

 HAWAII HEALTH SYSTEMS CORPORATION "Quality Healthcare For All" POLICY	Department: Quality Through Compliance	Policy No.: CMP 029A
	Issued by: Audit and Compliance Committee	Revision No.:
Subject: HIPAA Authorizations for Use and Disclosure of Protected Health Information	Approved by:  HHSC Board of Directors By: Carol A. VanCamp Its: Secretary/Treasurer	Effective Date: September 19, 2013
		Supersedes Policy: Page: 1 of 5

Last Reviewed: August 26, 2013. Next Review: August 26, 2016

- I. **PURPOSE:** This Policy defines the circumstances under which an authorization is necessary prior to use or disclosure of an individual's protected health information ("PHI") and provides the requirements of a valid authorization.
- II. **DEFINITIONS:**

Marketing – A communication about a product or service, the purpose of which is to encourage recipients of the communication to purchase or use the product or service. Marketing excludes a communication made to an individual:

 1. To describe the entities participating in a health care provider or health plan network and if, and the extent to which, a product or service (or payment for a service) is provided by the entity or included in a plan of benefits.
 2. For the treatment of that individual, or;
 3. For case management or care coordination for that individual, or to direct or recommend alternative treatments, therapies, health care providers, or settings of care to that individual.

Psychotherapy Notes – 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, which notes are separated from the rest of the individual's medical record. "Psychotherapy notes" excludes medication prescription and monitoring, counseling session start and stop times, modalities and frequencies of treatment furnished, results of clinical tests, and any summary of the following items: diagnosis, functional status, treatment plan, symptoms, prognosis, and progress to date. Psychotherapy notes are kept separate from the patient's medical and billing records.

Sale of PHI – a disclosure of PHI by a covered entity or business associate, where the covered entity or business associate directly or indirectly receives remuneration from or on behalf of the recipient of the PHI in exchange for the PHI. Sale of PHI does not include a disclosure of PHI:

1. For public health purposes, pursuant to 164.512(b) or 164.514(e);

2. For research purposes pursuant to 164.512(i) or 164.514(e);
3. For treatment and payment purposes, pursuant to 164.506(a);
4. For the sale, transfer, merger, or consolidation of all or part of the covered entity and for related due diligence as described in paragraph (6)(iv) of the definition of health care operations and pursuant to 164.506(a);
5. To or by a business associate for activities that the business associate undertakes on behalf of HHSC, or on behalf of a business associate in the case of a subcontractor, pursuant to 164.502(e) and 164.504(e);
6. To an individual, when requested under 164.524 or 164.528;
7. Required by law as permitted under 164.512(a); and;
8. For any other purpose permitted by and in accordance with the applicable requirements of this subpart, where the only remuneration received by the covered entity or business associate is a reasonable, cost-based fee to cover the cost to prepare and transmit the PHI for such purpose or a fee otherwise expressly permitted by other law.

III. POLICY: The following general rules shall apply:

- A. Hawaii Health Systems Corporation (HHSC) will not use or disclose a patient's protected health information (PHI) without a valid authorization except for those purposes otherwise permitted or required by law or rule including:
 1. Uses/disclosures for treatment, payment and health operations.
 2. Uses/disclosures permitted by verbal agreement for:
 - a) The HHSC Facility Directory
 - b) Family or other involvement in the patient's care
 3. Uses/disclosures required by or permitted as follows:
 - a) Required by law
 - b) For limited law enforcement purposes
 - c) For public health activities and health oversight activities
 - d) Disclosures about victims of abuse, neglect or domestic violence
 - e) Disclosures for workers' compensation
 - f) To medical examiners and funeral homes
 - g) For organ donation
 - h) For research
 - i) For specialized government functions

Refer to other HHSC policies governing the above uses and disclosures in detail.
- B. Use or disclosure of PHI pursuant to a valid authorization must be consistent with such authorization.
- C. HHSC will provide a copy of a signed authorization to the individual when the authorization is requested by HHSC.
- D. HHSC will not condition treatment, payment, or eligibility for benefits on the completion of an authorization except that:
 1. Research-related treatment may be provisioned upon completion of an authorization for the use/disclosure of PHI for the research;
 2. Health care provided solely for the purpose of creating health care information for the use of the third party (i.e., pre-employment physicals, drug screening tests, etc.) may be provisioned on the completion of an authorization for release of the PHI to the third party;

E. Valid Authorization

1. A valid authorization contains all of the following required elements:
 - i. A specific and meaningful description of the information to be used and/or disclosed.
 - ii. The name or other specific identification of the person(s) or class of person(s) authorized to make the use and/or disclosure.
 - iii. The name or other specific identification of the person(s) or class of person(s) to whom the information may be used and/or disclosed.
 - iv. An expiration date or event that relates to the individual or the purpose of the use and/or disclosure. The following statements of expiration events are sufficient under federal law if the use/disclosure is for the following:
 - a. Research – “end of research study”.
 - b. Creation and maintenance of a research database or repository – “none”
 - v. A description of each purpose of the requested use and/or disclosure. If the patient initiates the authorization the statement “at the request of the patient” is sufficient.
 - vi. Signature of the individual or personal representative and the date of signature.
 - vii. If the authorization is signed by a personal representative, a description of that person’s authority to act for the individual.
 - viii. The authorization may contain elements or information in addition to the elements required by law, provided that such additional elements are not inconsistent with the required elements.
2. A valid authorization contains all of the following statements:
 - i. The patient’s right to revoke the authorization in writing and either:
 - a. Exceptions to this right to revoke or
 - b. A description of how the patient may revoke the authorization;
 - ii. The patient’s treatment, payment, enrollment or eligibility of benefits cannot be conditioned upon an authorization, except as allowed for research-related treatment, initial enrollment in a health plan, or the provision of health care for the purposes of disclosure of the PHI to a third party (see section I – D above)
 - 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 this subpart.
 - iv. If the authorization is for marketing purposes and HHSC expects to receive remuneration directly or indirectly for the requested use/disclosure, a statement that remuneration is expected.
3. A valid authorization must not contain any of the following defects:
 - i. Expiration date has passed or the expiration event is known by HHSC to have occurred.

- ii. Has not been filled out completely or is missing any of the required elements or statements.
 - iii. HHSC is aware that the authorization was revoked or that any of the material information is false.
 - iv. The authorization is a combined authorization and no exception applies (see section III.E above on combined authorization).
- 4. A valid authorization must be written in plain language.
- 5. A valid authorization must not be combined with any other document to create a compound authorization, except as follows:
 - i. An authorization (other than for psychotherapy notes) may be combined with any other authorization except when the provision of treatment, payment, enrollment in a health plan or eligibility of benefits has been conditioned upon any of the combined authorizations.
 - ii. An authorization for the use or disclosure of PHI for a specific research study may be combined with any other type of written permission for the same, or other, research study. This exception includes combining an authorization for the use or disclosure of PHI for a research study with an authorization for the creation or maintenance of a research database or repository, or with a consent to participate in the research. Where HHSC has conditioned the provision of research-related treatment on the provision of one of the authorizations, as permitted by the HIPAA Privacy Rule, then any such "compound authorization" is required to differentiate between the conditioned and unconditioned research components and must allow the individual the option to opt in to the unconditioned research activities.
 - iii. An authorization for use or disclosure of "psychotherapy notes" may only be combined with another authorization for use or disclosure of "psychotherapy notes".

F. Authorizations Involving Restricted and/or Confidential Health Information

- 1. Alcohol or Drug Abuse: Records and information of federally assisted alcohol abuse and drug abuse programs (which includes providers who advertise or hold themselves out as diagnosing, treating or making referrals for treatment of substance abuse, under 42 CFR Part 2) may be released only pursuant to a specific authorization for the release of this type of record.
- 2. Psychotherapy Notes: Patients do not have the right to access "psychotherapy notes", as defined above, regarding themselves. 45 CFR 164.524. HHSC must obtain an authorization for any other use or disclosure of psychotherapy notes, except:
 - a) To carry out the following treatment, payment or health care operations:
 - i. Use by the originator of the psychotherapy notes for treatment.
 - ii. Use or disclosure by HHSC 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

- iii. Use or disclosure by HHSC to defend itself in a legal action or other proceeding brought by the patient.
 - b) A use or disclosure that is required by 45 CFR 164.502(a)(2)(ii) [refer to CMP 036A] or permitted by 164.512(a) [refer to CMP 050A], 164.512(d) with respect to oversight of the originator of the psychotherapy notes [refer to CMP 037A], 164.512(g)(1) [CMP 032A]; or 164.512(j)(1)(i) [refer to CMP 030A].
- 3. Research: HHSC will obtain an authorization or an IRB waiver of authorization for use/disclosure of PHI created for research in accordance with HHSC policy "Use and Disclosure of Protected Health Information for Research Purposes (CMP 046A)."
- 4. Marketing: HHSC must obtain an authorization for any use/disclosure of PHI for marketing purposes except if the communication is in the form of a face-to-face communication between HHSC and the patient or a promotional gift of nominal value provided by HHSC.
- 5. Sale of PHI: HHSC must obtain an authorization for any disclosure of PHI which is a sale of PHI, as defined in this policy. Such authorization must state that the disclosure will result in remuneration to the covered entity.
- I. Documentation: HHSC will document and retain any signed authorizations in written or electronic form for six years from the date of its creation or the date when it last was in effect, whichever is later.

J. Revocation of Authorizations

- 1. Individuals who wish to revoke a previously executed authorization may contact the Facility's Health Information Management (HIM) Department.
- 2. Written verification of the revocation request will be requested.
- 3. The HIM Department will research the request and advise the individual if the release of records pursuant to the authorization has already been completed.
- 4. If the disclosure has not yet occurred or is ongoing, the written revocation request will be attached to the original authorization and/or filed in EMR system as appropriate.
- 5. Additional health information will not be disclosed once a revocation request has been received and documented.
- 6. If the disclosure occurred prior to the receipt of the written revocation, the individual will be notified and the notification will be documented on the written revocation request or in EMR as appropriate.
- 7. If the authorization was obtained as a condition of obtaining health care insurance, the individual will be notified that the insurer has a right to contest the claim under the insurance policy.

K. HHSC facilities shall develop operational procedures to implement this Policy.

IV. APPLICABILITY: This Policy applies to all HHSC facilities

V. AUTHORITY: 45 C.F.R. 164.501, 164.508, 164.524; Hawaii Revised Statutes Chapter 323B, 42 CFR Part 2.

VI. ATTACHMENT: HHSC Procedure 029B.