**Without authorization, doctors are bound by federal law to protect medical record privacy**

***BY GENE L. OSOFSKY***

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*I heard on a radio program that living trusts should be HIPAA compliant, but I didn't quite catch the full comment. Can you shed any light on this?*

Sure. Most trusts and powers of attorney contain provisions which call for a change in trustee or agent when the maker of these instruments becomes incapable of handling their own financial or personal affairs.

These documents typically require that incapacity be proved by the written statement of one or, sometimes, two physicians.

The problem: These provisions often assume that the physicians will provide the written statements upon the simple request of another family member. But here's the catch: Under current law relating to medical privacy, the physicians cannot legally provide the statements unless a "HIPAA Authorization" has been signed in advance by the trust-maker.

HIPAA refers to a federal law designed, in part, to protect the privacy of one's medical records. It stands for Health Insurance Portability and Accountability Act, and the provisions concerning medical privacy became generally effective in April, 2003.

The law provides stiff fines for doctors, hospitals and other providers who disregard the requirement of written authorization.

So, the term "HIPPA Compliant" refers to a trust or other estate-planning document which includes, among its provisions, a section expressly authorizing someone — usually the nominee next in line to be trustee or agent — to request competency statements from the trust maker's physicians.

Alternatively, the HIPAA Authorization may be contained in a separate document. But preauthorization, in some form, must be part of the person's estate plan in order to satisfy the medical release requirement, encourage physicians to provide the needed statements and thereby permit the smooth transfer of management responsibility when incapacity arises.

Many persons with long-standing relationships with their physicians assume that their own doctors will comply with a request from the family without the necessity of a release.

However, this approach is risky, because at the time of need you may not be under the care of your own personal physicians; for example, you may be in a critical-care hospital or in a nursing home where your care is managed by other physicians who practice only in that care facility.

Further, even your own doctors may be reluctant to breach privacy protocols if the request for disclosure arises at a time of family conflict.

A word to the wise: Review your trust, powers of attorney and related documents to make sure that you have pre-authorized designated persons to request letters from your physicians when they reasonably believe that you are no longer capable of managing your own financial and personal affairs.

Doing so will help smooth the transfer of management responsibility as you originally intended and may avoid the need for court intervention to resolve the issue.

*Gene L. Osofsky is an elder law and estate planning attorney in Hayward. Visit his website at www.LawyerForSeniors.com.*