

Veterans Administration Claims

Federal Law: The VA Claims Confidentiality Statute

Theme: Veterans

Citation: [38 U.S.C. § 5701](#); [38 C.F.R. §§ 1.500-1.527](#)

Protects the confidentiality of VA files, records, reports and other papers and documents that pertain to VA claims.

THE LAW

What does the law do?

The Department of Veterans Affairs (VA) Claims Confidentiality Statute protect the confidentiality of VA files, records, reports and other papers and documents that pertain to VA claims (including health records) and the names and addresses of present or former armed services personnel and their dependents.

To whom does the law apply?

The law applies to the VA.

How is “identifiable” information defined?

The VA Claims Confidentiality Statute and related regulations do not specifically describe what makes information “identifiable.” However, [VA guidance](#) is clear that the VA applies the standards for “individually-identifiable health information” contained in the Health Insurance Portability and Accountability Act (HIPAA) to the VA Claims Confidentiality Statute.

SHARING OF IDENTIFIABLE DATA

Does this law allow identifiable data to be shared?

The VA has [broad discretion](#) to “release information, statistics, or reports to individuals or organizations when [the] release would serve a useful purpose.” The VA Claims Confidentiality Statute and related regulations contain specific provisions relating to the disclosure of different types of VA records (e.g., [names and addresses](#), [social security records](#), [genealogy](#), [service](#), [medical](#), and [social data](#)) and provisions relating to disclosures in specific circumstances (e.g., disclosure to the [veteran](#), [next of kin](#), government agencies, [members of congress](#), law enforcement, [insurance companies](#), [private healthcare providers](#), [private psychologists](#), [prescription drug monitoring programs](#), and [disclosure in connection with a judicial proceeding](#)). The VA will not release address information for debt [collection](#), [canvassing](#), [harassing or for propaganda purposes](#).

Among who?

[Medical record information can be released](#) to the Army, Navy, Air Force, Coast Guard, Selective Service, US Public Health Service, federal or state hospitals, penal institutions, governmental or contract agencies conducting research for the VA, registered civilian physicians, the veteran or next of kin, health and social

agencies, procurement organizations, state prescription drug monitoring programs, the Department of Justice, the Department of the Treasury, and the U.S. Postal Service.

What are the prerequisites and conditions?

The requirements for a disclosure vary depending on the specific context. Many disclosures require a written authorization from the individual (e.g., [disclosures to private physicians for treatment](#)), an official request from a data recipient (e.g., [disclosures to federal agencies](#)), a written application (e.g., [disclosures of lists of names and addresses](#)), or a written agreement (i.e., [procurement organizations](#)). [VA guidance](#) permits routine reporting to state public health authorities pursuant to a signed standing written request letter.

SHARING OF DE-IDENTIFIED DATA

Does this law allow de-identified information to be shared?

Although the law grants the VA broad discretion to disclose “information, statistics, or reports,” [VA guidance](#) clearly states that non-identifiable or de-identified information is not protected by the VA Claims Confidentiality Statute.

Does this law define de-identification or standards to render the data de-identified?

[VA guidance](#) defines “non-identifiable information” as information “from which all unique identifiers have been removed.” The guidance clearly states that non-identifiable information is not protected under the VA Claims Confidentiality Statute. Information de-identified under the [HIPAA standards](#) is not protected by the VA Claims Confidentiality Statute.

DATA SHARING IMPLICATIONS FOR PUBLIC HEALTH

Does this law support data sharing to improve the health of communities?

The VA Claims Confidentiality Statute provides the VA with broad discretion to share data for useful purposes. Additionally, the VA Claims Confidentiality Statute contains several provisions that permit data sharing in ways that could improve the health of communities, including disclosures to the US Public Health Service, health and social agencies, prescription drug monitoring programs.

How does this law hinder data sharing to improve the health of communities?

The VA Claims Confidentiality Statute and its implementing regulations are complex laws. Moreover, [VA guidance](#) is clear that any disclosure of VA data must comply with five additional legal frameworks (see below). Consequently, some disclosures permitted under the VA Claims Confidentiality Statute might be prohibited by a different federal law.

Does this law establish prerequisites, conditions, or limitations for data sharing, not previously identified?

The requirements for a disclosure vary depending on the specific context. Each administration, staff office, and field facility has a [designated employee](#) that is responsible for granting or denying requests to inspect or obtain information from the VA. [Some disclosures](#) to the veteran or relatives are not permitted if they would be injurious to the physical or mental health of the veteran or cause repugnance or resentment toward the veteran if deceased.

What other terms apply to sharing this data?

[VA guidance](#) identifies six federal laws that are relevant to the disclosure of VA data: The Freedom of Information Act (FOIA), The Privacy Act, The VA Claims Confidentiality Statute, Confidentiality of Drug Abuse, Alcoholism and Alcohol Abuse, Human Immunodeficiency Virus (HIV) Infection, and Sickle Cell Anemia Health Records, HIPAA, and Confidentiality of Medical Quality Assurance Review Records. These six laws are applied simultaneously to disclosures involving VA records. For discretionary disclosures, the VA will not release identifiable information unless the disclosure is in the best interest of VA or individual. The [VA Claims Confidentiality Statute](#) contains penalty provisions for organizations that use VA data for any unapproved purpose.

What remedies or solutions might be employed to support data sharing while complying with this law?

[VA guidance](#) permits public health authorities to submit standing requests for routine public health reporting data. This permits public health authorities to use a single request for routine reporting data concerning specified diseases for up to three years. The VA utilizes an opt-in health information exchange. Veterans who want their health data shared between their health care providers using the VA health information exchange must complete an [authorization form](#).

What ethical considerations apply to the exercise of discretion to share data under this law?

VA records contain information from individuals who are, or were, in the armed forces. The military chain of command can potentially affect an individual's ability to make truly voluntary and uncoerced decisions. Inappropriately disclosures of certain information (e.g., mental, behavioral, and physical health information) could substantially affect the work lives of individuals both currently in the armed forces and veterans.

Additional federal guidance on the confidentiality of VA data can be found [here](#).

SUPPORTERS



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This document was developed by Cason Schmit, Research Assistant Professor, Texas A&M University and reviewed by Jennifer Bernstein, Deputy Director, Mid-States Region of The Network for Public Health Law. The Network for Public Health Law provides information and technical assistance on issues related to public health. The legal information and assistance provided in this document does not constitute legal advice or legal representation. For legal advice, please consult specific legal counsel.