### LEGISLATIVE COMMITTEE MINUTES

## **SB61**

# Bill as Introduced

#### SB 61 - AS INTRODUCED

#### 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-struckthrough.]

Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

#### SB 61 - AS INTRODUCED

17-0781 01/05

#### STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Seventeen

AN ACT

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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 Medical Records of Deceased Spouse or Next of Kin. Amend RSA 560:22 to read as follows: 560:22 Medical Records of Deceased Spouse or Next of Kin. Notwithstanding any provision of law to the contrary and upon proof of the requestor's identity as the spouse or next of kin of the deceased, the surviving spouse or next of kin shall have access to the information contained in the medical records of his or her deceased spouse or next of kin and be authorized to execute a standard medical authorization to be submitted with a copy of the decedent's death certificate to receive a complete copy of the decedent's medical records where there is no estate administration, unless the medical records indicate that the [deceased-spouse] decedent has [indicated] directed that the surviving spouse or next of kin should not have access to those records. A health care provider, as defined in RSA 332-I:1, II(b), shall not be required to initiate a conversation with a patient on the subject of access to the information in a medical record by a surviving spouse or next of kin.

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

## Amendments



Sen. Bradley, Dist 3 March 2, 2017 2017-0696s 01/03

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paragraph III.

Amend the bill by replacing section 1 with the following:

#### Amendment to SB 61

| 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.  |
| 6  | I. Where there is no estate administration, the surviving spouse or next of kin of the               |
| 7  | deceased is designated the personal representative of the deceased for the limited purpose of        |
| 8  | obtaining the medical records of the deceased. Such authority shall automatically cease upon the     |
| 9  | initiation of estate administration or the death of the surviving spouse or next of kin.             |
| 10 | II.(a) "Next of kin" means:  |
| 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 | (b) If 2 or more relatives in the same category qualify as next of kin, each shall be                |
| 14 | considered the deceased's personal representative under this section.                                |
| 15 | III.(a) Where there is no estate administration, the requestor shall provide:                        |
| 16 | (1) A notarized affidavit, pursuant to paragraph VII, indicating he or she is                        |
| 17 | authorized to access the patient's records;  |
| 18 | (2) An authorization in compliance with the federal Health Insurance Portability                     |
| 19 | and Accountability Act of 1996, 42 U.S.C. section 1320d et seq., and the regulations implementing    |
| 20 | such act ("HIPAA"); and  |
| 21 | (3) A copy of the death certificate.   |
| 22 | (b) Upon request, a health care provider, as defined in RSA 332-I:1, II(b), shall provide            |
| 23 | the surviving spouse or next of kin with a copy of the legal medical records of the deceased, unless |
| 24 | the deceased has indicated or any court of competent jurisdiction has ordered that the surviving     |
| 25 | spouse or next of kin not have access to those records. The health care provider shall provide such  |
| 26 | records within the time frame required under applicable law.   |
| 27 | (c) A health care provider shall not release mental health records or other medical                  |
| 28 | records afforded additional privacy protection under other state or federal law.                     |
| 29 | IV. A health care provider shall not be required to initiate a conversation with a patient on        |

the subject of access to the information in a medical record by a surviving spouse or next of kin.

V. Any provider shall be justified in relying upon the affidavit provided in accordance with

#### Amendment to SB 61 - Page 2 -

| 1  | VI. Any provider or person who in good faith releases copies of medical records in                  |
|----|---|
| 2  | accordance with this section shall not have violated any criminal law or be civilly liable to the   |
| 3  | patient, the deceased patient's estate, or to any other person.                                     |
| 4  | VII. The following form of affidavit shall be used by any surviving spouse or next of kin           |
| 5  | seeking records under this section.   |
| 6  | AFFIDAVIT OF SURVIVING SPOUSE OR NEXT OF KIN  |
| 7  | SEEKING ACCESS TO MEDICAL RECORDS   |
| 8  | I,, being duly sworn, do hereby state as follows:   |
| 9  | As "Surviving Spouse" or "Next of Kin" to(name of "decedent"), I am                                 |
| 10 | requesting a copy of a decedent's legal medical record.   |
| 11 | I acknowledge and understand that Next of Kin includes the following surviving individuals:         |
| 12 | 1) Adult Child by blood or adoption only in the absence of a surviving spouse.                      |
| 13 | 2) Parent only in the absence of a surviving spouse or adult child.                                 |
| 14 | I represent that, as the surviving spouse, adult child by blood or adoption, parent (circle one) of |
| 15 | the decedent, that I am the Surviving Spouse or Next of Kin and that there is no survivor of higher |
| 16 | priority.   |
| 17 | I hereby represent and affirm that no estate administration has been initiated on behalf of the     |
| 18 | decedent and that I have not applied and been denied access to the requested records by any court.  |
| 19 | I declare subject to the criminal penalty of false swearing established in RSA 641:2 that the       |
| 20 | foregoing statements are true and correct.  |
| 21 | Date: Signed:   |
| 22 | STATE OF NEW HAMPSHIRE  |
| 23 | COUNTY OF   |
| 24 | Signed and sworn to (or affirmed) before me on theday of, 20,                                       |
| 25 | by (name of person).  |



Sen. Bradley, Dist 3 March 7, 2017  $2017\text{-}0761\mathrm{s}$ 01/03

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| 18 | (2) An authorization in compliance with the federal Health Insurance Portability                     |
| 19 | and Accountability Act of 1996, 42 U.S.C. section 1320d et seq., and the regulations implementing    |
| 20 | such act ("HIPAA"); and  |
| 21 | (3) A copy of the death certificate.   |
| 22 | (b) Upon request, a health care provider, as defined in RSA 332-I:1, II(b), shall provide            |
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#### Amendment to SB 61 - Page 2 -

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| 2  | accordance with this section shall not have violated any criminal law or be civilly liable to the       |
| 3  | patient, the deceased patient's estate, or to any other person for the release of such medical records. |
| 4  | VII. The following form of affidavit shall be used by any surviving spouse or next of kin               |
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| 6  | AFFIDAVIT OF SURVIVING SPOUSE OR NEXT OF KIN  |
| 7  | SEEKING ACCESS TO MEDICAL RECORDS   |
| 8  | I,, being duly sworn, do hereby state as follows:   |
| 9  | As "Surviving Spouse" or "Next of Kin" to(name of "decedent"), I am                                     |
| 10 | requesting a copy of a decedent's legal medical record.   |
| 11 | I acknowledge and understand that Next of Kin includes the following surviving individuals:             |
| 12 | <ol> <li>Adult Child by blood or adoption only in the absence of a surviving spouse.</li> </ol>         |
| 13 | 2) Parent only in the absence of a surviving spouse or adult child.                                     |
| 14 | I represent that, as the surviving spouse, adult child by blood or adoption, parent (circle one) of     |
| 15 | the decedent, that I am the Surviving Spouse or Next of Kin and that there is no survivor of higher     |
| 16 | priority.   |
| 17 | I hereby represent and affirm that no estate administration has been initiated on behalf of the         |
| 18 | decedent and that I have not applied and been denied access to the requested records by any court.      |
| 19 | I declare subject to the criminal penalty of false swearing established in RSA 641:2 that the           |
| 20 | foregoing statements are true and correct.  |
| 21 | Date: Signed:   |
| 22 | STATE OF NEW HAMPSHIRE  |
| 23 | COUNTY OF   |
| 24 | Signed and sworn to (or affirmed) before me on theday of, 20,   |
| 25 | by (name of person).  |

Health and Human Services March 8, 2017 2017-0792s 01/03

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#### Amendment to SB 61

| 1  | Amend the bill by replacing section 1 with the following:  |
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| 18 | (2) An authorization in compliance with the federal Health Insurance Portability                     |
| 19 | and Accountability Act of 1996, 42 U.S.C. section 1320d et seq., and the regulations implementing    |
| 20 | such act ("HIPAA"); and  |
| 21 | (3) A copy of the death certificate.   |
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| 27 | (c) A health care provider shall not release mental health records or other medical                  |
| 28 | records afforded additional privacy protection under other state or federal law.                     |

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

the subject of access to the information in a medical record by a surviving spouse or next of kin.

IV. A health care provider shall not be required to initiate a conversation with a patient on

### Amendment to SB 61 - Page 2 -

| 1         | VI. Any provider or person who in good faith releases copies of medical records in                      |
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| 2         | accordance with this section shall not have violated any criminal law or be civilly liable to the       |
| 3         | patient, the deceased patient's estate, or to any other person for the release of such medical records. |
| 4         | VII. The following form of affidavit shall be used by any surviving spouse or next of kin               |
| 5         | seeking records under this section.   |
| 6         | AFFIDAVIT OF SURVIVING SPOUSE OR NEXT OF KIN  |
| 7         | SEEKING ACCESS TO MEDICAL RECORDS   |
| 8         | I,, being duly sworn, do hereby state as follows:   |
| 9         | As "Surviving Spouse" or "Next of Kin" to(name of "decedent"), I am                                     |
| LO        | requesting a copy of a decedent's legal medical record.   |
| 1         | I acknowledge and understand that Next of Kin includes the following surviving individuals:             |
| 12        | 1) Adult Child by blood or adoption only in the absence of a surviving spouse.                          |
| 13        | 2) Parent only in the absence of a surviving spouse or adult child.                                     |
| <b>L4</b> | I represent that, as the surviving spouse, adult child by blood or adoption, parent (circle one) of     |
| 15        | the decedent, that I am the Surviving Spouse or Next of Kin and that there is no survivor of higher     |
| 16        | priority.   |
| 17        | I hereby represent and affirm that no estate administration has been initiated on behalf of the         |
| 18        | decedent and that I have not applied and been denied access to the requested records by any court.      |
| 19        | I declare subject to the criminal penalty of false swearing established in RSA 641:2 that the           |
| 20        | foregoing statements are true and correct.  |
| 21        | Date: Signed:   |
| 22        | STATE OF NEW HAMPSHIRE  |
| 23        | COUNTY OF   |
| 24        | Signed and sworn to (or affirmed) before me on theday of, 20,   |
| 25        | by (name of person)   |

# Committee Minutes

#### Senate Health and Human Services Committee

Kyle Baker 271-2609

SB 61, relative to medical records of a deceased spouse or next of kin.

**Hearing Date:** 

January 24, 2017

Time Opened:

2:20 p.m.

Time Closed:

2:40 p.m.

Members of the Committee Present: Senators Bradley, Avard, Gray, Fuller Clark

and Hennessey

Members of the Committee Absent: None

Bill Analysis:

This bill clarifies the procedure for receipt of medical records of a

deceased spouse or next of kin.

Sponsors:

Sen. D'Allesandro

Sen. Bradley

Sen. Feltes

Sen. Reagan

Rep. Hynes

Rep. McBeath

Who supports the bill: Rep. Dan Sullivan, Hills 8; Marissa Chase, NHAJ; Holly Haines, Abramson, Brown and Dugan; Senator Lou D'Allesandro, SD# 20

Who opposes the bill: Kathy Bizarro-Thunberg, NH Hospital Association; Jane Alessandrini, NH Hospital Association

Who is neutral on the bill:

Summary of testimony presented in support:

#### Senator D'Alessandro, Senate District 20

- Clarifies the procedure of who receives medical records.
- Current statute only allows spouse or next of kin to access medical records of deceased spouse.
- Loved ones should be allowed to access medical records even if not named next of kin, which is what this bill would do.
- Being named next of kin under current statute can be very time consuming.
- Medical records are all electronic, very important in this day and age.
- In closing, medical records should be available to more than just the specified next of kin.

#### Holly Haines - Abramson, Brown & Dugan

- US Dept of Health addressed this issue, states can set different standards.
- Next of kin can be defined by current statute.
- Medical records can be acquired by patients when alive, cost a reasonable amount.
- Representatives of individual should be able to access medical records since they are technically individuals property, and their representatives are managing the rest of their property.
- Current statute does not fit with modern family structures, families are very complicated now (ie. Domestic partnership not currently recognized).
- People get married later, adults live with their parents.
- Death certificate often all family or next of kin gets, which is not very specific.
- Should not have to wait 2-3 months for probate court appointment.
- Need access to medical records for insurance or genetic reasons.
- Not a large cost, medical professionals can charge for administration costs.
- Family disagreements not relevant, all children are entitled to medical records of parents for example.
- · Requests for records will be put on the record.
- Recent opiate deaths have highlighted this problem, parents cannot tell extent
  of the problem from death certificate of deceased children.
- Those who wants medical records must verify who they are, with a birth certificate or affidavit.

Senator Avard - What happens in the case of estranged siblings?

Haines – Even if a sibling is estranged they are entitled to the records of a parent for the purpose of their own healthcare management and possible genetic testing.

Senator Fuller-Clark – What options does a parent have for a child that has died of an overdose?

Haines – Under current law parents have no access to a deceased child's medical records if they are not the next of kin.

Senator Hennessey - Who is verifying claims of relationship?

Haines – Parents and spouse would be listed on the death certificate that would need to be submitted with the request for records. For children and siblings there would be something like a birth certificate or a signed affidavit.

#### Summary of testimony presented in opposition:

#### Cathy Bizzaro-Thunberg and Jane Alessandrini - NH Hospital Association

- Vice President of NH hospital association
- How can hospital know who should be entitled to medical records?
- How would hospital know who is family or who in the family should get records?
- Hospital workers have no way of establishing who is next of kin, should be left to probate court.
- Do not want to give up complete copy of medical records, only relevant information should be provided.
- Standard medical authorization form should be added to statute, hospital should provide it to individual (only applies to surviving spouse, other family must go to probate court).
- Domestic partnership is not accepted under current statute for next of kin.
- HIM Staff person should not have to decide who gets records, need probate court to decide, even if it takes a long time.
- Most patients do not fill out forms for the future, hospital employees often do not know who should have access because deceased individual did not give authorization to anyone.
- Problem can be solved by filling out a form designating who should receive records, which is a perfect scenario but it does not always happen.

Neutral Information Presented: None

Future Action: Pending

KRB Date Hearing Report completed: January 27, 2017

# Speakers

## Senate Health and Human Services Committee SIGN-IN SHEET

\_ate: 1/24/2017

Time: 1:40 p.m.

**SB 61** 

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

| Name/Representing (please print neatly) |         |        |           |          | _                |
|---|---------|--------|-----------|----------|------------------|
| Rep D Sullivan Hills 8                  | Support | Oppose | Speaking? | Yes      | Z <sup>o</sup> N |
| -KATHY BIZARRO-THUNBERG ASSN.           | Support | Oppose | Speaking? | Yes      | Νo               |
| - Marsa Chare NHAS                      | Support | Oppose | Speaking? | Yes      | ĭď ∝             |
| - Holly Haires Aloramson, Brown-Dugan   | Support | Oppose | Speaking? | Yes      | N <sub>0</sub>   |
| Jane Alessandrini NH Hospital Assoc     | Support | Oppose | Speaking? | Yes      | No<br>□          |
| Sen D'Allesadro                         | Support | Oppose | Speaking? | Yes<br>1 | No               |
| THE POLICE ASSOC                        | Support | Oppose | Speaking? | Yes      | No<br>□          |
|   | Support | Oppose | Speaking? | Yes      | No               |
|   | Support | Oppose | Speaking? | Yes      | No               |
|   | Support | Oppose | Speaking? | Yes      | No               |
|   | Support | Oppose | Speaking? | Yes      | No               |
|   | Support | Oppose | Speaking? | Yes      | No               |
|   | Support | Oppose | Speaking? | Yes      | No<br>□          |
|   | Support | Oppose | Speaking? | Yes      | No<br>□          |
| ·                                       | Support | Oppose | Speaking? | Yes      | No<br>□          |
|   | Support | Oppose | Speaking? | Yes      | No<br>□          |
|   | Support | Oppose | Speaking? | Yes      | No<br>□          |
|   | Support | Oppose | Speaking? | Yes      | No<br>□          |
|   | Support | Oppose | Speaking? | Yes      | No<br>□          |

## Testimony

#### (Proposed Amended Legislation)

Repeal RSA 560:22 and replace with new RSA 560:22

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

- I. Where there is no estate administration, the surviving spouse or next of kin of the deceased is designated the personal representative of the deceased for the limited purpose of obtaining the medical records of the deceased. Such authority shall automatically cease upon the initiation of estate administration or the death of the surviving spouse or next of kin.
- II. "Next of kin" means the closest living relative of the deceased, in the following priority:
  - (a) Spouse
  - (b) Adult child by blood or adoption (only in the absence of a surviving spouse).
  - (c) Parent (only in the absence of a surviving spouse-or-adult child).

If two or more relatives in the same category qualify as next of kin, each shall be considered the deceased's personal representative under this section.

- III. Notwithstanding any provision of law to the contrary, where there is no estate administration, the requestor shall provide:
  - a notarized affidavit, pursuant to Section VII below, indicating he or she is authorized to access to the patient's records;
  - (b) an authorization in compliance with the federal Health Insurance Portability and Accountability Act of 1996, 42 U.S.C. Section 1320d et seq., and the regulations implementing such act ("HIPAA"); and
  - (c) a copy of the death certificate.; and
  - (d) Proof of identity as surviving spouse (by marriage certificate) or as adult child or parent (by birth certificate or legal adoption record),

On request under this statute, a health care provider, as defined in RSA 332-I:1, II(b), shall provide the surviving spouse or next of kin with a copy of the legal access to the information contained in the medical records of the deceased, unless the deceased has indicated or any court of competent jurisdiction has ordered that the surviving spouse or next of kin not have access to those records. The health care provider will provide such records within the timeframe required under applicable law. Notwithstanding the above,

no provider shall, pursuant to this Section, release mental health records or other medical records afforded additional privacy protection under other state or federal law.

- IV. A health care provider, as defined in RSA 332-I:1, II(b), shall not be required to initiate a conversation with a patient on the subject of access to the information in a medical record by a surviving spouse or next of kin.
- V. Any provider shall be justified in relying upon the affidavit provided in accordance with Section III (a) above.
- VI. Any provider or person who in good faith releases copies of medical records in accordance with this section shall not thereby be found to have violated any criminal law or to be civilly liable to the patient, the deceased patient's estate, or to any other person.

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

#### AFFIDAVIT OF SURVIVING SPOUSE OR NEXT OF KIN

#### SEEKING ACCESS TO MEDICAL RECORDS

| Ι, _     | I,, being duly sworn, do hereby state as follows:   |  |  |  |  |  |
|----------|---|--|--|--|--|--|
| •        | As "Surviving Spouse" or "Next of Kin" to (name of "decedent"), I am requesting a copy of the decedent's legal medical record.  |  |  |  |  |  |
| •        | I acknowledge and understand that Next of Kin includes, in order of priority, the following surviving individuals:  1) Spouse   |  |  |  |  |  |
|          | 2) Adult Child by blood or adoption (only in the absence of a surviving spouse)   |  |  |  |  |  |
|          | 3) Parent (only in the absence of a surviving spouse-or-adult-child or adult child).  |  |  |  |  |  |
|          | <ul> <li>I represent that, as the surviving spouse, adult child by blood or adoption, parent (circle one) of the decedent, that I am the Surviving Spouse or Next of Kin and that there is no survivor of higher priorit</li> <li>I hereby represent and affirm that no estate administration has been initiated on behalf of the decedent and that I have not applied and been denied access to the requested records by any court.</li> <li>I declare under-subject to the criminal penaltiesy of perjury established in RSA 641:2 that the foregoing ements are true and correct.</li> </ul> |  |  |  |  |  |
|          | ate: Signed:  |  |  |  |  |  |
| STATE OF | NEW HAMPSHIRE   |  |  |  |  |  |
| COUNTY   | OF  |  |  |  |  |  |
| Si       | gned and sworn to (or affirmed) before me on the day of, 20, by (name of person).   |  |  |  |  |  |

Hon. Jeb Bradley, Chairman

Hon. Kevin Avard, Vice Chairman

Hon. James Gray

Hon, Martha Fuller Clark

Hon. Martha Hennessey

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 firm of 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 to submit this bill.

What this bill does is allow a surviving spouse, or next of kin if there is no surviving spouse, to execute a standard medical authorization with a copy of decedent's death certificate to receive a complete copy of decedent family member's medical records.

With increasing frequency we are 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 an estate. That prompts them to come to us in search of answers to provide 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: 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? These questions and need for access are not limited to investigating potential legal claims. For most of these people, the decedent has no assets requiring a probate estate to be opened and no will directing specific authority to act. There is no reason these people should be required to spend the time or money to open a full or temporary probate estate to access this information. Nor should we burden our probate courts with these additional unnecessary estate administrations.

Under the current statute, a surviving spouse is allowed <u>access</u> 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 medical authorizations 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.

Many people do not have surviving spouses to make this request. Often the closest next of kin is a parent, sibling or adult child. These people 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, 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 suggest 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 when there is no spouse. 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.

This amendment will bring our statute into 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. 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.

Thank you for your time and consideration, and I am happy to take any questions.

# Committee Report

#### STATE OF NEW HAMPSHIRE

#### SENATE

#### REPORT OF THE COMMITTEE

Wednesday, March 8, 2017

THE COMMITTEE ON Health and Human Services

to which was referred SB 61

AN ACT

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

Having considered the same, the committee recommends that the Bill

OUGHT TO PASS WITH AMENDMENT

BY A VOTE OF: 4-0

AMENDMENT # 0792s

Senator Martha Hennessey For the Committee

Kyle Baker 271-2609

#### **HEALTH AND HUMAN SERVICES**

SB 61, relative to medical records of a deceased spouse or next of kin. Ought to Pass with Amendment, Vote 4-0. Senator Martha Hennessey for the committee.

## Other Referrals

### **COMMITTEE REPORT FILE INVENTORY**

ORIGINAL REFERRAL RE-REFERRAL

|          | AS INTRODUCED TO COMMITTEE   |
|----------|--|
| $\angle$ | HEARING REPORT   |
| $\angle$ | SIGN-UP SHEET(S)   |
|          | COMMITTEE REPORT   |
| _        | PREPARED TESTIMONY AND OTHER SUBMISSIONS HANDED IN AT THE PUBLIC HEARING   |
|          | ALL AMENDMENTS (passed or not) CONSIDERED BY COMMITTEE:  - AMENDMENT # 07475 - AMENDMENT # 06965 - AMENDMENT # 07415 - AMENDMENT # |
|          | OTHER (Anything else deemed important but not listed above, such as amended fiscal notes):   |
| DATE     | DELIVERED TO SENATE CLERK  BY:  COMMUNITEE ADE   |