

AUTHORIZATION FOR USE AND DISCLOSURE OF PHI

Policy Number: [Enter]

Effective Date: [Enter]

[Note: This Policy addresses authorizations for use and disclosure of PHI for providers and does not include additional requirements that apply to health plans.]

I. Policy:

A. Purpose

This policy establishes the requirements for the creation and use of authorizations required under the HIPAA Regulations.

Minnesota Law does not differentiate between authorizations and consents but instead refers to informed consent language specifically in identifying how information will be disclosed.

However, the term “authorization” has a specific meaning under HIPAA. As discussed in this Policy, a valid HIPAA authorization form must include specific elements. While obtaining HIPAA authorization satisfies the consent requirements under Minnesota Law, obtaining consent that satisfies Minnesota law does not necessarily constitute a valid HIPAA authorization (unless all of the HIPAA requirements are satisfied).

For more information on consent requirements under Minnesota law, refer to policy number [Enter], Consent to Use and Disclose Health Information Under Minnesota Law.

B. Policy Implementation

The general rule is that except as otherwise permitted under the HIPAA Regulations, [Organization] may not use or disclose PHI without valid authorization from the individual to whom the PHI pertains. [Organization] must use or disclose PHI only in accordance with the authorization.

There are exceptions to this rule. For example, [Organization] does not need to obtain HIPAA authorization for:

- Treatment purposes;
- Payment;
- Health Care Operations; and
- Releases that are required by law.

Additional exceptions may apply and [Organization] workforce should consult with the [compliance officer/privacy officer/other designee] as appropriate.

Alcohol and Drug Abuse Records. When dealing with alcohol and drug abuse records, [Organization] generally may not use or disclose this information unless the individual has signed a consent form that satisfies Part 2 requirements. This is true even if the disclosure is otherwise permitted under the HIPAA Regulations. Any disclosure must be limited to the information necessary to carry out the purpose of the disclosure.

For more information on consent requirements for alcohol and drug abuse records, refer to policy number [Enter], Disclosures of Alcohol and Drug Abuse Records.

C. Authorizations for Use or Disclosure of PHI for Marketing

[Organization] must obtain HIPAA authorization for any use or disclosure of PHI for Marketing, unless the communication is:

- I. A face-to-face communication made by [Organization] or its workforce to an individual; or
- II. A promotional gift of nominal value.

If the Marketing involves any direct or indirect payments to [Organization] from or on behalf of a third party whose product or service is being described in the communication (“Financial Remuneration”), [Organization] must include language in the authorization form that clearly states remuneration is involved. Direct or indirect payments do not include any payments for treatment of an individual.

Refer to policy number [Enter], Use and Disclosure of PHI for Marketing, for the definition of “Marketing” and additional information.

D. Authorizations for Sale of PHI

[Organization] must obtain HIPAA authorization prior to any Sale of PHI. The authorization must state that the disclosure will result in remuneration to [Organization].

“Sale of PHI” means a disclosure of PHI by [Organization] or its business associate where [Organization] or business associate directly or indirectly receives remuneration in exchange for the PHI. Sale of PHI does not include a disclosure:

1. For public health purposes pursuant to § 164.512(b) or § 164.514(e);
2. For research purposes pursuant to § 164.512(i) or § 164.514(e), where the only remuneration received by [Organization] or its business associate is a reasonable fee to cover the cost to prepare and transmit the PHI;
3. For treatment and payment purposes;
4. For the sale, transfer, merger, or consolidation of all or part of [Organization];
5. To or by a business associate for activities that the business associate undertakes on behalf of [Organization], or on behalf of a business associate in the case of a subcontractor, where the only remuneration provided is by [Organization] to the

business associate, or by the business associate to the subcontractor, if applicable, for the performance of such activities;

6. To an individual, when requested under § 164.524 or § 164.528;
7. Required by law; and
8. For any other purpose permitted by the HIPAA Privacy Rule where the only remuneration received by [Organization] or its business associate is a reasonable fee to cover the cost to prepare and transmit the PHI or a fee otherwise expressly permitted by other law.

E. Authorizations for Use or Disclosure of Psychotherapy Notes

[Organization] must obtain HIPAA authorization for any use or disclosure of Psychotherapy Notes. However, authorization is not required for the following:

1. Use by the originator of the Psychotherapy Notes for treatment;
2. Use or disclosure by [Organization] for its own training programs in which students, trainees, or practitioners in mental health learn under supervision to practice or improve their skills in group, joint, family or individual counseling;
3. Use or disclosure by [Organization] to defend itself in a legal action or other proceeding brought by the individual;
4. Use or disclosure that is required by the Secretary to investigate or determine [Organization]'s compliance with the HIPAA Privacy Rule;
5. Use or disclosure that is required by law;
6. Use or disclosure for health oversight activities by the originator of the Psychotherapy Notes;
7. Use or disclosure about decedents to a coroner or medical examiner for the purpose of identifying a deceased person, determining a cause of death, or other duties as authorized by law; or
8. Use or disclosure to avert a serious threat to health or safety pursuant to 45 C.F.R. § 164.512(j)(1)(i).

F. Content of Valid Authorization

All authorizations must be written in plain language and contain at least the following elements:

1. A specific and clear description of the information to be used or disclosed;
2. The name or other specific identification of the person(s) or group of persons authorized to make the requested use or disclosure;
3. The name or other specific identification of the person(s) or group of persons to whom [Organization] may make the requested use or disclosure;
4. 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. An expiration date or an expiration event that relates to the individual or the purpose of the use or disclosure. The statements, “end of the research study,” “none” or similar language is sufficient if the authorization is for a use or disclosure of PHI for research, including for the creation and maintenance of a research database or research repository;

Note: The expiration date in Minnesota shall be one year from the time of issuance, or for a different period specified in the consent, consistent with Minnesota Statutes § 144.293, subd. 4;

6. Signature of the individual and date;
7. If the authorization is signed by a personal representative of the individual, a description of such representative’s authority to act for the individual must also be provided;
8. A statement of the individual’s right to revoke the authorization in writing, and either:
 - a. The exceptions to the right to revoke and a description of how the individual may revoke the authorization; or
 - b. A reference to *[Organization]’s* Notice of Privacy Practice if the Notice of Privacy Practice includes a statement regarding exceptions to the right to revoke and a description of how the individual may revoke the authorization.
9. A statement of *[Organization]’s* ability or inability to condition treatment, payment, enrollment or eligibility for benefits on the authorization, by stating either:
 - a. *[Organization]* may not condition treatment on whether the individual signs the authorization when it is prohibited to do so; or
 - b. The consequences to the individual of a refusal to sign the authorization when *[Organization]* may condition treatment on failure to obtain such authorization.
10. A statement that the potential for information disclosed pursuant to the authorization to be subject to disclosure by the recipient and no longer be confidential by the HIPAA Regulations.

If *[Organization]* seeks an authorization from an individual for a use or disclosure of PHI, *[Organization]* must provide the individual with a copy of the signed authorization. A valid authorization may contain additional elements or information provided they are not inconsistent with the required elements.

Alcohol and Drug Abuse Records. When dealing with alcohol and drug abuse records, *[Organization]* may not use or disclose any information about an individual

unless such individual has consented in writing on a form that meets the requirements of Part 2, or unless another limited exception applies. A Part 2 consent form is different from an authorization under the HIPAA Regulations—thus, [Organization] and its workforce must be sure to use the appropriate form.

Authorization to Release Information to Others/Minnesota Law. Minnesota Law requires that upon the written request by a spouse, parent, child or sibling of an individual being evaluated for or diagnosed with a mental illness, [Organization] must ask the individual whether he/she wishes to authorize a specific person (noted above) to receive information regarding the individual's current or proposed course of treatment.

If the individual so authorizes, the provider will communicate to the designated individual the person's current and proposed course of treatment. Such a consent is valid for one year or for a lesser period specified in the consent or for a different period provided by law.

Additional information can be found in policy number [Enter], Disclosures of Alcohol and Drug Abuse Records.

G. Invalid Authorizations

Authorizations are not valid if the document submitted has any of the following defects:

1. The expiration date has passed or the expiration event is known by [Organization] to have occurred.
2. The authorization has not been filled out completely, with respect to a core element or required statement, if applicable.
3. The authorization is known by [Organization] to have been revoked.
4. The authorization is compound authorization or been conditioned on individual receiving treatment, payment, enrollment in a health plan, or eligibility for benefits.
5. Any material information in the authorization is known by [Organization] to be false.

H. Compound Authorizations

An authorization for use or disclosure of PHI may not be combined with any other document to create compound authorization, except for research studies and the disclosure of psychotherapy notes.

1. An authorization for a research study may be combined with any other type of written permission for the same or another research study. This includes combining an authorization for the use or disclosure of PHI for a research study with another authorization for the same research study, with an authorization for the creation or maintenance of a research database or repository, or with a consent to participate in

research. Where *[Organization]* has conditioned the provision of research related treatment on the provision of one of the authorizations, as permitted under the HIPAA Regulations, any compound authorization created must clearly differentiate between the conditioned and unconditioned components and provide the individual with an opportunity to opt in to the research activities described in the unconditioned authorization.

2. An authorization for a use or disclosure of psychotherapy notes may only be combined with another authorization for a use or disclosure of psychotherapy notes
3. An authorization, other than an authorization for a use of disclosure of psychotherapy notes, may be combined with any such authorization under this section, except when *[Organization]* has conditioned the provision of treatment, payment or enrollment in the health plan, or eligibility for benefits on the provision of one of the authorizations. The prohibition on combining authorizations where one authorization conditions the provision of treatment, payment, enrollment in a health plan, or eligibility for benefits does not apply to a compound authorization created in accordance with a research study.

I. Prohibition on Conditioning of Authorizations

[Organization] may not condition the provision to an individual of treatment, payment, and enrollment in the health plan, or eligibility for benefits on the provision of an authorization, except:

1. *[Organization]* may condition the provision of research-related treatment on provision of an authorization for the use or disclosure of PHI for such research; and
2. *[Organization]* may condition the provision of health care that is solely for the purpose of creating PHI for the disclosure of the PHI to a third party.

J. Revocation of Authorizations

An individual may revoke an authorization at any time, provided that the revocation is in writing, except to the extent that:

1. *[Organization]* has taken action in reliance thereon; or
2. 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.

Alcohol and Drug Abuse Records. If an authorization pertains to alcohol or drug abuse records and the revocation is made verbally, *[Organization]* must honor this revocation. However, you should obtain written revocation when possible.

Additional information can be found in policy number [Enter], Disclosures of Alcohol and Drug Abuse Records.

K. Documentation

[Organization] must document and retain any signed authorization according to the HIPAA Regulations and its policy on documentation.

II. **Procedure:**

- A. When [Organization] and its staff requests information or receives a request from another person related to PHI, it will adhere to the above policy prior to using or disclosing such PHI.
- B. If a personal representative has authority to act for the consumer there must be a description of that authorization and the personal representative must sign the document.
- C. The consumer and/or the personal representative must receive a copy of the completed authorization prior to being sent to the person requesting information.
- D. A client may revoke an authorization at any time, provided that the revocation is in writing except to the extent that *[Organization]* has relied on the authorization to request information to date.
- E. All signed authorizations must be placed in the client's chart/file. These records are kept in each program for seven years before being destroyed.
- F. The [compliance officer/privacy officer/other designee] will document the request or release on the *[Organization]* Accounting for Disclosure of PHI form.