

## Department of Veterans Affairs

**Federal Law:** Confidentiality of Drug Abuse, Alcoholism and Alcohol Abuse, Human Immunodeficiency Virus (HIV) Infection, and Sickle Cell Anemia Medical Records

**Theme:** Veterans

**Citation:** [38 U.S.C. 7332](#); [38 C.F.R. §§ 1.460-1.499](#)

Protects drug and alcohol abuse, HIV, and sickle cell VA records.

### THE LAW

#### What does the law do?

[Title 38, Section 7332](#) of the United States code protects the confidentiality of drug abuse, alcoholism and alcohol abuse, human immunodeficiency virus (HIV) infection, and sickle cell anemia health records (“Section 7332-protected information”). Section 7332 protects Department of Veterans Affairs (VA) records that relate to the identity, diagnosis, prognosis or an offer or referral for treatment of drug and alcohol abuse, alcoholism and the testing and treatment of sickle cell anemia or HIV infection.

#### To whom does the law apply?

The law applies to the VA and protects [current and former patient records](#). The law also restricts the [use and further disclosure by recipients](#) of Section 7332-protected information.

#### How is “identifiable” information defined?

The [regulations implementing](#) 38 U.S.C 7332 define “patient identifying information” as the “name, address, social security number, fingerprints, photograph, or similar information by which the identity of a patient can be determined with reasonable accuracy and speed either directly or by reference to other publicly available information.”

### SHARING OF IDENTIFIABLE DATA

#### Does this law allow identifiable data to be shared?

Generally, Section 7332-protected information pertaining to education, training, treatment, rehabilitation, or research [cannot be disclosed without the consent of the individual](#). Section 7332-protected information can be disclosed without consent in a [limited number of circumstances](#), including: 1) disclosures within the VA for furnishing health care or determining eligibility; 2) disclosures to VA contractors; 3) disclosures relating to crimes on VA premises or against VA personnel; 4) [disclosures to state prescription drug monitoring programs](#); 5) [disclosures to surrogates of patients without decision-making capacity](#); 6) [disclosures for medical emergencies](#); 7) [disclosures to the Food and Drug Administration \(FDA\) to notify patients of potential dangers relating to products within the FDA’s jurisdiction](#); 7) [disclosures to procurement organizations for eye, organ and tissue donations](#); 8) [disclosures to public health authorities](#); 9) [partner notification of HIV infection](#); 10) [disclosures for research](#); and 11) [disclosures for audit and evaluation activities](#).

### Among who?

Section 7332-protected information can be disclosed without consent to the following individuals or entities under the conditions prescribed by law: 1) VA and Department of Defense personnel; 2) medical personnel; 3) qualified personnel for conducting scientific research, audits or evaluations; 5) a public health authority; 6) To a court of competent jurisdiction pursuant to a Court Order; 7) a spouse or sexual partner of a patient with HIV; 8) a state prescription drug monitoring program; 8) the next of kin of the deceased individual; 9) procurement organizations; and 10) the individual or surrogate.

### What are the prerequisites and conditions?

A disclosure of Section 7332-protected information is limited to [only the information necessary for the disclosure's purpose](#). The law's protections against disclosure apply to [third-party health payers](#) and [others that receive Section 7332-protected information pursuant to a consent](#). A written consent for the disclosure of Section 7332-protected information must contain certain [required elements](#). Individual patients or subjects must not be identified in reports of [research, audits, or evaluations](#) using Section 7332-protected information. A written request is required for [disclosures to public health authorities](#), and public health authorities are prohibited for re-disclosing Section 7332-protected information for additional purposes. Disclosures made during emergencies [must be documented in writing](#). A VA health facility must have a [signed agreement](#) with a procurement organization and confirm that the organization is certified with the US Department of Health and Human Services prior to disclosing Section 7332-protected information. HIV infection status information cannot be disclosed to a spouse or sexual partner [unless there is a reasonable belief that the patient will not provide the information and that the disclosure is necessary to protect the health of the spouse or sexual partner](#).

## SHARING OF DE-IDENTIFIED DATA

### Does this law allow de-identified information to be shared?

The Section 7332 disclosure protections relate to [disclosures of patient-identifying information or information about an identified patient](#). [VA guidance](#) clearly states that non-identifiable or de-identified information is not protected by Section 7332.

### Does this law define de-identification or standards to render the data de-identified?

[VA guidance](#) defines "non-identifiable information" as information "from which all unique identifiers have been removed." The guidance clearly states that non-identifiable information or information de-identified under the [HIPAA standards](#) is not protected by Section 7332.

## DATA SHARING IMPLICATIONS FOR PUBLIC HEALTH

### Does this law support data sharing to improve the health of communities?

The Section 7332 confidentiality provisions permit the VA to disclose Section 7332-protected data in several ways that could improve community health, including disclosures for public health reporting, partner notification of HIV status, research, program evaluation, prescription drug monitoring, and prevention of injuries from dangerous products.

### How does this law hinder data sharing to improve the health of communities?

Section 7332 contains confidentiality protections that [apply simultaneously with five other legal frameworks, including HIPAA and the VA Claims Confidentiality Statute](#). Consequently, Section 7332 adds both stringency and complexity to existing data protections. Section 7332 also contains restrictions on re-disclosure of Section

7332-protected information disclosed for certain purposes, including public health reporting research, audits, and evaluations. These re-disclosure restrictions limit secondary uses of Section 7332-protected data that could benefit public health objectives.

**Does this law establish prerequisites, conditions, or limitations for data sharing, not previously identified?**

Section 7332-protected information [cannot be used to support criminal investigations of the individual](#). [Research activities](#) using Section 7332-protected information must have a complaint protocol that is approved by an independent group. Individuals receiving Section 7332-protected information for [audits and evaluations](#) must agree in writing to certain practices for use, security, record destruction, and re-disclosure restrictions. The regulations contain specific [requirements relating to minors that vary depending on state law requirements](#).

**What other terms apply to sharing this data?**

[VA guidance](#) identifies six federal laws that are relevant to the disclosure of VA data: The Freedom of Information Act (FOIA), The Privacy Act, The VA Claims Confidentiality Statute, Confidentiality of Drug Abuse, Alcoholism and Alcohol Abuse, Human Immunodeficiency Virus (HIV) Infection, and Sickle Cell Anemia Health Records, HIPAA, and Confidentiality of Medical Quality Assurance Review Records. These six laws are applied simultaneously to disclosures involving VA records. For discretionary disclosures, the VA will not release identifiable information unless the disclosure is in the best interest of VA or individual. The law contains [penalty provisions](#) for violations of Section 7332 and its related regulations. VA facilities must also comply with specific security requirements and adopt written procedures relating to access and use of Section 7332-protected information.

**What remedies or solutions might be employed to support data sharing while complying with this law?**

[VA guidance](#) permits public health authorities to submit standing requests for routine public health reporting data. This permits public health authorities to use a single request for routine reporting data concerning specified diseases for up to three years. The VA utilizes an opt-in health information exchange. Veterans who want their health data shared between their health care providers using the VA health information exchange must complete an [authorization form](#).

**What ethical considerations apply to the exercise of discretion to share data under this law?**

VA records contain information from individuals who are, or were, in the armed forces. The military chain of command can potentially affect an individual's ability to make truly voluntary and uncoerced decisions. Additionally, Section 7332-protected information is generally considered highly sensitive information and inappropriately disclosures could be particularly harmful to individuals.

Additional federal guidance on the confidentiality of VA data can be found [here](#).

**SUPPORTERS**



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**This document was developed by Cason Schmit, Research Assistant Professor, Texas A&M University and reviewed by Jennifer Bernstein, Deputy Director, Mid-States Region of The Network for Public Health Law. The Network for Public Health Law provides information and technical assistance on issues related to public health. The legal information and assistance provided in this document does not constitute legal advice or legal representation. For legal advice, please consult specific legal counsel.**