

# Sample Consent Policy:

## DRAFT

### Consent for Use or Disclosure of Protected Health Information

#### Purpose:

To issue instructions to \_\_\_\_\_ regarding the use and disclosure of protected health information (PHI) and necessary documentation of authority for such use or disclosure, for purposes of treatment, payment and health care operations (TPO).

#### Applicability:

This policy applies to

#### Definitions:

[define PHI; TPO; covered entity]

#### Policy:

- A. Generally: In compliance with 45 CFR Part 164 and Ohio law, an individual's consent must be obtained prior to using or disclosing protected health information to carry out treatment, payment or health care operations.

PHI may be used or disclosed for TPO without consent if:

- There is an indirect treatment relationship with the individual; or
- The PHI was created or received in the course of providing health care to an individual who is an inmate

PHI may be used or disclosed for TPO without **prior** consent:

In emergency treatment situations if consent is attempted to be obtained as soon as reasonably practicable after the delivery of treatment;

If, by law, the individual is required to be treated and consent was attempted but not able to be obtained;

If consent was attempted but unable to be obtained due to substantial barriers to communicating with the individual and a determination is made, in the exercise of professional judgment, that the individual's consent to receive treatment is clearly inferred from the circumstances.

Attempts to obtain consent and the reason why consent was not obtained must be documented.

Treatment and enrollment in a health plan may be conditioned on an individual's provision of consent.

Consent may not be combined in a single document with the notice required by 45 CFR Part 164 but may be combined with other types of written legal permission from the individual if the consent is:

- Visually and organizationally separate from such other written legal permission; and
- Separately signed by the individual and dated.
- Consent may be combined with a research authorization.
- Consent may be revoked by an individual at any time in writing except to the extent that action has been taken in reliance on it.
- A signed consent must be documented and retained.
- A consent is not effective to permit another covered entity to use or disclose PHI unless the consent is a joint consent.

**B.** Content Requirements: Each consent for the use or disclosure of an individual's PHI must be written in plain language and:

- inform the individual that PHI may be used and disclosed to carry out treatment, payment or health care operations;
- refer the individual to the notice required by 45 CFR Part 164 for a more complete description of uses and disclosures and state that the individual has the right to review the notice prior to signing the contract;
- state that the terms of the notice may change if the right to change privacy practices has been reserved and state how the individual may obtain a revised notice;

State that:

- an individual has the right to request restrictions on how PHI is used or disclosed;
- the requested restricted do not have to be agreed to;
- if the requested restriction is agreed to, the restriction is binding.
- state that the individual has the right to revoke the consent in writing except to the extent that action has been taken in reliance on it;

➤ be signed and dated by the individual.

- C.** Conflicting Consents and Authorizations: If consent has been obtained from an individual and another authorization or written legal permission is received for a disclosure of the individual's protected health information to carry out TPO, PHI may be disclosed only in accordance with the more restrictive consent, authorization or other written legal permission from the individual.

The conflict between the consent and authorization or other written legal permission from the individual may be resolved by:

- obtaining a new consent for TPO from the individual; or
- communicating orally or in writing with the individual in order to determine the individual's preference in resolving the conflict. The preference must be documented and PHI may only be disclosed in accordance with that preference.

- D.** Joint Consents: Covered entities that participate in an organized health care arrangement and that have a joint notice under 45 CFR Part 164, may have a joint consent.

A joint consent must:

- include the name or other specific identification of the covered entities, or classes of covered entities, to which the joint consent applies; and
- meet the requirements of this policy, except that the statements required by this policy may be altered to reflect the fact that the consent covers more than one covered entity.

If an individual revokes a joint consent, the covered entity that receives the revocation must inform the other entities covered by the joint consent of the revocation as soon as practicable.