

HEALTH SCIENCE CENTER HANDBOOK OF OPERATING PROCEDURES

Chapter 11	Patient Privacy Policies	Effective:	April 2003
Section 11.2	Uses and Disclosures of Protected Health Information	Revised:	May 2007
Policy 11.2.3	Uses and Disclosures of Protected Health Information Based on Patient Authorization	Responsibility:	Assistant Vice President for Regulatory Affairs & Compliance

USES AND DISCLOSURES OF PROTECTED HEALTH INFORMATION BASED ON PATIENT AUTHORIZATION

Policy

Patients' protected health information is disclosed for treatment, payment, and healthcare operations; based on patient/representative authorization; or, when allowed by [Section 11.2.1](#) of the *Handbook of Operating Procedures* (HOP), "Uses and Disclosures of Protected Health Information Without Authorization".

Definitions

DISCLOSURE: Release, transfer, provision of access to, or divulging in other manner of information outside the Health Science Center.

MEDICAL RECORD CUSTODIAN: The person or department responsible for the maintenance, retention, access, integrity, and quality of protected health information; including protecting patient privacy, providing information security, and complying with standards and regulations regarding protected health information.

SHADOW/DUPLICATE MEDICAL RECORD OR CASE MANAGEMENT FILE: Medical or health information that is a duplicate of information contained in the legal health record. Temporary file retained only for the duration necessary to assist the healthcare professional maintaining it. This record is considered a convenience copy and has no record retention schedule.

Core Elements of a Valid Authorization

A valid authorization for disclosure of health information must contain at least the following elements and must be written in plain language:

1. A description of the information to be used or disclosed that identifies the information in a specific and meaningful fashion.
2. The name or other specific identification of the person or class of persons authorized to make the requested use or disclosure.

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3. The name or other specific identification of the person or class of persons to whom the Health Science Center 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 statement, "end of the research study," "none," or similar language is sufficient if the authorization is for a use or disclosure of protected health information for research, including the creation and maintenance of a research database or repository.
 6. Signature of the individual and the date.
 7. If a personal representative of the individual signs the authorization, a description of such representative's authority to act for the individual.

The authorization may contain elements or information in addition to the required elements, provided that such additional elements or information are not inconsistent with the required elements.

Required Statements

In addition to the core elements, the authorization must contain statements adequate to inform the individual of the following:

1. The individual's right to revoke the authorization in writing and the exceptions to the right to revoke, together with a description of how the individual may revoke the authorization.
2. The Health Science Center may not condition treatment, payment, enrollment in a health plan, or eligibility for benefits on

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the individual providing the authorization unless an exception exists, as described in the following section, and the consequences to the individual if a refusal to sign the authorization, if an exception exists.

3. The information used or disclosed pursuant to the authorization may be subject to re-disclosure by the recipient and no longer be protected by the federal privacy regulations.
4. If the Health Science Center seeks an authorization from an individual for use or disclosure of protected health information, the Health Science Center must provide the individual with a copy of the signed authorization.
5. The individual may inspect or receive a copy of the protected health information to be used or disclosed.
6. The individual may refuse to sign the authorization.
7. Community Based Clinics (CBC), Texas Department of Criminal Justice (TDCJ), Regional Maternal Child Health Program (RMCHP) Clinics, and requests for substance abuse records, including Employee Assistance Program (EAP records), must require the purpose for the request.

Additional Requirements for Certain Types of Disclosures

Psychotherapy Notes: The Health Science Center must obtain an authorization for any use or disclosure of psychotherapy notes, except to carry out treatment, payment, and health care operations. Specifically, psychotherapy notes may be used by the originator of the psychotherapy notes for treatment purposes; used or disclosed by the Health Science Center in its own training programs in which students, trainees, residents, or practitioners in mental health learn under supervision to practice or improve their skills in group, joint, family, or individual counseling; used or disclosed by the Health Science Center to defend itself in a legal action or other proceeding brought by the individual; used or disclosed to Secretary of Health and Human Services to investigate or determine compliance with the privacy rules

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and as required by law, and for health oversight activities; used or disclosed to coroners or medical examiners; and, used or disclosed to prevent or lessen a serious and imminent threat to the health and safety of a person or to the public. See also [Section 11.2.2](#) of the HOP, “Use and Disclosure of Psychotherapy Notes”.

Psychotherapy notes may not be used or disclosed to another provider or covered entity for treatment, payment or healthcare operations without obtaining the individual’s authorization.

Marketing: The Health Science Center must obtain an authorization for any use or disclosure of protected health information for marketing, except if the communication is in the form of a face-to-face communication made by the Health Science Center to an individual or is in the form of a promotional gift of nominal value provided by the Health Science Center. If the marketing involves direct or indirect remuneration to the Health Science Center from a third party, the authorization must state that such remuneration is involved.

See also [Sections 11.2.7](#) and [11.2.8](#) of the HOP, “Uses and Disclosures of Protected Health Information for Marketing”, and “Uses and Disclosures of Protected Health Information for Fundraising”.

Research: For specific policies governing the use or disclosure of protected health information for research purposes, see [Section 11.2.12](#) of the HOP, “Uses and Disclosures of Protected Health Information for Research”.

Defective Authorizations

An authorization is considered defective and invalid if any material information in the authorization is known to be false by the Health Science Center or its employees or if any of the following exist:

1. The expiration date has passed or the expiration event is known by the Health Science Center to have occurred;
2. The authorization has not been filled out completely;

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3. The authorization is known by the covered entity to have been revoked;
 4. The authorization lacks any one of the core elements previously described;
 5. Any material information in the authorization is known by the Health Science Center to be false; or,
 6. The authorization violates rules regarding compound authorizations or conditioning of authorizations.

Compound Authorizations

An authorization for use and disclosure of protected health information may not be combined with any other document to create a compound authorization, except for the following.

1. An authorization for the use or disclosure of protected health information for a research study may be combined with any other type of written permission for the same research study, including another authorization for the use and disclosure of protected health information for such research or a consent to participate in such research.
2. An authorization for the use and disclosure of psychotherapy notes may only be combined with another authorization for use and disclosure of psychotherapy notes.
3. An authorization, other than that for a use and disclosure of psychotherapy notes, may be combined with any other such authorization, unless the Health Science Center has conditioned the provision of treatment, payment, enrollment in a health plan, or eligibility for benefits as prohibited by the section outlining "Conditioning of Authorizations".

Conditioning of Authorizations

1. The Health Science Center may not condition the provision of treatment, payment, enrollment in a health plan, or eligibility for benefits on the provision of an authorization, except the Health

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Science Center may condition the provision of research related treatment on provision of an authorization; see [Section 11.2.12](#) of the HOP, “Uses and Disclosures of Protected Health Information for Research”;

2. The Health Science Center may condition the provision of health care that 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; or,
3. The Health Science Center may condition enrollment and eligibility on the provision of an authorization, but these rules are not included in this policy because those activities are outside the scope of the Health Science Center’s operations.

Existing Authorizations

The Health Science Center can use or disclose protected health information that it created or received prior to April 14, 2003, pursuant to an authorization or other express legal permission obtained from an individual prior to April 14, 2003, provided that the authorization or other express legal permission specifically permits such use or disclosure and there is no agreed-to restriction on the use or disclosure of that protected health information.

Revocation of Authorizations

For specific rules governing the revocation of authorizations, see [Section 11.3.3](#) of the HOP, “Revocation of Authorization to Use or Disclose Protected Health Information”.

Personal Representatives

For information regarding who the proper person is to sign authorizations for the release of information regarding incapacitated individuals, minors, and deceased individuals, see [Section 11.1.7](#) of the HOP, “Patient Consent and Authorization—Basic Requirements”.

Retention

Signed authorizations must be retained by the Health Science Center for a minimum of six years.

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Procedures for Disclosures

Receiving and Fulfilling Authorizations: The custodian of the official medical record is responsible for receiving and fulfilling authorizations obtained from a patient or a patient’s personal representative.

Shadow records or case management files must NOT be disclosed or released. Anyone who possesses shadow records must direct persons requesting information that requires an authorization to the custodian of the official medical record.

If custodians release protected health information, they must comply with the “Accounting of Disclosures of Protected Health Information”, [Section 11.3.1](#) of the HOP, which mandates the tracking of disclosures of protected health information. To identify approved custodians, who are responsible for accounting of disclosures in each department, contact the School’s Associate/Assistant Dean of Clinical Affairs.

The Health Science Center’s release of protected health information must be consistent with the directives found in the authorization. The Health Science Center must document each disclosure and retain all signed authorizations. The custodian that discloses the protected health information will be responsible for retaining the signed authorizations.

Requests Received Not on Health Science Center Authorization Forms:

1. All requests for disclosure of health information that are not on Health Science Center authorization forms are to be forwarded to the custodian of medical record for review.
2. The custodian will review the authorization to determine if all the required documentation elements are present.

If the authorization does not meet the requirements, the custodian will send a cover letter and a copy of the Health Science Center’s [Patient Authorization for Release of Health Records to External Parties](#) form to the requestor and ask him/her to use this form.