

HARTSOUGH DERMATOLOGY

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Individual Rights – Authorizations

Introduction

Nine sections of the Privacy Rule address patient authorizations.¹ In general, a covered entity – including a physician – is required to obtain an authorization for the use or release of information for other than treatment, payment, or health care operations, unless state or federal law requires such disclosure.

Policy

The practice obtains a written authorization from a patient or the patient’s representative for the use or disclosure of protected health information (PHI) for other than treatment, payment, or health care operations. However, the practice will not get an authorization for the use or disclosure of PHI specifically allowed under the Privacy Rule in the absence of an authorization, except for PHI requiring an authorization under Illinois law. Such uses and disclosures are discussed under “Use and Disclosures – Not Requiring AuthorizationError! Reference source not found..”

Procedure

Situations in which the practice does not obtain the individual’s authorization to use or disclose PHI are discussed under “Use and Disclosures – Not Requiring Authorization.”

Elements of an Authorization: Every authorization used by the practice includes the following core elements:

- the name of the practice;
- a description of the information to be used or disclosed by the practice;
- the name of recipient(s) or class of recipient of the use or disclosure;
- an expiration date, time period or event following which the authorization terminates;
- a statement regarding the individual’s right to revoke the authorization and a description of how the individual may revoke the authorization;
- a statement that the information may be subject to re-disclosure by the recipient and may no longer be protected by the federal privacy law;
- the individual’s signature and date of signature; and
- if signed by a representative, a description of the representative’s authority to act for the individual and/or relationship to the individual.

¹ § 164.506(a) – Standards for Consents and How Consents Differ from Authorizations; § 164.508(a) – Standard for Requirements and Exceptions for Authorizations; § 164.508(b) – Implementation Specifications for Authorizations; § 164.508(c) – Core elements and requirements; § 164.508(d) – Specifications for an Entity’s Own Uses and Disclosure; § 164.508(e) – Specifications for an Entity’s Disclosure to Others; § 164.508(f) – Specifications for Research and Treatment; § 164.520 – Requirements for Plain English Language; and § 164.512 – Uses and Disclosures for which Consent, an Authorization, or Opportunity to Agree or Object is *Not* Required.

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In addition to the core elements, when the authorization is for the practice to use or disclose the information for its own purposes, the authorization also includes:

- a statement that the practice does not condition treatment on the provision of the authorization for the requested use or disclosure;
- a description of the purpose of the requested use or disclosure;
- the right of the individual to inspect or copy the PHI to be used or disclosed;
- the right of the individual to refuse to sign the authorization; and
- a statement of any remuneration, direct or indirect, that the practice will receive from a third party as a result of the disclosure.

In addition to the core elements, when the authorization is for the practice to disclose information to others, the authorization also includes:

- a description of each purpose of the requested disclosure (the statement “at the request of the individual” is sufficient description of the purpose when an individual initiates the authorization and does not or elects not to provide a statement of purpose);
- a statement that the practice does not condition treatment on the provision of authorization for the requested use or disclosure; and
- a statement that the individual may refuse to sign the authorization.

Authorizations for Research: The practice does not participate in research and, accordingly, does not have any authorizations related to research studies.

Conditioning Care on Authorization: The practice does not condition treatment of a patient on the signing of an authorization, except:

- disclosure necessary to determine payment of claim (excluding authorization for use or disclosure of psychotherapy notes); or
- provision of health care solely for purpose of creating PHI for disclosure to a third party (e.g., drug screening, fitness-for-duty examinations, pre-employment or life insurance physicals).

Compound Authorizations: The practice does not combine an authorization for use or disclosure of PHI with any other document, except:

- an authorization for a use or disclosure of psychotherapy notes may be combined with another authorization for a use or disclosure of psychotherapy notes; and
- an authorization, other than for psychotherapy notes, may be combined with another authorization except when the practice has conditioned the provision of treatment on the execution of one of the authorizations.

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Revocation of Authorizations: The practice allows an individual to revoke an authorization at any time. The revocation must be in writing and must be sent to the attention of the practice's Privacy Officer; however, the practice will be able to use or disclose the PHI to the extent that the practice has taken action in reliance on the authorization.

Defective Authorizations: The practice recognizes that an authorization is defective or invalid if:

- the expiration date or event has passed;
- the authorization is not filled out completely;
- the authorization is revoked;
- the authorization lacks a required element; or
- the authorization violates requirements regarding compound authorizations.

Copy to Patients: The practice will provide a patient upon request a copy of any authorization initiated by the practice (as opposed to requested by the patient) and signed by the patient.

Psychotherapy Notes: Psychotherapy notes are defined as follows:

Notes recorded (in any medium) by a health care 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. Psychotherapy notes exclude 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.

The practice requires an authorization for use and disclosure of psychotherapy notes except for the following uses:

- use by the originator of the psychotherapy notes for treatment;
- use or disclosure by the practice in 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; and
- use or disclosure by the practice to defend a legal action or other proceeding brought by the individual.

Mental Health, Alcoholism Treatment, Drug Abuse, Genetic HIV/AIDS Records: In addition, in Illinois, a specific written authorization is required to disclose or release of mental health treatment, genetic information, alcoholism treatment, drug abuse treatment or HIV/Acquired Immune Deficiency Syndrome (AIDS) information, even for treatment. *This is an exception to the rule that authorization is not needed to release PHI for treatment purposes.*

Documentation

The practice will retain copies of all authorizations and revocations of authorizations for a period of six years from the date of its creation.