

## **PRIVACY 3.0**

## **USE AND DISCLOSURE REQUIRING AUTHORIZATION**

**Scope:** All **workforce** members (employees and non-employees), including employed medical staff, management, and others who have direct or indirect **access** to patient **protected health information (PHI)** created, held or maintained any subsidiaries of Universal Health Services, Inc., including facilities and UHS of Delaware Inc. (collectively, “UHS”), including UHS **covered entities** (“Facilities”).

**Purpose:** Identifies when Facilities may **use** and **disclose PHI** of patients pursuant to an Authorization.

### **Definitions:**

Terms not defined in this Policy or the *HIPAA Terms and Definitions* maintained by the UHS Compliance Office will have the meaning as defined in any related State or Federal privacy law including the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191 (“HIPAA”) and regulations promulgated thereunder by the U.S. Department of Health and Human Services (“HHS”) at 45 CFR Part 160 and 164, Subparts A and E (“Privacy Regulations” or “Privacy Rule”) and Subparts A and C (“Security Regulations” or “Security Rule”), the Health Information Technology for Economic and Clinical Health Act (“HITECH”) privacy and security provisions of the American Recovery and Reinvestment Act (Stimulus Act) for Long Term Care, Public Law 111-5, the American Recovery and Reinvestment Act of 2009 (“ARRA”), Title XIII and related regulations.

### **Policy:**

Facilities must obtain written **authorization** from the patient (or their authorized personal representative, as applicable) (“individual”) that meets the requirements of this Policy for any **use** or **disclosure** of **PHI** that is not for **treatment, payment, or health care operations**, unless the use or disclosure is permitted or required by UHS Privacy Policies or by law. Facilities will **use** and **disclose PHI** in accordance with a valid **authorization** that satisfies the requirements of this Policy, the **Privacy Rule** and applicable state laws. State law may impose additional requirements – Facilities will contact the UHS Legal Department if they have any questions regarding the state laws applicable to them.

### **Procedure:**

Except as otherwise permitted or required by UHS policy or is required by law, a Facility may not **use** or disclose **PHI** without an **authorization** that is valid under this Policy. When a Facility obtains or receives a valid **authorization**, the **use** and **disclosure** of **PHI** must be consistent with

the [authorization](#). If the Facility seeks an [authorization](#) for the [use](#) or [disclosure](#) of PHI, the Facility must provide the individual with a copy of the signed [authorization](#).

#### Written Authorization for Disclosure of PHI

A written [authorization](#) for the [disclosure](#) of PHI may be executed by:

- The patient;
- The parent or legally appointed guardian in cases of a minor (except where state law does not allow the parent or guardian to obtain the records; for example, in certain requests for alcohol and drug abuse records or treatment for sexually transmitted diseases), unless otherwise ordered by the court for good cause shown;
- The executor or administrator of the estate of a deceased patient; and/or
- The court-appointed conservator or guardian for a patient lacking capacity or a mentally handicapped patient.

#### Contents of the Authorization

Facilities will develop and use a model form for [authorizations](#) that has been approved by the UHS Privacy Officer. When another [authorization](#) document is presented to the facility for disclosure, the Facility Privacy Officer will examine the [authorization](#) to assure it meets the requirements of this Policy, consulting with the UHS Privacy Officer or Legal department as necessary.

The written [authorization](#) must contain at least the following:

- A description of the information to be [used](#) or [disclosed](#) that identifies the information in a specific and meaningful fashion;
- The name or other specific identification of the person(s), or class of persons, authorized to make the requested [use](#) or [disclosure](#);
- The name or other specific identification of the person(s), or class of persons, to whom the Facility may make the requested [use](#) or [disclosure](#);
- 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;

- An expiration date or an expiration event that relates to the individual or the purpose of the **use** or **disclosure** (“end of **research** study” and “none” are acceptable if **disclosure** is for **research** purposes).
- Signature of the individual (or authorized personal representative), date, and a description of any representative’s authority to act;
- A statement that the individual has the right to revoke the **authorization** in writing;
- Either a statement that puts the individual on notice of the exceptions to the right to revoke and the methods by which the individual may revoke the **authorization** (in writing) or a reference to the Notice of Privacy Practices for **PHI** provided to the individual;
- A statement that **treatment** or **payment** for services are not conditioned on signing the **authorization**;
- A statement that information **disclosed** pursuant to the **authorization** may be subject to re-**disclosure** and no longer protected.

#### Copy to the Individual

If the Facility seeks an **authorization** for the **use** or **disclosure** of **PHI**, the Facility must provide the individual with a copy of the signed **authorization**.

#### Revocation of Written Authorization

An **authorization** may be revoked at any time if the revocation is in writing except to the extent that:

- **PHI** has already been **disclosed** in reliance on the **authorization**, or
- The **authorization** was obtained as a condition of obtaining insurance coverage.

#### Compound Authorizations

Generally, an **authorization** for **use** or **disclosure** of **PHI** may not be combined with any other document, i.e. it cannot be combined with a “consent to treat” form. In limited circumstances, the **authorization** for **use** or **disclosure** of **PHI** may be combined with another document as follows:

- **Research** – An **authorization** for **use** or **disclosure** of **PHI** may be combined with any other type of written **permission** for participating in a **research** study, including another

authorization for the use or disclosure of PHI for the same research study or the consent to participate in the study.

- **Psychotherapy Notes** - An authorization for use or disclosure of psychotherapy notes may be only be combined with another authorization for use or disclosure of psychotherapy notes.
- **Other Authorizations** - An authorization for use or disclosure of PHI (other than an authorization for a use or disclosure of psychotherapy notes), may be combined with any another authorization for use or disclosure of PHI, unless the Facility has conditioned the provision of treatment or payment on the provision of any of the authorizations.

#### Prohibition on Conditioning Authorization

Facilities may not condition the provision of treatment or payment on the provision of an authorization, except in the following circumstances:

- The Facility may condition the provision of research-related treatment on provision of an authorization for the use or disclosure of PHI for such research under this section;
- The Facility may condition the provision of health care 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 – an independent medical examination (IME) for litigation).

#### Authorization to Use PHI for Marketing to Patients

Except as set forth in UHS Privacy 15.0 *Use and Disclosure of PHI for Marketing*, UHS must obtain an authorization from a patient (or authorized representative) before using the patient's PHI for the purposes of marketing.

#### Disclosure of Alcohol and Substance/Drug Abuse Records

Alcohol and substance/drug abuse records will only be disclosed in accordance with UHS Privacy 11.0 *Use and Disclosure of Alcohol and Substance/Drug Abuse Records*.

#### Psychotherapy Notes

Psychotherapy notes may only be disclosed in accordance with an authorization unless the disclosure is made to carry out the following treatment, payment or health care operations:

- Use by the originator of the note for treatment purposes;

- Use by the Facility for its own mental health 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
- To defend the Facility in a legal action or other proceeding brought by the individual.

#### Document Retention Period for Authorizations

The Facility shall maintain a copy of each authorization for use and disclose of PHI for six (6) years.

#### State Laws

State law may impose additional requirements – Facilities will contact the UHS Legal Department if they have any questions regarding the state laws applicable to them.

#### **References:**

45 C.F.R. §164.508

45 C.F.R. §164-530

Facility Authorization Form

#### **Related UHS Policies:**

UHS Privacy 11.0 *Disclosure of Alcohol and Substance/Drug Abuse Records*

UHS Privacy 24.0 *Overview of the Uses and Disclosures of PHI*

UHS Privacy 15.0 *Use and Disclosure of PHI for Marketing*

UHS Privacy 5.0 *Use and Disclosure for Treatment, Payment and Health Care Operations*

UHS Privacy 25.0 *Uses and Disclosures Requiring an Opportunity to Agree/Object*

UHS Privacy 26.0 *Uses and Disclosures Not Requiring Authorization or Opportunity to Agree/Object*

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**Reviewed and Approved by:**

**UHS Compliance Committee**