

# SUNY DOWNSTATE MEDICAL CENTER

## UNIVERSITY HOSPITAL OF BROOKLYN POLICY AND PROCEDURE

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| <b>Subject:</b> <u>PRIVACY RIGHTS OF MINORS</u>  | <b>No.</b> HIPAA-21   |
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|  | <b>Effective Date:</b> <u>12/2016</u>   |
|  | <b>Standards:</b> Privacy of Individually Identifiable -<br>Health Information 45 CFR Parts 160 and 164,<br>§164.502(g); NY Social Services Law §2(31), 371;<br>NY Public Health Law §2504(4), §2305(2),<br>§18(2)(c), §18(3)(c). |
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### I. PURPOSE

To ensure that appropriate authority to control, access and protect the confidentiality of protected health information (PHI) is granted to parents or guardians and to minors in accordance with the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and its accompanying regulations.

### II. POLICY

SUNY Downstate will grant authority to parents or guardians to control, access and protect the confidentiality of PHI of an unemancipated minor. SUNY Downstate will also grant an unemancipated minor the authority to exercise these rights on his/her own behalf in limited circumstances.

**A. Emancipated Minors-** Emancipated minors have full authority to control their PHI, including information obtained when they were unemancipated minors. Guidelines delineated in this policy do not apply to emancipated minors.

1. Emancipated minors will be given the same privacy rights as all adults, in accordance with all other SUNY Downstate policies and procedures.
2. A personal representative may act on behalf of an emancipated minor only under the same circumstances in which a personal representative may act on behalf of an adult.

## **B. Parental or Guardian Control**

1. Parents or guardians ordinarily have the authority to control the health information of a minor by exercising the rights granted to a patient concerning his/her PHI. This includes:
  - a. Signing an authorization form permitting the use and disclosure of the minor's information for other purposes;
  - b. Objecting to the use and disclosure of the minor's information in the facility directory or to friends and family involved in the minor's health care;
  - c. Inspecting or copying the minor's information;
  - d. Requesting an amendment of the minor's information;
  - e. Requesting an accounting of disclosures of the minor's information;
  - f. Requesting additional privacy protections, including confidential communications, with respect to the minor's information;
  - g. Requesting a copy of the hospital's Notice of Privacy Practices;
  - h. Filing privacy complaints with the hospital or with the United States Department of Health and Human Services.
  
2. In a medical emergency, SUNY Downstate may provide treatment to a minor without the written permission of the parent or guardian.
  - a. The parent or guardian, nevertheless, retains the authority to control the privacy of the minor's PHI. SUNY Downstate would not be permitted to treat the minor as having independent authority to exercise his/her privacy rights (Ex: Allowing the minor's objection to the use of PHI in the facility directory); and
  - b. The appropriate staff member should obtain appropriate consents or authorizations from the parent or guardian as soon as practicable after the medical emergency has ended.

## **C. Exception: Minor's Control**

1. In the following circumstances, the minor is permitted to exercise the privacy rights delineated in Section III.B. on his/her own behalf:
  - a. When the minor may lawfully obtain a healthcare 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 healthcare service. For example, under NYS law, information regarding treatment of a minor for venereal disease or the performance of an abortion operation may not be made available to the parent or guardian. The minor has the authority to exercise his/her own privacy rights even if:
    - i. A parent or guardian has also consented to the healthcare service; or
    - ii. The minor has voluntarily chosen to involve the parent or guardian in his/ her healthcare.
  - b. When a parent, guardian or other person acting in loco parentis agrees to maintain the confidentiality between SUNY Downstate and the minor with respect to a particular healthcare treatment or service.
2. Disclosures- Minors are not always permitted to exercise their rights to prevent disclosures of their PHI to parents or guardians, including disclosures through

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conversations in person or over the phone and disclosures through requests by parents or guardians to inspect or copy records.

- a. Appropriate staff member should continue to follow SUNY Downstate's already established policies and procedures addressing parental access to a minor's information.
- b. In all cases, disclosure to and access by a parent or guardian to the minor's PHI should be determined by the attending physician.

**D. Abuse, Neglect or Endangerment-** Regardless of other policies and procedures to the contrary, the attending physician may deny a parent or guardian the authority to exercise the privacy rights of a minor if s/he:

1. Reasonably believes that the minor:
  - a. Has been, or may be, subjected to violence, abuse or neglect by the parent or guardian; or
  - b. Could be endangered if the parent or guardian is treated as a personal representative; and
2. Decides, using professional judgment, that it is not in the best interest of the minor to treat the parent or guardian as the personal representative.

The policy on Reporting of Suspected Abuse/ Maltreatment of Children should be referred to for additional guidelines.

### III. DEFINITIONS

**Minor-** An individual under the age of 18 who is not emancipated.

**Emancipated Minor-** An individual under the age of 18 who is married, has children or was determined emancipated from the care of a parent or guardian by the court. A pregnant patient under the age of 18 is considered emancipated with respect to medical, dental, health and hospital services relating to prenatal care.

### IV. RESPONSIBILITIES

It is the responsibility of all medical staff members and hospital staff members to comply with this policy. Medical staff members include physicians as well as allied health professionals. Hospital staff members include all employees, medical or other students, trainees, residents, interns, volunteers, consultants, contractors and subcontractors at the hospital.

### V. PROCEDURE/ GUIDELINES

The development of the procedure section is the responsibility of the respective department. It is dependent upon the unique needs of each department's operating structure and shall be advanced and customized accordingly.

### VI. ATTACHMENTS

None

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**VII. REFERENCES**

Standards for Privacy of Individually Identifiable Health Information- 45 CFR Parts 160 and 164, §164.502(g); NY Social Services Law §2(31), 371; NY Public Health Law §2504(4), §2305(2), §18(2)(c), §18(3)(c).

| <b>Date Reviewed</b> | <b>Revision Required (Circle One)</b> |      | <b>Responsible Staff Name and Title</b>    |
|----------------------|---------------------------------------|------|--|
| 12/07                | (Yes)                                 | No   | Shoshana Milstein /AVP, Compliance & Audit |
| 9/2013               | (Yes)                                 | No   | Shoshana Milstein /AVP, Compliance & Audit |
| 9/2016               | (Yes)                                 | No   | Shoshana Milstein /AVP, Compliance & Audit |
| 12/2016              | Yes                                   | (No) | Shoshana Milstein /AVP, Compliance & Audit |
|                      |                                       |      |  |