



HIPPA Privacy Rule Policies

Policies and Procedures	Policy # 13	
PERSONAL REPRESENTATIVES		
APPROVED BY:	ADOPTED:	
	REVISED: 07122017	
SUPERCEDES POLICY: NEW	REVIEWED: 07122017	

Purpose

To define the methods by which LifeMed ID will receive and handle notifications of requests from individuals or its customers to treat persons as Personal Representatives of individuals in keeping with LifeMed ID’s obligations to maintain the privacy of Protected Health Information (PHI) in accordance with state and federal privacy laws, HIPAA Regulations and LifeMed ID’s contracts with its customers.

Policy

It is the policy of LifeMed ID to protect PHI and to comply with requests of designation of a Personal Representative by an individual that has been granted by a customer and to allow the Personal Representative to exercise privacy rights on behalf of the individual, in accordance with state and federal privacy laws, HIPAA Regulations and LifeMed ID’s contracts with its customers.

All workforce members must comply with this policy. Violations of this policy will result in disciplinary action based on the seriousness of the offense or other factors. Disciplinary action may include written warning, suspension, or termination.

Definitions

“Customer” is an entity from which LifeMed ID receives PHI subject to a Business Associate Agreement (or other written agreement with the entity) in compliance with the HIPAA Regulations and approved by LifeMed ID’s legal counsel.

A “Personal Representative” is defined and governed by state law and generally means:

1. For an adult or emancipated minor: A person with legal authority to make health care decisions on behalf of the individual. Examples:
 - a. Health care power of attorney
 - b. Court appointed legal guardian
 - c. General power of attorney or durable power of attorney that includes the power to make health care decisions;
2. For an un-emancipated 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;
3. For a deceased person: 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:
 - a. Executor or administrator of the estate





- b. Next of kin or other family member (if relevant law provides authority).

See <http://www.hhs.gov/ocr/privacy/hipaa/understanding/coveredentities/personalreps.html>

For definitions of other capitalized terms or phrases, please refer to: *HIPAA-HITECH Privacy and Security Glossary*.

Procedures

1. Authority of Personal Representatives. In general, competent adult or emancipated minor who does not suffer from mental incapacity has authority to exercise his or her rights regarding the use or disclosure of PHI. However, under some circumstances, a Personal Representative may be appointed (by the individual or, in certain circumstances, by a Court) under state law to make health care decisions on behalf of an individual and may also exercise the individual's privacy rights, on behalf of the individual.
2. Personal Representatives for Minors. A Minor's parent is usually the Personal Representative of the Minor unless another individual provides written proof that he or she is the Minor's legal guardian and Personal Representative. {If your Company deals with Minors on a regular basis, you may request a more detailed Policy related to Minors}
3. Notification of Designation.
 - a. If the customer notifies LifeMed ID's Privacy Officer of the appointment of a Personal Representative for an individual, LifeMed ID's Privacy Officer will forward the information to the designated office responsible for recording the appointment.
 - b. The designated office will document the information about the Personal Representative in the individual's record as required by the customer or the customer's contract, and in accordance with LifeMed ID's internal policies and procedures.
 - c. LifeMed ID's Privacy Officer will oversee implementing the necessary procedures to comply with the request consistent with state and federal privacy laws, HIPAA Regulations and LifeMed ID's contracts with its customers.
 - d. Any workforce member who receives a notice directly from an individual requesting the designation of a Personal Representative will forward the request to LifeMed ID's Privacy Officer. LifeMed ID's Privacy Officer will forward the notice to the appropriate customer's Privacy Office which will make the determination of the validity of the Personal Representative's appointment.
4. Rescission of Authority of a Personal Representative. Upon receipt of a valid notification from LifeMed ID's customer that the individual no longer wishes to retain a previously designated Personal Representative, or that the authority of a court-appointed Personal Representative has been rescinded or ended, the Privacy Officer will forward the information to the designated office responsible for recording the appointment who will update the individual's records marking the



Personal Representative's information as "inactive" or will eliminate the information from the record as dictated by the Privacy Officer.

5. Documentation. The designated office will document the information about the handling of the appointment of the Personal Representative in the individual's record as required by the customer or the customer's contract, and in accordance with LifeMed ID's internal policies and procedures. The LifeMed ID Privacy Officer will ensure that documentation associated with the appointment of a Personal Representative includes:
 - a. The titles of the persons or offices at your customer responsible for determining the validity of, and informing LifeMed ID of, the appointment of the Personal Representative,
 - b. The titles of persons and office at LifeMed ID responsible for receiving, documenting and implementing the appointment of a Personal Representative, and
 - c. Steps taken by LifeMed ID to accommodate the appointment of a Personal Representative.

Documentation

This version of the policy, together with any forms and other documentation created or obtained in accordance with the policy, will be retained by LifeMed ID for a period of at least 6 years plus the current year from the date of creation or the date when last in effect, whichever is later.



Regulatory Authority

45 C.F.R. §164.502 Uses and disclosures of protected health information: general rules.

- (g) **(1) Standard: Personal representatives.** *As specified in this paragraph, a covered entity must, except as provided in paragraphs (g)(3) and (g)(5) of this section, treat a personal representative as the individual for purposes of this subchapter.*
- (2) Implementation specification: adults and emancipated minors.** *If under applicable law a person has authority to act on behalf of an individual who is an adult or an emancipated minor in making decisions related to health care, a covered entity must treat such person as a personal representative under this subchapter, with respect to protected health information relevant to such personal representation.*
- (3) **(i) Implementation specification: unemancipated minors.** *If under applicable law a parent, guardian, or other person acting in loco parentis has authority to act on behalf of an individual who is an unemancipated minor in making decisions related to health care, a covered entity must treat such person as a personal representative under this subchapter, with respect to protected health information relevant to such personal representation, except that such person may not be a personal representative of an unemancipated minor, and the minor has the authority to act as an individual, with respect to protected health information pertaining to a health care service, if:*
- (A) The minor consents to such health care service; no other consent to such health care service is required by law, regardless of whether the consent of another person has also been obtained; and the minor has not requested that such person be treated as the personal representative;*
 - (B) The minor may lawfully obtain such health care service without the consent of a parent, guardian, or other person acting in loco parentis, and the minor, a court, or another person authorized by law consents to such health care service; or*
 - (C) A parent, guardian, or other person acting in loco parentis assents to an agreement of confidentiality between a covered health care provider and the minor with respect to such health care service.*
- (ii) Notwithstanding the provisions of paragraph (g)(3)(i) of this section:**
- (A) If, and to the extent, permitted or required by an applicable provision of State or other law, including applicable case law, a covered entity may disclose, or provide access in accordance with §164.524 to, protected health information about an unemancipated minor to a parent, guardian, or other person acting in loco parentis;*
 - (B) If, and to the extent, prohibited by an applicable provision of State or other law, including applicable case law, a covered entity may not disclose, or provide access in accordance with §164.524 to, protected health information about an*

unemancipated minor to a parent, guardian, or other person acting in loco parentis ; and

(C) Where the parent, guardian, or other person acting in loco parentis, is not the personal representative under paragraphs (g)(3)(i)(A), (B), or (C) of this section and where there is no applicable access provision under State or other law, including case law, a covered entity may provide or deny access under §164.524 to a parent, guardian, or other person acting in loco parentis, if such action is consistent with State or other applicable law, provided that such decision must be made by a licensed health care professional, in the exercise of professional judgment.

(4) Implementation specification: *Deceased individuals. If under applicable law an executor, administrator, or other person has authority to act on behalf of a deceased individual or of the individual's estate, a covered entity must treat such person as a personal representative under this subchapter, with respect to protected health information relevant to such personal representation.*

(5) Implementation specification: *Abuse, neglect, endangerment situations. Notwithstanding a State law or any requirement of this paragraph to the contrary, a covered entity may elect not to treat a person as the personal representative of an individual if:*

(i) The covered entity has a reasonable belief that:

(A) The individual has been or may be subjected to domestic violence, abuse, or neglect by such person; or

(B) Treating such person as the personal representative could endanger the individual; and

(ii) The covered entity, in the exercise of professional judgment, decides that it is not in the best interest of the individual to treat the person as the individual's personal representative.

45 C.F.R. §164.512 Uses and disclosures for which an authorization or opportunity to agree or object is not required.

(c) Standard: *Disclosures about victims of abuse, neglect or domestic violence*

(1) Permitted disclosures. Except for reports of child abuse or neglect permitted by paragraph (b)(1)(ii) of this section, a covered entity may disclose protected health information about an individual whom the covered entity reasonably believes to be a victim of abuse, neglect, or domestic violence to a government authority, including a social service or protective services agency, authorized by law to receive reports of such abuse, neglect, or domestic violence:

(2) Informing the individual. A covered entity that makes a disclosure permitted by paragraph (c)(1) of this section must promptly inform the individual that such a report has been or will be made, except if:

(i) The covered entity, in the exercise of professional judgment, believes informing the individual would place the individual at risk of serious harm; or



(ii) The covered entity would be informing a personal representative, and the covered entity reasonably believes the personal representative is responsible for the abuse, neglect, or other injury, and that informing such person would not be in the best interests of the individual as determined by the covered entity, in the exercise of professional judgment.



References

External

1. Omnibus Final Rule: <http://www.ecfr.gov/cgi-bin/text-idx?c=ecfr&SID=a1031c979126e6440b522063b7bba578&rgn=div5&view=text&node=45:1.0.1.3.78&idno=45%20>