

Protection of Personal Information

NHFPC Promulgated Administrative Measures for Population Health Information (for Trial Implementation)

The Administrative Measures for Population Health Information (for Trial Implementation) (the “**Administrative Measures**”) was issued by the National Health and Family Planning Commission (“**NHFPC**”) on May 5, 2014 and took effect on the same day. This is the first time the Chinese government has proposed a distinguished and unified framework for the administration and protection of population health information. Compared with the draft circulated for comments in November last year which contains seven chapters and 48 clauses, the Administrative Measures is simplified into 23 clauses and with no division of chapter with more general requirements.

Definition

Population Health Information is defined under the Administrative Measures as “the basic demographic information, medical and health care services information and other population health information generated by medical, health care and family planning services agencies of all types and at all levels during the processes of providing services and carrying out management pursuant to State laws and regulations, and according to their work responsibilities”. The

Administrative Measure also provides that digital form of population health information created pursuant to law has the same legal effect with the population health information in hardcopy.

Requirements for Responsible Entities

Medical, health care and family planning services agencies of all types and at all levels (the “**Responsible Entities**”) that responsible for the collection, utilization, management and protection of population health information are required to:

- **Internal control:** set up a separate department for management of population health information with corresponding job responsibilities designed, and establish a sound quality control system.
- **Collection:** comply with the principle of “a piece of information must correspond to a unique source” and minimize information to be collected to the extent necessary.
- **Storage:** use a classified storage method, establish a reliable backup system and to achieve long-term data storage and archival management of historical data.

- **Renewal:** ensure up-to-date, continuous and valid information with timely update.
- **Access:** provide information inquiry and copying services.
- **Usage:** establish a trace management system, and apply stringent real-name identity authentication and authorization control.

Requirements for Agencies and Service Providers

An agency entrusted with storage, operation and maintenance functions are required to provide proper technical support for population health information management in accordance with the relevant entrustment agreement, and are prohibited from collecting, developing and using population health information beyond its authority.

Providers of information technology products and services for systems related to population health information are mainly required to: (a) follow the

State information security review system; (b) not to discontinue or otherwise interrupt reasonable technical support and services; and (c) make available secure and convenient conditions for the migration, interaction and sharing of population health information across different systems.

Special Requirements for Information Transfer

It is notable that the Administrative Measures specifically prohibits a Responsible Entity from storage of any population health information in overseas servers or hosting or renting overseas servers.

Our Observation

The Administrative Measures took the first step in the protection of population health information, a sensitive type of information. We would envisage that many specific and tricky issues are still remaining to be resolved and tested in practice.

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个人信息保护法律热点问题

国家卫计委颁布《人口健康信息管理办法（试行）》

2014年05月05日，国家卫生和计划生育委员会颁布《人口健康信息管理办法（试行）》（以下简称“《管理办法》”），自颁布日起生效。这是中国首次特别对个人健康信息通过单独的法律规定进行管理和保护。与2013年11月18日发布的征求意见稿相比，正式颁布的《管理办法》从七章48条变为23条且不分章，规定相对概括和原则。

人口健康信息的定义

《管理办法》对“人口健康信息”仅概括的定义为“依据国家法律法规和工作职责，各级各类医疗卫生计生服务机构在服务和管理过程中产生的人口基本信息、医疗卫生服务信息等人口健康信息”。并说明符合相关法规规定的人口健康电子信息与纸质文本具有同等法律效力。

人口健康信息保护的要求

《管理办法》规定的基本原则总结如下：

责任单位

各级各类医疗卫生计生服务机构负责人口健康信息的采集、管理、安全和隐私保护，是人口健康信息管理中的责任单位。

- **内控**：设立相应的人口健康信息管理部门和岗

位职责，建立完善的控制管理制度。

- **采集**：遵循“一数一源，最少够用”的原则。
- **保存**：分级存储。建立可靠的备份机制，实现长期保存和历史数据的归档管理。
- **更新**：及时更新与维护，确保信息处于更新、连续、有效状态。
- **查询**：提供查询和复制渠道和服务。
- **使用**：建立痕迹管理制度，实施严格的实名身份鉴别和授权控制。

受委托存储、运维机构

- 按委托协议做好技术支持，禁止超权限采集、开发和利用人口健康信息。

相关系统的信息技术产品和服务提供者

- 遵守信息安全审查制度；不得中断或者以其他方式中断合理的技术支持与服务；为人口健康信息在不同系统间的迁移、交互、共享提供安全与便利。

信息转移的要求

- 不得用境外的服务器存储人口健康信息，不得托管、租赁境外的服务器。

简评

《管理办法》相对征求意见稿更加原则、概括，例如征求意见稿中关于信息利用的部分几乎完全被删除。作为“试行”办法，《管理办法》在人口健康信息这个比较敏感的信息种类的保护上，迈出了

试探性的第一步。原则性的规定，在立法阶段可以平衡涉及多方的、很多具体的、难以处理的问题，但可以预见在实践之中，这些问题仍然亟待解决。从执行上看，《管理办法》的法律责任虽增加了卫生计生行政部门通报制度，但依然主要依靠其他法律法规予以处罚，没有规定相应的处罚措施。出台后，《管理办法》将如何执行、如何推动实践的发展值得关注。

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