

NCVHS Subcommittee on Privacy, Confidentiality and Security

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Context

- Electronic health information from clinical care has been recognized as important for public health preparedness for several decades
- With the recent COVID public health emergency, substantial progress was made by rolling out electronic case reporting (eCR) from EHRs nationally, but work remains to be done to meet the full need
- EHR data and public health readiness
 - The secure exchange of health information between organizations is critical
 - Public health reporting uses HIEs, HINs as well as state laws, HIPAA business associate authorities, and public health disclosures to securely accomplish
 - There are other tools like cloud technologies, that can facilitate connecting healthcare and public health organizations too (e.g. the eCR hub and spoke architecture)
 - For this, legal and regulatory approaches must cross, and be enforceable in, multiple jurisdictions, and healthcare organizations and must overcome different perceptions of federal and state laws

Example Considerations

- EHR data quality and consistency is important for public health use
 - Existing data quality efforts have been very limited due to EHR company, and to some extent, clinical care resistance
 - Standards and certification can be more rigorously applied for quality outcomes without clinical impact
- A public health “purpose of use” designation for public health reporting data should be used broadly and consistently applied
 - About appropriate, secure data exchange and other data uses
 - TEFCA “Exchange Purpose Implementation SOP: Public Health” language is good, but consistent enforcement for HIEs and healthcare organizations is needed outside of TEFCA
 - Although technically appealing, queries for data have policy issues and do not meet all public health needs. Queries do not replace “reporting.”

Example Considerations

- Perception of HIPAA language for disclosures to public health authorities can impede some exchange intermediaries (e.g. TEFCA QHINs)
 - “The Privacy Rule permits covered entities to **disclose protected health information, without authorization, to public health authorities** who are legally authorized to receive such reports for the purpose of preventing or controlling disease, injury, or disability.”
 - If the disclosure is the exchange step are intermediaries enabled to be “disclosed to”?
- Perception of conflicting federal regulations
 - SAMHSA has said that their substance abuse disorder regulations (42 CFR part 2) should not block state required reporting
 - Some public health agencies, however, believe that they cannot get electronic case reports or labs, that are required by state laws, if the patient is covered by such regulations
- Public health agencies have trailed behind clinical care in HIT adoption and understanding of their data rights
 - Variant interpretations by state legal advisors is an ongoing issue