



# TMA Privacy Office Guidance

Records Management ♦ FOIA ♦ DUAs ♦ HIPAA Compliance ♦ Privacy Act/System of Records ♦ PIAs



## USE AND DISCLOSURE: WHEN AN AUTHORIZATION IS REQUIRED

HIPAA Privacy ♦ August 2008

### Purpose

The purpose of this paper is to provide guidance on when authorization is required for uses and disclosures of Protected Health Information (PHI), and to ensure that the Military Health System (MHS) covered entities apply appropriate safeguards to prevent any intentional or unintentional use or disclosure of PHI that would be in violation of the Health Insurance Portability and Accountability Act (HIPAA) of 1996.

The DoD Health Information Privacy Regulation (DoD 6025.18-R), Chapter 5, and HIPAA (45 CFR §164.508) establish the requirement for when an authorization is required for uses and disclosures of PHI. This paper provides clarification and guidance as it relates to when an authorization is required for uses and disclosures of PHI.

### Guidance

Except as otherwise permitted by DoD 6025.18-R, a covered entity may not use or disclose PHI without a valid authorization.

There are three prescribed uses for an authorization under the HIPAA Privacy Rule. The first pertains to requests by the patient when the individual gives the covered entity permission to release information to a third party. The second pertains to requests by the covered entity when there is a need to use or disclose PHI beyond treatment, payment and health care operations (TPO). The third relates to authorizations for research beyond the scope of TPO requirements.

### General Provision

Use and disclosure of psychotherapy notes requires an authorization, except in instances to carry out TPO, for use by the originator for treatment, or for use by the covered entity for training purposes.

- A. **Authorizations Requested by Patient:** Must be in plain language and
- B. contain the following core elements:
  - 1) Description of information to be used or disclosed
  - 2) Name of person (s) authorized to make the request
  - 3) Name of person (s) to whom the requested use or disclosure may be made
  - 4) An expiration date or an expiration event
  - 5) Statement of the patient's right to revoke authorization, exceptions to this right and how the patient may revoke the authorization

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- 6) Statements that information used or disclosed may be subject to re-disclosure by the recipient and thereby no longer protected under HIPAA
  - 7) Signature of the patient and date
  - 8) If signed by patient's representative, a description of the representative's authority is required.
- B. Authorizations Requested by MTF:** If the authorization is requested by the covered entity for its own use, the authorization must include the following in addition to the core elements above:
- 1) A statement that the covered entity will not "condition treatment, payment, enrollment or eligibility" upon authorization
  - 2) A description of each purpose of the requested use or disclosure
  - 3) A statement that the patient may inspect or copy the PHI to be used or disclosed
  - 4) A statement that the patient may refuse to sign the authorization
  - 5) A statement that the use or disclosure will result in payment to the covered entity by a third party, if applicable
- C. Authorizations for Research Beyond the Notice of Privacy Practices (NoPP):** If the authorization is for research purposes not already addressed in the NoPP, the authorization must include the following in addition to the core elements previously mentioned:
- 1) A description of each purpose of the requested use or disclosure related to the research
  - 2) A statement that the covered entity will not "condition treatment, payment, enrollment or eligibility" upon authorization to allow use of their PHI in the research activities
  - 3) A statement that the patient may refuse to sign the authorization as it applies to research

### *Patients Rights Regarding Authorizations*

Individuals have the right to inspect or copy any of their PHI that is used or disclosed based on authorization. Patients also have the right to refuse to sign an authorization. In this instance, the covered entity cannot "condition treatment, payment, enrollment" in a health plan or eligibility for benefits unless treatment is research-related or treatment is solely for the purpose of creating PHI for disclosure to a third party.

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### *Patient Revocation of Authorization*

An individual may revoke an authorization at any time, so long as the revocation is in writing. Unless the covered entity has taken some action in reliance upon the authorization, the authorization is effectively revoked. For example, a covered entity would not be required to retrieve information that it disclosed in accordance with the authorization once that authorization is revoked.

### *Conflicting Consents and Authorizations*

If conflicting authorizations or restrictions are on file, the most restrictive document takes precedence. The MTF must not use or disclosure what is expressly excluded from the consent or authorization. Additionally, an MTF may continue to use or disclose PHI with the patient's consent or authorization made prior to the HIPAA Privacy compliance date of April 14, 2003, even though the consent does not strictly comply with the requirements for consent or authorization.

DD Form 2870 is to be used for authorizations. This form can be downloaded from the TMA Web site at: <http://www.dtic.mil/whs/directives/infomgt/forms/eforms/dd2870.pdf>.

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