
Title:	DPH Privacy and Security Manual
Chapter:	IV. Client Rights Policies, Personal Representatives
Current Effective Date:	November 1, 2004
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Purpose

The purpose of the Division of Public Health (DPH) personal representatives policy is to ensure that the HIPAA covered components within the Division DHHS agencies allow a personal representative, authorized to act on behalf of a client under applicable law, to make decisions related to the use and disclosure of a client's individually identifying health information. This policy is in compliance with the [DHHS Policy and Procedure Manual, Section VIII, Security and Privacy](#), that establishes the NC Department of Health and Human Services (DHHS) privacy personal representatives requirements.

Policy Scope:

- *HIPAA covered health care components that serve clients directly*
- *Internal business associates that serve clients directly*

Background

The HIPAA Privacy Rule limits the personal representative's authority to act on behalf of a client to that which is relevant to the matters on which the personal representative is legally authorized to represent the client as it relates to individually identifying health information.

Policy

Division HIPAA covered health care components and internal business associates that provide direct services to clients shall recognize personal representatives who are authorized by the courts or by state or federal law to act on behalf of clients regarding their IIHI in a manner consistent with all requirements within this policy. These DPH covered components shall treat the personal representative as the client with regard to the client's IIHI relevant to the matters on which the personal representative is authorized to represent the client.

Implementation

Applicability of Personal Representative Policy within DPH

The following DPH workgroups have been designated as Covered Health Care Components:

- State Laboratory of Public Health
- Children's Development Service Agencies (state operated).

The NC Attorney General's Office has determined the state-operated CDSA (formally DEC's) are exempt from the HIPAA Privacy Regulation and are governed by the Family Education Rights Privacy Act requirements. FERPA and the Individuals with Disabilities Education Act (IDEA) specify the equivalent rights of parents, guardians, and in loco parentis to act behalf of the children being served by the CDSA's. The CDSA policies and procedures are defined in the Infant Toddler Program manual.

As a covered health care component, the State Laboratory for Public health is an indirect health care services provider, which does not have direct contact with the clients it serves. As such, the State Laboratory would afford the client's legal personal representative the same rights as described in the [DPH Privacy Policy, Rights of Clients](#). The rights afforded would be limited to those described in the client rights policy and in the Notice of Privacy Practices.

Note: Providers who contract with the Division (e.g., local health departments, private practices, community-based organizations, clinics) and covered health plans that provide benefits to DPH clients (e.g., Medicaid, HealthChoice) are required to treat the personal representative as the client with regard to the client's IIHI following their policies, and as guided by their legal counsel.

The following table shows the DPH internal business associates identified within the Division and indicates how the personal representative policy applies to each:

DPH Business Associate	Designation	Treats Clients Directly	Policy Applies?	Procedure/Rational
Medicaid Liaison and Reimbursement	Internal BA of Division of Medical Assistance	No	No	Medicaid Liaison and Reimbursement performs cost analysis on behalf of DMA and has no direct client contact.
Children's Special Health Services	Internal BA of Division of Medical Assistance	No	No	With the DHHS Office of the Controller provides prior approval (authorization) for Medicaid for mobility devices. CSHS provides medical review of existing DME provider records and supporting medical information to authorize or disallow medical necessity for mobility devices. Contact is with the client's health care providers not with the client directly.
HSIS Business Liaison	Internal BA of State Lab and CSA's and external BA of the local health departments	No	No	With the Division of Information Resources Management, provides billing services for the covered health care providers. Has no direct contact with clients. Client contact is through service provider, e.g. Local Health Department.
State Center for Health Statistics	TBD pending AG review – Internal BA of Division of Medical Assistance	No	No	Performs cost analysis and data aggregation services for DMA. . The SCHS has no direct contact with clients.
Information Technology	Internal BA for DPH covered health care components and internal BAs	No	No	Workgroup provides data processing and network support functions and does not maintain records nor make decisions about clients. Does not have direct client contact.

References Regarding Personal Representatives

All DPH workgroups should continue to follow federal and state legal requirements and program-specific regulations regarding who can be authorized to act on behalf of a client in matters regarding decisions about a client's health information. The following sections summarize some standard requirements within North Carolina, as described in the [NC DHHS Privacy Policy, Personal Representatives](#). Further information is available in the UNC-CH Institute of Government HIPAA October 2002 training material, [Personal Representatives, Protected Health Information of Unemancipated Minors: HIPAA Privacy Rule and North Carolina Law](#), and [Medical Treatment of Minors and North Carolina's "Minor Consent Rule" \(G.S. 90-21.5\)](#). Also, the following article from the Institute of Government provide [Guidance on Guardianship of Incapacitated Adults: An Introduction to North Carolina's Law](#), January, 30, 2001, provides guidance about the issues surrounding medical decisions for incapacitated adults.

In most situations, clients are authorized to make health care decisions on their own behalf and do not require a personal representative if they are:

- Adults (individuals 18 years of age or older) who have not been adjudicated incompetent;
- Individuals under 18 years of age who are married, serve in the Armed Forces of the United States, or who have been declared emancipated by a court of competent jurisdiction;

A personal representative is usually required to make health care decisions about and adults adjudicated incompetent and persons less than 18 years of age (unless they meet the exception noted above).

Personal representatives may include the following:

- Person ordered by the court
- Parent(s), of juveniles under 18 years of age
- Person, other than parent, acting in loco parentis (of minor)
- Guardian as defined in Chapter 35A
- Person with health care power of attorney. The health care power of attorney document should define the scope of the personal representation with respect to access to individually identifying health information. The individual may also be referred to "health care agent" or "health care attorney-in-fact"
- Executor/Administrator of Estate (of deceased person).

Disclosure of IIHI to a personal representative is required (with the exception of those situations described in this policy) only if disclosure to the client is required.

Unemancipated Minors

Generally, a parent, guardian, or other person acting *in loco parentis* who has the authority to make health-related decisions on behalf of a client who is an unemancipated minor must be treated as a personal representative and may access and control health information about the minor.

The minor may control his/her health information related to a particular service and exercise the privacy rights afforded to the client in any of the following circumstances:

- If the parent, guardian or other person acting in loco parentis has agreed to a confidential relationship between the minor and the physician for a particular health care service
- Where a minor can obtain a particular health care service under their own consent (for example, as specified in NCGS 90-21.5), and no other consent is required by law (regardless of whether such consent has actually been obtained), the parent, guardian or other person acting in loco parentis may not be treated as the personal representative, unless the minor requests they be treated as such
- If the minor may lawfully obtain care without consent of a parent, guardian or person acting in loco parentis, and the minor, a court, or another person authorized by law consents to the service (for example, as specified in NCGS 90-21.7), the parent, guardian or person acting in loco parentis may not be treated as the personal representative.

In the case of joint parental custody, either parent may be treated as the personal representative of the minor unless a court order dictates otherwise.

Disclosure of health information about a minor to a parent, guardian or person acting *in loco parentis* to avert a serious and imminent threat to the health or safety of the minor is permitted even if the minor obtained the health service without the consent of the parent, guardian, or person acting *in loco parentis*.

Emancipated Minors and Adults

Any individual who has legal authority to act on behalf of an adult or to act on behalf of an emancipated minor who has been determined to lack the capacity to make health-related decisions, shall be treated as a personal representative as it relates to the client's health information relevant to the matters on which the personal representative is authorized to represent the client.

In the case of shared guardianship, both guardians must be treated as personal representatives and both have equal rights regarding decisions related to the client's IIHI. Both guardians must signify agreement in order to execute a decision, unless a court order dictates otherwise.

Deceased Individuals

An executor, administrator, or other person who has authority to act on behalf of a deceased client or of the client's estate shall be recognized as the personal representative with respect to the deceased client's IIHI. The next of kin of a deceased individual can be treated as the personal representative when there is no executor or administrator.

The following persons, in priority order, can be treated as the personal representative of a deceased individual with respect to authorizing anatomical gifts and the IIHI pertaining to the making of the anatomical gift:

- Spouse
- Adult child
- Either of the individual's parents
- Adult sibling
- Guardian of the person
- Any other person authorized or under obligation to dispose of the body.

An agency may disclose IIHI to a funeral director as necessary to carry out their duties with respect to the decedent.

Domestic Violence, Abuse, or Neglect

An agency may decide not to treat an individual as a personal representative of the client if, in the exercise of professional judgment, the agency determines that it is not in the best interest of the client to treat the individual as the client's personal representative, and that either of the following exists:

- The covered entity has a reasonable belief that the client has been or may be subjected to domestic violence, abuse, or neglect by such person
- That treating such person as the personal representative could endanger the client.

Family Members and Friends (who are not Personal Representatives)

If the client is present for, or otherwise available prior to a disclosure, the agency may disclose to a family member(s) or friend(s) IIIHI that is directly relevant to that person's involvement with the client's health care if the agency meets one of the following criteria:

- Obtains the client's authorization to disclose to the parties involved in their care
- Provides the client with the opportunity to object to the disclosure, and the client does not
- Reasonably infers from the circumstances, based on professional judgment, that the client does not object to the disclosure.

If the client is not present for the disclosure, or the opportunity to agree or object to the use or disclosure cannot practicably be provided because of the client's incapacity or an emergency circumstance, the agency may use professional judgment to determine whether the disclosure is in the best interest of the client. If so, the agency may disclose only the health information that is directly relevant to the family member/friend's involvement with the client's health care.

An agency may use professional judgment and experience with common practice to make reasonable inferences of the client's best interest in allowing a person to act on behalf of the client to pick up filled prescriptions, medical supplies, x-rays, or other similar forms of IIIHI.

An agency may disclose the necessary IIIHI to notify or assist in the notification of family members, personal representatives, or other persons responsible for a client's care with respect to a client's location, condition, or death.

For relevant documents:

These documents can be accessed from the DPH HIPAA website at <http://www.schs.state.nc.us/hipaa/>.

References: DHHS Directive Number III-11; DHHS Policy and Procedure Manual, Section VIII, Security and Privacy, DPH HIPAA Compliance Statement, DPH Client Rights Privacy Policy, Rights of Clients, 45CFR 164.502(g); 45CFR 164.510(b); NC General Statutes 122C-3 (20); NC General Statutes 7B-3402; NC General Statutes 7B-3400; NC General Statutes 90-21.5(a); NC General Statutes 90-21.4(b); NC General Statutes 35A-1241(a)(3); Article 3 of Chapter 32A of the NC General Statutes; NC General Statutes 8-53; NC General Statutes 130A-404; Chapter 35A of the NC General Statutes.

For questions or clarification on any of the information contained in this policy, please contact the DPH Privacy Office at <mailto:HIPAA.DPH@ncmail.net>.