

## STANDARD ADMINISTRATIVE PROCEDURE

### 16.99.99.M0.14 Personal Representative

*Approved April 27, 2020*

*Next scheduled review: April 27, 2025*

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#### SAP Statement

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This standard administrative procedure applies to the Texas A&M University (TAMU) components that have been designated as a TAMU HIPAA Health Care Component (TAMU HIPAA HCC) in Standard Administrative Procedure 16.99.99.M0.01, *Designation as a Hybrid Entity*.

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#### Definitions

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#### Official Procedure

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##### 1. GENERAL

This procedure addresses (1) personal representatives<sup>i</sup> and (2) the privacy rights of minors under the age of 18 who are not emancipated from the care of their parents or guardians. Personal representatives are those individuals who, under Texas law, are able to make health care decisions on behalf of the patient. With respect to deceased individuals, a personal representative is an executor, administrator, or other person who has authority to act on behalf of the deceased individual or of the individual's estate. With respect to the PHI relevant to their personal representation, personal representatives have the same rights and obligations as the patient for all purposes under TAMU HIPAA HCC policies and procedures, except with respect to the Patient Access to Protected Health Information procedure and as otherwise specified in the Sensitive Information Procedure and in this procedure.

- 1.1 As a general rule, only the parent, guardian or other person acting in the place of a parent (collectively referred to as "parents or guardians") has the authority to control access and protect the confidentiality of PHI about a minor.

- 1.2 In limited circumstances, however, a minor will have the authority to exercise these rights on his or her own behalf. Clinicians and staff are expected to protect the privacy of health information about minors in accordance with the procedures below.
- 1.3 Under Texas law, patients under the age of 18 may be emancipated from the care of a parent or guardian by court or if they are married.
  - 1.3.1 Emancipated individuals will be afforded the same privacy rights as all adults in accordance with all other TAMU HIPAA HCC policies.

## 2. PROCEDURE

### 2.1 Control by Parent or Guardian.

2.1.1 As with personal representatives generally, parents or guardians ordinarily have the authority to control the health information of a minor by exercising the rights granted to a patient concerning his or her health information including the rights to:

- Sign an authorization form permitting the use and disclosure of the minor's information for other purposes.
- Object to the use and disclosure of the minor's information in the hospital directory, or to friends and family involved in the minor's health care.
- Inspect or copy the minor's information.
- Request amendment of the minor's information.
- Request an accounting of disclosures of the minor's information.
- Request additional privacy protections, including confidential communications, with respect to a minor's information.
- Request a copy of the hospital's Notice of Privacy Practices.
- File privacy complaints with the hospital or with the United States Department of Health and Human Services.

2.1.2 There are certain circumstances, such as a medical emergency, under which the TAMU HIPAA HCCs may provide treatment to a minor without the consent or other written permission of a parent or guardian. In these

circumstances, the parent or guardian nevertheless retains the authority to control the privacy of the minor's PHI.

## 2.2 Exceptions: Minor's Authority to Exercise Privacy Rights.

2.2.1 There are two exceptions to the general rule, under which the minor is permitted to exercise the privacy rights listed in this procedure on his or her own behalf:

- When the minor may lawfully obtain a healthcare service without the consent of a parent, guardian or other person acting *in loco parentis*.
- When the minor, a court, or another person authorized by law consents to such health care service even if a parent or guardian has also consented to the health care service or the minor has voluntarily chosen to involve the parent or guardian in his or her health care.

2.2.2 Under Texas law, a minor who is or believes himself or herself to be addicted to a narcotic or other drug may consent to substance abuse treatment, and any minor who believes himself or herself to be afflicted with an illness or disease may likewise consent to care.

2.2.3 Under Texas law, a minor may consent to medical care or the administration of medication for the purpose of alleviating or reducing pain, discomfort, or distress of and during labor and childbirth.

2.2.4 In the above cases, upon the advice and direction of the treating physician, a physician may, but is not obligated to, inform the spouse, parent, or guardian of any such minor as to the treatment given or needed, and such information may be given to, or withheld from the spouse, parent or guardian without the consent and over the express objection of the minor, *unless* an exception in this procedure applies.

2.2.5 When a parent, guardian, or other person acting *in loco parentis* agrees to confidentiality between the TAMU HIPAA HCC and the minor with respect to a particular health care treatment or service.

## 2.3 Abuse, Neglect or Endangerment.

2.3.1 A licensed TAMU HIPAA HCC professional may elect not to treat a person as the personal representative of a patient, including a minor, if he or she:

- Reasonably believes that the patient (1) has been or may be subjected to violence, abuse or neglect by the person, or (2) could be endangered if the person is treated as a personal representative.

- Decides, using his or her professional judgment, that it is not in the best interest of the patient to treat the person as a personal representative.

### 3. VIOLATIONS

The TAMU Privacy Officer has general responsibility for implementation of this procedure. Employees who violate this procedure will be subject to disciplinary action up to and including termination of employment. Anyone who knows or has reason to believe that another person has violated this procedure should report the matter promptly to his or her supervisor or the TAMU Privacy Officer. All reported matters will be investigated and, where appropriate, steps will be taken to remedy the situation. Where possible, every effort will be made to handle the reported matter confidentially. Any attempt to retaliate against a person for reporting a violation of this procedure will itself be considered a violation of this procedure that may result in disciplinary action up to and including termination of employment.

<sup>i</sup> HIPAA Code: §164.502(g)

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#### **Contact Office**

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**Office of University Risk, Ethics, and Compliance**