

HIPAA PRIVACY RULE: WHEN TO OBTAIN AUTHORIZATIONS TO USE AND DISCLOSE PROTECTED HEALTH INFORMATION

I. Policy

The University of Southern California (USC)¹ may use and disclose an individual's Protected Health Information² (PHI) only pursuant to a written Authorization of the patient or the patient's Personal Representative with the following exceptions:

- for treatment, payment or health care operations (see USC HIPAA Policy CLIN-201)
- as mandated or permitted by public policy (see USC HIPAA Policy GEN-103)
- for certain research purposes (see USC HIPAA Policy RES-301)
- de-identified PHI or limited data sets (see USC HIPAA Policy GEN-105, RES-301)
- certain highly sensitive records which require disclosure-specific written authorization (see USC HIPAA Policy CLIN-203)

II. Procedures

A. General procedure

1. When an authorization is required

Except as set forth above, a patient or patient's Personal Representative must sign a HIPAA authorization before USC may use or disclose the

¹ For purposes of the HIPAA Privacy Rule, USC includes USC Norris Cancer Hospital, Keck Hospital of USC, USC's employed physicians, nurses and other clinical personnel, those units of USC that provide clinical services within the School of Pharmacy, the Herman Ostrow School of Dentistry, Physical and Occupational Therapy as well as the Keck Doctors of USC, those units that support clinical and clinical research functions, including the Offices of the General Counsel, Audit and Compliance.

² Protected Health Information is identifiable information that relates to an individual's past, present or future physical or mental condition or to payment for health care.

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patient's PHI. Examples of specific disclosures which require authorizations include:

- a. requests from a patient's attorney
- b. life insurance company requests
- c. camp or school physical forms (if such form will be released to anyone other than the parent)
- d. immunization records (if such records will be released to anyone other than the parent)
- e. worker's compensation (except if the purpose of the disclosure is limited to payment only)
- f. use of PHI for a clinical trial
- g. company physicals (other than at the request of the employer pursuant to USC's policy on uses and disclosures based on public policy (USC HIPAA Policy GEN-103))
- h. use of PHI for marketing
- i. use of PHI for fundraising

2. *Use of USC authorization forms*

The privacy regulations have specific requirements for ensuring that a patient authorization is valid. USC has developed a number of template authorizations that satisfy the specific authorization criteria in the privacy regulations. USC's template forms can be found at:

<http://policies.usc.edu/index-hipaa.html>

3. *Non-USC authorization forms*

USC faculty, staff and other employees covered by the Privacy Rule may not disclose PHI pursuant to an authorization form without ensuring that it meets the privacy requirements. Contact the Office of Compliance for assistance or refer to the elements below.

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B. Elements of patient authorization

A valid non-USC authorization form must contain the following elements:

1. *Description of health information.*

The authorization identifies the PHI to be used or disclosed in a specific and meaningful fashion.

2. *Identification of authorized person.*

The authorization identifies the name or other specific identification of the person(s) authorized to make the requested use or disclosure (e.g., the patient or the patient's Personal Representative).

3. *Identification of recipient.*

The authorization identifies by name or other specific identification the person(s), or class of persons, authorized to receive, use and/or disclose the PHI (e.g., USC; a third party designated by the patient).

4. *Description of purpose(s).*

The authorization must contain a description of each purpose for which PHI is to be used or disclosed by the recipient.

a. This description must be specific enough to provide a patient with the facts that he/she needs to make an informed decision whether to allow release of the PHI.

b. The statement "at the request of the individual/patient" is a sufficient description of the purpose when the patient initiates the authorization and does not (or elects not to) provide a statement of the purpose.

5. *Expiration.*

The authorization must contain an expiration date or an expiration event that relates to the patient or the purpose of the use or disclosure. For research authorizations, "none" or "the end of the research study" is acceptable.

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6. *Statement of right to revoke.*

The authorization must contain a statement of the patient's right to revoke the authorization in writing and the exceptions to the right to revoke, together with either a description of how the patient may revoke the authorization or a cross-reference to a Notice of Privacy Practices.

7. *Statement that treatment not conditioned on the authorization.*

The authorization must contain a statement that the provision of health care to the patient is not conditioned on whether the patient signs the authorization, *unless* either:

- a. the health care to be provided is solely for the purpose of creating PHI to be disclosed to a third party and the patient's authorization permits USC to release the patient's PHI to such third party; or
- b. the health care to be provided is research-related treatment and the patient's authorization is for the use or disclosure of PHI for such research pursuant to USC HIPAA Policy RES-301.

8. *Statement regarding redisclosure.*

The authorization must contain a statement that PHI used or disclosed pursuant to the authorization may be subject to redisclosure by the recipient and no longer protected by the Privacy Rule.

9. *Remuneration for marketing activity.*

If the authorization is for a marketing activity and if USC has received or will be receiving any remuneration in connection with such marketing activity, the authorization must state that USC is receiving remuneration in connection with such marketing activity.

10. *Dated patient signature.*

The authorization must contain a signature of the patient or the patient's Personal Representative and the date of the signature.

11. *Personal Representative.*

If the authorization is signed by a Personal Representative of the patient, a

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description of such Personal Representative's authority to act for the patient must be included.

C. Verification of validity.

The following information must be verified to confirm that the authorization is valid:

1. *Completion.*

A non-USC authorization must contain all the elements identified in Section II.B above.

2. *Not expired.*

The authorization must not be expired.

3. *Not revoked.*

The authorization must not be revoked.

4. *No material false information.*

The authorization must not contain any material information that is known to be false.

5. *No compound authorizations.*

An authorization may not be combined with any other document to create a compound authorization, except as set forth in the two exceptions below:

- a. An authorization to use or disclose PHI for a research study may be combined as set forth in USC HIPAA Policy RES-301.
- b. An authorization covered under this policy may be combined with any other authorization covered under this policy, except when the provision of health care has been conditioned on the provision of one of the authorizations.

Additional References

45 CFR § 164.508

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University of Southern California
Page 5 of 6

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Page 6 of 6