



# HURON BEHAVIORAL HEALTH OPERATIONAL POLICY

Policy #: ORI.1.15  
Issue Date: 01/13/03  
Rev. Date: 07/11/17  
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## Title: Personal Representative/Guardian Policy

Prepared By: Executive Director

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### Purpose:

To define the guidelines to be used regarding the interpretation/understanding of an individual's Personal Representative/Guardian as defined under the Health Insurance Portability and Accountability Act (HIPAA) of 1996.

### Scope:

This policy applies to all employees (including full-time employees, part-time employees, contractual providers, volunteers, students, and/or interns) of Huron Behavioral Health (HBH) and all consumers served by HBH.

### Information:

- It is the policy of HBH, as related to the Health Insurance Portability and Accountability Act (HIPAA) of 1996 Privacy Rule, that a Personal Representative must be treated as the individual/consumer and may "stand in the shoes" of the consumer and be treated as the consumer for the purposes of signing all HIPAA forms and exercising all rights under HIPAA. (This means that HBH employees should treat the personal representative/guardian as the consumer for purposes of signing HIPAA forms and exercising their rights under HIPAA. For example, a personal representative/guardian may sign an acknowledgement form on behalf of the consumer or may request copies of the consumer's Protected Health Information/PHI.)
- Under the HIPAA, a Personal Representative must be treated as the Individual.
- Because Personal Representatives are often encountered in behavioral health, this policy outlines how personal representatives are treated for HIPAA purposes.
- HBH has historically used the term "Guardian" on its internal forms, policies, and procedures. For the purpose of this policy and other internal previously created documentation, the use of the word "Guardian" shall be understood to mean "Personal Representative".
- Under HIPAA, if an individual has the authority to act on behalf of the consumer under Michigan law, then that person is considered a Personal Representative for the purposes of HIPAA.
- Employees with questions as to whether or not an individual is a Personal Representative/Guardian of a consumer should contact the Privacy Officer or their program supervisor.

### Policy:

#### A. Minors:

##### 1. Determination of Personal Representative/Guardian Status for Un-emancipated Minors:

For un-emancipated minors, the following are personal representatives under Michigan Law:

- The child's custodial parent
- The child's non-custodial parent unless there is a court order limiting the non-custodial parents' access to medical records. (Note: the custodial parent may object to the release of mental health records to the non-custodial parent).
- The child's legal guardian
- A person with whom the care of the child has been entrusted by the child's parents and whom the parents have authorized in writing to consent to medical treatment on the child's behalf.
- Person standing "in loco parentis" (a person who has legal or physical custody of the minor and is providing support and care for the minor)
- A child care institution, or child care organization with written authority to consent to routine, non-surgical medical care of the child (i.e. agency delegate)
- For children whose parents' parental rights have been terminated, the probate court, or agency having jurisdiction over the child

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Note – Under the HIPAA Privacy Rule, there are three (3) exceptions to when a parent is not the minor's Personal Representative:

- 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 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.

Additionally, under the HIPAA Privacy Rule addresses Abuse, Neglect, and Endangerment situations as follows:

- When a physician or other covered entity reasonably believes that an individual, including an un-emancipated minor, has been or may be subjected to domestic violence, abuse, or neglect by the personal representative, or that treating a person as an individual's personal representative could endanger the individual, the covered entity may choose not to treat that person as the individual's personal representative, if in the exercise of professional judgment, doing so would not be in the best interests of the individual. For example, if a physician reasonably believes that providing the personal representative of an incompetent elderly individual with access to the individual's health information would endanger that individual, the Privacy Rule permits the physician to decline to provide such access. If this situation occurs at HBH, the worker must document that determination and the justification for the determination in the minor's case record and immediately notify their supervisor of the concerns.

## **2. Determination of Emancipation**

If a minor is emancipated, he/she is to be treated as an adult. Under Michigan law, a minor is emancipated if:

- He or she is validly **married**
- He or she is **18 years of age**
- He or she is on **active duty with the armed forces** of the United States
- There is a **court order** for emancipation
- The minor is in **police custody** and the minor's parent or guardian cannot be located (please note that emancipation in this context is limited to consent for routine, non-surgical medical care or emergency medical treatment)
- The minor is **incarcerated** and the minor's parent or guardian cannot be located (please note that emancipation in this context allows consent for all medical care with the exception of vasectomies or other procedures related to reproduction)

## **3. Control of Medical Information by an Un-emancipated Minor:**

In most situations, the parent or legal guardian of an un-emancipated minor will control the flow of the minor's health information (e.g., request access, request restrictions, request amendment, sign authorizations, etc.).

An un-emancipated minor **can control his or her own health information (including a request that information not be provided to parents)** in the following **limited situations**:

- The minor and the parent, guardian, or person acting in loco parentis entered into an agreement for confidentiality with respect to such treatment.
- Mental health services provided to a minor patient age fourteen (14) or older may not be disclosed to the parent, guardian, or person acting in loco parentis unless the mental health professional treating the minor determines that there is a compelling need for disclosure and the minor is first informed.

There are other situations where the minor can sign his or her own informed consent for treatment and exercise all rights under HIPAA, but cannot preclude the agency for medical reasons from informing the parents or

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guardian regarding the treatment. Specifically, based upon Michigan law, the minor can consent to treatment and can exercise rights under HIPAA with regard to substance abuse treatment. However, for medical reasons, the treating physician or member of the medical staff of a clinic or other health professional, and on the advice and direction of the treating physician, may, but is not obligated to, inform the parent, guardian or person in loco parentis as to the substance abuse treatment given to or needed by a minor. The information can be provided even if the minor expressly refuses.

**B. Incapacitated Adults:****1. For adults, the following are Personal Representatives:**

- A court appointed guardian
- Where there is no court appointed guardian and the consumer cannot make his or her own decisions: a patient advocate (designated in writing by the patient in a durable power of attorney document) or a surrogate decision maker (such as a family member)

**2. Guardian Signatory Responsibilities:**

Full Guardianship – When Full Guardianship has been assigned to a consumer (documented), the Guardian is responsible for signing all documents/forms for the consumer.

Partial Guardianship – When Partial Guardianship (Medical, Payee, etc.) has been assigned to a consumer (documented), the Guardian must sign only the pertinent documents which are relative to the assigned type of guardianship. The consumer is responsible for signing any remaining documents/forms.

No Guardian – The consumer must sign all of the documents/forms.

*Note:* If there are any questions regarding guardianship or partial guardianship, contact the HBH Compliance Liaison or the Recipient Rights Officer.

**Definitions/Acronyms:**

CFR – Code of Federal Regulations

HBH – Huron Behavioral Health

HIPAA – Health Insurance Portability and Accountability Act (of 1996)

MCL – Michigan Code of Law

PHI – Protected Health Information

**Forms:**

N/A

**Records:**

N/A

**Reference(s) and/or Legal Authority**

45 CFR §164.502(g) (personal representatives) @ <https://www.law.cornell.edu/cfr/text/45/164.502>

MCL 330.1707 (parent or guardian not to be notified of mental health services provided to minor) @

<http://www.mcadsv.org/mrcdsv/law/SexualAssault.pdf>

MCL 333.5653 (definition of patient surrogate) @ <http://www.rtl.org/html/legislation/prolifeleg/pdf/DeathDying/1996-SB1102.pdf>

MCL 333.6121 (minor can consent to substance abuse treatment) @ <http://www.ag.state.mi.us/opinion/datafiles/1990s/op06682.htm>

MCL 333.9132 (minor can consent for prenatal and pregnancy related care) @ <http://www.legislature.mi.gov/mileg.asp?page=ChapterIndex>

MCL 600.2157 (deceased's heirs at law are personal representatives) @

<http://www.legislature.mi.gov/mileg.asp?page=getObject&objName=mcl-600-2157a>

MCL 700.5215 (minor's legal guardian) @ [http://www.michigan.gov/documents/MCWLChap15Part1\\_34821\\_7.pdf](http://www.michigan.gov/documents/MCWLChap15Part1_34821_7.pdf)

MCL 700.5313 (appointment of guardian of legally incapacitated individual) @ <http://www.legislature.mi.gov/mileg.asp?page=ChapterIndex>

MCL 700.5511 (patient advocate) @ <http://www.legislature.mi.gov/documents/2003-2004/publicact/pdf/2004-PA-0532.pdf>

MCL 722.124a (child care organizations and institutions) @ <http://www.legislature.mi.gov/mileg.asp?page=ChapterIndex>

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MCL 722.30 (noncustodial parents' right to access records) @ <http://www.legislature.mi.gov/printDocument.aspx?objName=mcl-Act-91-of-1970&version=txt>  
MCL 722.904 (judicial waiver of consent for abortion) @ <http://www.legislature.mi.gov/mileg.asp?page=ChapterIndex>  
Attorney General Opinion No. 7092 (October 16, 2001) (custodial parent may object to release of mental health records to noncustodial parent). @ <http://www.ag.state.mi.us/opinion/datafiles/2000s/op10167.htm>  
Ingham County Dept. of Social Services v. Curry, 113 Mich. App. 821 (1982) (parents may execute and sign authorization allowing relative in whose care child has been entrusted to consent to any medical treatment child may require).  
Devilbiss Company v. Hush, 77 Mich. App. 639 (1977) (common law definition of "in loco parentis").  
Young v. Oakland Gen. Hosp., 175 Mich. App. 132 (1989) (patient surrogate).  
[RR.2.07 Confidentiality & Disclosure of Information Procedure](#)

**Change History:**

Change Letter	Date of Change(s)	Changes
A	07/07/05	Added the first sentence in the first bullet in the "Information" section to reflect required HIPAA Privacy language due to AAM's formation of the OHCA (Organized Health Care Arrangement), added website references & hyperlinks, added "MCL" to Acronym section.
B	05/12/09	Reviewed for content, corrected header from "Procedure" to "Policy", no other content changes made.
C	05/23/13	Reviewed and revised to comply with 8 <sup>th</sup> edition COA standards – no content changes made.
D	02/25/15	In "Information" section 1 <sup>st</sup> paragraph removed "In accordance with the Access Alliance of Michigan's (AAM) Privacy Policy and in support of the Organized Health Care Arrangement (OHCA)", in "Acronym" section removed "AAM" & "OHCA" and added "CFR", in last "Note:" changed "your supervisor or the HBH privacy officer" to "Compliance Liaison or Recipient Rights Officer", corrected hyperlinks.
E	09/01/15	In A.1 (6 <sup>th</sup> bullet) added "(i.e. agency delegate)" to comply with 07/29/15 guidelines issued by MDHHS
F	07/11/17	In A.1 added "Note" section, no other content changes made.