 Saskatchewan Health Authority	Title: Disclosure of Deceased Personal Health Information after Death Role performing Activity: Health Information Management Practitioner or Designate	
<h1>WORK STANDARD</h1>	Location: SHA Facilities	Department/Unit: Privacy & Health Information Management
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	Related Policies/Documentation Request For Access to Personal Health Information form Disclosure of PHI for Genetic Disease When Individual is Deceased WS Disclosure of PHI after Death letter templates	

Work Standard Summary: To respect the confidentiality of the patient’s health record even after death and to limit the release to those who are authorized to see the information.

The Health Information Protection Act (HIPA) applies to information for 30 years following death.

As per clause 3(2)(b) HIPA does not apply to:

- (b) personal health information about an individual who has been dead for more than 30 years;

Clause 27(4)(e) of HIPA states that:

Where the disclosure is being made to the personal representative of the subject individual for a purpose related to the administration of the subject individual’s estate; or

Where the information relates to circumstances surrounding the death of the subject individual or services recently received by the subject individual, and the disclosure:

- is made to a member of the subject individual’s immediate family or to anyone else with whom the subject individual had a close personal relationship; **and**
- is made in accordance with established policies and procedures of the trustee, or where the trustee is a health professional, made in accordance with the ethical practices of that profession.

Subclause 27(4)(e)(i) of HIPA permits a trustee to disclose personal health information to the personal representative of the subject individual for a purpose related to the administration of the subject individual’s estate.

Subclause 27(4)(e)(ii) of HIPA permits a trustee to disclose circumstances surrounding death or services recently provided to the subject individual.

Definitions

Immediate family is defined as family members listed in subsection 15(1) of *The Health Care Directives and Substitute Health Care Decision Makers Act* and who had a close personal relationship with the deceased. If the Health Information


Management Practitioner (HIMP) or designate is unsure if the family member fits this definition, refer to the escalation process in the “Roles and Responsibilities” section of the [Access and Disclosure of Personal Health Information](#) procedure for support.

A **close personal relationship** shall be determined by the HIMP or designate by having a conversation with the applicant to understand their relationship with the deceased. If the relationship is unclear, the HIMP or designate shall refer to the escalation process in the “Roles and Responsibilities” section of the [Access and Disclosure of Personal Health Information](#) procedure for support.

Services recently received is defined as any visits related to the cause of death within 90 days prior to the date of death.

Essential Tasks:	
1.	<p>The individual making the request (the applicant) shall submit a request in writing, either on a <i>Request For Access To Personal Health Information</i> form or on another paper with sufficient information to respond to the request, to the Health Information Services department or to the facility where the personal health information is located.</p> <p><u>Administration of the Estate:</u> If the applicant is the executor of the estate or the court appointed representative, they are only entitled to information related to insurance or issues surrounding the estate. The request must include proof that the applicant is the executor of the estate or the court appointed administrator (e.g. provide portion of the Last Will and Testament that names them the executor, or documentation from the court that names the applicant the court appointed administrator).</p> <p>The request must include the reason why the information being requested is necessary for the purpose of administering the estate (e.g. a letter from a life insurance company requesting specific health information of the deceased in order to evaluate the insurance policy).</p>
2.	<p>The HIMP or designate will review the health record of the deceased to determine if there is any notation that the deceased previously stated that specific family members were not to be informed of their personal health information. If the health record contains this type of documentation then the applicant’s request is denied.</p> <p>The HIMP or designate is authorized to release PHI related to the care or issues surrounding death within the 90-day period with standard release protocol applying for Mental Health records, and redaction of PHI about other identifiable persons. Refer to the work standard: Access to Information (ATI) – Provider Review</p> <p><u>Administration of the Estate:</u> Individuals who were expressly identified by the patient, verbally or in writing, as to not be included during the course of care will not be permitted access to records following death unless the applicant is the executor or the court appointed representative and the information is limited to insurance or issues surrounding the estate.</p>
3.	<p>If there is no documentation in the health record of the deceased prohibiting disclosure to the individual making the request, evaluate what portion of the health record would be appropriate to disclose, following the data minimization principle and respecting the patient’s privacy.</p>

4.	If the applicant is acknowledged as having a close personal relationship or to be immediate family with a close personal relationship, they have access to only information surrounding the death or services recently received related to death.
5.	<p>The data minimization principle should be followed where the least amount of information is disclosed that is sufficient for the request. This includes reviewing the health record to sever information that would not be relevant to circumstances surrounding death or recently provided services.</p> <p><u>Administration of the Estate:</u></p> <p>The HIMP or designate shall provide the minimum amount of information necessary to fulfill what is required for the order for the executor of the estate or the court appointed administrator to administer the estate.</p> <p>When requested by the applicant, the HIMP or designate shall send the information directly to a third party (ex. insurance company).</p>
6.	The HIMP or designate shall document on the <i>Request For Access To Personal Health Information</i> form what is disclosed, and file the form in the health record of the deceased.
7.	Applicants that do not have a valid reason that pertains to the administration of the estate can be asked if they would like to make a request for the circumstances surrounding death if the applicant is an immediate family member or had a close personal relationship with the deceased.
8.	<p>For requests for information related to the individual’s death outside of 90 days prior to the date of death, follow the escalation process in the “Roles and Responsibilities” section of the Access and Disclosure of Personal Health Information procedure for support, if necessary.</p> <p>If the records relate to a chronic condition, it may be determined to release the records to support a claim or concern.</p> <p>If the request for information relates to genetic information of the deceased, refer to the work standard Disclosure of Personal Health Information for Genetic Disease When Individual is Deceased.</p>
9.	<p>Considerations for Release by the HIMP or designate</p> <p>The applicant must provide a reason for the request.</p> <p>When considering whether or not to disclose the PHI requested by the applicant (either information from the past 90 days, or beyond 90 days), consider these guiding questions to the applicant:</p> <ul style="list-style-type: none"> - Is the request for PHI related to the settlement of the deceased’s estate, or for insurance purposes? - Are they looking for a report or health records related to a patient safety incident? (Note that these reports are not filed on the patient chart, however the facts related to the incident are charted.) - Would the applicant benefit from meeting with a care provider to review and understand the health record? If the applicant is permitted access to the chart, provide them the opportunity to review the chart with a health care provider so that they can identify which records they would like copies of.
10.	Fees are charged according to the Health Information Services fee schedule .

9.	<p><u>Requests from Third Parties</u></p> <p>Requests for personal health information of deceased individuals from third parties must be signed by the executor to the estate, or the court appointed administrator. An executor named in a Last Will and Testament is entitled to administer an estate. If there is no Last Will and Testament, the closest relative is entitled to apply to the court to become the administrator of the estate. Proof of authority as executor / court appointed administrator must be provided (copy of the death certificate, or copy of the will or other legal document such as a grant of probate or letters of administration showing that they are the legal representative).</p> <p>Further information regarding executors or administrators in the Government of Saskatchewan website "Beneficiaries".</p>
10.	<p><u>Response Letter Templates</u></p>  <p>The PHIM or designate shall use one of the following letter templates for the response to the applicant.</p> <p><u>Disclosure of Deceased PHI After Death – Approved:</u> use this letter when release of the requested record is fully approved.</p> <p><u>Disclosure of Deceased PHI After Death – No Record:</u> use this letter when the requested record does not exist.</p> <p><u>Disclosure of Deceased PHI After Death – Fully or Partially Denied:</u> use this letter when the request is fully or partially denied because at least one of the following conditions apply:</p> <ul style="list-style-type: none"> • The applicant has not proven that they are a family member or a close personal friend of the deceased; • The applicant has not proven that they are a personal representative of the deceased and requesting the PHI for a purpose related to the administration of the subject individual’s estate; or • The requested information is more than 90 days since the date of death and the request is not related to supporting a patient safety claim or concern.