

## Medical Quality Assurance Review Records

**Federal Law:** Confidentiality of Medical Quality Assurance Review Records

**Theme:** Veterans

**Citation:** [38 U.S.C. § 5705](#); [38 C.F.R. Section 17.500-17.511](#)

Protects records and documents as part of a VA medical quality-assurance program against unauthorized uses and disclosures.

### THE LAW

#### What does the law do?

The Veterans Administration (VA) [medical quality assurance review records confidentiality provisions](#) (QA Confidentiality Provisions) protects records and documents created by the VA as part of a medical quality-assurance (QA) program against unauthorized uses and disclosures. The [QA Confidentiality Provisions protect records](#) of 1) monitoring and evaluation reviews; 2) focused reviews of specific issues or incidents; 3) VA Central Office or Regional general oversight reviews to assess facility compliance; and 4) contracted external reviews of care.

#### To whom does the law apply?

The [QA Confidentiality Provisions](#) apply to the VA and records created as part of a medical QA program, meaning a systematic healthcare reviews carried out by or for VA for the purpose of improving the quality of medical care or improving the utilization of healthcare resources in VA medical facilities.

#### How is “identifiable” information defined?

The QA Confidentiality provisions consider information identifiable if [it identifies, either implicitly or explicitly, individual practitioners, patients, or reviewers](#). However, non-identifiable information could still be protected if it meets [other criteria](#) (e.g., discussions, deliberations, memoranda, letters or other documents relating to a quality assurance activity). [VA guidance](#) states that the VA applies the standards for “individually-identifiable health information” contained in the Health Insurance Portability and Accountability Act (HIPAA) to the QA Confidentiality Provisions.

### SHARING OF IDENTIFIABLE DATA

#### Does this law allow identifiable data to be shared?

The QA Confidentiality Provisions permit [sharing of identifiable data](#) in the following [contexts](#): disclosures 1) to perform licensing or accreditation functions or to perform facility monitoring required by law; 2) for VA participation in a health-care program; 3) to a criminal or civil law enforcement entity with a public health or safety legal mandate; 4) for response to a medical emergency affecting health or safety. 5) for healthcare program activities, including healthcare delivery, research, planning, and related activities.

### Among who?

Authorized VA [employees, contractors, and consultants](#) who require the information to perform their duties or responsibilities, [Congressional committees](#), certain federal agencies, licensing or accrediting organizations, criminal or civil law enforcement governmental agencies with a legal mandate to protect public health or safety, healthcare personnel (for a medical emergency), [VA practitioners](#) (with respect to the care they provided), [certain qualified persons](#), academic institutions, or organizations engaged in healthcare program activities, including research.

### What are the prerequisites and conditions?

Disclosures to [non-VA entities](#) require a written request that specifies the nature and content of the requested information, the disclosure recipient(s), that the purpose of the disclosure. Requests for confidential QA records for [research purposes](#) must include the research protocol and must be approved by a VA research and development committee and the VA facility director. The VA will not disclose or remove original copies of confidential QA records outside of the VA, but may disclose "[copies, abstracts, summaries, or similar records.](#)" Names and other identifying information must be deleted prior to a disclosure if the identifying information would constitute and "[clearly unwarranted invasion of personal privacy.](#)" The VA must also accompany disclosures with a [statement describing the legal penalties](#) for inappropriate uses and disclosures.

## SHARING OF DE-IDENTIFIED DATA

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

The [QA Confidentiality Provisions](#) specifically exclude certain records from the confidentiality protections, including certain statistical, summary, or aggregate information. However, the law [does protect some records that do not identify individuals](#) (e.g., records of discussions by healthcare evaluators or certain correspondence relating to QA activities).

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

The law does not contain specific standards for de-identification. Moreover, the [QA Confidentiality Provisions](#) protect some records that do not identify specific individuals.

## DATA SHARING IMPLICATIONS FOR PUBLIC HEALTH

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

QA activities aim to improve "[the quality of medical care](#)" or improve "[the utilization of healthcare resources in VA medical facilities.](#)" Sharing QA information could improve understanding of the factors related to these health related outcomes. The QA Confidentiality Provisions contain exceptions permitting the disclosure of protected information for [public health and research purposes](#). Accordingly, these exceptions permit limited data sharing for the purpose of improving community health.

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

Some disclosure exceptions to the QA Confidentiality Provisions contain administrative requirements that could be perceived as impediments to data sharing. Additionally, the requirement that certain [identifying information be removed](#) from data prior to non-VA disclosures could inhibit advanced data analytics and record linkage.

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

The law [limits re-disclosure](#) and [contains penalties for violations](#).

## **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, and the [QA Confidentiality Provisions](#) do not permit the disclosure of protected information if prohibited by another statute. Moreover, [VA guidance](#) states that discretionary disclosures must be in the best interest of the VA or the record subjects.

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

Many disclosures to non-VA entities require a written request for confidential information. Requests that clearly articulate the benefits of the disclosure to the VA or the record subjects will likely assist the reviewers within the VA determine whether the disclosure is the best interest of the VA or the record subjects as required by [VA policy](#).

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

Quality assurance and peer review records can contain information that could be harmful to healthcare providers (e.g., documentation of medical errors). Confidentiality of these records encourages providers and institutions to be honest and forthcoming in the quality assurance and peer review process aimed at improving patient care. Inappropriate disclosures of records could undermine the quality assurance and peer review process by discouraging providers and institutions from fully disclosing errors or mistakes and risk delaying needed interventions to improve patient care.

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



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### **SUPPORTERS**

The Network for Public Health Law is a national initiative of the Robert Wood Johnson Foundation.

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.