

HIPAA PRIVACY BULLETIN

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INTRODUCTION

The privacy rule promulgated by the Department of Health and Human Services (HHS) requires covered entities, except as provided in the rule, to obtain an individual's consent prior to using or disclosing Protected Health Information (PHI) to carry out Treatment, Payment or Health Care Operations (TPO). 45 C.F.R. §164.506(a)(1). In July, HHS also published its official guidance for the regulations which help to clarify the requirements for valid consent under the rule. Health care providers will need to develop their own policies, procedures and forms for obtaining consent to TPO and providing notice to individual parties of the providers' privacy policies.

WHAT MUST BE INCLUDED IN A CONSENT?

A proper consent must:

- (1) inform the individual that protected health information may be used and disclosed to carry out treatment, payment or health care operations;
- (2) refer the individual to the required HIPAA notice of privacy requirements for a more complete description of the uses and disclosures and must tell the individual that he or she has the right to review the notice prior to signing the consent;
- (3) if the covered entity has reserved the right to change its privacy policies that are described in the required HIPAA notice, the consent must state that the terms of the notice may change and describe how the individual may obtain a revised notice;
- (4) the consent must state that the individual has a right to request that the covered entity restrict how the information is used or disclosed to carry out treatment, payment or health care operations; that the covered entity is not required to agree to the requested restrictions but if the covered entity does agree, the restriction is binding on the covered entity;
- (5) the consent must state that the individual has a right to revoke the consent, in writing, except to the extent that the covered entity has already taken action in reliance on the consent; and
- (6) the consent must be signed and dated by the individual.

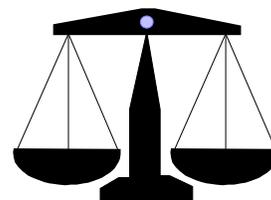
The covered entity must document and retain any signed consent for a period of six (6) years from the date the consent was last in effect. The rule does not require the consent to be saved in any particular form.

CAN CONSENT BE COMMUNICATED ELECTRONICALLY?

Yes. Consent may be obtained in paper or electronic form provided that it meets all the requirements under the rule, including that it be signed by the individual.

CAN A CONSENT FOR TPO BE COMBINED WITH OTHER TYPES OF LEGAL PERMISSION, E.G. INFORMED CONSENT FOR TREATMENT?

Yes, so long as the consent for TPO is visually and organizationally separate from such other legal permission and separately signed and dated.



CAN MORE THAN ONE ENTITY UTILIZE THE SAME SIGNED CONSENT?

Consent obtained by one covered entity is generally not effective to permit another covered entity to use or disclose information, unless it is a joint consent. A joint consent must include the name or other specific identification of the covered entities and must meet the requirements of the rule. A joint consent is not required where the other covered entity is a business associate of the covered entity to which consent was given. In such case, a business associate acting on behalf of the covered entity is authorized to perform TPO on behalf of the covered entity by the covered entity's obtained consent.

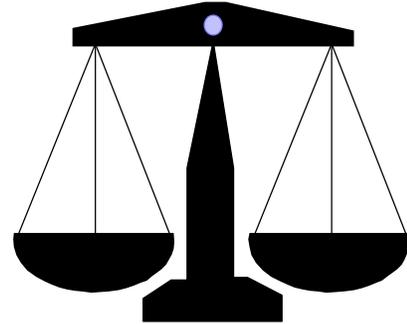
WHAT ARE AN INDIVIDUAL'S RIGHTS?

An individual has a right to:

- (1) Revoke consent in writing, except to the extent that the covered entity has already taken action in reliance on the consent.
- (2) Request restrictions on uses or disclosures of PHI. While a covered entity is not required to agree to any requested restrictions, it is bound by any restrictions to which it does agree.
- (3) Receive a copy of the required HIPAA notice of the covered entity's privacy practices and the opportunity to review the notice prior to signing any consent.

IS AN ORAL REVOCATION OF CONSENT VALID?

No. Revocation of a consent must be in writing.



ATTENTION READERS, the editors of Thomson, Rhodes & Cowie *HIPAA Privacy Bulletin* invite you to submit questions you may have dealing with HIPAA issues. The editors will compile questions received and periodically provide answers to recurrent issues. Submission of a question is no guarantee that an answer will be provided, but we will make every effort to answer as many questions as possible. Of course, for specific legal advice the reader should seek counsel from a qualified health care law attorney.

Send questions to:

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Prior issues are available on request. Please direct inquiries to L. Jane Charlton or William James Rogers, Thomson, Rhodes & Cowie, P.C., Tenth Floor, Two Chatham Center, Pittsburgh, Pennsylvania 15219, (412) 232-3400.