

1 **TRIBAL HEALTH INFORMATION**

2 2012 GENERAL SESSION

3 STATE OF UTAH

4 **Chief Sponsor: Kevin T. Van Tassell**

5 House Sponsor: Jack R. Draxler

7 **LONG TITLE**

8 **General Description:**

9 This bill modifies Title 26, Utah Health Code, by amending procedures relating to the
10 disclosure of health information.

11 **Highlighted Provisions:**

12 This bill:

- 13 ▶ defines the term "public health authority;"
- 14 ▶ permits a custodian of vital records to permit a public health authority to inspect
15 vital records;
- 16 ▶ permits the Department of Health to disclose specific medical or epidemiological
17 information; and
- 18 ▶ makes technical changes.

19 **Money Appropriated in this Bill:**

20 None

21 **Other Special Clauses:**

22 None

23 **Utah Code Sections Affected:**

24 AMENDS:

25 **26-1-2**, as last amended by Laws of Utah 1991, Chapter 112

26 **26-2-22**, as last amended by Laws of Utah 2009, Chapter 183

27 **26-3-7**, as last amended by Laws of Utah 2008, Chapter 3

28 **26-6-27**, as last amended by Laws of Utah 2008, Chapter 3

29

30 *Be it enacted by the Legislature of the state of Utah:*

31 Section 1. Section **26-1-2** is amended to read:

32 **26-1-2. Definitions.**

33 Subject to additional definitions contained in the chapters of this title which are
34 applicable to specific chapters, as used in this title:

35 [~~(3)~~] (1) "Council" means the Utah Health Advisory Council.

36 [(+)] (2) "Department" means the Department of Health created in Section 26-1-4.

37 [(2)] (3) "Executive director" means the executive director of the department appointed
38 pursuant to Section 26-1-8.

39 (4) "Public health authority" means an agency or authority of the United States, a state,
40 a territory, a political subdivision of a state or territory, an Indian tribe, or a person acting under
41 a grant of authority from or contract with such an agency, that is responsible for public health
42 matters as part of its official mandate.

43 Section 2. Section **26-2-22** is amended to read:

44 **26-2-22. Inspection of vital records.**

45 (1) (a) The vital records shall be open to inspection, but only in compliance with the
46 provisions of this chapter, department rules, and Section 78B-6-144.

47 (b) It is unlawful for any state or local officer or employee to disclose data contained in
48 vital records contrary to this chapter or department rule.

49 (c) A custodian of vital records may permit inspection of a vital record or issue a
50 certified copy of a record or a part of a record when the custodian is satisfied that the applicant
51 has demonstrated a direct, tangible, and legitimate interest.

52 (2) A direct, tangible, and legitimate interest in a vital record is present only if:

53 (a) the request is from:

54 (i) the subject;

55 (ii) a member of the subject's immediate family;

56 (iii) the guardian of the subject;

57 (iv) a designated legal representative of the subject; or

58 (v) a person, including a child-placing agency as defined in Section 78B-6-103, with
59 whom a child has been placed pending finalization of an adoption of the child;

60 (b) the request involves a personal or property right of the subject of the record;

61 (c) the request is for official purposes of a public health authority or a state, local, or
62 federal governmental agency;

63 (d) the request is for a statistical or medical research program and prior consent has
64 been obtained from the state registrar; or

65 (e) the request is a certified copy of an order of a court of record specifying the record
66 to be examined or copied.

67 (3) For purposes of Subsection (2):

68 (a) "immediate family member" means a spouse, child, parent, sibling, grandparent, or
69 grandchild;

70 (b) a designated legal representative means an attorney, physician, funeral service
71 director, genealogist, or other agent of the subject or the subject's immediate family who has
72 been delegated the authority to access vital records;

73 (c) except as provided in Title 78B, Chapter 6, Part 1, Utah Adoption Act, a parent, or
74 the immediate family member of a parent, who does not have legal or physical custody of or
75 visitation or parent-time rights for a child because of the termination of parental rights pursuant
76 to Title 78A, Chapter 6, Juvenile Court Act of 1996, or by virtue of consenting to or
77 relinquishing a child for adoption pursuant to Title 78B, Chapter 6, Part 1, Utah Adoption Act,
78 may not be considered as having a direct, tangible, and legitimate interest; and

79 (d) a commercial firm or agency requesting names, addresses, or similar information
80 may not be considered as having a direct, tangible, and legitimate interest.

81 (4) Upon payment of a fee established in accordance with Section 63J-1-504, the
82 following records shall be available to the public:

83 (a) except as provided in Subsection 26-2-10(4)(b), a birth record, excluding
84 confidential information collected for medical and health use, if 100 years or more have passed
85 since the date of birth;

- 86 (b) a death record if 50 years or more have passed since the date of death; and
- 87 (c) a vital record not subject to Subsection (4)(a) or (b) if 75 years or more have passed
- 88 since the date of the event upon which the record is based.

89 Section 3. Section **26-3-7** is amended to read:

90 **26-3-7. Disclosure of health data -- Limitations.**

91 The department may not disclose any identifiable health data unless:

92 (1) one of the following persons has consented to the disclosure:

- 93 (a) the individual;
- 94 (b) the next-of-kin if the individual is deceased;
- 95 (c) the parent or legal guardian if the individual is a minor or mentally incompetent; or
- 96 (d) a person holding a power of attorney covering such matters on behalf of the
- 97 individual;

98 (2) the disclosure is to a governmental entity in this or another state or the federal

99 government, provided that:

100 (a) the data will be used for a purpose for which they were collected by the department;

101 and

102 (b) the recipient enters into a written agreement satisfactory to the department agreeing

103 to protect such data in accordance with the requirements of this chapter and department rule

104 and not permit further disclosure without prior approval of the department;

105 (3) the disclosure is to an individual or organization, for a specified period, solely for

106 bona fide research and statistical purposes, determined in accordance with department rules,

107 and the department determines that the data are required for the research and statistical

108 purposes proposed and the requesting individual or organization enters into a written

109 agreement satisfactory to the department to protect the data in accordance with this chapter and

110 department rule and not permit further disclosure without prior approval of the department;

111 (4) the disclosure is to a governmental entity for the purpose of conducting an audit,

112 evaluation, or investigation of the department and such governmental entity agrees not to use

113 those data for making any determination affecting the rights, benefits, or entitlements of any

114 individual to whom the health data relates;

115 (5) the disclosure is of specific medical or epidemiological information to authorized
116 personnel within the department, local health departments, public health authorities, official
117 health agencies in other states, the United States Public Health Service, the Centers for Disease
118 Control and Prevention (CDC), or agencies responsible to enforce quarantine, when necessary
119 to continue patient services or to undertake public health efforts to control communicable,
120 infectious, acute, chronic, or any other disease or health hazard that the department considers to
121 be dangerous or important or that may affect the public health;

122 (6) the disclosure is of specific medical or epidemiological information to a "health
123 care provider" as defined in Section 78B-3-403, health care personnel, or public health
124 personnel who has a legitimate need to have access to the information in order to assist the
125 patient or to protect the health of others closely associated with the patient. This Subsection
126 (6) does not create a duty to warn third parties;

127 (7) the disclosure is necessary to obtain payment from an insurer or other third-party
128 payor in order for the department to obtain payment or to coordinate benefits for a patient; or

129 (8) the disclosure is to the subject of the identifiable health data.

130 Section 4. Section **26-6-27** is amended to read:

131 **26-6-27. Information regarding communicable or reportable disease confidential**
132 **-- Exceptions.**

133 (1) Information collected pursuant to this chapter in the possession of the department
134 or local health departments relating to an individual who has or is suspected of having a disease
135 designated by the department as a communicable or reportable disease under this chapter shall
136 be held by the department and local health departments as strictly confidential. The department
137 and local health departments may not release or make public that information upon subpoena,
138 search warrant, discovery proceedings, or otherwise, except as provided by this section.

139 (2) The information described in Subsection (1) may be released by the department or
140 local health departments only in accordance with the requirements of this chapter and as
141 follows:

142 (a) specific medical or epidemiological information may be released with the written
143 consent of the individual identified in that information or, if that individual is deceased, his
144 next-of-kin;

145 (b) specific medical or epidemiological information may be released to medical
146 personnel or peace officers in a medical emergency, as determined by the department in
147 accordance with guidelines it has established, only to the extent necessary to protect the health
148 or life of the individual identified in the information, or of the attending medical personnel or
149 law enforcement or public safety officers;

150 (c) specific medical or epidemiological information may be released to authorized
151 personnel within the department, local health departments, public health authorities, official
152 health agencies in other states, the United States Public Health Service, the Centers for Disease
153 Control and Prevention (CDC), or when necessary to continue patient services or to undertake
154 public health efforts to interrupt the transmission of disease;

155 (d) if the individual identified in the information is under the age of 18, the information
156 may be released to the Division of Child and Family Services within the Department of Human
157 Services in accordance with Section 62A-4a-403. If that information is required in a court
158 proceeding involving child abuse or sexual abuse under Title 76, Chapter 5, Offenses Against
159 the Person, the information shall be disclosed in camera and sealed by the court upon
160 conclusion of the proceedings;

161 (e) specific medical or epidemiological information may be released to authorized
162 personnel in the department or in local health departments, and to the courts, to carry out the
163 provisions of this title, and rules adopted by the department in accordance with this title;

164 (f) specific medical or epidemiological information may be released to blood banks,
165 organ and tissue banks, and similar institutions for the purpose of identifying individuals with
166 communicable diseases. The department may, by rule, designate the diseases about which
167 information may be disclosed under this subsection, and may choose to release the name of an
168 infected individual to those organizations without disclosing the specific disease;

169 (g) specific medical or epidemiological information may be released in such a way that

170 no individual is identifiable;

171 (h) specific medical or epidemiological information may be released to a "health care
172 provider" as defined in Section 78B-3-403, health care personnel, and public health personnel
173 who have a legitimate need to have access to the information in order to assist the patient, or to
174 protect the health of others closely associated with the patient. This subsection does not create
175 a duty to warn third parties, but is intended only to aid health care providers in their treatment
176 and containment of infectious disease; and

177 (i) specific medical or epidemiological information regarding a health care provider, as
178 defined in Section 78B-3-403, may be released to the department, the appropriate local health
179 department, and the Division of Occupational and Professional Licensing within the
180 Department of Commerce, if the identified health care provider is endangering the safety or life
181 of any individual by his continued practice of health care.