

## Health Information of Deceased Individuals

### Frequently Asked Questions\*

**1. Do the HIPAA Privacy Rule protections apply to the health information of deceased individuals?**

Yes – the HIPAA Privacy Rule protections apply for a period of 50 years following the date of death of the individual. During this period, the Privacy Rule protects the identifiable health information of the deceased individual to the same extent as it protects the health information of a living individual. After 50 years, any such information is no longer considered protected health information and may be used or disclosed without regard to the Privacy Rule.

**2. Since the HIPAA Privacy Rule protects the health information of deceased individuals for 50 years following the person’s death, am I required to keep the decedent’s information for the same period of time?**

No – the Privacy Rule does not include medical record retention requirements. Covered entities may destroy medical records at the time permitted by State or other applicable law.

**3. Does the HIPAA Privacy Rule permit a covered entity to disclose protected health information (PHI) about a decedent to family members or other persons involved in the care of the decedent?**

Yes – the Privacy Rule permits a covered entity to disclose PHI of a decedent to a family member or other person who was involved in the individual’s health care or payment for care prior to the individual’s death, unless doing so is inconsistent with any prior expressed preference of the deceased person that is known to the covered entity.

**4. If an individual instructs a covered healthcare provider that they do not want the provider to discuss their medical conditions or treatment with their family members, can the covered entity share such information with family members after the individual has died?**

Generally, no. The Privacy Rule permits a covered entity to disclose PHI about a decedent to persons involved in the healthcare or payment for care prior to the decedent’s death, only if doing so is not inconsistent with any prior expressed preference of the deceased person that is known to the covered entity. However, an individual that is the personal representative of the decedent (e.g., an executor or administrator of the decedent’s estate) is to be treated as the individual for purposes

of the Privacy Rule with respect to PHI relevant to the representation, without regard to the decedent's prior objection.

**5. How can a covered entity determine whether a person is a family member, or person involved in an individual's care prior to death, for purposes of sharing PHI about the decedent after death?**

The Privacy Rule does not require formal verification of the identity and authority of the person but rather permits the covered entity to rely on the exercise of professional judgment in making the disclosure.

**6. How can family members of a deceased person obtain the deceased person's PHI that is relevant to their own health care?**

The HIPAA Privacy Rule recognizes that a deceased person's PHI may be relevant to a family member's health care. The Privacy Rule provides two ways for a surviving family member to obtain the PHI of a deceased relative.

First, disclosures of PHI for treatment purposes – even the treatment of another individual – do not require authorization; therefore, a covered entity may disclose a decedent's PHI, without authorization, to the health care provider who is treating the surviving relative.

Second, a covered entity must treat a deceased individual's legally authorized executor or administrator, or person otherwise legally authorized to act on the behalf of the deceased individual or their estate, as a personal representative with respect to PHI relevant to such representation. As such, the Privacy Rule permits the personal representative to obtain the information or provide the appropriate authorization for its disclosure.

**7. What is required to conduct research on decedent's PHI?**

To use or disclose PHI of the deceased for research, covered entities are not required to obtain Authorization from the personal representative or next of kin, a waiver or an alteration of the Authorization, or a data use agreement. However, the covered entity must obtain from the researcher who is seeking access to decedent's PHI 1) oral or written representations that the use and disclosure is sought solely for research on the PHI of decedents, 2) oral or written representations that the PHI for which use or disclosure is sought is necessary for the research purposes, and 3) documentation, at the request of the covered entity, of the death of the individuals whose PHI is sought by the researchers.

**Questions, Comments, or Concerns?**

Contact [HIPAA@cuanschutz.edu](mailto:HIPAA@cuanschutz.edu)

\*Excerpted from <https://www.hhs.gov/hipaa/for-professionals/faq/decedents/index.html>