

STATE OF OKLAHOMA

2nd Session of the 57th Legislature (2020)

HOUSE BILL 3491

By: Talley

AS INTRODUCED

An Act relating to health records; amending 63 O.S. 2011, Section 1-502.2, which relates to the Public Health Code; modifying confidentiality of records; amending 25 O.S. 2011, Section 304, as amended by Section 3, Chapter 81, O.S.L. 2019 (25 O.S. Supp. 2019, Section 304), which relates to the Open Meeting Act; updating statutory reference; and providing an effective date.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. AMENDATORY 63 O.S. 2011, Section 1-502.2, is amended to read as follows:

Section 1-502.2 A. ~~Unless otherwise provided by law, all information and records concerning any person who has participated in a public health investigation or who may have any communicable or noncommunicable disease which is required to be reported pursuant to Sections 1-501 through 1-532.1 of this title or information and records of any disease which are held or maintained by any state agency, health care provider or facility, physician, health professional, laboratory, clinic, blood bank, funeral director,~~

1 ~~third party payor, or any other agency, person, or organization in~~  
2 ~~the state shall be confidential. Any information obtained pursuant~~  
3 ~~to the requirements of Sections 1-501 through 1-532.1 of this title~~  
4 ~~shall not be required to be produced pursuant to the Oklahoma Open~~  
5 ~~Records Act. Any information authorized to be released pursuant to~~  
6 ~~paragraphs 1 through 8 of this subsection shall be released in such~~  
7 ~~a way that no person can be identified unless otherwise provided for~~  
8 ~~in such paragraph or by law. Such information shall not be released~~  
9 ~~except under the following circumstances:~~

10 ~~1. Release is made upon court order;~~

11 ~~2. Release is made in writing, by or with the written consent~~  
12 ~~of the person whose information is being kept confidential or with~~  
13 ~~the written consent of the legal guardian or legal custodian of such~~  
14 ~~person, or if such person is a minor, with the written consent of~~  
15 ~~the parent or legal guardian of such minor;~~

16 ~~3. Release is necessary as determined by the State Department~~  
17 ~~of Health to protect the health and well-being of the general~~  
18 ~~public. Any such order for release by the Department and any review~~  
19 ~~of such order shall be in accordance with the procedures specified~~  
20 ~~in Sections 309 through 323 of Title 75 of the Oklahoma Statutes.~~  
21 ~~Only the initials of the person whose information is being kept~~  
22 ~~confidential shall be on public record for such proceedings unless~~  
23 ~~the order by the Department specifies the release of the name of~~

1 ~~such person and such order is not appealed by such person or such~~  
2 ~~order is upheld by the reviewing court;~~

3 ~~4. Release is made of medical or epidemiological information to~~  
4 ~~those persons who have had risk exposures pursuant to Section 1-~~  
5 ~~502.1 of this title;~~

6 ~~5. Release is made of medical or epidemiological information to~~  
7 ~~health professionals, appropriate state agencies, or district courts~~  
8 ~~to enforce the provisions of Sections 1-501 through 1-532.1 of this~~  
9 ~~title and related rules and regulations concerning the control and~~  
10 ~~treatment of communicable or noncommunicable diseases;~~

11 ~~6. Release is made of specific medical or epidemiological~~  
12 ~~information for statistical purposes whether within the State of~~  
13 ~~Oklahoma or throughout the United States, in such a way that no~~  
14 ~~person can be identified;~~

15 ~~7. Release is made of medical information among health care~~  
16 ~~providers, their agents or employees, within the continuum of care~~  
17 ~~for the purpose of diagnosis and treatment of the person whose~~  
18 ~~information is released whether within the State of Oklahoma or~~  
19 ~~throughout the United States; or~~

20 ~~8. When the patient is an inmate in the custody of the~~  
21 ~~Department of Corrections or a private prison or facility under~~  
22 ~~contract with the Department of Corrections, and the release of the~~  
23 ~~information is necessary:~~

1           a.   ~~to prevent or lessen a serious and imminent threat to~~  
2           ~~the health or safety of a person or the public, and it~~  
3           ~~is to a person or persons reasonably able to prevent~~  
4           ~~or lessen the threat, including the target of the~~  
5           ~~threat, or~~

6           b.   ~~for law enforcement authorities to identify or~~  
7           ~~apprehend an individual where it appears from all the~~  
8           ~~circumstances that the individual has escaped from a~~  
9           ~~correctional institution or from lawful custody.~~

10        ~~B. For the purposes of this section only, "written consent"~~  
11        ~~means that the person whose information is required to be kept~~  
12        ~~confidential by this section or the person legally authorized to~~  
13        ~~consent to release by this section has been informed of all persons~~  
14        ~~or organizations to whom such information may be released or~~  
15        ~~disclosed by the specific release granted. Consent obtained for~~  
16        ~~release of information, pursuant to paragraph 2 of subsection A of~~  
17        ~~this section, shall not be considered valid unless, prior to~~  
18        ~~consent, the person consenting to the release was given notice of~~  
19        ~~the provisions for release of confidential information pursuant to~~  
20        ~~this section. The provisions of this subsection shall not apply to~~  
21        ~~written authorizations to disclose information to the Social~~  
22        ~~Security Administration.~~

23        ~~C.~~ 1. The State Department of Health may convene a  
24        confidential meeting of a multidisciplinary team for recommendation

1 on school placement of a student who is infected with the human  
2 immunodeficiency virus. The multidisciplinary team shall include,  
3 but not be limited to, the following:

- 4 a. the parent, parents, legal representative, or legal  
5 guardian or legal custodian of the student~~†~~1
- 6 b. the physician of the student~~†~~1
- 7 c. a representative from the superintendent's office of  
8 the affected school district~~†~~1
- 9 d. a representative from the State Department of  
10 Education~~†~~1 and
- 11 e. a representative from the State Department of Health.

12 Each member of the team shall be responsible for protecting the  
13 confidentiality of the student and any information made available to  
14 such person as a member of the team. The multidisciplinary team  
15 shall be exempt from the requirements of Sections 301 through 314 of  
16 Title 25 of the Oklahoma Statutes and Sections 24A.1 through 24A.19  
17 of Title 51 of the Oklahoma Statutes.

18 2. Each member of the local school board having jurisdiction  
19 over the student shall also be responsible for protecting the  
20 confidentiality of the student and any information made available to  
21 such person as a school board member.

22 ~~D.~~ B. The State Department of Health may convene a confidential  
23 meeting of a multidisciplinary advisory committee to make  
24 recommendations regarding the practice of health care workers who

1 are infected with the human immunodeficiency virus (HIV) or  
2 hepatitis B virus (HBV), who may be performing exposure-prone  
3 procedures. The membership of the multidisciplinary advisory  
4 committee shall include, but not be limited to, the following:

- 5 1. The State Commissioner of Health or designee;
- 6 2. Legal counsel to the State Commissioner of Health;
- 7 3. The state epidemiologist or designee;
- 8 4. An infectious disease specialist with expertise in HIV/HBV  
9 infection; and
- 10 5. Two practicing health care workers from the same discipline  
11 as the HIV/HBV-infected health care worker.

12 In addition, the health care worker being discussed, and/or an  
13 advocate, and the personal physician of the health care worker being  
14 discussed shall be invited to the multidisciplinary advisory  
15 committee meeting. Discussion of the case shall be made without  
16 using the actual name of the health care worker. Each member of the  
17 multidisciplinary advisory committee shall be responsible for  
18 protecting the confidentiality of the HIV/HBV-infected health care  
19 worker and the confidentiality of any information made available to  
20 such person as a member of the multidisciplinary advisory committee.  
21 The multidisciplinary advisory committee shall be exempt from the  
22 requirements of the Oklahoma Open Meeting Act and the Oklahoma Open  
23 Records Act.

1       ~~E.~~ C. Upon advice of the multidisciplinary advisory committee,  
2 the State Commissioner of Health or designee may notify an  
3 appropriate official at the health care facility where the HIV/HBV-  
4 infected health care worker practices that the health care worker is  
5 seropositive for HIV and/or HBV. Notification shall be made only  
6 when necessary to monitor the ability of the HIV/HBV-infected health  
7 care worker to comply with universal precautions and appropriate  
8 infection control practices, and/or to monitor the ongoing  
9 functional capacity of the health care worker to perform his or her  
10 duties. Notification shall occur through one of the following  
11 officials:

- 12           1. The facility administrator;
- 13           2. The hospital epidemiologist;
- 14           3. The chair of the infection control committee of the  
15 facility; or
- 16           4. The medical chief of staff of the facility.

17       ~~F.~~ D. If the HIV/HBV-infected health care worker fails or  
18 refuses to comply with the recommendations of the multidisciplinary  
19 advisory committee, the State Commissioner of Health or designee may  
20 take such actions as may be required to perform the duties imposed  
21 by the laws of the State of Oklahoma, and may advise the appropriate  
22 licensing board.

23       ~~G.~~ E. Any person who negligently, knowingly or intentionally  
24 discloses or fails to protect medical or epidemiological information

1 classified as confidential pursuant to this section, upon  
2 conviction, shall be guilty of a misdemeanor punishable by the  
3 imposition of a fine of not less than One Thousand Dollars  
4 (\$1,000.00) or by imprisonment in the county jail for not more than  
5 thirty (30) days, or by both such fine and imprisonment.

6 ~~H.~~ F. Any person who negligently, knowingly or intentionally  
7 discloses or fails to protect medical or epidemiological information  
8 classified as confidential pursuant to this section shall be civilly  
9 liable to the person who is the subject of the disclosure for court  
10 costs, attorney fees, exemplary damages and all actual damages,  
11 including damages for economic, bodily or psychological harm which  
12 is proximately caused by the disclosure.

13 SECTION 2. AMENDATORY 25 O.S. 2011, Section 304, as  
14 amended by Section 3, Chapter 81, O.S.L. 2019 (25 O.S. Supp. 2019,  
15 Section 304), is amended to read as follows:

16 Section 304. As used in the Oklahoma Open Meeting Act:

17 1. "Public body" means the governing bodies of all  
18 municipalities located within this state, boards of county  
19 commissioners of the counties in this state, boards of public and  
20 higher education in this state and all boards, bureaus, commissions,  
21 agencies, trusteeships, authorities, councils, committees, public  
22 trusts or any entity created by a public trust, including any  
23 committee or subcommittee composed of any of the members of a public  
24 trust or other legal entity receiving funds from the Rural Economic



1 Action Plan Fund as authorized by Section 2007 of Title 62 of the  
2 Oklahoma Statutes, task forces or study groups in this state  
3 supported in whole or in part by public funds or entrusted with the  
4 expending of public funds, or administering public property, and  
5 shall include all committees or subcommittees of any public body.  
6 Public body shall not include the state judiciary, the Council on  
7 Judicial Complaints when conducting, discussing, or deliberating any  
8 matter relating to a complaint received or filed with the Council,  
9 the Legislature, or administrative staffs of public bodies,  
10 including, but not limited to, faculty meetings and athletic staff  
11 meetings of institutions of higher education when those staffs are  
12 not meeting with the public body, or entry-year assistance  
13 committees. Furthermore, public body shall not include the  
14 multidisciplinary teams provided for in Section 1-9-102 of Title 10A  
15 of the Oklahoma Statutes and subsection € A of Section 1-502.2 of  
16 Title 63 of the Oklahoma Statutes or any school board meeting for  
17 the sole purpose of considering recommendations of a  
18 multidisciplinary team and deciding the placement of any child who  
19 is the subject of the recommendations. Furthermore, public body  
20 shall not include meetings conducted by stewards designated by the  
21 Oklahoma Horse Racing Commission pursuant to Section 203.4 of Title  
22 3A of the Oklahoma Statutes when the stewards are officiating at  
23 races or otherwise enforcing rules of the Commission;

1        2. "Meeting" means the conduct of business of a public body by  
2 a majority of its members being personally together or, as  
3 authorized by Section 307.1 of this title, together pursuant to a  
4 videoconference. Meeting shall not include informal gatherings of a  
5 majority of the members of the public body when no business of the  
6 public body is discussed;

7        3. "Regularly scheduled meeting" means a meeting at which the  
8 regular business of the public body is conducted;

9        4. "Special meeting" means any meeting of a public body other  
10 than a regularly scheduled meeting or emergency meeting;

11       5. "Emergency meeting" means any meeting called for the purpose  
12 of dealing with an emergency. For purposes of the Oklahoma Open  
13 Meeting Act, an emergency is defined as a situation involving injury  
14 to persons or injury and damage to public or personal property or  
15 immediate financial loss when the time requirements for public  
16 notice of a special meeting would make such procedure impractical  
17 and increase the likelihood of injury or damage or immediate  
18 financial loss;

19       6. "Continued or reconvened meeting" means a meeting which is  
20 assembled for the purpose of finishing business appearing on an  
21 agenda of a previous meeting. For the purposes of the Oklahoma Open  
22 Meeting Act, only matters on the agenda of the previous meeting at  
23 which the announcement of the continuance is made may be discussed  
24 at a continued or reconvened meeting; and

1        7. "Videoconference" means a conference among members of a  
2 public body remote from one another who are linked by interactive  
3 telecommunication devices permitting both visual and auditory  
4 communication between and among members of the public body and  
5 members of the public. During any videoconference, both the visual  
6 and auditory communications functions of the device shall be  
7 utilized. Whenever the term "teleconference" appears in any law in  
8 relation to a meeting of a public body, it shall be deemed to mean a  
9 videoconference as defined in this paragraph.

10        SECTION 3. This act shall become effective November 1, 2020.

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