

UNIVERSITY OF WYOMING

HIPAA POLICY 3.2

RELEASE OF PROTECTED HEALTH INFORMATION WITH INDIVIDUAL'S AUTHORIZATION

- I. **Purpose:** The purpose of this policy is to ensure that UW Covered Components do not release PHI without a valid authorization from the individual or his or her representative, except as otherwise permitted or required and described within this policy or other UW HIPAA policies. This policy also specifies the specific elements needed for an authorization to be considered valid as required by HIPAA. It is the responsibility of anyone who uses or discloses PHI at a UW Covered Component to ensure that a valid authorization has been obtained or some other exception applies in order to release PHI without an authorization from the individual.

- II. **Required Content of a Valid Authorization:** A valid authorization must contain the following core elements in plain language:
 - A. A specific and meaningful description of the information (how much and what kind) to be used or disclosed.
 - B. A description of each purpose, immediate and future, of the requested use or disclosure.
 - i. Describe specifically the purpose(s) for seeking the client's informed consent and the new use(s) to which the information will be put.
 - ii. The statement, "at the request of the individual," is a sufficient description of the purpose when an individual data subject initiates the authorization and does not, or elects not to, provide a statement of the purpose.
 - C. The name or other specific identification of the person or class of persons authorized to make the requested use or disclosure (e.g. Social Security Number or State License Number).
 - D. The name or other specific identification of the person(s) to whom the organization may make the requested use or disclosure.
 - i. Use the Client's full legal name.
 - ii. Identify the entity or agencies to which the information will be released.
 - iii. If available, include the name and address of the entity.
 - iv. Include relevant staff names and titles.
 - E. The specific types of information to be included or excluded with this request, including the inclusion or exclusion of the entire record, information regarding sexually transmitted disease and information regarding mental health issues.
 - F. An expiration date or an expiration event that relates to the individual or the purpose of the use or disclosure that is no more than one-year from the dated signature of the individual.
 - i. The statement "end of the research study," "none," or similar language is sufficient if the authorization is for a use or disclosure of PHI for research, including for the creation and maintenance of a research database or research repository.

- G. Signature of the individual and the date.
 - i. If the authorization is signed by a personal representative of the individual, a description of such representative's authority to act for the individual must be included.
- H. In addition to the core elements, the authorization must contain statements adequate to place the individual on notice of all of the following:
 - i. The individual's right to revoke the authorization in writing;
 - ii. A UW Covered Component may not condition treatment, payment, enrollment or eligibility for benefits on whether the individual signs the authorization when the prohibition on conditioning of authorizations applies; or
 - iii. The potential for information disclosed pursuant to the authorization to be subject to re-disclosure by the recipient and no longer be protected by the Privacy Regulations.

- III. **Defective Authorizations:** An authorization is not valid, if the document submitted has any of the following defects:
 - a. The expiration date has passed or the expiration event is known by the covered entity to have occurred;
 - b. The authorization has not been filled out completely, with respect to an element described by section II this policy, if applicable;
 - c. The authorization is known by the covered entity to have been revoked;
 - d. The UW Covered Component knows that material information in the authorization is false;
 - e. The authorization has been inappropriately combined with another document creating an improper compound authorization defined in section IV of this policy; or
 - f. The authorization has been inappropriately conditioned.

- IV. **Compound Authorizations:** The general rule is that an authorization for use or disclosure of PHI may not be combined with any other document to create a compound authorization.
 - a. **Exceptions:** There are special rules for research studies and psychotherapy notes.

- V. **Revocation of Authorizations:** An individual may revoke an authorization at any time, provided that the revocation is in writing, except to the extent that the UW Covered Component has taken action in reliance thereon. A revocation of authorization must be retained with the authorization and the individual's health care information.

- VI. **Procedure for Release of PHI Pursuant to an Authorization:** When releasing PHI pursuant to a valid Authorization, a UW Covered Component staff must:
 - a. **Require Completion of Authorization Form:** Require and ensure completion and signature of the signed UW Covered Component's Authorization Form; or
 - b. **Review of Outside Authorization Form:** The appropriate individuals are to thoroughly review authorization forms from outside entities to ensure that they are valid and meet all of the elements of Section II above before disclosing the individual's PHI to the third-party designated in the authorization form.

- c. **Document Management:** A UW Covered Component Privacy Officer or designee must retain a copy of the completed, signed Authorization form in the patient's medical record. If the UW Covered Component seeks an authorization from an individual for a use or disclosure of protected health information, the UW Covered Component shall provide the individual with a copy of the signed authorization.

VII. Disclosure of PHI Requiring an Authorization

- a. **Psychotherapy Notes:** A UW Covered Component must obtain an authorization by the individual for any use or disclosure of psychotherapy notes;

- i. **Definition:** "Psychotherapy Notes" means 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" excludes 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

- ii. **When Authorization Not Needed for Disclosure of Psychotherapy Notes:** A covered entity does not need an authorization for disclosures of psychotherapy notes:
 - 1. To carry out the following treatment, payment, or health care operations:
 - a. Use by the originator of the psychotherapy notes for treatment;
 - b. Use or disclosure by the covered entity for its own 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; or
 - c. Use or disclosure by the covered entity to defend itself in a legal action or other proceeding brought by the individual; or
 - 2. To the Secretary of HHS as required by HIPAA;
 - 3. As required by law;
 - 4. To a health oversight agency with respect to oversight of the originator of the notes;
 - 5. To a coroner or medical examiner for the purpose of identifying a deceased person, determining a cause of death, or other duties as authorized by law; or
 - 6. Consistent with applicable law and standards of ethical conduct, the UW Covered Component believes in good faith that the use or disclosure is necessary to prevent or lessen a serious and imminent threat to the health or safety of a person or the public; and the use or disclosure is to

a person(s) reasonably able to prevent or lessen the threat, including the target of the threat.

- iii. **Compound Authorizations:** An Authorization for the use or disclosure of psychotherapy notes may only be combined with another authorization for a use or disclosure of psychotherapy notes.
- b. **Marketing:** A UW Covered Component must obtain authorization for any use or disclosure of PHI for marketing except in one of the two situations below. Additionally, if the marketing involves direct or indirect renumeration to the UW Covered Component the authorization must state that renumeration is involved.
 - 1. **Face to Face-** If the communication is face-to-face between the UW Covered Component and the individual; or
 - 2. **Promotional Gift-** The communication involves only a promotional gift of nominal value provided by the UW Covered Component.
- c. **Sale of PHI:** The sale of PHI must obtain an authorization for any disclosure of PHI which is a sale of protected health information. Such authorization must state that the disclosure will result in remuneration to the UW Covered Component.

VIII. REFERENCES/APPLICABLE LAW

- a. 45 C.F.R. Section 164.508

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