



STATE OF INDIANA

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July 23, 2013

Mr. John Silcox
Director of Communications
Allen County Department of Health
200 E. Berry Street
Fort Wayne, Indiana 46802

Re: Informal Inquiry 13-INF-37; Application of I.C. § 16-41-8 to a certificate of death issued by a county health department

Dear Mr. Silcox:

This informal opinion is in response to your inquiry regarding the application of Ind. Code § 16-41-8 to a certificate of death issued by a county health department ("Department"). Pursuant to I. C. § 5-14-4-10(5), I issue the following informal opinion in response to your inquiry.

BACKGROUND

You provide that you are seeking guidance regarding the disclosure of confidential information on a certificate of death. Specifically, is a Department obligated to redact the cause of death from a death certificate if the cause of death involves a communicable disease and the Department does not have prior permission from the deceased to release said information. If so, is the answer the same in providing a copy of the certificate of death to funeral directors, immediately family, and next of kin.

ANALYSIS

The public policy of the APRA states that "(p)roviding persons with information is an essential function of a representative government and an integral part of the routine duties of public officials and employees, whose duty it is to provide the information." See I.C. § 5-14-3-1. The Department would be considered a public agency for the purposes of the APRA. See I.C. § 5-14-3-2. Accordingly, any person has the right to inspect and copy the Department's public records during regular business hours unless the records are excepted from disclosure as confidential or otherwise nondisclosable under the APRA. See I.C. § 5-14-3-3(a).

I.C. § 16-37-3-3 provides that a copy of the certificate of death shall be filed with the Department by the physician last in attendance upon the deceased or the person in charge of interment. *See* I.C. § 16-37-3-3(a). The local health officer is required to retain a copy of the certificate of death. *Id.* Amongst other things, the certificate of death provides the cause of death of the deceased. *See* I.C. § 16-37-3-5(a). I.C. § 16-41-8(b) provides that:

“(b) Except as provided in this chapter, a person may not disclose or be compelled to disclose medical or epidemiological information involving a communicable disease or other disease that is a danger to health (as defined under rules adopted under IC 16-41-2-1).” I.C. 16-41-8-1(b).

I.C. 16-41-8-1(b) further provides that such information may be released under certain circumstances, including for statistical purposes if done in a manner that does not identify the individual; when given written consent by all parties identified in the information released; to the extent necessary to enforce public health laws or to protect the health or life of a named party; or in accordance with I.C. 16-41-8. *See* I.C. § 16-41-8-1(b)(1)-(4). A person responsible for recording, reporting, or maintaining information required to be reported under I.C. § 16-41-2 who recklessly, knowingly, or intentionally discloses or fails to protect medical or epidemiologic information classified as confidential commits a Class A misdemeanor and a public employee who violates said prohibition is subject to discharge or other disciplinary action under the personnel rules of the agency. *See* I.C. §§ 16-41-8-1(c), (d). The provisions of I.C. § 16-41-8 regarding confidentiality apply to information obtained under I.C. § 16-41-1 through I.C. § 16-41-16. *See* I.C. § 16-37-1-8(g). As applicable to your inquiry when the cause of death reported by the physician to the Department and recorded on a certificate of death involves a communicable disease, is the Department required to redact the cause of death in light of the confidentiality provisions of I.C. § 16-41-8.

In researching your inquiry, I contacted the Indiana State Department of Health (“State Department”) regarding any analysis and/or guidelines the agency provides on this issue. Although the State Department does not maintain formal guidelines, it is of the belief that I.C. § 16-41-8 would not be applicable to information collected by the Department pursuant to I.C. § 16-37. The State Department noted that I.C. § 16-41-8-1(g) provides that the confidentiality provisions apply only to information collected under I.C. § 16-41-1 through I.C. 16-41-16, which deals with the surveillance of, investigation of, and intervention for certain communicable diseases. Information recorded on the certificate of death is collected pursuant to I.C. 16-37, thus the confidentiality provisions of I.C. § 16-41-8-1(b) would not be applicable and redaction of the cause of death on the certificate of death would not be required. Aside from the cause of death, communicable disease information is used for other purposes outside of the above-mentioned chapters. If the information could not otherwise be accessed due to the confidentiality provisions of I.C. § 16-41-1-8(b), other program areas, such as medical services, would be unable to access said data and be unable to provide the necessary services. I agree with the analysis provided by the State Department. Accordingly, as the Department receives information regarding the cause of death pursuant to I.C. § 16-37 and the confidentiality

provisions of I.C. § 16-41-8-1(b) only apply to information obtained under I.C. § 16-41-1 though I.C. § 16-41-16, it is my opinion that the confidentiality provisions of I.C. § 16-41-8-1(b) would not apply to the cause of death provided on a certificate of death maintained and issued by the Department.

Please let me know if I can be of any further assistance.

Best regards,

A handwritten signature in black ink, appearing to read "J. Hoage". The signature is written in a cursive style with a large initial "J" and a distinct "Hoage" following.

Joseph B. Hoage
Public Access Counselor

cc: Hilari A. Sautbine