

Access to Medical Records by Family Members

ADDITIONAL RESOURCES

Contact your Service Coordinator or Support Coordinator for more information.

For more information on topics discussed in this fact sheet, contact

The Arc of Frederick County.

Phone: 301-663-0909

www.arcfc.org



Sometimes a family member or close friend of an adult with a disability has difficulty getting medical records released from a medical facility like a hospital or doctor's office. Generally, records are released if the person with a disability can understand that the records are private but that he or she wants the records released to another person, and the person with a disability authorizes the release. Also, records are generally released if the person with a disability has previously signed a valid advance directive that authorizes the family member or friend to act as his or her "health care agent."

However, sometimes there is more difficulty if the person with a disability does not have the ability to understand and consent to the release of records, and there is no health care agent authorized by an existing advance directive. However, there can still be legal authority to authorize the release medical information and records without involving a court or guardianship.

Maryland's Surrogate Decision Making law authorizes a family member or close friend to make many health decisions. That person is entitled to review the current medical information in order to understand the situation, evaluate proposed medical treatments and provide informed consent. (See the Fact Sheet on Medical Decision Making for a more thorough discussion of Surrogate Decision Making).

There are times when a family member or close friend may need access to health care records that may not involve the current health care facility or proposed treatment. For example, they may need old records from prior facilities or doctors. Sometimes medical facilities will say that The Health Insurance Portability and Accountability Act (HIPAA) prevents the medical facility from releasing these records without a guardianship order.

However, HIPAA allows the release of records to a personal representative, which can include a family member or close friend acting as a surrogate decision maker. HIPAA regulations state that if a person has legal authority to act on behalf of an individual in making decisions related to healthcare, a health care provider or facility must treat the person as a “personal representative” under HIPAA and release the appropriate records. This regulation is found at 45 CFR 164.502(g)(1) and (2). Since Maryland Surrogate Decision Making law generally allows a family member or close friend to authorize health care decisions for a person who is unable to provide informed consent, the family member or close friend who has this authority should also be entitled to access to medical records and information. This means that the medical records and information can be released to a person authorized to make health care decisions under Maryland’s Surrogate Decision Making law, without a guardianship order or court involvement.

This information is provided as general information only and is not to be considered as legal advice. If you have questions regarding this information or need help in obtaining medical records, you should consult an attorney about your particular situation.