

County Of San Diego
Health and Human Services Agency (HHS A)

Chapter: Health Insurance Portability and Accountability Act of 1996 (HIPAA)
Key Words: privacy, authorization

**SUBJECT: Authorization For Use & Disclosure of
Protected Health Information**

NO: HHS A-L-9
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DATE: July 27, 2007

REFERENCE: Federal Privacy Regulations, 45 C.F.R. Subtitle A, Subchapter C, Parts 160 and 164.

PURPOSE: To establish a process for when written authorization from an individual (patient/resident/client) or their legal representative is required for the use and disclosure of protected health information.

BACKGROUND: County agencies designated as covered components must comply with privacy regulations promulgated under the federal Health Insurance Portability and Accountability Act of 1996 (HIPAA). They must also comply with California laws and regulations pertaining to the use and disclosure of individually identifiable health information, unless such state laws and regulations are preempted by HIPAA.

HIPAA's privacy regulations outline many detailed requirements protecting the confidentiality of health information and providing individuals significant rights with respect to their health information. Compliance with these regulations is addressed in a series of County policies and procedures.

DEFINITIONS

Note: The definitions below are in compliance with HIPAA and the Standards for Privacy of Individually Identifiable Health Information (Privacy Rule).

Health Care Operations: Any of the following activities:

- Internal performance improvement activities, excluding research;
- Reviewing the competence or qualifications of health care professionals;
- Underwriting, premium rating, and other activities related to health insurance contracting;
- Medical review, legal services, and auditing;
- Business planning and development; or
- Business management and general administrative activities.

Individually Identifiable Health Information: Information that is created or received by the County, identifies an individual (or could reasonably be used to identify an individual) and that:

- Relates to the past, present, or future physical or mental health or condition of an individual;
- Relates to the provision of health care to an individual; or
- Relates to the past, present, or future payment for the provision of health care to an individual.

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This includes demographic information (such as name, address, date of birth, sex, and race) collected from an individual.

Payment: Activities undertaken to obtain or provide reimbursement for health care services, including:

- Billing, claims management, and collection activities;
- Review of health care services for medical necessity, coverage, appropriateness, or charge justification; or
- Utilization review activities.

Protected Health Information (PHI): Individually identifiable health information that is transmitted or maintained by electronic or any other medium. PHI does not include educational records of students maintained by federally funded educational agencies or institutions or persons acting for these agencies or institutions. PHI also does not include records of (1) students who are 18 years or older or are attending post-secondary educational institutions, (2) maintained by a physical or mental health care provider, (3) that are made, maintained, or used only in connection with the treatment of the student, and (4) that are not available to anyone, except a health care provider or appropriate professional reviewing the record as designated by the student.

Treatment: Provision, coordination, or management of health care and related services by one or more health care providers, including:

- Management of care by a provider with a third party;
- Consultation between health care providers relating to a individual;
- Referral of a individual from one provider to another

POLICY: In compliance with state and federal laws and regulations, the County will obtain written authorization from the individual or his or her legal representative for uses and disclosures of PHI unless the County is allowed or required to disclose the information without an authorization. Instances where PHI may be or is required to be disclosed and where an authorization is not required are set forth in the following policies and procedures:

- Disclosures to the Secretary of the United States Department of Health and Human Services, Policy HHSa-L-7;
- Uses and Disclosure of Protected Health Information to Carry Out Treatment, Payment and Other Health Care Operations, Policy HHSa-L-8;
- Facility Directories, Policy HHSa-L-11; and
- Uses and Disclosures for Which an Authorization or Opportunity Agree or Object is Not Required, Policy HHSa-L-13.

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The County will not condition the provision of treatment to an individual on signing an authorization except for research-related treatment.

PROCEDURES:

1. Authority to Grant Authorization

Authority to grant authorization for use or disclosure of PHI resides with:

- The individual, if the individual is a competent adult or a minor authorized under applicable state law to control the use or disclosure of his or her PHI, including where the minor is:
 1. Married or previously married;
 2. Self-sufficient (15 years or older, not living at home, manages own financial affairs);
 3. Not married, but treatment is related to the minor's pregnancy, except sterilization;
 4. Not married, but treatment is related to pregnancy termination;
 5. On active duty with the Armed Forces;
 6. Twelve (12) years or older and treatment is for a communicable reportable disease or condition;
 7. Twelve (12) years or older and treatment is for rape;
 8. Treated for sexual assault;
 9. Twelve (12) years or older and treatment is for alcohol or drug abuse;
 10. Twelve (12) years or older receiving outpatient mental health treatment;
- A parent or legal guardian on behalf of a minor child if the minor child is not authorized under applicable state law to control the use or disclosure of his or her PHI; or
- The individual's legal representative if the individual is deceased or lacks the ability to authorize the disclosure on his or her own behalf. (See Policy HHSa-L-13, Uses and Disclosures for Which an Authorization or Opportunity to Agree or Object is Not Required.)

2. Valid Authorizations

A valid authorization must contain at least the following elements:

- A description of the information to be used or disclosed that identifies the information in a specific and meaningful way;
- The name or other specific identification of the person(s), or class of persons, authorized to make the requested use or disclosure;
- The name or other specific identification of the person(s), or class of persons, to whom the facility may make the requested use or disclosure;

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- A description of each purpose of the requested use or disclosure. The statement “at the request of the individual” is sufficient when the individual initiates the authorization and chooses not to describe the purpose of the request;
- An expiration date or expiration event that relates to the individual or the purpose of the use or disclosure. The statement “end of the research study,” “none,” or similar language is acceptable if the authorization is for research;
- A statement of the individual’s right to revoke the authorization in writing and the exceptions to the right to revoke, along with a description of how the individual may revoke the authorization;
- A statement that the County may not condition treatment on whether the individual signs the authorization, unless the authorization involves participation in a research study;
- A statement that the information used or disclosed pursuant to the authorization may be subject to re-disclosure by the recipient and no longer protected by the federal privacy regulations;
- Be handwritten by the same person who signs it or be in typeface of at least 14 point;
- Signature of the individual and date;
- If the authorization is signed by a legal representative of the individual, a description of the representative’s authority to act for the individual; and
- Advise the individual signing of the right to receive a copy of the authorization.

The authorization must be written in plain language.

Additional requirements for particular conditions and procedures:

- Psychotherapy notes: If the authorization seeks the disclosure of psychotherapy records, please refer to Policy HHSA-L-10, Use and Disclosure of Psychotherapy Notes.
- HIV and AIDS related test results: A separate authorization is required for each separate disclosure of test results.
- Substance abuse records: The authorization must accompany the records released along with a statement that prohibits the receiving person or entity from further disclosing the records unless the authorization or subsequent authorization expressly permits the further disclosure or that disclosure is specifically allowed under federal and state law.

If the County asks the individual for written authorization for use or disclosure of protected health information, the individual must be given a copy of the completed authorization form.

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The County will document and retain any signed authorization for at least six (6) years, in compliance with federal law and regulation.

3. Outside Authorizations

A written authorization provided by the individual or an outside requester is acceptable if it contains all of the elements described in the "Valid Authorizations" section above. If the authorization is missing one or more of the required elements, the individual or his or her legal representative will be asked to sign the County's form for "Authorization to Use or Disclose Protected Health Information."

4. Combined Authorizations

An authorization for use or disclosure of PHI may **not** be combined with any other document to create a compound authorization **except** as follows:

- An authorization for the use or disclosure of PHI created for research that includes treatment of the individual may be combined.

5. Invalid Authorizations

An authorization is not valid if the document has any of the following defects:

- The expiration date has passed or the expiration event is known by the County to have occurred;
- The authorization has not been filled out completely;
- The authorization is known by the County to have been revoked;
- The authorization lacks a required element, as described in the "Valid Authorizations" section above; or
- Any material information in the authorization is known by the County to be false.

6. Timeframes for Authorizations

The individual's authorization to use or disclose PHI must be obtained **at or after** the date of service.

Unless the individual specifies an earlier expiration date or event, the County will honor an authorization for up to one (1) year after the date it was signed by the individual or his legal representative. If the authorization is for research, the expiration date may state "end of the research study," "none," or similar language.

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7. Retrieval/Copy Fees

Fees will be charged for retrieving records and making copies in accordance with the County's fee schedule. (See Policy HHSa-L-20, Clerical and Copy Fees for Protected Health Information.)

8. Record of Authorization and Disclosure

Following disclosure of information, the signed authorization form should be filed with the individual's record along with a notation of what specific information was disclosed, the date of the disclosure, and the printed name and signature of the employee who made the disclosure. This information will be kept for at least six (6) years.

9. Revocation of Authorizations

An individual may revoke his or her authorization in writing at any time, **except** to the extent the County has already taken action in reliance on the authorization. (For example, if the County has already used or disclosed information to an outside party based on the individual's prior authorization, this use or disclosure is allowed by the authorization because the authorization was valid at the time of the use or disclosure. Once the authorization is revoked, it cannot be used for any future uses or disclosures of PHI.)

An individual or his or her legal representative who wishes to revoke his authorization will be asked to complete the County form entitled "Revocation of Authorization to Use or Disclose Protected Health Information."

QUESTIONS/INFORMATION: Privacy Officer of the County of San Diego

SUNSET DATE: This policy will be reviewed for continuance by July 27, 2010.

Approved:



Jean M. Shepard, Director
Health and Human Services Agency