SECTION 3: USES & DISCLOSURES OF PHI

3.4. Authorizations for Release of Protected Health Information

POLICY

1. Authorizations for Uses and Disclosures of PHI.
   a. A covered entity must obtain the individual’s written authorization for any use or disclosure of protected health information (PHI) that is not for treatment, payment or health care operations or otherwise permitted or required by the Privacy Rule. A covered entity may not condition treatment, payment, enrollment, or benefits eligibility on an individual granting an authorization, except in limited circumstances.
   b. An authorization must be written in specific terms. It may allow use and disclosure of PHI by the covered entity seeking the authorization, or by a third party. Examples of disclosures that would require an individual’s authorization include disclosures to a life insurer for coverage purposes, disclosures to an employer of the results of a pre-employment physical or lab test, or disclosures to a pharmaceutical firm for their own marketing purposes.
   c. All authorizations must be in plain language, and contain specific information regarding the information to be disclosed or used, the person(s) disclosing and receiving the information, expiration, right to revoke in writing, and other data.
   d. If the patient is 18 years of age or older, the patient must sign and date the authorization, unless:
      i. The patient is incompetent or disabled and cannot sign the form, in which case a legally authorized substitute (Legal Guardian or Health Care Power of Attorney) may sign.
      ii. The patient is deceased, in which case the executor or administrator of the deceased’s estate may sign.
   e. If the patient is younger than 18 years of age, the patient must sign and date the authorization if:
      i. The patient is emancipated, or
      ii. The patient is deemed capable by a health care provider and the PHI includes treatment for mental illness, alcohol or drug abuse, pregnancy, sexually transmitted diseases, or HIV/AIDS testing.
   f. If the patient is younger than 18 years of age and does not meet the above criteria, the patient’s parent or legal guardian must sign and date the authorization.

2. Verification: UF will make reasonable efforts to verify the identity of any person authorizing a use or disclosure of PHI. If the authorizing person is not the patient, UF will also make reasonable efforts to verify the person’s relationship to the patient and their authority to consent to the use or disclosure. (See 3.9 Verification of Identity and Authority and Personal Representatives.)

3. Valid Authorizations: Authorizations for release of PHI must be in writing and may be delivered to UF by mail, fax, or in person. Signed documents and forms may also be scanned and e-mailed to the appropriate record custodian.
   a. Official UF authorization forms that have any of the following defects will not be valid for use or disclosure of PHI under any circumstances:
i. Incomplete in any part,
ii. Are known to have expired,
iii. Are known to have been revoked,
iv. Appear falsified in any way, or
v. Are signed by a representative who does not have authority to consent to the use or disclosure of PHI.

b. Written requests for release of PHI that are not on official UF or other forms will be evaluated case by case.

4. Revoking an Authorization: An individual may revoke an authorization at any time, as long as the revocation is in writing. The revocation will be effective immediately when received, except to the extent that UF has already disclosed information in reliance upon the authorization. Once received and processed, no further information will be disclosed.

5. Expiration Date: Authorizations are generally only valid for disclosing information created prior to the date the authorization was signed. If the authorization includes a statement that information created after the date of signing may be included in future disclosures, then information created up to the expiration date may also be disclosed.

6. Alteration or modification of UF authorization forms by UF healthcare components is not allowed except by special permission and approval of the Privacy Office.

7. Retention: UF must retain all authorizations it acts upon for the applicable retention period required by federal or state laws.

8. Verbal Agreements/Authorizations, when allowed, may be documented in a patient’s health record by health care personnel. Verbal authorizations are usually time-limited and only valid for the immediate purpose for which the agreement was given by the patient or representative.

9. Special Circumstances: Florida Statute 766.1065, regarding medical malpractice cases, requires a plaintiff, as a pre-condition to filing suit, to sign a HIPAA-compliant authorization form allowing the disclosure of PHI relevant to the claim of personal injury or wrongful death. Such authorizations are valid, and are not in violation of HIPAA.

DEFINITIONS

1. **Authorization:** A document or the action or fact of giving consent or permission or conferring authority on another person or entity.

2. **Personal Representative:** A person authorized under state or other applicable law to act on behalf of an individual in making health care-related decisions and who must be treated as the patient under the HIPAA Privacy Rule. Examples of Personal Representatives include a health care surrogate or proxy, an executor of an individual’s estate, a court-appointed guardian, a Child Protective Services case worker, or the parent of a minor child.

PRIVACY REQUIREMENTS

1. Authorization required: General rule: Except as otherwise permitted or required by the Privacy Rule, a covered entity (CE) may not use or disclose PHI without an authorization that is valid. 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.
2. A valid authorization is a document that meets the following requirements:
   a. Includes at least the following core elements:
      i. Specific, meaningful description of the information to be disclosed;
      ii. The name of the entity authorized to make the disclosure;
      iii. The name of the entity to whom the information may be disclosed;
      iv. A description of the purpose of the disclosure (the statement “at the request of the individual” is sufficient when an individual initiates the authorization and does not, or elects not to, provide a statement of the purpose);
      v. An expiration date or 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);
      vi. The signature of the individual or personal representative and the date of signing; if the authorization is signed by a personal representative, a description of such representative’s authority to act for the individual must also be provided.
   b. Includes three statements adequate to place the individual on notice of all of the following:
      i. The individual’s right to revoke the authorization in writing, the exceptions to this right, and a description of how to revoke;
      ii. The ability or inability to condition treatment, payment, enrollment, or eligibility for benefits on the authorization; and
      iii. The potential for information disclosed pursuant to the authorization to be subject to re-disclosure by the recipient and no longer protected by the privacy regulations.
3. Plain Language: The authorization must be written in plain language.
4. Provision of Copies: 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.

PROCEDURES:
1. Verify Identity and Authority: Make reasonable efforts to verify the identity of a person presenting an authorization for release of health information, and if not the patient, their relationship to the patient and authority to sign the authorization. If a patient or legal representative has documents to corroborate identity or authority, attach copies to the form. (See 3.9 Verification of Identity and Authority of Personal Representatives)
2. Use the correct form: Whenever possible, use forms that are applicable to the situation: Forms are available for general use, email and other electronic communications, and public activities (publication, marketing, fundraising, public relations, and sale of PHI).
3. Provide assistance: Assist the patient or representative in completing an Authorization form as needed. Give the requestor a copy of the completed form.
4. Return incomplete or invalid authorizations to the requestor with an explanation of the defect and how to correct it. Wait until a valid authorization is received before proceeding with any disclosures.
5. Forward completed authorizations to the person or department responsible for the release of the information requested. If using a record copying service, forward the authorization to the service representative.

REFERENCES
1. HIPAA: 45 CFR §164.508 Uses and disclosures for which an authorization is required.
2. Florida Statute: FS 766.1065 Authorization for release of protected health information

EXHIBITS