PATIENT PRIVACY: AUTHORIZATION FOR THE USE AND DISCLOSURE OF PROTECTED HEALTH INFORMATION POLICY

PURPOSE

The purpose of this policy is to provide that, unless otherwise permitted by law:

- No Protected Health Information (PHI) is Used or Disclosed without proper Authorization from the individual who is the subject of the PHI, and
- An individual’s Authorization for the Use or Disclosure of PHI is properly obtained.

POLICY STATEMENT

It is the policy of The University of Texas MD Anderson Cancer Center (MD Anderson) to:

- Comply with all state and federal laws regarding the privacy and confidentiality of PHI.
- Require written Authorization from the individual who is the subject of the PHI, prior to the Use or Disclosure of PHI, unless otherwise permitted or required by law.
- Use and Disclose PHI in accordance with the Patient Privacy: Uses and Disclosures of Protected Health Information Policy (UTMDACC Institutional Policy # ADM0401).

SCOPE

Compliance with this policy is the responsibility of all MD Anderson Workforce Members.

TARGET AUDIENCE

The target audience for this policy includes, but is not limited to, all MD Anderson Workforce Members.

DEFINITIONS

Authorization: See HIPAA Definitions Plan.

Business Associate: See HIPAA Definitions Plan.

Covered Entity: See HIPAA Definitions Plan.

Disclosure: See HIPAA Definitions Plan.
1.0 Determining Whether an Authorization is Required

1.1 In general, MD Anderson Workforce Members must obtain an individual’s Authorization before Using or Disclosing his/her PHI. However, there are a number of exceptions to this rule, which are discussed in Sections 1.3 and 1.4 below.

1.2 Authorizations are ALWAYS required in the following situations:

A. When the Use or Disclosure of PHI is not for one of the purposes listed in Sections 1.3 and 1.4.

B. Psychotherapy Notes:

An Authorization must be obtained for Use or Disclosure of Psychotherapy Notes, except to carry out the following Treatment, Payment, or Health Care Operations activities:

- Use by the originator of the Psychotherapy Notes for Treatment;
- Use or Disclosure by MD Anderson for its own training programs in which students, trainees, or practitioners in mental health learn under supervision to practice or improve their skills in group, joint, family, or individual counseling;
- Use or Disclosure by MD Anderson to defend itself in a legal action or other proceeding brought by the individual;
- When required by the Secretary of the Department of Health and Human Services to investigate MD Anderson’s compliance with the HIPAA privacy and security rules;
- When required by law;
- For health oversight activities relating to the originator of the notes;
• To a coroner or medical examiner for the purpose of identifying a deceased person, determining a cause of death, or other duties authorized by law;

• To avert a serious threat to health or safety if MD Anderson believes the Use or Disclosure is necessary to prevent or lessen a serious and imminent threat to the health or safety of a person or the public and the Disclosure is to a person reasonably able to prevent or lessen the threat (including the target of the threat).

*Note:* Psychotherapy Notes are a specific type of note, and are defined by HIPAA. Psychotherapy Notes are generally not maintained in the patient’s electronic health record (EHR). Although MD Anderson imposes special release restrictions for Private Notes and Sensitive Notes maintained in the EHR, Private Notes and Sensitive Notes are generally not Psychotherapy Notes.

C. Marketing:

An Authorization must be obtained for Use or Disclosure of PHI for Marketing, unless the communication is in the form of: (1) a face-to-face communication made by a MD Anderson Workforce Members to an individual; or (2) a promotional gift of nominal value provided by MD Anderson. If the Marketing involves Payment to MD Anderson from a third party, the Authorization must state that such Payment was received in exchange for the Disclosure of PHI. For more information, see Patient Privacy: Marketing Policy (UTMDACC Institutional Policy # ADM0353).

D. Sale of PHI:

An Authorization must be obtained prior to any Sale of PHI, and the Authorization must state that the Disclosure will result in remuneration (some type of benefit, whether a Payment or an in-kind benefit) to MD Anderson.

1.3 Uses and Disclosures for which an Authorization is NOT required, but for which the individual must be given an opportunity to agree or object.

An individual’s PHI may be Used or Disclosed without written Authorization, provided that the individual is informed in advance of the Use or Disclosure and is given the opportunity to agree, prohibit, or restrict the Use or Disclosure, for the following activities:

A. Listing in a facility (or clergy) directory;

B. To persons involved in the individual’s care (for example, anyone designated by the patient, including, but not limited to, spouse, domestic partner (including a same-sex domestic partner), another family member, friend, or other person identified by the patient), in accordance with Patient Privacy: Disclosures of a Patient’s Protected Health Information to Individuals Involved in the Patient’s Care Policy (UTMDACC Institutional Policy # ADM1032). If a patient changes his/her mind about the individuals to whom Uses and Disclosures may be made, the patient’s new objection should be noted and respected.

C. To a public or private entity authorized to assist in disaster relief efforts.

1.4 Activities for which an Authorization is NOT required:

PHI may Used or Disclosed without a written Authorization for the following activities:

A. Treatment, Payment, and Health Care Operations activities. Examples of such activities include, but are not limited to:
A discussion between health care professionals about a common patient, a Disclosure to a pharmacy in order to fill a prescription order, and a call from an MD Anderson physician to a patient’s local physician to obtain more information about the patient’s medical history.

Billing a patient’s insurance company.

Quality improvement activities, legal and compliance activities, case management and care coordination, business planning, formal internal education/training activities, and certain fundraising activities. See Patient Privacy: Fundraising Policy (UTMDACC Institutional Policy # ADM0162).

B. As required by law.

C. For certain public health activities, including:

- As required or requested by a public health authority that is authorized by law to collect information for purposes of preventing or controlling disease, injury, or disability (e.g., reporting of disease, injury, births, deaths, and conducting public health surveillance, investigations, and interventions);

- For certain FDA-related reporting requirements, including to a person subject to the jurisdiction of the FDA with respect to an FDA-regulated product or activity for which that person is responsible, or for the purpose of activities related to the quality, safety, or effectiveness of the FDA-regulated product or activity (for example, to collect or report adverse events, to track FDA-regulated products, to enable product recalls, repairs, or replacement, and to conduct post-marketing surveillance);

- To a person who may have been exposed to a communicable disease or is at risk of contracting or spreading a disease, if MD Anderson or a public health authority is authorized by law to notify such person in the conduct of a public health intervention or investigation;

- To employers about work-related injuries or workplace-related medical surveillance in certain employment-related situations; and

- To a school about a student or prospective student if the PHI is required proof of immunization and the adult individual or parent/guardian’s consent is obtained and documented by MD Anderson.

D. Reporting on victims of abuse, neglect, or domestic violence in accordance with applicable law.

E. Reporting to a health oversight agency authorized to collect individual health information.

F. In the course of judicial and administrative proceedings, provided that the Disclosure request is accompanied by a court order, a valid subpoena accompanied by an Authorization, or as otherwise specifically required by applicable law.

G. To law enforcement officials for the location or identity of a suspect, fugitive, victim or material witness; or for other law enforcement purposes as required by legal process or applicable law, including a grand jury subpoena, judicial warrant or order, or an administrative request authorized under applicable law.
H. About decedents, to coroners, medical examiners, and funeral directors, as authorized or required by law.

I. For cadaveric organ, eye or tissue donation purposes.

J. For the following research purposes:
   - Pursuant to an IRB waiver of the Authorization requirement;
   - For reviews preparatory to research (accessing PHI in order to prepare a protocol or determine whether potential subjects exist), if the IRB obtains assurances from the researcher that: (1) Use or Disclosure is sought solely to review PHI as necessary to prepare a research protocol or similar purposes preparatory to research; (2) no PHI will be removed from MD Anderson by the researcher in the course of the review; and (3) the PHI for which Use or access is sought is necessary for the research purposes; and
   - Research on decedent information if the IRB obtains the following assurances from the researcher: (1) the Use or Disclosure sought is solely for research on the PHI of decedents; (2) if requested, documentation on the death of such individuals; and (3) the PHI for which the Use or Disclosure is sought is necessary for the research purposes.

K. When necessary to prevent or lessen a serious or imminent threat to the health or safety of a person or the public.

L. For specialized government functions.

M. To comply with laws related to worker’s compensation or other similar programs.

N. If the individual is deceased, Disclosures of PHI to a family member or other person involved in the individual’s care or Payment prior to the individual’s death, as long as the PHI disclosed is relevant to that person’s involvement, and doing so is not inconsistent with any prior expressed preference of the deceased individual.

Note: The complete list of Uses and Disclosures permitted without an Authorization can be found at 45 C.F.R. § 164.512. The above permitted Disclosures should be made only in accordance with procedures approved by the Institutional Compliance Office (ICO). Any questions concerning the above Uses or Disclosures should be brought to the attention of the ICO.

1.5 HIPAA protections apply for 50 years after death. If an individual has been deceased for more than 50 years, a HIPAA Authorization is not required. In situations where a HIPAA Authorization is required and the individual is deceased, the Authorization must be obtained from the deceased individual’s legally-authorized representative.

2.0 Obtaining an Authorization

2.1 The Authorization must be completed and signed prior to conducting the desired Use or Disclosure.

2.2 All of the required elements of the Authorization must be completed and explained to the individual or his/her personal representative.
2.3 The individual or designated representative should read, sign, and date the completed Authorization. If the Authorization is signed by a personal representative, a description of his/her authority to act for the individual must be included.

2.4 A signed and dated copy of the completed Authorization must be provided to the individual or personal representative.

2.5 For patients, the original signed Authorization should be maintained in the patient’s electronic health record (EHR). It may be completed and stored electronically or in paper form. If completed in paper form, the completed Authorization should be submitted to Health Information Management (HIM) at Unit 1200 or in the HIM secure boxes for inclusion in the patient’s EHR. In certain rare circumstances, it may be necessary to obtain an Authorization from an individual who is not an MD Anderson patient. In these circumstances, the individual or department that obtained the Authorization must maintain a copy of the Authorization for at least 6 years from the date the individual signed the form, or the date the Authorization form last was in effect, whichever is later.

3.0 Types of Authorizations

3.1 General:

There are numerous versions of Authorization forms available for use, depending on the purpose for the Use or Disclosure (e.g., release of information, educational publications, media use). Blank Authorization forms approved by the ICO are available in Forms On Demand. In certain circumstances, a tailored Authorization form may be needed. In this case, the ICO should be contacted for guidance and approval.

3.2 Photographs:

When obtaining an Authorization for use of an individual’s photograph or other image, refer to the Policy Regarding Use of Institutional Images (UTMDACC Institutional Policy # ADM1050). This policy contains a link to the Photographs – HIPAA Authorizations General Reference Tool. It may also be necessary to obtain a Media Authorization and Release form in addition to the Authorization form.

3.3 Research:

When obtaining an Authorization for research purposes, such Authorizations must be approved by the MD Anderson Institutional Review Board (IRB). Generally, Authorizations for research Uses and Disclosures are found in the latter part of the informed consent document used for a particular study. All research-related Uses and Disclosures of PHI must be consistent with the informed consent document signed by the subject. Exceptions to the general rule that an Authorization must be obtained from a subject prior to Using a subject’s PHI for research purposes are discussed further in Section 1.3.J. of this policy. For more information about Using and Disclosing PHI for Research purposes, refer to Informed Consent Policy (UTMDACC Institutional Policy # CLN0547).

3.4 Other:

If MD Anderson is going to receive Payment or another benefit in exchange for disclosing PHI, Authorizations for the Use or Disclosure of PHI for Marketing or the Sale of PHI must include a statement that MD Anderson will receive Payment or some other benefit in exchange for the PHI.
4.0 **Valid Authorizations**

An Authorization must meet ALL of the following requirements in order to be a valid Authorization:

4.1 Is easy to read and understand (in plain language).

4.2 Describes the PHI to be Used or Disclosed in specific and meaningful detail.

4.3 States the name or other identifying information of the person or people who are authorized to make the Use or Disclosure.

4.4 States the name or other identifying information of the person or people to whom MD Anderson may make the Use or Disclosure.

4.5 Describes each purpose of the requested Use and/or Disclosure.

4.6 Contains an expiration date or event that relates to the individual or purpose of the Use or Disclosure (e.g., January 1, 2014, “one year from the date of signature”, or “none”).

4.7 Signed and dated by the individual or personal representative, and if the Authorization is signed and dated by the individual’s personal representative, a description of that person’s authority to act for the individual.

4.8 States that the individual signing the Authorization has the right to revoke the Authorization in writing, and either:
   
   A. A statement explaining the revocation is valid except to the extent that it has been relied on by MD Anderson and a description of how the individual may revoke the Authorization (e.g., usually tells the individual to send the written revocation to a certain address); or

   B. A reference back to MD Anderson’s [Joint Notice of Privacy Practices](#).

4.9 States that Treatment, Payment, enrollment, or eligibility for benefits will not be conditioned on signing the Authorization (except for certain research purposes, where ability to participate in a study may be conditioned on the individual’s agreement to sign an Authorization and the Authorization explains the consequences of a refusal to sign an Authorization).

4.10 States that information Used or Disclosed pursuant to the Authorization may be re-disclosed or reused by the recipient of the PHI and no longer protected by federal privacy laws.

4.11 In the case of Authorizations for Marketing or the Sale of PHI, states that remuneration was received in exchange for the Disclosure of PHI.

4.12 A fax, photocopy, or electronic copy of a properly completed, signed and dated Authorization is valid.

5.0 **Invalid Authorizations**

An Authorization is invalid if it lacks any of the elements noted in Section 4.0, above. Additionally, an Authorization is no longer or not valid if it contains any of the following defects:

5.1 The expiration date has passed.

5.2 The Authorization has not been filled out completely.

5.3 The Authorization is known to have been revoked.
Note: An individual may revoke an Authorization at any time, in writing, except to the extent that MD Anderson has already taken action in reliance on the Authorization. In those cases, future Uses or Disclosures will not occur, but anything already Used or Disclosed cannot be undone. Revocations of Authorizations should be sent to the Institutional Compliance Office, in accordance with the Notice of Privacy Practices.

5.4 Any information in the Authorization is known to be false.

5.5 The Authorization is improperly combined with additional documents.

Note: The combination of an Authorization with any other document into a single document (Compound Authorization) for purposes other than research is generally prohibited. Authorizations obtained for research purposes may be combined with the informed consent document. As discussed in Section 3.3 above, all informed consent and Authorization documents utilized for research purposes must be approved by the MD Anderson IRB.

In general, the provision of Treatment may not be conditioned on signing an Authorization, except that the provision of research-related Treatment may be conditioned on an Authorization for the Use and Disclosure of PHI for such research.
ATTACHMENTS / LINKS

Forms On Demand

HIPAA Definitions Plan (Attachment # ATT0699)

Media Authorization and Release (Attachment # ATT1601)

Joint Notice of Privacy Practices

Photographs – HIPAA Authorizations General Reference Tool (Attachment # ATT1597)

RELATED POLICIES

Confidentiality Policy (UTMDACC Institutional Policy # ADM0264)

Informed Consent Policy (UTMDACC Institutional Policy # CLN0547)

Patient Privacy: Disclosures of a Patient’s Protected Health Information to Individuals Involved in the Patient’s Care Policy (UTMDACC Institutional Policy # ADM1032)

Patient Privacy: Fundraising Policy (UTMDACC Institutional Policy # ADM0162)

Patient Privacy: Marketing Policy (UTMDACC Institutional Policy # ADM0353)

Patient Privacy: Right to Receive Accounting of Disclosures Policy (UTMDACC Institutional Policy # ADM0392)

Patient Privacy: Uses and Disclosures of Protected Health Information Policy (UTMDACC Institutional Policy # ADM0401)

Policy Regarding Use of Institutional Images (UTMDACC Institutional Policy # ADM1050)

JOINT COMMISSION STANDARDS / NATIONAL PATIENT SAFETY GOALS

IM.02.01.01:

IM.02.01.03:

REFERENCES

45 C.F.R. §§ 164.508, 164.510, and 164.512.