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Policy #6.011 - PHI Protected Health Information: Obtaining Authorization to Disclose
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Policy:

- Conditioning Services on Authorization to Disclose Protected Health Information (PHI):
 - The Division <u>may not condition</u> treatment, enrollment in a health plan, eligibility for benefits, or payment of a claim on the provision of an authorization for the use or disclosure of PHI.
 - The Division <u>may condition</u> the following services on obtaining an authorization from the individual to use or disclose PHI:
 - Research-related treatment:
 - ❖ Enrollment in services or eligibility for benefits if the authorization is requested by the Division prior to an individual's enrollment and; if the authorization is sought for services eligibility or enrollment determinations relating to the individual or for its underwriting or risk rating determinations.
- Authorization in Writing:

Whenever an authorization to use or disclose PHI is required, the Division obtains a written signed authorization from the individual or their personal representative before using or disclosing the PHI. Each page of a released individual's clinical record shall contain a re-disclosure statement indicating the name of the individual or agency the information is released to and indicating the information is confidential and should not be re-disclosed.

- Authorization Required Specific Instances:
 - Prior to all marketing communications, the Division will obtain authorization from the individuals who would receive such communications, except if:
 - The communication is made face-to-face by an employee of the Division, or
 - The communication is a promotional gift of nominal value provided by the Division.
- Invalid Authorization to Use or Disclose PHI:
 - The Division prohibits the use of an invalid authorization to use or disclose PHI.
 - An authorization will become invalid in the event that the Division knows the authorization has been revoked.
- Individuals Right to Revoke Their Authorization to Disclose PHI:
 - The Division will allow an individual to revoke an authorization to use or disclose their PHI, except in situations where:
 - The Division has taken action in reliance thereon;
 - ❖ The authorization was obtained as a condition of obtaining insurance coverage and other law provides the insurer with the right to contest a claim under the policy or the policy itself.
 - The Division will take all necessary steps to honor and comply with an individual revocation of an authorization to use or disclose PHI, unless stated otherwise in this policy.

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Purpose:

Generally, the Division will not condition the provision of treatment, payment, enrollment, or eligibility for benefits on the provision of an authorization to use or disclose an individual's PHI. However, certain exceptions apply where the Division must obtain an authorization from the individual. The Division will take necessary steps to comply with applicable laws and regulations regarding the conditioning of services or eligibility on an authorization to use or disclose PHI.

For all uses and disclosures of an individual's PHI, other than those required by law or for treatment, payment, and health care operations, the Division must obtain an authorization signed by the individual. The purpose of obtaining an individual's authorization to disclose PHI is to provide the individual with an opportunity to determine how his or her PHI may be used or disclosed, and to inform the individual of his or her rights. When obtaining an authorization for the use or disclosure of PHI, it is important the document contain all necessary information. If not, the authorization is defective and therefore invalid. On occasion, there will be cases where individuals will initially grant authorization, only to change their mind later.

These policies and procedures address obtaining authorizations for use or disclosure of PHI; determining defective/invalid authorizations, and accommodating an individual's request to revoke their authorization.

Procedures:

- I. Authorization Form for Use or Disclosure of PHI:
 - A. The authorization will be written in easy to understand language.
 - B. The authorization document will allow individuals to request that their PHI be used or disclosed for specific purposes.
 - C. When the Division initiates an authorization to use or disclose PHI for its own purposes, the Division will provide individuals with any facts they need to make an informed decision as to whether to allow the release of the information.
 - D. The authorization will not be combined with another document to create a compound authorization, unless:
 - 1. The other document is a similar authorization, or
 - 2. The authorization is for the use or disclosure of PHI created for a research study, and is to be combined with another written permission for the study.
 - E. Any authorization for the use or disclosure of PHI will contain the following:
 - 1. A description of the information to be used or disclosed that identifies the information in a specific and meaningful fashion;
 - 2. The name or other specific identification of the person(s), or class of persons, authorized to make the requested use or disclosure;

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- 3. The name or other specific identification of the person(s), or class of persons, to whom the Division may make the requested use or disclosure;
- 4. An expiration date or an expiration event that relates to the individual or the purpose of the use or disclosure;
- 5. A statement of the individual's right to revoke the authorization in writing and the exceptions to the right to revoke;
- 6. A description of how the individual may revoke the authorization;
- 7. A statement that the entity will not condition treatment, payment, enrollment in a health plan, or eligibility for benefits on the provision of an authorization, except as permitted by law.
- 8. A statement that if the individual approves disclosure to a third party source, then the Division will not be responsible for any re-disclosure by such source and the information will no longer be protected by 45 C.F.R. Part 164;
- 9. The signature of the individual and date.
- F. In the event that the authorization is signed by a personal representative of the individual, the authorization will contain a description of the representative's authority to act for the individual. A copy of appropriate documentation of this authority must also be provided, unless a copy is already included in the individual's case file.
- G. The Division will provide the individual with a copy of the signed authorization.
- H. The Division will document and retain the signed authorization for a period of at least six years from the date of its creation or the date when it last was in effect, whichever is later.
- II. Conditioning Services on Authorization to Disclose PHI:
 - A. All requests to require authorization for use or disclosure of PHI will be directed to the Divisions HIPAA Compliance Officer for determination.
 - B. The Divisions HIPAA Compliance Officer, in close consultation with the requesting party, will determine the nature of the request, and whether it is necessary to condition payment or services on obtaining the authorization.
 - C. Division staff will inform individuals of the requirement for the authorization and the reason for conditioning services on the need for disclosure of PHI.
 - D. All authorization forms for the use or disclosure of PHI will include a statement that the individual's treatment, payment, enrollment or eligibility for benefits will not be conditioned on provision of the authorization, except as permitted by law.
 - E. When the Division conditions an individual's treatment, payment, enrollment, or eligibility for benefits on provision of an authorization under this policy, the authorization form will state the consequences to the individual of refusing to sign the authorization.

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III. Invalidating an Authorization to Use or Disclose PHI Authorization:

The Division will invalidate an authorization to use or disclose PHI upon the following events:

- A. The expiration date has passed or the expiration event is known by the Division to have occurred;
- B. The authorization is known by the Division to have been revoked;
- C. All of the required elements of the authorization have not been filled out completely, as applicable;
- D. The authorization lacks any of the elements required for the purpose of applicable use or disclosure:
- E. The authorization is inappropriately combined with any other document to create a compound authorization;
- F. If any material information in the authorization is known by the Division to be false; or
- G. Treatment, payment, enrollment, or eligibility for benefits have been unlawfully conditioned on the provision of such authorization.
- IV. Individuals Right to Revoke Their Authorization to Disclose PHI:
 - A. The Division will not impose a time restriction on when an individual may revoke authorization to use or disclose their PHI.
 - B. The Division will require individuals to request the revocation of authorization to use or disclose PHI in writing.
- V. Each Division agency shall develop specific written procedures to implement the provisions of this policy or shall incorporate this policy into their agency policies.



Administrator

Effective Date: 4/15/03

Date Revised: 4/15/03; 7/09/07; 8/16/07 Date Approved by MHDS Commission:

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Example

Effective as of	[INSERT DATE	OF PRINTING]
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AUTHORIZATION FOR THE USE AND DISCLOSURE OF PROTECTED HEALTH INFORMATION

I hereby authorize the use or disclosure of my protected health information as described below. I understand that the information I authorize a person or entity to receive may be re-disclosed and no longer protected by federal privacy regulations.

1.	Specific description of information that may be used/disclosed:
2.	The information will be used/disclosed for the following purpose(s):
3.	Persons/organizations authorized to use or disclose the information:
4.	Persons/organizations authorized to receive the information:
5.	The person/organization authorized to use/disclose the information will receive compensation for doing so. Yes No

- 6. I understand that this authorization is voluntary and that I may refuse to sign this authorization. My refusal to sign will not affect my eligibility for benefits or enrollment, payment for or coverage of services, or ability to obtain treatment, except as provided under numbers 7, and 8 on this form.
- 7. If the purpose of this authorization is for the Division of Mental Health and Developmental Services to determine eligibility before enrollment, the requested use or disclosure is not for psychotherapy notes, and I refuse to sign this authorization, the Division of Mental Health and Developmental Services reserves the right to deny enrollment or eligibility for benefits.

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- 8. If the purpose of this authorization is for the use and/or disclosure of health information for a research study, and I refuse to sign this authorization, the Division of Mental Health and Developmental Services reserves the right to deny treatment associated with such research.
- 9. I understand that I may inspect or copy the information used or disclosed.
- 10. I understand that I may revoke this authorization at any time by notifying the Division of Mental Health and Developmental Services in writing, except to the extent that:
 - a) Action has been taken as a result of this authorization; or
 - b) If this authorization is 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.
- 11. I understand that I have a right to request and receive a Notice of Privacy Practices from the Division of Mental Health and Developmental Services.

2. This authorization expires on [upon] DATE OR EVENT]	[INSERT APPLICABLE
Signature of individual or individual's representative	Date
Printed name of individual or individual's representative	Relationship to individual or representative's authority to act for the individual, if applicable