

HIPAA Procedure 5038
Personal Representatives
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Personal Representatives for Routine Patients

In the event the patient is unable to communicate and represent him or herself, staff must recognize the following legally appointed persons as the patient’s Personal Representative for purposes of exercising the patient’s rights relating to PHI (see the [Definitions](#) section for further details):

- Conservator of the Estate
- Conservator of the Person
- Health Care Representative
- Attorney in Fact (person appointed by Durable Power of Attorney)
- Health Care Agent
- Guardian of a Mentally Retarded Patient
- Guardian of an Unemancipated Minor

When relying on a person’s appointment by a court or a legal document signed by the patient as the authority for such person to serve as a patient’s Personal Representative, a copy of the certificate or document of appointment should be obtained and placed in the patient’s medical record.

Every attempt should be made to positively identify the Personal Representative before sharing PHI. Government issued photo identification will serve this purpose (see [Policy 5031](#) and [Procedure 5031](#) on Authorization Requirements for Uses and Disclosures, including Verification of Identification, Verification of Identification).

In cases in which a patient does not have any of the above-mentioned legally appointed representatives or in an emergency situation, staff may treat an appropriate family member (“Next of Kin”) or a patient’s “significant other” (including close friends) as the patient’s Personal Representative. Use reasonable means to identify these individuals, i.e. if they are not known to you then ask for a valid photo ID.

Although exceptions may be made based on the circumstances, family members are generally deemed next of kin in the following order:

- Spouse
- Adult children
- Parents
- Adult siblings
- Grandparents or adult grandchildren, and
- Adult nephews, nieces, uncles or aunts of a patient.

Personal Representatives for Emancipated and Unemancipated Minors

In all situations, an **emancipated minor** is deemed equivalent to an adult for purposes of determining who may be given access to his or her protected health information.

If a patient is an unemancipated minor, a parent, guardian, or other person acting in loco parentis generally has the authority to act on behalf of this minor for making decisions related to health care and authorizing uses and disclosures of PHI. The parent, guardian or other person acting in loco parentis must be treated as the unemancipated minor's Personal Representative unless:

- The unemancipated minor consents to a health care service that by law requires no other consents for service; regardless of whether the consent of another person has also been obtained; and the minor has not requested that the parent, guardian, or other person acting *in loco parentis* be treated as the Personal Representative;
- The unemancipated 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. Without parental consent, minors may consent to their own:
 - HIV testing and treatment
 - treatment for alcohol and drug abuse
 - outpatient mental health treatment
 - treatment of sexually transmitted diseases

In cases where the minor provides his or her own consent, parents and others will not be recognized as Personal Representatives with respect to PHI pertaining to such treatment; or a parent, guardian or other person acting in loco parentis agrees to confidentiality between Yale health care providers and the patient.

Personal Representatives in Abuse, Neglect and Endangerment Situations

Even if a person would otherwise qualify under this policy to serve as a patient's Personal Representative, Yale may elect not to treat such person as the Personal Representative of a patient if:

Yale has a reasonable belief that:

- The patient has been or may be subjected to domestic violence, abuse, or neglect by such person; or
- Treating such person as the Personal Representative could endanger the patient; and
- One or more licensed healthcare professionals at Yale, in the exercise of professional judgment, decide that it is not in the best interest of the patient to treat the person as the patient's Personal Representative.

Personal Representatives for Deceased Patients

For HIPAA purposes, the executor or administrator must be treated as a Personal Representative. In most cases, upon providing Yale with a certificate from a court as evidence of such appointment, the executor or administrator would be treated as a Personal Representative of the patient. As the deceased patient's Personal Representative, the executor or administrator will only have the authority to access the decedent's PHI and exercise other rights relating to the decedent's PHI as necessary to carry out the executor's or administrator's responsibilities on behalf of the estate. The executor or administrator has no such authority while the patient is living.

If there is no executor or administrator of a deceased patient's estate, the patient's next of kin must provide a notarized request in writing stating there is no executor or administrator of the estate and that said person is the next of kin in order to obtain the deceased patient's PHI.

Access to the PHI of deceased patients for research purposes is governed by [Policy 5032](#) and [Procedure 5032](#) for Use and Disclosure of PHI for Research, Research on the PHI of a Decedent.

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