

**HIPAA Back-to-Basics Bulletin Series:
PHI of Deceased Individuals and Sharing PHI with Family and Friends**

This is the second in a series of bulletins going “Back to Basics” on HIPAA compliance. With the recent changes to HIPAA resulting from the Omnibus Final Rule, this is a good time to reevaluate your organization’s compliance with all aspects of HIPAA.

PHI of Deceased Individuals

Under the Omnibus Final Rule, individually identifiable health information is protected for 50 years following an individual’s date of death. Prior to this change, the HIPAA Privacy Rule hasn’t contained such a time period. In [guidance](#) published on its website in September 2013, The Department of Health and Human Services (HHS) explained that the change was intended to “balance the privacy interests of surviving relatives and other individuals with a relationship to the decedent, with the need for archivists, biographers, historians, and others to access old or ancient records on deceased individuals for historical purposes.”

During the protection period, the decedent’s personal representative has the ability to exercise rights under the Privacy Rule with regard to the decedent’s protected health information (PHI). This would include authorizing disclosures of the PHI, gaining access to the PHI and making requests for amendments of the PHI. The personal representative is the individual under applicable law with authority to act on behalf of the decedent or his or her estate (i.e., the executor or administrator).

Generally, a decedent’s PHI has the same protections as a living individual’s PHI during the 50-year protection period. However, there are some important differences. The Privacy Rule permits covered entities to disclose a decedent’s PHI as follows during the 50-year protection period:

- To law enforcement officials to notify them of the individual’s death if there is suspicion that the death resulted from criminal conduct;
- To coroners, medical examiners and funeral directors;
- For research that is solely on the health information of decedents; and
- To organ procurement organizations and other similar organizations for the purpose of facilitating organ and tissue donation;

Once the 50-year protection period expires, the decedent’s information is no longer considered to be “protected health information,” and it may be used or disclosed without regard to Privacy Rule requirements.

**HIPAA Back-to-Basics Bulletin Series:
Deceased Individuals: Sharing PHI with Family and Friends**

Sharing PHI with Family and Friends

The Privacy Rule does not *require* a covered entity to share PHI with a patient's family or friends unless the family member or friend is the patient's personal representative. However, the Privacy Rule does *permit* covered entities to share a patient's PHI with family and friends in certain circumstances.

A covered entity may disclose PHI that is directly relevant to the involvement of a family member, other relative, or a close personal friend with the patient's health care or payment related to that care, 45 CFR 164.510(b)(1). Such PHI may be disclosed if the patient consents, if the patient does not object to the sharing of the PHI or if the covered entity believes – in its professional judgment – that the patient would not object to the sharing of the PHI. The HHS [website](#) provides the following examples:

- For example, if you do not object, your doctor could talk with the friend who goes with you to the hospital or with a family member who pays your medical bill.
- For example, if you send your friend to pick up your prescription for you, the pharmacist can assume that you do not object to that individual being given the medication.
- When you are not there or when you are injured and cannot give your permission, a provider may share information with these persons when it decides that doing so would be in your best interest.

The Omnibus Rule also provides covered entities with greater flexibility to disclose PHI to individuals who were involved with a decedent's care or payment of care. Previously, covered entities could only disclose PHI to family members and friends while the patient was alive. The Omnibus Rule amends the Privacy Rule to allow covered entities to make such disclosures to family members and friends of decedents unless doing so would be contrary to the decedent's previously expressed preference.

Recommendations

All covered entities should review their HIPAA policies and procedures to ensure compliance with the updated rules governing the PHI of decedents and sharing PHI with family and friends. Covered entities should also provide updated training to their workforce members to ensure that the new requirements are adequately communicated.



INCompliance

**HIPAA Back-to-Basics Bulletin Series:
Deceased Individuals: Sharing PHI with Family and Friends**

INCompliance offers customized HIPAA consulting services, including audits, training programs, and policy and procedure development to help you with all aspects of Privacy Rule compliance. [Click here](#) for additional information on our services.

This E-Alert was prepared by Chris Bennington. Chris can be reached at 513.870.6572 or cbennington@incomplianceconsulting.com. Please contact any INCompliance consultant for more information at info@incomplianceconsulting.com. This E-Alert may be accessed on the INCompliance website.