



Why Won't the Doctor Tell Me What's Going On With My Child?

By Carina Lyn Roselli, Esq.

Do you have a child who's 18 or more years old who you still think of as your little boy or girl? Are they heading off to college in the fall or otherwise leaving your household? Are you comfortable with them making independent decisions about their medical care?

If your answers to those questions were all yeses and then a no, then you need to read on.

The Law

When your child was a minor (under 18 years old), you had the legal right to access their medical records (Virginia Code § 20-124.6). When your child reached the age of 18 years old, they became a legal "adult" and you lost your right to access immediately. Your now "adult" child's personal health information is now protected by the Health Insurance Portability and Accountability Act (HIPAA).

HIPAA is a federal law enacted to protect your healthcare information from unauthorized access. Under HIPAA rules, healthcare providers are not legally permitted to disclose a patient's medical record or even discuss their health status or treatment recommendations with anyone—even the parents of an adult child, and even if the adult child is still economically dependent on the parent and is being treated under the parent's health insurance policy. Virginia law agrees (Virginia Code § 32.1-127.1:03 Health records privacy).

What if your adult child gives their permission?

Under HIPAA's Privacy Rule, healthcare providers are permitted to share medical information with family members (or other people involved in the patient's care or payment for care) after the patient agrees or, when given the overt opportunity, does not object. Consent may be given verbally or in writing (some providers may require it be in writing to have it on record).

It can be that simple—but what if it isn't?

What if your adult child is incapacitated and unable to speak or sign their consent?

In cases where the adult child is mentally or physically incapacitated, healthcare providers are permitted to disclose a patient's location, general condition, or death to notify family members, personal representatives, or other persons responsible for the care of their patient (hereinafter cumulatively referred to as "family members"). But the healthcare provider must make a judgement call first.

Healthcare providers may only share their patient's information with family members if the healthcare provider determines—based on their professional judgment—that the disclosure is in the best interest of their patient.

HIPAA specifically states that a healthcare provider is not required to share a patient's information with family members. And because of our litigious society, healthcare providers



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are extremely cautious about exercising their professional judgement in this way. It's therefore possible, and perhaps even probable, they will choose not to disclose their patient's information.

(Even if they choose to share your adult child's information with you, it's on a "need to know" basis. Healthcare providers may only disclose information they decide you need to know.)

What if you don't have a great relationship with your adult child?

Or what if they don't want you to know they injured themselves doing something stupid?

A healthcare provider may not disclose a patient's information to anyone the patient has asked them not to. Therefore, if your adult child has stated they don't want their family member(s) to know they're in the Emergency Room, then you won't be notified. If you somehow learn of the situation, you won't be informed about your adult child's condition or treatment recommendations or have access to their medical records (even if you'll be the one paying the bill).

What to Do

Get prepared! Work with your adult child and an attorney to draft the legal documents that will ensure you have the legal right to stay informed and involved. I recommend every child over the age of 18 have a Healthcare Power of Attorney, Living Will (DNR),

and standalone HIPAA Authorization, each naming their family members. (Note: I also recommend they have a General Durable Power of Attorney granting access to the adult child's financial and administrative information.)

For our purposes, a Healthcare Power of Attorney is a type of Advance Directive that lets your adult child name you as their Agent to make healthcare decisions on their behalf if they become incapacitated. A well-drafted Healthcare Power of Attorney will also have a built-in HIPAA Authorization granting you access to everything you'll need to make informed decisions (this authorization is critical and often omitted). I also provide a standalone general HIPAA Authorization because the access and authority granted by your adult child's Healthcare Power of Attorney only takes effect when they become incapacitated. The standalone HIPAA Authorization is necessary for access to your adult child's medical information in all other circumstances. Also, they can be used to grant someone access to your medical information without granting them the authority to make decisions.

If your adult children are anything like mine, they'll be easily persuaded to create these documents when you explain you could be unable to help them if they became incapacitated. If not, please find a way to get them onboard. I'm happy to talk to you and your adult child. Book an appointment online at www.clrlaw.pro or contact me with your questions at carina@clrlaw.pro or 202-599-5960.

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