

# Privacy Rights Never Die: And Sometimes Complications Linger On

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The laws surrounding release of a deceased patient's records can lead to complex and frustrating situations in the HIM department. Just who has access rights depends on federal law, state law, and individual circumstances, illustrated by the two scenarios below.

Last summer the Office for Civil Rights proposed easing access to deceased patient records in the notice of proposed rulemaking on the HITECH privacy and security provisions. The changes would give providers the option of disclosing records to a wider range of individuals. A second modification would limit a record's protected status to 50 years following the individual's death. A final rule is expected this spring.

Meanwhile, release of information staff face challenges teasing apart intersecting privacy protections that can look like red tape to the requestor.

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## Scenario 1: Surviving Spouse

**Q:** My spouse died without creating a will and naming an executor. We had been married for 40 years, but the medical records department has denied my request for her records. Why can't I get access?

**A:** HIPAA ensures that a patient's designated personal representative or legal executor has a right to access the patient's medical records after death. When a patient dies without naming either, state law determines who by default possesses the right.

Some states allow a surviving spouse to access records automatically; others establish a chain of rights based on closest relationship to the patient. In states that do neither, a spouse has to petition a probate court to become the deceased's estate executor.

## Scenario 2: Treatment of Another Individual

**Q:** My granddaughter has been diagnosed with what may be an inherited disease. My sister may have died from the same condition, but her husband has refused to have anything to do with us. Is there a way I could get copies of my sister's records for my granddaughter's physician to review?

**A:** Yes. HIPAA allows for the disclosure of a decedent's information for the treatment of another individual. The granddaughter's physician should contact the facility that maintains the sister's records and request the records relevant to the granddaughter's treatment.

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For more questions and answers on release of decedent records, see the online exclusive, "Accessing Deceased Patient Records-FAQ."

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