

Committee Report

CONSENT CALENDAR

April 4, 2017

HOUSE OF REPRESENTATIVES

REPORT OF COMMITTEE

**The Committee on Health, Human Services and Elderly
Affairs to which was referred SB 61,**

**AN ACT relative to medical records of a deceased spouse
or next of kin. Having considered the same, report the
same with the following amendment, and the
recommendation that the bill OUGHT TO PASS WITH
AMENDMENT.**

Rep. William Marsh

FOR THE COMMITTEE

COMMITTEE REPORT

Committee:	Health, Human Services and Elderly Affairs
Bill Number:	SB 61
Title:	relative to medical records of a deceased spouse or next of kin.
Date:	April 4, 2017
Consent Calendar:	CONSENT
Recommendation:	OUGHT TO PASS WITH AMENDMENT 2017-1293h

STATEMENT OF INTENT

This bill provides a mechanism for a spouse or next of kin to obtain medical records. The amendment places this in RSA 332-I dealing with medical records rather than RSA 560 dealing with probate. The amendment clarifies that records request must be processed in the time frame specified by federal law and must occur in the time frame records are retained under RSA 508:4.

Vote 20-0.

Rep. William Marsh
FOR THE COMMITTEE

Original: House Clerk
Cc: Committee Bill File

CONSENT CALENDAR

Health, Human Services and Elderly Affairs

SB 61, relative to medical records of a deceased spouse or next of kin. **OUGHT TO PASS WITH AMENDMENT.**

Rep. William Marsh for Health, Human Services and Elderly Affairs. This bill provides a mechanism for a spouse or next of kin to obtain medical records. The Amendment places this in RSA 332-I dealing with Medical Records rather than RSA 560 dealing with Probate. The Amendment clarifies that records request must be processed in the time frame specified by Federal Law and must occur in the time frame records are retained under RSA 508:4 **Vote 20-0.**

COMMITTEE REPORT

COMMITTEE: HMS

BILL NUMBER: SB 61

TITLE: Relative to Medical Records of a
Diseases Spouse

DATE: 4/4 CONSENT CALENDAR: YES NO

- OUGHT TO PASS
- OUGHT TO PASS W/ AMENDMENT
- INEXPEDIENT TO LEGISLATE
- INTERIM STUDY (Available only 2nd year of biennium)

Amendment No.
1237h 1208h

1293h

STATEMENT OF INTENT:

This bill provides a mechanism for a spouse
or Next of kin to obtain medical records.
The Amendment ~~1237h~~ places this in RSA 332-I
dealing with Medical Records rather than RSA 560
dealing with probate.
The Amendment ~~1208h~~ clarifies that records
request must be processed in the time frame specified
by Federal Law and must occur in the time frame
records are retained under RSA 508:4.

COMMITTEE VOTE: _____

- Copy to Committee Bill File
- Use Another Report for Minority Report

RESPECTFULLY SUBMITTED,
Rep. William Marsik
For the Committee
WILLIAM MARSIK



Amendment to SB 61

1 Amend the bill by replacing all after the enacting clause with the following:

2

3 1 Medical Records of Deceased Spouse or Next of Kin. RSA 560:22 is repealed and reenacted to
4 read as follows:

5 560:22 Medical Records of Deceased Spouse or Next of Kin. Where there is no estate
6 administration, the surviving spouse or next of kin of the deceased may obtain the medical records
7 of the deceased as provided in RSA 332-I:13.

8 2 New Section; Medical Records of Deceased Spouse or Next of Kin. Amend RSA 332-I by
9 inserting after section 12 the following new section:

10 332-I:13 Medical Records of Deceased Spouse or Next of Kin.

11 I. Where there is no estate administration, the surviving spouse or next of kin of the
12 deceased is designated the personal representative of the deceased for the limited purpose of
13 obtaining the medical records of the deceased. Such authority shall automatically cease upon the
14 initiation of estate administration or the death of the surviving spouse or next of kin.

15 II.(a) "Next of kin" means:

16 (1) Adult child by blood or adoption only in the absence of a surviving spouse.

17 (2) Parent, only in the absence of a surviving spouse or adult child.

18 (b) If 2 or more relatives in the same category qualify as next of kin, each shall be
19 considered the deceased's personal representative under this section.

20 III.(a) Where there is no estate administration, the requestor shall provide:

21 (1) A notarized affidavit, pursuant to paragraph VII, indicating he or she is
22 authorized to access the patient's records;

23 (2) An authorization in compliance with the federal Health Insurance Portability
24 and Accountability Act of 1996, 42 U.S.C. section 1320d et seq., and the regulations implementing
25 such act ("HIPAA"); and

26 (3) A copy of the death certificate.

27 (b) Upon request, a health care provider, as defined in RSA 332-I:1, II(b), shall provide
28 the surviving spouse or next of kin with a copy of the legal medical records of the deceased, unless
29 the deceased has indicated or any court of competent jurisdiction has ordered that the surviving
30 spouse or next of kin not have access to those records. The health care provider shall provide such
31 records within the time frame established under 45 C.F.R. 164.524(b)(2). Requests under this
32 subparagraph shall be valid within the time frame established under RSA 508:4.



1 (c) A health care provider shall not release mental health records or other medical
2 records afforded additional privacy protection under other state or federal law.

3 IV. A health care provider shall not be required to initiate a conversation with a patient on
4 the subject of access to the information in a medical record by a surviving spouse or next of kin.

5 V. Any provider shall be justified in relying upon the affidavit provided in accordance with
6 paragraph III.

7 VI. Any provider or person who in good faith releases copies of medical records in
8 accordance with this section shall not have violated any criminal law or be civilly liable to the
9 patient, the deceased patient's estate, or to any other person for the release of such medical records.

10 VII. An affidavit in the following form shall be used by any surviving spouse or next of kin
11 seeking records under this section.

12 AFFIDAVIT OF SURVIVING SPOUSE OR NEXT OF KIN
13 SEEKING ACCESS TO MEDICAL RECORDS

14 I, _____, being duly sworn, do hereby state as follows:

15 As "Surviving Spouse" or "Next of Kin" to _____(name of "decedent"), I am
16 requesting a copy of a decedent's legal medical record.

17 I acknowledge and understand that Next of Kin includes the following surviving individuals:

- 18 1) Adult child by blood or adoption only in the absence of a surviving spouse.
19 2) Parent only in the absence of a surviving spouse or adult child.

20 I represent that, as the surviving spouse, adult child by blood or adoption, parent (circle one) of
21 the decedent, that I am the Surviving Spouse or Next of Kin and that there is no survivor of higher
22 priority.

23 I hereby represent and affirm that no estate administration has been initiated on behalf of the
24 decedent and that I have not applied and been denied access to the requested records by any court.

25 I declare subject to the criminal penalty of false swearing established in RSA 641:2 that the
26 foregoing statements are true and correct.

27 Date: _____ Signed: _____

28 STATE OF NEW HAMPSHIRE

29 COUNTY OF _____

30 Signed and sworn to (or affirmed) before me on the ____day of _____, 20____,
31 by _____ (name of person).

32 3 Effective Date. This act shall take effect January 1, 2018.

Voting Sheets

HOUSE COMMITTEE ON HEALTH, HUMAN SERVICES AND ELDERLY AFFAIRS

EXECUTIVE SESSION on SB 61

BILL TITLE: relative to medical records of a deceased spouse or next of kin.

DATE: April 4, 2017

LOB ROOM: 205

MOTIONS: OUGHT TO PASS WITH AMENDMENT

Moved by Rep. W. Marsh Seconded by Rep. Salloway AM Vote: 20-0

Amendment # 2017-1208h

MOTIONS: OUGHT TO PASS WITH AMENDMENT

Moved by Rep. P. Gordon Seconded by Rep. Freitas AM Vote: 20-0

Amendment # 2017-1237h

MOTIONS: OUGHT TO PASS WITH AMENDMENT

Amendment # 2017-1208h & 2017-1237h

Moved by Rep. W. Marsh Seconded by Rep. M. MacKay Vote: 20-0

MOTIONS: Reconsider both Amendments 2017-1208h & 2017-1237h

Moved by Rep. W. Marsh Seconded by Rep. M. MacKay Vote: 20-0

Respectfully submitted,



Rep Bill Nelson, Clerk

HOUSE COMMITTEE ON HEALTH, HUMAN SERVICES AND ELDERLY AFFAIRS

①

EXECUTIVE SESSION on SB 61

BILL TITLE: relative to medical records of a deceased spouse or next of kin.

DATE: 4/4/17

LOB ROOM: 205

MOTION: (Please check one box)

OTP ITL Retain (1st year) Adoption of Amendment # 1208 (if offered) ✓

Moved by Rep. Marsh Seconded by Rep. Salloway Vote: 20-0

MOTION: (Please check one box)

OTP OTP/A ITL Retain (1st year) Adoption of Amendment # 1237 (if offered) ✓

Moved by Rep. Gordon Seconded by Rep. Freitas Vote: 20-0

MOTION: (Please check one box)

OTP OTP/A (1208 + 1237) ITL Retain (1st year) Adoption of Amendment # (if offered) ✓

Moved by Rep. Marsh Seconded by Rep. M. Mackay Vote: 20-0

MOTION: (Please check one box)

~~OTP~~ OTP/A ITL Retain (1st year) Adoption of Amendment # (if offered) ✓

Moved by Rep. Marsh *Recons. by* Seconded by Rep. M. Mackay *of both amendments* Vote: 20-0 ✓

CONSENT CALENDAR: ~~YES~~ YES NO

Minority Report? Yes No If yes, author, Rep: Motion

Respectfully submitted: Bill Nelson
Rep Bill Nelson, Clerk



STATE OF NEW HAMPSHIRE
OFFICE OF THE HOUSE CLERK

1/10/2017 9:31:48 AM
Roll Call Committee Registers
Report

2017 SESSION

HHS&EA

Bill #: SB61 Title: relative to medical records of a deceased spouse or next of kin
 PH Date: 3 128 12017 Exec Session Date: 4 1 4 12017
 Motion: ~~don~~ O+P Amendment #: ~~1205~~ ~~123~~ 1208

MEMBER	YEAS	NAYS
Kotowski, Frank R. Chariman <u>Schmidt</u>	19	
LeBrun, Donald L. Vice Chairman	20	
McMahon, Charles E.	1	
Nelson, Bill G. Clerk	2	
Guthrie, Joseph A.	3	
Donovan, Daniel A.	4	
Fothergill, John	5	
Bove, Martin N.	6	
Edwards, Jess	7	
Fedolfi, Jim	8	
Marsh, William M.	9	
Pearson, Mark	10	
MacKay, James R.	11	
Freitas, Mary C.	12	
Gordon, Pamela S.	13	
Snow, Kendall A. <u>Frank Smith</u>	14	
MacKay, Mariellen J.	15	
Long, Patrick T.	16	
Knirk, Jerry	17	
Messmer, Mindi F.	+	
Salloway, Jeffrey C.	18	
TOTAL VOTE:	20	0



STATE OF NEW HAMPSHIRE
OFFICE OF THE HOUSE CLERK

2/15/2017 3:50:33 PM
Roll Call Committee Registers
Report

2017 SESSION

HHS&EA

Bill #: 5061 Title: Relative to medical records of a deceased spouse or next of kin
PH Date: 3/28/17 Exec Session Date: 4/4/2017
Motion: OT0 Amendment #: ~~1237~~ - 1237 h

MEMBER	YEAS	NAYS
Kotowski, Frank R. Chariman <i>Schmidt</i>	19	
LeBrun, Donald L. Vice Chairman	20	
McMahon, Charles E.	1	
Nelson, Bill G. Clerk	2	
Guthrie, Joseph A.	3	
Donovan, Daniel A.	4	
Fothergill, John	5	
Bove, Martin N.	6	
Edwards, Jess	7	
Fedolfi, Jim	8	
Marsh, William M.	9	
Pearson, Mark	10	
MacKay, James R.	11	
Freitas, Mary C.	12	
Gordon, Pamela S.	13	
Snow, Kendall A. <i>S. Smith</i>	14	
MacKay, Mariellen J.	15	
Long, Patrick T.	16	
Knirk, Jerry	17	
Messmer, Mindi F.		
Salloway, Jeffrey C.	18	
TOTAL VOTE:	20	0





STATE OF NEW HAMPSHIRE
OFFICE OF THE HOUSE CLERK

2/15/2017 3:50:33 PM
Roll Call Committee Registers
Report

3

2017 SESSION

HHS&EA

Bill #: SB61 Title: Relative To medical records of a deceased spouse or next of kin

PH Date: 3/28/2017 Exec Session Date: 4/4/17

Motion: OTB/A Amendment #: ~~1237~~ - ~~1237~~ 2 Amendments
1208 + 1237

MEMBER YEAS NAYS

Kotowski, Frank R. Chariman <i>Schmidt</i>	19	
LeBrun, Donald L. Vice Chairman	20	
McMahon, Charles E.	1	
Nelson, Bill G. Clerk	2	
Guthrie, Joseph A.	3	
Donovan, Daniel A.	4	
Fothergill, John	5	
Bove, Martin N.	6	
Edwards, Jess	7	
Fedolfi, Jim	8	
Marsh, William M.	9	
Pearson, Mark	10	
MacKay, James R.	11	
Freitas, Mary C.	12	
Gordon, Pamela S.	13	
Snow, Kendall A. <i>S. Smith</i>	14	
MacKay, Mariellen J.	15	
Long, Patrick T.	16	
Knirk, Jerry	17	
Messmer, Mindi F.		
Salloway, Jeffrey C.	18	
TOTAL VOTE:	20	0

0



STATE OF NEW HAMPSHIRE
OFFICE OF THE HOUSE CLERK

2/15/2017 3:50:33 PM
Roll Call Committee Registers
Report

1

2017 SESSION

HHS&EA

Bill #: 61

Title: Relative To medical records of a deceased spouse or next of kin

PH Date: 3 128 117

Exec Session Date: 4 14 12017

Motion: Records - ~~Both~~ Amend Amendment #: _____

MEMBER

YEAS

NAYS

MEMBER	YEAS	NAYS
Kotowski, Frank R. Chariman <u>schmidt</u>	19	
LeBrun, Donald L. Vice Chairman	20	
McMahon, Charles E.	1	
Nelson, Bill G. Clerk	2	
Guthrie, Joseph A.	3	
Donovan, Daniel A.	4	
Fothergill, John	5	
Bove, Martin N.	6	
Edwards, Jess	7	
Fedolfi, Jim	8	
Marsh, William M.	9	
Pearson, Mark	10	
MacKay, James R.	11	
Freitas, Mary C.	12	
Gordon, Pamela S.	13	
Snow, Kendall A. <u>J. Smith</u>	14	
MacKay, Mariellen J.	15	
Long, Patrick T.	16	
Knirk, Jerry	17	
Messmer, Mindi F.	18	
Salloway, Jeffrey C.	18	
TOTAL VOTE:	21	0

Rep. W. Marsh, Carr. 8
March 29, 2017
2017-1208h
01/04



*Combined
Amendment
2017-1293h*

Amendment to SB 61

1 Amend RSA 560:22, III(b) as inserted by section 1 of the bill by replacing it with the following:

2

3 (b) Upon request, a health care provider, as defined in RSA 332-I:1, II(b), shall provide
4 the surviving spouse or next of kin with a copy of the legal medical records of the deceased, unless
5 the deceased has indicated or any court of competent jurisdiction has ordered that the surviving
6 spouse or next of kin not have access to those records. The health care provider shall provide such
7 records within the time frame established under 45 C.F.R. 164.524(b)(2). Requests under this
8 subparagraph shall be valid within the time frame established under RSA 508:4.



*Combined
Amendment
2017-1293H*

Amendment to SB 61

1 Amend the bill by replacing all after the enacting clause with the following:

2

3 1 Medical Records of Deceased Spouse or Next of Kin. RSA 560:22 is repealed and reenacted to
4 read as follows:

5 560:22 Medical Records of Deceased Spouse or Next of Kin. Where there is no estate
6 administration, the surviving spouse or next of kin of the deceased may obtain the medical records
7 of the deceased as provided in RSA 332-I:13.

8 2 New Section; Medical Records of Deceased Spouse or Next of Kin. Amend RSA 332-I by
9 inserting after section 12 the following new section:

10 332-I:13 Medical Records of Deceased Spouse or Next of Kin.

11 I. Where there is no estate administration, the surviving spouse or next of kin of the
12 deceased is designated the personal representative of the deceased for the limited purpose of
13 obtaining the medical records of the deceased. Such authority shall automatically cease upon the
14 initiation of estate administration or the death of the surviving spouse or next of kin.

15 II.(a) "Next of kin" means:

16 (1) Adult child by blood or adoption only in the absence of a surviving spouse.

17 (2) Parent, only in the absence of a surviving spouse or adult child.

18 (b) If 2 or more relatives in the same category qualify as next of kin, each shall be
19 considered the deceased's personal representative under this section.

20 III.(a) Where there is no estate administration, the requestor shall provide:

21 (1) A notarized affidavit, pursuant to paragraph VII, indicating he or she is
22 authorized to access the patient's records;

23 (2) An authorization in compliance with the federal Health Insurance Portability
24 and Accountability Act of 1996, 42 U.S.C. section 1320d et seq., and the regulations implementing
25 such act ("HIPAA"); and

26 (3) A copy of the death certificate.

27 (b) Upon request, a health care provider, as defined in RSA 332-I:1, II(b), shall provide
28 the surviving spouse or next of kin with a copy of the legal medical records of the deceased, unless
29 the deceased has indicated or any court of competent jurisdiction has ordered that the surviving
30 spouse or next of kin not have access to those records. The health care provider shall provide such
31 records within the time frame required under applicable law.

32 (c) A health care provider shall not release mental health records or other medical



1 records afforded additional privacy protection under other state or federal law.

2 IV. A health care provider shall not be required to initiate a conversation with a patient on
3 the subject of access to the information in a medical record by a surviving spouse or next of kin.

4 V. Any provider shall be justified in relying upon the affidavit provided in accordance with
5 paragraph III.

6 VI. Any provider or person who in good faith releases copies of medical records in
7 accordance with this section shall not have violated any criminal law or be civilly liable to the
8 patient, the deceased patient's estate, or to any other person for the release of such medical records.

9 VII. An affidavit in the following form shall be used by any surviving spouse or next of kin
10 seeking records under this section.

11 AFFIDAVIT OF SURVIVING SPOUSE OR NEXT OF KIN
12 SEEKING ACCESS TO MEDICAL RECORDS

13 I, _____, being duly sworn, do hereby state as follows:

14 As "Surviving Spouse" or "Next of Kin" to _____ (name of "decedent"), I am
15 requesting a copy of a decedent's legal medical record.

16 I acknowledge and understand that Next of Kin includes the following surviving individuals:

- 17 1) Adult child by blood or adoption only in the absence of a surviving spouse.
18 2) Parent only in the absence of a surviving spouse or adult child.

19 I represent that, as the surviving spouse, adult child by blood or adoption, parent (circle one) of
20 the decedent, that I am the Surviving Spouse or Next of Kin and that there is no survivor of higher
21 priority.

22 I hereby represent and affirm that no estate administration has been initiated on behalf of the
23 decedent and that I have not applied and been denied access to the requested records by any court.

24 I declare subject to the criminal penalty of false swearing established in RSA 641:2 that the
25 foregoing statements are true and correct.

26 Date: _____ Signed: _____

27 STATE OF NEW HAMPSHIRE

28 COUNTY OF _____

29 Signed and sworn to (or affirmed) before me on the ____day of ____, 20__,
30 by _____ (name of person).

31 3 Effective Date. This act shall take effect January 1, 2018.

HOUSE COMMITTEE ON HEALTH, HUMAN SERVICES AND ELDERLY AFFAIRS

EXECUTIVE SESSION on SB 61

BILL TITLE: relative to medical records of a deceased spouse or next of kin.

DATE: April 4, 2017

LOB ROOM: 205

MOTIONS: OUGHT TO PASS WITH AMENDMENT

Moved by Rep. P. Gordon Seconded by Rep. Fothergill AM Vote: 20-0

Amendment # 2017-1237h

MOTIONS: OUGHT TO PASS WITH AMENDMENT

Moved by Rep. W. Marsh Seconded by Rep. Knirk AM Vote: 20-0

Amendment # 2017-1208h

MOTIONS: OUGHT TO PASS WITH AMENDMENT

Amendment # 2017-1237h & 2017-1208h

Moved by Rep. W. Marsh Seconded by Rep. M. MacKay Vote: 20-0

Respectfully submitted,



Rep Bill Nelson, Clerk

H



STATE OF NEW HAMPSHIRE
OFFICE OF THE HOUSE CLERK

2/15/2017 3:50:33 PM
Roll Call Committee Registers
Report

2017 SESSION

HHS&EA

Bill #: 61

Title: Relative To medical records of a deceased spouse or next of kin

PH Date: 3/28/17

Exec Session Date: 4/4/17

Motion: Recom. Jevetion

Amendment #: _____

MEMBER

YEAS

NAYS

Kotowski, Frank R. Chariman <i>schmidt</i>		
LeBrun, Donald L. Vice Chairman		
McMahon, Charles E.		
Nelson, Bill G. Clerk		
Guthrie, Joseph A.		
Donovan, Daniel A.		
Fothergill, John		
Bove, Martin N.		
Edwards, Jess		
Fedolfi, Jim		
Marsh, William M.		
Pearson, Mark		
Mackay, James R.		
Freitas, Mary C.		
Gordon, Pamela S.		
Snow, Kendall A. <i>smith</i>		
Mackay, Mariellen J.		
Long, Patrick T.		
Knirk, Jerry		
Messmer, Mindi F.		
Salloway, Jeffrey C.		
TOTAL VOTE:	<u>20</u>	<u>0</u>

W



STATE OF NEW HAMPSHIRE
OFFICE OF THE HOUSE CLERK

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Roll Call Committee Registers
Report

2

2017 SESSION

relative to medical records of a deceased spouse
~~relative to criminal history background checks~~

HHS&EA SB 61

Bill #: ~~1237~~

Title: ~~for certain health care workers~~

PH Date: 3 / 28 / 17

Exec Session Date: 4 / 4 / 2017

Motion: OTP

Amendment #: 1237

Gordon / Fothergill

MEMBER

YEAS

NAYS

Kotowski, Frank R. Chariman	19	
LeBrun, Donald L. Vice Chairman	20	
McMahon, Charles E.	1	
Nelson, Bill G. Clerk	2	
Guthrie, Joseph A.	3	
Donovan, Daniel A.	4	
Fothergill, John	5	
Bove, Martin N.	6	
Edwards, Jess	7	
Fedolfi, Jim	8	
Marsh, William M.	9	
Pearson, Mark	10	
MacKay, James R.	11	
Freitas, Mary C.	12	
Gordon, Pamela S.	13	
Snow, Kendall A.	14	
MacKay, Mariellen J.	15	
Long, Patrick T.	16	
Knirk, Jerry	17	
Messmer, Mindi F.		
Salloway, Jeffrey C.	18	
TOTAL VOTE:	20	0



STATE OF NEW HAMPSHIRE
OFFICE OF THE HOUSE CLERK

2/15/2017 3:50:33 PM
Roll Call Committee Registers
Report

3

2017 SESSION

HHS&EA

Bill #: ~~1205~~ SB 61 Title: Relative to criminal history background checks for certain health care workers

PH Date: 3 / 28 / 17 Exec Session Date: 4 / 4 / 2017

Motion: March / Knirk Amendment #: 1208

MEMBER	YEAS	NAYS
Kotowski, Frank R. Chariman	19	
LeBrun, Donald L. Vice Chairman	20	
McMahon, Charles E.	1	
Nelson, Bill G. Clerk	2	
Guthrie, Joseph A.	3	
Donovan, Daniel A.	4	
Fothergill, John	5	
Bove, Martin N.	6	
Edwards, Jess	7	
Fedolfi, Jim	8	
Marsh, William M.	9	
Pearson, Mark	10	
MacKay, James R.	11	
Freitas, Mary C.	12	
Gordon, Pamela S.	13	
Snow, Kendall A.	14	
MacKay, Mariellen J.	15	
Long, Patrick T.	16	
Knirk, Jerry	17	
Messmer, Mindi F.		
Salloway, Jeffrey C.	18	
TOTAL VOTE:	20	0



STATE OF NEW HAMPSHIRE
OFFICE OF THE HOUSE CLERK

2/15/2017 3:50:33 PM
Roll Call Committee Registers
Report

2017 SESSION

HHS&EA

Bill #: SB 61

Title: Relative to medical records of a deceased
spouse next of kin

PH Date: 3/28/17

Exec Session Date: 4/4/2017

Motion: DTG/A
119254 m.m.

Amendment #: 1237 + 1208

MEMBER

YEAS

NAYS

<u>MEMBER</u>	<u>YEAS</u>	<u>NAYS</u>
Kotowski, Frank R. Chariman	19	
LeBrun, Donald L. Vice Chairman	20	
McMahon, Charles E.	1	
Nelson, Bill G. Clerk	2	
Guthrie, Joseph A.	3	
Donovan, Daniel A.	4	
Fothergill, John	5	
Bove, Martin N.	6	
Edwards, Jess	7	
Fedolfi, Jim	8	
Marsh, William M.	9	
Pearson, Mark	10	
MacKay, James R.	11	
Freitas, Mary C.	12	
Gordon, Pamela S.	13	
Snow, Kendall A.	14	
MacKay, Mariellen J.	15	
Long, Patrick T.	16	
Knirk, Jerry	17	
Messmer, Mindi F.		
Salloway, Jeffrey C.	18	
TOTAL VOTE:	20	0



*combined
amendment
2017-1293H*

Amendment to SB 61

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10 seeking records under this section.

11 AFFIDAVIT OF SURVIVING SPOUSE OR NEXT OF KIN
12 SEEKING ACCESS TO MEDICAL RECORDS

13 I, _____, being duly sworn, do hereby state as follows:

14 As "Surviving Spouse" or "Next of Kin" to _____ (name of "decedent"), I am
15 requesting a copy of a decedent's legal medical record.

16 I acknowledge and understand that Next of Kin includes the following surviving individuals:

17 1) Adult child by blood or adoption only in the absence of a surviving spouse.

18 2) Parent only in the absence of a surviving spouse or adult child.

19 I represent that, as the surviving spouse, adult child by blood or adoption, parent (circle one) of
20 the decedent, that I am the Surviving Spouse or Next of Kin and that there is no survivor of higher
21 priority.

22 I hereby represent and affirm that no estate administration has been initiated on behalf of the
23 decedent and that I have not applied and been denied access to the requested records by any court.

24 I declare subject to the criminal penalty of false swearing established in RSA 641:2 that the
25 foregoing statements are true and correct.

26 Date: _____ Signed: _____

27 STATE OF NEW HAMPSHIRE


28 COUNTY OF _____

29 Signed and sworn to (or affirmed) before me on the ____ day of ____, 20__
30 by _____ (name of person).

31 3 Effective Date. This act shall take effect January 1, 2018.

Rep. W. Marsh, Carr. 8
March 29, 2017
2017-1208h
01/04

*Combined
Amendment
2017-1293h*



Amendment to SB 61

1 Amend RSA 560:22, III(b) as inserted by section 1 of the bill by replacing it with the following:

2

3 (b) Upon request, a health care provider, as defined in RSA 332-I:1, II(b), shall provide
4 the surviving spouse or next of kin with a copy of the legal medical records of the deceased, unless
5 the deceased has indicated or any court of competent jurisdiction has ordered that the surviving
6 spouse or next of kin not have access to those records. The health care provider shall provide such
7 records within the time frame established under 45 C.F.R. 164.524(b)(2). Requests under this
8 subparagraph shall be valid within the time frame established under RSA 508:4.

HOUSE COMMITTEE ON HEALTH, HUMAN SERVICES AND ELDERLY AFFAIRS

EXECUTIVE SESSION on SB 61

BILL TITLE: relative to medical records of a deceased spouse or next of kin.

DATE: April 4, 2017

LOB ROOM: 205

MOTIONS: Reconsideration of Vote on SB 61 relative to medical records of a deceased spouse or next of kin.

Moved by Rep. W. Marsh

Seconded by Rep. McMahon

Vote: 20-0 Voice Vote

MOTIONS: OUGHT TO PASS WITH AMENDMENT

Moved by Rep. W. Marsh

Seconded by Rep. Salloway

AM Vote: 20-0

Amendment # 2017-1293h

Moved by Rep. W. Marsh

Seconded by Rep. M. MacKay

Vote: 20-0

CONSENT CALENDAR: YES

Statement of Intent: Refer to Committee Report

Respectfully submitted,



Rep Bill Nelson, Clerk

HOUSE COMMITTEE ON HEALTH, HUMAN SERVICES AND ELDERLY AFFAIRS

3

EXECUTIVE SESSION on SB 61

BILL TITLE: relative to medical records of a deceased spouse or next of kin.

DATE: April 4, 2017

LOB ROOM: 205

MOTION: (Please check one box)

H

OTP ITL Retain (1st year) Adoption of Amendment # ~~1293h~~ voice vote ✓
 Interim Study (2nd year) (if offered)

Moved by Rep. Reconsideration Seconded by Rep. Memalo Vote: 20-0

MOTION: (Please check one box)

I

OTP OTP/A ITL Retain (1st year) Adoption of Amendment # 1293h ✓
 Interim Study (2nd year) (if offered)

Moved by Rep. MARSH Seconded by Rep. Salloway Vote: 20-0

MOTION: (Please check one box)

B

OTP OTP/A ITL Retain (1st year) Adoption of Amendment # _____
 Interim Study (2nd year) (if offered)

Moved by Rep. MARSH Seconded by Rep. M. Mackay Vote: 20-0 ✓

MOTION: (Please check one box)

OTP OTP/A ITL Retain (1st year) Adoption of Amendment # _____
 Interim Study (2nd year) (if offered)

Moved by Rep. _____ Seconded by Rep. _____ Vote: _____

CONSENT CALENDAR: YES _____ NO

Minority Report? _____ Yes No If yes, author, Rep: _____ Motion _____

Respectfully submitted: Bill Nelson
Rep Bill Nelson, Clerk



(4)

2017 SESSION

HHS&EA

relative to medical records of a deceased
spouse or next of kin

Bill #: 61 Title: _____

PH Date: 3/28/2017 Exec Session Date: 4/4/17

Motion: OTP Amendment #: 1293 h

MEMBER

YEAS

NAYS

MEMBER	YEAS	NAYS
Kotowski, Frank R. Chariman	19	
LeBrun, Donald L. Vice Chairman	20	
McMahon, Charles E.	1	
Nelson, Bill G. Clerk	2	
Guthrie, Joseph A.	3	
Donovan, Daniel A.	4	
Fothergill, John	5	
Bove, Martin N.	6	
Edwards, Jess	7	
Fedolfi, Jim	—	
Marsh, William M.	8	
Pearson, Mark	9	
Mackay, James R.	10	
Freitas, Mary C.	11	
Gordon, Pamela S.	12	
Snow, Kendall A.	13	
Mackay, Mariellen J.	14	
Long, Patrick T.	15	
Knirk, Jerry	16	
Messmer, Mindi F.	17	
Salloway, Jeffrey C.	18	
TOTAL VOTE:	20	0



2017 SESSION

(5)

HHS&EA

Bill #: 41

Title: relative to medical records of a deceased spouses or next of kin

PH Date: 3/28/2017

Exec Session Date: 4/4/17

Motion: OTP/A

Amendment #: _____

MEMBER	YEAS	NAYS
Kotowski, Frank R. Chariman	19	
LeBrun, Donald L. Vice Chairman	20	
McMahon, Charles E.	1	
Nelson, Bill G. Clerk	2	
Guthrie, Joseph A.	3	
Donovan, Daniel A.	4	
Fothergill, John	5	
Bove, Martin N.	6	
Edwards, Jess	7	
Fedolfi, Jim	8	
Marsh, William M.	8	
Pearson, Mark	9	
MacKay, James R.	10	
Freitas, Mary C.	11	
Gordon, Pamela S.	12	
Snow, Kendall A.	13	
MacKay, Mariellen J.	14	
Long, Patrick T.	15	
Knirk, Jerry	16	
Messmer, Mindi F.	17	
Salloway, Jeffrey C.	18	
TOTAL VOTE:	20	0



Amendment to SB 61

1 Amend the bill by replacing all after the enacting clause with the following:

2

3 1 Medical Records of Deceased Spouse or Next of Kin. RSA 560:22 is repealed and reenacted to
4 read as follows:

5 560:22 Medical Records of Deceased Spouse or Next of Kin. Where there is no estate
6 administration, the surviving spouse or next of kin of the deceased may obtain the medical records
7 of the deceased as provided in RSA 332-I:13.

8 2 New Section; Medical Records of Deceased Spouse or Next of Kin. Amend RSA 332-I by
9 inserting after section 12 the following new section:

10 332-I:13 Medical Records of Deceased Spouse or Next of Kin.

11 I. Where there is no estate administration, the surviving spouse or next of kin of the
12 deceased is designated the personal representative of the deceased for the limited purpose of
13 obtaining the medical records of the deceased. Such authority shall automatically cease upon the
14 initiation of estate administration or the death of the surviving spouse or next of kin.

15 II.(a) "Next of kin" means:

16 (1) Adult child by blood or adoption only in the absence of a surviving spouse.

17 (2) Parent, only in the absence of a surviving spouse or adult child.

18 (b) If 2 or more relatives in the same category qualify as next of kin, each shall be
19 considered the deceased's personal representative under this section.

20 III.(a) Where there is no estate administration, the requestor shall provide:

21 (1) A notarized affidavit, pursuant to paragraph VII, indicating he or she is
22 authorized to access the patient's records;

23 (2) An authorization in compliance with the federal Health Insurance Portability
24 and Accountability Act of 1996, 42 U.S.C. section 1320d et seq., and the regulations implementing
25 such act ("HIPAA"); and

26 (3) A copy of the death certificate.

27 (b) Upon request, a health care provider, as defined in RSA 332-I:1, II(b), shall provide
28 the surviving spouse or next of kin with a copy of the legal medical records of the deceased, unless
29 the deceased has indicated or any court of competent jurisdiction has ordered that the surviving
30 spouse or next of kin not have access to those records. The health care provider shall provide such
31 records within the time frame established under 45 C.F.R. 164.524(b)(2). Requests under this
32 subparagraph shall be valid within the time frame established under RSA 508:4.



1 (c) A health care provider shall not release mental health records or other medical
2 records afforded additional privacy protection under other state or federal law.

3 IV. A health care provider shall not be required to initiate a conversation with a patient on
4 the subject of access to the information in a medical record by a surviving spouse or next of kin.

5 V. Any provider shall be justified in relying upon the affidavit provided in accordance with
6 paragraph III.

7 VI. Any provider or person who in good faith releases copies of medical records in
8 accordance with this section shall not have violated any criminal law or be civilly liable to the
9 patient, the deceased patient's estate, or to any other person for the release of such medical records.

10 VII. An affidavit in the following form shall be used by any surviving spouse or next of kin
11 seeking records under this section.

12 AFFIDAVIT OF SURVIVING SPOUSE OR NEXT OF KIN
13 SEEKING ACCESS TO MEDICAL RECORDS

14 I, _____, being duly sworn, do hereby state as follows:

15 As "Surviving Spouse" or "Next of Kin" to _____(name of "decedent"), I am
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21 the decedent, that I am the Surviving Spouse or Next of Kin and that there is no survivor of higher
22 priority.

23 I hereby represent and affirm that no estate administration has been initiated on behalf of the
24 decedent and that I have not applied and been denied access to the requested records by any court.

25 I declare subject to the criminal penalty of false swearing established in RSA 641:2 that the
26 foregoing statements are true and correct.

27 Date: _____ Signed: _____

28 STATE OF NEW HAMPSHIRE
29 COUNTY OF _____

30 Signed and sworn to (or affirmed) before me on the ____day of ____, 20__,
31 by _____ (name of person).

32 3 Effective Date. This act shall take effect January 1, 2018.

Hearing Minutes

HOUSE COMMITTEE ON HEALTH, HUMAN SERVICES AND ELDERLY AFFAIRS

PUBLIC HEARING ON SB 61

BILL TITLE: relative to medical records of a deceased spouse or next of kin.

DATE: March 28, 2017

LOB ROOM: 205 Time Public Hearing Called to Order: 11:20 a.m.

Time Adjourned: 11:45 a.m.

Committee Members: Reps. LeBrun, McMahon, Guthrie, Donovan, Fothergill, Bove, J. Edwards, Fedolfi, W. Marsh, M. Pearson, J. MacKay, Freitas, P. Gordon, M. MacKay, P. Long, Knirk, Messmer, Salloway and Nelson

Bill Sponsors:

Sen. D'Allesandro
Sen. Reagan

Sen. Bradley
Rep. Hynes

Sen. Feltes
Rep. McBeath

TESTIMONY

* Use asterisk if written testimony and/or amendments are submitted.

Senator D'Allesandro introduced bill.

Allows surviving spouse or next of kin (when no spouse) to get medical records in a more efficient manner.

* **Holly Haines - NH Association of Justice** - Supports bill.

this is a quicker process that would provide answers to family etc. cause of death, possible genetic issues. Surviving spouse should have the same access to full records as the person had themselves had when they were alive.

Q. Should this bill be addressed under Right to Know legislation?

Q. Is it correct that this only adds Next of Kin? A. Yes. Spouse already has access.

* **Paula Minnehan - NH Hospital Association** - Supports bill as amended.

Q. How long are records kept (electronic and those on paper)? A. This has not been a problem as requests are normally for recent records.

Respectfully submitted,



Rep. Bill Nelson, Clerk

HOUSE COMMITTEE ON HEALTH, HUMAN SERVICES AND ELDERLY AFFAIRS

PUBLIC HEARING ON SB 61

BILL TITLE: relative to medical records of a deceased spouse or next of kin.

DATE:

ROOM: 205

Time Public Hearing Called to Order: 11:20

Time Adjourned: 11:45

(please circle if present)

Committee Members: Reps. Kotowski, LeBrun, McMahon, Guthrie, Donovan, Fothergill, Bove, J. Edwards, Fedolfi, W. Marsh, M. Pearson, J. MacKay, Freitas, P. Gordon, Snow, M. MacKay, P. Long, Knirk, Messmer, Salloway and Nelson

Bill Sponsors:

Sen. D'Allesandro
Sen. Reagan

Sen. Bradley
Rep. Hynes

Sen. Feltes
Rep. McBeath

TESTIMONY

* Use asterisk if written testimony and/or amendments are submitted.

Sen. D'Allesandro introduced bill

Allows surviving spouse or next of kin (when no spouse)
to get ~~death certificate~~ medical records records
in a more efficient ~~more~~ manner

* Kelly Haines - N.H. Association of Justice

supports bill. this is a quicker process
that would provide answers to family ^{etc} - cause
of death, possible genetic issues.

Surviving spouse should have the same access to full
records as the person had themselves had when
they were alive

Q should this bill be addressed under Right to ~~know~~
~~the~~ know legislation

Q - ~~Does~~ is it correct that this only adds next of kin?
yes. ~~Spouse~~ spouse already has access

* Paula Mannheim - NH Hosp. Association - supports bill
as amended

Q - How long are records kept (~~on computer~~ ^{Electronic ~~storage~~} &
those on paper). This has not been a problem
as requests are normally for recent records

Testimony

March 28, 2017

House Committee on Health, Human Services, and Elderly Affairs Committee

Hon. Frank Kotowski, Chairman

Hon. Donald LeBrun, Vice Chairman

Hon. Bill Nelson, Clerk

Hon. Charles McMahon

Hon. Joseph Guthrie

Hon. Daniel Donovan

Hon. John Fothergill

Hon. Martin Bove

Hon. Jess Edwards

Hon. Jim Fedolfi

Hon. William Marsh

Hon. Mark Pearson

Hon. James MacKay

Hon. Mary Freitas

Hon. Pamela Gordon

Hon. Kendall Snow

Hon. Mariellen MacKay

Hon. Patrick Long

Hon. Jerry Knirk

Hon. Mindi Messmer

Hon. Jeffrey Salloway

SB 61: Relative to Medical Records of Deceased Spouse/Next of Kin

Members of the Committee,

Thank you for the opportunity to speak to this bill. My name is Holly Haines, and I am an attorney with the law firm Abramson, Brown and Dugan based in Manchester. I speak today on behalf of the New Hampshire Association for Justice, who approached Sen. D'Allesandro and asked for this bill's submission.

What this bill, as amended, does is allow a surviving spouse, or a surviving parent or adult child next of kin, if there is no surviving spouse, to execute and submit a standard HIPAA compliant medical authorization, with a copy of the decedent's death certificate and an affidavit signed under the pains and penalties of perjury, to receive a copy of a decedent family member's legal medical record without having to go through the lengthy formal process of opening a probate estate.

This bill has been substantially amended since its introduction, through the joint efforts of the New Hampshire Association for Justice and the New Hampshire Hospital Association, to ensure it is narrowly tailored enough to balance a patient's right to privacy under HIPAA, and a hospital's need to protect private health information, with a family's need for access to their loved one's medical records. It has also been narrowed to limit and prioritize the definition of next of kin to make sure a hospital is not subject to numerous requests from people at all levels of familial relations with a deceased patient. The amended bills also has added protections for health care providers complying with this statute, by providing immunity from civil or criminal penalty and by requiring the family member to execute an affidavit under the pains and penalties of perjury.

The initial purpose of this bill was to get answers and closure for surviving family members without requiring them to go through the sometimes onerous, expensive and time consuming process of opening a probate estate when there are no assets in need of probate. My office primarily helps victims of medical malpractice, but we also routinely assist with insurance and other claims as part of that process. With increasing frequency we are being approached by people who have lost a spouse or loved one while that person was under medical care and they are searching for answers about what happened to their family member. When they ask for answers from their loved one's medical provider, or ask for a copy of their loved one's medical records, they are usually precluded from getting the information due to patient privacy laws and because they are not a court appointed representative of the loved one's estate. That prompts them to come to us in search of answers to get closure at their time of loss. In these cases, the person seeking medical information of a deceased loved one is often grieving, having gone through a very traumatic event and major loss. They are seeking questions to answers they do not have, such as: What caused my loved one's death? Could it have been prevented? Are there any genetic concerns I should be worried about for my other family members? Can I get life insurance benefits? Can I get accidental death or disability benefits? With our ongoing opiate epidemic, with many deaths being caused by over prescription of opiate pain medications, these questions will only become more and more frequent. Families want answers and they are entitled to them. These questions and need for access to medical records are not just limited to investigating potential legal claims. For most of these family members, the decedent had no assets requiring a probate estate to be opened and no will directing that someone has specific authority to act. There is no reason these citizens should be required to spend the time or money to open a full or temporary probate estate to access this information and get closure for their losses. Nor should we burden our probate courts with these additional unnecessary estate administrations, when no assets need to be probated.

The reason this bill was necessary is that under the current statute, a surviving spouse is allowed only access to their decedent spouse's medical records. When this statute was first enacted, most medical providers honored medical authorizations signed by surviving spouses and allowed them to receive copies of their spouse's medical records. Increasingly, however, this statute is being interpreted to allow spousal access to review the medical records, but not to authorize the spouse to execute a HIPAA compliant medical authorization to receive a copy of the medical records or send the medical records to a third party such as an attorney or insurance company. In order to even access the records, the spouse is required to go to the hospital, prove their identity, prove their spousal relationship, and execute an affidavit just to access the information in their loved one's medical records. Grieving spouses seeking answers should not be required to do this at their greatest time of loss.

More and more often, people are dying and do not have surviving spouses to make this request on their behalf. Often the closest next of kin is a parent or adult child. These family members should have the same rights as surviving spouses and should not have to go through the procedures above just to receive a copy of information to which they are entitled. Surviving spouses, or the next of kin as defined in the amended statute, should have the same rights to the information in medical records as the decedent patient had when they were alive - to be able to access critical information they are entitled to by law without having to go through a lengthy, time consuming, and cost incurring probate process.

The medical records statute, RSA 332-I:1 provides that:

All medical information contained in the medical records in the possession of any health care provider shall be deemed the property of the patient. The patient shall be entitled to a copy of such records upon request. . . . at a reasonable cost. (emphasis added)

The information in medical records is clearly a patient's property, which means it passes as property to their spouse or next of kin upon their death. If there is no will when a person dies, their property is deemed the property of their estate, which is distributed by the intestacy statute, which establishes priority of next of kin. RSA 561:1 lays out the priority order of descent and distribution, and we suggested that it could properly be followed for determining next of kin. The order of distribution in that statute is: (1) Spouse; (2) Children; (3) Parents; (4) Siblings; (5) Grandparents.

We understand that health care providers have valid concerns about the very slippery slope of determining next of kin and the number of potential next of kin when there is no spouse, and we worked with the Hospital Association to address this in the amended statute. This concern has been addressed on the federal level by the US DHHS as part of the HITECH Act's modification to the HIPAA privacy rule. Under that act, HHS allows access to private health information by: (1) Personal representatives of the deceased (including estate executors and administrators and parents / guardians of minors); (2) family members who had access to the patient's health information prior to death but do not qualify as personal representatives, such as a healthcare proxy or medical power of attorney; and (3) family members and others who were involved in the care or the payment of the care of the patient prior to death. See 45 C.F.R. 164:502(g); 145 C.F.R. 64:510(b); 45 C.F.R. 160.103.

In contrast to our current statute, under the federal rules, the decedent's personal representative or family member not only has the right to access the information in their loved one's medical records, but also has the right to authorize the use and disclosure of protected health information, which means they can execute medical authorizations to release the medical records to a third party.

This amendment brings our statute closer to conformance with the federal regulations governing use and disclosure of private health information and medical records and will give many grieving New Hampshire citizens a way to get answers they need and final closure for their losses. This statute is also more narrowly tailored than the federal regulations because it more narrowly defines who would be an authorized personal representative, it is also drafted to comply with HIPAA, requiring a HIPAA compliant medical authorization and affidavit be executed. Because this statute is more narrow than federal law, and health care providers can comply with both federal and state law, this statute is not preempted by HIPAA . See Opis Mgt. Res. LLC v. Sec'y Fla. Agency for Health Care Admin., 713 F.3d 1291, 1294 (11th Cir. 2013); Altavista Healthcare Ctr. v. Miller, 686 S.E.2d 96 (Ga. 2009).

Finally, there will not be an unnecessary burden on health care providers because they will still be able to charge the patient's personal representative for copies of the medical records just as if the patient were making the request.

I ask that the committee adopt the statute as amended and submit to the House for a full vote. Thank you for your time and consideration. I am happy to take any questions.



House Health and Human Services Committee

March 28, 2017

SB 61 Relative to medical records of a deceased spouse or next of kin

Testimony

Good morning, Mr. Chairman and members of the committee. My name is Paula Minnehan and I am the Vice President, State Government Relations with the New Hampshire Hospital Association (NHHA), representing all 26 of the state's community hospitals as well as all of our specialty hospitals.

The New Hampshire Hospital Association is fine with SB 61, as amended.

Initially the NHHA had a number of concerns with the bill as introduced. However, we were able to work with the proponents of the bill and reached a compromise that we are comfortable with. The bill before you is the result of that compromise.

Specifically, the following changes were made to address our concerns:


- Clearly specifies "next of kin"
- Requires affidavit to assist with proof of who the person is
- Protects healthcare provider who acted in good faith
- Supports privacy for the deceased who still has privacy rights

Thank you for the opportunity to share our questions and comments. I am happy to answer any questions you may have.

Amendments

Rep. W. Marsh, Carr. 8
March 29, 2017
2017-1208h
01/04

*Combined
Amendment
2017-1293h*



Amendment to SB 61

1 Amend RSA 560:22, III(b) as inserted by section 1 of the bill by replacing it with the following:

2

3 (b) Upon request, a health care provider, as defined in RSA 332-I:1, II(b), shall provide
4 the surviving spouse or next of kin with a copy of the legal medical records of the deceased, unless
5 the deceased has indicated or any court of competent jurisdiction has ordered that the surviving
6 spouse or next of kin not have access to those records. The health care provider shall provide such
7 records within the time frame established under 45 C.F.R. 164.524(b)(2). Requests under this
8 subparagraph shall be valid within the time frame established under RSA 508:4.



*Combined
Amendment
2017-1293H*

Amendment to SB 61

1 Amend the bill by replacing all after the enacting clause with the following:

2

3 1 Medical Records of Deceased Spouse or Next of Kin. RSA 560:22 is repealed and reenacted to
4 read as follows:

5 560:22 Medical Records of Deceased Spouse or Next of Kin. Where there is no estate
6 administration, the surviving spouse or next of kin of the deceased may obtain the medical records
7 of the deceased as provided in RSA 332-I:13.

8 2 New Section; Medical Records of Deceased Spouse or Next of Kin. Amend RSA 332-I by
9 inserting after section 12 the following new section:

10 332-I:13 Medical Records of Deceased Spouse or Next of Kin.

11 I. Where there is no estate administration, the surviving spouse or next of kin of the
12 deceased is designated the personal representative of the deceased for the limited purpose of
13 obtaining the medical records of the deceased. Such authority shall automatically cease upon the
14 initiation of estate administration or the death of the surviving spouse or next of kin.

15 II.(a) "Next of kin" means:

16 (1) Adult child by blood or adoption only in the absence of a surviving spouse.

17 (2) Parent, only in the absence of a surviving spouse or adult child.

18 (b) If 2 or more relatives in the same category qualify as next of kin, each shall be
19 considered the deceased's personal representative under this section.

20 III.(a) Where there is no estate administration, the requestor shall provide:

21 (1) A notarized affidavit, pursuant to paragraph VII, indicating he or she is
22 authorized to access the patient's records;

23 (2) An authorization in compliance with the federal Health Insurance Portability
24 and Accountability Act of 1996, 42 U.S.C. section 1320d et seq., and the regulations implementing
25 such act ("HIPAA"); and

26 (3) A copy of the death certificate.

27 (b) Upon request, a health care provider, as defined in RSA 332-I:1, II(b), shall provide
28 the surviving spouse or next of kin with a copy of the legal medical records of the deceased, unless
29 the deceased has indicated or any court of competent jurisdiction has ordered that the surviving
30 spouse or next of kin not have access to those records. The health care provider shall provide such
31 records within the time frame required under applicable law.

32 (c) A health care provider shall not release mental health records or other medical



1 records afforded additional privacy protection under other state or federal law.

2 IV. A health care provider shall not be required to initiate a conversation with a patient on
3 the subject of access to the information in a medical record by a surviving spouse or next of kin.

4 V. Any provider shall be justified in relying upon the affidavit provided in accordance with
5 paragraph III.

6 VI. Any provider or person who in good faith releases copies of medical records in
7 accordance with this section shall not have violated any criminal law or be civilly liable to the
8 patient, the deceased patient's estate, or to any other person for the release of such medical records.

9 VII. An affidavit in the following form shall be used by any surviving spouse or next of kin
10 seeking records under this section.

11 AFFIDAVIT OF SURVIVING SPOUSE OR NEXT OF KIN
12 SEEKING ACCESS TO MEDICAL RECORDS

13 I, _____, being duly sworn, do hereby state as follows:

14 As "Surviving Spouse" or "Next of Kin" to _____(name of "decedent"), I am
15 requesting a copy of a decedent's legal medical record.

16 I acknowledge and understand that Next of Kin includes the following surviving individuals:

- 17 1) Adult child by blood or adoption only in the absence of a surviving spouse.
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19 I represent that, as the surviving spouse, adult child by blood or adoption, parent (circle one) of
20 the decedent, that I am the Surviving Spouse or Next of Kin and that there is no survivor of higher
21 priority.

22 I hereby represent and affirm that no estate administration has been initiated on behalf of the
23 decedent and that I have not applied and been denied access to the requested records by any court.

24 I declare subject to the criminal penalty of false swearing established in RSA 641:2 that the
25 foregoing statements are true and correct.

26 Date: _____ Signed: _____

27 STATE OF NEW HAMPSHIRE

28 COUNTY OF _____

29 Signed and sworn to (or affirmed) before me on the ____day of ____, 20__,
30 by _____ (name of person).

31 3 Effective Date. This act shall take effect January 1, 2018.

Rep. W. Marsh, Carr. 8
March 24, 2017
2017-1117h
01/04

not used

Amendment to SB 61

1 Amend RSA 560:22, III(b) as inserted by section 1 of the bill by replacing it with the following:

2

3 (b) Upon request, a health care provider, as defined in RSA 332-I:1, II(b), shall provide
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7 records within the time frame established under RSA 508:4.

Bill as
Introduced

SB 61 - AS AMENDED BY THE SENATE

03/16/2017 0792s

2017 SESSION

17-0781

01/05

SENATE BILL **61**

AN ACT relative to medical records of a deceased spouse or next of kin.

SPONSORS: Sen. D'Allesandro, Dist 20; Sen. Bradley, Dist 3; Sen. Feltes, Dist 15; Sen. Reagan, Dist 17; Rep. Hynes, Hills. 21; Rep. McBeath, Rock. 26

COMMITTEE: Health and Human Services

ANALYSIS

This bill clarifies the procedure for receipt of medical records of a deceased spouse or next of kin.

Explanation: Matter added to current law appears in *bold italics*.
Matter removed from current law appears [~~in brackets and struck through~~].
Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Seventeen

AN ACT relative to medical records of a deceased spouse or next of kin.

Be it Enacted by the Senate and House of Representatives in General Court convened:

1 1 Medical Records of Deceased Spouse or Next of Kin. RSA 560:22 is repealed and reenacted to
2 read as follows:

3 560:22 Medical Records of Deceased Spouse or Next of Kin.

4 I. Where there is no estate administration, the surviving spouse or next of kin of the
5 deceased is designated the personal representative of the deceased for the limited purpose of
6 obtaining the medical records of the deceased. Such authority shall automatically cease upon the
7 initiation of estate administration or the death of the surviving spouse or next of kin.

8 II.(a) "Next of kin" means:

9 (1) Adult child by blood or adoption only in the absence of a surviving spouse.

10 (2) Parent, only in the absence of a surviving spouse or adult child.

11 (b) If 2 or more relatives in the same category qualify as next of kin, each shall be
12 considered the deceased's personal representative under this section.

13 III.(a) Where there is no estate administration, the requestor shall provide:

14 (1) A notarized affidavit, pursuant to paragraph VII, indicating he or she is
15 authorized to access the patient's records;

16 (2) An authorization in compliance with the federal Health Insurance Portability
17 and Accountability Act of 1996, 42 U.S.C. section 1320d et seq., and the regulations implementing
18 such act ("HIPAA"); and

19 (3) A copy of the death certificate.

20 (b) Upon request, a health care provider, as defined in RSA 332-I:1, II(b), shall provide
21 the surviving spouse or next of kin with a copy of the legal medical records of the deceased, unless
22 the deceased has indicated or any court of competent jurisdiction has ordered that the surviving
23 spouse or next of kin not have access to those records. The health care provider shall provide such
24 records within the time frame required under applicable law.

25 (c) A health care provider shall not release mental health records or other medical
26 records afforded additional privacy protection under other state or federal law.

27 IV. A health care provider shall not be required to initiate a conversation with a patient on
28 the subject of access to the information in a medical record by a surviving spouse or next of kin.

29 V. Any provider shall be justified in relying upon the affidavit provided in accordance with
30 paragraph III.

31 VI. Any provider or person who in good faith releases copies of medical records in

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1 accordance with this section shall not have violated any criminal law or be civilly liable to the
2 patient, the deceased patient's estate, or to any other person for the release of such medical records.

3 VII. The following form of affidavit shall be used by any surviving spouse or next of kin
4 seeking records under this section.

5 AFFIDAVIT OF SURVIVING SPOUSE OR NEXT OF KIN
6 SEEKING ACCESS TO MEDICAL RECORDS

7 I, _____, being duly sworn, do hereby state as follows:

8 As "Surviving Spouse" or "Next of Kin" to _____ (name of "decedent"), I am
9 requesting a copy of a decedent's legal medical record.

10 I acknowledge and understand that Next of Kin includes the following surviving individuals:

11 1) Adult Child by blood or adoption only in the absence of a surviving spouse.

12 2) Parent only in the absence of a surviving spouse or adult child.

13 I represent that, as the surviving spouse, adult child by blood or adoption, parent (*circle one*) of
14 the decedent, that I am the Surviving Spouse or Next of Kin and that there is no survivor of higher
15 priority.

16 I hereby represent and affirm that no estate administration has been initiated on behalf of the
17 decedent and that I have not applied and been denied access to the requested records by any court.

18 I declare subject to the criminal penalty of false swearing established in RSA 641:2 that the
19 foregoing statements are true and correct.

20 Date: _____

Signed: _____

21 STATE OF NEW HAMPSHIRE

22 COUNTY OF _____

23 Signed and sworn to (or affirmed) before me on the ____ day of ____, 20__,
24 by _____ (name of person).

25 2 Effective Date. This act shall take effect January 1, 2018.