

Applications for Access to a Deceased Individual's Care Records Policy

Introduction

This policy is written to provide guidance to any UK care service which receives an application from a third party to have access to the care records held by Focus Care Link during its required retention period of three years following the death of the person while receiving care and treatment from the service. Such applications are usually made to assist enquiries into the death of the person and the care and treatment provided.

Care providers should note that there is no automatic right of access from any applicant, except possibly where the request is made under a court order, and they must consider the reasons for the request, as discussed in this policy before agreeing to carry out the work involved.

It should be noted that the Data Protection Act 2018, which has replaced the 1998 Act does not cover the records of dead people. (A "data subject" covered by the Act is defined as an "identified or identifiable living individual to whom personal data relates".)

What guidance there is about access to records of people who have died concerns applications to see medical records rather than care records. However, it is reasonable to think that the same principles governing applications to access medical records apply equally to care records (and in fact they might overlap).

These principles are that:

- a. the medical/care records of a deceased person should be treated with the same degree of confidentiality as for a person who is alive
- b. where someone applies for access, they must have a good reason and their request is dealt with on a "need-to-know basis" as if the person were alive.

In respect of medical records, any person with a claim arising from the death of a patient has a right of access to information previously covered by the Data Protection Act 2018 and the General Data Protection Regulation, providing it is directly relevant to that claim. No information which is not directly relevant to the claim may be released.

Thus, a personal representative or executor can access information to benefit the deceased's estate, as can an individual who was a dependant of the deceased and who has a claim relating to that dependency which has arisen from the death.

There are certain exemptions to this right, and information may be withheld if, for example, it identifies a third party without that person's consent or the person gave the information in the past on the understanding that it would be kept confidential.

Policy Statement

From time to time, Focus Care Link might receive an application from a third party, e.g. a relative or solicitor, to have access to the care records of an individual who has died. Current care regulations require all records kept on a person to be retained for not less than three years from the date of the last entry.

This policy therefore applies primarily to records that have been retained by Focus Care Link within this statutory period. The policy determines the actions to be taken in the event of someone requesting access to the deceased person's records during the time that Focus Care Link is required to retain them.

Procedures

1. Focus Care Link is committed to open, transparent management of its services and will respond positively to any concerns or complaints about its provision in respect of any person who uses the service, including those who have died when under its care.
2. Focus Care Link accepts that under certain circumstances a third party will apply for and have the right to have access to the care records of a deceased individual.

3. Focus Care Link will carefully consider any such application but, if unsure about the reasonableness and legitimacy of the request, reserves the rights to take further advice, e.g. from the care regulator, local authority where involved or legal advice and to refuse the request altogether. This decision does not prevent the applicant from seeking a court order to disclose the care records.
4. Once Focus Care Link is satisfied that the applicant is entitled to the information, it will provide it within a specified time limit of, e.g. 21/28 days. (discretionary)
5. Focus Care Link will give access by allowing the applicant to inspect the records or to extract or to supply a copy if this is requested. In doing so, it recognises that it will, in line with data protection requirements, need to protect (e.g. by redactions, removal or obtaining consent) information regarding anyone living that is included or referred to in the records.
6. In considering any request, Focus Care Link will consider any information it has on the deceased person's wishes and will act upon these.
7. Focus Care Link might seek to recover the costs of supplying the information, e.g. for administrative time, photocopying, printing and postage.

Training

The service management is responsible for the handling of any request within the scope of this policy and will ensure that the administrative staff involved in any responses to a request are competent to carry out the tasks involved.