

**DISCLOSURE OF PROTECTED HEALTH  
INFORMATION TO PERSONAL  
REPRESENTATIVES POLICY**

**RESPONSIBILITY:** Privacy Official or Designee(s)

**BACKGROUND:**

It is recognized that there are many circumstances in which one person is legally authorized to act on behalf of another in making decisions related to health care. This includes parents and guardians of minor children, as well as other circumstances in which an adult client has a legal representative (guardian, power of attorney/attorney-in-fact, health care surrogate decision-maker, guardian-ad-litem, or other Court-appointed representative). HIPAA provisions consider these to be personal representatives, and extends to them the right to examine and receive a copy of the individual's protected health information (PHI), to request an amendment of that PHI, to request an accounting for disclosure of PHI, and to authorize its disclosure to another. HIPAA provisions also provide for nondisclosure of PHI under certain circumstances

**POLICY:**

In applying Behavioral Health and Health Facilities (BHFF) policies and procedures relating to the use or disclosure of protected health information, a personal representative (See DEFINITIONS) will be treated the same as the individual to whom the PHI pertains. This includes the right to examine and receive a copy of the individual's protected health information (PHI), to request an amendment of that PHI, to request an accounting for disclosures of PHI, and to authorize its disclosure to another.

**Exceptions:**

**Emancipated Minors**

PHI of an emancipated minor shall be treated the same as the PHI of an adult.

**Unemancipated Minors**

1. When a request for PHI is from a parent, guardian, other person acting in loco parentis of an unemancipated minor, the following exceptions apply. For convenience, parents, guardians, other persons acting in loco parentis are referred to collectively as "parent."
  - 1.1. If the minor may lawfully receive a given health care service without the consent of a parent, (regardless of whether someone else has given consent or not) a parent of that minor will not be treated as a personal representative for purposes of PHI related to that health care service, unless the minor has requested that the parent be treated as a personal representative. This applies to the following situations:

- 1.1.1. State law allows a minor to consent to receive the service;
  - 1.1.2. A minor consents to the service and state law does not require other consent; or
  - 1.1.3. A court or other person authorized by law (other than a parent) consents to the service on the minor's behalf.
- 1.2. If the parent has agreed that PHI related to a given health care service will be kept confidential between the health care provider and the minor, that parent will not be treated as a personal representative for purposes of PHI related to that health care service.
- 1.3. The following apply to situations in which state law requires, permits, or prohibits disclosure of PHI to a parent:
  - 1.3.1. If state law requires the disclosure of PHI to a parent, then PHI will be disclosed in accordance with such law even if the parent is not otherwise being treated as a personal representative under this policy.
  - 1.3.2. If state law permits disclosure of PHI to a parent in situations in which the parent would not be treated as a personal representative under this policy, PHI will be disclosed when the health care professional who is responsible for the minor's care determines that the disclosure will not be detrimental to the minor.
  - 1.3.3. If state law prohibits disclosure of PHI to a parent, even if the parent would be treated as a personal representative of a minor under this policy, no disclosure of PHI may be made if the disclosure would violate such state law.
- 1.4. If, in a given situation, state law does not specifically require, permit, or prohibit disclosure of PHI to a parent, the following apply:
  - 1.4.1. If the parent would be treated as a personal representative of a minor under this policy, then exceptions of this policy do not apply;
  - 1.4.2. If the parent would not be treated as a personal representative of a minor under this policy, then a licensed health care professional may provide a parent with access to certain PHI, or may deny such access. This decision is to be made in the exercise of professional judgment, consistent with state and other applicable law. This applies only to providing the parent with access to the information, and does not imply that the parent may receive a copy of the information, or otherwise exercise the rights of a personal representative.
- 1.5. Even when state law permits or requires disclosure of PHI to a personal representative, including the parent of a minor, BHHF will exercise professional judgment in the patient's best interests, and refuse to treat a

person as the personal representative of a patient, if either of the following applies:

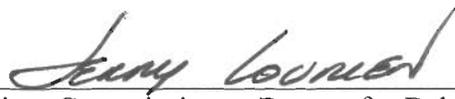
- 1.5.1 There is a reasonable belief that the patient has been or may be subjected to domestic violence, abuse, or neglect by such person; or
- 1.5.2 There is a reasonable belief that treating the person as a personal representative (for instance, providing access to medical records) could endanger the patient.

### **Deceased Individuals**

When a request for PHI is from the executor, administrator, or other person who has authority to act on behalf of a deceased individual or of the individual's estate, only PHI that is necessary to allow the requestor to fulfill the responsibilities of such personal representation (such as administration of the estate or the affairs of the decedent) may be disclosed.

Effective Date: 4/14/03

Revised Dates:



---

Jerome E. Lovrien, Commissioner, Bureau for Behavioral Health and Health Facilities