

HIPAA PRIVACY RULE DEFECTIVE AUTHORIZATION GUIDANCE

The Health Insurance Portability and Accountability Act (HIPAA) Privacy Rule contains a provision specifying what constitutes a “defective authorization.” The implementing regulations for 38 U.S.C. § 7332 contain a similar provision specifying what constitutes an “expired, deficient or false consent.” The combined list is as follows:

- The expiration date has passed or the expiration event is known by the covered entity to have occurred;
- The authorization has not been filled out completely, with respect to the content requirements and required statements, if applicable;
- The authorization is known to have been revoked;
- The authorization violates provisions relating to compound or conditional authorizations, if applicable; and
- Any material information in the authorization is known, or through reasonable effort could be known, to be false.

Please note the importance of the second bullet in the above list. VHA facility Privacy Officers (or designees and staff) are responsible for ensuring that authorizations are complete. If the content requirements in Appendix A are incomplete, the authorization is invalid and the facility’s release of information based on that authorization is a privacy violation.