

CONFIDENTIALITY REFERENCE

for

OREGON COUNTY

HEALTH DEPARTMENTS

STATE OF OREGON
DEPARTMENT OF HUMAN SERVICES
HEALTH SERVICES
OFFICE OF COMMUNITY LIAISON

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***Note: all HIPAA citations included above are taken from the Unofficial Version of the Standards for Privacy of Individually identifiable Health Information (45 CFR§ 160 and 164), as amended last on Aug. 14, 2002 (Office for Civil Rights website, <http://www.hhs.gov/ocr/hipaa/finalreg.html>). The official version is now available on the Code of Federal Regulations website (http://www.access.gpo.gov/nara/cfr/waisidx_02/45cfr164_02.html). A note of caution—this version includes the unrevised text in the manuscript, with the amended text separately noted at the **end** of each subpart. Therefore, the official version may appear less clear than the unofficial version.*

GENERAL

Purpose of this Handbook

Assuring confidentiality of medical information is essential to the delivery of health care services. The purpose of this handbook is to provide information that may be useful when making decisions concerning disclosure of client information. This handbook also includes some general references and information regarding the Final Privacy Rule of HIPAA (the Health Insurance Portability and Accountability Act of 1996, <http://www.hhs.gov/ocr/hipaa/>). The required compliance date is April 14, 2003 for most covered and hybrid entities.

This handbook has been designed to give the reader basic information, and should be regarded as providing technical assistance. It should not be viewed as a detailed “how to” manual or as offering legal advice. Each county or program is a separate legal entity, and therefore **must** ultimately rely on their own judgment, and advice from their legal counsel. **If there are any questions, the public health administrator and/or the county legal counsel should be consulted.** Many of the issues faced may represent a combination of complicated legal and factual issues.

We have attempted to update the handbook to reflect all changes through September 2002. Statutes and rules cited in this handbook can be located in the Appendices, as well as online at <http://www.leg.state.or.us/ors/> (for the ORS), <http://arcweb.sos.state.or.us/banners/rules.htm> (for the OARs), and at <http://www.access.gpo.gov/nara/cfr/index.html> (for the Federal Regulations).

Some basic medical record principles regarding such things as record control and security have also been included. Good medical record management is an important part of assuring clients that patient information will be properly maintained.

Purpose of Medical Records

The purposes of the medical record include:

1. To document the course of the client’s health care.
2. To provide a medium of communication among health care professionals for current and future care.

3. To serve as a basis for planning individual patient care.
4. To serve as a basis for analysis, study and evaluation of the quality of care rendered to the patient.
5. To provide clinical data for use in research and education.

Confidentiality Principles

A primary goal for managing patient information is to balance authorized access with safeguarding patient information against unauthorized disclosures.

When resolving confidentiality issues, remember that the three general purposes of confidentiality laws and regulations are:

1. To protect individuals from unwarranted invasions into their privacy;
2. To give clients access to their own records; and
3. To protect the interests of society by permitting disclosure without client consent in certain limited situations, such as suspected child abuse, medical emergencies, communicable disease control, and program evaluations.

RECORD-KEEPING RESPONSIBILITIES AND PRACTICES

Policies and Procedures

Each local public health department (LPHD) is required to have comprehensive written policies and procedures regarding record-keeping responsibilities and practices that incorporate State and Federal statute, along with the appropriate departmental policies (HIPAA 45 CFR §164.530(i), Appendix A-36; CLHO Standards). Clearly written policies and procedures not only fulfill legal obligations, but they can also help achieve effective medical record management and record control.

Ownership of the Medical Record

Medical records are the property of the local public health department, hospital, or related health care institution. The medical record, either in the original or microfilm form, should not be removed from the institution except where necessary for a judicial or administrative proceeding or according to defined clinic procedures regarding record transfer between clinics. Some LPHDs have a policy that specifies that only copies can leave the institution, never the original.

Medical Record Control and Security

Every program, agency and service provider should have written policies and procedures that safeguard the confidentiality of client information. One of the new HIPAA regulations requires all personnel having any access to client information be trained in these confidentiality procedures, and this training must be documented (45 CFR§ 164.530(b), Appendix A-36).

Medical records should be secure and locked during non-office hours. Health records should never be left unattended in areas accessible to unauthorized individuals (45 CFR§ 164.530(c), Appendix A-36), including custodial staff. According to OAR 166-020-0015 (Appendix A-2), public health department medical records, as a part of public records, "...should be stored in fire-resistant structures and in areas in which the temperature and humidity are maintained at the levels required to insure optimum longevity of the paper, film, or tape on which they are recorded. Adequate light and access should be provided to permit retrieval of public records. Adequate ventilation and protection against insect or mold invasion should be provided. Steam, water, and sewer pipes, other than fire-control sprinkler systems, pose extreme hazard to records. No public records of enduring

value should be stored where heat, breaks, drips, or condensation from pipes could damage them; where windows, doors, walls, or roofs are likely to admit moisture; or where they will be exposed to sunlight or extreme temperature variations. (2) Aisle space in public records storage areas should be kept free of obstruction, and no public records should be stacked or piled directly on the floor of any storage area. All public records should be shelved above initial flood level of any bursting pipe, leaky roof, sprinkler system, or other source of water.”

Access to the medical record file area should be limited to a small number of designated employees. This will result in increased control of the file area with fewer misfiles and reduced traffic flow in that area.

Medical Record Handling and Information Release

Policies on the following medical record handling and release of information issues should be included: computerized records systems; faxing of medical records; telephone release of information; and specification of those employees who have access to medical records.

Retention of Records

The State Archives rules were updated in 1997, and contain a complete list of the different types of records, along with how long each is required to be retained (this requirement is a minimum length of time—records can be retained for a longer period of time, depending on the LPHD policy). Please refer to these updated rules for further information and requirements (OAR 166-113-0020, Appendix A-3).

Assembly and Contents of Records

General principles of medical record management recommend that the following policies and procedures be included:

- A policy defining the contents of the medical record, including approved forms
- A procedure for the uniform assembly of records should be developed, and only approved forms should be used. All forms should be placed in a designated area of the record. These steps will promote consistency in documentation and will expedite the review of records for particular types of information. Consistency becomes increasingly important when responding to a request for a record, which may contain sensitive information.

- A policy outlining:
 - the correct format to be used in documentation;
 - the personnel allowed to document in the medical record (and where);
and
 - the manner in which records are dated and signed.

Documentation Principles on Corrections and Additions to the Record

The following methods for correcting and adding to the medical record should be followed:

By the provider:

Corrections and additions are to be made by the original documenter. If the error is discovered immediately after it is made, draw a single, thin line through each line of inaccurate material and make certain it is still legible. Initial and write the correct information. If the error is discovered later, draw the line through the incorrect entry, initial it, and make the new entry in the next available location. State which entry the correction is replacing. Describe as accurately as possible the recalled situation. Date and initial the new entry. In some situations, it is recommended that a colleague witness the corrected notation.

By the client:

HIPAA specifically grants individuals the right to request to amend their medical record (45 CFR §164.526, Appendix A-4). If a patient reviews his/her record and feels there is a mistake or wishes to make a comment, notation of such should be dated, made on a *separate sheet* and attached to the patient's record. Alteration of the original record by crossing out and initialing should never occur. The LPHD must then identify the records that are affected by the amendment, and provide a link to the location of the amendment, if needed. The LPHD must also inform the individual that this record has been amended, and obtain their permission to notify the relevant persons with whom the amendment needs to be shared. The individual's request to amend their own record can be denied in certain specific circumstances—please refer to the rules for specific information.

RELEASING INFORMATION

Policies and Procedures

Policies and procedures concerning the release of patient information should be in written form and readily available to both patients and staff.

According to ORS 192.525 (Appendix A-5), the State policy concerning medical records, “it is the right of an individual to have the medical history of the individual protected from disclosure to persons other than the health care provider and insurer of the individual who needs such information, and the right of an individual to review the medical records of that individual. It is recognized that both rights may be limited, but only to benefit the patient. These rights of confidentiality and full access must be protected by private and public institutions providing health care services and by private practitioners of the healing arts.” These rights are also granted by HIPAA (45 CFR §164.502 and 45 CFR §164.524; see Appendices A-6 and A-8 respectively), with some exceptions. If there are any questions, please consult with the county counsel.

Except as otherwise provided by law, a health care provider must disclose a patient's medical records after receiving a written release authorization that directs the health care provider to produce the patient's medical records. Patient information should never be released without the patient's or their guardian's (please see special section on Releasing the Health Information of Minors on page 12) written consent (see 45 CFR §164.502, OAR 847-012-0000, and ORS 179.505; see Appendices A-6, A-17 and A-9 respectively). In certain instances, however, confidential information may be released without client consent (see Release of Information without Authorization).

According to HIPAA (45 CFR §164.502(b), 45 CFR §164.514(d); Appendices A-6 and A-1), any disclosure of client information should be limited to only that information which is reasonably necessary to fulfill the purpose for which the information was disclosed—the “minimum necessary.” Information that falls under the Public Health exemption of HIPAA is not exempt from the minimum necessary disclosure (45 CFR §164.514(d-3), Appendix A-1). All release of information forms (the ‘authorizations’ referred to in HIPAA) must contain specifically required elements (see Release of Information with Authorization section).

Patient information should not be given out over the telephone unless proper authorization is on file. If information must be released over the telephone, always verify that the person requesting information is authorized to receive information (refer to LPHD policy). Do not release confidential patient information unless it is clear that it is appropriate to do so. Any time there is a question about the appropriateness of disclosing confidential information, it is highly recommend that the county counsel be consulted prior to any disclosure.

Documentation of Disclosures

Whenever a client's record or any part thereof is disclosed, a signed authorization or other appropriate documentation should be included in the record. If the disclosure is authorized, a copy of the authorization should be filed in the patient's medical record. Tracking of disclosure is required by HIPAA (unless the patient has authorized the disclosure), and must be kept on file for at least six years (45 CFR §164.528, Appendix A-10). The following information should be documented in the record and must include (per HIPAA):

- Client's name
- Date of disclosure
- Name of recipient
- Name and title of disclosing person
- The information disclosed or a description of the information
- A brief statement regarding the purpose of the disclosure

This documentation is good practice whether or not the law requires it.

Charging for Searching, Abstracting, Copying Materials

Public agencies (under ORS 179.505, Appendix A-9) are entitled to require a person requesting client records to pay reasonable costs of searching for files, and, if requested by the person, abstracting and copying material. However, a client cannot be denied access to his or her own file because of inability to pay. The charge assessed should be based on actual costs, such as staff time, proportional share of overhead, amortization of copying equipment, and cost of copy paper. The individual county and/or public health department should have a policy regarding these charges.

Release of Information with Authorization

A client, or in the case of incapacity or minority, the legal guardian (please see special section on **Releasing the Health Information of Minors** on page 12), may authorize any person to review or obtain copies of his/her medical records, as long as a valid authorization for release of records is obtained. Authorization (consent) must be in writing, and must be dated and signed by the patient or by a person authorized by law to give authorization. Information may be requested by a variety of parties including:

Healthcare Providers	The Patient
Attorneys	Disability Determination Services
Third Party Payers	Worker's Compensation
Other Insurance Companies	Employers
Vocational Rehabilitation	Social Security Administration

All authorizations for release of information must comply with ORS 179.505 (Appendix A-9) and ORS 192.525 (Appendix A-5), must be written in plain language, and must include the following (45 CFR§ 164.508(c), Appendix A-11):

- Name of program or person permitted to make the disclosure
- Name of individual or organization to which the disclosure is to be made
- Name of the patient
- Purpose for the disclosure
- How much and what kind of information is to be disclosed
- The signature of the patient or a person authorized to give consent (if signed by representative of the patient, a description of his or her authority to act for the patient)
- The date on which the consent is signed
- Expiration date of the consent
- A statement that the individual may revoke the authorization in writing at any time, and either instructions on how to exercise this right, or a reference to the notice (the Notice of Privacy Policy required by HIPAA), if such information is contained in the notice
- A statement that treatment, payment, enrollment or eligibility for benefits may not be conditioned on obtaining the authorization (if prohibited by the HIPAA Privacy Rule), or a statement about the consequences of refusing to sign the authorization

- A statement that there is the possibility that the recipient might disclose the protected health information. Even though Oregon state law prohibits this re-disclosure (ORS 179.505 (14), Appendix A-9), this statement is a required element of the authorization, according to Federal law, and must be included.

The individual must be given a copy of the signed authorization (45 CFR §164.508(c)(4), Appendix A-11).

If someone other than the patient has signed, it must be determined that this person has the legal authority to do so (please see special section on **Releasing the Health Information of Minors** on page 12). Always obtain a copy of the official documentation that indicates the legal relationship and keep it on file with the release.

If a patient has died, the personal representative or executor of the estate has the power to sign a release (45 CFR §164.502 (f), Appendix A-6). Be sure to obtain proof of his/her authority. Similarly, for a patient who is not competent, be sure to obtain a copy of the court order or power of attorney designating guardianship.

Re-disclosure Notice

When copies of a record are provided to authorized external users, these copies should be accompanied by a statement which:

1. Prohibits use of the information for other than the stated purpose
2. Requests destruction of copies after the stated need has been fulfilled
3. Prohibits re-disclosure of the information (ORS 179.505 (14), Appendix A-9).

Likewise, the health department should never re-release (re-disclose) any information received from an external provider unless the patient has specifically requested this in the form of a valid release of information.

Release to Insurance Companies

Occasionally, insurance companies may send a request for information to the LPHD. Sometimes, by virtue of an enrollment plan or agreement, insurance companies are automatically allowed access to some medical records, because they are paying for the services provided, and may need to see additional documentation to support the billing (HIPAA 45 CFR §164.506 (c)(3), Appendix A-13). Always make sure that it is appropriate to release client information before doing so, as an

insurance company that does not represent the client may be requesting information. In these cases, a valid written authorization from the client or guardian must be received before any information is disclosed.

Release to Worker's Compensation Insurance

“The act of the worker in applying for workers' compensation benefits constitutes authorization for any medical provider and other custodians of claims records to release relevant medical records. Medical information relevant to a claim includes a past history of complaints or treatment of a condition similar to that presented in the claim or other conditions related to the same body part. The authorization is valid for the duration of the work related injury or illness and is not subject to revocation by the worker or the worker's representative. However, this authorization does not authorize the release of information regarding:

(a) Federally funded drug and alcohol abuse treatment programs governed by Federal Regulation 42 CFR §2.1 (Appendix A-14), which may only be obtained in compliance with this federal regulation, or

(b) The release of HIV related information otherwise protected by ORS 433.045(3) (Appendix A-15). HIV related information should only be released when a claim is made for HIV or AIDS or when such information is directly relevant to the claimed condition(s).”

The above is quoted from OAR 436-10-0240 (Appendix A-16)—please refer to this and ORS 656.726 (Appendix A-18) for more information.

Client Access to Own Records

According to HIPAA (45 CFR §164.524(a)) and Oregon State law (ORS 179.505(9) and OAR 847-12-000; Appendices A-8, A-9 and A-17), a patient may request that a copy of his/her medical records be released to him/her. Additionally, a patient (or his or her legal guardian) has the right to immediate inspection of the record. The following items should guide a provider's decision on such a request:

1. The patient's request must be in writing and must specify which records he/she wishes released.
2. The requested records must be released within a reasonable time, no longer than five working days (specified in ORS 179.505(9), Appendix A-9), or 30

working days (specified in OAR 847-12-000 and 45 CFR §164.524(b), Appendices A-17 and A-8).

A patient can only be denied access to his or her own records in specific cases, under both State law (ORS 179.505(9), Appendix A-9) and HIPAA (45 CFR §164.524(a)(1-3), Appendix A-8). See the specific HIPAA rules for those circumstances in which an individual can be denied access to their own record. HIPAA also gives the individual the “right to have the denial reviewed by a licensed health care professional who is designated by the covered entity to act as a reviewing official and who did not participate in the original decision to deny” (45 CFR §164.524(a)(4), Appendix A-8). If the request is denied, the reason for the denial must be documented in the patient’s record.

For security reasons, the client should never be left alone with the record. If the patient requests to inspect the original record, a staff member should stay with the patient in order to answer any questions, and also to ensure that no one tampers with the record. For information on the client making amendments to his or her medical record, see section on **Record Keeping Responsibilities** (page 4).

Release to Employers

The patient’s employer must have the patient’s written consent to review or receive copies of a medical record. No information shall be released without this consent. Providers may furnish an employer’s “return to work” statement upon patient request, but no diagnosis.

There might be some cases in which a client has authorized the release of information to an employer. The LPHD should be aware of any potential sensitivity about the client information authorized to be released (for instance, mental health or substance abuse issues). If the client records contain any sensitive information, the LPHD should contact the employee and discuss the information to be included in the authorization. If necessary, the LPHD can request that the provider dictate a separate report for the purpose of answering the employer’s request, excluding the sensitive information. For telephone requests, no information should be given.

Releasing the Health Information of Minors

Under Oregon law (ORS 109.610-.680; Appendix A-12), minors can consent to:

- General Medical and Surgical Treatment at the age of fifteen
- Mental Health and Substance Abuse Treatment at the age of fourteen
- Family Planning and STD Treatment at *any age*.

The laws concerning the release of information of a minor to the parents in the above circumstances, against the wishes of the minor involved, are very complex. If this situation should arise, it is **strongly** recommended that the county counsel be consulted and involved in any decisions that are made.

A physician or dentist providing medical diagnosis or treatment (or any physician providing birth control information or services) to a minor who is 15 years old or older may advise the parent or legal guardian of such care, diagnosis, treatment or the need for any treatment without patient consent. In addition, there is no liability for so advising without patient consent (ORS 109.640, 109.650; Appendix A-12). However, specific funding streams may **prohibit** the release of any information without the patient's written consent, including minor patients. In case of doubt, please check with the appropriate program staff and or the county counsel prior to releasing **any** information without the patient's consent.

Similarly, a physician, psychologist, nurse practitioner, licensed clinical social worker or community mental health and developmental disabilities program providing outpatient diagnosis or treatment of a mental or emotional disorder or chemical dependency to a minor 14 years of age or older may advise the minor's parents or guardian of the diagnosis or treatment whenever the disclosure is "clinically appropriate" and will serve the best interests of the minor because:

- The minor's condition has deteriorated; or
- The risk of a suicide attempt has become such that inpatient treatment is necessary; or
- The minor's condition requires detoxification in acute or residential treatment (ORS 109.680, Appendix A-12).

Sexually Transmitted Disease

Any minor may give consent to treatment for a sexually transmitted disease (ORS

109.610(1), Appendix A-12). In addition, a minor may consent to HIV testing (ORS 433.045(5), Appendix A-15). However, minors tested for HIV should be advised that HIV test results may be disclosed to parents or guardians upon the parent's request (OAR 333-12-0270 (2), Appendix A-29).

If a minor is legally able to consent for treatment, the minor may also authorize the release of the information about the treatment. Otherwise, the patient's medical record may only be released with the informed consent of the patient's parent or guardian. In the case of divorce, unless otherwise ordered by the court, either parent may consent on behalf of the minor (ORS 107.154, Appendix A-32).

Release of Information Without Authorization

In certain instances, confidential information may be released without patient consent. Records/information can be released without client consent in the following circumstances:

Medical Emergencies

ORS 179.505 (4)(a) (Appendix A-9) permits disclosure of medical/clinical information to any person without client consent, but only to the extent necessary to meet a medical emergency. This provision requires the exercise of sound judgment to determine whether a medical emergency exists and, if so, how much information needs to be disclosed to meet the emergency. The person responding at the LPHD should consider the following guidelines in these situations:

1. A medical emergency exists if a patient is severely injured and, therefore, unconscious, delirious or otherwise unable to convey consent.
2. The information disclosed should be only that necessary to assess and/or treat the emergency.
3. Ensure that the party requesting information (i.e. Hospital Emergency Room) is a legitimate caller. Verify the name and phone number.

Government Agencies

Patient records may be released to government agencies (such as Medicaid and Medicare) when they seek to secure payment for treatment (ORS 179.505(4)(c), Appendix A-9).

Cooperating Providers

Public Health agencies, acting as health care providers, may use or disclose protected health information (PHI) for patient treatment, payment or healthcare operations, and may disclose PHI for the treatment activities of a cooperating health care provider (45 CFR §164.506 (c), Appendix A-13) if:

1. The provider furnishing the information is currently providing care or treatment;

2. The recipient is an employee or agent of the provider furnishing the information; or
3. The recipient is a “cooperating provider” acting within the scope of his/her duties to either evaluate a treatment program or diagnose or assist in diagnosing or treating the patient.

Law Enforcement Officials

It is recommended that all requests for information from law enforcement, the District Attorney, or the courts are either reviewed by the county counsel prior to being acted upon, or are processed following specific policies and procedures that have been approved by the county counsel.

A covered entity is permitted under HIPAA to disclose the following information to law enforcement officials(45 CFR §164.512(f), Appendix A-24):

- Name and address;
- Date and place of birth;
- Social security number;
- ABO blood type and rh factor;
- Type of injury;
- Date and time of treatment;
- Date and time of death, if applicable; and
- A description of distinguishing physical characteristics, including height, weight, gender, race, hair and eye color, presence or absence of facial hair, scars and tattoos.

Under ORS 179.505(11) (Appendix A-9), no written clinical records or other written patient reports may be used to initiate or substantiate any criminal, civil, administrative, legislative or other proceeding against a patient or to conduct any investigations of a patient.

Other information shall be released to law enforcement only with patient’s consent, subpoena (see p. 18), or as otherwise required by law. HIPAA outlines a number of circumstances in which information can be disclosed. Please refer to the specific rule (45 CFR §164.512(f), Appendix A-24), LPHD policies, and the county counsel for further information.

Discretionary Disclosures

The following guidelines describe those situations in which LPHD employees are either required or permitted by law to report confidential information to law enforcement agencies. In all cases, employees should disclose only information about a client necessary to respond to the particular situation. In all but abuse reporting situations, an employee should disclose confidential information to law enforcement only after reviewing this with his or her supervisor. Health Departments and their counsel should have clear policies and procedures to assist employees who deal with these situations.

Health Department employees may lawfully report client confidential information to law enforcement officials in the following situations:

1. When a client poses a “clear and immediate danger to others or to society” a clinician can lawfully report this information to the “appropriate authority” (ORS 179.505(12), Appendix A-9). In most cases the “appropriate authority” would be law enforcement. Although this provision is discretionary, liability may arise from a failure to warn.
2. When law enforcement personnel are investigating a crime committed on Health Department premises, the Health Department may disclose client specific information necessary to the criminal investigation (45 CFR §164.512(f-5), Appendix A-24).
3. When confronted by law enforcement personnel from other than state or local law enforcement agencies (i.e. immigration and naturalization services, US dept. of justice, or alcohol tobacco and firearms) employees should contact counsel.
4. When a client indicates a clear and immediate danger to self. Although this exception is not clearly set out in the law, liability may arise from a failure to take appropriate protective action for the individual. This may include notification of law enforcement personnel.

Mandatory Disclosures

There are some situations in which Health Department employees are required by law to report client confidential information to law enforcement officials.

Outstanding warrants:

The health department is required to report to the state police if services are being provided to an individual for whom there is an outstanding

warrant (ORS 659A.212, Appendix A-23). Please consult with county counsel.

Abuse Reporting

All Health Department employees are mandatory abuse reporters in cases involving child abuse, elder abuse, abuse of long term care residents, and abuse of the mentally ill or developmentally disabled.

Suspected Child Abuse

ORS 419B.010 and 419B.015 (Appendix A-19) states that “any public or private official having reasonable cause to believe that a child with whom the official comes in contact has suffered abuse or that any person with whom the official comes in contact has abused a child shall immediately report or cause a report to be made” to the local office of the Department of Human Services, the department’s designee, or to a law enforcement agency within the county. The ORS further requires that “when a report is received by the department, the department shall immediately notify a law enforcement agency within the county where the report was made.” Psychiatrists, psychologists, clergymen or attorneys are not required to report if the communication is privileged under Oregon law. The report should contain the nature and extent of the abuse including evidence of prior abuse or any explanation given, and any other information the person making the report believes might be helpful in establishing either the cause of the abuse or the identity of the perpetrator.

Suspected Abuse of Elderly Persons

All employees of county health departments are mandatory reporters regarding allegations of abused elderly persons (ORS 124.060, Appendix A-21). “Any public or private official having reasonable cause to believe that any person 65 years of age or older with whom the official comes in contact, while acting in an official capacity, has suffered abuse, or that any person with whom the official comes in contact while acting in an official capacity has abused a person 65 years of age or older shall report or cause a report to be made in the manner required in ORS 124.065” (Appendix A-21).

Suspected Abuse of Long Term Care Facility Residents

All employees of county health departments are mandatory reporters regarding allegations of suspected abuse of a resident in a long-term care facility (ORS 441.640, Appendix A-20). “Any public or private official having reasonable cause to believe that any resident in a long term care facility, with whom the official comes in contact while acting in an official capacity, has suffered abuse, or that any person with whom the official comes in contact while acting in an official capacity has abused a resident in a long term care facility, shall report or cause a report to be made in the manner required in ORS 441.645” (Appendix A-20).

HIPAA also permits disclosure for the purpose of reporting abuse or suspected abuse (45 CFR §164.512(c), Appendix A-24).

Any other requests for medical information from a law enforcement agency must be in the form of a written authorization from the patient or guardian, or an order from the courts, and should be carried out under the direction of the county counsel or under specific policies and procedures approved by the county counsel.

Reportable Diseases and Other Public Health Activities

Health care providers in Oregon have the legal responsibility to report known or suspected communicable diseases (as described in OAR 333-018 and OAR 333-019-0405, Appendices A-25, A-26) to the local health authority. All reporting is authorized by ORS 433.004 (Appendix A-27) and OAR 333-18-000 (Appendix A-25). The HIPAA Privacy Rule also “permits covered entities to disclose protected health information (PHI) without consent or authorization for public health purposes...”. These “public health purposes” are defined very broadly in HIPAA, and include disease control and prevention, surveillance, investigations, and interventions (45 CFR §164.512(b), Appendix A-24)). Some providers may be unwilling to release PHI to the public health department, assuming incorrectly that they are no longer allowed to do so under HIPAA. Having a cover sheet ready to send to the providers, along with the authorization or request for disclosure (with reference to HIPAA law, particularly 45 CFR §164.512(b), Appendix A-24), may help facilitate this exchange.

Immunization Records

A local health department may release information concerning the status of a child's immunization against communicable disease to a parent, guardian, school, children's facility, medical provider, or public health official (ORS 433.280, Appendix A-28).

Other Disclosures Permissible without Authorization

HIPAA allows for disclosure without authorization for "quality assessment and improvement activities, population-based activities relating to improving health or reducing health care costs, case management and care coordination, conducting training programs, and accreditation, licensing or credentialing activities..." (45 CFR §164.506 (c)(4), Appendix A-13). In addition, records may be released without consent (ORS 179.505(4)(b), Appendix A-9) "to persons engaged in scientific research, program evaluation, peer review and fiscal audits." Patient identity may not be disclosed except when the disclosure is essential to the research, evaluation, review or audit or when the disclosure benefits the provider or patient. HIPAA also has other restrictions regarding research, the use of de-identified patient information, and the use of limited datasets. If these circumstances arise, please read the HIPAA rules concerning this, which are at 45 CFR §164.512 (Appendix A-24), and 45 CFR §164.514 (Appendix A-1). **Please check with the LPHD's specific policies or county counsel prior to disclosing confidential information in these circumstances.**

Subpoenas and Court Orders

A subpoena is an order, which requires the named party to appear before a court or an administrative body or to be in attendance at a deposition, where the LPHD employee, as the named party, will be asked questions under oath. A court order is different than a subpoena, and **county counsel should definitely be consulted** if a court order is received.

A *subpoena duces tecum* is an order commanding the named party to appear, and to bring with them certain documents. The LPHD employee could be subpoenaed to appear with records to either a hearing, a trial, or to a deposition.

If a subpoena is received, **contact county counsel for advice**. Do **NOT** automatically assume that a subpoena is sufficient to release all medical records. In order for subpoenas to be valid, several specific requirements must be met; including presenting witness fees and mileage at the time the subpoena is served. The subpoena must also have been served with proper notice. The records or testimony requested might be protected by statute (also see **Records with Special Protection**). The recipient should fax or send a copy of the subpoena to the county counsel for review it prior to instructing the recipient in how to proceed.

On the other hand, do not ignore a subpoena, assuming a response is not required. The person receiving the subpoena could be held in contempt of court. **Check with the county counsel**.

Legal Actions Against Client

- Section (9) of ORS 179.505 (Appendix A-9) prohibits disclosure of medical or clinical information without a client's consent if the information is to be used to initiate or substantiate any criminal, civil, administrative, legislative, or other proceedings conducted by federal, state, or local authorities against the client. It also prohibits the use of confidential information to conduct an investigation of a patient.
- Section (9) above allows disclosure of protected information for use in a judicial proceeding if the client, as a party to the proceeding, produces evidence regarding an issue to which the information held by the provider would be relevant. The court must rule whether the information is "relevant". If the attorney for the client does not raise the issue, the

provider or an employee of the provider should point out to the court the existence of ORS 179.505 and ask whether the witness is compelled to testify.

RECORDS WITH SPECIAL PROTECTION

Human Immunodeficiency Virus (HIV)

All HIV test and treatment information have special protection by law. This special protection extends to both test and test result information on clients, whether the tests were performed at the LPHD or another facility. This protection also extends to test and test result information reported by the patient to the LPHD (ORS 433.045(3), Appendix A-15). The laws and rules concerning HIV change with some frequency. Be sure to check with county counsel if there are any questions regarding release of HIV records.

HIV Test Information

HIV test information is specially protected by statute. However, in certain limited circumstances, this information may be shared, even without patient consent.

The general rule is that no person shall disclose or be compelled to disclose the identity of a person upon whom an HIV related test is performed or the result of such a test in a way which would permit the identification of the subject of the test except (OAR 333-012-0270, Appendix A-29):

- To the person ordering the test or to any other individual authorized to give consent to medical procedures for that individual.
- Test results and documentation of consent may be entered into the routine medical record of that individual and may be seen by or shared with persons who must review the record for purposes of delivering health care or for routine administrative procedures. Those with such access must maintain patient confidentiality.
- To physicians or other licensed health care providers giving care to the tested individual when knowledge of the test result is specifically needed to promote optimal emergency diagnosis and/or treatment and the individual is unable to authorize such disclosure.
- A physician may notify an individual who has had a substantial exposure to another individual disclosing whether that individual has been HIV tested and, if so, what the result was, provided that:
 - The individual whose test information is released is notified in

- writing; and
- The identity of the HIV tested person is not explicitly disclosed during the notification (OAR 333-012-0266 (4), Appendix A-30).
- Reporting the identity and test results of an individual with a positive HIV test result to the local health department or the Department of Human Services (DHS) on a death certificate or as required or permitted by law is not a breach of confidentiality.
- The identity of an HIV tested deceased individual and test results may be released to physicians and other licensed providers to the minimum extent necessary to prevent contaminated anatomical parts from being transplanted into others.

Release of HIV Test Information with Patient Consent

HIV test information may be released with specific written authorization by the individual whose blood is tested (or his/her attorney in fact, next-of-kin, or guardian, as appropriate). This release must specifically authorize release of HIV information. A general medical release is not sufficient. The authorization for release of HIV test information must specifically include (OAR 333-012-0270(8), Appendix A-29):

- The statement that HIV test information may be released;
- The specific purpose for which the information may be released;
- Those to whom the information may be released;
- The specific time period during which the release may occur; and
- The date of the authorization, and the signature of the individual giving authorization.

All written HIV test information released with authorization must be labeled with a statement, which substantially says:

“This information may not be disclosed to anyone without the specific written authorization of the individual tested.”

If a subpoena or a court order for a release of HIV-related information is received, contact county counsel.