



# Legal Tips

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## State-Specific Laws in Policies and Procedures

For decades, NIFLA has provided our member centers with sample policies and procedures (P&P). These documents provide directions on best practices for your center. We have our *Basic Operations P&P and Medical P&P* for centers providing ultrasounds and other medical services. Within both documents, we reference some areas specific to state law.

## NIFLA Attorney Coalition and State Coalitions

NIFLA's Attorney Coalition (NAC) aims to develop a network of pro-life attorneys and to further inform and educate on pro-life pregnancy center issues. One-way local attorneys can help is to provide the necessary research for these state-specific topics. If one state-licensed attorney provides the research, every center in the state can benefit from that research. This is where state coalitions come in. We want to encourage our state coalitions to share this state-specific research with all the centers in your state.

It would be helpful to know attorneys willing to help with this research. NIFLA would like to offer help and resources to these attorneys as they serve your centers in this unique and helpful way. Please have an attorney sign up for our NIFLA Attorney Coalition so that we can get them the resources needed in this research and helpful legal updates.

[\(https://nifla.org/training/nifla-attorney-coalition-nac/\)](https://nifla.org/training/nifla-attorney-coalition-nac/)

In the state-specific laws referenced in the P&P, many practice areas are implicated in the memo for attorneys. It may be intimidating for a lawyer who practices employment law to advise on child abuse reporting. Similarly, a lawyer familiar with medical practices may not feel comfortable researching concealed weapons. The bottom line is that having a few different lawyers divide the research may be necessary. Again, sharing these resources within a state coalition would be very helpful.

If you are the leader of a state coalition and do not have an attorney willing to do your state's research, please contact the NIFLA office. We will try to connect your coalition with a like-minded attorney licensed in your state.

## NIFLA Resources

There are two resources. We have provided you with a brief document to send to an attorney licensed in your state. This document only includes the questions which need to be answered following research on your state's laws.

The second document is for your ED/CEO and the staff members helping with the P&P update. It is titled: APPENDIX for Attorney Review of State Specific Laws. This document provides a listing of each policy that refers to state law. In addition, we have included the wording from the policy to make it easier for your center to update and customize your P&P.

## State-Specific Laws

The following is a brief overview of the legal questions and P&Ps that reference them.

1. State Law on Abortion: This can be a moving target in a post-Roe legal landscape. We want centers to know what their state law allows.
2. Reporting Requirements: Medical facilities are most likely mandatory reporters for suspected child abuse and/or neglect cases. It is also important to know where and how to report. This section also covers the age of consent for sexual activity, statutory rape, and other important reporting-related policies.
  - a. Policy: CHILD ABUSE REPORTING
  - b. Policy: PATIENT BASIC INTAKE SHEET/DISCLAIMER
  - c. Policy: DOMESTIC VIOLENCE SCREENING
  - d. Policy: SUICIDE AND SEVERE EMOTIONAL DISTRESS
3. Minor Consent and Parental Notification: Centers should understand what consent is needed when a minor seeks their services and other implications of serving minors.  
Policy: MINOR'S ABILITY TO CONSENT TO MEDICAL SERVICES
4. State medical practice issues: As a medical clinic that operates under the license and supervision of a medical doctor, it is important to understand several state-specific matters.
  - a. Form: STANDING ORDER FOR ULTRASOUNDS
  - b. Policy: VERIFICATIONS OF POSITIVE PREGNANCY TESTS AND CONFIRMATIONS OF PREGNANCY
  - c. Policy: TELEHEALTH
  - d. Form: TELEHEALTH CONSENT
  - e. Policy: STI TESTING/TREATMENT
  - f. Policy: PROTECTED HEALTH INFORMATION (PHI)
  - g. Policy: NOTICE OF PRIVACY PRACTICES
  - h. Policy: RELEASE OF HEALTH INFORMATION
  - i. Policy: BREACH ASSESSMENT, NOTIFICATION, AND SANCTIONS
  - j. Policy: MEDICAL RECORDS
  - k. Policy: RETENTION & DESTRUCTION OF PROTECTED HEALTH INFORMATION (PHI)/ FORM: MEDICAL RECORD DESTRUCTION FORM
  - l. Policy: BLOODBORNE PATHOGEN POST-EXPOSURE
  - m. Form: BLOODBORNE PATHOGEN REPORT - SUMMARY
  - n. Policy: TB Testing
5. Data Protection Laws/Privacy Policy: This research is for your website's Privacy and Terms of Use Policy.
6. Charitable Solicitation Laws: This research will help protect your center if your center is raising funds in other states.
7. Employment Laws: Several policies within the Employee Manual must be addressed with state law. We have included section references to make it easier as you update this section. In addition, the following P&P needs to be customized:
  - a. Policy: PERSONNEL RECORDS
  - b. Policy: STAFF HEALTH
  - c. Policy: BACKGROUND CHECKS
8. Recording: Is your state a one-party consent state?  
Policy: NO RECORDINGS ON PREMISES
9. Service Animals:  
Policy: SERVICE ANIMALS
10. Concealed Weapons: What are the applicable state firearm licensing laws, and are concealed weapons permitted at the center?  
Policy: CONCEALED WEAPONS (allowing firearms at the workplace)
11. State law on deleted policies?  
Policy: CHANGING, ADDING, OR DELETING POLICIES & PROCEDURES

12. Law on Photo ID: Is there any limitation under state law regarding the collection by the center of the patient's photo ID?  
Policy: PHOTO IDENTIFICATION OF PATIENTS
13. Interpreters: Does state law require the center to have an interpreter?  
Policy: INTERPRETERS

## Annual Review

Your P&P should be reviewed and approved by the appropriate people annually. If you have not been doing this, please start now. The P&P is meant to be a known and utilized document within your organization. Implementing policies and never reviewing them creates a liability for your center. Having something in your P&P and employees not following it can be risky. Instead, use this opportunity with our newly updated P&P to start fresh, get state-specific policies, and utilize best practices.

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The National Institute of Family and Life Advocates

## APPENDIX: Research Questions with a List of Policies and Procedures

### State-specific Legal Issues for Pregnancy Centers

Once an attorney licensed in your state has researched answers to the questions below, use this appendix to place the appropriate responses in the corresponding policies for each legal question.

*The italicized sections are exact wording from NIFLA's upcoming policies and procedures.*

- I. State Law on Abortion: Any restrictions? If so, what is the gestational age? Any exceptions? Insert applicable law here:
- II. Reporting Requirements: *Medical facilities are most likely mandatory reporters. You can begin research about your state laws by going to the website for the Child Welfare Information Gateway at [http://childwelfare.gov/systemwide/laws\\_policies/](http://childwelfare.gov/systemwide/laws_policies/).*

The following questions and answers will help the PC create the policy.

- Suspected cases of child abuse and/or neglect: Are centers obligated to report? Permitted? What is the proper reporting agency? (Police department, Child, and Family services?)
- Is a pregnancy center considering a mandatory report?
- How does the pregnancy center report?
- What is the state's age of consent for sexual activity?
- Is consensual sex between minors reportable? If so, what are the actual age reporting requirements? (15-year-old girl with 19-year-old boy?)
- Does the state have a "Romeo and Juliet" exception?
- What is the statutory rape law?
- Is statutory rape reportable?

#### A. Policy: CHILD ABUSE REPORTING

*(Important Note: State laws vary in child abuse reporting. When creating this policy and procedure, it is important that you carefully follow the requirements of your state's laws. The following is provided only as a sample and must conform to your state's laws. A good resource is the Child Welfare Information Gateway website: [www.childwelfare.gov](http://www.childwelfare.gov). The PC is obligated to report known or suspected cases of abuse (sexual, physical, and mental) and neglect of patients and those associated with patients. Staff members of the PC are likely considered mandatory reporters. The center director or other authorized personnel shall determine the status of the incident and, in compliance with state law, will report the incident to the proper authorities within the prescribed time. Child abuse may be any act of omission or commission that endangers or impairs a child's physical or emotional health and development. (Insert your state law here))*

- B. Policy: PATIENT BASIC INTAKE SHEET/DISCLAIMER  
*"All information is kept confidential, except as required or permitted by law." (Can be customized according to your state law on mandatory reporting.)*
- C. Policy: DOMESTIC VIOLENCE SCREENING
  1. *"Domestic violence screening should be conducted at the initial visit of each patient and, when appropriate, at intervals thereafter." (See state law: A few states require reporting of domestic violence).*
  2. *"The PC can encourage the patient to report the abuse to proper authorities. If required by state law, the CEO shall promptly report the abuse to the proper authorities."*
- D. Policy: SUICIDE AND SEVERE EMOTIONAL DISTRESS  
*"Some states require reporting of any known or suspected cases of potential suicide or attempted suicide." (Conform this policy & procedure to the requirements of your state)*

### III. Minor Consent and Parental Notification:

- A. May a minor consent to pregnancy-related medical care, or does she need parental consent?
- B. Do parents have a right to be notified about their minor's pregnancy?
- C. What if it would be in the best interest of the minor to tell the parents?
- D. Do parents have the right to know if their daughter is a patient?
- E. Do parents have a right to request records?
- F. Policy: MINOR'S ABILITY TO CONSENT TO MEDICAL SERVICES  
*"The PC abides by state law regarding a minor's ability to consent. (Important Note: state laws vary in a minor's ability to consent to medical treatment. When creating this policy and procedure, it is important that you carefully follow the requirements of your state. You can copy and paste the text and citation of the state law into this policy."*

### IV. State Medical Practice Issues:

- A. Are there clinic licensing regulations? States that have regulations: CA, NJ, NY, MA, CT
- B. May the center use "clinic" in its name if it wants to?
- C. Are standing orders permitted? Can an MD prescribe via standing orders?  
 Form: STANDING ORDER FOR ULTRASOUNDS  
*"NOTE: State laws may vary regarding the issuance of standing orders. It is imperative that you check your state laws in this regard."*
- D. Scope of Practice: NP, PA, RN, LPN, CNA, MA, RDMS
  1. Policy: VERIFICATIONS OF POSITIVE PREGNANCY TESTS AND CONFIRMATIONS OF PREGNANCY  
*"Verifications of positive pregnancy tests simply verify that the pregnancy test reads positive. Approved medical professionals may verify positive pregnancy tests. This is different from a confirmation of pregnancy, which can only be diagnosed by a physician or advanced clinical provider pursuant to state law and their scope of practice (NP, PA, CNM only)."*
  2. Can an NP practice on their own?
  3. Can an RDMS provide verification of pregnancy?
  4. Can an LPN provide verification of pregnancy?
- E. ONLY IF PC IS PROVIDING TELEHEALTH: What are the state telehealth requirements?
  1. Policy: TELEHEALTH  
*"(Note: Check state law regarding the practice of telehealth in your state. Here's a useful resource: (<https://www.cchpca.org/all-telehealth-policies/>)"*

## 2. Form: TELEHEALTH CONSENT

(Please form this template for your operations and to comply with your state's law.)

### F. ONLY IF PC IS PROVIDING STI TESTING/TREATMENT: What are the requirements for STI Testing/Treatment? Reporting requirements?

Policy: STI TESTING/TREATMENT

*"State law differs on reporting requirements related to STI testing/treatment. Make sure to insert your state law."*

### G. Medical Record Privacy Laws (in addition to HIPAA-federal)/ See memo for each state on the NIFLA website, [www.membership.nifla.org](http://www.membership.nifla.org), under the HIPAA tab.

1. *"PCs which do not bill electronically may not be considered a 'covered entity' under HIPAA. However, state privacy laws may apply. The following policies are best practices and highly recommended for PHI privacy and security."*

2. Policy: PROTECTED HEALTH INFORMATION (PHI)

*"Requests by patients for medical records inspection and copying shall be responded to within \_\_\_ days (check state law). Requests for restrictions on use and disclosure or requests for amendments of health information shall be responded to within \_\_\_ days (check state law)."*

3. Policy: NOTICE OF PRIVACY PRACTICES

*"The Privacy Rule requires you to describe any state or other laws that require greater limits on disclosures. For example, 'We will never share any substance abuse treatment records without your written permission.' Insert this type of information here. If no laws with greater limits apply to your entity, no information needs to be added."*

4. Policy: RELEASE OF HEALTH INFORMATION

a. *"Patient's health information (PHI) will be made available to the patient and shared with her designated third parties upon request according to this policy. A patient has a right to a copy of her medical record pursuant to HIPAA and applicable state law."*

b. *"Timing and Fees: A request for medical records must be responded to within 15 days (check state law), except in emergency situations, and a reasonable fee (check state law, but NIFLA does not recommend charging a fee) to cover costs of copying may be charged to the patient."*

5. Policy: BREACH ASSESSMENT, NOTIFICATION, AND SANCTIONS

*"In the event of a breach in the security of Protected Health Information (PHI), the Privacy Officer will conduct a risk assessment and make appropriate notifications if required. A breach is an impermissible acquisition, access, or use or disclosure of PHI unless the center or its business associate 'demonstrates that there is a low probability that the PHI has been compromised based on a risk assessment.' Examples of breaches include unauthorized access to a computer containing PHI; theft or loss of a computer, laptop, or other portable device containing PHI; misplacement of medical records. Please check your state law to see if there are additional requirements."*

### H. Medical Record Retention and Destruction: How long do medical records need to be retained in your state? Are there any state laws on the destruction of medical records?

1. Policy: MEDICAL RECORDS

*"Medical records shall be retained for seven years, except for minors, whose records shall be kept at least seven years after the minor has attained the age of 18, but in no case less than seven years. (Check State law) Records shall be destroyed according to the Record Retention and Destruction Policy."*

2. Policy: RETENTION & DESTRUCTION OF PROTECTED HEALTH INFORMATION (PHI)/ Form: MEDICAL RECORD DESTRUCTION FORM

- a. *“All medical records will be destroyed at the end of the applicable retention period as follows: Medical Records – Adults – check state law; Medical Records – Minors – check state law.”*
  - b. *“A Medical Record Destruction Log (see sample Destruction Log) must be maintained to identify the destroyed records. The Destruction Log will be maintained indefinitely. At a minimum, the Destruction Log must capture the patient information (If required by state law).”*
- I. Bloodborne Pathogens: Are there any state OSHA-type laws regarding bloodborne pathogens? (The nurse/clinic manager should insert the policy and citation here and have the attorney review it.)
  - a. Policy: BLOODBORNE PATHOGEN POST-EXPOSURE  
*“The clinic manager will make an attempt to identify the source individual in each exposure incident unless this is not feasible or prohibited by state or local law.”*
  - b. Form: BLOODBORNE PATHOGEN REPORT - SUMMARY  
*“The current state law regarding permission to test the source individual's blood was verified. (Some states do not have a specific law on this).”*
- J. TB Testing: Annual TB testing of health care personnel is not recommended unless there is a known exposure or ongoing transmission (or unless required by your state or local laws).
  - 1. <http://www.cdc.gov/tb/links/tboffices.htm>
  - 2. (The nurse/clinic manager should insert the policy and citation here and have the attorney review it.)
- V. Data Protection Laws/Privacy Policy: Are there any state-specific laws regarding website requirements? (There are new consumer data privacy laws in California, Colorado, Connecticut, Utah, and Virginia.)
- VI. Charitable Solicitation Laws: (Only research this if the center is soliciting funds in other states or hosting raffles/auctions, etc.) You could start the research at [www.multistatefiling.org](http://www.multistatefiling.org).
- VII. Employment Laws:
  - A. State’s minimum wage: \_\_\_\_\_
  - B. Do the state guidelines follow the FLSA definitions of exempt vs. non-exempt employees?
  - C. What are flexible/compensatory time rules to avoid overtime pay for non-exempt employees? Does the state require sick days?
 Compensatory/Flex Time Off: (Employee Manual section reference: 3.6)
  - 1. *Non-exempt employees who work overtime must be paid overtime wages and cannot be granted compensatory time instead. Non-exempt employees may work a flexible schedule within the same workweek so as not to work overtime.*
  - 2. *Exempt employees are not legally entitled to overtime pay and are not strictly subject to a 40-hour work week. From time to time, exempt employees must work hours more than their normal scheduled hours to accomplish their goals. As such, comp or flex time is available to the exempt employee under the following circumstances:*
    - a. *The CEO/executive director may choose to grant compensatory time to exempt employees who are required to work more than their normal work hours for special projects or during weekends, or any normally scheduled time off.*
    - b. *The excess work must be approved in advance.*
    - c. *Compensatory time will be granted on an hour-for-hour basis.*
    - d. *Compensatory time must be taken within 30 days of being earned.*
    - e. *Compensatory time will not be exchanged for monetary compensation.*

- D. Does state law require mandatory breaks/lunch breaks?  
Mandatory breaks/lunch breaks: (Employee Manual section reference: 5.8)  
*“All exempt employees shall take a lunch break at their discretion. All non-exempt employees who work more than five (5) hours in a workday are provided with unpaid meal periods of at least 45 minutes in length. Notwithstanding the foregoing, the meal period can be waived by the mutual consent of you and your manager.”*
- E. Are there any paycheck rules related to distribution, timesheets, salary deductions, etc.?  
Paycheck Policy: (Employee Manual section reference: 5.11)  
*“Paychecks are distributed on the 1st of each month, except when those days fall on a Saturday, Sunday, or holiday, in which case paychecks will be distributed on the prior workday. Timesheets are due to the CEO/executive director or his designer by the 25th of the month proceeding. All salary deductions are itemized and presented to employees with the paycheck. Approved salary deductions may include federal and state income taxes; social security, Medicare, and state disability insurance; voluntary medical and group hospitalization insurance premiums (if in force and if paid by employee) and other benefits, if applicable.”*
- F. What are state laws on overtime?  
Overtime: (Employee Manual section reference: 5.13)  
*“Non-exempt employees are not allowed to work more than forty hours per week without approval. Travel time is allowed during business hours.”*
- G. How long do employment records need to be maintained?  
Policy: PERSONNEL RECORDS  
*“These records shall be maintained for seven (7) years following termination of employment.” (Check State law)*
- H. Are there vaccination requirements (i.e., flu for medical personnel)?  
Policy: STAFF HEALTH  
*“Vaccination status of staff will be kept on file at the clinic (only if state law requires).”*
- I. What are state laws regarding background checks?  
Policy: BACKGROUND CHECKS  
*“All staff, volunteers, and board members shall submit to a background check prior to serving at the center. (Check state law – some states (CA) require a firm offer to be made to an employee prior to performing the background check.) Although a criminal background check is no guarantee against criminal acts, it does reduce the likelihood of crime and may reduce the center’s liability in the event a crime occurs. The executive director/CEO is responsible for initiating the criminal background check. If the background check reveals a conviction relevant to the sensitive position, the individual may be disqualified from holding such position.”*

VIII. Recording: Is your state a one-party consent state?

Policy: NO RECORDINGS ON PREMISES

*“Explain your state law here: Each state has different laws about the ability to record a confidential conversation. Some states require the consent of only one party. Others require the consent of all the parties to the conversation. “*

IX. Service Dogs:

A. Are service animals permitted in medical offices? Are service animals limited to dogs only? Do they require some special tags? May center personnel inquire about the disability which would require a service animal?

B. Policy: SERVICE ANIMALS

*PC will make accommodations for a person with a disability who has a service dog or a trainer of a service dog. The term “Service Animal” is defined as any dog individually*



*trained to do work or perform tasks for the benefit of an individual with a disability. Dogs whose sole function is to provide comfort or emotional support do not qualify as service animals under the Americans with Disabilities Act (ADA). Under the ADA (check state law, too), healthcare facilities must permit the use of a service animal by a person with a disability. Some states require service dogs to wear special tags. (Check your state's requirements. California requires a service dog to have a tag indicating that the dog is a service animal.)*

X. Concealed Weapons:

A. What are the applicable state firearm licensing laws, and are concealed weapons permitted at the center?

Is pepper spray permitted in the workplace?

B. Policy: CONCEALED WEAPONS (allowing firearms at the workplace)

1. *No firearms shall be allowed on the center's premises or at center events except for pre-approved staff (employed or volunteer) who are legally authorized to do so through a proper permit and/or license from the state. Any staff member who wishes to carry a concealed weapon shall comply with the procedures outlined herein.*
2. *The person must be a current licensed firearms carrier in the state of \_\_\_\_\_ and must always follow state regulations. A copy of the firearms permits, and proof of firearm proficiency must be given to the executive director and placed in the staff member's personnel file.*
3. *A thorough background check and psychological evaluation must be obtained of the staff person prior to permission being granted to carry a weapon on the premises to ensure no violent tendencies or other issues that would warrant concern. These evaluations shall be repeated at least every \_\_\_\_\_ years after employment and shall be paid for by the staff person wishing to carry.*
4. *Prior to being approved to carry a firearm in the center, the staff person must sign below in agreement with this policy, copies of which shall be given to the staff person and placed in the staff person's file.*
5. *Only one firearm is permitted and must be no larger than \_\_\_\_\_. All state restrictions on storing and securing the firearm shall be followed, including keeping it in a snapped holster, zippered case, or other appropriate carrying device with a covered trigger guard.*

XI. State law on deleted policies?

Policy: CHANGING, ADDING, OR DELETING POLICIES & PROCEDURES

"Deleted policies must be kept on file for a minimum of seven years or as state laws direct."

XII. Law on Photo ID

A. Is there any limitation under state law regarding the collection by the center of the patient's photo id?

B. Policy: PHOTO IDENTIFICATION OF PATIENTS

*"It is the policy of this PC, pursuant to existing state and federal laws, including HIPAA, that appropriate procedures are in place to reasonably safeguard protected health information and sensitive information related to patient identity from any intentional or unintentional use or disclosure."*

XIII. Interpreters

A. Does state law require the center to have an interpreter?

B. Policy: INTERPRETERS

*"The PC shall make reasonable efforts to provide meaningful access to persons who have limited English proficiency (LEP) pursuant to HIPAA, Title VI, and ADA." (Check state law)*



The National Institute of Family and Life Advocates

## **State-Specific Legal Issues for Pregnancy Centers**

**Research for the STATE of: \_\_\_\_\_**

*An attorney licensed in your state should assist the PC with the following state laws.*

- I. **Summary of State Law on Abortion:** Any restrictions? If so, what is the gestational age? Any exceptions?
  - Insert applicable law here.
  
- II. **Reporting Requirements:** Medical professionals and facilities are most likely mandatory reporters for child abuse/neglect. You can begin research about your state laws by visiting the Child Welfare Information Gateway at [http://childwelfare.gov/systemwide/laws\\_policies/](http://childwelfare.gov/systemwide/laws_policies/). The following questions and answers will help the PC create the policy.
  - A. Suspected cases of child abuse and/or neglect: Are centers obligated to report? Permitted? What is the proper reporting agency? (Police department, Child and Family Services?)
  - B. Is a pregnancy center considered a mandatory reporter?
  - C. How does the pregnancy center report?
  - D. What is the state's age of consent for sexual activity?
  - E. Is consensual sex between minors reportable? If so, what are the actual age reporting requirements? (15-year-old girl with 19-year-old boy?)
  - F. Does the state have a "Romeo and Juliet" exception?
  - G. What is the statutory rape law?
  - H. Is statutory rape reportable?
  - I. Is domestic violence reportable?
  - J. Is suicide reportable?
  - K. Is sex trafficking reportable?
  - L. "*All information is kept confidential, except as required or permitted by law.*" This should be customized according to your state law on mandatory reporting.
  
- III. **Minor Consent and Parental Notification:**
  - A. May a minor consent to pregnancy-related medical care, or does she need parental consent?
  - B. Do parents have a right to be notified about their minor's pregnancy?
  - C. What if it would be in the best interest of the minor to tell the parents?
  - D. Do parents have the right to know if their daughter is a patient?
  - E. Do parents have a right to request records?

IV. State medical practice issues:

- A. Are there clinic licensing regulations? States that have regulations: CA, NJ, NY, MA, CT
- B. May centers use “clinic” in their name?
- C. Are standing orders permitted? Can an MD prescribe via standing orders?
- D. Scope of Practice: NP, PA, RN, LPN, CNA, MA, RDMS

- 1. Can an NP practice on their own?
- 2. Does an RDMS need to be licensed by the state?
- 3. Can an RDMS provide verification of a positive pregnancy test?
- 4. Can an LPN provide verification of a positive pregnancy test?
- 5. Can a CAN or MA perform pregnancy testing without direct supervision?

- E. If PC is providing Telehealth: What are the state telehealth requirements?  
Here’s a useful resource: <https://www.cchpca.org/all-telehealth-policies/>

- F. If PC is providing STI testing/treatment: What are the requirements for STI testing/treatment? Reporting requirements?

State laws differ on reporting requirements related to STI testing/treatment.

- G. Medical Record Privacy Laws (in addition to HIPAA-federal): Ask the executive director for NIFLA’s memo on state privacy laws.

- 1. The policy affected: PROTECTED HEALTH INFORMATION (PHI)

*“Requests by patients for medical records inspection and copying shall be responded to within \_\_\_ days (check state law). Requests for restrictions on use and disclosure or requests for amendments of health information shall be responded to within \_\_\_ days (check state law).”*

- 2. The policy affected: NOTICE OF PRIVACY PRACTICES

*“The Privacy Rule requires you to describe any state or other laws that require greater limits on disclosures. For example, ‘We will never share any substance abuse treatment records without your written permission.’ Insert this type of information here. If no laws with greater limits apply to your entity, no information needs to be added.”*

- 3. The policy affected: RELEASE OF HEALTH INFORMATION

- a. *“Patient’s Health Information (PHI) will be made available to the patient and shared with her designated third parties upon request pursuant to this policy. A patient has a right to a copy of her medical record pursuant to HIPAA and applicable state law.”*
- b. *“Timing and Fees: A request for medical records must be responded to within 15 days (check state law), except in emergency situations, and a reasonable fee (check state law, but NIFLA does not recommend charging a fee) to cover costs of copying may be charged to the patient.”*

- 4. The policy affected: BREACH ASSESSMENT, NOTIFICATION, AND SANCTIONS

*“In the event of a breach in the security of Protected Health Information (PHI), the privacy officer will conduct a risk assessment and make appropriate notifications if required. A breach is an impermissible acquisition, access, or use or disclosure of PHI unless the center or its business associate ‘demonstrates that there is a low probability that the PHI has been compromised based on a risk assessment.’ Examples of breaches include unauthorized access to a computer containing PHI; theft or loss of a computer, laptop, or other portable device containing PHI; misplacement of medical records. Please check your state law to see if there are additional requirements.”*

H. Medical Record Retention and Destruction:

- 1. How long do medical records need to be retained in your state?
- 2. Are there any state laws on the destruction of medical records?

- I. Bloodborne Pathogens: Are there any state OSHA-type laws regarding bloodborne pathogens? (The nurse/clinic manager should insert the policy and citation here and have the attorney review it.)
- J. TB Testing: Annual TB testing of health care personnel is not recommended unless there is a known exposure or ongoing transmission (or unless required by your state or local laws).
  - 1. <http://www.cdc.gov/tb/links/tboffices.htm>
  - 2. (The nurse/clinic manager should insert the policy and citation here and have the attorney review it.)
  
- V. Data Protection Laws/Privacy Policy: Are there any state-specific laws regarding website requirements? (There are new consumer data privacy laws in California, Colorado, Connecticut, Utah, and Virginia.)
  
- VI. Charitable Solicitation Laws: (Only research if the center is soliciting funds in other states or hosting raffles/auctions, etc.) You could start the research at the following web page: [www.multistatefiling.org](http://www.multistatefiling.org).
  
- VII. Employment Laws:
  - A. State's minimum wage: \_\_\_\_\_
  - B. Do the state guidelines follow the FSLA definitions of exempt vs. non-exempt employees?
  - C. What are flexible time and compensatory time rules to avoid overtime pay for non-exempt employees? Does the state require sick days?
  - D. What are state laws on overtime?
  - E. Does state law require mandatory breaks/lunch breaks?
  - F. Are there any paycheck rules related to distribution, timesheets, salary deductions, etc.?
  - G. How long do employment records need to be maintained?
  - H. Are there vaccination requirements (i.e., flu for medical personnel)?
  - I. What are state laws regarding background checks?
  
- VIII. Recording: Is your state a one-party or two-party consent state?
  
- IX. Service Dogs: Are service animals permitted in medical offices? Are service animals limited to dogs only? Do they require some special tags? May the center personnel inquire about the disability which would require a service animal?
  
- X. Concealed Weapons: What are the applicable state firearm licensing laws, and are concealed weapons permitted at the center? Is pepper spray permitted in the workplace?
  
- XI. State law on deleted policies:  
The policy affected: CHANGING, ADDING, OR DELETING POLICIES & PROCEDURES, which states: "Deleted policies must be kept on file for a minimum of seven years or as state laws direct."
  
- XII. Law on Photo ID: Is there any limitation under state law regarding the collection by the center of the patient's photo ID?
  
- XIII. Interpreters: Does state law require the center to have an interpreter?



The National Institute of Family and Life Advocates

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## **April Legal Tips: State-Specific Laws in Policies and Procedures**

For decades, NIFLA has provided our member centers with sample policies and procedures (P&P). These documents provide directions on best practices for your center. We have our Basic Operations P&P and Medical P&P for centers providing ultrasounds. Within both documents, we reference some areas specific to state law.

In this ***Legal Tips***, we will highlight the state-specific areas in the Basic Operations P&P, Medical P&P, and a few other documents which contain state-specific issues. NIFLA will be releasing an updated P&P this year. In preparation for this update, we want to inform our member centers of the policies that will need to be researched by a state-licensed attorney.

### **NIFLA ATTORNEY COALITION and STATE COALITIONS**

The goal of the NIFLA Attorney Coalition is to develop a network of pro-life attorneys and further inform and educate the network on pro-life pregnancy center issues. One of the ways the attorneys can help pregnancy centers is to provide the necessary research for these state-specific topics. Unfortunately, many of our centers do not have an attorney involved with their ministry.

If one state-licensed attorney provides the research, every center in the state can benefit from that research. This is where state coalitions come in. We want to encourage our state coalitions to share state-specific research with all the centers in your state.

NIFLA will help with resources and support for attorneys willing to help with the research. Please share the attorney sign-up for our NIFLA Attorney Coalition, so they can access the resources needed for the research and give legal updates.

[\(https://nifla.org/training/nifla-attorney-coalition-nac/\)](https://nifla.org/training/nifla-attorney-coalition-nac/)

As you will notice in the state-specific laws referenced in the P&P, a wide array of practice areas are implicated in the memo for attorneys. It may be intimidating for a lawyer who practices employment law to advise on child abuse reporting. Similarly, a

lawyer who is familiar with medical practices may not feel comfortable researching concealed weapons. The bottom line is that it may be necessary to get a few different lawyers to divide up the research. Again, sharing these resources within a state coalition would be very helpful.

If you are the leader of a state coalition and do not have an attorney who is willing to do the state's research, please contact the NIFLA office. We will help to connect your coalition with a like-minded attorney who is licensed in your state.

## RESOURCES

The ***Legal Tips*** includes two resources. We have provided you with a brief document to send to an attorney licensed in your state. This document only includes the questions which need to be answered following research on your state's laws. The second document is meant for your executive director/CEO and the staff members helping with the P&P update. It is titled: APPENDIX for Attorney Review of State Specific Laws. This document provides a listing of each policy that refers to state law. In addition, we have included the wording from the policy to make it easier for your center to update and customize your P&P.

## STATE-SPECIFIC LAWS

The following is a brief overview of the legal questions:

1. State Law on Abortion: This can be a moving target in a post-Roe legal landscape. We want centers to know what their state law allows.
2. Reporting Requirements: Medical facilities are most likely mandatory reporters for suspected child abuse and/or neglect cases. It is also important to know where and how to report. This section also covers the age of consent for sexual activity, statutory rape, and other important reporting related policies.
  - a. Policy: CHILD ABUSE REPORTING
  - b. Policy: PATIENT BASIC INTAKE SHEET/DISCLAIMER
  - c. Policy: DOMESTIC VIOLENCE SCREENING
  - d. Policy: SUICIDE AND SEVERE EMOTIONAL DISTRESS
3. Minor Consent and Parental Notification: Centers should understand what consent is needed when minors seek their services and other implications of serving minors.  
Policy: MINOR'S ABILITY TO CONSENT TO MEDICAL SERVICES
4. State medical practice issues: As a medical clinic that operates under the license and supervision of a medical doctor, it is important to understand several state-specific matters.
  - a. Form: STANDING ORDER FOR ULTRASOUNDS
  - b. Policy: VERIFICATIONS OF POSITIVE PREGNANCY TESTS AND CONFIRMATIONS OF PREGNANCY
  - c. Policy: TELEHEALTH
  - d. Form: TELEHEALTH CONSENT
  - e. Policy: STI TESTING/TREATMENT
  - f. Policy: PROTECTED HEALTH INFORMATION (PHI)
  - g. Policy: NOTICE OF PRIVACY PRACTICES

- h. Policy: RELEASE OF HEALTH INFORMATION
  - i. Policy: BREACH ASSESSMENT, NOTIFICATION, AND SANCTIONS
  - j. Policy: MEDICAL RECORDS
  - k. Policy: RETENTION & DESTRUCTION OF PROTECTED HEALTH INFORMATION (PHI)/ FORM: MEDICAL RECORD DESTRUCTION FORM
  - l. Policy: BLOODBORNE PATHOGEN POST-EXPOSURE
  - m. Form: BLOODBORNE PATHOGEN REPORT - SUMMARY
  - n. TB Testing
5. Data Protection Laws/Privacy Policy: This research is for your website's Privacy and Terms of Use Policy.
  6. Charitable Solicitation Laws: This research will help protect your center if your center is raising funds in other states.
  7. Employment Laws: Several policies within the Employee Manual need to be addressed with state law. We have included section references to make it easier as you update this section. In addition, the following P&P needs to be customized:
    - a. Policy: PERSONNEL RECORDS
    - b. Policy: STAFF HEALTH
    - c. Policy: BACKGROUND CHECKS
  8. Recording: Is your state a one-party consent state?  
Policy: NO RECORDINGS ON PREMISES
  9. Service Animals:  
Policy: SERVICE ANIMALS
  10. Concealed Weapons: What are the applicable state firearm licensing laws, and are concealed weapons permitted at the center?  
Policy: CONCEALED WEAPONS (allowing firearms at the workplace)
  11. State law on deleted policies?  
Policy: CHANGING, ADDING, OR DELETING POLICIES & PROCEDURES
  12. Law on Photo ID: Is there any limitation under state law regarding the collection by the center of the patient's photo ID?  
Policy: PHOTO IDENTIFICATION OF PATIENTS
  13. Interpreters: Does state law require the center to have an interpreter?  
Policy: INTERPRETERS

## **ANNUAL REVIEW**

Your P&P should be reviewed and approved by the appropriate people annually. If you have not been doing this, please start now. The P&P is meant to be a known and utilized document within your organization. Implementing policies and never reviewing them creates a liability for your center. Having something in your P&P and employees not following it can be risky. Instead, use this opportunity with the updated P&P to start fresh, get state-specific policies, and utilize best practices.