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Executive Office of Health and Human Services
Department of Public Health
State Laboratory Institute
305 South Street, Jamaica Plain, MA 02130

BUREAU OF COMMUNICABLE DISEASE CONTROL

Date: May 9, 2003

To: Local Boards of Health

From: Alfred DeMaria, Jr., M.D., Assistant Commissioner, State Epidemiologist
Bureau of Communicable Disease Control

Tracy A. Miller, J.D., MDPH Privacy Officer

Re: Surveillance and Confidentiality

Recent implementation of the Health Insurance Portability and Accountability Act's (HIPAA) Privacy Rule, has created some confusion and misunderstanding concerning case reporting and the authority of public health officials to conduct public health surveillance and case investigations. With regard to communicable disease surveillance and reporting, HIPAA does not interfere with state public health reporting laws, nor does it prevent access to protected health information (PHI) for public health surveillance, investigations and interventions.

HIPAA specifically allows public health reporting and access to PHI for public health activities without requiring an individual's authorization. The Massachusetts Department of Public Health (MDPH) is a public health authority as defined by the HIPAA Privacy Regulation (45 CFR §§ 164.501 and 164.512 (b)). Local boards of health have coordinate authority with the MDPH to access PHI for the public health activities described in this memo. Staff of the Bureau of Communicable Disease Control and local boards of health (or authorized agents) are authorized to inspect certain medical records in the course of official public health duties.

The HIPAA Privacy Rule is found in the Code of Federal Regulations (CFR) at 45 CFR Part 164. Specifically, 45 CFR 164.512(a)(1) states that "a covered entity (for these purposes, a health care provider) may use or disclose protected health information to the extent that such use or disclosure is required by law and the use or disclosure complies with and is limited to the relevant requirements of the law." 45 CFR 64.512(b)(2)(i), further states that a covered entity may disclose protected public health information to a public health authority that is authorized by law to collect or receive such information for the purpose of preventing and controlling disease, injury, or disability, including, but not limited to, the reporting of disease, injury, vital events

such as birth or death, and the conduct of public health surveillance, public health investigations, and public health interventions.

Please note that while covered entities are required to account for disclosures made to a public health authority, routine reporting conducted on an on-going basis to public health authorities need not be logged in individual medical records and may consist of a summary statement as to the nature of such reporting (45 CFR § 164.528 (b)(3)).

MDPH will specify the minimum information necessary to conduct public health investigations and a covered entity may reasonably rely on a public health official's determination that the information requested is the minimum necessary data for this purpose.

For additional interpretations of this passage, please review the website of the federal Office of Civil Rights at <http://www.hhs.gov/ocr/> or the Federal Register, Vol. 67, No. 59, Page 14801, Wednesday March 27, 2002.

For your reference, attached is a list of federal and state laws and regulations pertaining to public health reporting and allowing access to protected health information.

Legal Basis for Disease Surveillance, Reporting and Investigations

Disease surveillance is a core function of public health. Various entities have the legally mandated responsibility to report cases of disease deemed dangerous to the public health. Case investigations serve to reduce morbidity and mortality through identification of exposed or at-risk contacts and prevent further transmission of illness. Case reports may help document and describe the extent of a disease in a population, spread of disease to new areas, and assess control measures. Surveillance is also a necessary tool for resource allocation. The legal basis for these activities is found in federal regulations, state laws, and state regulations.

Federal Regulations

- 45 CFR §164.512: federal HIPAA Privacy Regulation allows access to PHI for public health functions, when the public health authority is authorized by law to collect or receive such information. The Rule defines public health purposes broadly and does not limit public health activities to those specifically specified. HIPAA did not intend to interfere with existing public health activities established under state law.

State Laws

- M.G.L. c.111, §6: authorizes the Massachusetts Department of Public Health (MDPH) to define diseases dangerous to the public health and through regulations establish lists of reportable diseases
- M.G.L. c.111 §7: authorizes the MDPH and the board of health to investigate cases of reportable diseases
- M.G.L. c.111 §24A: authorizes MDPH studies to reduce morbidity
- M.G.L. c.111 §109: authorizes household contacts to report cases of reportable diseases to the local board of health
- M.G.L. c.111 §111: mandates physician reporting of reportable diseases to the local board of health
- M.G.L. c.111, §112: mandates that local boards of health report cases of reportable diseases to the MDPH
- M.G.L. c.111, §113: directs boards of health to keep records of reported cases or reportable diseases
- M.G.L. c.111D, §6: mandates laboratory reporting of significant clinical findings of infectious disease to the MDPH

State Regulations

- 105 CMR 300.000: Reportable Diseases and Isolation and Quarantine Regulations: These regulations specify who is required to report, what is reportable to the local boards of health and what is reportable directly to the MDPH, establishes isolation and quarantine requirements for those diseases, and authorizes surveillance activities such as case investigation, and the collection of confidential data.

Any questions concerning specific situations may be directed to the Division of Epidemiology and Immunization Surveillance Program at (617) 983-6801. Thank you for your cooperation and assistance in our efforts to prevent and reduce morbidity and mortality in Massachusetts.