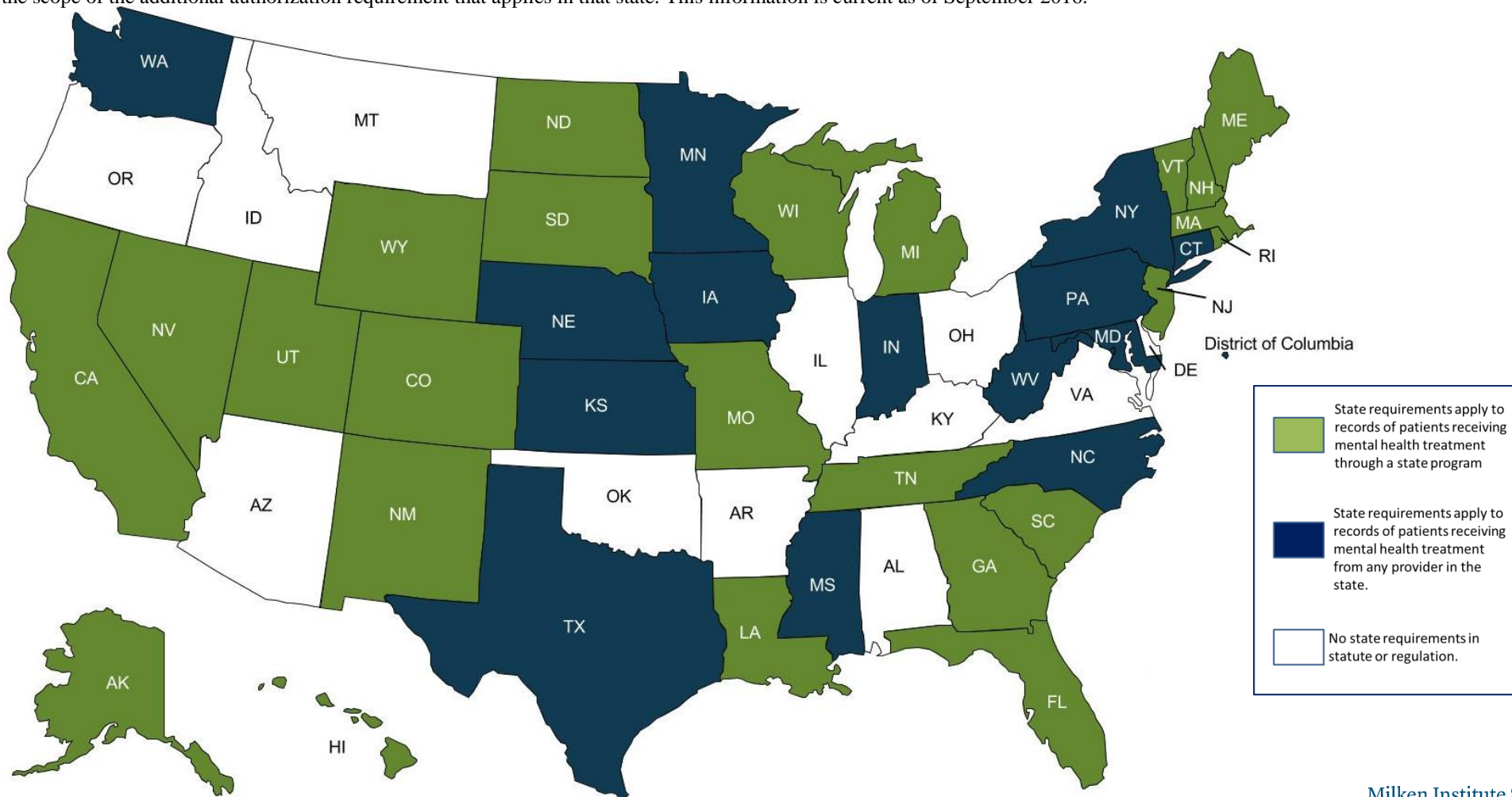


State Laws Requiring Authorization to Disclose Mental Health Information for Treatment, Payment, or Healthcare Operations

Under the HIPAA Privacy Rule, disclosures for treatment, payment, and healthcare operations (TPO) do not require patient authorization (45 C.F.R. § 164.512). However, some states have enacted statutes or regulations that require authorization to disclose mental health information, either from the patient (or their representative in the case of incapacity) or from an authority like a mental health program director. This additional authorization requirement in the case of mental health information is a stronger standard than HIPAA and therefore is not preempted by federal law. In some cases, the additional authorization requirement applies to mental health information disclosed by any provider in the state (shown in blue below), while in other states, the additional authorization requirement applies only to disclosures of mental health information 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 an additional authorization requirement on mental health information disclosures, 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 additional authorization requirement that applies in that state. This information is current as of September 2016.



State	Citation of Statute or Regulation	Requires authorization for one or more TPO disclosures that would be permitted under HIPAA without authorization	Narrative Description of State Law	Definition or Scope of Information/Material Covered by Application of Additional Authorization Requirement
Alabama	None	No	The provision does not address TPO authorization.	N/A
Alaska	AS § 47.30.845	Yes	Authorization required by individual or personal representative for health care operations disclosures.	Records and information obtained while screening, evaluating, examining, or treating a person in accordance with Alaska's procedures for voluntary or involuntary commitment (AS § 47.30.845).
Arizona	None	No	State does not require additional authorization for TPO disclosures.	N/A
Arkansas	None	No	State does not require additional authorization for TPO disclosures.	N/A
California	West's Ann.Cal.Welf. & Inst.Code § 5328	Yes	Authorization required by individual or personal representative for health care operations disclosures and some treatment disclosures.	Information and records obtained while providing mental health services, developmental services, or community mental health services in accordance with California's Welfare and Institutions Code (West's Ann.Cal.Welf. & Inst.Code § 5328).
Colorado	C.R.S.A. § 27-65-121	Yes	Authorization required by individual or personal representative for health care operations disclosures.	Information and records obtained and prepared while providing services governed by Colorado's mental health code (C.R.S.A. § 27-65-121).
Connecticut	Conn. Gen. Stat. §§ 52-146d	Yes	Authorization required by individual or personal representative for health care operations disclosures.	Communications and records relating to a psychiatrist's diagnosis or treatment of a patient (Conn. Gen. Stat. §§ 52-146d).
Delaware	None	No	State does not require additional authorization for TPO disclosures.	N/A
District of Columbia	D.C. Code §§ 7-1201.01 et seq.	Yes	Authorization required by individual or personal representative for health care operations disclosures.	Mental health information. The District of Columbia 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	West's F.S.A. § 394.4615	Yes	Authorization required by individual or personal representative for payment disclosures and some health care operations disclosures.	Clinical records. Defined by Florida as medical records, charts, data, and other information regarding a patient's hospitalization or treatment in a facility that provides mental health services (West's F.S.A. § 394.455).
Georgia	Ga. Code. Ann., § 37-3-166¹/Ga	Yes	Authorization required by individual or personal representative for payment	Clinical records. Georgia defines clinical records as written records maintained by facilities and other entities that provide

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	Comp. R. & Regs. 290-4-6-.05		disclosures and some health care operations disclosures.	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	Authorization required by individual or personal representative for payment disclosures and some health care operations disclosures. Authorization by facility representative required for some TPO disclosures.	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 require additional authorization for TPO disclosures.	N/A
Illinois	None	No	State does not require additional authorization for TPO disclosures.	N/A
Indiana	IC 16-39-2-6	Yes	Authorization required by individual or personal representative for some health care operations disclosures.	Mental health records maintained by providers of mental health services. The Division of Mental Health and Addiction, the Division of Disability and Rehabilitative Services, or the Indiana State Department of Health will define the content of these records by regulation. Mental health records maintained by private mental health institutions, hospitals, ambulatory outpatient surgical centers, abortion clinics, birthing centers, substance abuse services programs, and certain state institutions are not protected by this law (IC 16-39-2-2).
Iowa	I.C.A. § 228.5	Yes	Authorization required by individual or personal representative for some health care operations disclosures.	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	K.S.A. § 59-2979	Yes	Authorization required by individual or personal representative for health care operations disclosures and payment disclosures, as well as for treatment disclosures, which may be refused at the discretion of the facility director for certain reasons.	Patient treatment records, court records, and medical records maintained by a district court or treatment facility. Kansas defines treatment facility as including mental health centers, clinics, a medical facility's psychiatric clinic, a state psychiatric hospital, or medical professionals licensed to provide inpatient or outpatient treatment. Patient refers to persons that have or are receiving mental health services either voluntarily or involuntarily. Patient also refers to a person in the process of being committed for involuntary

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				treatment (K.S.A. § 59-2979).
Kentucky		No	State does not require additional authorization for TPO disclosures.	N/A
Louisiana	La. Admin Code, tit. 48, pt. I, § 507	Yes	Authorization required by individual or personal representative for health care operations disclosures and payment disclosures. Authorization required by facility representative for TPO disclosures.	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	14-193 CMR Ch. 1, § IX/ 14-472 CMR Ch. 1, § IX/ 34-B M.R.S.A. § 1207	Yes	Authorization required by individual or personal representative for some health care operations disclosures. Authorization required by facility representative for payment disclosures.	Medical records, administrative records, commitment orders, applications, and reports regarding persons that receive services from the Department of Behavioral and Developmental Services, a Department contractor, or state institution (34-B M.R.S.A. § 1207). Information related to a person or child's mental health care and treatment (14-193 CMR Ch. 1, § IX and 14-472 CMR Ch. 1, § IX).
Maryland	Md. Gen. Health. § 4-307	Yes	Authorization required by health care provider for some treatment disclosures.	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	104 CMR 27.17/ M.G.L.A. 123 § 36	Yes	Authorization required by individual or personal representative for some health care operations disclosures.	Records maintained by the Department of Mental Health regarding the admission and treatment of persons admitted to facilities supervised by the Department (M.G.L.A. 123 §§ 36, 36B Ch. 123); "Individual records" maintained by mental health facilities (104 CMR 27.17).
Michigan	M.C.L.A. § 330.1748	Yes	Authorization required by individual or personal representative for some health care operations disclosures and some payment disclosures.	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	M.S.A. § 144.293	Yes	Authorization required by individual or	Health records. Defined by Minnesota as information

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			personal representative for some TPO disclosures.	regarding and individual's past, current, or future mental health or physical condition, receipt of health care, or payment for health care (M.S.A. § 144.291).
Mississippi	Miss. Code Ann. § 41-21-97²	Yes	Authorization required by individual or personal representative for payment disclosures and some health care operations disclosures. Authorization required by facility representative for some payment and health care operations purposes.	Records and information regarding the patients of treatment facilities and persons receiving mental health treatment from physicians, psychologists, social workers, or professional counselors (Miss. Code Ann. § 41-21-97).
Missouri	Mo. Rev. Stat. § 630.140	Yes	Authorization required by individual or personal representative for some health care operations disclosures.	Records and information obtained or maintained by residential facilities, department of mental health programs, or mental health facilities or programs that civilly detain persons (V.A.M.S. 630.140).
Montana	None	No	State does not require additional authorization for TPO disclosures.	N/A
Nebraska	Neb. Rev. Stat. § 71-961/ Neb. Rev. Stat. § 38-2136	Yes	Authorization required by individual or personal representative for TPO disclosures.	Records regarding persons committed pursuant to Nebraska's Mental Health Commitment Act (Neb. Rev. Stat. § 71-961). Information acquired by a mental health practitioner from their client or patient (Neb. Rev. Stat. § 38-2136).
Nevada	N.R.S. 433A.360	Yes	Authorization required by individual or personal representative for payment disclosures and some health care operations disclosures. Authorization required by facility representative for some treatment disclosures.	Clinical records regarding persons receiving mental health services from a state facility, private institution, or a facility that provides community-based or outpatient services (N.R.S. 433A.360).
New Hampshire	N.H. Rev. Stat. § 135-C:19-a	Yes	Authorization required by individual or personal representative for TPO disclosures.	Mental health treatment, diagnosis, and admission information maintained by state mental health facilities or community health centers (N.H. Rev. Stat. § 135-C:2).
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.	Yes	Authorization required by individual or personal representative for some TPO disclosures.	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

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	10:31-12.4			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	Authorization required by individual or personal representative for some health care operations disclosures.	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	McKinney's Mental Hygiene Law § 33.13	Yes	Authorization required by individual or personal representative for some TPO disclosures. Authorization by Government representative for payment disclosures.	Clinical records. New York defines clinical records as including information regarding a patient or client's care, treatment, admission, or legal status (McKinney's Mental Hygiene Law § 33.13).
North Carolina	N.C. Gen. Stat. § 122C-51 et seq.	Yes	Authorization required by individual or personal representative for some TPO disclosures.	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	NDCC § 23-01.3-01 et seq.	Yes	Authorization required by individual or personal representative for some TPO disclosures.	Protected health information. North Dakota defines protected health information as including information about an individual's past, current, or future mental or physical condition (NDCC, 23-01.3-01).
Ohio	None	No	State does not require additional authorization for TPO disclosures.	N/A
Oklahoma	None	No	State does not require additional authorization for TPO disclosures.	N/A
Oregon	None	No	State does not require additional authorization for TPO disclosures.	N/A
Pennsylvania	50 P.S. § 7111/ 55 Pa. Code § 5100.32	Yes	Authorization required by individual or personal representative for some health	Documents regarding persons receiving mental health treatment on a voluntary or involuntary basis (50 PS 7111).

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			care operations purposes.	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	R.I. Gen. Laws 1956, § 40.1-5-26	Yes	Authorization required by individual or personal representative for some TPO disclosures.	Information and records generated while providing services pursuant to Rhode Island's mental health law, including fact of admission or certification (R.I. Gen. Laws 1956, § 40.1-5-26).
South Carolina	S.C. Ann. Code § 44-22-100	Yes	Authorization required by individual or personal representative for some TPO disclosures.	Records, applications, certificates, and reports that directly or indirectly identify a patient receiving mental health or substance abuse treatment and are generated in accordance with South Carolina's mental health law (S.C. Ann. Code § 44-22-100).
South Dakota	SDCL § 27A-12-25 et seq.	Yes	Authorization by facility representative required for some TPO disclosures. Authorization by Government representative required for some TPO disclosures.	Medical records of persons receiving mental health services in accordance with South Dakota's mental health law (SDCL § 27A-12-25 et seq.).
Tennessee	T.C.A. §§ 33-3-103 et seq. ³	Yes	Authorization required by individual or personal representative for some TPO disclosures.	Records, applications, reports, and legal documents that directly or indirectly identify a person who received or is receiving services regulated by Tennessee's mental health law (T. C. A. § 33-3-103).
Texas	V.T.C.A., Health & Safety Code § 611.001 et seq.	Yes	Authorization required by individual or personal representative for some health care operations disclosures.	Records maintained by professionals regarding the identity, treatment, or diagnosis of their patient and communications between professionals and their patients. Texas defines professional as including persons licensed to practice medicine and persons licensed to evaluate, diagnose, and treat mental or emotion conditions or disorders (V.T.C.A., Health & Safety Code §§ 611.001-611.002).
Utah	U.C.A § 62A-15-643/U.C.A. § 62A-15-707/U.A.C. R432-101	Yes	Authorization required by individual or personal representative for some TPO disclosures.	Records, reports, applications, and legal documents that directly or indirectly identify a current or form patient and are made in accordance with Utah's mental health laws (U.C.A § 62A-15-643/U.C.A. § 62A-15-707/U.A.C. R432-101).
Vermont	18 V.S.A. § 7103	Yes	Authorization required by individual or personal representative for some TPO	Records, reports, applications, and certificates that directly or indirectly identify a current or former patient and are

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			disclosures.	generated in accordance with Vermont's mental health law (18 V.S.A. § 7103).
Virginia	None	No	State does not require additional authorization for TPO disclosures.	N/A
Washington	West's RCWA 70.02.230	Yes	Authorization required by individual or personal representative for some TPO disclosures.	Information and records created or obtained while providing mental health services, including fact of admission (West's RCWA 70.02.030).
West Virginia	W. Va. Code, § 27-3-1	Yes	Authorization required by individual or personal representative for some TPO disclosures.	Communications and information regarding the treatment or evaluation of a patient or client (W. Va. Code, § 27-3-1).
Wisconsin	W.S.A. 51.30	Yes	Authorization required by individual or personal representative for some TPO disclosures.	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	Authorization required by individual or personal representative for some TPO disclosures.	Registration and treatment records regarding patients receiving mental health treatment at a treatment facility that is under contract with the department (W.S.1977 § 9-2-125).