

§622-57 Availability of medical records. (a) If a patient of a health care provider as defined in section 671-1, requests copies of the patient's medical records, the copies shall be made available to the patient unless, in the opinion of the health care provider, it would be detrimental to the health of the patient to obtain the records. If the health care provider is of the opinion that release of the records to the patient would be detrimental to the health of the patient, the health care provider shall advise the patient that copies of the records will be made available to the patient's attorney upon presentation of a proper authorization signed by the patient.

(b) If an attorney for a patient asks a health care provider for copies of the patient's medical records and presents a proper authorization from the patient for the release of the information, complete and accurate copies of the records shall be given to the attorney within a reasonable time not to exceed ten working days.

(c) In the case of a deceased person, a personal representative of the deceased person's estate may obtain copies of or may authorize the health care provider to release copies of the deceased person's medical records upon presentation of proper documentation showing the personal representative's authority.

If no personal representative has been appointed, the deceased person's next of kin in order of superseding priority, without court order, may obtain copies of or may authorize the health care provider to release copies of the deceased person's medical records, except as otherwise provided in this subsection and subsections (d) and (e). A deceased person's next of kin possesses superseding priority when all kin ranked higher in the order listed in the definition of "deceased person's next of kin" are deceased or incapacitated. When there are multiple persons at the same level of superseding priority, all such persons shall be entitled to request and obtain the records. The person claiming to be next of kin of a deceased person and requesting the deceased person's medical records shall submit to the medical provider from whom the records are requested, an affidavit attesting to status as next of kin with superseding priority. The medical provider may rely upon the affidavit, and in so doing, shall be immune to any claims relating to release of the medical records.

(d) Notwithstanding applicable state confidentiality laws governing the following types of specially protected health information, a health care provider may honor, in whole or in part, a request by the deceased person's next of kin for release of medical records if the medical records of the deceased person contain references pertaining to any of the following types of specially protected health information:

- (1) HIV infection, AIDS, or AIDS-related complex;
- (2) Diagnosis or treatment of a mental illness; or
- (3) Participation in a substance abuse treatment program.

(e) A health care provider shall refuse a request by the deceased person's next of kin for release of medical records if the deceased person had previously indicated to the medical provider in writing that the person did not wish to have medical records released to next of kin.

(f) Notwithstanding subsections (c) through (e), any medical records of a deceased person may be produced pursuant to a court order specifically compelling release.

(g) Reasonable costs incurred by a health care provider in making copies of medical records shall be borne by the requesting person.

(h) For the purposes of this section:

"Deceased person's next of kin" means a person with the following relationship to the deceased person:

- (1) The spouse or reciprocal beneficiary;
- (2) An adult child;
- (3) Either parent;
- (4) An adult sibling;

(5) A grandparent; and

(6) A guardian at the time of death.

"Personal representative" shall have the meaning provided in section 560:1-201. [L 1976, c 219, §15; am L 1984, c 150, §1; am L 2004, c 192, §1]

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