



## L - 27: Legal Authority for Privacy Decisions

**POLICY:** See HHSA-L-27 Legal Authority for Privacy Decisions, at [www.cosdcompliance.org](http://www.cosdcompliance.org).

**DEFINITIONS:** See HHSA Policy L-30 Privacy Definitions.

### **PROCEDURES:**

#### 1. Determine the Client's Legal Authority

- a. Staff must confirm that the individual making decisions regarding Protected Health Information (PHI) meets one of the following categories:
  - i. Competent Adult: 18 years or older, or a legally emancipated minor.
  - ii. Minor with Legal Authority: A minor may control their PHI if they are:
    - a. Married or previously married.
    - b. Self-sufficient (15+ and managing own financial affairs).
    - c. Seeking pregnancy-related care (excluding sterilization).
    - d. On active duty with the armed forces.
    - e. 12 or older and receiving treatment for: a communicable disease, rape/sexual assault, Alcohol or drug use, Outpatient mental health. If unsure, consult your supervisor or BAC Office.
- b. When a Minor may Control Their Own PHI (Consent Exceptions)
  - i. Minors may consent to and control PHI for:
    - a. Receiving outpatient mental health treatment (age 12+).
    - b. Receiving drug/alcohol treatment (age 12+).
    - c. Receiving care related to pregnancy, contraception, or sexual assault, including services provided after rape or abuse (all ages).
    - d. Receiving treatment for communicable disease or condition (age 12+).
    - e. Minors who meet consent criteria for specific services retain the right to control their own PHI for those services, regardless of parental involvement.
  - ii. Do not disclose PHI related to the above services to a parent or guardian without the minor's written authorization, unless disclosure is required by law (e.g., mandated reporting).
  - iii. Consult your supervisor or Business Assurance & Compliance (BAC) for complex or overlapping scenarios involving minors.

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### 2. Verify Legal Representative or Guardian Authority

- a. If the individual is a minor and does not meet the criteria above, obtain documentation showing the legal authority to act on behalf of the individual such as:
  - i. A parent or legal guardian, or
  - ii. A designated legal representative (e.g., Power of Attorney for Health Care)
  - iii. Staff must verify identity and legal documentation before disclosing PHI.

### 3. Surrogate Designation by Client

- a. An adult client may designate a surrogate if:
  - i. The designation is made personally to HHSA staff.
  - ii. It is documented in the client's record.
  - iii. The designation is valid only during the course treatment or for 60 calendar days from the date of designation, whichever occurs first.
- b. Staff must document:
  - i. Name of surrogate,
  - ii. Date/time of designation,
  - iii. Scope of authority or any limitations stated by the client, and
  - iv. End date.

### 4. Deceased Client

- a. If the individual is deceased, PHI decisions may be made by:
  - i. Executor or Administrator of the estate, or
  - ii. Power of Attorney for Health Care (if still valid), or
  - iii. Next of kin under CA law.
- b. Staff must obtain and verify documentation before disclosing PHI.

### 5. Documentation Requirements:

- a. Legal representative documentation (e.g., POA, guardianship).
- b. Surrogate designation.
- c. Minor status verification.
- d. Documentation must be retained per HHSA records retention policy.

### 6. Reporting Requirements

- a. Staff must comply with mandatory reporting laws (Penal Code §11165) regardless of consent status.
  - i. Legal authority does not override reporting duties.

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**QUESTIONS/INFORMATION:** Please contact HHSA Business Assurance and Compliance (BAC) by email at [Compliance.HHSA@SDCounty.ca.gov](mailto:Compliance.HHSA@SDCounty.ca.gov) or by phone (619) 237-8571.