



VNS HEALTH CORPORATE POLICY & PROCEDURE

TITLE: Disclosures to Family Members, Friends and Personal Representatives

APPLIES TO: VNS Health Home Care, including the Home Care, and Care Management Organization (CMO) divisions;
VNS Health Personal Care;
VNS Health Behavioral Health, Inc.;
VNS Health Health Plans;
VNS Health Hospice Care; and
Medical Care at Home, P.C. (collectively, "VNS Health")

POLICY OWNER: Corporate Compliance Department

FIRST ISSUED: November 16, 2018

NUMBER: HIPAA.16

I. PURPOSE

This policy and procedure establishes the general rules which VNS Health will follow when using and disclosing the health information of its patients or members to family, friends and personal representatives.

II. DEFINITIONS

Individual means a person who is a patient of any VNS Health Provider, or a member of any VNS Health CHOICE health plan.

III. GENERAL POLICY

Subject to the rules discussed below, VNS Health may disclose an Individual's health information to family members and friends involved in the Individual's health care or payment for health care.

Note: To the extent that the Individual's information includes HIV-related information, genetic information, alcohol and/or substance abuse treatment records, or mental health treatment records, special confidentiality protections under Federal and/or State law must be considered. Questions regarding the disclosure of these types of information or records should

be raised with the Chief Compliance and Privacy Officer (“Privacy Officer”), who will consult with legal counsel, as appropriate.

IV. DISCLOSURES TO FAMILY MEMBERS² AND FRIENDS

A. **Patient Care and Payment.** Unless stated otherwise below, VNS Health may disclose an Individual’s health information to a family member or friend of the Individual or to any other person identified by the Individual as being involved in the Individual’s care or payment for health care. VNS Health may continue to disclose such information after the Individual’s death, unless such disclosure is inconsistent with any prior expressed preferences of the decedent. Disclosures to family members, friends and other persons will be limited to the health information that is directly relevant to their involvement with the Individual’s health care or payment for health care.

i. **Uses and Disclosures in the Presence of the Individual.** If the Individual is available prior to disclosures to family members, friends or personal representatives and has the capacity to make health care decisions, the use and disclose may be made only if VNS Health :

1. obtains the Individual’s agreement;
2. provides the Individual with the opportunity to object to the disclosure, and the Individual does not express an objection; or
3. reasonably infers from the circumstances, based on the exercise of professional judgment, that the Individual does not object to the disclosure.

ii. **Uses and Disclosures When the Individual Is Incapacitated or Not Present.** If the Individual is not present, or if the Individual cannot be given an opportunity to agree or object to a disclosure because of incapacity or an emergency, VNS Health may, in the exercise of professional judgment, disclose information that is directly relevant to the Individual’s care, to a family member, friend or another person otherwise identified by the Individual. VNS Health may also use professional judgment to make reasonable inferences regarding the Individual’s best interests when allowing a person to act on behalf of the Individual to pick-up filled prescriptions, medical supplies, X-rays, or other similar forms of patient information.

² A family member of a patient is defined as (1) any Individual who is or may become eligible for coverage under the terms of a group health plan because of the Individual’s relationship to the patient (a “Dependent”), or (2) any person who is a parent, spouse, sibling, child, grandparent, grandchild, aunt, uncle, nephew, niece, great-grandparent, great-grandchild, great aunt, great uncle, first cousin, great-great-grandparent, great-great-grandchild, or child of a first cousin of the patient or of the Dependent.

- B. **Notification.** A VNS Health Provider may use or disclose Individual information to family members, personal representatives and others involved in the patient's care in order to notify, or assist in the notification of (including identifying or locating) the patient's location, general condition or death.

V. **PERSONAL REPRESENTATIVES**

- A. **Rights of Personal Representatives.** VNS Health is required by HIPAA's privacy regulations to treat an Individual's personal representative as if he/she were the Individual for purposes of making uses and disclosures of Individual's health information to the personal representative and allowing the personal representative to exercise the Individual's available privacy rights (including the right to access and request amendments to patient information).

B. **Identification of Personal Representatives.**

- i. **Adults and Emancipated Minors.** If, under applicable law, a person has the authority to act on behalf of an adult or emancipated minor in making health care decisions, VNS Health will treat such person as a personal representative of the Individual. Examples of legal representatives may include: health care agents, surrogates, and guardians legally appointed pursuant to applicable legal proceedings.

In addition, for deceased patients, if an executor, administrator, or other person has authority under applicable law to act on behalf of the Individual or the Individual's estate, VNS Health will treat such person as the Individual's personal representative.

- ii. **Unemancipated Minors.** If under State law, a parent, guardian or other person acting *in loco parentis* for an unemancipated minor has the authority to act on behalf of the minor Individual in making health care decisions, VNS Health will treat such person as a personal representative with respect to the individual's health information relevant to such person's authority.

C. **Limitations.**

- i. Even though a person may otherwise be considered a personal representative of an Individual, VNS Health may elect not to treat such person as the personal representative if the VNS Health has a reasonable belief that:
1. The Individual 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 Individual; and VNS Health, in the exercise of professional judgment, decides that it is not in the best interest of the Individual to treat the person as the Individual's personal representative. (Note: VNS Health must notify the Privacy Officer of this situation; the Privacy Officer will consult will Legal Counsel as appropriate.)
- ii. A parent, guardian or other person acting *in loco parentis* for an unemancipated minor may not be treated as a personal representative with respect to the minor's health information in the following situations:
 1. The minor consents to a health care service, no other consent to such health care service is required by law (regardless of whether the consent of another person has also been obtained), and the minor has not requested that such person be treated as a personal representative;
 2. The minor may lawfully obtain a health care service without the consent of a parent, guardian, or other person acting *in loco parentis*, and the minor, a court, or another person authorized by law consents to such health care service; or
 3. A parent, guardian or other person acting *in loco parentis* assents to an agreement of confidentiality between a VNS Health Provider or VNS Health Care Management IPA, and the minor with respect to a health care service.

Notwithstanding the foregoing, VNS Health must comply with state law in allowing access to health information in regard to an unemancipated minor.

Finally, when a parent, guardian or other person acting *in loco parentis* is not a personal representative (as defined in paragraph B, above) and no applicable provision under State law (including case law) grants access to the health information of an unemancipated minor, the VNS Health may provide or deny access to such person if the decision is consistent with State or other applicable law, provided that the decision is made by a licensed health care professional exercising professional judgment.

VI. VERIFICATION

Except with respect to disclosures to family members and friends, VNS Health is required to verify the identity and authority of persons to whom an Individual's health information is disclosed, if the identity and authority are not known to VNS Health. With regard to persons claiming to be personal representatives, VNS Health will request verification of the identity of such persons by checking their driver's license, passport, or other identifying documentation. As proof of authority to make health care decisions on behalf of the patient, VNS Health will review a copy of the applicable court order, health care proxy, or other legal documentation. VNS Health may reasonably rely on such documents and representations as providing the required verification. (See, VNS Health Policy HIPAA.15-Uses and Disclosures of Patient Information.)

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Any questions regarding disclosures to family members, friends or personal representatives or the verification of personal representatives should be raised with the Privacy Officer, who will consult with legal counsel as appropriate.

REFERENCE: 45 CFR 164.502(g)

SEE ALSO: VNS Health Policy *HIPAA.15-Uses and Disclosures of Patient Information*

Reviewed:	11/16/18 (NEW)	11/2019	10/2020	3/2022	6/2023	
Revised & Approved:	1/2019	1/2020	3/2021	6/2022	9/2023	