

## Appendix C: Specially Protected Health Information and Oregon Law

### **Oregon HISPIC Project Specially Protected Health Information & Oregon Law March 30, 2007**

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#### **A. Introduction:**

Oregon law provides special protections for limited classes of health information. Such protections preempt the HIPAA privacy rule because they are more stringent than HIPAA. More stringent is defined as providing greater protections for the patient/health plan member or providing the patient/health plan member greater access to his/her individually identifiable health information (IIHI). The purpose of this document is to identify the different classes of specially protected health information given current Oregon law.

It should be noted that there have been no significant changes to classes of information considered specially protected for some time with two exceptions. The Oregon Legislature provided greater protections for genetic information during the 2005 legislative session. Also, the Oregon Department of Human Services (DHS) recently promulgated rules that allowed freer access to HIV/AIDS test information (keeping in mind that this does not provide any less protection than afforded by the HIPAA privacy rule).

Legislation was passed during the 2003 session that was considered HIPAA conforming legislation. This legislation did not change what was already considered specially protected health information under Oregon law. It merely made sure Oregon law conformed to federal regulations. The only additions to Oregon law, over and above HIPAA, were to establish a maximum amount providers could charge patients for a copy of their medical record and established in statute a model authorization form.

#### **B. Classes of Specially Protected Health Information:**

Oregon law, like most other states, provides special protections for certain classes of health information. While laws differ from state to state, generally the categories of health information afforded additional protections are relatively similar. In a number of cases, the primary difference between states is the level of protections found in statute or rule. As an example, Oregon probably has the most stringent genetic privacy law in the nation. Another good example is California – overall California provides greater privacy protections than any other state and has been a leader in enacting consumer-focused legislation that enhances the privacy of the individual.

The different classes of information afforded special protections under Oregon law include:

- Genetics
- Mental health
- Alcohol and chemical dependency (also specially protected under federal law, 42 CFR pt. 2)
- HIV/AIDS
- Health information about a minor (generally a minor 14 years of age or older and specific to alcohol and chemical dependency, birth control, mental health and sexually transmitted diseases)

When health care information is specifically protected, it generally requires a specific authorization from the patient/health plan member for any release, including for treatment, payment and healthcare operations. The authorization to release information needs to be specific, event driven or time limited and can be valid for no more than 18 months. Also, authorization forms need to indicate that no protections are guaranteed after initial release; that the information can be re-released and, at that point, not necessarily protected by the provisions of Oregon law. The exception to this is information about alcohol and chemical dependency. This exception, mandated by 42 CFR pt. 2, requires all authorizations include language indicating that the information cannot be re-released without specific authorization from the patient/health plan member.

C. Legal Specifics:

The following includes the specific legal information regarding specially protected health information under Oregon law.

- a. **HIV/AIDS - Authorization required:** No person may be compelled to disclose the identity of a person upon whom an HIV-related test is performed, or the results of such test in a manner which permits identification of the subject of the test except as required or permitted by law or authorized by the person whose blood is tested. ORS 433.045(3).
  - i. Authorization requirement includes third party payers. OAR 333-012-0170(8)(a)
  - ii. Authorization to release HIV test results must contain:
    1. The statement that HIV test information is to be released
    2. The purpose for which the information may be released
    3. The identity of those to whom the information may be released
    4. The time period during which the release may occur
    5. The date of the authorization and the signature of the person giving authorization. OAR 333-012-0270(8)(a).

Exceptions: The following disclosures do not require authorization:

- iii. Emergency treatment
- iv. To those who “must review the record for the purpose of delivering health care to the individual or for routine administrative procedures”.