

JOURNAL^{OF}AHIMA



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January 26th

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Making HIPAA Work for You: Discussing Record Access (and More) for Consumers

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Posted By Mary Butler on Aug 1, 2016

The US Department of Health and Human Services (HHS) has taken many steps to try and clear up consumer confusion regarding the more consumer-centric aspects of HIPAA's Privacy Rule and Security Rule. The most recent efforts include the Office of the National Coordinator's Patient Engagement Playbook. But confusion still lingers about patients' rights. The *Journal of AHIMA* has enlisted the help of Barry S. Herrin, CHPS, FAHIMA, FACHE, an attorney based in Atlanta, GA, [who specializes](#) in HIPAA law, privacy and security, as well as healthcare fraud and other healthcare topics, to help clear up some common questions the *Journal* receives from readers.

1. Requesting Records of Deceased Adults

My mother died while undergoing a routine procedure and my family has received conflicting reports about what happened. We're wondering if she had an allergic reaction that contributed to her death. Do we have a right to view her medical records to see if something wrong happened?

Regardless of how the requestor and an adult patient are related— be it fiancée, spouse, parent—they remain a stranger in the eyes of the law. Adult children can't obtain their parents' medical records unless they have been named in an advance directive prior to their parent's death. Requestors can petition the court and file forms that will grant them status as an appointed administrator or executor or some similar title after the patient's death, and this may afford access to the records.



Questions about Accessing Records of the Deceased Persist

In what is perhaps a symptom of consumer confusion about HIPAA, the *Journal of AHIMA's* website frequently receives reader queries about whether they are victims of HIPAA violations.

Two archived articles in particular continue to draw comments and questions three and five years after they were initially published: "[Who Has Rights to a Deceased Person's Records](#)," and "[Accessing Deceased Patient Records](#)."

To help answer some of the lingering questions readers have, the *Journal* spoke with Barry S. Herrin, CHPS, FAHIMA, FACHE, an attorney based in Atlanta, GA, [who specializes](#) in HIPAA law, privacy and security, as well as healthcare fraud and other healthcare topics. Herrin provided responses for the questions used in the above slideshow, as well as providing context and insight for some frequent themes in questions posed in response to *Journal* articles.

The Records of Deceased Adults

In the slideshow, scenario #1 is representative of dozens of similar examples in which family members are seeking to obtain the records of someone who has died. Some other examples include:

"I was wondering if I can obtain copies or gain access of treatment and psychiatric treatment records and physician records for my deceased fiancé. We have a year and a half old daughter together and he took his own life just over a month ago. He never appointed anyone to be his representative."

"My 21 year daughter passed away in January in San Francisco. She was student at a university there. She lived and had a job there. She was not married, has no children neither does she own land or any other property. We have her clothing and other personal items. How can we as her parents get her medical records?"

"My mother died recently of pancreatic cancer. I requested her medical records from the doctor's office, I was just notified by their office that they were advised not to release any medical records to me or the insurance company, without a court order signed by a judge, per their legal department. What do I have to do go get these records?"

Herrin says that in all of these examples, the record requestors overestimate the extent to which their relationship to the deceased affects their rights to the records.

"Dead adults are problematic. I don't care how much you love them and how close your connection was, if they're an adult when they die, and you don't have a piece of paper that says you've got rights to get access to their stuff, the law does not care," Herrin says.

For an individual to gain access to another adult's medical records, as Herrin notes in the slideshow, they must file a petition with the court to become a personal representative of the estate.

This can be done in a probate court or other court of appropriate jurisdiction, and the requestor must be able to provide documentation proving their relationship to the deceased. And this isn't necessarily a lengthy process.

If the person who's asking for access is the sole heir, or their name is in the will, "I can get them letters of administration within a day. I just have to go to the probate court, file the forms, get them on oath, get the order and off they go. But they've got to do their homework. That's the problem. People do not do their homework," Herrin emphasizes.

The US Department of Health and Human Services [has released guidance](#) targeted to consumers covering these types of questions, which Herrin says are written for a sixth grade reading level.

"The problem is the regulations are so difficult to navigate that even if you write it at a sixth grade level it still doesn't help because you have to look at three or four different regulations, and you've got the problem of state law being more restrictive," Herrin says.

Much of this confusion could be pre-empted if families were more proactive about discussing end of life issues. State bar associations can also provide guidance in these matters.

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Mary Butler is the associate editor at The Journal of AHIMA.

1 Comment



Katy Jacobs

NOVEMBER 7, 2016

To obtain a copy of an elderly patient, do i need to secure a PA to execute the request? If the elderly has alzheimer? Will a PA from my attorney <http://susansandys.com/about-me/> work?

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