Section 6	Compliance Policies	04/11/03 - Originated
Subject 6.2	Privacy Related	08/31/07 - Reviewed w changes - Reviewed w/o changes
Policy 6.2.3	**Use and Disclosure by and for Personal Representatives, Minors and Deceased Patients**	Compliance Office - Author

Use and Disclosure of PHI by and for Personal Representatives, Minors and Deceased Patients

Definitions

Personal Representative: Any adult who has decision-making authority and who is willing to act on behalf of a patient. A personal representative would include an individual who has authority, by law or by agreement from the individual receiving treatment, to act in the place of the individual. This includes parents, legal guardians or properly appointed agents, such as those identified in Medical Power of Attorney documents, or individuals designated by state law.

Minor*:* an individual under the age of 18 who has not been legally emancipated by a court and is not:

1. Legally or previously married;
2. Serving in the armed forces;
3. Presently an offender in the Texas Department of Criminal Justice or other correctional facility; or
4. At least 16 years old **and** living away from home and managing his or her own financial affairs.

(Note: If a minor has been emancipated, UTMB can no longer recognize the minor's parent, guardian or person acting in loco parentis, unless there is a legal justification other than minority granting the individual the ability to be treated as the personal representative.)

Policy

UTMB, in an effort to comply with the Health Insurance Portability and Accountability Act of 1996 (HIPAA), maintains that patient information must be kept private and confidential.

As a general rule, minors, incapacitated and deceased patients must have a personal representative who is authorized to execute an Authorization Form allowing for the use and disclosure of PHI. For the purposes of this policy, UTMB must recognize a personal representative as the individual responsible for providing:

1. Acknowledgement of the receipt of the Notice of Privacy Practices, and
2. Authorization to use and disclose PHI from UTMB(Policy 6.2.1, *Uses and Disclosures of PHI Based on Patient Authorization).*

Policy, continued

UTMB can elect to not treat a person as a personal representative of a patient, as outlined in a later section in this policy.

Violation of this policy may result in disciplinary action up to and including termination for employees; a termination of employment relationship in the case of contractors or consultants; or suspension or expulsion in the case of a student. Additionally, individuals may be subject to loss of access privileges and civil and/or criminal prosecution**.**

Emancipated Minors and Adults

This policy does not address who may consent to treatment, for guidance on who may consent for medical treatment; see IHOP Policy 9.3.17, *Patient Consent-Overview and Basic Requirements*.

If a person has been granted authority by law for making healthcare related decisions for an incapacitated patient who is an adult or an emancipated minor, UTMB must treat such person as a personal representative for all HIPAA Privacy Regulation purposes.

Absent a legal document (e.g., a Medical Power of Attorney or formal guardianship documents), the following individuals, in order of priority, will have the right to act as the patient's personal representative for HIPAA purposes. These individuals will have the ability to acknowledge the receipt of the Notice of Privacy Practices and provide authorization for use or disclosure of PHI. The following individuals, in order of priority, are:

1. A patient's spouse;
2. An adult child of the patient who has the waiver (agreement) and the consent of all other qualified adult children of the patient to act as the sole decision-maker;
3. A majority of the patient's reasonably available adult children;
4. A patient's parent(s); or
5. An individual clearly identified to act for the patient (before the patient's incapacity), the patient's nearest living relative, or a member of the clergy.

Unemancipated Minors

If a parent, guardian, or other person has been granted authority by law to make healthcare related decisions for a patient who is an unemancipated minor, UTMB must recognize this individual as the patient's personal representative. However if the parent, guardian, or other person assents to an agreement of confidentiality between

Unemancipated Minors, continued

UTMB and the minor, UTMB is no longer required to treat the patient, guardian or other person as the personal representative.

In some circumstances, state law allos a minor to consent to treatment for healthcare services on the minor's own behalf. Examples of where a minor, with authority by law, can act as on their own behalf may include:

1. Diagnosis and treatment of a sexually transmitted disease;
2. Family planning services;
3. Some outpatient surgeries; and
4. Alcohol/drug abuse treatment

If the minor consents to their own treatment as stated above, UTMB must treat the unemancipated minor as if they were not a minor and grant the minor the ability to acknowledge the receipt of the Notice of Privacy Practices and provide authorization for use or disclosure of PHI.

If a parent, guardian, or other person acting in *loco parentis* requests access to the unemancipated minor's medical records, billing records, or healthcare provider for a situation discussed above, please contact the Department of Legal Affairs.

Abuse, Neglect, Endangerment Situations

In some situations, UTMB may elect not to recognize a person as the personal representative of a patient. If UTMB chooses not to recognize a person as a personal representative, UTMB must believe in the exercise of professional judgment, that it is not in the best interest of the patient to treat the person as the patient's personal representative. Furthermore, UTMB must have a reasonable belief that one of the following conditions exist:

1. The patient has been or may be subjected to domestic violence, abuse, or neglect by a parent, guardian or personal representative; or
2. Treating such person as the personal representative could endanger the patient.

Deceased Individuals

If under applicable law an executor, administrator, or other person has authority to act on behalf of a deceased patient or of the patient's estate, UTMB must recognize such person as a personal representative under this policy.

Deceased Individuals, continued

Absent an executor, administrator or other court-appointed representative for the deceased patient's estate, the following individuals listed below may authorize the release of PHI in order of priority. An entire category must be exhausted (no people in the category exist or still alive) before moving to the next category. If questions arise, contact the Department of Legal Affairs

1. Spouse
2. Adult children
3. Adult grandchildren
4. Parents
5. Adult descendants of parents (brothers and sisters)
6. Brothers and sisters' adult children
7. Brothers and sisters' adult grandchildren
8. Grandparents
9. Adult descendants of grandparents (uncles and aunts)

References

Texas Health & Safety Code Ann. §241.153

45 C.F.R. §164.502(g)