

# Policy Memorandum



**Date:** June 26, 2017

**Policy Number:** 05-18

**Subject:** Disclosure of Patient Data

## Purpose:

To protect individual privacy as required by the Constitution of the State of California (Article I, Section 1), the Information Practices Act of 1977 (IPA) (Civ. Code, §1798 et seq.), and the provisions of the Health Data and Advisory Council Consolidation Act (Data Act) (H&S Code, §128675 et seq.).

The Data Act requires collection of personally identifiable patient discharge data, emergency encounter data, and ambulatory surgery encounter data, as well as coronary artery bypass graft surgery patient data, from hospitals, and collection of personally identifiable ambulatory surgery encounter data from licensed free-standing ambulatory surgery clinics.

## Policy:

It is the policy of the Office of Statewide Health Planning and Development (OSHDP) to respect the privacy of individuals by protecting the confidentiality of all patient data that it collects, uses, and disseminates.

Accordingly, OSHDP will carefully evaluate all requests for disclosure of patient data and will ensure that all disclosures comply with applicable laws.

Absent a specific statutory authorization, OSHDP will disclose patient data only if OSHDP has determined that the data have been de-identified pursuant to the Data De-Identification Guidelines (DDG) adopted by the California Health and Human Services Agency (CHHS) or any OSHDP-specific version of the DDG approved by CHHS. This is consistent with the provisions of the Data Act that limit patient data disclosure, set forth in Health and Safety Code Sections 128735, 128736, 128737, 128745, 128755, and 128765.

OSHDP will share patient data collected by OSHDP pursuant to Health and Safety Code Sections 128735, 128736, and 129737 with the State Department of Health Care Services and the State Department of Public Health, pursuant to Health and Safety Code Section 128730.

Unless the Director of OSHDP has determined that the disclosure would create an unreasonable risk to patient privacy, OSHDP will disclose patient data collected by OSHDP pursuant to Health and Safety Code Sections 128735, 128736, and 129737 to: (1) any California hospital, (2) any local health department or local health officer in California, or (3) a listed federal agency for the purpose of conducting a statutorily authorized activity, pursuant to Health and Safety Code Section 128766. As Section 128766 requires, all disclosures of data pursuant to Section 128766 will be consistent with the standards and limitations applicable to

the disclosure of limited data sets under the Health Insurance Portability and Accountability Act (Section 164.514 of Part 164 of Title 45 of the Code of Federal Regulations), as determined based on review and analysis of each individual request.

As authorized by the IPA, OSHPD may elect to disclose confidential patient data pursuant to one of the exceptions listed in Civil Code Section 1798.24.

OSHPD will not disclose confidential patient data under Health and Safety Code Section 128766 or the IPA unless the request for the data has been thoroughly analyzed and compliance with the following conditions has been documented:

- The relevant statutory section authorizing disclosure has been identified and all requirements met.
- The data will not be used for the purpose of identifying or contacting individuals or to obtain medical information about specific individuals.
- Disclosure of the patient data is limited to only those data that are the least confidential and most relevant and necessary to accomplish the objective for which they are requested.
- Use of the data will be limited to that described in the request.
- The data will be protected from unauthorized use or disclosure.
- The CHHS Committee for the Protection of Human Subjects (CPHS) has approved the project for which the data is requested. If the data are requested for research under the IPA, CPHS will assure that the requirements of subdivision (t) of Civil Code Section 1798.24 are met.
  - Requests submitted by another state agency under subdivision (e) of Civil Code Section 1798.24: If the data are not to be used for research purposes, the agency may request waiver of the requirement for CPHS approval.
  - Requests for data submitted under Section 128766: CPHS review will only be required if the data are requested for research purposes.
- OSHPD's Deputy Director, Information Services Division, approves the disclosure.
- OSHPD's Privacy Officer approves the disclosure.

In addition, OSHPD reserves the right to withhold the disclosure of any patient data or information, or recover any data and information previously disclosed.

### **Eligibility:**

This policy applies to all OSHPD employees, agents, and contractors. This policy shall be read and applied in conjunction with the OSHPD Privacy Policy.

### **Responsibilities and Approval:**

Requests for confidential patient data must be approved by the Deputy Director, Information Services Division, and the Privacy Officer.

### **Definitions:**

*Patient data:* Refers to any patient data collected pursuant to Health and Safety Code Sections 128735, 128736, 128737, or 128745.

*Confidential patient data:* Includes all patient data that have not been de-identified in accordance with the standards set forth in the CHHS DDG or a CHHS-approved OSHPD version of the DDG.

**Contact information:**

Questions about this policy should be directed to Elizabeth C. Wied, Chief Counsel and Privacy Officer, [PrivacyOfficer@oshpd.ca.gov](mailto:PrivacyOfficer@oshpd.ca.gov) or (916) 326-3610.