

HIPPA Update

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The United States Department of Health and Human Services (HHS) has not published final regulations for the *Health Insurance Portability and Accountability Act of 1996* (HIPPA). This is legislation which, in major part, protects your medical information from prying eyes. It does so by defining which health care providers are covered (health plans, health care clearinghouses, and any health care provider that transmits health information in electronic form in connection with transactions for which HHS has adopted standards under HIPPA), and by requiring authorization for any access.

The connection to your estate plan comes up in several areas, but here I note only two: (1) obtaining records by which to determine that you are no longer able to make your own health care decisions under a springing durable power of attorney for health care (now known as Advance Health Care Directive), and (2) obtaining those records in order to determine whether you no longer have capacity to function effectively as trustee (for yourself or someone else). Without those records and proof of incapacity, you may be left too long in charge of those decisions, potentially making a fatal mistake.

Notice must be given to you any time someone seeks access to your medical records. If the inquirer lacks standing to have it, or if you object, access will be denied. If provided improperly by the covered provider, a complaint from you will lead to civil fines of \$100 to \$25,000 (the latter for multiple violations). This tends to focus the attention of the provider, so it is important to pave the way for timely access; if your agent or successor trustee ever needs it, time will be of the essence.

I have taken two steps to address these matters. One is to add an authorization in the Advance Health Care Directive by which your agent is designated your “personal representative” (a defined term) and may thereby obtain the medical information. The other is a pre-signed authorization for use by your named successor trustee.

If you wish to incorporate these features into your estate plan, just call Mee at my office. The charge is modest, and you need not come in to see me.