

Effective 5/3/2023

**Part 4
Health Statistics**

26B-8-401 Definitions.

As used in this part:

- (1) "Disclosure" or "disclose" means the communication of health data to any individual or organization outside the department.
- (2) "Health data" means any information, except vital records as defined in Section 26B-8-101, relating to the health status of individuals, the availability of health resources and services, and the use and cost of these resources and services.
- (3) "Identifiable health data" means any item, collection, or grouping of health data which makes the individual supplying it or described in it identifiable.
- (4) "Individual" means a natural person.
- (5) "Organization" means any corporation, association, partnership, agency, department, unit, or other legally constituted institution or entity, or part of any of these.
- (6) "Research and statistical purposes" means the performance of activities relating to health data, including:
 - (a) describing the group characteristics of individuals or organizations;
 - (b) analyzing the interrelationships among the various characteristics of individuals or organizations;
 - (c) the conduct of statistical procedures or studies to improve the quality of health data;
 - (d) the design of sample surveys and the selection of samples of individuals or organizations;
 - (e) the preparation and publication of reports describing these matters; and
 - (f) other related functions.

Renumbered and Amended by Chapter 306, 2023 General Session

26B-8-402 Powers of department to collect and maintain health data.

The department may on a voluntary basis, except when there is specific legal authority to compel reporting of health data:

- (1) collect and maintain health data on:
 - (a) the extent, nature, and impact of illness and disability on the population of the state;
 - (b) the determinants of health and health hazards;
 - (c) health resources, including the extent of available manpower and resources;
 - (d) utilization of health care;
 - (e) health care costs and financing; or
 - (f) other health or health-related matters;
- (2) undertake and support research, demonstrations, and evaluations respecting new or improved methods for obtaining current data on the matters referred to in Subsection (1) of this section; and
- (3) collect health data under other authorities and on behalf of other governmental or not-for-profit organizations.

Renumbered and Amended by Chapter 306, 2023 General Session

26B-8-403 Quality and publication of statistics.

The department shall:

- (1) take such actions as may be necessary to assure that statistics developed under this part are of high quality, timely, and comprehensive, as well as specific, standardized, and adequately analyzed and indexed; and
- (2) publish, make available, and disseminate such statistics on as wide a basis as practicable.

Renumbered and Amended by Chapter 306, 2023 General Session

26B-8-404 Coordination of health data collection activities.

- (1) The department shall coordinate health data activities within the state to eliminate unnecessary duplication of data collection and maximize the usefulness of data collected.
- (2) Except as specifically provided, this part does not independently provide authority for the department to compel the reporting of information.

Renumbered and Amended by Chapter 306, 2023 General Session

26B-8-405 Uniform standards -- Powers of department.

The department may:

- (1) participate and cooperate with state, local, and federal agencies and other organizations in the design and implementation of uniform standards for the management of health information at the federal, state, and local levels; and
- (2) undertake and support research, development, demonstrations, and evaluations that support uniform health information standards.

Renumbered and Amended by Chapter 306, 2023 General Session

26B-8-406 Disclosure of health data -- Limitations.

The department may not make a disclosure of any identifiable health data unless:

- (1) one of the following persons has consented to the disclosure:
 - (a) the individual;
 - (b) the next-of-kin if the individual is deceased;
 - (c) the parent or legal guardian if the individual is a minor or mentally incompetent; or
 - (d) a person holding a power of attorney covering such matters on behalf of the individual;
- (2) the disclosure is to a governmental entity in this or another state or the federal government, provided that:
 - (a) the data will be used for a purpose for which they were collected by the department; and
 - (b) the recipient enters into a written agreement satisfactory to the department agreeing to protect such data in accordance with the requirements of this part and department rule and not permit further disclosure without prior approval of the department;
- (3) the disclosure is to an individual or organization, for a specified period, solely for bona fide research and statistical purposes, determined in accordance with department rules, and the department determines that the data are required for the research and statistical purposes proposed and the requesting individual or organization enters into a written agreement satisfactory to the department to protect the data in accordance with this part and department rule and not permit further disclosure without prior approval of the department;
- (4) the disclosure is to a governmental entity for the purpose of conducting an audit, evaluation, or investigation of the department and such governmental entity agrees not to use those data

for making any determination affecting the rights, benefits, or entitlements of any individual to whom the health data relates;

- (5) the disclosure is of specific medical or epidemiological information to authorized personnel within the department, local health departments, public health authorities, official health agencies in other states, the United States Public Health Service, the Centers for Disease Control and Prevention (CDC), or agencies responsible to enforce quarantine, when necessary to continue patient services or to undertake public health efforts to control communicable, infectious, acute, chronic, or any other disease or health hazard that the department considers to be dangerous or important or that may affect the public health;
- (6)
 - (a) the disclosure is of specific medical or epidemiological information to a "health care provider" as defined in Section 78B-3-403, health care personnel, or public health personnel who has a legitimate need to have access to the information in order to assist the patient or to protect the health of others closely associated with the patient; and
 - (b) this Subsection (6) does not create a duty to warn third parties;
- (7) the disclosure is necessary to obtain payment from an insurer or other third-party payor in order for the department to obtain payment or to coordinate benefits for a patient; or
- (8) the disclosure is to the subject of the identifiable health data.

Renumbered and Amended by Chapter 306, 2023 General Session

26B-8-407 Disclosure of health data -- Discretion of department.

- (1) Any disclosure provided for in Section 26B-8-406 shall be made at the discretion of the department.
- (2) Notwithstanding Subsection (1), the disclosure provided for in Subsection 26B-8-406(4) shall be made when the requirements of that paragraph are met.

Renumbered and Amended by Chapter 306, 2023 General Session

26B-8-408 Health data not subject to subpoena or compulsory process -- Exception.

Identifiable health data obtained in the course of activities undertaken or supported under this part may not be subject to discovery, subpoena, or similar compulsory process in any civil or criminal, judicial, administrative, or legislative proceeding, nor shall any individual or organization with lawful access to identifiable health data under the provisions of this part be compelled to testify with regard to such health data, except that data pertaining to a party in litigation may be subject to subpoena or similar compulsory process in an action brought by or on behalf of such individual to enforce any liability arising under this part.

Renumbered and Amended by Chapter 306, 2023 General Session

26B-8-409 Department measures to protect security of health data.

The department shall protect the security of identifiable health data by use of the following measures and any other measures adopted by rule:

- (1) limit access to identifiable health data to authorized individuals who have received training in the handling of such data;
- (2) designate a person to be responsible for physical security;
- (3) develop and implement a system for monitoring security; and

- (4) review periodically all identifiable health data to determine whether identifying characteristics should be removed from the data.

Renumbered and Amended by Chapter 306, 2023 General Session

26B-8-410 Relation to other provisions.

Because the following parts contain specific provisions regarding collection and disclosure of data, the provisions of this part do not apply to data that is subject to the following parts:

- (1) Part 1, Vital Statistics;
- (2) Part 2, Utah Medical Examiner; and
- (3) Sections 26B-7-201 through 26B-7-223.

Renumbered and Amended by Chapter 306, 2023 General Session

26B-8-411 Duty to establish standards for the electronic exchange of clinical health information -- Immunity.

(1) As used in this section:

- (a) "Affiliate" means an organization that directly or indirectly through one or more intermediaries controls, is controlled by, or is under common control with another organization.
- (b) "Clinical health information" shall be defined by the department by administrative rule adopted in accordance with Subsection (2).
- (c) "Electronic exchange":
 - (i) includes:
 - (A) the electronic transmission of clinical health data via Internet or extranet; and
 - (B) physically moving clinical health information from one location to another using magnetic tape, disk, or compact disc media; and
 - (ii) does not include exchange of information by telephone or fax.
- (d) "Health care provider" means a licensing classification that is either:
 - (i) licensed under Title 58, Occupations and Professions, to provide health care; or
 - (ii) licensed under Chapter 2, Part 2, Health Care Facility Licensing and Inspection.
- (e) "Health care system" shall include:
 - (i) affiliated health care providers;
 - (ii) affiliated third party payers; and
 - (iii) other arrangement between organizations or providers as described by the department by administrative rule.
- (f) "Qualified network" means an entity that:
 - (i) is a non-profit organization;
 - (ii) is accredited by the Electronic Healthcare Network Accreditation Commission, or another national accrediting organization recognized by the department; and
 - (iii) performs the electronic exchange of clinical health information among multiple health care providers not under common control, multiple third party payers not under common control, the department, and local health departments.
- (g) "Third party payer" means:
 - (i) all insurers offering health insurance who are subject to Section 31A-22-614.5; and
 - (ii) the state Medicaid program.

(2)

- (a) The department shall make rules in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, to:

- (i) define:
 - (A) "clinical health information" subject to this section; and
 - (B) "health system arrangements between providers or organizations" as described in Subsection (1)(e)(iii); and
 - (ii) adopt standards for the electronic exchange of clinical health information between health care providers and third party payers that are for treatment, payment, health care operations, or public health reporting, as provided for in 45 C.F.R. Parts 160, 162, and 164, Health Insurance Reform: Security Standards.
 - (b) The department shall coordinate its rule making authority under the provisions of this section with the rule making authority of the Insurance Department under Section 31A-22-614.5.
 - (c) The department shall establish procedures for developing the rules adopted under this section, which ensure that the Insurance Department is given the opportunity to comment on proposed rules.
- (3)
- (a) Except as provided in Subsection (3)(e), a health care provider or third party payer in Utah is required to use the standards adopted by the department under the provisions of Subsection (2) if the health care provider or third party payer elects to engage in an electronic exchange of clinical health information with another health care provider or third party payer.
 - (b) A health care provider or third party payer may make a disclosure of information to the department or a local health department, by electronic exchange of clinical health information, as permitted by Subsection 45 C.F.R. Sec. 164.512(b).
 - (c) When functioning in its capacity as a health care provider or payer, the department or a local health department may make a disclosure of clinical health information by electronic exchange to another health care provider or third party payer.
 - (d) An electronic exchange of clinical health information by a health care provider, a third party payer, the department, a local health department, or a qualified network is a disclosure for treatment, payment, or health care operations if it complies with Subsection (3)(a) or (c) and is for treatment, payment, or health care operations, as those terms are defined in 45 C.F.R. Parts 160, 162, and 164.
 - (e) A health care provider or third party payer is not required to use the standards adopted by the department under the provisions of Subsection (2) if the health care provider or third party payer engage in the electronic exchange of clinical health information within a particular health care system.
- (4) Nothing in this section shall limit the number of networks eligible to engage in the electronic data interchange of clinical health information using the standards adopted by the department under Subsection (2)(a)(ii).
- (5)
- (a) The department, a local health department, a health care provider, a third party payer, or a qualified network is not subject to civil liability for a disclosure of clinical health information if the disclosure is in accordance with:
 - (i) Subsection (3)(a); and
 - (ii) Subsection (3)(b), (c), or (d).
 - (b) The department, a local health department, a health care provider, a third party payer, or a qualified network that accesses or reviews clinical health information from or through the electronic exchange in accordance with the requirements in this section is not subject to civil liability for the access or review.

- (6) Within a qualified network, information generated or for which a disclosure is made in the electronic exchange of clinical health information is not subject to discovery, use, or receipt in evidence in any legal proceeding of any kind or character.

Renumbered and Amended by Chapter 306, 2023 General Session