

Original Draft Date: January 13, 2003
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SUBJECT: Personal Representatives of Patients
HIPAA CITES: 45 C.F.R. § 164.502(g)
DEPARTMENT: All Departments of Kewaunee County
POLICY NUMBER: 115

I. POLICY:

Kewaunee County treats a patient's Personal Representative (as defined herein) as the patient with respect to the ability to authorize Kewaunee County's use and disclosure of the patient's Protected Health Information.

II. PROCEDURES:

- A. Determine Status of Patient. If there is reason to believe that a patient lacks decisional capacity or is unable to give his or her authorization on an Authorization Form as required by Kewaunee County's policies, staff must first determine if the patient is (1) an adult; (2) a minor; (3) deceased; or (4) a victim of abuse, neglect or endangerment. After making this determination, then staff must follow the procedures applicable to the category of patient as set forth in Section III below.
- B. Verify Authority of Personal Representative. For all categories of patients, Kewaunee County must obtain *written documentation* of a person's authority under state law to act as the patient's Personal Representative before allowing the person to act as the patient's Personal Representative in connection with the use or disclosure of the patient's Protected Health Information.
- C. Documentation
1. Kewaunee County shall maintain in the patient's medical record the written documentation of a person's authority to act as the patient's Personal Representative.
 2. Kewaunee County shall also maintain in the patient's medical record the Personal Representative's name, address, telephone number and relationship to the patient.

III. PROCEDURES FOR CERTAIN CATEGORIES OF PATIENTS

- A. Personal Representative for Adults. If the patient is an adult who lacks decisional capacity as documented in the patient's medical record, then Kewaunee County must make a reasonable inquiry to determine whether a guardian has been appointed by the court or whether the patient has a properly executed Power of Attorney for Health Care.

- B. Minors. Kewaunee County will treat a parent or guardian as authorized under state law, as the Personal Representative of a minor with respect to such minor's Protected Health Information. However, Kewaunee County will not treat such person as the minor's Personal Representative, when state law would not permit such person to act on such minor's behalf with respect to the Protected Health Information.

- C. Deceased Patient. If, under applicable state law, an executor, administrator, or other person has authority to act on behalf of a deceased patient or of the patient's estate, Kewaunee County will treat such person as the Personal Representative with respect to Protected Health Information relevant to such Personal Representation. As discussed in Section II above, Kewaunee County must obtain written documentation of a person's authority under state law to act as the patient's Personal Representative before allowing the person to act as the patient's Personal Representative.