

# & CARNICK COMPANY

PERSONAL FINANCIAL ADVISORS

Colorado Springs, Colorado USA

## The New Privacy Rules Under HIPAA

### *How To Keep Your Estate Plans And Medical Directives From Becoming Useless!*

Most of us are now experiencing the affects of the privacy provisions in the HIPAA (Health Insurance Portability and Accountability Act) law that became effective in April, 2003. It changed how physicians, hospitals, health insurers, and pharmacies to name a few, safeguard our private medical information. Signing disclosure forms and standing behind a yellow line at Walgreen's are but a few of the most noticeable differences. The law's negative affects, however, center-around the real life implications of how it can restrict access to medical records when most needed by those making decisions on ones behalf.

Regardless on whose behalf it is, timely access to medical records can be critical. Imagine an incapacitated elderly relative or college student 1,000 miles away in need of your decision making. Obviously, full knowledge of their condition can enable you to decide whether an immediate long distance trip is warranted. Also, imagine *your* own mental or physical incapacity and how a refusal of your medical records could block decision making by the very people you designate in legal documents.

That's right, under HIPAA your medical records may become inaccessible even with a properly drafted estate plan. And though it sounds improbable, the early stages of this law warrant our concern as interpretations of this law vary among healthcare providers. What we know now... is that those designated to act on your behalf through a Durable Medical Power of Attorney, Trust or Living Will, need a medical certification of your condition for these instruments to be successful. Unfortunately, incapacity and the inability to authorize medical record release may prove this task difficult. All it takes is for a doctor to refuse information due to his or her interpretation of HIPAA privacy regulations.

Unfortunately, these regulations leave you with only one work-around that involves Probate Court Guardianship. This can be a long, burdensome and possibly humiliating to the loved one since the state would then take control of their assets and finances.

Now, while we are not advocates of creating hysteria, we are advocates protecting our clients from financial potholes like those created by HIPAA's privacy rules. Our advice is to error on the side of caution by bullet proofing your estate plan and executing a HIPPA healthcare information release form. Everyone should look at their family situation and execute this document where advanced directives are established.

## **Real Life Cases --**

-- A family in Washington D.C. first learns of the father's death when they receive a hospital bill in the mail because the institution did not want to violate federal confidentiality laws.

-- A 91-year-old woman in a Seattle nursing home falls, is taken to the emergency room, and her relatives are unable to assess how serious it is due to privacy rules.

-- A Washington State Hospital Association President is informed through his father's neighbor in Pennsylvania that his 88-year-old father was taken away in an Ambulance. When calling the only hospital in town, he is told government regulations prohibited them from telling him how his dad was doing.

-- The Chicago Tribune reported how the new rules prevented priests and ministers from getting a list of parishioners from hospitals to make visits.

While these stories may be the extreme, they do demonstrate the results when the law is misunderstood. Some hospitals take a permissive approach, others do not. And while the law does give providers some discretion, that leeway can be difficult for providers to determine.

We do hope these issues play out favorably. Until then, we know the future is uncertain and advise you to error on the side of caution.

## **A Universal Solution --**

We urge everyone to contact their attorneys to execute a ***"HIPAA Authorization for Disclosure of Protected Health Information"*** that when properly drafted can have universal application to authorize release of information by any provider -- to the appropriate people -- at any time. The document should be designed so that under all circumstances, the person(s) you designate will be able to receive your protected information that satisfies the requirements of a Power of Attorney and Living Trust so that your Designee or Trustee is able to act according to your wishes.

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# HIPAA Release and Authorization

I, \_\_\_\_\_, residing at \_\_\_\_\_, with social security number \_\_\_\_\_ authorize any physician, health-care professional, dentist, health plan, hospital, clinic, laboratory, pharmacy or other covered health-care provider, any insurance company and the Medical Information Bureau Inc. or other health-care clearinghouse that has provided treatment or services to me, or that has paid for or is seeking payment from me for such services, to give, disclose and release to the agent(s) as hereinafter described, without restriction, all of my individually identifiable health information and medical records regarding any past, present or future medical or mental health condition, including all information relating to the diagnosis and treatment of HIV/AIDS, sexually transmitted diseases, mental illness, and drug or alcohol abuse.

The persons designated as my agents for purposes of this agreement are as follows:

- All person(s) designated as health care agent(s) or alternative health care agent(s) in any Power of Attorney for Health Care or similar document executed by me;
- All person(s) designated as my attorney-in-fact and/or agent and their successors under any Durable Power of Attorney or similar document executed by me;
- All person(s) designated as trustee(s) and/or successor trustee(s) under any revocable or living trust executed by me.

The authority given my agent(s) shall supersede any prior agreement that I may have made with my health-care providers to restrict access to or disclosure of my individually identifiable health information. The authority given my agent has no expiration date and shall expire only in the event that I revoke the authority in writing and deliver it to my health-care provider.

I intend for my agent to be treated as I would be with respect to my rights regarding the use and disclosure of my individually identifiable health information or other medical records. This release authority applies to any information governed by the Health Insurance Portability and Accountability Act of 1996 (aka HIPAA), 42 USC 1320d and 45 CFR 160-164, and all other applicable state and federal law.

\_\_\_\_\_  
Signed

\_\_\_\_\_  
Date

State of \_\_\_\_\_  
County of \_\_\_\_\_

On \_\_\_\_\_, 2005, before me \_\_\_\_\_, \_\_\_\_\_ personally appeared and is personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to this instrument and acknowledged to me that he executed the same in his authorized capacity.

Witness my hand and official seal.

\_\_\_\_\_