

Office of the Commissioner

***Privacy and Security: Authorization to
Release Information***

Policy #: DHHS-09-14

Issue Date: 9/10/14

I. SUBJECT

Privacy and Security: Authorization to Release Information

II. POLICY STATEMENT

The Health Insurance Portability and Accountability Act (HIPAA) Privacy Rule allows the HIPAA-covered entities and HIPAA-covered components Maine Department of Health and Human Services (the Department) to use or disclose Protected Health Information (PHI) for treatment, payment (including billing and collections), and healthcare (business) operations, (together "TPO") or as permitted or required by law, without a patient's written authorization.

Maine law governing the Department's activities also requires the client/consumer records be kept confidential, and requires authorization before disclosure of such identifiable information (together with PHI, "protected information or "PI") where the disclosure is not required by law or related to the operations of the Department program.

Before otherwise permitting access to, use by or disclosure of PHI in any format to other third parties, it is the practice of the Department to first receive a signed, valid authorization from the individual or the individual's personal representative.

III. RATIONALE

To comply with federal and state confidentiality laws governing the Department's work, the Department will obtain written permission from the individual, or the personal representative of the individual, who is the subject of the PHI or PI, for uses or disclosures of PHI other than for TPO or as required or permitted by law.

IV. PROCEDURE STATEMENT

General Procedure: If uncertain about whether an Authorization is required in a particular instance, contact your office Privacy/Security Liaison or the Director of Healthcare Privacy.

1. The Authorization Form

- A. The Authorization is posted on the Department internet at <http://www.maine.gov/dhhs/privacy/index.shtml> and the intranet at <http://inet.state.me.us/dhhs/forms/index.shtml> and includes certain required language.
- B. Compound Authorizations: An authorization for a use or disclosure of PHI may not be combined with any other document unless the authorization involves the patient's enrollment in a clinical research study.
- C. Defective or Invalid Authorizations: If the authorization does not meet the requirements in this Policy and Procedure, the authorization is defective and PI may not be used or disclosed under its terms.
- D. Duration: The Department requires the authorization form to expire after one year to ensure compliance with certain state mental health rules.
- E. Revoking an Authorization: An individual may revoke an authorization at any time by notifying their appropriate Privacy Officer in writing to revoke an authorization. Revocation only applies after the request was received, and does not apply to disclosures already made with the written permission of the individual.

2. General Procedures for Handling the Authorization Form

- A. An authorization form must be used (a) when an individual asks us to release his or her PHI to a third party and (b) when we seek the individual's permission to use or disclose his or her PHI for a non-routine purpose (such as marketing or fundraising) in which case we will provide the individual with any facts he or she needs to make an informed decision as to whether to allow use or disclosure of the information as requested.
- B. Pursuant to our minimum necessary policy, only that specific PHI requested on the authorization (no more) may be disclosed. If less than the specific PHI requested is disclosed, the disclosure must indicate that fact.

- C. Signature of the patient or other legal representative is required.
- D. If the patient is a minor not legally permitted to disclose PI, the signature of a parent or appropriate personal representative is required.
- E. The Department must verify the validity of the authorization.
- F. The identity of a personal representative signing the authorization will be verified.
- G. A copy of the authorization must be given to the individual or personal representative at the time the form is signed, where requested.
- H. Retention of Authorization Forms and Requests for Revocation: Each completed Authorization form and/or a written request to revoke an Authorization must be retained in the individual's medical record for a period of no less than six (6) years from the date it was last in effect (i.e., the expiration date or date of expiration event).

3. Who May Sign the Authorization Form

For disclosures of PHI and PI that require authorization, the following individuals may sign the written authorization for disclosure of healthcare records:

1. The adult patient/client with decision-making capacity;
2. The patient's personal representative or court-appointed guardian, as applicable, for the patient/client without capacity or declared incompetent by a court. In Maine, a spouse, adult child, sibling, grandchild, aunt, uncle, niece, nephew, other blood relative or adult who has exhibited special interest in the patient and is familiar with the patient's personal values is permitted to sign the authorization regarding healthcare records.
3. The parent or guardian of a minor (under 18-years old who is neither married nor the parent of a child), unless the minor has been emancipated by the court, or is otherwise qualified under the law.

NOTE: Where a minor is permitted to consent to treatment, s/he is also permitted to control the PHI associated with that treatment. Beyond emancipated minors, such minors also include:

- a. A minor who has been living separately from parents or legal guardians for at least 60 days and is independent of parental support is entitled to consent to health care services as an adult;

- b. Current or former members of the armed forces are treated as adults by law and may consent to health care services;
- c. Married minors (or minors who have been married) are treated by law as adults;
- d. A minor who is 17 may consent to donate blood;
- e. A minor who has given birth may make health care decisions *for her child* and control her child's PHI;
- f. The minor may consent to treatment for venereal disease, which includes HIV/AIDS;
- g. A minor may consent to collection of forensic evidence of sexual assault;
- h. A minor may consent to treatment for emotional or psychological problems under Maine law;
- i. Family planning services may be furnished to any minor who is a parent or married or has the consent of his or her legal guardian *or who may suffer in the professional judgment of a physician probable health hazards if such services are not provided*;
- j. A minor may consent to substance abuse treatment and control the resulting information.

Note: There are conflicts in the law about whether a minor may consent to, and therefore control information related to, hospitalization for certain mental health or substance abuse treatment. If in doubt, General Counsel, the Director of Healthcare Privacy, or your Attorney General should be consulted.

- 4. Regarding a decedent's information, the authorization must be signed by (a) the lawful executor, administrator or personal representative of the estate, or, (b) a family member or other who was directly involved in the care or payment for care of the decedent prior to the death, *unless doing so is inconsistent with any prior expressed preference of the individual that is known to the Department/facility*. However, these latter disclosures under 4(b) *are permissible, (we "may" disclose,) not required*. Therefore, if a Department facility that is a HIPAA covered entity questions the relationship of the person to the decedent or believes disclosure of the decedent's protected health information would not be appropriate, it is not required to make the disclosure without proof of legal status appointed by the court or by a will.

4. Verbal Authorization

It is the Department's policy to only permit verbal authorization in an extreme *emergency* circumstance (a) where the patient/client is unable to provide written authorization and (b) no personal representative is available to provide written permission. The circumstances surrounding such a **rare** situation shall be documented in the patient/client record.

5. Workforce Member's Access to Their Own, or a Friend or Family Member's PI

The Department's workforce members must follow the Department's procedure for accessing, using or disclosing their own, or a family members' PI. Any workforce member who accesses, uses or discloses his/her own, or a friend or relatives' PI without following the Department's policy and procedure and/or for other than an employment related or other lawful purpose, shall be subject to disciplinary sanctions up to and including termination, consistent with our policy on **Privacy and Security Sanctions**.

V. DISTRIBUTION

All Staff via e-mail and posting on the DHHS Intranet.

September 10, 2014

Date



Mary C. Mayhew
Commissioner