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The Unanticipated Hindering of Medicolegal Death Investigation by the HHS Attestation Rule for the Release of Reproductive Health Medical Records

The Consortium of Forensic Science Organizations (CFSO) represents thousands of medical examiners and coroners (MECs) who do the mandated death investigations in the United States.

Recently, a new rule was issued by the Health and Human Services (HHS) requiring an attestation by MECs for access to protected health information that is potentially related to reproductive health care (45 CFR 164.509). It requires medical examiners and coroners (MECs) to sign an attestation form that states the requested use or disclosure of an individual's medical records is not for certain prohibited purposes.

These prohibited purposes include identifying or conducting a criminal, civil, or administrative investigation into any person for the mere act of seeking, obtaining, providing, or facilitating lawful reproductive health care. This new rule has led to unintended consequences that have hindered medicolegal death investigation across the U.S.

This additional attestation requirement is not needed for MECs as there is a standard HIPAA exemption for disclosure of medical records to MEC (45 CFR 164.512 (g)(1)) and penalties already apply for improper release of protected health information. Although this attestation should allow MECs still to obtain this health information, this new requirement has caused confusion among health care providers and resulted in the loss of timely access to medical records in some jurisdictions. Simply put, without this access, MECs will not be able to perform proper death investigations.

MECs need medical information in a timely fashion to facilitate organ donation, make identifications, obtain next-of-kin contact information, investigate homicides, and public health risks. The delay in obtaining these records impedes the ability of MECs to fulfill their statutory duties. For example, most organ donors are dying from trauma that results in an MEC investigation. MECs must investigate these deaths prior to donation to ensure that the donation will not impair a subsequent death investigation (e.g., a homicide). MECs review medical records in real time to make these determinations. If they must wait hours or days to obtain this information, organ donor teams are likely to miss the transplantation window. This also results in delays for families to proceed with funeral arrangements and collect insurance benefits by delaying the certification of the death.

The requirement to use this form has resulted in hospitals blocking MECs' access to the electronic health record and requiring a completed attestation for every death investigation. With this new rule, records must be requested by submitting a form to the medical records department. Submitting this form further burdens an already overworked and understaffed MEC profession. It also puts a burden on medical records departments, and it can take them hours or days to respond to these requests. Large offices request thousands of medical records per year. The "few minutes" that it takes to complete, send, and then document receipt of this form adds up to significant delay.

We are inquiring about further guidance/clarification that may help this situation. For example, by stating that MEC are still entitled to these records and that it would be sufficient for MEC to do a single attestation once per year per hospital. The model HHS form appears to allow for this grouping option as it includes wording for a "class of individuals."