

HEALTH SCIENCE CENTER HANDBOOK OF OPERATING PROCEDURES

Chapter 11	Patient Privacy Policies	Effective:	April 2003
Section 11.2	Uses and Disclosures of Protected Health Information	Revised:	February 2006
Policy 11.2.6	Uses and Disclosures of Protected Health Information For/From Personal Representatives	Responsibility:	Assistant Vice President for Regulatory Affairs & Compliance

USES AND DISCLOSURES OF PROTECTED HEALTH INFORMATION FOR/FROM PERSONAL REPRESENTATIVES

Policy

As a general rule, minors, incapacitated and deceased individuals must have a personal representative identified in order to provide authorization for use and disclosure of protected health information. For the purposes of this policy, the Health Science Center must recognize a personal representative as the individual with respect to protected health information.

Definitions

PERSONAL REPRESENTATIVE: An individual with decision-making capacity, identified as the person who has authority to consent to medical treatment on behalf of a patient in need of medical treatment. This includes an individual who has authority by law or by agreement from the individual receiving treatment, to act in the place of the individual. This includes parents, legal guardians or properly appointed agents, such as identified in a “Durable Power of Attorney”.

EMANCIPATED MINORS: Persons under the age of 18 who are legally emancipated by the court and are able to provide their own consent for treatment.

Minors

If a parent, guardian, or other person has authority by law to act on behalf of an individual who is an unemancipated minor in making decisions related to use and disclosure of protected health information, the Health Science Center must recognize such person as a personal representative. If the minor does not require the consent of an adult and may consent to treatment, the minor will be treated as an individual and may provide authorization for release of protected health information, if:

1. The minor consents to such health care service; no other consent to such health care service is required by law, regardless of whether the consent of another person has also been obtained; and the minor has not requested that such person be treated as the personal representative;
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2. The minor may lawfully obtain such health care service without the consent of a parent, guardian, or other person who has the authority by law to act on the behalf of the individual, and the minor, a court, or another person authorized by law consents to such health care service; or,
 3. A parent, guardian, or other person who has authority by law to act on behalf of the individual, assents to an agreement of confidentiality between the Health Science Center and the minor with respect to such health care service.

See [Section 11.1.9](#) of the *Handbook of Operating Procedures* (HOP), "Consent for Treatment of a Minor".

Disclosure to Parent

To the extent permitted by state or other law, the Health Science Center may disclose or provide access to protected health information about an unemancipated minor to a parent, guardian, or other person who has the authority to act on behalf of the individual.

To the extent prohibited by state or other law, the Health Science Center may not disclose or provide access to protected health information about an unemancipated minor to a parent, guardian, or other person who has the authority to act on behalf of the individual.

If the parent, guardian, or other person who has authority to act on behalf of the individual is not the individual's personal representative as described in the "Definitions" section above, and if state or other law does not permit access, the Health Science Center may provide or deny access to such person, provided that such decision is made by a licensed health professional in the exercise of professional judgment.

See [Section 11.3.6](#) of the HOP, "Access of Individual to Protected Health Information".

Deceased Individuals

Protected health information generated during the life of an individual is protected from disclosure after death unless disclosure is for treatment,

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payment, and health care operations. The Health Science Center may disclose protected health information regarding a deceased individual only if a valid patient representative has been established and the individual or entity has requested protected health information through the proper authorization process.

If under applicable law, an executor, administrator, or other person has the authority to act on behalf of a deceased individual or of the individual's estate, the Health Science Center must recognize such person as a patient representative under this policy.

If there is no executor, administrator, or other court-appointed representative for the deceased individual's estate, the following individuals listed below may authorize the release of protected health information in order of priority. An entire category must be exhausted (no people in the category exist or none living) before moving to the next category. If there are questions, contact the Office of Legal Affairs.

In the case of a deceased, married individual, survived by a spouse with or without descendants:

1. Spouse
2. Adult children
3. Adult grandchildren
4. Parents
5. Adult descendants of parents (brothers and sisters)
6. Brothers' and sisters' adult children
7. Brothers' and sisters' adult grandchildren
8. Grandparents
9. Adult descendants of grandparents (uncles and aunts)

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In the case of a deceased individual with no spouse, i.e., never married, widowed, or divorced and not remarried, with or without descendants: start with number 2 above.

**Abuse, Neglect,
Endangerment
Situations**

The Health Science Center is not obligated to recognize an individual as the patient's representative if it believes that it is not in the best interest of the patient, and one of the following conditions exist:

1. The patient has been or may be subjected to domestic violence, abuse, or neglect by a parent, guardian, or patient representative; or,
 2. Treating such a person as the patient's representative could endanger the patient.
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