

## POLICY INFORMATION

**Policy Title:** Personal Representatives and Communication with Patient Families Policy and Procedure

**Departmental Owner:** Chief Compliance, Audit, and Privacy Officer

**Version Effective Date:** 2/28/24

**Last Reviewed:** 2/28/24

## SCOPE

This policy applies to the following individuals and/or groups:

- All of the below categories  
 All Employees  CT Employees  NY Employees  Remote Employees  Contractors  Volunteers  Students/Interns  Vendors

This policy applies to all above listed Nuvance Health workforce members including but not limited to the following locations:

- All of the below entities
- |   |   |   |
|---|---|---|
| <input type="checkbox"/> Nuvance Health Systems                                   |   |   |
| <input type="checkbox"/> Danbury Hospital (including New Milford Hospital Campus) | <input checked="" type="checkbox"/> Health Quest Systems, Inc. ("HQSI")   | <input type="checkbox"/> Western Connecticut Home Care, Inc ("WCHN")                                  |
| <input checked="" type="checkbox"/> Northern Dutchess Hospital                    | <input checked="" type="checkbox"/> Health Quest Home Care, Inc   | <input type="checkbox"/> Western Connecticut Health Network Physician Hospital Organization ACO, Inc. |
| <input type="checkbox"/> Norwalk Hospital   | <input checked="" type="checkbox"/> Hudson Valley Cardiovascular Practice, P.C. (aka The Heart Center) ("HVCP") | <input type="checkbox"/> Western Connecticut Home Care, Inc   |
| <input checked="" type="checkbox"/> Putnam Hospital                               | <input checked="" type="checkbox"/> Other HQSI-affiliated Entities Not Listed                                   | <input type="checkbox"/> Other WCHN-affiliated Entities Not Listed                                    |
| <input checked="" type="checkbox"/> Sharon Hospital                               |   | <input checked="" type="checkbox"/> Nuvance Health Medical Practices (NHMP PC, NHMP CT, ENYMS & HVCP) |
| <input checked="" type="checkbox"/> Vassar Brothers Medical Center                |   |   |

## POLICY STATEMENT/PURPOSE

To ensure compliance with the HIPAA Privacy Rule, that allows a personal representative authorized to act on behalf of a patient, to make decisions related to the use and disclosure of the patient's individually identifiable health information ("PHI").

## DEFINITIONS

See HIPAA Glossary

**Personal Representative:** A "personal representative" is an adult granted the legal authority to act on behalf of an incompetent or minor patient in making health care decisions or obtaining information, or on behalf of a decedent's estate in obtaining information. When appropriate, the personal representative may consent to treatment, receive and acknowledge receipt of the Notice of Privacy Practices, sign authorizations to use or disclose the patient's PHI, receive PHI as needed to act on behalf of the patient, and exercise individual rights such as requesting an amendment or an accounting of disclosures. Please see Section E regarding communication with persons who are not personal representatives.

**Covered Individual:** This term refers to all Nuvance Health workforce members, business affiliates, and agents. Workforce members shall include any of the following individuals at Nuvance Health: Members of the Nuvance Health

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Revision Dates: 2/28/24

Supersedes: HQ 5.2.25 Personal Representatives and Communication with Patient Families Policy;  
 HQ 5.2.25 Personal Representatives and Communication with Patient Families Procedure

Board and the boards of any Nuvance Health related entity; President/Chief Executive Officer; administrators; managers, officers; employees, affiliates; medical staff members; appointees; volunteers; personnel; interns; students, trainees, and any individual whose conduct is under direct control of Nuvance Health whether or not they are paid by Nuvance Health. Business Affiliates shall include any non-workforce member, contractor, independent contractor, vendor, person, subcontractor or third-party, who or that, in acting on behalf of Nuvance Health: (i) delivers, furnishes, prescribes, directs, orders, authorizes, or otherwise provides Federal healthcare program items and services; (ii) performs billing or coding functions; (iii) contributes to Nuvance Health's entitlement to payment under Federal healthcare programs; and (iv) is affected by one or more of Nuvance Health's risk areas through the Business Affiliate's interaction with, or performance of their role, functions, and responsibilities or provision of contracted services at Nuvance Health. Agents include individuals or entities that have entered into an agency relationship with Nuvance Health. Agents fall under the category of either Workforce Member or Business Affiliate depending on their role, functions, and responsibilities.

## POLICY

It is the policy of Nuvance Health and its affiliates ("Nuvance"), when appropriate, to recognize personal representatives for patients of Nuvance for purposes of sharing PHI with them and allowing them to act on behalf of patients in certain circumstances. Subject to certain exceptions, the HIPAA Privacy Rule (the "Rule") requires Nuvance to treat an individual's personal representative as the individual with respect to uses and disclosures of the individual's protected health information, as well as the individual's rights under the Rule, depending on the personal representative's authority to make health care decisions for the individual. State or other law should be consulted to determine the authority of the personal representative to receive or access the individual's protected health information.

## PROCEDURE

1. Nuvance Covered Individuals shall treat a personal representative the same as the individual (e.g. patient) with respect to disclosing PHI.
2. Nuvance must verify the personal representative's identify and authority to act on behalf of the individual.
3. Identity Verification
  1. Check to see that the patient has not opted out of the facility directory or placed restrictions on the release of his/her PHI (please see the policy on the Right to Request Confidential Communications or Restrictions on the Use and/or Disclosure of Protected Health Information (PHI)).
  2. Every effort should be made to identify the person requesting information before sharing PHI. The following identifiers can be used to verify a person's identity:
    - i. Patient's name and relationship to the requestor
    - ii. Patient's address
    - iii. Patient's date of birth
    - iv. Patient's Social Security Number
    - v. Patient's Hospital account number
4. Personal Representatives
  1. Individuals serving in the following roles are considered personal representatives of a patient. When a patient is incapable, these individuals are treated as the patient in exercising the patient's rights under HIPAA. See the relevant Nuvance Consent, Limiting Life Sustaining Treatment, and/or Advance Directives policy for additional information about other powers that can be exercised by persons holding the following types of legal authority.
    - i. **Conservator:** A conservator of the person is an individual who has been appointed by a New York Probate Court to make personal decisions for an incapable patient when a physician has determined that the patient is unable to use sound judgment regarding his or her own care. If a conservator of

the person has been appointed, he or she has the right to make health care decisions for the patient and has access to a patient's medical information, just as a patient would. (Please note: a conservator of the estate is an individual who has been appointed to make financial decisions for an incapable patient. He or she only has access to PHI related to financial issues, such as a Medicaid application or the patient's bills.)

- ii. **Durable Power of Attorney/Attorney in Fact:** A durable power of attorney is a legal document signed by a then-competent person that appoints a competent adult to make certain decisions for that individual in the event that he/she is temporarily or permanently unable to make such decisions. The appointee is called an Attorney in Fact. The language of the particular power of attorney determines the extent of the Attorney in Fact's authority. If the Power of Attorney is currently effective, an Attorney in Fact with authority to make health care decisions has the right to access the patient's medical record.
  - iii. **Health Care Agent:** A Health Care Agent is a competent adult appointed via a document signed by a then competent patient giving that agent the authority to make life support decisions in the event the patient becomes temporarily or permanently unable to make them. The Health Care Agent's authority to receive PHI will be limited to the information required to make those decisions.
  - iv. **Health Care Representative:** A Health Care Representative is a competent adult who is appointed via a document signed by a then-competent patient giving the Representative the authority to make certain medical decisions after the patient becomes incapable of making those decisions. A Health Care Representative's authority will depend on the scope of authority given to him or her in the appointing document but in most cases includes both end-of-life and other medical decisions. The Health Care Agent's access to the patient's medical information should correspond to the extent of his or her authority in the appointing document.
  - v. **Guardian of a Mentally Retarded Patient:** A guardian is a competent adult appointed by a New York Probate Court to take care and control of a mentally retarded adult. The guardian, who may be related or unrelated or may be a Department of Mental Retardation representative, has authority to make decisions affecting the welfare of that individual. See relevant facility policy for limits on the other authority of this type of guardian.
  - vi. **Guardian of an Unemancipated Minor:** The guardian of an unemancipated minor is always a parent unless the parent is deceased or unless parental rights have been terminated. Both parents have equal access to PHI unless a court has ordered otherwise. A probate court may appoint as guardian another adult in lieu of a parent.
2. When relying on a person's appointment by a court or the patient, a copy of the certificate or document of appointment should be obtained, if possible, and placed in the patient's medical record.

## 5. Minors

### 1. Emancipated Minors

- i. In all situations, an emancipated minor shall be deemed equivalent to an adult for purposes of determining who may be given access to his or her PHI.
- ii. Under New York State and Connecticut law, an emancipated minor is at least 16 years of age and, (1) has entered into a valid marriage or (2) is on active duty with any of the armed forces of the United States or (3) willingly lives separate and apart from his/her parents or guardian with or without their consent and manages his/her own financial affairs regardless of the source of that income. In addition, a minor 16 years of age or older may be declared emancipated by a New York probate court.
- iii. If a minor is emancipated, a parent or other former guardian no longer has access to PHI in the capacity of a personal representative.

### 2. Unemancipated Minors

- i. If a patient is an unemancipated minor, under applicable law a parent, guardian, or other person or agency acting in loco (i.e. in place of parent) parentis generally has the authority to act on behalf of the minor in making decisions related to health care. Except as described in 2.b. below, Nuvance facilities must treat such person as a personal representative with respect to PHI relevant to such personal representation.
- ii. If a minor has authority to consent to the particular health care service without parental or other consent, or if the parent or guardian has agreed to confidentiality between the provider and the minor, the minor has sole authority to exercise his or her own rights under HIPAA. For example, under appropriate circumstances, minors may consent to their own HIV testing and treatment, treatment for alcohol and drug abuse, out-patient mental health treatment, or treatment of sexually transmitted diseases without parental consent. In cases where the minor provides his or her own consent, parents and others will not be recognized as personal representatives and so will not have access to the minor patients PHI related to the treatment. (See the relevant Nuvance Consent policy for more information.)

#### 6. Abuse, Neglect, and Endangerment Situations

- 1. A Nuvance facility or provider may elect not to treat a person as the personal representative of a patient if the facility or provider has a reasonable belief that:
  - i. Either
    - 1. The patient has been or may be subjected to domestic violence, abuse, or neglect by such person; or
    - 2. Treating such person as the personal representative could endanger the patient; and
  - ii. One or more licensed healthcare professionals, in the exercise of professional judgment, decide that it is not in the best interest of the patient to treat the person as the patient's personal representative.
- 2. For more information about the abuse policies for Nuvance, especially as they relate to the mentally incapacitated, the elderly, and emancipated minors, please see the policies for each individual Nuvance entity.

#### 7. Deceased Patients

- 1. An executor or administrator is an adult who is appointed by a court to administer the estate of a patient after death. For HIPAA purposes, the executor or administrator must be treated as a personal representative. In most cases upon providing Nuvance with a certificate from a court as evidence of such appointment, the executor or administrator would be treated as a personal representative of the patient and would be provided access to a patient's medical information. A copy of the decedent's will is not sufficient authority.
- 2. If there is no executor or administrator, next of kin must provide a notarized request in writing stating that the estate has been probated and that said person is next of kin in order to obtain the deceased patient's PHI.
- 3. The authority of the personal representative of a deceased patient is limited to the information needed to carry out the representative's functions regarding the estate. Nuvance may, in its discretion, protect other information of a deceased patient for confidentiality or invasion of privacy reasons.

#### 8. Communicating with Family Members: Designating a Family Spokesperson at a Nuvance Entity

- 1. In cases involving a patient who lacks capacity, a legally appointed personal representative will have authority to communicate with providers regardless of the wishes of family or friends. In cases in which a patient is incapacitated and does not have a legally appointed personal representative or in an emergency situation, staff should consult and communicate with appropriate family members ("Next of Kin") or a patient's close friends.
  - i. Although exceptions may be made based on the circumstances, family members are generally deemed next of kin in the following order:
    - 1. Spouse
    - 2. Adult children

3. Parents
  4. Adult siblings
  5. Grandparents or adult grandchildren, and
  6. Adult nephews, nieces, uncles, or aunts of a patient
- ii. Prior to making any Disclosures of PHI of incapacitated patients to family members, one or more licensed healthcare professional in the exercise of professional judgment shall determine whether the Disclosure is in the best interest of the patient and, if so, disclose only the PHI that is directly relevant to the family member's involvement in the patient's care.
2. Designating a Family Spokesperson
    - i. Patients with large families and/or many friends could potentially have many people with whom they wish staff to communicate their medical information. In some cases, to minimize intrusion into patient care, it is best if one individual can be designated as a "spokesperson" with which Nuvance staff can communicate PHI about a patient on a regular basis. This avoids breaching confidentiality. If requested, the patient should tell his or her primary nurse or attending physician who the spokesperson will be. In circumstances where the patient is unable to designate a preferred spokesperson, family members may be asked to designate a single spokesperson.
    - ii. At the discretion of Nuvance, the name and phone number of any designated spokesperson may be entered into the nursing admission assessment or in the registration system so that Nuvance may verify the individual. If no family is available, a spokesperson may be an adult not legally related to the individual such as a close friend. However, without appointment as a personal representative, family will prevail over friends. In the event that such a spokesperson is not designated and there is an apparent need for a single point of communication, staff may default to the legal definition of personal representative.

## ENFORCEMENT

All individuals whose responsibilities are affected by this policy are expected to be familiar with the basic procedures and responsibilities created by this policy. Failure to comply with this policy will be subject to appropriate remedial and/or disciplinary action, up to and including termination of any employment or other relationship, in accordance with this policy.

## REFERENCES

45 CFR, Parts 160 and 164  
Sections 18(2) and 2982(3) of the New York Public Health Law  
2011 Connecticut Code, Sec. 19a-575a

## APPROVAL

DocuSigned by:  
  
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**Signature**

2/28/2024

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**Date**