

## **The Federal Health Care Privacy Law - Health Insurance Portability and Accountability Act (HIPAA) And Your Advance Directive**

**<http://www.hhs.gov/ocr/privacy/hipaa/faq/index.html>**

See especially: “Frequently Asked Questions” about HIPAA which can be found on the website for the United State Department for Health and Human Services. In the search box, enter “power of attorney” (the more common term, “advance directive,” is not used.) The questions and responses below may be most helpful.

### **Does the HIPAA Privacy Rule change how a person can grant a health care Power of Attorney?**

No. Nothing in the Privacy Rule changes the way in which an individual grants another person power of attorney for health care decisions. State law (or other law) regarding health care powers of attorney continue to apply. The intent of the provisions regarding personal representatives was to complement, not interfere with or change, current practice regarding health care powers of attorney or the designation of other personal representatives. Such designations are formal, legal actions which give others the ability to exercise the rights of, or make treatment decisions related to, an individual. The Privacy Rule provisions regarding personal representatives generally grant persons, who have authority to make health care decisions for an individual under other law, the ability to exercise the rights of that individual with respect to health information.

### **Can I access someone’s medical record if I have that person’s health care Power of Attorney?**

Yes, 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. However, when a physician or other covered entity reasonably believes that an individual, including an 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.

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Also:

**<http://www.partnershipforcaring.org/HomePage/>** (Last accessed 2/13/06)

Although you may hear a lot about the Health Insurance Portability and Accountability Act, “HIPAA,” this law does not require any new language in advance directive documents. A person authorized under their state advance directive law to make medical decisions on behalf of a patient may still receive medical information about that patient. Last Acts Partnership will not add any wording about HIPAA to our state specific advance directives. None is required.

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