

## **HIPAA POLICY FOR OREGON PROVIDERS**

Original Draft Date: March 19, 2003

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**SUBJECT:** Client's Right to Access Protected Health Information

**HIPAA CITES:** 45 CFR §164.524

**DEPARTMENT:** Coos County Mental Health

**POLICY NUMBER:** 30

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### **I. POLICY:**

Coos County Mental Health Department recognizes the right of a client to have access to (i.e., inspect and obtain a copy of) his or her Protected Health Information which is maintained by the Department in the Department's Designated Record Set for as long as the Protected Health Information is maintained in the Designated Record Set as defined in the HIPAA Glossary, Policy #3

The client will have a right to access to any Protected Health Information that is used, in whole or in part, to make decisions about him or her, *except* for Protected Health Information listed in Section II.C below and in situations in which the Department has determined that access would be inappropriate in accordance with Sections II.D.4 and II.D.5 below.

### **II. PROCEDURES:**

#### **A. Request for Access Forms**

Coos County Mental Health Department will make available to clients in the Medical Records Department an Access Request Form notifying clients that, except in certain circumstances (as described in Sections II.C, II.D.4 and II.D.5 below), they have the right to access their Protected Health Information maintained in the Designated Record Set. Additionally, this Access Request Form shall explain the Department's procedures for obtaining such Protected Health Information.

#### **B. Request for Access in Writing**

If a client makes an oral Request to inspect or obtain copies of their Protected Health Information, the Department shall inform the client that such Requests must be made in writing, provide the client with the Request form, and make a reasonable effort to assist the client in submitting the request.

A request from a client to inspect or to obtain a copy of his or her Protected Health Information must be in writing and set forth on the Department's Access Request Form. The Department may refuse an oral Request to obtain copies of Protected Health Information on the basis that such Request is oral and not written.

The Department may accept a written request on a form other than the Department's Access Request Form on a case by case basis if the request contains the information on the Department Form.

C. Exception to the Client's Right to Access

Coos County Mental Health Department shall not provide a client with access to the following Protected Health Information maintained in the Designated Record Set:

1. Psychotherapy Notes (as defined by the Privacy Rule); provided that Coos County Mental Health Department determines that the disclosure of Psychotherapy Notes would constitute an immediate and grave detriment to the Treatment of the client and such disclosure is medically contraindicated by the attending physician in the medical record of the client [ORS 179.505(9)(a)];
2. Information compiled in reasonable anticipation of, or for use in, a civil, criminal, or administrative action or proceeding;
3. Certain Protected Health Information (other than information about HIV-tests performed in a clinical laboratory) that is subject to the Clinical Laboratory Improvements Amendments of 1988 ("CLIA"), 42 U.S.C. 263a, to the extent that the provision of access to the client would be prohibited by CLIA.

D. Action on a Request

1. Timing of Action on Request.
  - a. The Department shall provide immediate access to the client to inspect their health information on site according to Policy CR-07.
  - b. The Department shall act on the Request for copies within five (5) days of receiving the Request if the Protected Health Information is maintained or accessible on-site. The Department will make a good faith effort to act on the Request and within five (5) days if maintained off-site.

If the Department is unable to act on a Request for records within the above-referenced deadline, it may extend the deadline once by no more than thirty (30) days by providing the client with a written statement indicating the reasons for the delay and the date by which Coos County Mental Health Department will complete its action on the Request.

2. Types of Actions on a Request. Coos County Mental Health Department may take one of the following four actions on a request:
  - a. determine that the client has no right to access as set forth in Section II.C above;
  - b. provide access in accordance with this policy;
  - c. deny the Request without an opportunity for review as set forth in Section II.D.4 below; or
  - d. deny the Request and give the client an opportunity to obtain a review of the denial as set forth in Section II.D.5 below.
3. Access Procedures. If Coos County Mental Health Department provides access to the client (in whole or in part):
  - a. The Department may discuss with the client the scope, format and other aspects of the Request as necessary to facilitate the timely provision of access.
  - b. The Department must notify the client of the decision and arrange for a mutually convenient time and place to provide the access requested. Once the Department has located the requested Protected Health Information, the individual has the right to inspect the information, to obtain a copy of the information or to do both.
  - c. Coos County Mental Health Department may provide the client with a summary of the Protected Health Information requested, in lieu of providing an opportunity to inspect or obtain a copy of the Protected Health Information, if the client agrees in advance (i) to the provision of the summary, (ii) to any fees imposed by Coos County Mental Health Department for such summary and (iii) to any extended time period required by the Department to produce the summary.

- d. If Coos County Mental Health Department grants the Request and wants to provide an explanation to accompany the Protected Health Information provided to the client, or finds that it would be appropriate or necessary to explain the Protected Health Information to the client the Department may do so, but only if the client agrees in advance (i) to the provision of the explanation and (ii) to any fees imposed by Coos County Mental Health Department for such explanation.
  - e. If the same Protected Health Information is maintained in more than one Designated Record Set or at more than one location, Coos County Mental Health Department need only produce the information once per Request.
  - f. Coos County Mental Health Department shall provide the requested Protected Health Information in the form or format requested, provided that the information is readily producible in such form or format. If the Protected Health Information is not readily producible in the requested format, the Department shall produce a hard copy of the information or in another form or format to which the client and the Department can agree.
  - g. If the client requests that Coos County Mental Health Department mail a copy of the requested Protected Health Information, the Department shall do so. If the client requests to inspect Protected Health Information that is maintained electronically, Coos County Mental Health Department shall print out a copy and allow the client to view the print-out on-site.
4. Permissible Grounds for Denial of Access Without Opportunity for Review. Coos County Mental Health Department may (but is not required to) deny a Request without providing the client with a right to have the denial reviewed for any of the following five reasons:
- a. If the requested Protected Health Information falls under one of the exceptions to the client's right of access discussed in Section II.C above.
  - b. If an Inmate of a Correctional Institution makes a Request, Coos County Mental Health Department is acting under the direction of a Correctional Institution, and the Inmate's Request would jeopardize the health, safety, security, custody, or rehabilitation of the Inmates or the safety of any officer, employee or other person at the institution.

- c. *Coos County Mental Health Department does not currently participate in research programs. If the Department commences participation in research programs then the following policy in this section (4c) would be implemented.*

If the requested Protected Health Information is information that has been obtained by the Department in the course of research that includes treatment of the research participants. The client's right to access this Protected Health Information may be temporarily suspended for as long as the research is in progress; *provided* that:

- i. the client has agreed to the denial of access when consenting to participate in the research that includes treatment; and
  - ii. the Department has informed the client that his or her right to access the Protected Health Information will be reinstated once the research is completed.
- d. If the requested Protected Health Information is information that is subject to the Privacy Act (5 U.S.C. §552a), and denial to access is permitted under the Privacy Act. *This exception is only available to government agencies that maintain Protected Health Information and would not normally apply to Coos County Mental Health Department.*
- e. If Coos County Mental Health Department obtained the requested Protected Health Information from someone other than a Health Care Provider under a promise of confidentiality and such access would be reasonably likely to reveal the source of the information. This exception would only apply when in limited situations when the Department was acting on behalf of the Oregon Department of Corrections

- 5. Grounds for Denial of Access With Opportunity for Review of Denial in Certain Cases. Coos County Mental Health Department may deny a Request in any of the following three circumstances; *provided* that the Department affords the client with a right to have the denial reviewed by a licensed health care professional designated by Coos County Mental Health Department who has not participated in the original decision to deny access:

- a. A licensed health care professional has determined that providing such access is reasonably likely to endanger the life or physical safety of the client or another person.

- b. The requested Protected Health Information contains a reference to another person (and such other person is not a Health Care Provider) and a licensed health care professional has determined that providing the access requested is reasonably likely to cause substantial harm to such other person.
- c. The Request is made by the client's Personal Representative and a licensed health care professional has determined that providing the requested access is reasonably likely to cause substantial harm to the client or another person.

See Section II.E below for a discussion of the selection process of the licensed health care professional who shall review a denial of access when the client is given an opportunity to request a review of such denial.

- 6. Procedures in Case of Denial. If Coos County Mental Health Department denies access (in whole or in part) under Section II.D.4 or Section II.D.5, the Department shall, to the extent possible, give the client access to any other Protected Health Information requested after excluding the Protected Health Information to which the Department had grounds to deny access.
- 7. Notice of Denial Form. Coos County Mental Health Department shall prepare a Denial Form containing: (i) a space to be filled in by a licensed Health Care Provider for the "reason for denial of access to Protected Health Information"; (ii) complaint procedures for client to be directed to the Privacy Office; (iii) complaint procedures for client to be directed to the Director, Office for Civil Rights of the U.S. Department of Health and Human Services; (iv) information describing the client's right to a review of the denial of access and how the client may exercise this right; and (v) contact information (name, telephone number) for the Reviewing Official for Denials of Access to Protected Health Information Requests. If Coos County Mental Health Department denies a Request, in whole or in part, the Department shall furnish the client with the completed Denial Form.
- 8. Protected Health Information Not Maintained by Coos County Mental Health Department. If Coos County Mental Health Department does not maintain the Protected Health Information requested by the client, but the Department knows where the requested information is maintained, the Department must inform the client where to direct the request for access.

E. Review Procedures

1. Appointment of Reviewing Official. The Privacy Officer shall be responsible for referring requests for review of a denial to the Risk Management Committee. The Risk Management Committee shall be responsible for appointing on a case-by-case basis a representative of the Coos County Mental Health Department to serve as the Reviewing Official for Denials of Access to Health Information Requests. The Reviewing Official shall be a licensed health care professional and shall not have participated in the original decision to deny access.
2. Referral to Reviewing Official. The Department shall promptly refer a Request for review to the Reviewing Official.
3. Determination by Reviewing Official. Within a reasonable time of receiving the Request for Review, the Reviewing Official must determine whether or not to deny the requested access based on the standards set forth in Section II.D.5, and provide the client with written notice of the Reviewing Official's decision. The Reviewing Official's decision shall be final.

F. Fees

1. Categories of Fees. Coos County Mental Health Department may charge the individual the following reasonable, cost-based fees associated with obtaining access to Protected Health Information, but may not deny access to medical records due to inability (or refusal) to pay for such records:
  - a. Copying: Fees may include the labor and supply costs, paper costs; of \$0.25 per page.
  - b. Mailing: Fees may include copying costs and the cost of postage; of the actual postage.
  - c. Electronic: Fees may include cost of computer disk at the current agency cost.
2. No Handling Fees. Coos County Mental Health Department shall not charge any fees for retrieving or handling the Protected Health Information or for processing the Request.
3. Preparation of Summary or Explanation. Coos County Mental Health Department shall charge \$25 for the preparation of an explanation or summary of the Protected Health Information that the Department provides to a client, if: (i) the client requests such explanation and (ii) the client agrees to be charged such fee in advance of the preparation.

G. Documentation.

1. Written Communications With Clients. Coos County Mental Health Department shall maintain Access Request Forms, Denial of Access Forms and any other written communications to or from a client regarding his or her right to access Protected Health Information in the client's medical record. Such documentation shall be retained for no less than six years from the date of its creation or the date when it was last in effect, whichever is later.
2. Designations. Coos County Mental Health Department shall document, in written or electronic form, the Designated Record Sets that are subject to access by clients and the titles of the persons or offices responsible for receiving and processing Requests. Such documentation shall be retained in Record Set as defined in the HIPAA Glossary for no less than six years from the date of its creation or the date when it was last in effect, whichever is later.