

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

<b>Using and Disclosing PHI</b>	<b>Policy: 3.3</b>
<b>Minors, Incapacitated Adults and Decedents</b>	<b>Effective Date: May 10, 2011</b>
<b>References:</b> <a href="http://www.hhs.gov/ocr/hipaa">http://www.hhs.gov/ocr/hipaa</a>	
<b>TTUHSC El Paso HIPAA Website:</b> <a href="http://elpaso.ttuhscc.edu/hipaa/">http://elpaso.ttuhscc.edu/hipaa/</a>	

### **Policy Statement**

Unless otherwise allowed by Federal or State Law, TTUHSC El Paso shall only release Protected Health Information (PHI) of minors, incapacitated adults and decedents to his or her personal representative as outlined in this policy.

### **Scope**

This policy applies to all PHI maintained by TTUHSC El Paso

### **Definitions**

Refer to [HPP 1.1 for Glossary of HIPAA Terms](#)

### **Policy**

#### 1. Definitions

- a. *HIPAA Authorizations.* See [HPP 3.1 HIPAA Authorization](#)
- b. *Minor.* Under Texas law,<sup>1</sup> 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 court order<sup>2</sup>.

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 he/she is the unmarried parent of a minor child.
- c. *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/or emancipated minors<sup>3</sup>. For purposes of this policy a personal representative for patients can be any of the following<sup>4</sup>

<sup>1</sup> Texas Family Code §101.003

<sup>2</sup> Texas Family Code §31.001

<sup>3</sup> HIPAA, 45 CFR §164.502(g)

<sup>4</sup> Texas Health & Safety Code, §241.151(5)

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

- 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<sup>5</sup>;
- Attorney ad litem<sup>6</sup> appointed by a court for the patient as evidenced by written court order;
- Guardian ad litem<sup>7</sup> appointed by a court for the patient as evidenced by written court order;
- A personal representative or statutory beneficiary of a deceased patient (See Section 5.b. below for more details); or
- An attorney retained by the patient or by the personal representative of the patient.

### 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 communication or making decisions for him/herself.
  - 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

<sup>5</sup> Texas Health and Safety Code §166.001, et. seq.

<sup>6</sup> Texas Probate Code §601

<sup>7</sup> Texas Probate Code §601

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

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 parent(s) or personal representative(s) of the minor has authority to sign a HIPAA Authorization for use or disclosure of a minor patient’s PHI.
- b. *Exceptions to General Rule - Rights of Minors Pursuant to Texas Law<sup>8</sup>.* A minor who has authority to consent to his/her own treatment pursuant to 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 those situations where the parent or personal representative of the minor 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 use or disclosure of PHI subject to that agreement of confidentiality.
- d. *Unmarried Minor Parent.* An unmarried un-emancipated minor parent who has custody of a child and consents to treatment for that child has authority, as the parent of the child, to authorize 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 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 personal representative of the patient 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 PHI of a deceased patient pursuant to a written authorization from the deceased patient’s personal representative.

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<sup>8</sup>Texas Family Code §31.003 and 31.004

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

- b. *Legally Appointed Personal Representative.* TTUHSC El Paso shall recognize as a deceased patient's personal representative the individual appointed as the executor, administrator or court appointed representative of the deceased patient.
- 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 authority to sign a HIPAA Authorization for 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.
7. This policy and procedure will be documented and retained for a period of 6 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 to 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**

The TTUHSC El Paso Privacy and Security Committee have authority for HIPAA policy approval.

Questions regarding this policy may be addressed to the [Institutional Privacy Officer](#), or the [Institutional Compliance Officer](#).

This policy may be terminated or amended at any time.

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

**Review Date:** January 15, 2020

**Revision Date:** Jan 15, 2015, March 21, 2017, January 21, 2020