



SAINT LOUIS UNIVERSITY

USES AND DISCLOSURES FOR REPRESENTATIVES, MINOR, & DECEASED

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Responsible University Official: Privacy Officer

Approved By: Executive Staff

Legal and Compliance Committee

1.0 INTRODUCTION

Saint Louis University (hereinafter the "University") is committed to provide services in compliance with all state and federal laws governing its operations, incorporating the highest levels of business and professional ethics. HIPAA requires a covered entity to treat a "personal representative" the same as the patient, with respect to uses and disclosures of the individual's protected health information, as well as the individual's rights. A personal representative is a person legally authorized to make health care decisions on an individual's behalf or to act for a deceased individual or the estate. The Privacy Rule permits an exception when a covered entity has a reasonable belief that the personal representative may be abusing or neglecting the individual, or that treating the person as the personal representative could otherwise endanger the individual.

2.0 PURPOSE

The purpose of this policy is to provide guidance to workforce regarding the use and disclosure of a patient's protected health information (PHI) for personal representatives, minors and deceased individuals.

3.0 PERSONNEL AFFECTED

This policy applies to all regular full-time and part-time faculty and staff and volunteers within all divisions of the University, including employees, professional staff members, residents, agents, representatives and consultants tasked with use or release of patient health information.

4.0 DEFINITIONS

Authorization: A document that gives permission for a specific disclosure of protected health information. Authorizations typically include the name of the person or entity authorized to disclose, name of the person or entity authorized for use or disclosure, purpose of the disclosure, expiration of the authorization, and the patient's signature.

Minor: An individual under the age of 18 and has not been legally emancipated by a court and is:

- not legally or previously married;

- not serving in the armed forces;
- not presently an offender in a correctional facility; or
- not at least 16 years old and living away from home and managing their own financial affairs.

Personal Representative: Any adult that has decision-making capacity and who is willing to act on behalf of a patient. A personal representative would include an individual who has authority, by law or by agreement from the individual receiving treatment, to act in the place of the individual. This includes parents, legal guardians or properly appointed agents or individuals designated by state law.

Protected Health Information (PHI): Any individually identifiable health information transmitted or maintained in any form or medium, including oral, written, and electronic. Individually identifiable health information relates to an individual's health status or condition, furnishing health services to an individual or paying or administering health care benefits to an individual. Information is considered PHI where there is a reasonable basis to believe the information can be used to identify an individual.

Workforce: Employees, volunteers, trainees, contractors, and other persons under the direct control of the covered entity, whether or not paid by the covered entity.

5.0 POLICY

As a general rule, minors, incapacitated and deceased individuals must have a personal representative identified in order to provide consent or authorization to use and disclose protected health information.

Saint Louis University does not have to recognize a personal representative as the individual if the personal representative is suspected of abusing, neglecting or endangering the individual.

6.0 PROCEDURES

Adults and Emancipated Minors

If a person has authority by law to act on behalf of an individual who is an adult or an emancipated minor in making decisions related to use and disclosure of PHI, Saint Louis University will treat such person as a personal representative. Once a minor is emancipated, a guardian or a parent cannot be recognized as a personal representative.

Absent a legal document like a Durable Power of Attorney for Health Care or formal guardianship documents, the following individuals, in order of priority, will have the right to act as the individual for HIPAA consent and authorization to release PHI. This includes both providing the HIPAA consent based on *General Policy on Uses and Disclosures of PHI* and authorizing the release of PHI on behalf of the patient. The following individuals, in order of priority, are:

- Patient's spouse;

- An adult child of the patient who has the waiver (agreement) and the consent of all other qualified adult children of the patient to act as the sole decision-maker;
- A majority of the patient's reasonably available adult children;
- Patient's parent(s); or
- The individual clearly identified to act for the patient (before the patient's incapacity), the patient's nearest living relative, or a member of the clergy.

Un-emancipated Minors

If a parent, guardian, or other person has authority by law to act on behalf of an individual who is an un-emancipated minor in making decisions related to use and disclosure of PHI, Saint Louis University must recognize such person as a personal representative. If a minor does not require the consent of an adult and may consent to treatment the minor will be treated as an individual and may provide HIPAA consent or authorization for release of PHI. Examples of where a minor, with authority by law, can act as an individual may include:

- Diagnosis and treatment of a sexually transmitted disease
- Family planning services
- Some outpatient surgeries
- Alcohol/drug abuse treatment
- Abortion

Abuse, Neglect, Endangerment Situations

Notwithstanding a state law or any requirement of this paragraph to the contrary, Saint Louis University may elect not to recognize a person as the personal representative of a patient. If the University chooses not to recognize a person as a personal representative, it must decide that it is not in the best interest to treat the person as the patient's personal representative and believes that one of the following conditions exist:

- The patient has been or may be subjected to domestic violence, abuse, or neglect by a parent, guardian or personal representative.
- Treating such person as the personal representative could endanger the patient.

Deceased Individuals

PHI generated during the life of an individual is protected from disclosure after death unless disclosure is for treatment, payment or health care operations. The University and its employees cannot release PHI regarding a deceased individual unless a valid personal representative has been established and the individual has requested the PHI through the proper authorization process.

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, Saint Louis University must recognize such person as a personal representative under this policy.

Absent an executor, administrator or other court-appointed representative for the deceased individual's estate, the following individuals listed below may authorize the release of PHI in order of priority. An entire category must be exhausted (no people in the category exist or still alive) before moving to the next category.

In the case of a deceased, married individual survived by a spouse with or without descendants:

- Spouse
- Adult children
- Adult grandchildren
- Parents
- Adult descendants of parents (brothers and sisters)
- Brothers and sisters' adult children
- Brothers and sisters' adult grandchildren
- Grandparents
- Adult descendants of grandparents (uncles and aunts)

In the case of a deceased individual with no spouse (i.e. never married, widowed, or divorced and not remarried) with or without descendants:

- Adult children
- Adult grandchildren
- Parents
- Adult descendants of parents (brothers and sisters)
- Brothers and sisters' adult children
- Brothers and sisters' adult grandchildren
- Grandparents
- Adult descendants of grandparents (uncles and aunts)

7.0 SANCTIONS

Individuals who fail to comply with this policy and the procedures associated with it will be subject to disciplinary actions guided by the University's Staff Performance Management Policy, Faculty Manual, or Student Guidelines.

Non-compliance in this Policy can result in disciplinary action, including but not limited to, restricted incentive payments, suspension or termination. It may also result in the enforcement of a corrective action plan, as well as notification of the suspected misconduct and/or violation to government regulatory agencies.

This Policy does not limit the University’s ability to impose greater sanctions or impose immediate action against serious violations. Disciplinary actions appropriate to the severity of the infraction will be carried out as needed.

8.0 CHANGES TO THIS POLICY

Changes to this policy may be necessary from time to time. At a minimum, the policy and all other program policies, procedures and guidelines will be reviewed on an annual basis.

9.0 RELATED POLICIES & DOCUMENTS

- Authorization for Use or Disclosure Policy
- Authorization for Use and Disclosure of Psychotherapy Notes Policy
- Authorization for Disclosure (Form)
- Authorization to Use or Disclose Patient Image (Form)

REVISION HISTORY

EFFECTIVE DATE	VERSION NUMBER	MODIFICATION
4/14/2003	1.0	New Policy
7/01/2008	1.1	Review & Change Format
3/01/2015	1.2	Review & Change Format
	2.0	Ownership Shifted from Provost to General Counsel