



Access to PHI:

HIPAA and Personal Representatives

45 CFR 164.502(g)

The HIPAA Privacy Rule provides patients with rights that permit them to control certain uses and disclosures of their protected health information. There may be times when the patient is legally or otherwise incapable of exercising their rights, or the patient may choose to designate another to act on their behalf with respect to health care decision making. A person authorized to act on behalf of the individual to make healthcare decisions is the patient's "personal representative" and may exercise the patient's rights under HIPAA.

The chart below displays who must be recognized as the personal representative for a category of individuals:

If the Individual Is:

An Adult or

An Emancipated Minor

The Personal Representative Is:

A person with legal authority to make health care decisions on behalf of the individual

Examples: Court appointed legal guardian
Healthcare power of attorney or durable power of attorney that includes the power to make health care decisions

An Unemancipated Minor

A parent, guardian, or other person acting in loco parentis with legal authority to make health care decisions on behalf of the minor child

Exceptions: See parents and unemancipated minors on following page for the types of visits the minor can consent & authorize the disclosure of PHI.

Deceased

A person with legal authority to act on behalf of the decedent or the estate (not restricted to persons with authority to make health care decisions)

Examples: Executor or administrator of the estate; next of kin or other family member (see WU HIPAA Policy #2 Access to PHI)

Parents and Unemancipated Minors

In most cases under the Privacy Rule, either parent, guardian, or other person acting *in loco parentis* (collectively, “parent”) is the personal representative of the minor child and can exercise the minor’s rights with respect to protected health information, because the parent usually has the authority to make health care decisions about his or her minor child.

However, the Privacy Rule specifies three circumstances in which the parent is not the “personal representative” with respect to certain health information about his or her minor child. These exceptions generally track the ability of certain minors to obtain specified health care without parental consent under State or other laws, or standards of professional practice. In these situations, the parent does not control the minor’s health care decisions, and thus under the Rule, does not control the protected health information related to that care. The three exceptional circumstances when a parent is not the minor’s personal representative are:

- When State or other law does not require the consent of a parent or other person before a minor can obtain a particular health care service, and the minor consents to the health care service;

Example: A State law provides an adolescent the right to obtain mental health treatment, reproductive health services, or substance abuse treatment without the consent of his or her parent, and the adolescent consents to such treatment without the parent’s consent.

- When someone other than the parent is authorized by law to consent to the provision of a particular health service to a minor and provides such consent;

Example: A court may grant authority to make health care decisions for the minor to an adult other than the parent, to the minor, or the court may make the decision(s) itself.

- When a parent agrees to a confidential relationship between the minor and a health care provider.

Example: A physician asks the parent of a 16-year-old if the physician can talk with the child confidentially about a medical condition and the parent agrees.

The Privacy Rule defers to State or other applicable laws that expressly address the ***ability of the parent to obtain health information about the minor child***. In doing so, the Privacy Rule permits a covered entity to disclose to either parent, or provide either parent with access to, a minor child’s protected health information when and to the extent it is permitted or required by State or other laws (including relevant case law). Likewise, the Privacy Rule prohibits a covered entity from disclosing a minor child’s protected health information to a parent, or providing a parent with access to such information, when and to the extent it is prohibited under State or other laws (including relevant case law).