

<b>Policy Title:</b>	<b>Uses and Disclosures of Client or Participant Information</b>				
<b>Policy Number:</b>	DHS-100-003	<b>Version:</b>	2.0	<b>Effective Date:</b>	Upon Approval

Signature on File in the office of the Chief Administrative Officer

**Approved:** Jeremy Emerson, Interim CAO

**Date:** July 20, 2009

## Overview

### Purpose/Rationale:

The intent of this policy is to specify the appropriate uses of authorizations, when client or participant information cannot be used or disclosed without the individual's prior authorization, and to identify exceptions.

## Policy

### 1. General

DHS will not use, disclose, or re-disclose information about a client or participant of DHS programs or services without a written authorization from the individual or their representative, unless authorized by this policy or as otherwise authorized by program statutes or rules. This policy is also intended to define circumstances under which a signed authorization is not required.

Each DHS program may use information obtained from clients or participants for purposes of the specific program as related to program area confidentiality statutes.

- a. Examples of program area confidentiality statutes include, but are not limited to:
  - A. Vocational rehabilitation services (ORS 344.600)
  - B. Child welfare services (ORS 409.225)
  - C. Public assistance – seniors and people with disabilities (ORS 410.150)
  - D. Public assistance – adults and families, generally (ORS 411.320)
  - E. Temporary assistance for needy families (ORS 412.074)
  - F. Mental health, substance abuse treatment and services for persons with developmental disabilities (ORS 179.505)
  - G. Public health records (ORS Chapter 431 - 433)
  - H. Child support services (ORS 25.260)

- b. Many programs obtain or use health information as a part of their program purposes. Health information may be received directly or indirectly from the individual, from health providers, service providers, or many other sources.

Health information includes physical, mental health or functional status, or eligibility for or health services paid for under Medicaid/private health insurance/other medical assistance program, or provided by a DHS program such as the state hospital or group homes or another treatment provider

Health information about clients or participants in program files and records is subject to health information privacy and security requirements (ORS 192.518-192.526 and HIPAA). Additional protections apply to “specially protected records”, health records that have more stringent federal or state confidentiality requirements than HIPAA. The following types of health information are treated as “specially protected records”:

- A. Substance abuse treatment records (42 CFR Part 2 and ORS 430.399(5))
- B. Genetic information (ORS 192.531-192.549)
- C. Mental health and developmental disabilities services information (ORS 179.505)
- D. HIV information (ORS 433.045)
- E. Public health information (Generally, ORS chapters 431-444)
- F. Vocational rehabilitation information (ORS 344.530(1)(b); ORS 344.600)
- G. Information that is confidential under either program rules or health information privacy requirements should not be given out by the program. The program should follow whichever confidentiality requirement is the most protective of the privacy of the client or participant.

## **2. People who can take actions on behalf of a client, if a client cannot provide authorization or take other actions by himself or herself.**

- a. Clients who are unable to provide authorizations on their own behalf include:
  - The individual is a child
  - An individual who has died
  - The individual is impaired, and requires assistance
- b. When an individual cannot provide authorization or make their own decisions, an authorized representative usually is identified to help the client make decisions or to make decisions in the best interests of the individual. In this context an authorized representative is a person who has authority under program rule to act on behalf of the individual in making an application for the program, in reporting changes, in obtaining benefits or in using benefits. Program rules describe the people who will be acknowledged as an authorized representative.

- c. Decisions or authorizations that relate to health care or health information may not always fall within the program rules. Not everyone who can be an “authorized representative” also qualifies as someone who can make decisions or provide authorizations related to health care or health information. For example, an attorney may qualify as an authorized representative, but it is not always true that an attorney is authorized to make health care decisions on behalf of the individual.
- d. A personal representative is a person who has authority to act on behalf of an individual in making decisions related to health care.
  - A. A personal representative for a child is usually a parent or legal guardian. If the child is in DHS custody, DHS is the personal representative for the child. If the child is in voluntary custody, the voluntary custody agreement must be checked to see who may make the health care decisions for the child.
  - B. A personal representative may be someone who has been identified by the individual as a health care representative in their advance directive or as a representative to make mental health care and treatment decisions in a declaration for mental health treatment.
  - C. A personal representative may be a legal guardian or a conservator. The court document creating the guardian or conservator will specify whether the guardian or custodian has this authority.
  - D. If the individual has died, their personal representative is a person defined in ORS 192.526.
- e. If DHS has substantiated abuse findings that an individual has been or may be subjected to domestic violence, abuse or neglect by a “personal representative”, it would be considered an abuse, neglect or endangerment situation in which the Department would not recognize that person as a “personal representative” for health care decisions.
- f. The term “representative” is someone who is allowed under program rules to act on behalf of a client. In most cases, an “authorized representative” under program rules is the person who may be treated as a representative. If the issue relates to health care or health information, though, the representative must meet the qualifications of a “personal representative.”

### 3. Authorization

DHS staff will use the approved DHS authorization form to grant authorization ([DHS 2099](#), “Authorization for Use & Disclosure of Information”). DHS may also accept other non-DHS forms when the following required elements are included:

- a. A description of the information to be used or disclosed;
- b. A statement and specific purpose of the information. The individual or their

- representative can authorize disclosure of the information for any purpose;
- c. The name or other specific information about the person(s), classification of persons, or entity (i.e., DHS or specified DHS program) authorized to make the specific use or disclosure;
  - d. The name or other specific identification of the person(s), classification of persons, or entity to whom DHS may make the use or disclosure;
  - e. An expiration date, or an expiration event that relates to the individual or to the purpose of the use or disclosure;
  - f. Signature of the individual, or of their representative, and the date of signature; and
  - g. If a representative signs the authorization form instead of the individual, a description or explanation of the representative's authority to act for the individual, including a copy of the legal court document (if applicable) appointing the representative, must also be provided.
    - A. When DHS is the individual's representative, the agency signature authority on the authorization form should follow DHS rules and policy.
    - B. If the information is health information or relates to health care, the representative must be a "personal representative".
    - C. An attorney representing a client is not the same as a "personal representative" of the client.
  - h. Statements which inform the client or participant authorizing the disclosure of information that:
    - A. The individual has a right to revoke the authorization in writing;
      - A revocation must be in writing and signed by the individual.  
Exception: Alcohol and drug treatment participants may orally revoke authorization to disclose information obtained from alcohol and drug treatment programs.
      - No revocation applies to information already released while the authorization was valid and in effect.
      - Any revocations, written or oral, must be documented and maintained in the individual's record. When an individual revokes authorization, DHS must boldly mark the authorization form "revoked" and include the date, and signature of the requesting individual, when appropriate.
    - B. There is the potential for information disclosed by DHS pursuant to the authorization to be subject to re-disclosure by the recipient and no longer protected.

- i. Uses and disclosures must be consistent with what the individual has authorized on a signed authorization form.
  - A. An individual's authorization only applies to records about himself or herself, or the person who is the subject of the authorization (if signed by a representative).
- j. Authorizations should be voluntary.
  - A. DHS must make program determinations concerning the individual based on the information that is available. DHS may explain to the individual that without a signed authorization, DHS may be unable to verify income or resource information, and may be unable to refer the individual to other services.
- k. When the authorization involves health information, DHS may *not require* an individual to sign an authorization form in order to receive treatment or to provide a basis for payment or eligibility for medical services or benefits. However, DHS may *require* the individual to sign an authorization concerning health information for the following reasons:
  - A. DHS can require medical documentation of eligibility for medical assistance programs and may require the individual to sign an authorization if needed to help determine the applicant's eligibility for enrollment in the program; or
  - B. DHS and its contracted health care providers can require the individual to sign an authorization before providing health care that is solely for the purpose of creating protected health information for disclosure to a third party. For example, in a juvenile court proceeding where a parent is required to obtain a psychological evaluation by DHS, the evaluator may, as a condition of conducting the evaluation, require the parent to sign an authorization to release the evaluation report (but not the underlying psychotherapy notes) to DHS; or
  - C. Before providing research-related treatment, a DHS health care provider may condition the individual to sign an authorization for the use or disclosure of health information for such research.
- l. A required authorization (described in (k) (A), (B) or (C) above) and a voluntary authorization must be separate documents, signed separately. The differences must be clear to the individual.
- m. Each authorization for use or disclosure of an individual's information must be fully completed jointly by the staff worker and the individual whenever possible. The staff worker must ensure that the individual understands why the information is to be used or disclosed.

#### **4. Uses and Disclosures without written authorization by the individual**

DHS may use or disclose information as necessary for program purposes and, consistent with program purposes, to assist an individual in accessing and receiving other governmental or private nonprofit services, using the minimum necessary standards outlined in **DHS Policy DHS-100-004**, without the written authorization of the individual in the circumstances described in this section.

If reasonably feasible, DHS should seek authorizations even if it is not required to do so.

- a. Exception for specially protected records: Section 4 of this policy applies to all client information including general health information but does not apply to “specially protected records” defined in Section 1 of this policy. These “specially protected” health records are usually only disclosed with individual authorization, and have very narrow exceptions for when authorization is not required. Do not disclose “specially protected records” without individual authorization using this policy.
- b. DHS clients or participants may access their own information, with certain limitations. (See **DHS Policy DHS-100-002**, “Client Privacy Rights”). If the record includes information about others all information about other people must be redacted from the record before providing the individual access to their information.
- c. Disclosure is “required by law” when a statute or regulation makes it mandatory, using terms like “shall” or “must”. Examples of “required by law” include:
  - A. The child abuse reporting law is mandatory for DHS employees, when making a report and providing the information in accordance with that law.
  - B. Provide information in response to an order of the Psychiatric Security Review Board about an individual’s fitness for discharge or conditional release.
  - C. A court may require DHS to evaluate an individual’s ability to aid and assist in their own defense. A court order is required for disclosure of information to the court for this purpose.
- d. If what is “required by law” conflicts with another law that applies to the program or to the information that is being requested – the law that is more protective of client or participant privacy should be followed. Check with the program privacy representative or, if authorized, with DOJ to get help about which laws apply.
  - A. Disclosure of health information because it is required by law (except when provided based on individual authorization) should be tracked in order to provide an accounting of disclosures.
  - B. For purposes of DHS’ treatment, payment, and health care operations (TPO), DHS can disclose information. DHS administers many programs

and activities that provide or pay for the cost of health care (physical, behavioral, mental) treatment services, items or prescription drugs. For purposes of TPO:

- i. "Treatment" is the provision, coordination, management or health care, including coordination or management by a health care provider and a non-healthcare third party, consultation between health care providers relating to a patient, or the referral of a patient for health care from one provider to another. For example, treatment includes DHS provision of targeted case management to coordinate or manage client health care.
- ii. "Payment" is activities related to determining health care eligibility or coverage including claims processing, prior authorization or medical appropriateness review or utilization review on a client-specific basis. Payment activities can include client or provider hearing requests about eligibility, coverage or payment issues. DHS can ask for or provide payment information to entities involved in payment activities.
- iii. "Health care operations" includes the administrative and management functions related to DHS' health care program operations. DHS can use and disclose information for its own operations that are directly connected to the administration of its health care program, service or activity.
- iv. DHS can disclose information for purposes of the "health care operations" of another health care provider or health plan if both DHS and that provider or health plan either has or had a relationship with the person (common clients), the disclosure is for the purpose of administering DHS' health care program, service or activity, and the disclosure is for the purpose of:
  - I. Conducting quality improvement activities, and activities related to improving health or reducing health care costs, and care coordination that is not treatment;
  - II. Reviewing the qualifications or competence of health care professionals or evaluating performance; or
  - III. For health care fraud and abuse detection or compliance.
- v. Psychotherapy notes are not found in individual records and refers to the notes recorded by a mental health professional in the performance of professional duties documenting or analyzing the contents of a conversation during a counseling session that are maintained separately from the rest of the individual's medical record. "Psychotherapy notes" does not mean notes documenting: medication prescription and monitoring; counseling session start and stop times; modalities and frequencies of treatment furnished; the results of

clinical tests; or any summary of diagnosis, functional status, treatment plan, symptoms, prognosis, or progress to date. Certain DHS staff who are mental health professionals may maintain psychotherapy notes that are already confidential as “specially protected” mental health records under ORS 179.505. Psychotherapy notes have some additional rules about how they may be used or disclosed, subject to ORS 179.505 and other applicable confidentiality laws:

- I. Psychotherapy notes may be used by the person who wrote them, for treatment purposes.
  - II. Psychotherapy notes may be used in supervised counseling training programs. If the patient’s identity is not required for the training activity, the identity of the patient should be redacted from the document to reduce the risk of inadvertent unauthorized disclosure.
  - III. Psychotherapy notes may be used in connection with oversight of the person who wrote the psychotherapy notes; or
  - IV. To the extent authorized under state law (ORS 179.505), psychotherapy notes may be used to defend DHS or its health care services provider employed by DHS in a legal action or other proceeding brought by the individual.
  - V. Disclosure of psychotherapy notes for reasons other than treatment (or unless provided based on individual authorization) should be tracked in order to provide an accounting of disclosures, unless the individual’s identity has been redacted so that the information is de-identified.
- e. Public health activities include collection or receiving information for the purpose of controlling disease, injury, or disability, including but not limited to, the reporting of disease, injury, vital events such as birth or death, and the conduct of public health surveillance, public health investigations, and public health interventions.
- A. DHS is a public health authority and the Public Health Division within DHS is the primary source of public health activities. The Division communicates with other governmental public health authorities, such as county or other state health authorities. In the exercise of its public health authority, uses or disclosures of information are governed by the laws related to public health matters.
  - B. Disclosure of health information to the Public Health Division or a local public health authority for reasons other than treatment (or unless provided based on individual authorization) should be tracked in order to provide an accounting of disclosures; that the use and disclosure of

information by the Public Health Division for public health purposes are not subject to this requirement.

- C. Public health activities in Oregon include the Public Health Lab. Communications with the Public Health Lab relate to treatment activities for patients. Within the laws (Title 42, Part 493) that describe what a clinical laboratory may or may not disclose and any other confidentiality laws, communications with the Public Health Lab for treatment-related purposes are treated the same as communications with other types of treatment providers.
- f. If DHS has reasonable cause to believe that a child is a victim of abuse or neglect, DHS is authorized to use and disclose the information consistent with its legal authority, including disclosure to governmental authorities authorized by law to receive reports of child abuse or neglect.
- A. DHS employees are mandatory child abuse reporters. DHS employees should follow agency policy and procedures for reporting child abuse.  
Child abuse reporting laws – ORS 419B.005-419B.050
- B. DHS is also the child protective services and child welfare agency. DHS can use the information it obtains under the child abuse reporting laws in order to carry out its official duties.  
Child welfare confidentiality laws – ORS 409.225
- i. Disclosure of health information for abuse reporting (except when provided based on individual authorization) should be tracked in order to provide an accounting of disclosures; however, the identity of an abuse reporter is confidential under state law.
- g. If DHS has reasonable cause to believe that a vulnerable adult is a victim of abuse or neglect, DHS may disclose information, as required by law and consistent with program legal authority, to a government authority or regulatory agency authorized by law to receive such reports of such abuse or neglect.
- “Vulnerable person” means an adult who is:
- An elderly person;
  - A financially incapable person;
  - An incapacitated person; or
  - A person with disabilities who is susceptible to force, threat, duress, coercion, persuasion or physical or emotional injury because of the person’s physical or mental impairment.
- A. DHS employees are mandatory adult abuse reporters. DHS employees should follow agency policy and procedures for reporting abuse of vulnerable persons.

- B. DHS is the protective services agency that responds to reports of abuse. DHS uses the information it obtains under the abuse reporting laws (ORS 124.050-124.095; ORS 430.735-430.765; ORS 441.630-441.680) in order to carry out its official duties.
- C. If DHS staff makes a report of adult abuse or neglect, the vulnerable person must be promptly informed that such a report has been or will be made, except if:
  - i. DHS staff, in the exercise of professional judgment, believes informing the vulnerable person would place the individual at risk of serious harm; or
  - ii. DHS would be informing a “personal representative” and DHS reasonably believes the personal representative is responsible for the abuse, neglect or other injury, and that informing such person would not be in the best interests of the vulnerable person as determined by DHS, in the exercise of professional judgment.
  - iii. DHS adult protective services staff will assist in determining whether the vulnerable person should be informed. Safety and other concerns must be taken into account.
  - iv. Disclosure of health information for abuse reporting (except when provided based on individual authorization) should be tracked in order to provide an accounting of disclosures; however, the identity of an abuse reporter is confidential under state law.
- h. Health oversight activities. To the extent allowed under other applicable confidentiality laws, DHS may disclose information without authorization for health oversight activities authorized by law, including audits; civil, criminal, or administrative investigations, prosecutions, or actions; licensing or disciplinary actions; Medicaid fraud; or other activities necessary for oversight of the program under review.
  - A. DHS as the health oversight entity. DHS conducts audits and reviews of programs, contracts, providers and licensees that includes asking for and receiving individual information about clients, participants or about the provider or licensee. DHS can use the information it obtains to carry out its health oversight function about a program, contract, provider or licensee, as well as investigation of recipient fraud, within applicable program confidentiality requirements.
  - B. DHS provides information to health oversight agencies. Government agencies that review DHS’ programs, contracts and services may request client or participant information. DHS can provide that information to the oversight agency if the request is connected with the administration of the DHS program, service or activity being reviewed. For example, the Medicaid Fraud Unit of the Department of Justice has legal authority to

review records related to the administration of the Medicaid program.

- i. Disclosure of health information to health oversight agencies (except when provided based on individual authorization) should be tracked in order to provide an accounting of disclosures.
- C. If DHS receives a request for information from another health oversight agency each request should be evaluated to determine whether the information requested may be disclosed under program confidentiality requirements or applicable requirements of specially protected records.
- i. If the person being investigated is a current or former DHS client and the health oversight agency seeks patient records, contact the privacy representative of the program where the client received services.
  - ii. When the person being investigated is a licensee who provided services or care to a DHS client, DHS should cooperate with such investigations under authority of statutes and rules authorizing disclosures for purposes of audit or program evaluation. Before disclosure, ask about applicable confidentiality laws and confirm that individual information disclosed for the investigation will be kept confidential.
  - iii. Disclosure of health information for health oversight purposes (except when provided based on individual authorization) should be tracked in order to provide an accounting of disclosures.
- D. Investigations that can be part of health oversight include:
- The receipt of health care;
  - A claim for public benefits related to health; or
  - Qualifications for or receipt of public benefits or services when a patient's health is important to the claim for public benefits or services; or
  - A joint investigation that involves both health and non-health public benefits.

If the investigation about a DHS client or participant is not about one of these purposes, then disclosure of information may be law enforcement. (See section on Law Enforcement (I. A-D.)

- i. Review or oversight activities not a part of health oversight, such as federal or state audits. Many program and contract review processes are not related to health oversight. DHS should follow the program rules and policies that apply to the review or oversight authority, while protecting the privacy of health information.
- A. All DHS programs may be subject to review or audit by federal or state auditors or reviewers in accordance with funding requirements or federal or state laws. These "required by law" disclosures may include health

information in the records, for purposes of conducting the review. DHS may use and disclose information as required by official federal or state reviewers. It is appropriate to ask the reviewers for their authority to obtain or review information. (See the verification section of this policy (9. a-g).)

- i. Disclosure of health information because it is required by law for purposes of these oversight activities (except when provided based on individual authorization) should be tracked in order to provide an accounting of disclosures.
- B. DHS may act in a review or audit capacity in order to review the activities of its non-health program contractors, providers, licensees or other entities in accordance with law. DHS may collect and use the information it needs to conduct its oversight activity.
- C. Some programs are subject to review or oversight by official or unofficial advisory committees. If a program provides information to the advisory committee, the program should redact the identity of all clients or participants and any identifying health information.
- j. DHS hearings, grievances and appeals procedures. Information relevant to hearings, grievances or appeals regarding individuals' eligibility for program services or a reduction, suspension, termination or closure of benefits or services may be reviewed to assist DHS in making a decision about the appeal or grievance by the following: DHS staff and DHS legal counsel, providers or, a health plan involved in the service or action, provided to the client, and provided to a hearing officer.
  - A. Client information remains confidential during the hearing process, hearings involving client matters or provider appeals involving client services should not be open to the public. Final decisions about client hearings, grievances or appeals remain confidential.
  - B. Hearings or appeals related to qualifications of or potential sanctions of Providers or Licensees are generally not confidential, although any DHS client information is confidential. These cases may require the use of Qualified Protective Orders (QPOs) or the use of methods that will not disclose the identity or identifiable health information about the client.
- k. Court cases and non-DHS administrative hearings. DHS may not disclose confidential information for purposes of court cases or non-DHS administrative hearings.
  - A. DHS staff will refer any questions or concerns to the DHS Privacy Officer or to the Division Privacy Representative.
  - B. DHS may receive requests for information about clients or participants from attorneys, insurance companies or others for use in a court case or a non-DHS hearing. The request may come as a public record request, a

subpoena, or a letter or a phone call. In each of these cases, an authorization is required.

- C. DHS must follow any procedures established within the DHS program for responding to subpoenas, discovery requests, or other requests for documents that DHS may have regarding an individual. If the request is by a subpoena in connection with a court or administrative hearing, DHS should respond consistently with program policy.
- D. If a subpoena for records also has a QPO, and the QPO is signed by a judge. A QPO provides confidentiality to the health records that relates to HIPAA being used in the court or administrative case, but it does not mean that the judge or administrative law judge has ruled on the specific confidentiality laws that DHS has to follow.
  - i. Many DHS clients are applicants for or recipients of public assistance. Their records are not subject to disclosure unless the disclosure is for a purpose related to the administration of the public assistance laws. If the case does not involve the administration of the public assistance programs, the information cannot be provided even if a judge has issued a qualified protective order – unless the judge also overruled the other DHS confidentiality issues.
  - ii. If the person asking for records provides a QPO, DHS must still go through the legal process described above to show that DHS' confidentiality requirements have also been addressed. DOJ can provide additional information about a QPO.
  - iii. Disclosure of health information because it is required for a court proceeding (except when provided based on individual authorization) should be tracked in order to provide an accounting of disclosures.
- I. Law enforcement purposes.

- A. DHS may provide client information to a law enforcement officer in any of the following situations:
- i. The law enforcement officer is involved in carrying out any investigation, criminal or civil proceedings specifically connected with administering the DHS program from which the information is sought. A law enforcement officer is an employee of the Oregon State Police, a county sheriff's department, or a municipal police department, whose job duties include arrest authority
  - ii. A Department employee may disclose information from personal knowledge that does not come from the client's interaction with the Department.
  - iii. The information alerts law enforcement of a death as a result of criminal conduct.
  - iv. The information constitutes evidence of criminal conduct on DHS' premises, and the disclosure is made in accordance with DHS policy applicable to such reporting.
  - v. The disclosure is necessary to protect the client or others, and the client poses a threat to his or her safety or to the safety of others, in the manner provided in Subsection (4.s.) of this policy.
- B. Law enforcement may ask DHS for information because they are trying to locate someone, except as provided in paragraph (C) of this subsection. If a law enforcement officer makes the request in the course of official duty, supplies the client's name, and states the following:
- i. A client is a fugitive felon or is violating parole, probation, or post-prison supervision. A fugitive felon is a person fleeing to avoid prosecution or custody for a crime, or an attempt to commit a crime, that would be classified as a felony
  - ii. For all public assistance programs, has information that is necessary to conduct official duties of the officer, and the location or apprehension of the client is within the officer's official duties. For clients only in the Food Stamp program, the law enforcement officer has information that is necessary to conduct an official investigation of a fugitive felon or someone violating parole, probation, or post-prison supervision; then the Department may give a client's current address, Social Security number, and photo to a law enforcement officer.
- C. If domestic violence has been identified in the household, paragraph (B) of this subsection does not authorize the release of information about a victim of domestic violence unless a member of the household is either wanted as a fugitive felon or is violating parole, probation, or post-prison supervision.
- D. Information maintained about participants in the medical marijuana

- program may only be provided to law enforcement agencies in the manner authorized by ORS 475.331.
- i. Disclosure of health information because it is required by law (except when provided based on individual authorization) should be tracked in order to provide an accounting of disclosures.
  - m. If a correctional institution or a law enforcement official has lawful custody of an inmate or other person, information may be disclosed for a purpose directly related to the administration of the program and the institution or official represents that the information is necessary for:
    - A. Providing health care to the person – DHS may share health information (including mental health treatment information except for substance abuse treatment information) between providers currently engaged in the treatment of the individual. In addition, health care services providers, DHS, the Department of Corrections (DOC) or a local correctional facility may transfer information when the transfer is necessary or beneficial to the treatment of the individual. See ORS 179.505(6) and ORS 179.508.
      - i. Youth (18 years or older) in the custody of the Oregon Youth Authority or inmates of the Department of Corrections may be transferred to DHS for periods of stabilization and evaluation for treatment pursuant to ORS 179.473, and DHS may provide information to OYA or DOC in connection with those treatment services;
    - B. DHS may provide information for coordination of communications or visitation with children in DHS custody, in the manner provided in child welfare program rules or policies.
  - n. DHS is authorized to disclose information for specialized government functions, including providing information to authorized federal officials for the conduct of lawful intelligence, counterintelligence, and other national security activities that federal law authorizes. Often, federal officials seeking information are using local law enforcement to carry out their federal activity. DHS staff should exercise caution in responding to such a request. It is appropriate to ask the official making the request to provide a copy of the laws that authorize DHS to provide the information. This policy recommends that program should consult with their program privacy coordinator and, if authorized, with DOJ before disclosing information in response to such a request.
  - o. To a coroner or medical examiner, for the purpose of identifying a deceased person, determining a cause of death, or other duties authorized by law. ORS chapter 146 contains the general requirements for reporting deaths to the medical examiner when a death occurs.

- A. Disclosure of health information for this purpose should be tracked in order to provide an accounting of disclosures.
- p. To funeral directors, consistent with applicable law, as needed to carry out their duties regarding the decedent if the decedent was in the care of DHS. DHS may also disclose such information prior to, and in reasonable anticipation of the death of an individual in the care of DHS. If a responsible family member is available, DHS should seek authorization.
  - A. Disclosure of health information for this purpose should be tracked in order to provide an accounting of disclosures.
- q. To organ procurement organizations or other entities engaged in procuring, banking, or transplantation of cadaver organs, eyes, or tissue, for the purpose of facilitating transplantation. Oregon law describes authority for decision-making about organ donation, also called anatomical gifts, in ORS 97.950 to 97.964. DHS staff should follow DHS policy about decision-making related to transplants and organ donation for clients in the care or custody of DHS. (CAF Policy I-E.5.3; ORS 97.170)
  - A. Disclosure of health information for this purpose (except when provided based on individual authorization) should be tracked in order to provide an accounting of disclosures.
- r. For research purposes, as specified in **DHS Policy DHS-100-006**.
- s. To avert a serious threat to health or safety, DHS may disclose limited individual information without authorization if:
  - A. DHS believes in good faith that the information is necessary to prevent or lessen a serious and imminent threat to the health or safety of a person or the public; and
  - B. The report is to a person or persons reasonably able to prevent or lessen the threat, including the target of the threat; and
  - C. Consistent with (E) below, the information is limited to the minimum necessary to explain the basis for the good faith belief about the risk of harm and to provide basic information about the nature of the threat. Reasonable measures should be taken to avoid identifying the person as a recipient of public assistance or any particular type of care, services or treatment.
  - D. DHS has adopted a policy to address situations when a DHS patient is on unauthorized leave status that creates a risk of a serious threat to health or safety of the person or the public. See **Policy DHS-120-002**.
  - E. Some programs or services are subject to specific disclosure limitations regarding disclosures in response to health or safety threats.
    - i. For substance abuse treatment programs See ORS 42 CFR 2.51, which defines that information may only be disclosed to medical personnel

for patients requiring immediate medical attention and the disclosure must be properly documented.

- ii. For vocational rehabilitation programs, 34 CFR 361.38 (e)(5) defines that personal information may be disclosed "in order to protect the individual or others if the individual poses a threat to his or her safety or to the safety of others".
- iii. ORS 409.230 states that information about a child's history and prognosis may be disclosed to an appropriate authority and the person or entity who is in danger from the child.
- iv. ORS 179.505 states that information may be disclosed "to any person to the extent necessary to meet a medical emergency."
- v. Medicaid, Children's Health Insurance Program information (CHIP), 42 CFR 431.306(d) "If because of an emergency situation, time does not permit obtaining consent before release, the agency must notify the family or individual immediately after supplying the information"; 42 CFR 457.1110(b) (CHIP)
- vi. Temporary Assistance for Needy Families (TANF) program information, 45 CFR 205.50(a)(2)(iii) "In an emergency situation when the individual's consent for the release of information cannot be obtained, the individual will be notified immediately."
- I. Disclosure of health information for this purpose (except when provided based on individual authorization) should be tracked in order to provide an accounting of disclosures.

- t. To the extent permitted by law, DHS may share information with other governmental entities providing public benefits.
  - A. DHS programs involved in administering Medicaid or Children's Health Insurance Program may disclose eligibility and information about enrollment in Medicaid, CHIP or Family Health Insurance Assistance Program (FHIAP) to other DHS programs or governmental entities administering public assistance programs.
  - B. To the extent permitted by program-specific statute or rule, DHS may disclose information for purposes directly related to the administration of the public assistance programs, including the medical assistance programs and other health care services, to another DHS program or government entity providing similar benefits if the programs serve the same or similar populations and the disclosure of information is necessary to coordinate functions of such programs or to improve administration and management relating to the health-care related functions. Such disclosures are governed by interagency agreements that should include provisions to protect the confidentiality, security and integrity of the data.

Example: DHS coordinates with the Social Security Administration (SSA), consistent with interagency agreements.

- u. To the extent permitted by law, DHS may share information with contractors and community resources, including nonprofit organizations and other community partners.

DHS may provide information and referrals to individuals for community resources as necessary to assist individuals in accessing and receiving other governmental or private non-profit services, to the extent permitted by program rules and policies and any applicable contracts or intergovernmental agreements. Such disclosures should not contain individual health information or identify the person as a participant in substance abuse treatment or other treatment program.

Disclosure of health information to other programs or government agencies (except when provided based on individual authorization) should be tracked in order to provide an accounting of disclosures.

## **5. Limited disclosures (for people involved in the client's services or care without written authorization)**

It is common for DHS clients to include another person (family member, other relative, or close personal friend or other person identified by the client) in some involvement with the client's program application or participation, services, care or payment related to their services or care.

- a. If the client is present for, or otherwise available prior to, a use or disclosure to the other person, and has the capacity to make their own decisions, DHS may use or disclose the information if one of the following exists:
  - A. If the client is present for, or available prior to, such a use or disclosure, DHS may disclose the information to the other person if DHS:
    - i. Obtains the client's agreement; or
    - ii. Provides the client with the opportunity to object to the disclosure and the client does not express an objection; or
    - iii. Reasonably infers from the circumstances, based on the exercise of professional judgment that the client does not object to the disclosure.
  - B. If the client is not present, or the opportunity to agree or object cannot be provided because of the client's incapacity or an emergency circumstance, the program should determine whether the other person may be treated as the client's authorized representative, or if health care is involved, if the person may be treated as their personal representative, under applicable program rules. If so, and if DHS determines in the exercise of professional judgment, that a disclosure is in the best interests of the client, disclose only the information that is directly relevant to the person's involvement in the client's services or care.
    - i. For a description of who qualifies as an authorized representative or a personal representative, see Section 2 of this policy.
      - I. Disclosure of health information because of this purpose (except when provided based on client authorization or when the client is present) should be tracked in order to provide an accounting of disclosures.
  - C. For clients referred to or receiving alcohol and drug, mental health, or vocational rehabilitation services, written authorization by the client is required, and the authorization should be maintained in the client's record.
  - D. A substance abuse treatment program cannot acknowledge or confirm that a client is a patient at a program without the written authorization of the client.

## **6. Limited disclosures for notification purposes without authorization**

DHS may use or disclose information for notifying, including identifying or locating, a family member, personal representative, or other person responsible for care of the individual, regarding the individual's location, general condition, or death. For individuals who had resided at one time at the Fairview Training Center, OAR 411-320-0090(6) addresses family reconnection.

- a. If the individual is present for, or available prior to, such a use or disclosure, DHS may disclose the information to the other people as noted above.

- A. Obtains the individual's verbal agreement;
  - B. Provides the individual an opportunity to object to the disclosure, and the individual does not express an objection; or
  - C. Reasonably infers from the circumstances that the individual does not object to the disclosure.
- b. If the individual is not present, or the opportunity to object to the use or disclosure cannot practicably be provided due to the client's incapacity or an emergency situation, DHS may determine, using professional judgment, that the use or disclosure for purposes of notification or locating the client is in the client's best interests.
    - A. For individuals referred to or receiving alcohol and drug, mental health, or vocational rehabilitation services, written authorization is required.
    - B. Disclosure of health information for this purpose (except when provided based on individual authorization or when the individual is present) should be tracked in order to provide an accounting of disclosures.

## **7. Limited Disclosures for Disaster Relief Purposes without Authorization**

DHS may use or disclose information to a public or private entity authorized by law to assist in disaster relief efforts, for the purpose of coordinating with such entities the information about an individual's care and for notification purposes. The requirements in sections (6)(a) (where the individual is present) and (b) (where the individual is not present, or is incapacitated or in an emergency) apply to these uses or disclosures unless DHS staff, in the exercise of professional judgment, determine that those requirements will interfere with their ability to respond to the emergency circumstances.

- a. For individuals referred to or receiving alcohol and drug, mental health, or vocational rehabilitation services, oral permission is not sufficient and written authorization is required. However, if the individual is experiencing a medical emergency during the disaster, disclosures to avert a serious threat to health or safety may be authorized. See Section 4(s).
- b. Disclosure of health information for this purpose (except when provided based on individual authorization) should be tracked in order to provide an accounting of disclosures.

## **8. Re-disclosure of an Individual's Information:**

- a. Re-disclosure is the term used to describe the disclosure of information to a person, DHS program, DHS subcontracted entity, or other entity beyond what is originally authorized. Literally, this means disclosing the information for a new/different reason, to someone other than originally intended.

b. Re-disclosure is subject to all of the same requirements of the original disclosure. If the original disclosure required authorization, it still requires authorization in order to re-disclose the information for a different purpose or to a different person or program.

A. Information received under authorization generally becomes integrated into a database, narrative, or the case record. This information can continue to be used as long as it is used for the purpose it was provided.

i. If a different purpose arises that the original authorization would not have contemplated to be within the permissible scope of uses, DHS should get a new authorization form for the new use. For example, individual information is received pursuant to an authorization in connection with a TANF application or JOBS program. Later, the individual applies to be a care provider. It is unlikely that the individual understood that their TANF authorization form would be used for a different purpose related to applying to be a care provider. DHS should obtain an authorization form for the new use.

B. Some documents are received under a specific authorization, such as a psychological evaluation. Uses and disclosures of the psychological evaluation are limited to those within the scope of the original authorization. Any further uses or disclosures require separate authorization.

c. As long as the use of the information obtained under the authorization is being used in a manner consistent with the program and purposes for which the information was provided, the further uses of the information in the manner described in Sections 4-7 is not a re-disclosure and may be used.

For example, assume the information was obtained in connection with family services being provided in self-sufficiency. The disclosure exceptions for DHS hearings or TPO, as required by law for child abuse reporting, health oversight of a self-sufficiency program related to services provided to the individual, and referrals to relevant programs are all sufficiently within the scope of administering the self-sufficiency program that as long as the disclosure is made in accordance with program laws and rules, it is not a re-disclosure.

d. When the information obtained under the authorization would be used for a different purpose or program, the exceptions to authorization do not apply unless a disclosure is required by law.

For example, if information was obtained in self-sufficiency when the individual was a client, but now a health oversight entity (e.g., the Board of Nursing) is seeking information in connection with very different separate licensing matters about the individual as a licensee. The exception for health oversight would not apply to the self-sufficiency information because it is not health oversight of a self-sufficiency program. This would be a re-disclosure that requires a further authorization or other legal authority.

## 9. Verification of Individuals Requesting Information

DHS receives requests for information in many ways. People may come to the counter at a DHS office and ask for information about an individual, or mail/fax a client authorization form, or serve a subpoena on a record custodian. Requests are also informal, such as phone calls or contacts at business meetings. Attorneys contact DHS and ask for information. Outside entities like the Joint Commission, providers, consultants, researchers, contractors, as well as other state agencies and local governments may ask for information.

- a. Information about individuals may not be disclosed without verifying the identity of the person or entity requesting the information and their authority to have access to the client or participant information. If the person or entity is not known as having authority to obtain the information being requested reasonable evidence must be supplied to the DHS staff member fulfilling the request. Reasonable efforts should be used to identify the requestor and their authority.
- b. Reasonable evidence of the identity of the requestor should be supplied in the form of the following, including but not limited to:
  - A. A call back number or faxed office letterhead that can be confirmed; or
  - B. Identification badge; or
  - C. Driver's license; or
  - D. Written statement of identity on agency letterhead; or
  - E. Similar proof that has sufficient evidence that the requestor is who they represent themselves to be and that they may appropriately be provided the type of information that is requested.
- c. The requestor must also establish their authority to obtain the information that is requested. DHS should obtain written information that can reasonably be relied upon showing the legal authority under which the information is requested.
- d. If the requestor fails to supply credible information about their identity or authority to have access to the information without individual authorization, supply the requestor with a DHS authorization form and explain that unless DHS receives individual authorization or the requestor provides additional documentation about identity or authority to receive the information to the satisfaction of DHS, no disclosure can be made. If the requestor supplies an authorization form signed by the individual, DHS staff may confirm that the authorization is valid and that the requestor is the person identified on the authorization form to receive the information

- e. If DHS staff have any doubt about the bona fide nature of a request, follow DHS privacy and security precautions and policies.  
<http://www.oregon.gov/DHS/admin/infosec/index.shtml>
- f. DHS may be required to document disclosures, including what information was provided, why and to whom. Documenting the identity and authority of the requestor helps DHS meet its obligations to monitor how information is being used.
- g. If the request is legitimate and there is no doubt about the identity or authority of the person or entity making the request, it does not mean that the information can be provided. (For example, a subpoena from an attorney is a legitimate request, but DHS must determine how to respond consistent with program laws and this policy.) Follow this policy to determine if the information may be disclosed. If DHS staff has questions about whether specific information can be disclosed, contact the program's privacy representative.

#### **Form(s):**

**DHS [2097](#)**, "Disclosures of Protected Health Information"

**DHS [2099](#)**, "Authorization for Use and Disclosure of Information"

#### **Reference(s):**

- 45 CFR 164.502(a)
- 45 CFR 164.508 – 164.512
- 42 CFR Part 2
- 34 CFR361.38 (e)(5)
- OAR 411-320-0090(6)
- ORS 179.505
- ORS 344.600
- ORS 409.225
- ORS 410.150
- ORS 411.320
- ORS 412.074
- ORS 179.505
- ORS Chapter 431 - 433
- ORS 25.260
- [Privacy/Security Glossary of Common Terms](#)

#### **Policy(ies) that apply:**

[DHS-100-002](#) Client Privacy Rights

[DHS-100-004](#) Minimum Necessary Information

[DHS-100-006](#) Uses and Disclosures for Research Purposes & Waivers

[DHS-120-002](#) Unauthorized Patient Leave Communications

### Contact(s):

- Jane Alm, DHS Privacy Officer, [jane.alm@state.or.us](mailto:jane.alm@state.or.us)
- Privacy Program Office, (503) 945-5780

### Policy History:

- **Version 2.0:**
  - 07/01/09 : This policy originated in March 2003 in order to meet compliance with the federal HIPAA Privacy Rule. The 2009 revisions do not impact the policy's compliance with HIPAA. The revisions are implemented to improve clarity and to bring some of the language in line with other more familiar program-specific privacy language.
- **Version 1.0:**
  - 03/31/2003: Initial Release