

**Data Use Agreement**  
**Between**  
**Texas Department of State Health Services**  
**And**  
**Centers for Disease Control and Prevention (“CDC”), National Healthcare Safety Network (“NHSN”)**

The Texas Department of State Health Services (DSHS) and CDC/NHSN enter into this Data Use Agreement (the “Agreement”) effective 11 / 13 / 2018 (“Effective Date”). CDC/NHSN and the DSHS shall be referred to individually as a “Party,” or collectively as the “Parties.”

This Agreement establishes a formal data access and data use relationship between CDC/NHSN and the DSHS. This Agreement covers individual- and institution-identifiable data, received by the CDC/NHSN subject to the Federal Privacy Act, 5 USC §§552 and 552a, from the NHSN Patient Safety Component, Healthcare Personnel Safety Component, and Dialysis Component as listed in the attached document that have been voluntarily submitted to NHSN by healthcare institutions in Texas and for which there is **no** State or applicable local mandate for reporting of such individual- or institution-identifiable data (“COVERED DATA”). However, COVERED DATA shall NOT include data pertaining to federal or tribal healthcare institutions.

The Parties shall abide by all applicable Federal and State laws, rules, and regulations including, without limitation, all patient confidentiality and medical record requirements and any applicable Institutional Review Board (“IRB”) requirements.

**STATE’S OR MUNICIPALITY’S USES OF COVERED DATA**

DSHS agrees to use the COVERED DATA for surveillance and/or prevention purposes only (e.g., evaluating the impact of a targeted program to reduce central line-associated bloodstream infections). DSHS specifically agrees not to use the COVERED DATA obtained under this data use agreement for purpose of public reporting of institution-specific data or any regulatory or punitive actions against healthcare institutions, such as a fine or licensure action. The Parties acknowledge that COVERED DATA is limited to those data specified in the attached document, which identifies the complete set of data items, e.g., facility survey data, central line associated bloodstream infection numerator data, that DSHS will have access to as a result of this Agreement.

DSHS agrees to designate an NHSN Group Administrator and CDC/NHSN agrees to grant the State’s designated NHSN Group Administrator access to the State’s COVERED DATA. In the event that the NHSN Group Administrator leaves that role prior to assigning a replacement via the NHSN application, CDC/NHSN requires notification in writing on official letterhead from the signatory or the signatory’s successor to assure continuity.

- The designated NHSN Group Administrator for DSHS is Emily Engelhardt, Public Health and Prevention Specialist, Emily.Engelhardt@dshs.texas.gov, Austin, Texas.

DSHS agrees that access to individual- and institution-identifiable data provided under the terms of the Agreement will be limited solely to department staff or contractors who are explicitly authorized to use those data for surveillance and/or prevention purposes only.

## DATA PROTECTIONS

CDC's legal authorities to obtain COVERED DATA from healthcare institutions are 42 U.S.C. section 241(a) (Public Health Service Act section 301(a)), pertaining to CDC's broad public health authority to conduct research and investigations, and 42 U.S.C. section 242k (Public Health Service Act section 306), pertaining to the collection of statistical data. CDC's authority to keep the COVERED DATA confidential (i.e., protected from an unauthorized release) is 42 U.S.C. section 242m (Public Health Service Act section 308(d)) and the Federal Privacy Act, 5 USC §§552 and 552a.

DSHS acknowledges that Federal statutes, including 18 U.S.C. section 1001 (providing penalties for making false statements to the Government of the United States), may be implicated if the State does not protect the COVERED DATA from release pursuant to this Agreement.

DSHS acknowledges that it will be the custodian of COVERED DATA stored in its data files and, as such, will be responsible for establishing and maintaining appropriate administrative, technical, and physical safeguards to prevent unauthorized access to or use of these files, for example, security awareness training and signed rules of behavior for all persons who have access to COVERED DATA, strong passwords and auditing for all access to COVERED DATA, approved encryption of COVERED DATA stored digitally.

The State or municipality will use the following safeguards to protect COVERED DATA stored in its data files:

Texas Health and Safety Code Chapter 98 related in reporting of Healthcare Associated Infections data stipulates in Sec. 98.109 (CONFIDENTIALITY; PRIVILEGE)

“(a)...all information and materials obtained or compiled or reported by the department under this chapter or compiled or reported by a health care facility under this chapter, and all related information and materials, are confidential and:

(1) are not subject to disclosure under Chapter 552, Government Code, or discovery, subpoena, or other means of legal compulsion for release to any person; and

(2) may not be admitted as evidence or otherwise disclosed in any civil, criminal, or administrative proceeding.

(b) The confidentiality protections under Subsection (a) apply without regard to whether the information or materials are obtained from or compiled or reported by a health care facility or an entity that has an ownership or management interest in a facility.

(b-1) A state employee or officer may not be examined in a civil, criminal, or special proceeding, or any other proceeding, regarding the existence or contents of information or materials obtained, compiled, or reported by the department under this chapter.

(c) The transfer of information or materials under this chapter is not a waiver of a privilege or protection granted under law.

(d) The provisions of this section regarding the confidentiality of information or materials compiled or reported by a health care facility in compliance with or as authorized under this chapter do not restrict access, to the extent authorized by law, by the patient or the patient's legally authorized representative to records of the patient's medical diagnosis or treatment or to other primary health records.

(e) A department summary or disclosure may not contain information identifying a patient, employee, contractor, volunteer, consultant, health care professional, student, or trainee in connection with a specific incident.”

DSHS specifically agrees that, to the extent permitted by local, State and federal law, it will not release COVERED DATA requested under a State's or municipality's open records laws; to media; for litigation purposes; that is proprietary and if disclosed could cause competitive harm; or to anyone other than department staff or contractors who are explicitly authorized to use those data for surveillance and/or prevention purposes only.

The following federal, State or municipal statutes, regulations, or policies provide additional safeguards that protect against the release of COVERED DATA:

**Statutes:**

- Texas Health & Safety Code Chapter 181 – Texas Medical Records Privacy Act
- Texas Business Commerce Code Chapter 521 – Texas Identity Theft Enforcement and Protection Act.
- Texas Health & Safety Code Chapter 81
- Texas Health & Safety Code Chapter 161
- Health Insurance Portability and Accountability Act (HIPAA) of 1996

**Internal Policies and Guidelines:**

- Health and Human Services (HHS) Human Resources (HR) Work Rules in the HHS HR Manual
- HHS Information Security Controls
- HHS Enterprise Information Security Acceptable Use Policy (EIS-AUP)
- HHS Acceptable Use Agreement (AUA)

DSHS agrees to inform CDC/NHSN in advance of any forthcoming changes to State or municipal law(s) that will reduce legal safeguards that protect against release of COVERED DATA. DSHS acknowledges that CDC/NHSN may terminate the Agreement as a result of this information.

**PROVISION AND MANAGEMENT OF THE DATA**

DSHS acknowledges that its access to COVERED DATA will be for adverse healthcare events and/or processes of care that occur subsequent to signing this agreement, specifically occurring on or after the first day of the fourth month following the signing date. COVERED DATA reported to NHSN for prior events or processes will not be accessible.

DSHS agrees to notify CDC in the event that DSHS is obligated or chooses to release COVERED DATA for a purpose other than surveillance and prevention.

**TERM AND TERMINATION OF AGREEMENT**

This Agreement shall be effective for a period of 5 years beginning on the Agreement Effective Date, The Agreement may be terminated before the 5-year period upon submission by either Party of written notice by Signatory or Signatory successor, in which case the Agreement shall cease 5 days after the date that CDC/NHSN submits the notice to DSHS OR 5 days after CDC/NHSN receives a notice submitted by DSHS.

In addition, upon CDC/NHSN's knowledge of a pattern or practice that constitutes a material breach of this Agreement by DSHS, CDC/NHSN may immediately and unilaterally terminate this Agreement.

CDC requires that in the absence of a conflict with State or local law DSHS must delete or otherwise destroy COVERED DATA stored in its files within one year of the conclusion of this Agreement or a successor Agreement. CDC will retain all COVERED DATA in its files.

NOW, THEREFORE, by signing below, the Parties agree that they have read, understand, and agree to the conditions set forth above:

Texas Department of State Health Services

CDC/NHSN

Signature *Sheldia Jarve*

Signature *Daniel B. P. Ucker*

**Associate Commissioner  
Texas Department of State Health Services**

**Branch Chief, Surveillance Branch  
CDC Division of Healthcare Quality  
Promotion**

Date *11/6/18*

Date *Nov 13, 2018*