

**DEPARTMENT OF HEALTH SERVICES
COUNTY OF LOS ANGELES**



SUBJECT: USE AND DISCLOSURE OF PROTECTED HEALTH INFORMATION (PHI) OF DECEASED INDIVIDUALS AND MINORS AND MAKING DISCLOSURES TO PERSONAL REPRESENTATIVES

POLICY NO: 361.17

PURPOSE:

The purpose of this policy is to outline the procedures of the Department of Health Services (DHS) for the use or disclosure of Protected Health Information (PHI) of deceased individuals and minors to personal representatives, in accordance with the Privacy Standards of the Health Insurance Portability and Accountability Act of 1996, 45 Code of Federal Regulations Parts 160 and 164 (HIPAA).

POLICY:

Deceased Individuals. DHS will ensure its use or disclosure of the PHI of deceased individuals 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, the DHS shall treat 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, DHS 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 DHS maintains a deceased individual's PHI.

Adults or Emancipated Minors. 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 DHS must treat 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, "Use and Disclosure of Protected Health Information Requiring Authorization."

Unemancipated Minors. 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 decisions, then DHS must treat such person as the person representative responsible for making decisions regarding the use and disclosure of such individual's PHI and must obtain, as necessary, an appropriate Authorization form from the personal representative in accordance with DHS. Policy No. 361.4.

APPROVED BY:

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DEFINITIONS:

Authorization means the signed Authorization language used by DHS to obtain an individual'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.

Disclose or Disclosure means, with respect to PHI, the release of, transfer of, provision of access to, or divulging in any manner of PHI outside of DHS' internal operations or to other than its Workforce Members.

Minor means, under California law:

1. A person under the age of 18.
2. An unemancipated minor is considered to be an adult for the purpose of consenting to medical care. An unemancipated minor is a minor who comes within any of the following categories:
 - 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 the U.S. armed forces regardless of age.
 - c. Married or formerly married.
3. 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.
 - a. A self-sufficient minor may consent to his or her medical care without parental consent.

Personal Representative means:

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.
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Protected Health Information (PHI) means information that is created or received by a Health Care Provider, Health Plan, employer or Health Care Clearinghouse; relates to the past, present or future physical or mental health or condition of an individual; the provision of Health Care to an individual, or the past, present or future payment for the provision of health care to an individual and identifies the individual (or for which there is a reasonable basis for believing that the information can be used to identify the individual).

Use or Uses means, with respect to PHI, the sharing, employment, application, utilization, examination or analysis of such information within DHS' internal operations.

PROCEDURE:

I. DECEASED INDIVIDUALS

- A. If under applicable law an executor, administrator or other person has the authority to act on behalf of a deceased individual or the deceased individual's estate, DHS will treat such person as the personal representative of the deceased individual, and will allow such personal representative to make decisions regarding the decedent's PHI.
- B. DHS must verify the identity and authority of a person holding himself or herself out as 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."
- C. After the person has been properly identified as the personal representative, DHS must obtain an Authorization, as applicable, from the personal representative regarding the use and disclosure of the decedent's PHI.
 1. There are six general exceptions that permit DHS 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 coroners;
 - b. Disclosures of PHI needed by medical examiners;

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- c. Disclosures of PHI needed by funeral directors;
 - d. Disclosures of PHI needed to facilitate an organ donation;
 - e. Disclosures of PHI to alert a law enforcement agency of the death of the individual if DHS has a suspicion that such death may have resulted from criminal conduct.
 - f. 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, DHS must document the disclosure on the "*Disclosures by the Department of Health Services of Deceased Individual's PHI Without Authorization*" form (Attachment) and the exception under which it was made.

II. PERSONAL REPRESENTATIVES OF ADULTS OR EMANCIPATED MINORS

- A. Any person who has the authority under applicable law to act on behalf of an individual who is an adult or an emancipated minor regarding health care decisions will be treated by DHS as the personal representative responsible for making decisions regarding the Use and Disclosure of the individual's PHI.
- 1. DHS will verify the identity and authority of a person holding himself out as the personal representative of the individual in accordance with DHS Policy No. 361.16.
 - 2. After the person has been properly identified as the personal representative, DHS will obtain an Authorization, as necessary, from the personal representative for DHS' use and disclosure of the PHI in accordance with DHS Policy No. 361.4.

III. PERSONAL REPRESENTATIVES OF UNEMANCIPATED MINORS

- A. Any parent, guardian or person acting *in loco parentis* (a "Parent") who has the authority under applicable law to act on behalf of an individual who is an unemancipated minor in making decisions related to Health Care will be deemed by DHS as the personal representative responsible for making the decisions regarding the Use and Disclosure of such individual's PHI.
- 1. DHS will verify the identity and authority of a person holding himself out as a parent in accordance with DHS Policy No. 361.16.

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2. After the parent has been properly identified as the personal representative of an unemancipated minor, DHS 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.
 - B. 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 treated as the personal representative;
 2. The unemancipated minor may lawfully obtain the health care service(s) without the consent of the 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 DHS and the unemancipated minor with respect to the health care service(s).

If any of the exceptions set forth in the Section above apply, then DHS is responsible for ensuring that it obtains an Authorization, as necessary, from the unemancipated minor regarding the use and disclosure of his or her PHI in accordance with DHS Policy No. 361.4.

IV. SITUATIONS WARRANTING DISREGARD OF PERSONAL REPRESENTATIVE

- A. DHS may elect not to treat a person as an individual's personal representative under this policy if:
 1. DHS has a reasonable belief that
 - a. The individual has been or may be subjected to domestic violence, abuse or neglect by the person holding himself or herself out as the personal representative; or
 - b. Treating the person as the personal representative could endanger the individual; and

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- c. In its professional judgement, DHS decides that it is not in the best interest of the individual to treat the person as the individual's personal representative.
- B. When DHS elects not to treat a person as an individual's personal representative, the following steps should be taken:
 - 1. DHS will notify the person that DHS will not consider that person as the individual's personal representative;
 - 2. DHS 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. DHS, 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.

V. DOCUMENTATION RETENTION

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

REFERENCES:

45 Code of Federal Regulations Parts 160 and 164

DHS Policy No. 361.3, "Use and Disclosure of Protected Health Information Without Authorization"

DHS Policy No. 361.4, "Use and Disclosure of Protected Health Information Requiring Authorization"

DHS Policy No. 361.15, "Access of Individual to Protected Health Information (PHI)/Designated Record Set"

DHS Policy No. 361.16, "Verification of Identity and Authority of Individuals Requesting Protected Health Information"

DHS Policy No. 361.27, "Use and Disclosure of Protected Health Information for Research Purposes"

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SAMPLE FORM
DISCLOSURES BY THE DEPARTMENT OF HEALTH SERVICES OF DECEASED
INDIVIDUAL'S PHI WITHOUT AUTHORIZATION

1. Name of Deceased Individual:

2. Date of Disclosure:

3. Name of Workforce Member making the Disclosure:

4. Purpose of the Disclosure (check applicable disclosure):

_____ Disclosure of PHI needed by coroners

_____ Disclosure of PHI needed by a medical examiner

_____ Disclosures of PHI needed by a funeral director

_____ Disclosure of PHI needed to facilitate an organ donation

_____ Disclosure of PHI to alert a law enforcement agency of the death of the individual based on the suspicion that such death may have resulted from criminal conduct

5. Description of the Disclosure (insert to whom the information was disclosed, for what purpose, type of PHI disclosed):

Workforce Member Name: _____

Signature: _____

Date: _