I. 11.2.3 Uses and Disclosures of Protected Health Information Based on Patient Authorization

Chapter 11 - Patient Privacy	Original Effective Date: April 2003
Section: 11.2 Uses and Disclosures of Protected Health Information	Date Last Reviewed: January 2023
Responsible Entity: Chief Compliance and Privacy Officer	Date Last Revised: January 2023

II. Purpose

To ensure that UT Health San Antonio follows HIPAA regulations regarding patient authorizations for uses and disclosures of protected health information.

III. Scope

This policy applies to all faculty, staff, students, residents, healthcare providers, researchers, contractors, or any other individual (collectively, Workforce Member, including employees and non-employees) who has direct or indirect access to patient protected health information (PHI) created, held or maintained by any UT Health San Antonio controlled affiliate, including, but not limited to its clinics, hospitals and research operations.

IV. Policy

A signed authorization is to be obtained from an individual prior to using or disclosing that individual's PHI, unless otherwise permitted or required as described in this Policy.

A. Core Elements of a Valid Authorization

1. A valid authorization for disclosure of health information must contain at least the following elements and must be written in plain language:
2. A description of the PHI to be used or disclosed that identifies the information in a specific and meaningful fashion.
3. The name(s) or other specific identification of the person or class of persons authorized to make the requested use or disclosure.
4. The name(s) or other specific identification of the person or class of persons to whom UT Health San Antonio may make the requested use or disclosure.
5. 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.

6. An expiration due date or an expiration event that relates to the individual or the purpose of the use or disclosure. The statement, "end of the research study," "none," or similar language is sufficient if the authorization is for a use or disclosure of PHI for research, including the creation and maintenance of a research database or repository.
7. Signature of the individual and the date.
8. If a personal representative of the individual signs the authorization, a description of such representatives' authority to act for the individual.
9. The authorization may contain elements or information in addition to the required elements, provided that such additional elements or information are consistent with the required elements.
10. When the authorization is for electronic disclosure it may be made in written or electronic form, or in oral form if documented in writing by the medical record custodian.

B. Required Statements

1. In addition to the core elements, the authorization must contain statements adequate to inform the individual of the following:
2. The individual's right to revoke the authorization in writing and the exceptions to the right to revoke, together with a description of how the individual may revoke the authorization (see Institutional Handbook of Operating Policies (IHOP), policy 11.3.3 Revocation of Authorization to Use or Disclose Protected Health Information).
3. UT Health San Antonio may not condition treatment, payment, enrollment in a health plan, or eligibility for benefits on the individual providing the authorization unless an exception exists, as described in the following section, and the consequences to the individual if a refusal to sign the authorization, if an exception exists.
4. The information used or disclosed pursuant to the authorization may be subject to re-disclosure by the recipient and no longer be protected by the federal privacy regulations.
5. If UT Health San Antonio seeks an authorization from an individual for use or disclosure of PHI, UT Health San Antonio must provide the individual with a copy of the signed authorization.
6. The individual may inspect or receive a copy of the PHI to be used or disclosed.
7. The individual may refuse to sign the authorization.
8. Community Clinics (CBC), Texas Department of Criminal Justice (TDCJ), Regional Maternal Child Health Program (RMCHP) Clinics, and requests for substance abuse records, including Employee Assistance Program (EAP records), must require the purpose for the request.

C. Additional Requirements for Certain Types of Disclosures

1. Psychotherapy Notes

UT Health San Antonio must obtain an authorization for any use or disclosure of psychotherapy notes, except to carry out treatment, payment, and health care operations.

a. Specifically, psychotherapy notes may be used by the originator of the psychotherapy notes for treatment purposes;

b. used or disclosed by UT Health San Antonio in its own training programs in which students, trainees, residents, or practitioners in mental health learn under supervision to practice or improve their skills in group, joint, family, or individual counseling;

c. used or disclosed by UT Health San Antonio to defend itself in a legal action or other proceeding brought by the individual;

d. used or disclosed to Secretary of Health and Human Services to investigate or determine compliance with the privacy rules and as required by law, and for health oversight activities;

e. used or disclosed to coroners or medical examiners; and,

f. used or disclosed to prevent or lessen a serious and imminent threat to the health and safety of a person or to the public. See IHOP policy 11.2.2 Use and Disclosure of Psychotherapy Notes for additional guidance.

g. Psychotherapy notes may not be used or disclosed to another provider or covered entity for treatment, payment or healthcare operations without obtaining the individual's authorization.

2. Marketing

UT Health San Antonio must obtain an authorization for any use or disclosure of PHI for marketing, except if the communication is in the form of a face-to-face communication made by UT Health San Antonio to an individual or is in the form of a promotional gift of nominal value provided by UT Health San Antonio. If the marketing involves direct or indirect remuneration to UT Health San Antonio from a third party, the authorization must state that such remuneration is involved.

See IHOP policies 11.2.7 Uses and Disclosures of Protected Health Information for Marketing and 11.2.8 Uses and Disclosures of Protected Health Information for Fundraising for more guidance.

3. Research

For specific policies governing the use or disclosure of PHI for research purposes, see IHOP policy 11.2.12 Uses and Disclosures of Protected Information for Research.

D. Defective Authorizations

An authorization is considered defective and invalid if any material information in the authorization is known to be false by UT Health San Antonio or its workforce members or if any of the following exist:

1. The expiration date has passed, or the expiration event is known by UT Health San Antonio to have occurred;
2. The authorization has not been filled out completely;
3. The authorization is known by the covered entity to have been revoked;
4. The authorization lacks any one of the core elements previously described;
5. Any material information in the authorization is known by UT Health San Antonio to be false; or,
6. The authorization violates rules regarding compound authorizations or conditioning of authorizations.

E. Compound Authorizations

An authorization for use and disclosure of protected health information may not be combined with any other document to create a compound authorization, except for the following:

1. An authorization for the use and disclosure of PHI for a research study may be combined with any other type of written permission for the same research study, including another authorization for the use and disclosure of PHI for such research or a consent to participate in such research.
2. An authorization for the use and disclosure of psychotherapy notes may only be combined with another authorization for use and disclosure of psychotherapy notes.
3. An authorization, other than that for a use and disclosure of psychotherapy notes, may be combined with any other such authorization, unless UT Health San Antonio has conditioned the provision of treatment, payment, enrollment in a health plan, or eligibility for benefits as prohibited by the section outlining “Conditioning of Authorizations".

F. Conditioning of Authorizations

1. UT Health San Antonio may not condition the provision of treatment, payment, enrollment in a health plan, or eligibility for benefits on the provision of an authorization, except in the provision of research related treatment on provision of an authorization per IHOP policy 11.2.12 Uses and Disclosures of Protected Health Information for Research.
2. UT Health San Antonio 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.

G. Existing Authorizations

UT Health San Antonio can use or disclose PHI that it created or received prior to April 14, 2003, pursuant to an authorization or other express legal permission obtained from an individual prior to April 14, 2003, provided the authorization or other express legal permission specifically permits such use or disclosure and there is no agreed-to restriction on the use or disclosure of that PHI.

H. Revocation of Authorizations

For specific rules governing the revocation of authorization, see IHOP policy 11.3.3 Revocation of Authorization to Use or Disclose Protected Health Information.

I. Personal Representatives

For information regarding who the proper person is to sign authorizations for the release of information regarding incapacitated individuals, minors, and deceased individuals, see IHOP policy 11.1.7 Patient Consent and Authorization - Basic Requirements.

J. Retention

Signed authorizations must be retained by UT Health San Antonio for a minimum of six years.

K. Process for Disclosures

1. Receiving and Fulfilling Authorizations
2. The custodian of the official medical record is responsible for receiving and fulfilling authorizations obtained from a patient or patient's personal representative.
3. Shadow records or case management files must NOT be disclosed or released. Anyone who possesses shadow records must direct persons requesting information that requires an authorization to the custodian of the official medical record.
4. If custodians release PHI, they must comply with IHOP policy 11.3.1 Accounting of Disclosures of Protected Health Information, which mandates the tracking of disclosures of PHI. To identify approved custodians, who are responsible for accounting of disclosures in each department, contact the school's associate/assistant dean of clinical affairs.
5. UT Health San Antonio's release of PHI must be consistent with the directives found in the authorization. UT Health San Antonio must document each disclosure and retain all signed authorizations. The custodian that discloses the PHI will be responsible for retaining the signed authorizations.
6. Requests Received Not on UT Health San Antonio Authorization Forms
7. All requests for disclosure of health information that are NOT on UT Health San Antonio authorization forms are to be forwarded to the custodian of medical records for review.
8. The custodian will review the authorization to determine if all the required documentation elements are present.

   If the authorization does NOT meet the requirements, the custodian will send a cover letter and a copy of the UT Health San Antonio Patient Authorization for Release of Health Records to External Parties form to the requestor asking them to use the UT Health San Antonio form.

V. Definitions

Terms used in this document have the meaning set forth in the Patient Privacy Policies Glossary *unless a different meaning is required by context.*

VI. Related References

For questions regarding this policy, contact the Privacy Program Director at 210-567-2014 or compliance@uthscsa.edu.

VII. Review and Approval History

The approving authority of this policy is the University Executive Committee.

Effective Date	Action Taken	Approved By	Approved Date
04/2003	Policy Origination		
09/2012	Policy Revision		
01/2023	Policy Review	ICPO	01/10/23