HCA

DEPARTMENT: Health Information Management Services	**POLICY DESCRIPTION:** Authorization for Uses and Disclosures of Protected Health Information
PAGE: 1 of 7	**REPLACES POLICY DATED:** 6/1/10, 11/1/12, 9/23/13
EFFECTIVE DATE: August 1, 2014	**REFERENCE NUMBER:** HIM.PRI.010
APPROVED BY:	

SCOPE: All Company-affiliated facilities in the state of Virginia including, but not limited to, hospitals, ambulatory surgery centers, imaging and oncology services, physician practices, and shared service centers.

PURPOSE: To establish the requirements for each Company-affiliated facility to utilize patient authorizations to use or disclose protected health information (PHI) as required by the Health Insurance Portability and Accountability Act (HIPAA), Standards for Privacy of Individually Identifiable Health Information, 45 CFR Parts 160 and 164, the Health Information Technology for Economic and Clinical Health Act (HITECH) component of the American Recovery and Reinvestment Act (ARRA), and all Federal regulations and interpretive guidelines promulgated thereunder, as well as applicable state laws and regulations

POLICY: A patient's HIPAA compliant authorization is not required for a facility's own payment, treatment and limited healthcare operations activities.

Per §164.508, an authorization for uses and disclosures of PHI must be obtained for:

- Uses and disclosures of PHI to non-health care providers for treatment;
- Uses and disclosures of PHI to non-covered entities or health care providers for payment purposes;
  Note: Virginia law requires authorization for payment disclosures. Any hospital, nursing facility, physician, or other health care provider receiving a request from a patient's authorized insurer must require a writing (written consent or authorization) signed by the patient confirming the insurer's authority to make the request and must accept a photocopy, facsimile, or other copy of the original signed by the patient as if it were an original. Va. Code Ann. § 8.01-413 (B)
- Disclosures of PHI beyond the first two paragraphs of the health care operations definition;
- Disclosures of PHI limited to the first two paragraphs of the health care operations definition to non-covered entities;
- Uses and disclosures for marketing except for:
  a. Face-to-face communication made by the facility to an individual; or
  b. A promotional gift of nominal value provided by the covered entity;
- Sale of PHI, unless:
  a. The price charged for the information reflects the cost of preparation and transmittal of the data;
  b. Disclosures of PHI are to or by a business associate for activities that the business associate undertakes on behalf of a covered entity;
  c. Payments are received in the form of grants, or contracts or other arrangements to perform programs or activities.
- Uses and disclosures created for research that includes treatment of the individual unless an

Institutional Review Board has waived the authorization requirement or other exclusion for research applies (*i.e.,* preparatory to research, research on decedent's information); and

- Psychotherapy notes except:
  a. To carry out the following treatment, payment or health care operations:
     i. Use by the originator of the notes for treatment;
     ii. Use or disclosure in training programs in which trainees, students, or practitioners in mental health learn under supervision to practice or improve their skills in group, joint, family, or individual counseling; or
     iii. Use or disclosure by a facility to defend itself in a legal action or other proceeding brought on by the individual.
  b. Use and disclosure with respect to oversight of the originator of the notes.

Specific requirements under Virginia law/regulation are outlined below.

Who May Grant Authorization

Authority to grant authorization for use or disclosure of health information resides with:

- The patient, if the patient is an adult or an emancipated/mature minor capable of informed decisions; or
- The executor of the estate or an individual appointed by the probate court, if the patient is deceased.

In the case of minors, authority to consent to treatment and grant authorization for use or disclosure of health information resides with:

- Custodial parent or guardian;
- Other authorized persons (such as judges for minors in court custody);
- Local directors of social services or their designees (for minors in custody of the local board);
- Director of the Department of Corrections or the Department of Juvenile Justice or his/her designees (for minors in custody of such departments);
- Principal executive officers of state institutions and any other institution legally qualified to receive minors for care and maintenance (for minors in the care of such institutions);
- Any person standing *in loco parentis*; or
- Any authorized conservators or custodians may provide consent when any minor who has been separated from the custody of his parent or guardian is in need of surgical or medical treatment.
- A minor shall be deemed an adult for the purpose of consenting to:
  1. Medical or health services needed to determine the presence of or to treat venereal disease or any infectious or contagious disease that the State Board of Health requires to be

reported;
2. Medical or health services required in case of birth control, pregnancy or family planning except for the purposes of sexual sterilization;
3. Medical or health services needed in the case of outpatient care, treatment or rehabilitation for substance abuse as defined in § 37.2-100; or
4. Medical or health services needed in the case of outpatient care, treatment or rehabilitation for mental illness or emotional disturbance.

- A minor shall also be deemed an adult for the purpose of accessing or authorizing the disclosure of medical records related to subdivisions 1 through 4.
- Except for the purposes of sexual sterilization, any minor who is or has been married shall be deemed an adult for the purpose of giving consent to surgical and medical treatment.
- A pregnant minor shall be deemed an adult for the sole purpose of giving consent for herself and her child to surgical and medical treatment relating to the delivery of her child when such surgical or medical treatment is provided during the delivery of the child or the duration of the hospital admission for such delivery; thereafter, the minor mother of such child shall also be deemed an adult for the purpose of giving consent to surgical and medical treatment for her child.

When the Patient is Unable to Grant Authorization: Virginia law outlines the following circumstances in which treatment decisions may be made for adult patients who are deemed incapable of informed consent by the attending physician. Decision-makers are listed in order of priority:

- Guardian
- Committee
- Spouse
- Adult child
- Parent
- Adult sibling
- Any other relative in the descending order of blood relationship. Va. Code Ann. § 54.1-2986
- Except in cases in which the proposed treatment recommendation involves the withholding or withdrawing of a life-prolonging procedure, any adult, except any director, employee, or agent of a health care provider currently involved in the care of the patient, who (i) has exhibited special care and concern for the patient and (ii) is familiar with the patient's religious beliefs and basic values and any preferences previously expressed by the patient regarding health care, to the extent that they are known. A quorum of a patient care consulting committee as defined in § 54.1-2982 of the facility where the patient is receiving health care or, if such patient care consulting committee does not exist or if a quorum of such patient care consulting committee is not reasonably available, two physicians who (a) are not currently

involved in the care of the patient, (b) are not employed by the facility where the patient is receiving health care, and (c) do not practice medicine in the same professional business entity as the attending physician shall determine whether a person meets these criteria and shall document the information relied upon in making such determination.

The provision of treatment or payment to an individual may not be conditioned on signing an authorization except for:

- Research-related treatment; and
- Health care that is solely for the purpose of creating information for disclosure to a third party (*e.g.*, employment drug testing).

An individual may revoke an authorization in writing except to the extent that the facility has taken action in reliance thereon; or if an authorization was obtained as a condition of obtaining insurance coverage. In the event an individual revokes a compounded authorization (as permitted for multiple research projects), absent clarity from the individual on which specific component(s) the individual is revoking, the entire authorization will be considered revoked.

Refer to the HIPAA Privacy Standards, 45 CFR Parts 160.101 and 164.501, and HIM.PRI.001, Patient Privacy Program Requirements Policy, for definitions.

PROCEDURE:

1. A compliant authorization for all uses and disclosures outlined in the policy statement must be received before using or disclosing the PHI.

2. A valid authorization must contain at least the following elements and statements (see Attachment for a sample form):
   a. A description of the information to be used or disclosed that identifies the information in a specific and meaningful fashion.
   b. The name or other specific identification of the person(s), or class of persons, authorized to make the requested use or disclosure;
   c. 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;
   d. A description of each purpose of the requested use or disclosure. "At the request of the individual" is sufficient when the individual initiates the authorization;
   e. An expiration date or an expiration event that relates to the individual or the purpose of the use or disclosure. "End of research study," "none," or similar language is sufficient if the authorization is for use or disclosure of PHI for research;
   f. A statement of the individual's right to revoke the authorization in writing and the exceptions to the right to revoke and a description of how the individual may revoke the

authorization or a reference to the facility's Notice of Privacy Practices for further instructions;

g. A statement that the provision of treatment and payment may not be conditioned on obtaining this authorization unless otherwise allowed (*e.g.*, research related treatment);
h. A statement that information used or disclosed pursuant to the authorization may be subject to re-disclosure by the recipient and no longer be protected by this rule;
Statement Prohibiting Redisclosure:
When providers disclose information, they must attach a statement that informs the person receiving the information that it must not be disclosed to anyone else unless the individual consents or unless the law allows or requires further disclosure without consent. 12 VAC § 35-115-80
i. A statement that the individual may inspect or copy the PHI to be used or disclosed in response to the authorization;
j. If the use or disclosure of the requested information will result in any direct or indirect remuneration to the facility from a third party, a statement that such remuneration will result;
k. If a facility seeks an authorization from an individual for a their own use or disclosure of PHI, the facility must provide the individual with a copy of the signed authorization; and
l. The signature of the individual and date. If the authorization is signed by a personal representative (as defined by state law) of the individual, a description of such representative's authority to act for the individual.

3. The authorization must be written in plain language.

4. Every signed authorization must be retained for a minimum of six (6) years.

5. An authorization for use or disclosure of PHI may not be combined with any other document to create a compound authorization, except as follows:
   a. An authorization for the use or disclosure of PHI created for a research study may be combined with any other type of written permission for the same research study (*e.g.*, consent to participate in the research study); or
   b. An authorization for a research study may be compounded with authorizations for subsequent studies (*e.g.,* a sub-study, contribution to a data/tissue bank for unspecified future research) provided that the facility has conditioned the provision of research-related treatment on the provision of one of the authorizations. Any compound authorization must clearly differentiate between the conditioned and unconditioned components and provide the individual with an opportunity to opt in (not opt-out) to the research activities described in the unconditioned authorization; or
   c. 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.

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6. To use or disclose PHI for research purposes without an authorization the facility must obtain documentation of a waiver of authorization from an IRB or Privacy Board or meet one of the other exclusionary criteria for research (*e.g.,* preparatory to research, research on decedent's information). For specific information about research authorizations, refer toCSG.IRB.008 and CSG.RSH.006.

7. A previously unexecuted authorization is not valid if the document has any of the following defects:
   a. The expiration date has passed or the expiration event is known by the facility to have occurred;
   b. The authorization has not been filled out completely with respect to a required element;
   c. The authorization is known by the facility to have been revoked; or
   d. Any material information in the authorization is known by the facility to be false.

   Thus, no PHI may be disclosed.

8. The covered entity may not charge the patient a retrieval fee, but may charge for the actual cost to reproduce a copy of requested information. Other requestors (*e.g.*, attorney, insurance company, subpoenas) may be charged a retrieval fee and the costs to copy the information. The facility must to follow the Patients' Right to Access Policy, HIM.PRI.004, and Va. Code § 8.01-413 for specific requirements regarding what fees may be charged to patient and non-patient requestors.

REFERENCES:

1.Health Insurance Portability and Accountability Act (HIPAA), Standards for Privacy of Individually
Identifiable Health Information, 45 CFR Parts 160 and 164
2. American Recovery and Reinvestment Act of 2009, Title XIII, Subtitle D
3. Patient Privacy Program Requirements Policy, HIM.PRI.001
4. Privacy Official Policy, HIM.PRI.002
5. Patients' Right to Access Policy, HIM.PRI.004
6. Notice of Privacy Practices Policy, HIM.PRI.007
7. Marketing Under the HIPAA Privacy Standards/HITECH Model Policy
8. IRB Review of Research Informed Consent and Its Documentation Policy, CSG.IRB.008
9. Handling Research Informed Consent Documents (Non-IRB Requirements) Policy, CSG.RSH.006
10. http://privacyruleandresearch.nih.gov/

Section A: This section must be completed for all Authorizations

Patient Name:	**Date of Birth:**	**Patient's Phone:**	**Last 4 digit SSN** (optional)**:**
Provider's Name:	**Recipient's Name:**		
Provider's Address:	**Address 1:**		
	Address 2:		**Recipient's Phone:**
	City:	**State:**	**Zip:**

Request Delivery (If left blank, a paper copy will be provided): ☐ **Paper Copy** ☐ **Electronic Media, if available (*e.g.,* USB drive, CD/DVD)** ☐ **Encrypted Email** ☐ **Unencrypted Email**

NOTE: In the event the facility is unable to accommodate an electronic delivery as requested, an alternative delivery method will be provided (*e.g.,* paper copy). There is some level of risk that a third party could see your PHI without your consent when receiving unencrypted electronic media or email. We are not responsible for unauthorized access to the PHI contained in this format or any risks (*e.g.,* virus) potentially introduced to your computer/device when receiving PHI in electronic format or email.

Email Address (If email checked above. Please print legibly):

This authorization will expire on the following: (Fill in the Date or the Event but not both.)

Date: **Event:**

Purpose of disclosure:

Description of information to be used or disclosed

Is this request for psychotherapy notes? ☐ Yes, then this is the only item you may request on this authorization. You must submit another authorization for other items below. ☐ No, then you may check as many items below as you need.

Description:	***Date(s):***	***Description:***	***Date(s):***	***Description:***	***Date(s):***
☐ All PHI in medical record		☐ Operative information		☐ Labor/delivery summary	
☐ Admission form		☐ Cath lab		☐ OB nursing assess	
☐ Dictation reports		☐ Special test/therapy		☐ Postpartum flow sheet	
☐ Physician orders		☐ Rhythm strips		☐ Itemized bill:	
☐ Intake/outtake		☐ Nursing information		☐ UB-04:	
☐ Clinical test		☐ Transfer forms		☐ Other:	
☐ Medication sheets		☐ ER information		☐ Other:	

I acknowledge, and hereby consent to such, that the released information may contain alcohol, drug abuse, genetic information, psychiatric, HIV testing, HIV results or AIDS information. _____ (Initial)

I understand that:

1. I may refuse to sign this authorization and that it is strictly voluntary.
2. My treatment, payment, enrollment or eligibility for benefits may not be conditioned on signing this authorization.
3. I may revoke this authorization at any time in writing, but if I do, it will not have any affect on any actions taken prior to receiving the revocation. Further details may be found in the Notice of Privacy Practices.
4. If the requester or receiver is not a health plan or health care provider, the released information may no longer be protected by federal privacy regulations and may be redisclosed.
5. I understand that I may see and obtain a copy the information described on this form, for a reasonable copy fee, if I ask for it.
6. I get a copy of this form after I sign it.

Section B: Is the request of PHI for the purpose of marketing and/or does it involve the sale of PHI? ☐ Yes ☐ No

If yes, the health plan or health care provider must complete Section B, otherwise skip to Section C.

Will the recipient receive financial remuneration in exchange for using or disclosing this information? ☐ Yes ☐ No

If yes, describe:

May the recipient of the PHI further exchange the information for financial remuneration? ☐ Yes ☐ No

Section C: Signatures

I have read the above and authorize the disclosure of the protected health information as stated.

Signature of Patient/Patient's Representative:	**Date:**
Print Name of Patient's Representative:	**Relationship to Patient:**