

TEXAS ASSOCIATION OF COUNTIES HEALTH AND EMPLOYEE BENEFITS POOL HIPAA POLICIES

PERSONAL REPRESENTATIVES

Effective Date: March 17, 2003

POLICY

To the extent provided by the Privacy Rule, the Texas Association of Counties Health and Employee Benefits Pool (HEBP) recognizes the rights of a properly-designated personal representative of a participant to be treated the same as the participant for the purposes of the Privacy Rule.

PROCEDURE

Personal Representatives of Adults and Emancipated Minors

- Upon a showing that a person has lawful authority to act on behalf of an individual who is an adult or an emancipated minor in making decisions related to health care, HEBP will treat such person as a personal representative with respect to protected health information relevant to such personal representation.

Personal Representatives of Unemancipated Minors

- If under applicable law a 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, HEBP will treat such person as a personal representative with respect to protected health information relevant to such personal representation, except that such person may not be a personal representative of an unemancipated minor, and the minor has the authority to act as an individual, with respect to PHI pertaining to a health care service, if:
 1. The minor consents to such health care service; no other consent to such health care service is required by law, regardless of whether the consent of another person has also been obtained; and the minor has not requested that such person be treated as the personal representative;
 2. The minor may lawfully obtain such health care service without the consent of a parent, guardian or other person acting *in loco parentis*, and the minor, a court, or another person authorized by law consents to such health care service; or

3. A parent, guardian, or other person acting in loco parentis assents to an agreement of confidentiality between a covered health care provider and the minor with respect to such health care service.

Notwithstanding the provisions of 1 – 3, above:

- If, and to the extent, permitted or required by applicable law, HEBP may disclose, or provide access to PHI about an unemancipated minor to a parent or other person acting *in loco parentis*;
- If, and to the extent prohibited by applicable law, HEBP may not disclose or provide access to PHI about an unemancipated minor to a parent or other person acting *in loco parentis*; and
- Where the parent or other person acting *in loco parentis* is not the personal representative under 1, 2 or 3, above, and where there is no applicable access provision under State or other law, HEBP may provide or deny access to a parent or other person acting *in loco parentis* if such action is consistent with State or other applicable law. The decision whether to grant or deny access will be made by a licensed health care professional, in the exercise of professional judgment.

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, HEBP will treat such person as a personal representative with respect to PHI relevant to such personal representation.

Abuse, Neglect and Endangerment Situations

- Notwithstanding State law, or any other provisions of the Privacy Rule, HEBP may elect not to treat a person as the personal representative of an individual if:
 - HEBP has a reasonable belief that:
 - the individual has been or may be subjected to domestic violence, abuse, or neglect by such person; or
 - treating such person as the personal representative could endanger the individual; and
 - HEBP, 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.