

## Personal Representatives of Individuals

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Effective Date: 01/01/2018

### Policy

- A. It is the policy of the ACO to treat an individual's personal representative as the individual with respect to the Protected Health Information (PHI) of the individual. The personal representative of an individual is a person who, under applicable state law, has the authority to act on behalf of the individual in making decisions related to health care.

### Applicability

This policy and procedure applies to all Next Generation Participants, Preferred Providers, Next Generation Professionals and other individuals or entities performing functions or services related to the ACO's activities.

### Procedure

- A. Prior to allowing a person to act as an individual's personal representative in connection with the ACO's use or disclosure of the individual's PHI, the ACO must determine if the individual is (A) an adult or emancipated minor; (B) an unemancipated minor; (C) deceased; or (D) a victim of abuse, neglect or endangerment. After making this determination, the ACO must follow the procedures applicable to the individual's category as set forth in Section E below.
- B. The ACO may use or disclose an individual's PHI based on a verbal authorization from the individual. If verbal authorization cannot be obtained from the individual:
  1. The ACO must obtain *written documentation* of a person's authority under applicable state law to act as the individual's personal representative before allowing the person to act as the individual's personal representative in connection with the use or disclosure of the individual's PHI.
  2. The ACO shall maintain the written documentation of a person's authority to act as the individual's personal representative in that individual's record. The ACO shall also maintain the personal representative's name, address, telephone number and relationship to the individual in the individual's record.
- C. Different categories of personal representatives hold different obligations and responsibilities.
  1. A Power of Attorney is the most robust of the personal representative forms. This would permit the power of attorney to effectuate any action on matters the Beneficiary normally would. The formats for these vary and are usually drawn up by a Beneficiary with their legal counsel.
  2. A Third Party Authorization permits another to receive information on behalf of the Beneficiary. This third party may only receive information and cannot effectuate any changes to the Beneficiary's record. The company may accept verbal authorization

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received from a Beneficiary to release information to a third party for a period of fourteen (14) days prior to receipt of a written authorization.

3. An Appointment of Representative Form/CMS 1696 allows a Beneficiary to exercise his or her right only to an initial determination or appeal and to appoint a representative to act on the Beneficiary's behalf in these matters.
- D. The ACO will comply with applicable state laws that are more stringent with regard to authorization or prohibiting disclosure of PHI about a minor to a parent, guardian, or person acting in loco parentis of such minor.
- E. Procedures for Certain Categories of Individuals:
1. Adults and Emancipated Minors
    - a. If the individual is an adult or emancipated minor, the ACO will treat a person who has authority under applicable state law to act on behalf of the individual in making decisions related to health care as such individual's personal representative with respect to PHI relevant to such personal representation.
  3. Unemancipated Minors
    - a. The ACO will treat a parent, guardian or other person acting *in loco parentis*, as authorized under state law, as the personal representative of an unemancipated minor with respect to such minor's PHI. However, such person may not be an unemancipated minor's personal representative, and the minor has the authority to act on his or her own behalf, with respect to PHI pertaining to a health care service under any of the following three circumstances
      - i. The minor consents to the health care service; no other consent to such health care service is required by law, regardless of whether the consent of another person has also been obtained; and the minor has not requested that such person be treated as the minor's personal representative;
      - ii. The minor may lawfully obtain the 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; or
      - iii. Parent, guardian, or other person acting *in loco parentis* assents to an agreement of confidentiality between a covered health care provider and the minor with respect to such health care service.
    - b. Notwithstanding Section E.2.a. above:
      - i. If, and to the extent, permitted or required by applicable state or other law, including case law ("state law"), the ACO may disclose, or provide access in accordance with §164.524 to, PHI about an unemancipated minor to a parent, guardian, or other person acting *in loco parentis*;

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- ii. If, and to the extent, prohibited by state law, the ACO may not disclose, or provide access in accordance with §164.524 to, PHI about an unemancipated minor to a parent, guardian, or other person acting *in loco parentis*; and,
  - iii. Where the parent, guardian, or other person acting *in loco parentis*, is not the personal representative of the individual and where there is no applicable access provision under state law, the ACO may provide or deny access under §164.524 to a parent, guardian, or other person acting *in loco parentis*, if such action is consistent with state law, provided that such decision must be made by a licensed health care professional, in the exercise of professional judgment.
- 4. Deceased Individuals
  - a. If under applicable law an executor, administrator, or other person has authority to act on behalf of a deceased individual or the individual's estate, the ACO will treat such person as a personal representative with respect to PHI relevant to such personal representation.
  - b. The ACO may disclose a deceased individual's information to family members and others who were involved in the care or payment for care of the individual prior to death, unless doing so is inconsistent with any prior expressed preference of the individual that is known to the covered entity.
- 5. Abuse, Neglect, Endangerment Situations
  - a. Notwithstanding state law or any requirement of this policy to the contrary, the ACO may elect not to treat a person as the personal representative of an individual if:
    - i. The ACO has a reasonable belief that:
      - a. The individual has been or may be subjected to domestic violence, abuse, or neglect by such person; or,
      - b. Treating such person as the personal representative could endanger the individual.
    - ii. The ACO, in the exercise of professional judgment, decides that it is not in the best interest of the individual to treat the person as the individual's personal representative.

## Reporting

- A. N/A

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### Related Documentation

- A. 45 CFR §164.502(g)
- B. Next Generation ACO Model Participation Agreement Section V.I and VI.B.1
- C. ACO Terms & Definitions Policy
- D. Health Insurance Portability and Accountability Act (HIPAA) Authorization Form
- E. HIPAA Revocation of Authorization Form

### Additional Guidance

Should an issue regarding personal representatives of individuals arise, the Participant or Provider/Supplier should reach out to their Executive Director, Compliance, or other appropriate counsel for assistance.