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MORE CHANGES AHEAD FOR HIPAA?

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The Office for Civil Rights oversees HIPAA Privacy Rules, which are designed to protect the privacy of patients, their identifiable health information and other security measures for protected health information. When Congress meets later in 2015, there are bound to be some challenges and many are concerned those challenges could threaten the passage of any meaningful measures, especially when it comes to the elderly and children. If a solution isn’t found, it could mean the same challenges HIPAA faces now won’t be resolved for at least a year or longer.
Since the law was passed, it’s already gone through several “growing pains”, including breach notification decisions and patient safety rule revisions, which protects and prevents identifiable information being used to analyze patient safety events and to improve patient safety.

**Politics**

Under significant pressure to act after a number of mass shootings in this country, both House and Senate lawmakers have proposed bills to improve federal oversight while also providing patients more access to services. The Senate version is known as the Mental Health Reform Act while the House’s version is the Helping Families in Mental Health Crisis Act. This is the priority, at this time, of lawmakers wishing to strengthen HIPAA.

Of course, when politics are involved, it can be challenging to come to a consensus and this is no different. Many are just happy to see any talk of mental health reform while others point to portions of the changes that would loosen the law. Many want to see an easing of the privacy restrictions in order to enable family members to access dates and times of a loved one’s medical visits along with information about medications they are on so they can help in caregiving. Specifically, the focus on is the rule that addresses “situations in which family members or other persons who are involved in the individual’s health care or payment for care may receive protected health information about the individual even if they are not expressly authorized to act on the individual’s behalf”.
Personal Representatives

While the debate continues about family members and the access they may have, there’s an ongoing problem. Some are concerned about the introduction of personal representatives. For years, patients have relied on their powers of attorney with great success. Now, though, there have been questions that the laws will require a personal representative to “act on behalf of the individual in making health care related decisions”. Keep in mind, these personal representatives are not family members.

When asked about the similarities between the role of personal representatives and powers of attorney, as well as how they affect the others, representatives from U.S. Department of Health and Human Services explained, “An individual that has been given a health care power of attorney will have the right to access the medical records of the individual related to such representation to the extent permitted by the HIPAA Privacy Rule at 45 CFR 164.524.” That, however, could still change, depending on what happens in this specific area, since there remains confusion.

Clearly, there are logistics that need to be worked out.
This matters, and certainly for Medicaid and Medicare recipients for a number of reasons. There continue to be breaches to the government’s “cloud” and other digital problems and some say it could leave many patients extremely vulnerable with those wishing to steal and sell personal information.

**Exceptions**

When a physician or other covered entity believes, within reason, that an individual, including an elderly person or unemancipated minor, has been or may be subjected to “domestic violence, abuse or neglect by the personal representative, or that treating a person as an individual’s personal representative could endanger the individual, the covered entity may choose not to treat that person as the individual’s personal representative, if in the exercise of professional judgment, doing so would not be in the best interests of the individual.”

As you can see, the potential for conflicts of interest is high. Further, there are state laws that change everything. As estate planning lawyers, we understand the importance of protecting patient rights. In fact, as part of most estate plans, we strongly encourage our clients to consider powers of attorney to ensure there’s one who can make important health decisions and we also tell our clients
that they may keep their choices private or reveal them to the rest of the family. For us, it comes down to protecting the safety, health and trust of our clients. Ideally, Congress will finally put these problems to rest so that this law can serve the purpose it was intended. In the meantime, we continue to serve as legal advocates for each of our clients. To learn more, contact Unsworth Law, PLC today.
About the Author

Stephen A. Unsworth has over 30 years of experience in estate planning and business law. His mission is to provide quality estate planning services, including assistance with Living Trusts, Wills, Medicaid Planning, Probate, Trust Administration, Powers of Attorney, Special Needs Planning, and Family Limited Partnerships.

Stephen is admitted to practice law in both Vermont and Maine. He is a member of the Vermont Bar Association, the Chittenden County Bar Association, the American Academy of Estate Planning Attorneys, the National Academy of Elder Law Attorneys, and the Vermont Bar Association’s Elder Law and Probate & Trust Sections.

Stephen has been named a “Super Lawyer” by the New England Super Lawyers Magazine each year since its creation in 2007. This distinction – based on peer nomination, extensive polling, and independent research – ranks him in the top 5% of lawyers in New England. He has also been named one of Vermont’s top estate planning attorneys by Vermont Business Magazine.

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