



## Advisory: Sharing Member Information with Healthfirst

Various providers have asked for Healthfirst's justification in requesting member medical records and other clinical information, and for the basis by which a provider could release that information to Healthfirst. In doing so, some providers have asked Healthfirst to provide specific written consent from members prior to releasing this information in the belief that this consent is required under the Health Insurance Portability and Accountability Act ("HIPAA").

As explained in greater detail below, member consent specific to the release of this information is not required. Healthfirst is required under its contracts with the federal Centers for Medicare and Medicaid Services (CMS) and the New York State Department of Health (SDOH) to gather this information for important quality improvement programs that are essential components of Medicare and Medicaid managed care. Given that this information is required by CMS and SDOH as part of the Medicare and Medicaid programs, these activities are included squarely within definition of "health care operations" at *45 CFR 164.501*. Accordingly, individual member consent is not required for these requests just as they are not required for more familiar functions such as claims payment.

### CMS AND SDOH REQUIRE HEALTH QUALITY IMPROVEMENT (QI) ACTIVITIES FOR MEDICARE AND MEDICAID MANAGED CARE

Both CMS and SDOH have implemented extensive quality improvement programs for Medicare and Medicaid managed care plans that require all plans, including Healthfirst, to collect not only data commonly included with claims submitted by providers for payment, but other information and documents such as medical records and other clinical information. Healthfirst uses this information to measure the quality of care and health status of its members, reports these results in the aggregate to CMS and SDOH, and is partly evaluated by each agency on our member's ability to receive services and reach certain health outcomes.

### RELEASE OF CLINICAL INFORMATION FOR QI ACTIVITIES IS PART OF HIPAA'S "HEALTH CARE OPERATIONS." NO SEPARATE MEMBER CONSENT IS REQUIRED

The release of clinical information to Healthfirst as part of government mandated quality improvement programs falls squarely within the scope of health care operations as defined under the HIPAA regulations for which member consent is not required. The relevant HIPAA regulations (*45 CFR 164.501*) define health care operations in part as *"any of the following activities of the covered entity to the extent that the activities are related to covered functions: (1) Conducting quality assessment and improvement activities, including outcomes evaluation and development of clinical guidelines...population-based activities relating to improving health or reducing health care costs, protocol development, case management and care coordination, contacting of health care providers and patients with information about treatment alternatives; and related functions that do not include treatment;..."*. Since Healthfirst requires these results as part of its quality improvement activities under the Medicare and Medicaid managed care programs, the release of clinical information is exempt from the requirement of member consent just as the activities for claims adjudication and payment are. To the extent that a provider believes consent is required, the authorization on file with the provider which permits the release of information for health care operations such as claims payment equally applies to Healthfirst's CMS and SDOH required quality improvement programs.

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SDOH'S PROVIDER CONTRACT STANDARD CLAUSES REQUIRE REPORTING  
OF CLINICAL INFORMATION REGARDING QI ACTIVITIES TO HEALTHFIRST

In March 2007, SDOH reinforced that clinical information must be provided to Healthfirst for QARR and Medicaid managed quality programs in its revised Standard Clauses which must be included in all provider agreements. Section D of the Standard Clauses states that “[p]ursuant to appropriate consent/authorization by the enrollee, the Provider will make the enrollee's medical records and other personally identifiable information (including encounter data for government-sponsored programs) available to the MCO (and IPA if applicable), for purposes including preauthorization, concurrent review, quality assurance, (including Quality Assurance Reporting Requirements (“QARR”)), payment processing, and qualification for government programs, including but not limited to newborn eligibility for Supplemental Security Income (SSI) and for MCO/Manager analysis and recovery of overpayments due to fraud and abuse.”

It is important to note that SDOH, like HIPAA, includes quality assurance and QARR in the same list of activities as payment processing, for which no discrete or additional member authorization is required. To the extent that a provider believes that an “appropriate consent/authorization” as reference in the Standard Clauses above is required, the consent or authorization the provider maintains on file for the submission of claims is also sufficient for the release of clinical information.

HEALTHFIRST'S PROVIDER AGREEMENTS ALSO REQUIRE REPORTING  
OF CLINICAL INFORMATION REGARDING QI ACTIVITIES TO HEALTHFIRST

In addition to the HIPAA regulatory framework and SDOH's Standard Clauses, in order to meet perform the required quality improvement programs and reporting requirements to CMS and SDOH, we in turn require participating providers to supply this information. Our provider agreements require participating providers to provide both medical records and clinical information. In addition, our provider agreements require all providers and Healthfirst to comply with the applicable portions of our contracts with CMS and SDOH for our Medicare and Medicaid managed care plans. As a result both Healthfirst and providers are required to exchange information as part of the CMS and SDOH mandated quality improvement programs.

We believe this additional information provides sufficient background to resolve any concerns a provider may have regarding the release of an individual member's result to Healthfirst. If you still have unresolved questions, you may contact either of the following two individuals to discuss the matter further:

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