

## Optometry Coding & Billing Alert

### Reader Question: A Marriage of Convenience?

**Question:** How does 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?

Idaho Subscriber

**Answer:** As a matter of fact, HIPAA does affect married couples differently than others, says **Brian Gradle**, a HIPAA expert and attorney with the Washington office of Hogan & Hartson.

For example, he says, 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 or her 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 does require at least the opportunity for the individual to object orally. And the rule is not just limited to spouses - it could also include close friends or a close companion.

There are no inherently greater benefits for a spouse as opposed to a close companion other than the fact that when the covered entity looks to see whether an individual is the patient's personal representative or not, that will be determined by state law, Gradle says.

Frequently, then, in cases in which the spouse is incapacitated and unable to give directions, the remaining spouse is deemed to be the personal representative, and HIPAA recognizes that, he says.