

Office of Compliance Programs

PRIVACY POLICY AND PROCEDURES

LSU Health Sciences Center New Orleans

Date Effective: April 14, 2003

Policy #: 2100.20

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Patient Information Policy

Use or Disclosure of Protected Health Information that Requires an Individual's Written Authorization

SCOPE:

All Louisiana State University (LSU) System health care facilities and providers including, but not limited to, hospitals, physician practices, clinics, schools, etc. All LSU System health care facilities and providers including, but not limited to hospitals, clinics, and schools are referred to in this policy as LSUHSC-NO.

PURPOSE:

To provide guidance to the health care facilities and providers affiliated with the LSU System on the requirement to obtain a patient's written authorization to use or disclose the patient's Protected Health Information under the Health Insurance Portability and Accountability Act, Standards for Privacy of Individually Identifiable Health Information (HIPAA Privacy Regulations), and any other applicable state or federal laws or regulations.

POLICY:

All LSU System health care facilities and providers must obtain a patient's written authorization.

DEFINITIONS:

Protected Health Information (sometimes referred to as "PHI") – for purposes of this policy means individually identifiable health information, that relates to the past, present or future health care services provided to an individual. Examples of Protected Health Information include medical and billing records of a patient.

Disclosure - For purposes of this policy, means the release, transfer, provision of access to PHI outside of LSUHSC-NO.

Use – For purposes of this policy, means with respect to Protected Health Information, the sharing, utilization, or examination of Protected Health Information within and by employees or agents of LSUHSC-NO.

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PROCEDURE:

- 1.0 An individual's written authorization must be obtained prior to using or disclosing the individual's Protected Health Information, unless the particular Use or Disclosure is listed in Attachment A to as a "Permitted" or a "Required" Use or Disclosure, such as treatment, payment or healthcare operations.
- 2.0 If a signed authorization is required for a particular Use or Disclosure, then either the attached "Authorization" form (as Attachment B) or an authorization form that contains all of the "Authorization Form Content Requirements" listed in 3.0 below must be used when obtaining an individual's authorization. Examples of disclosures that require an Authorization include:
 - 2.1 Release of psychotherapy notes (except to the originator of the notes);
 - 2.2 For marketing purposes;
 - 2.3 To release health information to an employer as part of a background check;
 - 2.4 To release information to an insurance company at the patient's request for underwriting or eligibility for benefits (e.g. life or disability insurance); or
 - 2.5 To release the results of a fitness test to a prospective employer.
- 3.0 Authorization Form Content Requirements:

A valid authorization must contain at least the following information and statements:

 - 3.1 A description of the information to be used or disclosed that identifies the information in a specific and meaningful fashion;
 - 3.2 The name or other specific identification of the person(s), or class of persons, authorized to make the requested use or disclosure;
 - 3.3 The name or other specific identification of the person(s), or class of persons, to whom LSUHSC-NO may make the requested disclosure;
 - 3.4 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;
 - 3.5 An expiration 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 for the creation and maintenance of a research database or research repository; and

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- 3.6 In addition to the above information, the authorization form must contain statements with the following information:
 - 3.6.1 The individual's right to revoke the authorization in writing, and either: (a) the exceptions to the right to revoke and a description of how the individual may revoke the authorization; or (b) a reference to LSUHSC-NO'S notice of privacy practices;
 - 3.6.2 The ability or inability to condition treatment, payment, enrollment or eligibility for benefits on the patient signing the authorization, by stating either:
 - 3.6.2.1 LSUHSC-NO may not condition treatment, payment, enrollment or eligibility for benefits on whether the individual signs the authorization when the prohibition on conditioning of authorizations contained in the HIPAA Privacy Regulations is applicable; or
 - 3.6.2.2 The consequences to the individual of a refusal to sign the authorization when LSUHSC-NO can condition treatment, enrollment in the health plan, or eligibility for benefits on obtaining such an authorization; and
 - 3.6.3 The potential for information disclosed pursuant to the authorization to be subject to re-disclosure by the recipient and no longer be protected by the HIPAA Privacy Regulations.
- 3.7 A valid authorization may contain other information in addition to the required elements, provided that such additional information does not conflict with the required information and statement.
- 3.8 A copy of the signed authorization must be given to the patient.
- 3.9 The authorization must be written in plain language
- 4.0 Psychotherapy Notes Authorization Exceptions - A signed authorization form must be obtained for any use or disclosure of psychotherapy notes, except in the following situations:
 - 4.1 To carry out the following treatment, payment, or health care operations:
 - 4.1.1 Use by the originator of the psychotherapy notes for treatment;
 - 4.1.2 Use or disclosure by LSUHSC-NO for its own training programs in which students, trainees, or practitioners in mental health learn under supervision to practice or improve their skills in group, joint, family, or individual counseling; or
 - 4.1.3 Use or disclosure by LSUHSC-NO to defend itself in a legal action or other proceeding brought by the individual; and
 - 4.1.4 Use or disclosure that is required or permitted with respect to the oversight of the originator of the psychotherapy notes.

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- 5.0 Marketing Authorization Exceptions - A signed authorization must be obtained for any use or disclosure of Protected Health Information for marketing purposes, except if the communication is in the form of:
 - 5.1 A face-to-face communication made by LSUHSC-NO to an individual; or
 - 5.2 A promotional gift of nominal value provided by LSUHSC-NO.
 - 5.3 If the marketing involves direct or indirect remuneration to LSUHSC-NO from a third party, the authorization must state that.
- 6.0 Invalid Authorizations: LSUHSC-NO cannot accept an authorization that contains any of the following defects:
 - 6.1 The expiration date has passed or the expiration event is known LSUHSC-NO to have occurred;
 - 6.2 The authorization has not been filled out completely, with respect to information that is required for a valid authorization form;
 - 6.3 The authorization is known by LSUHSC-NO to have been revoked;
 - 6.4 The authorization violates any requirements of this policy; or
 - 6.5 Any material information in the authorization is known by our LSUHSC-NO to be false.
- 7.0 Compound Authorizations: An authorization for use or disclosure of PHI may not be combined with any other document to create a compound authorization, except as follows:
 - 7.1 An authorization for the use or 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 or disclosure of PHI for such research or a consent to participate in such research;
 - 7.2 An authorization for a use or disclosure of psychotherapy notes may only be combined with another authorization that also regards psychotherapy notes;
 - 7.3 An authorization under this section, other than an authorization for a use or disclosure of psychotherapy notes, may be combined with any other such authorization under this section, except when LSUHSC-NO has conditioned the provision of treatment, payment, enrollment in the health plan, or eligibility for benefits under this section on the provision of one of the authorizations.
- 8.0 Prohibition on Conditioning of Authorizations: LSUHSC-NO may not condition treatment, payment, enrollment in our health plan, or eligibility for benefits to an individual on the signing of an authorization, except in the following circumstances:
 - 8.1 LSUHSC-NO may condition the provision of research-related treatment on the signing of an authorization for the use or disclosure of PHI for research; or
 - 8.2 LSUHSC-NO may condition the provision of health care that is solely for the purpose of creating PHI for disclosure to a third party on the signing of an authorization for the disclosure of the PHI to such third party.

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- 9.0 Revocation of an Authorization: An individual may revoke his or her authorization at any time, provided that the revocation is in writing, except to the extent that:
 - 9.1 LSUHSC-NO has taken action in reliance on the signed authorization; or
 - 9.2 If the authorization was 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.
- 10.0 Documentation Requirements: LSUHSC-NO must retain copies of all signed authorization forms for six (6) years from the date the authorization was last in effect. The authorization forms may be retained in a paper or electronic format.

REFERENCES:

45 C.F.R. § 164.508