



## Boston Herald Personal Finance Section

### **Make sure your power-of-attorney agreements are hip to HIPPA**

By Gail Liberman and Alan Lavine/Family Finances

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You've drafted all the important legal documents naming people to handle your affairs: Health care and financial powers of attorney giving others the right to make decisions for you.

You may have set up a trust permitting someone to hold title to property for the benefit of another.

Yet you and your family still could face trouble from privacy rules that largely took effect last month under the Health Insurance Portability and Accountability Act (HIPAA).

The law restricts providers - including doctors, druggists, hospitals and nursing homes - from giving out your personal medical information.

The rule also limits information insurers can release about you.

Violators can face fines up to \$100,000, as well as up to five years in prison.

HIPAA could bar people you designate to handle your affairs from obtaining medical information they need, warns Joseph Karp, a Palm Beach Gardens, Fla., lawyer.

He suggests clearly specifying either in legal documents or in a separate statement that your agents can access the information.

"If (a power of attorney) doesn't address HIPAA, under federal law there can be a question whether a medical provider can release any information," Karp said.

This lack of information could force your family into costly court proceedings - exactly what powers of attorney usually aim to avoid.

Here are examples of what could happen if your documents aren't updated to reflect the new privacy laws:

A legal document might take effect only upon proof of disability or if two doctors say that you can't act on your own. But if doctors can't tell your legal representatives anything, how will loved ones know when this has occurred?

Karp suggests a clear statement using HIPAA-specific language to grant this authority.

A spouse's designated role as your legal agent could, over time, be filled by a child. But Karp said that without a specific HIPAA release, your child could face roadblocks to getting needed medical information while your spouse is still alive.

Releases should also be added to all successor trustees or powers of attorney, Karp said.

"All your money could be frozen in space because nobody has the right to get the information," he warned.

Not all doctors are concerned about HIPAA. But others have gone so far as to stop leaving doctor-appointment confirmation of patients' answering machines, Karp said.

However, Richard Campanelli, director fo the U.S. Health & Human Services Department's Office of Civil Rights, countered that HIPAA actually "requires that doctors share information with personal representatives."

Still, Campanelli admitted the rule doesn't apply to a real estate power of attorney.

The official said questions of disability of incapacity in such legal documents could boil down to the state statute your lawyer uses to devise the power of attorney.

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