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# Texas Health and Safety Code Chapter 181 Amendments

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During its 2011 session, the Texas Legislature passed HB300, making significant amendments to the Texas Medical Records Privacy Act (Chapter 181 of the Texas Health and Safety Code). HB300 expands the privacy protections afforded to healthcare consumers in Texas and imposes additional requirements and enhanced penalties on hospitals and other covered entities. The revised bill becomes effective on September 1, 2012.

**Highlights of HB300 from a Hospital's Perspective**

**1. New Privacy Training Requirements**

As revised, Texas Health and Safety Code § 181.101 imposes privacy-training requirements more stringent than those found in the Health Insurance Portability and Accountability Act (HIPAA). The revised Texas statute requires covered entities to train new employees about state and federal privacy laws within 60 days of hire and, unlike HIPAA, requires covered entities to ensure that employees receive additional privacy training every two years. Training must be specifically tailored to both the course of the covered entity's business and the scope of the trainee's employment. Additionally, the Texas law requires covered entities to keep records of attendance at privacy-law-training sessions. These records must include signatures, either written or electronic, of all trainees. Hospitals should develop adequate retraining programs for existing employees and to insure that training is appropriately tailored to the scope of employment of all trainees.

**2. Duty to Send Notice of Creation of Electronically Disclosable Records**

As of September 2012, § 181.154 requires any covered entity that creates or receives a record of private health information subject to electronic disclosure to notify the individual who is the subject of that disclosable record. Hospitals can satisfy this requirement relatively easily because the statute allows the notice to be general. The notice can be posted inside the hospital, on the hospital's website, or in any other place the consumer is reasonably likely to see it.

**3. Requirement to Obtain Authorization to Disclose Electronic Record**

Section 181.154 also requires that, in order to electronically disclose an individual's health information, the covered entity must get a separate authorization from the individual or an authorized representative for *each* disclosure. A general authorization for release is not sufficient. A release authorization can be written, electronic, or oral—so long as the oral authorization is documented in writing by the hospital. The Attorney General is required to adopt a standardized authorization form for covered entities to use by January 1, 2013, but has not released one yet. Notably, this section does not require a hospital to obtain authorization if the disclosure is to be made to another covered entity for one of the purposes listed in the statute

(treatment, payment, healthcare operations, or performing a health maintenance function) or if the disclosure is required by federal law.

**4. Deadline for Responding to Request for Electronic Records**

Under § 181.102 of the revised statute, a covered entity that uses an electronic health records system must now respond to a patient's written request for an electronic health record within 15 days of receiving the request. This provision is stricter than HIPAA, under which covered entities have 30 days to respond to a request. 45 C.F.R. § 164.524(b)(2). However, while this deadline change presents a significant change for many covered entities, it should not for most hospitals. Texas Health and Safety Code § 241.154 already requires that hospitals must provide access to a patient's requested medical records (electronic or not) as promptly as circumstances require, but no later than the 15th day after the hospital receives a written request and payment for any copies requested. The most significant change for hospitals is that § 181.102 requires covered entities that store records electronically to produce records in electronic format unless another format is requested. Section 241.154 expresses no preference for electronic production.

Notably, § 181.102 does not require or allow a covered entity to release information exempted from disclosure by portions of HIPAA, found in 45 C.F.R. § 164.524. It also does not apply to non-electronic records, nor does it require that a covered entity keep any or all of its records electronically.

**5. Audits and Enhanced Penalties**

HB300 also increased Texas's investigatory and enforcement authority, and its ability to cooperate with federal officials. As revised, §181.206 authorizes the Commission of Health and Human Services and the Texas Attorney General to request that the United States Secretary of Health and Human Services conduct audits of covered entities to evaluate compliance with HIPAA. The revised Chapter also provides that, if the Commission has "evidence" that a covered entity has committed egregious violations of Texas privacy law, the Commission may either (1) require that covered entity to submit to the Commission the results of a HIPAA-required risk analysis (if one was required), or (2) request a licensing agent to conduct an audit of the covered entity's system to determine compliance with Texas law.

The potential penalties for failing to comply with the revised statute's requirements are steep. Possible penalties for privacy violations have increased significantly. Negligent privacy violations can be fined up to $5,000 each. Knowing and intentional violations are subject to fines up to $25,000. Knowing violations committed for financial gain can cost a covered entity up to $250,000. Finally, under § 181.102 there is a possible $1.5 million fine and revocation of institutional license for an entity where privacy violations occur with sufficient frequency to constitute a "pattern or practice." Under prior Texas law, a covered entity's total penalty was capped at $250,000.

## Conclusion

HB 300 makes significant changes to the health-information-privacy law in Texas. Hospitals should ensure their procedures and policies comply with the law's new requirements so that they can avoid potentially harsh consequences.

If you would like more information on this topic, please contact:

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