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DEPARTMENT OF HEALTH & HUMAN SERVICES

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OFFICE OF THE SECRETARY

Director

Office for Civil Rights

200 Independence Ave., SW Rm 506F

Washington, DC 2020

April 25, 2003

Jo Anne B. Barnhart, Commissioner
Social Security Administration
Baltimore, MD 21235-0001

Dear Commissioner Barnhart:

Secretary Thompson has asked me to respond to you on some matters relating to this Department's Standards for Privacy of Individually Identifiable Health Information (the Privacy Rule), and the content and use of forms to authorize disclosures, as permitted or required by the Privacy Rule. The Office for Civil Rights (OCR) is charged with responsibility for compliance and implementation of the Privacy Rule. At the outset, the Secretary wanted me to thank you for your support of the Rule and your commitment to its underlying principles and efficient administration.

I am aware that the Office of Management and Budget (OMB) has approved form SSA-827, and that the Social Security Administration (SSA) is prepared to employ it nationwide as of the April 14, 2003 compliance date for most entities covered by the Rule. We were consulted by OMB as part of that agency's approval process.

In response to your specific inquiries, we confirm that:

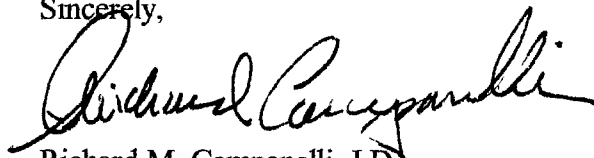
- Disclosures to SSA (or its affiliated State agencies) for purposes of determining eligibility for disability benefits made pursuant to an individual's completed SSA-827 authorization form, or any other valid authorization, are exempt from the minimum necessary requirements of the Privacy Rule. The authorization form itself identifies the scope of the information which the individual is specifically agreeing may be disclosed.
- An authorization is sufficiently "specific and meaningful," as required by the Privacy Rule, if the form states that the individual is authorizing disclosure of "all of my medical records" or "my complete patient file." Where nothing else in the form qualifies the scope of that authorization, individuals who authorize such disclosures may reasonably be expected to understand the common meaning of those terms, and the breadth of the authorization they are providing.

- One authorization form may be used to authorize disclosures by categories of covered entities, without naming particular covered entities. An individual need not execute additional forms for each covered entity or provider, as long as the authorization form adequately identifies the categories of entities to which the authorization is directed. Thus, it is sufficient for a form to authorize disclosures by “all medical sources (hospitals, clinics, labs, physicians, psychologists, etc.)”
- Similarly, one authorization form may be used when disclosure of the same protected health information is being sought for multiple purposes,¹ as long as an authorization for the disclosure of psychotherapy notes is not combined with an authorization for the disclosure of any other protected health information. We note that the SSA-827 specifically excludes psychotherapy notes from the types of information being authorized for disclosure.
- A copy, facsimile, or electronically transmitted version of a signed authorization is also a valid authorization under the Privacy Rule
- An authorization remains valid until its expiration date, unless revoked in writing by the individual before that date. A covered entity may disclose the protected health information specified in the authorization, even if that information was created after the authorization is signed, as long as the authorization has not expired or been revoked in writing.

As these comments demonstrate, the Privacy Rule affords significant flexibility to covered entities and others to develop authorization forms that meet their needs, yet which permit individuals to understand fully the authorizations they are asked to sign. The Rule specifies the elements of a valid authorization, but does not mandate any particular form by which individuals may authorize disclosure of their health information.

I trust that these clarifications are helpful. If you have any further questions, please do not hesitate to contact me.

Sincerely,



Richard M. Campanelli, J.D.
Director
Office for Civil Rights

¹We note that the disclosing covered entity may not condition treatment, payment, enrollment in a health plan, or eligibility for benefits in connection with the individual’s provision of the authorization, for any of the purposes that may be identified in the authorization.