

State Bar Health Law Section  
HIPAA Trilogy Part 2

*Personal Representatives*

December 10, 2002

**Elizabeth O. Callahan**



# General Rule

- **Under the HIPAA Privacy Rule, a person authorized under applicable law (state, tribal, or military law) to act on behalf of a patient in making health care related decisions is the patient's "personal representative," 45 CFR 164.502(g).**
- **A covered entity must treat a personal representative as the patient under the HIPAA Privacy Rule, to the extent of the personal representative's authority.**

# Exceptions

- **A covered entity may, in its professional judgment, decide that it would not be in the patient's best interest to treat a person as the patient's personal representative, if the covered entity reasonable believes:**
  - The patient has been or may be subject to domestic violence, abuse, or neglect by such person; or
  - Treating such person as the personal representative could endanger the patient.

# Determining who is a Personal Representative

- **Determining who is a personal representative depends on the type of patient:**
  - Adult or Emancipated Minor
  - Unemancipated Minor
  - Deceased Individual
- **A covered entity is required to verify a personal representative's authority in accordance with 45 CFR 164.514(h).**

# Adults & Emancipated Minors

- **HIPAA: A person with legal authority to make health care decisions on behalf of an adult or emancipated minor.**
- **Michigan Law:**
  - Plenary, temporary, partial, or standby guardian of a developmentally disabled individual, if authorized by court to give to give medical consent, MCL 330.1629.
  - Guardian of incapacitated individual by testamentary appointment, MCL 700.5301.
  - Guardian of incapacitated individual by court appointment, MCL 700.5306. If the patient has a valid patient advocate, then the guardian does not have authority to make health care decisions.
  - Health Care Power of Attorney / Patient Advocate, MCL 770.5506-5512.

# Unemancipated Minors

- **HIPAA: A parent, guardian, or other person acting *in loco parentis* with legal authority to make health care decisions on behalf of a minor child.**
- **Michigan Law:**
  - Parents have custody and control of minors, unless otherwise ordered by court, MCL 722.2.
  - Guardians assume the responsibilities of custodial parent, MCL 700.5215:
    - Parental appointed, MCL 700.5202;
    - Court appointed, MCL 700.5204;
    - Limited court appointed MCL 700.5205;
    - Temporary, MCL 700.5213.
  - Persons *in loco parentis* are persons who have legal custody or physical custody and are responsible for support and care, MCL 330.1498c, MCL 333.6122(c).

# Unemancipated Minors – Exceptions

- 1. When state law does not require parental consent for a particular health care service.**
  - Michigan Law: Treatment for: VD or HIV, MCL 333.5127; substance abuse, MCL 333.6121; pregnancy, MCL 333.9132. Provider may inform parent, guardian, or person *in loco parentis*.
    - PREEMPTED: May inform spouse or putative father.
  - Michigan Law: Mental health services up to 12 sessions or 4 months, MCL 330.1707.
- 2. When a court or state law authorizes someone else to make treatment decisions.**
  - Michigan Law: Probate court may: waive parental consent requirement for abortion, MCL 722.903; approve kidney donation of minor, MCL 700.5105.
- 3. When a parent agrees to a confidential relationship between the minor and provider.**

# Deceased Individuals

- **HIPAA: An executor, administrator, or other person with legal authority to act on behalf of the decedent or the estate.**
- **Michigan Law:**
  - Court appointed personal representative, MCL 700.3101 et seq.
  - Heirs at law shall be considered the personal representatives of a decedent for the purposes of waiving the physician-privilege in a will contest or for providing necessary documentation to a life insurer in examining a claim for benefits, MCL 600.2157.

# Speaker Contact Information

**Elizabeth O. Callahan**  
**HIPAA Task Force Chairperson**  
**Butzel Long**  
**150 W. Jefferson Ave.**  
**Detroit, MI 48226**  
**(313) 225-7059**  
**[callahan@butzel.com](mailto:callahan@butzel.com)**

