

OKLAHOMA STANDARD AUTHORIZATION TO USE OR SHARE PROTECTED HEALTH INFORMATION (PHI)

REFERENCE GUIDE & PROVIDER INSTRUCTIONS

Introduction

These instructions (i) outline the contents of the Oklahoma Standard Authorization Form to Use or Share Protected Health Information (hereinafter the "Authorization"); (ii) highlight federal and/or Oklahoma privacy laws underlying such provisions; and (iii) provide guidance regarding proper use of the Authorization. Where disclosures of protected health information (hereinafter "PHI") under the Authorization comply with the following instructions, Oklahoma law provides immunity against state based privilege and privacy liability for such actions.

There will likely be instances where an individual completing the Authorization will not have sufficient knowledge to supply the information requested. To the extent necessary, these instructions permit (i) communications with the individual to provide them with information (in addition to the Patient Instructions) necessary to supply what the Authorization requests, and/or (ii) completion of the requested information by the entity supplying the individual with the Authorization, provided the individual or their legal representative signs the Authorization under Part V. B.

The instructions below are not required to be communicated when the Authorization is presented, but must be communicated upon question or request of an individual completing the Authorization.

I. INDIVIDUAL INFORMATION (FOR PERSON WHOSE INFORMATION WILL BE SHARED)

Instruction

Instruct the individual completing the Authorization (i.e. the patient or legal representative) to provide the requested information regarding the identity of the individual whose records will be shared.

Applicable Privacy Law

Neither federal nor Oklahoma privacy law requires information beyond identification of the individual (via signature) whose records will be shared. The Authorization, however, requests additional information for both recordkeeping/patient-tracking purposes and for purposes of identifying whether the individual whose records will be shared is an adult or a minor. If the individual is a minor at the time of sharing, additional steps (detailed in Part V. B. of these instructions) must be followed in order for the Authorization to be proper.

II. SCOPE & PURPOSE FOR SHARING INFORMATION

Instruction

Inform the individual completing the Authorization that the sole purpose of the Authorization is to enable sharing of PHI where federal and/or Oklahoma privacy law require written authorization prior to release. The Authorization defines PHI as information that identifies the individual or person for whom the individual is legally empowered to act. The Authorization is not a consent to treatment or admission.

Applicable Privacy Law

Neither federal nor Oklahoma privacy law requires a statement of general purpose for an effective authorization for release of PHI. The Authorization, however, has included such a statement to provide clarity with regard to the Authorization's sole purpose, which, as noted, is to enable sharing of PHI where authorization is legally required.

III. AUTHORIZATION & INFORMATION TO BE SHARED

Instruction

Inform the individual completing the Authorization that the initial clause in Part III has two purposes. Its first and primary purpose is to authorize sharing of PHI. Its second aim is to reiterate the scope of the Authorization, being limited to enabling release of PHI in instances where federal and/or Oklahoma privacy law do not permit sharing absent authorization.

Applicable Privacy Law

The first clause of Part III reveals situations where use of the Authorization is required. The Authorization must be used for sharing of PHI where federal and/or Oklahoma privacy law require authorization prior to release. Conversely, the Authorization does not have to be used where federal and/or Oklahoma privacy law permit sharing without prior authorization. Importantly, the Authorization takes into account the variance among these laws through inclusion of the phrase "reasons in addition to ... **permitted**" disclosures under such laws. Hence, whether federal and/or Oklahoma privacy law permit sharing without authorization is central to a determination of when the Authorization must be used.

The clause also provides the reference point for when statutory immunity (discussed in the Introduction to these instructions) attaches – i.e. disclosures under the Authorization that federal and/or Oklahoma privacy law do not otherwise permit absent such action.

Ultimately, two guidelines capture the aforementioned points:

1. Instances where federal and/or Oklahoma privacy law do not permit sharing of PHI without prior authorization are the only instances where the Authorization must be used.
2. Statutory immunity attaches only to the sharing of PHI "under the Authorization ... in accordance with the instructions" provided herein. Immunity does not attach to sharing of PHI without use of the Authorization under what is believed to be a "permitted" purpose under federal and/or Oklahoma privacy law.

Because the decision of whether federal and/or Oklahoma privacy law permits sharing without authorization is central to determining whether the Authorization should be used, and consequently whether statutory immunity attaches to a disclosure, it is recommended that entities or persons sharing PHI take steps to confirm when such laws require use of the Authorization. Whether authorization is necessary often depends upon the type of record being shared. Appendix 1 contains a general but non-exhaustive list referencing several record types that federal and/or Oklahoma privacy law require authorization for prior to sharing of PHI.

A. Person/Organization Receiving My Information and Purpose for Sharing

Instruction

Instruct the individual completing the Authorization to designate the person(s) and/or organization(s) authorized to receive PHI. Instruct the individual to provide the requested information concerning such parties as well as their relationship to the individual and the purpose for sharing the information.

Applicable Privacy Law

In order for an authorization to be valid, federal and/or Oklahoma privacy law require (i) identification of the recipient of PHI; (ii) a description of the relationship between the recipient and the individual whose PHI is shared; and (iii) a statement of the purpose for which the PHI is shared.¹

B. Information to be Shared

Instruction

Instruct the individual completing the Authorization to designate the specific PHI records to be shared. The following instructions should also be given as needed:

- Inform the individual that Psychotherapy Notes, as required by law, may not be shared pursuant to an Authorization that covers any other type of information.² Hence, instructions indicating that no other boxes may be checked, and that Psychotherapy Notes are not a part of the Entire Medical Record, are included in the Authorization. Sharing of records in addition to Psychotherapy Notes requires completion of a separate Authorization.
- If the individual does not select "Entire Medical Record", the individual must use the remaining record descriptions and/or the line next to "Other" to indicate the records the individual desires to share.

Applicable Privacy Law

In order for an authorization to be valid, federal and/or Oklahoma privacy law require a description of the information to be shared.³

IV. EXPIRATION & REVOCATION

A. Expiration

Instruction

Instruct the individual completing the Authorization to select between the boxes provided. If the individual selects "Other", the individual must provide a date or event in time, after the occurrence of which, the Authorization will expire.

Applicable Privacy Law

In order for an authorization to be valid, federal and/or Oklahoma privacy law require a date or event in time after which an authorization will expire.⁴

¹ 45 C.F.R. § 164.508(c)(1)(i)-(iv) (2007); 42 C.F.R. § 2.31(a)(1)-(5) (2007); 43A O.S. § 1-109(C)(1) (2008).

² 45 C.F.R. § 164.508(b)(3) (2007).

³ 45 C.F.R. § 164.508(c)(1)(i) (2007); 42 C.F.R. § 2.31(a)(5) (2007); 43A O.S. § 1-109(C)(1) (2008).

⁴ 45 C.F.R. § 164.508(c)(1)(v) (2007); 42 C.F.R. § 2.31(a)(9) (2007); 43A O.S. § 1-109(C)(1) (2008).

B. Right to Revoke

Instruction

Inform the individual completing the Authorization of the right to revoke authorization for sharing PHI at any time. Inform the individual that such revocation must be in writing to the address listed at the bottom of the Authorization, and that such revocation is not effective as to PHI shared prior to the time at which the revocation is received at the address listed on the bottom of the Authorization.

Applicable Privacy Law

In order for an authorization to be valid, federal and/or Oklahoma privacy law require an individual be informed of the right to revoke authorization for sharing of PHI.⁵

V. ACKNOWLEDGEMENTS & SIGNATURES

A. Acknowledgements

The following privacy laws require the acknowledgements referenced as part of a valid authorization for sharing PHI:

1. HIPAA (45 C.F.R. § 164.508(c)(2) (2007)).
2. HIPAA (45 C.F.R. § 164.508(a)(3)(ii) (2007)).
3. HIPAA (45 C.F.R. 164.508(c)(2)(iii) (2007); 42 C.F.R. § 2.32 (2007)).
4. HIPAA (45 C.F.R. §§ 164.508(c)(4), 164.524 (2007)).
5. Oklahoma Statutes Title 63 (63 O.S. § 1-502.2 (2008)).

B. Signature

Instruction

Inform the individual completing the Authorization that federal and/or Oklahoma privacy law, with exceptions for minors in certain instances (detailed below), generally permit sharing of PHI by authorization from either the individual or the individual's legal representative. If the legal representative signs the Authorization, he or she must also indicate the capacity by which such legal representative is entitled to act on the individual's behalf (e.g., pursuant to a power of attorney, guardianship order, etc.).⁶ The Authorization must also be dated when signed.

Minor Signature Requirements

In certain cases, PHI may only be shared if the minor gives authorization. Such cases include:

1. Only the minor may authorize sharing of family planning information.⁷
2. Only the minor may authorize sharing of Alcohol or Drug Abuse Records when the entity sharing such records is a "Program" as defined under 42 C.F.R. §§ 2.3 and 2.11. If the entity is not a "Program", then the following rule applies:
3. Only the minor may authorize sharing of (i) Alcohol or Drug Abuse Records; (ii) pregnancy testing information; and/or (iii) communicable disease information with the minor's spouse or legal guardian where a minor seeks treatment and is found not to suffer from such condition.⁸
4. Absent legal requirement, or in instances to protect the health of the minor and/or the public, only the minor may authorize sharing of (i) Alcohol or Drug Abuse Records; (ii) pregnancy information; and/or (iii) communicable disease information where such information is to be distributed to any health professional, school, law enforcement agency or official, court authority, government agency, or official employer.⁹

Additional Instructions

1. Under HIPAA, the individual signing the Authorization must be provided with a signed copy of the completed Authorization.¹⁰
2. If the entity sharing Alcohol or Drug Abuse Records under the Authorization is a "Program" under 42 C.F.R. Part 2, an additional checkbox and required statement prohibiting re-disclosure of such records are included under the signature lines. Generally, an entity is Part 2 "Program" if (i) the entity maintains Alcohol or Drug Abuse Records and (ii) maintains such records in connection with a federally assisted alcohol and drug abuse program.¹¹ It is recommended that entities take additional steps as necessary to confirm whether Part 2 applies to their specific operations. If Part 2 is found to apply, the entity must utilize the box and statement when sharing Alcohol or Drug Abuse Records.

⁵ 45 C.F.R. § 164.508(c)(2) (2007); 42 C.F.R. § 2.31(a)(8) (2007); 43A O.S. § 1-109(C)(1) (2008).

⁶ 45 C.F.R. § 164.508(c)(1)(vi) (2007); 42 C.F.R. § 2.31(a)(6), (7) (2007); 43A O.S. 1-109(C)(1) (2008).

⁷ 42 C.F.R. § 59.11 (2007).

⁸ 63 O.S. § 2602(A)(3) (2008).

⁹ 63 O.S. § 2602(B) (2008).

¹⁰ 45 C.F.R. § 164.508(c)(4) (2007).

¹¹ 42 C.F.R. §§ 2.3(a), 2.11 (2007).