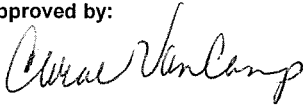


 HAWAII HEALTH SYSTEMS CORPORATION "Quality Healthcare for All" POLICY	Department: Quality Through Compliance	Policy No.: CMP 044A
	Issued by: Audit and Compliance Committee	Revision No.:
Subject: HIPAA Personal Representatives	Approved by:  HHSC Board of Directors By: Carol A. VanCamp Its: Secretary/Treasurer	Effective Date: September 19, 2013
		Supersedes Policy: Page: 1 of 4

Last Reviewed: August xx, 2013. Next Review: August xx, 2016

I. **PURPOSE:** This Policy provides guidelines as to who is able to act as an individual's personal representative in regards to access, use and disclosure of medical records.

II. **DEFINITIONS:**

Consent – Written agreement to the use and/or disclosure of an individual's protected health information (PHI) for the purposes of treatment, payment and health care operations.

Authorization – Written agreement to the use and/or disclosure of an individual's protected health information (PHI) for purposes as defined by the authorization.

Incapacitated – An individual who lacks the ability to understand the significant benefits, risks and alternatives to proposed health care and to make and communicate a health-care decision.

Incompetent – Any individual who has been adjudicated to be incompetent or is, in the opinion of the treating physician, either permanently or temporarily not able to understand the nature and consequences of his/her decisions, is considered incompetent.

Personal Representative – An individual who has authority under applicable law to act on another's behalf in making health care decisions is a personal representative with respect to the use/disclosure of the PHI relevant to such personal representation.

Protected Health Information (PHI) – Health information, including demographic information collected from an individual created or received by HHSC that:

1. Identifies the individual or for which there is reasonable basis to believe the information can be used to identify an individual.
2. Relates to:
 - a. The individual's past, present, or future physical or mental health or condition;
 - b. The provision of health care to the individual, or;
 - c. The past, present, or future payment for the provision of health care to the individual.
3. Is stored or transmitted in any medium.
4. Are not federally funded educational records (FERPA-Family Educational Rights and Privacy Act), or in employment records held by a covered entity in its role as employer, or in records described at 20 U.S.C. 1232g(a)(4)(B)(iv), or regarding a person who has been deceased for more than 50 years.

Surrogate – A person, other than an individual's agent or guardian, authorized, in accordance with HRS 327E-5, to make health care decisions on behalf of an incapacitated individual.

III. POLICY:

- A. Authority of Personal Representatives: If under applicable law, a person has authority to act on behalf of an individual in making decisions related to health care, that person may act as the individual's personal representative in terms of consent to and/or authorization for the use/disclosure of the individual's protected health information (PHI) relevant to that representation.
- B. Exceptions:
 - 1. A minor has the authority to act as an individual with respect to protected health care information relating to a service if:
 - a) Under applicable law, if the minor consents to a health care service, no other consent for such service is required by law (regardless of whether another person's consent has been obtained) and the minor has not requested that the other person be treated as a personal representative;
 - b) Under applicable law, if the minor obtains health services without the consent of a parent, guardian or other person acting in *loco parentis*, and the minor, court or another person authorized by law has consented to such service, or
 - c) A parent, guardian, or other person acting in *loco parentis* assents to an agreement of confidentiality between a health care provider and a minor with respect to particular health care services.
 - 2. Hawaii Health Systems Corporation (HHSC) may elect not to treat a person as the personal representative of an individual being treated if there is reasonable belief that:
 - a) The individual has been or may be subjected to domestic violence, abuse or neglect by such person,
 - b) Treating such a person as the personal representative could endanger the individual, or;
 - c) In the exercise of professional judgment of the provider, a determination is made that it is not in the best interest of the individual.
- C. PHI may be used and/or disclosed with the written consent or authorization of the individual or personal representatives as follows:
 - 1. Adults:
 - a) *Competent Adult*: An adult (age 18 or older) may consent to or authorize the use/disclosure of his/her own PHI and may have access to his/her own records.
 - b) *Incompetent Adult with Guardian*: An adult with a court-appointed guardian may still be competent to sign for the use/disclosure of his/her own PHI. The determination of who will provide consent and/or authorization (adult or guardian) will depend on whether the guardianship documents specify the adult's incompetence to consent to health care.
 - i. When guardianship documents note that the adult is not able to give consent to health care, the guardian must consent to and/or authorize the use/disclosure of PHI.
 - ii. When guardianship documents do not specifically address the issue of consent for health care, the adult may consent to and/or authorize the use/disclosure of protected health if, in the opinion of the attending physician, such use/disclosure is not detrimental to the individual's health.
 - c) *Adult with a Designated Representative*: A designated representative authorized through a power of attorney or any other instrument recognized by law to act on the adult's behalf, may consent to and/or authorize the use/disclosure of the adult's PHI.

- d) *Incapacitated Adult with a Surrogate*: A surrogate authorized through the Uniform Health-Care Decisions Act may consent to and/or authorize the use/disclosure of the adult's PHI as necessary for the health care of the incapacitated adult.
 - e) *Incompetent Adult without Guardian*: If an adult is temporarily or permanently incompetent and there is no guardian, consent and/or authorization should be obtained from the individual if in the opinion of the attending physician such use/disclosure is not detrimental to the individual's health.
 - f) *Deceased Adult*: An executor, administrator or other person with authority to act on behalf of a deceased individual or of the individual's estate may access or authorize disclosure of the deceased individual's PHI.
2. Minors: By statutory definition, a person under the age of 17 years is incompetent to consent to or authorize the use/disclosure of his/her PHI except as otherwise allowed by law (see Minors Between 14 – 17 years). Consent/authorization must be sought from the appropriate party as specified below:
- a) Either parent
 - b) *Legal Guardian*: A copy of the official letter of guardianship shall be attached to the signed consent or authorization form and placed in the minor's medical record.
 - c) *Authorized Third Party*: Under certain circumstances an authorized third party may present a notarized medical power of attorney or other acceptable authorizations. A copy of the document must be attached to the consent or authorization form and retained in the medical record.
3. Minors Ages 14 through 17 Years: In certain circumstances minors do have the legal capacity to provide consent and/or authorization for the use/disclosure of their PHI. These circumstances include:
- a) *Minor on Active Duty with the US Armed Forces*: Any minor with any branch of the US Armed Forces may personally consent to and/or authorize the use/disclosure of his/her own PHI without having to obtain parental or guardian consent (US Codes 10 USC 1074).
 - b) *Emancipated Minor*: Except for the purposes of designating a surrogate, the State of Hawaii recognizes only married minors as emancipated and having the legal status of an adult. An emancipated minor may consent to and/or authorize use/disclosure of his/her own health information (HRS Section 577-25). Note: In regards to designation of a surrogate pursuant to the Uniform Health Care Decisions Act, an emancipated minor is a person under eighteen years of age who is totally self-supporting (HRS 327E-2).
 - c) *Minor, ages 14 through 17 Who Has Consented to Specific Care Without Parental Knowledge*: In these circumstances, the minor must provide consent and/or authorization for use/disclosure of PHI. The parent or legal guardian may consent to and/or authorize use/disclosure of the health information related to these specific health care services only if they also consented to the service on the minor's behalf.
 - i. Minor records regarding pregnancy care, family planning or treatment of venereal disease: (HRS Section 577A-2).
 - ii. Minor records regarding alcohol or drug abuse counseling: (HRS Section 577-26).
 - d) *Minors—Conditions Involving Other Parent/Guardian Situations*:
 - i. *Minors with Divorced Parents*: The consent and/or authorization of either parent is usually sufficient. However, if there is a conflict between the parents, the parent who has sole legal custody has the final authority. In cases of legal joint custody, usually the consent or authorization of either parent is sufficient. However, if parents disagree, refer situation to the Risk Manager. A copy of the divorce decree or custody order may be attached to the consent or authorization form.

- ii. *Stepparent*: A stepparent may not consent to and/or authorize the use/disclosure of protected health information (PHI) unless the stepparent has legally adopted the minor.
- iii. *Adopted Minor*: If the child has been adopted legally by order of the court, the adoptive parents may consent to and/or authorize use/disclosure of the PHI as long as such information does not contain identifying information about the birth mother or others involved in the adoption process.
- iv. *Birth Mother*: A birth mother in signing the adoption papers agrees to termination of all parental rights and has the right to obtain only those records created prior to the adoption, as long as such information does not contain identifying information about the adoptive parents.
- v. *Adult adopted as a child*: An adult adopted as a child has the right to obtain medical information about himself/herself as long as sufficient identifying information is provided to ensure the appropriate record is being released. Identifying information about the birth mother or others involved in the adoption process shall not be released.
- vi. *Minor in process of adoption*: If the child has been placed for adoption through an attorney or agency and the adoptive parents have not yet been given legal custody, refer to the placing attorney or agency to which legal authorization for consent resides.
- vii. *Minor born to unmarried parents*: The mother may consent to and/or authorize the use/disclosure of PHI. If a child has been legitimized under the Uniform Parentage Act (HRS Section 338-21) as indicated by the father's name appearing on the birth certificate, then either parent can provide consent and/or authorization.
- viii. *Minor born of minor parents*: A minor parent (as substantiated by the birth certificate) can consent to and/or authorize use/disclosure of health information for his/her child.
- ix. *Minor in custody of the police or the probation officer*: Consent and/or authorization for the use/disclosure of PHI must be sought from a parent or legal guardian. In the absence of parental authorization, disclosure of health information for other purposes should only be in response to a properly executed subpoena or court order.
- x. *Minor under the jurisdiction of the Department of Human Services (DHS), the Family Court or the Youth Correctional Facility*: The parents, the legal guardian or the representative of the authorized institution to whom legal custody has been awarded must consent to and/or authorize use/disclosure of health information.

D. Verification of identity and authority: HHSC will verify the identity and authority of the personal representative prior to the release of any PHI (CMP 047A).

E. HHSC facilities shall implement procedures to operationalize this Policy.

IV. APPLICABILITY: This Policy applies to all HHSC facilities.

V. AUTHORITY: Standards for Privacy of Individually Identifiable Health Information (HIPAA), 45 CFR Subtitle A, Subchapter C, Section 164.502(g); Hawaii Revised Statutes, Chapter 327E; Hawaii Revised Statutes, Sections 577-25, 577-26 and 577A-2. 10 USC, 1074. CMP 047A.

VI. ATTACHMENTS: None.