MEMORANDUM

TO: R. Marc Lodge, Special Deputy Attorney-General  
Office of the Attorney-General

FROM: Leah Devlin, Division Director & Acting State Health Director  
Division of Public Health

SUBJECT: Applicability of HIPAA’s Public Health Exemption Provisions on DPH

The purpose of this memo is to request confirmation from the Attorney-General’s Office regarding our understanding of the HIPAA public health exemption provisions as they apply to the Division of Public Health, and to request clarification regarding the status of the Division’s Local Health Services Section in view of this exemption.

Background

To carry out its mandated programs and functions, the Division collects health-related data, including individually-identifiable health information from within DHHS and outside entities including local health departments, educational institutions, laboratories, local registrars, physicians, and other medical professionals. Many of these entities are covered by HIPAA and are required to comply with rules to protect the confidentiality of individually identifiable health information. The Division would like to be able to provide guidance to its program participants (i.e., local health departments, as well as public and private health care providers) and assure the Division’s continued right of access to individually identifiable health information as required by State law.

However, this issue becomes complicated when the Division provides program participants with the means to capture the individually identifiable health information through its application systems. The Local Health Services Section manages an application system that facilitates public health reporting and at the same time, is used by program participants to support their daily operations.

HIPAA’s Public Health Exemption Provisions

It is our understanding that Public Law 104-191 (Health Insurance Portability and Accountability Act or HIPAA) carved-out a specific provision to avoid impeding certain public health laws:

“Public Health. --Nothing in this part shall be construed to invalidate or limit the authority, power, or procedures established under any law providing for the reporting of disease or injury, child abuse, birth, or death, public health surveillance, or public health investigation or intervention.” (P.L. 104-191, Sec. 1178(b)).

Attachment A includes provisions from the HIPAA Privacy regulations, 45 CFR Parts 160 and 162, that we believe further elaborate on the public health exemption as it may apply to the Division. In Attachment B, we are also providing a list of some of the Division’s programs and functions that can serve as examples of public health and health oversight activities that may utilize individually-identifiable health information from certain HIPAA covered entities.
We request clarification that,

- HIPAA does not prevent the Division from collecting from covered entities, information that are otherwise considered as “protected health information” (PHI) under HIPAA.
- Once a HIPAA covered entity’s “protected health information” is submitted to the Division to meet public health and oversight reporting objectives, the information loses its HIPAA-protected status, and is simply individually-identifiable information that falls under the purview of applicable public health laws such as G.S. 130A and the North Carolina Administrative Codes. It must be noted that these laws also provide for the protection of the confidentiality of individually identifiable health information.

Classifying the Shared Data in HSIS

The Division maintains application systems that facilitate the electronic capture of program information from its program participants. The intent of providing these application systems is to enable the Division to conduct its program monitoring and evaluation activities and to enable the Division to use the data for public health purposes such as disease surveillance. In the specific case of the Health Services Information System (HSIS), however, program participants also use the same application system as either a “practice management” system or a supplemental system to support its health care operations.

The Division’s Local Health Services Section manages the Health Services Information System (HSIS). Certain programs in the Women’s and Children’s Health Section of the Division require its program participants, such as local health department as well as public and private entities, to submit patient data and service statistics through HSIS for program monitoring and evaluation purposes (References: 15A NCAC - 21A.0107, 21B.0108, 21C.0310, 21E.0308, 21F.1007, 21G.0507). Today, HSIS is used by a significant number of program participants not only for program reporting purposes, but also for billing, accounts receivables reconciliation, and appointment scheduling.

Furthermore, other Division programs or units such as State Laboratory of Public Health, may take advantage of the availability of the billing function and utilize HSIS to submit claims to Medicaid, although there is no requirement to submit patient and service data through HSIS.

We request clarification regarding:

- the status of the individually-identifiable health information in HSIS, and
- the status of the Local Health Services Section under HIPAA and any specific responsibilities it may have with respect to its role in managing a Division application system that is used by program participants who may be covered by HIPAA.

We would be glad to provide further information if needed. Thank you and we look forward to your assistance with this matter.

cc: Karen Tomczak  
Wanda Mandeville  
Dennis Harrington  
Chris Hoke  
Susan Huang

Attachments:  
A – HIPAA’s Public Health Exemption Provisions  
B – A List of Some of the DPH Programs and Functions Utilizing Individually Identifiable Health Information
§ 160.203 General rule and exceptions.

“A standard, requirement, or implementation specification adopted under this subchapter that is contrary to a provision of State law preempts the provision of State law. This general rule applies, except if one or more of the following conditions is met:

…

(c) The provision of State law, including State procedures established under such law, as applicable, provides for the reporting of disease or injury, child abuse, birth, or death, or for the conduct of public health surveillance, investigation, or intervention.”

§ 164.512 Uses and disclosures for which consent, an authorization, or opportunity to agree or object is not required.

…

(b) Standard: uses and disclosures for public health activities.

…

“(1) Permitted disclosures. A covered entity may 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;…”

…

(d) Standard: uses and disclosures for health oversight activities.

…

“(1) Permitted disclosures. A covered entity may disclose protected health information to a health oversight agency for oversight activities authorized by law, including audits; civil, administrative, or criminal investigations; inspections; licensure or disciplinary actions; civil, administrative, or criminal proceedings or actions; or other activities necessary for appropriate oversight of:

(i) The health care system;

(ii) Government benefit programs for which health information is relevant to beneficiary eligibility;

(iii) Entities subject to government regulatory programs for which health information is necessary for determining compliance with program standards; or

(iv) Entities subject to civil rights laws for which health information is necessary for determining compliance.”
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<th>DPH Program or Function</th>
<th>Legal Reference for Collection of Individually-Identifiable Health Information</th>
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| Vital Records: Custody, security and maintenance of State vital records, including records of birth and death received from local registrars. | ➢ G.S. 130A, Article 4  
➢ 15A NCAC 19H |
| Women’s and Children’s Health Programs: Child Health Services, Pediatric Primary Care, Kindergarten Health Assessments, Comprehensive Adolescent Health Care Projects, Child Service Coordination, Children with Special Health Care Needs, Newborn Metabolic Screening Program, Newborn Hearing Screening Program, Family Planning Program, Genetic Health Care Program, Sickle Cell Program, Immunization Program, and others. These programs were established for the delivery of preventive, diagnostic, therapeutic and habilitative health services to women of child-bearing years, children and others. Program participants who may provide services under this program include local health departments, as well as other public and private entities. The Division, for program monitoring and evaluation, as well as for public health surveillance purposes, may use data collected by these programs. | ➢ G.S. 130A, Article 5  
➢ 15A NC Administrative Codes Chapter (19A.0400)  
➢ 15A NC Administrative Codes Chapter 20  
➢ 15A NC Administrative Codes Chapter 21 (subchapters A through H) |
| Adult Health Programs: Cancer Diagnostic and Treatment Program, Breast and Cervical Cancer Screening and Follow-up Program, Kidney Program, Adult Health Promotion and Disease Prevention Program, Ryan White HIV Care Program, Home and Community-based HIV Health Services Program, and others. The goals of these programs are the prevention, detection, care and treatment of diseases, disabilities, and accidents that contribute to mortality and morbidity among adults. Program participants who may provide services under this program include local health departments, as well as other public and private entities. The Division, for program monitoring and evaluation, as well as for public health surveillance purposes, may use data collected by these programs. | ➢ G.S. 130A, Article 7  
➢ 15A NC Administrative Codes Chapter 16  
➢ Some programs also utilize data from the hospital discharge database established under G.S. 131E-214 (Medical Care Data Act). |
| Reporting and control of specified communicable diseases. Those required to report cases to the local health director (and in some cases, directly to DHHS) include physicians, school principals, and laboratories; medical facilities are also authorized to report cases. The local health director is required to forward reports to DHHS. | ➢ G.S. 130A, Article 6  
➢ 15A NC Administrative Codes Chapter 19 |
| State Center for Health Statistics:  
In general: collect, maintain, and analyze health data, coordinate health data activities within the State, undertake and support research efforts, and publish statistics based on collected health data. | ➢ G.S. 130A-373  
➢ 15A NC Administrative Codes Chapter 26A  
➢ Some programs also utilize data from the hospital discharge database established under G.S. 131E-214 (Medical Care Data Act). |
| Compilation, tabulation, and preservation of statistical, clinical and other reports and records relating to the incidence, treatment, and cure of cancer through the Central Cancer Registry. All North Carolina health care facilities that detect, diagnose, or treat cancer are required to report these cases to the Central Cancer Registry, which is managed by the State Center for Health Statistics. | ➢ G.S. 130A-208, 209  
➢ 15A NC Administrative Codes Chapter 26B |
| Compilation, tabulation, and publishing of information relating to the incidence and prevention of birth defects through the Birth Defect Monitoring Program administered by the State Center for Health Statistics. Physicians and persons in charge of licensed medical facilities in North Carolina are required to provide medical information upon the request of Program staff. | ➢ G.S. 130A-131.16  
➢ 15A NC Administrative Codes Chapter 26C |