Disclosing Deceased Patient’s PHI Without Authorization

In certain circumstances, the HIPAA privacy regulations allow a health care organization to disclose a patient’s protected health information (PHI) without getting an authorization from the patient or her personal representative. For example, your organization generally doesn’t need an authorization to disclose PHI for the purpose of treating the patient, to get paid for providing health care services to the patient, or for health care operations. But what if the disclosure involves a patient who has died? When may you disclose PHI about the deceased patient without an authorization?

The regulations generally offer the same privacy protections for the PHI of deceased patients as they do for the PHI of living patients. This means, for example, that you generally won’t need to get an authorization from the deceased patient’s personal representative or someone else—such as the executor of the patient’s estate—to disclose the patient’s PHI if the disclosure is for treatment, payment, or health care operations. In addition, the regulations cover circumstances under which it’s okay to disclose a deceased patient’s PHI without an authorization. For example, in most situations you don’t need an authorization to disclose a deceased patient’s PHI to a coroner or medical examiner.

To help you understand when you may disclose a deceased patient’s PHI without an authorization, we give you 12 rules to follow. There’s also a Trainer’s Quiz to help you test your knowledge.

12 RULES FOR DISCLOSING DECEASED PATIENT’S PHI WITHOUT AUTHORIZATION

To help you determine when you may disclose a deceased patient’s PHI without an authorization, follow these 12 rules.

Rule #1: You Don’t Need Authorization to Disclose Deceased Patient’s PHI to Patient’s Personal Representative

The HIPAA privacy regulations require your organization to give a deceased patient’s personal representative the same rights as the patient. So a personal representative has the right to request access to—that is, inspect and obtain a copy of—the PHI that your organization maintains about the deceased patient in a designated record set. Your organization needn’t get an authorization to disclose the deceased patient’s PHI to the personal representative.

According to the regulations, a personal representative is a person who has the legal authority to act on behalf of a deceased patient or the patient’s estate. But the
Rule #2: You Don’t Need Authorization to Disclose Deceased Patient’s PHI to Health Care Provider for Treatment of Surviving Family Member

A deceased patient’s PHI may be relevant to a family member’s health care. For example, to assist in her own treatment, a surviving relative may need to know a deceased patient’s genetic information or information about hereditary diseases and risk factors. The HIPAA privacy regulations allow a health care organization to disclose a deceased patient’s PHI to another health care provider in this situation without getting an authorization to do so. In other words, if PHI about a deceased patient is relevant to the treatment of a family member, the deceased patient’s physician doesn’t need an authorization from the patient’s personal representative or anyone else to disclose that PHI to the surviving family member’s physician.

Who’s considered a family member? Your organization will have to instruct you about this. It must first check your state law to determine who qualifies as a deceased patient’s family member, notes Buckovich. But generally, a blood relative or spouse is considered to be a family member, she explains.

Example: Patient A dies from breast cancer. Patient A’s daughter is worried about her risk of getting breast cancer. She goes to Dr. X for a breast exam and cancer screening. To treat the daughter, Dr. X requests Patient A’s PHI from Patient A’s oncologist. Patient A’s oncologist doesn’t need an authorization to disclose Patient A’s PHI to Dr. X for the treatment of Patient A’s daughter.

Rule #3: In General, You Don’t Need Authorization to Disclose Deceased Patient’s PHI to Get Paid for Treating Patient

Your organization doesn’t need to get an authorization from the patient’s personal representative or anyone else to disclose a deceased patient’s PHI to get paid for providing health care services to the patient. Nor does an organization—like a health plan or payor—need an authorization when it discloses a deceased patient’s PHI so it can pay for health care services provided to the patient.

Example: Patient A has open-heart surgery at XYZ Heart and Lung Center. The patient dies. The hospital discloses Patient A’s PHI to his health insurer to seek reimbursement for services provided to Patient A. XYZ Heart and Lung Center doesn’t need an authorization from the patient’s personal representative or anyone else to disclose Patient A’s PHI for this payment purpose. Similarly, Patient A’s insurer doesn’t need an authorization to disclose PHI to pay XYZ for the health care services provided to Patient A.
Rule #4: In General, You Don’t Need Authorization to Disclose Deceased Patient’s PHI for Health Care Operations

Your organization generally may disclose a patient’s PHI for health care operations—either for its own purposes or those of another health care organization receiving the PHI—without getting an authorization. According to the guidance on the HIPAA privacy regulations issued by the Department of Health and Human Services (HHS) in December 2002, “health care operations include administrative, financial, legal, and quality improvement activities that are necessary for a health care organization to run its business and support the core functions of treatment and payment.” For example, it’s part of a hospital’s health care operations to hire an attorney to defend against a lawsuit brought by a former patient.

Example: Patient A dies at XYZ Hospital. Patient A’s estate then sues the hospital for malpractice for improperly administering anesthesia during an outpatient procedure. XYZ Hospital needn’t get an authorization from the patient’s personal representative or anyone else to disclose Patient A’s PHI to its attorneys.

Rule #5: You Don’t Need Authorization to Disclose Deceased Patient’s PHI Through Your Directory

Unless a patient has opted out of your organization’s facility directory, you may disclose the patient’s general medical condition—including the fact that a patient has died—as part of its facility directory information, explains health information consultant Mary D. Brandt. But you may disclose this PHI only to someone who asks for the patient by name.

Trainer Says: Your organization should have a policy that bars disclosure of a patient’s death through a facility directory until family members have been notified, Brandt says. If that’s the case, someone handling facility directory inquiries could, for example, forward inquiries about a recently deceased patient to the nurse’s station in the department where the patient was being treated, she suggests. If enough time has passed to allow the patient’s family to be notified of the patient’s death (four to six hours, for example), the information could then be released through the facility directory.

Rule #6: You Don’t Need Authorization to Disclose Deceased Patient’s PHI to Law Enforcement Officials if You Suspect Criminal Activity

If your organization suspects that a patient’s death may have resulted from criminal activity (say, a homicide or overdose of narcotics or illegal drugs), your organization may disclose the patient’s PHI without an authorization to law enforcement officials to alert them to the patient’s death. In fact, your state law may require you to do so. Permitting disclosures of PHI in situations where criminal activity is suspected allows law enforcement officials to begin their investigation into the death more rapidly and increases the likelihood of success, according to the preamble to the HIPAA privacy regulations.

Example: A woman with multiple head injuries is admitted to a hospital’s emergency department. The woman is treated but dies. The emergency department believes that the woman’s injuries and death resulted from an assault. The emergency department may contact law enforcement officials to inform them that the woman’s death may have involved criminal activity.

Rule #7: You Don’t Need Authorization to Disclose Deceased Patient’s PHI to Authority When Law Requires It

From time to time, a state or other law (say, the federal Public Health Service Act) will require your organization to disclose a deceased patient’s PHI to an agency authorized by law to collect and receive PHI for public health purposes. This generally involves state laws that require the reporting of vital events—such as death or contagious or infectious diseases—to a specific public health agency (like a state vital statistics department). If your state has such mandatory reporting laws, your organization may disclose a deceased patient’s PHI (including the fact that the patient has died) to the authorized public health agency. You don’t need an authorization from the deceased patient’s personal representative or anyone else. If your organization itself performs the duties of a public health authority, it may use and disclose the patient’s PHI for public health purposes.

The December 2002 HHS guidance gives the following examples of a public health authority:

- State and local health departments;
- U.S. Food and Drug Administration;
- Centers for Disease Control and Prevention (CDC); and
- U.S. Occupational Safety and Health Administration.

Trainer Says: Occasionally, a public health authority may ask your organization to disclose a deceased patient’s PHI to a foreign government agency that’s acting in collaboration with the public health authority. If so, you may disclose the deceased patient’s PHI to the foreign government agency without an authorization from the patient’s personal representative or anyone else, according to the December 2002 HHS guidance. For example, if the CDC asks your organization to notify a public health authority of China when a patient dies from severe acute respiratory syndrome, you may do so without an authorization.
Rule #8: In Certain Situations, You Don’t Need Authorization to Disclose Deceased Patient’s PHI to Coroner or Medical Examiner

Your organization may disclose PHI when it’s needed by a coroner or medical examiner for the purpose of identifying a deceased patient, determining a cause of death, or other duties as authorized by law. Your organization doesn’t need to get an authorization from the patient’s personal representative or anyone else. If your organization itself performs the duties of a coroner or medical examiner, it may use the patient’s PHI for these same purposes. For example, a public hospital that performs medical examiner functions may use a deceased patient’s PHI to determine the cause of death.

**Example:** A man dies in a fire. To confirm the man’s identity, the coroner requests a copy of the man’s dental records from his dentist. The HIPAA privacy regulations allow the dentist to disclose this PHI to the coroner.

**Trainer Says:** If a patient’s medical record includes the PHI of another person, your organization needn’t delete the PHI of this other person before disclosing the record to a coroner or medical examiner, according to the preamble to the HIPAA privacy regulations.

**Example:** Patient A gives birth to Patient B at XYZ Hospital. Patient B dies. To determine the cause of Patient B’s death, the medical examiner asks XYZ Hospital for his medical record. Patient B’s medical record includes Patient A’s PHI (for example, prenatal test results). XYZ Hospital needn’t get an authorization to disclose Patient B’s PHI to the medical examiner. Also, XYZ Hospital needn’t delete Patient A’s PHI from Patient B’s medical record before disclosing it to the medical examiner.

Rule #9: In Certain Situations, You Don’t Need Authorization to Disclose Deceased Patient’s Psychotherapy Notes to Coroner or Medical Examiner

Similarly, your organization doesn’t need an authorization to disclose psychotherapy notes to a coroner or medical examiner who needs the notes to identify a deceased patient or to determine the patient’s cause of death—for example, when suicide is suspected (see “Use and Disclosure of a Patient’s Psychotherapy Notes Without the Patient’s Authorization,” Trainer, April 2002).

**Example:** Patient A’s body is found floating in a river. To help determine whether the patient’s death was a homicide, suicide, or accident, the local medical examiner asks Patient A’s therapist to disclose the patient’s PHI, including psychotherapy notes about the patient. The therapist may disclose Patient A’s psychotherapy notes and other PHI to the medical examiner without an authorization.

But beware. Even though the HIPAA privacy regulations don’t require an authorization to disclose psychotherapy notes to a coroner or medical examiner, some state laws impose additional conditions before a health care organization may make such a disclosure. For example, California requires that the organization first get a written request from the coroner or medical examiner. Your organization should let you know if your state has additional conditions.

Rule #10: You Don’t Need Authorization to Disclose Deceased Patient’s PHI to Funeral Director

A health care organization may disclose PHI to a funeral director as needed to carry out the director’s duties regarding the deceased patient, explains Buckovich. What this means may vary by state. For example, in certain states, funeral directors are required by law to complete death certificates. If that’s the case in your state, you don’t need an authorization to disclose the deceased patient’s PHI to the funeral director.

Certain medical conditions—like contagious diseases or missing organs—will also affect how the funeral director carries out his duties. For example, some states require cremation when death is caused by a contagious or infectious disease (like tuberculosis). If that’s so in your state, you don’t need an authorization to disclose the deceased patient’s PHI—including the fact that the patient had a contagious disease—to the funeral director for the funeral director to carry out this duty.

Your organization should let you know what your state law requires.

You also don’t need an authorization to disclose to a funeral director that a deceased patient has donated an organ or tissue to an organ procurement organization or tissue bank (see Rule #11, below). That’s because the missing organ or tissue will affect the embalming process.

And you don’t need an authorization to disclose a patient’s PHI to a funeral director before, and in reasonable anticipation of, the patient’s death if such disclosure is necessary. For example, funeral directors are often contacted when death is foreseen to begin the process of planning funeral arrangements and to prevent unnecessary delays.

Rule #11: You Don’t Need Authorization to Disclose Deceased Patient’s PHI to Organ Procurement Organization

Your organization doesn’t need an authorization to disclose a deceased patient’s PHI to an organ procurement organization—that is, an organization involved in the procurement, banking, or transplantation of cadaveric organs, eyes, or tissue. When a patient dies without having expressed a wish to donate organs, eyes, or tissues, a hospital will typically disclose the patient’s PHI to organ and
tissue donation and transplantation organizations to determine if the patient is a suitable candidate for donation. This is generally done before seeking consent for donation from the patient’s family, according to a policy memorandum issued by the California Office of HIPAA Implementation. This protects the patient’s family from the stress of considering whether the patient should be a donor before a determination has been made that such a donation would be medically suitable, the memorandum explains.

Example: Patient A dies at XYZ Hospital. The hospital contacts ABC Organ Donation Registry to determine whether the patient may be a candidate for organ donation. It discloses Patient A’s PHI, including age, weight, blood type, and heart size. XYZ Hospital needn’t get an authorization from Patient A’s personal representative before disclosing his PHI to ABC Organ Donation Registry to facilitate the transplantation of Patient A’s organs.

---

**Rule #12: In Certain Situations, You Don’t Need Authorization to Disclose Deceased Patient’s PHI for Research Purposes**

Normally, your organization needs a special research authorization to disclose a patient’s PHI for research purposes, says Brandt. But there’s an exception if the research involves a deceased patient’s PHI, she points out. The HIPAA privacy regulations permit a health care organization to disclose a deceased patient’s PHI for research purposes without an authorization if the organization gets two representations—that is, statements—from the researcher. They are:

- The PHI is necessary for research purposes. To meet this requirement, the researcher should provide a signed representation. Your organization may also require approval of the research study by its Institutional Review Board, although the HIPAA privacy regulations don’t require this. Someone in your organization will tell you whether this additional approval is needed.

- If the patient didn’t die at your facility, your organization may require that the researcher provide either a valid death certificate or a signed statement that the person whose PHI is being sought is dead, says Brandt. If the patient died in your organization’s custody, you won’t need this documentation, she explains.

Your organization could develop a form that researchers can use—or are required to use—to request a deceased patient’s PHI for research purposes, suggests Buckovich. Your organization should keep the signed form, as it would any other documentation that authorizes the release of a patient’s PHI. Your organization could also use the form when requesting a deceased patient’s PHI for research purposes from another organization.

**Trainer Says:** Even though the HIPAA privacy regulations don’t restrict who may receive a deceased patient’s PHI for research purposes, your state law may. For example, some states limit disclosures for research using deceased patients’ PHI to nonprofit educational institutions. Someone in your organization will tell you if your state law limits to whom you may disclose PHI for research purposes.

---

**AT A GLANCE**

---

**12 Rules for Disclosing Deceased Patient’s PHI Without Authorization**

1. You Don’t Need Authorization to Disclose Deceased Patient’s PHI to Patient’s Personal Representative
2. You Don’t Need Authorization to Disclose Deceased Patient’s PHI to Health Care Provider for Treatment of Surviving Family Member
3. In General, You Don’t Need Authorization to Disclose Deceased Patient’s PHI to Get Paid for Treating Patient
4. In General, You Don’t Need Authorization to Disclose Deceased Patient’s PHI for Health Care Operations
5. You Don’t Need Authorization to Disclose Deceased Patient’s PHI Through Your Directory
6. You Don’t Need Authorization to Disclose Deceased Patient’s PHI to Law Enforcement Officials if You Suspect Criminal Activity
7. You Don’t Need Authorization to Disclose Deceased Patient’s PHI to Authority When Law Requires It
8. In Certain Situations, You Don’t Need Authorization to Disclose Deceased Patient’s PHI to Coroner or Medical Examiner
9. In Certain Situations, You Don’t Need Authorization to Disclose Deceased Patient’s Psychotherapy Notes to Coroner or Medical Examiner
10. You Don’t Need Authorization to Disclose Deceased Patient’s PHI to Funeral Director
11. You Don’t Need Authorization to Disclose Deceased Patient’s PHI to Organ Procurement Organization
12. In Certain Situations, You Don’t Need Authorization to Disclose Deceased Patient’s PHI for Research Purposes
We’ve described the situations in which your organization may disclose a deceased patient’s PHI without getting an authorization from the patient’s personal representative or anyone else. Now let’s see if you can apply the 12 rules we’ve provided to real-life situations that health care organizations like yours are likely to encounter. The TRAINER’s Quiz, below, will give you an opportunity to test your knowledge. Take it, and see how well you do.

INSTRUCTIONS: Analyze the questions below according to the 12 rules for disclosing a deceased patient’s PHI without an authorization. Circle the answer you think is right. The correct answers (with explanations) appear after the quiz. Good luck!

**QUESTION #1**

Patient A is critically injured in a car accident and is rushed unconscious to XYZ Hospital. The patient is placed on life support and declared brain dead. She hadn’t previously indicated whether she wished to donate organs, eyes, or tissues. Before disconnecting life support, XYZ Hospital calls ABC Organ Procurement Registry to determine if Patient A is a suitable candidate for donation. True or false: XYZ Hospital needn’t get an authorization from Patient A’s personal representative before disclosing Patient A’s PHI to ABC Organ Procurement Registry.

a. True.

b. False.

**QUESTION #2**

Patient A is admitted to XYZ Hospital with suspicious bruises on her neck and body and dies. The hospital suspects that the patient was strangled. True or false: XYZ Hospital may disclose Patient A’s PHI to law enforcement officials without an authorization.

a. True.

b. False.

**QUESTION #3**

Patient A is admitted to XYZ Hospital’s psychiatric ward and the next day is found hanging in his room. To help determine whether Patient A’s death was a homicide or suicide, the medical examiner asks XYZ Hospital for Patient A’s PHI, including psychotherapy notes. True or false: XYZ Hospital can’t disclose Patient A’s psychotherapy notes to the medical examiner without an authorization.

a. True.

b. False.

**QUESTION #4**

Patient A dies from colon cancer at age 49. Patient A’s adult son, Patient B, goes to Dr. X for a yearly screening for colon cancer. Dr. X requests Patient A’s medical record from Patient A’s physician, Dr. Y. True or false: Dr. Y needs an authorization from Patient A’s personal representative to disclose Patient A’s PHI to Dr. X.

a. True.

b. False.

**QUESTION #5**

State law requires XYZ Hospital to report all patient deaths to State Vital Statistics Registry. True or false: XYZ Hospital may disclose its deceased patients’ PHI to State Vital Statistics Registry without getting authorizations from the patients’ personal representative.

a. True.

b. False.
TRAINER’S ANSWERS & EXPLANATIONS

QUESTION #1
Correct answer: a
Reason: Rule #11 applies here.
Rule #11: You Don’t Need Authorization to Disclose Deceased Patient’s PHI to Organ Procurement Organization

A health care organization (like XYZ Hospital here) may disclose a deceased patient’s PHI to an organ procurement organization (like ABC Organ Procurement Registry here) without an authorization. This is allowed to spare the family the stress of deciding whether to donate a deceased patient’s organs before it’s determined if donation is medically suitable. So XYZ Hospital didn’t need to get an authorization from the patient’s personal representative or anyone else to make the disclosure.

Wrong answer explained:
b. As stated above, XYZ Hospital isn’t required to get an authorization before disclosing a deceased patient’s PHI to an organ procurement organization.

QUESTION #2
Correct answer: a
Reason: Rule #6 applies here.
Rule #6: You Don’t Need Authorization to Disclose Deceased Patient’s PHI to Law Enforcement Officials if You Suspect Criminal Activity

When, as here, a health care organization suspects that a patient’s death is the result of a crime, it may, without an authorization, disclose the deceased patient’s PHI to law enforcement officials to alert officials to the patient’s death. So XYZ Hospital may disclose Patient A’s PHI to law enforcement officials without getting an authorization from Patient A’s personal representative or anyone else.

Wrong answer explained:
b. Because XYZ Hospital suspects that Patient A’s death was the result of criminal activity, it’s okay for it to disclose Patient A’s PHI to law enforcement officials without an authorization.

QUESTION #3
Correct answer: b
Reason: Rule #9 applies here.
Rule #9: In Certain Situations, You Don’t Need Authorization to Disclose Deceased Patient’s Psychotherapy Notes to Coroner or Medical Examiner

The HIPAA privacy regulations allow a health care organization (like XYZ Hospital here) to disclose a deceased patient’s PHI, including psychotherapy notes, to a medical examiner who needs them to determine the patient’s cause of death. So XYZ Hospital doesn’t have to get an authorization from the patient’s personal representative or anyone else before disclosing Patient A’s psychotherapy notes to the medical examiner.

Wrong answer explained:
a. As stated above, XYZ Hospital may disclose a deceased patient’s PHI, including psychotherapy notes, to a medical examiner to determine the cause of death without getting an authorization to do so.

QUESTION #4
Correct answer: b
Reason: Rule #2 applies here.
Rule #2: You Don’t Need Authorization to Disclose Deceased Patient’s PHI to Health Care Provider for Treatment of Surviving Family Member

Patient A and Patient B are related, and Patient A’s PHI is relevant to Patient B’s health care. In this case, the HIPAA privacy regulations let Patient A’s physician, Dr. Y, disclose Patient A’s PHI to Dr. X so that Dr. X may treat Patient B. Dr. Y needn’t get an authorization from Patient A’s personal representative or anyone else to make the disclosure.

Wrong answer explained:
a. As stated above, it’s okay for Dr. Y to disclose Patient A’s PHI to Dr. X for the treatment of Patient B.
QUESTION #5
Correct answer: a

Reason: Rule #7 applies here.

Rule #7: You Don’t Need Authorization to Disclose Deceased Patient’s PHI to Authority When Law Requires It

When state law requires it, a health care organization (like XYZ Hospital here) may disclose a deceased patient’s PHI (including the fact that the patient has died) to the public health agency authorized by law to collect or receive reports on vital events (like State Vital Statistics Registry here). XYZ Hospital doesn’t need an authorization from the deceased patient’s personal representative or anyone else to do so.

Wrong answer explained:

b. As stated above, it’s okay for XYZ Hospital to disclose its deceased patients’ PHI to State Vital Statistics Registry.