



HIPPA Privacy Rule Policies

Policies and Procedures	Policy # 12	
AUTHORIZATION TO USE OR DISCLOSE PROTECTED HEALTH INFORMATION		
APPROVED BY:	ADOPTED:	
	REVISED: 07122017	
SUPERCEDES POLICY: NEW	REVIEWED: 07122017	

Purpose

To describe the procedures for using or disclosing an individual’s Protected Health Information (PHI) in accordance with state and federal privacy laws, HIPAA Regulations and LifeMed ID’s contracts with its customers.

Policy

It is the policy of LifeMed ID to protect PHI and to use or disclose PHI only in accordance with a valid Authorization, when required and in accordance with state and federal privacy laws, HIPAA Regulations and LifeMed ID’s contracts with its customers.

All workforce members must comply with this policy. Violations of this policy will result in disciplinary action based on the seriousness of the offense or other factors. Disciplinary action may include written warning, suspension, or termination.

Definitions

A valid Authorization must meet all the criteria set forth in Attachment 1: Checklist of Required Elements for Third-Party Authorization Form. See also 45 C.F.R. §164.508(c).

“customer” is an entity from which LifeMed ID receives PHI subject to a Business Associate Agreement (or other written agreement with the entity) in compliance with the HIPAA Regulations and approved by LifeMed ID’s legal counsel.

“Psychotherapy Notes” means notes recorded (in any medium) by a Health Care Provider who is a mental health professional documenting or analyzing the contents of conversation during a private counseling session or a group, joint, or family counseling session and that are separated from the rest of the patient’s medical record. It excludes medication prescription and monitoring, counseling session start and stop times, the modalities and frequencies of treatment furnished, results of clinical tests, and any summary of the following items: diagnosis, functional status, the treatment plan, symptoms, prognosis, and progress to date.

Note: Psychotherapy notes are maintained separately from other records, and are not shared by the originating provider except in very limited circumstances.





For definitions of other capitalized terms or phrases, please refer to: *HIPAA-HITECH Privacy and Security Glossary*.

Procedures

1. When Authorization is Not Required. Refer to: *Privacy Policy # 14: Overview of Required and Permissible Uses and Disclosures*.
2. When Authorization is Required. Written Authorization will be obtained before using or disclosing an individual's PHI for any of the following purposes:
 - a. Marketing: With some exceptions, PHI may not be used for Marketing unless an Authorization is obtained; the Authorization must so state if LifeMed ID is receiving financial remuneration for the communication. Refer to: *Policy #22: Uses and Disclosures for Marketing*.
 - b. Sale of PHI: With some exceptions, LifeMed ID must obtain an Authorization for any disclosure of PHI for which LifeMed ID receives direct or indirect remuneration from, or on behalf of, the recipient of the information; the LifeMed ID Privacy Officer, in conjunction with legal counsel, will make the determination of the need for an Authorization in this situation. Refer to: *Policy #24: Sale of Protected Health Information*.
 - c. Employers: PHI may not be disclosed to employers or persons acting on behalf of employers unless Authorization has been obtained.
 - d. Life Insurance Companies: PHI may not be disclosed to life insurance companies, or persons acting on their behalf, unless Authorization has been obtained.
 - e. Pharmaceutical Companies: PHI may not be disclosed for marketing purposes to pharmaceutical companies, or persons acting on their behalf, unless Authorization has been obtained.
 - f. Research: PHI may not be disclosed for research purposes without an Authorization unless an alteration or waiver of Authorization satisfies specific criteria. Refer to: *Policy #26: Other Permissible Uses and Disclosures*.
 - g. Any other Purpose.
3. Authorization for Use or Disclosure. If an Authorization is required by the HIPAA Privacy Rule, the individual or the individual's Personal Representative may authorize the use or disclosure of the individual's PHI. Refer to: *Policy #13: Personal Representatives*.
4. Implementing an Authorization.
 - a. If a LifeMed ID workforce member receives a request to release PHI from an individual or entity, the workforce member will instruct the individual or entity to make the request directly to the applicable customer service department and advise LifeMed ID's Privacy Office of the request.



- b. All Authorizations received or obtained by LifeMed ID will be forwarded to the LifeMed ID's Privacy Office to confirm that the requirements of this policy have been met and to oversee the response to the Authorization.
 - c. LifeMed ID may use or disclose PHI pursuant to an Authorization when any of the following apply:
 - i. LifeMed ID receives a written request from a customer to use or disclose the individual's PHI with representation from the customer that the customer has obtained a valid Authorization,
 - ii. A customer provides LifeMed ID with a copy of the appropriate executed Authorization to use or disclose PHI, or
 - iii. LifeMed ID obtains an Authorization that complies with this policy and the use or disclosure is permitted by the customer contract.
5. Scope of Authorization. Only the information specified in an Authorization may be used or disclosed and the terms of the Authorization must be followed. If the Authorization appears vague or overly broad, the LifeMed ID Privacy Officer will review the Authorization and may contact the individual or the customer, as appropriate, to determine the appropriate amount of PHI to be used or disclosed.
6. Defective Authorizations. An Authorization cannot be accepted if it has any of the following defects:
- a. The expiration date has passed, or the Authorization specifies a particular expiration event that is known to have occurred.
 - b. The Authorization:
 - i. Does not include all of the required core elements (see *Attachment #1: Checklist of Required Elements for Third-Party Authorization Form* for the required elements) or has not been filled out completely,
 - ii. Has not been signed and dated by the individual or an authorized Personal Representative, or
 - iii. Is for a limited or specific purpose and the anticipated disclosure of PHI would exceed the limitation or specific use.
 - c. The Authorization is known to have been revoked even if LifeMed ID has not yet received a copy of the written revocation.
 - d. The Authorization has been combined with other documents or types of permissions. See regulatory exceptions for Psychotherapy Notes and research at 45 C.F.R. §164.508(b)(3).
7. Revocation. The individual or the individual's Personal Representative may revoke an Authorization at any time. The revocation will be in writing and will be signed by the individual or the Personal



Representative. The revocation does not affect any uses or disclosures made by LifeMed ID prior to the revocation.

8. Revoked or Expired Authorization.

- a. Upon revocation or expiration of an Authorization, the Authorization form will be clearly marked to show that it is no longer valid. LifeMed ID's Privacy Office will communicate, in writing, the revocation or expiration of the Authorization, to the designated quality manager who will mark all related records, as appropriate, to show that the Authorization is no longer valid.
- b. Upon completion of the marking of related records, the designated quality manager will so notify LifeMed ID's Privacy Office who will notify the customer's Privacy Office that the records have been so marked and will provide a list of LifeMed ID's Subcontractors who might otherwise rely on the Authorization that it has expired or been revoked.

9. No Denial of Enrollment in a Health Plan or Eligibility for Benefits. Enrollment in a Health Plan, or eligibility for benefits will not be denied solely because an individual refuses to sign an Authorization. See 45 C.F.R. §164.508(b)(4) for certain exceptions related to Research or situations where an employer or insurer has requested and is paying for physicals or screenings.

10. Possible Exemptions from Authorization Requirements. LifeMed ID's Privacy Office is responsible for making determinations of possible exemptions from Authorization requirements.

- a. If a use or disclosure of PHI is for any of the following purposes, it may be exempted from the Authorization requirements, provided that the use or disclosure is permitted by the applicable customer contract. Refer to the following LifeMed ID Privacy Policies and Procedures to determine the circumstances under which the PHI may be released without Authorization from the individual:
 - i. *Privacy Policy #15: Uses By and Disclosures to Subcontractors and Third Parties,*
 - ii. *Privacy Policy # 16: De-Identification of Health Information, and*
 - iii. *Privacy Policy # 17: Uses and Disclosures of Limited Data Sets.*
- b. If a use or disclosure of PHI is for any of the following purposes, it may be exempted from the Authorization requirements, provided that the use or disclosure is permitted by the applicable customer contract. Refer such uses and disclosures to LifeMed ID's Privacy Office to determine the circumstances under which the PHI may be released without Authorization from the individual:
 - i. *Privacy Policy #18: Uses and Disclosures for Treatment Purposes,*
 - ii. *Privacy Policy #19: Uses and Disclosures for Payment Purposes,*
 - iii. *Privacy Policy #20: Uses and Disclosures for Health Care Operations, and*



- iv. *Privacy Policy #25: Uses and Disclosures Required by Law.*

- c. Certain other uses and disclosures of PHI may be made without an Authorization in specific circumstances set forth in the HIPAA Privacy Rule. Refer to: *Privacy Policy #26: Other Permissible Uses and Disclosures*. If permitted by the customer, LifeMed ID may disclose PHI in the following circumstances, provided the Privacy Officer, after conferring with legal counsel, has approved the disclosure in advance and determined that the regulatory requirement for the applicable exception to the requirement for an Authorization has been met:
 - i. Use and Disclosure for Disaster Relief Purposes,
 - ii. Uses and Disclosures for Public Health Activities,
 - iii. Uses and Disclosures for Health Oversight Activities,
 - iv. Uses and Disclosures to Avert a Serious Threat to Health or Safety,
 - v. Uses and Disclosures about Decedents,
 - vi. Uses and Disclosures for Cadaveric Organ, Eye, or Tissue Donation Purposes,
 - vii. Uses and Disclosures for Research Purposes,
 - viii. Uses and Disclosures for Specialized Government Functions, and
 - ix. Disclosures for Workers' Compensation.

11. Documentation. The LifeMed ID Privacy Officer will ensure that documentation associated with an Authorization that has been used for a use or disclosure of PHI includes:

- a. The titles of the persons or offices at your customer responsible for approving and authenticating the Authorization,
- b. The titles of persons and office at LifeMed ID responsible for receiving and implementing requests for PHI based on the Authorization, and
- c. Steps taken by LifeMed ID to implement uses or disclosures of PHI permitted by the Authorization.

Documentation

This version of the policy, together with any forms and other documentation created or obtained in accordance with the policy, will be retained by LifeMed ID for a period of at least 6 years plus the current year from the date of creation or the date when last in effect, whichever is later.



Attachment 1: Checklist of Required Elements for Third-Party Authorization Form

The following elements and statements must be present for an Authorization form to be considered valid. Any missing elements or statements render the Authorization form defective.

A. Elements

1. A description of the information to be used or disclosed that identifies the information in a specific and meaningful fashion.
Examples: "All medical records from 2012" or "My lab reports from June 3, 2012"
2. The name or other specific identification of the person(s), or class of persons, authorized to make the requested use or disclosure.
Examples: "Dr. Smith's office" or "XYZ Medical Center"
3. The name or other specific identification of the person(s), or class of persons, to whom the covered entity may make the requested use or disclosure.
Examples: "To my attorney, Jim Smith" or "To XYZ Life Insurance Company"
4. 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.
5. An expiration date or an expiration event that relates to the individual or the purpose of the use or disclosure. The statement "end of the research study," "none," or similar language is sufficient if the Authorization is for a use or disclosure of PHI for research, including for the creation and maintenance of a research database or research repository.
6. Signature of the individual and date. If the Authorization is signed by a Personal Representative of the individual, a description of such Representative's authority to act for the individual must also be provided.

B. Required statements

In addition to the core elements, the Authorization must contain statements adequate to place the individual on notice of all of the following:

1. The individual's right to revoke the Authorization in writing, and either:



- a. The exceptions to the right to revoke and a description of how the individual may revoke the Authorization; or
 - b. To the extent that the customer's Notice of Privacy Practices includes reference to certain exceptions referred to in paragraph a. above, the statement must include a reference to the customer's Notice of Privacy Practices.
2. The ability or inability to condition treatment, payment, enrollment or eligibility for benefits on the Authorization, by stating either:
- a. Neither the customer nor LifeMed ID may condition treatment, payment, enrollment or eligibility for benefits on whether the individual signs the Authorization when the prohibition on conditioning of Authorizations in 45 C.F.R. §164.508(b)(4) applies; or
 - b. The consequences to the individual of a refusal to sign the Authorization when, in accordance with in 45 C.F.R. §164.508(b)(4), the customer or LifeMed ID can condition treatment, enrollment in the health plan, or eligibility for benefits on failure to obtain such authorization.
3. The potential for PHI disclosed pursuant to the Authorization to be subject to re-disclosure by the recipient and no longer be protected.

C. Language

The authorization must be written in plain language.



Regulatory Authority

45 C.F.R. §164.508 Uses and disclosures for which an authorization is required.

(a) Standard: Authorizations for uses and disclosures

(1) *authorization required: general rule. Except as otherwise permitted or required by this subchapter, a covered entity may not use or disclose protected health information without an authorization that is valid under this section. When a covered entity obtains or receives a valid authorization for its use or disclosure of protected health information, such use or disclosure must be consistent with such authorization.*

(2) *authorization required: psychotherapy notes. Notwithstanding any provision of this subpart, other than the transition provisions in §164.532, a covered entity must obtain an authorization for any use or disclosure of psychotherapy notes, except:*

(i) *To carry out the following treatment, payment, or health care operations:*

(A) *Use by the originator of the psychotherapy notes for treatment;*

(B) *Use or disclosure by the covered entity 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; or*

(C) *Use or disclosure by the covered entity to defend itself in a legal action or other proceeding brought by the individual; and*

(ii) *A use or disclosure that is required by §164.502(a)(2)(ii) or permitted by §164.512(a); §164.512(d) with respect to the oversight of the originator of the psychotherapy notes; §164.512(g)(1); or §164.512(j)(1)(i).*

(3) *authorization required: Marketing.*

(i) *Notwithstanding any provision of this subpart, other than the transition provisions in §164.532, a covered entity must obtain an authorization for any use or disclosure of protected health information for marketing, except if the communication is in the form of:*

(A) *A face-to-face communication made by a covered entity to an individual; or*

(B) *A promotional gift of nominal value provided by the covered entity.*

(ii) *If the marketing involves financial remuneration, as defined in paragraph (3) of the definition of marketing at §164.501 to the covered entity from a third party, the authorization must state that such remuneration is involved.*

(4) *authorization required: Sale of protected health information.*

(i) *Notwithstanding any provision of this subpart, other than the transition provisions in § 164.532, a covered entity must obtain an authorization for any disclosure of protected health information which is a sale of protected health information, as defined in § 164.501 of this subpart.*



(ii) Such authorization must state that the disclosure will result in remuneration to the covered entity.

(b) Implementation specifications: general requirements —

(1) Valid authorizations.

(i) A valid authorization is a document that meets the requirements in paragraphs (a)(3)(ii), (a)(4)(ii), (c)(1), and (c)(2) of this section, as applicable.

(ii) A valid authorization may contain elements or information in addition to the elements required by this section, provided that such additional elements or information are not inconsistent with the elements required by this section.

(2) Defective authorizations. An authorization is not valid, if the document submitted has any of the following defects:

(i) The expiration date has passed or the expiration event is known by the covered entity to have occurred;

(ii) The authorization has not been filled out completely, with respect to an element described by paragraph (c) of this section, if applicable;

(iii) The authorization is known by the covered entity to have been revoked;

(iv) The authorization violates paragraph (b)(3) or (4) of this section, if applicable;

(v) Any material information in the authorization is known by the covered entity to be false.

(3) Compound authorizations. An authorization for use or disclosure of protected health information may not be combined with any other document to create a compound authorization, except as follows:

(i) 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 or another research study. This exception includes combining an authorization for the use or disclosure of protected health information for a research study with another authorization for the same research study, with an authorization for the creation or maintenance of a research database or repository, or with a consent to participate in research. Where a covered health care provider has conditioned the provision of research related treatment on the provision of one of the authorizations, as permitted under paragraph (b)(4)(i) of this section, any compound authorization created under this paragraph must clearly differentiate between the conditioned and unconditioned components and provide the individual with an opportunity to opt in to the research activities described in the unconditioned authorization.

(ii) An authorization for a use or disclosure of psychotherapy notes may only be combined with another authorization for a use or disclosure of psychotherapy notes;

(iii) An authorization under this section, other than an authorization for a use or disclosure of psychotherapy notes, may be combined with any other such authorization under this section, except when a covered entity has conditioned the provision of treatment, payment,



enrollment in the health plan, or eligibility for benefits under paragraph (b)(4) of this section on the provision of one of the authorizations. The prohibition in this paragraph on combining authorizations where one authorization conditions the provision of treatment, payment, enrollment in a health plan, or eligibility for benefits under paragraph (b)(4) of this section does not apply to a compound authorization created in accordance with paragraph (b)(3)(i) of this section.

(4) Prohibition on conditioning of authorizations. A covered entity may not condition the provision to an individual of treatment, payment, enrollment in the health plan, or eligibility for benefits on the provision of an authorization, except:

(i) A covered health care provider 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 under this section;

(ii) A health plan may condition enrollment in the health plan or eligibility for benefits on provision of an authorization requested by the health plan prior to an individual's enrollment in the health plan, if:

(A) The authorization sought is for the health plan's eligibility or enrollment determinations relating to the individual or for its underwriting or risk rating determinations; and

(B) The authorization is not for a use or disclosure of psychotherapy notes under paragraph (a)(2) of this section; and

(iii) A covered entity 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.

(5) Revocation of authorizations. An individual may revoke an authorization provided under this section at any time, provided that the revocation is in writing, except to the extent that:

(i) The covered entity has taken action in reliance thereon; or

(ii) If the authorization was obtained as a condition of obtaining insurance coverage, other law provides the insurer with the right to contest a claim under the policy or the policy itself.

(6) Documentation. A covered entity must document and retain any signed authorization under this section as required by §164.530(j).

(c) Implementation specifications: Core elements and requirements

(1) Core elements. A valid authorization under this section must contain at least the following elements:

(i) A description of the information to be used or disclosed that identifies the information in a specific and meaningful fashion.

(ii) The name or other specific identification of the person(s), or class of persons, authorized to make the requested use or disclosure.



(iii) The name or other specific identification of the person(s), or class of persons, to whom the covered entity may make the requested use or disclosure.

(iv) 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.

(v) An expiration date or an expiration event that relates to the individual or the purpose of the use or disclosure. The statement "end of the research study," "none," or similar language is sufficient if the authorization is for a use or disclosure of protected health information for research, including for the creation and maintenance of a research database or research repository.

(vi) Signature of the individual and date. If the authorization is signed by a personal representative of the individual, a description of such representative's authority to act for the individual must also be provided.

(2) Required statements. In addition to the core elements, the authorization must contain statements adequate to place the individual on notice of all of the following:

(i) The individual's right to revoke the authorization in writing, and either:

(A) The exceptions to the right to revoke and a description of how the individual may revoke the authorization; or

(B) To the extent that the information in paragraph (c)(2)(i)(A) of this section is included in the notice required by §164.520, a reference to the covered entity's notice.

(ii) The ability or inability to condition treatment, payment, enrollment or eligibility for benefits on the authorization, by stating either:

(A) The covered entity may not condition treatment, payment, enrollment or eligibility for benefits on whether the individual signs the authorization when the prohibition on conditioning of authorizations in paragraph (b)(4) of this section applies; or

(B) The consequences to the individual of a refusal to sign the authorization when, in accordance with paragraph (b)(4) of this section, the covered entity can condition treatment, enrollment in the health plan, or eligibility for benefits on failure to obtain such authorization.

(iii) The potential for information disclosed pursuant to the authorization to be subject to redisclosure by the recipient and no longer be protected by this subpart.

(3) Plain language requirement. The authorization must be written in plain language.

(4) Copy to the individual. If a covered entity seeks an authorization from an individual for a use or disclosure of protected health information, the covered entity must provide the individual with a copy of the signed authorization.



45 .F.R. §164.502 Uses and disclosures of protected health information: general rules.

(a) Standard. *A covered entity or business associate may not use or disclose protected health information, except as permitted or required by this subpart or by subpart C of part 160 of this subchapter.*

(5) Prohibited uses and disclosures.

(ii) Sale of protected health information:

(A) Except pursuant to and in compliance with § 164.508(a)(4), a covered entity or business associate may not sell protected health information.

(B) For purposes of this paragraph, sale of protected health information means:

(1) Except as provided in paragraph (a)(5)(ii)(B)(2) of this section, a disclosure of protected health information by a covered entity or business associate, if applicable, where the covered entity or business associate directly or indirectly receives remuneration from or on behalf of the recipient of the protected health information in exchange for the protected health information.

(2) Sale of protected health information does not include a disclosure of protected health information:

(i) For public health purposes pursuant to § 164.512(b) or § 164.514(e);

(ii) For research purposes pursuant to § 164.512(i) or § 164.514(e), where the only remuneration received by the covered entity or business associate is a reasonable cost-based fee to cover the cost to prepare and transmit the protected health information for such purposes;

(iii) For treatment and payment purposes pursuant to § 164.506(a);

(iv) For the sale, transfer, merger, or consolidation of all or part of the covered entity and for related due diligence as described in paragraph (6)(iv) of the definition of health care operations and pursuant to § 164.506(a);

(v) To or by a business associate for activities that the business associate undertakes on behalf of a covered entity, or on behalf of a business associate in the case of a subcontractor, pursuant to §§ 164.502(e) and 164.504(e), and the only remuneration provided is by the covered entity to the business associate, or by the business associate to the subcontractor, if applicable, for the performance of such activities;

(vi) To an individual, when requested under § 164.524 or § 164.528;

(vii) Required by law as permitted under § 164.512(a); and

(viii) For any other purpose permitted by and in accordance with the applicable requirements of this subpart, where the only remuneration received by the covered entity or business associate is a reasonable, cost-based fee to cover the cost to prepare and transmit the protected health information for such purpose or a fee otherwise expressly permitted by other law.



References

Internal

1. Privacy Policy #13, Personal Representatives
2. Privacy Policy #14, Required and Permissible Uses and Disclosures
3. Privacy Policy #15, Uses and Disclosures to Subcontractors and Third Parties
4. Privacy Policy #16, De-Identification of Health Information
5. Privacy Policy #17, Uses and Disclosures of Limited Data Sets
6. Privacy Policy #18, Uses and Disclosures for Treatment Purposes
7. Privacy Policy #19, Uses and Disclosures for Payment Purposes
8. Privacy Policy #20, Uses and Disclosures for Health Care Operations
9. Privacy Policy #22, Uses and Disclosures for Marketing
10. Privacy Policy #24, Sale of Protected Health Information
11. Privacy Policy #25, Uses and Disclosures Required by Law
12. Privacy Policy #26, Other Permissible Uses and Disclosures

External

1. Omnibus Final Rule: <http://www.ecfr.gov/cgi-bin/text-idx?c=ecfr&SID=a1031c979126e6440b522063b7bba578&rqn=div5&view=text&node=45:1.0.1.3.78&idno=45%20>