HIPAA or No HIPAA – That Is the Question

written by Richard Leslie | May 24, 2016

Avoiding Liability Bulletin – April 2013

… For those of you who are sole practitioners or soon may become sole practitioners, are you a "covered entity" under HIPAA or not? Do you want to be a "covered entity" or not? Is there an advantage to you and your patients for you to be a covered entity? How much thought have you given to this subject? I haven't thought about this subject for a while, but recently, I was surprised to learn that there are still some who believe that all licensed health care practitioners are covered by HIPAA and the rules/regulations implementing HIPAA. This, of course, has not been true from the beginning, and it is not true now. One can usually choose whether or not he or she wants to become a covered entity.

From a broader point of view, I would think that the less that state practitioners are governed by federal law, the better. Health care professions are typically regulated by state laws. Of course, if one is a covered entity under HIPAA, then he or she is bound by the regulations implementing HIPAA (for example, the "Privacy Rule"). If not covered by HIPAA, then the practitioner will be bound by state laws – which may or may not be in accord with the federal rules. Many states have amended a variety of state laws to be in accord with the HIPAA rules. Other states may be in the process of doing so, and there are some who believe that eventually, all health care providers will be bound by the HIPAA requirements.

Do you know the major differences between state law and HIPAA regulations regarding the issues of a) confidentiality of patient records and information, and b) patient access to their mental health records – that is, the right of the patient to inspect the records or to obtain a copy of the records?