

Overdose Fatality Review Teams: Next of Kin Information

Do we need signed consent to share information from the decedent's friends or family?

Response

No. Health information known firsthand by a decedent's family, friends, next of kin, or other loved ones is not subject to the Health Insurance Portability and Accountability Act (HIPAA), 42 U.S.C. § 290dd-2, or 42 C.F.R. Part 2. This is because these individuals are neither HIPAA-covered entities nor Part 2 programs. Therefore, the OFR team is free to speak with any of the decedent's family or friends without needing a release or consent form, and any information received by the team from a decedent's family or friends can and should be shared freely with the rest of the OFR team.

If, however, the OFR team contacts these individuals for the additional purpose of obtaining consent to receive medical, behavioral health, or educational records from other providers, then the team should provide a consent or authorization form for signature by the appropriate next of kin or personal representative for that purpose.

Even though it is not legally necessary to get written consent from the decedent's family or friends to share information obtained from those individuals, the OFR team should provide an informational document to any family members or friends with whom they are speaking. The document should set out:

- The purpose of the OFR team;
- The information the team seeks and how that information will be used by the team;
- Who will have access to the information;
- The confidentiality provisions in place to protect the information; and
- The OFR team's contact information.

Finally, family or friends may ask for a report about the OFR team's findings. OFR teams may share any general recommendations with friends and family that include their loved one's information. However, the confidentiality agreement signed by OFR team members should prohibit disclosing any specific information or report about a case review to any person who is not a member of the OFR team, including family and friends.

PRACTICE TIP

OFR teams can speak with family members and friends without written consent and can get written consent from family members to obtain records from other providers.

Definitions

HIPAA-covered entity [45 C.F.R. § 160.103]: Health plan, health care clearinghouse, or a health care provider who transmits any health information in electronic form in connection with a transaction covered by HIPAA.

Part 2 program [42 C.F.R. §§ 2.11 and 2.12(b)]: Individual or entity that holds itself out as providing, and actually provides, assessment, treatment, or referral to treatment for SUD and receives federal assistance (as defined by regulation). Most SUD treatment providers qualify as Part 2 programs.