

March 17, 2015

**OFFICIAL OPINION 2015-3**

Jerome Adams, M.D., M.P.H.  
State Health Commissioner  
Indiana State Department of Health  
2 N. Meridian St.  
Indianapolis, IN 46204

**RE: Indiana Death Registration System (IDRS)**

Dear Dr. Adams:

You requested the Office of the Attorney General review the following issue:

May the Indiana State Department of Health (ISDH) continue to permit local health departments (LHDs) to access, use, and disclose (under the appropriate circumstances) death certificate information that is maintained by the ISDH in its electronic Indiana Death Registration System (IDRS)?

**BRIEF ANSWER**

Under the current statutes governing the IDRS, the ISDH may continue to permit LHDs to access, use and disclose, when appropriate, death certificate information that is maintained by ISDH in the IDRS under Ind. Code § 16-37-1-10(a)(1). Under Ind. Code § 16-37-1-10(a)(1), the ISDH may allow access to an “applicant,” including an LDH, that has a direct interest in the information maintained, especially where access to such information is necessary for the LDH to comply with state law, specifically, the obligation to disclose information reported by the LDH to the IDRS under Ind. Code § 16-37-1-3.1.

**ANALYSIS**

Since 2011, LHDs have been required to use the IDRS as an electronic means of reporting death information under IND. CODE § 16-37-1-3.1(c). Since that time, the ISDH has allowed LHDs to access, use, and disclose death certificate information maintained in the IDRS. LHDs have specific, real-time access to the database in order to generate paper death certificates on demand. Most LHDs, despite having a statutory obligation to maintain this information at the local level,<sup>1</sup> do not keep separate systems or copies of death records that have been uploaded to the IDRS by local reporting persons (such as funeral directors, physicians, coroners, etc.) under Ind. Code § 16-37-1-3.1(e).

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<sup>1</sup> Ind. Code §16-37-3-3(a).

Access to records of vital statistics<sup>2</sup> maintained by the ISDH is restricted to certain requestors and for certain purposes by statute. The ISDH may only disclose death certificate information as set forth in Ind. Code § 16-37-1-10(a), which provides in relevant part:

...Data contained in the records and files [of the ISDH concerning vital statistics] may be disclosed only as follows:

- (1) The state registrar shall permit inspection of the records or issue a certified copy of a certificate or part of a certificate only if the state registrar is satisfied of the following:
  - (A) That the applicant has a *direct interest* in the matter recorded.
  - (B) That the information is necessary for the determination of personal or property rights or *for compliance with state or federal law*.The state registrar's decision is subject to review by the state department or a court under this section.
- (2) The [ISDH] may permit the use of data contained in vital statistical records for research purposes only, but no identifying use may be made of the data.
- (3) In any extraordinary case that the state registrar determines is a *direct tangible and legitimate public interest* (emphasis added).

The ISDH must be satisfied that the request fits within one of the exceptions outlined above in order to disclose death certificate information. LHDs, however, are required to disclose certain death certificate information upon request, regardless of who has requested it. On October 7, 2014, the Indiana Supreme Court held that the information entered into the IDRS by local reporting persons under Ind. Code § 16-37-3-3 and Ind. Code § 16-37-1-3.1, including cause of death information, is subject to disclosure by the LHDs upon request under the Indiana Access to Public Records Act ("APRA"), Ind. Code Chpt. 5-14-3. *Evansville Courier & Press v. Vanderburgh County Health Dept.*, 17 N.E.3d 922, 929-30 (Ind. 2014).

As noted above, the ISDH may only disclose death certificate information as set forth in Ind. Code § 16-37-1-10(a). The information maintained on the IDRS by the ISDH is currently also available to the LHDs for use; however, the LHDs have different obligations with respect to disclosure than the ISDH. You have asked whether the ISDH may legally continue to share the information stored in the IDRS with the LHDs given these differences in disclosure requirements.

In your request, you outlined possible alternatives under the current language of Ind. Code § 16-37-1-10(a) and the current configuration of the IDRS to allow LHDs to continue to access the information that is required to be disclosed at the county level once that information has been transferred into the IDRS. You first suggested that the ISDH could interpret Ind. Code § 16-37-1-10(a) as not applying to LHDs, such that the direct interest determination would not have to be made. Governmental entities, such as the LHDs, are considered "persons" for the purposes of Title 16 of the Indiana Code. Ind. Code §16-18-2-274. In our opinion it is not advisable to treat or to define LHDs differently in this circumstance as this interpretation may place the ISDH in a difficult position in one of the many other programs or areas it administers.

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<sup>2</sup> "Vital statistics" include "[f]actual data concerning...deaths, and...relevant personal, medical and social data," as well as the "registration, preparation, transcription, collection, compilation, and preservation of such data." See Ind. Code § 16-18-2-366.

You also noted that the ISDH could rely upon Ind. Code § 16-37-1-10(a)(3), which would allow disclosure by the ISDH in “any extraordinary case that the state registrar determines is a direct tangible and legitimate public interest.” The disclosure of information reported under Ind. Code § 16-37-1-3.1 and required to be maintained by the LHDs under Ind. Code § 16-37-3-3 is not an extraordinary case or matter, but rather a routine function of the LHDs. To characterize this as something that can be determined as extraordinary does not appear consistent with the intent of this subsection—to allow for disclosure when there is a legitimate public interest in doing so that is not otherwise contemplated by the law. In this case, disclosure by the LHDs of the information reported under Ind. Code § 16-37-1-3.1 is required and would not be extraordinary.

The other option you proposed under Ind. Code § 16-37-1-10(a) would be to consider an LHD as an “applicant” with a direct interest in the information stored in the IDRS and then provide that information as necessary for the LHD to comply with state law. This may be the most viable option for the ISDH and the LHDs. Under IND. CODE § 16-37-1-10(a)(1), there must be, *inter alia*, an applicant with a direct interest who needs the information for purposes of complying with state law. The ISDH administrative rules governing the vital records program has defined “applicant,” in relevant part, as “the person making application to obtain a . . . death certificate.” 410 IAC 18-0.5-3. While the LHDs are not seeking a certified record of death from the ISDH, the information that was submitted by the local officials under IND. CODE § 16-37-1-3.1 has been intermingled with information that forms the basis for the death certificates issued by the ISDH, as noted in the recent Supreme Court decision.

Under Ind. Code § 16-37-1-10(a)(1), the applicant must also have a direct interest in the matter. There is no statutory definition of “direct interest,” but the ISDH, again through its administrative rules, has interpreted this phrase to include disclosure to “[o]ther applicants at the discretion of the state registrar,” which in this case, could include LHDs for the purpose of disclosure required by statute. 410 IAC 18-4-1(7).

Finally, Ind. Code § 16-37-1-10(a)(1) also requires that the information requested for disclosure must be, *inter alia*, for the purpose of determining property rights or to comply with state law. The statutory requirements for disclosure of information by the LHDs under Ind. Code § 16-37-3-3, as confirmed by the Supreme Court in *Evansville Courier & Press v. Vanderburgh County Health Department*, is the state law that is the basis for disclosure from the IDRS by the ISDH to the LHDs. For these reasons, the ISDH, under its current statutes and rules, may disclose information under Ind. Code § 16-37-1-10(a)(1) from the IDRS to the LHDs in order to allow the LHDs to meet their legal obligation to make information reported under Ind. Code § 16-37-1-3.1 available for public disclosure under Ind. Code § 16-37-3-3.

Ideally, LHDs should maintain the information reported under IND. CODE § 16-37-3-3 at the local level. The IDRS provides a valuable system for maintaining information regarding records of vital statistics for Indiana. The ISDH is working to find a solution to this issue with the use of the IDRS by the LHDs. If there is a way the IDRS can be modified to assist LHDs in accessing the information submitted within their counties under Ind. Code § 16-37-3-3 without compromising the information of the ISDH or other counties, the ISDH may wish to consider this option as well.

## **CONCLUSION**

Under the current statutes governing the IDRS, the ISDH may continue to permit LHDs to access, use and disclose, when appropriate, death certificate information that is maintained by ISDH in the IDRS under Ind. Code § 16-37-1-10(a)(1).

Sincerely,

Gregory F. Zoeller  
Attorney General

Anne Mullin O'Connor  
Deputy Attorney General