

Issue Brief

State and Territorial Contact Tracing Legislation

July 2, 2020

OVERVIEW

As the spread of COVID-19 continues across much of the country and community mitigation measures are relaxed, the ability to identify those who are infected with and exposed to COVID-19 through contact tracing is increasingly important. While contact tracing is an established public health function used for decades in the prevention and control of tuberculosis, HIV, and sexually transmitted infections, the scale and speed at which the work needs to be carried out for COVID-19 is unprecedented. With state and territorial health departments rapidly expanding their capacity to conduct contact tracing for COVID-19, their legislative counterparts are starting to consider and enact policies addressing several aspects of this core public health practice.

In early June, Kansas enacted comprehensive COVID-19 contact tracing legislation ([HB 2016](#)). The new law directs the state's secretary of health and environment to adopt rules setting out contact tracer qualifications and training requirements as well as regulations for the data that may be collected. Contract tracers are deemed state or local employees and granted immunity protections as provided by state law. The collected data may only be used for contact tracing purposes and must also be destroyed when no longer necessary. Also, disclosure of an infected person's identity is explicitly prohibited, and the law makes clear that participation in contact tracing is voluntary. In other states, contact tracing bills are not as comprehensive, but focus on specific issues such as:

- Privacy and confidentiality.
- The composition of and legal protections for the contact tracing workforce.
- Voluntary participation in contact tracing.
- Technology and emerging digital solutions to facilitate contact tracing.

PRIVACY AND CONFIDENTIALITY

Safeguarding the identity and privacy of those contacted by contact tracers can build and maintain the trust of the public. A bill in Minnesota, [SF 4500](#) (*sine die, failed*¹), sought to establish a COVID-19 testing and contact tracing bill of rights and classify the information collected by contract tracing as data subject to the state's privacy laws. A New Jersey bill, [A 4170](#) (*introduced, reported favorably out of committee*), would limit the use of contract tracing data to contact tracing purposes and require the collected data to be deleted no later than 30 days after it is received. If any data is shared with third parties, the name of the third party must be disclosed and published online. The bill would also make third party misuse of the data unlawful.

Several bills related to the privacy and confidentiality of contact tracing data have been introduced in New York. Companion bills [A10500](#) and [S8450A](#) (*introduced, in committee*) would require that all information collected by COVID-19 contact tracers remain confidential and inaccessible to law enforcement without a court order. Disclosure of information would be allowed to healthcare providers,

¹ The legislature adjourned before passage of the bill.

for documentation needed for sick leave based on an isolation or quarantine order, for third-party reimbursement for healthcare services, and in certain court proceedings. Another New York bill [A10462](#) (*introduced, in committee*) would establish enhanced privacy protections for contact tracing data and grant individuals continued control over their information after its collected. Finally, New York bill [S8327](#) (*introduced, in committee*) would make it unlawful to knowingly disseminate contact tracing information to an unauthorized person.

WORKFORCE

Building an effective and reliable contact tracing workforce will ensure the work is done well. In Minnesota the legislature considered a bill ([HF 4579](#), *sine die, failed*) that would prohibit employers from firing or retaliating against furloughed employees who conduct contact tracing. While it failed to become law, this kind measure could ensure that those who temporarily enter the contact tracing workforce remain economically secure.

With [evidence](#) showing the disparate impact of COVID-19 on minority communities, having a contact tracer workforce that is trusted by and familiar with these communities can help to break through cultural and language barriers that often lead to health disparities. To this end, New York passed a new law ([A10447](#) and [S8362](#)) requiring contact tracers hired within New York City to be representative of the cultural and linguistic diversity of the community in which they will work. Similar bills for contact tracers hired within Suffolk and Nassau County are pending (NY [A10567](#) and [S8476](#), *introduced, in committee*). In Iowa, a bill amendment ([H 8322](#)) requiring that newly hired case investigators and contact tracers meet the cultural and linguistic needs of the populations they serve was filed then withdrawn. The District of Columbia is also drawing from its communities by requiring the district's department of health to set a goal of hiring 50% district residents for contact tracing positions and 25% graduates from district-funded workforce development or adult education programs for case investigator positions ([B 23-0757](#)).

PARTICIPATION IN CONTACT TRACING

While participation in contact tracing remains voluntary, some legislative proposals seek to make explicit that no one can be compelled to participate. In Louisiana, a provision in an appropriations bill ([HB1](#), *passed first chamber*) would prohibit the department of health from using contact tracing funds if participation by individuals or businesses is mandatory. A Minnesota bill ([HF 4665](#), *sine die, failed*) sought to limit the state health department's ability to require participation in contact tracing, and in Ohio, a set of bills ([HB 61](#) and [SB 31](#), *passed first chambers*) would declare contact tracing voluntary and not require an individual's compliance. The bill would also require the acquisition of consent from each individual contacted.

While not a piece of legislation, Rhode Island's health department recently adopted [rules](#) requiring businesses and other establishments that wish to reopen or remain open to cooperate with the department in testing, contact tracing, and disease investigation. The rules also require the development of written operation plans that designate a point of contact to work with the state health department on testing, contact tracing, and disease investigation.

TECHNOLOGY

Legislatures are also considering bills to address the use of technology and emerging digital solutions that, while often referred to as contact tracing, are more akin to exposure notification. Sometimes referred to as digital contact tracing or proximity sensing, "exposure notification" is a term that refers to

technology products that support the otherwise manual tasks involved in both contact elicitation (traditionally collected during a case interview) and contact notification. Information such as broadcasted Bluetooth pings or ultrasound is shared between mobile devices. When information is shared, devices log it as a “contact” given the close physical proximity between the devices. If someone installs an exposure notification app on his or her mobile device and is diagnosed with COVID-19, the logged contacts can be used to communicate with other app users about their potential exposure. Examples of exposure notification tools include the Apple/Google application programming interface, the Care19 app developed by ProudCrowd, and Dimagi’s CommCare platform.

In California, [AB 660](#) (*introduced, in committee*) would require that exposure notification app developers contracted by the state inform users of the authorized purposes of the app and collected data. Another California bill, [AB 1782](#) (*introduced, in committee*), would require public health entities and businesses offering exposure notification services to allow users to revoke consent for the collection, use, maintenance, or disclosure of the user’s information. A business that provides the services but is not affiliated with a public health entity would be required to disclose its non-affiliation. The bill would also require the encryption of data collected by the contact tracing technology, limit the use of the data as well as the amount of time the data can be maintained, and require reported exposures be verified by a healthcare provider before notifying logged contacts of their potential exposure.

Companion bills in New York ([A10583-A](#) and [S8448B](#), *introduced, in committee*) would establish requirements for the collection and use of emergency health data and the use of technology for collecting data during the COVID-19 emergency. The bill requires the disclosure of certain information to those who install and use data collecting apps on mobile devices. This includes information about the right to opt-in, the right to privacy, the app’s privacy policy, time limitations for maintaining the data, and the individual’s right to access the data. The bill would also allow individuals to sue for violations of the law.

Finally, a bill in Minnesota ([HF 164](#), *introduced, in committee*) would authorize the state’s health commissioner to establish an exposure notification type system but prohibit the mandatory use of the system or collection of location data. The bill would also prohibit employers from requiring employees to install an exposure notification application on their mobile devices or use location information for determining an employee’s risk of exposure to a communicable disease.

State and territorial health agencies play a key role in creating and maintain the contact tracing functions needed to contain COVID-19. As legislatures seek to address issues related to contact tracing, it is important for ASTHO members to remain informed about the potential impacts of these activities. To this end, ASTHO will continue to track legislative activity on this important public health issue.

For questions, feedback, or follow-up questions, please email preparedness@astho.org.