**PURPOSE**

To define when and what protected health information (“PHI”) may be disclosed to an individual’s personal representative.

**POLICY**

Subject to certain exceptions described in this policy, [COVERED ENTITY] will treat, where appropriate, the personal representative of an individual as the individual for purposes of exercising the individual’s rights under HIPAA.

**PROCEDURE**

1. Personal Representative Defined. A “personal representative” is an individual who has authority – either by operation of law or from the individual him or herself – to act on behalf and in place of the individual. This includes parents, legal guardians, and persons with power of attorney. This may also include the family or next of kin of an individual who is unable to communicate and/or represent him or herself and who has no legally appointed representative.

2. Scope of Authority. [COVERED ENTITY] must treat the personal representative as the individual only to the extent that the PHI to be used or disclosed is relevant to the matters on which the personal representative is authorized to represent the individual.

3. Adults and Emancipated Minors. If a person has authority by law to make decisions related to the use or disclosure of PHI on behalf of an individual who is an adult or an emancipated minor, that person will be treated as the individual’s personal representative. Once a minor is emancipated, a parent or guardian cannot be recognized as the emancipated minor’s personal representative.

4. Un-empancipated Minors. In general, parents are the personal representatives of their children. In cases where a legal guardian or other individual has been designated to act on behalf of a minor child, that person will be recognized as the child’s personal representative. There are, however, exceptions to this general rule. [COVERED ENTITY] will not treat the parent as the minor child’s personal representative in the following circumstances:

* When state or other law allows a minor to obtain a particular health care service without parental consent (e.g., testing and counseling for sexually transmitted diseases; treatment and rehabilitation for substance abuse; and limited reproductive issues) and the minor consents to the health care services.
* 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 (e.g., when a court grants authority to make healthcare decisions for the minor to itself, to another adult, or to the minor.
* When a parent agrees to a confidential relationship between the minor and a health care provider.

In these situations, the parent does not control the minor’s health care decisions, and thus does not control the protected health information related to that care.

5. Deceased Individuals. [COVERED ENTITY] will treat an executor, administrator, or other person designated to act on behalf of a deceased individual or the estate as the deceased individual’s personal representative. [COVERED ENTITY] will treat the personal representative as the individual only for purposes relevant to the representation. Therefore, the executor of the estate has a right to access the deceased individual’s PHI that is relevant to the personal representative’s responsibilities as executor. If the individual died without naming a personal representative or executor, state law determines who has a right to access the individual’s medical records.

6. Exceptions. [COVERED ENTITY] may elect not to treat an individual as a personal representative if [COVERED ENTITY] has a reasonable belief that:

* The individual has been or may be subjected to domestic violence, abuse, or neglect by a parent, guardian, or personal representative; or
* Treating such a person as the personal representative could endanger the individual; and
* One or more licensed healthcare professionals at [COVERED ENTITY], in the exercise of professional judgment, determines that it is not in the best interest of the patient to treat the person as the patient’s personal representative.