

# Consent for Uses and Disclosures of Information (2002 update)

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*Editor's note: The following information updates information contained in the Web version of the May 2001 Practice Brief "[Consent for the Use or Disclosure of Individually Identifiable Health Information \(Updated\)](#)" at [www.ahima.org](http://www.ahima.org) as well as the version in the May 2001 Journal of AHIMA.*

In the past, the terms "consent" and "authorization" have been used somewhat interchangeably in reference to written legal permission to disclose health information. As a standard of practice, healthcare providers obtained an individual's permission to disclose health information to entities outside the organization, but as a rule did not obtain the individual's permission to use or disclose health information for treatment, healthcare operations, or disclosures otherwise mandated or authorized by law.

New federal standards for privacy of individually identifiable health information (also known as the HIPAA final privacy rule), were published December 28, 2000, and introduced the concept of consents for treatment, payment, and healthcare operations, which made it necessary to distinguish between the two terms. These consents were intended to grant individuals seeking healthcare services the right to give permission to the covered entity to use their individually identifiable healthcare information for treatment, payment, and healthcare operations prior to the occurrence.

However, members of the healthcare industry expressed significant operational concerns, which triggered reconsideration and withdrawal of the consent requirement. They called attention to the potential for interruptions in efficient delivery of healthcare services and operations while permission to use protected health information was being sought. In addition, opposing opinions challenging the compromise of individual privacy rights with relaxation of the consent requirements were also heard.

## Legal Requirements

Not wanting to impede or block efficient healthcare operations and privacy protections, the Department of Health and Human Services released amendments to section 164.506 of the privacy rule on August 14, 2002, and eliminated the requirement for the consent, leaving covered entities the option to use it. Nothing in the preamble or the amended rule discourages a covered entity from implementing the optional consent when determined prudent and desirable. No particular design requirements are directed. Those choosing to implement the consent have complete freedom in structure, process, and format. This provides individual states flexibility in exercising regulatory directives. Further, a covered entity may, at its own discretion, choose to apply the original December 28, 2000, consent requirements.

Along with this change, other sections of the rule were strengthened and reinforced. Section 164.520 now requires written acknowledgment of receipt of the notice of privacy practices by the individual or documentation by the covered entity of reasonable effort to obtain written acknowledgment.<sup>1</sup> Additionally, the rule states that the consent is not to be used as a substitute for compliance with the authorization requirements addressed in section 164.508.

In the absence of a consent requirement, implementation guidelines state:

- "A covered entity may use or disclose protected health information for its own treatment, payment, or healthcare operations.
- A covered entity may disclose protected health information for treatment activities of a healthcare provider.
- A covered entity may disclose protected health information to another covered entity or a healthcare provider for the payment activities of the entity that receives the information.
- A covered entity may disclose protected health information to another covered entity for healthcare operations activities of the entity that receives the information, if each entity either has or had a relationship with the individual who is the

subject of the protected health information being requested, the protected health information pertain to such relationship, and the disclosure is:

- i. For a purpose listed in paragraph (1) or (2) of the definition of healthcare operations,<sup>2</sup> or
- ii. For the purpose of healthcare fraud and abuse detection or compliance
- A covered entity that participates in an organized healthcare arrangement may disclose protected health information about an individual to another covered entity that participates in the organized healthcare arrangement for any healthcare operations activities of the organized healthcare arrangement."

The modified rule further clarifies the optional consent as differing from informed consent for treatment within state laws by renaming it "consent for uses and disclosures of information."

## Recommendations

While providing a healthcare organization guidance on best choice for a consent option, HIM professionals should consider the following:

- Involve key organizational leaders in evaluating philosophy and suitability to implement the consent to use and disclose PHI prior to treatment, payment, and healthcare operations
- Consider any state requirements for the use and disclosure of health information
- If implementing a consent policy and practice:
  - Know that covered entities are not forbidden to adopt the details of the original regulations as a blueprint for their implementation processes. For assistance, please refer to the AHIMA Practice Brief "Consent for the Use or Disclosure of Individually Identifiable Health Information (Updated)" available online in the FORE Library: HIM Body of Knowledge
  - Ensure policy and procedure clarity in the coordination of the consent process with the notice of privacy practices acknowledgment mandate
- Whether or not your organization is implementing the consent option, ensure reliable policies and procedures for obtaining written acknowledgment of receipt of the notice of privacy practices and handling of restrictions to privacy practices.<sup>3</sup>

## Revised by

Beth Hjort, RHIA, CHP, HIM practice manager

Originally prepared by Gwen Hughes, RHIA, HIM practice manager

## Notes

1. For more information on notice of privacy practices, see the "Notice of Information Practices (Updated)" Practice Brief available on the AHIMA Web site at [www.ahima.org](http://www.ahima.org).
2. The definition of healthcare operations includes operations such as quality assessment and improvement activities; reviewing the competence or qualifications of healthcare professionals; underwriting premium rating, etc., for health insurance or benefits; medical review/legal services/auditing functions including fraud and abuse detection; business planning and development; business management; and general administrative activities.
3. See the "Notice of Information Practices (Updated)" Practice Brief.

## Reference

"Standards for Privacy of Individually Identifiable Health Information; Final Rule." 45 CFR Parts 160 and 164. *Federal Register* 67, no. 157 (August 14, 2002). Available at: <http://aspe.hhs.gov/admnimp/>.

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Harry Rhodes, MBA, RHIA

Mary Brandt, MBA, RHIA, CHE

Jill Callahan Dennis, JD, RHIA

Cheryl M. Smith, BS, RHIT, CPHQ

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