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Authorization/Informed Consent for Use and Disclosure of Health Care Information Grid Wisconsin Statutes and the Federal Privacy Law

August 27, 2010

Grid updated to correct the omission of "general" in the Wis. Stat. 51.30 column for the 42 CFR 2.31(a)(1) reference

March 1, 2006

Grid updated to address the HHS FAQ "Can an individual revoke his or her Authorization?"

[dated 8/8/2005]

http://healthprivacy.answers.hhs.gov/cgi-bin/hipaa.cfg/php/enduser/std_adp.php?p_faqid=474

The Right to Withdraw the Authorization statement identifies the covered entity as the "disclosing" covered entity.

March 15, 2004

Grid updated: HFS 94.03(1)(f) removed

January 2, 2004

Grid is updated to address expiration date according to HFS 94.03(1)(f)

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Wis. Stat. 146.81	Wis. Stat. 51.30 HFS 92 42 CFR 2.31	Wis. Stat. 252.15	Wis. Stat. 610.70	45 CFR 164.508 HIPAA Authorization
All patient health care records shall remain confidential. Patient health care records may be released with patient consent or to the persons designated in the statutory exceptions 146.82(2)	...all treatment records shall remain confidential...records may be released with the written consent of the subject individual or without written informed consent under specific statutory exceptions. 51.30(4)(b)	An individual who is the subject of a test for the presence of HIV,...may disclose the results of the test to anyone. Disclosure is otherwise prohibited except under specific statutory exceptions. 252.15(4)		Except as otherwise permitted or required by this subch., a CE may not use or disclose PHI without an authorization that is valid under this section.
Required Elements	Required Elements	Required Elements	Required Elements	Required Elements
<ul style="list-style-type: none"> In writing: 146.81(2) 	<ul style="list-style-type: none"> In writing: 51.30(2) 	<ul style="list-style-type: none"> In writing: 252.15(1)(d) 	<ul style="list-style-type: none"> ---- 	<ul style="list-style-type: none"> Written in plain language: 164.508(c)(3)
<ul style="list-style-type: none"> Name of the patient whose record is being disclosed: 146.81(2)(a) 	<ul style="list-style-type: none"> Name of the individual whose treatment record is being disclosed: 51.30(2) 2.31(a)(3) 	<ul style="list-style-type: none"> Name of potential test subject giving consent and whose test results may be disclosed: 252.15(2)(b)1 	<ul style="list-style-type: none"> ---- 	<ul style="list-style-type: none"> (Signature, see below)
<ul style="list-style-type: none"> Type of information to be disclosed: 146.81(2)(b) 	<ul style="list-style-type: none"> Specific type of information to be disclosed: 51.30(2) How much and what kind of information to be disclosed: 2.31(a)(5) 	<ul style="list-style-type: none"> Authorizing disclosure of HIV test results: 252.15(1)(e) 	<ul style="list-style-type: none"> Specifies the nature of the information that is authorized to be disclosed: 610.70(2)4 	<ul style="list-style-type: none"> A description of the information to be <u>used/disclosed</u> that identifies the information in a specific and meaningful fashion: 164.508(c)(1)(i)
<ul style="list-style-type: none"> The types of health care providers making the disclosure: 146.81(2)(c) 	<ul style="list-style-type: none"> Specific name or general designation of program or person permitted to make disclosure: 2.31(a)(1) 	<ul style="list-style-type: none"> --- 	<ul style="list-style-type: none"> Specifies the types of persons that are authorized to disclose information about the individual: 610.70(2)3 	<ul style="list-style-type: none"> The name or other specific identification of the person(s), or class of persons, authorized to make the requested use or disclosure: 164.508(c)(1)(ii)
<ul style="list-style-type: none"> The individual, agency, or organization to which disclosure may be made: 146.81(2)(e) 	<ul style="list-style-type: none"> The name of the individual, agency or organization to which disclosure is to be made: 51.30(2); 2.31(a)(2) 	<ul style="list-style-type: none"> The name of the person to whom the test subject authorizes that disclosure of test results be made: 252.15(2)(b)3.b. 	<ul style="list-style-type: none"> The name of insurer and identifies by generic reference representatives of the insurer, to whom the information is authorized to be disclosed: 610.70(2)5 	<ul style="list-style-type: none"> The name or other specific identification of the person(s), or class of persons, to whom the CE may make the requested use or disclosure: 164.508(c)(1)(iii)

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Elements (continued)	Elements (continued)	Elements (continued)	Elements (continued)	Elements (continued)
<ul style="list-style-type: none"> The purpose of the disclosure: 146.81(2)(d) 	<ul style="list-style-type: none"> The purpose or need for the disclosure: 51.30(2); 2.31(a)(4) 	<ul style="list-style-type: none"> ---- 	<ul style="list-style-type: none"> The purposes for which the information is being obtained/disclosed: 610.70(2)6 	<ul style="list-style-type: none"> A description of each purpose of the requested use or disclosure. The statement "at the request of the individual is sufficient...": 164.508(c)(1)(iv)
<ul style="list-style-type: none"> The signature of the patient or the person authorized by the patient, and relationship to patient or legal authority: 146.81(2)(f) 	<ul style="list-style-type: none"> The signature of the individual or person legally authorized to give consent for the individual: 51.30(2); 2.31(a)(6) 	<ul style="list-style-type: none"> Signature of potential test subject or...of the health care agent...: 252.15(2)(b)3.a. 	<ul style="list-style-type: none"> Signed/Authorized by individual, or by a person who is authorized to consent on behalf of an individual: 610.70(5)(a) 	<ul style="list-style-type: none"> Signature of the individual and date. If the authorization is signed by a personal representative of the individual... : 164.508(c)(1)(vi)
<ul style="list-style-type: none"> If the authorization is signed by a person authorized by the patient, the relationship of that person to the patient or the authority of the person: 146.81(2)(f) 	<ul style="list-style-type: none"> ---- 	<ul style="list-style-type: none"> ---- 	<ul style="list-style-type: none"> ---- 	<ul style="list-style-type: none"> If the authorization is signed by a personal representative of the individual, a description of such representative's authority to act for the individual must also be provided: 164.508(c)(1)(vi)
<ul style="list-style-type: none"> The date on which the consent is signed: 146.81(2)(g) 	<ul style="list-style-type: none"> The date on which the consent is signed: 51.30(2); 2.31(a)(7) 	<ul style="list-style-type: none"> The date on which the consent to disclosure is signed: 252.15(2)(b)3.b. 	<ul style="list-style-type: none"> The form is dated: 610.70(2)1 	<ul style="list-style-type: none"> Signature of the individual and date: 164.508(c)(1)(vi)
<ul style="list-style-type: none"> The time period during which the consent is effective: 146.81(2)(h) 	<ul style="list-style-type: none"> The time period during which the consent is effective: 51.30(2); 2.31(a)(9) Informed consent is effective only for the period of time specified by the patient in the informed consent document : HFS 92.03(3)(b) 	<ul style="list-style-type: none"> The time period during which the consent to disclosure is effective: 252.15(2)(b)3.b. 	<ul style="list-style-type: none"> Specifies the length of time for which the authorization remains valid: 610.70(2)7 	<ul style="list-style-type: none"> An expiration date or an expiration event that relates to the individual or the purpose of the use or disclosure: 164.508(c)(1)(v)

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Wis. Stat. 146.81	Wis. Stat. 51.30 HFS 92 42 CFR 2.31	Wis. Stat. 252.15	Wis. Stat. 610.70	45 CFR 164.508 HIPAA Authorization
<ul style="list-style-type: none"> • ---- 	<ul style="list-style-type: none"> • Each informed consent document shall include a statement that the patient has a right to inspect and receive a copy of the material to be disclosed: HFS 92.03(3)(d) 	<ul style="list-style-type: none"> • ---- 	<ul style="list-style-type: none"> • ---- 	<ul style="list-style-type: none"> • ----
<ul style="list-style-type: none"> • ---- 	<ul style="list-style-type: none"> • ---- 	<ul style="list-style-type: none"> • A statement of explanation that test results may be released without consent and whether a listing of those circumstances or that a list is available upon request: 252.15(2)(b)2. 	<ul style="list-style-type: none"> • ---- 	<ul style="list-style-type: none"> • ----
<ul style="list-style-type: none"> • ---- 	<ul style="list-style-type: none"> • any patient or patient representative may withdraw authorization for disclosure of any information at any time: HFS 92.03(3)(e); 2.31(a)(8) • If this occurs, an agency not included under s. 51.30(4)(b) Stats., that requests release of information requiring informed consent shall be told only that s. 51.30, Stats., prohibit release of the information requested. 	<ul style="list-style-type: none"> • ---- 	<ul style="list-style-type: none"> • ---- 	<ul style="list-style-type: none"> • A statement placing the individual on notice of the individual's right to revoke the authorization in writing, and either <ul style="list-style-type: none"> • The exceptions to the right to revoke and how to revoke [164.508(b)(5)], or • If the right to revoke is in the notice, a reference to the notice. 164.508(c)(2)(i) Note: An individual may revoke an authorization by providing a revocation in writing to the disclosing CE, except to the extent: 1) the disclosing CE has taken action in reliance on the authorization or 2) if the authorization was

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				<p>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. <i>Reference HFS FAQ website link on page 1 of this document.</i></p>
<ul style="list-style-type: none"> • ---- 	<ul style="list-style-type: none"> • ---- 	<ul style="list-style-type: none"> • ---- 	<ul style="list-style-type: none"> • ---- 	<ul style="list-style-type: none"> • A statement placing the individual on notice of the ability or inability to condition treatment, payment, enrollment or eligibility for benefits on the authorization by stating either <ul style="list-style-type: none"> • CE may not condition above based on whether individual signs authorization when the prohibition on conditioning of authorizations applies, or • The consequences of refusal to sign. 164.508(c)(2)(ii) <p>Note: A consequence of refusal to sign an authorization for disclosure of WI law 252.15 or 51.30 records may be non-payment; therefore, a CE may want to include this consequence in the authorization.</p>

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• ----	• ----	• ----	• ----	<ul style="list-style-type: none"> • A statement placing the individual on notice of the potential for information disclosed pursuant to the authorization to be subject to redisclosure by the recipient and no longer be protected by the federal privacy rule: 164.508(c)(2)(iii)
•	•	•	•	<ul style="list-style-type: none"> • Marketing authorization—a statement noticing individual that remuneration is involved if CE receives direct or indirect remuneration from a third party. 164.508(a)(3)(ii)
• ----	• ----	• ----	• ----	<ul style="list-style-type: none"> • Miscellaneous A valid authorization may contain elements in addition to the required elements, which are not inconsistent with this section. May have additional requirements based on reason for obtaining authorization. 164.508(b)(1)(ii)
Maintenance of Authorization	Maintenance of Authorization	Maintenance of Authorization	Maintenance of Authorization	Maintenance of Authorization
• ----	<ul style="list-style-type: none"> • A copy of the informed consent document shall be maintained in the treatment record. HFS 92.03 (3)(c) 	<ul style="list-style-type: none"> • HCP must maintain consent for testing or disclosure: 252.15(4)(b) 	• ----	<ul style="list-style-type: none"> • CE must document and retain any signed authorization. 164.508(b)(6)

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Wis. Stat. 146.81	Wis. Stat. 51.30 HFS 92 42 CFR 2.31	Wis. Stat. 252.15	Wis. Stat. 610.70	45 CFR 164.508 HIPAA Authorization
Providing Copy of Authorization	Providing Copy of Authorization	Providing Copy of Authorization	Providing Copy of Authorization	Providing Copy of Authorization
	<ul style="list-style-type: none"> A copy of each informed consent shall be offered to the patient or guardian and a copy shall be maintained in the treatment record: HFS 92.03(3)(c) 	<ul style="list-style-type: none"> ---- 	<ul style="list-style-type: none"> Advises that the individual, or an authorized representative of the individual, is entitled to receive a copy of the completed authorization form: 610.70(a)(2)8 	<ul style="list-style-type: none"> If a CE seeks an authorization from an individual for a used/disclosed of PHI, the CE must provide the individual with a copy of the signed authorization. 164.508(c)(4)
Fees	Fees	Fees	Fees	Fees
Any patient or other person may, upon submitting a statement of informed consent, receive a copy of the patient's health care records upon payment of fees as established by rule by the department which shall be based on an approximation of actual costs: 146.83(1)(b)	<ul style="list-style-type: none"> A reasonable and uniform charge for reproduction may be assessed to the subject individual requesting individual access: 51.30(4)(d)3. 	<ul style="list-style-type: none"> ---- 	<ul style="list-style-type: none"> An insurer may charge the individual a reasonable fee to cover the costs incurred in providing a copy of recorded personal medical information:610.70(3)(f) 	<ul style="list-style-type: none"> If an individual requests a copy of their PHI the CE may impose a reasonable, cost-based fee... 164.524(c)(4)

The Wisconsin statutes regulate release or disclosure of patient information. HIPAA regulates uses and disclosures of patient information. Understanding that the law "most protective" of patient rights will control, an authorization may now be required for a use and/or disclosure. Therefore, the HIPAA-COW interface authorization form is titled "Authorization for Use and Disclosure of Health Information."

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