

MDCH AUTHORITIES AND OBLIGATIONS

This handout does not address the obligations of Medical Control Authorities for keeping data confidential, for notifying people about possible breaches of that confidentiality, or for responding to FOIA requests. MCA's are strongly encouraged to consult with their legal counsel to determine their obligations.

MDCH Broad and Flexible Authority to Collect Data Under the Public Health Code

- ✓ The department must continually and diligently endeavor to promote the public health through development and regulation of health care facilities and agencies and health services delivery systems. MCL 333.2221.
- ✓ To assist the department in its duties and functions, officials of this state and persons transacting business in this state must furnish the department with information relating to public health which may be requested by the department. MCL 333.2231.
- ✓ The MDCH may engage in research programs and staff professional training programs and enter into an agreement, contract, or arrangement with governmental entities or other persons necessary or appropriate to assist the department in carrying out its duties and functions. MCL 333.2226(a), MCL 333.2226(c).
- ✓ The MDCH must establish a comprehensive health information system providing for the collection, compilation, coordination, analysis, indexing, dissemination, and utilization of both purposefully collected and extant health-related data and statistics. MCL 333.2616.
- ✓ The health information system must include statistics relative to health resources, the utilization of health care, and services of health facilities and agencies defined in section 20106 and other health care institutes. MCL 333.2617(e) & (f).
- ✓ The department must also conduct research and demonstration activities related to the department's responsibility for the environmental, preventive, and personal health needs of the communities and people of the state, including: the accessibility, acceptability, availability, organization, distribution, utilization, quality, and financing of health care. MCL 333.2621

PART 209 of the Public Health Code –Particular Requirements that Pertain Specifically to the Administration and Provision of EMS

- ✓ The MDCH is required by Part 209 to develop, coordinate and administer a statewide emergency medical services system, to implement and operate a statewide trauma care system, to develop and maintain standards of emergency medical services and personnel, to promulgate rules, and to collect data as necessary to assess the need for and quality of emergency medical services throughout the state pursuant to the Peer Review Statute. MCL 333.20910(l).

Confidentiality of Data

The Public Health Code

- Data is confidential and shall be used solely for statistical, scientific, and medical research purposes relating to the cause or condition of health. MCL 333.2631.
- Data must not be exhibited or its contents disclosed in any way, in whole or in part, by the department or its representative, or by any other person, agency, or organization except as necessary to further the research project. MCL 333.2632
- Furnishing data to the department or its representative does not subject the provider to liability in an action for damages or other relief and is not considered to be the willful betrayal of a professional secret or the violation of a confidential relationship. MCL 333.2633.

The Common Rule 45 CFR Part 46.

- Protects the confidentiality of data used in human subjects research.
- Research that involves a human being's personal information is covered under the Common Rule.
- Approval of research is contingent on the finding that there are adequate provisions to protect the privacy of subjects and to maintain the confidentiality of the data. 45 CFR 46.111.
- When consent is obtained, the subject is informed of the extent of the confidentiality provided for the research project. 45 CFR 46.116.

Other confidentiality provisions can include:

- HIPAA, when data is received by a covered entity. 45 CFR Parts 160 and 164.
- Federal Grant Agreement provisions.
- Other data sharing agreement provisions.

Section 2637 of the Public Health Code protects MEMSIS data selected for both research and non-research purposes.

- Data collected in a system of records must have procedures established that specifies the data that shall not be disclosed unless items identifying a person by name, address, number, symbol, or any other identifying particular are removed. MCL 333.2637(3).
- MDCH is precluded from disclosing data contained in a departmental data system or system of records unless authorized in the department's procedures. MCL 333.2637(5).
- Unlawful disclosures in violation of Part 26 of the Public Health Code or related administrative rules is guilty of a misdemeanor, punishable by imprisonment for not more than 1 year, or a fine of not more than \$1,000.00, or both, and if the person is an employee of the department shall be subject to immediate dismissal. MCL 333.2638.

User and Data Sharing Agreements

- ✓ User Agreements signed by each user granted access to MEMSIS
- ✓ *Data Use and Non-Disclosure Agreement Concerning the Access to Protected Health Information or Other Confidential Information in the Michigan Emergency Medical Services Information System (MEMSIS)* – Data Confidentiality agreement signed by the MDCH with each Medical Control Authority

Breach Notification Obligations

- ✓ Michigan's Identity Theft Protection Act, MCL 445.61, et.seq.

The following are inapplicable to the MDCH EMS and Trauma Systems Section:

- ✓ Red Flags Rule, Identity Theft Breach Notification, 16 CFR Part 681
- ✓ Health Information Technology for Economic and Clinical Health Act, HITECH Act, (HIPAA)

FOIA Exemptions

Data is most likely a "public record." Possible applicable exemptions:

- ✓ Information described and exempted from disclosure by statute. MCL 15.243(1)(d).
- ✓ Information of a personal nature that would constitute a clearly unwarranted invasion of an individual's privacy, MCL 15.243(1)(a)
- ✓ Information or records subject to the physician-patient privilege, MCL 15.243(1)(h) and
- ✓ Identifiable medical, counseling, or psychological facts or evaluations. MCL 15.243(1)(l)