



Pennsylvania Hospital  
& Surgery Center

**ADMINISTRATIVE POLICY MANUAL**

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Effective: 0508

**SUBJECT: ACCESS TO PROTECTED HEALTH INFORMATION BY  
PERSONAL REPRESENTATIVE**

**POLICY NUMBER: HIP16**

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Related Policies:  
[HIP1 - Patient's  
Right to Access,  
Inspect or Copy PHI](#)

## **POLICY**

For purposes of this policy, Pennsylvania Hospital includes all off campus licensed facilities, including but not limited to the Surgery Center of Pennsylvania Hospital.

It is the policy of Pennsylvania Hospital that protected health information (PHI) will be used and disclosed in a manner that respects a patient's right to privacy, and is in accordance with HIPAA privacy regulations and applicable law.

## **PURPOSE**

The purpose of this policy is to describe the rights of personal representatives of patients under the HIPAA privacy regulations.

## **SCOPE**

This policy is applicable to all members of Pennsylvania Hospital workforce.

## **IMPLEMENTATION**

This policy will be implemented by all members of Pennsylvania Hospital workforce.

## **DEFINITIONS**

**Health Care Agent:** An individual designated by a patient in an advance health care directive. A health care provider is disqualified from acting as a patient's health care agent unless related by blood or marriage.

**Health Care Representative\*:** A person who is at least 18 years of age can be a health care representative and may make a health care decision for an individual whose attending physician has determined that the individual is incompetent, if there is no guardian appointed by the court, there is no health care agent appointed in a health care power of attorney or the health care agent is not reasonably available. A health care provider is disqualified from acting as a patient's health care representative unless related by blood or marriage.

a) Any member of the following classes, in descending order of priority, who is reasonably available, may act as a patient's health care representative:

- (1) The spouse, unless an action for divorce is pending, AND the adult children of the patient who are not the children of the spouse
- (2) An adult child
- (3) A parent
- (4) An adult brother or sister
- (5) An adult grandchild

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(6) An adult who has knowledge of the patient's preferences and values, including, but not limited to, religious and moral beliefs, to assess how the patient would make health care decisions

(\*Note: Operational aspects of the statutory definition of the health care representative are addressed in Policy # CA2, Consent to Health Care Services.)

Personal representative means one who, by law, has the authority to act on behalf of another in making decisions relating to health care. This person may also be referred to as a "legally authorized representative". In cases where a guardian has been appointed by the court, the guardian would be first in the order of priority, followed by an individual designated by the patient as health care agent in a health care power of attorney. In the event there is no court appointed guardian or a health care agent, a health care representative will have the authority to consent to medical care and will be treated as a personal representative consistent with this policy.

**Protected health information (PHI):** information that is created or received by Pennsylvania Hospital; and relates to the past, present, or future physical or mental health or condition of a patient; the provision of health care to a patient; or the past, present, or future payment for the provision of health care to a patient; and that identifies the patient or for which there is a reasonable basis to believe the information can be used to identify the patient. PHI includes information of persons living or deceased.

The following components of a patient's information also are considered PHI:

- a) names
- b) street address, city, county, precinct, zip code
- c) dates directly related to a patient, including birth date, admission date, discharge date, and date of death
- d) telephone numbers, fax numbers, and electronic mail addresses
- e) Social Security numbers
- f) medical record numbers
- g) health plan beneficiary numbers
- h) account numbers
- i) certificate/license numbers
- j) vehicle identifiers and serial numbers, including license plate numbers
- k) device identifiers and serial numbers
- l) Web Universal Resource Locators (URLs)
- m) biometric identifiers, including finger and voice prints
- n) full face photographic images and any comparable images
- o) any other unique identifying number, characteristic, or code.

**Emancipated Minor:** any minor who is eighteen years of age or older, has graduated from high school, is or has been married, or is or has been pregnant.

## PROCEDURE

### A. Personal Representatives – General Rule

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As specified in this policy, Pennsylvania Hospital will treat the personal representative of the patient who is the subject of PHI as the patient for purposes of the HIPAA privacy regulations.

**B. Adults and Emancipated Minors**

If an adult or emancipated minor is incapacitated or otherwise unable to make a decision a healthcare decision on their own behalf, then a person who has authority under applicable law to act on behalf of that adult or emancipated minor in making healthcare decisions must be considered a personal representative, with respect to PHI relevant to such personal representation of the individual.

**C. Deceased Individuals**

If, under applicable law, an executor, administrator, or other person has authority to act on behalf of a deceased individual or on behalf of the individual's estate, Pennsylvania Hospital must consider such person a personal representative with respect to PHI relevant to such personal representation of the individual.

**D. Unemancipated Minors**

1. In general, a parent, guardian, or other person acting in loco parentis has authority to act on behalf of an unemancipated minor in making decisions related to healthcare. Therefore, Pennsylvania Hospital must consider such person a personal representative with respect to PHI relevant to such personal representation, except if:
  - a) A parent, guardian, or other person acting in loco parentis consents to an agreement between the University of Pennsylvania and the minor with respect to maintaining the confidentiality of such healthcare service.
  
2. In some situations, an unemancipated minor can consent to the receipt of health care without the involvement of a parent, guardian, or other person acting in loco parentis. In such cases, the unemancipated minor may exercise his or her rights under HIPAA without the involvement of a parent, guardian, or other person acting in loco parentis. These cases include:
  - a) An unemancipated minor receiving medical and health services to determine the presence of or to treat pregnancy, and venereal disease and certain other diseases;
  - b) An unemancipated minor receiving medical, dental and health services when, in the physician's judgment, an attempt to secure consent would result in delay of treatment which would increase the risk to the minor's life or health;
  
3. Notwithstanding the above, in some situations, an unemancipated minor can consent to their receipt of health care, but such receipt involves the parent, guardian, or other person acting in loco parentis, either by requiring notice to such other individuals or the consent of such other individuals. In these situations Pennsylvania Hospital must consider such person a personal representative under HIPAA with respect to protected health information relevant to such personal representation. These situations include:

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- a) An unemancipated minor or person judged incapacitated receiving an abortion, except in the case of a medical emergency;
- b) A minor between the ages of 14 and 18 applying for mental health examination and treatment;
- c) An unemancipated minor receiving psychological services.

4. Where the parent, guardian, or other person acting in loco parentis, is not the personal representative under paragraph 4(a) of this policy, Pennsylvania Hospital may provide or deny access to a parent, guardian, or other person acting in loco parentis, if such action is consistent with State or other applicable law, provided that such decision must be made by a licensed health care professional, in the exercise of professional judgment;

E. Abuse, Neglect, Endangerment Situations.

Notwithstanding state law or any requirement of this policy or the HIPAA privacy regulations to the contrary, Pennsylvania Hospital may elect not to treat a person as the personal representative of an individual if:

1. Pennsylvania Hospital has a reasonable belief that:
  - a) The individual has been or may be subjected to domestic violence, abuse, or neglect by such person; or
  - b) Considering such person the personal representative could endanger the individual; and
2. Pennsylvania Hospital, in the exercise of professional judgment, decides that it is not in the best interest of the individual to consider the person the individual's personal representative.
3. If such a decision is made not to treat a person as the patient's representative for these reasons, documentation of the factual basis for such decision should be noted in the medical record.

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 Kathleen Kinslow, CRNA, EdD, MBA  
 Executive Director

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 Date

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 R. Michael Buckley, M.D.  
 Chief Medical Officer

\_\_\_\_\_  
 Date

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