

Health Information Compliance Alert

Reader Questions: Spouse Gets Special Privileges Under HIPAA

Question: How does The Health Insurance Portability and Accountability Act (HIPAA) affect married couples? Does HIPAA allow for more disclosure to a spouse than to a stranger, assuming no specific waiver or authorization has been signed?

Louisiana Subscriber

Answer: As a matter of fact, HIPAA does affect married couples differently, notes **Brian Gradle**, attorney with the Washington office of Hogan & Hartson. For example, if a spouse goes to a meeting with a physician and the physician is talking to both spouses about the patient's condition, it is legitimate for the physician to conclude that the patient has agreed to disclosures to that spouse about his condition.

There's an entire section of the privacy rule (164.510) that deals not only with spouses, but also with family members and friends. Gradle calls this section 'HIPAA-lite' because it doesn't require written authorization but it requires at least the opportunity for the individual to object orally. And the rule is not limited to spouses -- it could also include close friends or a close companion of some kind.

There are no greater rights for a spouse than those of a close companion, other than the fact that when the covered entity looks at whether the individual was the personal representative or not, that is largely determined by state law.

Frequently with the incapacitation of the spouse, the remaining spouse is deemed to be the personal representative, and HIPAA recognizes that, Gradle explains.