

HIPAA Privacy Policy No. 1

Personal Representative Policy

Policy:

1.1 Personal Representative Must be Treated as the Individual

A patient's "personal representative" may "stand in the shoes" of a patient for HIPAA purposes and may sign HIPAA related documents. For example, the patient's personal representative could sign an acknowledgement of receipt of notice of privacy practices or an authorization. A personal representative can also exercise all of the rights that are afforded to patients under HIPAA. For example, a personal representative could request access to medical records or request amendments to the medical record.

1.2 Determination of Personal Representative

If, under Michigan law, an individual has the authority to act on behalf of the patient for the purposes of making health care related decisions, then that person is considered a personal representative for the purposes of HIPAA.

1.3 Personal Representative for Minors

Unless a patient under the age of 18 has been "emancipated", he or she will be treated as a minor. The following are personal representatives for a minor patient:

- The child's custodial parent.
- The child's noncustodial parent unless there is a court order limiting the noncustodial parents' access to medical records. (Note: the custodial parent may object to the release of mental health records to the noncustodial parent).
- The child's legal guardian.
- A person with whom the care of the child has been entrusted by the child's parents and whom the parents have authorized in writing to consent to medical treatment on the child's behalf.
- Person standing "in loco parentis" (a person who has legal or physical custody of the minor and is providing support and care for the minor).
- A child care institution, or child care organization with written authority to consent to routine, nonsurgical medical care of the child.
- For children whose parents' parental rights have been terminated, the probate court or agency having jurisdiction over the child.

1.4 Personal Representatives for Adults

For adults, the following are personal representatives:

- A court appointed guardian.

- Where there is no court appointed guardian and the patient cannot make his or her own decisions: a patient advocate (designated in writing by the patient in a durable power of attorney document) or a surrogate decision maker (such as a family member).

1.5 Personal Representatives for Deceased Patients

For deceased patients, the personal representative is an executor, administrator, or other person with authority to act on behalf of a deceased individual or of the individual's estate.

1.6 Determination of Emancipation

If a minor is emancipated, he or she is treated like an adult. Under Michigan law, a minor is emancipated if:

- He or she is validly **married**.
- He or she is **18 years of age**.
- He or she is on **active duty with the armed forces** of the United States.
- There is a **court order** for emancipation.
- The minor is in **police custody** and the minor's parent or guardian cannot be located (please note that emancipation in this context is limited to consent for routine, non-surgical medical care or emergency medical treatment).
- The minor is **incarcerated** and the minor's parent or guardian cannot be located (please note that emancipation in this context allows consent for all medical care with the exception of vasectomies or other procedures related to reproduction).

1.7 Control of Medical Information by an Unemancipated Minor

In most situations, the parent or legal guardian of an unemancipated minor will control the flow of the minor's health information (e.g., request access, request restrictions, request amendment, sign consents and authorizations, etc.).

An unemancipated minor **can control his or her own health information (including a request that information not be provided to parents)** in the following **limited situations**:

- The minor and the parent, guardian, or person acting in loco parentis entered into an agreement for confidentiality with respect to such treatment.
- Mental health services provided to a minor patient age 14 or older may not be disclosed to the parent, guardian, or person acting in loco parentis unless the mental health professional treating the minor determines that there is a compelling need for disclosure and the minor is first informed.

There are other situations where the minor can sign his or her own informed consent for treatment and exercise all rights under HIPAA, but cannot preclude the practice for

medical reasons from allowing the parents to access the medical records. In the following situations, based upon Michigan law, the minor can consent to treatment and can exercise rights under HIPAA, but the practice may for medical reasons disclose information to the minor's parents:

- prenatal and pregnancy related health care
- venereal disease or HIV testing
- substance abuse treatment

Procedure:

1. If a patient is a competent adult, he or she should be asked to sign all forms and make all requests pursuant to HIPAA (an emancipated minor should be treated as an adult and can act on his or her own behalf).
2. A minor who is receiving prenatal, pregnancy, venereal disease, HIV, or substance abuse treatment can act on his or her own behalf with respect to signing forms and exercising all rights, with the exception that the practice may for medical reasons allow the minor's parents to access the minor's medical records.
3. When a parent seeks access to a minor's medical records, the access should be granted unless the practice is aware of a court order restricting such access, the minor is an emancipated minor, the situation falls within one of the limited exceptions listed in paragraph 1.7 (mental health services or pursuant to a confidentiality agreement with the parents), or an exception to the HIPAA right to access exists.
4. Employees should contact the HIPAA Privacy Officer if there are questions about the status of personal representatives.

Authorities and Resources:

45 CFR §164.502(g) (personal representatives)

MCL 330.1707 (parent or guardian not to be notified of mental health services provided to minor)

MCL 333.5127 (minor can consent to venereal disease or HIV testing)

MCL 333.5653 (definition of patient surrogate)

MCL 333.6121 (minor can consent to substance abuse treatment)

MCL 333.9132 (minor can consent for prenatal and pregnancy related care)

MCL 600.2157 (deceased's heirs at law are personal representatives)

MCL 700.5215 (minor's legal guardian)

MCL 700.5313 (appointment of guardian of legally incapacitated individual)

MCL 700.5511 (patient advocate)

MCL 722.124a (child care organizations and institutions)

MCL 722.30 (noncustodial parents' right to access records)

MCL 722.904 (judicial waiver of consent for abortion)

- Attorney General Opinion No. 7092 (October 16, 2001) (custodial parent may object to release of mental health records to noncustodial parent).

- Ingham County Dept. of Social Services v. Curry, 113 Mich. App. 821 (1982) (parents may execute and sign authorization allowing relative in whose care child has been entrusted to consent to any medical treatment child may require).
- Devilbiss Company v. Hush, 77 Mich. App. 639 (1977) (common law definition of “in loco parentis”).
- Young v. Oakland Gen. Hosp., 175 Mich. App. 132 (1989) (patient surrogate).