



HIPAA Authorizations: A Necessity for Fundraising, Research and Operations

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Authorizations: Defined

Except as otherwise permitted or required by HIPAA regulations, a covered entity may not use or disclose protected health information (PHI) without an authorization that is valid. When a covered entity obtains or receives a valid authorization for its use or disclosure of PHI, such use or disclosure must be consistent with such authorization

Core Elements of a Valid Authorization

- The information
- Who may use or disclose the information
- Who may receive the information
- Purpose of the use or disclosure
- Expiration date or event
- Individual' signature and date

Core Elements of a Valid Authorization

- Right to revoke authorization
- Right to refuse signature authorization
- May not require signature for treatment (except research related)
- Re-disclosures not protected
- Plain language requirement
- Copy to the individual

Defective Authorizations

- An authorization is not valid if any of the following defects exist within the submitted document:
 - The expiration date has passed or the expiration is known by the covered entity to have occurred
 - The authorization has not been filled out completely
 - The authorization is known by the covered entity to have been revoked
 - Any material information in the authorization is known by the covered entity to be false

Compound Authorizations

- An authorization for use or disclosure of PHI may not be combined with any other document to create a compound authorization except:
 - When an authorization for the use or disclosure of PHI for research study is combined with any other types of written permission for the same research study
 - When an authorization for a use or disclosure of psychotherapy notes may be combined with another authorization for a use or disclosure of psychotherapy notes

Prohibition of Conditioning Authorizations

- A covered entity may not condition the provision to an individual of treatment, payment, enrollment in a health plan or eligibility for benefits on the provision of authorization unless:
 - The provision is for research-related treatment which requires an authorization for the use or disclosure of PHI
 - The provision is for enrollment in a health plan when an authorization is sought for the health plan's eligibility or enrollment determinations relating to the individual or for health plan's underwriting or risk rating determinations. Use or disclosure of psychotherapy notes under this provision is not acceptable
 - The provision of healthcare by the covered entity is solely for the purpose of creating PHI for disclosure to a third party on provision that appropriate authorization for disclosure has been obtained

Revocation of Authorizations

- An individual may revoke an authorization at any time provided that the revocation is in writing except to the extent that:
 - The covered entity has taken action in reliance
 - If the authorization was obtained as a condition of obtaining insurance coverage, other law provides the insurer with the right to contest a claim under the policy or the policy itself

Tracking Authorizations

- Various Methods:
 - The organization can have one repository where all authorizations are provided
 - Authorizations can be maintained and tracked via the medical record
 - Organizations must determine if their individual entities will use a database to track separate authorizations or if they will be maintained and tracked by the organization as a whole
 - Tracking of individual authorizations may occur via information systems in order to easily revoke authorizations; however, information systems are not required to track authorizations
Revocations must occur swiftly

Authorizations for Release of Medical Records

- Authorizations are required for the release of medical records
- Are organizations required to provide a copy of the authorization to the individual?
 - No, the regulation states if a covered entity seeks an authorization from an individual for a use or disclosure of PHI, the covered entity must provide the individual with a copy of the signed authorization

**In this case, the covered entity is not seeking the authorization, the patient is providing it*

Psychotherapy Notes

- Covered entities must obtain authorization for any use or disclosure of psychotherapy notes, except:
 - To carry out certain treatment, payment and healthcare operations
 - When a use or disclosure is required by the regulations
- Authorization for the use or disclosure of psychotherapy notes may not be combined in a general authorization form

Note: Covered entities should be especially aware of how state laws deal with psychotherapy notes. In addition, covered entities should re-evaluate how psychotherapy notes are defined within the organization

How will HIPAA change the way we find patient stories?

- Authorizations will need to be provided to the facility from patients prior to the release of PHI to those not involved in treatment, payment or operations
- The communications department is **NOT** part of the health care treatment, payment or operations under HIPAA
- However, the Special Constituency Program does fall within HIPAA guidelines as patient advocates
- General discussions may take place between providers and the communications department prior to a signed authorization as long as PHI is not disclosed

How will HIPAA change the way we deal with the media?

- The facility news office will provide news media with patient condition reports **UNLESS** the patient opts out of the directory
- Statements may be provided to the media by the patient or patient's family describing the condition of the patient
- These statements do not need to be authorized by the provider
- General statements may be provided by the facility about a specific health care crisis (e.g., epidemics, carbon monoxide illnesses)

Fundraising

- For HIPAA purposes, there are three fundraising types:
 - Direct patient contact
 - Direct mailings not based on PHI
 - Direct mailings based on PHI

A determination needs to be made as to whether or not authorizations will be obtained for direct mailings based on PHI or as to whether or not this practice will need to cease if authorizations are not obtained.

Fundraising Cont.

- Authorizations will need to be provided to the facility from patients prior to the release of PHI to the fundraising team
- Databases containing PHI will continue to be used after April 14, 2003, but PHI will not be used
- Providers will continue to be encouraged to have patients contact the development office directly to discuss fundraising opportunities. In addition, providers will be encouraged to notify the development office with patients who may be potential donors. However, no PHI will be provided to the development office
- Traditional “Marketing” activities will increase and “Fundraising activities” will decrease based on HIPAA definitions

VIPs

- Authorizations for VIPs will need to be obtained prior to any PHI being released directly to administration or via the VIP distribution list if the VIP patient has been addressed in your organization or has opted out of the directory
- Certain VIPs will have spokespersons. No authorization is required for the spokesperson. However, if a physician or organizational spokesperson accompanies them in discussions with the press, an authorization should be obtained

How will HIPAA change the way we manage photography and B-roll?

- Authorizations will need to be provided to the facility from patients prior to the release of PHI to those not involved in treatment, payment or operations
- The communications department is **NOT** part of the health care treatment, payment or operations under HIPAA
- Patients signing a confidentiality agreement to use photos/videos prior to April 14, 2003 will be grandfathered under HIPAA

Research Defined

- Researchers must obtain approval from the IRB to use PHI
- Researchers can grant approval without patient authorization under defined circumstances
- De-identified data should be used when possible
- Additional steps to become HIPAA compliant will be added for researchers

Athletes

- Athletes attending universities or schools need to provide authorizations related to the sharing of PHI to the media and conferences or sports related injuries (e.g. Dahntay Jones of Duke University suffered a fractured tibia)
- Authorizations still need to be specific. Example language may need to include “This authorization will expire upon completion of eligibility by this athlete.”

Case 1

Immediate live birth data has been requested by four separate counties' public health departments to Hospital A. The health departments are targeting Medicaid mothers so they can provide postnatal care within a reasonable time frame. This information does not become public for one month. The health departments are only interested in those mothers living in their counties, not the other mothers. This service has been provided for fifteen years, but is not mandated by law. Can Hospital A provide this information to the public health departments without obtaining authorizations from the mothers involved?

Case 2

Jeff Foxworthy is the MC of your annual Children's event that raises money for your children's hospital. Jeff will typically spend some time with the pediatric patients prior to the big event in order to better understand what the children are experiencing. Is an authorization required for Jeff to speak with the children? Does Jeff need an authorization to relay a healthcare story from a child he met earlier in the day?

Case 3

A famous celebrity is a patient in Hospital B. The patient's condition worsens due to an unforeseen event, and three weeks later the celebrity expires. During these three weeks, the family continues to feed the media information related to the case and provides the press with incredible details related to PHI. Much of the information provided to the media is inaccurate and negatively impacts Hospital B. Is Hospital B allowed to respond to the negative criticism with facts related to the case without obtaining an authorization from the patient or designated legal guardian?

Case 4

Hospital C has many centers: Cancer, Heart, Pediatrics, OB/GYN and Eye Center. Each of these centers have historically conducted fundraising based on the lists of patients seen at the each individual center. These lists are driven by diagnoses and the fundraising material is very specific (e.g. the Heart Center sends fundraising material related to cardiac initiatives). Are authorizations required to continue this fundraising practice?

Case 5

The research department of your organization has a history of conducting reviews preparatory to research. In fact, private companies are so impressed with the speed of these reviews that your organization has become a favorite for many of the companies. However, many of these companies are concerned that the new HIPAA regulations will slow down the process and would prefer for organizations to conduct reviews as they have in the past. Does the organization need authorization from all patients prior to the reviews preparatory to research? Do you believe HIPAA will slow down the review process? Why?