

**SAMPLE**

**CLAYTON - MACBAIN**

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# SAMPLE

## AUTHORIZATION TO USE OR DISCLOSE PROTECTED HEALTH INFORMATION

[NOTE: This template reflects the requirements of federal HIPAA privacy regulations. More stringent state law may require written authorization in situations in which federal regulations do not. This template must be modified to conform to any more stringent state laws regarding written authorization for the use or disclosure of individually identifiable health information.]

**RESPONSIBILITY:** Privacy Official, Directors of Claim Processing and Enrollment, Office and Department Managers

### **BACKGROUND:**

Federal and state *laws*, and [ENTITY] policy, permit the *use* and *disclosure* of *protected health information* (PHI) for certain purposes without obtaining the *member's* written *authorization*. For instance, an authorization is not required when PHI is used for *treatment*, for *payment*, or *health care operations*.

PHI also may be disclosed without an authorization when required by law, or when permitted to assist law enforcement or other public purposes. These situations are addressed in other [ENTITY] policies. (See GENERAL POLICY -- USE AND DISCLOSURE OF PROTECTED HEALTH INFORMATION).

In all other cases, the member must sign an authorization form before [ENTITY] may use or disclose the member's PHI.

### **POLICY:**

1. A written authorization, signed by the member, or the member's *personal representative*, is required to permit [ENTITY] to use or disclose that member's protected health information (PHI) in any circumstance that is not:
  - 1.1. For treatment, payment, or health care operations, as described in the GENERAL POLICY -- USE AND DISCLOSURE OF PROTECTED HEALTH INFORMATION, or
  - 1.2. For other uses and disclosures which are permitted without authorization under [ENTITY] policies, as listed in the GENERAL POLICY -- USE AND DISCLOSURE OF PROTECTED HEALTH INFORMATION.
2. [ENTITY] will require individuals to submit signed authorizations to allow it to request certain protected health information as necessary for purposes of determining an individual's eligibility for benefits or enrollment, or for underwriting or risk rating determinations. In

- most instances, health care providers and other health plans will not be permitted to disclose the required PHI to [ENTITY] without such an authorization from the individual.
- 2.1. Such authorizations must:
    - 2.1.1. Authorize health care providers and other health plans to disclose the information to [ENTITY], and
    - 2.1.2. State the purpose for which the information is sought, and
    - 2.1.3. Authorize [ENTITY] to use the information for the stated purpose.
  3. In addition, authorization is specifically required:
    - 3.1. For most uses and disclosures of *psychotherapy notes*. A provider may not disclose psychotherapy notes to [ENTITY] unless either [ENTITY] or the provider has obtained the member's written authorization for the disclosure. [ENTITY] must obtain the member's authorization in order to use psychotherapy notes for any purpose. See USE OR DISCLOSURE OF PSYCHOTHERAPY NOTES,
    - 3.2. For *marketing* (See USE AND DISCLOSURE OF PROTECTED HEALTH INFORMATION FOR MARKETING PURPOSES), and
    - 3.3. For [list other uses or disclosures for which state law requires written authorization, such as certain disclosures of records relating to mental health, substance abuse, HIV infection, etc. Insert references to other policies adopted in compliance with such state laws].
  4. The written authorization must be in the form prescribed by the [ENTITY] policy STANDARDS FOR FORM AND CONTENT OF AUTHORIZATION FORMS. An authorization is invalid if:
    - 4.1. It does not comply in all respects with the [ENTITY] STANDARDS FOR FORM AND CONTENT OF AUTHORIZATION FORMS, or
    - 4.2. One or more required elements is not completed or does not clearly express the member's desires, or
    - 4.3. It has been revoked by the member to whom the protected health information pertains, or by a personal representative authorized to act on the member's behalf, or
    - 4.4. It has expired, based on the expiration date or event, or
    - 4.5. Any material information contained in it is known by [ENTITY] to be false.
  5. Any use or disclosure under the terms of an authorization must be consistent with the provisions of that authorization.
  6. Authorizations must be retained for at least six years after the date they cease to be in effect (due to expiration or revocation).
  7. Members may revoke their authorizations at any time, except to the extent that [ENTITY] has taken action in reliance of the authorization. The revocation must be in writing, and

must be specific enough to permit identification of the original authorization that is being revoked.

8. [ENTITY] will not require an authorization as a precondition to treatment, except:
  - 8.1. If treatment is research-related, provision of treatment may be conditioned on receipt of an authorization to use and disclose PHI related to this treatment as necessary for the research; or
  - 8.2. If the purpose of the treatment is to create PHI for disclosure to a third party, provision of the services may be conditioned on receipt of an authorization to disclose the PHI to that third party.

[NOTE: Since HIPAA's definition of treatment is quite broad, and since HIPAA is very specific regarding the rules for conditioning treatment on the receipt of an authorization, we recommend including the provisions of paragraph 8, above, in a health plan's authorization policy. However, this provision may be omitted if the health plan is certain that it will never engage in any activity that could be construed as "treatment" under the HIPAA definition.]

9. [ENTITY] will not require an authorization as a precondition to payment, enrollment in the health plan, or eligibility for benefits, except:
  - 9.1. If the information for which the authorization is sought is for purposes of determining an individual's eligibility for benefits or enrollment, the benefits or enrollment may be conditioned on receipt of the authorization; or
  - 9.2. If the information for which the authorization is sought is for underwriting or risk rating determinations, enrollment in the health plan or eligibility for benefits may be conditioned on receipt of the authorization.
  - 9.3. [ENTITY] will not condition payment, enrollment in the health plan, or eligibility for benefits on the receipt of an authorization to use or disclose psychotherapy notes.
10. When [ENTITY] requires a member to sign an authorization as a condition of receiving treatment, payment, enrollment in the health plan, or eligibility for benefits, the authorization may not be combined with any other authorization forms.
11. The MINIMUM NECESSARY RULE does not limit the amount of information which may be used or disclosed under the authority of an authorization.

[NOTE: Other state laws may establish more stringent limitations on the use or disclosure of health care information without a member's authorization, and may apply limits to more types of information (HIV, for instance). This policy must be modified to comply with applicable state laws that are more stringent than federal HIPAA privacy regulations.]

## **PROCEDURE:**

1. Requests for uses and disclosures of PHI without written authorization that have not previously been reviewed under either the REQUESTS FOR, AND DISCLOSURES OF, PROTECTED HEALTH INFORMATION THAT ARE NOT ROUTINE AND RECURRING policy or the ROUTINE AND RECURRING REQUESTS FOR AND DISCLOSURES OF PROTECTED HEALTH INFORMATION policy, will be directed to the Privacy Official. The Privacy Official will review such requests in accordance with applicable [ENTITY] policies, and respond in writing with a determination as to whether the requested use or disclosure is permitted under [ENTITY] policy, or federal and state law, or whether a written authorization from the member is required. The Privacy Official will retain a copy of this written determination for at least six years. [NOTE: This documentation is not specifically required by federal HIPAA privacy regulations, but is recommended to demonstrate compliance.] If the Privacy Official determines that an authorization is required prior to the requested use or disclosure, an authorization that complies with this policy must be obtained.
2. When a written authorization to use or disclose PHI is requested from a member, or is presented by or on behalf of a member, the authorization document will be reviewed by the manager of the department that has custody of the requested information, for compliance with the [ENTITY] policy regarding the content of authorization forms. See STANDARDS FOR FORM AND CONTENT OF AUTHORIZATION FORMS. This includes determining whether the correct form has been used and whether all required elements have been completed.
  - 2.1. In some instances, members will present forms designed by other organizations. These forms are acceptable, as long as all of the required information is present. If there is any question as to the validity of an authorization form, the member should be asked to use the [ENTITY] authorization form instead.
3. If the authorization document does not comply, it is not valid and will be returned to the person from whom it was received, with a cover letter explaining the reason it was rejected, and inviting the member to submit the authorization in the form approved by [ENTITY]. A copy of the [ENTITY] authorization form will be included with the letter. A copy of the returned form and the cover letter will be filed and retained for at least six years. [NOTE: This documentation is not specifically required by federal HIPAA privacy regulations, but is recommended to demonstrate compliance.]
4. If the authorization document does comply, the requested information will be released in accordance with the provisions of the authorization form, using [ENTITY]'s current policies regarding the copying and mailing of member records. The original authorization form will be retained for at least six years. [NOTE: The federal HIPAA privacy regulations require that authorizations be retained for six years after the date they are no longer in effect.] A notation will be made on the authorization form to identify which information was disclosed, the date, the recipient, and the reason.

## Revocation of authorization

Any member who wishes to revoke an authorization to use or disclose PHI will be directed to contact the Privacy Official. Such revocation must be in writing, and must be specific enough to permit identification of the original authorization that is being revoked. The Privacy Official will notify *workforce* members in possession of the revoked authorization that it has been revoked, and will determine the extent to which action has been taken in reliance upon the authorization. The Privacy Official, with the advice of the General Counsel, will prepare directions regarding how the member's PHI is to be handled following the revocation. This may include no further action on the initial authorization, or action to the extent that it is permitted because [ENTITY] has already relied upon the authorization.

**REFERENCE:** 45 CFR § 164.508(a)

See also:

GENERAL POLICY -- USE AND DISCLOSURE OF PROTECTED HEALTH INFORMATION

STANDARDS FOR FORM AND CONTENT OF AUTHORIZATION FORMS

ROUTINE AND RECURRING REQUESTS FOR AND DISCLOSURES OF PROTECTED HEALTH INFORMATION

REQUESTS FOR, AND DISCLOSURES OF, PROTECTED HEALTH INFORMATION THAT ARE NOT ROUTINE AND RECURRING

USE AND DISCLOSURE OF PROTECTED HEALTH INFORMATION FOR PURPOSES OF RESEARCH