# **Personal Representatives**

General Rule: The HIPAA privacy regulations provide that, with respect to adults and emancipated minors, a covered entity must treat a person as a personal representative of an individual if the person is authorized under other applicable law to act on behalf of the individual in making decisions related to health care. This includes court-appointed guardians, a person with health care power of attorney and may also include others such as next of kin. Remember that disclosure to a personal representative is mandatory only if disclosure to the individual is mandatory.

**Limitations:**

* Limited Authority: The personal representative's authority may be limited under other law. For example, a general power of attorney does not necessarily give a personal representative authority to make health care decisions. Some authority is activated only when the person is incapacitated. Further, some authority extends only to certain health care matters. For example, a personal representative may only be authorized to make decisions regarding treatment for cancer. If so, the covered entity may not disclose information to the personal representative related to other treatment.
* Abuse: A covered entity is not obligated to treat a person as a personal representative if the entity, 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 and the entity has a reasonable belief that the individual has been or may be subjected to domestic violence, abuse, or neglect by such person, or that treating the person as the personal representative could endanger the individual.

**Oregon Terms:** Oregon's Advance Directive calls for appointment of a "health care representative." The Declaration for Mental Health Treatment calls for appointment of a "representative to make decisions regarding mental health treatment." Such representatives are also known an "attorney-in-fact." Oregon law also provides for appointment of a guardian and recognizes a "Power of Attorney for Health Care."

**Informal Arrangement:** HIPAA provides that covered entities may disclose relevant protected health information to a person involved in the current health care of the individual, such as a family member, close personal friend, or any other person identified by the individual. The entity may disclose only as much information as is minimally necessary to allow the friend or relative to provide the assistance he or she was providing.

If the individual is present and able to make his/her own decisions, the individual must be given an opportunity to opt out of release of information to family and friends. If the individual is not able to opt out, the entity must use its own professional judgment to determine whether the disclosure is in the individual's best interests.

**Special Note:** Release of information to family and friends pursuant to the informal arrangement discussed here does not authorize the family member or friend to make decisions on behalf of the individual or control the individual's protected health information.

* ***Implementation Tip:***If you use professional judgment to release information to a family member or friend, make sure you document the factors you considered in making this judgment.

**Frequently Asked Questions:**

* *Must a personal representative sign an authorization or consent to authorize release of protected health information?* Yes, if the decedent did not sign a consent form or authorization that covers the release (see next question), the personal representative must complete either a consent form or an authorization, depending on the reason for the release. See the Consent and Authorization sections of these guidelines for more information on which form must be used.
* *May a decedent's protected health information be released pursuant to a consent or authorization form signed by the decedent prior to death?*Yes if, in the case of consent, the release is for treatment (unlikely), payment or health care operations or, in the case of authorization, the release is within the parameters set by the authorization. Any restrictions on consent established by the decedent control releases after death.
* *Who may act as "personal representative" in the absence of a formal appointment?* Oregon law does not specify who may make decisions on behalf of an incapacitated patient in the absence of an appointed health care representative. ORS 127.635, however, lists the people, in order of priority, who may legally make decisions about end of life care. That list commonly is relied upon in determining who may make decisions on behalf of an incapacitated person.