

Emma Eccles Jones College of Education & Human Services

POLICY INFORMATION

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Safeguard: HIPAA	Approved by: Beth E. Foley 	Date Approved: 11/8/2016

I. POLICY STATEMENT

In accordance with 45 CFR § 164.502(g) covered entities are required to treat a patient's Personal Representative as if they were the patient.

II. DEFINITIONS

See HIPAA Privacy Policy 100

III. AUTHORITY AND RESPONSIBILITIES

CEHS has component units that are listed as a hybrid entity in accordance with USU's HIPAA Hybrid Covered Entity Declaration. Only the health care component/HCC (i.e., covered functions) of CEHS must comply with this policy. All references in this policy to "CEHS" shall be construed to refer only to the health care component of CEHS.

IV. PROCEDURES TO IMPLEMENT

A Personal Representative is an adult who is authorized by law and/or by the individual to make decisions for a patient.

Examples of Personal Representatives include:

- a. Parents of minors (unless parental rights have been restricted or terminated); or
 - b. A person who has been authorized by law to act on behalf of a patient, has been given Power of Attorney or is a court appointed legal guardian.
1. **Personal Representatives for Adult Patients** - If the patient is unable to communicate and represent him or herself, HCC staff must recognize the appointed person as the patient's Personal Representative for purposes of exercising the patient's rights relating to PHI. When relying on a person's appointment by a court or a legal document signed by the patient as the authority for such person to serve as a patient's representative, a copy of the certificate or documentation of the court appointment should be placed in the patient's medical record. Every attempt to positively identify the Personal Representative should be taken before sharing PHI. Government issued photo identification is sufficient to verify the identity.

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2. **Personal Representatives for Emancipated and Unemancipated Minors** - In all situations, an emancipated minor is considered an adult for purposes of determining who should be given access to the patient's PHI.
If the minor patient is not emancipated, a parent or guardian must be treated as the Personal Representative. There is an exception if the unemancipated minor consents to health care services that, by law, requires no other consents and the minor has not specified that the parent or guardian should be treated as their Personal Representative for that service. In those cases where the minor provides his or her own consent, parents and others will not be recognized as Personal Representatives with respect to PHI pertaining to such treatment.
3. **Personal Representatives in Abuse, Neglect and Endangerment Situations** - The HCC may choose not to treat an individual as the patient's Personal Representative when they reasonably believe that:
 - a. The patient has been or may be subjected to domestic violence, abuse or neglect by such person; or
 - b. Treating such person as the Personal Representative could endanger the patient; and;
 - c. One or more licensed professionals within the HCC, in the exercise of professional judgement, decide that it is not in the best interest of the patient to treat the person as the patient's Personal Representative.
4. **Personal Representatives for Deceased Patients** - The HCC will allow access to any person with legal authority to act on behalf of the decedent or the estate (not restricted to persons with authority to make health care decisions).
5. **Verification** - The HCC Privacy Officer will confirm the identity and authority of personal representatives.
6. **Documentation** - The HCC Privacy Officer will document a personal representative's identity and status as an authorized representative. Documentation must be retained for six years from the date that the representative authority and identity were verified.
7. **State Law** - If the State law regarding access of records by Personal Representatives is more stringent than HIPAA, State law shall govern.

V. ATTACHMENTS

N/A

VI. REFERENCES

45 CFR § 164.502(g)