

Forms and Documentation for HIPAA Privacy--A Closer Look (HIPAA on the Job)

Save to myBoK

by Margret Amatayakul, RHIA, FHIMSS

Policy and procedure documentation is essential to comply with HIPAA's final rule on privacy. Many of the documentation requirements are not new to healthcare, but new details are associated with the documentation, and there are some new procedures to follow to ensure patient rights.

The basis for changes in the consent and authorization for use and disclosure of protected health information is to ensure that a covered entity does not use or disclose such information except as required or permitted by the rule. "Consent or Authorization?" below describes the requirements of the consent and authorization and compares and contrasts their content.

Use and disclosure of protected health information for marketing and fund-raising purposes is one of the issues privacy activists and healthcare organizations are most concerned about, obviously with different points of view. Such use can be devastating to an individual—consider an example of a person receiving promotional material on cancer treatment when only a screening study was performed. Alternatively, healthcare organizations find such material can be useful in reminding patients about the need for screening tests. In response to industry requests, the final privacy rule was changed to include some limited use and disclosure permitted for marketing and fund raising. "Marketing and Fund-raising Requirements," below, outlines the requirements for such uses and disclosures.

The primary document upon which individuals will base their trust in healthcare organizations maintaining the confidentiality of their protected health information is the notice of privacy practices. Much like the notice of patient rights and responsibilities given to patients today and prominently displayed in provider settings, this notice is essentially a trust agreement between the covered entity and individual. Key elements of its content are listed in "Notice of Privacy Practices," below. (For more on this topic, see the practice briefs on notice of information practices and marketing purposes in this issue.)

Consent or Authorization?

Consent	Authorization
<p>Purpose: To carry out treatment, payment, and healthcare operations.</p>	<p>Purpose: To use or disclose protected health information except as otherwise permitted.</p>
<p>Exceptions: Indirect treatment relationship, for inmates, in emergency treatment situations, if required by law to treat an individual, and where there are substantial communication barriers. (Attempt made to obtain consent and reason why consent was not obtained should be documented.)</p>	<p>Inclusion: A consent for uses and disclosures of protected health information is required for treatment, payment, and healthcare operations. For use and disclosure beyond treatment, payment, and operations, a specific authorization is required.</p> <p>An authorization must be obtained for any use or disclosure of psychotherapy notes except for use by the originator of the notes for treatment,</p>

	in training programs, or to defend a legal action, and for oversight of the originator.
Redisclosure: Must state that redisclosure will not be made without authorization.	Redisclosure: Authorization must identify person(s) or classes of persons to whom entity may make requested use or disclosure.
Conditioning: Provider may condition treatment on provision of consent.	Conditioning: A provider may not condition treatment or payment on an authorization except for research-related treatment and when the disclosure is necessary to determine payment of a claim.
Combination: A consent may not be combined with the notice of privacy practices. A consent may be combined with other types of legal permissions (e.g., informed consent for treatment) if it is visually and organizationally separate from the other permission, is separately signed, and if authorization is for research, it allows for revocation. Joint consents are allowed from providers who participate in an organized healthcare arrangement, but they must include the name of all entities. A revocation of consent for an entity is a revocation for all. Where there are conflicting consents, the more restrictive applies. Provider may attempt to resolve the conflict with a new consent or obtaining the individual's designated preference.	Combination: An authorization may not be combined with any other document except an authorization for research, when both are for use of psychotherapy notes, and when there is no condition placed on the provision of treatment or payment.
Expiration: None	Expiration: Date or event that relates to the individual or purpose of use required. Expiration period often governed by state law.
Retention: Signed consent forms must be retained for six years.	Retention: Signed authorizations must be retained for six years.
Content requirements: Inform individual in plain language of uses and disclosures, refer individual to notice of privacy practices for more complete information, state terms of notice change, state that individual has right to request restrictions but covered entity is not required to agree with request but if so, must	Content requirements: Description in plain language of information to be used or disclosed that identifies the information in a specific and meaningful fashion, name or other identification of person or class of persons authorized to make the requested use or disclosure or to whom the provider may make the requested

<p>abide by request, state that the individual has the right to revoke the consent except to the extent that action has already been taken, and be signed and dated by the individual.</p>	<p>use or disclosure, an expiration date or event, a statement of the individual's right to and description of how to revoke the authorization, a statement that information may be subject to redisclosure by the recipient and no longer be protected by this rule, signature and date, and (if signed by a personal representative) a description of representative's authority.</p>
<p>Defective consents: Are not valid and are those lacking any element of the content requirements.</p>	<p>Defective consents: Those with expiration date that has passed, is incomplete, has been revoked, lacks a required element, or contains information known to be false.</p>
	<p>Additional requirements: Specific to whether the authorization is for the provider to request information, others are requesting information from the provider, or the authorization is for research related to treatment.</p>

Marketing and Fund-Raising Requirements

<p>Marketing</p>	<p>Fund-raising</p>
<p>Authorization Requirement: Provider may not use or disclose information for marketing without an authorization, with certain exceptions: authorization is not required when communication is face to face, concerns products of nominal value, or concerns health-related products and services of the covered entity or a third party and meets communication conditions.</p>	<p>Authorization Requirement: Provider may use or disclose to a business associate or institutionally related foundation certain information for fund raising for its own benefit without authorization.</p>
<p>Content: Marketing communications must prominently state any remuneration, be distributed to a broad cross-section, and contain instructions to opt out of future communications.</p>	<p>Content: Fund-raising pieces must contain instructions to opt out of future communications.</p>

<p>Information used: If providers uses information to target communication based on health status, the entity must determine that product is beneficial to the target group, explain why the individual was targeted and how product relates, and make reasonable efforts to ensure individuals who opt out are not sent such communications.</p>	<p>Information used: Demographic information relating to an individual and dates of care provided to individual may be used</p>
--	--

Notice of Privacy Practices—Required Elements

<p>Header: "THIS NOTICE DESCRIBES HOW MEDICAL INFORMATION ABOUT YOU MAY BE USED AND DISCLOSED AND HOW YOU CAN GET ACCESS TO THIS INFORMATION. PLEASE REVIEW IT CAREFULLY."</p>
<p>Description and at least one example of types of uses and disclosures provider may make for treatment, payment, and operations.</p>
<p>Description of other purposes for which provider is permitted or required to use or disclose protected health information without the individual’s written consent or authorization.</p>
<p>Description of any more stringent law that applies.</p>
<p>Descriptions must include sufficient detail to place individual on notice of such uses and disclosures.</p>
<p>Statement that other uses and disclosures will be made only with the individual’s written authorization and that the individual may revoke such authorization.</p>
<p>Separate statements must be made for certain uses and disclosures if the provider intends to contact the individual to provide appointment reminders, information about treatment alternatives, or other benefits and services that may be of interest to the individual and may contact the individual to raise funds.</p>

Contain statement of individual's rights and a brief description of how the individual may exercise these rights, including right to request restrictions, right to receive confidential communications, right to inspect and copy information, right to amend information, right to receive an accounting of disclosures except for those for treatment, payment, and operations, and right to receive the notice electronically or on paper.
Provider's duties must be included: to maintain the privacy and provide notice, to abide by terms of notice, and to provide revised notice.
Statement that individuals may complain to provider and to secretary of HHS if they believe their privacy rights have been violated.
Name, title, and telephone number of person or office to contact for further information.
Effective date.
Optional elements may include any further limitations the provider makes on uses and disclosures.

Margret Amatayakul is the founder and president of MargretVA Consulting, LLC, an independent consulting firm based in Schaumburg, IL. She can be reached at margretcpr@aol.com

Article citation:

Amatayakul, Margret. "Forms and Documentation for HIPAA Privacy--a Closer Look" (HIPAA on the Job series). *Journal of AHIMA* 72, no.5 (2001): 16A-D.

Driving the Power of Knowledge

Copyright 2022 by The American Health Information Management Association. All Rights Reserved.