
HIPAA Policy 5038 Personal Representatives

Responsible Office: HIPAA Privacy Office
Responsible Official: HIPAA Privacy Officer

Effective Date: April 14, 2003
Last Revision: October 13, 2015

Scope

This policy applies to the University's Covered Components and those working on behalf of the covered components, designated as such for purposes of complying with the privacy provisions of the Health Insurance Portability and Accountability Act of 1996. The Covered Components are: (1) the Group Health Plan Component; and (2) the Covered Health Care Component, which includes the School of Nursing, the Department of Psychology clinics, Yale Health and the School of Medicine (except the School of Public Health and the Departments of Cell Biology, Cellular and Molecular Physiology, Comparative Medicine, History of Medicine, Immunobiology, Microbial Pathogenesis, Molecular Biophysics & Biochemistry, Neurobiology, Pharmacology, and WM Keck Biotechnology Resources Laboratory).

The policy addresses those situations in which a patient's Personal Representative will be treated as the patient in exercising the patient's rights under HIPAA.

Policy Statement

The Covered Components of the University, when appropriate, will treat the Personal Representative of an individual as the individual for purposes of exercising the individual's rights under HIPAA.

Reason for the Policy

This policy is written to guide staff in the release of PHI to a Personal Representative as regulated by HIPAA and Connecticut State law.

Definitions

Conservator of the Estate is an individual who has been appointed to make financial decisions for an incapable patient. He or she only has access to PHI related to financial issues, such as a Medicaid application or the patient's bills.

Conservator of the Person is an individual who has been appointed by a Probate Court to make personal decisions for an incapable patient. If a conservator of the person has been appointed, he or she has the right to make health care decisions for the patient and has the right to access a patient's medical information, just as the patient would.

Disclosure

The release, transfer, provision of access to, or divulging in any other manner of protected health information outside of the entity holding the information.

Durable Power of Attorney is a legal document that appoints someone else to make certain decisions for an individual in the event that he/she is unable to make such decisions. The person who is appointed is called an Attorney in Fact. The language of the particular power of attorney determines the extent of the Attorney in Fact's authority. An Attorney in Fact with authority to make health care decisions has the right to access the patient's medical record, assuming that the patient has been deemed unable to make his/her own decisions by an attending physician. Please note: an Attorney in Fact is not authorized to make decisions for patients that involve the withdrawal of life support systems. The Durable Power of Attorney for Health Care was replaced by the

Health Care Representative October 1, 2006. Durable Power of Attorney for Health Care documents executed prior to October 1, 2006 will continue to be honored as long as the appointment has not been revoked.

Emancipated Minor

A minor who is to be treated as an adult for purposes of this policy. An emancipation order allows a minor to consent to "medical, dental or psychiatric care, without parental consent, knowledge or liability." In Connecticut, minors above age sixteen or their parents may petition the Superior Court for Juvenile Matters or the Probate Court for emancipation orders. The court may declare the minor emancipated if (1) the minor has been married, (2) the minor actively serves in the U.S. armed forces, (3) the minor willingly lives away from home and manages his or her own finances, or (4) the court determines "for good cause" that emancipation is in the "best interest" of the minor. A minor may also be considered emancipated under common law under similar circumstances.

Guardian of a Mentally Retarded Patient is a person appointed by a Probate Court to supervise some, or all, aspects of the care of a mentally retarded adult who has been determined to be unable to make informed decisions about matters related to his or her care.

Guardians of an Unemancipated Minor are the father and mother of the unemancipated minor, unless the father or mother is deceased or parental rights have been terminated. Another adult may be appointed by a Probate Court to serve as the guardian of an unemancipated minor, in lieu of the minor's parent(s).

Health Care Agent is someone who is appointed via a document signed by a patient giving the Agent the authority to communicate certain medical decisions in the event that the patient becomes incapable of making those decisions. A Health Care Agent's authority is limited to communicating decisions about life support and comfort care measures. Therefore, the Health Care Agent's access to the patient's medical information is limited to the information needed to address these decisions. In the event no such decisions need to be made, the Health Care Agent will not be provided access to the patient's health information unless the access is otherwise authorized. Health Care Agents were replaced with Health Care Representatives October 1, 2006. Health Care Agent documents executed prior to October 1, 2006 will be honored unless the document has been revoked.

Health Care Representative is someone appointed via a document signed by the patient and witnessed by two adults giving the Representative authority to decide any and all health care decisions including decisions about the withdrawal of life support and/or nutrition and hydration, and decisions to accept or refuse any treatment, service or procedure used to diagnose or treat the person's physical or mental condition in the event that that patient becomes incapable of making such decisions.

In loco parentis prep. (in loh-coh pah-rent-iss) Latin for "instead of a parent" or "in place of a parent." A person or institution acting in lieu of a parent.

Personal Representative

Someone with the legal authority to act on behalf of an incompetent 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.

Protected Health Information (PHI)

Any individually identifiable health information, including genetic information and demographic information, collected from an individual, whether oral or recorded in any form or medium that is created or received by a covered entity (Yale School of Medicine (excluding the School of Public Health, the Animal Resources Center, and the basic science departments: Cell Biology, Cellular and Molecular Physiology, Comparative Medicine, History of Medicine, Immunobiology, Microbial Pathogenesis, Molecular Biophysics & Biochemistry, Neurobiology, Pharmacology and WM Keck Biotechnology Resources Laboratory), Yale School of Nursing, Yale Health, Department of Psychology Clinics and the Group Health Plan component)

PHI encompasses information that identifies an individual or might reasonably be used to identify an individual and relates to:

- The individual's past, present or future physical or mental health or condition of an individual; OR
- The provision of health care to the individual; OR
- The past, present or future payment of health care to an individual.

Information is deemed to identify an individual if it includes either the patient's name or any other information that taken together or used with other information could enable someone to determine an individual's identity. (For

example: date of birth, medical records number, health plan beneficiary numbers, address, zip code, phone number, email address, fax number, IP address, license numbers, full face photographic images or Social Security Number see [Policy 5039](#) for a list of [HIPAA Identifiers](#))

PHI excludes individually identifiable health information in education records covered by the Family Educational Right and Privacy Act (FERPA) (records described in 20 USC 1232g(a)(4)(B)(iv)) and employment records held by a covered entity in its role as employer. PHI also excludes information related to individuals who have been deceased for more than 50 years. (see also definitions of “health information” and “individually identifiable health information”)

Unemancipated Minor

A person under 18 years of age and not previously married; not in the Armed Services; not previously emancipated by court proceedings initiated by the parents or the State and in the care and control of the parents.

Procedures

[Procedure 5038 PR1](#): Personal Representatives

Related Information

[Policy 5004](#): Request Restrictions or Confidential Communications

Roles and Responsibilities

Job titles and business offices directly involved in the practices related to the policy.

Chief Privacy Officer

Office of the General Counsel

Executive Director – Yale Medical Group

Medical Director – Yale Medical Group

Associate Director – Yale Medical Group

Associate Privacy Office for the School of Medicine and Nursing

Patient Financial Services

Revision History

The official version of this information will only be maintained in an on-line web format. Any and all printed copies of this material are dated as of the print date. Please make certain to review the material on-line prior to placing reliance on a dated printed version.
