

Pandemic and Privacy: Public Health Emergency Meets Consumer Confidentiality

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Who We Are

The Maine Department of Health and Human Services (the Department) is a network of 16 offices and numerous programs, all with the mission of improving the public health of the People of Maine. It includes:

- ▶ **Division of Licensing and Certification**
- ▶ **Maine Centers for Disease Control and Prevention (MeCDC)**, including Disease Surveillance, WIC, Public Health Nursing and many more programs
- ▶ **Office of Aging and Disability Services** and Adult Protective Services
- ▶ **Office of Behavioral Health** (including the Prescription Monitoring Program)
- ▶ **Office of Child and Family Services** and Child Protective Services
- ▶ **Office for Family Independence** (Supplemental Nutrition Assistance Program, Temporary Assistance for Needy Families, Aspire, (jobs program), and more
- ▶ **Office of MaineCare Services (Medicaid)**
- ▶ **Riverview and Dorothea Dix Psychiatric Centers**

A Hybrid-Covered Entity

The Department is a hybrid-covered entity from a HIPAA perspective.

MaineCare and its numerous waiver programs, along with our Psychiatric facilities, are considered HIPAA-covered entities.

MeCDC's Health and Environmental Testing Laboratory is HIPAA-covered in so far as it bills electronically for testing human specimens.

The MeCDC is otherwise considered a Public Health Authority with regard to all of its other programming.

Our Privacy/Security Program: Using Safeguards that Wrap Around our Information

The Department has a strong privacy framework that seeks to protect all identifiable consumer data. It includes:

- ▶ Privacy/Security Liaisons in each office
- ▶ Education and Training
- ▶ Policies, forms, protocols, a website
- ▶ Relationship with the State Office of Information Technology (OIT), which serves as the security/technology/data center for every state agency and the Department's technology and security partner
- ▶ Regular communications with workforce on privacy/security topics
- ▶ A strong breach notification process, and knowledge of appropriate persons to contact re: incidents or concerns

Confidentiality Policies

- ▶ While the Department maintains confidentiality policies that apply across all offices, the MeCDC maintains its own (additional) policies and processes for responding to its many and varied requests for data.
- ▶ MeCDC data is suppressed where numbers could identify individuals (e.g., small communities).
- ▶ Information that is requested for research purposes follows the Department's **research process** to ensure 1) confidentiality and tracking of the data flow and 2) appropriate review by our IRB of record and/or the HIPAA Privacy Board, where appropriate.

Covid – 19

Test Results – Legal Status

- ▶ Laboratory results obtained by the Health and Environmental Testing Lab are kept secure in an electronic system via administrative (policies/training), physical (security badge access) and technical/system (passwords, virus protection, firewalls, etc.) safeguards.
- ▶ When Covid-19 tests, or any human specimens, are processed and sent to a provider, those results are considered to be part of the individual's medical record, and therefore protected by state and federal confidentiality laws, regulations and rules, including HIPAA.
- ▶ When those results are reported by providers to the Disease Surveillance program at the MeCDC, HIPAA no longer applies, but the information is still kept confidential under state law.



Lab Results: Flow of Identifiable Information

- ▶ Patient tested - results entered into lab's electronic data system (true for both state lab and private labs).
- ▶ Transferred via secure connection to the electronic lab reporting system and merged into National Electronic Disease Surveillance System (NEDSS).
- ▶ NEDSS data is used to identify confirmed cases. Case investigators follow-up on confirmed cases to identify close contacts. Contact data is entered into NEDSS.
- ▶ Close contacts are transferred from NEDSS to the SARA ALERT system.
- ▶ Contact tracers, using the SARA ALERT system, reach out to close contacts via phone, and enroll them, with permission, into the contact tracing texting program.
- ▶ When either case investigators or contact tracers identify people in isolation or quarantine who have additional social services needs, permission is obtained to share information with the Department's Commissioner's office, 211 partners, and/or contracted agencies who can help fill those needs.

Uses and Disclosures of Covid-19 Testing Information include:

MeCDC webpage – dashboard updated daily.

News media – Dr. Nirav Shah regularly speaks to the media.

Case investigations.

Public health activities, including surveillance, containment, analysis.

Regular Press Briefings



De-Identification Is Implemented Before Posting Covid-19 Data to Protect Privacy

Both state and federal law permit the disclosure of consumer information where the individual cannot reasonably be identified.

As a general rule, the HIPAA Safe Harbor method of “de-identification” is used, however, **county** is being shared in this public health context.

This method requires the removal of 18 identifiers and

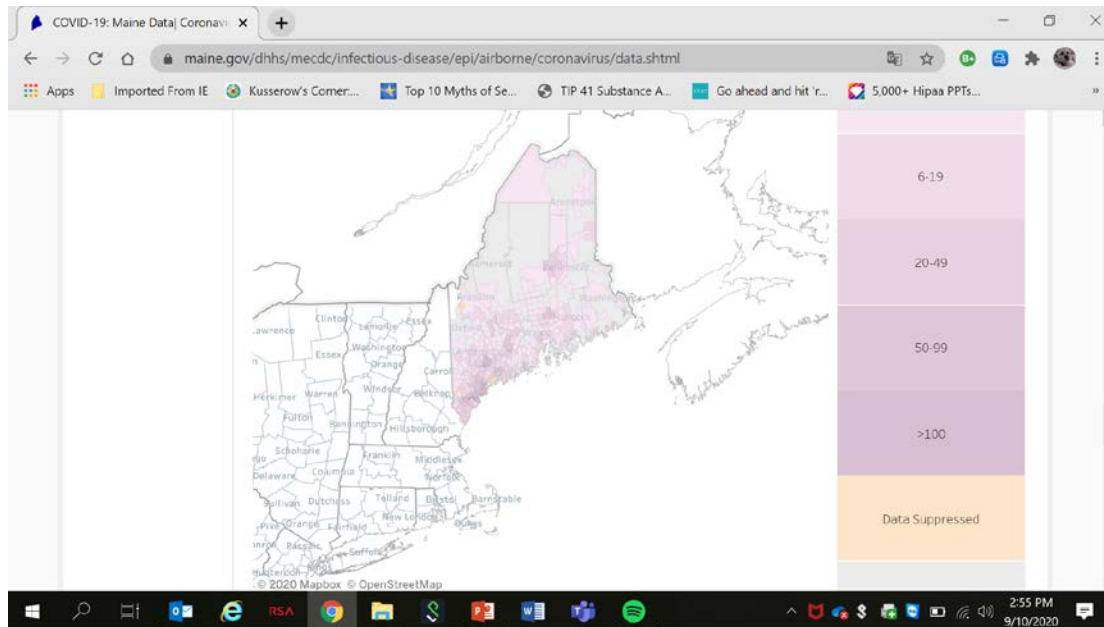
“The covered entity does not have **actual knowledge** that the information could be used alone or in combination with other information to identify an individual who is a subject of the information.”

MeCDC Website Posting of Covid-19 Cases By County

The screenshot shows a web browser window with the URL `maine.gov/dhhs/mecdc/infectious-disease/epi/airborne/coronavirus/data.shtml`. The page title is "Cumulative COVID-19 Cases by County". A link "Access a Google Sheet with the most recent cumulative case data by county, sex, age, and race." is visible. The table below lists the data for each county in Maine, including Statewide totals. The data is as of Tuesday, September 8, 2020, at 11:59 pm.

| County | Cases | Confirmed cases | Probable cases | Deaths | Hospitalizat.. | Recoveries | Case rate (per 10K peo.. |
|------------------|--------------|-----------------|----------------|------------|----------------|--------------|--------------------------|
| Statewide | 4,734 | 4,258 | 476 | 134 | 429 | 4,135 | 35.4 |
| Cumberland | 2,224 | 1,986 | 238 | 70 | 199 | 1,981 | 75.8 |
| York | 925 | 827 | 98 | 15 | 88 | 753 | 44.9 |
| Androscoggin | 627 | 569 | 58 | 10 | 49 | 576 | 58.2 |
| Penobscot | 249 | 234 | 15 | 6 | 27 | 219 | 16.5 |
| Kennebec | 198 | 181 | 17 | 11 | 28 | 173 | 16.2 |
| Oxford | 75 | 62 | 13 | 0 | 1 | 64 | 13.0 |
| Waldo | 72 | 67 | 5 | 14 | 5 | 56 | 18.1 |
| Somerset | 65 | 57 | 8 | 3 | 5 | 45 | 12.8 |
| Sagadahoc | 62 | 60 | 2 | 0 | 7 | 55 | 17.4 |

MeCDC Posting of Covid – 19 Zip Code Map



Per Maine CDC's privacy policy:

- ▶ 1) Case counts are suppressed in zip codes with fewer than 50 people.
- ▶ 2) Exact case counts are suppressed in all zip codes with 5 or fewer cases.
- ▶ 3) In counties where total case counts are low enough that zip code data could indirectly reveal the identity of a case, all zip codes in the county are suppressed.

Weekly Updates: Protecting the Privacy of Individuals In Small Communities



The screenshot shows a web browser window with the URL `maine.gov/dhhs/mecdc/infectious-disease/epi/airborne/coronavirus/data.shtml`. The page displays contact tracing data for Sara Alert. A table shows 408 individuals currently in monitoring and 4,556 total individuals enrolled. Below the table, a note states that the Maine CDC updates the data weekly, with the last update on September 3, 2020, at 10:30 AM. A list of links provides access to various data tables, including those for the previous 14 days, all reported COVID-19 tests, current hospital use and capacity, cumulative cases by age, race and ethnicity, and sex. A link to read details about the data is also present.

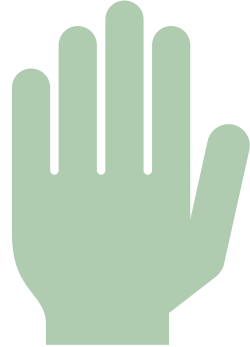
| Contact Tracing (Sara Alert) Data | |
|---|--------------------------------------|
| Number of Individuals Currently in Monitoring | Total Number of Individuals Enrolled |
| 408 | 4,556 |

Maine CDC updates contact tracing data weekly.
Updated September 3, 2020 at 10:30 AM

- + [View Tables of Data for the Previous 14 Days](#)
- + [View a Table of All Reported COVID-19 Tests in Maine](#)
- + [View a Table of Maine COVID-19 Current Hospital Use and Capacity Data](#)
- + [View a Table of Cumulative COVID-19 Cases by Age](#)
- + [View a Table of Cumulative COVID-19 Cases by Race and Ethnicity](#)
- + [View a Table of Cumulative COVID-19 Cases by Sex](#)
- + [Read Details About the Data](#)

The Windows taskbar at the bottom shows the time as 3:05 PM on 9/10/2020, with various application icons including Microsoft Edge, RSA, Google Chrome, File Explorer, and several Office applications.

Case Investigators, Contact Tracers and Confidentiality



First step: Confidentiality training and a signed confidentiality statement/agreement for contract staff.

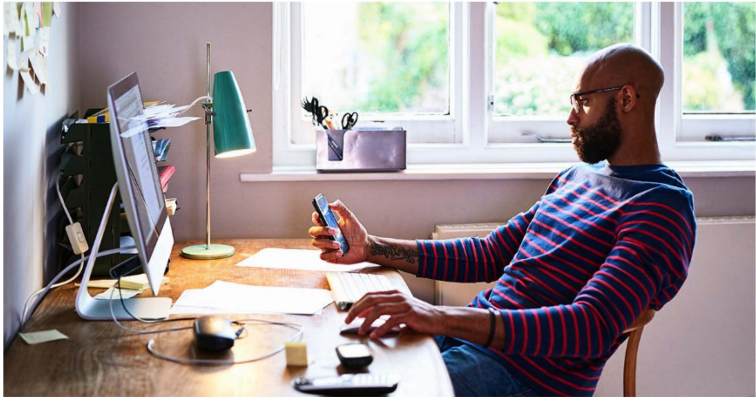


Use/Access to Covid-19 data in electronic systems, including the health information exchange, is audited for appropriateness.

Confidentiality and Contact Tracing



- ▶ Case investigators and contract tracers have been educated on issues of sensitivity to privacy/security issues.
- ▶ Reminders to case investigators and contact tracers that they may have access to information about individuals they know from the community, school, work.
- ▶ Those individuals deserve the same protections as those we do not know personally.
- ▶ Any privacy or security concerns are reported to the worker's supervisor, who reports to the MeCDC's Privacy/Security Liaison.



**HUMAN
ERROR**



***Your workstation is
wherever you work.***

***Privacy and security
safeguards apply.***

Agreements

- ▶ Contracts, MOUs or “Data Sharing and Protection Agreements” have been executed for the purpose of providing supports and services through external agencies/entities.
- ▶ Agreements that allow for the sharing of any consumer-identifiable information, including Covid-19 information, are required to include:
 - ▶ State template consumer confidentiality language;
 - ▶ Agreement not to contact subject of the information;
 - ▶ Agreement to contact the Department within 24 hours or 1 business day of incident that actually, or reasonably could amount to, a reportable breach;
 - ▶ Promise to work cooperatively with the Department regarding any investigation.

Agreements/Steps:

Maine's Health and Environmental Testing Laboratory in the Context of Covid-19 and Contracted Workforce

HIPAA Applies: Business Associate Agreement Required.

Health Information Privacy and Security Training conducted for contracted workforce.

Department review of our security controls to confirm effective processes for access and termination of access to the lab's electronic health record.

MeCDC - Limited Access to Statewide Information Exchange During Pandemic to assist with containment and care

Permits providers to view
patient/consumer record, including
Covid-19 test status.

Permits MeCDC and certain
contracted staff to access
patient/consumer health
information consistent with public
health emergency rules.

Access closely audited by exchange
staff, concerns communicated with
Department's Director of Healthcare
Privacy.

In Summary, How do We Keep Identifiable Covid -19 Data Protected Now and in the Future?

- ▶ We slow down. Whether on large or small scales, data incidents often occur as a result of human error.
- ▶ We ensure that appropriate safeguards (administrative, physical, technical) are in place.
- ▶ We ensure that appropriate protections are documented in any agreement with contractors, volunteers, or others who might handle COVID-19 data.
- ▶ We regularly educate workforce to maintain awareness.
- ▶ We don't fall for phishing scams.
- ▶ We (with our OIT partner) test/monitor the effectiveness of our system security and policies.
- ▶ We have processes in place to respond to and mitigate incidents.
- ▶ We keep the importance of consumer privacy at top-of-mind for our workforce, at every level, whether employee, volunteer or contractor.
- ▶ We reinforce our privilege in maintaining sensitive consumer identifiable information. It could be our own information at risk.





Follow up Questions, Concerns or Feedback:

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