

## **HIPAA POLICY FOR OREGON PROVIDERS**

Original Draft Date: February 28, 2003

Last Revision Date:

**SUBJECT:** Obtaining Client Authorization for Uses and Disclosures Other Than Treatment, Payment and Health Care Operations

**HIPAA CITES:** 45 CFR § 164.508

**DEPARTMENT(S):** Coos County Mental Health

**POLICY NUMBER:** 13

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### **I. POLICY:**

Coos County Mental Health Department obtains the authorization of the client or the client's Personal Representative on the applicable Authorization Form whenever it desires to use or disclose Protected Health Information for a purpose other than: (a) providing Treatment, obtaining Payment or carrying out its Health Care Operations pursuant to Policy # 10; (b) making a disclosure based on public policy pursuant to Policy # 11; (c) a facility directory pursuant to Policy #16; (d) to persons involved in a client's care or for notification purposes pursuant to Policy # 17; or (e) as otherwise provided in the Department's policies.

Coos County Mental Health Department may use or disclose Protected Health Information that it created or received prior to April 14, 2003 pursuant to an authorization or other express legal permission obtained from a client prior to April 14, 2003 *if* (a) the authorization or other express legal permission specifically permits such use or disclosure, and (b) there is no agreed upon restriction in accordance with Policy # 33.

Further, it is the policy of Coos County Mental Health Department to obtain the authorization of the client or the client's Personal Representative on the applicable Authorization Form whenever it desires to use or disclose Highly Confidential Information other than as permitted under federal and Oregon laws protecting such information. For uses and disclosures of Psychotherapy Notes, Coos County Mental Health Department shall follow the procedures set forth in Policy # 41 regarding Psychotherapy Notes.

A client's (or Personal Representative's) request to access the client's Protected Health Information is accommodated by following Policy # 30 regarding access.

## II. **PROCEDURES:**

### A. General Procedure

1. Except as permitted by Policy # 10 regarding uses and disclosures for Treatment, Payment and Health Care Operations, and Coos County Mental Health Department's other policies regarding uses and disclosures of Protected Health Information, a client's Protected Health Information may only be used and disclosed if the client or the client's Personal Representative completes and signs an Authorization Form (Authorization to Use/Disclose). A sample of the form is included in Policy 14.
2. Coos County Mental Health Department may accept an authorization form signed by the client which is not the Department's specific Authorization Form, as long as the authorization form contains each of the elements set forth in Section II.B below.
3. Coos County Mental Health Department staff may not disclose information pursuant to an Authorization Form without ensuring the validity of the Authorization Form by following the procedures set forth in Section II.C below.

### B. Elements of Client Authorization. Coos County Mental Health Department shall provide a client with an Authorization Form, written in plain language, allowing the Department to use or disclose Protected Health Information for purposes not covered by the consent form signed by the client and containing the following elements:

1. Description of Health Information. The Authorization must contain a description of the information to be used or disclosed that identifies the information in a specific and meaningful fashion. If the Department intends to use or disclose Highly Confidential Information, then the client must specifically authorize each type of Highly Confidential Information by checking the applicable box on the Authorization Form.
2. Identification of Authorized Person. The Authorization must contain the name or other specific identification of the Coos County Mental Health Department, person(s), or class of persons, authorized to make the requested use or disclosure.
3. Identification of Recipient. The Authorization must contain the name or other specific identification of the person(s), or class of persons, to whom Coos County Mental Health Department may make the requested use or disclosure.

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4. Description of Purpose(s). The Authorization must contain a description of each purpose for which Protected Health Information is to be used or disclosed.
  - a. This description must be specific enough to provide a client with the facts that he/she needs to make an informed decision whether to allow release of the Protected Health Information.
  - b. The statement “at the request of the individual” is a sufficient description of the purpose only when an individual initiates the authorization and does not (or elects not to) provide a statement of the purpose.
5. Expiration. The Authorization must contain an expiration date or an expiration event that relates to the client or the purpose of the use or disclosure. The statement “end of research study,” “none,” or similar language is sufficient if the authorization is for a use or disclosure of Protected Health Information for research, including for the creation and maintenance of a research database or research repository.
6. Statement of Right to Revoke. The Authorization must contain a statement of the client’s right to revoke the authorization in writing and either:
  - a. a statement of the exceptions to the client’s right to revoke an authorization and a description of how the client may revoke the authorization; or
  - b. a reference to the Coos County Mental Health Department’s Notice of Privacy Practices, if the Notice of Privacy Practices describes the exceptions to the client’s right to revoke an authorization and the authorization revocation process.
7. (In)Ability to Condition Treatment on the Authorization. The Authorization must contain a statement that the Coos County Mental Health Department may *not* condition its provision of health care to the client on whether the client’s signs the Authorization, *unless* either:
  - a. the health care to be provided is solely for the purpose of creating Protected Health Information to be disclosed to a third party and the client’s Authorization permits the Department to release the client’s Protected Health Information to such third party; or
  - b. the health care to be provided is research-related treatment and the client’s Authorization is for the use or disclosure of Protected Health Information for such research pursuant to Policy # 27.

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8. Statement Regarding Re-disclosure. A recipient of health records or information is generally not permitted to re-disclose the records or information without the client's authorization unless permitted under Oregon law [ORS 179.505(14)]. Health information disclosed by the Department includes instruction for the recipient not to re-disclose pursuant to Policy CR-07. However, the Authorization must contain a statement that Protected Health Information used or disclosed pursuant to the Authorization Form may be subject to re-disclosure by the recipient and no longer be protected by the Privacy Rule.

In addition, if the Department is disclosing HIV test information or alcohol or drug abuse treatment program records or information, then the information or records, which are disclosed, must be accompanied by the following notice statements regarding re-disclosure:

- a. HIV-related Test Information. Each disclosure of HIV test information shall be accompanied by a statement in writing, which includes the following or substantially similar language: "This information may not be disclosed to anyone without the specific written authorization of the individual to whom it pertains. [OAR § 333-012-0270(9)(a)]"
  - b. Alcohol or Drug Abuse Program Records and Information. Each disclosure of alcohol or drug abuse program records or information shall be accompanied by a statement in writing, which includes the following language: "This information has been disclosed to you from records protected by Federal confidentiality rules (42 CFR part 2). The Federal Rules prohibit you from making any further disclosure of this information unless further disclosure is expressly permitted by the written consent of the person to whom it pertains or as otherwise permitted by 42 CFR part 2. A general authorization for the release of medical or other information is NOT sufficient for this purpose. The Federal rules restrict any use of the information to criminally investigate or prosecute any alcohol or drug abuse client." [42 CFR § 2.32]
10. Remuneration for Marketing Activity. If the Authorization is for a marketing activity and if the Department has received or will be receiving any remuneration in connection with such marketing activity, then the Authorization must state that the Coos County Mental Health Department is receiving remuneration in connection with such marketing activity.
  11. Dated Signature. The Authorization must contain a signature of the client or the client's authorized Personal Representative and the date of the signature.

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12. Personal Representative. If the Authorization Form is signed by a Personal Representative of the client, a description of such Personal Representative's authority to act for the client must be included.
- C. Verification of Validity. Coos County Mental Health Department may not disclose Protected Health Information pursuant to an Authorization Form without verifying the validity of the Authorization Form. Department staff shall verify the validity of the Authorization Form by confirming the following:
1. Completion. An Authorization Form must contain all the elements identified in Section II.B above.
  2. Not Expired. An Authorization Form must not be expired.
  3. Not Revoked. An Authorization Form must not be revoked.
  4. No Material False Information. An Authorization Form must not contain any material information that the Department knows to be false.
  5. No Compound Authorizations. An Authorization Form is not combined with any other document to create a compound authorization, except as set forth in the three exceptions below:
    - a. An Authorization to use or disclose Protected Health Information for a research study may be combined as set forth in Policy # 27.
    - b. An Authorization to use or disclose Psychotherapy Notes may be combined as set forth in Policy #41 regarding Psychotherapy Notes.
    - c. An Authorization covered under this Policy, other than an Authorization for a use or disclosure of psychotherapy notes, may be combined with any other Authorization covered under this Policy, except when Coos County Mental Health Department has conditioned the provision of health care on the provision of one of the Authorizations.
  6. No Conditioning Treatment on the Authorization. The provision of Treatment is not conditioned on whether the client signs the Authorization except under the two circumstances described in Section II.D. below.
- D. Treatment Not Conditioned on Authorization. Except as set forth in this Subsection, Coos County Mental Health Department may not condition the provision of Treatment on a client signing an Authorization.

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1. The Department may condition the provision of research-related Treatment pursuant to Policy # 27..
2. The Department may condition the provision of Treatment if the sole purpose of the client's Treatment is to provide health information to a third party (e.g., disclosure of the results of an employer-mandated drug test to the employer).

### E. Revocation of Authorization

1. A client may revoke an authorization at any time. To revoke an authorization the client must submit the revocation in writing and that specifies the authorization to be revoked. A revocation will be effective immediately unless the client specifies a future date in his or her written revocation. A sample of the Department Revocation of Authorization form is included in Policy 15.
2. The revocation will not be valid where Coos County Mental Health Department has already acted in reliance upon the authorization.

### F. Documentation Requirements

1. Authorization Stored in Medical Record. Coos County Mental Health Department must retain a completed Authorization Form in the client's Medical Record for no less than six (6) years.
2. Client Shall Receive Copy of Authorization. If Coos County Mental Health Department seeks an Authorization from a client for a use or disclosure of Protected Health Information, the Department must provide a copy of the client's signed Authorization Form to the client.