

AUTHORIZATION OR CONSENT TO USE OR DISCLOSE PROTECTED HEALTH INFORMATION POLICY

RESPONSIBILITY: Privacy Official or Designee(s), Director of Medical Records,
Office and Department Managers

BACKGROUND:

Federal and state laws, and Behavioral Health and Health Facilities (BHFF) policy, permit the use and disclosure of protected health information (PHI) for certain purposes without obtaining the patient's written authorization. For instance, an authorization is not required when most PHI is used for medical treatment, for payment, or health care operations. However, state law still requires authorization or consent to disclose certain types of PHI for these purposes. These include mental health, HIV, Agent Orange, certain pharmaceutical and counseling information.

PHI also may be disclosed without an authorization when required by law, or when permitted to assist law enforcement or other public purposes. These situations are addressed in other BHFF policies. (See GENERAL POLICY -- USE AND DISCLOSURE OF PROTECTED HEALTH INFORMATION).

In all other cases, the patient must sign an authorization or consent form before BHFF may use or disclose the patient's PHI.

POLICY:

1. A written authorization, signed by the patient, or the patient's personal representative, is required to permit BHFF to use or disclose that patient's protected health information (PHI) in any circumstance that is not:
 - 1.1 For other uses and disclosures which are permitted without authorization under BHFF policies, as listed in the GENERAL POLICY -- USE AND DISCLOSURE OF PROTECTED HEALTH INFORMATION,
 - 1.2 For other uses and disclosures as stated in the Notice of Privacy Practices.
2. In addition, authorization is specifically required:
 - 2.1 For marketing (See USE AND DISCLOSURE OF PROTECTED HEALTH INFORMATION FOR MARKETING PURPOSES),
 - 2.2 For HIV related disclosures an authorization is required except for:
 1. A person potentially infected by another has the right to know the current status of the person they may have been infected by.
 - 2.3 Long-Term Care Ombudsman activities.

- 2.4 For autopsies' an authorization must be obtained in writing from the decedent's representative; except when requested by a local prosecuting attorney or a circuit court with criminal jurisdiction makes the request.
- 2.5 Mental Health Information, including whether a patient is or was a mental health patient of BHHF, may not be disclosed except:
 - 2.5.1 When authorized by the patient or representative. BHHF cannot deny treatment for refusal to give authorization except when necessary for or payment by a third party;
 - 2.5.2 In involuntary commitment proceedings or proceedings to determine whether a criminal defendant is competent to stand trial or not guilty by reason of mental illness;
 - 2.5.3 Pursuant to a court order finding the information is sufficiently relevant to a case before the court to outweigh the need to protect this information;
 - 2.5.4 To protect against a clear and substantial danger to the patient or others;
 - 2.5.5 For treatment and internal review purposes; and
 - 2.5.6 To comply with state and federal legal and regulatory requirements.
3. BHHF may also request a written consent, signed by the patient or his/her representative to use or disclose PHI for treatment, payment, or health care operations.
4. The written authorization or consent must be in the form prescribed by the BHHF policy STANDARDS FOR FORM AND CONTENT OF AUTHORIZATION FORMS. An authorization or consent is invalid if:
 - 4.1 It does not comply in all respects with the BHHF STANDARDS FOR FORM AND CONTENT OF AUTHORIZATION FORMS, or
 - 4.2 One or more required elements is not completed or does not clearly express the patient's desires, or
 - 4.3 It has been revoked by the patient to whom the protected health information pertains, or by a personal representative authorized to act on the patient's behalf, or
 - 4.4 It has expired, based on the expiration date or event, or
 - 4.5 Any material information contained in it is known by BHHF to be false.
5. Any use or disclosure under the terms of an authorization or consent must be consistent with the provisions of that authorization or consent.
6. Authorizations or consents must be retained for at least six years or longer if required by state law or regulation after the date they cease to be in effect (due to expiration or revocation).
7. Patients may revoke their authorizations or consents at any time, except to the extent that BHHF has taken action in reliance of the authorization or consent. The revocation must be in writing, and must be specific enough to permit identification of the original authorization or consent that is being revoked.
8. BHHF will not require an authorization or consent as a precondition to treatment except

- 8.1 If the treatment is research-related, provision of treatment may be conditioned on receipt of an authorization to use and disclose PHI related to this treatment as necessary for the research; or
 - 8.2 If the purpose of the treatment services is to create PHI for disclosure to a third party, provision of the services may be conditioned on receipt of an authorization to disclose the PHI to that third party.
 - 8.3 For mental health records, for payment purposes.
9. The MINIMUM NECESSARY RULE does not limit the amount of information that may be used or disclosed under the authority of an authorization.

Effective Date: 4/14/03
Dates Revised:



Jerome E. Lovrien, Commissioner, Bureau for Behavioral Health and Health Facilities