PURPOSE AND SCOPE

This policy outlines the circumstances under which a patient’s personal representative or legally authorized surrogate decision-maker, including a minor’s parents, guardian or other person acting in loco parentis, may make decisions about the use/access/disclosure of the patient’s PHI.

POLICY PRINCIPLES/STATEMENT

See POLICY.

DEFINITIONS

1. **Family member** means spouse or same or opposite sex domestic partner, child, parent, grandparent, grandchild, sister, brother, great grandparent, great-great grandparent, great grandchild, great-great grandchild, aunt, great aunt, uncle, great uncle, niece, nephew, first cousin and child of first cousin. Family member also means individuals in the above relationships with spouse or domestic partner and includes those persons in adoptive, step and foster relationships.

2. **In loco parentis** means day-to-day responsibility to care for and financially support a minor.

3. **Personal representative or legally authorized surrogate decision-maker** means a person authorized under State or other applicable law to act on behalf of the individual in making healthcare related decisions.

4. **Proxy access** is when an individual other than the patient is provided online access to the patient’s personal health information through UW Medicine eCare.

See UW Medicine Compliance Policy: **PP.00 Glossary of Terms**.
POLICY
A personal representative or legally authorized surrogate decision-maker can make decisions concerning the use, access and disclosure of a patient’s protected health information (PHI).\(^1\)

I. Access or disclosures of PHI for minor patients

   A. A parent, guardian or other person acting in loco parentis has authority to make healthcare decisions for a minor, including use, access or disclosure of the minor’s PHI, subject to the following four exceptions:

      1. Emancipated minors.
      2. When the minor may lawfully consent to a healthcare service without parental consent under Washington State law:
         - Sexually transmitted disease treatment/testing, to include human immunodeficiency virus (if 14 years of age or older);
         - Birth control services;
         - Abortion services;
         - Prenatal care services;
         - Outpatient or inpatient mental health services (if 13 years of age or older);
         - Outpatient substance abuse treatment (if 13 years of age or older);
         - Inpatient substance abuse treatment (if 13 years of age or older and the Washington State Department of Social and Health Services determines he or she is a child in need of services).

      If a minor receives any of the above services from UW Medicine and does not want that information disclosed to a parent, guardian or other person acting in loco parentis, then the visit information and services may not be disclosed to a parent or others or billed to the parent’s or others insurance without the minor’s consent, with the following exception:

      - Within twenty-four hours of a minor's voluntary admission for inpatient mental health services, the parent(s) must be notified of the following:
         i. The minor has been admitted to inpatient treatment;
         ii. The location and telephone number of the facility providing such treatment;
         iii. The name of a professional person on the staff of the facility providing treatment who is designated to discuss the minor’s need for inpatient treatment with the parent; and
         iv. The medical necessity for admission.

      Note: When a minor requests non-disclosure, the “Confidential Services” account type must be associated to the applicable encounter dates in the Epic system. Visit information associated with the “Confidential Services” account type may not be disclosed without the minor’s consent and may not be billed to the insurance of the parent, guardian or other person acting in loco parentis. By associating the “Confidential Services” account type to the encounter, the patient will have to arrange for payment of the services because the insurance of the parent, guardian or other person acting in loco parentis will not be billed for the services.

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\(^1\) For information on how family members can act as surrogate decision makers for healthcare services, see the UW Medicine Consent Manual: [https://know1.mcis.washington.edu/manuals/amc_consent/index.html](https://know1.mcis.washington.edu/manuals/amc_consent/index.html).
3. A parent who has the authority to consent for a minor may choose to permit certain healthcare services to be confidential between healthcare professionals and the minor. In those cases, the minor may make decisions concerning UW Medicine’s use and disclosure of the PHI related to the services.

4. When there is documentation that a court has terminated the parental rights of one or both parents, then UW Medicine is not authorized to release records to the parent who has lost parental rights.

B. If the parent has the right to access the minor’s medical record, then UW Medicine is authorized to release records to both custodial and non-custodial parents.

C. When a minor’s mental health information\(^2\) is disclosed for any purpose, the UW Medicine workforce member must document the following in the minor's medical record:
   - The date of the disclosure;
   - The circumstances under which the disclosure is made;
   - The name or names of the persons or agencies to whom such disclosure is made;
   - The relationship, if any, to the minor; and
   - The information disclosed.

II. Disclosure of PHI for deceased patients

A personal representative of a deceased patient may exercise all of the deceased patient's rights. If there is no personal representative, or upon discharge of the personal representative, a deceased patient's rights may be exercised by persons who would have been authorized to make healthcare decisions for the deceased patient when the patient was living.

III. Abuse, neglect, and endangerment situations

UW Medicine workforce, in exercising professional judgment, may elect not to disclose PHI to a person, personal representative or legally authorized surrogate of a patient, if there is a reasonable belief that the patient has been, or may be subjected to domestic violence, abuse or neglect by such person, or that disclosing PHI to such person could endanger the patient.

IV. Proxy eCare access to a patient’s online personal health information

Patients can use UW Medicine eCare, a secure internet tool, to access their care team and PHI. Proxy access allows an authorized person to have eCare online access for the patient.

A. Patients under 13 years old.

\(^2\) Behavioral healthcare providers maintain information as necessary to document the provision of behavioral health treatment. Behavioral health information includes information typically shared with a patient and by definition is part of a behavioral health note. Examples of information found in the Designated Record Set include: strategies for promoting treatment adherence and optimizing disease management, medication prescription and monitoring, counseling session start and stop times, objective behavioral assessments upon which clinical treatment decisions are made, the modalities and frequencies of treatment furnished, results of clinical tests, and any summary assessment of the following items: diagnosis, treatment plan, patient's presenting symptoms, progressions, and progress to date. Examples of notes that are included in the Designated Record Set: physician progress notes, nursing notes, case management notes, individual and group therapy notes, and other behavioral health notes. Generally, all of this information is found within the UW Medicine entity's Designated Record Set.
1. If the minor patient is not receiving care for reproductive conditions, a parent, guardian or other person acting in loco parentis may be granted online proxy access. (See Minor Proxy eCare Account Request Process – Attachment A. The form Request for Minor Proxy eCare Access – Attachment C may be used. For deactivation of eCare proxy access related to a minor patient, see Deactivation of eCare Proxy Access – Attachment E.)

2. If the minor patient is receiving care for reproductive conditions, specific authorization from the minor patient is required in order to release the conditions relating to the minor’s reproductive care.

B. Minor patients 13 and older.

eCare proxy access is not allowed for minor patients 13 and older. (As stated in UW Medicine Compliance policy: PP-23 Patient’s Access to Their Protected Health Information and Designated Record Set, emancipated minors, patients over the age of 16 who can consent for their care, or patients deemed as a mature minor by their healthcare professional, who are patients at UW Medicine sites may obtain access to their personal health medical records information online through eCare.)

C. If a healthcare professional determines that a minor patient has diminished capacity and that proxy access is in the patient’s best interest, the patient’s healthcare professional should consult with UW Medicine Compliance for the exception access to be processed.

D. eCare proxy access for a patient who is an adult.

Adult patients may authorize that eCare proxy access be granted to a representative. (For eCare, see Adult/Proxy eCare Account Request Process – Attachment B. The form Request for Adult Proxy eCare Access – Attachment D may be used. For deactivation of adult eCare proxy accounts at a patient’s request, see Deactivation of eCare Proxy Access – Attachment E.)

E. Deactivation of eCare accounts at UW Medicine’s request.

1. Non-Use eCare accounts of patients who have not accessed their account in over three years may be deactivated. No letter or other form of notification will be provided to the patient to inform them of the deactivation. To request that a deactivated account be re-opened, follow the usual processes for activating an account.

2. Patients with eCare accounts whose care relationship with a UW Medicine entity has been terminated. eCare accounts are deactivated upon the date of their dismissal. Patients are notified of the deactivation by the clinic as part of the dismissal notification process. The patient may request to activate an eCare account with another UW Medicine site.

3. Failure to comply with the requirements of the eCare Terms and Conditions, User Agreement and /or Authorization form.

4. Known or suspected security breach. If, at any point, the staff person responsible for monitoring eCare accounts suspects that log in information for a patient has been compromised, the account will be immediately deactivated and the patient will be notified of the deactivation. Patients will be asked to come in to the clinic with photo identification to have their eCare account reactivated.
V. Consent Process Diagrams:

REGULATORY/LEGISLATION/REFERENCES
- 45 CFR Part 164.510 (b) (5) – Uses and disclosures requiring an opportunity for the individual to agree or to object.
- 45 CFR Part 164.512 (e) – Disclosures for judicial and administrative proceedings.
- RCW 7.70.050 – Failure to secure informed consent — Necessary elements of proof — Emergency situations.
- RCW 7.70.065 – Informed consent - Persons authorized to provide for patients who are not competent.
- RCW 9.02.100 – Reproductive privacy – Public policy.
- RCW 13.34.060 – Shelter care – Placement – Custody – Duties of parties.
- RCW 26.28.010 – Age of majority.
- RCW 70.02 – Medical Records - Healthcare Information Access and Disclosure.
- RCW 70.24.110 - Minors – Treatment, consent, liability for payment for care.
- RCW 70.96A.095 - Age of consent – Outpatient treatment of minors for chemical dependency.
- RCW 70.96A.230 – Minor – When outpatient treatment provider must give notice to parents.
- RCW 70.96A.235 – Minor – Parental consent for inpatient treatment – Exception.
- RCW 71.34.500 – Minor thirteen or older may be admitted for inpatient mental treatment without parental consent – Professional person in charge must concur – Written renewal of consent required.

PROCEDURE ADDENDUM(s) REFERENCES/LINKS
- UW Medicine Compliance Policy: PP-00 Glossary of Terms.
- UW Medicine Compliance Policy: PP-14 Attachment B - Adult/Proxy eCare Account Request Process.
- UW Medicine Compliance Policy: PP-14 Attachment C - UW Medicine Parent/Guardian eCare Account.
- UW Medicine Compliance Policy: PP-14 Attachment E - Deactivation of eCare Proxy Access.
- UW Medicine Consent Manual:
  https://know1.mcis.washington.edu/manuals/amc_consent/index.html

Related Procedures
- Minor Proxy eCare Account Request Process (Attachment A).
- Adult/Proxy eCare Account Request Process (Attachment B).
Forms/Instructions
- Request for Minor Proxy eCare Access (Attachment C).
- Request for Adult Proxy eCare Access (Attachment D).
- Deactivation of eCare Proxy Access (Attachment E).

ROLES AND RESPONSIBILITIES
Defined within POLICY.

AUTHORITIES

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<tr>
<th>Custodian</th>
<th>Responsible Officer</th>
<th>Implementation Officer</th>
<th>Administrative Officer</th>
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<td>UW Medicine Executive Compliance Committee</td>
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APPROVALS

UW Privacy Official
Johnese M. Spisso, Chief Health System Officer, UW Medicine and Vice President for Medical Affairs, UW

_________________________________________  ____________________________
UW Privacy Official                      Date