

TEXAS HIPAA – HB 300 Information

House Bill 300 will take effect September 1, 2012. The new law is basically a revision of the Texas Medical Records Privacy Act and is stricter due to concerns that federal law (HIPAA) does not adequately protect patient privacy. The tougher new health privacy legislation extends patient protections beyond those contained in the Health Insurance Portability and Accountability Act (HIPAA).

Covered Entity

A covered Entity under the new Texas Law is defined as individuals or organizations who, "engage in the practice of assembling, collecting, analyzing, using, evaluating, storing, or transmitting protected health information."

Under the appropriation provision in HIPAA, the stricter law will apply to HIPAA covered entities doing business in Texas. These include but may not be limited to:

- Business Associates
- Health Care Payers
- Governmental Units
- Information/computer management entities
- Schools
- Health Researchers
- Health care facilities
- Clinics
- Health care Providers
- Persons who maintain Internet sites

New Patient Rights

A covered entity must provide general notice to the individuals for whom it creates or receives PHI by:

- Posting a written notice in the entity's business;
- Posting an electronic notice on the entity's website; or
- Posting a notice in a conspicuous location where it is likely to be noticed by the individuals whose PHI is being disclosed

The electronic disclosure of PHI is prohibited without a separate authorization from each individual for each disclosure. The authorization must be made in electronic or written form, or documented in writing by the covered entity if authorization was provided in oral form. Authorization is not required for disclosures listed in the prior section. A patient shall now have access to their health records in electronic form within 15 days, HIPAA is 30 days. Note, the health records can be provided in other formats like paper, only if the patient is willing to accept it in that format.

The new law also prohibits the sale of PHI which mirrors the current HIPAA Privacy Rule, HITECH act of 2009 but the new State law enforces stricter penalties for violations. Exceptions are; for treatment, payment, health care operations, performing an insurance function, or as otherwise allowed by federal law. The price must be the reasonable cost for preparing and transmitting and cannot be for profit. The covered entity must obtain written authorization from, patients regarding the electronic disclosure of their PHI, except in instances for treatment, payment or health care operations. A notice of electronic disclosure must be posted in a conspicuous area where a patient is likely to see it.

The Health and Human Services Commissioner, in consultation with the Texas Health Services Authority (THSA), the Texas Medical Board and the Texas Department of Insurance is charged with developing and recommending a standard electronic format for the release of requested health records.

Employee Training

Training is an expansion of the HIPAA Privacy Rule which means that as a covered entity, all staff members will have to have recurring training every two years on privacy regulations. All new staff members will have to be trained on your privacy policies within 60 days of employment.

As a covered entity you are required to tailor the employee training to reflect the nature of your business and each employee's role and how they relate to the maintenance and protection of PHI.

You must also keep records of this training, which specifically includes a signed acknowledgement of attendance by the staff member.

Increased penalties for non-compliance

The new law will increase the penalties from \$5,000 to \$1.5 million annually. The amount is determined by the seriousness of the violation; the covered entity's compliance history; whether the violation poses a significant risk of financial, reputational, or other harm to the patient; the amount necessary to deter future violations, the covered entity's efforts to correct the violation.

