

PRIVACY 28.0

PERSONAL REPRESENTATIVES

Scope: All **workforce** members (employees and non-employees), including employed medical staff, management, and others who have direct or indirect **access** to patient **protected health information (PHI)** created, held or maintained by any subsidiaries of Universal Health Services, Inc., including facilities and UHS of Delaware Inc. (collectively, “UHS”), including UHS **covered entities** (“Facilities”).

Purpose: To provide information to Facilities on requirements relating to **personal representatives**, who must be treated as the patient for the purposes of **using** or **disclosing PHI** under **HIPAA**.

Definitions:

Terms not defined in this Policy or the *HIPAA Terms and Definitions* maintained by the UHS Compliance Office will have the meaning as defined in any related State or Federal privacy law including the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191 (“HIPAA”) and regulations promulgated thereunder by the U.S. Department of Health and Human Services (“HHS”) at 45 CFR Part 160 and 164, Subparts A and E (“Privacy Regulations” or “Privacy Rule”) and Subparts A and C (“Security Regulations” or “Security Rule”), the Health Information Technology for Economic and Clinical Health Act (“HITECH”) privacy and security provisions of the American Recovery and Reinvestment Act (Stimulus Act) for Long Term Care, Public Law 111-5, the American Recovery and Reinvestment Act of 2009 (“ARRA”), Title XIII and related regulations.

Policy:

Facilities will recognize authorized **personal representatives** and treat them as the patient for the purposes of **PHI** under **HIPAA**.

Procedure:

Facilities must treat a patient’s authorized **personal representative** as the patient with respect to **PHI**, except for unemancipated minors and/or abuse, neglect, and endangerment situations. An authorized **personal representative** is a person with authority under applicable law to act on behalf of a patient in making decisions related to health care. With respect to deceased individuals, an authorized **personal representative** is an executor, administrator, or other person who has authority to act on behalf of the deceased individual or of the individual’s estate. States may impose additional restrictions, and the Facility will contact the UHS Legal department with any questions related to the applicability of state laws to the Facility.

General Rule: Control by Parent or Guardian of Unemancipated Minors

If under applicable law a parent, guardian, or other person acting *in loco parentis* has authority to act on behalf of an individual who is an unemancipated minor in making decisions related to health care, a Facility must treat such person as an authorized **personal representative**, with respect to **PHI** relevant to such personal representation.

Exception to the General Rule: Unemancipated Minor's Authority to Exercise Privacy Rights

In limited circumstances, an unemancipated minor will have the authority to act as an individual, with respect to **PHI** pertaining to a health care service. There are three exceptions to the general rule, under which the minor is permitted to exercise his or her **privacy** rights:

1. When applicable law requires only the minor's consent for the provision of a particular health care service and the minor consents and has not requested that **another person be treated as his or her personal representative (even if that person's consent has also been obtained)**.

For example: A state law provides an adolescent the right to obtain mental health treatment without the consent of his or her parent, and the adolescent consents to such treatment without the parent's consent.

2. When a minor may lawfully obtain a health care service without the consent of a parent, guardian or other person acting *in loco parentis*, and the minor, a court, or another person authorized by law consents to such health care service even if a parent or guardian has also consented to the health care service or the minor has voluntarily chosen to involve the parent or guardian in his or her health care.

For example: A court may grant authority to make a healthcare decision for the minor to an adult other than the parent, to the minor, or the court may make the decision itself.

3. When a parent, guardian, or other person acting *in loco parentis* agrees to confidentiality between the Facility and the minor with respect to a particular health care treatment or service.

For example: A physician asks the parent or **personal representative** if he or she can speak with a 16 year old patient confidentially about a medical condition and the parent or **personal representative** agrees.

Additional Rules Regarding Personal Representatives and Unemancipated Minors

Notwithstanding any of the provisions above, if:

- There is a state or other applicable law that permits or requires the Facility to disclose or provide access to PHI about an unemancipated minor to a parent, guardian or *in loco parentis*, the Facility **may** disclose or provide access to PHI;
- There is a state law or other law prohibiting the Facility from disclosing or providing access to PHI about an unemancipated minor to a parent, guardian or *in loco parentis*, the Facility **may not** disclose or provide access to PHI; or
- If a parent, guardian or person acting in the place of the parent is not considered to be a personal representative for HIPAA purposes, and there is no state law that grants or denies access to PHI about an unemancipated minor to the parent, guardian, or person acting in *in loco parentis*, then the Facility **may grant or deny** access to the PHI based on a decision made by a licensed health care professional in the exercise of his/her professional judgment.

Abuse, Neglect, or Endangerment

Notwithstanding a State law or any requirement of this policy, a Facility may elect not to treat a person as the **personal representative** of an individual if the Facility has reason to believe that:

- The patient has been or may be subjected to violence, abuse or neglect by the person, or could be endangered if the person is treated as a **personal representative**; and
- Decides in exercising its professional judgment that it is not in the best interest of the patient to treat the person as a **personal representative**.

State Law

State law may provide for other types of personal representatives or impose additional requirements. For example, personal representatives may also be a person ordered by a state court (Court-appointed) or those with Health Care Power of Attorney. The health care power of attorney document should define the scope of the personal representation with respect to access to individually identifying health information.

Facilities will contact the UHS Compliance Office or the UHS Legal Department if they have any questions regarding the state laws applicable to them.

References:

45 C.F.R. § 160.316

45 C.F.R. § 164.306

45 C.F.R. § 164.310

45 C.F.R. § 164.520

45 C.F.R. § 164.530

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Reviewed and Approved by:

UHS Compliance Committee