



CONSORTIUM FOR CITIZENS
WITH DISABILITIES

TALKING POINTS

OBTAINING A CLAIMANT'S ELECTRONIC SIGNATURE ON THE AUTHORIZATION FOR DISCLOSURE OF INFORMATION

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The timely and accurate processing of disability claims depends on the ability of SSA and claimants to obtain the required information and medical evidence. The current process is cumbersome for all parties – claimants, providers, and SSA. The Consortium for Citizens with Disabilities (CCD) supports efforts to make this process more efficient, including the use of electronic signatures for applications and authorizations to disclose medical information. However, claimants' privacy rights must be protected. We believe it is important to note that the most significant barrier to SSA's prompt and efficient receipt of medical evidence is not the process that protects the rights of claimants, but rather, the failure of providers, for a host of reasons discussed below, to deliver information to SSA. We will work with SSA and Congress to find a way to obtain, as efficiently as possible, a claimant's authorization for release of medical records to SSA, while protecting the individual's privacy rights.

We believe that any new process to obtain a claimant's electronic signature should be measured against the following criteria:

- The current system requires explicit consent from the claimant for the release of medical records. Obtaining the claimant's explicit consent must be preserved.
- The explicit consent obtained from the claimant must be sent to providers.
- The authorization to disclose information (the SSA-827) should be a separate document from the disability application.
- SSA must have the ability to authenticate the signer's identity.
- SSA must require some evidence that the claimant agrees to execute the SSA-827 in electronic form. This agreement provides evidence that the claimant is "opting in" to the process.

- The complete electronic SSA-827 must be clearly displayed on the computer screen so that, before signing the form, the claimant can review the document, print the form, and download a copy of the form.
- SSA must design a signing process that appropriately conveys to the claimant the significance of his/her actions. In particular, the process must:
 - (a) make clear to the claimant that he or she will be doing something with legal significance (i.e., affixing a legally binding signature);
 - (b) clearly specify what it is that the claimant is signing/agreeing to;
 - (c) clearly specify what action or conduct constitutes the act of “signing”;
 - (d) be sufficiently easy for the claimant to use and create;
 - (e) clearly specify what the signature means, e.g., “I authorize disclosure”;
 - (f) be readily understood by the claimant; and
 - (g) clearly give the claimant a choice of proceeding or not proceeding.
- The electronic signature used to sign the SSA-827 must include the following elements:
 - (1) A symbol or process that is easy to execute but reasonably recognizable by the claimant as a signature, e.g., an “I agree . . .” button, typing one’s name, following certain instructions, etc.
 - (2) Ensure that the claimant’s electronic signature, once executed, is attached to or logically associated with the SSA-827 being signed, is date and time-stamped, and is saved/recorded in a tamper-evidence format.
 - (3) Ensure that the signing process clearly sets forth the intent with which the signature is made, e.g., “I authorize disclosure . . .,” etc. This provides clear evidence of the claimant’s intent when signing the SSA-827 and that the claimant clearly understands the legal significance of the signing act.
- After signing the SSA-827, the signed copy should be available for downloading and/or printing by the claimant.
- The authorization to disclose information that is signed at the time the application is filed provides consent to obtain information only from those providers listed in the application.
- Unless otherwise authorized by the claimant, SSA must obtain the claimant’s authorization for newly discovered medical sources that were not identified on the application. Our understanding is that the DDSs currently follow this procedure. However, a claimant should be able, if he or she affirmatively chooses, to authorize SSA to contact sources not identified in the application.
- SSA must allow claimants to limit the release of certain segments of their medical records. This is consistent with a consumer driven release that allows the consumer/claimant to control release of his/her records.

Improving the response rate of providers. We support efforts to compel providers to respond to SSA requests for information. However, the issue of creating a process to obtain the claimant's electronic signature needs to be kept separate from the issue of improving the response rate of providers.

We recognize that a critical consideration for SSA, which is outside the control of claimants, is improving the response rate of medical providers to requests for information. CCD has repeatedly raised this issue in congressional testimony and comments to proposed rules. In addition, a recent report by the GAO found that the non-responsiveness of providers was a barrier to collection of medical evidence. The privacy rights of claimants should not be compromised due to the failure of providers to respond to SSA requests for information.

There are many reasons why providers delay or refuse to respond including: offices and hospitals are understaffed; offices and hospitals do not see fulfilling record requests as a high priority; reimbursement rates are inadequate; hospitals and offices insist on receiving their own form releases, even when a general HIPAA-compliant form has already been executed by the claimant; mental health outpatient treatment centers erroneously claim that HIPAA prohibits them from releasing psychotherapy notes; and claimants who, because of mental impairments, are unable to recall all of their treatment sources. In addition, SSA and DDSs fail to explain to providers what evidence is important, necessary, and relevant for adjudication of the claim. Better explanations should be provided to treating sources about the disability standard and questions should be tailored so that evidence received is relevant to the standard.

One recommendation that might help to improve the response rate is to include a statement on the new Form SSA-827 that states: "For purposes of the SSA authorization to disclose information, the claimant's electronic signature is compliant with HIPAA." We understand that there may be an issue whether HIPAA regulations allow an authorization with an electronic signature to be valid. If not already allowed, this issue needs to be addressed.