



Ottawa County

Corporation Counsel

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STATEMENT FROM CORPORATION COUNSEL

August 31, 2021

Several local school partners have become concerned that the Health Department's disclosure of COVID-19 positive student information could be a violation of HIPAA and students who are contact traced by the school have sometimes so asserted. ***The purpose of this Statement is to assure that neither HIPAA nor Michigan's Public Health Code preclude such sharing and you can use that information for contact tracing.***

1. HIPAA's rules only apply to covered entities. A public health department acting in its nontreatment capacity is not considered a covered entity and therefore is not subject to HIPAA. The regulations make clear that the term "covered entities" refers to health plans, health care clearinghouses, and certain health care providers. 45 C.F.R. § 160.103. The definition of providers includes "a hospital, critical access hospital, skilled nursing facility, comprehensive outpatient rehabilitation facility, home health agency, hospice program, or, for purposes of section 1395f(g) and section 1395n(e) of this title, a fund." 42 U.S.C. § 1395x(u). A public health department on the other hand, is "an agency or authority 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 C.F.R. § 164.501.

2. To the extent the school is considered a covered entity, the Privacy Rule, 45 C.F.R. § 164.512(b) expressly exempts disclosures to public health authorities and vice versa:

"Public health. PHI can be disclosed to public health authorities and their authorized agents for public health purposes including but not limited to public health surveillance, investigations, and interventions."

While the Privacy Rule directly only covers the flow of information from covered entities to the health department, CDC guidelines indicate that the flow of health information from health department to covered entity or school is also exempt from HIPAA:

"Also, after PHI is disclosed to a public health authority pursuant to the Privacy Rule, the public health authority (if it is not a covered entity) may maintain, use, and disclose the data consistent with the laws, regulations, and policies applicable to the public health authority."

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See <https://www.cdc.gov/privacyrule/Guidance/PRPH.htm>

3. The Public Health Code authorizes and requires the collection and sharing of communicable disease data between health departments and schools.

MCL §333.5111 authorizes the Department of Health and Human Services to promulgate rules regarding communicable disease data and sharing and it has done so in R 325.175 which authorizes the flow of confidential private health information in the school context so schools and the local health department can control the diseases in that setting.

Feel free to contact me if you have any questions or concerns.

Sincerely,

Very Truly Yours,



Douglas Van Essen

Ottawa County Corporation Counsel