

# Texas Tech University Health Sciences Center El Paso HIPAA Privacy Policy

<b>Policy: 3.3 Using and Disclosing PHI</b>	<b>Effective Date:</b> May 10, 2011
<b>Minors, Incapacitated Adults and Decedents</b>	<b>Last Revision Date:</b> March 19, 2024
<b>References:</b> <a href="http://www.hhs.gov/ocr/index.html">http://www.hhs.gov/ocr/index.html</a>	

## **Policy Statement**

Unless otherwise allowed by Federal or State Law, Texas Tech University Health Sciences Center El Paso (TTUHSC EP) shall only release the protected health information (PHI) of minors, incapacitated adults, and decedents to their personal representatives as outlined in this policy.

## **Scope**

This policy applies to all PHI maintained by TTUHSC El Paso.

## **Policy**

### 1. Definitions

- a. *HIPAA Authorizations.* See [HPP 3.1 HIPAA Authorization](#).

*Minor.* Under Texas law (Texas Family Code § 101.003), a minor is any individual who is under the age of 18 years of age who:

- Is not or has not been married; or
- Has not been emancipated through a court order (Texas Family Code §31.001)

A minor who is married or emancipated by court order is considered an “adult” for purposes of this policy. A minor does not become emancipated (i.e., treated as an adult) merely because they are the unmarried parent of a minor child.

- b. *Personal Representative.* A personal representative is a person who has authority under Texas law to make health care decisions on behalf of adults, decedents, and emancipated minors (HIPAA 45 CFR §164.502(g)). For purposes of this policy, a patient's personal representative can be any of the following (Texas Health & Safety Code, §241.151(5)):

- Parent or legal guardian of a minor patient;
- Legal guardian if the patient has been found by a court to be incapacitated to manage the individual’s personal affairs;
- The agent of the patient authorized under a written durable power of attorney for health care (Texas Health and Safety Code §166.01, et seq.);
- Attorney ad litem appointed by a court for the patient as evidenced by written court order (Texas Probate Code §601);
- Guardian ad litem appointed by a court for the patient as evidenced by written court order (Texas Probate Code §601);
- A personal representative or statutory beneficiary of a deceased patient (See Section 5.b. below for more details); or

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- An attorney retained by the patient or the patient's personal representative.

### 2. Adults

- a. *Emancipated Minor (Adult)*. Once a minor is married or emancipated by court order (emancipated minor), TTUHSC El Paso shall only use or disclose PHI pursuant to the written HIPAA Authorization provided by the emancipated minor or a personal representative authorized by the court or the emancipated minor.
- b. *Incapacitated Adults*.
  - 1) General Meaning. An incapacitated adult means an adult, including an emancipated minor, who is mentally or physically incapable of communicating or making decisions for themselves.
  - 2) Legally Appointed Personal Representative. TTUHSC El Paso shall use and disclose PHI pursuant to the written HIPAA Authorization provided by the incapacitated patient's personal representative appointed pursuant to a valid written Durable Power of Attorney for Health Care Decisions or court order.
  - 3) Absence of Legally Appointed Personal Representative. In the event there is no signed Durable Power of Attorney for Health Care Decisions or court order, TTUHSC El Paso shall recognize the individuals identified in TTUHSC El Paso: Ambulatory Policies and Procedures EP 6.15A, Informed Consent, Consent for Treatment Guidelines under "Consent Requirements for Incapacitated or Incompetent Adults" **in order of priority list therein**, as having authority to sign a HIPAA Authorization for use or disclosure of the patient's PHI:

### 3. Un-emancipated Minor Patients

- a. *General Rule*. Except as noted below, the minor's parent(s) or personal representative(s) has the authority to sign a HIPAA Authorization for the use or disclosure of a minor patient's PHI.
- b. *Exceptions to General Rule - Rights of Minors Pursuant to Texas Law* (Texas Family Code §31.003 and 31.004). A minor who has the authority to consent to his/her treatment under Texas law, as outlined in TTUHSC El Paso: Ambulatory Clinic Policy and Procedure EP 6.15A Informed Consent, Consent for Treatment Guidelines. is the only one that has the authority to sign a HIPAA Authorization for use or disclosure of his/her own PHI related to that consent.
- c. *Agreement of Confidentiality*. In situations where the minor's parent or personal representative has agreed in writing to confidentiality between TTUHSC El Paso and the minor, the minor shall only have the authority to sign a HIPAA Authorization for the use or disclosure of PHI subject to that confidentiality agreement.

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- d. *Unmarried Minor Parent.* An unmarried, un-emancipated minor parent who has custody of a child and consents to treatment for that child has the authority, as the parent of the child, to authorize the use and/or disclosure of the child's PHI.
4. Endangerment Situations  
TTUHSC El Paso may elect not to treat a person as the personal representative of a patient if TTUHSC El Paso believes that one of the following conditions exists:
  - there is a reasonable belief that the patient has been or may be subject to domestic violence, abuse, or neglect by such personal representative or
  - treating the individual as the patient's personal representative could endanger the patient.
5. Deceased Patient
  - a. *General Rule.* HIPAA protects PHI generated during the life of an individual after their death unless disclosure is related to treatment, payment, or health care operations. TTUHSC El Paso shall only release the PHI of a deceased patient pursuant to written authorization from the deceased patient's personal representative.
  - b. *Legally Appointed Personal Representative.* TTUHSC El Paso shall recognize the individual appointed as the executor, administrator, or court-appointed representative of the deceased patient as a deceased patient's personal representative.
  - c. *Absence of Legally Appointed Personal Representative.* In the absence of an executor, administrator, or other court-appointed representative for the deceased patient, the following individuals, **listed in the order of priority**, have the authority to sign a HIPAA Authorization for the use or disclosure of the decedent's PHI:
    - Decedent's spouse; if the decedent was not married, then
    - Adult children of the decedent; if no adult children, then
    - Adult grandchildren of the decedent; if no adult grandchildren, then
    - Parents of the decedent; if no parents, then
    - Adult brothers and sisters of the decedent; if no brothers or sisters, then
    - Adult children of the decedent's brothers or sisters; if none, then
    - Adult grandchildren of the decedent's brothers or sisters; if none, then
    - Grandparents of the decedent; if no grandparents, then
    - Adult uncles or aunts of the decedent.
6. Supervisors are responsible for educating faculty, residents, staff, and students, as applicable, on this policy and enforcing it in their clinical areas.

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7. This policy and procedure will be documented and retained for six years from the date of its creation or the date when it last was in effect, whichever is later.

Knowledge of a violation or potential violation of this policy must be reported directly to the Institutional Privacy Officer or the employee Fraud and Misconduct Hotline at (866) 294-9352 or [www.ethicspoint.com](http://www.ethicspoint.com) Texas Tech University System.

### **Frequency of Review**

This policy will be reviewed on each even-numbered (ENY) by the Institutional Privacy Officer, and the HIPAA Privacy and Security Committee, but may be amended or terminated at any time.

Questions regarding this policy may be addressed to the Institutional Privacy Officer or the Institutional Compliance Officer.

**Review Date:** March 11, 2024

**Revision Date:** Jan 15, 2015, March 21, 2017, January 21, 2020, January 25, 2022, March 19, 2024