

# **Sharing Confidential Mental Health and Addiction Information in Ohio**

## ***Mental Health and Addiction Providers, Jails and Courts: During Initial Detention & Court Hearings***

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# INTRODUCTION

The goals of this manual are to promote a common understanding of the application of the confidentiality laws to mental health and addiction information and to provide tools and resources to assist in ensuring that necessary information can be shared between mental health and addiction providers, jails and courts during the initial detention and court hearing phase.

A myriad of complex state and federal confidentiality laws apply to persons receiving mental health and addiction services. The information needed to achieve an effective cross-system approach is not always shared amongst the community partners, either because of real or perceived barriers to the sharing of that information.

Collaboration between the courts, jail staff and providers of mental health and addiction services is an example of cross-system communication that is necessary to assist persons with mental health and addiction needs. The sharing of information between these systems at the time of a person's initial detention and court hearing are vital to ensure that the person's mental health and substance use disorder needs are identified, services and medications are available, necessary safety measures can be taken and appropriate diversion options are considered.

# **OVERVIEW OF THE CONFIDENTIALITY LAWS**

## **Introduction to HIPAA and 42 CFR Part 2**

This section provides an overview of the two federal confidentiality laws that apply to the identifying information of persons receiving behavioral health services – the Health Insurance Portability and Accountability Act of 1996 and the Confidentiality of Substance Use Disorder Patient Records Law.

### Health Insurance Portability and Accountability Act of 1996 (HIPAA)

HIPAA was signed into law in 1996 and its implementing regulations became effective in 2003. Although there are various sections, or titles, under HIPAA, the focus of this manual is HIPAA's Privacy Rule, which contains the requirements for safeguarding protected health information. Protected health information, or PHI, generally refers to "any information held by a HIPAA-covered entity which concerns health status, the provision of healthcare, or payment for healthcare, that can be linked to an individual".

### Confidentiality of Substance Use Disorder Patient Records Law (42 CFR Part 2)

This federal confidentiality law, commonly referred to by the location of its regulations in the Code of Federal Regulations, 42 CFR Part 2 or even just "Part 2", was enacted in the 1970s to encourage persons with substance use disorders (SUDs) to seek and remain in treatment. Very minor changes have been made to the regulations since they became effective.

### The Relationship between HIPAA and 42 CFR Part 2

HIPAA has much broader protections since it applies to many types of protected health information and not just information related to SUDs. Part 2 is generally much more restrictive in the disclosures it permits, and when both laws apply to a disclosure of information, the law that is the most protective of the information is the one that requires compliance. This can be challenging for SUD providers who are permitted to disclose information under HIPAA but not under Part 2. Various efforts have been made to bring this law into line with HIPAA but to date, those efforts have been unsuccessful.

The remainder of this section provides a more in-depth look at these two laws, including who and what they apply to and how they protect the information of persons receiving mental health and substance use disorder services.

### Other Confidentiality Laws

There may be other provisions of state or federal law that offer additional protection to information or records protected by HIPAA and 42 CFR Part 2. The law that is the most protective of the information requires compliance.

# Overview of the Health Insurance Portability and Accountability Act of 1996 (HIPAA)

The Health Insurance Portability and Accountability Act of 1996 (HIPAA) is a federal law that protects the privacy and security of health-related information. HIPAA's Privacy Rule (45 CFR 164) contains the regulations that govern the use and disclosure of the information it protects.

## ***Who is required to comply with the Privacy Rule?***

### Covered Entities

#### Health Care Providers

- Individual providers and provider organizations, including mental health and addiction providers
- Most (but not all) health care providers meet the definition of a "covered entity"

#### Health Plans

- Private insurance companies
- Public payers of health care services such as Alcohol, Drug Addiction and Mental Health (ADAMH) Boards and the Ohio Department of Mental Health and Addiction Services (OhioMHAS)

#### Health Care Clearinghouses

- Businesses that process electronic transactions for covered providers and health plans

### Business Associates

"Business Associates" of covered entities are also required to comply with the Privacy Rule. A Business Associate is a person or organization that provides services to a HIPAA-covered entity for which the person or organization requires access to protected health information.

#### Examples of Business Associates:

- An attorney providing legal services to a covered entity
- A consultant assisting with claims processing
- Electronic Health Record (EHR) vendors
- Medical transcription companies
- Data entry, conversion and analysis providers
- Answering services

## ***What information is protected by the Privacy Rule?***

Information protected by HIPAA is called "Protected Health Information" or "PHI". PHI is information that meets all the following criteria:

- Relates to the provision of health care to an individual, the payment for the individual's health care, or the individual's physical or mental health or condition;
- Is held or transmitted by a HIPAA-Covered Entity or a Business Associate of a Covered Entity; **and**
- Identifies or can be used to identify the individual.

***General Rule for Disclosure of Protected Health Information:***

In general, the Privacy Rule requires that written authorization be obtained for the disclosure of a person's PHI unless an exception to the authorization requirement applies to the disclosure. Many of the disclosures of PHI commonly made by health care providers and payers are permitted to be made without the authorization of the person such as disclosures related to treatment, payment and health care operation activities.

***Important Considerations:***

- HIPAA provides an exception to the authorization requirement for disclosures that are required to be made by state and other federal laws. For example, if Ohio law requires a disclosure of PHI to be made by a covered entity (e.g. felony reporting laws), HIPAA permits that disclosure to be made without the authorization of the person.
- If more than one confidentiality law applies to a disclosure of information, each of the applicable laws must provide an exception to the disclosure requirement regarding that information in order to make the disclosure without the person's written authorization.
  - *Example: Both federal confidentiality laws (HIPAA and 42 CFR Part 2) apply to the information to be disclosed. HIPAA permits disclosure of the information to law enforcement without the person's written authorization. 42 CFR Part 2 does not permit the disclosure of the information to law enforcement without the person's written authorization. Since one of the applicable laws require it, the person's authorization must be obtained prior to making the disclosure.*
- OhioMHAS requirements for the protection of mental health records permits disclosures that are authorized by other state and federal laws, i.e., if HIPAA permits a disclosure of information to be made without authorization, that disclosure is also permitted under OhioMHAS rules (regarding mental health records).
- When a written authorization is required, the Privacy Rule has specific requirements for what the written authorization must contain.

- Persons and organizations that do not meet the definition of a “covered entity” or a “business associate” are not governed by HIPAA. As examples, none of the following are required to comply with the Privacy Rule’s disclosure requirements:
  - Law Enforcement
  - Probation/Parole Officers
  - Court Personnel
  - Schools
  - Family Members/Friends
  - Any person/organization that does not provide health care or pay for the cost of health care services

\*\* Note that jails are not included as an example because some jails are HIPAA-covered entities. This point will be discussed in more detail throughout the manual.
- Persons and organizations that are not subject to HIPAA are not prohibited from re-disclosing PHI received from a HIPAA-covered entity (although there may be another law protecting the information).

# Overview of the Federal Drug and Alcohol Confidentiality Law (42 CFR Part 2)

The Federal Drug and Alcohol Confidentiality Law and its implementing regulations, 42 CFR Part 2, govern the confidentiality of records of substance use disorder treatment.

## ***Who is required to comply with the disclosure requirements of 42 CFR Part 2?***

- Covered Programs  
Most providers of drug and alcohol services, including all of Ohio's community addiction treatment and prevention service providers. *See detailed discussion of what is a Part 2-covered program under "Important Considerations" below.*
- Third Party Payers  
Payers that receive records/information from Part 2 programs.
- Administrative Entities  
Entities that have received records/information from Part 2 programs that they have direct administrative control over.
- "Lawful Holders" of Part 2-Protected Information  
Part 2's disclosure requirements were extended to apply to all "lawful holders" of Part 2-protected information in March 2017. "Lawful holders" under Part 2 are individuals or organizations that receive Part 2-protected information pursuant to the written authorization of an individual (accompanied by the required prohibition on re-disclosure notice) or because of one of Part 2's exceptions to the authorization requirements.

## ***What information is protected by 42 CFR Part 2?***

42 CFR Part 2 protects information that:

- Is created or obtained by a Covered Program pertaining to a person's SUD treatment, referral for treatment or diagnosis (made for the purpose of treatment or referral for treatment)
- AND
- Identifies an individual as a recipient of substance use disorder services or as having or having had a substance use disorder (either directly, by reference to publicly available information or through verification of such identification by another person).

The following is from the language of 42 CFR Part 2 and is a good explanation of what information is covered by the regulations:

*These regulations cover any information (including information on referral and intake) about patients receiving diagnosis, treatment, or referral for treatment for a substance use disorder created by a part 2 program. Coverage includes, but is not limited to, those treatment or rehabilitation programs, employee assistance programs, programs within general hospitals, school-based programs, and private practitioners who hold themselves out as providing, and provide substance use disorder diagnosis, treatment, or referral for treatment. However, the regulations in this part would not apply, for example, to emergency room personnel who refer a patient to the intensive care unit for an apparent overdose, unless the primary function of such personnel is the provision of substance use disorder diagnosis, treatment, or referral for treatment and they are identified as providing such services or the emergency room has promoted itself to the community as a provider of such services.*

**General Rule for disclosures of Part 2-protected information:**

Part 2 requires written authorization to be obtained for the disclosure of a person's protected information unless an exception to the authorization requirement applies to the disclosure.

**Important Considerations:**

- The exceptions to 42 CFR Part 2's authorization requirement are much more limited than HIPAA's exceptions.
- Unlike HIPAA, 42 CFR Part 2 overrides other laws regarding disclosures of PHI. This means that Part 2-protected disclosures that are authorized or required to be made by state or other federal law can only be made without authorization if they are also permitted to be made by 42 CFR Part 2 without authorization.
  - Example: Ohio law requires the reporting of felonies, but Part 2 does not contain an exception to the authorization requirement for this purpose. Therefore, Part 2 programs are only permitted to report felonies in compliance with state law if the information reported does not contain any Part 2-protected information. In other words, it does not identify an individual as being a recipient of substance use disorder services or as having or having had a substance use disorder.
- If 42 CFR Part 2 requires authorization for a particular disclosure but HIPAA does not, an authorization must be obtained unless the disclosure would not identify the person as receiving addiction services or as having an alcohol or drug problem.
- OhioMHAS requirements for the protection of addiction services records mirror the requirements of 42 CFR Part 2.
- When a written authorization is required, 42 CFR Part 2 has specific requirements for what the written authorization must contain.
- 42 CFR Part 2 prohibits recipients of Part 2-protected information from re-disclosing the information to other persons/organizations unless the regulations

permit the disclosure or the written authorization of the person that is the subject of the information is obtained. Part 2 programs are required to inform recipients of protected information about the prohibition on re-disclosure.

- A 42 CFR Part 2-covered program is a person or organization that holds itself out as providing alcohol or drug abuse diagnosis, treatment, referral for treatment, or prevention services, and that provides those services, as a stand-alone entity or as part of larger organization (such as a unit of a general medical facility). An organization providing mental health services does not become a Part 2-covered program simply by discussing a client's drug or alcohol use or addiction or including that information in the client's record. It must represent itself to the community and to clients as providing alcohol/drug services covered by Part 2 (e.g. certified to provide the services, publicly advertises the services, information presented to clients, etc.) and then provide those services. The services being offered and provided should be considered more than the type of facility/organization when determining if an entity is a Part 2-covered program.

Examples:

- A provider is certified to provide both mental health and SUD services. During the course of mental health treatment, the person shares information about past substance use. The substance use information in the client's record is not Part 2-protected because it was not received by the provider for the purpose of SUD treatment or referral for treatment.
- If the person receives a substance use diagnosis and then begins receiving SUD counseling, however, that diagnosis is Part 2-protected because it was created for the purpose of SUD treatment or referral for treatment.
- If a mental health residential site also offers substance use counseling groups if clients have an SUD in addition to their mental health diagnosis, Part 2 applies to the information that identifies the client as receiving SUD counselling services because that information was created for the purpose of referral for treatment and treatment.

# **EXCHANGE OF INFORMATION WITH COURTS DURING INITIAL HEARING**

## HIPAA-Permitted Disclosures to Courts

HIPAA-covered entities are permitted to make disclosures of PHI to Courts:

- In compliance with a HIPAA-compliant authorization. 45 CFR 164.502(a)(1)(iv).
- As required by law (see definition below). 45 CFR 164.512(a).
- As necessary to comply with a court order. 45 CFR 164.512(e)(1)(i).

### ***Important Considerations:***

- *Required by law* means a mandate contained in law that compels an entity to make a use or disclosure of protected health information and that is enforceable in a court of law. Examples include court orders and court-ordered warrants; subpoenas or summons issued by a court, grand jury or administrative body authorized to require the production of information; and statutes or regulations that require the production of information.

## 42 CFR Part 2-Permitted Disclosures to Courts

42 CFR Part 2 permits disclosures of protected information to be made to Courts:

- In compliance with a 42 CFR Part 2-compliant authorization (42 CFR 2.31)
- In accordance with a court order that has been issued in accordance with the requirements of 42 CFR Part 2.61-67. *(Note: Purposes for which a court order for Part 2-protected information may be issued are limited and specific procedures must be followed by the issuing court. A subpoena alone is not sufficient to authorize disclosure unless accompanied by a court order.)*

### ***Important Considerations:***

- A subpoena that is not accompanied by a court order does not authorize the disclosure of Part 2-protected information. A court order issued in accordance with the requirements of 42 CFR Part 2.61-67 does authorize disclosure but does not compel a person/organization to make the disclosure if they do not want to disclose for any reason. A subpoena issued to accompany the court order will compel the person to disclose the records authorized by the court order.

## Information that is NOT Protected

In considering how information can be exchanged between Courts and Mental Health and Addiction Providers, it is important to keep in mind the information that is NOT protected by the confidentiality laws that could be beneficial to exchange regarding persons with mental health and addiction issues.

- Court staff can disclose information about a person TO mental health and addiction services providers since they are not covered entities under HIPAA or covered programs under Part 2.
- Court staff that receive protected information can share that information with other court officials in the performance of their official duties.
- Court journal and court docket entries are not protected information under HIPAA or Part 2. This can be helpful for people seeking basic information about a person since the information may not have to be sought from a provider, however, it is also something that courts should be cognizant of when deciding what sensitive information to include in an entry.
- Mental health and addiction providers can always share general information about how to best handle an interaction with someone experiencing mental health/substance use issues with court staff.
- Results of screenings conducted specifically for purposes of determining eligibility for specialized dockets, less restrictive bail release and appropriate release conditions, diversions programs, etc., are not protected under HIPAA or Part 2 since the information was not obtained for purpose of providing healthcare. For the purposes of this manual, a “screen” or “screening” refers to a general evaluation of a persons’ history and needs and “assessment” refers to a mental health or addiction-specific assessment.
- Information that does not directly or indirectly identify the person as receiving addiction services or as having a substance use disorder is not protected by Part 2 and can be disclosed by a Part 2 program even if the information was obtained by the program in the course of providing substance use disorder treatment. 42 CFR 2.12 (a)(1)

# **EXCHANGE OF INFORMATION WITH JAILS DURING INITIAL DETENTION**

# HIPAA-Permitted Disclosures to Jails

HIPAA-covered entities are permitted to make disclosures of PHI to Jails:

- In compliance with a HIPAA-compliant authorization. 164.502(a)(1)(iv);
- As required by law (see definition below). 45 CFR 164.512(a)
- As necessary to comply with a court order. 45 CFR 164.512(e)(1)(i).
- To a health care provider (e.g. jail nurse, mental health professional, etc.) for treatment purposes.
- To a jail (as a correctional institution) that has lawful custody of the person or other PHI about the inmate or person if the jail represents that such PHI is necessary for:
  - The provision of health care to the person;
  - The health and safety of the person or other inmates;
  - The health and safety of the officers or employees of or others at the jail;
  - The health and safety of the person and officers or other persons responsible for the transporting of inmates or their transfer from one institution, facility, or setting to another;
  - Law enforcement on the premises of the correctional institution; or
  - The administration and maintenance of the safety, security, and good order of the jail.

45 CFR 164.512(k)(5)

## ***Important Considerations:***

- *Required by law* means a mandate contained in law that compels an entity to make a use or disclosure of protected health information and that is enforceable in a court of law. Examples include court orders and court-ordered warrants; subpoenas or summons issued by a court, grand jury or administrative body authorized to require the production of information; and statutes or regulations that require the production of information.
- *Treatment* means the provision, coordination, or management of health care and related services by one or more health care providers, including the coordination or management of health care by a health care provider with a third party; consultation between health care providers relating to a person; or the referral of a patient for health care from one health care provider to another.
- A covered entity is permitted to rely on the representations of the jail/correctional facility that the information is necessary for the stated purpose. It is important for a covered health care provider to keep in mind that although HIPAA permits disclosure based on a jail's representation that the information is necessary, HIPAA never requires information to be disclosed. Therefore, unless

another law is requiring disclosure of the information, the provider should use be prudent in determining the amount of information that should be disclosed in response to the request. For example, disclosing a list of clients on the mental health caseload is very different than providing diagnosis or full evaluations.

- A jail is a HIPAA-covered entity if it meets HIPAA's definition of health care provider (i.e. has jail staff or contractors providing health care services that bill electronically for services provided using a HIPAA-standard transaction).
  - If the definition of "health care provider" applies to a jail, the jail can declare itself a "hybrid entity" under HIPAA which means that only the health care staff and their related departments will be considered the HIPAA-covered portion of the facility and the rest of the facility would, in general, not be subject to HIPAA.
    - *Note: A "hybrid entity" is a single legal entity (i) that is a HIPAA-covered entity (ii) whose business activities include both covered and non-covered functions; and (iii) that designates health care components of the covered entity. A jail or other covered entity can "declare" itself to be a "hybrid entity" by documenting that decision, identifying the health care components of the entity and developing policies and procedures that comply with the requirements of 45 CFR 164.105(a).*
  - HIPAA-covered jail staff (and contractors) can only disclose PHI to non-health care jail staff and outside entities in accordance with the requirements of HIPAA.
- Jail staff that are not covered by HIPAA are not prohibited from re-disclosing information obtained from HIPAA-covered entities to third parties. For example, if HIPAA permits a covered provider to disclose PHI to jail administrators under one of the correctional institution disclosures, the jail administrator that receives the PHI can re-disclose it to a court that needs it for first hearing and pre-trial purposes. Jail, court and provider staff should understand the flow of these permissible disclosures of PHI so they can adjust their processes accordingly in order to share necessary information.

## 42 CFR Part 2-Permitted Disclosures to Jails

42 CFR Part 2 permits disclosures of protected information to be made to Jails:

- In compliance with a 42 CFR Part 2-compliant authorization (42 CFR 2.31)
- In accordance with a court order that has been issued in accordance with the requirements of 42 CFR Part 2.61-67. *(Note: Purposes for which a court order for Part 2-protected information may be issued are limited and specific procedures must be followed by the issuing court. A subpoena alone is not sufficient to authorize disclosure unless accompanied by a court order.)*
- To medical personnel who have a need for information about a person for the purpose of treating a condition that poses an immediate threat to the health of the person and that requires immediate medical intervention.

### ***Important Considerations:***

- A subpoena that is not accompanied by a court order does not authorize the disclosure of Part 2-protected information. A court order issued in accordance with the requirements of 42 CFR Part 2.61-67 does authorize disclosure but does not compel a person/organization to make the disclosure if they do not want to disclose for any reason. A subpoena issued to accompany the court order will compel the person to disclose the records authorized by the court order.

## Information that is NOT Protected

In considering how information can be exchanged between Jails and Mental Health and Addiction Providers, it is important to keep in mind the information that is NOT protected by the confidentiality laws that could be beneficial to exchange regarding persons with mental health and addiction issues.

- Jail administrative staff can disclose information about a person TO mental health and addiction services providers since they are not covered entities under HIPAA or covered programs under Part 2.
- Jail staff that receive protected information can share that information with other jail staff in the performance of their official duties.
- Mental health and addiction providers can always share general information about how to best handle an interaction with someone experiencing mental health/substance use issues with jail staff.
- Results of booking screens conducted specifically for purposes of identifying service needs, determining proper placement, making reports to court, etc., are not protected under HIPAA or Part 2 since the information was not obtained for purpose of providing healthcare. For the purposes of this manual, a “screen” or “screening” refers to a general evaluation of a person’s history and needs and “assessment” refers to a mental health or addiction-specific assessment.
- Information that does not directly or indirectly identify the person as receiving addiction services or as having a substance use disorder is not protected by Part 2 and can be disclosed by a Part 2 program even if the information was obtained by the program in the course of providing substance use disorder treatment. 42 CFR 2.12 (a)(1)

## Recommendations

A community approach to addressing the emergent needs of individuals living with mental illness and/or substance use disorders is vital to the successful treatment and recovery of those individuals. Numerous public and private agencies and organizations must work together to best support and improve the quality of life of Ohio residents dealing with mental health and addiction issues. A necessary part of the collaboration that must occur is the sharing of information between community partners that play a role in addressing those needs.

In order to share information that can be critical to the treatment and progress of a person with mental illness or substance use disorders, it is vital for courts, jails and mental health and addiction providers to be proactive and to discuss their mutual and respective needs and considerations in regard to information sharing. The following recommendations and considerations will facilitate such discussions:

- Local mental health and addiction providers, jails and courts should meet and collaborate:
  - Courts and jails should explain information needs and requirements. See *Appendix for Ohio's requirements for medical and mental health services in jails*.
  - Mental health and addiction providers explain confidentiality requirements.
  - Achieve common understanding of what can be shared and what cannot.
- When necessary, the written authorization of the person can be obtained by court staff, jail staff or the mental health and addiction provider.
  - Obtaining the person's authorization can be a good way to address the on-going exchange of information about the person's services, health and progress.
  - Clients/inmates should be educated as to how it can be in their best interests to sign an authorization for such disclosures so that the jail or court can consider them for specialized dockets, pretrial services, less restrictive bail release and appropriate release conditions, etc.
  - The authorization must be HIPAA and/or 42 CFR Part 2-compliant for mental health and addiction providers to disclose the information. **See *Authorization Forms section***.
- A multi-party release that lists all organizations in the local system can also be obtained at whichever point the individual encounters the system (e.g. court, law enforcement, provider, probation, pretrial services, etc.).
- Mental health and addiction providers are not permitted to REQUIRE a person to sign an authorization form for most disclosures but non-covered entities, such as

courts, are not prohibited from requiring persons to sign authorizations for the disclosure of their protected information.

Example: A judge can condition consideration of placement in a specialized docket program, eligibility for diversion, etc., on the person signing an authorization in order to provide the court with the information it needs to make decisions about the person.

# **FREQUENTLY ASKED QUESTIONS AND SCENARIOS\*\***

*\*\* The scenarios in this section are based on the application of HIPAA, 42 CFR Part 2 and the confidentiality requirements applicable to Ohio's behavioral health system. Other areas of state law may contain additional confidentiality requirements that also apply to the information discussed.*

# Frequently Asked Questions

## Information-Sharing Between Courts, Jails and Mental Health Providers

1. A nurse at a jail calls a community mental health provider for the names of medications taken by a person that is being booked into the jail. Can the mental health provider share this information?
  - *Yes. A health care provider is permitted under HIPAA to exchange PHI with another health care provider for treatment purposes, regardless of whether the other provider is a HIPAA-covered provider and regardless of setting (e.g. jail, community, hospital, etc.).*
  - *In addition, HIPAA permits a covered health care provider to disclose information to staff of a jail/correctional facility to provide health care to an inmate and for the health and safety of the inmate.*
2. A mental health court requests information about a client's treatment progress from a community mental health provider.
  - *The person's authorization or a court order must be obtained to disclose this information to the court.*
  - *Best practice would be for the mental health court to require the person to sign an authorization for disclosure of that information as a condition of participation.*
3. A mental health professional working for the court screens a person for eligibility to a mental health court. Can the mental health professional disclose to the court details obtained from the screening about the person's prior treatment history?
  - *Yes, results of screenings conducted specifically for purposes of determining eligibility for specialized dockets, less restrictive bail release and appropriate release conditions, diversions programs, etc., are not protected under HIPAA, even if conducted by a mental health professional, since the information was not obtained for purpose of providing healthcare to the person.*
  - *Information obtained by a HIPAA-covered mental health professional from previous health care records, however, such as from the agency where the mental health professional works, would be PHI and the person's authorization would be required to disclose information from those records to the court.*
  - *If the screen is later utilized by the HIPAA-covered treating professional for treatment purposes, it would become PHI as part of the provider's records.*
4. A jail has an in-house records system containing both administrative and HIPAA-covered records. Can non-healthcare staff have access to the system?

- *Non-health care staff can only access records for the purposes for which PHI can be disclosed to jails/correctional institutions.*
  - *Best practice would be for medical/treatment records to be separated from administrative records, with access restricted, and for disclosures of medical/treatment records to be made by health care providers when needed by jail staff for permitted purposes.*
5. A jail administrator requests information about an inmate's mental health treatment from a community mental health provider stating that the information is necessary to ensure the inmate's proper placement in facility.
- *The provider is permitted to disclose the requested PHI since the jail administrator stated that it is necessary for the administration of the facility.*
  - *HIPAA permits a provider to disclose PHI to a correctional institution if the institution represents that the PHI is necessary for one of the correctional institution exceptions to the authorization requirement.*
6. A community mental health provider is informed that a client has been arrested. The provider wants to inform jail staff that on-going services are needed and to recommend that the person be referred to a specialized docket.
- *The provider can share information about the person's treatment history and needs with health care providers at the jail (whether HIPAA-covered or not) for treatment purposes and also with jail administrators for the provision of health care and the health and safety of the inmate.*
  - *Jail administrators can re-disclose this information to the court as needed for specialized docket consideration.*
  - *The provider cannot share this information directly with the court without the person's authorization or a court order.*
7. A jail administrator wants to disclose information received from a community mental health provider about a client's treatment progress to the court.
- *A jail administrator is typically not HIPAA-covered and therefore not prohibited from re-disclosing PHI obtained from a HIPAA covered-entity.*
  - *If the disclosure is to be made directly by HIPAA-covered jail staff, however, the person's authorization would be required.*
8. A jail-based nurse (not HIPAA-covered) requests medication information for an inmate from a community mental health provider.
- *The community provider is permitted to disclose the requested information to the nurse because HIPAA permits a covered entity to disclose PHI to a health care provider (HIPAA covered or not) for treatment purposes.*
  - *Because the jail-based nurse is not HIPAA-covered, the nurse could also re-disclose the information to others such as the court.*

9. Local mental health providers would like to link criminal justice data to mental health data that providers can access for treatment and care coordination purposes. Can a third party be used for this purpose?
- *The providers can enter into a multi-party business associate agreement with the third party in order to disclose PHI the business associate needs to provide this service on their behalf.*
  - *The combined data can then be accessed by the providers as needed for treatment purposes.*
  - *Jail and court administrators would not be permitted to have direct access to this information. Jail staff can receive needed information from health care staff if it is for a purpose for which PHI can be disclosed to a jail/correctional institution under HIPAA.*
10. Can an ADAMH Board that accesses or receives a booking list (or other inmate-related information such as homeless severely mentally ill (SMI) inmates) match the list against its claims data in order to notify local providers when a client of the provider has been arrested or needs re-entry assistance?
- *Yes, the ADAMH Board, as a HIPAA-covered entity, can disclose PHI to a provider for treatment purposes such as care coordination.*
  - *The booking list could also be provided to the court since the booking list itself is not PHI.*
  - *Note: If an entity other than a HIPAA-covered ADAMH Board is performing this care coordination service on behalf of a provider, the provider would need to enter into a business associate agreement with that entity since it would need access to the provider's PHI in order to determine whether the provider's clients are on the booking list.*
11. A person is issued a summons. Can a Crisis Intervention Team (CIT) incident report be provided to the Court?
- *HIPAA does not apply to a CIT incident report since the report is created by law enforcement and not by a mental health provider for the provision of health care.*
12. A jail-based nurse calls the hospital to request follow-up care info after the inmate was treated for a broken arm.
- *The hospital can share information about the person's follow-up care with health care providers at the jail (whether HIPAA-covered or not) since the disclosure is being made for treatment purposes.*
  - *The jail-based nurse can disclose this information to corrections officers and jail administrators so that special accommodations can be made for the inmate (for the provision of health care and the health and safety of the inmate.)*
13. A court wants to be informed when a person is placed on suicide watch in the jail.

- *A HIPAA-covered provider could only disclose this information with the court pursuant to the person's authorization or a court order but a corrections officer or jail administrator can disclose this information to the court.*
14. A court calls a jail-based mental health provider (HIPAA covered) for information about an inmate's mental health status.
- *The person's authorization or a court order must be obtained for the provider to disclose this information directly to the court. The court could obtain an authorization from the inmate at the initial hearing for this purpose.*
  - *The provider could also disclose this information to jail administrators for the provision of health care and the health and safety of the inmate.*
  - *A jail administrator can then re-disclose this information to the court as requested by the court because it is no longer protected by HIPAA once received by a non-covered entity such as a jail administrator.*
  - *The provider should inform the client about the benefits of the court being able to receive information about the inmates on-going treatment and needs if the client signs an authorization for that purpose.*
15. A criminal court judge wants the sheriff to notify the court each time a person booked into the jail reveals a history of mental illness for specialized docket consideration.
- *A general booking screen provided for purposes of identifying service needs, determining proper placement, making reports to court, etc., does not constitute the provision of healthcare and is therefore not protected by HIPAA. This is the case even if the general screen is conducted by a HIPAA-covered mental health professional and the person is referred for a mental health assessment as a result of the general screen. If the general screen is later utilized by a HIPAA-covered treating professional for treatment purposes, it would become PHI as part of the provider's records. (Note: This is referring to a general screening tool that asks a variety of question to determine inmate needs, some of which may pertain to mental health needs, and not a professional mental health assessment.)*
  - *If a screen is being conducted by a HIPAA-covered mental health professional for dual purposes, however, such as determining proper placement in the jail and as a mental health assessment for treatment services, the document is PHI under HIPAA since it was created, at least in part, for health care purposes by a covered provider. If two separate tools are used, the one used to determine proper jail placement would not be PHI but the mental health assessment would be PHI. If the general screen is utilized by a HIPAA-covered treating professional for treatment purposes, it would become PHI as part of the provider's records.*

# Information-Sharing Between Courts, Jails and Addiction Services Providers

1. A nurse at the jail calls a community addiction services provider for the names of medications taken by a person that is being booked into the jail.
  - *The inmate's authorization is required for the provider to disclose client information to the nurse.*
  - *Part 2 does not contain an exception for addiction treatment providers to disclose information for treatment purposes or to correctional institutions without authorization.*
  
2. At booking, a person is experiencing a medical emergency. A jail-based nurse contacts the person's community addiction services provider for information about the person's treatment that could assist during the emergency medical intervention. Can the community addiction services provider disclose information to the nurse that would assist in providing medical intervention to the person?
  - *Yes, Part 2 permits disclosures to medical personnel who have a need for information about a person for the purpose of treating a condition that poses an immediate threat to the health of the person and that requires immediate medical intervention.*
  
3. The court requests information about a person's treatment progress from the treating Part 2 provider.
  - *The person's authorization or a Part 2-compliant court order must be obtained to disclose the requested information to the court.*
  - *The provider should inform the client about the benefits of the court being able to receive information that will assist in determinations such as pretrial diversion, specialized dockets, less restrictive bail release and appropriate release conditions, etc., if an authorization is signed for that purpose.*
  
4. A criminal court judge wants the sheriff to notify the court each time a person booked into the jail reveals a history of substance abuse for specialized docket consideration.
  - *A general booking screen conducted for the purpose of identifying eligible persons for specialized docket consideration (or similar general purposes such as identifying service needs), is not protected by Part 2, even if it identifies substance use issues, since it was not conducted for the purpose of substance use disorder treatment, diagnosis for treatment or referral for treatment.*
  - *The same applies even if the person conducting the screen is a SUD provider since the screen is not being conducted for Part 2-covered purposes.*
  - *If a screen is being conducted by a Part 2 covered professional for dual purposes, however, such as specialized docket consideration and as a*

*substance use disorder assessment for purposes of diagnosis or referral for treatment, the document is Part-2 protected since it was created, at least in part, for Part-2 covered purposes. If two separate tools are used for these separate purposes, the one used for specialized docket consideration would not be protected but the substance use assessment would be Part 2-protected information. If the general screen is utilized at any point by a Part 2 provider for treatment, diagnosis or referral for treatment purposes, it would become Part 2-protected information as part of the provider's records and the person's authorization would be needed even to release it to jail staff.*

5. An addiction treatment provider receives a court order to disclose the records of a client.
  - *A general court order is not sufficient to authorize a Part-2 covered provider to disclose client-specific information. 42 CFR Part 2 contains specific requirements for courts to follow when issuing a court order authorizing the disclosure of Part 2-protected information.*
  
6. A community addiction and mental health treatment provider is aware that a client has been booked into the jail and wants to contact the jail-based nurse to provide medication information.
  - *The list of medications can be disclosed except for any SUD-specific medications since disclosing that medication would also disclose that the person is a recipient of SUD services. The person's authorization would be required to disclose the SUD-specific medications. Likewise, if the provider is solely a provider of addiction services, the provider could not contact the jail about any of the client's medications since it would disclose that the person is a recipient of SUD services by virtue of the provider only providing SUD services.*
  
7. A jail administrator asks a jail-based addiction treatment provider covered by Part 2 to provide information about the inmate's treatment history.
  - *The inmate's authorization is required for the provider to disclose client information to other jail staff.*
  - *Part 2 does not contain an exception for a Part 2-covered provider (community-based or jail-based) to disclose information for treatment purposes or to correctional institutions without authorization.*
  - *The inmate's authorization should be obtained at the start of the program in order for the jail-based provider to share necessary information with jail administrators such as attendance at program, community linkage needs, etc. The authorization could also authorize a jail administrator to re-disclose the information to the court if necessary.*
  
8. A community-based addiction services provider is informed that a client has been arrested. The provider wants to inform the Court that the person should be considered for specialized dockets.

- *The person's authorization or a court order must be obtained to disclose this information to the court.*
- *The provider should inform the client about the benefits of the court being able to receive information that will assist with determinations about pretrial diversion, specialized dockets, less restrictive bail release and appropriate release conditions, etc., if an authorization is signed for that purpose.*

## References, Sample Forms and Checklists

- **HIPAA Requirements for Disclosures to Courts and Jails**
- **42 CFR Part 2 Requirements for Court Orders Authorizing Disclosure and Use**
- **Ohio Administrative Code Requirements for Mental Health and Medical Care in “Full Service Jails”**
- **Ohio Administrative Code Requirements for Mental Health and Medical Care in “Twelve Day Facilities”**
- **Authorization Forms**
  - **Overview**
  - **Sample Authorization Form (multi-party exchange)**
  - **Ohio’s Standard Authorization Form - Instructions**
  - **Ohio’s Standard Authorization Form A**
  - **Ohio’s Standard Authorization Form B**

# HIPAA Privacy Rule Requirements for Disclosures to Courts and Jails (Correctional Facilities)

## TO COURTS

### **164.512(e) STANDARD:**

#### **DISCLOSURES FOR JUDICIAL AND ADMINISTRATIVE PROCEEDINGS**

(1) *Permitted disclosures.* A covered entity may disclose protected health information in the course of any judicial or administrative proceeding:

(i) In response to an order of a court or administrative tribunal, provided that the covered entity discloses only the protected health information expressly authorized by such order;

## TO HEALTH CARE PROVIDERS AT COURTS/JAILS FOR TREATMENT PURPOSES

164.506(c)(1) A covered entity may use or disclose protected health information for its own treatment, payment, or health care operations.

(2) A covered entity may disclose protected health information for treatment activities of a health care provider.

## TO JAILS/CORRECTIONAL INSTITUTIONS

### **164.512(k)(5) CORRECTIONAL INSTITUTIONS AND OTHER LAW ENFORCEMENT CUSTODIAL SITUATIONS.**

(i) *Permitted disclosures.* A covered entity may disclose to a correctional institution or a law enforcement official having lawful custody of an inmate or other individual protected health information about such inmate or individual, if the correctional institution or such law enforcement official represents that such protected health information is necessary for:

- (A) The provision of health care to such individuals;
- (B) The health and safety of such individual or other inmates;
- (C) The health and safety of the officers or employees of or others at the correctional institution;
- (D) The health and safety of such individuals and officers or other persons responsible for the transporting of inmates or their transfer from one institution, facility, or setting to another;
- (E) Law enforcement on the premises of the correctional institution; or
- (F) The administration and maintenance of the correctional institution.

(ii) A covered entity that is a correctional institution may use protected health information of individuals who are inmates for any purposes for which such protected health information may be disclosed.

(iii) No application after release. For the purposes of this provision, an individual is no longer an inmate when released on parole, probation, supervised release, or otherwise is no longer in lawful custody.

## AS REQUIRED BY LAW

### **164.512(a) STANDARD: USES AND DISCLOSURES REQUIRED BY LAW.**

(1) A covered entity may use or disclose protected health information to the extent that such use or disclosure is required by law and the use or disclosure complies with and is limited to the relevant requirements of such law.

*Required by law* means a mandate contained in law that compels an entity to make a use or disclosure of protected health information and that is enforceable in a court of law. *Required by law* includes, but is not limited to, court orders and court-ordered warrants; subpoenas or summons issued by a court, grand jury... and statutes or regulations that require the production of information...

## **42 CFR Part 2 Requirements for Disclosures to Jails (other than pursuant to court orders)**

### **TO JAIL-BASED MEDICAL PERSONNEL/HEALTH CARE PROVIDERS:**

§ 2.51 Medical emergencies. (a) General Rule. Under the procedures required by paragraph (c) of this section, patient identifying information may be disclosed to medical personnel who have a need for information about a patient for the purpose of treating a condition which poses an immediate threat to the health of any individual and which requires immediate medical intervention.

# 42 CFR Part 2 Requirements for Court Orders Authorizing Disclosure and Use

## §2.61 Legal effect of order.

(a) *Effect.* An order of a court of competent jurisdiction entered under this subpart is a unique kind of court order. Its only purpose is to authorize a disclosure or use of patient information which would otherwise be prohibited by 42 U.S.C. 290dd-2 and the regulations in this part. Such an order does not compel disclosure. A subpoena or a similar legal mandate must be issued in order to compel disclosure. This mandate may be entered at the same time as and accompany an authorizing court order entered under the regulations in this part.

(b) *Examples.* (1) A person holding records subject to the regulations in this part receives a subpoena for those records. The person may not disclose the records in response to the subpoena unless a court of competent jurisdiction enters an authorizing order under the regulations in this part.

(2) An authorizing court order is entered under the regulations in this part, but the person holding the records does not want to make the disclosure. If there is no subpoena or other compulsory process or a subpoena for the records has expired or been quashed, that person may refuse to make the disclosure. Upon the entry of a valid subpoena or other compulsory process the person holding the records must disclose, unless there is a valid legal defense to the process other than the confidentiality restrictions of the regulations in this part.

## §2.62 Order not applicable to records disclosed without consent to researchers, auditors and evaluators.

A court order under the regulations in this part may not authorize qualified personnel, who have received patient identifying information without consent

for the purpose of conducting research, audit or evaluation, to disclose that information or use it to conduct any criminal investigation or prosecution of a patient. However, a court order under §2.66 may authorize disclosure and use of records to investigate or prosecute qualified personnel holding the records.

## §2.63 Confidential communications.

(a) A court order under the regulations in this part may authorize disclosure of confidential communications made by a patient to a part 2 program in the course of diagnosis, treatment, or referral for treatment only if:

(1) The disclosure is necessary to protect against an existing threat to life or of serious bodily injury, including circumstances which constitute suspected child abuse and neglect and verbal threats against third parties;

(2) The disclosure is necessary in connection with investigation or prosecution of an extremely serious crime allegedly committed by the patient, such as one which directly threatens loss of life or serious bodily injury, including homicide, rape, kidnapping, armed robbery, assault with a deadly weapon, or child abuse and neglect; or

(3) The disclosure is in connection with litigation or an administrative proceeding in which the patient offers testimony or other evidence pertaining to the content of the confidential communications.

## §2.64 Procedures and criteria for orders authorizing disclosures for noncriminal purposes.

(a) *Application.* An order authorizing the disclosure of patient records for purposes other than criminal investigation or

prosecution may be applied for by any person having a legally recognized interest in the disclosure which is sought. The application may be filed separately or as part of a pending civil action in which the applicant asserts that the patient records are needed to provide evidence. An application must use a fictitious name, such as John Doe, to refer to any patient and may not contain or otherwise disclose any patient identifying information unless the patient is the applicant or has given written consent (meeting the requirements of the regulations in this part) to disclosure or the court has ordered the record of the proceeding sealed from public scrutiny.

(b) *Notice.* The patient and the person holding the records from whom disclosure is sought must be provided:

(1) Adequate notice in a manner which does not disclose patient identifying information to other persons; and

(2) An opportunity to file a written response to the application, or to appear in person, for the limited purpose of providing evidence on the statutory and regulatory criteria for the issuance of the court order as described in §2.64(d).

(c) *Review of evidence: Conduct of hearing.* Any oral argument, review of evidence, or hearing on the application must be held in the judge's chambers or in some manner which ensures that patient identifying information is not disclosed to anyone other than a party to the proceeding, the patient, or the person holding the record, unless the patient requests an open hearing in a manner which meets the written consent requirements of the regulations in this part. The proceeding may include an examination by the judge of the patient records referred to in the application.

(d) *Criteria for entry of order.* An order under this section may be entered only if the court determines that good cause exists. To make this determination the court must find that:

(1) Other ways of obtaining the information are not available or would not be effective; and

(2) The public interest and need for the disclosure outweigh the potential injury to the patient, the physician-patient relationship and the treatment services.

(e) *Content of order.* An order authorizing a disclosure must:

(1) Limit disclosure to those parts of the patient's record which are essential to fulfill the objective of the order;

(2) Limit disclosure to those persons whose need for information is the basis for the order; and

(3) Include such other measures as are necessary to limit disclosure for the protection of the patient, the physician-patient relationship and the treatment services; for example, sealing from public scrutiny the record of any proceeding for which disclosure of a patient's record has been ordered.

### **§2.65 Procedures and criteria for orders authorizing disclosure and use of records to criminally investigate or prosecute patients.**

(a) *Application.* An order authorizing the disclosure or use of patient records to investigate or prosecute a patient in connection with a criminal proceeding may be applied for by the person holding the records or by any law enforcement or prosecutorial officials who are responsible for conducting investigative or prosecutorial activities with respect to the enforcement of criminal laws. The application may be filed separately, as part of an application for a subpoena or other compulsory process, or in a pending criminal action. An application must use a fictitious name such as John Doe, to refer to any patient and may not contain or otherwise disclose patient

identifying information unless the court has ordered the record of the proceeding sealed from public scrutiny.

(b) *Notice and hearing.* Unless an order under §2.66 is sought in addition to an order under this section, the person holding the records must be provided:

(1) Adequate notice (in a manner which will not disclose patient identifying information to other persons) of an application by a law enforcement agency or official;

(2) An opportunity to appear and be heard for the limited purpose of providing evidence on the statutory and regulatory criteria for the issuance of the court order as described in §2.65(d); and

(3) An opportunity to be represented by counsel independent of counsel for an applicant who is a law enforcement agency or official.

(c) *Review of evidence: Conduct of hearings.* Any oral argument, review of evidence, or hearing on the application shall be held in the judge's chambers or in some other manner which ensures that patient identifying information is not disclosed to anyone other than a party to the proceedings, the patient, or the person holding the records. The proceeding may include an examination by the judge of the patient records referred to in the application.

(d) *Criteria.* A court may authorize the disclosure and use of patient records for the purpose of conducting a criminal investigation or prosecution of a patient only if the court finds that all of the following criteria are met:

(1) The crime involved is extremely serious, such as one which causes or directly threatens loss of life or serious bodily injury including homicide, rape, kidnapping, armed robbery, assault with a deadly weapon, and child abuse and neglect.

(2) There is a reasonable likelihood that the records will disclose information of

substantial value in the investigation or prosecution.

(3) Other ways of obtaining the information are not available or would not be effective.

(4) The potential injury to the patient, to the physician-patient relationship and to the ability of the part 2 program to provide services to other patients is outweighed by the public interest and the need for the disclosure.

(5) If the applicant is a law enforcement agency or official, that:

(i) The person holding the records has been afforded the opportunity to be represented by independent counsel; and

(ii) Any person holding the records which is an entity within federal, state, or local government has in fact been represented by counsel independent of the applicant.

(e) *Content of order.* Any order authorizing a disclosure or use of patient records under this section must:

(1) Limit disclosure and use to those parts of the patient's record which are essential to fulfill the objective of the order;

(2) Limit disclosure to those law enforcement and prosecutorial officials who are responsible for, or are conducting, the investigation or prosecution, and limit their use of the records to investigation and prosecution of the extremely serious crime or suspected crime specified in the application; and

(3) Include such other measures as are necessary to limit disclosure and use to the fulfillment of only that public interest and need found by the court.

### **§2.66 Procedures and criteria for orders authorizing disclosure and use of records to investigate or prosecute a part 2 program or the person holding the records.**

(a) *Application.* (1) An order authorizing the disclosure or use of patient records to investigate or prosecute a part 2 program or the person holding the records (or employees or agents of that part 2 program or person holding the records) in connection with a criminal or administrative matter may be applied for by any administrative, regulatory, supervisory, investigative, law enforcement, or prosecutorial agency having jurisdiction over the program's or person's activities.

(2) The application may be filed separately or as part of a pending civil or criminal action against a part 2 program or the person holding the records (or agents or employees of the part 2 program or person holding the records) in which the applicant asserts that the patient records are needed to provide material evidence. The application must use a fictitious name, such as John Doe, to refer to any patient and may not contain or otherwise disclose any patient identifying information unless the court has ordered the record of the proceeding sealed from public scrutiny or the patient has provided written consent (meeting the requirements of §2.31) to that disclosure.

(b) *Notice not required.* An application under this section may, in the discretion of the court, be granted without notice. Although no express notice is required to the part 2 program, to the person holding the records, or to any patient whose records are to be disclosed, upon implementation of an order so granted any of the above persons must be afforded an opportunity to seek revocation or amendment of that order, limited to the presentation of evidence on the statutory and regulatory criteria for the issuance of the court order in accordance with §2.66(c).

(c) *Requirements for order.* An order under this section must be entered in accordance with, and comply with the requirements of, paragraphs (d) and (e) of §2.64.

(d) *Limitations on disclosure and use of patient identifying information.* (1) An order entered under this section must

require the deletion of patient identifying information from any documents made available to the public.

(2) No information obtained under this section may be used to conduct any investigation or prosecution of a patient in connection with a criminal matter, or be used as the basis for an application for an order under §2.65.

**§2.67 Orders authorizing the use of undercover agents and informants to investigate employees or agents of a part 2 program in connection with a criminal matter.**

(a) *Application.* A court order authorizing the placement of an undercover agent or informant in a part 2 program as an employee or patient may be applied for by any law enforcement or prosecutorial agency which has reason to believe that employees or agents of the part 2 program are engaged in criminal misconduct.

(b) *Notice.* The part 2 program director must be given adequate notice of the application and an opportunity to appear and be heard (for the limited purpose of providing evidence on the statutory and regulatory criteria for the issuance of the court order in accordance with §2.67(c)), unless the application asserts that:

(1) The part 2 program director is involved in the suspected criminal activities to be investigated by the undercover agent or informant; or

(2) The part 2 program director will intentionally or unintentionally disclose the proposed placement of an undercover agent or informant to the employees or agents of the program who are suspected of criminal activities.

(c) *Criteria.* An order under this section may be entered only if the court determines that good cause exists. To make this determination the court must find all of the following:

(1) There is reason to believe that an employee or agent of the part 2 program is engaged in criminal activity;

(2) Other ways of obtaining evidence of the suspected criminal activity are not available or would not be effective; and

(3) The public interest and need for the placement of an undercover agent or informant in the part 2 program outweigh the potential injury to patients of the part 2 program, physician-patient relationships and the treatment services.

(d) *Content of order.* An order authorizing the placement of an undercover agent or informant in a part 2 program must:

(1) Specifically authorize the placement of an undercover agent or an informant;

(2) Limit the total period of the placement to six months;

(3) Prohibit the undercover agent or informant from disclosing any patient identifying information obtained from the placement except as necessary to investigate or prosecute employees or agents of the part 2 program in connection with the suspected criminal activity; and

(4) Include any other measures which are appropriate to limit any potential disruption of the part 2 program by the placement and any potential for a real or apparent breach of patient confidentiality; for example, sealing from public scrutiny the record of any proceeding for which disclosure of a patient's record has been ordered.

(e) *Limitation on use of information.* No information obtained by an undercover agent or informant placed in a part 2 program under this section may be used to investigate or prosecute any patient in connection with a criminal matter or as the basis for an application for an order under §2.65.

# Ohio Administrative Code Requirements for Mental Health and Medical Care in Full Service Jails

## 5120:1-7-02 Glossary of Terms

(A)(1) "Full service jail": A local confinement facility used primarily to detain adults for more than two hundred eighty-eight hours. The standards set forth in rules 5120:1-8-01 to 5120:1-8-18 of the Administrative Code apply to full service jails.

## 5120:1-8-09 Medical/Mental Health

(A) (Essential) Health authority. The jail has a designated health authority with responsibility for health and/or mental health care services pursuant to a written agreement, contract or job description. The health authority may be a physician, health administrator or agency. When the health authority is other than a local physician, final clinical judgment rests with a single, designated, responsible, local physician licensed in Ohio. The health authority is responsible and authorized to:

(1) Provide written policies and procedures specifically designed for the jail for all aspects of this standard that shall be reviewed on an annual basis.

Written policies and procedures shall be easily accessible to staff and simple to understand.

(2) Arranges for all levels of health care, mental health care and dental care and assures quality, accessible and timely services for inmates. When necessary medical, mental health or dental care is not available at the jail, inmates are referred to an appropriate setting.

(3) Ensure where there is a separate organizational structure for mental health services; there is a designated mental health clinician.

(4) Ensure decisions and actions regarding health care and mental health care meet inmate's serious medical and mental health needs are the sole responsibility of qualified health care and mental health professionals.

(5) No inmate shall be denied necessary health care, as designated by the health authority.

(B) (Essential) Inmate pre-screen. Before acceptance into jail, health-trained personnel shall inquire about, but not be limited to the following conditions and the health authority shall develop policies for the acceptance or denial of admission for:

(1) Suicide thoughts/plan.

(2) Current serious or potentially serious medical or mental health issues needing immediate attention.

(3) The use of taser, pepper spray or other less lethal use of force during arrest.

(C) (Essential) Receiving screen. Health trained personnel, in accordance with protocols established by the health authority, shall perform a written medical, dental and mental health receiving screening on each inmate upon arrival at the jail and prior to being placed in general population.

(1) Inquiry includes at least the following:

(a) Current and past illness and health problems;

(b) Current and past dental problems;

(c) Current and past mental health problems;

(d) Allergies;

(e) Current medications for medical and mental health;

(f) Hospitalizations for medical or mental health purpose(s);

(g) Special health needs;

(h) Serious infection or communicable illness(s);

(i) Use of alcohol and drugs including types, amounts and frequency used, date or time of last use and history of any problems after ceasing use i.e. withdrawal symptoms;

(j) Suicidal risk assessment;

(k) Possibility of pregnancy;

(l) Other health problems as designated by the health authority.

(2) Observation of the following:

(a) Behavior including state of consciousness, mental health status, appearance, conduct, tremors and sweating;

(b) Body deformities and ease of movement;

(c) Condition of skin, including trauma markings, bruises, lesions, jaundice, rashes, infestations and needle marks or other indications of drug abuse.

(3) Medical disposition of inmate:

(a) General population;

(b) General population with prompt referral to appropriate health or mental health services;

(c) Referral for emergency treatment;

(d) Medical observation/isolation;

(e) Mental health observation/precautions;

(f) Documentation of date, time and signature and title of person completing screening.

(D) (Essential) Health appraisal. Within fourteen days, a licensed nurse, physician, physician's assistant, EMT or paramedic shall complete a health appraisal to determine the medical and mental health condition for each inmate in custody. Such appraisal shall at least include the following:

(1) Review of receiving screen.

(2) Collection of additional data to complete the medical, dental and mental health history.

(3) Laboratory and/or diagnostic tests to detect tuberculosis and other suspected communicable diseases as designated by the health authority.

(4) Recording the height, weight, pulse, blood pressure and temperature.

(5) Medical examination as determined by the examiner.

(6) Mental health assessment.

(7) Initiation of therapy when determined necessary by the examiner.

(8) Development and implementation of a treatment plan.

(9) Other test and examination as determined by the examiner or health authority.

(E) (Essential) Full-service scope. The jail provides twenty-four-hour emergency medical, dental, and mental health care services.

(F) (Essential) Sick call. A physician and/or qualified health care professional conducts sick call.

(1) Once per week for jails with an average daily population of less than fifty.

(2) Three times per week for jails with an average population of less than one hundred ninety-nine.

(3) Five times per week for jails with an average daily population of two hundred or more.

(G) (Essential) Credentials. All health and mental health care personnel who provide services to inmates are appropriately credentialed according to the licensure, certification, and registration requirements of Ohio. Verification of current credentials is on file at the facility. Health care staff work in accordance with profession-specific job descriptions approved by the health authority.

(H) (Essential) Health and mental health complaints. The jail shall ensure that there is a daily procedure whereby inmates have an opportunity to report medical and mental health complaints through health trained personnel, or for urgent matters, to any jail employee. The jail employee shall contact the appropriate medical or mental health department immediately. An inmate grievance system for medical and mental health treatment shall be established by the health authority. Both daily complaints and grievances shall be:

(1) Addressed in a timely manner.

(2) Recorded and maintained on file.

(3) Reviewed daily by qualified health care personnel and treatment or follow-up shall be provided as necessary.

(I) (Important) Personal physician treatment. Inmates can be treated by a personal physician in the jail at their own expense, upon the approval by the jail physician, provided that the current credentials of the personal physician are verified.

(J) (Essential) Medical/mental health record. The jail shall maintain an accurate health/mental health record in written or electronic format. The health authority shall develop policies and procedures concerning the following areas:

(1) Health records remain confidential and are only accessible to personnel designated by the health authority.

(2) Correctional staff may be advised of inmates' health/mental health status only to preserve the health and safety of the inmate, other inmates, jail staff and in accordance state and federal laws.

(3) Retention and reactivation of said records if an inmate returns to the facility.

(4) Transfer of medical/mental health information or record to external care provider.

(K) (Essential) Pharmaceuticals. Pharmaceuticals are managed in accordance with policies and procedures approved by the health authority and in compliance with state and federal laws and regulations and include the following:

(1) The policies require dispensing and administering prescribed medications by health-trained personnel or professionally trained personnel, adequate management of controlled medications, and provisions of medication to inmates in special management units.

(2) The jail shall develop a policy, approved by the health authority, regarding incoming medications.

(L) (Important) Dental care. Inmates shall be provided dental and oral care under the direction and supervision of a dentist licensed in the state of Ohio. There is a system of established priorities for care, when in the dentist's judgment, the inmate's health would otherwise be adversely affected.

(M) (Essential) Mental health services. Inmates evidencing signs of mental illness or developmental disability shall be referred immediately to qualified mental health personnel. The health authority shall develop policies for the following areas:

(1) Screening for mental health problems.

(2) Referral to outpatient services, including psychiatric care.

(3) Crisis intervention and management of acute psychiatric episodes.

(4) Stabilization of the mentally ill and prevention of psychiatric deterioration in the jail.

(5) Referral and admission to inpatient facilities.

(6) Informed consent.

(N) (Essential) Suicide prevention program. The health authority shall have a plan for identifying and responding to suicidal and potentially suicidal inmates. The plan components shall include:

(1) Identification - The receiving screening form contains observation and interview items related to the inmate's potential suicide risk. Circumstances include but are not limited to: profound incidents/issues, court dates, loss of significant others either by accident, natural causes or by suicide, sentencing, divorce, rejection, bad news, after a humiliating issue, etc. may be high risk periods for inmates.

(2) Training - Staff members who work with inmates are trained to recognize verbal and behavioral cues that indicate potential suicide and how to respond appropriately. The plan includes initial and annual training.

(3) Assessment - The plan specifies a suicide risk assessment and level system. The assessment needs to be completed every time an inmate is identified as being or potentially being suicidal, or if circumstances change. Only a qualified mental health professional may remove inmates from suicide risk status.

(4) Housing - The plan must designate the housing beds/units for the suicidal or potentially suicidal inmates.

(5) Monitoring - The plan specifies the procedures for monitoring an inmate who has been identified as potentially suicidal. A suicidal inmate is checked at varied intervals not to exceed ten minutes. Regular documented supervision is maintained. Inmates are placed in a designated cell, all belongings removed and other prevention precautions initiated, as appropriate.

(6) Referral - The plan specifies the procedures for referring a potentially suicidal inmate and attempted suicides to a mental health care provider or facility, and includes timeframes.

(7) Communication - The plan specifies for ongoing communications (oral and written), notifications between health care and correctional personnel regarding the status of suicidal inmates.

(8) Intervention - The plan addresses how to handle a suicide in progress, including first-aid measures.

(9) Notification - The plan includes procedures of notifying the jail administrator, outside authorities and

family members of completed suicides. The plan shall consider safety and security issues when it comes to notification.

(10) Reporting - The plan includes procedures for documenting, monitoring and reporting attempted or completed suicides. Completed suicides are immediately reported to the coroner/medical examiner and the division of parole and community services within thirty days of the incident.

(11) Review - The plan specifies procedures for medical and administrative review if a suicide or a serious suicide attempt occurs.

(12) Critical incident debriefing - The plan specifies the procedures for offering critical incident debriefing to affected staff and inmates.

(O) (Important) Emergency equipment/supplies. Emergency medical equipment and supplies, as determined by the health authority shall be available at all times and replenished, as needed and may include automatic external defibrillators (AEDs).

(P) (Essential) Infectious disease control program. The health authority shall have a written infectious disease control program which collaborates with the local health department and shall include, at minimum, an exposure control plan and standard isolation precautions for inmates and staff, which are updated annually. The health authority shall develop written policy and procedure.

(Q) (Essential) Pregnant inmate. Pregnant inmates shall receive appropriate and timely pre-natal care, delivery and postpartum care, as determined by the health authority.

(R) (Essential) Restraints. Use of restraints for medical and psychiatric purposes shall be applied in accordance with policies and procedures approved by the health authority, including:

- (1) Conditions under which restraints may be applied.
- (2) Types of restraints to be applied.
- (3) Identification of a qualified medical or mental health professional who may

authorize the use of restraints after reaching the conclusion that less intrusive measures are not a viable alternative.

(4) Monitoring procedures.

(5) Length of time restraints are to be applied.

(a) There shall be ten-minute, varied checks by correctional staff;

(b) There shall be thirty-minute checks by health-trained personnel;

(c) Inmates in medical restraints, if possible, after every two hours of continuous use, each extremity is freed or exercised for a period of five to ten minutes.

(6) Documentation of efforts for less restrictive treatment alternatives.

(7) An after-incident review.

(S) (Important) Continuous quality improvement program. The health authority shall develop a continuous quality improvement (CPI) system of monitoring and reviewing, at least annually, the fundamental aspects of the jail's health/mental health care system, including but not limited to: access to care; the intake process; emergency care and hospitalizations; and, adverse inmate occurrences, including all deaths. Periodic chart reviews are included to determine the timeliness and appropriateness of the clinical care provided to inmates.

(T) (Important) Emergency response plan - The health aspects of the emergency response plan (mass disaster drill & man down drill). Emergency medical care, including first aid and basic life support, is provided by all health care professionals and those health-trained correctional staff specifically designated by the jail administrator. All staff responding to medical emergencies are certified in cardiopulmonary resuscitation (CPR) in accordance with the recommendations of certifying health organizations.

(U) (Essential) Continuing education for health trained personnel. All qualified health care professionals participate annually in continuing education appropriate for their position.

(V) (Essential) Special nutritional and medical diets. Inmate diets are modified when ordered by the appropriate licensed individual to meet specific requirements related to clinical conditions.

(W) (Essential) Intoxication and detoxification. The health authority shall develop specific policies and protocols in accordance with local, state and federal laws for the treatment and observation of inmates manifesting symptoms of intoxication or detoxification from alcohol, opiates, hypnotics, or other drugs. Specific criteria are established for immediately transferring inmates experiencing severe, life-threatening intoxication (overdose) or detoxification symptoms to a hospital or detoxification center.

(X) (Essential) Confidentiality. Information about an inmate's health status is confidential. Non health trained staff only have access to specific medical information on a "need to know" basis in order to preserve the health and safety of the specific inmate, other inmates, volunteers, visitors, criminal justice professionals or correctional staff.

(Y) (Important) Informed consent. The health authority shall develop a policy and procedure requiring that all examinations, treatments and procedures are governed by informed consent practices applicable in the jail's jurisdiction.

(Z) (Important) Privacy. The health authority shall develop a policy whereby health care encounters, including medical and mental health interviews, examinations, and procedures are conducted in a setting that respects the inmate's privacy.

(AA) (Important) Inmate death. In all inmate deaths, the health authority determines the appropriateness of clinical care; ascertains whether corrective action in the system's policies, procedures, or practices is warranted; and, identifies trends that require further study.

# Ohio Administrative Code Requirements for Mental Health and Medical Care in Twelve Day Facilities

## 5120:1-7-02 Glossary of terms.

(A)(2) " Twelve day facility": A local confinement facility used primarily to detain adults for a maximum of two hundred eighty-eight hours. The standards set forth in rules 5120:1-10-01 to 5120:1-10- 18 of the Administrative Code apply to twelve day facilities.

## 5120:1-10-09 Medical/Mental Health

(A) (Essential) Health authority. The jail has a designated health authority with responsibility for health and/or mental health care services pursuant a written agreement, contract or job description. The health authority may be a physician, health administrator or agency. When the health authority is other than a local physician, final clinical judgment rests with a single, designated, responsible, local physician licensed in Ohio. The health authority is responsible and authorized to:

(1) Provide written policies and procedures specifically designed for the jail for all aspects of this standard that shall be reviewed on an annual basis.

Written policies and procedures shall be easily accessible to staff and simple to understand.

(2) Arranges for all levels of health care, mental health care and dental care and assures quality, accessible and timely services for inmates. When necessary medical, mental health or dental care is not available at the jail, inmates are referred to an appropriate setting.

(3) Ensure decisions and actions regarding health care and mental health care meet inmate's serious medical and mental health needs are the sole responsibility of qualified health care and mental health professionals.

(4) No inmate shall be denied necessary health care, as designated by the health authority.

(B) (Essential) Inmate pre-screen. Before acceptance into the jail, health-trained personnel shall inquire about, but not be limited to the following conditions and the health authority shall develop policies for the acceptance or denial of admission for:

(1) Suicide thoughts/plan.

(2) Current serious or potentially serious medical or mental health issues needing immediate attention.

(3) The use of an electronic weapon, pepper spray or other less lethal use of force during arrest.

(C) (Essential) Receiving screen. Health trained personnel, in accordance with protocols established by the health authority, shall perform a written medical, dental and mental health receiving screening on each inmate upon arrival at the jail and prior to being placed in general population.

(1) Inquiry includes at least the following:

(a) Current and past illness and health problems;

(b) Current and past dental problems;

(c) Current and past mental health problems;

(d) Allergies;

(e) Current medications for medical and mental health;

(f) Hospitalizations for medical or mental health purpose(s);

(g) Special health needs;

(h) Serious infection or communicable illness(s);

(i) Use of alcohol and drugs including types, amounts and frequency used, date or time of last use and history of any problems after ceasing use, i.e., withdrawal symptoms;

(j) Suicidal risk assessment;

(k) Possibility of pregnancy;

(l) Other health problems as designated by the health authority.

(2) Observation of the following:

(a) Behavior including state of consciousness, mental health status, appearance, conduct, tremors and sweating;

(b) Body deformities and ease of movement;

(c) Condition of skin, including trauma markings, bruises, lesions, jaundice, rashes, infestations and needle marks or other indications of drug abuse.

(3) Medical disposition of inmate:

(a) General population;

(b) General population with prompt referral to appropriate health or mental health services;

(c) Referral for emergency treatment;

(d) Medical observation/isolation;

(e) Mental health observation/precautions;

(f) Documentation of date, time and signature and title of person completing screening.

(D) (Essential) Scope of service. The jail shall provide, or make provisions for, twenty-four hour emergency health, dental and mental health care.

(E) (Essential) Credentials. All health and mental health care personnel who provide services to inmates are appropriately credentialed according to the licensure, certification, and registration requirements of Ohio. Verification of current credentials is on file at the facility. Health care staff works in accordance with profession-specific job descriptions approved by the health authority.

(F) (Essential) Sick call. The health authority shall develop a policy and procedure for sick call whereby a physician and/or qualified health care professional conducts sick call.

(G) (Essential) Health and mental health complaints. The jail shall ensure that there is a daily procedure whereby inmates have an opportunity to report medical and mental health complaints through health-trained personnel, or for urgent matters, to any jail employee. The jail employee shall contact the appropriate medical or mental health department immediately. An inmate grievance system for medical and mental health treatment shall be established by

the health authority. Both daily complaints and grievances shall be:

- (1) Addressed in a timely manner.
- (2) Recorded and maintained on file.
- (3) Reviewed daily by qualified health care personnel and treatment or follow-up shall be provided as necessary.

(H) (Important) Personal physician treatment. Inmates can be treated by a personal physician in the jail at their own expense, upon the approval by the jail physician, provided that the current credentials of the personal physician are verified.

(I) (Essential) Medical/mental health record. The jail shall maintain an accurate health/mental health record in written or electronic format. The health authority shall develop policies and procedures concerning the following areas:

- (1) Health records remain confidential and are only accessible to personnel designated by the health authority.
- (2) Correctional staff may be advised of inmates' health/mental health status only to preserve the health and safety of the inmate, other inmates, and jail staff and in accordance with state and federal laws.
- (3) Retention and reactivation of said records if an inmate returns to the facility.
- (4) Transfer of medical/mental health information or record to external care provider.

(J) (Essential) Pharmaceuticals. Pharmaceuticals are managed in accordance with policies and procedures approved by the health authority and in compliance with state and federal laws and regulations and include the following:

- (1) The policies require dispensing and administering prescribed medications by health-trained personnel or professionally trained personnel, adequate management of controlled medications, and provisions of medication to inmates in special management units.
- (2) The jail shall develop a policy, approved by the health authority, regarding incoming medications.

(K) (Essential) Mental health services. Inmates evidencing signs of mental illness or developmental disability shall be referred immediately to qualified mental health personnel. The health

authority shall develop policies for the following areas:

- (1) Screening for mental health problems.
- (2) Referral to outpatient services, including psychiatric care.
- (3) Crisis intervention and management of acute psychiatric episodes.
- (4) Stabilization of inmates with mental illness and prevention of psychiatric deterioration in the jail.
- (5) Referral and admission to inpatient facilities.
- (6) Informed consent.

(L) (Essential) Suicide prevention program. The health authority shall have a plan for identifying and responding to suicidal and potentially suicidal inmates. The plan components shall include:

- (1) Identification. The receiving screening form contains observation and interview items related to the inmate's potential suicide risk.
- (2) Training. Staff members who work with inmates are trained to recognize verbal and behavioral cues that indicate potential suicide and how to respond appropriately. The plan includes initial and annual training.
- (3) Assessment. The plan specifies a suicide risk assessment and level system. The assessment needs to be completed every time an inmate is identified as being or potentially being suicidal, or if circumstances change. Only a qualified mental health professional may remove inmates from suicide risk status.
- (4) Housing. The plan shall designate the housing beds/units for the suicidal or potentially suicidal inmates.
- (5) Monitoring. The plan specifies the procedures for monitoring an inmate who has been identified as potentially suicidal. A suicidal inmate is checked at varied intervals not to exceed ten minutes. Regular documented supervision is maintained. Inmates are placed in a designated cell, all belongings removed and other prevention precautions initiated, as appropriate.
- (6) Referral. The plan specifies the procedures for referring a potentially suicidal inmate and attempted suicides to a mental health care provider or facility, and includes timeframes.
- (7) Communication. The plan specifies for ongoing communications (oral and written), notifications between health

care and correctional personnel regarding the status of suicidal inmates.

- (8) Intervention. The plan addresses how to handle a suicide in progress, including first-aid measures.
- (9) Notification. The plan includes procedures of notifying the jail administrator, outside authorities and family members of completed suicides. The plan shall consider safety and security issues when it comes to notification.
- (10) Reporting. The plan includes procedures for documenting, monitoring and reporting attempted or completed suicides. Completed suicides are immediately reported to the coroner/medical examiner and the division of parole and community services within thirty days of the incident.
- (11) Review. The plan specifies procedures for medical and administrative review if a suicide or a serious suicide attempt occurs.
- (12) Critical incident debriefing. The plan specifies the procedures for offering critical incident debriefing to affected staff and inmates.

(M) (Important) Emergency equipment/supplies. Emergency medical equipment and supplies, as determined by the health authority shall be available at all times and replenished, as needed and may include automatic external defibrillators (AEDs).

(N) (Essential) Infectious disease control program. The health authority shall have a written infectious disease control program that collaborates with the local health department and shall include, at minimum, an exposure control plan and standard isolation precautions for inmates and staff, which are updated annually. The health authority will develop written policy and procedures.

(O) (Essential) Pregnant inmate. pregnant inmates shall receive appropriate and timely pre-natal care, delivery and postpartum care, as determined by the health authority.

(P) (Essential) Restraints. Use of restraints for medical and psychiatric purposes shall be applied in accordance with policies and procedures approved by the health authority, including:

(1) Conditions under which restraints may be applied.

(2) Types of restraints to be applied.

(3) Identification of a qualified medical or mental health professional who may authorize the use of restraints after reaching the conclusion that less intrusive measures are not a viable alternative.

(4) Monitoring procedures.

(5) Length of time restraints are to be applied.

(a) There shall be ten-minute, varied checks by correctional staff;

(b) There shall be thirty-minute checks by health-trained personnel;

(c) Inmates in medical restraints, if possible, after every two hours of continuous use, each extremity is freed or exercised for a period of five to ten minutes.

(6) Documentation of efforts for less restrictive treatment alternatives.

(7) An after-incident review.

(Q) (Important)Emergency response plan. The health aspects of the emergency response plan (mass disaster drill and man down drill). Emergency medical care, including first aid and basic life support, is provided by all health care professionals and those health-trained correctional staff specifically designated by the jail administrator. All staff responding to medical emergencies are certified in cardiopulmonary resuscitation (CPR) in accordance with the recommendations of certifying health organizations.

(R) (Essential)Continuing education for health trained personnel. All qualified health care professionals participate annually in continuing education appropriate for their position.

(S) (Important) Continuous quality improvement program. The health authority shall develop a continuous quality improvement (CPI) system of monitoring and reviewing, at least annually, the fundamental aspects of the jail's health/mental health care system, including but not limited to: access to care; the intake process; emergency care and hospitalizations; and, adverse inmate occurrences, including all deaths. Periodic chart reviews are included to determine the timeliness and

appropriateness of the clinical care provided to inmates.

(T) (Essential) Special nutritional and medical diets. Inmate diets are modified when ordered by the appropriate licensed individual to meet specific requirements related to clinical conditions.

(U) (Essential)Intoxication and detoxification. The health authority shall develop specific policies and protocols in accordance with local, state and federal laws for the treatment and observation of inmates manifesting symptoms of intoxication or detoxification from alcohol, opiates, hypnotics, or other drugs. Specific criteria are established for immediately transferring inmates experiencing severe, life-threatening intoxication (overdose) or detoxification symptoms to a hospital or detoxification center.

(V) (Essential)Confidentiality. Information about an inmate's health status is confidential. Non health trained staff only has access to specific medical information on a need to know basis in order to preserve the health and safety of the specific inmate, other inmates, volunteers, visitors, criminal justice professionals or correctional staff.

(W) (Important) Informed consent. The health authority shall develop a policy and procedure requiring that all examinations, treatments and procedures are governed by informed consent practices applicable in the jail's jurisdiction.

(X) (Important)Privacy. The health authority shall develop a policy whereby health care encounters, including medical and mental health interviews, examinations, and procedures are conducted in a setting that respects the inmate's privacy.

(Y) (Important)Inmate death. In all inmate deaths, the health authority determines the appropriateness of clinical care; ascertains whether corrective action in the system's policies, procedures, or practices is warranted; and identifies trends that require further study.

# **AUTHORIZATION FORMS**

# AUTHORIZATION FORMS OVERVIEW

This section contains the following:

## 1. Ohio's Standard Authorization Form Instructions, Form A and Form B

- The General Assembly charged the Director of the Ohio Department of Medicaid (ODM) with the responsibility of developing a standard form for the use and disclosure of protected health information.
- The purpose of the form is to improve care coordination for a patient across multiple providers by making it easier to share protected health information in a secure manner.
- The form complies with all current HIPAA privacy rule requirements and all requirements contained in 42 CFR Part 2, which cover certain substance use disorder treatment information.
- The Standard Authorization Form contains two separate forms. Form A is an authorization for release of information from covered entities under HIPAA. Form B is a consent for release of substance use disorder information from a "Part 2" program. A "Part 2" program includes practitioners or provider organizations that hold themselves out as providing, and provide, substance use disorder diagnosis, treatment or treatment referral. For more information see 42 CFR 2.11.
- The form is not required to be used, but a properly executed form must be accepted by the receiving entity. The requirement to accept a properly executed form is applicable within 30 days of January 3, 2019, the effective date of the rule.
- The standard form is authorized under section 3798.10 of the Ohio Revised Code and promulgated under rule 5160-1-32.1 of the Ohio Administrative Code, Standard Authorization Form.
- The form and instructions can be accessed through the following direct links:
  - Standard Authorization Form at:  
<https://medicaid.ohio.gov/Portals/0/Resources/Publications/Forms/ODM10221fillx.pdf>
  - Standard Authorization Form Instructions at:  
<https://medicaid.ohio.gov/Portals/0/Resources/Publications/Forms/ODM10221i.pdf>
- Questions about the Standard Authorization Form may be directed to StandardAuthForm@medicaid.ohio.gov

### **\*\*Important Information for Ohio's Criminal Justice System about the use of Standard Authorization form\*\***

- Some providers from the Criminal Justice system have noted that Form B does not address Part 2's additional requirement for the disclosure of information to the Criminal Justice system about a person that is required to participate in a treatment program as a condition of the disposition of criminal proceedings or of parole or other release from custody. Part 2 requires that authorization forms used for such purposes include a statement that the form is not revocable until a certain time or event related to the final disposition of the proceeding or release.
- ODM has agreed to include language to address this requirement in the next version of the form but in the meantime, providers can continue to use their current forms containing this language or they can add the following language to Form B to make it compliant with the Part 2 requirement.
  - Add the following to the revocation statement in Section IV: "See exception note below".
  - In the fillable box titled Expiration Date or Event enter the following sentence: If authorizing disclosure of information to the criminal justice system about the individual's court-mandated treatment, it may not be revoked until the final disposition of the criminal proceeding and/or the individual's release from custody or supervision.
- The addition of this language to Form B has been approved by ODM.
- Providers should contact legal counsel with questions about this language and the use of Ohio's Standard Authorization Form.

## **2. Authorization for the Exchange of Confidential Information (Template)**

- The template form offers an alternative to Ohio's Standard Authorization Form. It can be useful when more than two parties are engaged in the exchange of confidential information or for multi-directional sharing of information between two parties (instead of just a one-way disclosure of information).
- The template form complies with the current authorization requirements of HIPAA, 42 CFR Part 2 and OhioMHAS rules.
- Additional lines can be added (or current lines removed) depending on the number of parties involved in the exchange of information.

## Instructions for Completing ODM 10221 STANDARD AUTHORIZATION FORM

This standard authorization form should be used by an individual or their personal representative to give consent to the release of personal health information. This form is not a patient access request under 45 CFR 164.524.

**Which form do you use?** If you are a Part 2 program (Substance Use Disorder (SUD) provider), or you are releasing records obtained from a Part 2 program, use FORM B. In all other cases, use FORM A. Form A does not need to be used when the exchange of information is for the purposes of treatment, payment and healthcare operations under HIPAA.

- **Part 2 programs** are federally assisted individuals or entities that hold themselves out as providing, and provide, substance use disorder diagnosis, treatment or treatment referral. For more information, see 42 CFR 2.11.

### Section I (both FORM A and FORM B)

- Enter the requested information for the individual whose health information is to be released.
- Individuals are not required to provide a Social Security Number (SSN). If the SSN or additional identifying information is missing, an entity may not be able to identify the individual in order to respond to the request. An option is to provide the last 4 digits of the SSN.

### Section II (Form A)

- “Disclosing Entity (Name of Covered Entity)” is the health plan/insurer or provider who has the individual’s PHI which will be released. Enter the name of the Covered Entity as well as the contact information.
- “Recipient (Person or Entity)” - list the person or organization who should receive the PHI. Enter the contact information (phone number, email address, fax number, mailing address, etc.).

### Section II (Form B)

- “Disclosing Entity (Name of Holder of Part 2 Program Information)” is the person or entity who has the individual’s substance use disorder information to be released. Enter the name of the Holder of Part 2 Program information as well as the contact information. You may use a general description such as “any drug or alcohol treatment program that has provided services to the individual.” More than one person or entity may be named.
- “The information is to be provided to the following” - list the person or organization who should receive the substance use disorder information. This can be an individual, a provider, a third party payer (health plan/insurer), or a non-treating entity, such as a health information exchange, a parole office, or a drug court program. More than one person or entity may be named.
- Use a separate FORM B for each person or organization that will be disclosing information.
- **If “Named Non-Treatment Provider (such as an intermediary or research entity)” is selected then a, b, and/or c must be completed too.** *The form is not complete if this box is checked and no additional information is provided in a, b, and/or c.*
  - A treatment provider relationship exists where an individual has agreed to or is required to be diagnosed, evaluated, or treated by, or to accept consultation from, an individual or entity who provides or agrees to provide the service. For more information, see 42 CFR 2.11.
- Enter the contact information (phone number, email address, fax number, mailing address, etc.).

### Section III (both FORM A and FORM B):

- “Reason for Disclosure” must tell why the individual’s information is being released.
- “Health Information to be disclosed” - must give a complete description of the information to be released. For Form B, please clearly specify the substance use disorder information that may be released.
- “Specify Time Period, if desired” is to be used, if necessary, to indicate a specific date range for the information to be disclosed (e.g. 7/1/2017 to 1/1/2018).

### Section IV (both FORM A and FORM B)

- “Expiration Date or Event” is the specific date or event upon which the consent will expire. Event may be defined as the reason for the authorization or consent (e.g. insurance claim). If no date or event is provided, the authorization or consent will expire in one year.
- The individual whose information is being released should sign and date the form. If the individual is not able to sign the form, the personal representative should sign and date it. If a personal representative signs the form, indicate the relationship of the personal representative by selecting the appropriate box. Disclosing entity may require proof of authority of the representative.

## STANDARD AUTHORIZATION FORM

Fields marked with an asterisk (\*) are required to be completed. Failure to provide additional identifying information in Section I may result in the inability to respond to this request. This form is not a patient access request under 45 CFR 164.524. *Records released pursuant to this authorization may include information concerning testing, diagnosis or treatment of HIV/AIDS, psychiatric and/or drug/alcohol treatment, and/or sexual assault.*

### FORM A – AUTHORIZATION FOR RELEASE OF INFORMATION FROM COVERED ENTITIES (OTHER THAN PART 2 PROGRAMS)

<b>Section I</b>					
First Name*	M.I.	Last Name*	Date of Birth*	Social Security Number	
Address			City	State	Zip Code
I hereby authorize the disclosure of health information about the above individual as follows.					
<b>Section II</b>					
Disclosing Entity* <i>(Covered Entity such as a health plan/insurer or provider)</i>					
Address				Telephone Number	
City		State		Zip Code	
Recipient (Person or Entity) *					
Contact Information <i>(e.g. telephone number, email address, fax number, street address, etc.)</i>					
<b>Section III</b>					
Reason for Disclosure*					
Health information to be disclosed*					
Specify time period, if desired: Release only information from the period _____ (mm/dd/yyyy) to _____ (mm/dd/yyyy)					
<b>Section IV</b>					
This authorization will remain in effect until revoked or shall expire on date or event specified below. I understand that I may revoke or cancel this authorization at any time by submitting written revocation in the manner specified by the disclosing entity, except to the extent that action has been taken in reliance on this authorization. If this authorization has not been revoked, it will expire on the date or completion of the event stated below. If no date or event is specified below, this authorization will expire in one year.					
Expiration Date or Event _____ (mm/dd/yyyy)					
<ul style="list-style-type: none"> <li>• I understand that I may not be denied treatment, payment, and enrollment in the health plan, or eligibility for benefits for refusing to authorize disclosure unless such denial is permitted under state and federal law.</li> <li>• I understand that information disclosed by this authorization, except as prohibited by 42 CFR Part 2 or other applicable law, may be subject to re-disclosure by the recipient and may no longer be protected by the Health Insurance Portability and Accountability Act Privacy Rule [45 CFR Part 164].</li> </ul>					
Signature of Individual*					Date* (mm/dd/yyyy)
Signature of Personal Representative (if applicable)* <i>(identify relationship to individual below)</i>					Date* (mm/dd/yyyy)
Relationship of Personal Representative to Individual <i>(Personal representative shall submit proof of authority to the disclosing entity)</i>					
<input type="checkbox"/> Parent <input type="checkbox"/> Legal Guardian <input type="checkbox"/> Healthcare Power of Attorney <input type="checkbox"/> Executor/Administrator <input type="checkbox"/> Other <input type="checkbox"/> N/A					

For administrative use only:

Method of Delivery (e.g. paper, fax, electronic,)	Date Released
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**FORM B – CONSENT FOR RELEASE OF PART 2 PROGRAM (SUBSTANCE USE DISORDER PROVIDER) INFORMATION**

A Part 2 Program is a federally assisted: (i) individual or entity other than a general medical facility who holds itself out as providing, and provides, substance use disorder (SUD) diagnosis, treatment, or referral for treatment; (ii) an identified unit within a general medical facility that holds itself out as providing, and provides, SUD diagnosis, treatment, or referral for treatment; or, (iii) medical personnel or staff in a general medical facility whose primary function is provision of SUD diagnosis, treatment, or referral for treatment, and who are identified as such providers.

Section I					
First Name*	M.I.	Last Name*	Date of Birth*	Social Security Number	
Address			City	State	Zip Code
I hereby authorize the disclosure of health information about the above individual as follows.					
Section II					
Disclosing Entity* (Name of Holder of Part 2 Program Information)				Telephone Number	
Address			City	State	Zip Code
<p><b>The information is to be provided to the following*:</b></p> <input type="checkbox"/> Named Individual: <input type="checkbox"/> Named Third Party Payer: <input type="checkbox"/> Named Treatment Provider Entity: <input type="checkbox"/> Named Non-Treatment Provider (such as an intermediary or research entity)* <i>*If non-treatment provider is selected complete a, b and/or c below.</i> <p>a. Named Individual Participant(s): _____                  b. Named Treatment Provider Entity Participant(s): _____                  c. Description of Group or Class of Treatment Provider Entity Participant(s): _____</p>					
Contact Information (e.g. telephone number, email address, fax number, street address, etc.)					
Section III					
Reason for Disclosure*			Health information to be disclosed*:		
Specify time period, if desired: Release only information from the period _____ (mm/dd/yyyy) to _____ (mm/dd/yyyy)					
Section IV					
<p><b>This authorization will remain in effect until revoked or shall expire on date or event specified below.</b> I understand that I may revoke or cancel this authorization at any time by submitting written revocation in the manner specified by the disclosing entity, except to the extent that action has been taken in reliance on this authorization. If this authorization has not been revoked, it will expire on the date or completion of the event stated below. If no date or event is specified below, this authorization will expire in one year.</p>					
Expiration Date or Event _____ (mm/dd/yyyy)					
<ul style="list-style-type: none"> <li>Substance use disorder records of Part 2 programs disclosed pursuant to this Consent are protected by federal regulations and cannot be re-disclosed without my written consent unless otherwise provided for in the regulations. Any information disclosed pursuant to this Consent other than substance use disorder records or records protected under another state law may be subject to re-disclosure by the recipient.</li> <li>I might be denied services if I refuse to authorize disclosure of information for purposes of assessment, treatment, or payment relating to substance use disorder if refusal is permitted by state law. My refusal to authorize disclosure of information for other purposes will not affect my ability to obtain treatment or services.</li> <li>If I have authorized disclosure to a generally described group or class of participants in an entity which is not my treatment provider, upon my written request, I must be provided a list of entities to which my information has been disclosed pursuant to that general designation.</li> </ul>					
Signature of Individual*				Date* (mm/dd/yyyy)	
Signature of Personal Representative (if applicable)* (Identify relationship to individual below)				Date* (mm/dd/yyyy)	
<p><b>Relationship of Personal Representative to Individual</b> (Personal representative shall submit proof of authority to the disclosing entity)</p> <input type="checkbox"/> Parent <input type="checkbox"/> Legal Guardian <input type="checkbox"/> Healthcare Power of Attorney <input type="checkbox"/> Executor/Administrator <input type="checkbox"/> Other <input type="checkbox"/> N/A					

For administrative use only:

Method of Delivery (e.g. paper, fax, electronic)	Date Released
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# AUTHORIZATION FOR THE EXCHANGE OF CONFIDENTIAL INFORMATION

I, \_\_\_\_\_, authorize

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

AND

AND

\_\_\_\_\_  
(provider name or organization, payer name or organization or name of other recipient)

To communicate with and disclose to one another the following information about me:

- \_\_\_\_\_ My treatment history, including mental health and/or addiction services
- \_\_\_\_\_ My name, contact information and other personal identifying information
- \_\_\_\_\_ Treatment Dates
- \_\_\_\_\_ Discharge Summary/Continuing Care Plan
- \_\_\_\_\_ Initial and subsequent evaluations of my service needs
- \_\_\_\_\_ Billing information
- \_\_\_\_\_ Recommendations/Prognosis
- \_\_\_\_\_ Other: \_\_\_\_\_

The purpose of this exchange of information is:

- \_\_\_\_\_ Evaluate my need for services and coordinate and provide those services to me
- \_\_\_\_\_ Family Involvement
- \_\_\_\_\_ Payment for my services
- \_\_\_\_\_ Report my attendance and compliance with treatment to the Court
- \_\_\_\_\_ Satisfy legal requirements
- \_\_\_\_\_ Coordinate and plan for any crisis events I may experience
- \_\_\_\_\_ Other: \_\_\_\_\_

I understand that my alcohol and/or drug treatment records receive special protection under federal law (42 C.F.R. Part 2) and can only be re-disclosed as permitted by the federal regulations. I understand that my physical and mental health treatment records are protected by HIPAA but may be subject to re-disclosure if the recipient of my information is not subject to HIPAA.

I understand that I may revoke this authorization at any time, except to the extent that the entity(ies) authorized to make the disclosure have taken action in reliance on it. Unless revoked earlier, this authorization will expire on this date: \_\_\_\_\_ OR this event: \_\_\_\_\_

This is a free and voluntary act by me. I understand that I may refuse to sign this authorization, if it is for purposes other than alcohol and/or drug treatment and payment for that treatment, and that my refusal to sign it for other purposes will not otherwise affect my ability to obtain treatment, my eligibility for benefits, or the payment provided for those services. I understand that refusing to sign this form does not prohibit disclosure of my health information that is otherwise permitted by law without my specific authorization or permission.

\_\_\_\_\_  
Date

\_\_\_\_\_  
Signature of Client/Legal Representative

\_\_\_\_\_  
Client Date of Birth

\_\_\_\_\_  
Printed name and authority of Legal Representative  
above)

\_\_\_\_\_  
Signature of Parent/Legal Guardian (if required and not already provided

*NOTICE TO RECIPIENTS OF ALCOHOL AND/OR DRUG TREATMENT INFORMATION: 42 CFR Part 2 prohibits unauthorized disclosure of these records.*