**Personal Representatives/Deceased Individuals**

**Purpose**:

To provide guidance for interactions with personal representatives who act on behalf of a patient. This includes authorizing uses and disclosures of protected health information (PHI) and exercising personal rights. To provide guidance on the uses and disclosures of a deceased patient’s protected health information.

**Definitions:**

1. Emancipated Minor: A minor who is to be treated as an adult. An emancipation order allows a minor to consent to “medical, dental or psychiatric care, without parental consent, knowledge or liability.” State laws can vary.
2. In loco parentis: A person or institution acting in lieu of a parent.
3. Personal Representative: Someone with the legal authority to act on behalf of an adult patient, a minor patient, or a deceased patient or the patient’s estate in making health care decisions or in exercising the patient’s rights related to the individual’s protected health information.
4. Unemancipated Minor: A person under 18 years of age, not previously emancipated by court proceedings initiated by the parents or the State and is in the care and control of the parents.

**Policy:**

Personal Representatives

[Insert Covered Entity] will treat the personal representative as if he/she were the patient. Personal representatives may authorize the use or disclosure of protected health information, and may exercise personal rights on behalf of the patient.

Adults and Emancipated Minors

When state law permits the personal representative to act on behalf of an adult or emancipated minor in making decisions related to health care (such as a guardian), or if the personal representative is an attorney-in-fact appointed under a durable power of attorney for health care decisions, [Insert Covered Entity] will treat the personal representative as if he/she is the patient for issues related to the privacy of protected health information.

Unemancipated Minors

[Insert Covered Entity] will recognize an unemancipated minor’s parent; guardian; other person acting in loco parentis (for example an agent appointed by a parent, a custodian, foster family, an institutional caretaker); or the court as the unemancipated minor’s personal representative.

[Insert Covered Entity] will evaluate the status of a personal representative of an unemancipated minor when:

* The minor is authorized to consent to treatment under state law, gives consent to such treatment, and has not requested that the person seeking status as the personal representative be treated as such;
* When someone other than the parent is authorized by law to consent to the provision of a particular health service to a minor and provides such consent;
* The parent, guardian, or person acting in loco parentis notifies [Insert Covered Entity] that he/she agrees that the minor is entitled to confidentiality regarding the minor’s protected health information.

In cases when the personal representative of the minor is not recognized by [Insert Covered Entity], the minor will sign necessary authorizations and may exercise his/her individual rights under the Privacy Regulations.

Abuse, Neglect, and Endangerment Situations

[Insert Covered Entity] may choose not to treat a person as the individual’s personal representative if they reasonably believe that:

* An individual, including an unemancipated minor, has been or may be subjected to domestic violence, abuse, or neglect by the personal representative.
* Treating a person as an individual’s personal representative could endanger the individual.

DECEASED PERSONS

[Insert Covered Entity] will use and disclose protected health information about a deceased patient in the same manner as other patients. [Insert Covered Entity] may provide information about and may permit access to a deceased patient’s PHI by a family member or other individual who has been involved in the deceased patient’s care to the extent of the previous involvement. [See Policy: Uses and Disclosures of Protected Health Information.]

[Insert Covered Entity] recognizes that the executor of the estate of the deceased patient is a personal representative and can authorize the disclosure of protected health information.

[Insert Covered Entity] will permit a disclosure of PHI without authorization to:

* Coroners/Medical examiners
* Funeral directors
* Organ procurement organizations for the purposes of donation and transplantation.

After 50 years the Privacy Rule no longer applies to health information of a deceased individual. This means that a personal representative no longer has rights to authorize disclosures.