

Required Content for Authorizations to Disclose (2002 update)

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Editor's note: The following information supplants information contained in the November-December 2001 "[Required Content for Authorizations to Disclose](#)" Practice Brief.

In the past, healthcare providers disclosed individually identifiable health information to comply with valid authorizations, laws and regulations, professional ethics, and accreditation standards. The federal government had not yet established standards regulating the disclosure of most individually identifiable health information or what constituted a valid authorization, except in the case of substance abuse records. State laws or regulations relative to authorization content varied or were nonexistent.

The HIPAA final privacy rule, published in the December 28, 2000, *Federal Register*, establishes standards for information disclosure including what constitutes a valid authorization. The rule was amended on August 14, 2002. It applies to covered entities, which are health plans, healthcare clearinghouses, and healthcare providers that transmit specific information electronically. Most covered entities must comply with the amended rule by April 14, 2003.

This practice brief will explore the portion of the rule that addresses authorization content. It will also provide an overview of other federal and state laws and regulations regarding authorization content.

Legal Requirements

HIPAA

Section 164.508 of the final privacy rule states that covered entities may not use or disclose protected health information without a valid authorization, except as otherwise permitted or required in the privacy rule.

General authorization content: The rule states that a valid authorization must be in plain language and contain at least the following core elements:

- A specific and meaningful description of the information to be used or disclosed
- The name or other specific identification of the person(s) or class of persons authorized to use or disclose the information
- The name or other specific identification of the person(s) or class of persons to whom the covered entity may make the use or disclosure
- A description of each purpose of the requested use or disclosure. The statement "at the request of the individual" is sufficient when an individual initiates the authorization and does not provide a statement of the purpose
- An expiration date or event that relates to the individual or the purpose of the use or disclosure. The statement "end of the research study," "none," or similar language is sufficient if the authorization is for a use or disclosure for research, including for the creation and maintenance of a research database or repository
- Signature of the individual and date. If the authorization is signed by a personal representative of the individual, a description of the representative's authority to act for the individual

In addition to the core elements, the rule states that a valid authorization must include:

1. A statement of the individual's right to revoke the authorization in writing and either:
 - A reference to the revocation right and procedures described in the notice, or

- A statement about the exceptions to the right to revoke and a description of how the individual may revoke the authorization

Exceptions to the right to revoke include situations in which the covered entity has already taken action in reliance on the authorization or the authorization was obtained as a condition of obtaining insurance coverage.

2. A statement about the ability or inability of the covered entity to condition treatment, payment, enrollment, or eligibility for benefits on the authorization:

- The covered entity must state that it will not condition treatment, payment, enrollment, or eligibility for benefits on whether the individual signs the authorization, or
- The covered entity must describe the consequences of a refusal to sign an authorization when the covered entity conditions research-related treatment, enrollment or eligibility for benefits, or the provision of healthcare solely for the purpose of creating protected health information for a third party on obtaining an authorization

3. A statement that information used or disclosed pursuant to the authorization may be subject to redisclosure by the recipient and may no longer be protected by the rule

Marketing content: The authorization must also include a statement about any direct or indirect remuneration it has or will receive from a third party when the authorization sought is for marketing purposes.

Content when authorization is requested by a covered entity: The covered entity must provide the individual with a copy of the signed authorization when the covered entity seeks the authorization. Therefore, covered entities may want to consider printing their authorization form on multiple-part paper (carbon or carbonless) and listing the distribution of the various copies on the front page. For example, text on the authorization form might indicate that the top copy is to be maintained by the covered entity, the second copy is to be given to the individual, and the third copy is to accompany any disclosure of protected health information.

Compound Authorizations

An authorization may be combined with another document to create a compound authorization only as described below:

Research: An authorization for the use or disclosure of protected health information for a research study may be combined with any other type of written permission for the same research, including a consent to participate in the research or another authorization to disclose protected health information from the research.

Psychotherapy notes: An authorization for the use or disclosure of psychotherapy notes may be combined with another authorization for the use or disclosure of psychotherapy notes. For example, an individual can complete an authorization that requests his psychotherapy notes be sent to his attorney and a second mental health professional. An authorization for psychotherapy notes may not be combined, however, with an authorization for disclosure of general health information or research.

General: An authorization for the disclosure of general health information may be combined with another authorization for the disclosure of general health information. However, a general authorization that conditions treatment, payment, enrollment, or eligibility for benefits on completion may not be combined with another authorization. For example, an insurance company may not combine an authorization they require as a condition of enrolling in their plan with another authorization.

Defective Authorizations

The privacy rule declares invalid any authorization with the following defects:

- The expiration date or event has passed or occurred
- The authorization is missing one or more items of content described above
- The authorization is known to have been revoked
- The authorization violates a privacy rule standard on conditioning or compound authorizations
- Material information in the authorization is known to be false

Discussion

Perhaps one of the unintended consequences of the privacy rule is that handwritten, patient-generated authorizations may often be invalid under the rule, as most do not contain an expiration date or a statement about the individual's right to revoke the authorization. To minimize the number of invalid authorizations received, the covered entity may want to post its authorization form on its Web site and encourage individuals to use it. Covered entities may also want to provide instructions for obtaining the authorization form on appropriate automated telephone messages. In addition, covered entities may find it beneficial to distribute new authorization forms to organizations that routinely request patient health information, such as local law firms, insurance companies, and law enforcement agencies.

Substance Abuse

The Confidentiality of Alcohol and Drug Abuse Patient Records Rule applies to federally assisted alcohol and drug abuse programs. The rule establishes the following content requirements for authorizations to disclose individually identifiable patient health information generated by alcohol or drug abuse programs:

- The specific name or general designation of the program or person permitted to make the disclosure
- The name or title of the individual or the name of the organization to which disclosure is to be made
- Patient name
- Purpose of disclosure
- How much and what kind of information is to be disclosed
- The signature of the patient or legal representative
- The date on which the authorization is signed
- A statement that the authorization is subject to revocation at any time except to the extent that the program or person who is to make the disclosure has already acted in reliance on it. Acting in reliance includes the provision of services in reliance on a valid authorization or consent to disclose information to a third-party payer
- The date, event, or condition upon which the authorization will expire if not revoked. This date, event, or condition must ensure that the authorization will last no longer than reasonably necessary to serve the purpose for which it is given

State

Individual states may have laws or regulations defining authorization content. For example, some state laws require that authorizations to disclose HIV are separate and apart from any other authorizations an individual may sign for release of protected health information. When such laws or regulations exist, consult section 160 of the HIPAA privacy rule to determine how to apply the preemption requirements.

Recommendations

- Study both federal and state requirements for authorizations.
- Draft a sample authorization form that complies with federal and state laws and regulations. (See "Sample Authorization to Use or Disclose Health Information," below)
- Ask the risk manager and legal counsel to review your draft authorization form.
- Update or generate new policies and procedures relative to the new authorization.
- Order appropriate quantities of the approved authorization form.
- Educate and train staff.
- Replace all supplies of the old authorization forms with new ones.
- Post the approved authorization form on the organization's Web site.
- Distribute new authorization forms to frequent requestors.

Sample Authorization to Use or Disclose Health Information

Patient Name: _____

Health Record Number: _____

Date of Birth: _____

1. I authorize the use or disclosure of the above named individual's health information as described below.

2. The following individual(s) or organization(s) are authorized to make the disclosure:

3. The type of information to be used or disclosed is as follows (check the appropriate boxes and include other information where indicated)

- ☐ problem list
- ☐ medication list
- ☐ list of allergies
- ☐ immunization records
- ☐ most recent history
- ☐ most recent discharge summary
- ☐ lab results (please describe the dates or types of lab tests you would like disclosed):
- ☐ x-ray and imaging reports (please describe the dates or types of x-rays or images you would like disclosed):
- ☐ consultation reports from (please supply doctors' names):
- ☐ entire record
- ☐ other (please describe):

4. I understand that the information in my health record may include information relating to sexually transmitted disease, acquired immunodeficiency syndrome (AIDS), or human immunodeficiency virus (HIV). It may also include information about behavioral or mental health services, and treatment for alcohol and drug abuse.

5. The information identified above may be used by or disclosed to the following individuals or organization(s):

Name:

Address:

Name:

Address:

6. This information for which I'm authorizing disclosure will be used for the following purpose:

- ☐ my personal records
- ☐ sharing with other health care providers as needed
- ☐ other (please describe):

7. I understand that I have a right to revoke this authorization at any time. I understand that if I revoke this authorization, I must do so in writing and present my written revocation to the health information management department. I understand that the revocation will not apply to information that has already been released in response to this authorization. I understand that the revocation will not apply to my insurance company when the law provides my insurer with the right to contest a claim under my policy.

8. This authorization will expire (insert date or event):

If I fail to specify an expiration date or event, this authorization will expire six months from the date on which it was signed.

9. I understand that once the above information is disclosed, it may be redisclosed by the recipient and the information may not be protected by federal privacy laws or regulations.

10. I understand authorizing the use or disclosure of the information identified above is voluntary. I need not sign this form to ensure healthcare treatment.

Signature of patient or legal representative

Date

If signed by legal representative, relationship to
patient _____

Signature of witness

Date

Distribution of copies: Original to provider; copy to patient; copy to accompany use or disclosure

Note: The types of documents listed on the authorization form may need to be modified depending on the particular health care setting. Authorizations for marketing need to disclose whether remuneration was received by the covered entity. This form was developed by AHIMA for discussion purposes only. It should not be used without review by your organization's legal counsel to ensure compliance with other federal and state laws and regulations.

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