

**Aging and People with Disabilities**

Marie Cervantes

**Authorized signature**

**Number: APD-IM-13-025**

**Issue date: 5/2/2013**

**Topic:** Protective Services

**Subject:** APS Investigations  
Medical and Financial Access Records and Subpoena Request Forms for

**Applies to (check all that apply):**

- |  |   |
|--|---|
| <input type="checkbox"/> All DHS employees                             | <input type="checkbox"/> County DD Program Managers     |
| <input checked="" type="checkbox"/> Area Agencies on Aging             | <input type="checkbox"/> County Mental Health Directors |
| <input checked="" type="checkbox"/> Aging and People with Disabilities | <input type="checkbox"/> Health Services                |
| <input type="checkbox"/> Children, Adults and Families                 | <input type="checkbox"/> Other (please specify):        |

**Message:**

The below forms may be found in the APS tool box at <http://www.dhs.state.or.us/spd/tools/cm/aps/index.htm>.

In response to rule changes in OAR 411-020-0123 and OAR 411-020-0126, there are three forms for obtaining medical and financial records for Adult Protective Services (APS) cases:

- 1) The medical records access document, '**Request For Disclosure Of Individually Identifiable Protected Health Information**', is for informing a health care provider of their authority to release depending on the circumstances.
  - a. This form replaces the current "Authority to Review" document in the APS tool box.
  - b. There is a template in MSWord in tools to use with your office letterhead
  - c. There is an example in tools of a filled out form in PDF.
  - d. This form may be used both with older adults, age 65 or older, and persons with physical disabilities.
  
- 2) The medical records, '**Requirement to disclose protected health information**' document is a template for local offices to develop with their MDTs, District Attorney Office (DA), and law enforcement agency (LEA) for the request of records through the subpoena authority of the District Attorney's Office.

- a. The local office would fill out the form and submit to their LEA and a request would be made to the DA by LEA to subpoena records for APS.
  - b. The form may be altered to fit the needs of the DA or the MDT. Please submit altered forms to OAAPI APS.
  - c. This form and the subpoena procedure only apply to older adults, age 65 or older. For persons with physical disabilities, you may ask for records as you did in the past.
- 3) The financial records, '**Requirement to disclose financial records**', document is a template for development with MDTs, DAs, and law enforcement agency (LEA) for requesting records through the subpoena authority of the District Attorney's Office.
- a. The local office would fill out the form and submit to the LEA and a request would be made by LEA to the DA to subpoena records for APS.
  - b. The form may be altered to fit the needs of the MDT, LEA, or DA. Please submit altered forms to OAAPI APS.
  - c. This form and the subpoena procedure only apply to older adults, age 65 or older. For persons with physical disabilities, you may ask for records as you did in the past.

*If you have any questions about this information, contact:*

<b>Contact(s):</b>	Valerie M. Eames		
<b>Phone:</b>	503-945-5884	<b>Fax:</b>	503-945-9893
<b>Email:</b>	<a href="mailto:valerie.m.eames@state.or.us">valerie.m.eames@state.or.us</a>		

REQUEST FOR DISCLOSURE OF  
INDIVIDUALLY IDENTIFIABLE  
PROTECTED HEALTH INFORMATION

To: *[INSERT PROVIDER NAME]*

The Oregon Department of Human Services (DHS) and its business partners, the Area Agencies on Aging (AAA), are responsible for investigation of complaints of abuse or neglect. Investigations for DHS or the AAA are conducted by their respective Adult Protective Services (APS) units.

*[LOCAL OFFICE]* Adult Protective Services is requesting the following patient's medical records for the purpose of an abuse and neglect investigation and intervention:

*[NAME OF PATIENT AND IDENTIFYING INFORMATION]*  
*[RECORDS REQUESTED]*

Please send true and complete copies to:

*[NAME OF PERSON RECEIVING RECORDS]*  
*[TITLE]*  
*[ADDRESS]*

Telephone: *(TELEPHONE NUMBER)*

Pursuant to the federal authority identified below (identified by a checked box), you are authorized to disclose protected health information to Adult Protective Services (APS) for the purpose of an investigation into abuse or neglect.

- Consent to Disclose in an Abuse Investigation.** HIPAA privacy rule 45 CFR 164.512(c)(ii) authorizes a health care provider or other covered entity to disclose protected health information about an individual who has been a victim of abuse or neglect if the individual agrees to the disclosure. APS is requesting protected health information for the purpose of an abuse or neglect investigation involving an individual who has been a victim of abuse or neglect and the

individual has provided written consent (enclosed/attached) for the disclosure, to APS, of their protected health information.

**Disclosure to Prevent or Lessen a Serious and Imminent Threat.** HIPAA privacy rule 45 CFR 164.512(j) authorizes a health care provider or other covered entity to disclose protected health information to prevent or lessen a serious and imminent threat to the health or safety of a person or the public if the health care provider, in good faith, believes that the disclosure of protected health information is necessary to prevent or lessen the threat. APS is requesting protected health information necessary to prevent or lessen a serious and imminent threat to an individual, or the public, in a neglect or abuse investigation being conducted by APS.

**Disclosure to a Health Oversight Agency Investigating in a Licensed Care Facility.** HIPAA privacy rule 45 CFR 164.512(d) authorizes a health care provider or other covered entity to disclose protected health information to a health oversight agency for oversight activities authorized by law for appropriate oversight of entities subject to government regulatory programs for which health information is necessary for determining compliance with program standards. APS is requesting, as part of an abuse investigation involving a resident of a DHS-licensed care facility, protected health information necessary for the statutorily required oversight of the licensed care facility.

#### Regarding Notice to the Individual

Disclosures of protected health information performed in accordance with 45 CFR 164.512(c) require the health care provider to inform the individual to whom the protected health information pertains that information has been or shall be disclosed unless, 1) the health care provider, in the exercise of their professional judgment, believes that informing the individual may place the individual at risk of serious harm, or 2) the health care provider would be informing a personal representative of the individual and the health care provider reasonably believes that the personal representative is responsible for the abuse, neglect, or other injury, and that informing such person may not be in the best interests of the individual as determined by the health care provider in the exercise of their professional judgment.

(check box if appropriate) **Notice of Confidential Investigation.** APS requests that you not inform the individual that protected health information has been or shall be disclosed as APS believes that informing the individual may place the individual at risk of serious harm or that notice to the individual will be informing a personal representative who is responsible for the abuse, neglect, or injury and that informing such person is not in the best interests of the individual.

Regarding Accounting of Disclosure Made Pursuant to 45 CFR 164.512(d)

(check box if appropriate) **Notice of Confidential Investigation.** APS requests that you temporarily suspend an individual's right to receive an accounting of disclosures made, in accordance with 45 CFR 164.512(d), to APS in its function as a health oversight agency. Revealing the protected health information that has been disclosed to APS would be reasonably likely to impede the Department's investigation. This right to an accounting should be suspended from the date of receipt of this notice until [INSERT DATE HERE]. As a covered entity, you must comply with this request in accordance with 45 CFR 164.528(a)(2)(i).

Name: \_\_\_\_\_ Date: \_\_\_\_\_

[INSERT DATE]

TO: [INSERT FINANCIAL INSTITUTION NAME]  
[INSERT FINANCIAL INSTITUTION ADDRESS]

FROM: [INSERT NAME OF LAW ENFORCEMENT AGENCY]

**RE: Requirement to disclose financial records**

As provided by 2012 Oregon Laws, Chapter 70 (HB 4084), a financial institution shall, in accordance with a subpoena issued by a court or on behalf of a grand jury, disclose and provide copies of the financial records of a person who is the alleged victim in an investigation into abuse being conducted by Adult Protective Services (APS) under ORS 441.650 or 124.070.

Enclosed/Attached is a subpoena issued by a court or on behalf of a grand jury for the disclosure of financial records for the following individual:

[INSERT INDIVIDUAL'S NAME]  
[INSERT INDIVIDUAL IDENTIFYING INFORMATION]

Regarding Notice to the Individual

Except when specifically directed by the court or district attorney issuing the subpoena not to, a financial institution that discloses and provides copies of financial records under this section may, but is not required to, inform the person about whom the financial records have been sought about the disclosure, or inform the person's caretaker, fiduciary, or other legal representative about the disclosure.

(check box if appropriate) **Notice of Confidential Investigation.** The court or district attorney issuing the subpoena in conjunction with this notice is directing the financial institution to not inform the person about whom financial records have been sought, or any representative of the person, about the disclosure. See the accompanying demand from the court or district attorney regarding this direction.

[*INSERT DATE*]

TO: [*INSERT HEALTH CARE PROVIDER NAME*]  
[*INSERT HEALTH CARE PROVIDER ADDRESS*]

FROM: [*INSERT NAME OF LAW ENFORCEMENT AGENCY*]

**RE: Requirement to disclose protected health information**

HIPAA privacy rule 45 CFR 164.512(c)(i) authorizes a health care provider or other covered entity to disclose protected health information about an individual who has been a victim of abuse or neglect to the extent the disclosure is required by law and the disclosure complies with and is limited to the relevant requirements of such law. 2012 Oregon Laws, Chapter 70 (HB 4084) requires a health care provider, upon notice by a law enforcement agency that an investigation into abuse is being conducted by Adult Protective Services (APS) under ORS 441.650 or 124.070, to permit the law enforcement agency to inspect and copy, or otherwise obtain, protected health information about an individual who has been a victim of abuse.

With this notice, [*INSERT NAME OF LAW ENFORCEMENT AGENCY*] is requesting, as part of an abuse investigation being conducted by APS under ORS 441.650 or 124.070, protected health information about an individual who has been a victim of abuse.

[*INSERT NAME OF LAW ENFORCEMENT AGENCY*] is requesting protected health information for the following individual:

[*INSERT NAME OF INDIVIDUAL*]  
[*INSERT INDIVIDUAL IDENTIFYING INFORMATION*]

## Regarding Notice to the Individual

Disclosures of protected health information performed in accordance with 45 CFR 164.512(c) require the health care provider to inform the individual to whom the protected health information pertains that information has been or shall be disclosed unless, 1) the health care provider, in the exercise of their professional judgment, believes that informing the individual may place the individual at risk of serious harm, or 2) the health care provider would be informing a personal representative of the individual and the health care provider reasonably believes that the personal representative is responsible for the abuse, neglect, or other injury, and that informing such person may not be in the best interests of the individual as determined by the health care provider in the exercise of their professional judgment.

(check box if appropriate) **Notice of Confidential Investigation.** [*INSERT NAME OF LAW ENFORCEMENT AGENCY*] requests that you not inform the individual that protected health information has been or shall be disclosed as [*INSERT NAME OF LAW ENFORCEMENT AGENCY*] believes, in coordination with the investigation being conducted by APS, that informing the individual may place the individual at risk of serious harm or that notice to the individual will be informing a personal representative who is responsible for the abuse, neglect, or injury and that informing such person is not in the best interests of the individual.