

APPENDIX 1

AUTHORIZATION REQUIREMENTS FOR RECORDS RELEASE

This appendix contains a general, non-exhaustive table outlining common instances where federal and/or Oklahoma privacy law may require authorization for release of certain protected health information (PHI). This appendix should only be used as an initial reference for identifying situations in which authorization for release is required. It is recommended that entities or persons sharing PHI confirm the scope of applicable law regarding disclosures with respect to the records shared and maintained by such person or entity.

While HIPAA, as cited in the table below, frequently establishes the standard concerning release of PHI, it should be noted that many of the additional federal and Oklahoma privacy provisions cited modify and often restrict the general HIPAA disclosure rules. Thus, in several instances, additional federal and/or Oklahoma privacy law might require use of the Authorization for release of PHI in a situation where HIPAA would otherwise not.

Statute	Records	Application	Authorization Not Required	Authorization Required	HIPAA Comparison
HIPAA (45 C.F.R. Parts 160, 164)	Protected Health Information (45 C.F.R. § 160.103)	Covered Entities (45 C.F.R. § 160.103)	<ul style="list-style-type: none"> • Payment, Treatment, Health Care Operations (45 C.F.R. § 164.501) • All disclosures under .45 C.F.R. § 164.512 	<ul style="list-style-type: none"> • Non-Payment, Treatment, or Health Care Operations (45 C.F.R. § 164.501) • Marketing (45 C.F.R. § 164.508(a)(3)) 	
HIPAA (45 C.F.R. Part 164)	Psychotherapy Notes (45 C.F.R. § 164.501)	Covered Entities (45 C.F.R. § 160.103)	Payment, Treatment, Health Care Operations (45 C.F.R. § 164.508(a)(2))	Anything that is not Payment, Treatment, or Health Care Operations (45 C.F.R. § 164.508(a)(2))	Potentially fewer permitted uses without authorization because narrower definition of Payment, Treatment, Health Care Operations than other record sets under HIPAA.
42 C.F.R. Part 2	Alcohol and Drug Abuse Records (42 C.F.R. § 2.11)	Programs (42 C.F.R. §§ 2.03, 2.11)	<ul style="list-style-type: none"> • Medical Emergencies (42 C.F.R. § 2.51) • Research Activities (42 C.F.R. § 2.52) • Audit and Evaluation Activities (42 C.F.R. § 2.53) • Court Orders (42 C.F.R. §§ 2.61-2.67) 	<ul style="list-style-type: none"> • Anything that is not a Medical Emergency, Research Activity, Audit and Evaluation Activity, or not authorized by Court Order (42 C.F.R. §§ 2.51-2.67) • Minors (42 C.F.R. § 2.14; 43A O.S. § 9-101(A)(2); 63 O.S. § 2602(A)(3)) 	<ul style="list-style-type: none"> • Potentially fewer permitted uses without authorization because Part 2 does not provide for HIPAA's Payment, Treatment, Health Care Operations disclosures. • Requires minor's authorization for release where authorization is required. Narrower than HIPAA permitted disclosure based upon signature of legal representative.
43A O.S. § 1-109	Mental Health Records (43A O.S. § 1-109(A)(1))	Any person or entity having named records	<ul style="list-style-type: none"> • "available to persons actively engaged in the treatment of the consumer or in related administrative work" • health care provider's disclosure of "mental health information necessary to carry out another provider's own treatment, payment, or health care operations" • Other listed exceptions to authorization (43A O.S. § 1-109(E)(2)-(16)) 	Any disclosure (i) not to a person actively engaged in treatment or administrative work, or (ii) not covered by an exception to authorization under 43A § 1-109(E)(1)-(16)	Potentially fewer permitted uses without authorization than under HIPAA.

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43A O.S. § 1-109	Alcohol and Drug Abuse Records (43A O.S. § 1-109(A)(1))	Any non 42 C.F.R. Part 2 person or entity having named records			
63 O.S. § 2602	Alcohol and Drug Abuse Records, Pregnancy Testing Information; and Communicable Disease Information regarding Minors	Any non 42 C.F.R. Part 2 person or entity having Alcohol or Drug Abuse Records and any person or entity having any other named records	A health professional "may, but shall not be required to inform the spouse, parent or legal guardian" without authorization when a minor, who consents to have services provided, seeks treatment for a named condition and is found to suffer from such condition. (63 O.S. § 2602(A)(3), (B))	Minor alone must authorize release of named information to the minor's spouse or parent or legal guardian where the minor consents to have services provided and is found not to suffer from such named condition. (63 O.S. § 2602(A)(3)) Absent legal requirements or for the health of the minor and/or public, minor alone must authorize release of named information to any health professional, school, law enforcement agency or official, court authority, government agency or official employer. (63 O.S. § 2602(B))	Potentially fewer permissible instances where authorization can be effective on the basis of legal representative's authorization as provided under HIPAA.
63 O.S. § 1-502.2	Communicable/ Non-Communicable Disease Records	State Agencies, Health Care Providers or Facilities, Physicians, Health Professionals, Laboratories, Clinics, Blood Banks, Funeral Directors, Third Party Payors, and any other Agency, Person, or Organization in Oklahoma (63 O.S. § 1-502.2(A))	Release "among health care providers, their agents or employees, with the continuum of care for the purpose of diagnosis and treatment of the person whose information is released." (63 O.S. § 1-502.2(A)(7)) Other listed uses under 63 O.S. § 1-502.2(A).	Any release not permitted under 63 O.S. § 1-502.2(A)(1)-(8).	