



Managing Information Privacy & Security in Healthcare

Consent and Authorization

By Barbara Demster, MS, RHIA, CHCQM and Gary L. Kurtz, CHPS, FHIMSS

Overview

The terms “Consent” and “Authorization” have often caused confusion and debate. Are they the same thing or do they have different purposes? The Privacy Final Rule did little to ease the confusion. Published in the December 28, 2000, Federal Register <<http://www.hhs.gov/ocr/privacy/hipaa/administrative/privacyrule/index.html>> the final rule required a provider with a direct treatment relationship to obtain an individual’s written consent prior to using or disclosing PHI for treatment, payment, or health care operations (TPO). The final modifications to the Privacy Rule, published in the Federal Register August 14, 2002, (also found at the same link) removed the consent requirement and made the consent discretionary by the covered entity.

Section [164.506\(b\)&\(c\)](#) of the final rule states that a covered entity (CE) may obtain consent of the individual but also without consent, may:

- 1) Use or disclose PHI for its own TPO;
- 2) Disclose PHI for treatment activities of a provider;
- 3) Disclose PHI to another CE or provider for their payment purposes;
- 4) Disclose PHI to another covered entity for their health care operations with certain specified limitations.

Should the covered entity opt to obtain the consent as allowed in §164.506(b), the rule goes on to say that this consent “shall not be effective to permit a use or disclosure of protected health information when an authorization, under §164.508, is required or when another condition must be met for such use or disclosure to be permissible...”

Except as otherwise permitted or required, a covered entity may not use or disclose protected health information without an authorization that is valid as defined by the regulation. When a covered entity obtains or receives a valid authorization for its use or disclosure of protected health information, such use or disclosure must be consistent with the authorization. Disclosures of psychotherapy notes or for marketing purposes

generally require authorizations. Go to the chapter on Use & Disclosures for more detailed information on circumstances requiring an authorization.

- 1 -

D75 - Consent and Authorization

The Practice Brief: Consent for Uses and Disclosures of Information (Updated October 2002) http://library.ahima.org/xpedio/groups/public/documents/ahima/bok1_016338_hcsp provides an explanation of the changes and gives recommendations to organizations on how to go about making the decision of whether or not they should obtain a consent under their business model.

OCR Privacy Guidance

The Office for Civil Rights guidance document contains the section “Uses and Disclosures for Treatment, Payment, and Health Care Operations” <http://www.hhs.gov/ocr/privacy/hipaa/understanding/coveredentities/usesanddisclosuresfortpo.html>. This helpful document discusses consent and authorization and provides answers to many frequently asked questions (FAQs).

HIPAA and State Regulations

Most states have pre-existing regulations on consents and authorizations for a variety of healthcare activities. The article Perspectives on Managing Regulations: HIPAA http://library.ahima.org/xpedio/groups/public/documents/ahima/bok3_005562_hcsp provides an in depth view of how two covered entities, one a provider network and the other a health plan, addressed the implementation issues of the privacy rule. The authors describe their state’s “greatest challenge” as “developing a uniform understanding of preemption analysis issues between previously existing state regulations and HIPAA’s privacy rule.” The practice brief Preemption of the HIPAA Privacy Rule provides guidance and offers tools on how to properly manage preemption decisions. http://library.ahima.org/xpedio/groups/public/documents/ahima/bok1_048022_hcsp?dDocName=bok1_048022

About Authorizations

Section [164.508](#) of the privacy rule addresses authorizations in detail. The regulations define:

- 1) Content & clarity of a valid authorization,
- 2) Statements required in an authorization,
- 3) Defective authorizations,
- 4) Compound Authorizations,
- 5) Prohibition on conditioning services on signing an authorization, and 6)
Conditions and procedures for revocation of an authorization.
- 7) Sale of PHI

The AHIMA Practice Brief: Required Content for Authorizations to Disclose (Updated)

http://library.ahima.org/xpedio/groups/public/documents/ahima/bok1_016272.hcsp?dDocName=bo_k1_016272> discusses each of these implementation specifications in detail and provides a sample Authorization to Use and Disclose Health Information.

Documentation Requirements

A covered entity must document and retain any signed authorization required under HIPAA for six years from the date of its creation or the date when it last was in effect, whichever is later. If a

- 2 -

D75 - Consent and Authorization

covered entity seeks an authorization from an individual for a use or disclosure of protected health information, the covered entity must provide the individual with a copy of the signed authorization.

Authorization Samples

10.5.1 Sample Authorization to Use or Disclose Health Information (included in the Practice Brief above)

http://library.ahima.org/xpedio/groups/public/documents/ahima/bok1_016272.hcsp#authorization

>

10.5.2 Sample Consent Agreement Photography/Videotaping

http://library.ahima.org/xpedio/groups/public/documents/ahima/bok1_016222.hcsp

10.5.3 Sample Consent Form for Use of Language Interpreter (English-Spanish).

This sample consent form was developed by McAlester Regional Health Center and a winner of an AHIMA FORE Practice solution award.

http://library.ahima.org/xpedio/groups/public/documents/ahima/bok1_009851.doc

