

## Myth Busters

### **MYTH: HIPAA prevents patients and families from accessing PHI.**

**FACT:** HIPAA allows patients and families to access PHI when certain requirements have been met.

The Health Insurance Portability and Accountability Act (HIPAA) Privacy Rule allows a patient and family members to access the patient's protected health information (PHI) if certain requirements are met. Protected health information refers to an individual's individually identifiable health information that may include information about an individual's physical or mental health condition; health care services for the individual, or payment for health care services. Protected health information may either directly identify an individual or provide information that could be used to identify an individual.

The Privacy Rule requires covered entities (such as a health care provider or health plan) to disclose PHI in two situations. Importantly, one of those two required disclosures is to the individual or personal representative (such as a family member).<sup>1</sup>

An individual also has the right to review and access his or her PHI in a covered entity's "designated record set."<sup>2</sup> A designated record set includes items such as a patient's medical file or a health insurance claim. However, covered entities may restrict an individual's right of access to his or her PHI in certain specific circumstances, such as when a health care provider believes that access could cause harm to the individual or other person.

An individual also may provide informal permission to a covered entity to disclose PHI to the individual's family, friends, or other people the individual identifies as relevant to his or her care. A covered entity may obtain this permission by either asking the individual directly, or giving the individual the opportunity to agree, acquiesce or object.<sup>3</sup>

Specifically, the HIPAA Privacy Rule allows a covered entity to disclose an individual's PHI to a family member involved in the individual's care or payment for their care, without the individual's written authorization. However, in most circumstances the individual should be given an opportunity to agree with the disclosure, restrict the disclosure, or provide oral agreement to the disclosure.<sup>4</sup> In addition, a provider may rely on his or her professional judgment to disclose PHI to an individual's family members (e.g., if the individual is unable to speak for her herself).

Family members also may access PHI of deceased individuals. The HIPAA Privacy Rule allows a covered entity to disclose a decedent's health information to family members or others who were involved in the decedent's health care or payment for care prior to death, unless doing so would be inconsistent with any prior expressed preference of the individual known to the covered entity.<sup>5</sup> Therefore, unless an individual has explicitly denied permission to disclose PHI to his or her family, a patient's family or relatives can be given to access to his or her PHI upon their death.

For more information on state and federal laws related to privacy, see [www.healthinfo.org/topics/63](http://www.healthinfo.org/topics/63). For more information about HIPAA, see [www.healthinfo.org/federal-law/HIPAA](http://www.healthinfo.org/federal-law/HIPAA).

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<sup>1</sup> 45 C.F.R. § 164.502(a).

<sup>2</sup> 45 C.F.R. § 164.524.

<sup>3</sup> 45 C.F.R. § 164.510(b).

<sup>4</sup> 45 C.F.R. § 164.510(b)(1).

<sup>5</sup> 45 C.F.R. § 164.510(b)(5).