

County of San Diego

Guide for Public Health Communications with the News Media

Background:

County Public Health must comply with various federal and state laws and regulations relating to the privacy of individual health information. These laws include the privacy regulations required under the federal Health Insurance Portability and Accountability Act of 1996 (HIPAA) and various provisions of the California Civil Code, Health and Safety Code and Code of Regulations, Title 17.

Releasing information on the condition of a patient/client/facility resident to the news media requires a careful balancing of individual privacy with the media's desire for information. The following sets forth general guidelines and a summary of the law that Public Health employees may use when considering requests from the media. These are only guidelines, however, and do not replace existing County policies and procedures applicable to communicating with the media (CAO Policy, News Release/Media Contact Guidelines and County of San Diego Health and Human Services Agency Policy HHSA-E-2, Media Relations.) Disclosure of health information may vary from case-to-case. Therefore, requests involving information discussed in this guide should be reviewed with the County Privacy Officer (619-515-4243), and as appropriate, with County Counsel prior to release.

General Information Regarding Disclosures to the Media	
<p>GENERAL RULE FOR HEALTH INFORMATION WHERE THE COUNTY IS THE HEALTH CARE PROVIDER (E.G. PUBLIC HEALTH CLINIC)</p>	<p>Disclosures to the media are allowed only if all of the following criteria apply:</p> <ol style="list-style-type: none"> 1. Media identifies patient/client/facility resident by name; 2. Patient/client/facility resident has not objected to disclosure (contact facility to confirm in writing); and 3. <u>None</u> of the following criteria apply: <ul style="list-style-type: none"> • The disclosure would embarrass or endanger the individual; • The information concerns alcohol or substance abuse diagnosis or treatment (see additional criteria below); • The individual is a minor and the applicable rules have not been followed (see additional criteria below); • The individual is incapacitated and the applicable rules have not been followed (see additional criteria below); • The information concerns an unidentified patient/client/facility resident; or • The information concerns HIV/AIDS or sexually transmitted diseases (see additional criteria below);

	<ul style="list-style-type: none"> The information is maintained by the Child Health and Disability Prevention Program (CHDP)(see additional criteria below). <p>(45 CFR Part 164, Standards for Privacy of Individually Identifiable Health Information and California Civil Code section 56.10.)</p>
<p>WHERE OTHERWISE ALLOWED, INFORMATION THAT MAY BE DISCLOSED TO THE MEDIA WHEN THE COUNTY IS THE HEALTH CARE PROVIDER (E.G. PUBLIC HEALTH CLINIC)</p>	<p>A patient/client/facility resident's condition may be described in general terms that do not communicate specific medical information. Acceptable descriptions are as follows:</p> <ul style="list-style-type: none"> Undetermined. Patient is awaiting physician assessment. Good. Vital signs stable, within normal limits. Patient is conscious, comfortable. Indicators are excellent. Fair. Vital signs stable, within limits. Patient is conscious, may be uncomfortable. Indicators are favorable. Serious. Vital signs are unstable or not within normal limits. Patient acutely ill. Indicators questionable. Critical. Vital signs unstable, not within normal limits. Patient may be unconscious. Indicators are unfavorable. Deceased. No other information may be released. <p>Note: "Stable" is not an accurate description of the patient's condition. This term should be avoided.</p> <p>No details of an individual's injuries or illness may be released without written authorization from the individual patient/client/facility resident (Only single word condition description may be released).</p> <p>(45 CFR Part 164, Standards for Privacy of Individually Identifiable Health Information.)</p>
<p>REQUESTS TO SPEAK WITH A PATIENT WHERE THE COUNTY IS THE HEALTH CARE PROVIDER (E.G., PUBLIC HEALTH CLINIC)</p>	<p>A request to speak with a patient/client/facility resident may be honored if all of the following conditions are met:</p> <ol style="list-style-type: none"> Do not confirm or deny that the individual is at a County facility; Contact the appropriate facility and seek the individual's written approval. Do not disclose anything without a signed copy of the authorization in your possession. If you cannot obtain written authorization, courteously decline the media's request without confirming or denying that the patient is at a County facility. (See exceptions or special situations below

	<p>and apply as necessary); and</p> <p>3. If a meeting is allowed, arrange for the meeting in a private location that does not compromise the privacy or safety of other patients/clients/facility residents.</p> <p>(45 CFR Part 164, Standards for Privacy of Individually Identifiable Health Information.)</p>
<p>ALCOHOL OR SUBSTANCE ABUSE INFORMATION WHERE THE COUNTY IS THE HEALTH CARE PROVIDER OR POSSESSES INFORMATION IN ITS CAPACITY AS A PUBLIC HEALTH DEPARTMENT)</p>	<p>A request to disclose information to the media about a patient/client/facility resident with an alcohol or substance abuse problem may only be disclosed if the patient/client/facility resident provides written authorization to disclose the information. Do not disclose anything without a signed copy of the authorization in your possession.</p> <p>(42 Code of Federal Regulations Part 2.)</p>
<p>MINORS WHERE THE COUNTY IS THE HEALTH CARE PROVIDER OR POSSESSES INFORMATION IN ITS CAPACITY AS A PUBLIC HEALTH DEPARTMENT)</p>	<p>Disclosures concerning minors may be made only if:</p> <ol style="list-style-type: none"> 1. The parent authorizes the disclosure; or 2. The minor authorizes the disclosure if the minor is: <ul style="list-style-type: none"> • Married or previously married; • Emancipated (declaration by court, identification card from DMV); • Self-sufficient (15 years or older, not living at home, manage own financial affairs); • Not married, but treatment is related to the minor's pregnancy, except sterilization; • Not married, but treatment is related to pregnancy termination; • On active duty with the Armed Forces; • Twelve (12) years or older and treatment is for a reportable communicable disease or condition; • Twelve (12) years or older and treatment is for rape; • Treated for sexual assault; • Twelve (12) years or older and treatment is for alcohol or drug abuse; and • Twelve (12) years or older receiving outpatient mental health treatment. <p>Do not request a parent's authorization to disclose the information if the minor is the proper person to authorize the disclosure. Contacting a parent may disclose to the parent information he or she is not entitled to, and may constitute an inappropriate disclosure of information.</p>

	(45 CFR Part 164, Standards for Privacy of Individually Identifiable Health Information and California Family Code Part's 4 and 6.)								
INCAPACITATED INDIVIDUALS WHERE THE COUNTY IS THE HEALTH CARE PROVIDER OR POSSESSES INFORMATION IN ITS CAPACITY AS A PUBLIC HEALTH DEPARTMENT)	<p>For incapacitated/unconscious individuals, certain individuals may authorize the disclosure of information. They are as follows:</p> <table border="0"> <thead> <tr> <th><u>Patient's Status</u></th> <th><u>Individual Empowered to Authorize Disclosure</u></th> </tr> </thead> <tbody> <tr> <td>Conservatee</td> <td>Conservator of the Person</td> </tr> <tr> <td>LPS Conservatee</td> <td>LPS Conservator</td> </tr> <tr> <td>General Incapacitated Individual</td> <td>Legal Guardian</td> </tr> </tbody> </table> <p>If the disclosure would endanger the individual, it should not be made.</p> <p>HIPAA states that when opportunity to object to disclosure cannot be practicably provided because of the patient's incapacity, a covered health care provider may disclose information if it is in the individual's best interest or is consistent with prior expressed preference.</p> <p>(45 CFR Part 164, Standards for Privacy of Individually Identifiable Health Information, California Civil Code Section 56.10(b)(7) and California Health and Safety Code Section 123105(e).)</p>	<u>Patient's Status</u>	<u>Individual Empowered to Authorize Disclosure</u>	Conservatee	Conservator of the Person	LPS Conservatee	LPS Conservator	General Incapacitated Individual	Legal Guardian
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UNIDENTIFIED PATIENTS WHERE THE COUNTY IS THE HEALTH CARE PROVIDER OR POSSESSES INFORMATION IN ITS CAPACITY AS A PUBLIC HEALTH DEPARTMENT)	<p>Health care providers sometime provide care to patients who cannot be identified through any means (personal ID, police records, etc.)</p> <p>As a means to ID "John Doe" patients, health care providers may provide a patient photo to the media. Under HIPAA, this practice may continue IF certain legal determinations have been met:</p> <ul style="list-style-type: none"> • Individual in unconscious and legally not "present or otherwise available". The covered component of the County may disclose that information, which is directly relevant to locating the individual's next-of-kin. <p>(45 CFR Part 164, Standards for Privacy of Individually Identifiable Health Information.)</p>								
HIV/AIDS AND SEXUALLY TRANSMITTED DISEASES WHERE THE COUNTY IS THE HEALTH CARE	<p>A request to disclose information to the media about a patient/client/facility resident with a HIV/AIDS/STD diagnosis may only be disclosed if the patient/client/facility resident provides written authorization to disclose the information. Do not disclose any identifying information to the media without a signed copy of the authorization in your</p>								

<p>PROVIDER OR POSSESSES INFORMATION IN ITS CAPACITY AS A PUBLIC HEALTH DEPARTMENT)</p>	<p>possession.</p> <p>(California Health and Safety Code section 121025, 17 California Code of Regulations sections 2502(f) and 2636.)</p> <p>California law declares the results of HIV/AIDS test to be confidential and strictly limits the disclosure of test results in a manner which identifies the individual tested.</p> <p>(California Health and Safety Code Section 120980.)</p>
<p>PARTICIPANTS IN THE CHILD HEALTH DISABILITY PREVENTION PROGRAM</p>	<p>The information may only be disclosed if:</p> <ol style="list-style-type: none"> 1. The individual authorizes the disclosure; and 2. The disclosure is accompanied by a professional interpretation of what the results mean. <p>(17 California Code of Regulations section 6874.)</p>
<p>MATTERS OF PUBLIC RECORD WHERE THE COUNTY IS THE HEALTH CARE PROVIDER OR POSSESSES INFORMATION IN ITS CAPACITY AS A PUBLIC HEALTH DEPARTMENT</p>	<p>Information included on police logs (transport of care accident victims to a hospital, etc.) are considered matters of public record.</p> <p>HIPAA mandates that covered health care providers accord individuals involved in matters of public record the same privacy rights as other patients/clients/facility residents.</p> <p>A reporter must have the name of a car accident victim before the health care provider can provide any individually identifiable health information.</p> <p>(45 CFR Part 164, Standards for Privacy of Individually Identifiable Health Information.)</p>
<p>DISASTERS AND EMERGENCY SITUATIONS WHERE THE COUNTY IS THE HEALTH CARE PROVIDER OR POSSESSES INFORMATION IN ITS CAPACITY AS A PUBLIC HEALTH DEPARTMENT)</p>	<p>HIPAA allows covered components to release general patient/client/facility resident information as long as it is not identifiable to specific individuals.</p> <ul style="list-style-type: none"> • A covered component may tell the media the number of patients by gender or age group and general cause of treatment needs (explosion, earthquake, etc.) <p>A covered component may release protected health information to other hospitals, health care facilities and relief agencies when multiple facilities are receiving patients from the same disaster.</p> <p>A County spokesperson may release basic patient information such as aggregate number of victims, gender or general conditions. No individually identifiable health information may be released without individual authorization.</p>

	(45 CFR Part 164, Standards for Privacy of Individually Identifiable Health Information.)
GENERAL REPORTABLE DISEASES (E.G.) WHERE THE COUNTY IS THE HEALTH CARE PROVIDER OR POSSESSES INFORMATION IN ITS CAPACITY AS A PUBLIC HEALTH DEPARTMENT)	Information specific to individuals obtained by, or in the possession of, Public Health officials may not be disclosed without a signed authorization from the individual whose information would be disclosed. (17 California Code of Regulations section 2502(f))

FREQUENTLY ASKED QUESTIONS

If a patient/client/facility resident or his or her family release information to the media, which include complaints about a particular health care component of the County, can the County defend itself in the media as well?	<p>The laws regarding the release of patient information apply even when the patient or the patient's family contacts the media. This makes it difficult, if not impossible, for the health care component of the County to defend itself in the press.</p> <p>The County may attempt to obtain written authorization from the patient or the patient's legal representative to release information to the media to respond to the patient's or family's accusations. However, if authorization is denied, no information may be released. The health care component should contact the County Privacy Officer and County Counsel regarding issues such as this.</p>
Can individually identifiable protected health information be disclosed to the media during a community disaster?	<p>Privacy rules governing the disclosure of patient information to the media generally do not change in disaster situations. The above described requirements should be followed, even in times of a disaster.</p> <p>Health care providers, however, may notify the media of the number of patients that have been brought to a particular facility by gender or age group and the general cause of their treatment needs (as explosion or earthquake) as long as it is not identifiable to a specific individual.</p>
Can Public Health disclose to the media the name of an individual who is not compliant with his or her tuberculosis treatment plan?	Health information obtained by Public Health is not subject to disclosure to the media. (California Code of Regulations section 2502(f). This includes reports of tuberculosis patients. The health information of individuals receiving treatment from the County is also protected from disclosure by federal and California law. (45 CFR Part 164 and California Civil Code section 56.10.)

Confidentiality and Privacy Laws Affecting Public Health's Ability To Communicate with the Media

California Civil Code §56.10(c)(7), Confidentiality of Medical Information Act (CMIA).

A provider of health care, or a health care service plan may disclose medical information as follows: The information may be disclosed to public agencies, clinical investigators, including investigators conducting epidemiologic studies, health care research organizations, and accredited public or private nonprofit educational or health care institutions for bona fide research purposes. **However, no information so disclosed shall be further disclosed by the recipient in any way that would disclose the identity of any patient or be violative of this part.**

California Health and Safety Code §125105, Hepatitis B Prenatal Testing.

(a) The blood specimen and test results pursuant to subdivision (b) of Section 125085 shall be confidential and shall not be disclosed, except as otherwise provided by law.

California Code of Regulation (CCR) §901 of Title 17, Access to the Records in the Office of the State Registrar and in the Offices of Local Registrars.

Records of birth, death, and marriage in the Office of the State Registrar and in offices of local registrars for which access is not specifically prohibited by statute shall be open for examination by the public during regularly scheduled office hours subject to the restrictions listed in Health and Safety Code Sections 10125.5 and 10129.

The principal researcher who needs access to confidential information shall submit a signed agreement to the State Registrar with a copy to the local registrar when appropriate, assuring that any report shall not identify an individual and that working papers which may permit such identification shall be destroyed as set forth in the agreement. Any breach of the signed agreement shall result in denial of further access to the data.

No person, except as authorized by law, shall copy or retain copies of confidential data unless procedures in this section are followed.

California Code of Regulation (CCR) §1004 of Title 17, Reporting Requirements.

(a) Notification of Positive Laboratory Finding for Syphilis. To assist the local health officer in the discharge of his duties under Section 3110 and 3194 of the Health and Safety Code, any person who is in charge of a blood bank in which a laboratory examination of any specimen derived from a donor yields serological or other evidence of syphilis shall promptly notify the health officer of the local health jurisdiction of the address of the donor. This notification shall contain the type of specimen, the date it was obtained, the nature and result of the test performed, and the name, address, and the date of birth of the donor who provided the specimen.

The notification may be made by mailing or otherwise delivering a legible copy of the laboratory report containing all of the required information or by a telephone communication which is documented in the blood bank's records.

(b) The notifications required in this section are confidential and not open for public inspection.

California Code of Regulation (CCR) §2502 of Title 17, Reports by Local Health Officer to State Department of Health Services.

(f) Confidentiality. Information reported pursuant to this section is acquired in confidence and shall not be disclosed by the local health officer except as authorized by these regulations, as required by state or federal law, or with the written consent of the individual to whom the information pertains or to the legal representative of that individual.

(1) A health officer shall disclose any information, including personal information, contained in an individual case report to state, federal or local public health officials in order to determine the existence of a disease, its likely cause or the measures necessary to stop its spread.

(2) A health officer may for purposes of his or her investigation disclose any information contained in an individual case report, including personal information, as may be necessary to prevent the spread of disease or occurrence of additional cases.

(3) A health officer may disclose any information contained in an individual case report to any person or entity if the disclosure may occur without linking the information disclosed to the individual to whom it pertains, and the purpose of the disclosure is to increase understanding of disease patterns, to develop prevention and control programs, to communicate new knowledge about a disease to the community, or for research.

(4) Notwithstanding subsections (1), (2), and (3) above, no information that would directly or indirectly identify an individual as one who has applied for or been given services for alcohol or other drug abuse by a federally assisted drug or alcohol abuse treatment program (as defined in 42 C.F.R. § 2.11) shall be included in an individual case report or otherwise disclosed absent the individual's written consent.

(g) Whenever the health officer collects personal information in order to prepare an individual case report required by subsection (b), the health officer shall notify the individual from whom the information is collected that: (1) supplying personal information related to the individual's disease is mandatory; (2) the only disclosure of personal information will be pursuant to subsections 2502 (f)(1) and 2502(f)(2); and (3) non-personal information may be disclosed pursuant to subsection 2502 (f)(3).

California Code of Regulation (CCR) §2636 of Title 17, Venereal Diseases.

(b) Reports Confidential. Reports of examinations, cases, investigations and all records thereof made under the regulations for the control of venereal diseases shall be confidential and not open to public inspection and no part thereof divulged, except as may be necessary for the preservation of the public health.

(h) Investigation. All city, county and other local health officers are hereby directed to use every available means to ascertain the existence of, and immediately to investigate, all reported or suspected cases of venereal disease in the infectious stages within their several territorial jurisdictions, and to ascertain the sources of such infections. The

attending physician, in every case of venereal disease coming to him for treatment, shall endeavor to discover the source of infection, as well as any sexual or other intimate contacts which the patient was in the communicable stage of the disease. **The physician shall make an effort, through the cooperation of the patient, to bring these cases in for examination and, if necessary, treatment. If, within 10 days of identification, any such source of infection or any such contact has not given satisfactory evidence of being under the care of a physician, such person shall be reported to the health officer, the physician's name being kept confidential in any investigation by the health department.** In cases in which prostitutes are named as sources of infection, all obtainable information as to name, description, residence, etc., shall be given to the health officer at once.

California Code of Regulation (CCR) §6874 of Title 17, Confidentiality. (Note: CHDP Regulations).

(a) All information and results of the health assessments of each person shall be confidential and shall not be released without the informed consent of the person or parent or guardian.

(b) The results of the health assessment shall not be released to any public or private agency, even with the consent of the person or parent or guardian, unless accompanied by a professional interpretation of what the results mean.

California Code of Regulation (CCR) §33040 of Title 17, Exemption From Fees. (Note: Lead Poisoning).

(E) Any records, or portion thereof, which the applicant wants to protect as a trade secret shall be submitted in a separate sealed envelope clearly marked on the outside as "Trade Secret Material." For purposes of this section, "trade secret" shall have the same meaning as in the Uniform Trade Secrets Act, Civil Code section 3426 et seq. **The application shall contain a declaration under penalty of perjury describing why the applicant believes the material is a trade secret. After review, the Department will either grant the trade secret request and keep the material confidential, or deny the request, return all copies of the trade secret material to the applicant, and not consider the trade secret material in its determination.** The Department's refusal to grant a requested claim of trade secret does not excuse the applicant from establishing all elements of the claim for exemption. Any material which the Department agrees to consider as a trade secret shall be exempt from disclosure under the Public Records Act, Government Code section 6250 et seq. Records for which the Department has denied protection as a trade secret shall also be exempt from disclosure under the Public Records Act during the time the records are in the possession of the Department.