Applicability: UW Medicine

Policy Title: Use & Disclosure of Protected Health Information Requiring Authorization

Policy Number: PP-08

Superseded Policy(ies) or Entity Policy: N/A

Date Established: April 10, 2003

Date Effective: July 1, 2014


Next Review Date: July 1, 2017

PURPOSE AND SCOPE
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.

This policy is applicable to all UW Medicine entities.

POLICY PRINCIPLES/STATEMENT
Use and disclosure of PHI for treatment, payment and healthcare operations (TPO) 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 the U.S. Department of Health and Human Services (DHHS).1

DEFINITIONS
See UW Medicine Compliance Policy: PP-00 Glossary of Terms.

POLICY
Typical examples of uses that would require authorizations are for research when an institutional review board (IRB) has not waived the authorization requirement and for special marketing or press events featuring patients.

I. Authorization Requirements

A. UW Medicine will not use or disclose PHI without a valid authorization except as allowed or required by law. UW Medicine Compliance form UH0626 “Authorization for UW Medicine to Disclose, Release or Obtain Protected Health Information” (Attachment A) can be used for patients to authorize the disclosure of their PHI. Authorization forms are directed to health information management (HIM) service areas to be processed. UW Medicine acts upon all authorizations within the 15-working day limit required by state law. 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.

In order to process an authorization, the workforce member verifies the presence of all core elements required for a valid authorization (see later policy section regarding valid authorizations for an itemization of the core required elements). If the authorization request does not contain all core required elements, the workforce member sends the requestor a letter stating their form was incomplete, see “EXAMPLE Letter – Incomplete Request” (Attachment E).

If other UW Medicine HIM Service Area(s) must act upon the authorization, then the HIM Service Area that received the authorization will fax the authorization to those other HIM Service Area(s), attaching “UW Medicine Authorization To Disclose PHI Coordination And Action Response Form” (Attachment H). When each entity provides the requested information, the “UW Medicine Authorization to Disclose Protected Health Information Status Update” (Attachment J) form is used.

When releasing PHI for any reason other than continuity or the provisioning of care and services, UW Medicine charges 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 (DOH) for both the processing fee and the per page charge. Even when multiple entities respond to the authorization, only one processing fee may be charged. Managers of HIM Service Areas may waive this fee on a case-by-case-basis for extenuating circumstances (for example: financial hardship or special circumstances).

Requests to obtain PHI from other healthcare organizations should be directed to the HIM Service Area of the facility that is the custodian of the requested PHI. See “Authorization for UW Medicine to Disclose, Release or Obtain Protected Health Information” UH0626 (Attachment A).

B. Psychotherapy Notes
While psychotherapy notes\(^2\) are not part of the designated record set\(^3\) they are entitled to heightened confidentiality. All original copies will be retained or maintained in separate therapist files or stored similarly in electronic format. 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 author of the psychotherapy notes for treatment;

2. For use or disclosure by the author in UW Medicine training programs (for example: by students, trainees, or 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 patient;

4. As required by the Secretary of Health and Human Services for compliance reviews;

5. As permitted by law\(^4\);

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.

C. Sexually transmitted disease (STD) information

When disclosure of information about individuals with STDs is not for treatment or other healthcare operation purposes, the following additional components are required to be part of the authorization form as defined by the DOH and the Washington State Board of Health\(^5\). Information and records related to STDs are a type of healthcare information that related to the identity of any person upon whom a human immunodeficiency virus (HIV) antibody test or other sexually transmitted infection test

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\(^2\) See UW Medicine Compliance Policy: PP00 Glossary of Terms for further description of “psychotherapy notes” and/or see UW Medicine Compliance Policy: PP17 Psychotherapy Notes Management.

\(^3\) See UW Medicine Compliance Policy: PP00 Glossary of Terms for further description of “designated record set.”


\(^5\) WAC 246-101-010(39)
is performed, the results of such tests, and any information relating to diagnosis of or treatment of any confirmed sexually transmitted infections.

1. A written confidentiality statement addressing the prohibition of re-disclosure will accompany the disclosure of any PHI related to STDs, 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 authorization 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."

2. If a disclosure is made verbally, the same confidentiality statement as above is required and it must be sent within 10 days of the disclosure. Whenever verbal 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” form UH1866 (Attachment D).

   Exception: The procedure for verbal disclosures within 10 days does not apply to disclosures to the patient or the legally authorized surrogate, disclosures to other healthcare professionals for purposes of treatment, or disclosures within a healthcare facility when there is a need for access to fulfill professional duties.

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 financial 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 or Obtain Protected Health Information” form UH0626 (Attachment A). If this circumstance applies; amend the standard authorization form to include this element.

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6 "PHI related to Sexually Transmitted Diseases" means a type of healthcare information that relates to the identity of any person upon whom an HIV antibody test or other sexually transmitted infection test is performed, the results of such tests, and any information relating to diagnosis of or treatment for any confirmed sexually transmitted infections.
III. Authorization Required for Sale of PHI

UW Medicine must obtain an authorization for any disclosure that is a sale of PHI. The authorization must state that the disclosure will result in remuneration to UW Medicine.

IV. Valid Authorization

See “Authorization for UW Medicine to Disclose, Release or Obtain Protected Health Information” form UH0626 (Attachment A).

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 and 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, 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 PHI for such research; or

   b. UW Medicine may condition the provision of healthcare that is solely for the purpose of creating PHI for disclosure to a third party on provision of an authorization for the disclosure of the PHI 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 re-disclosure by the recipient and may no longer be protected by state and federal laws protecting healthcare information;

10. If the authorization is signed by an individual’s personal representative or surrogate decision maker, include a description of the signatory’s authority; and

B. The authorization may contain other elements or information if not inconsistent with section (IV) (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.

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:

   a. STDs;
   b. Acquired immunodeficiency syndrome (AIDS), or HIV; or
   c. Behavioral or mental health services and treatment for alcohol and drug abuse.

E. If the authorization permits the disclosure of patient 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 one year 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 healthcare 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.

G. If the authorization permits the sale of PHI, it must state that the disclosure will result in remuneration to UW Medicine.

V. Patient Authorization for Use and Disclosure of Photography

A workforce member must obtain a valid authorization to use or disclose photography. Workforce member may use “Authorization to Use or Disclose Photography/Video Tape” form UH0324 (Attachment G).

VI. 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 healthcare is to create PHI for disclosure to a 3rd party.

VII. Defective or 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 Section IV of this policy;

D. The authorization violates the prohibitions stated in Section VIII 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 PHI for such research; or
2. Healthcare that is solely for the purpose of creating PHI for disclosure to a third party on provision of an authorization for the disclosure of the PHI 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;

G. The individual makes any revisions or alterations to the required core elements of UW Medicine’s authorization forms.

VIII. 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 PHI for a research study may be combined with any other type of written permission for the same or another research study. This includes creating a compound authorization for the use or disclosure of PHI for a research study with:

1. Another authorization for the same research study,

2. An authorization for the creation or maintenance of a research database or repository, or

3. A consent to participate in research.

Where UW Medicine has conditioned the provision of research-related treatment on the provision of one of the authorizations, any compound authorization created must clearly differentiate between the conditioned and unconditioned components. For the unconditioned components, workforce must provide the individual with an opportunity to opt in to the research activities described in the authorization.

B. For psychotherapy notes, authorization for use or disclosure may only be combined with another authorization for a use or disclosure of psychotherapy notes.

IX. Revocation of Authorizations

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. This revocation instruction must be shared with all affected UW Medicine entity HIM service areas.
An individual may revoke an authorization in writing at any time 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.

X. Documentation of Uses and Disclosures

UW Medicine will document and retain in electronic or written format all signed authorizations and actions taken in response to the authorization in the designated record set.

REGULATORY/LEGISLATION/REFERENCES

• 45 CFR Parts 160 and 164; Section 164.508 – "Uses and Disclosures for which an Authorization Is Required"
• RCW 70.02 - Medical Records – Healthcare Information Access and Disclosure
• RCW 70.24.105 – Sexually Transmitted Disease - Exchange of Medical Information
• RCW 70.96A.150 - Drug and Alcohol Abuse Treatment Records
• WAC 246-08-400 - “How much can a medical provider charge for searching and duplicating medical records?”
• WAC 246-101-010(39) – Definition of Sexually Transmitted Disease

PROCEDURE ADDENDUM(s) REFERENCES/LINKS

• Authorization for UW Medicine to Disclose, Release or Obtain PHI, Form UH0626 (Attachment A)
• Prohibition on Re-disclosure (Attachment C)
• Record of the Verbal Disclosure of PHI, Form UH1866 (Attachment D)
• EXAMPLE Letter – Incomplete Request (Attachment E)
• Patient Authorization to Use & Disclose PHI for Publication (Attachment F)
• Authorization to Use or Disclose Photography/Video Tape, Form UH0324 (Attachment G)
• UW Medicine Authorization To Disclose PHI Coordination And Action Response Form (Attachment H)
• Authorization for UW Medicine to Use or Disclose PHI for Publicity, Form UH1874 (Attachment I)
• UW Medicine Authorization to Disclose PHI Status Update (Attachment J)
• UW Medicine Compliance Policy: PP.00 Glossary of Terms
• UW Medicine Compliance Policy: PP-16a Use & Disclosure of PHI Permitted for Public Health Activities
• UW Medicine Compliance Policy: PP-16b Use & Disclosure of PHI Permitted to Employers
• UW Medicine Compliance Policy: PP-16c Use & Disclosure of PHI Permitted for Health Oversight Activities
• UW Medicine Compliance Policy: PP-16d Use & Disclosure of PHI Permitted for Decedents
• UW Medicine Compliance Policy: PP-16e Use & Disclosure of PHI Permitted to Avert a Serious Threat to Health or Safety
• UW Medicine Compliance Policy: PP-16f Use & Disclosure of PHI Permitted for Specialized Government Functions
• UW Medicine Compliance Policy: PP-16g Use & Disclosure of PHI Permitted for Judicial and Administrative Proceedings
• UW Medicine Compliance Policy: PP-16h Use & Disclosure of PHI Permitted for Law Enforcement Purposes
• UW Medicine Compliance Policy: PP-16i Disclosure of PHI for the Reporting of Violent Injuries
• UW Medicine Compliance Policy: PP-16j Use & Disclosure of PHI Permitted for Victims of Abuse, Neglect or Domestic Violence

**ROLES AND RESPONSIBILITIES**
Defined within POLICY.

**AUTHORITIES**

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**APPROVALS**

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UW Privacy Official          Date
Johnese M. Spisso, Chief Health System Officer, UW Medicine & Vice President for Medical Affairs, UW