

# Authorization Requirements for Use and Disclosure of Protected Health Information, Including Verification of Identification

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Permitted Use and Disclosure of PHI without an Authorization.....	1
Special Requirements for Use and Disclosure of Mental Health Information, Psychotherapy Notes, HIV/AIDS-Related Information or Substance Abuse Treatment Information .....	2
General Authorization Requirements .....	5
Authorization Exceptions .....	6
Verification of Identification .....	13
Requirements of a Valid Authorization .....	13
Defective Authorizations .....	14
Compound Authorizations .....	14
Response to Request for Use and Disclosure of PHI .....	15

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## Permitted Use and Disclosure of PHI without an Authorization

If the PHI contains mental health information, psychotherapy notes, HIV/AIDS-related information or substance abuse treatment information, refer to the Section entitled: Special Requirements for Use and Disclosure of Mental Health Information, Psychotherapy Notes, HIV/AIDS-Related Information or Substance Abuse Treatment Information of this procedure for additional disclosure requirements. PHI may generally be used or disclosed without an Authorization for:

1. Carrying out treatment, payment or health care operations. This includes:
  - a) Use or disclosure for the purpose of Yale's own TPO
  - b) Disclosures for treatment activities of another health care provider, e.g. referring physician.
  - c) Disclosure to another covered entity or a health care provider for the payment activities of the entity receiving the information.
  - d) Disclosure to another covered entity for the health care operations of the entity receiving the information, as long as Yale and the covered entity has or had a relationship with the individual who is the subject of the PHI requested, the PHI pertains to that relationship and the disclosure is:
    - (1) For purposes defined as health care operations limited to:
      - (A) Conducting quality assessment and improvement activities, including outcomes evaluation and development of clinical guidelines, provided that the obtaining of general knowledge is not the primary purpose of any studies resulting from such activities; population based activities relating to improving health or reducing health care costs, protocol development, case management and care coordination, contacting of health care providers and patients with information about treatment alternatives; and related functions that do not include treatment;
      - (B) Reviewing the competence or qualification of health care professionals, evaluating practitioner and provider performance, health plan performance, conducting training programs in which students, trainees, or practitioners in areas of health care learn under supervision to practice or improve their skills as health care providers, training of non-health care professionals, accreditation, certification, licensing, or credentialing activities.
    - (2) For the purpose of health care fraud and abuse detection or compliance.

- e) A covered entity participating in an organized health care arrangement may disclose protected health information about an individual to another covered entity that participates in the organized health care arrangement for any health care operations activities of the organized health care arrangement.
- 2. Disclosures to the individual.
- 3. Incidental to an otherwise permitted or required use or disclosure.
- 4. Disclosures for the purposes of fundraising (Refer to Yale Policy on Fundraising)
- 5. Disclosures as part of a limited data set (Refer to Yale Policy 5039: De-Identification and Limited Data Set Procedures)
- 6. Notification procedures for communicating with family and friends.
  - a) PHI may be used or disclosed for involvement in care and notification purposes. Yale may disclose PHI for involvement in care only to the extent the PHI is directly relevant to the person's involvement, and it may only disclose location, general condition, or the fact of death (for notification purposes). When the patient is present for, or otherwise available prior to, a use or disclosure (and has the capacity to make health care decisions), the following steps must be taken:
    - (1) Obtain the patient's written or verbal agreement, or
    - (2) Provide the opportunity to object to the disclosure and the patient does not express an objection, or
    - (3) Reasonably infer from the circumstance, based on the exercise of professional judgment that the patient does not object to the disclosure.

If the patient is deceased, PHI may be disclosed to those individuals who were involved in the patient's care or payment for care prior to the patient's death unless doing so is inconsistent with any prior expressed preference of the patient. Such disclosures must be limited to the information relevant to the recipient's involvement in the patient's care or payment for care.
  - b) If the patient is not present or the opportunity to agree or object cannot be provided because of the patient's incapacity or an emergency circumstance, a licensed healthcare professional may determine that the disclosure is in the best interest of the patient (for example, in allowing another person to pick up filled prescriptions, medical supplies, x-rays, or other similar forms of protected health information). In such cases, the disclosure must be limited to the protected health information that is directly relevant to the person's involvement with the patient's health care.
  - c) If the patient is not present, a disclosure may be made to a public or private entity authorized by law or charter to assist in disaster relief efforts for the purpose of coordinating with such entities appropriate uses or disclosures for notification purposes. The requirements described above apply to such uses and disclosures to the extent that Yale, in the exercise of professional judgment, determines that the requirements do not interfere with the ability to respond to the emergency circumstances.

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### **Special Requirements for Use and Disclosure of Mental Health Information, Psychotherapy Notes, HIV/AIDS-Related Information or Substance Abuse Treatment Information**

PHI that contains mental health information, Psychotherapy Notes, HIV/AIDS-related information or substance abuse treatment information is afforded special protections under state and federal laws. This Section addresses the additional requirements that apply to the disclosure, and with respect to Psychotherapy Notes, the use, of these forms of specially protected PHI. Any use or disclosure under this Section must meet these additional requirements and must also be consistent with the other requirements in this procedure.

#### **1. Mental Health Information \***

PHI (other than Psychotherapy Notes, which are addressed in this section #2.) pertaining to the patient's diagnosis or treatment for a mental condition may be disclosed without an Authorization signed by patient or the patient's Personal Representative only:

- a) To other persons engaged in the diagnosis or treatment of the patient or to a mental health facility to which the patient is admitted for diagnosis or treatment if the psychiatrist in possession of the communications or records determines that the disclosure is needed to accomplish the objectives of diagnosis or treatment and the patient is informed of the disclosure;

- b) If a psychiatrist determines that there is substantial risk of imminent physical injury by the patient to himself or others and the requirements of Section (11)(a) under Authorization Exceptions of this policy are met;
- c) If a psychiatrist, in the course of diagnosis or treatment of the patient, finds it necessary to disclose communications or records for the purpose of placing the patient in a mental health facility, by certification, commitment or otherwise;
- d) To individuals or agencies involved in the collection of fees, provided that the PHI disclosed is limited to the name, address and fees for psychiatric services and, in cases where a dispute arises over the fees or claims or where additional information is needed to substantiate the fee or claim, the disclosure of further information is limited to the fact that the person was a patient, the diagnosis, the dates and duration of treatment and a general description of the treatment, which may include evidence that a treatment plan exists and has been carried out and evidence to substantiate the necessity for admission and length of stay in a health care institution or facility;
- e) To the Department of Mental Health and Addiction Services, if a provider of behavioral health services that contracts with the Department requests payment, provided that the PHI disclosed is limited to the name and address of the patient, a general description of the types of services provided and the amount requested and the patient is notified, in writing, of the disclosure; in cases where a dispute arises over the fees or claims, or where additional information is needed to substantiate the claim, the disclosure of further information must be limited to additional information necessary to clarify only the following: that the patient in fact received the behavioral health services in question, the dates of such services, and a general description of the types of services;
- f) If the disclosure is made at a judicial or administrative proceeding in which the patient is a party, or in which the question of the patient's incompetence because of mental illness is an issue and the disclosure is of communications made to or records made by a psychiatrist in the course of a psychiatric examination ordered by a court or made in connection with the application for the appointment of a conservator, provided that certain requirements are met, including the requirements of Section (7) under Authorization Exceptions of this policy;
- g) If the disclosure is made in a civil proceeding in which the patient introduces his or her mental condition as an element of his or her claim or defense, or, after the patient's death, when the patient's condition is introduced by a party claiming or defending through or as a beneficiary of the patient, provided that certain requirements are met, including the requirements of Section (7) under Authorization Exceptions of this policy;
- h) To the Commissioner of Public Health or the Commissioner of Mental Health and Addiction Services in connection with any inspection, investigation or examination of an institution;
- i) If the disclosure is made to a member of the immediate family or legal representative of the victim of a homicide committed by the patient where such patient has, on or after July 1, 1989, been found not guilty of such offense by reason of mental disease or defect, provided that certain requirements are met, including the requirements of Section (7) under Authorization Exceptions of this policy;
- j) If the disclosure is made by a facility or individual under contract with the Department of Mental Health and Addiction Services to provide behavioral health services and the disclosure is requested by the Commissioner of that Department; and
- k) To persons engaged in research, provided that certain requirements are met.

\* These exceptions are based on C.G.S. §52-146f, which pertains to communications between a psychiatrist and a patient; the requirements may vary slightly for communications made to a health care provider, such as a psychologist, social worker, marital and family therapist or a professional counselor, if that health care provider is not participating under the supervision of a psychiatrist.

## **2. Psychotherapy Notes.**

These are notes recorded (in any medium) by a health care provider who is a mental health professional documenting or analyzing the contents of conversation during a private counseling session or group, joint, or family counseling session and that are separated from the rest of the individual's medical record. Psychotherapy notes excludes medication prescription and monitoring, counseling session start and stop times, the modalities and frequencies of treatment furnished, results of clinical tests, and any summary of the following items: Diagnosis, functional status, the treatment plan, symptoms, prognosis, and progress to date.

Under HIPAA, Authorization is required for any use or disclosure of Psychotherapy Notes, except those listed below. Any disclosure of Psychotherapy Notes must also comply with the requirements described above in # (1) of this Section:

- a) Use by the originator of the psychotherapy notes for treatment;
- b) Use or disclosure by Yale 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;
- c) Use or disclosure by Yale to defend itself in a legal action or other proceeding brought by the individual;
- d) Use or disclosure that is required by the Secretary of the Department of Health and Human Services to determine Yale's compliance with the Privacy Rule or is otherwise required by law;
- e) Use or disclosure for health oversight activities, with respect to the oversight of the originator of the psychotherapy notes;
- f) Use or disclosure for coroners and medical examiners, as described in this policy; or
- g) Use or disclosure that is necessary to prevent or lessen a serious and imminent threat to the health or safety of a person or the public, provided that the requirements of Section (7) under Authorization Exceptions of this policy are met;

### **3. HIV/AIDS-related information**

HIV-related information may not be disclosed without an Authorization from the patient or the patient's Personal Representative, unless the disclosure is to:

- a) The patient or the patient's Personal Representative;
- b) A federal, state or local health officer, if the disclosure is required or authorized by federal or state law;
- c) A health care provider or health facility when knowledge of the HIV-related information is necessary to provide appropriate care or treatment to the patient or a child of the patient, or when confidential HIV-related information is already recorded in a medical chart or record and a health care provider has access to such record for the purpose of providing medical care to the protected individual;
- d) A medical examiner to assist in determining the cause or circumstances of death;
- e) Health facility staff committees or accreditation or oversight review organizations which are conducting program monitoring, program evaluation or service reviews;
- f) A health care provider or other person in cases where such provider or person in the course of his occupational duties has had a significant exposure to HIV infection, provided that certain requirements are met;
- g) Employees of hospitals for mental illness operated by the Department of Mental Health and Addiction Services, provided that certain requirements are met;
- h) Employees of facilities operated by the Department of Correction, provided that certain requirements are met;
- i) A person allowed access to such information by a court order that expressly authorizes the disclosure of HIV-related information (see also Section (7) under Authorization Exceptions of this policy);
- j) Health insurers, government payers and health care centers and their affiliates, reinsurers, and contractors, except agents and brokers, in connection with underwriting and claim activity for health benefits;
- k) Any health care provider specifically designated by the patient to receive such information received by a life or health insurer or health care center pursuant to an application for life, health or disability insurance; and
- l) If the person making the disclosure is a physician and certain conditions are satisfied, to a known partner of the patient, if both the partner and the patient are under the physician's care, or to a public health officer for the purpose of informing or warning partners of the patient that they may have been exposed to HIV.

#### 4. Substance Abuse Treatment Information

Information relating to the identity, diagnosis, prognosis, or treatment of any patient by a federally assisted alcohol or drug abuse program may not be disclosed without the Authorization of the patient or the patient's Personal Representative, except for disclosures:

- a) Between or among personnel having a need for the information in connection with their duties in providing diagnosis, treatment, or referral for treatment of alcohol or drug abuse, if the communications are within a program (or between a program and an entity that has direct administrative control over the program);
- b) To qualified personnel for the purpose of conducting scientific research, management audits, financial audits, or program evaluation, provided that certain conditions are satisfied;
- c) That are authorized by an appropriate court order;
- d) To report incidents of suspected child abuse or neglect;
- e) Between a program and a qualified service organization (a person or organization that provides services to a program), if the information is needed by the organization to provide services to the program and certain conditions are satisfied;
- f) By program personnel to law enforcement officers that are directly related to a patient's commission of a crime on the premises of the program or against program personnel or to a threat to commit such a crime, and that are limited to the circumstances of the incident, including the patient status of the individual committing or threatening to commit the crime, that individual's name and address, and that individual's last known whereabouts;
- g) Of information relating to the cause of death of a patient under laws requiring the collection of death or other vital statistics or permitting inquiry into the cause of death;
- h) To medical personnel for the purpose of treating a condition which poses an immediate threat to the health of any individual and which requires immediate medical intervention; and
- i) To medical personnel of the Food and Drug Administration (FDA) who assert a reason to believe that the health of any individual may be threatened by an error in the manufacture, labeling, or sale of a product under FDA jurisdiction, and that the information will be used for the exclusive purpose of notifying patients or their physicians of potential dangers.

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### General Authorization Requirements

#### 1. General Rule – Authorization Required for Use or Disclosure of PHI

Except as otherwise outlined in the Section entitled Permitted Use and Disclosure of PHI for TPO or in Section: Authorization Exception of this policy, or as otherwise permitted or required by law, PHI may not be used or disclosed without a valid Authorization from the patient or the patient's Personal Representative. (Refer to Policy on Personal Representatives). When a valid Authorization is obtained, the use and disclosure of PHI must be consistent as outlined in the Authorization.

#### 2. Attorney Requests

Attorney requests will be honored only upon receipt of a valid Authorization for Disclosure of Protected Health Information signed by the patient or the patient's Personal Representative, or a court order directing Yale to disclose information to the specific named attorney. If PHI is disclosed in response to a court order, only the PHI expressly authorized by the court order may be disclosed. (For disclosures in response to a subpoena or other discovery request that is not accompanied by a court order, See Section 7 under Authorization Exceptions in this policy.) If the request is from an attorney or marked for legal purposes, all physicians who attended the patient must be notified and a copy of the request will be sent to Risk Management.

#### 3. Marketing

An Authorization is required for any use and disclosure of PHI for marketing, (Refer to Yale Policy on Marketing as well as the definition of marketing) except if the communication is in the form of:

- a) A face-to-face communication made by Yale to an individual; or
- b) A promotional gift of nominal value provided by Yale.

#### 4. Minors

In situations where the parent or guardian of an unemancipated minor has the authority to act on behalf of the minor as the minor's Personal Representative, and an Authorization to use or disclose the minor's PHI is required, the Authorization may be signed by the minor's parent or guardian.

If the minor has the authority to act on his or her own behalf in receiving health care services, then the minor must sign his or her own Authorization and must authorize disclosure of the minor's PHI to the parents or guardian. For example, under appropriate circumstances, minors may consent to their own HIV testing and treatment, testing and treatment for sexually transmitted disease, treatment for alcohol and drug abuse, outpatient mental health treatment and abortion services or information without parental consent. (See also HIPAA Policy on Personal Representatives).

#### 5. Sale of PHI

An authorization stating that Yale will receive remuneration in exchange for the disclosure of PHI is required for any disclosure of PHI which constitutes a sale of Protected Health Information. Sale of PHI refers to a disclosure of PHI by a covered entity or business associate where the covered entity or business associate directly or indirectly receives remuneration from or on behalf of the recipient of the PHI in exchange for the PHI except when the disclosure:

- (a) is for public health purposes and meets the requirements for disclosure of a limited data set (see Policy 5039 [Use and Disclosure of De-Identified Information and of Limited Data Sets](#)) or as described below in this procedure; or
- (b) is for research purposes in accordance with Policy 5032, [Use and Disclosure of PHI for Research Purposes](#) where the only remuneration is a reasonable cost-based fee to cover the cost to prepare and transmit the PHI; or
- (c) is for treatment and payment purposes; or
- (d) is for the sale, transfer, merger, or consolidation of all or part of the covered entity and for related due diligence; or
- (e) is to or by a business associate for activities that the business associate undertakes on behalf of the covered entity and the only remuneration provided is by the covered entity to the business associate for the performance of such activities; or
- (f) is to the individual and the remuneration is for the costs of preparing the PHI; or
- (g) is required by law as described below in this procedure; or
- (h) is for other permitted purposes and the only remuneration is a reasonable, cost-based fee to cover the cost to prepare and transmit the PHI for such purpose or a fee otherwise expressly permitted by other law.

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### Authorization Exceptions

PHI may generally be used or disclosed without an Authorization for the purposes listed below. If the PHI contains mental health information, psychotherapy notes, HIV/AIDS-related information or substance abuse treatment information, refer to the Section on Special Requirements for Use and Disclosure of Mental Health Information, Psychotherapy Notes, HIV/AIDS-Related Information of Substance Abuse Treatment Information of this policy for additional disclosure requirements.

When Yale is required under this Section (Authorization Exceptions) of the policy to inform the patient of, or when the patient may agree to, a permitted disclosure, Yale may obtain the patient's agreement orally.

#### 1. Disclosure by a Whistleblower

A member of the Yale faculty or staff or a business associate may disclose protected health information, provided that:

- a) The faculty or staff member or business associate believes in good faith that Yale has engaged in conduct that is unlawful or otherwise violates professional or clinical standards, or that the care, services, or conditions Yale provides potentially endangers one or more patients, workers, or the public; and
- b) The disclosure is to:
  - (1) A health oversight agency or public health authority authorized by law to investigate or otherwise oversee the relevant conduct or conditions of the covered entity or to an appropriate health care accreditation organization for the purpose of reporting the allegation of failure to meet professional standards or misconduct by the covered entity; or

- (2) An attorney retained by or on behalf of the faculty or staff member or business associate for the purpose of determining the legal options of the faculty or staff member or business associate with regard to the conduct or conditions described in (a) above.

**2. Disclosure by Faculty or Staff Member who is a Victim of a Crime.**

A member of the Yale faculty or staff who is the victim of a criminal act may disclose protected health information to a law enforcement official, provided that:

- a) The protected health information disclosed is about the suspected perpetrator of the criminal act; and
- b) The protected health information disclosed is limited to:
  - (1) Name and address;
  - (2) Date and place of birth;
  - (3) Social security number;
  - (4) ABO blood type and rh factor;
  - (5) Type of injury;
  - (6) Date and time of treatment;
  - (7) Date and time of death, if applicable; and
  - (8) A description of distinguishing physical characteristics, including height, weight, gender, race, hair and eye color, presence or absence of facial hair (beard or moustache), scars, and tattoos.

**3. Uses and Disclosures Required by Law.**

- a) Yale may use or disclose protected health information to the extent that such use or disclosure is required by law and the use or disclosure complies with and is limited to the relevant requirements of such law.
- b) Yale must meet also the requirements of #5 (Disclosures about Victims of Abuse, Neglect or Domestic Violence), #7 (Disclosure for Judicial and Administrative Proceedings), or #8 (Disclosure for Law Enforcement Purposes), under this section of Authorization Exceptions, if applicable.

**4. Uses and Disclosures for Public Health Activities.**

- a) Yale may disclose protected health information for public health activities and purposes to:
  - (1) A public health authority that is authorized by law to collect or receive such information for the purpose of preventing or controlling disease, injury, or disability, including, but not limited to, the reporting of disease, injury, vital events such as birth or death, and the conduct of public health surveillance, public health investigations, and public health interventions; or, at the direction of a public health authority, to an official of a foreign government agency that is acting in collaboration with a public health authority;
  - (2) A public health authority or other appropriate government authority authorized by law to receive reports of child abuse or neglect;
  - (3) A person subject to the jurisdiction of the Food and Drug Administration (FDA) with respect to an FDA-regulated product or activity for which that person has responsibility, for the purpose of activities related to the quality, safety or effectiveness of such FDA-regulated product or activity. Such purposes include:
    - (A) To collect or report adverse events (or similar activities with respect to food or dietary supplements), product defects or problems (including problems with the use or labeling of a product), or biological product deviations;
    - (B) To track FDA-regulated products;
    - (C) To enable product recalls, repairs, or replacement, or lookback (including locating and notifying individuals who have received products that have been recalled, withdrawn, or are the subject of look back); or
    - (D) To conduct post marketing surveillance;
  - (4) A person who may have been exposed to a communicable disease or may otherwise be at risk of contracting or spreading a disease or condition, if the covered entity or public health authority is

authorized by law to notify such person as necessary in the conduct of a public health intervention or investigation; or

- (5) An employer, about an individual who is a member of the faculty or staff of the employer, if:
  - (A) Yale provides health care to the individual at the request of the employer:
    - i. To conduct an evaluation relating to medical surveillance of the workplace; or
    - ii. To evaluate whether the individual has a work-related illness or injury;
  - (B) The protected health information that is disclosed consists of findings concerning a work-related illness or injury or a workplace-related medical surveillance;
  - (C) The employer needs such findings in order to comply with its obligations to record such illness or injury or to carry out responsibilities for workplace medical surveillance; and
  - (D) Yale provides written notice to the individual that protected health information relating to the medical surveillance of the workplace and work-related illnesses and injuries is disclosed to the employer:
    - i. By giving a copy of the notice to the individual at the time the health care is provided; or
    - ii. If the health care is provided on the work site of the employer, by posting the notice in a prominent place at the location where the health care is provided.
- (6) A school, about an individual who is a student or prospective student of the school, if:
  - (A) The PHI that is disclosed is limited to proof of immunization;
  - (B) The school is required by State or other law to have such proof of immunization prior to admitting the individual; and
  - (C) Yale obtains and documents the agreement to the disclosure from either
    - (i) the parent, guardian, or other person acting in loco parentis of the individual, if the individual is an unemancipated minor; or
    - (ii) the individual, if the individual is an adult or emancipated minor.

#### **5. Disclosures about Victims of Abuse, Neglect or Domestic Violence.**

- a) Permitted disclosures. Except for reports of child abuse or neglect permitted as a disclosure to a public health authority or other appropriate government authority authorized by law to receive reports of child abuse or neglect, Yale may disclose protected health information about an individual whom Yale reasonably believes to be a victim of abuse, neglect, or domestic violence to a government authority, including a social service or protective services agency, authorized by law to receive reports of such abuse, neglect, or domestic violence:
  - (1) To the extent the disclosure is required by law and the disclosure complies with and is limited to the relevant requirements of such law;
  - (2) If the individual agrees to the disclosure; or
  - (3) To the extent the disclosure is expressly authorized by statute or regulation and:
    - (A) In the exercise of professional judgment, Yale believe the disclosure is necessary to prevent serious harm to the individual or other potential victims; or
    - (B) If the individual is unable to agree because of incapacity, a law enforcement or other public official authorized to receive the report represents that the protected health information for which disclosure is sought is not intended to be used against the individual and that an immediate enforcement activity that depends upon the disclosure would be materially and adversely affected by waiting until the individual is able to agree to the disclosure.
- b) Informing the individual. If Yale makes a disclosure about victims of abuse, neglect or domestic violence in accordance with section (5)(a) above, Yale must promptly inform the individual that such a report has been or will be made, except if:
  - (1) In the exercise of professional judgment, Yale believes informing the individual would place the individual at risk of serious harm; or
  - (2) Yale would be informing a Personal Representative, and Yale believes the Personal Representative is responsible for the abuse, neglect, or other injury, and that informing such



person would not be in the best interests of the individual as determined in the exercise of professional judgment.

**6. Uses and Disclosures for Health Oversight Activities.**

- a) Permitted disclosures. Yale may disclose protected health information to a health oversight agency for oversight activities authorized by law, including audits; civil, administrative, or criminal investigations; inspections; licensure or disciplinary actions; civil, administrative, or criminal proceedings or actions; or other activities necessary for appropriate oversight of:
  - (1) The health care system;
  - (2) Government benefit programs for which health information is relevant to beneficiary eligibility;
  - (3) Entities subject to government regulatory programs for which health information is necessary for determining compliance with program standards; or
  - (4) Entities subject to civil rights laws for which health information is necessary for determining compliance.
- b) Exception to health oversight activities. A health oversight activity does not include an investigation or other activity in which the individual is the subject of the investigation or activity and such investigation or other activity does not arise out of and is not directly related to:
  - (1) The receipt of health care;
  - (2) A claim for public benefits related to health; or
  - (3) Qualification for, or receipt of, public benefits or services when a patient's health is integral to the claim for public benefits or services.

**7. Disclosures for Judicial and Administrative Proceedings.**

- a) Yale may disclose protected health information in the course of any judicial or administrative proceeding:
  - (1) In response to an order of a court or administrative tribunal, provided that Yale disclose only the protected health information expressly authorized by such order; or
  - (2) In response to a subpoena, discovery request, or other lawful process, that is not accompanied by an order of a court or administrative tribunal, if
    - (A) Yale receives satisfactory assurance from the party seeking the information that reasonable efforts have been made to ensure that the individual who is the subject of the protected health information that has been requested has been given notice of the request.

Satisfactory assurances must include a written statement and accompanying documentation demonstrating that:

- i. the party requesting such information has made a good faith attempt to provide written notice to the individual (or, if the individual's location is unknown, to mail a notice to the individual's last known address);
  - ii. the notice included sufficient information about the litigation or proceeding in which the protected health information is requested to permit the individual to raise an objection to the court or administrative tribunal; and
  - iii. the time for the individual to raise objections to the court or administrative tribunal has elapsed, and no objections were filed or all objections filed by the individual have been resolved by the court or the administrative tribunal and the disclosures being sought are consistent with such resolution.
- (B) Yale receives satisfactory assurance from the party seeking the information that reasonable efforts have been made by such party to secure a qualified protective order.

Satisfactory assurances must include a written statement and accompanying documentation demonstrating that:

- i. the parties to the dispute giving rise to the request for information have agreed to a qualified protective order and have presented it to the court or administrative tribunal with jurisdiction over the dispute; or
- ii. the party seeking the protected health information has requested a qualified protective order from such court or administrative tribunal.

A qualified protective order means an order of a court or of an administrative tribunal or a stipulation by the parties to the litigation or administrative proceeding that prohibits the parties from using or disclosing the protected health information for any purpose other than the litigation or proceeding for which such information was requested; and requires the return to the covered entity or destruction of the protected health information (including all copies made) at the end of the litigation or proceeding.

- (C) Notwithstanding paragraphs (2)(A) or (2)(B) of this section, Yale may disclose protected health information in response to a subpoena, discovery request, or other lawful process that is not accompanied by an order of a court or administrative tribunal without receiving the required satisfactory assurances, if Yale makes reasonable efforts to provide notice to the individual sufficient to meet the requirements of (2)(A), above, or to seek a qualified protective order.

#### **8. Disclosures for Law Enforcement Purposes.**

Yale may disclose protected health information for a law enforcement purpose to a law enforcement official if the following conditions are met, as applicable.

- a) Permitted disclosures: pursuant to process and as otherwise required by law. Yale may disclose protected health information:
  - (1) As required by law including laws that require the reporting of certain types of wounds or other physical injuries, except for laws subject to the sections of this policy relating to disclosures about victims of abuse, neglect or domestic violence, or the reporting of child abuse or neglect or
  - (2) In compliance with and as limited by the relevant requirements of:
    - (A) A court order or court-ordered warrant, or a subpoena or summons issued by a judicial officer;
    - (B) A grand jury subpoena; or
    - (C) An administrative request, including an administrative subpoena or summons, a civil or an authorized investigative demand, or similar process authorized under law, provided that:
      - i. The information sought is relevant and material to a legitimate law enforcement inquiry;
      - ii. The request is specific and limited in scope to the extent reasonably practicable in light of the purpose for which the information is sought; and
      - iii. De-identified information could not reasonably be used.
- b) Permitted disclosures: limited information for identification and location purposes. Except for disclosures required by law, as described in paragraph (8)(a) above, Yale may disclose protected health information in response to a law enforcement official's request for such information for the purpose of identifying or locating a suspect, fugitive, material witness, or missing person, provided that:
  - (1) only the following information may be disclosed:
    - (A) Name and address;
    - (B) Date and place of birth;
    - (C) Social security number;
    - (D) ABO blood type and Rh factor;
    - (E) Type of injury;
    - (F) Date and time of treatment;
    - (G) Date and time of death, if applicable; and
    - (H) A description of distinguishing physical characteristics, including height, weight, gender, race, hair and eye color, presence or absence of facial hair (beard or moustache), scars, and tattoos.
  - (2) Except as permitted by paragraph (8)(b)(1) above, Yale may not disclose for the purposes of identification or location any protected health information related to the individual's DNA or DNA analysis, dental records, or typing, samples or analysis of body fluids or tissue.
- c) Permitted disclosure: victims of a crime. Except for disclosures required by law as permitted by section (8)(a) above, Yale may disclose protected health information in response to a law enforcement

official's request for such information about an individual who is or is suspected to be a victim of a crime, if:

- (1) The individual agrees to the disclosure; or
- (2) The covered entity is unable to obtain the individual's agreement because of incapacity or other emergency circumstance, provided that:
  - (A) The law enforcement official represents that such information is needed to determine whether a violation of law by a person other than the victim has occurred, and such information is not intended to be used against the victim;
  - (B) The law enforcement official represents that immediate law enforcement activity that depends upon the disclosure would be materially and adversely affected by waiting until the individual is able to agree to the disclosure; and
  - (C) The disclosure is in the best interests of the individual as determined by the covered entity, in the exercise of professional judgment.
- d) Permitted disclosure: decedents. Yale may disclose protected health information about an individual who has died to a law enforcement official for the purpose of alerting law enforcement of the death of the individual if the covered entity has a suspicion that such death may have resulted from criminal conduct.
- e) Permitted disclosure: crime on premises. Yale may disclose to a law enforcement official protected health information that Yale believes in good faith constitutes evidence of criminal conduct that occurred on the premises of the covered entity.
- f) Permitted disclosure: reporting crime in emergencies.
  - (1) If Yale is providing emergency health care in response to a medical emergency, other than such emergency on the Yale premises, Yale may disclose protected health information to a law enforcement official if such disclosure appears necessary to alert law enforcement to:
    - (A) The commission and nature of a crime;
    - (B) The location of such crime or of the victim(s) of such crime; and
    - (C) The identity, description, and location of the perpetrator of such crime.
  - (2) If Yale believes that the medical emergency is the result of abuse, neglect, or domestic violence of the individual in need of emergency health care, any disclosure to a law enforcement official for law enforcement purposes is subject to this policy's provisions relating to disclosures about victims of abuse, neglect, or domestic violence (Refer to # 5 in Section on Authorization Exceptions), and not to the provisions relating to reporting crime in emergencies (this section).

## **9. Uses and Disclosures about Decedents.**

- a) Coroners and medical examiners. Yale may disclose protected health information to a coroner or medical examiner for the purpose of identifying a deceased person, determining a cause of death, or other duties as authorized by law. If Yale also performs the duties of a coroner or medical examiner Yale may use protected health information for the purposes described in this paragraph.
- b) Funeral directors. Yale may disclose protected health information to funeral directors, consistent with applicable law, as necessary to carry out their duties with respect to the decedent. If necessary for funeral directors to carry out their duties, Yale may disclose the protected health information prior to, and in reasonable anticipation of, the individual's death.

## **10. Uses and disclosures for Cadaveric Organ, Eye or Tissue Donation Purposes**

Yale may use or disclose protected health information to organ procurement organizations or other entities engaged in the procurement, banking, or transplantation of cadaveric organs, eyes, or tissue for the purpose of facilitating organ, eye or tissue donation and transplantation.

## **11. Uses and Disclosures to Avert a Serious Threat to Health or Safety.**

Permitted disclosures. Yale may, consistent with applicable law and standards of ethical conduct, use or disclose protected health information, if Yale, in good faith, believes the use or disclosure:

- a) Is necessary to prevent or lessen a serious and imminent threat to the health or safety of a person or the public and is to a person or persons reasonably able to prevent or lessen the threat, including the target of the threat; or
- b) Is necessary for law enforcement authorities to identify or apprehend an individual where it appears from all the circumstances that the individual has escaped from a correctional institution or from lawful custody; or
- c) Is necessary for law enforcement authorities to identify or apprehend an individual because of a statement by an individual admitting participation in a violent crime that Yale reasonably believes may have caused serious physical harm to the victim, provided that:
  - (1) The use or disclosure will not be made if Yale learns of the statement admitting the participation in a violent crime in the course of treatment to affect the propensity to commit the criminal conduct that is the basis for the disclosure or through a request by the individual to initiate or to be referred for the treatment, counseling, or therapy; and
  - (2) Yale will disclose only the individual's statement admitting the participation in a violent crime and the following PHI:
    - (A) Name and address;
    - (B) Date and place of birth;
    - (C) Social security number;
    - (D) ABO blood type and Rh factor;
    - (E) Type of injury;
    - (F) Date and time of treatment;
    - (G) Date and time of death, if applicable; and
    - (H) A description of distinguishing physical characteristics, including height, weight, gender, race, hair and eye color, presence or absence of facial hair (beard or moustache), scars, and tattoos.

**12. Uses and Disclosures for Specialized Government Functions.**

- a) Military and veterans activities.
  - (1) Armed Forces personnel. Yale may use and disclose the protected health information of individuals who are Armed Forces personnel for activities deemed necessary by appropriate military command authorities to assure the proper execution of the military mission, if the appropriate military authority has published by notice in the Federal Register the following information:
    - (A) Appropriate military command authorities; and
    - (B) The purposes for which the protected health information may be used or disclosed.
  - (2) Foreign military personnel. A covered entity may use and disclose the protected health information of individuals who are foreign military personnel to their appropriate foreign military authority for the same purposes for which uses and disclosures are permitted for Armed Forces personnel under paragraph (12)(a)(1), if the notice required by paragraph (12)(a)(1) is published in the Federal Register.
- b) National security and intelligence activities. Yale may disclose protected health information to authorized federal officials for the conduct of lawful intelligence, counter-intelligence, and other national security activities authorized by the National Security Act (50 U.S.C. 401, et seq.) and implementing authority (e.g., Executive Order 12333).
- c) Protective services for the President and others. Yale may disclose protected health information to authorized federal officials for the provision of protective services to the President or other persons authorized by 18 U.S.C. 3056, or to foreign heads of state or other persons authorized by 22 U.S.C. 2709(a)(3), or for the conduct of investigations authorized by 18 U.S.C. 871 and 879.
- d) Correctional institutions and other law enforcement custodial situations.
  - (1) Permitted disclosures. Yale may disclose to a correctional institution or a law enforcement official having lawful custody of an inmate or other individual protected health information about such inmate or individual, if the correctional institution or such law enforcement official represents that such protected health information is necessary for:
    - (A) The provision of health care to such individuals;

- (B) The health and safety of such individual or other inmates;
  - (C) The health and safety of the officers or employees of or others at the correctional institution;
  - (D) The health and safety of such individuals and officers or other persons responsible for the transporting of inmates or their transfer from one institution, facility, or setting to another;
  - (E) Law enforcement on the premises of the correctional institution; and
  - (F) The administration and maintenance of the safety, security, and good order of the correctional institution.
- (2) No application after release. For the purposes of this paragraph (d)(1) of this section, an individual is no longer an inmate when released on parole, probation, supervised release, or otherwise is no longer in lawful custody.

### **13. Disclosures for Workers' Compensation.**

Yale may disclose protected health information as authorized by and to the extent necessary to comply with laws relating to workers' compensation or other similar programs, established by law, that provide benefits for work-related injuries or illness without regard to fault.

### **14. Disclosures for Research**

Yale staff will refer to the Yale Policy and Procedure on Uses and Disclosures of Protected Health Information for Research to determine, for each use or disclosure for research purposes, whether an Authorization is required.

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## **Verification of Identification**

(See also the Yale policy on Personal Representatives). If it is determined that PHI may or must be released to a person or entity in accordance with this policy, valid identification will be requested as deemed necessary. The following will be accepted as valid identification:

1. Patient if adult or emancipated minor: government-issued photo identification card
2. Parent or guardian if a minor: If parents are divorced, separated or not married, either parent may request and receive PHI on the child unless the court has issued an order that limits the non-custodial parent's access or the provider determines there is risk to the child. A minor's PHI may not be disclosed to the minor's parent or guardian if the minor has consented to his or her own health care unless the minor provides his or her Authorization to the disclosure. The parent or guardian with exclusive access must inform Yale of any change that may affect use and disclosure of PHI of the minor.
3. The following individuals may receive PHI, if they present with a legal court document validating their identity as a/an:
  - a) Executor/executrix of the estate of a deceased patient, or if no executor or administrator has been appointed, the surviving spouse or next of kin.
  - b) Legally appointed conservator.
  - c) Legally appointed guardian.
  - d) Court appointed surrogate parent.
4. For governmental agencies, public health authorities, legal representatives, etc. the request for PHI should be made in writing on official letterhead.
5. Where HIPAA policy allows actions to be taken by a patient or their personal representative without the individual being present, the individual's identity will be verified by requiring the individual provide additional information that can be verified through the patient's medical record or other clinical source. See also *Guidance on Identity Verification* on the HIPAA website.

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## **Requirements of a Valid Authorization**

1. The Yale University HIPAA Privacy Officer or Deputy HIPAA Privacy Officer must approve all Authorization forms to be utilized.
2. All valid Authorizations must contain:
  - a) Plain language
  - b) The name or other 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 Yale may make the requested use or disclosure
  - d) Description of the information to be used or disclosed must be checked off and dates or date range specified.
  - e) A description of each purpose of the requested use or disclosure.
  - f) Date on which the Authorization expires. The patient may request a specific date, it may be a specific event, it may be at the end of a research study, it may be "none" if the Authorization is granting permission to use or disclose protected health information for research. If there are no special circumstances, the Authorization will expire two (2) years from the patient's last date of service visit. This expiration event will be recorded in the space provided.
  - g) Signature of patient or the patient's Personal Representative and date signed. If someone other than the patient is signing the Authorization form, that individual's relationship to the patient must be stated.
  - h) Notification of the individual's right to revoke the Authorization in writing, the exceptions to the right to revoke and a description of how the individual may exercise the right to revoke the Authorization.
  - i) Notification of Yale's inability to condition treatment, payment, enrollment or eligibility for benefits on whether or not the individual signs the Authorization OR the consequences to the individual who refuses to sign the Authorization when Yale CAN condition treatment, enrollment in the health plan, or eligibility for benefits on failure to obtain such Authorization.
  - j) Notification of the potential for information disclosed pursuant to the Authorization to be subject to redisclosure by the recipient and no longer be protected by HIPAA.
  - k) Notification to the individual of their right to receive a copy of the Authorization when Yale requires an Authorization for use or disclosure of PHI.
3. Authorizations for disclosure of psychiatric information or Psychotherapy notes must explicitly state that psychiatric information is to be disclosed pursuant to the Authorization.
- a) The patient must be informed, on the Authorization form or otherwise, that his or her refusal to sign the Authorization will not jeopardize his or her right to obtain present or future treatment except where disclosure of the communications and records is necessary for the treatment.
4. Authorizations for use and disclosure of PHI to be used for marketing purposes must indicate if the marketing involves direct or indirect remuneration to Yale from a third party.
5. Authorizations for disclosure of AIDS and/or HIV related testing and treatment information must specifically state that AIDS and/or HIV-related information may be disclosed pursuant to the Authorization.

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### **Defective Authorizations**

An Authorization is not valid if the document submitted has any of the following defects:

- 1. The expiration date has passed or the expiration event is known by Yale to have occurred
- 2. The Authorization has not been filled out completely
- 3. The Authorization is known by Yale to have been revoked
- 4. Material information in the Authorization is known by Yale to be false

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### **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:

- 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 or disclosure of PHI for such research or consent to participate in such research (see also HIPAA Policy 5032, Use and Disclosure of PHI for Research Purposes);
- 2. 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;
- 3. An authorization other than that for a use or disclosure of psychotherapy notes, may be combined with any other such authorization under this section, except when Yale has conditioned the provision of treatment, payment, enrollment in the health plan, or eligibility for benefits in only the following situations:

- a) For research-related treatment on provision of an authorization for the use or disclosure of PHI for such research;
- b) For enrollment in the health plan or eligibility for benefits on provision of an authorization requested by the health plan prior to an individual's enrollment in the health plan, if:
  - (1) The authorization is sought for the health plan's eligibility or enrollment determinations relating to the individual or for its underwriting or risk rating determinations; and
  - (2) The authorization is not for a use or disclosure of psychotherapy notes as described above.

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## **Response to Request for Use and Disclosure of PHI**

Each clinical department should establish a process for responding to requests for use and disclosure of PHI, identifying individuals responsible for receiving such requests and for fulfilling them. This may involve categorizing types of requests; e.g. TPO vs. non-TPO with Authorization required and identifying whom within the department is authorized to respond to each type of request, and when requests should be forwarded to the Clinical Department Privacy Representative. In all cases the following steps should be carried out:

- 1. All requests for use and disclosure of PHI that are not for the purpose of TPO must be in writing.
- 2. Appropriately requested medical information shall be furnished within a reasonable period of time. A physician cannot withhold medical records because of a patient's outstanding balance.
- 3. Verify that Yale has not agreed to a request to restrict access to the requested PHI or the requestor. (See HIPAA Policy and Procedure on Request Restrictions or Confidential Communications).
- 4. If the request is from a patient for access to his or her own information, follow the Yale Policy and Procedure on Patient's Right to Access and Amend the Designated Record Set.
- 5. If a request is for the purpose of TPO:
  - a) The Yale Policy and Procedure on Minimum Necessary Disclosures must be followed, as applicable, to determine the amount of information reasonably necessary to achieve the purpose. The designated Clinical Department Medical Record representative must review the medical records and indicate what information will be released in response to the written request. This individual should consult with the Department or Section Chief when questions arise as to the content of records to be released.
  - b) The authority of the request must be verified. Refer to Section entitled - Verification of ID.
- 6. If a request is not for purposes of TPO and does not require an Authorization:
  - a) The Yale Policy and Procedure on Minimum Necessary Disclosures must be followed, as applicable, to determine the amount of information reasonably necessary to achieve the purpose.
  - b) The authority of the request must be verified. Obtain any subpoena, court order, or other documentation, statements, or representations from any public official requesting the protected health information. If a request is made in person by a public official, document information from the identification badge, other official credentials, or other proof of government status. Refer to Section entitled - Verification of ID. For other individuals, request a government-issued photo ID card.
  - c) The Accounting of Disclosures Log must be completed and filed in the patient's medical record component of the designated record set with the documentation verifying authority for the disclosure, unless the disclosure is excepted from the individual's right to receive an accounting. An accounting is not required for disclosures:
    - (1) made to carry out treatment, payment, or operations
    - (2) to the patient or the patient's personal representative
    - (3) that are incidental disclosures made in connection with a use or disclosure otherwise permitted or required by HIPAA
    - (4) made to persons involved in a patient's care or as part of an inpatient directory
    - (5) pursuant to an authorization for release of information signed by the patient or patient's personal representative
    - (6) for national security or intelligence purposes to correctional institutions, or to law enforcement officials under certain circumstances
    - (7) to correctional institutions or law enforcement officials under certain circumstances

- (8) as part of a limited data set, when the recipient has executed a data use agreement, disclosed for research, public health, or certain health care operations purposes
- (9) that occurred prior to April 14, 2003

Under Connecticut law, a requested accounting of all disclosures of HIV-related information must be provided to the patient or personal representative, except those disclosures that are made to:

- (10) A federal, state, or local health officer when required or permitted by law.
- (11) Persons reviewing information or records in the ordinary course of ensuring that a health facility is in compliance with applicable quality of care standards, program evaluation, program monitoring or service review.
- (12) Life and health insurers, government payers and health care centers in connection with underwriting and claim activity for life, health, and disability benefits.

7. If an Authorization is required:

- a) The Authorization for Disclosure of Protected Health Information form must be completed by the patient or patient's Personal Representative (see the Yale Policy on Personal Representative). A non-Yale equivalent authorization, containing all elements as outlined in the Section: Requirements of a Valid Authorization will also be accepted, although the Yale form is preferred. Consult with the Deputy Privacy Officer as needed, to determine if a particular non-Yale Authorization form is acceptable. Note: If the request is for purposes of conducting research a different Authorization form and different policies and procedures will apply. See the Yale Policy and Procedure on Uses and Disclosures of Protected Health Information for Research.
- b) The authority of the request should be verified in accordance with the Section: Verification of Identification. Record in the "FOR OFFICE USE ONLY" box of the Authorization Form what type of photo identification if any, was checked (e.g., drivers' license, passport).
- c) When any person or entity makes a request for release of any protected health information requiring an Authorization for use and disclosure, the recipient will forward the request to the clinical department Privacy Representative. The clinical department staff will coordinate the acquisition and assembly of the PHI that was requested. A copy of the request and a copy of any transmission coversheets shall be kept with the medical records.
- d) The individual processing disclosures requiring an Authorization will verify the validity of the Authorization for Disclosure of Protected Health Information form. If there are any missing elements, the form will be returned for completion to the patient, or requestor, if the patient did not initiate the request.
- e) Only materials listed in the Authorization must be released.
- f) Disclosures of psychiatric information or Psychotherapy Notes must include the following disclosure statement, visibly marked on the copies of the PHI disclosed:
  - "The confidentiality of this record is required under Chapter 899 of the Connecticut General Statutes. This material shall not be transmitted to anyone without written consent or other authorization as provided in the aforementioned statutes."
- g) The following written disclosure statement must accompany a disclosure of AIDS/HIV-related information:
  - "This information has been disclosed to you from records whose confidentiality is protected by state law. State law prohibits you from making any further disclosure of it without the specific written consent of the person to whom it pertains, or as otherwise permitted by law. A general authorization for release of medical or other information is NOT sufficient for this purpose."
- h) Upon fulfilling the request, the date the request was filled and the full name of the person filling the request will be indicated on the Authorization form.
- i) Distribute copies of the Authorization form as follows:
  - (1) Original is filed with the patient's medical record.
  - (2) One copy accompanies the records released.
  - (3) One copy is mailed to the patient or the patient's Personal Representative if they did not receive the records.



8. Release only complete, copied information. Originals remain in the permanent medical record, even if a patient requests a transfer of their records to another physician.
9. Refer to the Yale Policy on charging for copies of records.

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The official version of this information will only be maintained in an on-line web format. Any and all printed copies of this material are dated as of the print date. Please make certain to review the material on-line prior to placing reliance on a dated printed version.

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