

**MEMORANDUM OF UNDERSTANDING
REGARDING THE DISCLOSURE OF PROTECTED HEALTH INFORMATION**

INTRODUCTION

This Memorandum of Understanding (MOU) is between the Tennessee Department of Health (“Health”) and the _____ (the “Department”). The purpose of this MOU is to detail the limited purposes for which Health is disclosing Protected Health Information (PHI) to the Department.

Health is a Covered Entity subject to the Privacy and Security Rules (45 C.F.R. Parts 160 and 164) promulgated by the United States Department of Health and Human Services pursuant to the Health Insurance Portability and Accountability Act of 1996 (HIPAA), Public Law 104-191, as amended by the final rule modifying the HIPAA Privacy, Security, Enforcement, and Breach Notification Rules under the Health Information Technology for Economic and Clinical Health Act (HITECH).

The Department has responsibility for the prevention and detection of crime and the apprehension of offenders. The Department uses a dispatch system to coordinate response to citizens in need of emergency assistance. The Department is also responsible for the lawful custody of individuals arrested and is also responsible for the health and safety of other individuals, including officers, employees and others present at the premises occupied by the Department, and persons responsible for the transporting or transferring of arrestees and inmates.

PURPOSES OF DISCLOSURES OF PHI BY HEALTH TO THE DEPARTMENT

Health is disclosing to the Department a list of names and addresses of individuals documented as having tested positive, or received treatment, for COVID-19. Health intends to update this list daily; after 30 days on the list, an individual’s name and address will roll off of this list. Health may cease disclosure of the list upon the termination of the statewide state of emergency for COVID-19.

The purpose of these disclosures is to:

1. Prevent or control the spread of COVID-19;
2. Minimize the imminent threat of exposure of COVID-19 to employees and officers of the Department and to any individual in the Department’s custody;
3. Provide for the health and safety of persons in custody, officers, employees and others present at the Department’s facilities, or persons responsible for the transporting or transferring of arrestees or individuals committed to correctional institutions; and
4. Administer and maintain the safety, security, and good order of the Department’s facilities.

Health believes these disclosures are necessary for these purposes.

REASONS DISCLOSURES ARE PERMITTED

As discussed in the “COVID-19 and HIPAA: Disclosures to law enforcement, paramedics, other first responder and public health authorities” guidance issued by the U.S. Department of Health and Human Services - Office for Civil Rights, Health’s disclosures to the Department for the purpose described above is permitted under 45 C.F.R. § 164.512(b)(1)(iv), (j)(1)(i), (j)(4), and (k)(5)(i) which state as follows:

(b) Standard: Uses and disclosures for public health activities –

(1) Permitted uses and disclosures. A covered entity may use or disclose protected health information for the public health activities and purposes described in this paragraph to:

(iv) A person who may have been exposed to a communicable disease or may otherwise be at risk of contracting or spreading a disease or condition, if the covered entity or public health authority is authorized by law to notify such person as necessary in the conduct of a public health intervention or investigation;

(j) Standard: Uses and disclosures to avert a serious threat to health or safety –

(1) Permitted disclosures. A covered entity may, consistent with applicable law and standards of ethical conduct, use or disclose protected health information, if the covered entity, in good faith, believes the use or disclosure:

(i)

(A) Is necessary to prevent or lessen a serious and imminent threat to the health or safety of a person or the public; and

(B) Is to a person or persons reasonably able to prevent or lessen the threat, including the target of the threat;

(4) Presumption of good faith belief. A covered entity that uses or discloses protected health information pursuant to paragraph (j)(1) of this section is presumed to have acted in good faith with regard to a belief described in paragraph (j)(1)(i) or (ii) of this section, if the belief is based upon the covered entity's actual knowledge or in reliance on a credible representation by a person with apparent knowledge or authority.

(k) Standard: Uses and disclosures for specialized government functions.

(5) Correctional institutions and other law enforcement custodial situations.

(i) Permitted disclosures. A covered entity may disclose to a correctional institution or a law enforcement official having lawful custody of an inmate or other individual protected health information about such inmate or individual, if the correctional institution or such law enforcement official represents that such protected health information is necessary for:

- (A) The provision of health care to such individuals;
- (B) The health and safety of such individual or other inmates;
- (C) The health and safety of the officers or employees of or others at the correctional institution;
- (D) The health and safety of such individuals and officers or other persons responsible for the transporting of inmates or their transfer from one institution, facility, or setting to another;
- (E) Law enforcement on the premises of the correctional institution; or
- (F) The administration and maintenance of the safety, security, and good order of the correctional institution.

THE DEPARTMENT'S RESPONSIBILITIES

The Department may:

- Consult the list and advise the employees of the Department of the individuals within its facility that are documented as having tested positive, or received treatment, for COVID-19 so that employees of the Department may:
 - Take extra precautions such as the enhanced use of personal protective equipment;
 - Provide for the health and safety of the individuals, others in custody, officers, employees and others present at the facility;
 - Enforce the law on the premises; and
 - Administer and maintain the safety, security, and good order of the facility;
- Upon arrest of an individual, consult the list and advise the officers making the arrest that the arrestee is documented as having tested positive, or received treatment, for COVID-19 so that the officers making the arrest may take extra precautions such as the enhanced use of personal protective equipment; and
- In the event of a transport or transfer of an arrestee or inmate, consult the list and advise the persons responsible for making the transport or transfer that the individual to be transported or transferred is documented as having tested positive, or received treatment, for COVID-19 so that the persons responsible for the transport or transfer may:
 - Take extra precautions such as the enhanced use of personal protective equipment; and
 - Provide for the health and safety of the individuals, other inmates, officers, employees and others present during the transport or transfer.

The Department may not:


- Re-disclose the entire list to anyone;
- Re-disclose any information on the list, or summary or derivative thereof, to anyone other than its officers and employees that need to know the information to meet the purposes of the disclosure;
- Use or disclose any information on the list for any purpose other than the purpose detailed in this MOU; or
- Retain any copy, or summary or derivative, of the list for more than 30 days.

The Department must:

- Keep the list confidential, and secure it accordingly, including, but not limited to:
 - safeguarding paper copies of the list from easy view of anyone other than its officers and employees that need to know the information to meet the purposes of the disclosure; and
 - storing electronic versions of the list on encrypted devices;
- Shred outdated lists, and delete any electronic copies thereof, upon receipt of an updated list from Health;

- Shred the list (and any copies), and delete any electronic copies thereof, 30 days after the termination of the statewide state of emergency;
- Limit disclosures of the information provided by Health to the purpose detailed in this MOU;
- Inform Health within 3 days if information has been, or is suspected of having been, disclosed in a manner not authorized by this MOU, even if the disclosure was made by a party other than the Department; and
- Inform Health immediately if it is known or suspected that, aside from taking extra precautions, including but not limited to enhanced use of personal protective equipment, any employee or officer is not providing services to individuals appearing on the list or previously on the list with the same level of service and responsiveness that they provide in response to other individuals not appearing on the list.

Agreed to and effective April 21, 2020.

TENNESSEE DEPARTMENT OF HEALTH 	
By: Valerie Nagashima Title: Chief of Staff	By: Title: