

**CHAPTER 108**  
**SB 61 - FINAL VERSION**

03/16/2017 0792s  
20Apr2017... 1293h

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

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ANALYSIS

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

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                         Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

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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            108:1 Medical Records of Deceased Spouse or Next of Kin. RSA 560:22 is repealed and  
2 reenacted to read as follows:

3            560:22 Medical Records of Deceased Spouse or Next of Kin. Where there is no estate  
4 administration, the surviving spouse or next of kin of the deceased may obtain the medical records  
5 of the deceased as provided in RSA 332-I:13.

6            108:2 New Section; Medical Records of Deceased Spouse or Next of Kin. Amend RSA 332-I by  
7 inserting after section 12 the following new section:

8            332-I:13 Medical Records of Deceased Spouse or Next of Kin.

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

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

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

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

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

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

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

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

24                    (3) A copy of the death certificate.

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

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1 subparagraph shall be valid within the time frame established under RSA 508:4.

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

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

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

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

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

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

15 I, \_\_\_\_\_, being duly sworn, do hereby state as follows:

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

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

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

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

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

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

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

28 Date: \_\_\_\_\_ Signed: \_\_\_\_\_

29 STATE OF NEW HAMPSHIRE

30 COUNTY OF \_\_\_\_\_

31 Signed and sworn to (or affirmed) before me on the \_\_\_\_day of \_\_\_\_, 20\_\_,  
32 by \_\_\_\_\_ (name of person).

108:3 Effective Date. This act shall take effect January 1, 2018.

Approved: June 08, 2017

Effective Date: January 01, 2018