

## Health Professionals' Services Program Program Guidelines

**Title: Confidentiality and Record Release**

**Pages: 3**

**Revision Date: 5/15/2013; 4/2013; 1/2013; 12/2012**

1 **Background:** The Health Professionals' Services Program (HPSP) operates as a vendor  
2 responsible to the Oregon Health Authority. It was established through House Bill 2345 with  
3 the expectation that it would comply with state and federal rules governing to the sharing of  
4 confidential information. Federal regulations do not protect from disclosure of information  
5 which is related to a licensee's commission of a crime against HPSP property or personnel,  
6 dangerousness to self or others or reports under state law of suspected abuse or neglect. (42U.  
7 S. C. 290dd-3 and 290ee-3 for federal laws and 42CFR part 2 for federal regulations).

8 The 1996 Health Insurance Portability and Accountability Act (HIPAA) represents a step by the  
9 Federal Government to protect individual confidentiality and privacy. On August 14, 2002 the  
10 Department of Health and Human Services (DHHS) issued final documentation to the HIPAA  
11 Privacy Rule, which governs how personal health information may be used.

12 In January 2011, the Department of Justice (DOJ) provided a brief regarding licensee  
13 confidentiality. Below is a summary of the response from DOJ. The original document is  
14 available upon request to the HPSP program manager.

15 **Summary of Memorandum from Shannon O'Fallon, Senior Assistant Attorney General to**  
16 **Darcy Edwards, Health Professional Program Manager**

17  
18 *The Department of Human Services (DHS) requested a reply from the Department of Justice (DOJ)*  
19 *regarding mandatory reporting under HB 2059, specifically requesting information regarding the*  
20 *need for Integrated Behavioral Health (IBH) licensed health care professionals and their contractors*  
21 *who may have access to information regarding unprofessional or prohibited conduct of licensees to*  
22 *report the licensee to his/her licensing board as defined in ORS 676.150 (1)(c) and (d). Shannon*  
23 *O'Fallon, Senior Assistant Attorney General responded to DHS in a memorandum dated 11/30/10.*  
24 *The DOJ response is summarized below and does not constitute legal advice to [IBH] staff or [IBH]*  
25 *contractors. If [IBH] staff or contractors have questions or concerns about their duty to report, they*  
26 *need to contact their own counsel.*

27  
28 *DOJ reported that the Federal drug and alcohol laws specifically 42USC 290dd-2(a) and 42 CFR Part 2*  
29 *prohibit disclosure of records or other information about a patient in a federally assisted drug or*

30 *alcohol program. The state law which mandates disclosures is superseded by the Federal law which*  
31 *prohibits disclosures. [IBH] contracts with DHS to carry out the functions of HPSP and holds itself out*  
32 *as providing referrals for treatment. Therefore [IBH] is a drug and alcohol program and is subject to*  
33 *restrictions on disclosures of drug and alcohol records.*

34  
35 *Additionally, when [IBH] licensed mental health professionals or contracted consultants learn of*  
36 *unprofessional or prohibited behaviors engaged in by the licensee prior to enrollment in the HPSP*  
37 *program, they are prohibited from reporting this information to the licensee's board because the*  
38 *information disclosed would be considered a drug and alcohol record maintained by a federally*  
39 *assisted program. Since the state of Oregon receives federal funds and [IBH] aka HPSP is a state*  
40 *program, HPSP is considered to be federally funded. However, if the licensee engages in*  
41 *unprofessional and prohibited behavior once enrolled in the HPSP program and that behavior*  
42 *constitutes substantial non-compliance, a report of substantial non-compliance would be made to*  
43 *the monitoring entity, Acumentra, and Acumentra would in turn report that information to the*  
44 *appropriate board. \*\* Such a report can be made because the licensee has executed a release to*  
45 *permit the disclosure of reports of substantial non-compliance.*

46  
47 *HIPAA offers the same protection of information for HPSP licensees with only mental health issues*  
48 *and no co-occurring drug or alcohol issues. HIPAA protects the privacy of an individual's health*  
49 *information and medical records and specifies when an individual's authorization is required for*  
50 *disclosure of protected health information. DHS is a covered entity under HIPAA, therefore [IBH] and*  
51 *its contractors are bound by HIPAA's requirements. HIPAA privacy rules do allow for disclosure of*  
52 *protected health information (PHI) to avert a serious threat to health or safety of a person or the*  
53 *public. It was the conclusion of the DOJ that the imminent danger exception in HIPAA Privacy Rules*  
54 *may in some situations, provide a good faith basis for a licensee to report another licensee's conduct*  
55 *to their licensing board: however it cannot be relied upon as an across the board basis for reporting*  
56 *prohibited or unprofessional conduct.*

57 **Guideline:** Integrated Behavioral Health operating as HPSP will keep all information gained  
58 through the monitoring process strictly confidential, except as required by state law or in  
59 situations deemed potentially life threatening or if there is an appropriately completed release  
60 of information form. When sharing information, only the information needed to complete the  
61 task will be shared.

62 All licensees, including self-referred and board referred are provided with documents that  
63 detail the confidentiality of the program and the limitations of confidentiality. Self-referred  
64 licensees are provided a Provisional Enrollment Agreement and subsequently, Consent to  
65 Services Enrollment Agreement. Board referred licensees are provided a Consent to  
66 Participate. These documents explain licensee privacy rights and limitations of confidentiality.

67 (See attached Consent to Participate and Provisional Enrollment Agreement, and Consent to  
68 Services Enrollment Agreement)

69 HPSP is under no legal obligation to voluntarily release any documents to a licensee's attorney.  
70 If an attorney feels it is necessary to access HPSP records for any reason, he or she should have  
71 a formal subpoena.

72 \*\*Acumentra no longer exists as an entity effective 7/1/12. The Program reports non-  
73 compliance directly to the appropriate licensing board.

74 **Revocation of Consent to Release, Use and Exchange of Information form:**

75 If a licensee is referred to the HPSP program by his/ her licensing board due to a mental  
76 health disorder and subsequently provides in writing a revocation of the above consent,  
77 the Program is compelled by ORS 676.190 and associated Administrative Rules to report  
78 licensee's disenrollment to the appropriate Board.

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80 If a licensee is referred to the HPSP program by his/her board due to a substance abuse  
81 disorder and subsequently provides in writing a revocation of the above consent or if  
82 the licensee revokes his/her Addendum to Consent 1, the program is compelled by ORS  
83 676.190 to remove licensee's name from the list of enrollees who are participating in  
84 the Program, which list will be provided to the appropriate licensing Board.

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86 If a licensee is self-referred to the HPSP program and has a mental health disorder  
87 and subsequently provides in writing a revocation of the above consent, the Program is  
88 compelled by ORS 676.190 and associated Administrative Rules to report licensee's  
89 disenrollment to licensee's Board.

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91 If a licensee is self-referred to the HPSP program and has a substance abuse disorder  
92 and subsequently provides in writing a revocation of the above consent, the Program is  
93 compelled by Oregon Administrative Rule 415-065-0055 to seek a court order  
94 authorizing release of alcohol or drug information protected under 42 CFR Part 2 and  
95 ORS 179.505.

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97 **Request for Case Record:** If a licensee requests a copy of licensee's electronic record, the  
98 licensee will be given a copy of their monitoring agreement, addendum to the monitoring  
99 agreement, and copies of all releases and consents for information. With a signed Release of  
100 Information, this same information may be shared with licensee's legal counsel.