



STATE OF INDIANA

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June 2, 2014

Ms. Hilari A. Sautbine
Office of Legal Affairs
Indiana State Department of Health
2 N. Meridian St., Ste. 3-H
Indianapolis, IN 46204

Re: Informal Inquiry 14-INF-17; Personal Health Information

Dear Ms. Sautbine:

This is in response to your informal inquiry regarding hospital discharge data received by the Indiana State Department of Health ("ISDH") and a subsequent request by USA TODAY. USA TODAY has responded via Courtney French. The response is enclosed for your review. Pursuant to Ind. Code § 5-14-4-10(5), I issue the following informal opinion in response to your inquiry. My opinion is based on applicable provisions of the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1.

BACKGROUND

On April 18, 2014, USA TODAY contacted ISDH seeking records relating to patient-level hospital data. On May 1, 2014, USA TODAY memorialized its search as an access to public records request. Specifically, USA TODAY seeks data contained in Indiana's hospital inpatient discharge database and also an administrative description of the database itself and its format.

On May 13, 2014, you contacted this Office requesting an Informal Inquiry and explained the rationale for why ISDH determines the data to be confidential under state statute. You cite several health records and hospital statutes to justify your position. After consulting with the ISDH epidemiologist team, it is the Department's stance the data sought in USA TODAY could be extrapolated to identify individual patients and therefore would not be releasable.

USA TODAY contends the information fields sought are common to other states' data repositories as releasable and should be disclosed, as they do not contain personal health

information. It is their position the data sets can be de-identified and released without violating Indiana or Federal health privacy laws.

ANALYSIS

The public policy of the APRA states that “(p)roviding persons with information is an essential function of a representative government and an integral part of the routine duties of public officials and employees, whose duty it is to provide the information.” *See* Ind. Code § 5-14-3-1. The Indiana State Department of Health is a public agency for the purposes of the APRA. *See* Ind. Code § 5-14-3-2. Accordingly, any person has the right to inspect and copy ISDH’s non-confidential public records during regular business hours unless the records are excepted from disclosure as confidential or otherwise non-disclosable under the APRA. *See* Ind. Code § 5-14-3-3(a).

Records declared confidential by Indiana Statute are not to be disclosed. *See* Ind. Code § 5-14-3-4(a)(1). Additionally, records required to be kept confidential by federal law are exempted from disclosure under the APRA pursuant to Ind. Code § 5-14-3-4(a)(3).

Ind. Code § 16-21-6-6 requires that “each hospital shall, not more than one hundred twenty (120) days after the end of each calendar quarter, file with the state department, or the state department's designated contractor, inpatient and outpatient discharge information at the patient level, in a format prescribed by the state health commissioner”. This subsection also provides a list of information that must be filed with the ISDH. The ISDH’s designated contractor for purposes of Ind. Code § 16-21-6-6 is the Indiana Hospital Association (“IHA”).

The hospital or the designated contractor is required to transfer to the ISDH the following:

- (1) The patient's:
 - (A) length of stay;
 - (B) diagnoses and surgical procedures performed during the patient's stay;
 - (C) date of:
 - (i) admission;
 - (ii) discharge; and
 - (iii) birth;
 - (D) type of admission;
 - (E) admission source;
 - (F) gender;
 - (G) race;
 - (H) discharge disposition; and
 - (I) payor, including:
 - (i) Medicare;
 - (ii) Medicaid;
 - (iii) a local government program;

- (iv) commercial insurance;
 - (v) self-pay; and
 - (vi) charity care.
- (2) The total charge for the patient's stay.
 - (3) The ZIP code of the patient's residence.
 - (4) Beginning October 1, 2013, all diagnosed external causes of injury codes. (IC 16-21-6-6).

Ind. Code § 16-39-5-3(f) states:

[a] provider may disclose a health record or information obtained from a health record to the association for use in connection with a data aggregation project undertaken by the association. The association is not required to, but may disclose the information it receives from a provider under this subsection to the state department to be used in connection with a public health activity or data aggregation of inpatient and outpatient discharge information submitted under IC 16-21-6-6. The information disclosed by:

- (1) a provider to the association; or
 - (2) the association to the state department;
- under this subsection **is confidential**.

Emphasis added.

Ind. Code § 16-21-6-7(c)(2), however, operates to authorize disclosure of information transferred to the state department by the state department's designated contractor **except** information that personally identifies; or may be used to personally identify a patient. To my knowledge, although USA TODAY suggests as much, ISDH has not made an argument attempting to distinguish the information referenced in Ind. Code § 16-21-6-6 from the data in Ind. Code § 16-39-5-3. Therefore at this juncture, I am not compelled by this argument.

Furthermore, under the Health Insurance Portability and Accountability Act, the United States Health and Human Services (HHS) has adopted Standards for Privacy of Individually Identifiable Health Information, 45 CFR Parts 160 and 164 (“HIPAA” or “Privacy Rule”). Under HIPAA, covered entities are required to conform to the Standards for Privacy. In summary, a covered entity must not disclose protected health information without a valid authorization from the subject of the health information, except as provided in the Privacy Rule. See 45 CFR §164.502. A covered entity under HIPAA is a health care clearinghouse, a health plan, or a health care provider who transmits any health information in electronic form in connection with a transaction covered by the subchapter.

ISDH epidemiologists have expressed concern the data fields could be extrapolated to identify the identity of a patient. It stands to reason a patient from a small town or rural

area could be identified even using the limited amount of information from IHA to ISDH. The operative section of Ind. Code § 16-21-6-7(c)(2) does not only declare confidential information which is on its face identifiable, but also information which may be used to identify a patient.

This notion is reinforced by 45 C.F.R. § 164.514 “Other requirements relating to uses and disclosures of protected health information”. The Code suggests in subsection (a) that a reasonable basis approach should be employed when de-identifying information. While I share USA TODAY’s concern standards could be set too high when evaluating a reasonable basis for de-identification, I do not believe all data triggers redaction or withholding.

Consider, for instance, if the information is requested with a specific patient in mind who resides in a zip code with a small population, is of extremely advanced age, and is a racial minority. In this case, it may be possible to identify that particular patient and obtain personal information about their hospitalization. Those instances are outliers, however, and could theoretically be easily identified by ISDH and the identifying information redacted.

Assuming the data set does include information which remains confidential, the language of IC 16-21-6-7(c) does not suggest the entire data set is then confidential, but specifically the information which personally identifies or may be used to personally identify.

My recommendations are as follows: ISDH should release the data fields which would not jeopardize the disclosure of a patient. Information potentially identifying outliers, however, should be redacted. The entire data set of the individual patient would not necessarily be subject to redaction; only those data fields creating an inference of a particular individual should be withheld.

Please do not hesitate to contact me with any further questions.

Best regards,

A handwritten signature in black ink, appearing to read 'L. Britt', with a long, sweeping underline.

Luke H. Britt
Public Access Counselor

cc: Courtney French