

# Memorandum

**To:** HIPAA Covered Entities  
**From:** Oregon Patient Safety Commission  
**Subject:** Health Insurance Portability and Accountability Act Exemption for the Oregon Patient Safety Commission and its Patient Safety Reporting Program Activities, Per Oregon Department of Justice

The Oregon Patient Safety Commission (OPSC) is a “public health authority” for the purposes of the Health Insurance Portability and Accountability Act’s (HIPAA) Privacy Rule. Therefore, a HIPAA Covered Entity is permitted to disclose protected health information (PHI) to OPSC and its Patient Safety Reporting Program (PSRP) without either a Business Associate agreement or an authorization.

**OPSC is a public health authority.**

The HIPAA Privacy Rule defines “public health authority” as a national or state governmental agency or authority with responsibility for public health matters as part of its official mandate. See 45 CFR 164.501.

Because OPSC is defined in ORS 442.820(1) as a semi-independent state agency, it is governed by ORS 184.454-851. These statutes in Chapter 184 regarding semi-independent agencies grant certain powers to the agency and define certain requirements. Since those powers and requirements are created by state laws, then OPSC is “an agency or authority of...a State” within the meaning of the Privacy Rule.

Per its origination statute, the official mandate of OPSC is to improve patient safety by reducing the risk of serious adverse events occurring in Oregon’s healthcare system and to encourage a culture of patient safety in Oregon. See ORS 442.820. The law further provides that “the commission shall exercise and carry out all powers, rights, and privileges that are expressly conferred upon it.” See ORS 442.820(1). Taken together, OPSC, and thus PSRP, is an agency or authority of a state and its official mandate is the promotion of the public’s health, satisfying the definition of “public health authority” for the purposes of the Privacy Rule.

**OPSC has the legal authority to request, collect, or receive the information for a stated public health purpose.**

One of the mandates of OPSC is to “establish a confidential, voluntary adverse event reporting system to identify serious adverse events.” See ORS 442.820(2) (a). This collected information is to be used to “establish quality improvement techniques to reduce systems’ errors contributing to serious adverse events,” and to create and disseminate “evidence based prevention practices to improve patient

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outcomes.” See ORS 442.820(2) (b-c); see also ORS 442.837(1). To engage in these mandates, PSRP was created within OPSC per ORS 442.837. These provisions establish both the legal authority for requesting the information and the public health purpose for collecting such information.

**OPSC is requesting the minimum amount necessary to accomplish its public health purpose.**

The public health purpose of OPSC is to improve the public’s health and patient safety by reducing the risk of serious adverse events. For this purpose, OPSC shall request reports from participants regarding the occurrence of serious adverse events, the root cause analyses of serious adverse events, action plans established to prevent similar serious adverse events, and patient safety plans establishing procedures and protocols. See ORS 442.837. The minimum disclosure required would be (1) patient safety data regarding an adverse event, (2) documentation which explains the root cause analysis of that serious adverse event, and (3) an explanation from the participant regarding what action plans have been or will be established to prevent similar adverse events. See ORS 442.819(3). Covered entities may disclose this information to OPSC/PSRP as long as they disclose only the minimum necessary to meet the public health purpose. Due to the specific exception for Public Health Authorities in the Privacy Rule, OPSC does not need to engage in either a Business Associate Agreement or provide an individual authorization to obtain the minimum necessary information from the covered entity.

**OPSC keeps the information confidential.**

Several laws protect the information provided by covered entities to PSRP. This information is confidential (ORS 441.820(2)), and patient safety data and information developed pursuant to the goals of OPSC may not be disclosed, subject to a subpoena or used by any state agency for the purposes of any enforcement or regulatory action in relation to a participant. See ORS 442.844. Additionally, PSRP within OPSC shall provide assistance to participants with recommendations and advice regarding the security and confidentiality of patient safety data. See ORS 441.837 (1)(c). The board of OPSC shall maintain the confidentiality of all patient safety data that identifies or could be reasonable used to identify a participant or an individual who has or is receiving healthcare from the participant. See 442.8321(3).