

## CHAPTER 8

### AUTHORIZATION FOR USE AND DISCLOSURE OF PROTECTED HEALTH INFORMATION

#### I. GENERAL RULE

An Authorization is the permission that an individual, or his/her Personal Representative (PR), if any, gives to another person or entity, to allow that person or entity to use or disclose the individual's Protected Health Information (PHI). An Authorization for the use or disclosure of PHI should not be confused with informed consent for treatment. Additionally, it should not be confused with a request by an individual, or his/her PR, if any, to access or receive copies of the individual's PHI. (See Chapter 11, Right of Individuals or Personal Representative to Access Protected Health Information Maintained by DMH.)

An Authorization must be written in plain language and contain the eight core elements set forth in Section II.A.

When an Authorization is required, only the specific PHI referenced in the Authorization may be used or disclosed, and then only by or to the person(s) or entity(ies) that are identified in the Authorization. Any restrictions set forth in the Authorization must be followed.

For a discussion of when an Authorization is needed to disclose or use PHI, see Chapter 6, Uses and Disclosures of Protected Health Information, and Appendix C, Routine Disclosures and Requests.

#### II. SPECIFIC REQUIREMENTS

##### A. Core Elements

Beginning on April 14, 2003, each Authorization for the use or disclosure of an individual's PHI must be written in plain language and include the following eight core elements. An Authorization may contain more elements, provided that they are not inconsistent with the required ones.

1. The signature of the individual, or PR, and the date. If the individual's PR signs the Authorization, the Authorization must include a description of the PR's authority to act for the individual. If an individual has a PR, the PR rather than an individual must sign the authorization unless an exception set forth in Section II.F. is applicable.

2. The name or other specific identification of the individual or class of individual(s) or Covered Entity(ies) authorized to make the requested use or disclosure.
3. The name or other specific identification of the individual, or job title of individual(s) (e.g., social worker, medical records), or entity to whom the requested use or disclosure may be made.
4. A specific and meaningful description of the PHI to be used and/or disclosed.
5. A description of each purpose of the requested use or disclosure. The statement "at the request of the individual" is sufficient if the individual initiates the Authorization.
6. An expiration date or an event that will trigger the expiration of the Authorization.
7. A statement of the individual's right to revoke the Authorization in writing, exceptions to the right to revoke, if any, and a description of how the individual may revoke the Authorization.
8. A statement acknowledging that the PHI may be subject to re-disclosure and no longer protected by federal or state privacy laws or regulations.

Additionally, if the Authorization is requested by a Covered Entity, the Authorization, to be valid, must contain a statement that treatment, payment, enrollment or eligibility for benefits are not conditioned on the individual or his/her PR, if any, signing the Authorization or if signing is a condition, a statement about the consequences of refusing to sign the Authorization.

**B. Combining an Authorization with Another Authorization or Document**

An Authorization for the use or disclosure of PHI may not be combined with any other document (e.g., consent form), except in the following limited circumstances:

1. **With Another Authorization.** An Authorization may be combined with another Authorization with the following limitations:
  - a. **Psychotherapy Notes.** An Authorization for the use or disclosure of psychotherapy notes may be combined only with another Authorization for the use or disclosure of psychotherapy notes.

Psychotherapy notes mean notes recorded in any medium by a Health Care Provider who is a mental health professional documenting or analyzing the contents of a conversation during a private counseling session or a group, joint, or family counseling session and that are separated from the rest of the individual's medical record. Psychotherapy notes exclude 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.

b. **Pre-condition to Treatment, Payment, etc. An**

Authorization that a Covered Entity has required as a condition for treatment, payment, eligibility for benefits, or enrollment in a Health Plan (see, Sections II.A and II.D.) cannot be combined with another Authorization.

2. **Authorization for Research.** An Authorization for the use or disclosure of PHI for research may be combined with any other type of written permission for the same research study.

C. **Special Rules for Authorization Concerning AIDS, HIV and/or Treatment for Drug or Alcohol Abuse PHI**

1. **Alcohol or Drug Treatment Records.** If the PHI concerns alcohol or drug treatment that is protected by Federal Regulations at 42 CFR, Part 2, a separate signature (or initials) which specifically authorizes the use and/or disclosure of such PHI is required.
2. **HIV/AIDS Testing and Treatment Records.** If the PHI concerns HIV/AIDS testing, diagnosis or treatment that is protected by M.G.L. c. 111, §70F, a separate signature (or initials) which specifically authorizes the use and/or disclosure of such information is required.

D. **When Treatment or Payment for Health Care Services Can Be Conditioned on an Authorization**

Treatment and payment for health care services cannot be conditioned on an individual providing a Covered Entity with Authorization for the use or disclosure of PHI unless one of the following situations applies:

1. **Research-related treatment** by a Health Care Provider (e.g., DMH) may be conditioned on the obtaining of an Authorization for the use or disclosure of PHI for the research.

2. ***Enrollment or the determination of eligibility for benefits*** by a Health Plan may be conditioned on obtaining a pre-enrollment Authorization for risk-rating or underwriting determinations.
3. ***The provision of health care that is solely for the purpose of creating PHI for disclosure to a third party*** by a Covered Entity (e.g., a life insurance physical examination) may be conditioned on obtaining an Authorization for disclosure to that third party.

**Note:** Although treatment cannot be conditioned on obtaining an Authorization, it may be indicated on an Authorization that the lack of ability to share or obtain information may prevent the applicable Health Care Provider, such as DMH, from being able to provide appropriate and necessary care.

#### **E. Revocation**

An Authorization may be revoked at any time. The revocation must be in writing. Upon receipt of a revocation, further use or disclosure of PHI shall cease immediately except to the extent that an individual or entity has acted in reliance upon the Authorization or to the extent that use or disclosure is permitted otherwise or required by law.

#### **F. When an Authorization Must Be Signed by the PR**

If an individual has a PR, the PR rather than the individual must sign the Authorization for it to be valid. The exceptions to this rule are that a Minor (1) who by law voluntarily admitted him or herself to a DMH Facility pursuant to 104 CMR 27.06, or (2) who by law consented to treatment (e.g., HIV testing) may sign an Authorization for the disclosure and use of PHI that is directly related to the admittance or to the treatment that Minor authorized.

#### **G. Invalid Authorization**

An Authorization is not valid if any of the following applies:

1. the expiration date or event has passed;
2. the Authorization has not been filled out completely (i.e., does not contain the eight core elements set forth in Section II.A.);
3. the Authorization was requested by a Covered Entity and it does not contain a statement as to whether treatment, etc., is conditioned on the Authorization;
4. the Authorization is combined incorrectly with another document;
5. the wrong person signed the Authorization;

6. the Authorization contains material information that the Covered Entity knows to be false; or
7. the Authorization is known by the Covered Entity to have been revoked in writing.

#### **H. Uses and Disclosures Made Pursuant to an Authorization**

All disclosures or uses made pursuant to an Authorization must be consistent with such Authorization. All restrictions and limitations set forth in the Authorization must be followed. If Authorizations conflict, the most restrictive Authorization shall prevail until the conflict is resolved. See Chapter 6, Uses and Disclosures of Protected Health Information, and Appendix C, Routine Disclosures and Requests, for more information on when Authorizations are required.

#### **I. Authorizations Issued Prior to April 14, 2003**

An Authorization that was in effect prior to April 14, 2003, remains effective after April 14, 2003, even if it does not contain the core elements specified in Section II.A. A Covered Entity may continue to make disclosures pursuant to such an Authorization after April 14, 2003. Such an Authorization remains in effect until it expires by its own terms, as matter of law or is revoked in writing.

### **III. DMH PROCEDURES FOR ISSUING AN AUTHORIZATION AND FOR USING OR DISCLOSING PHI PURSUANT TO AN AUTHORIZATION**

#### **A. DMH Initiated Authorization**

If an individual or his/her PR, if any, is asked by a DMH Workforce Member to sign an Authorization for the use or disclosure of PHI by or to DMH, an Authorization Form that has been approved by the DMH Privacy Officer shall be used for this purpose. The DMH Workforce Member obtaining the Authorization must ensure that the Authorization Form is completed in full and properly signed and dated before submitting it to another Covered Entity or acting pursuant to the Authorization. A copy of the signed Authorization Form shall be provided to the individual or PR. The individual or PR shall be offered an opportunity to examine the PHI to be disclosed.

Included at the end of this Chapter are the following Authorization Forms that have been approved by the DMH Privacy Officer:

- 1. Authorization - One Way From DMH.** This Authorization Form is intended to be used if PHI needs to be sent from DMH to a third party

(e.g., another health care provider, a family member, legislator, etc.) and it is not expected that the third party will send DMH PHI in return.

2. **Authorization - One Way To DMH.** This Authorization Form is intended to be used if DMH needs PHI to be sent to it from a third party (e.g., another health care provider, an insurance company, etc.)
3. **Authorization - Two Way.** This Authorization Form is intended to be used to enable the flow of PHI between DMH and another Covered Entity(ies) on an ongoing basis: for example, to enable regular communications between DMH and a DMH contracted residential service vendor.
4. **Authorization for Release of Information for Benefits Eligibility Inquiry and/or Reimbursement for Services.** This Authorization Form is intended to be used to allow DMH and/or a Health Care Provider to whom DMH has referred the individual for treatment (a) to verify an individual's eligibility for public benefits, Medicaid and/or Medicare, (b) to verify the individual's private insurance coverage, (c) to help identify other third party payers, (d) to apply for benefits on behalf of the individual, (e) to bill other agencies, insurance carriers and third parties for services, (f) to appeal a denial of benefits or reimbursement, and/or (g) to disclose pertinent PHI to accomplish (a) - (f), above. It also authorizes applicable agencies, insurance carriers and third parties to provide DMH with the necessary information to accomplish (a) - (f) above. Currently the form is intended to be used only as specified in the Charges for Care Policy.
5. **Authorization for Taking/Use/Disclosure of Photographs, Audiotapes, and/or Videotapes.** This Authorization Form is intended for use of photographing, audiotaping and or videotaping individuals for non-research purposes. If done for research, an Authorization approved by the DMH's Central Office Research Review Committee is required.

## **B. Individual or PR Initiated Authorization**

1. **Format.** If an individual or PR initiates the request for DMH to use or disclose any or all of the individual's PHI held by DMH, the individual or PR may use the appropriate DMH Authorization forms at the end of this Chapter for this purpose. The individual or PR, however, is not required to use a DMH Authorization form. The Authorization that is used, however, must meet the requirements as set forth in Section II.A.
2. **Review of an Authorization to Determine Validity.** An individual- or PR-initiated Authorization must be reviewed by DMH to determine

if it is valid (see Section II.G). If the Authorization only impacts one DMH Designated Record Set (e.g., case management file) that is maintained at one location (e.g., Site or Area Office), the determination of validity shall be made by the DMH Workforce Member responsible for the applicable DMH Designated Record Set (e.g., case manager) or, if not available, such other person as his/her supervisor shall designate. If the Authorization impacts several different DMH Designated Record Sets and/or Designated Record Sets at several different locations, then the Authorization shall be forwarded to the Records Coordinator for the Area, Site, Facility of Program where the Authorization is received or, if received at Central Office, to the DMH Privacy Officer. Appendix D contains a list of the Records Coordinators. (See the Intranet web site copy of Handbook for a current Appendix D) The Records Coordinator or Privacy Officer must determine if the Authorization is valid (Section II.G.)

If an Authorization is determined to be valid, the reviewer making this determination must note that fact on the Authorization and sign and date the notation. If the Authorization is not valid, the reviewer shall so notify the individual or PR and provide the reason(s) why. The Notice of Invalid Authorization at the end of this Chapter can be used for this purpose, but it is not required.

- 3. Coordination of a Disclosure and/or Use of PHI Pursuant to an Authorization that Impacts More than One Designated Record Set or More than One Location.** If an Authorization impacts more than one DMH Designated Record Set and/or Designated Record Sets at several locations, the Records Coordinator or Privacy Officer who determines that the Authorization is valid is responsible for coordinating all uses and disclosures pursuant to it. This may involve contacting other Record Coordinators to obtain PHI that is maintained in other Areas, Sites, Facilities, etc. If the Authorization is for a one-time disclosure of PHI, it is desirable that the entire relevant PHI be collected and disclosed together. If the Authorization allows for an ongoing flow of communication between DMH and another person or entity (e.g., a vendor), the Records Coordinator or Privacy Officer needs to ensure that the appropriate DMH Workforce Members are notified of the Authorization to ensure that the proper communications are made.

## **C. Revocation of an Authorization**

- 1. Authorizations for Disclosure of PHI to DMH.** If an individual or PR signed an Authorization to enable the disclosure of PHI to DMH, and DMH receives a revocation of such Authorization, the following actions shall be taken by DMH:

- a. If the requested information has not been received yet, DMH shall assist the individual or PR in forwarding the revocation to the person or entity that was authorized to disclose information to DMH.
- b. If all or a portion of the information has been received, or is subsequently received, DMH shall notify the individual of that fact. The information received shall become part of the applicable DMH record.

**2. Individual- or PR- Requested Authorization for Disclosure of Information by DMH.** If a written revocation of an Authorization permitting DMH to disclose or use PHI is received by DMH, DMH shall take all necessary actions to ensure that no further uses or disclosures are made under the Authorization.

**3. Format.** To be effective, a revocation must be in writing. The Authorization Revocation form that appears at the end of this Chapter or any other similar form can be used for this purpose.

**4. Validity.** If an individual has a PR, a revocation must be signed by the PR to be valid, except when an exception listed in Section II.F. applies.

#### **D. Record Disposal**

All Authorizations initiated or received by DMH and all revocations must be retained in the individuals' applicable DMH records. Such documents shall be maintained in accordance with DMH record disposal schedule.

### **IV. LEGAL REFERENCE AND ATTACHMENTS**

HIPAA 45 CFR 164.508

104 CMR 28.09(2)(b)

Authorization - One Way From DMH

Authorization - One Way To DMH

Authorization - Two Way

Authorization for Release of Information for Benefits Eligibility Inquiry and/or Reimbursement for Services.

Authorization for Taking/Use/Disclosure of Photographs, Audiotapes, and/or Videotapes

Notice of Invalid Authorization

Authorization Revocation