



NativeDATA

A Data Sharing Resource for
Native Peoples and Organizations

Public Health Authority Status

Public Health Authority

This handout is designed to provide basic information about public health authority status. It is written in language that has been reviewed and approved by legal experts, and it includes citations. If you are new to this topic, consider reading [Public Health Authority 101](#) as well.

Tribes have public health authority.

Public health authority is the authority of a sovereign government to protect the health, safety, and welfare of its citizens.¹ As sovereign nations, Tribes have the power to define how they will use this authority to protect and promote the health of their communities.²

Tribes do not need the recognition of the U.S. government to exercise their public health authority.¹ However, the federal government does recognize Tribes as public health authorities under federal law.³

Tribes have the inherent right to Tribal data sovereignty.

Tribes have the right to Tribal data sovereignty, or the right to “govern the collection, ownership, and application of [their] own data”.¹⁰ As sovereign nations, [Tribes also have the power to share their data with Tribal and non-Tribal entities](#).

Note: Principles of Tribal (or Indigenous) data sovereignty can apply to data on American Indian and Alaska Native people off Tribal lands as well.

Tribes and Native communities need health data to inform policies and decision-making.

Tribes and Native communities need data in order to successfully monitor and respond to health threats in their communities. They also need health data to inform policies and decision-making that impact the health of community members.

Some types of health data Tribes need in order to govern effectively include information that is protected by the Health Insurance Portability and Accountability Act’s (HIPAA) Privacy Rule. This protected health information (PHI) includes individually identifiable information collected by [HIPAA covered entities](#) on the past, current, or future physical and mental health of an individual, health care services provided to an individual, or payment for these services.⁴

Protected health information can be released to Tribes without an individual’s authorization if data are being used for public health activities.

A HIPAA covered entity cannot use or disclose an individual’s PHI without that individual’s written permission (also known as HIPAA authorization), except under [specific circumstances](#).⁵ One of these circumstances is if the PHI is being used by or disclosed to a Tribe, or other public health authority, for the purpose of public health activities, such as preventing or controlling disease, injury, or disability.⁵ Some examples of when a HIPAA covered entity can release PHI to a Tribe, or other public health authority, include:

- A clinic reporting a case of COVID-19 to a local health department.
- A hospital reporting a birth to a state vital records department.
- A doctor reporting a case of cancer to a state cancer registry.

In all of these cases PHI can be disclosed by the HIPAA covered entity to Tribes and other public health authorities for public health purposes without the need to obtain prior HIPAA authorization from the individual.

Tribal Epidemiology Centers (TECs) have public health authority.

The 2010 reauthorization of the Indian Health Care Improvement Act (IHCA) designated [Tribal Epidemiology Centers](#) as public health authorities for the purposes of the HIPAA Privacy Rule.^{7,8} With public health authority status under federal law, TECs can obtain PHI data for public health purposes without the HIPAA covered entity obtaining prior HIPAA authorization from the individual.

This authority, designated by federal law, allows TECs to obtain and use identifiable protected health information on behalf of the Tribes and urban Indian health organizations they serve.

Sometimes Tribes and Tribal Epidemiology Centers (TECs) need to seek legal support to specify their legal authority and to interpret their rights to data under local, state, and federal laws.

Tribes and TECs are able to obtain identifiable PHI for public health purposes based on their public health authority status under HIPAA. However, despite this authority designated by federal law, at times Tribes and TECs experience barriers to obtaining PHI and other data. These barriers may be due to a data steward's lack of knowledge about Tribes' and TECs' legal public health authority status, state laws that further restrict the sharing of PHI and sensitive health data, and misinterpretation of local, state, and federal laws regarding the sharing of health data for public health purposes.⁷

Tribes and TECs may need [legal support](#) to specify their legal authority and to interpret their rights to data under local, state, and federal laws.

Non-TEC Tribal and Native-serving organizations may be considered public health authorities.

Federal law is less clear about the public health authority status with regards to data of other, non-TEC, Tribal and urban Indian-serving organizations. Some of these organizations may be considered public health authorities under HIPAA if they are acting under a grant of authority from (or contract with) a Tribal public health authority (i.e. the Tribe itself or the Tribe's public health department).^{4,9}

These organizations should seek legal advice about their public health authority status.

Need Help?

These [data supports](#) can help Tribes and Native-serving organizations understand what data are available, how to navigate the data sharing process, and provide support in learning about Tribes' and Native-serving organizations' rights to [Tribal data sovereignty](#) and exercising their [public health authority](#) status.

References:

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