

**FACEY MEDICAL FOUNDATION
POLICIES AND PROCEDURES**

**Policy Number: 200.28
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Originator: Medical Records

Issue Date: 1/03

Subject: Authorization for Use and Disclosure of PHI

**Revision Date: 8/03,
4/05, 1/08, 2/09, 2/10,
2/11, 2/12, 2/13, 9/13**

Scope: Providers and Employees

Approval/s: on file

I. PURPOSE

To provide guidelines for a valid patient authorization for the use and disclosure of protected health information.

POLICY TEXT

It is the policy of Facey Medical Foundation to follow the HIPAA privacy rule that covered entities may not use or disclose protected health information without a valid authorization, except as otherwise permitted or required in the privacy rule.

General authorization content

To be valid, an authorization must contain certain necessary elements, as described below. It may contain any further elements or information that the provider wishes to include, as long as the additional materials are not inconsistent with the minimum required contents. An authorization that is missing an element will be considered invalid, with the result that the provider cannot respect it. As a result, providers will have to rely upon authorization forms that contain each and every element

Contents of Authorization Form

The authorization must be in plain language and must contain certain core elements:

- A description of the information to be used or disclosed that is given “in a specific and meaningful fashion.”
- The name of the provider or class of providers authorized to use or disclose the information.
- The name of the recipient or class of recipients to whom the provider may disclose the information.
- An expiration date after which the authorization is no longer valid; alternatively, the form can refer to an event relating to the patient or purpose of the disclosure after which the form will no longer be valid.
- A statement that the patient may revoke the authorization at any time in writing.
- A statement that information used or disclosed under the authorization may be subject to redisclosure by the recipient without being further protected under the HIPAA rules.
- The signature of the patient or patient’s legal representative who is signing on behalf of the patient.

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- A description of the position of any legal representative who is signing on behalf of the patient.

In addition, an authorization form must contain certain further elements if the provider is requesting it for its own purposes. There are two possible situations. First, a provider may be seeking patient authorization to use or disclose protected health information that already is in its custody. In that case, the authorization form must contain not only the core elements set forth above, but also the following:

- A statement that treatment will not be conditioned on the patient's signing the authorization form.
- A description of each purpose of the requested use or disclosure.
- A statement that the patient may inspect or receive copies of the protected health information, and may refuse to sign the authorization.
- An explanation of any remuneration that the provider will be receiving as a result of the use or disclosure.

The second situation involves a request by a provider for permission from the patient to receive protected health information from another provider for purposes of treatment, payment, or health care operations. In that case, the authorization must contain, in addition to the core elements, the following:

- A description of each purpose of the requested disclosure.
- A statement that failure by the patient or legal representative to sign the authorization will not result in denial of treatment.
- A statement that the patient or legal representative may refuse to sign the authorization.

A provider may not use or disclose protected health information without a valid authorization form, unless specifically permitted or required to do so. The only areas of exception where an authorization form is not required are where the provider:

1. Obtains a written "consent" from the patient or the patient's legal representative for routine disclosures;
2. Is permitted to use or disclose certain limited types of protected health information in order to create a patient directory or to provide notification to family members or friends about a patient's status; or
3. Is specifically allowed or required to disclose information without any permission whatsoever (e.g., pursuant to a subpoena or mandatory reporting laws). In all other

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cases, providers will be expected to obtain a written authorization that meets the requirements set forth below.

Marketing content: The authorization must also include a statement about any direct or indirect remuneration it has or will receive from a third party when the authorization sought is for marketing purposes.

The HIPAA rules state expressly that a provider must provide the patient or legal representative with a copy of a signed authorization form that includes more than the core elements.

Research: An authorization for the use or disclosure of protected health information for a research study may be combined with any other type of written permission for the same research, including a consent to participate in the research or another authorization to disclose protected health information from the research.

Psychotherapy Notes: An authorization for the use or disclosure of psychotherapy notes may be combined with another authorization for the use or disclosure of psychotherapy notes. For example, an individual can complete an authorization that requests his psychotherapy notes be sent to his attorney and a second mental health professional. An authorization for psychotherapy notes may not be combined, however, with an authorization for disclosure of general health information or research.

General: An authorization for the disclosure of general health information may be combined with another authorization for the disclosure of general health information. However, a general authorization that conditions treatment, payment, enrollment, or eligibility for benefits on completion may not be combined with another authorization. For example, an insurance company may not combine an authorization they require as a condition of enrolling in their plan with another authorization.

Placing Restrictions on Protected Health Information: An authorization for this type of restriction must be placed with the Medical Records Department. Once the authorization has been completed the medical record will be flagged accordingly and the IDX system will be updated by the Release of Information Coordinator to reflect the restrictions placed. If a restriction is terminated by the patient the authorization on file will be updated as well as the IDX system.

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Third Party Requests: Any requests to obtain patients' health information from a third party vendor must be referred to the Health Information Management department for review and approval process of such request.

Defective Authorizations

The privacy rule declares invalid any authorization with the following defects:

- The expiration date or event has passed or occurred
- The authorization is missing one or more items of content described above
- The authorization is known to have been revoked
- The authorization violates a privacy rule standard on conditioning or compound authorizations
- Material information in the authorization is known to be false