

## Model State Public Health Privacy Act

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**LAWRENCE O. GOSTIN, JD, LLD (HON)**  
*Principal Investigator and Committee Chair*  
Professor of Law  
Georgetown University Law Center  
600 New Jersey Avenue NW  
Washington, DC 20001

**JAMES G. HODGE, JR., JD, LLM**  
*Project Director*  
Adjunct Professor of Law  
Georgetown University Law Center  
600 New Jersey Avenue NW  
Washington, DC 20001

### Members of the Privacy Law Advisory Committee

*[Please note that Members served on the Committee in their individual expert capacities. The Model Act and accompanying Comments [see full version] do not necessarily reflect the official policy or views of the governmental bodies, departments, institutions, or organizations which these Members are employed or affiliated].*

**GUS BIRKHEAD, MD**  
Director, AIDS Institute  
N.Y. State Department of Health  
Empire State Plaza  
Corning Tower Bldg. - Room 342  
Albany, NY 12237

**JOHN F. HYBARGER**  
Program Director  
Council of State & Territorial  
Epidemiologists  
2872 Woodcock Boulevard, Suite 303  
Atlanta, GA 30341-4015

**KRISTINE MOORE, MD, MPH**  
Assistant State Epidemiologist  
Minnesota Department of Health  
717 Delaware Street SE  
Minneapolis, MN 55440

**JOHN W. WARD, MD**

**RONALD O. VALDISERRI, MD, MPH**  
Deputy Director, National Center for HIV,  
STD, and TB Prevention  
Centers for Disease Control and Prevention  
1600 Clifton Road NE  
MS E-07  
Atlanta, GA 30333

**KEVIN DECOCK, MD**  
Director, Division of HIV/AIDS Prevention-  
Surveillance & Epidemiology,  
Centers for Disease Control and Prevention  
1600 Clifton Road NE  
MS D-21  
Atlanta, GA 30333

Division of HIV/AIDS Prevention-  
Surveillance & Epidemiology

Centers for Disease Control and Prevention  
1600 Clifton Road NE  
MS E-47  
Atlanta, GA 30333

**VERLA S. NESLUND, JD**  
Deputy Legal Advisor  
Office of the General Counsel  
Centers for Disease Control and Prevention  
Mailstop D-53  
1600 Clifton Road NE  
Atlanta, GA 30333

**PATRICIA FLEMING, PHD**  
Acting Chief, Surveillance Branch Division  
of HIV/AIDS Prevention-Surveillance &  
Epidemiology,  
Centers for Disease Control and Prevention  
1600 Clifton Road NE  
MS E-47  
Atlanta, GA 30333

**ROB JANSSEN, MD**  
Deputy Director, Division of HIV/AIDS  
Prevention-Surveillance & Epidemiology,  
Centers for Disease Control and Prevention  
1600 Clifton Road NE  
MS D-21  
Atlanta, GA 30333

**MICHAEL T. ISBELL, JD**  
Hughes Hubbard & Reed  
One Battery Park Plaza  
New York, NY 10004-1482

**TRACEY HOOKER**  
Director, Prevention Projects Program  
National Council of State Legislatures  
**REPRESENTATIVE GLEN MAXEY**

1560 Broadway, Suite 700  
Denver, CO 80202

**SUSAN K. STEEG, JD**  
General Counsel  
Texas Department of Health  
1100 West 49th Street  
Austin, TX 78756-3199

**HELEN FOX FIELDS**  
Senior Director for Infectious Disease  
Policy  
*Association of State and Territorial  
Health Officials*  
1275 K Street NW, Suite 800  
Washington, DC 20005-4006

**JOHN P. FANNING, JD**  
Department of Health and Human Services  
440D Hubert H. Humphrey Building  
200 Independence Avenue SW  
Washington, DC 20201

**ERIC P. GOOSBY, MD**  
Director, Office of HIV/AIDS  
Room 736-E Hubert Humphrey Building  
200 Independence Avenue SW  
Washington, DC 20201

**ROBERT GELLMAN, JD**  
431 Fifth Street SE  
Washington, DC 20003

**ASSEMBLY MEMBER RICHARD N.  
GOTTFRIED**  
Chair, Committee on Health  
New York State Assembly  
270 Broadway, Room 1516  
New York, NY 10007

P.O. Box 2910

Austin, Texas 78768-2910

**SENATOR PAULA C. HOLLINGER**  
206 Senate Office Building  
Annapolis, Maryland 21401-1991

**JULIE SCOFIELD**

Director, *National Alliance of State  
and Territorial AIDS Directors*  
444 North Capitol Street NW  
Suite 617  
Washington, DC 20001

**JAMES L. PEARSON, MD**  
Director, State Public Health Laboratory  
Division of Consolidated Lab Services  
Commonwealth of Virginia  
Box 1877  
Richmond, VA 23215

**MARC ROTENBERG, JD**  
Adjunct Professor, Georgetown University  
Law Center,  
Senior Lecturer, Washington College of  
Law  
Director, Electronic Privacy Information  
Ctr.  
666 Pennsylvania Avenue SE  
Suite 301  
Washington, DC 20003

**ROBERT E. STEIN, JD**  
Chair, AIDS Coordination Project  
American Bar Association  
740 Fifteenth Street NW  
Washington, DC 20005-1022

**STEVEN B. POWELL, JD**  
Director, AIDS Coordination Project  
American Bar Association  
740 Fifteenth Street NW  
Washington, DC 20005-1022

**JULIO C. ABREU**  
Legislative Representative  
AIDS Action Council  
1875 Connecticut Avenue NW  
Suite 700  
Washington, DC 20009

**CORNELIUS BAKER**  
Director, National Association of People  
With AIDS  
1413 K Street NW  
Washington, DC 20005-3442

**JEFFREY S. CROWLEY, MPH**  
Deputy Executive Director for Programs,  
National Association of People With AIDS  
Co-Chair of the Consortium for Citizens  
with Disabilities (CCD)  
1413 K Street NW  
Washington, DC 20005-3442

**CHRISTOPHER E. ANDERS, JD**  
Legislative Counsel  
American Civil Liberties Union  
122 Maryland Avenue NE  
Washington, DC 20002

**STEVE SCARBOROUGH, JD**  
LAMBDA  
1447 Peachtree Street NE  
Suite 1004  
Atlanta, GA 30309-3027

**DEREK LINK**  
Director of Federal Affairs  
Gay Men's Health Crisis  
119 West 24th Street  
New York, NY 10011

**J. KING BURNETT, JD**  
Maryland Commission on Uniform State  
Laws  
P.O. Box 910

Salisbury, MD 21803

**SCOTT BURRIS, JD**

Professor of Law  
Temple Law School  
1719 North Broad Street  
Philadelphia, PA 19122

**DAVID WEBBER, JD**

1229 Wharton Street  
Philadelphia, PA 19147-4509

**TIMOTHY WESTMORELAND, JD**

Professor of Law  
Federal Legislation Clinic  
Georgetown University Law Center  
600 New Jersey Avenue NW  
Washington, DC 20001

**RUTH R. FADEN, PhD, MPH**

Director, The Bioethics Institute  
Johns Hopkins University  
624 North Broadway  
Hampton House 511  
Baltimore, Maryland 21205-1996

**KEVIN QUINN, SJ**

Professor of Law  
Georgetown University Law Center  
600 New Jersey Avenue NW  
Washington, DC 20001

**J. RICHARD CICCONE, MD**

Professor of Psychiatry  
University of Rochester Medical Ctr.  
300 Crittenden Boulevard  
Rochester, NY 14642

## TABLE OF CONTENTS

### **ARTICLE I - FINDINGS AND DEFINITIONS**

Section

- 1-101. Legislative Findings
- 1-102. Purposes
- 1-103. Definitions

### **ARTICLE II - ACQUISITION OF PROTECTED HEALTH INFORMATION**

Section

- 2-101. Acquisition of Protected Health Information
- 2-102. Subsequent Acquisition of Protected Health Information

### **ARTICLE III - USES OF PROTECTED HEALTH INFORMATION**

Section

- 3-101. Uses Consistent With Original Legitimate Public Health Purposes
- 3-102. Scope of Uses
- 3-103. Commercial Uses
- 3-104. De-identifying Protected Health Information

### **ARTICLE IV - DISCLOSURES OF PROTECTED HEALTH INFORMATION**

Section

- 4-101. Non-Public Information
- 4-102. Informed Consent
- 4-103. Scope of Disclosures
- 4-104. Disclosures Without Informed Consent
- 4-105. Disclosures for Criminal or Civil Purposes
- 4-106. Disclosures for Health Oversight Purposes
- 4-107. Deceased Individuals
- 4-108. Secondary Disclosures
- 4-109. Record of Disclosures

### **ARTICLE V - SECURITY SAFEGUARDS AND RECORD RETENTION**

Section

- 5-101. Duty to Hold Information Secure
- 5-102. Establishment of Public Health Information Officer
- 5-103. Issuance of Public Reports

### **ARTICLE VI - FAIR INFORMATION PRACTICES**

Section

- 6-101. Individual Access to Protected Health Information
- 6-102. Limitations Concerning Individual Access to Protected Health Information
- 6-103. Accuracy of Information
- 6-104. Appeals

**ARTICLE VII - CRIMINAL SANCTIONS AND CIVIL REMEDIES**

Section

- 7-101. Criminal Penalties
- 7-102. Civil Enforcement
- 7-103. Civil Remedies
- 7-104. Immunities
- 7-105. Administrative Procedure Act Applicable

**ARTICLE VIII- MISCELLANEOUS PROVISIONS**

Section

- 8-101. Titles
- 8-102. Uniformity Provision
- 8-103. Severability
- 8-104. Repeals
- 8-105. Saving Clause
- 8-106. Conflicting Laws
- 8-107. Reports and Effective Date

## ARTICLE I

### FINDINGS AND DEFINITIONS

#### Section 1-101. Legislative Findings

The [*State Legislative Body*] finds that:

- (1) Public health agencies acquire, use, disclose, or store an increasing amount of health-related information about individuals, some of which is highly-sensitive, in paper-based and electronic forms for legitimate public health purposes;
- (2) Uses of health-related information for legitimate public health purposes are critically important to preserving, monitoring, and improving population-based health as well as personal health of individuals;
- (3) Individuals have significant privacy interests with respect to health-related information which can be identified to them;
- (4) Individual privacy interests in health-related information justify duties and limitations concerning (a) the acquisition, use, disclosure, and storage of such information; (b) individual access to such information in the possession of public health agencies; and (c) security protections for such information;
- (5) Individual interests in the privacy of health-related information are significantly reduced when the information is acquired, used, disclosed, or stored in non-identifiable forms;
- (6) Public health agencies have a significant interest in protecting the privacy of health-related information in their possession where protecting the privacy of such information encourages individuals to participate in public health programs and objectives; and
- (7) While public health agencies generally have an excellent record of protecting the privacy interests of individuals in health-related information possessed by the agencies, additional statutory protections will further clarify and protect individual privacy interests while facilitating, without jeopardizing, legitimate public health purposes.

#### Section 1-102. Purposes

The [*State Legislative Body*] states that the purposes of this Act are to:

- (1) Address privacy and security issues arising from the acquisition, use, disclosure, and storage of protected health information by public health agencies at the State and local levels;

(2) Protect health-related information in the possession of public health agencies against unauthorized disclosures without significantly limiting the ability of agencies to use such information for legitimate public health purposes;

(3) Encourage wide use and disclosure of non-identifiable health information because this information does not implicate privacy and security concerns at the individual level and may greatly facilitate the accomplishment of legitimate public health purposes;

(4) Require the acquisition and uses of protected health information to be consistent with legitimate public health purposes;

(5) Prohibit disclosures of protected health information without the informed consent of the individual who is the subject of the information, with specified, narrow exceptions;

(6) Impose the duty on public health agencies to hold and use protected health information securely;

(7) Impose a general duty on public health agencies to ensure the accuracy of protected health information;

(8) Allow individuals access to their protected health information in the possession of public health agencies through inspection and copying privileges;

(9) Provide individuals the opportunity to request the correction, amendment, or deletion of erroneous, incomplete, or false protected health information; and

(10) Prescribe various criminal penalties and civil enforcement mechanisms to protect individuals who are harmed by violations of the Act by public health agencies, public health officials, and other persons.

### **Section 1-103. Definitions**

As used in this Act, these terms shall be defined as follows:

(1) "**Acquire**," "**Acquired**," or "**Acquisition**" means to collect or gain possession or control of any part of protected health information for legitimate public health purposes.

(2) "**Act**" means the Model State Public Health Privacy Act.

(3) "**Amend**" means to indicate one or more disputed entries in protected health information or to change the entry without obliterating the original information.



(4) "**Confidentiality statement**" means a written statement dated and signed by an applicable individual which certifies the individual's agreement to abide by the security policy of a public health agency, as well as this Act.

(5) "**Disclose,**" "**Disclosed,**" or "**Disclosure**" means to release, transfer, disseminate, provide access to, or otherwise communicate or divulge all or any part of any protected health information to any person or entity, other than a public health agency or authorized public health official.

(6) "**Expunge**" or "**Expunged**" means to permanently destroy, delete, or make non-identifiable.

(7) "**Health oversight agency**" means a person who (a) performs or oversees an assessment, investigation, or prosecution relating to compliance with legal or fiscal standards concerning fraud or fraudulent claims regarding health care, health services or equipment, or related activities; and (b) is a public executive branch agency, acts on behalf of a public executive branch agency, acts pursuant to a requirement of a public executive branch agency, or carries out such activities under federal or state law.

(8) "**Institutional review board**" means any board, committee, or other group formally designated by an institution or authorized under federal or state law to review, approve the initiation of, or conduct periodic review of research programs to assure the protection of the rights and welfare of human research subjects, consistent with requirements of the Federal Policy for the Protection of Human Subjects.

(9) "**Legitimate public health purpose**" means a population-based activity or individual effort primarily aimed at the prevention of injury, disease, or premature mortality, or the promotion of health in the community, including (a) assessing the health needs and status of the community through public health surveillance and epidemiological research, (b) developing public health policy, and (c) responding to public health needs and emergencies.

(10) "**Non-identifiable health information**" means any information, whether oral, written, electronic, visual, pictorial, physical, or any other form, that relates to an individual's past, present, or future physical or mental health status, condition, treatment, service, products purchased, or provision of care, and which (a) does not reveal the identity of the individual whose health status is the subject of the information, or (b) where there is no reasonable basis to believe such information could be utilized (either alone or with other information that is, or should reasonably be, known to be available to predictable recipients of such information) to reveal the identity of that individual.

(11) "**Person**" means a natural person, corporation, estate, trust, partnership, limited liability company, association, joint venture, government or governmental body, or any other legal or commercial entity.

(12) “**Protected health information**” means any information, whether oral, written, electronic, visual, pictorial, physical, or any other form, that relates to an individual’s past, present, or future physical or mental health status, condition, treatment, service, products purchased, or provision of care, and which (a) reveals the identity of the individual whose health care is the subject of the information, or (b) where there is a reasonable basis to believe such information could be utilized (either alone or with other information that is, or should reasonably be known to be, available to predictable recipients of such information) to reveal the identity of that individual.

(13) “**Public health**” means population-based activities or individual efforts primarily aimed at the prevention of injury, disease, or premature mortality, or the promotion of health in the community.

(14) “**Public health agency**” means any organization operated by any state or local government that acquires, uses, discloses, or stores protected health information for legitimate public health purposes.

(15) “**Public health official**” means any officer, employee, private contractor or agent, intern, or volunteer of a public health agency with authorization from the agency or pursuant to law to acquire, use, disclose, or store protected health information.

(16) “**Public information**” means information which is generally open to inspection or review by the general public.

(17) “**Request**” means a written, dated, and signed correspondence in paper or electronic form through which the identity of the person making the request can be verified.

(18) “**Requestor**” means any individual, the parent or legal guardian of a minor, or a person’s legally-appointed guardian who makes a request.

(19) “**Store,**” “**Stored,**” or “**Storage**” means to hold, maintain, keep, or retain all or any part of protected health information.

(20) “**Use**” or “**Used**” means to employ or utilize all or any part of any protected health information for a legitimate public health purpose.

## ARTICLE II

### ACQUISITION OF PROTECTED HEALTH INFORMATION

#### Section 2-101. Acquisition of Protected Health Information

[a] In General. A public health agency shall only acquire protected health information where:

- (1) the acquisition relates directly to a legitimate public health purpose;
- (2) the acquisition is reasonably likely to achieve such purpose, taking into account the provisions of this Act and other governing laws, and the availability of resources or means to achieve such purpose; and
- (3) the legitimate public health purpose cannot otherwise be achieved as well or better with non-identifiable information.

[b] Secret Acquisition. Protected health information shall not be secretly acquired by a public health agency.

[c] Public Notice Requirements. Prior to implementation of a public health agency determination to acquire or store protected health information, the agency shall announce, through public notice and comment, and through public written notice distributed and posted in a manner and to such extent as will reasonably inform members of the affected community, its intentions to acquire or store protected health information and the purposes for which the information will be used. Such notice shall not identify any individual who is or may be the subject of protected health information. Where State or local law requires counseling services regarding a reportable disease, such counseling services shall include information that such disease is reportable to the public health agency and a description of the purposes for which the individual's protected health information will be used by such agency.

#### Section 2-102. Subsequent Acquisition of Protected Health Information

A public health agency shall not acquire protected health information from another local, State, or federal public health agency unless the acquisition is consistent with the requirements of Section 2-101.

**ARTICLE III****USES OF PROTECTED HEALTH INFORMATION****Section 3-101. Uses Consistent With Original Legitimate Public Health Purposes**

[a] In General. Protected health information shall be used by a public health agency solely for legitimate public health purposes that are directly related to the purpose for which the information was acquired. Providing access to protected health information to any person other than a public health agency or public health official is not a use.

[b] Subsequent Uses. A public health agency may use protected health information for legitimate public health purposes that are not directly related to the purpose for which the information was acquired provided that the agency meets the requirements of Section 2-101[a] and [c] before using such information.

[c] Research Use. A public health agency or official may use protected health information for public health, epidemiological, medical, or health services research provided that:

- (1) it is not feasible to obtain the informed consent of the individual who is the subject of the information;
- (2) identifiable information is necessary for the effectiveness of the research project;
- (3) the minimum amount of information necessary to conduct the research is used;
- (4) the research utilizing the protected health information will likely contribute to achieving a legitimate public health purpose;
- (5) the information is made non-identifiable at the earliest opportunity consistent with the purposes of the research project and expunged after the conclusion of the project; and
- (6) such uses are made pursuant to assurances of protections through the execution of a confidentiality agreement after review and approval of an institutional review board. The agreement shall require any person receiving such information to adhere to protections for the privacy and security of the information equivalent to or greater than such protections provided in this Act.

**Section 3-102. Scope of Uses**

[a] In General. Non-identifiable health information shall be used by a public health agency whenever possible consistent with the accomplishment of legitimate public health purposes.

[b] Minimum Information. Any use of protected health information permitted by this Act shall be limited to the minimum amount of information which the public health official using the information reasonably believes is necessary to accomplish the legitimate public health purpose.

### **Section 3-103. Commercial Uses**

Protected health information shall not be used by a public health agency or public health official for commercial purposes.

### **Section 3-104. De-identifying Protected Health Information**

Protected health information whose use by a public health agency no longer furthers the legitimate public health purpose for which it was acquired shall be expunged in a confidential manner.

## ARTICLE IV

### DISCLOSURES OF PROTECTED HEALTH INFORMATION

#### Section 4-101. Non-Public Information

Protected health information is not public information, and may not be disclosed without the informed consent of the individual (or the individual's lawful representative) who is the subject of the information, except as provided in this Act.

#### Section 4-102. Informed Consent

[a] Generally. For the purposes of this Act, informed consent means a written authorization for the disclosure of protected health information on a form substantially similar to one promulgated by the [*State public health agency*] which is signed in writing or electronically by the individual who is the subject of the information. This authorization shall be dated and shall specify to whom the disclosure is authorized, the general purpose for such disclosure, and the time period in which the authorization for the disclosure is effective.

[b] Revocation. An individual may revoke an authorization in writing at any time. The individual is responsible for informing the person who originally received the authorization that it has been revoked.

[c] Expiration. If the authorization does not contain an expiration date or has not previously been revoked, it automatically expires six months after the date it is signed.

[d] General Authorization. A general authorization for the disclosure of health-related information shall not be construed as written authorization pursuant to informed consent for the disclosure of protected health information unless such authorization also complies with this Section.

[e] Inability to Provide Informed Consent. When the individual who is the subject of protected health information is not competent or is otherwise legally unable to give informed consent for the disclosure of protected health information, written authorization under Subsection [a] may be provided by the individual's parents, legal guardians, or other persons lawfully authorized to make health care decisions for the individual. For the purposes of this Subsection, a minor under the age of [*to be inserted consistent with state law*] years is unable to give informed consent.

#### Section 4-103. Scope of Disclosures

[a] Generally. Protected health information shall be disclosed with the informed consent of the individual who is the subject of the information to any person and for any purpose for which the disclosure is authorized pursuant to informed consent.

[b] Non-identifiable Information. Any disclosures of protected health information permitted by this Act shall be disclosed in a non-identifiable form whenever possible, consistent with the accomplishment of legitimate public health purposes, except when the disclosure is authorized through the informed consent of the individual who is the subject of the information.

[c] Minimum Information. Any disclosures of protected health information permitted by this Act shall be limited to the minimum amount of information which the person making the disclosure reasonably believes is necessary to accomplish the purpose of the disclosure, except when the disclosure is authorized through the informed consent of the individual who is the subject of the information.

[d] Accompanying Statement. Whenever disclosure of protected health information is made pursuant to this Act, such disclosures shall be accompanied or followed by [in cases of oral disclosures, within three days] a statement in writing concerning the public health agency's disclosure policy, which shall include the following or substantially similar language: "*This information has been disclosed to you from confidential public health records protected by state and federal law. Any further disclosure of this information in an identifiable form may be prohibited without the written informed consent of the person who is the subject of the information or as otherwise permitted by federal or state law. Unauthorized disclosure of this information may result in significant criminal or civil penalties, including imprisonment and monetary damages.*"

#### **Section 4-104. Disclosures Without Informed Consent**

Protected health information may be disclosed without the informed consent of the individual who is the subject of the information where such disclosures:

- [a] are made directly to the individual;
- [b] are made to appropriate federal agencies or authorities as required by federal or State law; or
- [c] are made to health care personnel to the extent necessary in a medical emergency to protect the health or life of the person who is the subject of the information from serious, imminent harm.

#### **Section 4-105. Disclosures for Criminal or Civil Purposes**

No protected health information shall be disclosed, discoverable, or compelled to be produced pursuant to subpoena, compelled testimony of public health officials or other persons who have knowledge of such information subsequent to its acquisition by the public health agency, in any civil, criminal, administrative, or other legal proceeding, except:

[a] Court Order. A public health agency or authorized public health official may seek a court order granting the disclosure of protected health information upon an application showing a clear danger to an individual or the public health that can only be averted or mitigated through a disclosure by the public health agency.

[b] Sealed Records and *In Camera* Proceedings. Upon receiving an application for an order authorizing disclosure pursuant to this Section, the court shall enter an order directing that all materials which are part of the application and decision of the court be sealed. Such materials shall not be made available to any person except to the extent necessary to conduct proceedings concerning the application, including any appeal. Such order shall further direct that all proceedings concerning the application be conducted *in camera*.

[c] Notification. Any individual about whom protected health information is sought and any person holding protected health information from whom disclosure is sought shall be notified of an application for its disclosure pursuant to this Section.

[d] Response or Appearance. Any individual about whom protected health information is sought and any person holding protected health information from whom disclosure is sought may file a written response to the application, or appear in person for the limited purpose of providing evidence on the statutory criteria for the issuance of an order pursuant to this Section. The court may grant an order without such notice or appearance where an application by a public health agency or authorized public health official requires immediate action to avert or mitigate a clear danger to the public health.

[e] Findings of Fact. In assessing clear danger under this Section, the court shall provide written findings of fact and shall weigh the need for disclosure against the privacy interests of the individual who is the subject of the protected health information and any legitimate public health purpose which may be curtailed by disclosure.

[f] Authorizing Order. An order authorizing disclosure of protected health information shall:

- (1) limit disclosure to that information which is necessary pursuant to the application;
- (2) limit disclosure to those persons who need the information and specifically prohibit re-disclosure to any other persons;
- (3) include any other measures which the court deems necessary to limit any disclosures not authorized by the order; and



- (4) conform to the other provisions of this Act to the extent possible.

#### **Section 4-106. Disclosures for Health Oversight Purposes**

A public health agency may disclose protected health information to a health oversight agency to enable the agency to perform a health oversight function authorized by law if:

- [a] the public health agency itself is the focus of the oversight inquiry;
- [b] the protected health information is not removed from the premises, custody, or control of the public health agency; and
- [c] the health oversight agency does not record the names or other identifying information of individuals who are the subjects of protected health information.

#### **Section 4-107. Deceased Individuals**

[a] Generally. Nothing in this Act shall prohibit the disclosure of protected health information:

- (1) in a certificate of death, autopsy report, or related documents prepared under applicable laws or regulations;
- (2) for the purposes of identifying a deceased individual;
- (3) for the purposes of determining a deceased individual's manner of death by a chief medical examiner or the examiner's designee; or
- (4) to provide necessary information about a deceased individual who is a donor or prospective donor of an anatomical gift.

[b] Deceased Rights. The rights of a deceased individual as provided by this Act may be exercised for a period of *[two]* years after the date of death by one of the individuals in the following order of priority, subject to any written limitations or restrictions by the decedent:

- (1) an executor or administrator of the estate of a deceased individual, or one soon to be appointed in accordance with a will or other legal instrument;
- (2) a surviving spouse or domestic partner;
- (3) an adult child;
- (4) a parent; or
- (5) another person authorized by law to act for the individual decedent.

#### **Section 4-108. Secondary Disclosures**

No person to whom protected health information has been disclosed pursuant to this Act shall disclose the information to another person except as authorized by this Act. This Section shall not apply to:

- [a] the individual who is the subject of the information;
- [b] the individual's parents, legal guardians, or other persons lawfully authorized to make health care decisions for the individual where the individual who is the subject of the information is unable to give legal consent under Section 4-102; or
- [c] any person who is specifically required by federal or state law to disclose the information.

**Section 4-109. Record of Disclosures**

[a] Generally. A public health agency shall establish a written or electronic record of any of its disclosures of protected health information authorized by this Act. This record shall be treated as protected health information for the purposes of this Act.

[b] Information Recorded. The record of disclosures shall include the following information:

- (1) the name, title, address, and institutional affiliation, if any, of the person to whom protected health information is disclosed;
- (2) the date and purpose of the disclosure;
- (3) a brief description of the information disclosed; and
- (4) the legal authority for the disclosure.

[c] Maintenance. This record shall be maintained by the public health agency for a period of ten years, even if the protected health information disclosed is no longer in the agency's possession.

**ARTICLE V****SECURITY SAFEGUARDS AND RECORD RETENTION****Section 5-101. Duty to Hold Information Secure**

[a] Generally. Public health agencies have a duty to acquire, use, disclose, and store protected health information in a confidential manner which safeguards the security of the information.

[b] Security Measures. Public health agencies and other persons who are the recipients of protected health information disclosed by any agency, other than the individual (or the individual's lawful representative) who is the subject of the information, shall take appropriate measures to protect the security of such information, including:

- (1) maintaining such information in a physically secure environment, including:
  - [i] minimizing the physical places in which such information is used or stored; and
  - [ii] prohibiting the use or storage of such information in places where the security of the information may likely be breached or is otherwise significantly threatened;
- (2) maintaining such information in a technologically secure environment;
- (3) identifying and limiting the persons having access to such information to those who have a demonstrable need to access such information;
- (4) reducing the length of time that such information is used or stored in a personally-identifiable form to that period of time which is necessary for the use of the information;
- (5) eliminating unnecessary physical or electronic transfers of such information;
- (6) expunging duplicate, unnecessary copies of such information;
- (7) developing and distributing written guidelines consistent with this Act concerning the preservation of the security of such information;
- (8) assigning personal responsibility to persons who acquire, use, disclose, or store such information for preserving its security;
- (9) providing initial and periodic security training of all persons who acquire, use, disclose, or store such information;
- (10) thoroughly investigating any potential or actual breaches of security concerning such information;
- (11) imposing disciplinary sanctions for any breaches of security when appropriate; and
- (12) undertaking continuous review and assessment of security standards.

[c] Display of Written Protections. Wherever protected health information is made accessible to public health officials on the premises of a public health agency, there shall be prominently displayed a notice in writing concerning the agency's disclosure policy, which shall include the following or substantially similar language: "*Protected health information contains health-related information about individuals which may be highly-sensitive. This information is entitled to significant privacy protections under federal and state law. The disclosure of this information outside public health agencies in an identifiable form is prohibited without the written consent of the person who is the subject of the information, unless specifically permitted by federal or state law. Unauthorized disclosures of this information may result in significant criminal or civil penalties, including imprisonment and monetary damages.*"

[d] Individuals on Agency Premises. All public health officials or other persons having authority at any time to acquire, use, disclose, or store protected health information shall:

- (1) be individually informed of their personal responsibility for preserving the security of protected health information;
- (2) execute a confidentiality statement prior to entering the premises, or as soon thereafter as possible, pursuant to their review of written guidelines consistent with this Act concerning the preservation of the security of such information;
- (3) fulfill their personal responsibility for preserving the security of protected health information to the degree possible; and
- (4) report to the public health information officer any known security breaches or actions which may lead to security breaches.

[e] Individual Identity. The identity of any person making a report under Subsection [d](4) shall not be revealed, without the consent of the person making the report, to anyone other than investigating public health officials or law enforcement officers.

[f] CDC Security Guidelines for HIV/AIDS Data. Notwithstanding any other provisions of this Act, protected health information concerning HIV or AIDS shall be secured in accordance with written standards promulgated by the federal Centers for Disease Control and Prevention of the Department of Health and Human Services, as amended.

### **Section 5-102. Establishment of Public Health Information Officer**

[a] Generally. Public health agencies shall appoint or designate a public health official as the agency's "public health information officer."

[b] Responsibilities. The public health information officer has overall responsibility for preserving the security of all protected health information consistent with this Section and the Act. This person shall report directly to the highest ranking public health official at the agency.

[c] Duties. The public health information officer shall perform all duties as required by this Section and the Act, including:

- (1) monitoring the acquisition, use, disclosure, and storage of protected health information to ensure such activities are conducted in a physically and technologically secure environment;
- (2) developing and implementing written policies and guidelines to preserve the security of protected health information, including a model confidentiality statement pursuant to Section 5-101[d](2);
- (3) coordinating the assignment of personal responsibility to each person who acquires, uses, discloses, or stores such information for preserving its security;
- (4) acting as the agency's principal investigator for each investigation of any security breach;
- (5) recommending disciplinary sanctions for any security breaches to the highest ranking public health official at the agency who shall be responsible for issuing and implementing any sanctions;
- (6) coordinating with federal, state, or local authorities, where appropriate, in the investigation of any security breach; and
- (7) preparing any report required pursuant to Section 5-103.

### **Section 5-103. Issuance of Public Reports**

[a] Agency Security Report. Public health agencies shall prepare on an annual basis a report concerning the status of security protections of protected health information, which shall be distributed to the public health information officer for the [State public health agency]. The report shall be prepared in accordance with guidelines issued by the public health information officer for the [State public health agency].

[b] Comprehensive Security Report. The public health information officer for the [State public health agency] shall prepare a summary report on the status of security protections of protected health information for all public health agencies in the [State] within ninety days of the date in which reports required under this Section are requested. This report shall be issued to the [State Legislative Body] with any recommendations for amendments to the Act or other relevant state laws which may improve the security of protected health information.

[c] Report Information. Reports prepared under this Section shall not contain any protected health information. Reports prepared under this Section are public information.

## ARTICLE VI

### FAIR INFORMATION PRACTICES

#### Section 6-101. Individual Access to Protected Health Information

[a] Opportunity to Inspect. Within fourteen days of the receipt of a request to review protected health information, a public health agency shall provide the requestor an opportunity during regular business hours to inspect copies of such information in the possession of the public health agency which concerns or relates to the requestor.

[b] Copies Furnished. Within ten days of the receipt of a request for copies of a requestor's protected health information, a public health agency shall provide without charge copies of protected health information in the possession of the agency which the requestor is authorized to inspect pursuant to this Section.

[c] Explanations. Upon request, the public health agency shall provide an explanation of any code, abbreviation, notation, or other marks appearing in the protected health information. A public health agency is not responsible for producing or reformulating protected health information, solely for the purposes of clarification, in other than its original form.

#### Section 6-102. Limitations Concerning Individual Access to Protected Health Information

[a] Reasonable Limitations. Reasonable limitations may be placed on the time, place, and frequency of any inspection and copying requests. A public health agency may ask to review the protected health information with the requestor upon inspection, although such review shall not be a prerequisite to providing the information.

[b] Information Related to Other Persons. Any information contained in the protected health information of the requestor that relates to the health status or other confidential information of other persons shall be deleted for the purposes of inspection and copying.

[c] Unrelated Information. Any information contained in the protected health information of the requestor that is not related to the requestor's health status may be deleted for the purposes of inspection and copying.

[d] Withholding Information. A public health agency may deny a requestor the opportunity to inspect protected health information in the possession of the agency or may deny a request for copies of such information if:

- (1) the public health agency can show via clear and convincing evidence that the review of the protected health information will cause substantial and

- identifiable harm to the requestor or others which outweighs the requestor's right to access the information;
- (2) a parent or legal guardian has requested access to protected health information concerning an individual over the age of [*to be inserted consistent with State law*] who is the subject of the information and the individual objects to such access of the information within seven days of receipt of written notice of the request by the public health agency in possession of the information; or
  - (3) the information is compiled principally in anticipation of, or for use in, a legal proceeding.

[e] Request Denials. If a public health agency denies a request to inspect or copy protected health information, it shall notify the requestor in writing of the reasons for denying such request, including that the agency does not possess any protected health information which is subject to the request.

[f] Appeals. A requestor may appeal such decisions under administrative review procedures as promulgated by the [*State public health agency*] consistent with state or local law.

### **Section 6-103. Accuracy of Information**

[a] Generally. Public health agencies shall reasonably ensure the accuracy and completeness of protected health information.

[b] Corrections. After inspection or review of copies of protected health information pursuant to Section 6-101, a requestor may request that the public health agency correct, amend, or delete erroneous, incomplete, or false information.

[c] Duty to Correct. The public health agency shall correct, amend, or delete erroneous, incomplete, or false information within fourteen days of a request provided that it determines that such modification is reasonably supported. The requestor has the burden of proving that information needs to be corrected, amended, or deleted.

[d] Written Notification. The requestor shall be notified in writing of any corrections, amendments, or deletions made, or, in the alternative, the reasons for denying any request in whole or part.

[e] Appeals. A requestor may appeal any decision of a public health agency denying a request to correct, amend, or delete erroneous, incomplete, or false information under administrative review procedures as promulgated by the [*State public health agency*] consistent with State or local law.

[f] Retention of Statement. A brief, written statement from the requestor challenging the veracity of the protected health information shall be retained by the public health agency for as long as the information is possessed. The public health agency shall make a notation of the disputed entries in the requestor's protected health information, including the original language and the requestor's proposed change. This statement shall be provided to any person who is authorized to receive the protected health information.

[g] Subsequent Notifications. A public health agency shall take reasonable steps to notify all persons indicated by the requestor, or others for which known acquisitions or disclosures have previously been made, of corrections, amendments, or deletions made to protected health information.

### **Section 6-104. Appeals**

[a] Generally. In the event that administrative appeals have been exhausted pursuant to Section 6-102[f] or Section 6-103[e], the requestor may appeal decisions of the public health agency in the State or local court having appropriate jurisdiction.

[b] Court Determination. The court shall determine whether there exists a reasonable basis for the action or decision of the public health agency pursuant to an *in camera* review of the relevant protected health information, the administrative record, and other admissible evidence.

[c] Relief. Individual relief is limited to a judgment requiring the public health agency to make available the requested information to the requestor for inspection or copying or to correct, amend, or delete erroneous, incomplete, or false information.



**ARTICLE VII****CRIMINAL SANCTIONS AND CIVIL REMEDIES****Section 7-101. Criminal Penalties**

[a] Public Health Officials Generally. Any public official who, knowing or in reckless disregard of the fact that protected health information is protected by this Act, intentionally acquires or uses such information in violation of this Act, or discloses such information to a person not lawfully entitled to receive it, is guilty of a felony. Upon conviction, the official is punishable by a fine not to exceed [\$5,000] or imprisonment for a period not to exceed [three] years, or both.

[b] Unlawful Disclosures. Any person who, knowing or in reckless disregard of the fact that protected health information is protected from disclosure by this Act, intentionally discloses such information to a person or entity not lawfully entitled to receive it is guilty of a misdemeanor. Upon conviction, the person is punishable by a fine not to exceed [\$5,000] or imprisonment for a period not to exceed one year, or both.

[c] Unlawful Access. Any person who by any unlawful means, including bribery, fraud, theft, false pretenses, or other misrepresentation of identity, purpose of use, or entitlement to information, inspects, copies, examines, or obtains protected health information in violation of this Act is guilty of a felony. Upon conviction, the person is punishable by a fine not to exceed [\$50,000] or imprisonment for a period not to exceed [five] years, or both, for each offense.

[d] Commercial Gain or Malicious Harm. Any person who acts in violation of this Act under Subsections [a-c] of this Section for the purposes of commercial gain, or with intent to cause malicious harm, shall be guilty of a felony. Upon conviction, the person is punishable by a fine not to exceed [\$50,000] or imprisonment for a period not to exceed [five] years, or both, for each offense.

[e] Enhanced Penalties. The maximum penalties described in Subsections [a-d] shall be doubled for every subsequent conviction of any person arising out of a violation or violations related to a set of circumstances that are different from those involved in the previous violation or set of related violations described in Subsections [a-d].

[f] Statute of Limitations. Any action under this Section is barred unless the action is commenced within [three] years after the cause of action accrues.

[g] Separate Offense. Each violation of this Act is a separate and actionable offense.

**Section 7-102. Civil Enforcement**

The [*State Attorney General*] or other appropriate State or local law enforcement official may maintain a civil action to enforce this Act. Relief may be ordered by the court as authorized in Section 7-103 of this Act.

### **Section 7-103. Civil Remedies**

[a] Generally. Any person aggrieved by:

- (1) the failure to impose and maintain adequate safeguards for the confidentiality and security of protected health information;
- (2) the failure to supervise persons responsible for the acquisition, use, disclosure, or storage of protected health information;
- (3) the disclosure of protected health information in violation of this Act; or
- (4) any other violation of this Act,

may maintain an action for relief as provided in this Section.

[b] Appropriate Relief. The court may order a public health agency, public health official, or other persons to comply with this Act and may order any other appropriate civil or equitable relief, including an injunction to prevent non-compliance.

[c] Compensatory and Punitive Damages. If the court determines that there is a violation of this Act, the aggrieved person is entitled to recover damages for losses sustained as a result of the violation. The measure of damages shall be the greater of the aggrieved person's actual damages, or liquidated damages of [*\$1,000*] for each violation, provided that liquidated damages shall not exceed [*\$10,000*] for any particular claim.

[d] Punitive Damages. If the court determines that there is a violation of this Act which results from wilful or grossly negligent conduct, the aggrieved person may recover punitive damages not to exceed [*\$10,000*], exclusive of any other loss, for each violation from the offending party.

[e] Attorney Fees. If the aggrieved person prevails, the court may assess reasonable attorney's fees and all other expenses reasonably incurred in the litigation against the non-prevailing parties.

[f] Joint and Several Liability. Responsible parties are jointly and severally liable for any compensatory damages, attorney's fees, or other costs awarded.

[g] Statute of Limitations. Any action under this Section is barred unless the action is commenced within [*one*] year after the cause of action accrues or was or should reasonably have been discovered by the aggrieved person or the person's lawful representative.

[h] Separate Offense. Each violation of this Act is a separate and actionable offense.

[i] Pre-existing Remedies. Nothing in this Section limits or expands the right of an aggrieved person or the person's lawful representative to recover damages under any other applicable law.

#### **Section 7-104. Immunities**

[a] Disclosure Pursuant to Informed Consent. No person shall be subject to criminal sanction or civil liability under this Act as a result of disclosing protected health information pursuant to valid informed consent under Section 4-102.

[b] Supervisory Officers. No public health official who is a superior or supervisory officer over a public health official who violates any part of this Act shall be subject to civil remedies under this Act on the theory of vicarious liability, provided the superior or supervisory official:

- (1) had no prior actual or constructive knowledge of the violation or actions leading to the violation; and
- (2) was not otherwise directly responsible for ensuring against the occurrence of the violation.

[c] Absence of Accompanying Language with Disclosures. No person, other than a public health official, shall be subject to criminal sanction or civil liability as a result of disclosing protected health information in violation of this Act where the original disclosure of information was not accompanied by language required under Section 4-103[d]. This Subsection, however, shall not release from criminal sanction or civil liability the public health official or other person who failed to include such language in the prior disclosure.

[d] Parent or Guardian. No person who is the parent or legal guardian of a minor, or an individual's legally-appointed guardian, shall be subject to criminal sanction or civil liability under this Section as a result of disclosing protected health information which relates to the individual, provided such parent or guardian lawfully obtained such information in accordance with this Act.

#### **7-105. Administrative Procedure Act Applicable**

Any action of a public health agency made pursuant to this Act, including but not limited to public notice given, or determinations made, under Sections 2-101 and 3-101, concerning

acquisition and use of protected health information, shall be governed by the State [*Administrative Procedure Act (APA)*]. The courts of this State shall have jurisdiction to review final agency actions in accordance with the APA, and may stay or permanently enjoin any such action that fails to comport with the requirements of the Model State Public Health Privacy Act.

## ARTICLE VIII

### MISCELLANEOUS PROVISIONS

#### Section 8-101. Titles

This Act may be cited as the Model State Public Health Privacy Act. For the purposes of this Act, titles and subtitles of Articles, Sections, and Subsections are instructive, but not binding.

#### Section 8-102. Uniformity Provision

This Act shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of this Act among States enacting it.

#### Section 8-103. Severability

The provisions of this Act are severable. If any provision of this Act or its application to any person or circumstances is held invalid in a federal or State court having jurisdiction, the invalidity does not affect other provisions or applications of this Act which can be given effect without the invalid provision or application.

#### Section 8-104. Repeals

The following acts, laws, or parts thereof, are explicitly repealed with the passage of this Act:

- (1) *[To be inserted in each state considering passage of the Act]*
- (2) *[To be inserted in each state considering passage of the Act]*
- (3) *[To be inserted in each state considering passage of the Act] . . .*

#### Section 8-105. Saving Clause

This Act does not explicitly preempt other laws or regulations which preserve to a greater degree the privacy and security protections of protected health information as set forth in this Act, provided such laws or regulations are consistent, and do not otherwise restrict or interfere, with the operation or enforcement of the provisions of the Act.

#### Section 8-106. Conflicting Laws

[a] Federal Supremacy. This Act does not restrict any person from complying with federal law or regulations.

[b] Prior Conflicting Acts. In the event of a conflict between this Act and other State or local laws or regulations concerning protected health information or administrative procedures pursuant to the [State Administrative Procedure Act], the provisions of this Act apply.

**Section 8-107. Reports and Effective Date**

[a] Initial Reports. No later than [six] months after the date of enactment, the highest ranking public health official at each public health agency shall prepare and submit a report to the [State public health agency] concerning the effect of this Act on each agency.

[b] Comprehensive Report. No later than [nine] months after the date of enactment, the [State public health agency] shall issue a comprehensive report to the [State Legislative Body] on behalf of each public health agency concerning the effect of this Act, including any recommendations for legislative amendments.

[c] Effective Date. The provisions of this Act shall be effective one year after the date of its enactment.