

# CONFIDENTIALITY

Protecting and Releasing

Health Information

in California

November 2018

17th Edition

Allan L. Bergesen



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Information Association

## PREFACE

This publication is designed to produce accurate and authoritative information on the subject matter covered. It is sold with the understanding that CHIA is not engaged in rendering legal service. This publication should not be viewed as legal advice or take the place of advice provided by a health care provider's legal counsel. If legal or other expert assistance is required, if there are differences of opinion or where the law is unclear, the advice of legal counsel should be sought.

This publication is designed to inform health information management and other health care professionals about the new HIPAA privacy and security rules and includes the California Preemption rules.

This publication reviews situations in which providers are called upon to disclose information – including releases pursuant to court orders, subpoenas, reporting requirements, patient treatment regimens, and billing and payment activities.

This publication will go a long way towards familiarizing the reader with health information confidentiality, as governed by HIPAA, as amended by the HITECH Act and the HIPAA Omnibus Rule, and by California state law.

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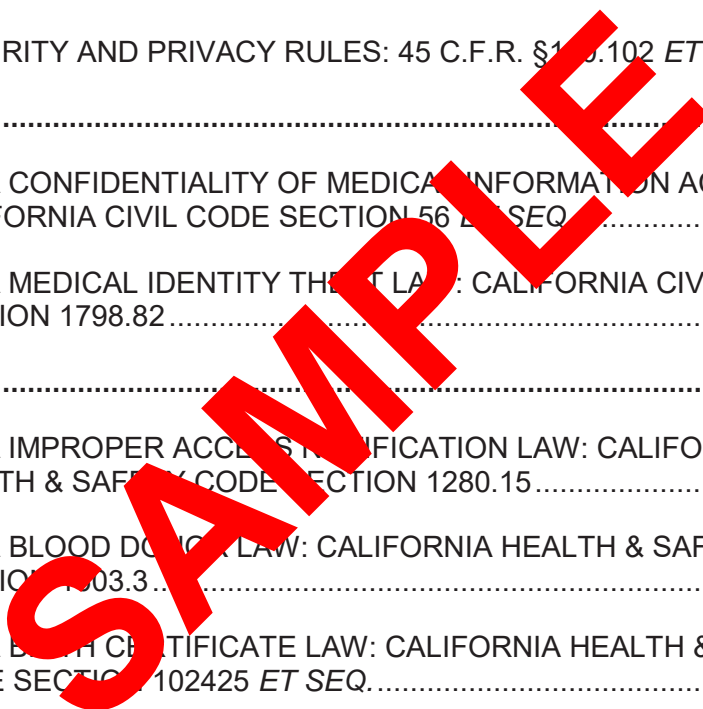
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## PART ONE

### PRIVACY: HIPAA IN CALIFORNIA

#### I. Background

- A. Health Insurance Portability and Accountability Act of 1996 (“HIPAA”)
  1. Enacted by Congress in 1996
  2. Divisions
    - a. “Portability” provisions – focus on ability of employees to maintain health coverage when moving between jobs (ERISA rules)
    - b. “Accountability” provisions – impose harsher penalties for Medicare/Medicaid fraud or abuse
    - c. “Administrative simplification” provisions – create national standards to facilitate transmission and use of electronic health information; includes national security and privacy standards
- B. Congressional Direction to DHHS – Congress directs federal Department of Health and Human Services (“DHHS”) to create rules governing electronic health care information in absence of congressional action
- C. DHHS Response – DHHS creates rules governing electronic health information
  1. E-healthcare transaction and code sets rules [65 Federal Register 50311 (August 14, 2000)] – prescribe standardized formats for electronic data interchange (“EDI”) between providers and payors, effective for all covered entities on October 16, 2003
  2. Patient identifier rules [67 Federal Register 38009 (May 31, 2002) (employers); 69 Federal Register 3434 (January 23, 2004) (health care providers)] – create single employer and provider identifiers for electronic transmissions; no national patient identifier rules yet
  3. Security rules [68 Federal Register 4334 (February 20, 2003)] – create national standards to protect electronic health information from loss or theft, effective on April 21, 2005.
  4. Privacy rules [65 Federal Register 82461 (December 28, 2000); 67 Federal Register 53182 (August 14, 2002)] – create national confidentiality standards for all health information (both electronic and non-electronic), effective on April 14, 2003.