



Document ID: MEMB 001	Title: Member Privacy Rights Policy
Revision: 1/01/2022	Effective Date: 01/01/2022

I. PURPOSE

To ensure that Empower Healthcare Solutions (Empower) staff, members, and network providers have access to and are knowledgeable about Members' Rights and Responsibilities.

II. POLICY

A. Empower is committed to ensuring that the following Member Rights and Responsibilities are:

- 1.** Distributed and available to members and network providers.
- 2.** Distributed and available to all Empower staff.
- 3.** Accessible to members and network providers via Empower's website.

B. It is the policy of Empower that a Legally Authorized Representative of a member who is acting on the behalf of that individual, and who is properly verified, is afforded the same rights as the member unless otherwise specified by federal or state law.

- 1.** As a general rule, the parent, guardian, or other Legally Authorized Representative has the authority to control access and protect the use or disclosure of a minor's protected health information (PHI).
- 2.** In limited circumstances, a minor may have the authority to exercise these rights on his/her own behalf.
- 3.** Emancipated minors will be afforded the same privacy rights as adults. Emancipated minors must provide the appropriate legal documents granting an individual the emancipated minor status to qualify as an adult under this policy.
- 4.** Under federal privacy law, emancipated minors have full authority to control the confidentiality and privacy of all their protected health information, including information obtained when they were considered unemancipated minors.
- 5.** A Legally Authorized Representative may act on the behalf of an emancipated minor only under the same circumstances in which a legally authorized representative may act on the behalf of an adult.
- 6.** The age of majority for minors is 18. Until the age of majority is reached, the individual will be considered a minor.



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C. It is the policy of Empower that members are informed of their privacy rights through the Empower Notice of Privacy Practices, their health plan Privacy Notice, or health benefit information materials.

D. Notice of Privacy Practices

1. Members have the right to adequate notice of the uses and disclosures of their PHI, and their rights and Empower legal duties with respect to PHI.
2. The Empower Notice is sufficiently broad to apply to and serve the needs of all lines of Empower business. If necessary, Empower may develop additional Notices to meet the unique needs of Empower are not accommodated in the primary Notice.
3. The Notice contains the elements required under 45 CFR §164.520(b), including but not limited to:
 - a. Empower entities to which the Notice applies
 - b. How Empower safeguards PHI
 - c. How Empower uses and discloses PHI
 - d. Member rights regarding PHI
 - e. How/when Empower may contact a member
 - f. How/when Empower provides a revised notice
 - g. The right of a member to be notified if his or her PHI is breached; and
 - h. Instructions for filing complaints about Empower privacy practices.
4. The Compliance Officer develops, maintains, and reviews, at least annually, the Notice to ensure accuracy. The Notice may be revised at any time to reflect:
 - a. Material changes in uses and disclosures of PHI
 - b. Changes to the rights afforded members under federal or state law; or
 - c. Changes to Empower legal obligations.
5. Empower distributes the Notice to members, subscribers on behalf of its members, or clients for distribution to their members in accordance with contractual requirements and the Privacy Rule and other applicable law. Distribution is accomplished according to the following schedule:
 - a. At the time of enrollment,
 - b. As required by contract or accreditation, and
 - c. Within 60 days of a material revision



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6. Current members may obtain a copy from the Empower web site, email, or in written format, upon request, by calling the customer service number located in their plan documents.
7. Empower, when operating as a covered entity and not as a business associate, notifies appropriate individuals of the availability of the Notice and how to obtain it every three years or annually as required by accreditation or contract.

E. Right to Request Restrictions

1. Members and their Legally Authorized Representatives have the right to and may request that Empower restrict the use and disclosure of their PHI for the purposes of:
 - a. Carrying out treatment, payment, and health care operations; or
 - b. Disclosing health information to a relative or other person who is involved in the member's care.
2. All requests for restrictions must be in writing. The member may, but is not required, to complete the Empower Request for Restriction form. Empower may accept any request as long as it meets the following criteria:
 - a. The request is signed by the member or the member's Legally Authorized Representative;
 - b. It includes but is not limited to the member's name, identification number, and date of birth;
 - c. It specifies what PHI is to be restricted and to which specific disclosure(s) the restriction applies; and
 - d. If the requestor is not the member, the request includes validation of the authority of the requestor to act on behalf of the member.
3. Requests that do not meet the above criteria are returned to the requestor within 10 business days of receipt with an explanation of why the request is being returned and what additional information is needed to process the request.
4. Empower is not required to agree to a member's request for a restriction on the use or disclosure of PHI and may deny the request or may agree to a restriction more limited than what the member requested. Empower may deny requests to restrict the use or disclosure of PHI on the following grounds:
 - a. The use or disclosure is required by federal and/or state law, or



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F. Right to Request Confidential Communications

1. A member, or the member's Legally Authorized Representative, has the right to request that Empower communicate his/her protected health information in a certain way or to a certain location.
2. Empower accommodates requests of this nature provided that:
 - a. The request is in writing;
 - b. The individual specifies a reasonable alternate address, phone number, or other means of contact; and
 - c. For reimbursements, if the member is a minor and the parent is not the policyholder, the individual provides a copy of the canceled check or a receipt of payment, with the payer clearly identified, if the request includes a change in Empower payment practices.
3. Requests that do not meet the above criteria are returned to the requestor within 10 business days with an explanation stating why the request is being returned and what additional information is required to process the request.
4. Empower is not required to agree to a member's request for alternative communication of PHI and may deny the request.

Empower may deny requests for alternate means of communication-based on:

- a. Whether the request is reasonable, and
 - b. Whether or not it is within the administrative capacity of Empower operations.
5. There are no review/appeal rights for denied alternative communication requests however the member, or the member's Legally Authorized Representative, may complain through the Empower Complaint and Grievance process.
 6. If an individual indicates that the information will cause endangerment if the request is not approved, the privacy official or designee discontinues consideration of the reasonableness of the request and honors the request to the extent possible. Empower delegate staff may accept a verbal request for alternate means of communication due to endangerment under emergent/urgent conditions.
 7. When circumstances preclude direct contact with the member and an intermediary agency is identified as the alternate means of communication, Empower faxes on behalf of the member (or mails depending on the level of urgency) an authorization to disclose PHI form to the intermediary agent with a cover letter stating:

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- a. The reason for the form;
 - b. What information is required to execute the request; and
 - c. A statement indicating an inability to honor the request without the member's documented permission granting the release of PHI to the agency.
 8. Empower's privacy official or designee enters all routine and/or urgent/emergent requests and the reason for granting or denying the request in Empower's IT system, flags the member record, and notifies the member of the decision in writing. S/he forwards the request to the appropriate Empower department or client (as required by contract) within 5 business days on routine requests and 1 business day on urgent/emergent requests to accommodate member/vendor file updates.
 9. The alternate means of communication remains in effect until another written request is received from the member or the member's Legally Authorized Representative.
- G. Right to Access, Amend, Inspect, and Copy the Designated Record Set - Members and their Legally Authorized Representative have the right to access, amend, inspect and obtain a copy of all or part of their health information as long as Empower maintains such information in a designated record set (DRS).**
- H. Right to Request an Accounting of Disclosures**
1. Members and their Legally Authorized Representatives have the right to and may request an accounting of certain disclosures made by Empower in the six years prior to the date on which the accounting is requested (or a shorter time at the request of the member).
 2. Upon request, Empower provides Individuals/Members or their Legally Authorized Representatives with one (1) Accounting report per 12-month period, free of charge.
 3. Empower may charge the member a reasonable cost, based on state regulations, for each additional request.
 4. All accounting requests must be in writing. The member or the member's Legally Authorized Representative may complete the Empower form entitled "Accounting of Disclosures" or Empower may accept any request as long as it meets the following criteria:
 - a. The request is signed by the member or the member's Legally Authorized Representative;
 - b. It includes the member's name, identification number, and date of birth;

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- c. It identifies an address to which the report is sent;
 - d. It specifies a date range for the accounting period; and
 - e. If the requestor is not the member, the request includes validation of the authority of the requestor to act on behalf of the member.
5. Requests that do not meet the above criteria are returned to the requestor within ten (10) business days of receipt with an explanation stating why the request is being returned and what is needed to process the request.
 6. Empower’s privacy official or designee, is responsible for processing accounting requests within 60 days unless state law requires a more timely submission. Empower may take a one-time 30-day extension if the privacy officer is unable to process the request within the original 60-day limit. Empower is required however to notify the requestor in writing of any extension outlining the reason(s) for the delay.
 7. All disclosures are recorded in the appropriated IT system or sent to the Compliance Department at the time of disclosure. An accounting is retrieved from this system/log at the time of the request. Accountable Disclosures included, at a minimum:
 - a. Disclosures required by law such as reporting of child or elder abuse (unless state law restricts accounting);
 - b. Disclosures to public health authorities;
 - c. Disclosures required by a subpoena or Court Order;
 - d. Disclosures to law enforcement authorities;
 - e. Disclosures for research; and
 - f. Impermissible disclosures.
 8. The following disclosures are NOT subject to accounting:
 - a. Disclosures made for the purposes of treatment, payment, and health care operations (TPO);
 - b. Disclosures made to the Individual of the Individual/Member's PHI;
 - c. Incident to a use or disclosure otherwise required or permitted;
 - d. Disclosures made pursuant to an Individual/Member authorization;
 - e. Disclosures for facility directories;
 - f. Disclosures to persons involved in the Individual/Member’s care;
 - g. Disclosures for Corporate security or intelligence needs;
 - h. Some Disclosures made to law officials or correctional institutions;
 - i. Disclosures made as part of a limited data set.



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9. Prior to releasing any requested information, Empower’s privacy official or designee validates the information is correct given the nature of the request and marks the sections that may be denied access under federal and state law. If there are government requested suspensions, the privacy official retrieves the specific documentation about the suspension and submits the list of accountable disclosures, the suspension request, and the review determination sheet to a designated licensed professional for a final determination on what content to release. The final accounting report is mailed to the requestor under the Empower accounting cover letter.
10. The following information is included
 - a. Date of Disclosure;
 - b. Name of recipient of the disclosure
 - c. Address of the Recipient, if known;
 - d. Brief description of PHI that was disclosed; and
 - e. A brief statement of the purpose of the disclosure or a copy of the written request for disclosure.
11. For multiple Accountable Disclosures made to the same entity and for a single purpose, Empower’s privacy official or designee records the following information:
 - a. All information listed in item 10 above for the first disclosure during the Accounting period; then
 - b. The frequency, or number of disclosures made during the Accounting period; and
 - c. The date of the last disclosure during the Accounting period.
12. There are no appeal rights for denied disclosures. The requestor however may file a complaint about the denial through the Empower Complaints and Grievance Process.

If some of the accountable disclosures are denied, the requestor is notified in writing. The notification includes:

 - a. The reason for the partial denial
 - b. Applicable appeal rights if available under state law, and
 - c. The right to file a complaint
13. If the member requests that Empower send the accounting to a third party, the request must be made in writing.

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14. If the member chooses to use any other form the content in that form must be validated against the criteria established by the HIPAA Privacy Rule for a valid authorization.

15. Empower retains a copy of an accounting report provided to the member or the member’s Legally Authorized Representative for a period of ten (10) years from the date of release.

I. Privacy Rights of Minors

1. CONTROL BY PARENT OR GUARDIAN

a. Parents or guardians ordinarily have the authority to control the PHI of a minor by exercising the rights granted to a minor. For example, a parent or guardian typically has the authority to do the following:

- i.** Sign a consent form permitting health care services for the minor;
- ii.** Sign an authorization form permitting the use and disclosure of the minor’s PHI;
- iii.** Object to the use and disclosure of the minor’s PHI to friends and family involved in the minor’s health care;
- iv.** Inspect or copy the minor’s DRS;
- v.** Request amendment of the minor’s PHI;
- vi.** Request an accounting of disclosures of the minor’s PHI;
- vii.** Request additional privacy protections, including confidential communications, with respect to the minor’s PHI; and
- viii.** File a privacy complaint with the agency or with the United States Department of Health and Human Services Office for Civil Rights.

b. In certain circumstances, such as a medical emergency, a minor may receive treatment without the consent or written permission of his/her parent or guardian. In these circumstances, the parent or guardian nevertheless retains the authority to control the privacy of the minor’s PHI.

2. MINOR’S AUTHORITY TO EXERCISE PRIVACY RIGHTS

a. There are exceptions to the general rule under which a minor is permitted to exercise the privacy rights listed in the above section on his or her own behalf. These exceptions are as follows:

- i.** When the minor may lawfully obtain health care services without the consent of a parent, guardian, or other person acting *in loco parentis*, and



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5. ALCOHOL SUBSTANCE USE DISORDER INFORMATION

- a. Is protected under 42 CFR Part 2;
- b. Requires a signed authorization for any release of information regardless of the state of residence, age, or state laws. *See* CO 32A Release of Minors PHI and Age of Majority.

6. NO LAW

If state and/or laws are silent concerning parental access to the minor’s protected health information, a covered entity has the discretion to provide or deny a parent or guardian access to the minor’s information, provided the decision is made by a licensed health care professional in the exercise of professional judgment.

III. DEFINITIONS

Authorization – Specific written permission granted by a member or the member’s personal representative allowing the disclosure of certain PHI for a specified purpose to a third party.

Minor – Anyone under the age of 18.

IV. REFERENCES

- HIPAA Privacy Rule
- 45 CFR §164.520(b)
- 42 CFR Part 2
- Arkansas Code § 20-9-602 – Consent
- CO 32A Release of Minors PHI and Age of Majority

V. ATTACHMENTS - None

VI. RESPONSIBILITY FOR IMPLEMENTATION

Empower Chief Compliance and Legal Officer; Empower Contract Compliance Vendor Oversight and all Department leads or their respective designees.

VII. RESPONSIBILITY FOR MONITORING POLICY COMPLIANCE

Empower Chief Compliance and Legal Officer; Empower Contract Compliance Vendor Oversight.