

Authorizations Under HIPAA*

Protected health information may be disclosed for the purposes of treatment, payment and health care operations when a written “consent” is obtained from the patient who is the subject of the medical information. In order to disclose protected health information for all other purposes, a physician practice must obtain a signed “authorization” from the patient. [There are instances when neither an authorization nor consent must be obtained to release information. For a discussion of those situations, see the section entitled Uses and Disclosures for which Consent, Authorization, or Opportunity to Agree or Object is Not Required].

Unlike a general consent form, authorizations are specific and detailed as to where and to whom the information is to be released. A physician practice may not refuse to treat an individual based on the fact that the individual refuses to sign an authorization, unless the health care is solely for the purpose of creating protected health information for disclosure to a third party on provision of an authorization for the disclosure of the protected health information to such third party.

When must a practice have a signed authorization form from a patient in order to release patient information? Here are some examples:

- An attorney needs information to evaluate an injury claim and asks the individual to authorize disclosure of records relating to the injury to the attorney;
- A patient’s employer wants to review the results of a pre-employment physical exam;
- An individual has applied for life or disability insurance and the insurance company would like to review the individual’s medical history;
- A school asks for a copy of a child’s health information or a children’s camp requests such health information;

- ❑ A physician practice wants to conduct specific forms of marketing to its patients.
- ❑ A physician practice must obtain the individual's authorization to use or disclose psychotherapy notes to carry out most treatment activities, payment activities or health care operations. [See discussion of Psychotherapy Notes]

Authorization Forms

In order for a written authorization to be valid under the HIPAA regulation, it must contain certain core elements. If these elements are not contained in the authorization form, the authorization is defective. The core elements for an authorization include the following:

1. The authorization must include a description of the information to be used or disclosed that identifies the information in a specific and meaningful fashion. The description of the information must be sufficiently specific for a physician practice to know which information the authorization references and only the information referenced should be released. If the entire medical record is to be released, the authorization should be specific enough "to ensure that the individual has a clear understanding that the entire record will be disclosed." If a physician practice does not understand what information is referred to in the authorization, the practice should seek clarification prior to the release.
2. The authorization must include the name or class of persons authorized to use or disclose the protected health information. [i.e. – "Doctor Elizabeth Jones" or "All doctors and health care providers I have seen since 1995."]
3. The authorization must include the name of the person or class of persons to whom the physician practice is authorized to make the use or disclosure. [i.e. – "My attorney, Bob Smith" or "the Social Security Administration"]

4. The authorization must include a description of each purpose of the requested use or disclosure. The statement “at the request of the individual” is a sufficient description of the purpose when an individual initiates the authorization and does not, or elects not to, provide a statement of the purpose.
5. The authorization must have a specific expiration date, time period or event. [i.e. – “June 15, 2003”; “one year from the date this authorization is signed.”] If an event is listed, the event must be directly relevant to the individual or the purpose of the use or disclosure.
6. The authorization must contain the signature of the individual patient or a personal representative of the patient, and the date of the signature. If the authorization is signed by a personal representative, a description of such representative’s authority to act for the individual must also be included.

In addition, an authorization form must include statements to place the individual patient on notice of the following:

1. The authorization must state that the individual has the right to revoke the authorization in writing, unless action has been taken in reliance upon the authorization, as well as instructions on how the individual may revoke the authorization. If such information is contained in a physician practice’s Notice of Privacy Practices, the authorization may simply reference the Notice.
2. The authorization must contain a statement that the physician practice may not condition treatment or payment on whether the individual signs the authorization, unless the health care is solely for the purpose of creating protected health information for disclosure to a third party on provision of an authorization for the disclosure of the protected health information to such third party.

3. The authorization must contain a statement that information used or disclosed pursuant to the authorization may be subject to re-disclosure by the recipient and no longer protected by federal regulation.

While the requirements of HIPAA will become generally known within the health care community, others outside of the health care community may not be familiar with HIPAA. Schools, life insurance companies and attorneys will probably continue to use releases that they have used for years. If a practice discloses information pursuant to one of these releases, and the release does not meet HIPAA standards, the practice will be in violation of HIPAA. Therefore, practices should review any authorization to release medical records to ensure the authorization complies with HIPAA. To assist in educating others on the requirements of HIPAA, KMA has prepared a sample letter to inform the person who sent the authorization that the document does not meet HIPAA standards. Such a document may also be used as a checklist for the practice. KMA has also prepared a sample authorization form for physician practices, although a great deal must be filled in by the practice or patient to adhere to HIPAA standards.

As a general rule, authorizations may not be combined with other documents to create a compound authorization. A physician practice also may not act on an authorization that does not meet the guidelines set out above or that contains any of the following defects:

- ❑ The expiration date has passed or the expiration event is known to have occurred;
- ❑ The authorization has not been filled out completely, with respect to an element described above;
- ❑ The authorization is known by the physician practice to have been revoked;
- ❑ Any material information in the authorization is known by the physician practice to be false.

If a physician practice seeks an authorization from an individual for a use or disclosure of protected health information, the practice must provide the individual with a copy of the signed authorization. Physician practices must also retain all signed authorizations. An individual may revoke an authorization at any time, provided that the revocation is in writing and has not been acted upon by the physician practice.

In addition to HIPAA, Kentucky law recognizes a patient's right of privacy in the content of a patient's record and a patient's communication with a health care provider with regard to mental health or chemical dependency. [Records regarding mental health under Kentucky law differ somewhat from those that constitute "psychotherapy notes" under HIPAA. See the discussion regarding psychotherapy notes.] A patient's authorization should include the specific information to be released, particularly when dealing with mental health or chemical dependency records. Drug or alcohol treatment records from federally supported programs are also protected. If these records are to be released, the authorization must mention these areas specifically rather than attempting to include them within the scope of an authorization to release "all the patient's records," or some similar general language. Also, records containing reference to sexually transmitted diseases should not be released without specific authorization.

* The source of this document is the Kentucky Medical Association.

