Consent for the Use or Disclosure of Individually Identifiable Health Information (2001)

This practice brief appendix has been updated. See the latest version here. This version is made available for historical purposes only.

Editor's note: An updated version of this practice brief, incorporating the final changes to the Privacy Rule published in the Federal Register *on 8/14/02 is available.*

Background

In the past, "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.

However, the recently published federal standards for privacy of individually identifiable health information (also known as the HIPAA final privacy rule), necessitate changes in both the vocabulary and practices related to consent and authorization for information use and disclosure. The new rule requires that covered entities obtain a general "consent" to use or disclose protected health information to carry out treatment, payment, and healthcare operations and written "authorization" for specific disclosures not otherwise authorized by law.

Legal Requirements

General

Relative to consent, the standards for privacy of individually identifiable health information require that, in general, covered healthcare providers obtain an individual's consent prior to using or disclosing protected health information to carry out treatment, payment, or healthcare operations. However, a covered healthcare provider may condition treatment, and a health plan may condition enrollment on the provision of such consent.

There are exceptions to this requirement, however, which are:

- a healthcare provider need not obtain a consent when its relationship with the individual is indirect or the individual is an inmate
- situations in which emergency treatment is necessary yet the provider must attempt to obtain consent as soon as reasonably practicable after the delivery of such treatment
- situations in which the covered entity is required by law to treat the individual, and the covered provider attempts but is unable to obtain consent
- situations in which the covered healthcare provider must infer the individual's consent due to substantial barriers in communication

In the last three exceptions, the covered healthcare provider must document its attempt and the reason why consent was not obtained.

The consent for use and disclosure described in the standards for privacy of individually identifiable health information must:

- be in plain language

- inform the individual that the protected health information may be used and disclosed to carry out treatment, payment, or healthcare operations
- refer the individual to the notice of information practices for a more complete description of such uses and disclosures
- state that the individual has the right to review the notice prior to signing the consent
- state that the terms of the notice may change and describe how the individual may obtain a revised notice
- state that the individual has the right to request that the covered entity restrict how protected health information is used or disclosed to carry out treatment, payment, or healthcare operations
- state that the individual has the right to revoke the consent in writing, except to the extent that the covered entity has taken action in reliance thereon
- be signed by the individual and dated
- when combined with other consents, be visually and organizationally separate, separately signed by the individual, and dated

Except when a covered entity creates protected health information for the purpose of research that includes treatment, the consent for use and disclosure cannot be combined with the notice of privacy practices.

The covered entity must document and retain the signed consent.

Requests for Restriction of Use

Individuals may ask to restrict the way in which their health information is used. However, the covered entity is not required to agree to requested restrictions. If the covered entity agrees to a requested restriction, the restriction is binding.

Joint Consents for Organized Healthcare Arrangements

Covered entities that participate in an organized healthcare arrangement and have a joint notice may also have a joint consent. A joint consent must include the name or other specific identification of the covered entities or classes of covered entities to which the joint consent applies and meet the requirements for consent content. Covered entities using a joint consent must notify other covered entities included in the joint consent as soon as practicable if and when a revocation is received.

Except where covered entities participate in an organized healthcare arrangement and have a joint notice and consent, a consent obtained by one covered entity is not effective to permit another covered entity to use or disclose protected health information.

Consents and Authorizations

When a covered entity receives both a consent and an authorization to disclose protected health information, it may do so only in accordance with the more restrictive consent or written authorization. A covered entity may attempt to resolve a conflict between a consent and an authorization by obtaining a new consent or by communicating with the individual to determine the individual's preference. The covered entity must document the individual's preference and may only disclose protected health information in accordance with the individual's preference.

Recommendations

To assure compliance with these regulations, HIM professionals should:

1. **Study federal and state requirements** for the use and disclosure of health information for treatment, payment, and healthcare operations.

2. **Develop a consent form** that complies with federal and state requirements. Although not required, consider including the consent for directory purposes in the consent for treatment, payment, and healthcare operations.

3. Develop policies and procedures for **obtaining consent** for the use of health information.

4. Develop policies and procedures for **handling requests** for restrictions, revocations of consents, and resolving discrepancies between authorizations and consents.

5. **File a copy of the notice** to which the consent refers in the individual's health record, or record the notice form number or issue date on the signed consent and maintain a version of the notice in a separate file.

6. **Ask legal counsel** to develop or approve the consent and related policies and procedures.

7. **Educate and train staff.**

8. **Implement the new consent policies** and procedures.

9. **Monitor compliance** and take corrective action when indicated.

Sample Consent Agreement

Consent to the Use and Disclosure of Health Information for Treatment, Payment, or Healthcare Operations

I understand that as part of my healthcare, this organization originates and maintains health records describing my health history, symptoms, examination and test results, diagnoses, treatment, and any plans for future care or treatment. I understand that this information serves as:

- a basis for planning my care and treatment
- a means of communication among the many health professionals who contribute to my care
- a source of information for applying my diagnosis and surgical information to my bill
- a means by which a third-party payer can verify that services billed were actually provided
- and a tool for routine healthcare operations such as assessing quality and reviewing the competence of healthcare professionals

I understand and have been provided with a *Notice of Information Practices* that provides a more complete description of information uses and disclosures. I understand that I have the right to review the notice prior to signing this consent. I understand that the organization reserves the right to change their notice and practices and prior to implementation will mail a copy of any revised notice to the address I've provided. I understand that I have the right to object to the use of my health information for directory purposes. I understand that I have the right to request restrictions as to how my health information may be used or disclosed to carry out treatment, payment, or healthcare operations and that the organization is not required to agree to the restrictions requested. I understand that I may revoke this consent in writing, except to the extent that the organization has already take action in reliance thereon.

o I request the following restrictions to the use or disclosure of my health information.

_____

_____

_____	_____
Signature of Patient or Legal Representative	Witness
_____	_____
Date	Notice Effective Date or Version

o Accepted o Denied

_____ _____ _____

Signature Title Date

Prepared by

Gwen Hughes, RHIA, HIM practice manager

References

"Standards for the Privacy of Individually Identifiable Health Information; Final Rule." 45 CFR Parts 160 through 164. *Federal Register* 65, no. 250 (December 28, 2000). Available at http://aspe.hhs.gov/admnsimp/.

Acknowledgments

Mary Brandt, MBA, RHIA, CHE
Jill Callahan Dennis, JD, RHIA
Harry Rhodes, MBA, RHIA
Cheryl M. Smith, BS, RHIT, CPHQ

This article is based on the privacy rule issued on December 28, 2000. At press time the rule was under review by the new administration and could be subject to change.

Article citation:
Hughes, Gwen. "Consent for the Use or Disclosure of Individually Identifiable Health Information (AHIMA Practice Brief)." *Journal of AHIMA* 72, no.5 (2001): 64E-G.