

# **OBTAINING RECORDS FROM MEDICARE**

The Department of Health and Human Services regulation 45 C.F.R. Part 2 states, among other things, that the Department will treat subpoenas duces tecum for records in its possession as requests under the Freedom of Information Act (5 U.S.C. § 552).

Because the records are in a Privacy Act system of records, the Privacy Act (5U.S.C. 552a) precludes release of those records except pursuant to a written authorization to release signed by the subject(s) of the records, or unless the Freedom of Information Act requires release of the records or a court of competent jurisdiction orders release. Regarding the latter condition of disclosure, for purposes of the Privacy Act, a court of competent jurisdiction is a Federal court, only.

Based upon the above excerpt from Centers for Medicare and Medicaid Services, and the following Medicare Carriers Manual (MCM) Part 3 § 10010, to obtain these types of records you will need a HIPAA compliant release.

Please see the [HIPAA Medical Release Authorization](#) located within the Resources page on our site.

## **Medicare Carriers Manual (MCM) Part 3 § 10010**

# Program Memorandum

## Intermediaries/Carriers

Department of Health & Human  
Services (DHHS)

Centers for Medicare &  
Medicaid Services (CMS)

Transmittal AB-03-147

Date: SEPTEMBER 26, 2003

**CHANGE REQUEST 2816**

**SUBJECT: Core Elements and Required Statements for a Valid Privacy Authorization**

This Program Memorandum (PM) provides the core elements and required statements necessary for a valid privacy authorization. The “Standards for Privacy of Individually Identifiable Health Information” (“Privacy Rule”) of the Health Insurance Portability and Accountability Act (HIPAA) of 1996 set forth the provisions for when an individual’s authorization is required for uses and disclosures of protected health information (PHI), and lists the core elements and required statements necessary for a valid authorization. (45 CFR 164.508). An authorization is a document that an individual uses to give a covered entity permission to use or disclose his or her PHI for a particular purpose (e.g., marketing or to a third party specified by the individual). A covered entity is not required to obtain an authorization for the use or disclosure of PHI for treatment, payment, or health care operations, as well as for certain public priority activities under specified conditions (e.g., health care oversight, law enforcement), except as indicated in 45 CFR 164.508(a). The regulatory compliance date of the Privacy Rule was April 14, 2003.

These instructions are compatible with the disclosure of information requirements found in §1106 of the Social Security Act, the DHHS Privacy Act Regulations (45 CFR Part 5b), the Medicare Carriers Manual (MCM) Part 3 §10010 and the Medicare Intermediary Manual (MIM) Part 3 §3763.

The CMS is in the process of clearing a standard authorization through the Paperwork Reduction Act. This process will take several months to complete. This PM outlines the core elements and required statements needed for a valid authorization. If an FI or carrier wants to add more to their authorization, they may do so, as long as the core elements and required statements remain. The FIs and carriers must also accept an authorization from another entity, provided it includes all of the core elements and required statements addressed below, and no provisions are added that conflict with these core elements and statements.

The core elements of a valid authorization must contain at least the following elements:

1. A description of the information to be used or disclosed that identifies the information in a specific and meaningful fashion;
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 persons, to whom the covered entity may make the requested use or disclosure;
4. A description of each purpose of the requested use or disclosure. The statement, “at the request of the individual” is a sufficient description of the purpose when the beneficiary initiates the authorization and does not, or elects not to, provide a statement of the purpose;
5. An expiration date or an expiration event that relates to the individual or the purpose of the use or disclosure; and
6. The signature of the individual and date. If a personal representative of the individual signs the authorization, a description of such representative’s authority to act for the individual must also be provided. Although the HIPAA Privacy Rule only requires a description of the representative’s authority to act for the individual, the CMS is requiring that documentation showing their authority be attached to the authorization (e.g., Power of Attorney).

**CMS-Pub. 60AB**

In addition to the core elements, the authorization must contain statements adequate to place the individual on notice of all of the following:

1. The individual's right to revoke the authorization in writing, how the individual may revoke the authorization, and the exceptions to the right to revoke. To assist you in this, you may choose to use the following:

“You have the right to take back (“revoke”) your authorization at any time, in writing, except to the extent that Medicare has already acted based on your permission. To revoke your authorization, send a written request to:

*[Each Medicare contractor or CMS: Please insert Name, Address, and Telephone number of your organization here]”;*

2. The inability to condition treatment, payment, enrollment or eligibility for benefits on the authorization. You may choose to use the following:

“I understand refusal to authorize disclosure of my personal medical information will have no effect on my enrollment, eligibility for benefits, or the amount Medicare pays for the health services I receive.”;

3. The potential for information disclosed pursuant to the authorization to be subject to redisclosure by the recipient and no longer protected. You may choose to use the following:

“Your personal medical information that you authorize Medicare to disclose may be subject to redisclosure and no longer protected by law.”; and

4. The authorization must be written in plain language.
5. A signed copy of the authorization must be provided to the individual.

**The effective date for this PM is October 10, 2003.**

**The implementation date for this PM is October 10, 2003.**

**These instructions should be implemented within your current operating budget.**

**This PM may be discarded after September 2004.**

**If you have any questions, contact Jennifer Kordonski at [jkordonski@cms.hhs.gov](mailto:jkordonski@cms.hhs.gov) or call 410-786-1840.**