

HIPAA

Portability, Privacy & Security



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What's New and Filing Instructions

Enclosed is the 2nd Qtr. 2021 Update Package for our *HIPAA Portability, Privacy & Security* manual—the authoritative guidebook for employers, administrators, and advisors.

This quarterly update package includes replacement pages for the Outline and Appendix. Please see the filing instructions at the end of this letter for a detailed explanation of what pages to remove and replace in your manual.

Subscription Information

EBIA's *HIPAA Portability, Privacy & Security* manual is updated quarterly.

Before you file this update, please be sure that your book is current. The box at the top of the title page in your binder should say "1st Qtr. 2021 Edition." Once you have determined that the 1st Qtr. 2021 update is in your manual, begin filing the 2nd Qtr. 2021 update, following the instructions in the table below.

Questions? If your title page is from any other quarter, or if you have other questions about your subscription, please contact Thomson Reuters Product Usage Support at (800) 431-9025 or send an email to Checkpoint.productusage@thomsonreuters.com.

We have made numerous changes to the Outline (there are no changes to the Appendix this quarter). Here are some highlights:

- **DOL Cybersecurity Guidance**
 - The DOL's first-ever guidance on cybersecurity—including tips for hiring service providers and cybersecurity program best practices—is covered in several Sections. Although the guidance is geared toward retirement plans, it is based on general ERISA fiduciary principles, including requirements for plan fiduciaries to act prudently and solely in the interest of plan participants and beneficiaries. Accordingly, we've added ERISA to Section XXXIV as another law imposing privacy or security requirements on group health plans. We address the DOL's tips for hiring service providers in Section XXIV, in the context of business associate contract terms, audits of business associates, and due diligence in hiring business associates. We've incorporated discussion of cybersecurity program "best practices" throughout Section XXX.
- **Breach Notification**
 - A recent Fifth Circuit decision (covered in our first quarter update) addressed disclosures of PHI that violate the HIPAA privacy rule, holding that OCR must prove that an unauthorized third party actually accessed PHI before a prohibited disclosure occurs. In Section XXV, we address some implications of this decision in the context of determining whether HIPAA's breach notification rules are triggered when a covered entity or business associate loses control of PHI without evidence that an unauthorized person actually accessed the PHI.

(over, please)

- **No Private Right of Action**
 - In Section XX, we’ve updated our (still unanimous) list of federal appellate decisions holding that there is no direct private right of action under the HIPAA privacy or security rules.
- **Excepted Benefit EAP**
 - Section VI includes FAQ guidance indicating that an excepted-benefit EAP will not be considered to provide significant benefits in the nature of medical care (and will not lose excepted-benefit status) merely because it covers COVID-19 vaccines and their administration.
- **Use and Disclosure Rules**
 - Section XXVI notes situations in which one business associate may disclose PHI directly to another business associate of the same covered entity, without using the covered entity as an intermediary. We’ve also updated our discussion of electronic health records and telecommunications relay services.
- **Appendix Tabs.** Changes have also been made to the Appendix Tabs. Those are highlighted in the second table below.

Filing Instructions for Outline:

Take Out & Toss	Insert These Pages	Take Out & Toss	Insert These Pages
Title Page , dated 1st Qtr. 2021	Title Page, dated 2nd Qtr. 2021	Outline: pages 999-1000	pages 999-1000
Intro Pages/ Table of Contents: pages iii-x	pages iii-x	Outline: pages 1007-1012B	pages 1007-1012B
Outline: pages 221-222	pages 221-222	Outline: pages 1131-1136	pages 1131-1136
Outline: pages 225-226	pages 225-226	Outline: pages 1181-1182	pages 1181-1182
Outline: pages 750Z-1-750Z-2	pages 750Z-1-750Z-2	Outline: pages 1190A-1210B	pages 1190A-1210B
Outline: pages 959-976	pages 959-976	Outline: pages 1210K-1210Z-2	pages 1210K-1210Z-2
Outline: pages 981-982B	pages 981-982B	Outline: pages 1311-1314	pages 1311-1314
Outline: pages 994C-998	pages 994C-998	Outline: pages 1335-1336	pages 1335-1336
Outline: pages 998H-1-998H-4	pages 998H-1-998H-6	Index & Glossary Tab: pages 1-14	New Index & Glossary pages 1-14
Outline: pages 998M-998N	pages 998M-998N		

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