



October 20, 2020

## **CONTACT TRACING: AUTHORITY AND CONFIDENTIALITY IN SELECTED STATES**

With enactment of 2020 Special Session HB 2016, Kansas added the COVID-19 Contact Tracing Privacy Act (Privacy Act) to its law. The provisions of the Privacy Act, which are effective until May 1, 2021, define terms for this purpose and prohibit the State or any municipality, or any officer or official or agent thereof, from conducting or authorizing contact tracing, except whenever the Secretary of Health and Environment or a local health officer determines contact tracing is necessary to perform a public health duty assigned by statute to the official; the Secretary or local health officer may then conduct or authorize contact tracing as provided in the Privacy Act.

Case investigation and contact tracing have been described as “core public health functions that involve working with individuals diagnosed with an infectious disease to identify and provide support to contacts that may have been exposed to infection”<sup>1</sup> and a “key strategy for preventing further spread of COVID-19.”<sup>2</sup> These tools have been used to reduce transmission of venereal disease, smallpox, tuberculosis, H1N1 influenza, measles, and other infectious diseases.<sup>3</sup> In Kansas, law enacted in 1917 authorized the State Board of Health to “make and prescribe rules, regulations and procedures for the isolation and quarantine of such diseases and persons afflicted with **or exposed to** such diseases as may be necessary to prevent the spread and dissemination of diseases dangerous to the public health” [emphasis added] (KSA 65-128 as of L. 1917, ch. 206, §1).

The practice of contact tracing has increased significantly during the current COVID-19 pandemic. Contact tracers notify people they may have been exposed to COVID-19 and advise them to monitor their health for signs and symptoms of COVID-19. Tracers also ask people to self-isolate if they have COVID-19 or self-quarantine if they are a close contact of someone who has the disease.<sup>4</sup> A report issued in April 2020 by the Association of State and Territorial Health Officials (ASTHO) and the Johns Hopkins Bloomberg School of Public Health stated

---

1 Association of State and Territorial Health Officials (ASTHO), “COVID-19 Case Investigation and Contact Tracing: Considerations for Using Digital Technologies,” July 16, 2020, available from <https://astho.org/Reports/>

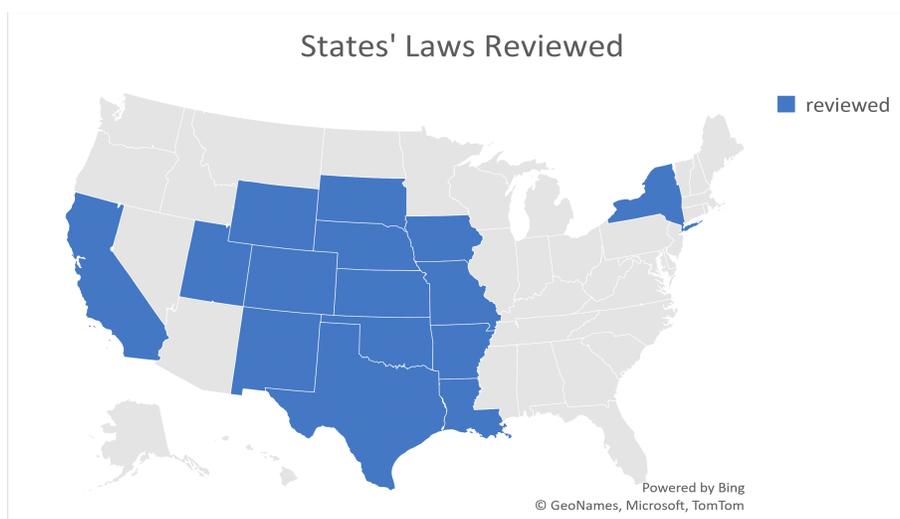
2 U.S. Centers for Disease Control and Prevention (CDC), “Case Investigation and Contact Tracing : Part of a Multipronged Approach to Fight the COVID-19 Pandemic,” <https://www.cdc.gov/coronavirus/2019-ncov/php/principles-contact-tracing.html>, accessed September 2020.

3 *EDM Digest*, American Military University, “Contact Tracing and Tracing the Source of Diseases,” <https://edmdigest.com/response/contact-tracing-tracking-source-diseases/>, accessed September 2020.

4 CDC, “Contact Tracing,” <https://www.cdc.gov/coronavirus/2019-ncov/daily-life-coping/contact-tracing.html>, accessed September 2020.

approximately 100,000 contact tracers, paid or volunteer, would need to be added in order to “trace all contacts, safely isolate the sick, and quarantine those exposed”<sup>5</sup> in a manner that is most likely to reduce further transmission of COVID-19. ASTHO further noted technologies that perform tasks, such as tracking symptoms, could be force multipliers, and some states have partnered with technology companies to build mobile COVID-19 exposure notification apps for their residents. *USA Today* reported 14 states had contact tracing apps in either the Apple or Google app stores.<sup>6</sup> The Centers for Disease Control and Prevention (CDC) is among the entities providing contact tracing resources for state and local officials.<sup>7</sup>

This memorandum provides information on the laws of selected states regarding the responsibilities of state departments of health, reporting of contagious diseases, information collected during contact tracing, and confidentiality of information collected. Laws for these states were reviewed: Kansas, Arkansas, California, Colorado, Iowa, Louisiana, Missouri, Nebraska, New Mexico, New York, Oklahoma, South Dakota, Texas, Utah, and Wyoming. Statutory and regulatory references are provided at the end of this memorandum. Unless otherwise noted, all provisions cited in this memorandum were law prior to the declaration of the COVID-19 pandemic in March 2020, as indicated in histories of statutes and regulations. Additional information sources are noted.



5 Johns Hopkins Bloomberg School of Public Health Center for Health Security and ASTHO, “A National Plan to Enable Comprehensive COVID-19 Case Finding and Contact Tracing in the US,” <https://www.centerforhealthsecurity.org/our-work/publications/2020/a-national-plan-to-enable-comprehensive-covid-19-case-finding-and-contact-tracing-in-the-us> accessed October 2020.

6 “Tracking coronavirus: Are Apple and Google contact tracing apps available in your state?,” <https://www.usatoday.com/story/tech/2020/10/02/apple-google-coronavirus-contact-tracing-apps/3592355001/>, October 2, 2020, accessed October 2020. The states listed were Alabama, Arizona, Delaware, Florida, New Jersey, New York, Nevada, North Carolina, North Dakota, Pennsylvania, Rhode Island, South Dakota, Virginia, and Wyoming. The article also describes how the apps work. In Kansas, the Privacy Act prohibits conducting contact tracing through use of cellphone location data.

7 See, for example, <https://www.cdc.gov/coronavirus/2019-ncov/php/open-america/contact-tracing-resources.html>.

## General State Authority for Protecting Public Health

Laws of the states reviewed authorize agencies with primary responsibility for public health (state health agencies) to take actions to protect the public health and to adopt regulations that specify how that is to be accomplished. Language from the statutes of Kansas and nearby states, quoted below, is generally the same as that found for other states reviewed. The statutes with this authority have been in place for many years; statute numbers and the year the statute was first enacted (or provided with the current statutory number) are provided.

- Kansas - “The secretary of health and environment shall exercise general supervision of the health of the people of the state and may . . . take action to prevent the introduction of infectious or contagious disease into this state and to prevent the spread of infectious or contagious disease within this state. . . . The secretary of health and environment may adopt rules and regulations necessary to carry out the provisions. . . .” (KSA 65-101, 1885)
- Colorado - “The department has, in addition to all other powers and duties imposed upon it by law, the powers and duties provided in this section as follows: (a) To investigate and control the causes of epidemic and communicable diseases affecting the public health . . . The board is authorized to require reports relating to such communicable diseases in accordance with the provisions of [other law] and to have access to medical records relating to such designated diseases . . . (b) To investigate and monitor the spread of disease that is considered part of the emergency epidemic . . .” (C.R.S.A. §25-1.5-102, 2003 [renumbered that year])
- Missouri - “It shall be the general duty and responsibility of the department of health and senior services to safeguard the health of the people in the state and all its subdivisions. It shall designate those diseases which are infectious, contagious, communicable or dangerous in their nature and shall make and enforce adequate orders, findings, rules and regulations to prevent the spread of such diseases and to determine the prevalence of such diseases within the state.” (R.S.Mo. 192.020, 1945)
- Nebraska - “The Department of Health and Human Services shall have supervision and control of all matters relating to necessary communicable disease control and shall adopt and promulgate such proper and reasonable general rules and regulations as will best serve to promote communicable disease control throughout the state and prevent the introduction or spread of disease.” (Neb.Rev.St. § 71-502, 1919)
- Oklahoma - “The State Board of Health shall have authority to adopt such rules and regulations, not inconsistent with law, as it deems necessary to aid in the prevention and control of communicable disease. . . .” (63 Okl.St. Ann. § 1-502, 1963)

Annotations to these statutes (also known as notes of decision) show very few challenges to these general laws and provide language upholding them.

- The U.S. Supreme Court in the widely cited case *Jacobson v. Massachusetts*, 197 U.S. 11 (1905), ruling on required smallpox vaccination, stated, “The police power of a State embraces such reasonable regulations relating to matters completely within its territory, and not affecting the people of other States, established directly by legislative enactment, as will protect the public health and safety. . . . [I]f a statute purporting to have been enacted to protect the public health, the public morals, or the public safety, has no real or substantial relation to those objects, or is, beyond all question, a plain, palpable invasion of rights secured by the fundamental law, it is the duty of courts to so adjudge, and thereby give effect to the Constitution.”
- The Missouri Supreme Court, in *State ex rel. Horton v. Clark* (320 Mo. 1190, 9 S.W.2d 635 [1928]), addressed the issue of the general powers of the state health agency this way: “[I]t is a wholesome and well-recognized rule of law that powers conferred upon boards of health to enable them effectually to perform their important functions in safeguarding the public health should receive a liberal construction.”<sup>8</sup> No other on-point state cases were found for the selected states.
- In 2020, rulings from the 11<sup>th</sup> Circuit (*Robinson v. Harris*, 11th Cir., No. 20-11401, 4/23/20) and the Eastern District of Arkansas (within the 8<sup>th</sup> Circuit) (*Little Rock Family Planning Services v. Rutledge*), regarding COVID-19 testing and abortion rights, have cited *Jacobson* and the requirement that a regulation of a health agency have a real or substantial relationship to protecting public health.

## Information Collected During Contact Tracing

States use various means to record the data collected for contact tracing and to report certain portions of that information to the CDC National Notifiable Diseases Surveillance System, which has been used since 2003 to protect public health by tracking instances of more than 140 diseases in the country and support electronic reporting regarding those diseases.<sup>9</sup> The Kansas Department of Health and Environment uses, since July 2019, a system called EpiTrax developed by the Utah Department of Health as part of a consortium effort to record and report such data.<sup>10</sup>

While CDC database elements inform the requirements, states prescribe data elements that must be reported by those who are statutorily required to report disease, generally health care professionals.<sup>11</sup> Some of the states place required data elements into their general public

8 An opinion from the Attorney General of New Mexico dated March 23, 2020, states the New Mexico courts had not examined the general responsibility statute but stated it “appears to fall within the State’s traditional police powers to regulate certain activity for the protection of public health against the spread of infectious disease” and outlines U.S. Supreme Court rulings on state policy powers with regard to health. To Senator Pirtle, “Governor’s Authority During a Public Health or Other Emergency,” available at <http://public-records.nmag.gov/opinions>.

9 See <https://wwwn.cdc.gov/nndss/nedss.html> and <https://www.cdc.gov/nbs/covid-19-response.html>.

10 See [https://www.kdheks.gov/epi/disease\\_investigation.htm](https://www.kdheks.gov/epi/disease_investigation.htm), specifically the EpiTrax User Guide. Information on the system from the Utah Department of Health is available at <http://health.utah.gov/epi/UT-NEDSS/>.

11 Statutes of Utah also include among those required to report “individuals who have knowledge of others who have a communicable disease” and “individuals in charge of schools having responsibility

health regulations (not specific to COVID-19), but the statutes and regulations of most of the states reviewed did not address data elements for contact tracing. Common elements among state regulations reviewed, including KAR 28-1-42, included these:

- Patient's diagnosis;
- Patient's name, address, and telephone number;
- Patient's date of birth;
- Patient's sex or gender;
- Patient's race and ethnicity;
- Patient's pregnancy status;
- Date of onset of symptoms;
- Medical provider's name, address, and telephone number; and
- Laboratory name, address, and telephone number.

Regulations of states including Colorado also listed "other information the agency may require" on the list of elements. States also had state-specific requirements in their regulations, such as the requirement in Iowa law requiring information on all household and other known contacts and whether those contacts had been tested; the name, address, and telephone number of the person making the report, in California law; and the patient's occupation, in California law.

The CDC offers a checklist of data elements in its *Case Investigation and Contact Tracing Guidance*<sup>12</sup> that includes common elements such as name and address, information about symptoms and disease progression, test results, risk factors including occupation and whether housing is congregate, and contacts. In Kansas, rule and regulation provisions implementing the Privacy Act, which expires May 1, 2021, specify the information a contact tracer may collect in response to a case of COVID-19: the patient's identity, address, telephone number, email address, and location information at certain points in time; the name of each individual who could be an additional contact; and the specified health data of age, physical biometrics, temperature, and symptoms (KAR 28-1-42). The Privacy Act requires the contact tracer to advise the contact that the contact is under no compulsion or prohibition from participating in the contact tracing.

## Confidentiality of Data Collected by Health Agencies

Laws of all of the states reviewed protect the confidentiality of information collected by state health agencies. Examples of language of those laws, and the date of first enactment of the statute containing the protection, are provided below:

- Kansas - "(a) Whenever any person licensed to practice the healing arts or engaged in a postgraduate training program approved by the state board of healing arts, licensed dentist, licensed professional nurse, licensed practical nurse[,] administrator of a hospital, licensed adult care home-administrator, licensed physician assistant, licensed social worker, teacher or school administrator knows or has information indicating that a person is suffering from

---

for any individuals who have a disease suspected of being communicable." U.C.A. 1953 § 26-6-6

12 CDC, *Case Investigation and Contact Tracing Guidance, Appendix C*, <https://www.cdc.gov/coronavirus/2019-ncov/php/contact-tracing/contact-tracing-plan/appendix.html#forms>.

or has died from a reportable infectious or contagious disease as defined in rules and regulations, such knowledge or information shall be reported immediately to the county or joint board of health or the local health officer, together with the name and address of the person who has or is suspected of having the infectious or contagious disease, or the name and former address of the deceased individual who had or was suspected of having such a disease. . . . (c) Information required to be reported under subsection (a) of this section shall be confidential and shall not be disclosed or made public, upon subpoena or otherwise, beyond the requirements of subsection (a) of this section . . . (KSA 65-118, 1901)

- California - “An agency shall not disclose any personal information in a manner that would link the information disclosed to the individual to whom it pertains unless the information is disclosed, as follows: . . . To those officers, employees, attorneys, agents, or volunteers of the agency that has custody of the information if the disclosure is relevant and necessary in the ordinary course of the performance of their official duties and is related to the purpose for which the information was acquired . . . .” (Cal. Civil Code § 1798.24, 1977)
- Colorado - “Reports and records resulting from the investigation of epidemic and communicable diseases . . . held by the state department of public health and environment or county, district, or municipal public health agencies shall be strictly confidential. Such reports and records shall not be released, shared with any agency or institution or made public, upon subpoena, search warrant, discovery proceedings, or otherwise, except under the following circumstances: . . .” (C.R.S.A. § 25-1-122, 1991)
- Louisiana - “All records of interviews, questionnaires, reports, statements, notes, and memoranda procured by and prepared by employees or agents of the office of public health or by any other person, agency, or organization acting jointly with that office . . . are confidential and shall be used solely for statistical, scientific, and medical research purposes relating to the cause or condition of health . . . . The office of public health shall promulgate rules and regulations in accordance with the Administrative Procedure Act to specify the extent to which confidential data may be disclosed to other local, state, or federal public health or environmental agencies . . . .” (LSA-R.S. 40:3.1)
- Utah - “Information collected pursuant to this chapter in the possession of the department or local health departments relating to an individual who has or is suspected of having a disease designated by the department as a communicable or reportable disease under this chapter shall be held by the department and local health departments as strictly confidential. The department and local health departments may not release or make public that information upon subpoena, search warrant, discovery proceedings, or otherwise. . . .” (U.C.A. 1953 § 26-6-27)

Exceptions to the above also are included in the state laws, e.g., the Colorado statute quoted above includes exceptions for release of medical and epidemiological information in a manner such that no individual person can be identified and for release of information to the “extent necessary for the treatment, control, investigation, and prevention of diseases and conditions dangerous to the public health; except that every effort shall be made to limit

disclosure of personal identifying information to the minimal amount necessary to accomplish the public health purpose.” In 2020, the Oklahoma statute regarding confidentiality and exceptions to it (63 Okl.St. Ann. § 1-502.2) was amended (as indicated by *italics*) to authorize release when “necessary as determined by the State Department of Health to protect the health and well-being of the general public *and such release is authorized or required under the Health Insurance Portability and Accountability Act of 1996.*” Other exceptions seen in the laws of multiple states include those for studies using data that are not personally identifiable.

No notes of decision were found for cases involving the health information data confidentiality statutes in the states reviewed.

## Data Protection

The explicit protection of health agency data in general was not found among the laws reviewed with the exception of regulations in Missouri, which include the following:

Local public health agencies that access MDOH [Missouri Department of Health] information systems shall establish security policies and procedures which are as stringent as MDOH policies and procedures to protect information systems against unauthorized data disclosure, modification, or destruction and to protect the integrity of the information system. Local public health agencies who use MDOH information systems to perform their duties shall abide by MDOH policies and procedures. . . . Local public health agencies shall provide comprehensive training to employees on confidentiality and security policies, laws, and the administrative, civil, and criminal penalties for violations. Local public health agencies shall monitor employees to assure compliance with confidentiality laws, rules, policies and procedures. . . . (19 Mo. Code of State Regulations 20-20.075)

KSA 65-6003 requires the Secretary of Health and Environment to investigate cases of human immunodeficiency syndrome (HIV) infection or AIDS and monitor such cases. It also requires the Secretary to adopt rules and regulations for maintaining confidentiality of the investigation data that are as strict as CDC guidelines; those requirements are in KAR 28-1-26, last amended in 2006.

The CDC recommends including safeguards to prevent introduction of false data and using programmatic means of secure data transfer for any information that is shared. It also recommends including automatic “unsubscribe” functionality for consenting patients and contacts from daily symptom and temperature monitoring after 14 days.<sup>13</sup> States including Kansas require training on the use of disease reporting systems before access to the system is allowed.

ASTHO has recommended steps including the following to protect data related to contact tracing<sup>14</sup>:

---

13 <https://www.cdc.gov/coronavirus/2019-ncov/php/open-america/contact-tracing-resources.html#digital-tools>, accessed September 2020

14 ASTHO, “COVID-19 Case Investigation and Contact Tracing: Considerations for Using Digital Technologies,” July 16, 2020.

- Encrypt the data when it is collected, transmitted, and stored. When possible, use password-protected files on the device collecting the data. Avoid transmitting unencrypted data that could be copied by an email provider and remain on a computer server.
- If feasible, use technical solutions to block unacceptable use of data and make sure staff with data access are trained on the acceptable use policy. Develop and use practices to prevent the data's unauthorized disclosure through human error and create access and usage logs for the data.
- To the greatest extent possible, use activity logs on any website with an application serving sensitive data. Logging any activity at the point of storage and processing may also capture unauthorized access by a cloud service's application programming interface.
- When location data is displayed in a web application, aggregating over geographical areas and adding differentially private noise may limit the risk of linkage attacks [determining identity based on location].

## **2020 Changes to Law Regarding Confidentiality of Data Collected by Health Agencies**

In 2020, Kansas added the Privacy Act, and New York added law specifically on contact tracing and confidentiality of records related to COVID-19 (2020 AB 10500, adding Title 8, § 2181). [Note: New York law contains separate confidentiality laws for several diseases or types of disease, including tuberculosis, sexually transmitted diseases, and HIV/AIDS.] As noted above, Oklahoma amended its law to permit release of information only when permitted under the Health Insurance Portability and Accountability Act of 1996 (HIPAA). Louisiana, Missouri, and Utah amended regulations to specifically add novel coronavirus diseases to their lists of reportable diseases (additional states require reporting of new infectious diseases or unusual outbreaks). Regulations also amended by the Utah Department of Health in May 2020 require entities submitting or forwarding a specimen for testing to provide additional information about the patient and added the patient's full name, date of birth, and telephone number to the information a laboratory must provide when a test of a submitted specimen confirms the presence of a reportable disease.

Governors of at least three states have issued executive orders (EOs) related to the COVID-19 pandemic and contact tracing:<sup>15</sup>

- Nebraska EO 20-15 temporarily suspended certain confidentiality requirements "solely in order to permit the Department of Health and Human Services and the local public health departments to use or disclose identifiable health information when they have a good faith belief that such use or disclosure would prevent and lessen a serious and imminent threat to the health or safety of a person or the public arising from or related to COVID-19." The order requires the Nebraska Department of Health and Human Services to "establish and publish guidance and information regarding when and how reports and information about cases of communicable diseases may be used and disclosed so that individually

---

<sup>15</sup> The Council of State Governments provides access to the executive orders of the states and territories at <https://web.csg.org/covid19/executive-orders/>.

identifiable health information is limited to the minimum information necessary for the purpose of preventing and lessening a serious and imminent threat to the health or safety of a person or the public arising from or related to COVID-19.”

- New Jersey EO 141 directs the Commissioner of Health to “take all necessary and appropriate actions within her authority to ensure an effective statewide contact tracing system” and “to ensure that the operating procedures for tracking and recording cases using the centralized platform include, at minimum, standards for maintaining privacy and safe handling of personally identifiable information by contact tracers.” EO 141 further requires “[a]ll State, county, regional, and local health departments performing COVID-19 contact tracing [to] adhere to the Commissioner’s orders relating to the statewide contact tracing system, including using the secure centralized contact tracing platform, complying with all operating procedures, and ensuring all individuals performing contact tracing participate in the training program, under any conditions and on any timelines that the Commissioner establishes.”
- Washington State EO 20-64 states the “success of the response to the COVID-19 epidemic depends in large part on the free flow of information and individuals’ willingness to share information and cooperate with public health authorities, which would be significantly hindered if this personal information was required to be disclosed to the general public” and suspended certain provisions with regard to copying public records for purposes of contact tracing in COVID-19 cases.

**Other bills.** Brief summaries of provisions regarding confidentiality of contact tracing data that are in bills prefiled for 2021, pending as of the date of this memorandum, or failed during the 2020 legislative session are provided in Appendix A.

## HIPAA and Privacy

The U.S. Department of Health and Human Services (HHS) provides guidance on the applicability of regulations implementing the HIPAA Privacy Rule, 45 Code of Federal Regulations (CFR) Part 164. It notes a state, county, or local health department that performs the functions of a covered entity is subject to the Privacy Rule.<sup>16</sup>

In 45 CFR § 164.512, “Uses and disclosures for which an authorization or opportunity to agree or object is not required,” federal law addresses public health activities, stating:

A covered entity may use or disclose protected health information without the written authorization of the individual . . . or the opportunity for the individual to agree or object . . . in the situations covered by this section, subject to the applicable requirements of this section. When the covered entity is required by this section to inform the individual of, or when the individual may agree to, a use or disclosure permitted by this section, the covered entity’s information and the individual’s agreement may be given orally. . . .

---

16 See <https://www.hhs.gov/hipaa/for-professionals/special-topics/public-health/index.html>, <https://www.hhs.gov/hipaa/for-professionals/faq/358/are-state-county-or-local-health-departments-required-to-comply-with-hipaa/index.html>, and related guidance.

(b) Standard: Uses and disclosures for public health activities -

(1) Permitted uses and disclosures. A covered entity may use or disclose protected health information for the public health activities and purposes described in this paragraph to:

(i) A public health authority that is authorized by law to collect or receive such information for the purpose of preventing or 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; or, at the direction of a public health authority, to an official of a foreign government agency that is acting in collaboration with a public health authority; . . .

(iv) A person who may have been exposed to a communicable disease or may otherwise be at risk of contracting or spreading a disease or condition, if the covered entity or public health authority is authorized by law to notify such person as necessary in the conduct of a public health intervention or investigation; or . . .

A “covered entity” is a health care plan, a health care clearinghouse, or a health care provider who transmits any health information in electronic form (45 CFR § 160.103). A public health authority is an agency of the United States, “a State, a territory, a political subdivision of a State or territory, or an Indian tribe, or a person or entity acting under a grant of authority from or contract with such public agency, including the employees or agents of such public agency or its contractors or persons or entities to whom it has granted authority, that is responsible for public health matters as part of its official mandate” (45 CFR 164.501).

On April 7, 2020, HHS notified the covered entities and the public *via* notice in the *Federal Register* (85 FR 19392) that it would be “exercising its discretion in applying the Privacy Rule” in this way:

Current regulations allow a HIPAA business associate to use and disclose protected health information for public health and health oversight purposes only if expressly permitted by its business associate agreement with a HIPAA covered entity. As a matter of enforcement discretion, effective immediately, the HHS Office for Civil Rights (OCR) will exercise its enforcement discretion and will not impose potential penalties for violations of certain provisions of the HIPAA Privacy Rule against covered health care providers or their business associates for uses and disclosures of protected health information by business associates for public health and health oversight activities during the COVID-19 nationwide public health emergency.

**State Law Sources**

<b>State</b>	<b>General Authority</b>	<b>Confidentiality</b>
Kansas	KSA 65-101	KSA 65-118 KAR 28-1-43

<b>State</b>	<b>General Authority</b>	<b>Confidentiality</b>
Arkansas	A.C.A. § 20-7-109	A.C.A. § 20-9-304
California	Cal. Health & Safety Code § 120140	Cal. Health & Safety Code § 120262 (individuals contacted) Cal.Civ.Code § 1798.24
Colorado	C.R.S.A. § 25-1.5-102 6 CCR 1009-1:5	C.R.S.A. § 25-1-122 6 CCR 1009-1:9
Iowa	I.C.A. § 135.11	Iowa Admin. Code 641-1.17(139A,22)
Louisiana	LSA-R.S. 40:3	LSA-R.S. 40:3.1
Missouri	R.S. Mo. 192.020 19 Mo. Code of State Regulations 20-20.040	19 Mo. Code of State Regulations 20-20.075
Nebraska	Neb.Rev.St. § 71-502 Neb. Admin. R. & Regs. Tit. 173, Ch. 1, § 1-007	Neb.Rev.St. § 71-503.01
New Mexico	N. M. S. A. 1978, § 24-1-3 N.M. Admin. Code 7.4.3	N. M. S. A. 1978, § 24-1-15.4 N.M. Admin. Code 7.4.3
New York	McKinney's Public Health Law § 206	McKinney's Public Health Law § 2136 2020 AB 10500 (enacted), adding Title 8, § 2181
Oklahoma	63 Okl.St. Ann. § 1-502	63 Okl.St. Ann. § 1-502.2 Okla. Admin. Code 310:515-3-1
South Dakota	SDCL § 34-22-9	SDCL § 34-22-12.1
Texas	V.T.C.A., Health & Safety Code §§ 81.002, 81.021	V.T.C.A., Health & Safety Code § 81.046 25 TAC § 97.10
Utah	U.C.A. 1953 § 26-6-3	U.C.A. 1953 § 26-6-27 R386-702-8.
Wyoming	W.S.1977 §§ 35-4-101, 35-4-103 WY Rules and Regulations 048.0046.1 §§ 10, 11	W.S.1977 § 35-4-107 WY Rules and Regulations 048.0046.1 § 3

## APPENDIX A

The following summarizes provisions regarding contact tracing and confidentiality of contact tracing information in bills identified in September 2020 using the National Conference of State Legislatures' COVID-19 State Legislation Database.<sup>17</sup> Sources for the bills are provided at the end of this appendix.

### Alabama, 2021 SB 1 (prefiled, pending) would:

- Authorize state and county health officers to conduct or authorize contact tracing.
- Require contact tracers to meet qualifications and training prescribed by the board and to acknowledge under oath familiarity with requirements for contact tracers, including confidentiality.
- Restrict the data collected by a contact tracer to data specifically authorized by rule.
- Prohibit production of contact data pursuant to a subpoena unless the subpoena is issued by a court and is accompanied by a valid protective order.
- Stipulate contact data are confidential and not subject to disclosure under the state open records act.
- Require contact data to be destroyed when no longer necessary for contact tracing.
- State participation in contact tracing shall be voluntary.
- Provide immunity for providing, in good faith, contact tracing information to a contact tracer.
- Authorize the use of electronic location data in contact tracing; participation must be voluntary.
- Require rules and regulations to be promulgated to implement and enforce the section.

### California, 2019-2020 AB 660 (failed)

- Required data collected, received, or prepared for contact tracing to be used, maintained, or disclosed only for contact tracing.
- Required all data prepared, received, or prepared for contact trading to be deleted within 60 days, except data in the possession of a local or state health department.
- Prohibited an officer, deputy, employee, or agent of a law enforcement agency from participating in contact tracing.

### California, AB 1782 (failed)

- Required a business or public health entity offering technology-assisted contact tracing (TACT) to provide a simple mechanism for an individual to revoke consent at any time.
- Required an entity offering TACT to issue a public report at least every 90 days containing information including the number of individuals whose personal

---

<sup>17</sup> <https://www.ncsl.org/research/health/state-action-on-coronavirus-covid-19.aspx>, accessed September 2020.

information was collected, used, or disclosed; categories of information; and the recipients of the information.

- Required any data collected using TACT to be deleted within 60 days of collection except that collected for health research and within HIPAA requirements.
- Require an entity offering TACT to implement and maintain reasonable security procedures and practices to protect the data from unauthorized use, disclosure, access, destruction, or modification.
- Prohibited collection of data not needed for TACT or used for contact tracing.
- Permitted civil action in case of a violation.

California, 2019-2020 AB 660 (vetoed)

- Require the Government Operations Agency to establish a working group to explore the use of verifiable health credentials to communicate COVID-19 or other medical test results.
- Require the Department of Consumer Affairs, in consultation with the working group, to establish procedures for the authorization of issuers for verifiable health credentials.

Hawaii, 2020 HB 2572 (failed)

- As part of a comprehensive privacy act, defined “specified data element” and prohibited “sell[ing] or offer[ing] for sale geolocation information that is recorded or collected through any means by mobile devices or location-based applications without the explicit consent of the individual who is the primary user of the device or application.”
- Amended provisions relating to electronic eavesdropping law.

Minnesota, 2020 SB 4500/ HB 4579 (failed)

- Required an individual who tests positive for COVID-19 to be informed the individual is not required to participate in contact tracing.
- Classified any data collected during contact tracing as private data not subject to disclosure.
- Required the commissioner to establish procedures and safeguards to ensure contact tracing data are not released, including addresses, without consent.
- Stated the commissioner would not have the authority to order quarantine of a person without symptoms who refuses to be tested for COVID-19, notwithstanding other law.
- Required grants to employers for COVID-19 testing.

Minnesota, 2020 HF 4665 (failed)

- Prohibited the commissioner of health from requiring a contagious person to participate in contact tracing.
- Authorized contact tracing that uses TACT, but prohibited the commissioner from requiring participation.
- Prohibited release to a contact of identifying information about the contagious person.
- Prohibited mandatory disclosure of health status with regard to a communicable disease.

New Jersey, 2020 AR 167 (pending) would:

- Create the Assembly Select Committee on COVID-19 Contact Tracing Data Privacy, to review matters pertaining to how data collected for purposes of contact tracing related to COVID-19 will be used. The committee would report to the General Assembly within 60 days after it organizes.

New Jersey, 2020 A4170/S2539 (pending) would:

- Require a public health entity or third-party entity to ensure any individually identifiable or private health data collected regarding an individual for the purposes of contact tracing related to the COVID-19 pandemic is de-identified or deleted from records within 90 days after the data are received.
- Require the third party use the data only for completing contact tracing or for research or other authorized purposes.
- Require the commissioner of health to require systems using health and location data for contact tracing purposes automatically delete or de-identify data within 90 days.
- Authorize use of de-identified contact tracing data for research or other purposes related to the state's response to the COVID-19 pandemic.
- Create a civil penalty for a third party that misuses or unlawfully discloses COVID-19 contact tracing data.
- Require the commission of health to adopt rules and regulations on how public health entities and third-party entities may use data collected and provide for public comment on it before final guidance is published.
- Require provisions to expire one year after the end of both the state of emergency and the public health emergency related to the COVID-19 pandemic.

New York, SB 8327 (failed)

- Created the felony crime of unlawful dissemination of contact tracing information.
- Created the crime of unlawful use of a surveillance drone when used for contact tracing without the consent of all persons within the area surveilled.

New York, SB 8448 (pending), for purposes of response to the COVID-19 public health emergency, would:

- Establish the right of an individual to opt in for collection of personal information or emergency health information and have data collected at the minimum level of identifiability reasonably needed for completion of the transaction agreed to by the individual.
- Establish an individual's right to know through a privacy policy what data are being collected and disclosed in a way that is understandable and at a 4<sup>th</sup> grade reading level or below.
- Require a covered entity to publish on its website transparency reports every 90 days with information including the numbers of individuals from whom information has been collected, its purpose, and the purpose of any disclosure.
- Require covered entities to implement security procedures and practices that ensure confidentiality, integrity, and availability of emergency health data and personal information.

- Require covered entities to hire a neutral third party to conduct annual data protection audits.
- Authorize actions by the attorney general and civil penalties and other appropriate relief, such as restitution.

New York, 2020 A10462 (pending) would:

- Add to civil rights law a misdemeanor crime for failing to exercise reasonable care over personal, biometric, or location data.
- Require health authorities to develop guidelines for contact tracing and certification for immunity status.
- Establish an individual's authority over data collected for purposes of tracking the spread of COVID-19.
- Prohibit information from being collected on immigration status, banking status, financial affairs, or criminal or policing record.
- Require use of a decentralized database for COVID-19-related data.

Ohio, 2020 Sub. SB 31 (pending), with regard to contact tracing, would:

- Prohibit the Governor from issuing an order requiring an individual to participate in contact tracing.
- Prohibit any health agency or contractor from requiring an individual to participate in contact tracing.
- Require written consent to participate in contact tracing.
- Prohibit any penalties, including withholding medical treatment, from being imposed on an individual who refuses to participate in contact tracing efforts.
- Specify that any record created during the contact tracing process is not a public record and that disclosure of protected health information collected during the process must be done in accordance with state law that is consistent with the federal HIPAA Privacy Rule.

Utah, HB 5001 (failed)

- Created requirements for the collection, storage, use, and retention of certain electronic information or data by a government entity to investigate or control COVID-19.
- Prohibited the collection of location information without clear and affirmative consent from the individual.
- Required a government entity to submit a contract to collect certain electronic information or data to the attorney general to certify that the contract met the requirements in this bill.
- Prohibited a government entity from collecting certain location information for the purpose of investigating or controlling COVID-19 unless the collection of location information is approved by the Legislature and the governor by concurrent resolution.
- Required a government entity with an existing contract to collect certain location information to terminate collection of that location information and destroy certain location information that has been collected.
- Made it a felony to willfully and knowingly violate an injunction or court order to enforce the requirements in this bill.

## Sources

The above-listed bills may be accessed using these websites (as of October 2020):

Alabama	<a href="http://alisondb.legislature.state.al.us/alison/Splash_Bills.aspx">http://alisondb.legislature.state.al.us/alison/Splash_Bills.aspx</a>
California	<a href="https://leginfo.legislature.ca.gov/faces/billSearchClient.xhtml">https://leginfo.legislature.ca.gov/faces/billSearchClient.xhtml</a>
Hawaii	<a href="https://www.capitol.hawaii.gov/measure_indiv.aspx?billtype=HB&amp;billnumber=2572">https://www.capitol.hawaii.gov/measure_indiv.aspx?billtype=HB&amp;billnumber=2572</a>
Minnesota	<a href="https://www.leg.mn.gov/leg/legis">https://www.leg.mn.gov/leg/legis</a>
New Jersey	<a href="https://www.njleg.state.nj.us/bills/BillsByNumber.asp">https://www.njleg.state.nj.us/bills/BillsByNumber.asp</a>
New York	<a href="https://www.nysenate.gov/legislation/bills/2019/s8327">https://www.nysenate.gov/legislation/bills/2019/s8327</a>
	<a href="https://www.nysenate.gov/legislation/bills/2019/s8448">https://www.nysenate.gov/legislation/bills/2019/s8448</a>
	<a href="https://www.nysenate.gov/legislation/bills/2019/a10462">https://www.nysenate.gov/legislation/bills/2019/a10462</a>
Ohio	<a href="https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA133-SB-31">https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA133-SB-31</a>
Utah	<a href="https://le.utah.gov/~2020S5/bills/static/HB5001.html">https://le.utah.gov/~2020S5/bills/static/HB5001.html</a>