Warning for All Clients Married or Single!

HIPAA Update **Effective 9/1/2004**

The Law Firm of RICHARD O. BARNDT; *E-Mail:* RichardBarndt@TrustAdvice.com; *Website:* www.TrustAdvice.com
San Diego County: 6265 Greenwich Drive, Suite 100-C, San Diego, CA 92122 (858) 554-1712; *fax* (858) 455-6260
Orange County: 1206 North Broadway, Santa Ana, CA 92701 (714) 939-1810; *fax* (714) 550-7234

PROBLEM: **Recently enacted regulations interpreting the federal Health Insurance Portability and Accountability Act of 1996 combined with the California Confidentiality of Medical Information Act may force your affairs into court if you become incapacitated because specific written authorization is required before your health care providers can legally disclose your medical information to your successor trustees without fear of fines and imprisonment.**

SOLUTION: **Update your estate plan with the "HIPAA Update Package" ($495 married/$395 single). This is a major update affecting all of the major legal documents in your notebook.**

DO I NEED IT? **YES. Unless you can GUARANTEE you will NEVER be incapacitated before you die.**

Health care providers are now working under strict medical information confidentiality laws, specifically the federal Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), as interpreted by regulations passed recently, and the California Confidentiality of Medical Information Act ("CMIA"). HIPAA violators can be punished with as much as ten years imprisonment or a $250,000 fine. CMIA violators can also be subject to fines up to $250,000. These penalties may deter health care providers from providing health care information to attorneys and their clients (i.e., your successor trustee).

All estate plans have at least two major functions: (1) provide for continued management of your financial affairs in the event of your incapacity, thereby avoiding a court supervised conservatorship; and (2) transfer title of your assets to your designated beneficiaries upon your death, thereby avoiding probate. Even though these medical information confidentiality laws were not intended to target estate planning documents, they have the potential of causing your estate plan to completely and utterly fail to provide for continued management of your financial affairs in the event of your incapacity.

When incapacity occurs, your estate planning documents confer power to your designated successor to deal with your financial accounts, including the power to withdraw all your money. Now, looking at this issue from your bank's point of view, why should your bank *believe* your successor trustee's statement that you are incapacitated? After all, if your successor trustee is lying, then your successor trustee might withdraw all your money and move to Fiji, never to be seen again. Of course, you would thereafter call your bank stupid and demand refund of your money. So the bank loses. This is why a thorough estate plan should contain a *method* for defining "incapacity" which will allow your bank to perform a timely transfer of control of your financial accounts to your successor trustees, without exposing your bank to liability. Otherwise, your bank can refuse to allow your successor trustee to manage your account until there has been a court determination of your incapacity. The same issue exists at your death, but to prove your death we simply have to produce a death certificate. There is no comparable *incapacity* certificate.

The most widely used definition of incapacity, based on my experience, and the method that this law firm uses, is that incapacity is proven when two doctors state in writing that the incapacitated individual can no longer handle financial affairs. It was simple, objective, and worked fine in virtually all circumstances in which I have been involved. The problem now is that doctors and other health care providers may now be hesitant to provide said written statements for fear of fines and imprisonment, even if they wanted to help.

There is not one universal fix out there, as most attorneys are inventing their own unique solutions. Both the HIPAA and CMIA allow for the patient to sign a written authorization to allow health care providers to disclose such medical information to the individuals named in the written authorization. This is a good start in dealing with these privacy laws from the estate planning perspective, but it is not nearly enough. Since current laws change, new laws are passed, papers are lost, and the effects of Murphy's Law are forever present, our HIPAA update package had to provide a solution that works in the present legal environment as well as unpredictable future legal environments, and I believe that it will.

The HIPAA Update Package does include a Medical Information Release, but more importantly contains a new "affidavit" method that your successor trustee can utilize to obtain control over your financial affairs, even if your health care providers refuse to provide written statements of your incapacity. The update also coordinates the sharing of health care information between the persons appointed in your advance health care directive and your other estate planning documents. This alternate method will work in the event of your incapacity, or upon the incapacity of your successor trustee. This solution is now ready for implementation and consists of the following:

		Single	**Married**
1.	HIPAA Amendment to Living Trust	200	200
2.	Codicil to Will	75	150
3.	New Power of Attorney for Financial	75	150
4.	New Advance Health Care Directive	75	150
5.	New Medical Information Release	75	150
6.	If Married, New Property Agreement*		100
7.	Update Notebook to Acknowledge Update	50	50
	If billed separately	$550	$950
	Package Price	**$395**	**$495**

*Property Agreements prepared by this firm prior to September 2000 will be updated to conform to changes in California law not related to Medical Information Privacy.

Should you wish to discuss in detail with this firm how the HIPAA update could benefit you, as well as planning options available to you, please call my office to schedule a consultation. These meetings are billed at our regular hourly rate (currently $250/hr as of 7/7/08).

---------- please detach and return ----------

____ Please call me/us to schedule an appointment to have the HIPAA Update incorporated into my/our estate plan. Enclosed is a check ($395 single/$495 married) made out to "Richard Barndt." **Bring your "Estate Planning Portfolio" and any extra copies of your estate plan to your signing meeting and we will update all the necessary documents.**

____ I/We elect not to obtain the HIPAA update.

A non-response will be deemed a declination and release of the Law Firm of Richard O. Barndt from any legal liability for your failure to incorporate the HIPAA Update into your estate plan.

Dated: _____

_____ _____

Print Name Print Name