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## **Texas Health Information Privacy for Personal Injury Attorneys**

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# Texas Health Information Privacy For Personal Injury Attorneys

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## **Texas Health Information Privacy For Personal Injury Attorneys**

The purpose of this paper is to explain the practices that a personal injury and an insurance defense law firm must do to comply with the privacy regulations for patient health information promulgated under Texas House Bill 300. This bill was enacted and became effective on September 1, 2012.<sup>1</sup>

### **I. Factual Background**

#### **A. Federal Law**

Federal law requires Health care providers to keep health information and patient records private under the Health Insurance Portability and Accountability Act (HIPAA).<sup>2</sup> HIPAA rules apply to health care providers and health insurance claim processors. These are referred to as "HIPAA covered entities." The business associates of these covered entities that receive protected health information (PHI) must also comply with the HIPAA rules.

The HIPAA Privacy Rule gives consumers rights over their health information and sets the standard on who may receive a consumer's PHI. This Rule applies to all forms of PHI, whether electronic or written. The HIPAA Security Rule protects PHI that is in electronic form and requires covered entities covered by HIPAA to maintain reasonable safeguards to ensure that electronic PHI is secure. The HIPAA Breach Notification Rule requires HIPAA covered entities and their business associates to provide notice to affected consumers and to HHS in the event of a breach of unsecured PHI.

This rule also requires the U.S. Department of Health and Human Services (HHS) to develop and implement rules. HHS's Final Omnibus Rule, adopted pursuant to HIPAA and related laws, went into effect on March 26, 2013. This final rule includes the Privacy Rule, the Security Rule, and the Breach Notification Rule.

HIPAA provides that if a state law grants more privacy protection to a patient, then the state law will govern.

#### **B. Texas Law**

The Texas Medical Records Privacy Act ("TMPA"), codified in Chapter 181 of the Texas Health and Safety Code<sup>3</sup> extends HIPAA protections beyond health care providers and health insurance claim processors and to any individual, business, or organization that obtains, stores,

<sup>1</sup>TEX. HEALTH & SAFETY CODE ANN. § 181.002(b).

<sup>2</sup> See generally, Health Insurance Portability and Accountability Act of 1996, 42 U.S.C. § 1320d-9 (2010). (Statute in general).

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