



TMA Privacy and Civil Liberties Office

Information Paper



Uses and Disclosures of PHI When an Authorization is Required

HIPAA Privacy ♦ November 2012

I. Supporting Policies for this Information Paper

- A. The Health Insurance Portability and Accountability Act of 1996 (HIPAA) Privacy Rule (45 CFR 164.508) establishes requirements regarding when authorization is required to use and disclose protected health information (PHI).
- B. The Department of Defense Health Information Privacy Regulation (DoD 6025.18-R, Chapter 5) implements the above provision of the HIPAA Privacy Rule within the Military Health System (MHS).

II. Definitions Associated with Uses and Disclosures of PHI When an Authorization is Required

- A. Covered Entity: A health plan or a healthcare provider within the MHS that transmits any health information in electronic form to carry out financial or administrative activities related to healthcare.
- B. Disclosure: The release, transfer, provision of access to, or revealing in any other manner of PHI outside the entity holding the information.
- C. Military Health System (MHS): All DoD health plans and all DoD healthcare providers that are, in the case of institutional providers, organized under the management authority of, or in the case of covered individual providers, assigned to or employed by TMA, the Army, the Navy, or the Air Force.
- D. Protected Health Information (PHI): Individually identifiable health information that is transmitted or maintained by electronic or any other form or medium, except as otherwise contained in employment records held by a covered entity in its role as employer.
- E. Psychotherapy Notes: Notes recorded by a healthcare provider who is a mental health professional documenting or analyzing the contents of conversation during a private counseling session or a group, joint, or family counseling session and that are separated from the rest of the individual's medical record.

1. Psychotherapy notes *excludes*:
 - Medication prescription and monitoring, counseling session start and stop times, the modalities and frequencies of treatment furnished, results of clinical tests, and
 - Any summary of the following items: Diagnosis, functional status, the treatment plan, symptoms, prognosis, and progress to date.

F. Use: With respect to PHI, the sharing, employment, application, utilization, examination, or analysis of such information within an entity that maintains such information.

III. Guidance Regarding Uses and Disclosures of PHI When an Authorization is Required

A. General Rule. A covered entity may not use or disclosure PHI without a valid authorization, except if such use or disclosure is otherwise required or permitted by the Privacy Rule.

B. Valid Authorization.

1. The authorization shall be written in plain language and contain the following core elements:
 - a) A description of the information to be used or disclosed;
 - b) A description of each purpose of the requested use or disclosure;
 - c) The name or other specific identification of the person(s) authorized to make the requested use or disclosure;
 - d) The name or other specific identification of the person(s) to whom the requested use or disclosure may be made;
 - e) An expiration date or event that relates to the use or disclosure; and
 - f) Signature of the individual and date. If signed by a personal representative, a description of the representative's authority.
2. In addition to the core elements, the authorization shall contain the following:
 - a) Statement of the individual's right to revoke authorization, exceptions to this right, and instructions on how the revocation can occur;
 - b) Statement that a covered entity may condition treatment, payment, enrollment or eligibility for benefits, if the individual refuses or fails to provide an authorization; and
 - c) Statement that the disclosed information may be subject to re-disclosure by the recipient, and it may no longer be protected by the Privacy Rule.
3. A covered entity within the MHS should use DD Form 2870, "Authorization for Disclosure of Medical or Dental Information," December, 2003. This form can be downloaded from the TRICARE Management Activity's (TMA) web site: <http://www.tricare.mil/tma/mmsso/downloads/dd2870.pdf>.

- C. Psychotherapy Notes. A covered entity shall obtain an authorization for any use or disclosure of psychotherapy notes, except:
1. For a use or disclosure that is permitted by Chapter 7 of DoD 6025.18-R or required by the Secretary of Health and Human Services.
 2. To carry out the following treatment, payment, or healthcare operations:
 - a) Use by the creator of the notes for treatment;
 - b) Use or disclosure by the covered entity for training purposes; or
 - c) Use or disclosure by the covered entity to defend itself in a legal action or other proceeding brought by the individual.
- D. Alcohol and Drug Abuse Program. Under paragraph C8.9 of DoD 6025.18-R, an authorization is generally required for uses and disclosures of alcohol and drug abuse program patient records.
- E. Marketing. A covered entity must obtain an authorization for any use or disclosure of PHI for marketing, except if the communication is in the form of:
1. A face-to-face communication made by a covered entity to an individual; or
 2. A promotional gift of nominal value provided by the covered entity.
- F. Research.
1. A covered entity must obtain authorization for the use or disclosure of PHI for a research study, unless the research involves minimal risk as noted under paragraph C7.9.
 2. For more information on research within the DoD and TMA, please refer to the “Human Research Protection Program” web page at:
<http://www.tricare.mil/tma/privacy/hrpp/default.aspx>.
- G. Employers. A covered entity must obtain an authorization for any disclosure of PHI to an individual’s employer, except if:
1. The covered entity is a member of the employer’s workforce and provides healthcare to an employee, at the employer’s request, in order to conduct an evaluation relating to medical surveillance of the workplace or to evaluate whether the individual has a work related illness or injury;
 2. The PHI disclosed consists of findings concerning a work-related illness or injury or a workplace-related medical surveillance;
 3. The employer needs such findings in order to comply with its obligations under Regulations of the Occupational Safety and Health Administration, the Mine Safety and Health Administration, or under State law; and
 4. The covered entity provides written notice of the above permissible disclosures to the individual at the time the healthcare is provided, or by posting the notice in a prominent location.

H. Individual Rights.

1. Individuals have the right to inspect or obtain a copy of their PHI that is used or disclosed based on an authorization.
2. Individuals have the right to receive a copy of the signed authorization.
3. Individuals have the right to refuse to sign an authorization.
 - a) A covered entity may not condition the delivery of treatment, payment, enrollment, or eligibility for benefits on the provision of an authorization, except:
 - i. For research-related treatment; or
 - ii. For healthcare that is provided only for creating PHI for disclosure to a third party, such as physical exams performed to participate in a school's extracurricular activities.
4. Individuals may revoke an authorization at any time, as long as the revocation is in writing, except if:
 - a) The covered entity has already taken action on the authorization; or
 - b) The authorization was obtained as a condition of obtaining insurance coverage.

I. Documentation. A covered entity must document and retain any signed authorization and/or revocation as required by section C14.10.