

Summary of Stakeholder comments and OFM response to comments

Stakeholder comments	OFM response to comments
Kaiser Foundation Health Plan of the Northwest	
<p>General comments:</p> <ol style="list-style-type: none"> 1. Concerned about the scope of the data requests. Encourage the rules to expand the scope of the types of data requests beyond research projects. 2. Concerned about the confidentiality requirements as they do not believe they would work for health care operations/patient treatment settings in which HIPPA already applies. 	<ol style="list-style-type: none"> 1. The rules do not limit data requests to research projects. This is a misreading of the rules. No change needs to be made as the rules already apply to more than just research projects. 2. The data being collected is claims data, not necessarily patient treatment data. In addition, the data will not be collected with sufficient frequency nor timely for use in direct or individual case management. The confidentiality requirements are consistent with what is required by statute and the OCIO, and should work for the process and purposes for which data will be requested.
<p>Specific comments:</p> <ol style="list-style-type: none"> 1. WAC 82-75-210 (2)(ii) & (iii). Add “if applicable” to the subsections. 2. WAC 82-75-210 (2)(iv) & (v) & (e). Add “For research requests” to limit these data elements to research projects. 3. WAC 82-75-220 (2)(d)(iii) requires the data recipient to notify the lead organization of staffing changes. This is not reasonable in a health care operations/patient treatment setting because staff may change on a regular basis. We recommend that the regulation include a sentence that this subsection does not apply to data release requests for health care operations or patient treatment. 	<ol style="list-style-type: none"> 1. OFM agrees that “if applicable” should be added to subsection (iii). The requirement in (ii) for methodology will be applicable in all requests. 2. OFM does not agree that the information required in subsections (iv), (v) and (e) should only be required for research projects. There may be other data requests that are not categorized as “research” for which confidential data is requested and approved. In those instances, in order to protect the data and comply with the strict confidentiality requirements in law and OCIO standards, the requester will need to provide the information requested. 3. The data cannot be released to an organization for general patient treatment purposes. The data is released to specified persons in an organization for approved purposes. In accordance with the statute and OCIO guidance, persons who will have access to the data, must sign a confidentiality agreement if confidential information is released.

Stakeholder comments	OFM response to comments
<p>Kaiser Foundation Health Plan of the Northwest (continued)</p>	
<p>4. WAC 82-75-240 (1)(b) & (3) require confidentiality agreements to be signed. In a health care operations/patient treatment setting, this is not a reasonable requirement. Health care providers are already bound by HIPAA rules for privacy. We recommend adding language to these sections that carves out health care operations/patient treatment settings from these additional requirements that are unnecessary due to HIPAA rules.</p> <p>5. WAC 82-75-250 (2)(e), (f), & (g). We recommend that for health care operations/patient treatment settings that the requirement in (e) require the officer or authorized individual to sign on behalf of the employees instead of requiring the confidentiality agreements under (f) and (g).</p> <p>6. WAC 82-75-260 (2). We recommend that for health care operations/patient treatment settings that the requirement in (2) require the officer or authorized individual to sign on behalf of the employees.</p>	<p>4. The statute does not distinguish between types of entities. All entities that receive confidential data from the database are subject to the same requirements necessary to protect the data. OFM cannot carve out exceptions for different types of organizations – the requirements are based on the data released not who receives the data.</p> <p>5. All persons who will have access to the data must sign a confidentiality agreement acknowledging that the data is confidential and restricting its use. An officer of the person’s employer cannot sign in the employees place, as this requirement is personal to the person who has access to the data.</p> <p>6. All persons who will have access to the data must sign a confidentiality agreement acknowledging that the data is confidential and restricting its use. An officer of the person’s employer cannot sign in the employees place, as this requirement is personal to the person who has access to the data.</p>
<p>Cambia Health Solutions</p>	
<p>1. WAC 82-75-280(3). This section states that the lead organization may decline a request “if the requestor or any person other than the requestor, who will have access to the data, within the five years prior to the data request date, been subject to a state or federal regulatory action related to a data breach.” What if the lead organization itself has been subject to regulatory action related to a data breach? OFM should include language in the rulemaking to address this very real concern.</p>	<p>1. This section applies to a lead organization when acting as a requester. If the lead organization requests data, it must use the same application process. The review to determine if the data can/should be released will also be the same as for any other requester. The lead and OFM will develop procedures to deal with the process when the lead is the data requester.</p>

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<p>2. WAC 82-75-280(7). This section states that the lead organization may decline a request if proposed use of the requested data is for an unacceptable commercial use or purpose. We support this language because it would be inappropriate for a data requester to use data from suppliers to further a commercial goal. However, we remain concerned that the rule does not also have explicit language barring the lead organization from using data from suppliers to further a commercial goal. In some situations, the lead organization will be a market competitor with data suppliers. The OFM should make it clear that the lead organization may not use its position as the lead organization to use data to gain a competitive edge in the market.</p>	<p>2. The rule does not need specific language regarding the lead organization as it applies to all data requesters, including the lead organization when it acts as requester. The reasons for denial apply to a lead organization request in the same manner as any other requester. The lead and OFM will develop procedures to deal with the process when the lead is the data requester. Note: The current lead organization is not a market competitor with data suppliers.</p>
SEIU Healthcare 1199NW (SEIU)	
Supports the rules as written.	No response needed.