

RESOLUTION
ROCK COUNTY BOARD OF SUPERVISORS

Supervisor Ronald Bomkamp
INITIATED BY



Supervisor Ronald Bomkamp
DRAFTED BY

SUBMITTED BY

April 20, 2020
DATE DRAFTED

ENCOURAGING THE ROCK COUNTY PUBLIC HEALTH DEPARTMENT TO SHARE THE ADDRESS OF ALL POSITIVE CIVID-19 TESTS WITH LOCAL GOVERNMENT AGENCIES

1 **WHEREAS**, the spread of COVID-19 across Wisconsin and Rock County represents a substantial threat
2 to the public health and the citizens of Rock County; and,

3
4 **WHEREAS**, first responders, who are on the front lines of dealing with the COVID-19 public health
5 emergency, are particularly vulnerable to exposure; and,

6
7 **WHEREAS**, the Rock County Public Health Department has refused to share the address of known
8 positives with any other government agency besides the Rock County 911 Communications Center; and,

9
10 **WHEREAS**, often the government agencies have resources that are available for private businesses, but
11 the businesses are not aware of the resources; and,

12
13 **WHEREAS**, sharing these addresses with local governments would allow local government agencies to
14 engage in emergency planning to identify and plan around hot spots, better address first responder safety,
15 and work with facilities to craft emergency plans that keep their residents and first responders safe; and

16
17 **WHEREAS**, the Public Health Officer has already released this information to the 911 center, so the
18 information is already available, and it can be shared easily with other agencies that need the information
19 to be prepared for any future emergencies.

20
21 **NOW, THEREFORE, BE IT RESOLVED** that the Rock County Board of Supervisors duly assembled
22 this 14th day of May, 2020 does hereby resolve that it is the wishes of the Board of
23 Supervisors that the Rock County Public Health Officer release the addresses of all positive COVID-19
24 test results to government agencies in Rock County that makes such a request.

25
26 ~~**BE IT FURTHER RESOLVED** that if the Public Health Officer continues to refuse to share this~~
27 ~~information with local government agencies, then the Rock County Board of Supervisors recommends that~~
28 ~~the County Administrator release the Public Health Officer from her duties.~~

Respectfully submitted,

PUBLIC SAFETY & JUSTICE COMMITTEE

Dissent
Mary Beaver, Chair

vacant
Vacant, Vice Chair

1s/Ron Bomkamp
Ron Bomkamp

Dissent
Brian Knudson

vacant
Vacant

BOARD OF HEALTH

Louis Peer, Chair

Dr. Connie Winter, Vice Chair

Dave Homan

Eric Gresens

Dr. Kaitlyn Meyers

Danette Rynes

Dr. Vijaya Somaraju

Deb Kolste

Vacant

FISCAL NOTE:

No fiscal impact.

/s/ Sherry Oja

Sherry Oja
Finance Director

LEGAL NOTE:

The County Board is authorized to take this action pursuant to secs. 59.01 & 59.51, Wis. Stats. However, adoption of this resolution will not legally compel disclosure of information to local government agencies, or the dismissal of the public health officer if such disclosure were to not occur.

HIPAA places the discretion to release Protected Health Information ("PHI") with the health professional who is in custody of that information. Protected Health Information can include information that does not disclose the name of a patient. For instance, a patient's residential address, phone number, birth date, social security number, and even the dates of medical procedures or diagnostics can be considered PHI even when released without the name of the patient. Pursuant to HIPAA's Privacy Rule, PHI may not be disclosed by a health professional without the informed consent of a patient, unless the disclosure meets one of the enumerated exceptions to the requirement for informed consent. HIPAA does allow for the disclosure of PHI without informed consent of the patient when the disclosure is necessary to prevent or lessen a serious and imminent threat to the health and safety of a person or the public. Any information shared under this exception to needing informed consent must be limited to only the minimum information necessary to satisfy the particular purpose for which the information is being shared. HIPAA delegates the decision whether an exception is met, and to what extent disclosing information meets the minimum necessary standard to the health professional who is custody of the information. Neither the Rock County Board of Supervisors, nor the County Administrator, has the legal authority to substitute its judgment for that of Public Health Officer's and compel the Public Officer to disclose PHI.

Additionally, because the Board does not supervise the public health officer the Board does not have the power to remove the public health officer. Department heads are appointed and supervised by the County Administrator. See Wis. Stat. § 59.14(2)(c). While a department head's appointment must be confirmed by the County Board, the department head serves at the pleasure of the county administrator and the County Board does not have any supervisory authority over the department head. *Id.* (" Any department head appointed by a county administrator under this paragraph may be removed at the pleasure of the county administrator.") The legislature has vested the removal power solely in the county administrator.

Accordingly, if the County Board of Supervisors were to adopt this resolution, it would be in an advisory capacity only.

/s/ Richard Greenlee

Richard Greenlee
Corporation Counsel

ADMINISTRATIVE NOTE:

The Federal Office of Civil Rights in the Department of Health and Human Services, Governor Evers, Attorney General Kaul, the Wisconsin Counties Association, and every other county in Wisconsin have determined that compliance with the "imminent threat" and "minimum necessary" provisions of HIPAA means that addresses of individuals with COVID-positive tests are to be shared only with 911 dispatch, which will then share this information with first responders on a per-call basis only. Specifically:

The Office of Civil Rights provides a directly applicable example in its COVID-19 guidance:

"A covered entity [NOTE: such as the Rock County Public Health Department]... may provide a list of the names and addresses of all individuals it knows to have tested positive, or received treatment, for COVID-19 to an EMS dispatch for use on a per-call basis.... A covered entity under this example also should not distribute compiled lists of individuals to EMS personnel, and instead should disclose only an individual's information on a per-call basis."

The Governor's Emergency Order #19 directed all counties to share addresses of individuals with COVID-positive tests with dispatch centers (I would note the Rock County Public Health Department began sharing this information with the 911 Center before the Governor's Order). The Attorney General provided guidance to accompany this Order, which read in part:

"No agencies or individuals outside of a designated dispatch center are to maintain or distribute the information obtained in conjunction with this order. This includes but not limited to daily logs, shift briefings, "BOLOs", "Hotsheets," etc."

The Wisconsin Counties Association (WCA) and its general counsel, von Briesen & Roper, provided further guidance to counties on this issue as follows:

"The Governor's Emergency Order #19 requires local health officers to report to **dispatch centers** (not directly to law enforcement or first responders) any known positive COVID-19 cases within the dispatch center's jurisdiction.... Guidance from federal agencies and Emergency Order #19 both contemplate that disclosures relating to COVID-19 be made to dispatch centers and then from the dispatch center on a per-call basis to first responders actually making contact pursuant to a dispatch call."

After speaking with the WCA and my colleagues in other counties, I am not aware of any county in the State of Wisconsin that is providing addresses of individuals who have tested positive for COVID-19 to other municipalities in the way this resolution requests. While some municipal fire/EMS agencies statewide may possess the addresses of individuals who have tested positive, it is only because those fire departments operate their own dispatch centers, which under the Governor's Order are to receive these addresses (not all counties have a countywide 911 dispatch center, nor do all counties have a countywide health department like Rock County). However, in places like Jefferson and Walworth counties where this is the case, the counties have entered into MOUs with the municipal dispatch centers to indicate that these addresses are to be used by dispatch on a per-call basis only and not shared as lists with first responders or others.

With regard to information sharing more generally, the Health Officer and I have noted from the beginning that as the number of cases increases (and consequently the likelihood of identifying any individual patient decreases), the Health Department will be able to share more information in aggregate, and it has done so. The Rock County website now includes cases by zip code, census tract, age group, gender, race, and ethnicity, as well as the number of negative, probable, and recovered cases. The Health Department has recently worked with local businesses and long-term care facilities where positive cases have occurred to self-identify through joint press releases with the Health Department. Further, the recent increase in testing has resulted in a spike in positive cases, confirming the message we have been sharing all along: we all must assume that everyone in the community has been exposed to COVID-19 and take necessary precautions; it is speculated that half of all people with COVID-19 show no symptoms.

While both the Health Officer and I would acknowledge that the County's response has not been perfect due to the significant learning curve for us all, Rock County has taken actions consistent with state and federal directives and the actions of other counties throughout the state. In this context, relieving the Health Officer of her duties in the middle of the biggest public health emergency any of us will likely ever face would be detrimental to our ongoing response and to the health and safety of County residents.

/s/ Josh Smith

Josh Smith
County Administrator

EXECUTIVE SUMMARY

This resolution is to have the Public Health Officer release the requested COVID-19 information to other county agencies, which would include fire departments, police departments, and other Rock County entities that need the information for planning or protecting the workers of these agencies. HIPPA states, the information can be released, when the disclosure of Protected Health Information to first responders is necessary to prevent or lesson a serious and imminent threat to the health and safety of a person or the public. Information is not being relayed to agencies for the prevention of the spread of COVID-19. Agencies and/or first responders are not getting follow up or notification from the Health Department after being exposed to the virus. The Health Department has a list of known addresses that have a positive case. This information is already given to the 911 center.