



The Network
for Public Health Law

Ideas. Experience. Practical answers.

Public Health Law in Correctional Facilities

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Principles & Objectives

- » **Introduction to the Network**
- » **Prisoner's Right to Health Care**
- » **Reporting Requirements**
- » **Health Care Privacy Laws**

Value of Public Health Law

Laws can solve public health challenges, including:

- » **Provision of emergency medical services**
- » **Regulation of medical marijuana in the interest of public health**
- » **Second-hand smoking laws**
- » **Air bag requirements**
- » **Vaccination requirements**



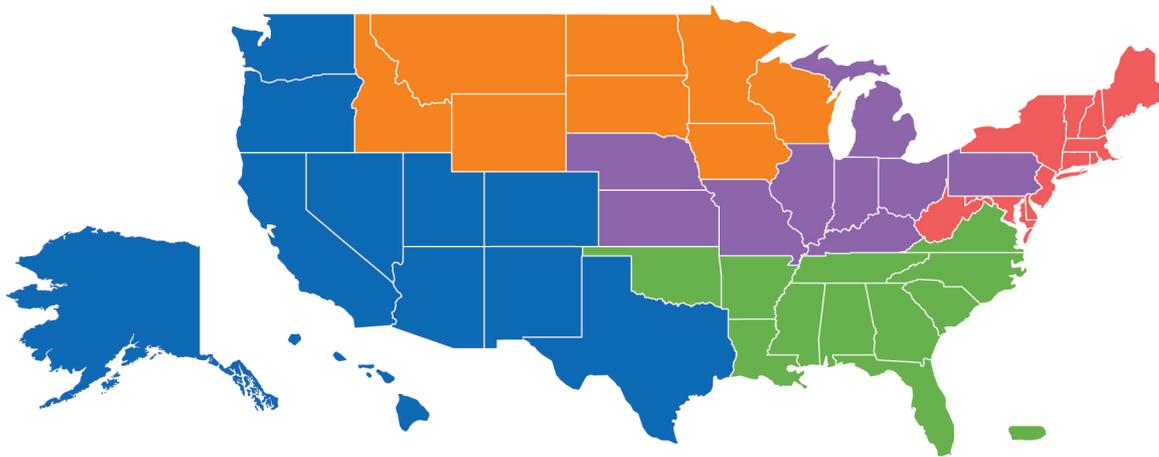
Who can use the Network

Anyone committed to public health can join the Network:

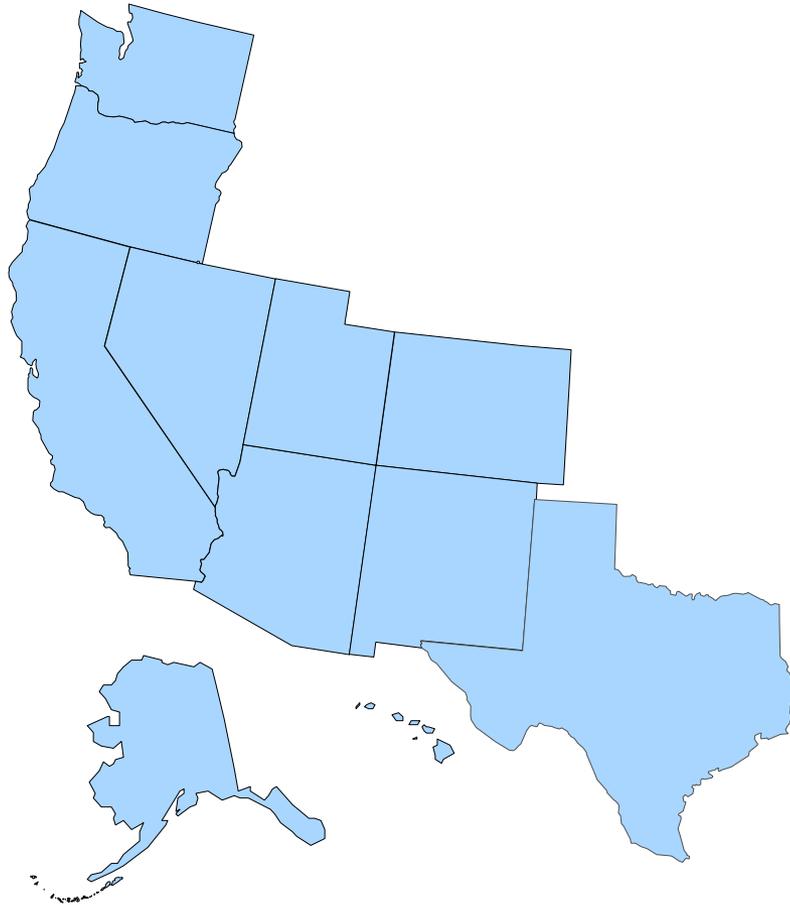
- » **Local, state, tribal and federal public health officials**
- » **Public health practitioners**
- » **Attorneys**
- » **Policy-makers**
- » **Advocates**

National Scope with Local Expertise

- » Provides support across the country
- » Divided into 5 Regions to provide local and state support
- » Contact your Region for assistance



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Legal Technical Assistance

Legal assistance can include:

- » **Strategizing about potential legal options**
- » **Help finding experts, resources and tools**
- » **Support to develop, implement and enforce legislation, statutes or regulations**

Technical assistance does not include providing legal advice or representation.

Join the Network at No Cost

- » <http://www.networkforphl.org>
- » Network products, such as fact sheets, tables of state laws, legal briefs and more
- » Monthly webinar series
- » Public health lawyer directory
- » Library of legal assistance questions and answers
- » External resources
- » Network newsletters
- » Events



Many children have dental coverage through either a private insurance program or a public one, like Medicaid or the Children's Health Insurance Program. Regrettably, simply having coverage does not convert to actually receiving dental services. The Affordable Care Act includes provisions to improve the accessibility of oral health care for at-risk children, enabling millions of children to have some form of dental insurance. The Pew Children's Dental Campaign has identified eight policy benchmarks that all states can adopt to improve children's health. The following table illustrates whether each state meets the benchmarks.

Network Resources

- Network Products
- Webinar Series
- Public Health Lawyer Directory
- Legal Assistance Library
- Network Newsletter
- Law In Action
- Events
- Research
- Archived External Resources

STATE PUBLIC HEALTH LAWYER DIRECTORY

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Total Score (Out of 8)

4	D	D	C
6	B	A	
5	C	F	
4	F	C	

Grade 2010
Grade 2011



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Health Care in Correctional Facilities

Prisoner's Right to Health Care

- » **Constitutional Right** established in the landmark case of *Estelle v. Gamble* (1976)
- » **Alleged:** inadequate medical care was **cruel and unusual** punishment under the Eighth Amendment. **Highlighted** clear inadequacies in care for inmates

Prisoner's Right to Health Care – Definitions

- » The Supreme Court of the United States stated that the Eighth Amendment requires the government to **“provide medical care for those whom it is punishing by incarceration”** as the prisoners lack access to any other health care
- » According to the Supreme Court **“deliberate indifference to serious medical needs”** and intentional denial of access to healthcare and treatment **may constitute constitutional violations**

Prisoner's Right to Health Care – Limitations

- » Following various litigation and legal revisions, a violation of the Eighth Amendment requires **“more than ordinary lack of due care for the prisoner’s interests or safety.”**
- » **A constitutional violation** requires the prison official to be **aware of and disregard an excessive risk** to the prisoner’s health or safety



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Reporting Laws in Correctional Facilities

Why Mandatory Reporting?

Mandatory reporting of communicable diseases helps **prevent and control** the spread of disease.

Authority to Control Spread of Communicable Disease

- » **The Arizona Department of Health Services (ADHS) maintains statutory authority to require healthcare workers required to report and correctional facility administrators to report cases (and potential cases) of communicable disease.**
- » ADHS may “[m]ake rules and regulations for the organization and proper and efficient operation of the department.” A.R.S. § 36-104(3).

Confidentiality exceptions

A.R.S. § 36-664

A. A person who obtains communicable disease related information in the course of providing a health service or obtains that information from a health care provider pursuant to an authorization shall not disclose or be compelled to disclose that information except to the following:

...

7. A federal, state, county or local health officer if disclosure is mandated by federal or state law.

Communicable Disease Reporting

- » In the event of a diagnosis, treatment, or detection of a communicable disease within a correctional facility, State law requires facility administrators to **report all cases or suspected cases to the local health agency.**
- » Local health agency is defined as: a county health department, a public health services district, a tribal health unit, or a U.S. Public Health Service Indian Health Service Unit
- » Dependent upon the severity of the disease and risk of spread, reporting requirements vary

Correctional Facility - Definition



- » **Correctional facility** means any place used for the confinement or control of an individual:
- » a. Charged with or convicted of an offense,
- » b. Held for extradition, or
- » c. Pursuant to a court order for law enforcement purposes.

Communicable Disease Reporting Requirements – Infected Individual

- » **An administrator or representative must include the following information about the infected individual:**
 - » **Name**
 - » **Address**
 - » **County of residence**
 - » **If the living on a reservation, the name of the reservation**
 - » **Telephone number**
 - » **Date of birth**
 - » **Race and ethnicity**
 - » **Gender**
 - » **If known, whether pregnant**
 - » **If known, whether alive or dead**
 - » **Occupation**
 - » **If individual attends or works in a childcare, healthcare, or foodservice facility**
 - » **Parent or guardian contact for child**

Communicable Disease Reporting Requirements – Disease

- » **An administrator or representative must include the following information about the disease:**
 - » The name of the disease
 - » The date of onset of symptoms
 - » The date of diagnosis
 - » The date of specimen collection
 - » Each type of specimen collected
 - » Each type of laboratory test completed
 - » The date of the result of each laboratory test
 - » A description of the laboratory test results, including quantitative values if available
- » Certain communicable diseases (Tuberculosis, chancroid, gonorrhea, genital herpes infection, or genital chlamydia infection and syphilis) may require the submission of disease-specific material

Communicable Disease Reporting: Requirements – Death with History of Fever

- » **An administrator or representative must include the following information for each case of unexpected death with history of fever:**

- » **Personal information of individual**
- » **Description of clinical course of illness**
- » **List of laboratory tests and results**
- » **Suspected cause of death**
- » **If known, status of autopsy**
- » **Contact information of family member to serve as point of contact**
- » **Contact information for individual drafting report**
- » **Name and address of healthcare provider and healthcare institution**



Communicable Disease Reporting Requirements – Outbreak

- » **In the event of an outbreak, Administrators must submit a detailed report within 24 hours including the following information:**
- » **Signs and Symptoms**
- » **If possible, diagnosis and identification of suspected sources**
- » **Number of known and suspect cases**
- » **Description of location of outbreak**
- » **Contact information for individual filing report**
- » **Contact information for health care provider and institution**



Communicable Disease Reporting Requirements

- » **In the event of a diagnosis, treatment or detection of the following diseases, administrators are required to submit a report by telephone or an electronic reporting system authorized by ADHS within 24 hours.**

Anthrax

Botulism

Diphtheria

Emerging or exotic disease

Enterohemorrhagic *E-coli*

Enterotoxigenic *E-coli*

Hemolytic uremic syndrome

Listeriosis

Measles (rubeola)

Meningococcal invasive disease

Pertussis

Plague

Poliomyelitis

Rabies in a human

Severe acute respiratory syndrome

Smallpox

Tularemia

Typhoid Fever

Unexplained death with history of fever

Vancomycin-resistant or Vancomycin-intermediate *Staphylococcus aureus*

Vancomycin-resistant *Staphylococcus epidermidis*

Viral hemorrhagic fever

Yellow fever

Communicable Disease Reporting Requirements

- » **In the event of a diagnosis, treatment or detection of the following diseases, administrators are required to submit a report by telephone or an electronic reporting system authorized by the Department of Health Services within 1 working day.**

Brucellosis

Cholera*

Encephalitis, viral or parasitic

Influenza-associated mortality in a child

Mumps

Q fever

Rubella (German Measles)*

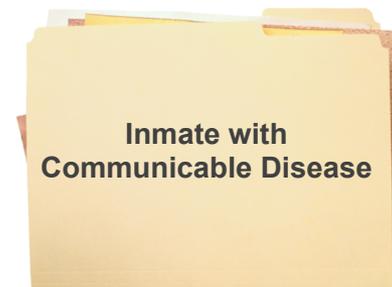
Rubella syndrome, congenital

Tuberculosis, active disease

Tuberculosis latent infection in a child 5 years of age or younger

Typhus fever

Vaccinia-related adverse event



*If a case or suspect case is a food handler, submit a report within 24 hours after the case or suspect case is diagnosed, treated, or detected.

Communicable Disease Reporting Requirements

» In the event of a diagnosis, treatment, or detection of the following diseases, administrators are required to submit a report by telephone or an electronic reporting system authorized by ADHS within 5 working days.

Amebiasis*, ○	Cryptosporidiosis*, ○	Herpes genitalis	Salmonellosis*, ○
Aseptic meningitis: viral	<i>Cyclospora</i> infection	HIV infection	Shigellosis*, ○
Basidiobolomycosis	Cysticercosis	Kawasaki syndrome	Streptococcal Group A & B
Campylobacteriosis*, ○	Dengue	Leionellosis	<i>Streptococcus pneumoniae</i>
Chagas disease	Diarrhea, nausea or vomiting	Leptospirosis	Syphilis
Chancroid	Ehrlichiosis and Anaplasmosis	Lyme disease	Taeniasis*, ○
Chlamydia infection, sexually transmitted	Giardiasis*, ○	Lymphocytic choriomeningitis	Tetanus
Coccidioidomycosis	Gonorrhea	Malaria	Toxic shock syndrome
Colorado tick fever	Haemophilus influenzae	Psittacosis	Trichinosis
Conjunctivitis: acute ○	Hansen's disease	Relapsing fever	Varicella
Creutzfeldt-Jakob disease	Hantavirus infection	Reye syndrome	<i>Vibrio</i> infection* ○
	Hepatitis A & E*, ○	Rocky Mountain spotted fever	West Nile Virus
	Hepatitis B, D & C		Yersiniosis*, ○

*If a case or suspect case is a food handler, submit a report within 24 hours after the case or suspect case is diagnosed, treated, or detected.
○ – In the event of an outbreak, submit a report within 24 hours.

Penalty for Failing to Report

A.R.S. § 36-630

A person who knowingly secretes himself or others known to have a contagious or infectious disease, or a member of a board of health or an officer of a local health department who with criminal negligence fails or refuses to perform a duty, **or a person who violates a provision of this article or a rule, regulation, order, instruction or measure adopted and given the required publicity by a board of health is guilty of a class 3 misdemeanor unless another classification is specifically prescribed in this article.**



Criminal Penalty for Class 3 Misdemeanor

A.R.S. § 13-707(A): Sentencing

A sentence of imprisonment for a misdemeanor shall be for a definite term to be served other than a place within custody of the state department of corrections. The court shall fix the term of imprisonment within the following maximum limitations:

3. For a class 3 misdemeanor, **thirty days**.

A.R.S. § 13-802(C): Fines

A sentence to pay a fine for a class 3 misdemeanor shall be a sentence to pay an amount, fixed by the court, **not more than five hundred dollars**.



ADOC Department Order Manual: Communicable Disease and Infection Control Procedures

Communicable Disease Reporting - Purpose

- » **The Department Order provides a standard guideline to ensure appropriate notification and documentation of reportable diseases, and for the appropriate management of inmates who require medical isolation to ensure that all inmates and staff are protected from communicable disease**



Communicable Disease Reporting - Responsibility

- » **The Deputy Director for Inmate Health Services is responsible for:**
- » **Directing the Department's program to provide surveillance, prevention, diagnosis and treatment of suspected or confirmed communicable diseases.**
- » **Notifying the Assistant Director for Human Resources/Development and other authorized recipients of each suspected or confirmed communicable disease in inmates and epidemiological information related to communicable disease in inmates.**
- » **Wardens, Deputy Wardens and Administrators are responsible for ensuring that inmate workers, when appropriate, use approved universal precautions, engineering controls and personal protective equipment to prevent exposure to communicable disease.**

1102.01 Communicable Disease Reporting Requirements

- » **1.1 The Facility Health Administrator (FHA) or designee shall submit a communicable disease report to the County Health Department (or Indian Health Service Unit) of a case or a suspected case of the diseases and conditions listed in Attachment A, Diseases To Be Reported, within the time frames noted on the attachment, by telephone or other equally expeditious means.**
- » **Attachment A includes list of required reportable diseases and requisite timeframe**
- » **Available: <http://www.azcorrections.gov/Policies/1100/1102.pdf>**

Communicable Disease Reporting Procedures

- » **1.2 The FHA or designee shall submit a weekly written report of positive laboratory findings for the communicable disease pathogens listed in Attachment B, Reportable Positive Findings, to the Arizona Department of Health Services.**
- » **Attachment B includes list of positive laboratory findings reportable to the Arizona Department of Health Services**
- » **Available: <http://www.azcorrections.gov/Policies/1100/1102.pdf>**



Communicable Disease Reporting Procedures

- » **1.3 The FHA or designee shall:**
- » **Obtain reportable disease forms from the State or County Health Department**
- » **Ensure completed reports based on Department requirements**
- » **Forward the original copy of the reports to the local health department each week specifying what action, if any, was initiated**
- » **Within thirty days of the completion of any outbreak investigation conducted, submit to the Department a written summary of the outbreak investigation.**
- » **Review communicable disease reports for completeness and accuracy**

Communicable Disease Reporting Procedures

- » **1.4 The Infection Control Liaison shall complete a monthly reportable disease report and forward it to the Health Services Coordinator at Central Office by the tenth working day of the month, conduct investigations, conduct surveillance, determine trends and implement medical isolation.**





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Privacy Laws

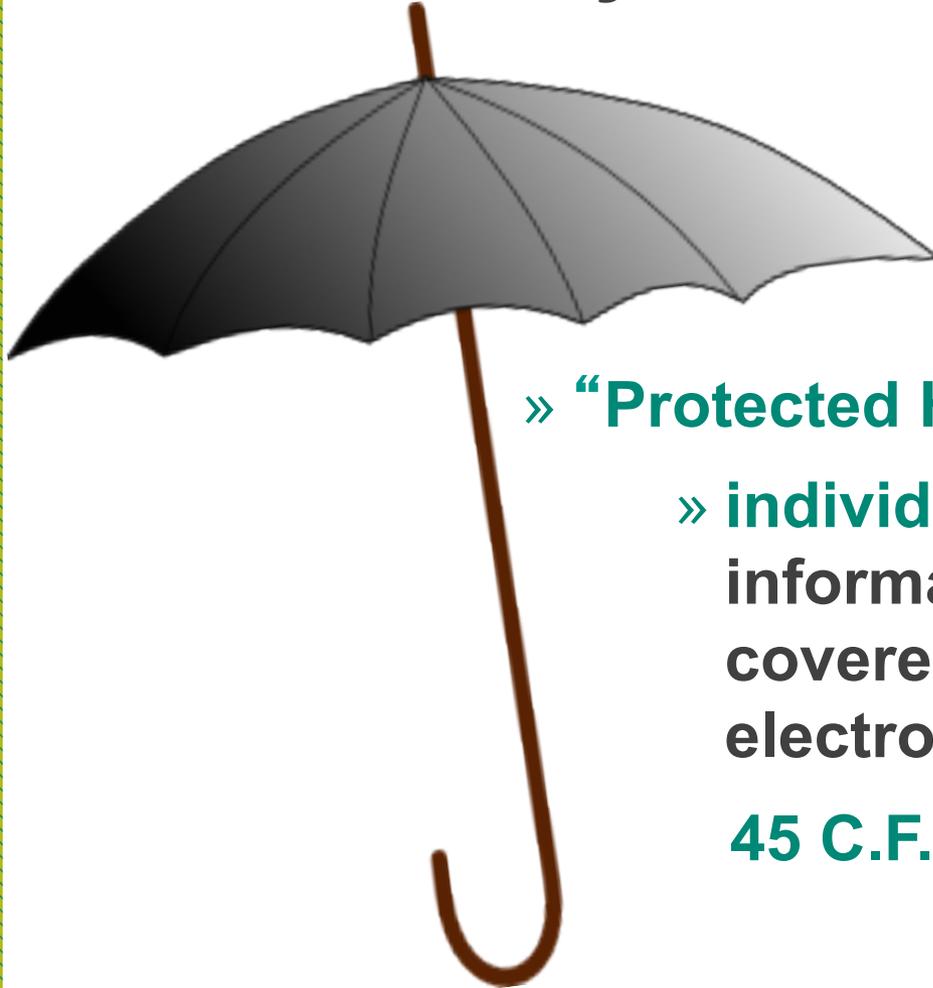
The Health Insurance Portability and Accountability Act of 1996 [HIPAA]

HIPAA Privacy Rule – Scope, Structure, and Implementation

- » **What is covered?**
- » **Who is covered?**
- » **How is it covered?**
- » **What about other laws?**
- » **What about violations?**



HIPAA Privacy Rule – What is Covered?



- » **“Protected Health Information (PHI)”**
- » **individually-identifiable** health information used or disclosed by a covered entity in any form, whether electronically, on paper, or orally.

45 C.F.R. 160.103

HIPAA Privacy Rule – Who is Covered?

» Covered Entities (CEs) Include:

» *Health Plans*

» *Health Care Clearinghouses*

» *Health Providers that Exchange
Identifiable Health Data
Electronically*

» *And Their Business Associates*

HIPAA Privacy Rule – Who is Covered?

- » **Beyond CEs (and their business associates) are those who engage in:**
 - » **Covered functions** – those functions the performance of which makes the entity a health plan, health care providers, or health care clearinghouse.

HIPAA Privacy Rule – How is PHI Covered?

- » **Boundaries**
- » **Security**
- » **Fair Information Practices**
- » **Accountability**



HIPAA Privacy Rule – How are Uses/ Disclosures Regulated?

- » **CEs may use or disclose PHI without individual informed consent to carry out treatment, payment, or health care operations (aka. *standard transactions*).**



HIPAA Privacy Rule – How are Uses/ Disclosures Regulated?

» The “anti-disclosure rule”:

» “Except as otherwise permitted or required. . . , a CE may not use or disclose PHI without an authorization . . . ”

45 CFR 164.508(a)(1)



HIPAA Privacy Rule – How are Uses/ Disclosures Regulated?

» In several contexts, disclosures do not require written authorization, including those concerning:

- » Law Enforcement
- » Judicial and Administrative Proceedings
- » Health emergencies
- » **Public Health**



HIPAA Privacy Rule – How are Uses/ Disclosures Regulated?

- » The public health exception within the Rule allows a covered entity to disclose PHI without individual authorization to a:
 - » “*public health authority* that is authorized by law to collect and receive such information for the purpose of preventing and controlling disease, injury, or disability, including . . . reporting of disease . . . and the conduct of public health surveillance”

HIPAA Privacy Rule – What is the scope of the Public Health Exception?

- » **Specific public health-based exceptions include disclosures:**
 - » **To notify persons exposed to communicable diseases**
 - » **Concerning work-related injuries**
 - » **About victims of abuse, neglect, or domestic violence**
 - » **To prevent serious threats to persons or the public**

HIPAA Privacy Rule – Who is a Public Health Authority?

» ***A public health authority (PHA) is an:***

agency or authority of the United States, a State, a territory, a political subdivision of a State or territory, or an Indian tribe, or a person or entity acting under a grant of authority from or contract with such public agency . . . that is responsible for public health matters as part of its official mandate.

HIPAA Privacy Rule – Who is a Public Health Authority?

» PHAs Include:



U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES
National Institutes of Health

- » **State or Tribal Health Departments**
- » **Local Health Departments**
- » ***Contractors/others acting under authority of these agencies***

HIPAA Privacy Rule – What About Other Laws?

» How does the Privacy Rule work with state laws?

- » **ARS 12-2292 Confidentiality of medical records and payment records**
- » **ARS 12-2294 Release of medical records and payment records to third parties**



HIPAA Privacy Rule – What About Violations?

- » **Violations or breaches of the Privacy Rule may result in:**
 - » **Complaints** filed with the Secretary of HHS;
 - » Ensuing **investigation** by the Secretary;
 - » **Compliance** reviews by the Secretary;
 - » Informal **resolution** by the Secretary whenever possible
 - » Imposition of **civil penalties**
 - » **Criminal sanctions** against individuals

HIPAA Privacy Rule- What About State Public Health Reporting Laws?

- » **All states require health care providers to report communicable diseases and other conditions**
 - » **Specific diseases or conditions vary from state to state**
 - » **May be found in statutory or regulatory laws**

- » **The Privacy Rule does not or override state law that “provides for the reporting of disease or injury . . . or for the conduct of public health surveillance [or] investigation”**

Institutional Policies

- » **Arizona Department of Corrections Policies regarding communicable diseases and infection control**

- » **Section 1102.02 Confidentiality of Communicable Disease Information**
 - » **Patient authorization required prior to release of information to a third party**
 - » **Allows unauthorized disclosure to a public health agency**

Thank you.

Contact the Network

» Visit www.networkforphl.org

- Click on “Get Technical Assistance”

» Call the Western Region anytime between 9a.m. to 5p.m.

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» Expect a first response within



Questions or Comments?