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## **New HIPAA Regulations Necessitate Important Changes In Your Estate Planning Documents**

On April 14, 2003 the new HIPAA Regulations took effect. These regulations are considered by some to be the biggest development in health care legislation since the enactment of Medicare in 1965. They apply to each and every health care provider in the nation, including physicians, dentists, nurses and pharmacists. The privacy rules impact access to health care information.

**What is HIPAA and why does it concern me?** HIPAA is the acronym for the Health Insurance Portability and Accountability Act of 1996. This legislation was designed to allow employees to maintain health insurance coverage when they change jobs or terminate employment. Because this results in the transmittal, often electronically, of health care information between health care providers and health insurers, Congress sought to standardize its transmission. The new regulations require providers to undertake “reasonable efforts to limit protected health information to the minimum necessary to accomplish the intended purpose of the use, disclosure or request.” Congress also enacted severe penalties for violation of the rules. As a result, each time we visit the doctor we are asked to sign new disclosure forms. But that’s the least of it. Many health care providers and their staff members are paranoid about releasing health care information. As long as we are capable of signing forms, of deciding when and to whom to release our private medical information, and of insisting that the information be released when appropriate, the inconvenience of the increased paper work can be overlooked. But what happens if we become incapacitated and it is important for others to access our medical information. Are our current health care proxies and powers of attorney broad enough? Will information be available that enables our health care providers to discern the best care and treatment under *all* of the existing circumstances? Will our health insurers have the requisite documentation to approve the expenditures?

Even if you implemented your estate plan as recently as this passed summer, your *advance directives*, the health care proxy and power of attorney, may not be particular enough to ensure that your agent will have the authority to secure your medical

records or direct their transmittal. **Berwitz & DiTata LLP recommends that everyone review these documents as soon as possible** to ascertain whether the appropriate protections are in place. Our clients have already received a Bulletin about the change in the law and how it affects them.