

**HIPAA Privacy Policy #8
Personal Representatives**

Effective Date: January 22, 2020	Refer to Privacy Rule Sections: 164.502
Authorized by: Equinox Board of Directors	Version #: v.

Policy: Except as specifically noted below, Equinox, Inc. must provide a patient’s “personal representative” with all of the rights and privileges that are possessed by the patient with respect to Protected Health Information that is relevant to the patient’s representation.

Procedures:

1. **Rights of a Personal Representative:** A personal representative possesses all the rights of the patient who he or she represents with respect to Protected Health Information that is relevant to his or her representation.

For example, a Health Care Agent who has been appointed in accordance with New York law may have access to a patient’s Protected Health Information that is relevant to permit the Agent to make decisions about the patient’s care and treatment. However, the Agent would not normally be entitled to review old medical records that are unrelated to the patient’s current medical condition. 45 C.F.R. 164.502(g).

2. **Exceptions to Policy:** Equinox, Inc. may elect to not treat a person as a patient’s personal representative if:
 - a. Equinox, Inc. has a reasonable belief that:
 - i. the patient has been or may be subjected to domestic violence, abuse or neglect by such person; or
 - ii. treating such person as the personal representative could endanger the patient; and
 - b. Equinox, Inc. decides, in the exercise of professional judgment after consultation with the Privacy Officer and, if appropriate, counsel, that it is not in the patient’s best interest to treat the person as the patient’s personal representative. 45 C.F.R. § 164.502(g)(5).

3. **Examples of Personal Representatives:**
 - a. **Representatives of Adult Patients:** A person (such as an Article 81 Guardian or Health Care Agent) who has legal authority to make health care decisions on behalf of an adult. *N.Y. Public Health Law § 2782(4).*

- b. Representatives of Decedents: An executor, administrator or person who has legal authority to act on behalf of a deceased individual or the individual’s estate. In New York, if no executor, administrator or other person has been appointed, any distributee of a deceased individual has authority to inspect and obtain copies of patient information about a deceased individual. *N.Y. Public Health Law § 18(g)*.
- c. Representatives of Minors:¹ A parent, guardian, or person who has legal authority to make health care decisions on behalf of a minor, except where:
 - i. a law does not require the consent of a parent or other person before a minor can obtain a particular health care service (regardless of whether the parent or guardian actually provides consent), and the minor consents to the health care services without parental authorization such as in the following circumstances:
 - (A) the minor is pregnant, and the health care services are related to abortion or prenatal care; or
 - (B) treatment for sexually transmitted disease; or
 - (C) the minor is not pregnant, and the services are related to reproductive health (i.e., contraceptives); or
 - (D) the services relate to mental health; or
 - (E) treatment for alcohol or substance abuse; or
 - (F) emergency care.
 - ii. a court determines, or a law authorizes, someone other than the parent or guardian to make treatment decisions for a minor; or
 - iii. a parent or guardian agrees to a confidential relationship between the minor and Equinox, Inc. *N.Y. Public Health Law § 250*; or
 - iv. health care services and treatment received by an Emancipated Minor.²
- 4. Review Policy Regarding Family and Friends: When considering whether Equinox, Inc. may disclose Protected Health Information to an individual who is not the patient’s personal representative, please *See* Equinox, Inc.’s Policy No. 16, entitled “Uses or Disclosures of Protected Health Information Without Patient Authorization to Family and Friends.” That Policy describes circumstances in which Equinox, Inc. may share Protected Health Information with a patient’s relative or friend despite the fact that the relative or friend is not a personal representative.

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¹ In New York, a minor is anyone who has not yet reached the age of 18, has never been married or has not had a child.

² Emancipated Minor means an individual under the age of 18 who is married, is a parent of a child, has been declared “emancipated” by a court or who has voluntarily left the care and services of his parents or guardians and who is living independently (this last category is fact specific and should only be determined by a provider following consultation with legal counsel).