

Kevin Meyer
Lieutenant Governor
State Capitol
Juneau, Alaska 99811
907.465.3520
WWW.LTGOV.ALASKA.GOV




530 West 7th Ave, Suite 1700
Anchorage, Alaska 99501
907.269.7460 269.0263
LT.GOVERNOR@ALASKA.GOV

**OFFICE OF THE LIEUTENANT GOVERNOR
ALASKA**

MEMORANDUM

TO: Triptaa Surve
Department of Health and Social Services

FROM: April Simpson, Office of the Lieutenant Governor 
465.4081

DATE: September 21, 2020

RE: Filed Emergency Regulations: Department of Health and Social Services

Department of Health and Social Services Emergency Regulations re: Division of Public Health - Permitted Public Health Information Disclosures During a Declared Public Health Emergency (7 AAC 27)

Attorney General File:	Emergency Regulations
Regulation Filed:	9/21/2020
Effective Date:	9/21/2020
Expiration Date:	January 18, 2021 unless made permanent by the adopting agency
Print:	236, January 2021

cc with enclosures: Harry Hale, Department of Law
Judy Herndon, LexisNexis

FINDING OF EMERGENCY

The Department of Health and Social Service (DHSS) finds that an emergency exists because the COVID-19 pandemic has revealed a significant barrier in state law that is preventing effective information sharing between state public health authorities and state agencies, municipalities, communities, boroughs, schools and school districts, private entities, individuals, tribes and tribal health organizations, and village councils, for the purpose of preventing the spread of COVID-19. DHSS further finds that adoption of the attached regulations is necessary for the immediate preservation of the public peace, health, safety, or general welfare, as required by AS 44.62.250. Facts supporting these findings are set out below.

Statement of Facts

The COVID-19 pandemic has continued to infect Alaskans throughout the state since March 2020, but the recent numbers of new cases each day remain high. This virus can be transmitted from pre-symptomatic and asymptomatic individual. Therefore, getting information about positive cases in any given area is critical to protecting the public. This is true for school districts, municipalities, and private business in particular as local jurisdictions contemplate daily whether to allow in-person activities. DHSS has the information, but its regulations are too restrictive to allow the sharing of that information. The high case counts but lack of information flow has created an unsustainable situation that directly threatens the health of Alaska residents. DHSS is therefore extremely concerned that it is unable to help the entities and jurisdictions that are pleading for this information.

Local governments, school districts, and other entities need to make important and time-sensitive decisions about access to public accommodations and spaces like local businesses and schools and mitigating the risk of spreading COVID-19. DHSS encourages everyone, but especially local governments, to base their decisions on the best available data about current infection rates. Alaska's unique geography, with communities existing unconnected by road to any other community, means that local governments and schools, among others, need information about the COVID-19 infection rate in their immediate community.

The current regulations that govern DHSS's ability to disclose identifiable health information are very restrictive (7 AAC 27.890 – 7 AAC 27.900). DHSS has not been able to disclose the level of local detail necessary for public, private, and tribal entities to make informed decisions about whether or when to open or close, and whether and how to protect individuals from exposure. Compared to 7 AAC 27.893, the attached emergency regulations, 7 AAC 27.903, permits DHSS to disclose identifiable health information not just to protect the health of the person who is ill, but to protect the health of others who are at risk of becoming ill. This is critical during the COVID-19 pandemic because contagious people often have no symptoms. The emergency regulation will permit DHSS to disclose information in this way to schools, universities, and federally recognized tribes, among others, to help them protect their own communities.

Public health responsibilities are centralized with DHSS; very few local governments have public health authority or capacity. Therefore, they rely upon DHSS to share public health information that they can use to make policy.

The attached emergency regulations, therefore, make explicit that DHSS may release identifiable health information to a broader list of people and for purposes limited to protecting the health and lives of community members, to respond to and to develop local policy related to COVID-19 to provide for the health, safety and welfare of their local communities. This increased disclosure would only apply when there is a federal- or state-declared public health emergency, and do not change DHSS's existing legal ability to share identifiable health information in other situations not related to this pandemic.

THEREFORE, I find:

The current public health emergency necessitates that local communities and entities have identifiable health information to take action to prevent transmission of COVID-19 in their communities;

The attached regulations enable DHSS to disclose identifiable health information to smaller communities and entities when that disclosure would help mitigate the spread of COVID-19, and requires that DHSS disclose only the minimum amount necessary to accomplish that goal; and

The attached regulations are necessary to preserve the public peace, health, safety, or general welfare of Alaskans and visitors to Alaska by permitting a broader swath of governments and groups to take actions and make policies to prevent or reduce the transmission of COVID-19 during public health emergencies.

ADOPTION ORDER

Under the authority of AS 18.05.010, AS 18.05.030, AS 18.05.040, AS 18.15.355, AS 18.15.360, AS 18.15.362, AS 18.15.395, AS 44.29.022, AS 47.05.010, and AS 47.07.030, the attached 7 pages of regulation changes are adopted as an emergency regulation to take effect immediately upon filing by the lieutenant governor, as provided in AS 44.62.180(3).

This action is not expected to require an increased appropriation.

Adam Crum

Digitally signed by Adam Crum
Date: 2020.09.21 12:09:45 -08'00'

Adam Crum, Commissioner
Department of Health & Social Services

FILING CERTIFICATION

I, Kevin Meyer, Lieutenant Governor for the State of Alaska, certify that on

Sept. 21, 2020, at 4:23p., I filed the attached regulation according to the provisions of AS 44.62.



Lieutenant Governor

Effective: September 21, 2020

Register: 236, January 2021

*Expires January 18, 2021
unless made permanent by
the adopting agency*

DEPARTMENT OF HEALTH & SOCIAL SERVICES



EMERGENCY REGULATIONS PROPOSED CHANGES TO REGULATIONS

PERMITTED PUBLIC HEALTH INFORMATION DISCLOSURES DURING A DECLARED PUBLIC HEALTH EMERGENCY

- 7 AAC 27. Preventive Medical Services.
 - New section- 7 AAC 27.903. Permitted disclosures during a federal or state-declared public health disaster emergency.



PUBLIC REVIEW DRAFT
September 21, 2020

COMMENT PERIOD ENDS: November 2, 2020

Please see the public notice for details about how to comment on these proposed changes.

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Notes to reader:

1. Except as discussed in note 2, new text that amends an existing regulation is **bolded and underlined**.
2. If the lead-in line above the text of each section of the regulations states that a new section, subsection, paragraph, or subparagraph is being added, or that an existing section, subsection, paragraph, or subparagraph is being repealed and readopted (replaced), *the new or replaced text is not bolded or underlined*.
3. [ALL-CAPS TEXT WITHIN BRACKETS] indicates text that is to be deleted.
4. When the word “including” is used, Alaska Statutes provide that it means “including, but not limited to.”
5. Only the text that is being changed within a section of the current regulations is included in this draft. Refer to the text of that whole section, published in the current Alaska Administrative Code, to determine how a proposed change relates within the context of the whole section and the whole chapter.

Title 7 Health and Social Services.

7 AAC 27.650(e)(1) is amended to read:

(1) any use permitted under 7 AAC 27.892, [AND] 7 AAC 27.893, **and 7 AAC 27.903**;

(Eff. 12/29/2013, Register 208; am 9/21/2020, Register 236)

Authority:	AS 18.05.010	AS 18.15.355	AS 18.15.362
	AS 18.05.040	AS 18.15.360	

7 AAC 27.655(a) is amended to read:

(a) A request for patient-specific data from the immunization information system maintained by the department will be responded to only if made by an authorized health care provider for information about a patient under its care, by a public health authority for patients within its jurisdiction, or as otherwise allowed under 7 AAC 27.893(b) **or 7 AAC 27.903**.

Except as described in 7 AAC 27.893(b) **or 7 AAC 27.903**, a request from a person other than an authorized health care provider, from an authorized health care provider for data beyond that of a specific patient under its care, or from a public health authority for data beyond that of patients within the public health authority’s jurisdiction will be considered on a case-by-case basis in the

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interest of public health practice and will be responded to only with aggregate or de-identified data.

(Eff. 12/29/2013, Register 208; am 9/21/2020, Register 236)

Authority: AS 18.05.010 AS 18.15.355 AS 18.15.362
AS 18.05.040 AS 18.15.360 AS 44.29.022

7 AAC 27.891(c) is amended to read:

(c) A public health agent in the department is authorized to use identifiable health information to accomplish a public health purpose in a manner consistent with 7 AAC 27.893 and 7 AAC 27.903. (Eff. 12/29/2006, Register 180; am 9/21/2020, Register 236)

Authority: AS 18.05.040 AS 18.15.360 AS 18.15.362
AS 18.15.355

7 AAC 27.900 is repealed:

7 AAC 27.900. Definitions. Repealed. (Eff. 1/19/96, Register 137; am 2/10/99, Register 149; am 12/29/2006, Register 180; am 12/29/2013, Register 208; repealed 9/21/2020, Register 236)

Authority: AS 18.05.040 AS 18.15.355 AS 18.15.395

An editor's note is added following 7 AAC 27.900 to read:

Editor's note: The subject matter on 7 AAC 27.900 has been relocated to 7 AAC 27.990.

7 AAC 27 is amended by adding a new section to Article 16 to read:

7 AAC 27.903. Permitted disclosures during a federal- or state-declared public health disaster emergency. (a) The department may disclose identifiable health information that the department collects, uses, and maintains under AS 18.05 or AS 18.15 in the conduct of public health surveillance, investigation, and intervention during a public health disaster emergency declared by the governor or by the federal government that is related to a contagious disease outbreak when an individual who is the subject of the information provides written consent to the disclosure as set out in 7 AAC 27.896, under all circumstances described in 7 AAC 27.893, and under the circumstances set out in this section.

(b) In addition to the disclosures permitted in 7 AAC 27.893, the department may disclose the minimum necessary identifiable health information without written consent from an individual if the disclosure is to

(1) a federal public health agency, health oversight agency, or law enforcement authority as permitted by federal or state law for the purpose of disease prevention;

(2) a school district, school, college, university, or licensed child care facility to provide information concerning contagious disease status and immunizations to promote effective disease prevention and control in schools and child care facilities within the state;

(3) an individual or group of individuals directly able to prevent or lessen a serious and imminent threat to the health of a group of individuals, or the public;

(4) an individual or group of individuals who may have been exposed to a contagious or possibly contagious disease or may otherwise be at imminent risk of contracting or spreading that disease; or

(5) a state agency, local government, village, federally recognized tribe, or tribal health program for the purpose of preventing or lessening a serious and imminent threat to the health of an individual, group of individuals, or the public being served by that entity.

(c) The department may disclose minimum necessary identifiable health information under this section for the purpose of conducting its own public health surveillance, investigation, intervention, prevention, and treatment.

(d) An individual or entity who receives identifiable health information from the department as a permitted disclosure under (a) of this section may not disclose the information to another individual or entity except for a purpose authorized in the written consent. Any identifiable health information disclosed by the department under this subsection shall be accompanied by

(1) a statement explaining the restriction on secondary disclosures under this subsection; and

(2) any relevant written consent that the department knowingly has in its possession.

(e) A public health agent may disclose the identity of an individual who has violated an order of a state medical officer under AS 18.15.375 or an emergency administrative order issued under AS 18.15.385 to the operator or manager of a public conveyance, accommodation, or other public place to prevent the spread of a contagious or possibly contagious disease.

(f) The department will not disclose identifiable health information in the course of legal discovery, subpoena, or compelled testimony of a public health agent, in any civil, criminal, administrative, or other legal proceeding, except

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(1) in a legal proceeding initiated by a public health agent or public health official for quarantine or isolation of the individual or group of individuals who are the subject of the health information to be disclosed, whether the proceeding is open or closed to the public; or

(2) when a court orders the disclosure.

(g) Nothing in this section prohibits or restricts disclosure of identifiable health information otherwise permitted under this chapter.

(h) In this section

(1) "local government" means any borough, municipality, or other political subdivision of the state;

(2) "federally recognized tribe" means an Alaska Native or American Indian tribe that is recognized by the United States Secretary of the Interior to exist as an Indian tribe under 25 U.S.C. 5129 (Federally Recognized Indian Tribe List Act of 1994); and

(3) "tribal health program" means a hospital, clinic, or other type of health care facility, program, association, or organization operated by a federally recognized tribe, or an intertribal consortium as defined in 25 U.S.C. 5381 or as established by federal law. (Eff.

9/21/2020, Register 236)

Authority:	AS 18.05.010	AS 18.05.040	AS 18.15.360
	AS 18.05.030	AS 18.15.355	AS 18.15.362

7 AAC 27 is amended by adding a new section to Article 17 to read:

7 AAC 27.990. Definitions. In this chapter, unless the context requires otherwise,

(1) "department" means the Department of Health and Social Services;

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(2) "health care-associated infection" means a localized or systemic patient condition resulting from an infectious agent that was not present or incubating at the time of admission to a facility or entity unless the condition was related to a previous admission or procedure, including central line insertion or other surgical procedure;

(3) "health care practitioner" has the meaning given in AS 18.15.395;

(4) "health care provider" has the meaning given in AS 18.15.395;

(5) "health oversight agency" means a public agency or entity acting under a grant of authority from a public agency, including an employee or agent of the public agency or its contractors, that is authorized by law to oversee a health care system or government program in which health information is necessary to determine eligibility or compliance, or to enforce civil rights laws for which health information is relevant;

(6) "identifiable health information" has the meaning given in AS 18.15.395;

(7) "immunization information system" means a confidential, population-based, computerized database that records all immunization doses administered by participating providers to persons residing within this state or a given geographical area of this state;

(8) "infectious disease" has the meaning given in AS 18.15.395;

(9) "known rabid animal" means an animal with a positive laboratory test for rabies virus;

(10) "National Healthcare Safety Network" means the Internet-based surveillance system managed by the United States Department of Health and Human Services, Centers for Disease Control and Prevention (CDC), National Center for Emerging and Zoonotic Infectious Diseases (NCEZID), Division of Healthcare Quality Promotion (DHQP);

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(11) "PPD skin test" means an intradermal purified protein derivative skin test for tuberculosis;

(12) "public health agent" means an official or employee of the department who is in the division of public health or who has oversight over the division responsible for carrying out the provisions of AS 18.05 and AS 18.15;

(13) "public health official" means an employee or appointee of a local government or political subdivision of the state who is employed or appointed to fulfill public health responsibilities;

(14) "state medical officer" has the meaning given in AS 18.15.395;

(15) "working day" means a day other than Saturday, Sunday, or a state or federal holiday. (Eff. 9/21/2020, Register 236)

Authority: AS 18.05.040 AS 18.15.355 AS 18.15.395

Editor's note: The subject matter of 7 AAC 27.990 was originally set out in 7 AAC 27.900. The history of 7 AAC 27.990 does not reflect the history of the former section.