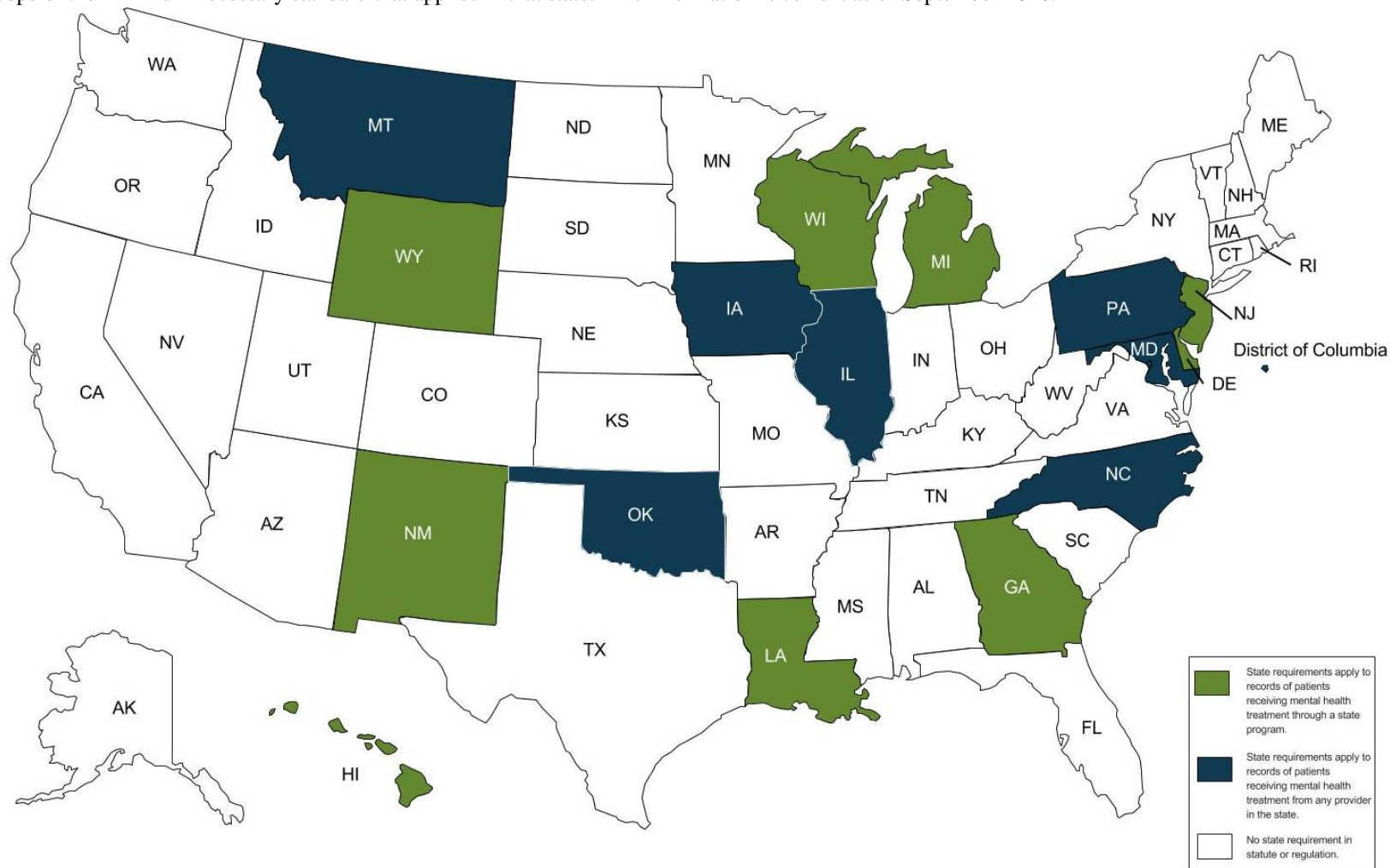


State Laws that Apply a Minimum Necessary Standard to Treatment Disclosures of Mental Health Information

Under the HIPAA Privacy Rule, disclosures for treatment, payment, and healthcare operations (TPO) do not require patient authorization (45 C.F.R. § 164.512). The Privacy Rule also requires that most disclosures be limited to the “minimum [amount of protected health information] necessary” to achieve the purpose for which the information was released or requested (45 C.F.R. § 164.502(b)). HIPAA does not apply this limitation to disclosures for treatment purposes. However, some states have enacted statutes or regulations that apply the minimum necessary standard to treatment disclosures where mental health information is being disclosed, which is a stronger standard than HIPAA and therefore is not preempted by federal law. In some cases, the minimum necessary standard applies to mental health information disclosed for treatment by any provider in the state (shown in blue below), while in other states, the minimum necessary standard applies only to disclosures of mental health information for treatment about individuals receiving treatment through a state program (shown in green). For purposes of this analysis, patients receiving treatment or services through a “state program” include treatment providers or services with a specific connection to the state – such as a state psychiatric hospital, a program that provides mental health services to qualifying state residents, or a facility or service regulated by a particular part of the state code. Where the state does not impose a minimum necessary standard to mental health information disclosures for treatment purposes, the state is shown in white and no law is listed in the table below. Every state defines “mental health information” differently, so the table below also includes the relevant definition to clarify the scope of the minimum necessary standard that applies in that state. This information is current as of September 2016.



State	Citation of Statute or Regulation	Applies Minimum Necessary Standard to Treatment Disclosures	Narrative Description of State Law	Definition or Scope of Information/Material Covered by Application of Minimum Necessary Requirement
Alabama	None	No	State does not apply a minimum necessary requirement to disclosures for treatment purposes.	N/A
Alaska	None	No	State does not apply a minimum necessary requirement to disclosures for treatment purposes.	N/A
Arizona	None	No	State does not apply a minimum necessary requirement to disclosures for treatment purposes.	N/A
Arkansas	None	No	State does not apply a minimum necessary requirement to disclosures for treatment purposes.	N/A
California	None	No	State does not apply a minimum necessary requirement to disclosures for treatment purposes.	N/A
Colorado	None	No	State does not apply a minimum necessary requirement to disclosures for treatment purposes.	N/A
Connecticut	None	No	State does not apply a minimum necessary requirement to disclosures for treatment purposes.	N/A
Delaware	16 Del.C. § 5161/16 Del.C. § 1210	Yes	When releasing protected health information without authorization, the Delaware Department of Health and Social Services must limit the disclosure to minimum amount necessary to accomplish the purpose of disclosure. This limitation applies to disclosures of protected health information for treatment purposes.	Protected health information maintained by the Department of Health and Social Services. Delaware defines protected health information as any information that relates to an individual's mental or physical health status, condition, or treatment history and identifies or could identify the individual (16 Del.C. § 1210).
District of Columbia	D.C. Code §§ 7-1201.01 et seq.	Yes	Health care providers may disclose mental health information to other providers for treatment purposes to the extent necessary to provide health services to an individual. Providers must give individuals an opportunity to opt out of such disclosures.	Mental health information. Washington D.C. defines mental health information as identifiable diagnosis or treatment information obtained by a mental health professional while serving in a professional capacity (D.C. Code § 7-1201.01).
Florida	None	No	State does not apply a minimum necessary requirement to disclosures for treatment purposes.	N/A

Georgia	Ga. Code Ann., § 37-3-166¹/Ga Comp. R. & Regs. 290-4-6-.05	Yes	Georgia permits facilities to disclose a patient's record when and as necessary for treatment as determined by the chief medical officer of a facility (Ga Comp. R. & Regs. 290-4-6-.05).	Clinical records. Georgia defines clinical records as written records maintained by facilities and other entities that provide treatment in accordance with Georgia's mental health law that include information about an individual's hospitalization and treatment (e.g., medical records, charts, admission data, etc.) (Ga. Code Ann., § 37-3-1).
Hawaii	HRS § 334-5/Haw. Admin. Rules (HAR) § 11-175-31	Yes	Hawaii prohibits the mental health division, a contract program, or providers from disclosing information from the clinical record of a person receiving mental health treatment unless the disclosure falls into one of the exempted disclosure categories. These categories include disclosures that the director or administer deems necessary to carry out the provisions of Hawaii's mental health law, including the provisions that address mental health treatment. All permissible disclosures must be limited to the information relevant to the purpose for disclosure. Therefore, the minimum necessary standard applies to disclosures for treatment purposes.	Certificates, applications, records, and reports that directly or indirectly identify an individual and are generated, maintained, or disclosed by providers, health plans, or health care clearinghouses in accordance with Hawaii's mental health statute (HRS § 334-4).
Idaho	None	No	State does not apply a minimum necessary requirement to disclosures for treatment purposes.	N/A
Illinois	740 ILCS 110/9	Yes	Illinois permits therapists, integrated health systems, or members of an interdisciplinary team ("providers") to disclose mental health information without an individual's consent in limited circumstances (e.g., to consulting therapists or staff members while providing services to an individual). Providers must notify individuals before making the disclosure and limit disclosure to only the information that is essential to the purpose of disclosure.	Records and communications made while providing mental health or developmental disability services (740 ILCS 110/2).
Indiana	None	No	State does not apply a minimum necessary requirement to disclosures for treatment purposes.	N/A
Iowa	I.C.A. § 228.5	Yes	Iowa allows the disclosure of an individual's mental health information to other providers so long as the disclosure is limited to the "extent necessary" to provide the individual with professional or administrative services.	Mental health information. Iowa defines mental health information as identifiable information in written, oral, or recorded form that pertains to an individual's receipt of mental health services (I.C.A. § 228.1).
Kansas	None	No	State does not apply a minimum necessary requirement to disclosures for treatment purposes.	N/A
Kentucky	None	No	State does not apply a minimum necessary requirement	N/A

¹ The link provided will direct user to a general state landing page from which user may search for the statute/regulation using identified citation.

			to disclosures for treatment purposes.	
Louisiana	La. Admin Code, tit. 48, pt. I, § 507	Yes	Louisiana allows agency employees to disclose medical information without a patient's consent to other employees of the agency if the employee has a legitimate need for the information in order to perform their duties. Louisiana grants the superintendent authority to determine the meaning of legitimate need. Agency employees may disclose medical information to another agency without a patient's consent if the superintendent of the disclosing agency determines that: (1) a Louisiana law or regulation compels disclosure; (2) the information is necessary for a cooperative program in which both agencies participate; (3) the agency has referred the patient to another agency for evaluation or treatment; or (4) the receiving agency needs the information to perform their duties and the disclosing agency cannot reasonably obtain the patient's consent. Employees must limit disclosure to the information necessary to achieve the purpose of the disclosure.	Medical information maintained by an agency. Louisiana defines medical information as records, documents, reports, and charts created by physicians, public hospital employees, psychiatrists, surgeons, public mental health facilities, and other public health facilities that pertain to an individual's physical or mental condition. Agency refers to mental health facilities, hospitals, intuitions, and other entities that are housed with the Department of Health and Human Resource and that use or maintain medical information. (La. Admin Code. tit. 48, pt. I, § 503).
Maine	None	No	State does not apply a minimum necessary requirement to disclosures for treatment purposes.	N/A
Maryland	Md. Gen. Health. § 4-307	Yes	Persons that disclose medical records related to mental health services without authorization may only disclose information relevant to the purpose for which they are disclosing the information. This limitation applies to disclosures for treatment purposes.	Medical records. Maryland defines medical records as information about a patient or recipient's health care that is entered into a record and identifies or can lead to the identification of a patient. Recipient refers to a person that has applied for or is receiving mental health services (MD Code, Health - General, § 4-307).
Massachusetts	None	No	State does not apply a minimum necessary requirement to disclosures for treatment purposes.	N/A
Michigan	M.C.L.A. § 330.1748	Yes	Michigan permits the disclosure of information from a state program recipient's mental health record without authorization when disclosure is necessary to comply with another provision of law. [This could be read to include disclosure for treatment purposes]. When disclosing a recipient's mental health record without authorization, the disclosing party may only disclose the recipient's identity if it is germane to the purpose of the disclosure and, if practicable, limit disclosure to only the information germane to the purpose of disclosure.	Records maintained by the Department of Health and Human Services, community mental health services, facilities, and contract providers regarding the provision of mental services to individual recipients (M.C.L.A. 330.1700).
Minnesota	None	No	State does not apply a minimum necessary requirement to disclosures for treatment purposes.	N/A

Mississippi	None	No	State does not apply a minimum necessary requirement to disclosures for treatment purposes.	N/A
Missouri	None	No	State does not apply a minimum necessary requirement to disclosures for treatment purposes.	N/A
Montana	Mont. Code. Ann. § 53-21-166	Yes	Montana authorizes health care providers to disclose a patient's health care information, without authorization, to any health care provider has previously provided services to the patient. Such disclosures must be limited to the extent the necessary to provide treatment and are prohibited if a patient requests that their provider not make such disclosures.	Records and information obtained and maintained while providing services to persons with serious mental illness in accordance with Montana's mental health law (Mont. Code. Ann. § 53-21-166). Health care information. Defined as information related to a patient's health care that either identifies the patient or can identify the patient (Mont. Code Ann. § 50-16-50 et seq.).
Nebraska	None	No	State does not apply a minimum necessary requirement to disclosures for treatment purposes.	N/A
Nevada	None	No	State does not apply a minimum necessary requirement to disclosures for treatment purposes.	N/A
New Hampshire	None	No	State does not apply a minimum necessary requirement to disclosures for treatment purposes.	N/A
New Jersey	N.J.S.A. § 30:4-24.3/N.J.A.C. § 10:37-6.79/ N.J.A.C. 10:37G-3.5/ N.J.A.C. 10:31-12.4	Yes	New Jersey limits disclosures without authorization of information and records related to the community mental health program to those that are "relevant and necessary" to the purpose for disclosure. This limitation applies to disclosures for treatment purposes. The releasing agency may rely upon the requesting party's assertion of need when releasing information for treatment purposes so long as the individual hasn't executed an authorization that limits the scope of disclosure (N.J.A.C. § 10:37-6.79).; New Jersey allows short term care facility staff to disclose patient information to community mental health agencies, screening services, psychiatric facilities, or special psychiatric hospitals for treatment purposes. Such disclosures are limited to the minimum necessary (NJAC 10:37G-3.5).	Certificates, applications, records, and reports that identify or could identify a current or former recipient of mental health services at a noncorrectional institution (N.J.S.A. § 30:4-24.3) or through a community mental health program (NJAC § 10:37-6.79). Patient records maintained by short term care facilities (N.J.A.C. § 10:37G-3.3). Consumer records maintained by screening services; Screening is the process for assessing whether a person meets the requirements for an involuntary commitment (NJAC 10:31-12.1).

New Mexico	NM ST § 43-1-19/§ 32A-6A-24	Yes	New Mexico permits the disclosure of a state mental health or developmental disability services client's confidential information without authorization to mental health or developmental disability professionals to the extent that these professionals need the information for practice, employment, or training purposes. Disclosure of a child's confidential information without authorization is permissible when the information is necessary for a clinician to treat the child (32A-6A-24).	Confidential information about a patient who is receiving mental health or developmental disability services which would allow a person familiar with the patient to identify the patient; Codes, numbers, or other items that would enable a person to match a patient to the patient's confidential information (NM ST 43-1-19). This information is also protected when it pertains to a patient under the age of 18 (NM ST 32A-6A-24).
New York	None	No	State does not apply a minimum necessary requirement to disclosures for treatment purposes.	N/A
North Carolina	N.C. Gen. Stat. § 122C-51 et seq.	Yes	Authorizes physicians, facilities, or other person responsible for treating, evaluating, managing, or supervising person committed to a state facility for outpatient services to disclose confidential information to the extent necessary to perform their duties.	Confidential information. North Carolina defines confidential information as information about an individual that is obtained or generated by a facility in the course of performing a function of the facility. This definition does not include non-identifiable information regarding treatment that is used for training, treatment, and monitoring purposes or statistical information from reports (N.C. Gen. Stat. § 122C-3).
North Dakota	None	No	State does not apply a minimum necessary requirement to disclosures for treatment purposes.	N/A
Ohio	None	No	State does not apply a minimum necessary requirement to disclosures for treatment purposes.	N/A
Oklahoma	43A Okl. St. Ann. § 109	Yes	Oklahoma privileges mental health information and the communications between a patient and their physician or mental health professional. Providers may disclose such information and communications for treatment or related administrative purposes so long as the disclosure is limited to the minimum necessary to achieve the purpose of the disclosure.	Mental health treatment information and communications between an individual and a physician or a mental health professional (43A Okl. St. Ann. § 109).
Oregon	None	No	State does not apply a minimum necessary requirement to disclosures for treatment purposes.	N/A
Pennsylvania	50 P.S. § 7111/ 55 Pa. Code § 5100.32	Yes	Persons that permissibly disclose mental health records without patient authorization must limit the disclosure to the information that is "relevant and necessary" to the purpose of the disclosure. This requirement applies to disclosures for treatment purposes.	Documents regarding persons receiving mental health treatment on a voluntary or involuntary basis (50 PS 7111). Records of persons receiving mental health services from a facility (55 PA Code 5100.32). Facilities include mental health establishments, hospitals, clinics, institutions, and community mental health centers.
Rhode Island	None	No	State does not apply a minimum necessary requirement to disclosures for treatment purposes.	N/A

South Carolina	None	No	State does not apply a minimum necessary requirement to disclosures for treatment purposes.	N/A
South Dakota	None	No	State does not apply a minimum necessary requirement to disclosures for treatment purposes.	N/A
Tennessee	None	No	State does not apply a minimum necessary requirement to disclosures for treatment purposes.	N/A
Texas	None	No	State does not apply a minimum necessary requirement to disclosures for treatment purposes.	N/A
Utah	None	No	State does not apply a minimum necessary requirement to disclosures for treatment purposes.	N/A
Vermont	None	No	State does not apply a minimum necessary requirement to disclosures for treatment purposes.	N/A
Virginia	None	No	State does not apply a minimum necessary requirement to disclosures for treatment purposes.	N/A
Washington	None	No	State does not apply a minimum necessary requirement to disclosures for treatment purposes.	N/A
West Virginia	None	No	State does not apply a minimum necessary requirement to disclosures for treatment purposes.	N/A
Wisconsin	W.S.A. 51.30	Yes	All records of treatment for mental health, developmental disabilities, alcoholism, or drug dependence shall remain confidential and are privileged to the subject individual. Wisconsin permits the disclosure of mental health information without consent for certain listed treatment purposes and limited to the extent necessary, including disclosure to the Department of Health Services, the director of the county department, or qualified staff members when the information is necessary to assess the adequacy of treatment or the need to transfer the individual to another facility; within facilities between to the extent that the information is necessary to perform their duties, and within the Department to the extent necessary to coordinate mental health treatment.	Registration and treatment records regarding persons receiving mental health services from treatment facilities, department contractors, county departments, psychologists, or mental health professionals that are not affiliated with a county department or treatment facility (W.S.A. 51.30).
Wyoming	W.S.1977 § 9-2-125	Yes	Wyoming permits a treatment facility to disclose an individual's mental health treatment records in connection with the individual's transfer to another facility. The transferring facility must limit disclosure to only the records necessary to enable the receiving facility to provide mental health services and any records required by law.	Registration and treatment records regarding patients receiving mental health treatment at a treatment facility that is under contract with the Department of Health (W.S.1977 § 9-2-125).