



Policy: HH.3009
Title: **Access by Member's Personal Representative**
Department: Office of Compliance
Section: Privacy

CEO Approval: /s/ Michael Hunn 11/20/2024

Effective Date: 04/01/2003

Revised Date: 11/07/2024

Applicable to: ☒ Medi-Cal
☒ OneCare
☒ PACE
☐ Administrative

I. PURPOSE

This policy defines the parameters for recognizing a Member's Personal Representative as having the right to access the Member's Protected Health Information (PHI).

II. POLICY

- A. CalOptima Health shall treat a Member's Personal Representative as the Member him/herself with respect to the Member's PHI.
- B. CalOptima Health shall adhere to applicable state and federal regulations when identifying Personal Representatives and disclosing PHI to those individuals.

III. PROCEDURE

- A. CalOptima Health must recognize an individual as a Member's Personal Representative (to the extent the PHI is relevant to the personal representation) as follows:

If the Member is:	The Member's Personal Representative is:
An adult or an emancipated minor	<p>A person with legal authority to make health care decisions on behalf of the Member.</p> <p>Examples:</p> <ul style="list-style-type: none">▪ Health care power of attorney▪ Court appointed legal guardian

If the Member is:	The Member's Personal Representative is:
An unemancipated minor	<p>A parent, guardian, or other person acting <i>in loco parentis</i> with legal authority to make health care decision on behalf of the minor child.</p> <p>Exceptions:</p> <ul style="list-style-type: none"> ▪ For special sensitive services, that California law allows minors age twelve (12) or older to give consent for Treatment ▪ Court has appointed someone, other than the parent, who agrees to the confidential relationship between the minor and a physician ▪ Suspected abuse by parent or guardian
A decedent	<p>A person with legal authority to act on behalf of the decedent or the estate, not restricted to health care decisions.</p> <p>Examples:</p> <ul style="list-style-type: none"> ▪ Executor or Administrator of the estate ▪ Durable power of attorney for health care

- B. CalOptima Health shall treat a Personal Representatives as the Member and with the same rights as the Member including, without limitation, the Member's rights to access, accounting, and amendment of their PHI.
- C. CalOptima Health shall grant a Member's Personal Representative access to a Member's PHI, in accordance with CalOptima Health Policy HH.3003: Verification of Identity for Disclosures of Protected Health Information.
- D. CalOptima Health recognizes that a parent, guardian, or other person acting *in loco parentis* has the authority to act on behalf of the Member who is an unemancipated minor with regard to PHI, subject to the limitations set forth in Section III.E. of this Policy.
- E. If a minor, age twelve (12) years and older, consents on his or her own behalf for the following services, without parental consent, PHI related to these services cannot be released to the parent or the Member's Personal Representative without specific authorization from the minor Member under California law:
1. Pregnancy test, prenatal care, or birth control;
 2. Testing or Treatment for sexual disease, including Human Immunodeficiency Virus (HIV);
 3. Mental health Treatment or counseling;
 4. Rape or sexual assault; and
 5. Alcohol or substance abuse Treatment.
- F. CalOptima Health may exercise professional judgment and refuse to accept an individual as a Personal Representative, if CalOptima Health believes:

1. A Member has been, or may be subjected to, domestic violence, abuse, or neglect; or
2. A Member's life may be endangered by the individual identified as the Personal Representative.

IV. ATTACHMENT(S)

Not Applicable

V. REFERENCE(S)

- A. CalOptima Health Contract with the Centers for Medicare & Medicaid Services (CMS) for Medicare Advantage
- B. CalOptima Health Contract with the Department of Health Care Services (DHCS) for Medi-Cal
- C. CalOptima Health PACE Program Agreement
- D. CalOptima Health Compliance Plan
- E. CalOptima Health Privacy Program
- F. CalOptima Health Policy HH.3000: Notices of Privacy Practices
- G. CalOptima Health Policy HH.3003: Verification of Identity for Disclosures of Protected Health Information
- H. California Family Code, §§6920-6929
- I. Title 45, Code of Federal Regulations (C.F.R.), §164.502(g)

VI. REGULATORY AGENCY APPROVAL(S)

None to Date

VII. BOARD ACTION(S)

Date	Meeting
12/01/2016	Regular Meeting of the CalOptima Board of Directors
12/07/2017	Regular Meeting of the CalOptima Board of Directors
12/06/2018	Regular Meeting of the CalOptima Board of Directors
12/05/2019	Regular Meeting of the CalOptima Board of Directors
12/03/2020	Regular Meeting of the CalOptima Board of Directors
12/20/2021	Special Meeting of the CalOptima Board of Directors
11/07/2024	Regular Meeting of the CalOptima Health Board of Directors

VIII. REVISION HISTORY

Action	Date	Policy	Policy Title	Program(s)
Effective	04/01/2003	HH.3009	Access by Member's Authorized Representative	Medi-Cal
Revised	04/01/2007	HH.3009	Access by Member's Authorized Representative	Medi-Cal
Revised	02/01/2008	HH.3009	Access by Member's Authorized Representative	Medi-Cal
Revised	02/01/2012	HH.3009	Access by Member's Authorized Representative	Medi-Cal
Revised	02/01/2013	HH.3009	Access by Member's Authorized Representative	Medi-Cal OneCare

Action	Date	Policy	Policy Title	Program(s)
Revised	04/01/2014	HH.3009	Access by Member's Authorized Representative	Medi-Cal
Revised	09/01/2015	HH.3009	Access by Member's Authorized Representative	Medi-Cal
Revised	12/01/2016	HH.3009	Access by Member's Authorized Representative	Medi-Cal OneCare OneCare Connect PACE
Revised	12/07/2017	HH.3009	Access by Member's Personal Representative	Medi-Cal OneCare OneCare Connect PACE
Revised	12/06/2018	HH.3009	Access by Member's Personal Representative	Medi-Cal OneCare OneCare Connect PACE
Revised	12/05/2019	HH.3009	Access by Member's Personal Representative	Medi-Cal OneCare OneCare Connect PACE
Revised	12/03/2020	HH.3009	Access by Member's Personal Representative	Medi-Cal OneCare OneCare Connect PACE
Revised	12/20/2021	HH.3009	Access by Member's Personal Representative	Medi-Cal OneCare OneCare Connect PACE
Revised	12/31/2022	HH.3009	Access by Member's Personal Representative	Medi-Cal OneCare PACE
Revised	09/01/2023	HH.3009	Access by Member's Personal Representative	Medi-Cal OneCare PACE
Revised	11/07/2024	HH.3009	Access by Member's Personal Representative	Medi-Cal OneCare PACE

IX. GLOSSARY

Term	Definition
Member	A beneficiary enrolled in a CalOptima Health program.
Personal Representative	For purposes of this policy, has the meaning given to the term Personal Representative in section 164.502(g) of title 45 of, Code of Federal Regulations. A person who has the authority under applicable law to make health care decisions on behalf of adults or emancipated minors, as well as parents, guardians or other persons acting <i>in loco parentis</i> who have the authority under applicable law to make health care decisions on behalf of unemancipated minors and as further described in this policy.
Protected Health Information (PHI)	<p>Has the meaning in 45 Code of Federal Regulations Section 160.103, including the following: individually identifiable health information transmitted by electronic media, maintained in electronic media, or transmitted or maintained in any other form or medium.</p> <p>This information identifies the individual or there is a reasonable basis to believe the information can be used to identify the individual. The information was created or received by CalOptima Health or Business Associates and relates to:</p> <ol style="list-style-type: none">1. The past, present, or future physical or mental health or condition of a Member;2. The provision of health care to a Member; or3. Past, present, or future Payment for the provision of health care to a Member.
Treatment	Has the meaning in 42 Code of Federal Regulations Section 164.501, including: activities undertaken on behalf of a Member including the provision, coordination, or management of health care and related services; the referral to, and consultation between, health care providers; and coordination with third parties for services related to the management of the Member's health care benefits.