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Area Organizational Integrity

Applicability PeaceHealth Systemwide

Tags Policy and Procedure

Personal Representative under Health Insurance Portability Accountability Act (HIPAA) Policy

SCOPE

This policy applies to all PeaceHealth settings and services in the location(s) checked below:

✓ Ambulatory Surgery Center	✓ PeaceHealth Medical Group
✓ Cottage Grove Medical Center	✓ Sacred Heart RiverBend
✓ Ketchikan Medical Center	✓ Southwest Medical Center
✓ Ketchikan Long Term Care	✓ St. John Medical Center
✓ Peace Harbor Medical Center	✓ St. Joseph Medical Center
✓ Peace Island Medical Center	✓ System Services Center
✓ PeaceHealth Home & Community	✓ United General Medical Center
PeaceHealth Laboratories	

PURPOSE

The purpose of this policy and procedure is to define the requirements related to personal representatives, who must be treated as the patient for purposes of accessing, using, or disclosing protected health information (PHI) under Health Insurance Portability Accountability Act (HIPAA).

DEFINITIONS

- **Caregiver:** Employees, independent providers, volunteers, students, trainees, and other persons whose conduct, in the performance of work for PeaceHealth, is under the direct control of PeaceHealth, whether or not they are paid by PeaceHealth.
- **Durable Power of Attorney (DPOA) for Health Care Decisions:** A document in which a patient name a trusted person to oversee his or her medical care and make healthcare decisions for the patient if he or she is unable to do so.
- **Emancipated Minor:** An individual under the age of 18 but has the power and capacity of an adult.
- **Health Insurance Portability Accountability Act (HIPAA) of 1996:** The Privacy Rule, Security Rule, and Breach Notification Rule issued under HIPAA, set forth in 45 CFR Part 160 and Part 164. US law designed to provide privacy standards to protect patients' medical records and other health information provided to health plans, doctors, hospitals and other health care providers. Developed by the Department of Health and Human Services, these standards provide patients with access to their medical records and more control over how their personal health information is used and disclosed.
- **Loco Parentis:** "in place of a parent" or "instead of a parent." Refers to the legal responsibility of a person or organization to perform the functions or responsibilities of a parent.
- **Personal Representative:** A person who, under applicable law, has authority to act on behalf of an individual (patient) in making decisions related to health care. This includes, but is not limited to, a parent or legal guardian.
 - In Washington if a patient has a Mental Health Advanced Directive (MHAD) form on file, the individual named on the form may be considered the personal representative under HIPAA.
- **Support Person:** A family member, guardian, personal care assistant, or other paid or unpaid attendant selected by the patient to physically or emotionally assist the patient or ensure effective communication with the patient.
- **Surrogate:** An individual who acts or speaks in support of a patient appointed to make healthcare decisions for the patient when the patient is unable to make healthcare decisions.

POLICY

PeaceHealth will recognize authorized personal representatives and treat them as the patient for purposes of exercising the patient's rights under HIPAA.

PeaceHealth must treat a patient's authorized personal representative as the patient with respect to PHI, except for unemancipated minors and/or abuse, neglect, and endangerment situations. An authorized personal representative is a person with authority under applicable law to act on behalf of a patient in making decisions related to healthcare. This includes parents, legal guardians, persons with durable power of attorney and may also include the family or next of kin of a patient who has no legally appointed surrogate.

PROCEDURE

This procedure will describe the standards for determining which person to properly recognize as a patient's personal representative.

Personal Representatives for Adults, Emancipated Minors, and Deceased Patients

1. In the event the patient is unable to communicate and represent themselves, caregivers must recognize the following legally appointed persons as the patient's personal representative for purposes of exercising the patient's rights relating to PHI under HIPAA:
 - a. Healthcare representative/agent
 - b. Attorney in Fact (person appointed by Durable Power of Attorney (DPOA))
 - c. Guardian of a mentally incapacitated adult
 - d. Parent or guardian of an unemancipated minor
2. When relying on a person's appointment by a court or a legal document signed by the patient as the authority for such person to serve as a patient's personal representative, a copy of the certificate or document of appointment should be obtained and placed in the patient's medical record.
 - a. Caregivers must validate the identity of the personal representative before sharing PHI.
3. In cases in which a patient does not have any of the above-mentioned, legally-appointed representatives, or in an emergency situation, caregivers may treat an appropriate family member ("next of kin") or a patient's "significant other" (including close friends) as the patient's personal representative. Use reasonable means to identify these individuals, i.e. if they are not known to you then ask for a valid photo ID. Generally, family members are considered next of kin in the following order:
 - a. **Alaska** ([AS 13.52.030](#))
 - i. In the absence of a designation, or if the designee is not reasonably available, a member of the following classes of the patient's family who is reasonably available, in descending order of priority, may act as personal representative/surrogate:
 1. the spouse, unless legally separated;
 2. an adult child;
 3. a parent; or
 4. an adult sibling.
 - ii. If none of the individuals eligible to act as a personal representative/surrogate under Alaska law is reasonably available, an adult who has exhibited special care and concern for the patient, who is familiar with the patient's personal values, and who is reasonably available may act as

personal representative/surrogate.

b. **Oregon** ([ORS 127.635](#))

- i. The patient's spouse;
- ii. A majority of the adult children of the patient who can be so located;
- iii. Either parent of the patient;
- iv. A majority of the adult siblings of the patient who can be located with reasonable effort; or
- v. Any adult relative or adult friend.

c. **Washington** ([70.02.140](#))([7.70.065](#))

- i. If a patient has a Mental Health Advanced Directive (MHAD) form on file. The individual named on the form may be considered the personal representative.
 1. If the patient has a DPOA and MHAD on file and the personal representative named is not the same individual, the personal representative listed on the most recently dated form would take priority. ([RCW 71.32.180](#); [RCW 11.125.400](#))
- ii. The patient's spouse or state registered domestic partner;
- iii. Children of the patient who are at least eighteen years of age;
- iv. Parents of the patient;
- v. Adult brothers and sisters of the patient;
- vi. Adult grandchildren of the patient who are familiar with the patient;
- vii. Adult nieces and nephews of the patient who are familiar with the patient
- viii. Adult aunts and uncles of the patient who are familiar with the patient; and
- ix. An adult who:
 1. Has exhibited special care and concern for the patient;
 2. Is familiar with the patient's personal values; and
 3. Is reasonably available to make health care decisions;

Unemancipated Minors

PeaceHealth will treat a parent, guardian or other person acting in *loco parentis*, who has authority under applicable law to make decisions related to healthcare on behalf of a patient who is an unemancipated minor, as a personal representative unless:

1. the minor may lawfully consent and obtain healthcare services, without the consent of a parent, guardian or other person acting in loco parentis,
2. a parent, guardian or other person acting in loco parentis agrees to the confidentiality between PeaceHealth and the minor with respect to healthcare services.

In cases where the unemancipated minor provides his or her own consent, parents and others will not be recognized as personal representatives with respect to release of PHI pertaining to treatment; or a parent, guardian or other person acting in loco parentis agrees to confidentiality between PeaceHealth care providers and the patient.

Please Note: A support person is not the same as a personal representative under HIPAA. For information on support persons please review the state-appropriate policy.

HELP

Further guidance may be obtained by contacting [Network Privacy Officer](#).

RELATED MATERIAL

Policies & Procedures:

- [Support Person Policy](#)
- [Informed Consent for Adult Patients Policy](#)
- [Informed Consent for Minor Patients Policy](#)

All Revision Dates

8/1/2024, 8/9/2023, 8/9/2023, 1/11/2022

Approval Signatures

Step Description	Approver	Date
APC	Shaina Hogan: Dir Policy Admin [TE]	8/1/2024
VP OI	Gerald Roy: Sys VP Organizational Integrity	4/15/2024
	Tarra Carey: Sys Dir Privacy and Integrity	4/12/2024

Applicability

PeaceHealth Cottage Grove Community Medical Center, PeaceHealth Home and Community, PeaceHealth Ketchikan Medical Center, PeaceHealth Medical Group, PeaceHealth Peace Harbor Medical Center, PeaceHealth Peace Island Medical Center, PeaceHealth SHMC at RiverBend, PeaceHealth

Southwest Medical Center, PeaceHealth St John Medical Center, PeaceHealth St Joseph Medical Center, PeaceHealth System Services, PeaceHealth United General Medical Center

Standards

No standards are associated with this document

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