SECTION 3: USES & DISCLOSURES OF PHI

3.9. Verification of Identity and Authority of Personal Representatives

POLICY

1. Verification Requirements: University of Florida (UF) personnel must make reasonable efforts to verify the identity of any person who enters UF facilities as a patient seeking treatment, as well as persons who make requests that will involve a disclosure of protected health information (PHI).

2. For registration purposes, methods of identification will depend on the circumstances, setting, and ability of the patient to communicate.
   a. Ideally, patients presenting for non-emergency care should always present a tangible, non-electronic form of identification, preferably a government-issued identification card that includes the patient's name, address, gender, date of birth, and a picture (e.g., driver's license, military id, State ID card, passport, etc.). When such an ID card is not available, patients should be instructed to bring with them a utility bill or other official mail that includes their name and address. Information for registration purposes should be collected directly from the patient or the patient's legal guardian to the greatest extent practicable.
   b. Updating PHI: When patients return for subsequent care, personnel should verify the patient's identity, and then check for and correct any inaccurate or outdated personal registration information.

3. For purposes related to requests involving disclosures of PHI, including, but not limited to, requests for appointments, test results, or clinical follow up, and requests for restriction, amendment, correction, or copies of PHI, UF personnel must make reasonable efforts to verify the identity of the person making such requests. If the person making the request is not the patient, reasonable efforts should be made to also verify the authority of that person to have access to or to use the information.

4. Personal Representatives: For requests involving disclosures of PHI, UF will treat a patient’s personal representative(s) as the patient, as appropriate and within reason, but only as it relates to PHI that is relevant to such representation and only as allowed under the Privacy Rule and other applicable laws. UF reserves the right to refuse to recognize a personal representative’s authority if, in using professional judgment, such action is deemed in the patient’s best interests.

5. Delivery Options for Certain Requests: Persons making requests for restriction, amendment, correction, or copies of PHI are not required to present such requests in person, but may deliver them via mail or fax; signed documents may also be scanned and e-mailed to the appropriate record custodian. The requests should be accompanied by copies of appropriate identification documents.

6. Relying on Evidences of Identity: UF personnel may accept and rely on relevant evidences that appear reliable and reasonable. Such evidences include documents and other written representations to substantiate a claim of identity and/or authority, unless the staff member has knowledge that there is a problem with evidence being supplied.

NOTE: Verification is not required for appropriate actions if there is reasonable belief of an imminent threat to the safety of the patient or another individual.
DEFINITIONS

1. **Custodian:** As used in this policy, is a designated UF staff member charged with maintaining custody of confidential and protected information belonging to a patient or other person for/about whom a record is created.

2. **Incapacitated Adult:** A person over the age of 18 who has been deemed incompetent by a court, or determined by an attending physician to be incapable of making informed health care decisions. Either situation should be documented in the patient’s health record.

3. **Personal Representative:** A person who, under applicable law, has authority to act on behalf of an individual in making decisions related to health care; or a person who, under applicable law, has authority to act as an executor or administrator on behalf of a deceased individual or of the individual’s estate. A covered entity must treat such a representative as the individual for purposes of the Privacy Rule. Examples of Personal Representatives include a health care surrogate or proxy, an executor of an individual’s estate, a court-appointed guardian, a Child Protective Services case worker, or the parent of a minor child.

4. **Public Official:** Representative(s) from an agency or authority of the United States, a state, a territory, a political subdivision of a state or territory, or an Indian tribe; or a person or entity acting under a grant of authority from or contract with such public agency, including the employees or agents of such public agency or its contractors or persons or entities to whom it has granted authority, that is responsible for public matters as part of its official mandate.

5. **Verification of Identity:** The process of affirming that a claimed identity is correct by comparing the offered claims of identity with previously proven information.

PRIVACY REQUIREMENTS

1. **Verification Requirements:** Prior to any disclosure of PHI permitted by the Privacy Rule (except for those uses and disclosures which require an opportunity for the individual to agree or to object), a covered entity (CE) must:
   
   a. Verify the identity of a person requesting PHI and the authority of any such person to have access to it, if the identity or any such authority of such person is not known to the CE; and
   
   b. Obtain documentation, statements, or representations, whether oral or written, from the person requesting the PHI when such is a condition of the disclosure. If a disclosure is conditioned by the Privacy Rule on particular documentation, statements, or representations from the person requesting the PHI, a CE may rely, if such reliance is reasonable under the circumstances, on documentation, statements, or representations that, on their face, meet the applicable requirements.

   c. Exercise of Professional Judgment: The verification requirements are met if the CE relies on the exercise of professional judgment in making a use or disclosure, or acts on a good faith belief in making a disclosure in accordance with the applicable rules.

2. **Identity and Authority of Public Officials:** A CE may rely, if such reliance is reasonable under the circumstances, on any of the following to verify identity and authority of a public official:

   a. Identity: Presentation of an agency identification badge, other official credentials, or other proof of government status, in person; or a written request on the appropriate government letterhead, or other evidence or documentation of agency, such as a contract for services, memorandum of understanding, or purchase order, that establishes that the person is acting on behalf of the public official.

   b. Authority: A written statement of the legal authority under which the information is requested or a properly executed warrant, subpoena, or judicial or administrative order.
3. Adults and Emancipated Minors: If under applicable law a person has authority to act on behalf of an individual who is an adult or an emancipated minor in making decisions related to health care, a CE must treat such person as a personal representative, with respect to PHI relevant to such personal representation.

4. Unemancipated Minors: If under applicable law a parent, guardian, or other person acting in loco parentis has authority to act on behalf of an individual who is an unemancipated minor in making decisions related to health care, a CE must treat such person as a personal representative under this subchapter, with respect to PHI relevant to such personal representation, with certain exceptions and restrictions.

5. Abuse, Neglect, Endangerment Situations: Notwithstanding a State law or any requirement of the Privacy Rule to the contrary, a CE may elect not to treat a person as the personal representative of an individual if:
   a. The CE has a reasonable belief that 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; and
   c. The CE, 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.

6. Deceased Individuals: If under applicable law an executor, administrator, or other person has authority to act on behalf of a deceased individual or of the individual's estate, a CE must treat such person as a personal representative under this subchapter, with respect to PHI relevant to such personal representation.

PROCEDURES

1. Registration: Follow facility procedures for initiating a patient encounter when patients arrive for appointments or care.
   a. Request to view the patient's identification documents. Use at least two (2) identifiers (name, date of birth, medical record number, etc.) to locate the correct patient in UF's electronic health record (EHR) system.
   b. Review all patient information, including billing and demographic information, with the patient and make corrections or additions as needed.

2. Requests involving disclosure of PHI:
   a. Provide Assistance as Needed: Assist the person making a request regarding PHI to complete the appropriate form for the request (see Forms: Patient Rights Forms).
   b. Document on the completed form how the identity and authority of anyone requesting PHI was verified. If there are any doubts, refer to your immediate supervisor.
      i. If the person is known, document the basis of knowledge of both identity and authority as “known patient”, “long-time patient”, “parent of established patient”, etc., as appropriate.
      ii. For a personal representative, document proof of status as parent (if available), guardian, health care surrogate, health care power of attorney, executor, administrator, etc.
      iii. For public officials, document either the presentation of proof of government status, such as official credentials, a badge or identification card, or the official's oral representation: what was said and why it was considered reasonable to rely on it.
      iv. For law enforcement or legal processes: receive the written warrant, subpoena, order, summons, or civil investigation demand presented, and refer the request to your immediate supervisor.
c. For all others, request a common form of identification, preferably one that includes a photo of the requestor, and document the information on the authorization or request form.

3. Verifying the Identity of a Patient or of a Personal Representative:
   a. When a patient or personal representative appears in person, ask for identification if the person is not known. The following may be reasonably relied on as meeting the requirements of verification of identity, including, but not limited to:
      i. Personal knowledge of an individual, place of business, address, or phone or fax number.
      ii. Documents presented by the patient or representative, including a picture-identification card, a state-issued driver’s license, a photo-ID credit card, or a government issued passport.
      iii. Other reasonable written or oral evidence: document the reasons why the evidence is considered valid and reasonable for identification.
   b. When individuals call in by telephone, ask for the specific personal identification information about the patient, which has been defined by your clinic, department, or unit as meeting the requirements of verification of identity. A pre-arranged password or security code, in addition to the patient’s full name may also be used.
   c. When individuals send in requests by mail or other methods, staff may reasonably rely on documentation provided by the requestor, unless staff members know there is a problem with the documentation. When in doubt, ask for more definitive proof of identity, or refer the request to your supervisor or manager or to the Privacy Office.

4. Verifying the Authority of a Personal or Legal Representative:
   a. Minors (Non-emancipated): For the purposes of HIPAA and access to PHI, natural or adoptive parents, legal custodians, and legal guardians are the personal representatives of persons under the age of 18.
      i. Exceptions: The following are some, but not all, cases in which parents or guardians of minors would not be considered personal representatives, and therefore not authorized to access the patient’s PHI without the minor patient’s authorization:
         ii. When the minor requests a medical examination or testing for STDs (including HIV);
         iii. When a minor voluntarily self-admits into a substance abuse facility;
         iv. When the minor is emancipated;
         v. When a minor requests outpatient mental health diagnostic/evaluation services (> age 13);
         vi. When a minor requests outpatient crisis intervention therapy/counseling services (> age 13).
   b. Emancipated Minors: For purposes of HIPAA and access to PHI, the following persons under the age of 18 do not need parental consent for health care; their parents or guardians would not be personal representatives, unless so designated by the minor:
      i. Unmarried minor consenting to pregnancy-related health care;
      ii. Unmarried minor female consenting to health care for her child;
      iii. Married minor (including widowed and divorced);
      iv. Minor emancipated by court order;
      v. Minor enlisted in military service.
c. Incapacitated Adults: For purposes of HIPAA and access to PHI, legal representatives are usually appointed and able to produce documents. Some examples include:

   i. Court-appointed Guardian;

   ii. Durable Power of Attorney (DPOA) for Health Care: Appointed by the patient, with authority to make health care decisions for another individual.

   iii. Healthcare Surrogate: Appointed by the patient, but usually not effective until the patient is declared incapacitated. Read the document to determine the effective date or event and other relevant criteria.

      • Authority to make health care decisions automatically includes access to PHI.

      • Authority to act may be limited, that is, the authority may be specified as only for purposes of end-of-life decisions or other defined circumstances. Read the document to ascertain the scope of authority.


d. Health Care Proxy: When an incapacitated patient has not personally appointed a substitute decision-maker (DPOA for Health Care or Health Care Surrogate), the following persons, in order of priority, may be appointed by UF, in accordance with Florida law, as Health Care Proxy. The appointment must be documented in the patient’s health record, including efforts to locate proxies from prior classes.

   i. Judicially appointed guardian;

   ii. Patient’s (current and legal) Spouse;

   iii. Adult child of the patient, or a majority of adult children reasonably available;

   iv. Parent of the patient;

   v. Adult sibling of the patient, or a majority of adult siblings reasonably available;

   vi. Adult relative of the patient who has exhibited concern and maintained contact;


5. Representatives for deceased patients: Refer requests for decedents’ health information to your supervisor or the Privacy Office. The following are guidelines for identifying legal representatives:

   a. With a Will: The Executor of the Estate is the personal representative.

   b. Without a Will: If no personal representative was named, the following persons, in order of priority, can serve as personal representatives:

      i. The surviving spouse

      ii. A person selected by a majority of those persons entitled to a share in the estate under the laws of intestate succession (i.e. lineal descendants, father and mother, siblings)

      iii. An heir in the nearest degree to the decedent (if more than one, the court appoints a representative)

REFERENCES

1. HIPAA: 45 CFR § 160.103 Definitions; §164.502(g) Personal Representatives; §164.514(h) Other Requirements: Verification; §164.530(c)(1) Administrative Requirements: Safeguards
2. Florida Statutes: 384.29 Sexually Transmissible Diseases: Confidentiality; 394.459 Mental Health: Rights of Patients; 395.501 Substance Abuse: Rights of Individuals; 395.601 Substance Abuse: Voluntary Admissions; 709.08 Durable Power of Attorney; 765 Health Care Advance Directives

EXHIBITS