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Title Minors, Personal Representatives and Deceased Individuals		
Regulatory Authority: HIPAA Regulations, FERPA Regulations, ORC, OAC		
Effective Date: 01/19/2021		
Reviewer/Job Title: Director of Operations		

(A) MINORS, PERSONAL REPRESENTATIVES AND DECEASED INDIVIDUALS

Purpose

To establish requirements to maintain confidentiality and to permit the legal release of protected health information (PHI) to minors and personal representatives, and for the release of PHI of deceased individuals.

Notes: Federal HIPAA law changes issued 1/25/2013 relax confidentiality requirements upon death of an individual. These include 45 CFR 164.502(f) which eliminates all protections of information 50 years after the death of an individual, and 45 CFR 164.510(b)(5) which allow for disclosures to people involved with the care of the individual prior to death information that is relevant to the person's involvement. While HIPAA rules preempt contrary state law, state laws which offer greater privacy safeguards, more rights of access to information, or less coercion shall prevail. No changes have been made to these policies to implement the relaxed HIPAA provisions; consult with your prosecutor regarding whether to change these policies.

1) **Rights of legally Consenting Minors**. Individuals being served, who are minors, and who are legally allowed to consent to treatment under Ohio Law may exercise all rights regarding access to, requests for amendment to, and release of their PHI pursuant to a written authorization.
2) **Rights of an Individual's Personal Representative**. HCBDD recognizes an individual's personal representative as a person authorized to exercise rights of access and/or inspection of PHI, rights to request amendment of PHI, and the right to sign the HCBDD Authorization Form which permits release of PHI.
3) **Recognized Personal Representative**. HCBDD recognizes the following persons to be personal representatives:
   a) The parent of a child younger than 18 years old
   b) The non-custodial parent of a child younger than 18 years old (ORC 3109.051(H)),
   c) An individual who is recognized through durable power of attorney to have authority to act on the behalf of the Individual (ORC § 1337.13)
   d) The legal guardian of the individual
   e) Any other person authorized by law except in Abuse, Neglect, and/or Endangerment situations, or where HCBDD has received a court order or other documentation limiting privileges of a non-custodial parent as provided below.
      i) Abuse, Neglect, and/or Endangerment Situations. Notwithstanding a state law of any requirement of this paragraph to the contrary, HCBDD may elect not to recognize a person as a personal representative of an individual. In order for HCBDD to choose not to recognize a person as a personal representative, HCBDD must decide that it is not in the best interest of the individual to treat the

person as the individual's personal representative and must believe that one of the following conditions exist:

1) The individual has been or may be subjected to domestic violence, abuse, or neglect by a parent, guardian, or personal representative.
2) Treating such person as the personal representative could endanger the individual.

ii) Receipt of a court order limiting privileges of a non-custodial parent. In the event that HCBDD receives from the custodial parent a court order limiting the privileges of the non-custodial parent to act in the capacity of the child's personal representative, HCBDD shall adhere to the restrictions in the court order.

4) Deceased Individuals

a) **Disclosure of PHI After Death**. PHI generated during the life of an individual is protected from disclosure after death unless disclosure is for treatment or payment (with a valid consent), quality assurance or other auditing or program review functions. HCBDD and its employees cannot release PHI regarding a deceased individual unless a valid personal representative has been established and has requested the PHI through the proper authorization process.

b) **Disclosure of PHI to Administer Estate**. PHI may be disclosed to the executor or administrator of the estate when the information is necessary to administer the estate (ORC § 5126.044).

c) **Proper Party to Authorize Release of PHI Absent Executor, Administrator, or Court Appointed Representative**. Absent an executor, administrator, or other court-appointed representative for the deceased individual's estate, the following persons listed below may authorize the release of PHI in order of priority. An entire category must be exhausted (i.e., no people in the category exist or are still alive) before moving to the next category.

i) Spouse (if married)
ii) The person's children
iii) The Person's parents
iv) The Person's brothers or sisters
v) The person's uncles or aunts;
vi) The person's closest relative by blood or adoption
vii) The person's closest relative by marriage