

Operational Policy

Policy Title:	Individual Privacy: Permissible and Prohibited Use and Disclosure of Information		
Policy Number:	OHA-100-002		
Original Date:	07/22/2014	Last Update:	10/03/2016
Approved:	Mark Fairbanks, OHA CFO		

Purpose

This policy is one of a series that outlines Oregon Health Authority (OHA) guidelines and expectations for the necessary collection, use, and disclosure of protected information about individuals in order to provide services and benefits while maintaining reasonable safeguards to protect the privacy of their information.

Description

This policy describes the privacy rights of individuals receiving benefits and services from OHA including what personal information may or must be released; who may receive the information; and what kinds of authorization are required for release. It also describes an individual's right to request and receive OHA's Notice of Privacy Practices (NPP) and OHA's use and disclosure of personal information. All OHA staff should review privacy policies 100-002 through 100-008 to be sure they understand how these policies work together to protect individual privacy.

Applicability

This policy applies to all OHA staff including employees, volunteers, interns and agency contractors.

As keepers of the public trust, all agency employees have a responsibility to comply with state and agency policies, administrative rule, and state and federal law. The agency takes this responsibility seriously and failure to fulfill this responsibility is not treated lightly. Employees who fail to comply with state or agency policy, administrative rule, or state and federal law may face progressive discipline, up to and including dismissal from state service.

Policy

1. OHA shall make available to each individual a NPP describing the responsibility of OHA to maintain the privacy of protected health information (PHI). The NPP shall include a description that clearly informs the individual about the types of uses and disclosures of PHI OHA is permitted or required to make.
 - a. OHA shall provide all individuals in direct care settings when they first receive care an OHA NPP and request the individual's signature on form MSC 2092 or another form approved by the Privacy Officer for this purpose.
 - b. OHA shall make a revised NPP available to all individuals when a material change is made to OHA privacy practices.

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- c. A copy of the revised NPP shall be provided to all individuals in direct care settings when a material change is made to OHA privacy practices and OHA shall request each individual's signature on form MSC 2092 or another form approved by the Privacy Officer for this purpose.
 - d. Any changes to OHA privacy practices apply to information OHA already has and any information OHA receives in the future.
 - e. OHA shall post a copy of the NPP for public viewing at each OHA worksite and on the OHA website.
 - f. OHA shall give a paper copy or an electronic copy of the NPP to any person upon request.
2. OHA shall not use, disclose, or re-disclose personal information about an individual, including PHI, without a written authorization from the individual or their representative, unless otherwise required or permitted.
 3. OHA does not require the authorization of an individual for the agency to use and disclose PHI about an individual:
 - a. For use in the treatment, payment and healthcare operations of OHA or another health plan, health provider or health care clearinghouse.
 - b. As required or allowed by law, such as in relation to abuse reporting laws.
 - c. In relation to an audit or review of a provider or contractor, whether financial, quality of care or other.
 - d. When medical records or medical claims payment records or other information is required by the Secretary of State, US Department of Health and Human Services (DHHS), Medicaid Fraud Unit or the Centers for Medicare and Medicaid Services, or their representatives.
 - e. For the purposes of organ, eye or tissue donation.
 - f. When a public notice is issued about an Oregon State Hospital patient on unauthorized leave.
 - g. To avert a serious threat to the health or safety of a person.
 - h. To a law enforcement official or another officer of the court in a court case or in another legal proceeding pursuant to a court order. For these disclosures, OHA also shall maintain a copy of the court order.
 - i. To law enforcement officials or the medical examiner for the purpose of identifying a deceased person, determining cause of death, or as otherwise authorized by law.
 - j. In relation to a fleeing felon or a person for whom an arrest warrant has been issued in response to a law enforcement official's proper request for the information.
 - k. From a non-public health official to a public health official such as the reporting of disease, injury, or in connection with the conduct of a public health study or investigation.
 - l. For purposes of OHA programs that are not part of health care operations.
 - m. For the purpose of research conducted using an authorization approved by an Institutional Research Board. OHA shall maintain a copy of the research protocol.
 - n. To entities with oversight over OHA's provision of direct health care services in relation to licensing, regulation or certification by a different component of OHA, state or federal auditor, or a state or federal reviewer.
 - o. For worker's compensation purposes.
 - p. When information is disclosed upon request 25 years or more after the individual's death, as required by ORS 192.495.
 4. Members of the OHA workforce or a business associate may disclose PHI to a health oversight agency, Department of Health and Human Services (DHHS) or an attorney if they believe in good faith that:
 - a. OHA has engaged in conduct that is unlawful or violates professional or clinical standards.
 - b. The care, services, or conditions provided by OHA potentially endangers one or more individuals, employees or members of the public.

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5. An OHA workforce member who is the victim of a criminal act or a witness to criminal conduct on the premises of an OHA work site may disclose to law enforcement officials the facts and circumstances of the alleged crime, including such information as the employee believes in good faith constitutes evidence of criminal conduct that occurred.
 6. In reporting criminal conduct, OHA staff should refrain from identifying an alleged perpetrator as an OHA client or from disclosing health or other information about the alleged perpetrator that is not directly pertinent to the actions of the alleged criminal conduct.
 7. An OHA workforce member who is the victim of a criminal act may disclose to law enforcement officials limited PHI about the suspected perpetrator:
 - a. Name and address;
 - b. Date and place of birth;
 - c. Social security number;
 - d. ABO blood type and rh factor;
 - e. Type of injury;
 - f. Date and time of treatment;
 - g. Date and time of death, if applicable; and
 - h. A physical description.
 8. With authorization, OHA may disclose information to:
 - a. A family member, personal representative or other person identified as involved in the individual's healthcare. Such information will be limited to information relevant to the person's involvement with care.
 - b. Notify a family member, personal representative or other responsible person of the individual's location, general condition or death.
 - c. A disaster relief organization for the purpose of coordinating care and notification.
 9. With a properly executed data use agreement or a properly executed access agreement, OHA may provide access to agency systems or use an individual's information as permitted by and outlined in federal or state statute or rule, or agency rule or policy.
 - a. OHA may use or disclose an individual's information for research purposes.
 - b. OHA may use or disclose PHI to business associates, with satisfactory assurance, documented through a business associate agreement that the business associate will appropriately safeguard the information.
 - c. OHA may use or disclose de-identified health information or limited data sets.
 10. Except in specific circumstances, valid authorization is required for the use or release of:
 - a. Genetic information.
 - b. Alcohol and drug treatment information.
 - c. Psychotherapy notes.
 - d. PHI about an individual in response to a public record request. (Individually identifiable PHI generally shall not be disclosed in response to a public record request.)
 11. The OHA forms for individuals authorizing the release of their individual information are:
 - a. MSC 2093 – for an individual requesting his or her own records.
 - b. MSC 2099 – for an individual obtaining someone else's information with a valid signature of the individual or the individual's authorized representative.
 - c. Similar HIPAA compliant form.
 12. Members of the OHA workforce shall verify an individual's identity and the authorization to disclose information before releasing personal information, including PHI.
 - a. OHA may infer authorization if the individual is present and either agrees or does not object when given the opportunity to object based on the circumstances.
 - b. If an individual is unable to authorize or object based on absence, incapacity or emergency circumstances OHA may release information if:
 - i. The person receiving the information may be treated as the individual's authorized representative.

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- ii. OHA determines that disclosure is in the best interest of the individual and only information directly relevant to the individual's services or care is disclosed.
13. Due to the complexity of the rules regarding uses and disclosures of personal information, members of the OHA workforce are strongly encouraged to consult with the Information Security and Privacy Office regarding uses and disclosures of PHI, and interpretation and application of the Privacy and Security Rules.
14. If OHA policy conflicts with federal or state statute or rule, that statute or rule supersedes unless the OHA policy provides more protection.

Reference(s)

[ORS 192](#)
[ORS 179.505](#)
[34 CFR 361](#)
[45 CFR Part 160](#)
[45 CFR Part 164](#)
[42 U.S.C. Chapter 114](#)
[42 U.S.C. Chapter 144](#)
[Privacy/Security Glossary of Common Terms](#)

Form(s)

MSC 2090 DHS/OHA Notice of Privacy Practices
MSC 2092 Notice of Privacy Practices Acknowledgement of Receipt
[MSC 2093](#) Request for Access to Records
[MSC 2095](#) Request for Restriction of Use and Disclosures
MSC 6455 Oregon State Hospital Notice Acknowledgment

Contact(s)

Information Security and Privacy Office (ISPO)
Phone: 503-945-6812 (Security)
503-945-5780 (Privacy)
Fax: 503-947-5396
dhsinfo.security@state.or.us
dhs.privacyhelp@state.or.us

U. S. Department of Health and Human Services, Office for Civil Rights
Medical Privacy, Complaint Division
200 Independence Avenue, SW
Washington, D.C. 20201
Toll free Phone: 877-696-6775
Phone: 866-627-7748
TTY: 886-788-4989
Email: <mailto:OCRComplaint@hhs.gov>

Policy History

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To request this policy in another format or language, contact the Publications and Design Section at 503-378-3486, 711 for TTY, or email dhs-oha.publicationrequest@state.or.us

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