

Department: UW Medicine Compliance

Subject: PP-08 Use & Disclosure of Protected Health Information Requiring Authorization

Policy Number: 08

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General Policy:

This policy addresses the requirement for written authorization from an individual for uses and disclosures of protected health information (PHI) and describes the individual's right to revoke that authorization. Use and disclosure of PHI for Treatment, Payment, and Healthcare Operations does not require patient authorization. Authorization is not required for uses and disclosures to public health and health oversight agencies, to law enforcement under certain circumstances, to medical examiners, and to the Secretary of Health and Human Services. See UW Medicine Privacy Policies: *PP-16a Use & Disclosure of Protected Health Information (PHI) Permitted for Public Health Activities*, *PP-16b Use & Disclosure of Protected Health Information (PHI) Permitted for Employers*, *PP-16c Use & Disclosure of Protected Health Information (PHI) Permitted for health Oversight Activities*, *PP-16d Use & Disclosure of Protected Health Information (PHI) Permitted for Decedents*, *PP-16e Use & Disclosure of Protected Health Information (PHI) Permitted to Avert a Serious Threat to Health or Safety*, *PP-16f Use & Disclosure of Protected Health Information (PHI) Permitted for Specialized Government Functions*, *PP-16g Use & Disclosure of Protected Health Information (PHI) Permitted for Judicial and Administrative Proceedings*, *PP-16h Use & Disclosure of Protected Health Information (PHI) Permitted for Law Enforcement Purposes*, and *PP-16i Use & Disclosure of Protected Health Information (PHI) Permitted for Victims of Abuse, Neglect or Domestic Violence*. Typical examples of uses that would require authorizations are for research when an Institutional Review Board (IRB) has not waived the consent requirement and for special marketing or press events featuring patients.

This policy has eight sections:

- I. Authorization Requirements
- II. Authorization Required for Marketing
- III. Valid Authorizations
- IV. Defective/Invalid Authorizations
- V. Compound Authorizations
- VI. Prohibition on Conditioning of Authorizations
- VII. Revocation of Authorizations
- VIII. Documentation of Uses & Disclosures

I. Authorization Requirements

A) UW Medicine will not use or disclose PHI without a valid authorization except as allowed or required by law. See Procedures (I) (A) and (I) (B). Also see UW Medicine Privacy Policies: *PP-16a Use & Disclosure of Protected Health Information (PHI) Permitted for Public Health Activities*, *PP-16b Use & Disclosure of Protected Health Information (PHI) Permitted for Employers*, *PP-16c Use & Disclosure of Protected Health Information (PHI) Permitted for health Oversight Activities*, *PP-16d Use & Disclosure of Protected Health Information (PHI) Permitted for Decedents*, *PP-16e Use & Disclosure of Protected Health Information (PHI) Permitted to Avert a Serious Threat to Health or Safety*, *PP-16f Use & Disclosure of Protected Health Information (PHI) Permitted for Specialized Government Functions*, *PP-16g Use & Disclosure of Protected Health Information (PHI) Permitted for Judicial and Administrative Proceedings*, *PP-16h Use & Disclosure of Protected Health Information (PHI) Permitted for Law Enforcement Purposes*, and *PP-16i Use & Disclosure of Protected Health Information (PHI) Permitted for Victims of Abuse, Neglect or Domestic Violence*. When an individual provides written authorization for a use or disclosure, UW Medicine will adhere to the conditions and limitations of that individual's authorization.

B) Psychotherapy Notes

While psychotherapy notes¹ are not part of the designated record set² they are entitled to heightened confidentiality. UW Medicine must obtain an authorization to use and disclose psychotherapy notes to carry out treatment, payment, or healthcare operations except under the following circumstances:

- 1) For use by the originator of the psychotherapy notes for treatment;
- 2) For use or disclosure by UW Medicine in UW Medicine training programs (e.g., by students, trainees, practitioners for group, joint, family or individual counseling training);
- 3) For use or disclosure by a UW Medicine entity to defend a legal action or other proceeding, like a complaint, brought by the individual;

¹ See "Definitions" section for further description of "psychotherapy notes" and/or See UW Medicine Privacy Policy: *Psychotherapy Notes Management*.

² See PP-00 Glossary for further description of "designated record set".

- 4) As required by the Secretary of Health and Human Services for compliance reviews;
 - 5) As permitted by law (See UW Medicine Privacy Policies: *PP-16a Use & Disclosure of Protected Health Information (PHI) Permitted for Public Health Activities*, *PP-16b Use & Disclosure of Protected Health Information (PHI) Permitted for Employers*, *PP-16c Use & Disclosure of Protected Health Information (PHI) Permitted for health Oversight Activities*, *PP-16d Use & Disclosure of Protected Health Information (PHI) Permitted for Decedents*, *PP-16e Use & Disclosure of Protected Health Information (PHI) Permitted to Avert a Serious Threat to Health or Safety*, *PP-16f Use & Disclosure of Protected Health Information (PHI) Permitted for Specialized Government Functions*, *PP-16g Use & Disclosure of Protected Health Information (PHI) Permitted for Judicial and Administrative Proceedings*, *PP-16h Use & Disclosure of Protected Health Information (PHI) Permitted for Law Enforcement Purposes*, and *PP-16i Use & Disclosure of Protected Health Information (PHI) Permitted for Victims of Abuse, Neglect or Domestic Violence*;
 - 6) For oversight of the author of the psychotherapy notes;
 - 7) By the coroner and medical examiner; **or**
 - 8) As necessary and as reasonably able to prevent or lessen a serious or imminent threat to the health and safety of a person or the public. (See Procedure (I) (D))
- C) Sexually Transmitted Disease Information
- When disclosure of information about individuals with sexually-transmitted diseases is not for treatment or other health care operations purposes, the following additional components are required as defined by the Washington State Department of Health and Board of Health to be part of the authorization form:
- 1) A written confidentiality statement addressing the prohibition of redisclosure will accompany the disclosure of any PHI related to Sexually Transmitted Diseases³ (STD/HIV/AIDS), which includes the following or substantially similar language: "This information has been disclosed to you from records whose confidentiality is protected by state law. State law prohibits you from making any further disclosure of it without the specific written consent of the person to whom it pertains, or as otherwise permitted by state law. A general authorization for the release of medical or other information is NOT sufficient for this purpose." See "Authorization for UW Medicine to Disclose/Release Protected Health Information" UH0626 (Attachment A); **and**

³ See "Definitions" section for further definition of "Sexually Transmitted Diseases"

- 2) If a disclosure is made orally, a written confidentiality statement, which includes the following or substantially similar language: "This information has been disclosed to you from records whose confidentiality is protected by state law. State law prohibits you from making any further disclosure of it without the specific written consent of the person to whom it pertains, or as otherwise permitted by state law. A general authorization for the release of medical or other information is NOT sufficient for this purpose." must be sent within ten (10) days of the disclosure. See "Record of the Oral Disclosure of Protected Health Information" UH1866 (Attachment D) (See also Procedure (I.)(D)).

II. Authorization Required for Marketing

- A) UW Medicine must obtain an authorization for any use or disclosure of protected health information for marketing, except when the communication is in the form of:
 - 1) A face-to-face communication made by UW Medicine to an individual; **or**
 - 2) A promotional gift of nominal value provided by UW Medicine.
- B) If the marketing involves direct or indirect remuneration to UW Medicine from a third party, the authorization must state that such remuneration is involved. Note: This clause is not pre-printed on the standard authorization form See "Authorization for UW Medicine to Disclose/Release Protected Health Information" UH0626 (Attachment A). If this circumstance applies; amend the standard authorization form to include this element.

III. Valid Authorization See "Authorization for UW Medicine to Disclose/Release Protected Health Information" UH0626 (Attachment A); & "Authorization for UW Medicine to Obtain Protected Health Information" UH0296 (Attachment B).

Except as defined below, the signing of an authorization by a patient is not a waiver of any rights a patient has under other statutes, the rules of evidence, or common law.

- A) A "valid" authorization to allow use and disclosure of PHI must be written in plain language that contain at least the following core elements:
 - 1) Patient name, signature, and date or the signature and date of their personal representative or surrogate decision maker;
 - 2) A description of the information to be used or disclosed that identifies the information in a specific and meaningful fashion;

- 3) The name or other identification of the person(s) or class of persons,⁴ agency, or organization authorized to make the requested use or disclosure;
 - 4) The name or other identification of the person(s) or class of persons, agency, or organization to whom UW Medicine is authorized to make the requested use or disclosure;
 - 5) A description of each purpose of the requested use or disclosure. The statement “at the request of the individual” is a sufficient description of the purpose when an individual initiates the authorization and does not, or elects not to, provide a statement of the purpose. If it is for the patient’s use and if the purpose is left blank by the patient, “at the request of the individual” may be added by a member of the entity’s workforce;
 - 6) Contain an expiration date or an expiration event that relates to the patient or the purpose of the use or disclosure;
 - 7) A statement of the individual’s right to revoke the authorization in writing, the exceptions to the individual’s right to revoke the authorization, and a description of how the patient can make a revocation;
 - 8) A statement that UW Medicine will not condition treatment or payment based on the individual’s provision of an authorization for the requested use or disclosure, **except**:
 - a. UW Medicine may condition the provision of research-related treatment on provision of an authorization for the use or disclosure of protected health information for such research; **or**
 - b. UW Medicine may condition the provision of health care that is solely for the purpose of creating protected health information for disclosure to a third party on provision of an authorization for the disclosure of the protected health information to such third party;
 - 9) A statement that when the information is used or disclosed in accordance with a signed authorization, it may be subject to redisclosure by the recipient and may no longer be protected by state and federal laws protecting health care information;
 - 10) If the authorization is signed by an individual’s personal representative or surrogate decision maker, a description of the signatory’s authority; **and**
- B) The Authorization may contain other elements or information if not inconsistent with subsection (II) (A) of this policy.
- C) UW Medicine must provide individuals with a copy of the signed authorization and must also retain a copy of the authorization.

⁴ See “Definitions” section for further definition of “classes of person(s)”.

- D) The Authorization must explicitly document that the patient authorizes UW Medicine to release PHI that contains the following categories of information in order for UW Medicine to be able to disclose these types of information:
 - Sexually transmitted disease,
 - Acquired immunodeficiency syndrome (AIDS), or human immunodeficiency virus (HIV).
 - Behavioral or mental health services and treatment for alcohol and drug abuse.
- E) If the authorization permits the disclosure of health care information to a financial institution or an employer of the patient for purposes other than payment, the authorization as it pertains to those disclosures shall expire ninety days after the signing of the authorization, unless the authorization is renewed by the patient.
- F) Where the patient is under the supervision of the department of corrections, an authorization signed pursuant to this section for health care information related to mental health or drug or alcohol treatment expires at the end of the term of supervision, unless the patient is part of a treatment program that requires the continued exchange of information until the end of the period of treatment.

IV. Prohibition on Conditioning of Authorizations

UW Medicine will not condition provision of individual treatment or payment on the provision of an authorization **except** in the following situations:

- A) For research-related treatment;

OR

- B) If the sole purpose of the provision of health care is to create PHI for disclosure to a 3rd party.

V. Defective/Invalid Authorizations

An authorization will be considered invalid under any of the following circumstances:

- A) The expiration date has passed or the expiration event is known by UW Medicine to have occurred;
- B) UW Medicine is aware that the authorization has been revoked by the individual;

- C) The authorization lacks one of the required core elements of a valid authorization as defined in Sections III of this policy;
- D) The authorization violates the compound authorization prohibitions of section VI of this policy;
- E) The authorization conditions treatment or payment on the individual's provision of an authorization for the requested use or disclosure. There are only two exceptions for conditioning treatment or payment:
 - 1) Research-related treatment on provision of an authorization for the use or disclosure of protected health information for such research; **or**
 - 2) Health care that is solely for the purpose of creating protected health information for disclosure to a third party on provision of an authorization for the disclosure of the protected health information to such third party; for example, a non-UW employer who contracts with UW Medicine to conduct TB testing for purposes of employee health screening;
- F) When a UW Medicine workforce member receives an authorization that contains information that the workforce member knows to be false; **or**
- G) The individual makes any revisions or alterations to the contents of UW Medicine's authorization forms.

VI. Compound Authorizations

An authorization for use or disclosure of PHI will not be combined with any other document at UW Medicine **except** in the following situations:

- A) An authorization for the use or disclosure of protected health information for a research study may be combined with any other type of written permission for the same research study, including another authorization for the use or disclosure of protected health information for such research or a subject's consent to participate in such research.
- B) For psychotherapy notes, authorization for use or disclosure may only be combined with another authorization for a use or disclosure of psychotherapy notes.

VII. Revocation of Authorizations (See Procedure (II))

An individual may revoke an authorization in writing at anytime **unless**:

- A) UW Medicine has already taken substantial action based on the original authorization;

OR

- B) UW Medicine requires the information to be compensated for treatment to the individual.

VIII. Documentation of Uses & Disclosures (See Procedure (IV))

UW Medicine will document and retain in electronic or written format all signed authorizations in accordance with the entity’s record retention policies and procedures. See UW Medicine Privacy Policy: *PP-25 Accounting of Disclosures of Protected Health Information*.

Procedures:

I. Authorization Requirements

- A) Obtaining a Patient Authorization to Disclose PHI See “Authorization for UW Medicine to Disclose/Release Protected Health Information” UH0626 (Attachment A)

<u>Step</u>	<u>Action</u>
<u>1</u>	Requests to disclose PHI are directed to the Health Information Management Service Areas of the UW Medicine entities.
<u>2</u>	When UW Medicine seeks authorization to use or disclose PHI, the workforce member verifies the presence of all core elements required for a valid authorization. (See policy Section III regarding Valid Authorizations for an itemization of the core elements.) If the authorization request does not contain all core elements, the workforce member sends the requestor a letter stating their form was incomplete. See “EXAMPLE Letter – Incomplete Request” (Attachment E).
<u>3</u>	The Health Information Management Service Area that receives the authorization will fax the authorization to those other UW Medicine Health Information Management Service Area(s) that must act upon the authorization, attaching “UW Medicine Authorization To Disclose PHI Coordination And Action Response Form” (Attachment H). Additionally, when each entity provides the requested information, the “UW Medicine Authorization to Disclose Protected Health Information Status Update” (Attachment J) form must be used.
<u>4</u>	In releasing PHI for any reason other than continuity of care, UW Medicine will charge a reasonable fee and applicable state sales tax for copies of PHI unless otherwise prohibited by law. UW Medicine will adhere to the reasonable charges established by the Washington State Department of Health for both the processing fee and the per page charge.
<u>5</u>	UW Medicine will act upon all authorizations within the 15-work day limit

	required by state law.
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B) Obtaining Patient Authorization to Obtain PHI See “Authorization for UW Medicine to Obtain Protected Health Information” UH0296 (Attachment B).

Step	Action
<u>1</u>	Requests to obtain PHI from other health care organizations should be directed to the Health Information Management Service Areas of the facility that is the custodian of the requested PHI.
<u>2</u>	UW Medicine workforce member will follow appropriate policies and procedures for faxing or mailing the request to the other entity.

C) Patient Authorization for Use & Disclosure of Photography

Action
Workforce member obtains a valid authorization to use or disclose photography when photography is contemplated. Use “Authorization to Use or Disclose Photography/Video Tape” UH0324 (Attachment G).

D) Patient Authorization for Use & Disclosure of Psychotherapy Notes

Action
Workforce member obtains a valid authorization to use or disclose all psychotherapy notes unless otherwise permitted or required by law. All original copies will be retained or maintained in separate therapist files or stored similarly in electronic format.

E) Patient Authorization for Disclosure of PHI regarding Sexually-Transmitted Diseases (STD/HIV/AIDS)

Step	Action
1	<p>Workforce member obtains a valid authorization for the release of PHI regarding Sexually Transmitted Diseases (STD/HIV/AIDS). These records contain:</p> <ul style="list-style-type: none"> • Testing, including the possibility of testing, diagnosis or treatment for sexually transmitted diseases [STD], • Testing, including the possibility of testing, diagnosis or treatment for human immunodeficiency virus infection [HIV], and • Testing, including the possibility of testing, diagnosis or treatment for acquired immunodeficiency syndrome [AIDS]. <p>The Washington State Department of Health and Board of Health define sexually transmitted diseases by regulation. See, WAC 246-101-010(39).</p>

2	<p>Whenever PHI is disclosed that concerns STD information, workforce member includes the following written statement:</p> <p style="padding-left: 40px;">“This information has been disclosed to you from records whose confidentiality is protected by state law. State law prohibits you from making any further disclosure of it without the specific written consent of the person to whom it pertains or as otherwise permitted by State law. A general authorization for release of medical or other information is NOT sufficient for this purpose.”</p>
3	<p>Where UW Medicine’s authorized disclosure was verbal, the workforce member making the verbal disclosure will inform the recipient of the redisclosure prohibition and mail a copy of the redisclosure statement to the recipient within ten (10) days.</p> <p>Whenever oral disclosures are made, an authorization that captures all required information will be completed and made part of the designated record set. Use “Record of the Verbal Disclosure of Protected Health Information” UH1866 (Attachment D).</p> <p>Exception: The procedure for oral disclosures within 10 days does not apply to disclosures to the patient or the legally authorized surrogate, disclosures to other health care providers for purposes of treatment, or disclosures within a health care facility when there is a need for access to fulfill professional duties.</p>

II. Revocation of Authorizations

Action
<p>At any time a patient or his/her personal representative or surrogate decision maker requests that an authorization be revoked; he/she must do so in writing. Deliver all revocation instructions to all affected UW entity Health Information Management Service Areas.</p> <p>A patient may not revoke authorization when:</p> <ul style="list-style-type: none"> A) The UW Medicine entity has relied on the authorization to provide services, or B) UW Medicine requires the information to be compensated for treatment to the individual. <p>The entity’s Health Information Management Service Area will contact all UW Medicine entity’s (or entities’) Health Information Management Service Area(s) and provide each with a copy of the “Revocation of Authorization”, which, in turn, shall be included in the entities’ designated record sets.</p>

III. Copy of Signed Authorization to Individuals

Action
Upon receipt of the signed authorization, workforce member provides the individual a copy of that signed authorization.

IV. Documentation & Retention of Signed Authorizations

Step	Action
1	UW Medicine entities will retain the signed authorization form in either a hard copy or electronic version in the designated record set.
2	UW Medicine entities will maintain a written or electronic record of the action taken in response to the authorization.

References:

- I. 45 CFR Parts 160 and 164; Section 164.508 (“Uses and Disclosures for which an Authorization Is Required”).
- II. RCW 70.24.105 -- Sexually Transmitted Disease – Exchange of Medical Information.
- III. RCW 70.96A.150 -- Drug and Alcohol Abuse Treatment Records.
- IV. RCW 71.05.390 and .690 -- Mental Illness and Treatment.
- V. RCW 70.02.010 – Definitions. (12) "Reasonable fee"
- VI. RCW 70.02.030 – Patient Authorization of Disclosure
- VII. RCW 70.02.040 – Patient Revocation of Authorization
- VIII. RCW 70.02.050 - Disclosure without patient's authorization
- IX. WAC 246-101-010(39) – Definition of Sexually Transmitted Disease
- X. WAC 246-08-400 - How much can a medical provider charge for searching and duplicating medical records?

UW Privacy Officer: _____ Date: _____

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