

DATE: February 18, 2016
TO: WIC Program Administrators, Directors and Coordinators
FROM: Betsy Clarke, WIC Director
SUBJECT: WIC Data Privacy – Memo REVISED

I am writing today to give you information about a finding on our latest federal Management Evaluation (ME) related to the sharing of WIC private data and to request your support in complying with WIC requirements.

The United States Department of Agriculture, Food and Nutrition Service, conducted an ME of the Minnesota state WIC program during the summer and early fall of 2015.

Non-compliance with data privacy requirements was identified as a finding in one CHB related to the sharing of participant names and contact information by WIC with Child and Teen Check-up (C&TC) without first obtaining a release of information signed by the WIC participant/parent/guardian. Other local WIC agencies may be out of compliance as well.

We are aware of some differences in opinion regarding data privacy requirements among local authorities, especially regarding the sharing of WIC private data within the same department.

*We trust this federal finding resolves any lingering doubts about federal interpretation of WIC data privacy requirements. Consistent with previous guidance, WIC data (including names and contact information) **cannot be shared outside of the WIC Program without an appropriate release of information.***

We have provided local agencies information and direction on WIC data privacy requirements on several occasions. To summarize these memos, we include the information below.

What are WIC Data?

WIC data are applicant and participant information, whether obtained from the applicant or participant, another source, or generated as a result of WIC application, certification, or participation. Private WIC data are any information that individually identifies an applicant or participant and/or family member(s). These private data include, but are not limited to, the name of an applicant or participant, address, telephone number, health data for the individual and the fact that they have applied for and/or are participating in WIC.

Summary data, such as numeric data that do not identify individuals, are not private data.

WIC Data are Private Data

Federal WIC Regulations specify that WIC data are confidential/private. State agencies must restrict the use and disclosure of WIC data to persons *directly connected* with the administration or enforcement of the WIC Program who the State agency determines have a need to know *for WIC Program purposes*.

Disclosure of private WIC data for any purpose other than in the case of mandatory reporting of child abuse or neglect or in response to a court order **requires a signed release** from the participant or legal guardian, in the case of a child. The use and protection of WIC data are subject to the [Federal Regulations](#) (7 CFR 246.26), the [MN Data Practices Act](#) and the MN state WIC policy in the [MN Operations Manual](#). The MN Operations Manual also provides a [sample release form](#) that meets WIC requirements.

Other Use of WIC Data

A participant's consent **must be obtained** in order to release these WIC data *to any third party, other programs and health providers* (e.g., public health, human services, physician, etc.). This is true *even when the information being released is within the same grantee agency*.

What WIC Data are Not

WIC is **exempt from HIPAA**, and so is *not* a Covered Entity under the HIPAA law. Local WIC agencies may be HIPAA covered entities, and some programs operated within the local agency may also be covered entities, *but WIC is not a covered HIPAA entity*.

WIC data include health data, but WIC data are *not* a Health Record under the Minnesota Health Records Act. This also means that WIC data are not subject to the Minnesota 2015 Interoperable Electronic Health Record (EHR) Mandate. WIC data are *not* part of 'medical information' included in the [MN Health Care Programs Notice of Privacy Practices](#). WIC data may *not* be released to agencies listed on these notices without written consent of the participant, except as required by law.

Commissioner Agreement

There is a provision in the federal rules that allows states to set up an agreement to release certain private WIC data under certain circumstances. The federal regulation requires the Minnesota Commissioner of Health to agree with the exchange and to set the scope and policy, in compliance with certain federal requirements including a limited number of rationales for the data exchange, assurance against further release of the data, federal plan approval and submission of a change to the state plan.

We know there is interest in such an agreement. Please be aware that any potential agreement would require a significant amount of time to plan, obtain approvals at many levels and to implement in a wide variety of settings not currently able to fully protect against further re-disclosure of private WIC data. While such an agreement may be a long term solution, **compliance with data privacy requirements cannot be delayed for an agreement to be in place**.

Summary

We are requesting your direction to local WIC staff to meet the federal/MDH requirements for WIC data privacy as listed above. The WIC grant agreement requires such compliance. If you have questions, please feel free to contact me or your WIC regional consultant.

Thanks for your understanding and support!