

Massachusetts Eye and Ear Infirmary

SUBJECT: Obtaining Patient Authorization for Uses and Disclosures Other Than Treatment, Payment and Health Care Operations

HIPAA CITES: 45 CFR § 164.508

DEPARTMENT(S): *Health Information Services, Research, Clinics*

I. POLICY:

Massachusetts Eye and Ear Infirmary (MEEI) obtains the authorization of the patient or the patient's Legal Representative on the applicable Authorization Form whenever it desires to use or disclose Protected Health Information for a purpose other than providing Treatment, obtaining Payment or carrying out its Health Care Operations or making a disclosure ,or except as otherwise provided in MEEI's policies.

MEEI may use or disclose Protected Health Information that it created or received prior to April 14, 2003 pursuant to an authorization or other express legal permission obtained from the patient prior to April 14, 2003 *if* (a) the authorization or other express legal permission specifically permits such use or disclosure, and (b) there is no agreed upon restriction.

Further, it is the policy of MEEI to obtain the authorization of the patient or the patient's Legal Representative on the applicable Authorization Form whenever it desires to use or disclose highly confidential or sensitive information other than as permitted under federal and state laws protecting such information.

II. PROCEDURES:

A. Transition Provision: The Hospital may use or disclose protected health information that it created or received prior to April 14, 2003 pursuant to an authorization or other express legal permission obtained from the patient prior to April 14, 2003 that may not meet the specific requirements of this Policy, provided that such authorization or other express legal permission specifically permits such use or disclosure and there is no agreed upon restriction.

B. General Procedure

1. Regarding uses and disclosures for Treatment, Payment and Health Care Operations, and MEEI's other policies regarding uses and disclosures of Protected Health Information, a patient's Protected Health Information may only be used and disclosed if the patient or the patient's Legal Representative completes and signs an Authorization Form.
2. MEEI may accept an authorization form signed by the patient as long as the authorization form contains each of the elements set forth in Section II.B below.
3. MEEI staff may not disclose information pursuant to an Authorization Form without ensuring the validity of the Authorization Form by following the procedures set forth in Section II.C below.

C. Elements of Patient Authorization. MEEI shall provide a patient with an Authorization Form, written in plain language, allowing MEEI to use or disclose Protected Health Information for purposes not covered by the consent form signed by the patient and containing the following elements:

1. Description of Health Information. The Authorization must contain a description of the information to be used or disclosed that identifies the information in a specific and meaningful fashion. If MEEI intends to use or disclose highly confidential or sensitive information, then the patient must specifically authorize each type of highly confidential information by signing the appropriate lines on the Authorization Form.
2. Identification of Authorized Person. The Authorization must contain the name or other specific identification of the person(s), or class of persons, authorized to make the requested use or disclosure.
3. Identification of Recipient. The Authorization must contain the name or other specific identification of the person(s), or class of persons, to whom MEEI may make the requested use or disclosure.
4. Description of Purpose(s). The Authorization must contain a description of each purpose for which Protected Health Information is to be used or disclosed.
 - a. This description must be specific enough to provide a patient with the facts that he/she needs to make an informed decision whether to allow release of the Protected Health Information.
 - b. The statement "at the request of the individual" is a sufficient description of the purpose only when an individual initiates the authorization and does not (or elects not to) provide a statement of the purpose.

5. Expiration. The Authorization must contain an expiration date or an expiration event that relates to the patient or the purpose of the use or disclosure. The statement “end of research study,” “none,” or similar language is sufficient if the authorization is for a use or disclosure of Protected Health Information for research, including for the creation and maintenance of a research database or research repository.
 6. Statement of Right to Revoke. The Authorization must contain a statement of the patient’s right to revoke the authorization in writing and either:
 - a. a statement of the exceptions to the patient’s right to revoke an authorization and a description of how the patient may revoke the authorization; or
 - b. a reference to the MEEI’s Notice of Privacy Practices, if the Notice of Privacy Practices describes the exceptions to the patient’s right to revoke an authorization and the authorization revocation process.
 7. (In)Ability to Condition Treatment on the Authorization. The Authorization must contain a statement that the MEEI may *not* condition its provision of health care to the patient on whether the patient’s signs the Authorization, *unless* either:
 - a. the health care to be provided is solely for the purpose of creating Protected Health Information to be disclosed to a third party and the patient’s Authorization permits MEEI to release the patient’s Protected Health Information to such third party; or
 - b. the health care to be provided is research-related treatment and the patient’s Authorization is for the use or disclosure of Protected Health Information for such research.
 8. Statement Regarding Re-disclosure. The Authorization must contain a statement that Protected Health Information used or disclosed pursuant to the Authorization Form may be subject to redisclosure by the recipient and no longer be protected by the Privacy Rule.
 9. Dated Patient Signature. The Authorization must contain a signature of the patient or the patient’s authorized Personal Representative and the date of the signature.
 10. Personal Representative. If the Authorization Form is signed by a Personal Representative of the patient, a description of such Personal Representative's authority to act for the patient must be included.
- D. Verification of Validity. MEEI may not disclose Protected Health Information pursuant to an Authorization Form without verifying the validity of the Authorization Form. MEEI staff shall verify the validity of the Authorization

Form by confirming the following:

11. Completion. An Authorization Form must contain all the elements identified in Section II.B above.
12. Not Expired. An Authorization Form must not be expired.
13. Not Revoked. An Authorization Form must not be revoked.
14. No Material False Information. An Authorization Form must not contain any material information that MEEI knows to be false.
15. No Compound Authorizations. An Authorization Form is not combined with any other document to create a compound authorization, except as set forth in the three exceptions below:
 - a. An Authorization to use or disclose Protected Health Information for a research study may be combined.
 - b. An Authorization to use or disclose psychotherapy notes may be combined.
 - c. An Authorization covered under this Policy, other than an Authorization for a use or disclosure of psychotherapy notes, may be combined with any other Authorization covered under this Policy, except when MEEI has conditioned the provision of health care on the provision of one of the Authorizations.
16. No Conditioning Treatment on the Authorization. The provision of Treatment is not conditioned on whether the patient signs the Authorization except under the two circumstances described in Section II.D. below.
17. Highly Confidential Information. A separate, specific authorization has been obtained with respect to the disclosure of Highly Confidential Information. For the following types of highly confidential information, the hospital must obtain a separate, specific authorization from the patient(using the authorization form) prior to each disclosure:
 - information about HIV/AIDS status (including the results of a test and the identity of the subject of a test);
 - information about substance abuse (alcohol or drug);
 - information related to mental health community program records; and
 - Psychotherapy Notes

E. Acceptability of Authorization Forms that Do Not Originate from the Hospital.

The Hospital may accept an authorization form signed by the patient as long as

the authorization form contains the following elements:

1. A description of the information to be used or disclosed that identifies the information in a specific meaningful fashion. If the Hospital intends to use or disclose highly confidential information, then the patient must separately and specifically authorize the disclosure of the highly confidential information;
2. The name or other specific identification of the person(s), or class of persons, authorized to make the requested use or disclosure;
3. The name or other specific identification of the person(s), or class of person, who will use or disclose the protected health information;
4. A description of each purpose for which protected health information is to be used or disclosed. 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 purpose;
5. An expiration date or an expiration event that relates to the patient 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 protected health information for research, including for the creation and maintenance of a research data base or research repository;
6. A statement of the patient’s right to revoke the authorization in writing and the exceptions to the right to revoke, together with a description of how the patient may revoke the authorization;
7. A statement that information used or disclosed pursuant to the authorization may be subject to the re-disclosure by the recipient an no longer protected by HIPPA;
8. A statement that the Hospital may not condition its provision of health care to the patient on whether the patient signs the authorization form, unless one of the two exceptions in Section H of this policy is applicable.
9. If the authorization is for a marketing activity, a statement that remuneration will be received by the Hospital in connection with such marketing activity;
10. Signature of the patient or the patient’s Personal Representative and the date of the signature; and
11. If the authorization is signed by a Personal Representative of the patient, a description of such Personal Representative’s authority to act for the patient.

- F. Treatment Not Conditioned on Authorization. Except as set forth in this Subsection, MEEI may not condition the provision of Treatment on a patient signing an Authorization.
12. MEEI may condition the provision of research-related Treatment.
 13. MEEI may condition the provision of Treatment if the sole purpose of the patient's Treatment is to provide health information to a third party (e.g., disclosure of the results of an employer-mandated drug test to the employer).
- G. Revocation of Authorization
14. A patient may revoke an authorization at any time. To revoke an authorization the patient must submit the revocation in a writing that specifies the authorization to be revoked. A revocation will be effective immediately.
 2. The revocation will not be valid where MEEI has already acted in reliance upon the authorization.
- H. Documentation Requirements
1. Authorization Stored in Medical Record. MEEI must retain the original Authorization Form and place it in the patient's medical record.
 2. Patient Shall Receive Copy of Authorization. If MEEI seeks an Authorization from a patient for a use or disclosure of Protected Health Information, MEEI must provide a copy of the patient's signed Authorization Form to the patient.