

HIPAA

Portability, Privacy & Security



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Aline G. Haffner, Esq., Contributing Author and Editor
Andrew Ky Haynes, Esq., Contributing Author
Cheryl Musselman-Brown, Esq., Contributing Author
Rebecca L. Williams, Esq., Contributing Author
John L. Barlament, Esq., Contributing Author
Howard D. Bye-Torre, Esq., Contributing Author
John R. Hickman, Esq., Contributor

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What's New in the 1st Qtr. 2012 Edition

This What's New section highlights the changes made in the last quarter to *HIPAA Portability, Privacy & Security*—the authoritative HIPAA resource for employers, administrators, and advisors.

Also see the 1st Qtr. 2012 *Current Developments* newsletter, which can be accessed under the Bookmarks tab. The *Current Developments* newsletter summarizes important legal developments that occurred during the quarter.

Below are some highlights of the substantive changes that we made to the Outline and Appendix.

- **Section X—*Special Enrollment Rights.***
 - *X.I—Retirees and Special Enrollment.* We've updated this discussion and added a chart contrasting the applicability of HIPAA special enrollment rights in group health plans that cover a combination of active employees and retirees, and those that cover only retirees.
- **Section XVIII—*Group Insurance Market Requirements.*** This entire Section has been reorganized and enhanced to highlight the changes in the guaranteed-availability and guaranteed-renewability rules applicable to health insurance issuers in the small and large group markets before and after health care reform's changes to these rules take effect beginning January 1, 2014. Subsection D takes a closer look at the effect on coverage provided through "bona fide associations," and subsection E focuses on multitemployer plans and MEWAs.
- **Section XXI—*Privacy, Security, and EDI: Sources of Law and Enforcement.***
 - *XXI.C—Regulations and Compliance Dates.* We've updated this discussion to note HHS's recent issuance of interim final regulations adopting a HIPAA transaction standard for health care electronic funds transfers (EFT) and remittance advice. The new transaction standard is discussed in detail in Section XXXII.
- **Section XXIII—*How the Privacy and Security Rules Affect Group Health Plans and Plan Sponsors.***
 - *XXIII.F—Applying the HIPAA Privacy and Security Rules to Group Health Plans and Their Sponsors.* We've included some additional considerations regarding the treatment of a plan sponsor that receives PHI from or on behalf of its group health plan.
- **Section XXIV—*Business Associate Contracts.***
 - *XXIV.A—What Is a Business Associate?* We've expanded our discussion of the "conduit" exception to business associate status.
- **Section XXVI—*Core Privacy Requirement #1: Use and Disclosure Rules.***
 - *XXVI.E—Uses and Disclosures Requiring Individual Authorization.* As technological developments expand our modes of communication, they also increase the challenges of HIPAA privacy compliance. We've added a discussion that contemplates the impact of social media and other evolving communication tools.
- **Section XXX—*Security & Privacy Compliance Roadmaps.***
 - *XXX.A—Introduction.* Getting a handle on HIPAA security compliance can be overwhelming—23 standards in five categories, many with multiple implementation specifications. We've created a chart that draws from

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our detailed analysis throughout Section XXX, compiling a summary of all of the security standards and implementation specifications into one handy reference tool.

- **Section XXXI—*Mistakes Happen: Correcting HIPAA Privacy and Security Compliance Problems*.** With the onset of OCR’s HIPAA audit program, a proactive approach to identification and self-correction of HIPAA privacy and security problems has never been more important. This entire Section has been revamped with expanded suggestions for corrective action. A new subsection H considers problems relating to the HITECH breach notification requirements.
- **Section XXXII—*Electronic Transactions and Code Sets*.**
 - XXXII.B—*Implementation Date and Enforcement Policy*. We’ve noted CMS’s announcement of a 90-day enforcement grace period with respect to certain EDI standards for which compliance was required by January 1, 2012.
 - XXXII.D—*What Transactions and Transmissions Are Covered?* In this subsection, we’ve provided a detailed explanation of the new transaction standard for health care electronic funds transfers (EFT) and remittance advice, adopted in January 2012. Discussions throughout Section XXX have been updated to reflect the new transaction standard and its impact on group health plans.
 - XXXII.H—*Code Sets*. We’ve noted the very recent announcement by HHS of its intent to postpone the October 1, 2013 compliance deadline for implementation of ICD-10 code sets.
- **Section XXXVI—*Multiple Employer Welfare Arrangements (MEWAs)*.**
 - XXXVI.F—*MEWAs Raise Issues Under ERISA*. An expanded Form M-1 discussion now includes the DOL’s proposed regulations and proposed form changes (Form M-1 and Form 5500) aimed at combatting fraud and abuse. We’ve also noted the availability of the 2011 Form M-1 package.

Substantive Changes to the Appendix:

- **Tab 6—Privacy & AS: Federal Regulations**
 - Updated TOC
 - Updated HHS Reg. § 160.103
 - Updated HHS Regs. §§ 162.103, 162.92, 162.1601, and 162.1602
- **Tab 10—Sample Documents**
 - Minor correction

Lots More to Come! From the feedback we’ve received, we know that our manuals are the premier group health plans resources in the country. But here at EBIA we’re not satisfied. We are constantly striving to make the manual even better. In upcoming editions, look forward to complete coverage of all legal developments affecting HIPAA, and to our further analysis of existing law, with more examples and Q/As, etc.

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