

Section 6	Compliance Policies	04/11/03 - Originated
Subject 6.2	Privacy Related	02/02/12 - Reviewed w/ changes - Reviewed w/o changes
Policy 6.2.1	Use and Disclosure of PHI Based on Patient Authorization	03/02/12 - Effective Compliance Office - Author

Use and Disclosure of PHI Based on Patient Authorization

Definitions

Authorization: A detailed document that gives UTMB permission to use PHI for specified purposes, which are generally other than treatment, payment, or health care operations, or to disclose protected health information to a third party specified by the individual.

Case Management Record/Shadow Medical Record (CMR): A record maintained by a specific physician or department that includes only copies of original PHI that has already been included in the UMR. A CMR does not contain any pertinent patient care information that cannot be found in the UMR. A CMR is considered a convenience copy and has no record retention schedule. These records should never contain original medical records.

Conditioning of Authorization: to require an individual to sign an authorization in order to provide treatment, payment, enrollment in a health plan, or eligibility for benefits to the individual.

HIM Satellite Operations: HIM may delegate or appoint management of the UMR to approved individuals. Original records managed by HIM satellite operations will be considered part of the UMR. This delegation of responsibility will require a formal application process, and interested parties must contact HIM to initiate the application process.

Medical Record Custodian: The person or department responsible for the maintenance, retention, access, data integrity, and data quality of Protected Healthcare Information (PHI); including protecting patient privacy and providing information security, analyzing clinical data for research and public policy, preparing PHI for accreditation surveys, and complying with standards and regulations regarding PHI.

Primary Care Physician: The regular source of health care to whom a patient goes for regular check ups, when sick or for on-going health care. A primary care physician may also be the family practitioner. The primary care physician may be a facility such as a clinic or a health department or a senior center.

Protected Health Information (PHI): Individually identifiable health information transmitted or maintained in any form or medium, including oral, written, and electronic. Individually identifiable health information

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**Definitions,
continued**

relates to 1) the past, present, or future physical or mental health, or condition of an individual; 2) provision of health care to an individual; or 3) past, present, or future payment for the provision of health care to an individual. Information is considered PHI where there is a reasonable basis to believe the information can be used to identify an individual. Demographic information on patients is also considered PHI.

Referring Physician: The source behind a particular episode of health care. The referring physician may be the primary care physician, may be a faculty member, and may be the consulting physician to whom the primary care physician referred the patient.

Source Data: Data from which interpretations, summaries, or notes are derived, regardless of media. This data includes health information stored in any original media. Examples of Source Data include, but are not limited to, paper diagnostic tests or tools, x-rays, videotapes, ultrasounds, fetal monitor strips, photographs (either conventional photos or digital images), EKG strips, and ancillary or supporting systems (e.g. . pharmacy information systems and radiation oncology information systems). These forms of Source Data have unique retention schedules. The UMR must contain a written interpretation of all Source Data. Source Data is distinct from the written interpretations of significant clinical information that has been forwarded to the UMR and is not part of the Legal Medical Record.

Unit Medical Record (UMR): The official UTMB legal medical record maintained by the Department of Health Information Management (HIM) that contains UTMB’s original/official patient care information. The UMR is designed to contain the written interpretations of all significant clinical information gathered for a given patient, whether as an inpatient, outpatient, or emergency care patient. The entire patient’s medical record is thus in paper or electronic form under one hospital number. UMR’s have a permanent retention schedule.

Policy

The [HIPAA Privacy Rule](#) requires patient authorization for the use or disclosure of PHI for purposes other than Treatment, Payment, and Healthcare Operations (TPO) or not otherwise allowed by HIPAA. For more information on the use of PHI for TPO see IHOP 6.2.0 General Policy on Use and Disclosure of PHI. If a disclosure is for treatment purposes, but UTMB doesn’t have prior knowledge of the relationship between the patient and the provider see the

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Policy, continued [Verifying Treatment Relationship Checklist.](#)

The authorization must include a number of elements, including a description of the PHI to be used and disclosed, the person authorized to make the use or disclosure, the person to whom UTMB may make the disclosure, an expiration date, and, in some cases, the purpose for which the information may be used or disclosed. With limited exceptions, UTMB may not require a patient to complete an authorization in order to receive treatment. ([See Authorization Validation Checklist for required elements.](#))

Violation of this policy may result in disciplinary action up to and including termination for employees; a termination of employment relationship in the case of contractors or consultants; or suspension or expulsion in the case of a student. Additionally, individuals may be subject to loss of access privileges and civil and/or criminal prosecution.

When a Patient Authorization is Required

In order to use and disclose PHI for non-TPO purposes, UTMB must obtain a signed authorization form from the patient or the patient’s representative. Examples of non-TPO disclosures are disclosures to life insurance companies, non court ordered subpoenas, disclosures for research purposes or disclosures to employers. Additionally, UTMB requires that the patient or the patient’s personal representative complete and sign a valid authorization in order to receive copies of PHI contained in their medical record.

HIM as the custodian of the Unit Medical Record (UMR) shall have the sole authority to disclose PHI when a patient authorization is required. Custodians of Case Management Records (CMR) or Custodians of Source Data (SD) must **NOT** disclose or release any PHI and must direct all persons requesting PHI requiring an authorization to HIM.

If the authorization form is not UTMB’s approved form, HIM can accept an outside entity’s authorization form if HIM determines the authorization form is valid. ([See Authorization Validation Checklist for required elements.](#)) HIM will document each disclosure and retain all signed authorizations.

When Patient Authorization is not Required

UTMB does **NOT** require a patient or personal representative to sign a valid authorization form in order to use or disclose PHI for the following purposes:

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When Patient Authorization is not Required, continued

1. UTMB clinics and providers may share PHI with other UTMB patient care areas for treatment, payment or health care operations.
2. UTMB may share PHI with providers with a known relationship to the patient, (such as physicians who refer patients to UTMB for a consult or specialty procedure, or providers to whom UTMB refers patients).
3. In emergency health care situations, PHI can be shared with non-UTMB providers.
UTMB clinics and providers can share a limited amount (20 pages) of information, such as recent lab results or medical reports that have been received or created within the last 30 days of the patient's most recent visit, with patients,. All requests for lab results and medical reports that are older than 30 days must be sent to HIM for release.

For limited disclosures of recent PHI, the following rules apply:

- a. **Telephone Requests for the Disclosure of PHI**
UTMB clinics and providers may only disclose lab results or medical reports over the phone if the UTMB employee has followed the IHOP Policy 6.2.32, *Verifying Identity and Authority of Individuals Requesting PH*
 - b. **Requests to Mail PHI**
UTMB employees may mail a limited amount of medical information to patients after verifying the address provided by the patient is the same as the address in Invision.
 - c. **Requests for disclosure of PHI during office visits**
UTMB clinics and providers may disclose, at their discretion, a limited amount (up to 20 pages) of medical information.
4. UTMB billing personnel may disclose PHI to family and friends if the information is solely limited to the amount owed. If the caller wishes to obtain more detailed support of the amount owed including medical information contained in the bill, the UTMB billing personnel must obtain oral permission from the patient and the UTMB employee must adhere to IHOP Policy 6.2.32, *Verifying Identity and Authority of Individuals Requesting PHI*. If the patient is not available for verification and approval, the UTMB employee must obtain a valid written authorization form from the patient or a medical power of attorney justifying the disclosure of information to the caller.

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When Patient Authorization is not Required, continued

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5. PHI may be disclosed without a valid authorization pursuant to an exception permitted by the HIPAA Privacy Rule, including any disclosure required by law. The following is list of policies under which UTMB is permitted to disclose PHI for reasons other than for TPO purposes as required by law or without the need for a valid authorization:
- IHOP Policy 6.2.2, *Use and Disclosure to Family and Friends*
 - IHOP Policy 6.2.4, *Use and Disclosure for Patient Directories*
 - IHOP Policy 6.2.16, *Permitted Use and Disclosure of PHI in Special Situations*
 - IHOP Policy 6.2.20, *Use and Disclosure of PHI for Judicial or Administrative Proceedings*
 - IHOP Policy 6.2.7, *Use and Disclosure for Disaster Relief Purposes*

All disclosures for non-TPO purposes and without patient authorization must comply with the IHOP Policy 6.2.26, *Patient's Rights Related to Protected Health Information (PHI) section on Accounting of Disclosure*, which mandates the tracking of disclosures of PHI.

Compound Authorizations

Authorizations may be combined with other documents to create a compound authorization except in the following circumstances:

1. Authorizations for release of psychotherapy notes may only be combined with another authorization to release psychotherapy notes.
Research authorizations may be combined only with other authorizations or written permissions for the same research study. See IHOP Policy 6.2.30, *Use and Disclosure of PHI for Research*.
2. An authorization may not be combined when treatment, payment, enrollment in a health plan or eligibility of benefits is conditioned upon the authorization.

Except as described above, authorization may be combined with other documents to create compound authorizations. If the PHI falls into one of the categories requiring separate authorization, a separate valid authorization must be obtained.

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Conditioning Treatment Upon an Authorization

UTMB may not require a patient to sign an authorization in order to receive treatment except in the event of:

1. Provision of research-related treatment upon receiving an authorization for such research.
2. Provision of health care that is solely for the purpose of creating PHI for disclosure to a third party on the provision of an authorization to such third party. For example, if an employer requests a fitness for duty evaluation on an employee, UTMB may require the individual to sign an authorization so that the results can be released to the employer prior to conducting the evaluation.

Defective Authorizations

An authorization is considered defective and invalid if any material information in the authorization is known to be false by UTMB or its employees or if any of the following defects exist:

1. The expiration date has passed;
2. The authorization has not been filled out completely or lacks an element required by the HIPAA Privacy rule to be a valid authorization.;
3. The authorization is known by UTMB to have been revoked;
4. The authorization violates the compound authorizations requirement or the conditioning of authorizations requirement.

Authorizations Requiring Special Instructions

Authorizations and Psychotherapy Notes

For specific rules governing the use and disclosure of psychotherapy notes, see IHOP Policy 6.2.7, *Use and Disclosure of Psychotherapy Notes*.

Authorizations for Marketing and Fundraising Purposes

For specific rules governing the use and disclosure of PHI for marketing and fundraising purposes, see IHOP Policy, *Use and Disclosure of PHI for Marketing Purposes* IHOP Policy 6.2.18, *Use and Disclosure of PHI for Fundraising*.

Research Authorization

For specific rules governing the use and disclosure of PHI for research purposes, see IHOP Policy 6.2.30, *Use and Disclosure of PHI for Research*.

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Revocation of Authorizations

An individual may revoke an authorization at any time, provided that the revocation is in writing, However, UTMB will not be able to get the PHI back if it has already been disclosed. As soon as the revocation is processed by Health Information Management (HIM), UTMB will stop using and disclosing the PHI.

When a patient requests a revocation of a prior authorization, the revocation form will be forwarded to HIM for proper documentation in the Unit Medical Record. A patient may submit a request for revocation in a signed letter and UTMB will accept this without requiring a signed revocation form.

All original revocation forms must be forwarded to HIM or scanned into the UMR. HIM will be responsible for notifying the departments or individuals authorized to use the patient’s PHI that the patient has revoked his/her authorization.

Once notified by HIM of the revocation, the departments or individuals are responsible for ensuring the patient’s PHI is no longer subject to further use or disclosure.

References

45 C.F.R. § 164.508
