
Title:	DPH Privacy and Security Manual
Chapter:	III. Use and Disclosure Policies, Consent for Treatment, Payment, Healthcare Operation (TPO)
Current Effective Date:	July 7, 2004
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Purpose

The purpose of the Division of Public Health (DPH) Consents for Treatment, Payment, and Health Care Operations (TPO) policy is to establish the DPH requirements to follow the requirements for obtaining client consent to use Protected Healthcare Information (PHI) health information for TPO purposes. This policy follows guidelines in the [DHHS Policy and Procedure Manual, Section VIII, Security and Privacy](#) that establishes the NC Department of Health and Human Services (DHHS) requirements for consent for TPO. This policy also follows guidelines issued to the Division to Local Health Departments, with input from the Institute of Government, regarding the North Carolina statutory basis for requiring consent for TPO.

The purpose of this policy is to provide direction to Division public health programs and the healthcare providers working with those programs about the use and disclosure of individual identifiable health information or (IIHI), information for treatment, payment, and health care operations (TPO), and to ensure compliance with NC General Statutes, as required and North Carolina “standard of care.”

Policy Scope: This policy and procedure applies to all DPH workgroups that serve clients, including:

- ***Covered health care components***
- ***Internal business associates***
- ***Non-covered DPH workgroups that serve clients and that maintain individually identifiable health information.***

Background

The HIPAA Privacy Rule allows covered health care components to use and disclose IIHI without consent within covered component and to within the facility and to disclose IIHI outside the facility without consent from the client, or the client's personal representative for the purposes of treatment, payment, and health care operations.

Effective July 7, 2004, North Carolina General Statute 130A-12 has been revised to align with HIPAA's Privacy Rule consent requirements. The Division of Public Health and local health departments are not required to obtain client consent to use or disclose IIHI for Treatment, Payment, and health care Operations purposed, except in very limited circumstance, as required by other state and federal laws.

Use means the sharing, employment, application, utilization, examination, or analysis of IIHI **within** the covered health care component that maintains the information.

Disclosure means the release, transfer, provision of access to, or divulging in any other manner of IIHI **outside** the covered health care component holding the information.

Consent as defined by HIPAA means that the individual (client) is giving the covered health care provider permission to use and disclose their protected health information (PHI) for treatment, payment, and other health care operations (TPO).

Information and additional background about the impact of the revised 130A-12 statute can be found in the following guidance memo, "[New state law regarding disclosures of patient information for purposes of treatment, payment, and health care operations](#)," Chris Hoke, Chief, Legal and Regulatory Affairs, NC Division of Public Health, Joy Reed, Head, Technical Assistance, NC Division of Public Health, Jill Moore & Aimee Wall, UNC Institute of Government.

Disclosure of health information for purposes other than TPO and other disclosures allowed by state law and permitted by the Privacy Rule require the use of the [DHHS Authorization to Disclose Health Information Form](#) (see the [DHHS Privacy Policy, Use and Disclosure Policies, Authorizations](#) and the [DPH Privacy Policy, Uses and Disclosure Policies, Authorizations](#)). The DHHS and [DPH Privacy Policies, Use and Disclosures of IIHI](#), provides further guidelines about disclosures of IIHI and how the Division can use and disclose IIHI. Further guidance regarding authorizations can be found in NC Institute of Governments, "[Using and Disclosing Information with Permission](#)."

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The following summarizes key points from the guidance memo cited in Background above:

- The new law (revised 130A-12) addresses only disclosures made for purposes of treatment, payment, and health care operations, as those terms are defined by HIPAA. (See the attachment for those definitions.) If a disclosure is for another purpose, other laws will determine whether the disclosure may be made without consent or authorization.
- North Carolina’s communicable disease rules contain a couple of significant exceptions to the new law for certain TPO disclosures of HIV/AIDS information:
 1. A local health department still must obtain specific written consent in order to bill a third-party payer for HIV testing or counseling. 10A N.C.A.C. 41A.0202(9).
 2. A local health department may disclose HIV/AIDS information to another health care provider for treatment purposes only when the local health department has provided direct medical care to the infected person and refers the person to or consults with the health care provider to whom the information is released. 10A N.C.A.C. 41A.0202(11). Consent is still required for any disclosure of HIV/AIDS information for treatment purposes that do not fit within this circumstance.
- The new law applies only to local health departments in North Carolina. It does not affect other local agencies (such as Children’s Developmental Services Agencies [CDSA] or Community-Based organizations [CBOs], other types of health care providers, or providers in other states.

Note that under state statute and standards of care, consent for treatment is still required.

The guidance in the memorandum supercedes guidance that was issued by the UNC Institute of Government in December 2002 (“Using and Disclosing Patients’ Health Information for Treatment, Payment, and Health Care Operations: Recommendations for North Carolina Local Health Departments,” by Jill Moore and Aimee Wall). Please do not rely on that guidance any longer. This memo also supercedes the July 7, 2003 memo to local health directors from Chris Hoke and Joy Reed regarding “Clients Who Refuse to Sign the ‘Permission to Use and Disclose’ Form.” Additional guidance regarding consent for TPO for the Division and local health departments can be found in [Frequently Asked Questions About New G.S. 130A-12](#), Jill Moore & Aimee Wall, UNC School of Government, August 2004.

Policy

The Division has an ethical and statutory duty of confidentiality to any individual whose IIIHI who's IIIHI the Division uses and maintains. Therefore, DPH shall not disclose, or be required to disclose information about any individual without that individual's explicit written consent, except as required by State law and permitted under the Health Insurance Portability and Accountability Act of 1996 (HIPAA) Privacy Rule.

As allowed by HIPAA and N.C.G.S. 130-12 covered healthcare entities and DPH covered healthcare components providing services to clients under auspices of Division programs are not required to obtain written consent from the client or personal representative prior to use and disclosure of IIIHI for the purposes of treatment, payment, and health care operations.

If Division program or service provider is required to obtain consents for TPO as provided by law, no covered health care covered entity or covered health care component may condition treatment on the client providing consent for treatment, payment, and health care operations. Staff may use such information within the covered health care component to provide treatment and to carry out health care operations as identified in the agency's Notice of Privacy Practices. However, without such consent, no IIIHI may be disclosed outside the covered health care component unless there is an authorization from the client.

The signed Consent for TPO shall be considered valid for the period of time needed to fulfill its purpose for treatment and health care operations for up to one year, after which time a new consent must be completed and signed. For payment purposes, the consent is valid until the need for disclosure is satisfied. A client only needs to sign one Consent form TPO to cover all services provided by the public health program.

Implementation

Division Responsibilities

When consent for TPO purposes is required, the Division shall provide a standard consent form that can be used by all programs. This consent form, which is based on the DHHS Consent for TPO template, can also be used by local health care providers providing public health program services to help develop their consent forms for using and/or disclosing IIIHI for treatment, payment, or health care operations. The consent template contains the basic elements required by state and federal laws and regulations. Public health providers can tailor this template, use their own equivalent form, or add additional elements to meet the needs of the covered entity.

When required, the responsibility for obtaining consent is with the provider of service who has direct contact with the client and should be obtained when the client has first contact with the provider and receives their Notice of Privacy Practices. The Division is responsible for disseminating the Consent for TPO guidance and forms and for working with the local direct service providers and with the DPH program staff to clarify the Consent for TPO guidelines and to provide procedural implementation support.

Note: Because the CDSAs follow the Family Education Rights and Privacy Act (FERPA) guidelines regarding consent, which are more stringent than HIPAA, special forms and procedures have been developed for the CDSAs and the Infant Toddler Program contracted providers. Refer to the ITP Program Manual and Early Intervention communications for the forms and procedures regarding consent and authorization.

Consent for TPO Templates

The Division has developed a generic Consent for TPO form:

Form [DHHS Consent for TPO](#) DHHS-3096-1 is developed for use by DPH programs that are not covered by the HIPAA Privacy Regulation and therefore are not required to provide a Notice of Privacy Practices to their participants. This form includes a description of Treatment, Payment, and Operations so clients can be informed about the consent they are providing.

Both forms can be used as templates and adapted by public health providers. However, organizations should consult with their legal representation before developing their Consent for TPO forms or adapting the Division forms.

Reference: DHHS Directive Number III-11; 42 CFR 164.508, 42, CFR 164.512, DPH HIPAA Compliance Statement, DHHS Policy and Procedure Manual, Section VIII, Security and Privacy, DPH Privacy Policy, Use and Disclosure Policies, Authorizations, NC General Statutes 130A-12, 130A-143, 10A N.C.A.C. 41A.0202(9).

For relevant forms:

Copies of the Consent for TPO forms are available on the DPH HIPAA web site at <http://www.schs.state.nc.us/hipaa/> or can be requested from the DPH Privacy Office.

[DHHS Consent for TPO 3096-1](#)

For questions or clarification on any of the information contained in this policy, please contact the DPH Privacy Office at <mailto:HIPAA.DPH@ncmail.net>.