

## Operational Policy

<b>Policy Title:</b>	<b>Using the Minimum Necessary Standard for individual Information</b>		
<b>Policy Number:</b>	OHA-100-008		
<b>Original Date:</b>	7/22/2014	<b>Last Update:</b>	10/03/2016
<b>Approved:</b>	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 responsibility of OHA staff to maintain the privacy of an individual's protected health information by using, disclosing or requesting only the minimum amount of information necessary to complete the task for which the information is being used, disclosed or requested. 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. When using, disclosing or requesting protected health information (PHI), OHA shall use, disclose or request only the smallest amount of information needed to provide the intended services and benefits to individuals (minimum necessary standard), and only to the extent provided in federal and state statute and rule and OHA policy.
2. The minimum necessary standard does not apply to:
  - a. Disclosures made to the individual who is the subject of the PHI.
  - b. Use, disclosure or requests from a health care provider for the purpose of treating an individual.
  - c. Use, disclosure or requests made with a valid authorization such as MSC 2093 or MSC 2099 signed by the individual or the individual's authorized representative.

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- d. Uses or disclosures required by law.
  - e. Uses or disclosures required to comply with the Privacy and Security rules.
  - f. Disclosures made to the United States Department of Health and Human Services (DHHS) Office for Civil Rights (OCR) related to complaints and investigations in accordance with the HIPAA Privacy Rule.
    - i. When requests are received from OCR the OHA Privacy Officer shall be contacted.
    - ii. The OHA Privacy Officer or a designee will lead and coordinate investigations or requests from OCR.
3. When OHA receives a request for PHI, the OHA workforce member responding to the request shall first determine if the minimum necessary standard applies.
    - a. The minimum necessary standard applies to any request falling outside the exceptions in section 2 of this policy.
    - b. If the minimum necessary standard applies, the workforce member shall contact their supervisor and the OHA privacy office for direction.
  4. When the minimum necessary standard applies to a request for PHI, the OHA workforce member who received the request, that individual's supervisor and the OHA Privacy Officer or a designee shall review the request to:
    - a. Establish the legal authority for the disclosure.
    - b. Ensure the PHI requested is limited to the amount reasonably necessary to accomplish the intended purpose of the disclosure.
  5. If OHA does not agree that the amount of PHI requested is reasonably necessary to achieve the intended purpose of the request, a supervisor within the program, or a designee in consultation with the supervisor, shall contact the requestor and negotiate an agreement for the necessary amount of PHI to be released.
  6. A routine and recurring disclosure is the ongoing release of specific and agreed upon PHI, to a single and specific requester in an established schedule or interval.
  7. OHA may designate the release of an agreed amount of PHI as a routine and recurring disclosure to a specific individual requester.
    - a. OHA is not required to conduct a full review for each routine and recurring disclosure to the same requester.
    - b. The OHA workforce member making the disclosure should confirm that the type and amount of PHI disclosed is consistent with the determination made during the initial review.
  8. Release of an approved PHI data set to a requester other than the requester for whom the initial release was authorized is not a routine and recurring disclosure. These requests are new requests in accordance with section 3 of this policy.
  9. Requests for the disclosure of PHI that have not been approved as routine and recurring must be reviewed on an individual basis to determine whether the information is subject to disclosure under federal and state statute and rule, OHA policy and applicable program requirements.
  10. Disclosures of PHI that are required by law have been designated by OHA as routine and recurring uses, including:
    - a. Mandatory Medicaid reports.
    - b. Records necessary to carry out audit or oversight of OHA programs or activities when the records are requested by federal or state agencies including the Department of Health and Human Services Office of Civil Rights and the Office of the Inspector General; Center for Medicaid Services; or the State of Oregon Medicaid Fraud Unit or Secretary of State.
  11. If OHA deems it necessary or appropriate, OHA may disclose PHI as a routine and recurring use:
    - a. To the Oregon Department of Justice to obtain advice and legal services.
    - b. When the records are subject to disclosure under the Oregon public records law.
  12. OHA will not disclose an individual's entire medical record, unless the entire medical record is specifically justified as the amount reasonably necessary to accomplish the purpose of the disclosure, or the disclosure is not subject to the minimum necessary standard.

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13. When OHA requests an individual's PHI from another entity, the OHA workforce member submitting the request and their supervisor shall review the initial request to ensure the request meets the minimum necessary standard.
    - a. Professional medical staff such as social workers, medical doctors, psychiatrists and psychologists are expected to be able to make these determinations without supervisory consultation after initial training.
    - b. To determine the minimum necessary amount of PHI to request, OHA shall:
      - i. Determine the purpose of the request; and
      - ii. Identify the data elements that are reasonably necessary to fulfill the request.
    - c. OHA will not request an individual's entire medical record unless OHA can specifically justify the need for the entire medical record.
  14. Requests for an individual's PHI may be designated as routine and recurring if the request is for the release of an agreed amount of PHI from a single individual or entity on a routine or recurring basis.
  15. If OHA policy conflicts with federal or state statute or rule that statute or rule supersedes unless the OHA policy provides more protection.

## References

[45 CFR Part 160](#)  
[45 CFR Part 164](#)  
[Privacy/Security Glossary of Common Terms](#)

## Forms

[MSC 2093](#) Request for Access to Records  
MSC 2099 Authorization for Use and Disclosure of Information

## Contacts

Information Security and Privacy Office (ISPO)  
Phone: 503-945-6812 (Security)  
503-945-5780 (Privacy)  
Fax: 503-947-5396  
[dhsinfo.security@state.or.us](mailto:dhsinfo.security@state.or.us)  
[dhs.privacyhelp@state.or.us](mailto: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:OCRCComplaint@hhs.gov>

## Policy History

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