

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

1. Designated, trained members of the workforce (i.e., paid employees of WV DHHR BHHF) will use the following criteria to identify a personal representative. Please note that WV Code at §49-7-27, allows a child (a person under the age of 18 years) over the age of 16 to petition a court to be declared emancipated, thereby gaining full capacity to contract in his/her own right; an emancipated minor would have the same privileges, rights and duties as an adult with regard to protected health information. An unemancipated minor is a child over the age of 16 years who has not been declared emancipated by a court.
  - 1.1. A parent will be treated as the personal representative of an unemancipated minor unless one of the exceptions listed above applies. An adult will be recognized as the parent of an unemancipated minor child if:
    - 1.1.1. He or she identifies himself or herself as the parent, and the adult and child share the same address; or,
    - 1.1.2. If the child is identified on a health insurance identification card or other documentation as a dependent covered by that adult's health insurance; or,
    - 1.1.3. If the adult is known by the workforce member to be the child's parent or guardian; or,
    - 1.1.4. If the adult presents documentation of guardianship.
  - 1.2. All others claiming to act as the personal representative of an individual must present written evidence of authority to act on behalf of the individual in making health care decisions. A copy of the written evidence of authority must be approved by the Privacy Official (or his or her designee) before the personal representative is to be granted access to the individual's PHI, or before a request to amend PHI, a request for an accounting of disclosures of PHI, an authorization to disclose PHI, or other request to act as a personal representative, will be honored. The Privacy Official or Designee(s) will determine which information the personal representative may have access to, in accordance with this and other BHHF policies and applicable federal and state laws.
2. The Privacy Official or Designee(s) will assure that a sufficient number of workforce members have been trained in the provisions of this policy, and have been designated to determine whether persons who represent themselves as personal representatives may be treated as such under this policy.
3. The Designated Attorney or Designee(s) will at least annually review state law to determine:

- 1.1. The circumstances in which a parent is not to be treated as a personal representative of an unemancipated minor in accordance with this policy; and,
  - 1.2. The circumstances in which disclosure of the minor's PHI to a parent is permitted, required, and prohibited under state law.
4. Based on a periodic review of state laws, the Privacy Official or Designee(s) will prepare and maintain written guidelines to assist members of the workforce to determine when a parent is to be treated as a personal representative of an unemancipated minor, and when not, and when the minor's PHI must, may, or may not be disclosed to the parent. The guidelines will be reviewed and approved by the Designated Attorney or Designee(s) before being distributed to members of the workforce. Copies of the guidelines will be attached to this policy, and will be retained on file until superseded by a more recent version, plus six years or longer if required by state law or regulation.
  5. Any member of the BHHF workforce who has a reasonable belief that a person should not be treated as a personal representative due to one of the exceptions above must contact the Privacy Official or Designee(s) before disclosing or providing access to an individual's PHI.

**REFERENCE:** 45 CFR §§ 164.502(g)(1), (2), (3), and (5).

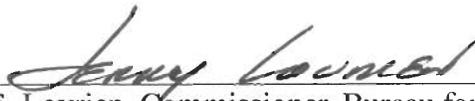
See also: OCR HIPAA Guidance, 7/6/2001, "Parents and Minors."

PROVIDING MEDICAL INFORMATION TO FAMILY, FRIENDS, OR OTHERS  
DIRECTLY INVOLVED IN THE PATIENT'S CARE

WV CODE §49-7-27, AS AMENDED.

Effective Date: 4/14/03

Revised Dates:



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