

<b>Policy Title:</b>	<b>Minimum Necessary Information</b>				
<b>Policy Number:</b>	DHS-100-004	<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 intention of the DHS Minimum Necessary Information Policy is to improve the privacy of confidential information that is used or disclosed by DHS employees in the course of their work.

## Policy

### 1. General

DHS defines minimum necessary as the least amount of information, when using or disclosing confidential client information that is needed to accomplish the intended purpose of the use, disclosure, or request.

- a. as the use or disclosure of only the minimum amount of information necessary to provide services and benefits to clients, and only to the extent provided in DHS policies.
- b. Minimum necessary requirements do not apply to:
  - A. Disclosures to or requests by a health care provider for treatment of a current DHS client for whom treatment is related to the client's participation in the DHS program, service or activity – as long as the information provided is within the scope of the treatment purpose;
  - B. Disclosures made to the individual about his or her own information;
  - C. Uses or disclosures authorized by the individual that are within the scope of the authorization;
  - D. Disclosures made to the United States Department of Health and Human Services (DHHS), Office for Civil Rights, in accordance with subpart C of part 160 of the HIPAA Privacy Rule. A response to a request from the Office for Civil Rights should be coordinated with the DHS Privacy Officer;
  - E. Uses or disclosures that are required by law. The amount of information required by the federal or state law may be used or disclosed;

- F. Uses or disclosures that are required for compliance with the HIPAA Transaction Rule. The minimum necessary requirement does not apply to the required or situational data elements specified in the implementation guides under the Transaction Rule. If information is required in order to submit or process a claim for payment, that information may be provided without violating the minimum necessary standard.

## 2. Minimum Necessary Information

- a. When DHS policy permits use or disclosure of an individual's information to another entity or DHS program, or when DHS requests an individual's information from another entity or DHS program, DHS employees must make reasonable efforts to limit the amount of information to the minimum necessary needed to accomplish the intended purpose of the use, disclosure, or request.
- b. If DHS policy permits making a particular disclosure to another entity or DHS program, DHS employees may rely on the requested disclosure as being the minimum necessary for the stated purpose when:
  - A. Making disclosures to public officials as stated in **DHS Policy DHS-100-003**, "Uses and Disclosures of Client or Participant Information," if the public official represents the information requested is the minimum necessary for the stated purpose(s). If not, DHS will provide only the minimum necessary for the stated purpose. A "public official" is any employee of a government agency who is authorized to act on behalf of that agency in performing the lawful duties and responsibilities of that agency.
  - B. The information is health information requested by:
    - i. Another entity that is a "covered entity" under the HIPAA Privacy rules. A "covered entity" is a health plan, a health care provider who conducts electronic transactions, or a health care clearinghouse;
    - ii. A professional who is a member of the workforce of a "covered entity" or is a business associate of the "covered entity" for the purpose of providing professional services to the "covered entity," if the professional represents that the information requested is the minimum necessary for the stated purpose(s) or;
    - iii. A person requesting the information for research purposes and has provided documentation or representations that comply with the applicable requirements of **DHS Policy DHS-100-006**, "Uses and Disclosures for Research Purposes & Waivers".

## 3. Routine and Recurring Disclosure of an Individual's Information

- a. For purposes of this policy, "routine and recurring" means the disclosure of records for a purpose that is compatible with the purpose for which the information was collected.

The disclosure can be made outside of the Department without the authorization of the individual

- A. DHS will not disclose an individual's entire medical record unless the request specifically justifies why the entire medical record is needed.
  - B. Routine and recurring uses include disclosures required by law. For example, a mandatory child abuse report by a DHS employee would be a routine use.
  - C. If DHS deems it desirable or necessary, DHS may disclose information as a routine and recurring use to the Oregon Department of Justice for the purpose of obtaining its advice and legal services.
  - D. When federal or state agencies – such as the DHHS Office for Civil Rights, the DHHS Office of Inspector General, the State of Oregon Medicaid Fraud Unit, or the Oregon Secretary of State – have the legal authority to require DHS to produce records necessary to carry out audit or oversight of DHS programs or activities, DHS will make such records available as a routine and recurring use.
  - E. When the appropriate DHS official determines that records are subject to disclosure under the Oregon Public Records Law, DHS may make the disclosure as a routine and recurring use.
- b. Disclosures for routine and recurring requests are subject to the minimum necessary requirements which is met by compliance with Department policy for uses and disclosures consistent with the purpose for which the information was obtained.

#### **4. Non-routine Disclosure of an Individual's Information**

- a. For the purpose of this policy, "non-routine disclosure" means the disclosure of records outside DHS that is not for a purpose for which it was collected.
- b. DHS will not disclose an individual's entire medical record unless the request specifically justifies why the entire medical record is needed, and applicable laws and policies permit the disclosure of all the information in the medical record to the requestor.
- c. Requests for non-routine disclosures must be reviewed on an individual basis to determine whether the information is subject to disclosure under the Department's policies and applicable program requirements.
- d. For Non-Routine Disclosures, DHS program areas will:
  - A. Limit the information disclosed to only the minimum amount of information necessary to accomplish the purpose for which the disclosure is sought; and
  - B. Review requests for non-routine disclosures on an individual basis in accordance with such procedures.

## 5. DHS' Request for an Individual's Information from another entity

- a. When requesting information about an Individual from another entity or DHS program, DHS employees must limit requests to those that are reasonably necessary to accomplish the purpose for which the request is made.
- b. DHS will not request an individual's entire medical record unless DHS can specifically justify why the entire medical record is needed.

## References

- 45 CFR Parts 160 and 164
- [Privacy/Security Glossary of Common Terms](#)

## Policy(ies) that apply:

[DHS-100-003](#) Uses and Disclosures of Client or Participant Information

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

## 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