

# STANDARD ADMINISTRATIVE PROCEDURE

## 16.99.99.M0.17 Authorization for the Release of Protected Health Information

*Approved October 27, 2014*

*Next scheduled review: October 27, 2019*

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### SAP Statement

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This procedure applies to Texas A&M Health Science Center (TAMHSC) health care providers, its participating physicians and clinicians, employees and business units who provide management, administrative, financial, legal, and operational support to or on behalf of the health care provider and has been designated as a member of the TAMHSC Health Care Component. This procedure pertains to protected health information covered by the TAMHSC Health Care Component's Notice of Privacy Practices.

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### Official procedure

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#### 1. GENERAL

To ensure all TAMHSC Health Care Components that release a patient's protected health information is in compliance with privacy rules governing such release. TAMHSC Health Care Component staff may not use or disclose PHI without a valid authorization<sup>i</sup> unless such use and disclosure is otherwise permitted or required under the privacy standard or as required by law.

All TAMHSC Health Care Component staff involved in areas where patient information (PHI) is released will comply with this procedure when authorizations for release of information are received.

#### 2. PROCEDURES

##### 2.1 Legal Authorization.

2.1.1 A legal authorization to release PHI must be written in plain language and signed by the patient or his/her legal representative in order for health information to be released. Use or disclosure to authorized individuals and/or agencies must be consistent with the authorization.

2.1.2 A valid authorization must contain the following core elements/information:

- Patient's full name;
- The name of person or class of persons authorized to make the use or disclosure of PHI;
- Description of the information to be used or disclosed (i.e. specific date of service, clinic visit, ED record, inpatient visit, etc.);
- Identification of person/agency to whom covered entity is authorized to make the requested use or disclosure (i.e. name, address);
- Description of the purpose for the use or disclosure;
- The authorization's expiration date or expiration event that relates to the individual or to the purpose or use of the requested disclosure and no longer protected;
- A statement of the patient's right to revoke the authorization in writing and how this can be done;
- A statement that information used/disclosed under the authorization may be subject to re-disclosure by the recipient;
- The signature of the patient's or patient's personal representative and date of signature;
- A description and or copy of legal paperwork of the personal representatives authority to sign (if applicable);
- In addition, it is desirable to have the patient's date of birth and address to further correctly identify the patient;
- A statement that treatment, payment, enrollment and eligibility for benefits cannot be conditioned on whether the individual signs the authorization.

## 2.2 Invalid/Defective Authorizations.

2.2.1 An authorization to use/disclose PHI is not valid if any of the following circumstances are present.

2.2.1.1 The expiration date has passed or the expiration event is known by the TAMHSC Health Care Component to have occurred.

2.2.1.2 The authorization has not been filled out completely with respect to the required core elements.

2.2.1.3 The authorization is known to have been revoked in writing.

2.2.1.4 The authorization is a prohibited type of combined authorization.

2.2.1.5 Any material information in the authorization is known by the TAMHSC Health Care Component to be false.

- 2.2.2 Defective authorizations will be returned to the requestor with an explanation as to why the authorization will not be honored.
- 3.3 Revocation of Authorization.
- 2.2.3 TAMHSC Health Care Component shall provide a means by which a patient may revoke their authorization for release of PHI.
- 2.2.4 A Patient has the right to revoke an authorization at any time by means of a written revocation, except to the extent that the TAMHSC Health Care Component has already used or released information while the authorization was still valid.
- 2.2.5 Written revocation must be to the Privacy Officer or Records Custodian/Designee.
- 2.2.6 The TAMHSC Health Care Component may not be able to prevent mailings or use of that information that was disclosed prior to the revocation.
- 2.2.7 Upon receipt of the request to revoke authorization, the TAMHSC Health Care Component will stop the processing of information for use or disclosure to the greatest extent practical (with the exception of information for treatment, payment or health care operations).
- 2.2.8 TAMHSC Health Care Component shall not be required to call back any information previously released under the valid authorization.
- 2.3 Documentation of Authorization.
  - 2.3.1 TAMHSC Health Care Component will document and retain the original or an electronic version of all authorizations for release of PHI on file.
  - 2.3.2 TAMHSC Health Care Component will keep all revoked authorizations on file along with documentation of any action taken based on the revocation of authorization.
  - 2.3.3 A copy of the signed authorization must be given to the patient.
- 2.4 Combined Authorizations.
  - 2.4.1 Authorizations may not be combined with any other documents to create a compound authorization except in the following circumstances:
    - 2.4.1.1 An authorization for the use or disclosure of PHI for a research study may be combined with any other type of written permission for the same research study;

2.4.1.2 The authorization for use or disclosure of psychotherapy notes may only be combined with another authorization for use or disclosure of psychotherapy notes.

2.4.2 TAMHSC Health Care Component must obtain an authorization for any use or disclosure of psychotherapy notes, with two exceptions:

2.4.2.1 To carry out treatment, payment, or health care operations:

- By the originator of the psychotherapy notes for treatment (use only);
- By TAMHSC Health Care Component in its own training programs in which students, trainees, or practitioners in mental health learn under supervision to practice or improve counseling skills (use or disclosure);
- Or by TAMHSC Health Care Component to defend itself in legal action or other proceeding brought by the individual (use or disclosure).

2.4.2.2 A use or disclosure that is:

- Required by section 164.502(a)(2)(ii) (regarding disclosures to individual or entities);
- Permitted by section 164.512(a) (use and disclosure required by law);
- Permitted by section 164.512(d) (regarding disclosures to health oversight agencies with respect to the oversight of the originator of the psychotherapy notes);
- Permitted by section 164.512(g)(1) (regarding disclosures to coroners and medical examiners); or,
- Permitted by section 164.512(j)(1) (i)(regarding uses and disclosures necessary to prevent or lessen a serious and imminent threat to the health and safety of a person or the public).

2.4.3 Texas' mental health confidentiality laws must still be met even if a HIPAA exception applies. Follow the rules for mental health by Component. If either HIPAA or Texas law does not permit disclosure, disclosure should not be made.

2.5 Previously Obtained Authorizations.

A Previously obtained, valid consents (i.e., consents, authorizations, or other legal permissions) obtained prior to April 14, 2003 may be used by TAMHSC Health Care Component under the following conditions:

2.5.1 Non-Research

2.5.1.1 The previously obtained consent is valid only for PHI that is created or received by TAMHSC Health Care Component prior to April 14, 2003.

2.5.1.2 The prior consent specifically permits such use or disclosure.

2.5.1.3 There is no agreed-to restriction on the use or disclosure.

## 2.5.2 Research

2.5.2.1 The previously obtained consent applies to PHI whenever created or received.

2.5.2.2 Provided that prior to April 14, 2003, TAMHSC Health Care Component has obtained either:

- An authorization or other express legal permission to use or disclose PHI for the research;
- The informed consent of the individual to participate in the research; or
- A waiver by the IRB of informed consent for the research.

## 2.6 Prohibition on conditioning authorizations.

2.6.1 TAMHSC Health Care Component may not condition the provision of treatment, payment, and enrollment in a health plan, or eligibility for benefits on the provision of an authorization, except:

2.6.1.1 TAMHSC Health Care Component may condition the provision of research related treatment on provision of an authorization;

2.6.1.2 TAMHSC Health Care Component may condition the provision of healthcare that is solely for the purpose of creating PHI for disclosure to a third party on acquisition of an authorization to allow such disclosure.

## 2.7 Signatures on Authorizations.

2.7.1 An individual is required to sign a valid authorization for the release of his/her PHI, except when that information is used for treatment, payment, or health care operations. Circumstances when authorization is required include but are not limited to:

2.7.1.1 When the individual has initiated the authorization because he/she wants the TAMHSC Health Care Component to disclose PHI to a third party;

2.7.1.2 For marketing of health and non-health items and service;

2.7.1.3 For disclosure to a health plan or Component for the purpose of making eligibility or enrollment determinations prior to the individuals enrollment in the plan;

2.7.1.4 When disclosing information to an employer for use in employment determinations.

2.7.2 Authorizations must be signed by:

2.7.2.1 The individual whose PHI is to be released.

2.7.2.2 If the patient is deceased, authorization to use or disclose PHI must be signed by the executor or administrator of the deceased's estate. If an executor of the estate does not exist, the next of kin may sign the authorization to release PHI (parent, spouse, brother, sister, etc.) If no family can be located, and the patient did not designate an individual to serve as conservator and did not execute a durable power of attorney while competent, probate court action is necessary.

2.7.2.3 If the patient is a minor age under 18, the parent or legal guardian must sign the authorization for use or disclosure of PHI. If the guardian is not the parent, legal guardianship is required.

2.7.2.4 Emancipated minors do not require the consent of the parent or guardian. They must supply court documents to prove status of emancipation.

2.7.2.5 Psychiatric records of minors aged 16-17 require both the minor's and the parent's/guardian's signature on the authorization. If the minor patient aged 16-17 signs for permission to treat, they are the only person who can authorize the use or disclosure of those records.

2.7.2.6 Records of minors involving venereal disease, drug abuse, or pregnancy/contraception require the minor's authorization only.

2.7.2.7 If the patient is between 0-18 and is in the custody of the State, required authorization from the Department of Children and Youth Services and a court certificate of removal from parents is required. If custody is retained by the parents, they are the only individuals who can authorize use or disclosure of the records.

2.7.2.8 If a patient under the age of 18 is deceased, the parent's/guardian's authorization is sufficient (a court certificate is not required).

2.7.2.9 A stepparent may not authorize the release for minor's records unless the child was adopted. If the child was adopted by the stepparent, proof is required.

2.7.2.10 If a minor is living in a foster home, the foster parent is not necessarily the legal guardian. TAMHSC Health Care Components require proof of guardianship in this case.

2.7.2.11 In the case of divorce, either parent may authorize release of the child's records. If the parent has lost their parental rights, they are not entitled to authorize use or disclosure of PHI.

2.7.2.12 Authorization to release PHI for HIV/AIDS must be signed by the "protected individual."

### 3. VIOLATIONS

The Privacy Officer has general responsibility for implementation of this procedure. Employees who violate this procedure will be subject to disciplinary action up to and including termination of employment. Anyone who knows or has reason to believe that another person has violated this procedure should report the matter promptly to his or her supervisor or the Privacy Officer. All reported matters will be investigated, and, where appropriate, steps will be taken to remedy the situation. Where possible, every effort will be made to handle the reported matter confidentially. Any attempt to retaliate against a person for reporting a violation of this procedure will itself be considered a violation of this procedure that may result in disciplinary action up to and including termination of employment.

i HIPAA Code: §164.508

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#### Contact Office

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TAMHSC Vice President of Finance and Administration