



### **Best of the Listserv**

In response to recent postings on this issue from Micah and John Stout, here's an explanation from a person I know who knows lots about HIPAA, who says a single form works fine, and that a separate form is needed only when protected health information is needed for another purpose (like litigation):

Nothing in the Privacy Rule of HIPAA changes the way in which an individual grants another person a power of attorney for health care decisions. This was and remains essentially a state law consideration. HIPAA provisions dealing with "personal representatives" are intended to complement, not interfere or change, the existing practices regarding health care powers of attorney. HIPAA provides the person given the authority to make health care decisions for an individual under other law, the ability to exercise the rights of that person with respect to protected health information ("PHI").

If a valid health care power of attorney designates an individual as a "personal representative" and/or gives the individual the authority to make health care decisions, the individual becomes a HIPAA personal representative and steps into the shoes of the patient with regard to PHI in most instances. Exceptions exist for instances in which the health care provider thinks the patient (including an unemancipated minor) may be subjected to domestic violence, abuse or neglect by the personal representative. If a HIPAA "authorization" would be required from the patient for a certain use or disclosure of PHI (for instance if a health care provider wanted to use PHI in marketing or most disclosures of psychotherapy notes outside treatment, payment or health care operations) the personal representative could sign. One of the core elements of a valid HIPAA authorization signed by a personal representative is a listing of the source of the personal representative's authority to sign for the patient and verification by the covered entity of that authority. Please note that authorizations are never needed for health care providers (and other HIPAA covered entities) to use PHI for treatment of the patient, payment, or health care operations.

The bottom line is that a health care power of attorney can designate a HIPAA personal representative. A simple, legal power of attorney (w/o the authority to make health care decisions) will not. Once the designation is validly made, there are instances in which the patient (or the personal rep) will need to give a covered entity a HIPAA authorization before PHI can be used or disclosed. In other instances, an authorization will not be required.

A word about minors. HIPAA generally allows a parent to have access to the medical record of his or her child as his or her personal representative when such access would not be inconsistent with state or other law.

The US Dept of Health and Human Services has a very useful HIPAA Q&A available to the public at [www.hhs.gov](http://www.hhs.gov). Click on the HIPAA link in the right hand corner. This will jump you to a page offering "Answers to your Frequently Asked Questions" Click again and then insert subjects or phrases as needed. "Minor" or "personal Representative" would be helpful in this case. There are a number of well articulated responses here and they are updated to assist the public. You can even sign up for e-mail notification should and answer on a specific HIPAA subject be updated.

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