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**SUBJECT: AUTHORIZATIONS**

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**GENERAL STANDARD (PRIVACY RULE SECTION 164.508):**

AHS health care providers and health plans are required to obtain written authorization from an individual before using or disclosing that individual's PHI, unless the Privacy Rule or an AHS Standard and Guideline specifies that such use or disclosure does not require an authorization.

AHS health care providers and health plans will use a form authorization that satisfies the requirements of Section 164.508 of the Privacy Rule (reiterated below) whenever it uses or discloses PHI in a situation where an authorization is mandated by the Privacy Rule (e.g., with respect to certain uses and disclosures of psychotherapy notes). In addition, AHS health care providers and health plans will not release PHI pursuant to a third party authorization without first ensuring that such authorization satisfies these requirements.

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**PRIVACY RULE:**

**I. Authorization Requirements**

- A. When a CE obtains or receives a valid authorization for its use or disclosure of PHI, such use or disclosure must be consistent with such authorization.
- B. A CE may not use or disclose PHI without a valid authorization, except when the Privacy Rule otherwise permits such use or disclosure without authorization (e.g., with respect to uses or disclosures for its own TPO).
- C. A CE must obtain an authorization to use or disclose psychotherapy notes except:
  - 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 CE 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 CE to defend itself in a legal action or other proceeding brought by the individual.
  - 2. For use or disclosure that is:

- a. Required by Section 164.502(a)(2)(ii) (i.e., by the Secretary of Health & Human Services for compliance reviews);
  - b. Permitted by Section 164.512(a) (i.e., as required by law);
  - c. Permitted by Section 164.512(d) with respect to oversight of the originator of the psychotherapy notes;
  - d. Permitted by Section 164.512(g)(1) (i.e., 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
  - e. Permitted by Section 164.512(j)(1)(i) (i.e., to prevent or lessen a serious and imminent threat to the health or safety of a person or the public, if a disclosure is to a person or persons reasonably able to prevent or lessen the threat, including the target of the threat).
- D. A CE must obtain an authorization for any use or disclosure of PHI for marketing, except if the communication is in the form of either a face-to-face communication made by a CE to an individual; or a promotional gift of nominal value provided by the CE.
1. If the marketing involves direct or indirect remuneration to the CE from a third party, the authorization must state that such remuneration is involved.

## **II. Valid Authorization**

- A. A “valid” authorization is a document that contains at least the following elements:
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(s), or class of persons, authorized to make the requested use or disclosure;
  3. The name or other specific identification of the person(s), or class of persons, to whom the CE 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 PHI for research, including for the creation and maintenance of a research database or research repository; and

6. 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 also be provided.
- B. In addition to the above core elements, the authorization must contain statements adequate to place the individual on notice of all of the following:
1. The individual’s right to revoke the authorization in writing, and either:
    - a. The exceptions to the right to revoke and a description of how the individual may revoke the authorization; or
    - b. To the extent that the information regarding revocation and how to revoke are included in the CE’s Notice of Privacy Practices, a reference to such document.
  2. The ability or inability to condition treatment, payment, enrollment or eligibility for benefits on the authorization, by stating either:
    - a. The CE may not condition treatment, payment, enrollment or eligibility for benefits on whether the individual signs the authorization when the prohibition on conditioning of authorizations in Paragraph V below applies; or
    - b. The consequences to the individual of a refusal to sign the authorization when, in accordance with Paragraph V below, the CE can condition treatment, enrollment in the health plan, or eligibility for benefits on failure to obtain such authorization.
  3. 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 Rule.
- C. In addition to the above core elements and statements, if the authorization is for a use or disclosure of PHI for marketing and the marketing involves direct or indirect remuneration to the CE from a third party, the authorization must state that such remuneration is involved.
- D. In addition:
1. The authorization must be written in plain language.

2. If a CE seeks an authorization from an individual for a use or disclosure of PHI, the CE must provide the individual with a copy of the signed authorization.
3. A valid authorization may contain elements or information in addition to the elements required by this section of the Privacy Rule, provided that such additional elements or information are not inconsistent with the elements required by this section of the Privacy Rule.

### **III. Defective Authorizations**

- A. An authorization is not valid if any of the following exist:
  1. The expiration date has passed or the expiration event is known by the CE to have occurred;
  2. The authorization does not have all required elements filled out completely;
  3. The authorization is known by the CE to have been revoked;
  4. The authorization violates Paragraphs IV or V below; or
  5. Any material information in the authorization is known by the CE to be false.

### **IV. Compound Authorizations**

- A. An authorization for use or disclosure of PHI may not be combined with any other document to create a compound authorization, except in the following situations:
  1. 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 research study, including another authorization for the use or disclosure of PHI for such research or a consent to participate in such research;
  2. An authorization for a use or disclosure of psychotherapy notes may only be combined with another authorization for a use or disclosure of psychotherapy notes;
  3. An authorization, other than an authorization for a use or disclosure of psychotherapy notes, may be combined with any other such authorization, except when a CE has conditioned the provision of treatment, payment, enrollment in a health plan, or eligibility for benefits under Paragraph V below on the provision of one of the authorizations.

**V. Prohibition on Conditioning of Authorizations**

- A. A CE may not condition the provision to an individual of treatment, payment, enrollment in a health plan, or eligibility for benefits on the provision of an authorization except in the following situations:
1. A covered health care provider may condition the provision of research-related treatment on provision of an authorization for the use or disclosure of PHI for such research;
  2. A health plan may condition enrollment in the health plan or eligibility for benefits on provision of an authorization requested by the health plan prior to an individual's enrollment in the health plan, if:
    - a. The authorization sought is for the health plan's eligibility or enrollment determinations relating to the individual or for its underwriting or risk rating determinations; and
    - b. The authorization is not for a use or disclosure of psychotherapy notes.
  3. A covered entity may condition the provision of health care that is solely for the purpose of creating PHI for disclosure to a third party on provision of an authorization for the disclosure of the PHI to such third party.

**VI. Revocation of Authorizations**

- A. An individual may revoke an authorization at any time, provided that the revocation is in writing, except to the extent that:
1. The CE has taken action in reliance thereon; or
  2. If the authorization was obtained as a condition of obtaining insurance coverage, other law provides the insurer with the right to contest a claim under the policy or the policy itself.

**VII. Documentation of Uses & Disclosures**

- A. A CE must document and retain in electronic or written format all signed authorizations.
- B. Signed authorizations must be retained for six years from the date of creation or the date when they were last in effect, whichever is later.

## **GUIDELINES:**

1. AHS has trained members of its workforce regarding:
  - A. When an authorization is required by the Privacy Rule (e.g., AHS has trained those members that an authorization is required when using or disclosing PHI for most marketing and research activities, and for many uses or disclosures of psychotherapy notes).
  - B. The information that must be included within an authorization (in addition, this Standard and Guidelines provides detailed instructions on how to complete an authorization, along with a model form authorization).
  - C. The fact that any use or disclosure that AHS makes of PHI under an authorization must be expressly permitted by the specific terms of the authorization – and that this requirement applies to authorizations that AHS receives from others, as well as authorizations that AHS itself creates.
  - D. The fact that the permissions granted in the authorization may not be acted upon, to any extent, if the authorization has been revoked or has expired.
  - E. The specific restrictions that apply with respect to the use and disclosure of psychotherapy notes and the sensitivity with which such notes must be treated.
2. This Standard and Guidelines does not require the use of a single authorization form, to permit each AHS health care provider and health plan flexibility in shaping the form to their specific needs. However, the authorization form attached to this Standard and Guidelines is offered as a model. The model is not meant to be used for any research activities (in research situations, AHS must work with its Privacy Official to develop a more specific authorization).
3. The actual content of the authorization model is based on Section 164.508 of the Privacy Rule, and AHS Rule 96-23: Sections 4.1 (“Employees shall inform clients that granting consent is not a pre-requisite for receiving services, and shall explain that they may apply for services separately”) and 4.3 (identifying the specific consent format).
4. AHS will not combine an authorization form with any other document, such as a consent or another authorization.
5. An authorization will be distributed as follows:
  - A. An AHS representative will provide the authorization to a patient/beneficiary/personal representative.
  - B. The AHS representative will explain each item of the authorization for the benefit of the patient/beneficiary/personal representative.

- C. **The AHS representative will emphasize that the patient/beneficiary/personal representative is not obligated to sign the authorization, that there will be no negative consequences from any decision not to sign the authorization, and that he/she can revoke the authorization at any time (except to the extent that AHS has already relied on the authorization).**
  - D. The AHS representative will ask the patient/beneficiary/personal representative to read and sign the authorization.
  - E. The patient/beneficiary/personal representative will be given a copy of the signed authorization. AHS will file the original, signed authorization in the appropriate record.
6. AHS will review any form authorization it receives from a third party, requesting that AHS disclose PHI that it maintains, against the requirements of this Standard and Guidelines, to ensure the authorization form satisfies those requirements. In the event the authorization does not satisfy those requirements, AHS will not make the disclosure of PHI that the authorization seeks (in that regard, AHS will contact the person who provided the authorization and offer to use an AHS form authorization).
7. The Disability Determinations Division (“DDD”) has developed an authorization form for use in making Medicaid eligibility determinations. This form is largely based upon a form created by the Social Security Administration, which has been approved as to form by the Department of Health and Human Services. The DDD authorization form has been approved as to form by AHS.

## Individual Authorization

Name: \_\_\_\_\_ ID Number: \_\_\_\_\_

*We understand that information about you and your health is personal, and we are committed to protecting the privacy of that information. Because of this commitment, we must obtain your special authorization before we may use or disclose your protected health information for the purposes described below. This form provides that authorization and helps us make sure that you are properly informed of how this information will be used or disclosed. Please read the information below carefully before signing this form.*

*A representative of the Agency of Human Services (“AHS”) must answer these questions completely before providing this authorization form to you. DO NOT SIGN A BLANK FORM. You or your personal representative should read the descriptions below before signing this form.*

**(1) Who within AHS will use or disclose the information?** The person(s) or classes of persons within AHS authorized to use or disclose the information are described below.

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**(2) To whom may AHS disclose the information?** The person(s) or classes of persons authorized to receive the information are described below, including any specific AHS Departments who will receive the information.

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**(3) What information will be used or disclosed?** The specific information that may be used or disclosed.

Information Type	Yes, it will be used and/or disclosed	No, it will not be used and/or disclosed



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The information at issue relates to the time period of \_\_\_\_\_ to \_\_\_\_\_.

**(4) What is the purpose of each use or disclosure?** The purposes for which the information will be used or disclosed are described below.

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**(5) When will this authorization expire?** The date or event that will trigger the expiration of this authorization must be described below.

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**(6) Any applicable individualized instructions?** Specific guidance from AHS on the authorization process.

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## **SPECIFIC UNDERSTANDINGS**

By signing this authorization form, you authorize the use and/or disclosure of your protected health information as described above. You understand that the information identified above could be re-disclosed by the recipients and, if so, may not be subject to federal or state laws protecting its confidentiality.

You have a right to refuse to sign this authorization. Your health care, the payment for your health care, and your enrollment or eligibility for health care benefits will not be affected if you do not sign this form.

You understand that federal regulations (42 CFR Part 2) prohibit the re-disclosure of drug and alcohol treatment information without your written consent, except as allowed by the federal regulations.

You have a right to see and copy the information described on this authorization form in accordance with our record access policies. You also have a right to receive a copy of this form after you have signed it.

If you sign this authorization, you will have the right to revoke it at any time, except to the extent that we have already taken action based upon your authorization. To revoke this authorization, please write to **[insert name of responsible person or department]**, at **[identify address]**.

**SIGNATURE**

*I have read this form and all of my questions about this form have been answered. By signing below, I acknowledge that I have read and accept all of the above.*

\_\_\_\_\_  
Signature of Individual or Personal Representative

\_\_\_\_\_  
Print Name of Individual or Personal Representative

\_\_\_\_\_  
Date

\_\_\_\_\_  
Description of Personal Representative's Authority

\_\_\_\_\_  
Signature of AHS Employee Explaining Authorization Process

\_\_\_\_\_  
Position and Job Title of AHS Employee

## Instruction Sheet

### **General Instructions**

1. Complete each blank in the form – the authorization is not valid unless all required information has been identified.
2. All authorizations for the use or disclosure of psychotherapy notes require review and approval from the Assistant Attorney General or other counsel providing services to the Department preparing the authorization – please complete such authorizations and submit them to the Assistant Attorney General or other counsel for review, before having them signed by a patient/beneficiary or his/her personal representative.
3. All authorizations for the use or disclosure of health information for marketing require review and approval from the Assistant Attorney General or other counsel providing services to the Department preparing the authorization – please complete such authorizations and submit them to the Assistant Attorney General or other counsel for review, before having them signed by a patient/beneficiary or his/her personal representative.
4. If an authorization is for marketing, AHS must add a paragraph to the authorization indicating whether it will receive direct or indirect remuneration in connection with the authorization. This paragraph should be added as section (6) of the form, and should state:  
  
**AHS will/will not receive direct or indirect remuneration in connection with the use or disclosure of information identified above.**
5. Do not combine a single authorization for the use or disclosure of health information with any other document (such as a consent form or any other authorization form).
6. This authorization form may not be used for any research related activity. Please see the Privacy Official if you intend to engage in any research related activities.
7. AHS may not condition the provision of health care, payment for health care, or health care benefits on the execution of an authorization, with certain limited exceptions. The Assistant Attorney General or other counsel providing services to the Department preparing an authorization must review and approve any situation where such conditioning is proposed -- please complete such authorizations and submit them to the Assistant Attorney General or other counsel for review, before having the authorization signed by a patient/beneficiary or his/her personal representative.

### **Specific Instructions (relating to the numbered paragraphs in the form)**

1. Identify the specific class of persons within AHS who will use, or disclose, the health information. The information should be precise (stating “AHS” is not sufficient) but you need not identify specific persons.
2. Identify the specific class of persons to whom AHS will disclose the information, if any. For example, Dr. Smith of the ABC Practice.

3. Identify the health information at issue in a specific and meaningful fashion. Use the checklist approach identified in the form and identify the time period at issue.
4. Identify the purpose of each use or disclosure. For example, “to permit the Vermont State Hospital to disclose psychotherapy notes to another health care provider.” 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. Identify the expiration date or expiration event that relates to the individual or the purpose of the use or disclosure. You may identify a specific date, a specific time period, or an event directly related to the individual or the purpose of the authorization. The term of the authorization should generally not exceed 1 year.
6. The authorization must be signed and dated by the patient – or his/her personal representative. If the form is signed and dated by the personal representative, then there must be a statement of that person’s authority to act for the patient (e.g., legal guardian).
7. The authorization must be signed by a minor, and no other person, in any situation where the minor has the authority under state or federal law to consent to the provision of health care, without the approval of a parent, guardian or other person acting in *loco parentis* (e.g., 18 VSA 4226 permits a minor age 12 or older to consent to treatment for alcohol abuse). See the Standard and Guidelines on Personal Representatives for a detailed discussion of those situations where the minor has the right to act as the “individual” under the Privacy Rule.