**Concise Definitive Review: A Clinician’s Guide to Privacy and Communication in the Intensive Care Unit**

Leslie Francis, JD, PhD1; Micah A. Vorwaller, JD2; Hanan Aboumatar, MD, MPH3; Dominick L. Frosch, PhD4; John Halamka, MD5; Ronen Rozenblum, PhD, MPH6; Eileen Rubin, JD7; Barbara Sarnoff Lee, MSW5; Jeremy Sugarman, MD, MPH, MA8; Kathleen Turner, RN9; Samuel M. Brown, MD, MS, FCCM10

for the Privacy, Access, and Engagement Task Force of the Libretto Consortium of the Gordon and Betty Moore Foundation

1University of Utah S.J. Quinney College of Law and Department of Philosophy, Salt Lake City, UT, USA

2University of Utah S.J. Quinney College of Law, Salt Lake City, UT, USA

3Armstrong Institute for Patient Safety and Quality, Johns Hopkins Medicine; Department of Medicine, School of Medicine; Department of Health, Behavior, and Society, Bloomberg School of Public Health; Johns Hopkins University, Baltimore, MD, USA

4Palo Alto Medical Foundation Research Institute, Palo Alto, CA, USA and Department of Medicine, University of California, Los Angeles, Los Angeles, CA, USA

5Beth Israel Deaconess Medical Center, Boston, MA, USA

6Brigham and Women’s Hospital and Harvard Medical School, Boston, MA, USA

7ARDS Foundation, Chicago, IL, USA

8Berman Institute of Bioethics; Department of Medicine, School of Medicine; and Department of Health Policy and Management, Bloomberg School of Public Health; Johns Hopkins University, Baltimore, MD, USA

9University of California, San Francisco Medical Center, San Francisco, CA, USA

10Center for Humanizing Critical Care, Intermountain Healthcare, 5121 S. Cottonwood St, Murray, UT, USA and Pulmonary and Critical Care Medicine, University of Utah, Salt Lake City, UT, USA

**ONLINE DATA SUPPLEMENT**

**Appendix: State Law Variations**

State laws may impose various limitations on information sharing that either extend or interpret federal legislation. On the protective side, some states have medical records statutes that apply protections that are more stringent than the HIPAA minimum. States may also provide greater protection to selected types of health information; mental health information is described here as an illustration. In this Appendix we provide detailed references for clinicians trying to orient to local privacy regulations that may affect communication in the ICU. The content of this Appendix were developed as a result of a systematic review of state laws applicable to medical records as of April 1, 2016. Relevant state laws were obtained from the Westlaw and LexisNexis databases. We searched medical record statutes as well as other existing compendia of state law surveys. These tables are provided for illustrative purposes only; clinicians should consult legal counsel for complete information on the relevant statutes of their jurisdiction. We intend this table as a starting point for relevant local discussions.

**State Medical Records Laws**

State laws protecting medical information can be fragmented and codified in various sections of state codes. Some states have general medical records statutes that include provisions regarding privacy. Some states use their laws licensing health care facilities or health care providers to impose restrictions on record disclosure. States typically impose special protections on records of individuals in state custody or in state health care facilities.

The following variations are of particular importance to the ICU setting:

--Many state statutes give the patient’s personal representative the same rights to request or to authorize disclosure of health care information that the patient would have; however, some state laws name only the patient as having the right to request the information

--States have a variety of exceptions to the patient’s right to access information, most commonly when the provider decides it would be deleterious to the patient’s health, would violate the confidentiality of others, or would pose a threat to the health or safety of others

--Some states give the patient rights to access mental health information but not the patient’s personal representative; many other states treat information about physical health and information about mental health in parallel fashion with respect to access by the PR. Iowa and Minnesota also permit mental health information to be disclosed to a patient’s spouse, parent, adult child, or adult sibling involved in the patient’s care; disclosures are limited to the patient’s diagnosis, prognosis, medications, and treatment plan.

--Some states incorporate HIPAA protections explicitly and some others use HIPAA language without referencing federal law

--Montana explicitly allows disclosure on a need to know basis to immediate family members or others with whom the patient has a close relationship, if disclosure is in accord with state law or good medical practice and the patient has not given instructions to the contrary. Similarly, Wyoming permits disclosure without patient authorization “to immediate family members of the patient, or any other individual with whom the patient is known to have a close personal relationship, if made in accordance with good medical or other professional practice, unless the patient has instructed the hospital not to make the disclosure.” Washington permits disclosure on a need to know basis to persons reasonably believed to be providing care to the patient; there is an exception for information concerning sexually transmitted infections (STIs).

--Nevada requires patient consent to the presence of anyone not directly involved in the patient’s care during examination, consultation, or treatment.

Appendix Table 1 lists results of our state survey.

Abbreviations:

AD = Advance Directive

Ct. = Court

DPA = Durable Power of Attorney

Dx. = Diagnosis

EHR = Electronic Health Record

l/s = Life sustaining

HCP = Health Care Professional

HC = Health Care

Med. = Medic[al, ine]

MH = Mental Health

Pt. = Patient

PR = Personal Representative

PVS = Persistent vegetative state

Recs. = Record(s)

Tx. = Treatment

W/in = Within

The term “personal representative” (PR), is used here as a general standardized term to cover and refer to the various terms used by individual state laws to refer to someone legally authorized to act for the patient, i.e., agent, proxy, surrogate, etc.

**Appendix Table 1:**

**State Medical Records Laws**

|  |  |  |  |
| --- | --- | --- | --- |
| **State** | **Medical Record Law Protections** | **Electronic Record Law Protections** | **Special Protections: Mental Health** |
| Alabama | Ala. Code § 34-24-504 (West 1975): comply with all laws governing confidentiality of Pt. med. recs. regardless of the state where the med. recs. of any Pt. w/in this state are maintained. | None specified | Ala. Code § 22-56-4 (West 1975): Right to confidentiality of MH recs.; right to access recs. unless a professional makes a “clinical determination” that access would be harmful to the Pt.’s health. |
| Alaska | Alaska Stat. Ann. § 18.23.005 (West 2012):  Pt. is entitled to access recs. pertaining to HC rendered to Pt. | Alaska Stat. Ann. § 18.23.100 (West 2012): HCP may maintain recs. in electronic form provided that proper security and privacy protections are in place. | Alaska Stat. Ann. § 47.30.590 (West 2012): Confidentiality of Pt. recs. if services provided by community MH facilities. |
| Arizona | Ariz. Rev. Stat. Ann. § 12-2293 (West 2012)  Release of med. recs. to Pt. or PR. | None specified | Ariz. Rev. Stat. Ann. § 36-509 (West 2012): MH recs. confidential; may be released only to treating HCPs, others to whom Pt. or PR has given authorization, Ct. order, research. |
| Arkansas | Ark. Code. Ann. § 16-46-106 (West 2012):  Pt. right to request med. recs. for litigation; use of such recs. subject to HIPAA ACA 16-46-405. | Ark. Code. Ann. § 25-42-101 (West 2012): Establish Office of Health Information Technology and authorizes State Health Alliance for Records Exchange; Ark. Code Ann. § 25-42-102 (West 2012): to respect and safeguard privacy and security. | None specified |
| California | Cal. Civ. Code § 56.101 (West 2012): Confidentiality of med. recs. | Cal. Civ. Code § 56.101(b)(2) (West 2012): Pt. right to access EHR must be consistent with federal HIPAA. | None specified |
| Colorado | Colo. Rev. Stat. Ann. § 25-1-801 (West 2012): Pt. recs. available on inspection to Pt. or PR. | Colo. Rev. Stat. Ann. § 25-1-1203 (West 2012): Develop policies to comply with federal law. | Colo. Rev. Stat. Ann. § 25-1-801 (West 2012): Summary of MH Tx. recs. available to Pt. or PR after Tx. ends. |
| Connecticut | Conn. Gen. Stat. Ann. § 20-7c (West 2012): HCP must give Pt. complete access to information about test results, Dx., care, and prognosis. Exception for when the HCP’s clinical judgment is that access would be harmful. Also must give Pt. or PR copy of med. recs. on written request. | None specified | Conn. Gen. Stat. Ann. § 20-7c (West 2012): Access does not apply to MH records. |
| Delaware | Del. Code Ann. tit. 16, § 1212 (West 2012): PHI may be disclosed w/ informed consent of Pt. or PR. Limited exceptions to disclosure w/out informed consent. | None specified | Del. Code Ann. tit. 16, § 5182 (West 2012): Community MH Pt.’s bill of rights includes confidentiality as directed by Pt. or PR. |
| District of Columbia | None specified | None specified | D.C. Code § 7-1201.02 (West 2012): No disclosure of MH info except as specifically permitted. |
| Florida | Fla. Stat. Ann. § 456.0 57 (West 2012): Must give copy of record to Pt. or PR on written request. Recs. may not be provided to anyone else or condition discussed with anyone else except on written authorization by Pt. | None specified | Fla. Stat. Ann. § 394.4615 (West 2012): Confidentiality of clinical MH recs. |
| Georgia | Ga. Code Ann. § 31-33-2 (West 2012): Furnish copy on written request of Pt. or PR; may refuse if detrimental to health.  Ga. Code Ann.§ 31-32-8 (West 2012): PR has same rights as Pt. to examine recs. relevant to expressed powers; this includes MH recs.  Ga. Code Ann. § 31-8-86 (West 2012): For Pt. in long-term care facilities, when there is an allegation of abuse, only Ct. appointed PR or PR w/ DPA may see recs.  Ga. Code Ann. § 31-8-114 (West 2012): Right to privacy in long-term care facility means that only resident or guardian may approve release of recs. except when transferred to another facility. | Ga. Code Ann. § 31-33-8 (West 2012): Same rules apply to electronic recs. as to tangible recs. | Ga. Code Ann. § 31-32-8(3) (West 2012): PR w/ power to examine recs. includes MH recs. |
| Hawaii | Haw. Rev. Stat. § 622-57 (West 2012): Copies to Pt. unless HCP’s opinion is that access would be detrimental to Pt.’s health.  Haw. Rev. Stat. § 334-5 (West 2012): Recs. confidential per federal standards. | None specified | Haw. Rev. Stat. § 334-5 (West 2012): MH and substance abuse recs. confidential per federal standards. |
| Idaho | None specified —only a retention statute and a statute regarding court proceedings. | None specified | None specified |
| Illinois | 735 Ill. Comp. Stat. Ann. 5/8-2001(West 2012):  Recs. available to Pt. or PR with valid authorization.  210 Ill. Comp. Stat. Ann. 85/6.17 (West 2012): Hospital recs. confidential but “may be disclosed to the patient, persons authorized by the patient, the party making treatment decisions, if the patient is incapable of making decisions regarding the health services provided, those parties directly involved with providing treatment to the patient or processing the payment for that treatment.” | 20 Ill. Comp. Stat. Ann. 3860/10 (West 2012): Illinois’ Health Information Exchange Authority. | 740 Ill. Comp. Stat. Ann. 110/1 *et seq.* (West 2012): Mental Health & Developmental Disabilities Confidentiality Act.  740 Ill. Comp. Stat. Ann. 110/4 (West 2012): Pt. or guardian or DPA may authorize access to therapist recs. (this includes physicians providing MH services, defined broadly). |
| Indiana | Ind. Code Ann. § 16-39-1-3 (West 2012): Med. recs may be requested by a competent Pt. or by parent, guardian, or custodian.  Ind. Code Ann. § 16-36-1-11 (West 2012): Individual authorized to consent to HC for Pt. has same rights as Pt. to receive information relevant to the contemplated care. | None specified | Ind. Code Ann. § 16-39-2-3 (West 2012): MH recs. confidential and disclosed only with Pt. consent. Exception if determined that disclosure detrimental to Pt. physical or mental health or likely to cause harm to another.  Ind. Code Ann. § 16-39-2-9 (West 2012): If Pt. incapacitated, MH recs. may be disclosed to guardian, Ct. appointed representative, DPA, or patient’s healthcare PR. |
| Iowa | Iowa Code Ann. § 144B.7 (West 2012): Except as limited in DPA, DPA has same authority as Pt. to access med. recs. | Iowa Code Ann § 135.154 (West 2012): Iowa’s Health Information Network | Iowa Code Ann § 228.3 (West 2012): MH information confidential; Pt. or PR can consent to disclosure of MH information.  Iowa Code Ann § 228.3 (West 2012): May disclose to spouse, parent, adult child, or adult sibling involved in care; disclosure limited to Dx., prognosis, Rxs, and Tx. plan. |
| Kansas | None specified | None specified | None specified |
| Kentucky | Ky. Rev. Stat. Ann. § 205.566 (West 2012): Pt. has right to request copy of med. recs. | Ky. Rev. Stat. Ann. § 205.566 (West 2012): May maintain electronic recs.; must have best practices to make sure people not authorized to see paper record don’t have access to electronic record. | Ky. Rev. Stat. Ann. § 205.566 (West 2012): Confidentiality of MH recs. of Pt. for whom hospitalization has been sought; Pt. or guardian may consent to disclosure. |
| Louisiana | La. Rev. Stat. Ann. § 1165.1 (West 2012): Pt. or PR has right to request copy of recs. with authorization. | La. Rev. Stat. Ann. § 1167.1 et seq. (West 2012): Electronic Health Records Loan Program Act. | None specified |
| Maine | Me. Rev. Stat. Ann. tit. 22, § 1711 (West 2012): If Pt. makes written request for recs., must provide copy unless in the hospital’s opinion it would be detrimental to the Pt.’s health; if PR requests with proper authorization from Pt., hospital must provide copy.  Me. Rev. Stat. Ann. tit. 22, § 1711-B (West 2012): HCP must provide copies of recs. on request; may exclude personal notes not directly related to Pt. Tx; may determine not to disclose if detrimental to Pt.’s health. Copies of recs. must also be provided to guardian, DPA, PR. | Me. Rev. Stat. Ann. tit. 22, § 1711 (West 2012): Copy must be in electronic form if hospital maintains electronic recs. and Pt. so requests. | Me. Rev. Stat. Ann. tit. 34-B, § 3003 (West 2012):  Authorization for administrative rules for confidentiality of MH recs. |
| Maryland | Md. Code Ann., Health – Gen. § 4-302 (West 2012): Confidentiality of medical recs. Several parts of this track HIPAA, including the provision regarding directory info.  Md. Code Ann., Health – Gen. § 4-303 (West 2012): Disclosure to Pt. with authorization. | Md. Code Ann., Health – Gen. § 4-302.2 (West 2012): Health Information Exchange; administrative rulemaking to protect security and privacy. | Md. Code Ann., Health – Gen. § 4-307 (West 2012): Protects confidentiality of MH recs.; if disclosure is without authorization by Pt., must be limited to info relevant to purpose for which disclosed. |
| Massachusetts | Mass. Gen. Laws Ann. ch. 111, § 70 (West 2012): Med. recs. statute for hospitals; Pt. right to copy with authorization. This statute does not mention PRs.  Mass. Gen. Laws Ann. ch. 111, § 70E (West 2012): Pt. bill of rights includes confidentiality and right to copy of recs.  Mass. Gen. Laws Ann. ch. 112, § 12CC (West 2012): Med. recs. statute for HCPs; Pt. or PR has right to copy of recs. with authorization. | Mass. Gen. Laws Ann. ch. 40J, § 6D (West 2012): Statute enabling e-health institute. | Mass. Gen. Laws Ann. ch. 112, § 12CC (West 2012): For psychotherapist, term “record” may mean the entire record or a summary, if in reasonable professional judgment the therapist believes that providing the entire record would be detrimental to the Pt.’s wellbeing. |
| Michigan | Mich. Comp. Laws Ann. § 333.16213 (West 2012): Med. recs. statute.  Mich. Comp. Laws Ann. § 333.26261 (West 2012): Med. recs. access act.  M.C.L.A. 333.26263 (West 2012): For a living Pt., “authorized representative” means “[a] person empowered by the patient by explicit written authorization to act on the patient's behalf to access, disclose, or consent to the disclosure.”  Mich. Comp. Laws Ann. § 333.26265 (West 2012): Disclosure to Pt. or authorized PR on written request, unless adverse effect on Pt., HCP, or facility. | Mich. Comp. Laws Ann. § 333.2503 (West 2012): Facilitation of state Health Information Exchange. | Mich. Comp. Laws Ann. § 330.1141a (West 2012): Requires development of standard release form for all HCPs treating Pt.s with serious mental illness or substance abuse disorders; must meet federal standards but may be more protective.  Mich. Comp. Laws Ann. § 330.1748 (West 2012): Confidentiality protection for MH information; disclosure to recipient of services on request, to legally authorized guardian, or to spouse or PR after death for benefits purposes. No provision for these recs. to be generally shared with people involved in Pt. care. |
| Minnesota | Minn. Stat. Ann. § 144.291 (West 2012): Minnesota Health Records Act.  Minn. Stat. Ann. § 144.292 (West 2012): Pt. right to copy of recs. unless  “detrimental to the physical or mental health of the patient, or is likely to cause the patient to inflict self harm, or to harm another”  Minn. Stat. Ann. § 145C.08 (West 2012): DPA has same rights as Pt. unless Pt. specifies otherwise. | Minn. Stat. Ann. § 62J.495 (West 2012): Facilities required to have e-health. | Minn. Stat. Ann. § 144.294 (West 2012): If written request from spouse, parent, child, or sibling of MH Pt. for information, provider should ask Pt. whether s/he wishes to authorize sharing information about current and proposed course of Tx. Also may provide this MH info on written request of a family member of other person who lives with, provides care for, or is directly involved in monitoring Tx. of the Pt. Pt. must be asked if competent; info is only Dx., admission, meds and side effects, discharge plan. Exception for info detrimental to Pt. physical or mental health, or likely to cause Pt. to inflict self harm or harm to another. |
| Mississippi | Miss. Code Ann. § 41-9-65 (West 2012): Recs. are property of hospital subject to reasonable rights of access by Pt., PR, or heirs. | Miss. Code Ann. § 41-119-7 (West 2012): Miss. Health Information Exchange [enacted with a 7/1/2019 repealer]. | Miss. Code Ann. § 41-21-102 (West 2012): Pt. right of access to MH recs. unless detrimental to Pt.’s physical or mental health. |
| Missouri | Mo. Ann. Stat. § 191.227 (West 2012): Pt.’s, legal guardian, or PR access to med. recs. consistent with Pt.’s Tx. and condition as determined by HCP. | None specified | Mo. Ann. Stat. § 630.140 (West 2012): Confidentiality of MH recs. |
| Montana | Mont. Code Ann. § 50-16-525 (West 2012): Disclosure only with Pt. written authorization.  Mont. Code Ann.  50-16-529 (West 2012): Disclosure on a need to know basis to immediate family members or others with whom Pt. has close relationship, if in accord with state law and good medical practice, unless Pt. has instructed to the contrary.  Mont. Code Ann. § 50-16-542 (West 2012): May deny access if injurious to Pt., cause danger, or lead to ID of person furnishing info.  Mont. Code Ann. § 50-16-521 (West 2012): Person authorized to consent to HC has same rights to info as Pt. | None specified | Mont. Code Ann. § 50-16-542 (West 2012): Applies to MH info as well as physical health info. This is the Uniform Health Information Act and the reporter’s notes say that most states do not include MH recs. in the recs. to which Pt. has access.  Mont. Code Ann.§  53-21-165 (West 2012): Rights of the seriously mentally ill: recs. must be available to anyone authorized by Pt. with approval of mental disabilities board. |
| Nebraska | Neb. Rev. Stat. § 71-8403 (West 2012): Pt. access to med. recs. on written request. | None specified | Neb. Rev. Stat.§ 71-8403 (West 2012): MH records may be withheld by HCP if determines not in best interest of Pt. to release (release with Ct. order). |
| Nevada | Nev. Rev. Stat. Ann. § 449.720 (West 2012): Pt. bill of rights includes confidentiality of recs.; Pt. must consent to presence of anyone not directly involved in care during exam, consultation, and Tx.  Nev. Rev. Stat. Ann. §  629.061 (West 2012): Recs. to be made available to Pt. or PR with written authorization from Pt. | Nev. Rev. Stat. Ann. § 439.581 (West 2012): statewide Health Information Exchange. | Nev. Rev. Stat. Ann. § 433.482 (West 2012): Rights of persons admitted to MH facility include right to deny access by others to recs., except facility staff or per Ct. order. |
| New Hampshire | N.H. Rev. Stat. Ann. § 332-I:2(West 2012): Pt. right to full information about condition unless medically ill advised and so documented in recs.; communications confidential unless need to protect welfare of individual or public.  N.H. Rev. Stat. § 332-I:1 (West 2012): Information in recs. the property of the Pt.; Pt. right to copy of recs. | N.H. Rev. Stat. Ann. § 332-I:2 (West 2012): Right to accounting of access by named HCPs.  N.H. Rev. Stat. Ann. § 332-I:3 (West 2012): State Health Information Exchange. | None specified |
| New Jersey | N.J. Stat. Ann. §  26:2H-12.8 (West 2012): Hospital Pt. bill of rights—complete info re: Dx., Tx., prognosis unless not medically advisable to give to Pt., but can give to Pt.’s designee; confidentiality of recs. | N.J. Stat. Ann. § 26:1A-135 (West 2012): Health information technology plan. | N.J. Stat. Ann. § 45:14B-28 (West 2012): Psychologist–Pt. privilege the same as attorney–client. This statute has been cited for saying NJ gives more protection to MH records than HIPAA, *Smith v. American Home Prods. Corp*, 372 N.J. Super. 105 (N.J. Super. 2003). |
| New Mexico | N.M. Stat. Ann. § 14-6-1 (West 1978): All PHI is “strictly confidential”. | N.M. Stat. Ann. § 24-14B-6 (West 1978): Info in e–health recs. shall not be disclosed without Pt. consent except as allowed by state or federal law. | N.M. Stat. Ann. § 43-1-19 (West 1978): No disclosure without Pt. authorization of identifiable MH info; exception for disclosure to primary caregiver of info necessary for continuity of care; Pt. has right of access to MH info; if Pt. incapacitated and without guardian must have Ct. appoint Tx. guardian to consent to disclosure of MH recs. |
| New York | None specified | None specified | N.Y. Ment. Hyg. Law § 33.13 (McKinney 2012): Disclosure of MH info requires consent unless within listed exceptions; disclosure limited to persons with “demonstrable need” for info, if not detrimental to Pt.; statute does not permit disclosure to Pt. |
| North Carolina | N.C. Gen. Stat. Ann. § 90-410 et seq. (West 2012): Med. recs. statute; Pt. or PR has access, provider may charge fee. | N.C. Gen. Stat. Ann. § 90-412 (West 2012): May maintain records in e-form; same requirements including confidentiality as for paper recs. | N.C. Gen. Stat. Ann. § 32A-25.1 (West 2012): MH DPA can be combined with health DPA—so same access to info as for physical health DPA unless limited.  N.C. Gen. Stat. Ann. § 122C-52 (West 2012): Right to confidentiality of recs. of Tx. in MH facility; exception if client or legally responsible person consents in writing for disclosure to a specified person; disclosure is for specified length of time. |
| North Dakota | N.D. Cent. Code Ann. § 23-12-14 (West 2012): HCP to provide recs. with signed authorization of Pt. with fee; with signed authorization of Pt. or PR HCP to provide recs. to another HCP. | N.D. Cent. Code Ann. § 54-59-29 (West 2012): Health Information Exchange; recs. confidential. | None specified |
| Ohio | Ohio Rev. Code Ann. § 3701.74 (West 2012): Access to med. recs by Pt., PR, or person authorized by Pt. | None specified | Ohio Rev. Code Ann. § 5119.26 (West 2012): Civil right of MH Pt. to confidentiality |
| Oklahoma | Okl. Stat. Ann. tit. 76, § 19 (West 2012): Pt. right to access, copy med. recs. (no mention of PR). | Okl. Stat. Ann. tit. 63, § 1-131 (West 2012): Health Information Exchange. | Okl. Stat. Ann. tit. 43A, § 1-109 (West 2012): MH, substance abuse Tx. Recs. “strictly confidential” and only available to persons “actively engaged in the treatment of the consumer or in related administrative work”; Pt. allowed personal access except for psychiatric notes (statute uses HIPAA language), certain other exceptions for criminal process, research, information received under a promise of confidentiality when access would reveal source. |
| Oregon | Or. Rev. Stat. Ann. § 192.558 (West 2012): HCP may use/disclose PHI as authorized by Pt. or PR or as otherwise permitted by state or federal law  Or. Rev. Stat. Ann. § 192.553 (West 2012): Right to have PHI protected; right to access and review PHI. | Or. Rev. Stat. Ann.§ 413.300 (West 2012): Oregon Health Information Exchange. | None specified |
| Pennsylvania | None specified | 35 Pa. Stat. Ann. § 510.102 et seq. (West 2012): e-health act.  35 Pa. Stat. Ann.§ 510.701 (West 2012): e-health does not supersede any stronger confidentiality requirements. | 50 Pa. Stat. Ann.§ 7111 (West 2012): MH recs. confidentiality; may not be released without Pt. consent except as legally required. |
| Rhode Island | R.I. Gen. Laws Ann. § 5-37.3-3 *et seq.* (West 1956). Confidentiality of Health Care Communications and Information Act. Defines “authorized representative” as someone explicitly empowered to waive confidentiality.  R.I. Gen. Laws Ann. § 5-37.3-4 (West 1956): PHI may not be released without written consent of Pt. or authorized representative by specified state form. | R.I. Gen. Laws Ann. § 5-37.7-4 (West 1956): Health Information Exchange; all provisions of confidentiality remain in effect. | None specified |
| South Carolina | S.C. Code Ann. § 44-115-40 (West 1976): May not release med. recs. without express written consent of Pt. or PR. | None specified | S.C. Code Ann. § 44-22-100 (West 1976): MH recs. confidential and may not be disclosed without consent of Pt. or guardian.  S.C. Code Ann. § 44-22-110 (West 1976): Pt. or guardian right to access MH recs. unless determined in writing to be detrimental to Tx. regimen. |
| South Dakota | None specified | None specified | S.D. Codified Laws § 27A-12-26.1 (West 2012): Pt. right to access MH recs. unless assurance to others that info would be confidential, or written determination that access would be detrimental to Pt.’s health. |
| Tennessee | Tenn. Code Ann. § 68-11-304 (West 2012): Copy of med. recs. to Pt. or PR.  Tenn. Code Ann.§ 68-11-1502 (West 2012): Every Pt. receiving care has right to privacy. | None specified | None specified |
| Texas | Tex. Gov’t Code Ann. § 531.905 (West 2012) and Tex. Occ. Code Ann. § 159.005 (West 2012): Release of confidential health information requires written consent from Pt., guardian, PR if Pt. deceased.  Tex. Health & Safety Code Ann. § 241.152 (West 2012): Hospitals may not disclose PHI without written authorization of Pt. or PR. | Tex. Gov’t Code Ann. § 531.905 (West 2012): e-health.  Tex. Health & Safety Code Ann. § 181.102 (West 2012): Consumer access to e-health record, follows HIPAA rule. | Tex. Health & Safety Code Ann. § 611.002 (West 2012): Confidentiality of MH recs.  Tex. Health & Safety Code Ann. § 611.004 (West 2012): Limited disclosure of recs. include with Pt. written consent, or to Pt.’s PR if Pt. deceased unless confidential by law. |
| Utah | No general statute; professional standards of confidentiality in each licensing statute for facilities and HCPs. | Utah Code Ann. § 58-67-803 (West 2012): Med. recs. may be maintained electronically if comply with standards of professional ethics. | Utah Code Ann. § 58-60-114 (West 2012): Confidentiality of MH recs—for disclosure must be express consent of Pt., guardian, or PR. |
| Vermont | None specified | Vt. Stat. Ann. tit. 32, § 10302 (West 2012): e-health funding. | None specified |
| Virginia | VA Code Ann. § 32.1-127.1:03 (West 2012): Health recs. privacy; disclosure to Pt.; no re-disclosure beyond original purpose without specific authorization except as permitted by HIPAA; disclosure to agent consistent with advance directive act. | None specified | None specified |
| Washington | Wash. Rev. Code Ann. § 70.02.020: Disclosure of HC info requires Pt. written authorization; tracks HIPAA  Wash. Rev. Code Ann. § 70.02.005: Disclosure on a need to know basis to persons reasonably believed to be involved in Pt.’s care; exception for info about sexually transmitted infections.  Wash. Rev. Code Ann. § 70.02.090: Exceptions to Pt.’s right to access info if injurious to Pt. health, threat to health/safety of others, received under promise of confidentiality, otherwise prohibited by law. | Wash. Rev. Code Ann. § 41.05.035 (West 2012): Health Information Exchange pilot. | Wash. Rev. Code Ann. § 70.02.340: Dept. of Social & Health Services rule-making authority for disclosure of MH info and recs. |
| West Virginia | W. Va. Code Ann. § 16-29-1 (West 2012): Recs. to Pt., authorized agent or PR on written request; if Tx. for mental illness, summary available following termination of Tx. | None specified | W. Va. Code Ann § 16-29-1 (West 2012): Summary available to Pt. after Tx. completed. |
| Wisconsin | Wis. Stat. Ann. § 146.82: Recs. may be released only to persons designated by statute, with informed consent of Pt. or person authorized by Pt. | None specified | None specified |
| Wyoming | Wyo. Stat. Ann. § 35-2-606 (West 2012): No disclosure by hospital without Pt. authorization, except as below.  Wyo. Stat. Ann.§ 35-2-609 (West 2012): Exception for disclosure “to immediate family members of the patient, or any other individual with whom the patient is known to have a close personal relationship, if made in accordance with good medical or other professional practice, unless the patient has instructed the hospital not to make the disclosure”.  Wyo. Stat. Ann.§ 35-2-607 (West 2012): Pt. authorization for disclosure.  Wyo. Stat. Ann. § 35-2-612 (West 2012): May deny Pt. access if imminent threat to life or safety of Pt. or others, info could lead to identification of individual providing info in confidence. | None specified | Wyo. Stat. Ann. § 9-2-125 (West 2012): Confidentiality of MH & substance abuse Tx. recs. |

**State Personal Representative Statutes**

State personal representative statutes permit patients to appoint special powers of attorney for health care. Many states also have default surrogate statutes giving a prioritized list of persons with legal authority to make health care decisions for patients who do not have appointed agents. Some states give PRs the same authority as patients to access health information; others impose limits or invite patients to do so. Some states limit the authority of PRs to specific types of decisions. These distinctions are important because under HIPAA legally recognized PRs have the same rights as patients unless otherwise limited by the patient’s appointment of the PR or by state law. HIPAA permits individuals involved in the patient’s care to have the information relevant to that care, but this does not extend to access to the full medical record.

The following variations are particularly important to ICU providers:

--A few states do not have statutes permitting patients to create DPAs for health care.

--Some states impose limits on the DPA’s authority over discontinuation of life-sustaining treatment

--Some states provide that the DPA has the same rights over health information as the patient. Some states remind patients in their DPA form that they are authorizing access to health information. Some invite patients to set limits on their DPA’s access to information.

--States list different priorities in their default surrogate statutes. Particularly important is whether these statutes are limited to relatives or also include others who are knowledgeable about the patient and have exhibited special care and concern for the patient. A few states limit the authority of default surrogates to decisions about life sustaining treatment and a few lack any provision for default surrogates.

--South Carolina has a statute allowing the patient to designate a family member or other person with whom their medical condition and treatment plan can be discussed. This statute requires health care providers to provide the opportunity for this designation on the patient’s electronic medical record.[[1]](#footnote-1)

Appendix Table 2 summarizes our findings regarding state personal representative statutes.

**Appendix Table 2**

**State Personal Representative Laws**

|  |  |  |  |
| --- | --- | --- | --- |
| **State** | **DPA Statute** | **Allow Pt. to restrict surrogate access to info** | **Default surrogate statute** |
| Alabama | Ala. Code § 26-1A-404 (West 2012).  Ala. Code § 22-8A-4 (West 2012): Separate DPA for withholding l/s Tx., nutrition, hydration. | DPA has access to any info re physical or mental health unless limited in AD.  Ala. Code § 26-1A-404(4) (West 2012); l/s Tx. law has no parallel provision. | Ala. Code § 22-8A-11 (West 2012):  Guardian; spouse; adult child; parent; adult sibling; other adult next closest in kinship; Pt.’s treating physician and facility ethics committee. |
| Alaska | Alaska Stat. Ann. § 13.52.010 (West 2012): AD for HC. | Alaska Stat. Ann. § 13.52.070 (West 2012): Yes, unless otherwise specified in AD. If about capacity may immediately access info necessary to determine capacity. | Alaska Stat. Ann. § 13.52.030 (West 2012): Spouse, adult child, parent, adult sibling, other adult exhibiting care and concern & knowing values (if more than one, majority of); no authority to consent to MH Tx. except emergency & Pt. lacks capacity. |
| Arizona | Ariz. Rev. Stat. Ann. § 36-3221 (West 2012): Health care power of attorney.  Ariz. Rev. Stat. Ann. § 36-3281 (West 2012): MH care power of attorney; scope; definition. | None specified | Ariz. Rev. Stat. Ann. § 36-3231(West 2012): Guardian, spouse, adult child, parent, DPA, sibling, close friend. |
| Arkansas | Ark. Code Ann. § 20-13-104 (West 2012): DPA for HC Act.  Ark. Code Ann. § 20-17-202(b) (West 2012): L/s procedures; implementation; declaration. | None specified | Ark. Code Ann. § 20-17-214 (West 2012): Guardian, parents (for under 18), spouse, majority of participating adult children, parents (over 18), adult sibling (majority), persons in loco parentis, majority of adult heirs participating in decision. |
| California | Cal. Prob. Code § 4671 (West 2012): Persons entitled to execute power of attorney for HC. | Unless otherwise specified, same rights as Pt. under Cal. Prob. Code § 4678 (West 2012); nothing explicit in form. | Domestic Pt. has same status as spouse under Cal. Prob. Code § 4616 (West 2012); apparently California does not have a default surrogate statute. |
| Colorado | Colo. Rev. Stat. Ann. § 15-14-506 (West 2012): Medical DPA. | None specified | Colo. Rev. Stat. Ann. § 15-18.5-103 (West 2012): Consult with “interested persons”: spouse, parent, adult child, sibling, grandchild, close friend. These persons are to make reasonable efforts to reach consensus on who should make med. Tx. decisions, who should be someone with a close relationship and knowledge of Pt. |
| Connecticut | Conn. Gen. Stat. Ann. §§ 19a-575a, 577 (West 2012): HC PR. | None specified | Conn. Gen. Stat. Ann. §19a-571 (West 2012): No specific list; when Pt. without directive provider should consult anyone to whom Pt. is known to have conveyed wishes. |
| Delaware | Del. Code Ann. tit. 16, § 2503 (West 2012): AD for HC. | None specified | Del. Code Ann. tit. 16, § 2507 (West 2012): Spouse, child, parent, sibling, grandchild, niece or nephew, aunt or uncle (adults); if Pt. is in acute care facility or client of Dept. of Health and Social Services, a close friend familiar with wishes. |
| District of Columbia | D.C. Code § 21-2205 (West 2012): DPA for HC. | D.C. Code § 21-2206(2) (West 2012): DPA has right to review recs.; form says nothing about access to recs. D.C. Code § 21-2207: Form for creating DPA for HC. | D.C. Code § 21-2210 (West 2012): Allows substituted consent; guardian/conservator, intellectual disability advocate, spouse/domestic partner, child, parent, sibling, religious superior (if member of order or priest), close friend, nearest living relative. |
| Florida | Fla. Stat. Ann. § 765.401 (West 2012).  Fla. Stat. Ann. § 765.202 (West 2012): Designation of a HC surrogate.  Fla. Stat. Ann. § 765.202 (West 2012): Designation of a HC surrogate for minor. | None specified | Fla. Stat. Ann. § 765.401 (West 2012): Guardian, spouse, adult child (majority), parent, sibling (majority), adult exhibiting special care & concern and knowing wishes, close friend, clinical social worker selected by provider’s bioethics, etc. |
| Georgia | Ga. Code Ann. § 31-32-4 (West 2012): AD for HC form. | Ga. Code Ann. § 31-32-4(3) (West 2012):  “my personal representative for all purposes of federal or state law related to privacy of medical records” | Ga. Code Ann. § 31-36A-6 (West 2012): Only applies to temporary health care placement decisions (admission, discharge): DPA, guardian, spouse, adult child, parent, sibling, grandparent, grandchild, aunt or uncle, nephew or niece.  Ga. Code Ann. § 31-9-2 (West 2012): Consent to health care; DPA, spouse, guardian, adult child, parent, sibling, grandparent, grandchild, niece/nephew/aunt/uncle, adult friend. |
| Hawaii | Haw. Rev. Stat. § 327E-3 (West 2012): HC DPA.  Haw. Rev. Stat. § 327G-3 (West 2012): MH care DPA. | None specified | None specified |
| Idaho | Idaho Code Ann. § 39-4510 (West 2012): Living will and DPA for HC. | Idaho Code Ann. § 39-4510 (West 2012): “You can also include a statement of your desires concerning other matters relating to your health care, including a list of one or more persons whom you designate to be able to receive medical information about you and/or to be allowed to visit you in a medical institution.” Also, directive is specific that a general grant gives authority for inspection and disclosure of info to agent unless specifies otherwise, and HIPAA authority. | Idaho Code Ann. § 39-4504 (West 2012): DPA, guardian, spouse, adult child, parent, person named in a delegation of parental authority, any relative representing him/herself to be an appropriate responsible person, any other competent individual representing him/herself to be responsible for the Pt.’s HC. |
| Illinois | 755 Ill. Comp. Stat. Ann. 45/4-10 (West 2012): DPA for HC. | 755 Ill. Comp. Stat. Ann. 45/4-10 (West 2012): Explicit that agent can talk with HCPs about condition, see medical recs., and approve for others to see recs.; also may limit any powers of DPA. | Ill. Comp. Stat. Ann. 40/25 (West 2012): Guardian, spouse, adult child, parent, adult sibling, adult grandchild, close friend, guardian of the Pt.’s estate. Surrogates of the same class should make reasonable efforts to reach consensus about decisions; if disagreement, majority vote unless minority seeks guardianship. |
| Indiana | Ind. Code Ann. § 16-36-1-7 (West 2012): Appointed PR for HC. | None specified | None specified |
| Iowa | Iowa Code Ann. § 144B.5 (West 2012): DPA for HC form. | Iowa Code Ann. § 144B.5 (West 2012):  Agent has right to examine recs. and consent to disclosure. | Iowa Code Ann. § 144A.7 (West 2012): For life sustaining treatment in cases of terminal illness or PVS: DPA, guardian, spouse, adult child (majority), parent, adult sibling. |
| Kansas | Kan. Stat. Ann. § 58-629 (West 2012): DPA for HC decisions. | Kan. Stat. Ann. § 58-629(a)(3): Unless limited, receive, review any info regarding principal’s personal affairs or physical or mental health. | None specified |
| Kentucky | Ky. Rev. Stat. Ann. § 311.623 (West 2012).  Ky. Rev. Stat. Ann. § 311.625 (West 2012): Form. | None specified | Ky. Rev. Stat. Ann. § 311.631 (West 2012): Guardian, DPA for health care, spouse, adult child (majority), parents, nearest living relative. |
| Louisiana | Louisiana has a different legal history than the other states; because of its civil law background, practitioners should consult local authorities. | Louisiana has a different legal history than the other states; because of its civil law background, practitioners should consult local authorities. | La. Rev. Stat. Ann. § 40:1299.53 (West 2012): Guardian, DPA for HC, spouse, adult child, parent, sibling, other “ascendants or descendants”, adult friend. |
| Maine | Me. Rev. Stat. Ann. tit. 18-A, § 5-804 (West 2012): Uniform Health-Care Decisions Act. | None specified | Me. Rev. Stat. Ann. tit. 18-A, § 5-805 (West 2012): Spouse, adult in relationship similar to spouse, adult child, parent, adult sibling, grandchild, niece or nephew, aunt or uncle, other adult relative, adult who has exhibited special concern. |
| Maryland | Md. Code Ann., Health – Gen. § 5-603 (West 2012): AD Form. | Md. Code Ann., Health – Gen. § 5-603 (West 2012): Form states that Pt. authorizes physician to discuss capacity with DPA, gives DPA authority to access all information regarding physical or mental health, makes DPA PR for all HIPAA purposes. | Md. Code Ann., Health – Gen. § 5-605 (West 2012): DPA, guardian, spouse, adult child, parent, sibling, friend or other relative with affidavit that is relative or close friend, states specific facts demonstrating regular contact and familiarity with Pt. |
| Massachusetts | Mass. Gen. Laws Ann. ch. 201D, § 2 (West 2012): Power to appoint HC PR. | Mass. Gen. Laws Ann. ch. 201D, § 5 (West 2012): PR has right to receive all med. information necessary to make informed decisions regarding the Pt.’s HC. | Mass. Gen. Laws Ann. ch. 201D, § 16 (West 2012): If Pt. has not appointed proxy, HCP may rely on informed consent of responsible parties to extent permitted by law.  No default surrogate statute specified. |
| Michigan | Mich. Comp. Laws Ann. § 700.5501 (West 2012): General DPA statute.  Mich. Comp. Laws Ann. § 700.5506 (West 2012): Pt. advocate designation. | Mich. Comp. Laws Ann. § 700.5509 (West 2012): Authority of Pt. advocate, does not mention access to recs. | None specified |
| Minnesota | Minn. Stat. Ann. § 145C.02 (West 2012): DPA for HC. | Minn. Stat. Ann. § 145C.08 (West 2012): Holder of DPA has same authority Pt. unless otherwise specified in AD.  Minn. Stat. Ann. § 145C.05 (West 2012): Form creating DPA may specify any limitations on right of agent to access recs., authorize disclosures, or visit Pt. in facility. | None specified |
| Mississippi | Miss. Code Ann. § 41-41-205 (West 2012): DPA for HC. | Miss. Code Ann. § 41-41-217 (West 2012): Unless otherwise specified DPA has same rights as Pt. to access or consent to disclosure of information. DPA form has no prompt for limiting access. | Miss. Code Ann. § 41-41-211 (West 2012): Pt.’s designee, spouse, adult, child, parent, adult sibling, person who has exhibited special care & concern and is familiar with Pt.’s values. |
| Missouri | Mo. Ann. Stat. § 404.800 to 872 (West 2012): DPA for HC.  Mo. Ann. Stat. § 404.820 (West 2012): DPA Must specifically state has power to withdraw nutrition/hydration; may not do so if intent is to cause death. | Mo. Ann. Stat. § 404.822 (West 2012): In making HC decisions, DPA should seek information about Dx., prognosis, benefits and burdens of Tx. | None specified |
| Montana | Mont. Code Ann. § 50-9-103 (West 2012): AD statute includes DPA to apply to withholding or withdrawing l/s Tx. when Pt. terminal; form does not contain a prompt regarding recs. | Mont. Code Ann. § 72-5-501 (West 2012): DPA for health care.  Mont. Code Ann. § 53-21-1333 (West 2012): MH recs.: unless otherwise specified in directive agent has same rights as principal. | Mont. Code Ann. § 50-9-106 (West 2012): Default surrogate list for withholding or withdrawing l/s Tx. for terminal Pt.: spouse, adult children, parents, siblings, nearest other adult relative. |
| Nebraska | Neb. Rev. Stat. § 30-3408 (West 2012): DPA Form. | Neb. Rev. Stat. § 30-3408 (West 2012): No prompt in Form to specify rights to access med. recs. | No default surrogate statute specified, but Neb. Rev. Stat. § 30-3414 (West 2012), requires DPA, on a declaration that the principal is unable to make HC decisions, to notify guardian and proximate next of kin in order: spouse, adult child, parent, adult sibling, next closest kin. |
| Nevada | Nev. Rev. Stat. Ann. § 162A.700 *et seq.* (West 2012): DPA for HC. | Nev. Rev. Stat. Ann. § 162A.860 (West 2012): Recommended form states that DPA has authority to examine and consent to disclosure of med. recs. unless document says otherwise. | Nev. Rev. Stat. Ann. § 449.626 (West 2012): Default surrogates for withdrawing/withholding l/s Tx. for Pt. without directive are spouse, adult children, parents, adult siblings, nearest other adult relative. |
| New Hampshire | N.H. Rev. Stat. Ann. § 137-J:5 (West 2012): DPA for HC. | N.H. Rev. Stat. Ann. § 137-J:9 (West 2012): HCPs authorized to communicate to an agent info needed to assist the agent in making HC decisions for Pt.; subject to any limits in AD, agent has authority to receive any info regarding physical or mental health (including med. and hospital recs.), execute releases needed to receive info, consent to info disclosure. | N.H. Rev. Stat. Ann. § 137-J:35 (West 2012): Spouse or civil union partner, adult child, parent, adult sibling, adult grandchild, grandparent, adult aunt/uncle/niece/nephew, close friend, conservator, guardian of estate. |
| New Jersey | N.J. Stat. Ann. § 26:2H-58 (West 2012): HC representatives. | N.J. Stat. Ann. § 26:2H-61 (West 2012): “representative shall exercise the patient's right to be informed of the patient's medical condition, prognosis and treatment options”. | No default statute specified, except where AD not clear and no PR, physicians directed to consult “appointed guardian, if any, family members, the physicians, nurses, other health care professionals, health care institutions, and others acting on the patient's behalf.”  N.J. Stat. Ann. § 26:2H-64 (West 2012). |
| New Mexico | N.M. Stat. Ann. § 24-7A-2 (West 2012): DPA for HC. | N.M. Stat. Ann. § 24-7A-4 (West 2012): AD form does not explicitly reference access to info. | N.M. Stat. Ann. § 24-7A-5 (West 2012): Surrogate statute; priority spouse, individual in long-term relationship with commitment similar to spouse, adult child, parent, adult sibling, grandparent, adult who has exhibited special care and concern and is familiar with Pt.’s values. |
| New York | N.Y. Pub. Health Law § 2981 (McKinney 2012): HC PR. | N.Y. Pub. Health Law § 2981 (McKinney 2012): Suggested form has no explicit statement about access to information.  N.Y. Pub. Health Law § 2994-d (McKinney 2012): “Notwithstanding any law to the contrary, the surrogate shall have the right to receive medical information and medical records necessary to make informed decisions about the patient's health care.” | N.Y. Pub. Health Law § 2994-a *et seq.* (McKinney 2012): Family Health Care Decisions Act. Order: guardian, spouse or domestic partner, adult child, parent, adult sibling, close friend. |
| North Carolina | N.C. Gen. Stat. Ann. § 32A-15 *et seq.* (West 2012): HC DPA. | N.C. Gen. Stat. Ann. § 32A-25.1 (West 2012): Suggested form states power includes: “Requesting, reviewing, and receiving any information, verbal or written, regarding my physical or mental health, including, but not limited to, medical and hospital records, and to consent to the disclosure of this information.” Pt. may specify limits. | None specified |
| North Dakota | N.D. Cent. Code Ann. § 23-06.5-03 (West 2012): Pt. can name PR for HC decisions. | N.D. Cent. Code Ann. § 23-06.5-05.1 (West 2012): DPA may include limitations on the right of the PR to access or consent to disclosure of med. recs.  N.D. Cent. Code Ann. § 23-06.5-17 (West 2012): Optional form says agent may review med. recs. and have the same rights as Pt. to give them to others. | No default statute specified, except for anatomical gifts after a declaration of death: spouse, adult children, parents, adult siblings, adult grandchildren, grandparents, adults who exhibited special care and concern, persons acting as guardians at time of death. N.D. Cent. Code Ann. § 23-06.6-08(1) (West 2012). |
| Ohio | Ohio Rev. Code Ann. § 1337.11 *et seq.*(West 2012): DPA for HC. | Ohio Rev. Code Ann. § 1337.17 (West 2012): Suggested form has no mention of info. However, in Ohio DPA does not have power to refuse l/s Tx. or nutrition or hydration unless the Pt. is terminally ill or in PVS. | Ohio Rev. Code Ann. § 2133.08 (West 2012): Consent to withdrawing/withholding l/s Tx. for terminally ill Pt. or in PVS: guardian, spouse, adult children, parents, adult siblings, nearest available relative. |
| Oklahoma | Okla. Stat. Ann. tit. 58, § 1072.1 (West 2012): General DPA statute; may make HC decisions but not about l/s Tx.; any power about l/s Tx must comply with Oklahoma Advance Directive Act or Oklahoma Do-Not-Resuscitate Act.  Okla. Stat. Ann. tit. 63, § 3101.4 (West 2012): DPA for HC when Pt. terminally ill, permanently unconscious, or in an “end stage” condition resulting in severe and permanent deterioration and incompetency and complete physical dependence may refuse l/s Tx.  Okla. Stat. Ann. tit. 43A, § 11-106 (West 2012): DPA for MH Tx. | Okla. Stat. Ann. tit. 63, § 3101.4 (West 2012): Form does not mention access to info; ditto as to MH form. | None specified |
| Oregon | Or. Rev. Stat. Ann § 127.510 (West 2012): DPA for HC.  Or. Rev. Stat. Ann § 127.705 (West 2012): DPA for MH Tx. | Or. Rev. Stat. Ann § 127.53 (west 2012): Statute prescribes form; no mention of access to info. | Or. Rev. Stat. Ann § 127.635 (West 2012): Authorizes default surrogate to refuse l/s Tx. if Pt. terminally ill, permanently unconscious, in a condition in which l/s procedures would provide no medical benefit and would cause permanent and severe pain, has progressive illness precluding swallowing safely, caring for self, and recognizing family and it is unlikely that condition will improve. |
| Pennsylvania | 20 Pa. Cons. Stat. Ann. § 5451 *et seq.* (West 2012): statute providing for appointment of HC PR. | 20 Pa. Cons. Stat. Ann. § 5456 (West 2012): PR has powers of principal; “shall gather information on the principal’s prognosis and acceptable medical alternatives”. | 20 Pa. Cons. Stat. Ann. § 5461: Authority to make HC decisions for individual without DPA or guardian—spouse, adult child, parent, sibling, adult grandchild, adult who has knowledge of preferences and values including religious and moral beliefs. |
| Rhode Island | R.I. Gen. Laws Ann. § 23-4.10-2 (West 2012): Statutory Form of DPA. | R.I. Gen. Laws Ann. § 23-4.10-2 (West 2012): PR has right to examine med. recs. and consent to disclosure unless otherwise specified. | No default statute specified, except for anatomical gifts after a declaration of death: PR, spouse/partner, adult children, parents, adult siblings, adult grandchildren, grandparents, adults who exhibited special care and concern, persons acting as guardians at time of death, etc. |
| South Carolina | S.C. Code Ann. § 62-5-504 (West 2012): DPA for HC. | S.C. Code Ann. § 44-66-75 (West 2012): Adult Health Care Consent Act allows Pt. to designate a family member or other individual with whom to discuss med. condition and Tx. plan.  S.C. Code Ann. § 62-5-504 (West 2012): DPA contains HIPAA authorization for release of all PHI including MH recs. and STD recs. | S.C. Code Ann. § 44-66-30 (West 2012): Guardian, DPA, person with other statutory priority, spouse, parent or adult child, adult sibling or grandparent or grandchild, any other “relative by blood or marriage” reasonably believed to have a close personal relationship. |
| South Dakota | S.D. Codified Laws § 34-12C-1 (West 2012): DPA for HC. | S.D. Codified Laws § 59-3-2.1 (West 2012): PR has power to request, review, execute release of any info regarding physical or mental health. | S.D. Codified Laws § 34-12C-3 (West 2012): Spouse, adult child, parent, adult sibling, grandparent/child, aunt/uncle/niece/nephew, close friend. |
| Tennessee | Tenn. Code Ann. § 34-6-201 *et seq.* (West 2012): DPA for HC. | Tenn. Code Ann. § 34-6-206 (West 2012): except as limited in DPA, DPA has same authority as Pt. to receive info regarding proposed HC, review and receive med. recs., and consent to disclosure of med. recs. | None specified  Tenn. Code Ann. § 68-11-1806 (West 2012): Surrogate must be adult who has exhibited special care and concern and is familiar with Pt.’s personal values, consideration to be given in this order: spouse, adult child, parent, adult sibling, other adult relative, and other adult meeting qualification of care, concern, and knowledge. |
| Texas | Tex. Health & Safety Code Ann. § 166.152 (West 2012): DPA for HC. | Tex. Health & Safety Code Ann. § 166.164 (West 2012): DPA form does not contain info about access to med. recs.  Tex. Health & Safety Code Ann. § 166.157 (West 2012): DPA has same authority as Pt. to request, review, release med. info or consent to disclosure. | None specified |
| Utah | Utah Code Ann. § 75-2a-107 (West 2012): DPA for HC.  Utah Code Ann. § 62A-15-1002 (West 2012): Declaration for MH Tx., may designate PR; except as otherwise limited by law or the declaration, PR has same right as Pt. to receive info and to receive, review, and consent to disclosure of med. recs. | Utah Code Ann. § 75-2a-117 (West 2012): Optional form says DPA authorized to get med. recs. unless limited in document.  Utah Code Ann. § 62A-15-1002 (West 2012): Declaration for MH Tx. | Utah Code Ann. § 75-2a-108 (West 2012): Default surrogate statute lists order: spouse, child, parent, sibling, grandchild, grandparent, person who has exhibited special care and concern and is familiar with values. |
| Vermont | Vt. Stat. Ann. tit. 18, § 9702 (West 2012): Authority to appoint HC PR. | Vt. Stat. Ann. tit. 18, § 9703 (West 2012): Form does address access to recs.  Vt. Stat. Ann. tit. 18, § 9711 (West 2012): Unless otherwise specified PR has same right as principal to receive and copy med. info, participate in meetings about care, and consent to disclosure of info. | None specified |
| Virginia | Va. Code Ann. § 54.1-2983 (West 2012): AD includes DPA. | Va. Code Ann. § 54.1-2984 (West 2012): Form has list of powers of PR and invitation to cross any out, list includes requesting and receiving any info regarding physical or mental health and consent to disclosure of this info. | Va. Code Ann. § 54.1-2986 (West 2012): If no PR, guardian, spouse, adult child, parent, adult sibling, any other relative in descending order of blood relationships; except for withholding or withdrawing l/s Tx., an adult who has exhibited special care and concern and is familiar with religious beliefs and basic values and any previously expressed preferences to extent known. |
| Washington | WASH. REV. CODE ANN. § 11.94.010 to .901 (West 2012): General DPA w/ health powers permitted. (Repealed by newly enacted legislation.)  2016 Wash. Legis. Serv. Ch. 209 (S.S.B. 5635) (WEST): Uniform Power Of Attorney Act. | None specified | None specified |
| West Virginia | W. Va. Code Ann. § 16-30-4 (West 2012): DPA for HC. | W. Va. Code Ann. § 16-30-4 (West 2012): DPA form specifically authorizes access to med. recs. and other health info. | W. Va. Code Ann. § 16-30-8 (West 2012): Default surrogate: spouse, adult children, parents, adult siblings, adult grandchildren, close friends. |
| Wisconsin | Wis. Stat. Ann. § 155.05 (West 2012): DPA for HC.  Wis. Stat. Ann. § 155.20 (West 2012): Limits on power of DPA, e.g. cannot consent to refusal of nutrition or hydration unless medically indicated. | None specified | Wis. Stat. Ann. § 50.94 (West 2012): For Pt. without DPA, may admit to hospice if in terminal condition: spouse or domestic partner, adult child, parent, adult sibling, close friend in sufficient relevant contact; may make decisions with respect to hospice care. |
| Wyoming | Wyo. Stat. Ann. § 35-22-403(b) (West 2012). AD and DPA statute. | Wyo. Stat. Ann. § 35-22-409 (West 2012): Unless directive says otherwise, same rights as principal to access and consent to disclosure. | Wyo. Stat. Ann. § 35-22-406 (West 2012): Spouse, adult child, parent, grandparent, adult sibling, adult grandchild, adult who has exhibited special care and concern and is familiar with values. |
|  |  |  |  |

1. Because this is a particularly interesting statute that others might want to emulate, we provide it in full here:

   S.C. Code 1976 § 44-66-75. Designating a family member with whom provider may discuss medical condition; exemptions.

   (A) A health care provider or the provider's agent shall provide on the patient information form or by electronic health records, the opportunity for the patient to designate a family member or other individual they choose as a person with whom the provider may discuss the patient's medical condition and treatment plan.

   (B) The authorization provided for in subsection (A):

   (1) satisfies the requirements of Title 42 of the Code of Federal Regulations, relating to public health, and the privacy rule of the Health Insurance Portability and Accountability Act of 1996 (HIPAA);

   (2) must present the question in bold print and capitalized, or by electronic means: “DO YOU WANT TO DESIGNATE A FAMILY MEMBER OR OTHER INDIVIDUAL WITH WHOM THE PROVIDER MAY DISCUSS YOUR MEDICAL CONDITION? IF YES, WHOM?”; and

   (3) must specify that the patient may revoke or modify an authorization with regard to any family member or other individual designated by the patient in the authorization and that the revocation or modification must be in writing.

   (C) A health care provider may disclose information pursuant to an authorization unless the provider has actual knowledge that the authorization has been revoked or modified.

   (D) A health care provider who in good faith discloses information in accordance with an authorization signed by a patient pursuant to this section is not subject to civil liability, criminal liability, or disciplinary sanctions because of this disclosure.

   (E) Nothing in this section may be construed to:

   (1) require a health care provider to disclose information that he otherwise may withhold or limit;

   (2) limit or prevent a provider from disclosing information without written authorization from the patient if this disclosure is otherwise lawful or permissible;

   (3) prohibit a provider from receiving and using information relevant to the safe and effective treatment of the patient from family members; and

   (4) conflict with an individual's health care power of attorney as provided for in the South Carolina Probate Code. [↑](#footnote-ref-1)