

LOS ANGELES GENERAL MEDICAL CENTER POLICY

Subject:		Original Issue Date: 6/22/04	Policy # 203.8
PROTECTED HEALTH INFORMATION: USE OR DISCLOSURE TO PERSONAL REPRESENTATIVES		Supersedes: 11/21/22	Effective Date: 05/09/23
Policy Owner(s): HIM Director Executive Sponsor(s): Chief Executive Officer			
Departments Consulted: Privacy Committee Health Information Management Decedent Affairs Risk Management Ethics Committee		Reviewed & approved by: Attending Staff Association Executive Committee Senior Executive Officer	Approved by: Chief Executive Officer Chief Executive Officer

PURPOSE

To delineate the process Los Angeles General Medical Center utilizes for the use or disclosure of protected health information (PHI) of an unemancipated minor, adult/emancipated minor, or deceased individual to a personal representative, in accordance with the Privacy Standards of the Health Insurance Portability and Accountability Act of 1996, 45 Code Federal Regulations Parts 160 and 164 (HIPAA).

POLICY

Deceased Individual: The Medical Center will ensure its use or disclosure of the PHI of a deceased individual is in accordance with applicable law. If under applicable California law, an executor, administrator, or other person has the authority to act on behalf of a deceased individual or deceased individual's estate, then the Medical Center shall recognize such person as the deceased individual's personal representative and allow such personal representative to make decisions regarding the deceased individual's PHI. Before using or disclosing the PHI of a deceased individual, the Medical Center will obtain, if necessary, an appropriate authorization from the personal representative of the deceased individual in accordance with DHS Policy No. 361.4, "Use and Disclosure of Protected Health Information Requiring Authorization." This policy applies for as long as the Medical Center maintains a deceased individual's PHI.

Adult or Emancipated Minor: If under applicable law, a person has the authority to act on behalf of an individual who is an adult or an emancipated minor regarding health care decisions, then the Medical Center must recognize this person as the individual's personal representative responsible for making decisions regarding the use and disclosure of such individual's PHI and must obtain, as necessary, an appropriate authorization from the personal representative in accordance with DHS Policy No. 361.4.

Unemancipated Minor: If under applicable law, a parent, guardian, or person acting *in loco parentis* has the authority to act on behalf of an individual who is an unemancipated minor regarding health care decisions, then the Medical Center must recognize such person as the personal representative responsible for making decisions regarding the use and disclosure of such individual's PHI and must obtain, as necessary, an appropriate authorization from the personal representative in accordance with DHS Policy No. 361.4.

DEFINITIONS

Subject: PROTECTED HEALTH INFORMATION: USE OR DISCLOSURE TO PERSONAL REPRESENTATIVES	Effective Date: 05/09/23	Policy # 203.8
	Chief Executive Officer's Initials:	

<u>Authorization</u>	The signed Authorization language used by the Medical Center to obtain an individual's or a personal representative's permission prior to using or disclosing that individual's PHI for purposes that do not fall within the definitions of treatment, payment, or health care operations activities.
<u>Disclose or Disclosure</u>	With respect to PHI, the release of, transfer of, provision of access to, or divulging in any manner PHI outside of the Medical Center's internal operations or to other than its workforce members.
<u>Minor</u>	California law states that a minor is a person under 18 years of age. However, there are certain categories under which a minor may give consent for medical care. For details, see Medical Center Policy #205, Consent for Care.
<u>Emancipated Minor</u>	An emancipated minor is considered to be an adult for the purpose of consenting to medical care. An emancipated minor is a minor who comes within any of the following categories: <ul style="list-style-type: none"> a. Emancipated by court order. Minors 14 years of age or older may petition a State court for emancipation. b. Minors on active duty with U.S. armed forces regardless of age. c. Married or formerly married. <p>A self-sufficient minor is a minor 15 years of age or older who is living separate and apart from his/her parents or legal guardian, and manages his or her own financial affairs, regardless of the source of income.</p> <ul style="list-style-type: none"> a. A self-sufficient minor may consent to his or her medical care without parental consent.
<u>Personal Representative</u>	<ol style="list-style-type: none"> 1. The guardian or conservator of an adult patient. 2. A parent or the guardian of a minor who is a patient. 3. The executor or administrator of the estate of a person who has died.
<u>Protected Health Information (PHI)</u>	Individually identifiable information relating to past, present, or future physical or mental health or condition of an individual; provision of health care to an individual, or the past, present, or future payment for health care provided to an individual.
<u>Use or Uses</u>	With respect to PHI, the sharing, employment, application, utilization, examination, or analysis of such information within the Medical Center's internal operations.

Subject: PROTECTED HEALTH INFORMATION: USE OR DISCLOSURE TO PERSONAL REPRESENTATIVES	Effective Date: 05/09/23	Policy # 203.8
	Chief Executive Officer's Initials:	

PROCEDURE

Deceased Individual

The Medical Center must verify the identity and authority of a person declaring himself or herself to be the executor, administrator, or other person with authority to act on behalf of the deceased individual in accordance with DHS Policy No. 361.16, "Verification of Identity and Authority of Individuals Requesting Protected Health Information."

After the person has been properly identified as the personal representative, the Medical Center must obtain an authorization, as applicable, from the personal representative regarding the use and disclosure of the decedent's PHI.

1. There are five general exceptions that permit the Medical Center to disclose the PHI of a deceased individual for purposes outside the scope of treatment, payment, and health care operations and without an authorization from the personal representative. These include:
 - a. Disclosures of PHI needed by medical examiner/coroner;
 - b. Disclosures of PHI needed by funeral directors;
 - c. Disclosures of PHI needed to facilitate an organ donation;
 - d. Disclosures of PHI to alert a law enforcement agency of the death of an individual if the Medical Center suspects that such death may have resulted from criminal conduct.
 - e. For disclosures to researchers in preparation for a research study, see DHS Policy No. 361.27, "Use and Disclosure of Protected Health Information for Research Purposes."
2. If any of the exceptions in the above Section apply, the Medical Center must document the disclosure on the "Disclosures by the Los Angeles General Medical Center of Deceased Individual's PHI Without Authorization" form and the exception under which it was made.

Personal Representative Of An Adult Or Emancipated Minor

The Medical Center will verify the identity and authority of a person declaring himself or herself to be an individual's personal representative with the power to act on behalf of that adult or emancipated minor regarding health care decisions.

After the person has been properly identified as the personal representative, the Medical Center will obtain an authorization, as necessary, from the personal representative for the Medical Center's use and disclosure of the PHI in accordance with DHS Policy No. 361.4, "Use and Disclosure of Protected Health Information Requiring Authorization."

Subject: PROTECTED HEALTH INFORMATION: USE OR DISCLOSURE TO PERSONAL REPRESENTATIVES	Effective Date: 05/09/23	Policy # 203.8
	Chief Executive Officer's Initials:	

Personal Representative Of An Unemancipated Minor

The Medical Center will verify the identity and authority of a person declaring himself or herself to be a parent or guardian of an unemancipated minor in accordance with DHS Policy No. 361.16, "Verification of Identity and Authority of Individuals Requesting Protected Health Information."

After the parent has been properly identified as the personal representative of an unemancipated minor, the Medical Center will obtain an authorization, as necessary, from the personal representative regarding the use and disclosure of the unemancipated minor's PHI, in accordance with DHS Policy No. 361.4, "Use and Disclosure of Protected Health Information Requiring Authorization."

Exceptions to Personal Representative Procedure for Unemancipated Minors: An unemancipated minor has the authority to act as an individual with regard to PHI and a parent cannot act as the unemancipated minor's personal representative if:

1. The unemancipated minor consents to the health care service(s) and no other consent is required by law and the minor has not requested that any other person be recognized as his or her personal representative;
2. The unemancipated minor may lawfully obtain the health care service(s) without the consent of a parent and the minor, a court, or another person authorized by law consents to such health care service(s); or
3. A parent assents to an agreement of confidentiality between the Medical Center and the unemancipated minor with respect to the health care service(s).

If any of these exceptions apply, then the Medical Center is responsible for ensuring authorization is obtained, as necessary, from the unemancipated minor regarding the use and disclosure of his or her PHI in accordance with DHS Policy No. 361.4.

Situations Warranting Disregard Of Personal Representative

The Medical Center may elect not to recognize a person as an individual's personal representative under this policy if:

1. The Medical Center has a reasonable belief that:
 - a. The individual has been or may be subjected to domestic violence, abuse, or neglect by the person declaring himself or herself to be the personal representative; or
 - b. Recognizing the person as the personal representative could endanger the individual; and

Subject: PROTECTED HEALTH INFORMATION: USE OR DISCLOSURE TO PERSONAL REPRESENTATIVES	Effective Date: 05/09/23	Policy # 203.8
	Chief Executive Officer's Initials:	

- c. In its professional judgment, the Medical Center decides that it is not in the best interest of the individual to recognize the person as the individual's personal representative.

When the Medical Center elects not to recognize a person as an individual's personal representative, the following steps should be taken:

1. The Medical Center will notify the person that the Medical Center will not consider that person as the individual's personal representative.
2. The Medical Center will immediately document the reasons why it has chosen to disregard the personal representative and must clearly state the basis of the reasonable belief that warrants disregard of the personal representative.
3. The Medical Center, with advice from County Counsel, may, in certain instances, as soon as practicable, petition the court to appoint a temporary guardian pending resolution of the matter in the event that another personal representative must be appointed to make decisions regarding the individual's PHI.

Documentation Retention

All forms completed under this policy shall be placed in the individual's health/medical record and retained for at least six (6) years.

REFERENCES

- 45 Code of Federal Regulations Parts 160 and 164
- DHS Policy # 361.3, Use and Disclosure of Protected Health Information Without Authorization
- DHS Policy # 361.4, Use and Disclosure of Protected Health Information Requiring Authorization
- DHS Policy # 361.15, Access of Individual to Protected Health Information/Designated Record Set
- DHS Policy # 361.16, Verification of Identity and Authority of Individuals Requesting Protected Health Information
- DHS Policy # 361.17, Use and Disclosure of Protected Health Information (PHI) Of Deceased Individuals and Minors To Personal Representatives
- DHS Policy # 361.27, Use and Disclosure of Protected Health Information for Research Purposes

REVISION DATES

June 22, 2004; June 10, 2008; September 25, 2008; September 10, 2013; November 8, 2016, November 21, 2022; May 9, 2023