

HIPAA

Portability, Privacy & Security



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What's New in the 1st Qtr. 2021 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.

- **COVID-19**
 - We've updated Section X and our sample Initial Notice About Special Enrollment Rights to address guidance on the duration of relief associated with the COVID-19 outbreak period. In Section XXIII, we've noted additional privacy considerations when employers use and disclose COVID-19 information about their employees.
- **Compliance Issues**
 - We've added coverage of OCR's December 2020 report summarizing the results of the privacy, security, and breach notification compliance audits conducted in 2016 and 2017, addressing OCR's findings in Sections XXV (breach notification), XXVII (individual access right and Notice of Privacy Practices), and XXX (risk analysis and risk management). In Section XX, we discuss OCR's compliance audit process, a federal appeals court decision that overturned OCR's assessment of a \$4.3 million civil monetary penalty, and a recent \$5.1 million resolution agreement involving a health plan that experienced a malware attack that went undetected for over a year. In Section XXIX, we highlight a new law that limits potential HIPAA liability of covered entities and business associates that adopt recognized cybersecurity practices.
- **Proposed Privacy Regulations**
 - We address proposed privacy regulations that would affect individuals' right to access PHI, the content of the Notice of Privacy Practices, and the definition of "health care operations." The proposed regulations are under review by the Biden administration.
- **Wellness Programs**
 - We've added discussion in Section XI regarding wellness programs that include incentives for employees to receive COVID-19 vaccinations. This Section also notes the EEOC's announcement of proposed regulations that would significantly change wellness program incentives permitted under the ADA and GINA, but we further observe that the Biden administration has withdrawn the proposed regulations for further administrative review.

Substantive Changes to the Appendix:

- **Tab 10—Sample Documents**
 - Updated TOC; sample documents

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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