



Alameda County Public Health Department

COVID-19 SSOIT Guidance on Confidentiality Rules

ACPHD Special Settings Outbreak Team (SSOIT) investigates outbreaks in a wide variety of high-risk settings. Since SSOIT identifies outbreaks using both passive and active surveillance strategies, investigators frequently encounter situations in which a facility manager or other point-of-contact is unaware of a COVID-19 case. In those situations, outbreak investigators (OIs) may be required to reveal the identity of cases associated with a suspected or confirmed outbreak. OIs should follow all federal, state, and County requirements that relate to protected health information (PHI) while upholding ACPHD's mandate and responsibility to protect the public from serious threats.

Investigators should refer to the following guide when faced with the need to reveal a case's identity or share PHI. Outbreak investigators should:

1. Be familiar with ACPHD's Notice of Privacy Practices. {link}
https://www.achch.org/uploads/7/2/5/4/72547769/achch_notice_of_privacy_practices.pdf
2. Be aware of the broad legal authority that mandates public health authorities to investigate outbreaks and "shall take measures as may be necessary to prevent the spread" of COVID-19 per California Health & Safety Code 120175.
3. Understand HIPAA allowances that permit disclosures "to avert a serious threat to health or safety." See specific citation from HIPAA 45 CFR 512(j) relating to public health investigations:

(j) Standard: Uses and disclosures to avert a serious threat to health or safety—

(1) Permitted disclosures. A covered entity may, consistent with applicable law and standards of ethical conduct, use or disclose protected health information, if the covered entity, in good faith, believes the use or disclosure:

(A) Is necessary to prevent or lessen a serious and imminent threat to the health or safety of a person or the public; and

(B) Is to a person or persons reasonably able to prevent or lessen the threat, including the target of the threat.

NOTES:

- A disclosure shall only contain the protected health information necessary to prevent or lessen a serious and imminent threat to the public health.
- There must be a presumption of good faith belief. That is, the investigator is presumed to have acted in good faith with a belief that a serious and imminent threat to the public health exists and that disclosure to an appropriate party (B) can avert that threat.



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4. Investigators should be aware of laws governing disclosure for public health activities as outlined in 45 CFR 164.512(b)(2). Specifically:
 - a) Public health authorities have a legitimate need for protected health information in order to carry out their public health mission to prevent or control disease, injury, or disability.
 - b) Public health reports are an important means of identifying threats to the health and safety of the public at large, as well as individuals. So, it goes both ways – public health authorities can disclose and “covered entities” may also disclose PHI to ACPHD without authorization for specific public health purposes.
 - c) Limit the protected health information disclosed for public health purposes to the minimum amount necessary to accomplish the public health purpose.

PROCESS:

1. Outbreak investigators should start by questioning the POC about what she/he already knows. Let the POC disclose to you rather than the other way around whenever possible. This way you avoid disclosing unnecessarily.
2. If you find that the POC is unaware of a case or cases:
 - a) First confirm that there is an imminent threat to health and safety (as above). Because we are doing COVID-19 outbreak investigation you can be assured that this criterion is met.
 - b) Determine if you are speaking to the correct POC. Confirm that this person is in a position to reasonably prevent or lessen the threat.
 - c) Explain briefly the importance of disclosure to protect the health and safety of employees /residents/patients from a public health threat (COVID-19).
 - d) Explain that you are only permitted to disclose the “minimum necessary” information to facilitate your outbreak investigation and to help the facility control, resolve, and prevent future outbreaks.
 - e) Explain to the POC their obligation to maintain the cases’ confidentiality and that they must not reveal the identity/identities to others unless those being informed are directly responsible for COVID-19 prevention and outbreak response in their facility.
 - f) If POC is understands and agrees, then go ahead and disclose the minimum necessary information.
3. Proceed with outbreak investigation.

RESOURCES

HIPAA For Professionals

<https://www.hhs.gov/hipaa/for-professionals/index.html>



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Disclosures for Public Health Activities

<https://www.hhs.gov/hipaa/for-professionals/privacy/guidance/disclosures-public-health-activities/index.html>