

Amendment to SB 61

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

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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 RSA 560:22 is repealed and reenacted to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.

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

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 paragraph III.

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

VII. An affidavit in the following form 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

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 a decedent's legal medical record.

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

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

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 priority.

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.

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

Date: _____ Signed: _____

STATE OF NEW HAMPSHIRE

COUNTY OF _____

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

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