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Transparency and Access in a Pandemic: Understanding the Impact of HIPAA on Government Disclosures

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Abstract

From the start of the pandemic, the American public has had inconsistent and often limited access to the COVID-19 data held by their governments. As legal cover for this lack of transparency, state and local officials have frequently invoked one federal law – the Health Insurance Portability and Accountability Act, better known as HIPAA – and its associated regulations. This article examines that trend. It unpacks the key parts of the regulations and explains why, in many cases, they provide no legal basis for agency refusals to disclose coronavirus-related information. The article also offers potential strategies to requesters seeking to pry that data loose.

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Introduction

As the COVID-19 pandemic tore through the United States in early 2020, states and localities grappled with a raft of difficult decisions. One was about transparency: How much information should residents be given about the spread of the coronavirus in their own communities?

It quickly became clear that no consistent approach would emerge. Government transparency about coronavirus data varied (and continues to vary) among states – and sometimes within them.¹ Troublingly, moreover, many officials have opted to keep their communities in the dark about basic facts regarding the spread of the disease. In some states, for instance, governments have declined to disclose the number of confirmed cases in a given town or community, releasing only county-wide data. Some have also pointedly refused to identify the places where coronavirus outbreaks have occurred, like long-term care facilities and meatpacking plants. And frequently, officials have said that their hands were tied by regulations issued under a 1996 federal law – the Health Insurance Portability and Accountability Act, or HIPAA² – that forbid disclosure of health information.³

The truth, however, is more complicated. In invoking HIPAA, government officials and agencies have often disregarded or simply ignored the law’s basic criteria and exceptions. In the context of public records requests, one exception – known as the “required by law” exception – is of particular significance.⁴ As courts around the country have held, the import of this exception is that HIPAA does not apply where disclosure is mandated by another law, such as a public records statute. And even outside the context of public records laws (*e.g.*, proactive government disclosures), governments appear to have ignored some of HIPAA’s key provisions.

This paper proceeds in three parts. It begins with an explanation of the basics of HIPAA and the relevant regulations (collectively known as the Privacy Rule), and then examines how the Privacy Rule has functioned as a roadblock to government transparency during the COVID-19 pandemic. The paper’s third part both explains why this lack of transparency is not necessarily justified by HIPAA and suggests strategies for journalists and lawyers seeking access to coronavirus-related information. The appendix then lists examples of how records were closed by HIPAA in every state.

¹ See, *e.g.*, Thomas Fuller, *How Much Information Should the Public Know About the Coronavirus?*, N.Y. TIMES (March 28, 2020), <https://nyti.ms/30jhcFW>.

² Pub. L. No. 104-191, 110 Stat. 1936 (1996) (codified in scattered sections of 26, 29, and 42 U.S.C.). As I explain herein, the HIPAA regulations that restrict disclosure of health information are collectively known as the Privacy Rule. In this paper I use the terms HIPAA and Privacy Rule interchangeably, although there is much more to HIPAA than just the Privacy Rule.

³ In the Appendix to this paper, I have compiled examples of governmental refusals to disclose coronavirus-related information from virtually every state in the country. (I did not find an example from the District of Columbia.) In almost all cases I have cited and excerpted news articles; in some places I have also provided examples that have been relayed to me by media law practitioners.

⁴ 45 C.F.R. § 164.512(a)(1).

I. The basics of HIPAA and the Privacy Rule

A. What is HIPAA?

Enacted in 1996, HIPAA is a broad statute that introduced a variety of requirements affecting health care and health insurance. Spread across five Titles, the law’s provisions had many objectives – among them, “improv[ing] portability and continuity of health insurance coverage in group and individual markets,” “combat[ing] waste, fraud, and abuse in health insurance and health care delivery,” and “simplify[ing] the administration of health insurance.”⁵

The statute itself did not create restrictions on the disclosure of individual health information. Instead, the law directed the Department of Health and Human Services (HHS) to do so, in the event that Congress did not pass comprehensive privacy legislation within three years of HIPAA’s enactment.⁶ That deadline passed, and in 2000 HHS published a set of privacy regulations, collectively known as the Privacy Rule.⁷ These regulations are what HIPAA is most closely associated with today.

B. The Privacy Rule

The Privacy Rule can seem (and sometimes is) technical and arcane. The essence of the Rule, though, is simple: it places limits on whether and how certain entities can use and disclose individual health information without the individual’s consent. These entities are known as either “covered entities” (defined as health plans, most health care providers, and certain other entities that translate protected health information from one electronic format to another) or “business associates” (the individuals and entities that obtain the information when helping covered entities perform their function).⁸

The category of information covered by the Privacy Rule, known as “protected health information” or PHI, is broad. Any information that relates to an individual’s health and that identifies, or could reasonably be used to identify, that individual, is subject to the Privacy Rule.⁹ A covered entity may determine that health information is not individually identifiable – and therefore not subject to the Rule’s restrictions on disclosure – in one of two ways: (i) by having a statistician or other expert certify that the risk of individual identification from disclosure of the information is “very small” (known as the “expert determination” method) or (ii) by ensuring that

⁵ HIPAA preamble, 100 Stat. at 1936.

⁶ See Stacey A. Tovino, *A Timely Right to Privacy*, 104 IOWA L. REV. 1361, 1368 (2019).

⁷ The Privacy Rule is codified at 45 C.F.R. §§ 160 and 164.

⁸ 45 C.F.R. § 160.103.

⁹ *Id.* To be more precise, the Privacy Rule defines “individually identifiable health information” as “a subset of health information, including demographic information collected from an individual,” that “(1) Is created or received by a health care provider, health plan, employer, or health care clearinghouse; and (2) Relates to the past, present, or future physical or mental health or condition of an individual; the provision of health care to an individual; or the past, present, or future payment for the provision of health care to an individual; and (i) That identifies the individual; or (ii) With respect to which there is a reasonable basis to believe the information can be used to identify the individual.” *Id.* PHI, in turn, is generally defined as individually identifiable health information that is “[t]ransmitted by electronic media,” “[m]aintained in electronic media,” or “[t]ransmitted or maintained in any other form or medium.” *Id.*

18 specific “identifiers,” including names, telephone numbers, and birthdates, are removed from the information before it is disclosed (known as the “safe harbor” method).¹⁰

C. Exceptions in the Privacy Rule

In certain enumerated circumstances, the Privacy Rule permits covered entities to use and disclose PHI without an individual’s authorization. For our purposes, the most important is the “required by law” exception: “A covered entity may use or disclose protected health information to the extent that such use or disclosure is required by law and the use or disclosure complies with and is limited to the relevant requirements of such law.”¹¹

The preamble to the Privacy Rule speaks to the intent behind this exception and its interaction with the federal Freedom of Information Act (FOIA).¹² The purpose of the “required by law” exception, according to the preamble, was “to preserve access to information considered important enough by state or federal authorities to require its disclosure by law.”¹³ As the drafters of the Privacy Rule saw it, FOIA is one example of a law that mandates disclosure:

“Uses and disclosures required by FOIA come within § 164.512(a) of the privacy regulation that permits uses or disclosures required by law if the uses or disclosures meet the relevant requirements of the law. Thus, a federal agency must determine whether it may apply an exemption or exclusion to redact the protected health information when responding to a FOIA request. When a FOIA request asks for documents that include protected health information, we believe the agency, when appropriate, must apply Exemption 6 [for personal privacy] to preclude the release of medical files or otherwise redact identifying details before disclosing the remaining information. ... Covered entities subject to FOIA must evaluate each disclosure on a case-by-case basis, as they do now under current FOIA procedures.”¹⁴

Thus, although the Privacy Rule’s drafters believed that PHI in the hands of a covered entity subject to FOIA would generally fall within Exemption 6, they also recognized that the Rule did not alter the standard legal analysis under FOIA. The covered entity would be required to evaluate every request “on a case-by-case basis.”

Of the Privacy Rule’s other exceptions, one more is potentially relevant here: that for disclosures made to avert threats to health and safety. Specifically, a covered entity may use or disclose PHI if it believes, in good faith, that the disclosure “[i]s necessary to prevent or lessen a serious and imminent threat to the health or safety of a person or the public” and is made “to a person or persons reasonably able to prevent or lessen the threat.”¹⁵

¹⁰ *Id.* § 164.514(b); see U.S. Dep’t of Health and Human Services, *Guidance Regarding Methods for De-identification of Protected Health Information in Accordance with the Health Insurance Portability and Accountability Act (HIPAA) Privacy Rule*, <https://bit.ly/2P6Kzpe>.

¹¹ 45 C.F.R. § 164.512(a)(1).

¹² 5 U.S.C. § 552.

¹³ Standards for Privacy of Individually Identifiable Health Information, 65 Fed. Reg. 82,462, 82,667 (Dec. 28, 2000).

¹⁴ *Id.* at 82, 482.

¹⁵ 45 C.F.R. § 164.512(j)(1)(i).

II. HIPAA's impact on government transparency about COVID-19

It is perhaps not surprising that a law restricting disclosure of health information has been widely cited by government officials and agencies as a basis for denying access to coronavirus-related data. What is striking, though, is the kind of information that has sometimes been withheld on the basis of HIPAA, and the inconsistency with which the law has been interpreted and applied – sometimes by officials in different parts of the same state.

At this point, government officials in every state have invoked HIPAA in withholding coronavirus-related information from the public.¹⁶ That itself is not a reason to be troubled. In many cases, the law has been cited as a basis for keeping confidential truly personal information about patients, like names and street addresses.¹⁷ Needless to say, such disclosures would raise obvious privacy concerns, and in the typical case serve the public interest only minimally, if at all.

But in many other cases, HIPAA has been used to stifle access where the opposite is true: the information is of serious public interest and implicates far weaker privacy concerns. In a number of states, for example, officials have disclosed the number of coronavirus cases only at the county level, claiming that providing more geographically detailed information – including by city or town – would violate HIPAA's de-identification provisions.¹⁸ On the same reasoning, some officials have declined to identify places – nursing homes, meatpacking plants, and others – where community outbreaks have occurred.¹⁹ As a practical matter, the risk of re-identification in these situations is often small, while the harm – forcing residents to rely on rumor and speculation to assess the state of the pandemic in their communities – tends to be comparatively much greater.

The other striking fact is how inconsistently officials across and even within states have interpreted and applied the Privacy Rule in deciding how much information to disclose. As one investigation found, the “little guidance [in HIPAA] on what types of information ... health officials can release to the public, even during epidemics,” has left it to “local health departments to decide how much data about COVID-19 cases they ought to share with the public.”²⁰ A separate analysis done in April found that only about two-thirds of states reported some level of data about coronavirus cases and deaths in long-term facilities, and that among those states there was wide variation in the types of data reported.²¹

In some states, the extent of public disclosure varies by county. In California, for instance, at least one county reports little more than the number of verified and active coronavirus cases, while others may disclose the number of people in quarantine and where they contracted the virus, or provide a breakdown of cases by location, or data by age and gender.²² The cause of this inconsistency, according to the report: differing “[i]nterpretations of federal patient privacy laws.”²³

¹⁶ See generally Appendix.

¹⁷ See *id.* (citing examples from Kentucky, Louisiana, Maine, and New Jersey).

¹⁸ See *id.* (citing examples from Arkansas, California, Delaware, Minnesota, Ohio, Oklahoma, and Vermont).

¹⁹ See *id.* (citing examples from Arizona, California, Florida, Maryland, Massachusetts, Mississippi, Nevada, South Dakota, Texas, and Washington).

²⁰ Christian Sheckler, *Details on Coronavirus Cases Often Scant as Midwest Health Officials Point to Privacy Laws*, SOUTH BEND TRIB. (April 6, 2020), <https://bit.ly/3fZRjkZ>.

²¹ Priya Chidambaram, *State Reporting of Cases and Deaths Due to COVID-19 in Long-Term Care Facilities*, KFF (April 23, 2020), <https://bit.ly/2CP4U0h>.

²² Barry Kaye, *How Much COVID-19 Information Does the Public Need? Counties Decide*, MTSHASTANEWS.COM (June 23, 2020), <https://bit.ly/2Ed0oJd>.

²³ *Id.*

III. What the Privacy Rule actually requires from governments during the pandemic (or, ‘How to fight HIPAA-based denials’)

So, does HIPAA’s Privacy Rule actually require state and local officials to withhold coronavirus-related information from the public? And if so, how broadly does the law sweep?

A. The ‘Required by Law’ exception

When the information has been sought under a public records law, the answer is actually fairly straightforward. As nearly every state court faced with the question has found, the import of the “required by law” exception is that the Privacy Rule does not exempt information whose disclosure is mandated by state law. Put another way, HIPAA has no independent exemptive force beyond state law.

The first court to squarely hold that, it appears, was the Ohio Supreme Court in its 2006 decision, *State ex rel. Cincinnati Enquirer v. Daniels*.²⁴ In that case, *The Cincinnati Enquirer* sued the local health department after it declined to disclose lead-contamination notices issued to residential property owners.²⁵ The department, which issued these notices upon concluding that children inhabiting the property had elevated levels of lead in their blood, claimed the records were made exempt by the Privacy Rule.²⁶

The court rejected that argument on several grounds. Most importantly, it held that HIPAA did not apply because disclosure of the notices was “required by law.”²⁷ That is because the Ohio Public Records Act, like virtually any public records law, presumes that public records will be made available to the public.²⁸ In reaching this conclusion, the court wrestled with a complication created by the Ohio statute, which itself contains an exception for disclosures prohibited by federal law.²⁹ The result is “a problem of circular reference”: “the Ohio Public Records Act requires disclosure of information unless prohibited by federal law, while federal law allows disclosure of protected health information if required by state law.”³⁰

The court resolved that problem by looking to the preamble of the Privacy Rule, which (as noted above) clarifies that the Rule is not intended to exempt information otherwise subject to disclosure under the federal FOIA.³¹ The same was true under state law, the court found: “By analogy, an entity like the Cincinnati Health Department, faced with an Ohio Public Records Act request, need determine only whether the requested disclosure is required by Ohio law to avoid violating HIPAA’s privacy rule.”³²

In the years since *Daniels*, courts in at least four other states (including two state supreme courts) have found that their respective public records laws fall within the Privacy Rule’s required by law exception. These courts rejected agency invocations of HIPAA – including by agencies that were indisputably “covered entities” within the meaning of the Privacy Rule – to withhold a

²⁴ 844 N.E.2d 1181 (Ohio 2006).

²⁵ *Id.* at 1183.

²⁶ *Id.*

²⁷ *Id.* at 1186-87.

²⁸ *Id.* at 1187.

²⁹ *Id.*

³⁰ *Id.*

³¹ *Id.*

³² *Id.*

wide range of information from public records requesters, such as statistical information about allegations of abuse and sexual assault at state mental health facilities,³³ the names of nearly a thousand people buried in a cemetery adjoining a former asylum,³⁴ and records concerning arrests and other allegations of misconduct for attorneys in a public defender's office.³⁵

To be clear, the above does not resolve the question of whether individual health information is subject to disclosure; it just means that the answer is provided by state law, rather than HIPAA. And, there are certainly provisions in state public records laws that will apply to at least some kinds of COVID-related data.

For instance, most state public records laws contain an exemption for personal privacy. Often these exemptions are patterned on Exemption 6 of the federal FOIA statute, which permits information to be withheld if its disclosure “would constitute a clearly unwarranted invasion of personal privacy.”³⁶ The courts have interpreted that to mean that release is required if the privacy interest at stake is *de minimis* or outweighed by the public interest in disclosure.³⁷

Thus, depending on the circumstances and specific information at issue, a requester may persuasively argue that this balance tips in favor of disclosure. If the requested information could plausibly be linked back to an identifiable person, the case for disclosure may be challenging – but not necessary insurmountable. The strength of the privacy interest, which turns on the “likely stigma from disclosure,”³⁸ is arguably tempered by the easily transmissible and now-widespread nature of the coronavirus disease. At the same time, the public interest in access to coronavirus data is significant.³⁹ Disclosure permits the public to assess whether their elected officials are downplaying the seriousness of the pandemic and to judge the success of their efforts to combat it. All of that may make a compelling case for disclosure.

In some states, though, more restrictive exemptions specific to health information will make the path to disclosure more difficult. In Arizona, for instance, the state recently defeated an effort by media organizations to obtain information about the spread of COVID-19 in nursing homes, thanks to state statutes barring disclosure of “communicable disease-related information.”

³³ *Abbott v. Tex. Dep't of Mental Health & Mental Retardation*, 212 S.W.3d 648, 664 (Tex. Ct. App. 2006).

³⁴ *State ex rel. Adams County Historical Soc'y v. Kinyoun*, 765 N.W.2d 212, 218 (Neb. 2009).

³⁵ *Flores v. Freedom of Info. Comm'n*, 2014 Conn. Super. LEXIS 831, *5-7, 20 (Conn. Sup. Ct. Apr. 7, 2014); *see also Or. Health & Sci. Univ. v. Oregonian Publ. Co., LLC*, 403 P.3d 732, 742 (Or. 2017) (“Following the guidance provided in the Privacy Rule commentary, a covered entity responding to a public records request often could comply with both HIPAA and a law requiring disclosure of public records. In particular, under HIPAA’s ‘required by law’ exception, a covered entity might be required by a law such as ORS 192.420(1) to disclose protected health information, thus complying with both laws.”); *A.G. Miss. Op. 2005-0595*, 2005 Miss. AG LEXIS 347, *3-4 (Dec. 16, 2005) (emphasizing that “the HIPAA privacy rule permits a covered entity to use and disclose protected health information as required by other law,” including the Mississippi Public Records Act) (citations omitted). In a decision that pre-dates *Daniels*, a Louisiana appellate court denied access to 911 tapes partly on the ground that disclosure was barred by HIPAA. *Hill v. E. Baton Rouge Parish Dep't of Emergency Med. Servs.*, 925 So. 2d 17, 23 (La. Ct. App. 2005). The court did not, however, consider or even mention the “required by law” exception.

³⁶ 5 U.S.C. § 552(b)(6).

³⁷ *E.g., Multi AG Media LLC v. Dep't of Agric.*, 515 F.3d 1224, 1229 (D.C. Cir. 2008). Importantly, the “public interest” comes into play only to the extent it relates to FOIA’s “core purpose” of “shed[ding] light on an agency’s performance of its statutory duties.” *U.S. Dep't of Justice v. Reporters Comm. for Freedom of Press*, 489 U.S. 749, 773, 775 (1989).

³⁸ *Rosenfeld v. U.S. Dep't of Justice*, 2012 U.S. Dist. LEXIS 28768, *15 (N.D. Cal. Mar. 5, 2012).

³⁹ *Cf. Golub v. Enquirer/Star Grp.*, 89 N.Y.2d 1074, 1077 (1997) (concluding in defamation case that “[c]ancer does not fall into the category of a loathsome disease since it ‘is neither contagious nor attributed in any way to socially repugnant conduct’”) (quoting *Chuy v Phila. Eagles Football Club*, 595 F.2d 1265, 1281 (3d Cir. 1979)).

⁴⁰ And in the state of Illinois, the legislature has enacted a statute forbidding disclosure of “mental health or developmental disabilities service records and communications.”⁴¹ As an appellate court recently found, the law actually incorporates and “relies on HIPAA to establish what constitutes private health information” – effectively making the Privacy Rule a matter of state law.⁴² In these and other states, therefore, defeating a HIPAA-based argument will not itself yield complete victory.

B. Other potential paths to disclosure

Let us put that last point aside and assume we are in a situation where HIPAA is the main impediment to disclosure. And let us assume that we are not making any headway with a state authority with the “required by law” exception. Perhaps the state concedes that the exception applies to requests made under public records laws, but maintains that the Privacy Rule nonetheless forbids certain proactive disclosures to the press and public. How else might one argue for disclosure?

One option is to disclaim desire to obtain information subject to the Privacy Rule – *i.e.*, PHI. As noted, information that neither identifies nor could reasonably be used to identify an individual is beyond the Privacy Rule’s scope.

The difficulty with this argument is that the Privacy Rule’s de-identification standards are fairly stringent. Under the law’s “safe harbor” provision, which is more commonly used as the method of de-identification,⁴³ a covered entity cannot release health information unless it removes 18 specific identifiers of “the individual or of relatives, employers, or household members of the individual.”⁴⁴

Those identifiers include not just names and telephone numbers, but also geographic information. In particular, a covered entity must remove “[a] geographic subdivisions smaller than a State, including street address, city, county, precinct, zip code, and their equivalent geocodes.”⁴⁵ The first three digits of a zip code may be released only if “[t]he geographic unit formed by combining all zip codes with the same three initial digits contains more than 20,000 people.”⁴⁶ This is the provision that state and local officials often have in mind when they claim that the Privacy Rule forbids disclosure of, for instance, anything more detailed than county-level data, or the names of meatpacking plants (“employers” whose identifiers are also protected) with confirmed cases of coronavirus.

A requester might be better served by going back to another threshold criterion in the Privacy Rule: that the body holding the information be a “covered entity” (or one of its “business associates”). Because this category includes health plans and health care providers, government agencies and programs that discharge those functions (*e.g.*, Medicare and Medicaid) can claim to

⁴⁰ Craig Harris, *Judge Rules Ducey Administration Does Not Have to Release COVID-19 Nursing Home Records*, ARIZ. REPUBLIC (May 29, 2020), <https://bit.ly/333fATG>.

⁴¹ Mental Health and Developmental Disabilities Confidentiality Act, 740 ILCS 110/1 *et seq.*

⁴² King v. Cook Cty. Health & Hosps. Sys., 2020 IL App (1st) 190925, P33, 2020 Ill. App. LEXIS 385, *22 (Ill. Ct. App. June 18, 2020).

⁴³ This point was conveyed to the author by a colleague, attorney Edward I. Leeds, a HIPAA expert.

⁴⁴ 45 C.F.R. § 164.514(b)(2).

⁴⁵ *Id.* § 164.514(b)(2)(i)(B).

⁴⁶ *Id.* § 164.514(b)(2)(i)(B)(2).

be bound by HIPAA. Some agencies, like correctional departments, may argue that they are “hybrid entities” that have covered components.⁴⁷

But it is also possible that a requester or journalist is seeking the information from an entity that is not “covered” and is therefore entirely beyond the reach of the Privacy Rule – for example, a governmental department gathering data or tracking the spread of the virus on a statewide basis.⁴⁸ That may seem like a technical distinction, but being strategic about the agency from whom the information is sought – a government agency that is a covered entity or one that is not – could make all the difference.

A requester might also get mileage out of the other exception to the Privacy Rule noted above – *i.e.*, where disclosure “[i]s necessary to prevent or lessen a serious and imminent threat to the health or safety of a person or the public.”⁴⁹ That can certainly be true in the pandemic, at least for some kinds of information. How can residents make educated decisions about their health and safety if they are left in the dark about basic matters like the number of coronavirus cases in their community or the places where outbreaks are occurring?

IV. Conclusion

The frequent lack of transparency about coronavirus data should be counted among the major failures of our governments’ response to the pandemic. Much of the responsibility for this failure rests with state and local agencies that have, among other things, taken an overly restrictive interpretation of HIPAA’s Privacy Rule. But the federal government had a role to play, too: it could have stepped up at any point and issued guidance about the proper application of HIPAA to COVID-related information. This collective failure has impeded public scrutiny and accountability of governments, almost certainly produced bad policy, and likely cost human lives.

⁴⁷ *See, e.g.*, Warren v. Corcoran, 2011 U.S. Dist. LEXIS 135012, *21 n.17 (N.D.N.Y. Oct. 20, 2011) (explaining that the New York State Department of Correctional Services is a “hybrid entity” under HIPAA) (citing, *inter alia*, 45 C.F.R. §§164.103, 164.105(a)(2)(ii), (iii)).

⁴⁸ *See, e.g.*, Abbott, 212 S.W.3d at 664 n.11 (“Our conclusion that the information requested in this case is not confidential under the Public Information Act is buttressed by the fact that the reporter was able to obtain the requested information from another agency, the Texas Department of Protective and Regulatory Services, which is not a covered entity under HIPAA.”).

⁴⁹ 45 C.F.R. §164.512(j)(1)(i)(A); *see, e.g.*, Lawson v. Halpern-Reiss, 212 A.3d 1213, 1226 (Vt. 2019) (relying on §164.512(j) to grant summary judgment to defendant in privacy lawsuit).

Appendix

Examples of records closed under the auspices of HIPAA, in each state:

Alaska

Adelyn Baxter, *Majority of Juneau's COVID-19 Cases Traced to Lemon Creek Correctional Center*, KTOO (May 19, 2020), <https://www.ktoo.org/2020/05/19/state-officials-says-theyre-working-to-contain-juneaus-correctional-facility-outbreak/>:

Daryl Webster is the facility's assistant superintendent. He told the Assembly that they understand people in the community would like to know where individuals who tested positive have been recently and who they came into contact with, but medical privacy laws like HIPAA prevent them from sharing too much.

Alabama

Leada Gore, *Alabama Infant, Teenager Among Coronavirus Deaths, ADPH Says*, AL.COM (June 10, 2020), <https://www.al.com/news/2020/06/alabama-infant-teenager-among-coronavirus-deaths-adph-says.html>:

The Alabama Department of Public Health is reporting the death of an infant and a teenager, both attributed to coronavirus.

The statistics were included in the daily update by ADPH and later confirmed by the agency. Both patients tested positive for COVID-19 and the infant death is under review for underlying health conditions.

Neither patient had Multisystem Inflammatory Syndrome-Children, the coronavirus-linked syndrome that's been reported.

"Due to respect for the families of these patients and HIPAA guidelines, ADPH cannot release further details of these investigations," ADPH said in a statement.

Arkansas

Megan Wilson, *ADH Not Releasing COVID-19 Numbers Within Cities*, KNWA (July 16, 2020), <https://www.nwahomepage.com/news/adh-not-releasing-covid-19-numbers-within-cities/>:

The Arkansas Department of Health will not be releasing COVID-19 case numbers within a city at this time.

Dr. Jose Romero with the Health Department said releasing city-level data poses an issue with HIPAA.

(Separately, an attorney in Arkansas, Alec Gaines, informed me that the Arkansas Health Department has withheld COVID-related information from one of his media clients on HIPAA grounds. I do not know the nature of the information.)

Arizona

Kevin Stone, *Glendale Care Facility Posts COVID-19 Data, Reports Nearly 100 Cases*, KTAR NEWS (May 18, 2020), <https://ktar.com/story/3166645/glendale-care-facility-posts-covid-19-data-reports-nearly-100-cases/>:

State officials have cited Health Insurance Portability and Accountability (HIPAA) regulations as a reason they can't reveal which long-term care facilities have COVID-19 cases.

California

Thomas Fuller, *How Much Information Should the Public Know About the Coronavirus?* N.Y. TIMES (Mar. 28, 2020), <https://www.nytimes.com/2020/03/28/us/coronavirus-data-privacy.html>:

In Santa Clara, health officials say they cannot disclose how many cases are found in each city because of the nation's strict medical privacy law, the Health Insurance Portability and Accountability Act, or HIPAA, signed by President Bill Clinton in 1996.

Angela Ruggiero, *Bay Area News Group Sues Alameda County for Nursing Home Coronavirus Records*, MERCURY NEWS (June 4, 2020), <https://www.mercurynews.com/2020/06/04/bay-area-news-group-sues-alameda-county-for-nursing-home-coronavirus-records/>:

The county released limited death and infection data for the Gateway and East Bay Post Acute only after those facilities already had released their own numbers.

But that practice “abruptly stopped” after April 20, and the county rejected a request for similar data for all nursing homes and long-term health care facilities in the county, according to the lawsuit. The county cited privacy laws that prevent disclosure of individual patient information (the federal Health Insurance Portability and Accountability Act, known as HIPAA).

Colorado

Second COVID-19 Patient Dies in Garfield County: Information Made Public Doesn't Include Day of Death, POST INDEPENDENT (Apr. 9, 2020), <https://www.postindependent.com/news/second-covid-19-patient-dies-in-garfield-county/>:

A man in his 80s with COVID-19 has died in Garfield County, according to a news release from Garfield County Public Health.

The day the death occurred is unclear – Garfield County Public Health Specialist Carrie Godes said in a follow-up email that the county is releasing just “the county, patient's gender, approximate age and if underlying conditions were present.”

Godes cited preserving patient privacy as the underlying reason for not making more information publicly available, although both Eagle and Pitkin counties have in some cases made more information available, including the day a person with COVID-19 died.

However, Colorado Freedom of Information Coalition Executive Director Jeff Roberts wrote in an email that HIPAA only protects information that would personally identify an individual.

“It limits disclosure about an ‘an identifiable patient.’ The patient who died hasn't been identified. How would disclosing the date of death identify the patient?” Roberts asked.

Connecticut

First Connecticut Prison Inmate Tests Positive for Coronavirus, NBC NEWS (Mar. 30, 2020), <https://www.nbcconnecticut.com/news/coronavirus/first-connecticut-prison-inmate-tests-positive-for-coronavirus/2247401/>:

An inmate at the Corrigan-Radgowski Correctional Center in Uncasville has tested positive for coronavirus, according to the Department of Correction.

The 32-year-old man is the first inmate in the Department of Correction prison system to have a confirmed case of COVID-19, the agency said.

The inmate is not being identified due to HIPAA regulations.

Delaware

Meredith Newman, *Here's What Delaware Can (and Can't) Say About its COVID-19 Cases*, DELAWARE NEWS JOURNAL (Mar. 27, 2020), <https://www.delawareonline.com/story/news/health/2020/03/27/heres-what-delaware-can-and-cant-say-its-covid-19-cases/5076877002/>:

Due to HIPAA restrictions, state officials say they can't release any personal information on any individual case, including: name, address, city, underlying health condition, or dates of medical care, including date of death.

Specifically, Rattay said the state can't identify patients' towns due to HIPAA restricting information for populations less than 20,000.

Florida

Carol Marbin Miller, *Florida Governor Won't Reveal Which Elder Homes Have Coronavirus*, MIAMI HERALD (Mar. 26, 2020), <https://www.govtech.com/em/safety/Florida-Governor-Wont-Reveal-Which-Elder-Homes-Have-the-Coronavirus-.html>

The DeSantis administration has based its refusal, so far, to name [elder] homes with positive results on its desire to protect the confidentiality of residents. While he has not named the law, DeSantis appears to be invoking the federal Health Insurance Portability and Accountability Act, or HIPAA, which protects patient medical records and privacy.

Georgia

Max Blau and Joshua Sharpe, *3 Georgia Prison Inmates Test Positive for COVID-19, Others Monitored*, ATLANTA JOURNAL-CONSTITUTION (Mar. 21, 2020), <https://www.ajc.com/news/local/breaking-georgia-prison-inmate-tests-positive-for-covid/2U3hE09fRS6WG9SMHOYZ7I/>:

After the department announced an employee had tested positive this week, Georgia Department of Corrections Commissioner Timothy Ward said in a statement that the department would respond with "all available resources to help prevent the potential introduction and spread of Coronavirus (COVID-19) into our facilities." But corrections officials declined to reveal which prison the employee worked at, citing "security and HIPAA."

HIPAA, the federal medical privacy law, does not apply to employers and shouldn't keep the prison system from saying the name of the prison where the infected employee works, experts said.

Hawaii

Sabrina Bodon, *Kaua'i COVID-19 Q&A: Can We Have More Information?*, GARDEN ISLAND (Apr. 21, 2020), <https://www.thegardenisland.com/2020/04/21/hawaii-news/kauai-covid-19-qa-can-we-have-more-information/>:

Q: I don't understand why they do not release the demographic information of COVID-19 cases such as location, age, etc.

A: The Health Insurance Portability and Accountability Act (HIPAA) Privacy Rule prohibits discussing or sharing information that can be used to identify a patient.

But, the state's Health Department does release some information, including general geographic locations where confirmed cases on the island are, race to state population, exposure curve and age range. This information is released in such a way that does not directly identify a patient.

Idaho

Jeannette Boner, *Do We Have Community Spread in Teton County, Idaho?*, TETON VALLEY NEWS (Mar. 31, 2020), https://www.tetonvalleynews.net/coronavirus/do-we-have-community-spread-in-teton-county-idaho/article_0d2ee915-2c01-50fb-87ed-b3682e5d6358.html:

Gnagey wrote in an email Saturday to the TVN, “Unfortunately, given the small number of people being tested under the CDC and EIPH rules, and the long and sometimes unknown times to get results from commercial labs, the number of tests is not a good indicator of COVID activity in the valley. Using those testing numbers to plan would be ill advised. What we are concerned about is the increasing number of respiratory cases being seen in the (emergency department), that is probably more indicative of COVID in the valley than any testing numbers.”

Gnagey said that he couldn't release emergency department numbers because of HIPPA [sic]. Eastern Idaho Public Health told the TVN that they have not had time to gather a clear picture of respiratory cases in the region at this time.

Illinois

Nic F. Anderson, *Mayor Suggests Low-Income Households, More Testing As Causes For High COVID Rate In MP*, JOURNAL & TOPICS (May 21, 2020), <https://www.journal-topics.com/articles/mayor-suggests-low-income-households-more-testing-as-causes-for-high-covid-rate-in-mp/>:

“Despite our best efforts to obtain info on the nature and location of the positive tests, the county refuses to give us that information due to federal HIPPA [sic] laws,” Juracek said.

Indiana

Four new COVID-19 cases reported in Dubois County, DUBOIS COUNTY FREE PRESS (Apr. 29, 2020), <https://www.duboiscountyfreepress.com/four-new-covid-19-cases-reported-in-dubois-county/>:

To remain in compliance with the Health Insurance Portability and Accountability Act of 1996 (HIPAA), we will not be able to disclose any information specific to the patient for each case. HIPAA is intended to protect INDIVIDUAL medical and health information. However, as we continue to review Dubois County resident positive cases, a report will be released weekly on Fridays.

Iowa

Taylor Holt, *Area Health Officials Address HIPAA, Patient Privacy Regarding COVID-19 Cases*, KCRG (Apr. 3, 2020) <https://www.kcrg.com/content/news/Area-health-officials-address-patient-privacy-concerns-regarding-covid-19-cases-569370791.html>:

The Iowa Department of Public Health reports hospitalization rates for COVID-19. However, other health departments don't release that information and aren't able to alert businesses if an employee has the virus, citing HIPPA [sic] and patient privacy protections.

Kansas

First Kansas COVID-19 Death Linked to Care Facility in Seattle Where More Than 20 Died from Virus, CT POST (Mar. 13, 2020), <https://www.ctpost.com/news/article/First-Kansas-COVID-19-death-linked-to-care-15130164.php>:

The facility released a statement and a timeline involving the patient who died: . . .
“HIPAA privacy guidelines prevent the sharing of personal patient information.”

Kentucky

Andrew Wolfson, *A Second Inmate in Kentucky Dies of the Coronavirus*, LOUISVILLE COURIER JOURNAL (Apr. 24, 2020), <https://www.courier-journal.com/story/news/2020/04/24/another-kentucky-inmates-dies-of-covid-19-er-kentucky-inmates-dies-covid-19/3023263001/>:

Spokeswoman Lisa Lamb said the family of the man, who was serving a 15-year sentence, has been notified but that out of respect for their privacy and HIPAA, the federal privacy law, his name was not being released.

Louisiana

Two DOC Employees Test Positive for COVID-19, KATC (Mar. 26, 2020), <https://www.katc.com/news/covering-louisiana/two-doc-employees-test-positive-for-covid-19/>:

The Louisiana Department of Corrections (LDOC) has been notified that two employees at different state prisons tested positive for COVID-19. These are the first confirmed staff cases within the LDOC.

Due to HIPAA restrictions and security concerns, the LDOC will not release the names of the individuals or the facilities at which they work.

Maine

Chance Viles, *Westbrook Resident Dies of COVID-19*, AMERICAN JOURNAL (Apr. 1, 2020), <https://www.pressherald.com/2020/04/01/westbrook-resident-dies-of-covid-19/>:

One Westbrook resident has died from COVID-19 and there are now 11 documented coronavirus cases among residents and city employees, Mayor Mike Foley said Wednesday.

“We have taken appropriate actions within each department to quarantine exposed employees and disinfect the facilities,” Foley said.

The name of the deceased resident and those of the people infected are not being disclosed due to HIPAA – Health Insurance Portability and Accountability Act – regulations.

Maryland

David A. Plymyer, *Maryland Must Start Disclosing Infections and Deaths at Nursing Homes*, BALTIMORE BREW (Apr. 20, 2020), <https://baltimorebrew.com/2020/04/20/maryland-must-start-disclosing-infections-and-deaths-at-nursing-homes/>:

An MDH spokesman told The Brew last week that the agency “cannot release a detailed list of nursing homes and other long-term care facilities affected by Covid-19 due to HIPAA [the Health Insurance Portability and Accountability Act] and state laws surrounding confidentiality.”

Massachusetts

An Open Letter to Gov. Baker from AARP Massachusetts, BARNSTABLE PATRIOT (Apr. 16, 2020), <https://www.barnstablepatriot.com/news/20200416/open-letter-to-gov-baker-from-aarp-massachusetts/>:

We urge Massachusetts’ Department of Public Health to release publicly the names of nursing facilities with confirmed COVID-19 cases. Contrary to concerns that such disclosures would violate a patient’s health privacy, we do not believe HIPAA precludes a state health agency from releasing the names of facilities because a facility is not a covered entity as defined by federal law.

Michigan

Detroit Metro Airport Worker Tests Positive for Coronavirus, Officials Say, CLICK ON DETROIT (Mar. 18, 2020), <https://www.clickondetroit.com/news/local/2020/03/18/detroit-metro-airport-worker-tests-positive-for-coronavirus-officials-say/>:

An employee at Detroit Metro Airport has tested positive for coronavirus, according to the Wayne County Airport Authority.

The positive case is in a ramp employee who works for a service provider of a carrier in the North Terminal, officials said.

Due to HIPAA and privacy issues, no additional information could be released, according to WCAA.

Minnesota

Pat Kessler, *Coronavirus in Minnesota: Why The State Won't Tell Us Who Has COVID-19, And Where They Are*, CBS MINNESOTA (Apr. 1, 2020), <https://minnesota.cbslocal.com/2020/04/01/coronavirus-in-minnesota-why-the-state-wont-tell-us-who-has-covid-19-and-where-they-are/>:

The Minnesota Department of Health credibly reports every day on counties with COVID-19 cases, but not cities. It will not name nursing homes where the virus was found. It will provide the numbers of people, but it won't say where they live.

Providing that kind of detail about COVID-19 is against the law, according to MDH officials, because of the strict medical privacy law called the Health Insurance Portability and Accountability Act, or HIPAA.

Mississippi

Tim Kalich, *COVID-19 Outbreak Escalates at Greenwood Nursing Home*, GREENWOOD COMMONWEALTH (Apr. 22, 2020), https://www.gwcommonwealth.com/news/article_ce77b460-84fc-11ea-a90a-5bcc41fb879a.html:

Last week, a representative of the Department of Health said that the federal Health Insurance Portability and Accountability Act, which protects patient privacy, bars the agency from naming the long-term care facilities with outbreaks.

Missouri

Lauren Trager, *Should Leaders Release More Information About COVID-19 Patients?* KMOV4 (Mar. 19, 2020), https://www.kmov.com/news/should-leaders-release-more-information-about-covid-19-patients/article_9b1d45a6-6a32-11ea-b9b8-4325aa8584d7.html:

As the number of coronavirus cases grow in the St. Louis area, people are wondering why they can't get more information on those who test positive.

So far, officials on both sides of the river have released very little information, often only providing an age range and a county in which the person resides.

"I am not going to be the first elected official to break HIPPA," St. Louis City Mayor Lyda Krewson said.

Krewson cited a federal law known as the Health Insurance Portability and Accountability Act (HIPAA) which is intended to protect an individual's privacy. Krewson said the law is why more information can't be given about people testing positive for COVID-19 in the St. Louis area.

Montana

David Sherman, *City-County Health Department Explains Privacy Laws*, KRTV (June 16, 2020), <https://www.krtv.com/news/coronavirus/city-county-health-department-explains-privacy-laws>:

The City-County Health Department strictly adheres to the privacy rules laid out in the Health Insurance Portability and Accountability Act (commonly referred to as HIPAA). Montana has its own set of privacy laws, the Government Health Care Information Act, which are even more restrictive about what health departments are able to share. These laws are determined at state and federal levels and prevent us from disclosing any of our patients' personally identifiable information to the public.

Nebraska

Makayla Hogenson, *COVID-19 Related Death in Custer County*, ABC 8 (Apr. 6, 2020), <https://www.klknv.com/covid-19-related-death-in-custer-county/>:

Loup Basin Public Health Departments (LBPHD) has identified an additional positive COVID-19 case in Custer County that resulted in death.

The male, in his 80s, was in contact with a known positive case. Patient information is considered protected health information under the Health Insurance Portability and Accountability Act (HIPAA) and will not be provided to protect the patient's privacy.

Nevada

Brad Streicher, *'It's nonsense' | City and State officials Still Won't Name Nursing Homes with Coronavirus Outbreaks*, KVUE (Apr. 20, 2020): <https://www.kvue.com/article/news/health/coronavirus/coronavirus-austin-and-texas-officials-still-wont-name-nursing-homes-with-covid19-outbreaks/269-ed9d1d71-e4d3-4b70-a906-68027f350178>:

But still, the City and State refuse to tell people where those nursing homes are and how many cases and deaths each one has.

Both agencies cite State and federal personal health privacy laws, like HIPAA, as the reason they won't disclose that information.

Separately, the in-house counsel of the Las Vegas Review-Journal, Benjamin Lipman, informed me that his reporters have filed public records requests with the City of North Las Vegas for COVID-19 related information that have been denied on the basis of HIPAA. I have reviewed correspondence related to these requests, but have been asked not to discuss their details.

New Hampshire

Paul Cuno-Booth, *Unlike Vermont, NH Tight-Lipped About Facilities with COVID-19 Cases*, KEENE SENTINEL (Apr. 3, 2020), <https://www.concordmonitor.com/Unlike-Vermont-NH-tight-lipped-on-facilities-with-COVID-cases-33693572>:

After the news conference, The Sentinel asked the state's Joint Information Center—which is handling all coronavirus-related media questions—what types of facilities, and how many, have had cases.

In an emailed response, a state spokesperson declined to answer. "All official information regarding individuals and COVID-19 in New Hampshire that is available under HIPAA restrictions is being provided through the updates provided at www.nh.gov/covid19," the spokesperson wrote. HIPAA is a federal law that includes privacy protections for patients.

New Jersey

Amanda Valentovic, *COVID-19 Touches Down in West Orange*, ESSEX NEWS DAILY (Mar. 19, 2020), <https://essexnewsdaily.com/headline-news/88124>:

In a press conference that was livestreamed on Facebook the evening of March 16, Mayor Robert Parisi repeated that there are two confirmed cases in town, and that the health department is following the necessary steps to protect other residents. HIPAA privacy laws prevent the town from releasing the names, addresses or any other information about the people who tested positive for the virus.

New Mexico

Donovan Quintero, *McKinley County Confirms First Coronavirus Case*, NAVAJO TIMES (Mar. 20, 2020), <https://navajotimes.com/coronavirus-updates/mckinley-county-confirms-first-coronavirus-case/>:

McKinley County has its first confirmed COVID-19 case.

McKinley County Manager Anthony Dimas Jr. said the New Mexico Department of Health notified the county and only said the person was a “male in (his) thirties.” Dimas said because of HIPAA laws, no other information was provided.

New York

In April 2020, a personal friend of mine who lives in the state of New York requested “COVID-19 infection numbers by town of residence” from the Schoharie County Department of Health. The agency denied the request, noting that these numbers were contained in patient records that could not be released because of “HIPAA confidentiality requirements.”

North Carolina

Sharon Myers, *Davidson County Reports 99 New Cases of COVID-19 and Two Deaths Over the Weekend*, THE DISPATCH (June 15, 2020), <https://www.the-dispatch.com/news/20200615/davidson-county-reports-99-new-cases-of-covid-19-and-two-deaths-over-weekend>:

There have been two additional deaths reported, bringing the overall number of deaths to 14 people. According to health department officials, one victim was in their 80s with underlying health conditions and the other victim was in their 60s also with health problems.

Due to HIPPA [sic] laws, and to maintain the privacy of relatives, no other information is available about the two residents who have died.

North Dakota

Renée Jean, *State Hitting New Highs for Coronavirus, Amid Increased Testing, Reopening*, WILLISTON HERALD (July 21, 2020), https://www.willistonherald.com/news/coronavirus/state-hitting-new-highs-for-coronavirus-amid-increased-testing-reopening/article_64d391c0-cad7-11ea-a817-a79e5aa9c221.html:

North Dakota is hitting new highs for coronavirus cases, even as Williams County itself is seeing a spike in coronavirus numbers.

It remains uncertain, however, how many out-of-state cases are present in the west, where a two-week on, two-week off schedule is common, and construction crews for the summer may often include an out-of-state component.

People who list an out-of-state address are not counted in the daily count, Gov. Doug Burgum has said.

The recent outbreak in Tioga involving eight workers for Hess contractor Ohmstede, for example, were all out-of-state workers. It is not known if any of those cases counted in the state's daily total. The state has refused to say whether those individuals were counted, saying it would violate HIPAA [sic] laws to clarify that point.

Ohio

Camryn Justice, *Why COVID-19 Testing Information at the Zip Code Level Can be Both Helpful and Harmful*, ABC NEWS 5 (Apr. 3, 2020), <https://www.news5cleveland.com/news/continuing-coverage/coronavirus/why-covid-19-testing-information-at-the-zip-code-level-can-be-both-helpful-and-harmful/>:

Acton said that some zip codes in the state of Ohio may have fewer than 100 people, so to share testing information at the zip code level in those places could expose a person's identity, which could be a violation of the rights issued under the Health Insurance Portability and Accountability Act (HIPAA).

Oklahoma

Sean Murphy, *Oklahoma Health Department to No Longer Release Detailed Data About COVID-19*, ASSOCIATED PRESS (June 1, 2020), <https://journalrecord.com/2020/06/01/oklahoma-health-department-to-no-longer-release-detailed-data-about-covid-19/>:

The Oklahoma State Department of Health announced Monday it will no longer release specific information about COVID-19 infections and deaths in nursing homes, cities or by ZIP code.

“Now that the emergency declaration has expired, the governor no longer has the authority to waive state statute,” Harder said. “We are being instructed that we have to reverse course on these particular data points due to the interpretation of the state’s (Health Insurance Portability & Accountability Act) laws.”

Oregon

Justin Werner, *Lincoln County to Resume COVID-19 Daily Updates*, LINCOLN CITY NEWS (June 16, 2020), <https://lincolncityhomepage.com/lincoln-county-to-resume-covid-19-daily-updates/>:

Due to Oregon Health Authority rules and HIPAA laws, Public Health says they cannot name a business with an outbreak unless five workers test positive for COVID-19 and the business has more than 30 employees.

Pennsylvania

I was informed by a lawyer at the Pennsylvania NewsMedia Association that “our legal hotline had seen numerous examples agencies denying access to various COVID-related records on the basis of HIPAA.” As she told me:

On the local level, a journalist requested access to de-identified data about nursing home deaths from COVID in Bucks County, PA. The county outright denied the request citing HIPAA, among other bases for denial. The case is currently on appeal to the Pennsylvania Office of Open Records for administrative review.

In separate cases involving the same journalist, Bucks County and the Bucks County Coroner denied access to name, cause and manner of death records related to COVID on the basis of HIPAA as well as state law. I should note that name, cause and manner of death records are expressly public under Pennsylvania's open records law (Right to Know Law). The county also denied access to long-term care facilities' emergency preparedness plans based on HIPAA, among other denial grounds. These cases are also on appeal to Office of Open Records for administrative review.

Rhode Island

Sean Flynn, *Two More Newport firefighters Test Positive for Coronavirus*, NEWPORT DAILY NEWS (Apr. 15, 2020), <https://www.newportri.com/news/20200415/two-more-newport-firefighters-test-positive-for-coronavirus>:

There have been two cases of COVID-19 reported in Newport nursing homes, according to Dugan and City Manager Joseph J. Nicholson Jr., who moderated the meeting and went through a series of updates.

Councilwoman Kathryn Leonard asked whether those nursing homes could be identified.

"We are going to be asked," she said.

Under the federal Health Insurance Portability and Accountability Act, often referred to as "HIPAA," and under even stronger Rhode Island statutes, health information is confidential and anything that could result in patients being identified is not allowed, Nicholson said.

South Carolina

Elizabeth LaFleur, *Here's Why We Don't Have More Details on South Carolina's COVID-19 Patients*, GREENVILLE NEWS (Mar. 23, 2020), <https://www.greenvilleonline.com/story/news/health/2020/03/23/coronavirus-south-carolina-patient-details-positive-tests-dhec/2897082001/>:

The state Department of Health and Environmental Control reports 31 of those cases are in Greenville County, though few other details are known about them.

Patient privacy laws (HIPAA) restrict the personal information that can be shared about specific patients. In many cases, this includes limitations on sharing things like where those people live and work.

The law is meant to protect patient privacy, but readers of The Greenville News have asked if they are being kept from crucial information about local cases because of the geographical size and population size of Greenville County.

South Dakota

Dean Welte and Matt Breen, *Gov. Ricketts: Nebraska Won't Release specific COVID-19 Numbers at Meatpacking Plants*, KTIV (May 6, 2020), <https://ktiv.com/2020/05/06/watch-live-gov-ricketts-provides-daily-update-on-covid-19-in-nebraska-11/>:

Nebraska Gov. Pete Ricketts says the state won't release specific numbers of cases at meatpacking plants, like Tyson's facilities in Dakota City, or Madison.

During his daily news conference Wednesday, Ricketts said its a matter of privacy, and the Health Insurance Portability and Accountability Act, also known as HIPAA.

Tennessee

Jeremy Finley, *State Health Department Criticized Over Not Releasing County Location of Coronavirus Patients*, WSMV (Mar. 10, 2020), https://www.wsmv.com/news/state-health-department-criticized-over-not-releasing-county-location-of-coronavirus-patients/article_e92a9026-6318-11ea-b5fb-d786694bac3a.html:

The internet is not pleased with the state department of health.

As the agency posts information on social media about new cases of coronavirus across the state, people are responding with a resounding question: why not release the county where the patient lives?

Yet the state refuses to release the locations, citing HIPAA privacy laws.

Texas

Francisco E. Jimenez, *Hidalgo County Cites HIPAA for Being Light on Case Details*, THE MONITOR (Apr. 16, 2020), <https://www.themonitor.com/2020/04/16/hidalgo-county-cites-hipaa-light-case-details/>:

Meanwhile, county spokesman Carlos Sanchez said even so much as confirming that a coronavirus patient resides at the facility is something the county is barred from doing for legal reasons. He also said he is not privy to that information.

“I can’t confirm whether anybody is from any assisted living facility,” Sanchez said. “I’m happy to try to help, but I’m very limited in my knowledge because of HIPAA (Health Insurance Portability and Accountability Act).”

Utah

Sydney Glenn, *Expert: Utah County Should Identify Businesses Involved in COVID-19 Outbreaks*, FOX 13 (May 7, 2020), <https://www.fox13now.com/news/coronavirus/local-coronavirus-news/lawyer-utah-county-health-departments-reasoning-not-to-release-names-of-businesses-accused-of-defying-restrictions-doesnt-apply>:

The Utah County Department of Health is not identifying two Utah County businesses accused of defying COVID-19 restrictions, resulting in 68 people testing positive for the virus.

Business leaders told employees not to follow quarantine guidelines after being exposed to a confirmed COVID-19 case, and required employees who tested positive to still report to work, Utah County leaders said.

The health department, as well as the Utah County Commission Chair have stood by the decision to not identify the businesses, citing medical privacy laws known as HIPAA, Utah Statute 26-6-27, as well as their assertion that the businesses are not “public facing.”

Vermont

John Flowers and Andy Kirkaldy, *Officials Differ on Sharing Local COVID-19 Info*, ADDISON COUNTY INDEPENDENT (Apr. 23, 2020), <https://addisonindependent.com/news/officials-differ-sharing-local-covid-19-info>:

“At this time, Vermont will continue to report data on county- and state-based levels,” Department of Health spokesman Ben Truman told the Independent via email. “COVID-19 is spreading throughout Vermont’s communities, and many people may have it and be contagious days before they show symptoms. So whether a county is reporting one case or 100 cases, Vermonters should presume the virus is in their town, and act to protect themselves and others.”

Truman said the federal Health Insurance Portability and Accountability Act, or HIPAA, “protects information that is potentially identifiable. Factors that might make some person identifiable include gender, age, race, health condition, travel history and the like, all within the context of a given geographic and population bound.”

He argued that while a patient living within Burlington (45,000-plus people) might not be identifiable, a hypothetical patient living in Victory (population 87) might be.

“The Department has determined that disclosing cases by county sufficiently protects potentially identifiable information, whereas (by) town may not,” Truman concluded.

Virginia

Sarah Fearing, *VB Correctional Center Inmate Tests Positive for COVID-19*, WAVY (June 16, 2020), <https://www.wavy.com/news/crime/vb-correctional-center-inmate-tests-positive-for-covid-19/>:

The Virginia Beach Sheriff’s Office says one inmate has tested positive for coronavirus.

The sheriff’s office isn’t identifying the inmate per the Health Insurance Portability and Accountability Act (HIPAA).

Washington

Simone Del, *61% of State’s Coronavirus Deaths Linked to Long-Term Care Facilities*, Q13 FOX (May 6, 2020), <https://www.q13fox.com/news/61-of-states-coronavirus-deaths-linked-to-long-term-care-facilities/>:

The state said it left off [a list of facilities connected to COVID-19 cases] the names of some adult family homes and supported living facilities that are so small that naming the facility could be a HIPAA violation.

West Virginia

Health Department Reports 4th COVID-19 Case in McDowell County, WVNS, <https://www.wvnstv.com/dhhr-health-coronavirus-mcdowell-4th-positive-case/>:

A fourth case of COVID-19 is reported in McDowell County, West Virginia. The announcement was made by the local health department.

Due to Federal HIPAA guidelines, no other information about this case will be given. As always, they recommend everyone comply with the West Virginia Stay-At-Home order and follow all guidelines from the Centers for Disease Control and Prevention.

Wisconsin

UPDATE: 6 Positive Cases of Coronavirus Confirmed in Clark County, WEAU (Mar. 31, 2020), <https://www.weau.com/content/news/Clark-County--569254051.html>:

In accordance with the Health Insurance Portability and Accountability Act (HIPAA), and by the guidance of the Clark County Attorney, the Clark County Health Department will not be releasing the locations, ages, or genders of any confirmed or pending COVID-19 cases.

Wyoming

Editorial Board: Informing the Public Should be the First Consideration, STAR-TRIBUNE (May 31, 2020), https://trib.com/opinion/editorial/editorial-board-informing-the-public-should-be-the-first-consideration/article_05712050-6d2f-5754-a885-8000549446db.html:

Our concerns over the release of information date back farther. In mid-April, we learned that the roommate of an employee at the Wyoming Behavioral Institute, which was home to a significant coronavirus outbreak, attended multiple house parties before testing positive themselves.

This roommate was also a health care worker. Where exactly? We don't know. The health department claimed revealing that would somehow violate HIPPA, a federal law concerning the privacy of an individual's health care information.