

Arkansas Legal Manual for Health Information Management

Table of Contents

Chapter 1: Format and Content of Medical Records

| | | |
|----|--|----|
| 1. | Medical Record Defined..... | 1 |
| 2. | Ownership of the Medical Record..... | 2 |
| 3. | Specified Content and Format Requirements for Medical Records..... | 3 |
| a. | <i>Hospitals</i> | 3 |
| b. | <i>Critical Access Hospitals</i> | 15 |
| c. | <i>Alcohol/Drug Abuse Inpatient Treatment Centers</i> | 15 |
| d. | <i>Ambulatory Surgery Centers</i> | 17 |
| e. | <i>CORFs</i> | 18 |
| f. | <i>Home Health Agencies</i> | 19 |
| g. | <i>Hospices</i> | 21 |
| h. | <i>Infirmaries</i> | 21 |
| i. | <i>Nursing Homes</i> | 22 |
| j. | <i>Outpatient Psychiatric Centers</i> | 24 |
| k. | <i>Portable X-Ray Suppliers</i> | 25 |
| l. | <i>Psychiatric Hospitals</i> | 25 |
| m. | <i>Recuperation Centers</i> | 27 |
| n. | <i>Rehabilitation Hospitals and Units</i> | 27 |
| o. | <i>Residential Long-Term Care Facilities</i> | 28 |

Chapter 2: Creating Defensible Records

| | | |
|----|---|---|
| 1. | The Medical Record as a Medicolegal Document..... | 1 |
| 2. | Proper Documentation..... | 4 |
| 3. | Authentication..... | 6 |
| 4. | Errors and Corrections..... | 7 |
| | Appendix A: ISMP's List of Error-Prone Abbreviations, Symbols and Dose Designations..... | 9 |

Chapter 3: Confidentiality of Medical Records

| | | |
|----|---|---|
| 1. | Physicians and other Practitioners..... | 1 |
| a. | <i>Medical Ethics</i> | 1 |
| b. | <i>Physician and Psychotherapist-Patient Privilege</i> | 2 |
| 2. | Health Care Facilities..... | 3 |
| a. | <i>Hospitals and Related Institutions</i> | 3 |
| b. | <i>Critical Access Hospitals</i> | 5 |
| c. | <i>Mammography Facilities</i> | 5 |
| d. | <i>Home Health Agencies</i> | 6 |
| e. | <i>Hospices</i> | 6 |
| f. | <i>Long Term Care Facilities</i> | 6 |
| g. | <i>Intermediate Care Facilities for the Mentally Retarded</i> | 9 |
| h. | <i>Alcohol and/or Other Drug Abuse Treatment Programs</i> | 9 |

| | | |
|----|--|----|
| 3. | Liability for Improper Disclosure of Confidential Information..... | 9 |
| a. | <i>Loss or Suspension of License/Certification</i> | 9 |
| b. | <i>Civil Lawsuit</i> | 9 |
| c. | <i>HIPAA</i> | 10 |

Chapter 4: Requirements Under The HIPAA Privacy Regulations

| | | |
|----|--|----|
| 1. | Applicability to Health Care Providers..... | 1 |
| a. | <i>Covered Entities</i> | 1 |
| b. | <i>Covered Health Care Providers</i> | 1 |
| 2. | Information Protected by the HIPAA Privacy Regulations..... | 3 |
| a. | <i>Protected Health Information</i> | 3 |
| b. | <i>De-identified Information</i> | 3 |
| c. | <i>Limited Data Sets and Data Use Agreements</i> | 5 |
| 3. | General HIPAA Duties..... | 7 |
| a. | <i>Duty to Keep Protected Health Information Confidential</i> | 7 |
| b. | <i>Duty to Make Only the Minimum Necessary Uses or Disclosures</i> | 7 |
| c. | <i>Duty to Make Contracts with Business Associates</i> | 8 |
| d. | <i>Duty to Implement Administrative Requirements</i> | 11 |
| e. | <i>Duty to Document Compliance</i> | 12 |
| 4. | Individual Rights under the HIPAA Privacy Regulations..... | 13 |
| a. | <i>Right to Access Health Information</i> | 13 |
| b. | <i>Right to Amend Protected Health Information</i> | 15 |
| c. | <i>Right to an Accounting of Disclosures of Protected Health Information</i> | 17 |
| d. | <i>Right to Request Restriction on Uses and Disclosures</i> | 18 |
| e. | <i>Right to Alternative Communications</i> | 19 |
| f. | <i>Right to Notice of Privacy Practices</i> | 19 |
| 5. | Provider Liability under HIPAA..... | 22 |
| a. | <i>Enforcement</i> | 22 |
| b. | <i>Civil Penalties</i> | 22 |
| c. | <i>Criminal Penalties</i> | 23 |
| d. | <i>No Private Right of Action</i> | 23 |

Chapter 5: Use and Disclosure of Health Information Under HIPAA and Other Laws

| | | |
|----|---|---|
| 1. | HIPAA Preemption..... | 1 |
| a. | <i>Regulatory Framework</i> | 1 |
| b. | <i>Preemption of State Laws</i> | 1 |
| c. | <i>Continued Applicability of Many State Laws</i> | 3 |
| 2. | Authorizations to Use or Disclose Health Information..... | 4 |
| a. | <i>HIPAA’s General Rule</i> | 4 |
| b. | <i>Authorization Form Requirements</i> | 4 |
| c. | <i>Invalid Authorizations</i> | 5 |
| d. | <i>Conditioning Services or Benefits on Receipt of an Authorization</i> | 5 |
| e. | <i>Compound Authorizations</i> | 6 |
| f. | <i>Revocation</i> | 6 |
| g. | <i>Special Authorization Rules</i> | 7 |
| 3. | Uses and Disclosures For Treatment, Payment and Health Care Operations..... | 7 |
| a. | <i>General Rule</i> | 7 |

| | | | |
|-----|----|---|----|
| | b. | <i>Treatment</i> | 7 |
| | c. | <i>Payment</i> | 8 |
| | d. | <i>Health Care Operations</i> | 8 |
| 4. | | Disclosures for Facility Directories. | 10 |
| | a. | <i>Maintaining a Facility Directory</i> | 10 |
| | b. | <i>Disclosing Directory Information</i> | 10 |
| | c. | <i>Opportunity to Agree or Object</i> | 10 |
| 5. | | Disclosures To Those Involved in a Patient’s Care | 11 |
| | a. | <i>Permitted Disclosure of Relevant Information</i> | 11 |
| | b. | <i>Opportunity to Agree or Object</i> | 11 |
| 6. | | Uses or Disclosures for Notification Purposes | 12 |
| 7. | | Uses and Disclosures Required by Law | 12 |
| | a. | <i>HIPAA Regulations</i> | 12 |
| | b. | <i>Required Disclosures Under Arkansas Law</i> | 12 |
| 8. | | Disclosures for Public Health Activities | 15 |
| | a. | <i>General Rule</i> | 15 |
| | b. | <i>Child Abuse and Neglect</i> | 15 |
| | c. | <i>Reports Concerning FDA-Regulated Products</i> | 16 |
| | d. | <i>Certain Disclosures to Employers</i> | 16 |
| 9. | | Disclosures About Adult Victims of Abuse, Neglect and Domestic Violence | 16 |
| | a. | <i>HIPAA Requirements for Disclosure</i> | 16 |
| | b. | <i>Arkansas Law</i> | 17 |
| 10. | | Disclosures for Health Oversight Purposes | 17 |
| | a. | <i>Health Oversight Activities</i> | 17 |
| | b. | <i>Health Oversight Agencies</i> | 18 |
| 11. | | Disclosures for Law Enforcement Purposes..... | 19 |
| | a. | <i>Law Enforcement Officials</i> | 19 |
| | b. | <i>Required by Law</i> | 19 |
| | c. | <i>Court Orders and Similar Directives</i> | 19 |
| | d. | <i>Administrative Requests or Demands for Law Enforcement Purposes</i> | 20 |
| | e. | <i>Identification of Suspects, Witnesses, and Missing Persons</i> | 20 |
| | f. | <i>Disclosures About Crime Victims</i> | 21 |
| | g. | <i>Suspicious Deaths</i> | 22 |
| | h. | <i>Reporting a Crime on the Covered Entity’s Premises</i> | 22 |
| 12. | | Disclosures in Emergency Situations..... | 22 |
| | a. | <i>Disclosures to Avert Serious Threats to Health or Safety</i> | 22 |
| | b. | <i>Uses or Disclosures for Disaster Relief Purposes</i> | 23 |
| | c. | <i>Reporting a Crime in an Emergency</i> | 23 |
| 13. | | Disclosures to the Patient | 24 |
| | a. | <i>Patient Requests</i> | 24 |
| | b. | <i>Disclosure of Health Information Created by Another Provider</i> | 24 |
| 14. | | Release of Information About Deceased Patients or for Organ Procurement..... | 24 |
| | a. | <i>Confidentiality Requirements</i> | 24 |
| | b. | <i>Disclosures to Coroners and Medical Examiners</i> | 25 |
| | c. | <i>Disclosures to Funeral Directors</i> | 25 |
| | d. | <i>Organ Procurement</i> | 25 |

| | | |
|-----|--|----|
| 15. | Personal Representatives | 26 |
| | a. <i>Personal Representative Defined</i> | 26 |
| | b. <i>Treating a Personal Representative as the Patient</i> | 26 |
| | c. <i>Abuse, Neglect and Endangerment Situations</i> | 26 |
| | d. <i>Deceased Patients</i> | 27 |
| | e. <i>Adults and Emancipated Minors</i> | 28 |
| | f. <i>Unemancipated Minors</i> | 30 |
| | g. <i>Authorizations Signed by Personal Representatives</i> | 33 |
| 16. | Uses or Disclosures of Protected Health Information for Marketing | 33 |
| | a. <i>Definition of Marketing</i> | 33 |
| | b. <i>Special Form of Authorization Required</i> | 34 |
| 17. | Uses and Disclosures for Research Purposes | 34 |
| | a. <i>Definition of Research</i> | 34 |
| | b. <i>General Rules for Use or Disclosure</i> | 34 |
| | c. <i>Institutional Review Board or Privacy Board Alteration or Waiver</i> | 35 |
| | d. <i>Review of Health Information Preparatory to Research</i> | 35 |
| | e. <i>Research Involving the Health Information of Deceased Patients</i> | 36 |
| | f. <i>Research Authorization Rules</i> | 36 |
| 18. | Telephone and Facsimile Disclosures | 36 |
| | a. <i>Telephone</i> | 36 |
| | b. <i>Facsimile</i> | 37 |
| 19. | Videotaping, Audiotaping or Photography of Patients | 39 |
| | a. <i>Treatment Purposes</i> | 39 |
| | b. <i>Educational Purposes</i> | 39 |
| | c. <i>Documentation of Child Abuse</i> | 39 |
| 20. | Incidental Disclosures | 39 |
| | a. <i>No HIPAA Violation</i> | 39 |
| | b. <i>Policies and Procedures</i> | 40 |
| | Appendix A: Sample Authorization Form..... | 41 |
| | Appendix B: Reportable Diseases and Conditions | 42 |
| | Appendix C: Sample Authorization Form – Including Marketing Language | 43 |

Chapter 6: Confidentiality of Mental Health Information

| | | |
|----|---|---|
| 1. | HIPAA Privacy Regulations | 1 |
| | a. <i>HIPAA and Psychotherapy Notes</i> | 1 |
| | b. <i>HIPAA and Other Mental Health Records</i> | 3 |
| 2. | Treatment Facility Records | 3 |
| | a. <i>Patient Rights</i> | 3 |
| | b. <i>Medicare Requirements</i> | 4 |
| | c. <i>Arkansas Law</i> | 5 |
| | d. <i>Accreditation Standards</i> | 6 |
| 3. | Individual Providers | 6 |
| | a. <i>Psychotherapist-Patient Privilege</i> | 6 |
| | b. <i>Duty to Warn</i> | 6 |
| | c. <i>Psychiatric Records</i> | 6 |
| | d. <i>Psychological Records</i> | 7 |
| | e. <i>Social Work Records</i> | 7 |

| | | |
|----|--|---|
| f. | <i>Counselor Records</i> | 8 |
| 4. | Authorizations to Release Records of a Mentally Ill Patient..... | 8 |
| a. | <i>Capacity</i> | 8 |
| b. | <i>Personal Representative</i> | 8 |

Chapter 7: Confidentiality of Substance Abuse Records

| | | |
|----|---|----|
| 1. | Applicability of 42 C.F.R. Part 2 (“Part 2”)..... | 1 |
| a. | <i>Entities and Persons Covered</i> | 1 |
| b. | <i>Patients Covered</i> | 3 |
| c. | <i>Records and Information Covered</i> | 3 |
| d. | <i>Records and Information Excluded</i> | 3 |
| 2. | Prohibited Uses and Disclosures Under Part 2 | 4 |
| a. | <i>General Rule</i> | 4 |
| b. | <i>Express Prohibition Against Use in Criminal Proceedings</i> | 5 |
| 3. | Permitted Disclosures Under Part 2 | 6 |
| a. | <i>Disclosures Consistent With a Patient’s Written Consent</i> | 6 |
| b. | <i>Disclosures to Prevent Multiple Enrollments in Detoxification or Maintenance Treatment Programs</i> | 7 |
| c. | <i>Disclosures to Elements of the Criminal Justice System Which Have Referred the Patient</i> | 8 |
| d. | <i>Disclosures in Medical Emergencies</i> | 9 |
| e. | <i>Disclosures for Research Activities</i> | 9 |
| f. | <i>Disclosures for Audit and Evaluation Activities</i> | 10 |
| g. | <i>Disclosures of Records Excluded From Regulations</i> | 11 |
| 4. | Disclosures Pursuant to Court Orders Under Part 2 | 11 |
| a. | <i>Legal Effect of Order</i> | 11 |
| b. | <i>Orders Not Applicable to Records Disclosed for Research, Audit or Evaluation Purposes</i> | 11 |
| c. | <i>Applicability to Release of Confidential Communications</i> | 11 |
| d. | <i>Procedures and Criteria for Orders Authorizing Disclosure for Noncriminal Purposes</i> | 12 |
| e. | <i>Procedures and Criteria for Orders Authorizing Use and Disclosure for Criminal Investigation or Prosecution of Patients</i> | 13 |
| f. | <i>Procedures and Criteria for Orders Authorizing Use and Disclosure for Investigation or Prosecution of Program or Holder of Records</i> | 15 |
| g. | <i>Orders Authorizing Use of Undercover Agents and Informants to Criminally Investigate Employees or Agents of a Program</i> | 16 |
| 5. | Disclosures to the Patient | 17 |
| a. | <i>No Prohibition</i> | 17 |
| b. | <i>No Written Consent Required</i> | 17 |
| 6. | Special Requirements for Certain Patients | 17 |
| a. | <i>Minor Patients</i> | 17 |
| b. | <i>Incapacitated Patients</i> | 19 |
| c. | <i>Deceased Patients</i> | 19 |
| 7. | Restrictions on Redislosure..... | 19 |
| a. | <i>Restrictions on Recipients of Substance Abuse Information</i> | 19 |
| b. | <i>Required Notice to Recipients</i> | 20 |

| | | |
|-----|---|----|
| 8. | Required Agreement with Qualified Service Organizations | 20 |
| a. | <i>Communications Authorized With Written Agreement</i> | 20 |
| b. | <i>Written Agreement Required</i> | 20 |
| c. | <i>Interaction with HIPAA Business Associate Provisions</i> | 20 |
| 9. | Notice to Patients of Confidentiality Requirements | 21 |
| a. | <i>Notice Required</i> | 21 |
| b. | <i>Required Elements</i> | 21 |
| c. | <i>Interaction With HIPAA</i> | 21 |
| 10. | Security of Written Records | 21 |
| 11. | Criminal Penalties for Violations of Requirements | 22 |

Chapter 8: Confidentiality of HIV-Related Information

| | | |
|----|---|---|
| 1. | Federal Laws and Regulations | 1 |
| a. | <i>Federal Grant Conditions</i> | 1 |
| b. | <i>Anti-Discrimination Laws</i> | 1 |
| c. | <i>HIPAA Privacy Regulations</i> | 1 |
| 2. | State Statutes and Regulations | 2 |
| a. | <i>Privacy Protections</i> | 2 |
| b. | <i>Free Testing</i> | 2 |
| c. | <i>Mandatory Testing and Related Disclosures</i> | 2 |
| d. | <i>Mandatory Notification and Reporting</i> | 4 |
| e. | <i>HIV Shield Law</i> | 5 |
| f. | <i>Arkansas State Medical Board Regulation 16</i> | 5 |
| 3. | AHIMA Guidance | 7 |
| a. | <i>AHIMA Practice Brief</i> | 7 |
| b. | <i>AHIMA Recommended Procedures</i> | 7 |

Chapter 9: Confidentiality of Quality Review Materials

| | | |
|----|--|----|
| 1. | Peer Review and Quality Assurance | 1 |
| a. | <i>Health Care Quality Improvement Act</i> | 1 |
| b. | <i>Arkansas Protections for Peer Review and Quality Improvement Committees and Records</i> | 2 |
| c. | <i>Submitting Peer Review and/or Quality Assurance Data to Accreditation Organizations</i> | 4 |
| 2. | Utilization Review | 5 |
| a. | <i>Definition</i> | 5 |
| b. | <i>Confidentiality</i> | 5 |
| c. | <i>No Privilege</i> | 5 |
| 3. | Quality Improvement Organization Records and Information | 5 |
| a. | <i>Quality Improvement Organization Defined</i> | 5 |
| b. | <i>QIO's Access to Provider Records</i> | 6 |
| c. | <i>Liability Protection for Providers</i> | 6 |
| d. | <i>QIO's Confidentiality Requirements</i> | 7 |
| e. | <i>QIO Confidential Information</i> | 7 |
| f. | <i>QIO Non-Confidential Information</i> | 10 |

Chapter 10: Use and Disclosure of Health Information in Judicial Proceedings

| | | |
|-------------|---|----|
| 1. | General Rules for Uses and Disclosures in Litigation | 1 |
| a. | <i>Uses and Disclosures When the Provider is a Party</i> | 1 |
| b. | <i>Disclosures When the Provider Is Not a Party</i> | 2 |
| 2. | Court and Administrative Orders | 2 |
| 3. | Subpoenas | 3 |
| a. | <i>Types of Subpoenas in a Civil Case</i> | 3 |
| b. | <i>Service of a Subpoena</i> | 4 |
| c. | <i>Responding to a Subpoena for Medical Information</i> | 5 |
| d. | <i>Mailing Medical Records in Response to a Subpoena</i> | 7 |
| e. | <i>Out-of-State Subpoenas</i> | 9 |
| f. | <i>Grand Jury Subpoenas</i> | 10 |
| g. | <i>Prosecutor’s Subpoenas</i> | 10 |
| h. | <i>Objecting to a Subpoena</i> | 11 |
| i. | <i>Subpoenas Issued by a Judicial Officer</i> | 12 |
| j. | <i>Arkansas Code’s Notice Requirements Prior to Use in Litigation</i> | 12 |
| k. | <i>Disclosing Records Created by Another Provider</i> | 12 |
| l. | <i>General Procedures for Handling Subpoenas</i> | 13 |
| m. | <i>Special Subpoena Rules</i> | 14 |
| 4. | Depositions | 14 |
| a. | <i>Deposition Defined</i> | 14 |
| b. | <i>Standard for Disclosure of Protected Health Information</i> | 15 |
| c. | <i>Required Attendance at a Deposition</i> | 15 |
| c. | <i>Handling Subpoenas Where a Business Entity is Named as the Witness</i> | 15 |
| d. | <i>Testifying in a Deposition</i> | 15 |
| 5. | Court Testimony by the Health Information Professional | 16 |
| a. | <i>Initial Questions to Introduce Medical Record as Evidence</i> | 16 |
| b. | <i>Reading Portions of Medical Records Into Evidence</i> | 17 |
| 6. | Search Warrants | 18 |
| a. | <i>Search Warrant Defined</i> | 18 |
| b. | <i>Standard for Disclosure of Protected Health Information</i> | 18 |
| c. | <i>Search Warrant Response Plan</i> | 18 |
| 7. | Providers’ Disclosures to their Attorneys | 20 |
| a. | <i>Health Care Operations</i> | 20 |
| b. | <i>Minimum Necessary Standard</i> | 20 |
| Appendix A: | Sample Subpoena in a Civil Case – Arkansas State Court | 21 |
| Appendix B: | Sample Subpoena in a Civil Case – Federal District Court | 23 |
| Appendix C: | Sample Affidavit of Custodian of Medical Records | 25 |
| Appendix D: | Sample Affidavit of No Records | 26 |
| Appendix E: | Sample “Exhibit A” to Prosecutors’ Subpoena for Medical Records | 27 |

Chapter 11: Storage, Retention and Destruction of Records

| | | |
|----|---|---|
| 1. | Why Must Records be Kept | 1 |
| a. | <i>Provide Better Health Care</i> | 1 |
| b. | <i>Comply With The Law</i> | 1 |
| c. | <i>Minimize Litigation Losses</i> | 1 |

| | | |
|----|--|----|
| 2. | Storage and Security of Records..... | 1 |
| a. | <i>General Requirements</i> | 1 |
| b. | <i>Hospitals and Related Institutions</i> | 2 |
| c. | <i>Critical Access Hospitals</i> | 5 |
| d. | <i>Long Term Care Facilities</i> | 6 |
| e. | <i>Home Health Agencies</i> | 7 |
| f. | <i>Hospices</i> | 7 |
| g. | <i>Alcohol and/or Substance Abuse Treatment Programs</i> | 8 |
| h. | <i>HIPAA Compliance</i> | 8 |
| 3. | Retention of Medical and Other Records..... | 9 |
| a. | <i>General Guidelines</i> | 9 |
| b. | <i>HIPAA Privacy Regulations</i> | 10 |
| c. | <i>State and Federal Regulatory Requirements</i> | 11 |
| d. | <i>Statutes of Limitations</i> | 13 |
| e. | <i>Physician Practices</i> | 14 |
| f. | <i>Process of Establishing a Record Retention Program</i> | 15 |
| g. | <i>Electronic Records</i> | 18 |
| h. | <i>HIPAA Requirements</i> | 18 |
| 4. | Destruction of Medical and Other Records..... | 18 |
| a. | <i>Compliance With Record Retention Program</i> | 18 |
| b. | <i>Spoliation and Suspension of Routine Destruction</i> | 18 |
| c. | <i>AHIMA Guidance</i> | 19 |
| d. | <i>Legal Requirements</i> | 20 |
| 5. | Disposition of Records When Physician Leaves | 20 |
| a. | <i>Contractual Rights</i> | 20 |
| b. | <i>Determining Who Retains the Records When No Contract Exists</i> | 21 |
| c. | <i>Providing Notice to Patients</i> | 22 |
| d. | <i>Ethical Obligations</i> | 22 |
| 6. | Handling Records During Facility Mergers and Acquisitions | 22 |
| a. | <i>Statutory and Regulatory Responsibilities</i> | 22 |
| b. | <i>Contractual Duties</i> | 23 |
| c. | <i>Integration of Information Systems</i> | 23 |
| 7. | Disposition of Records Upon Termination of Practice..... | 24 |
| a. | <i>Retention of Records</i> | 24 |
| b. | <i>Ethical Duties</i> | 24 |
| | Appendix A: AHIMA’s Recommended Retention Standards..... | 25 |
| | Appendix B: DOH Record Retention Time Frames | 26 |
| | Appendix C: Arkansas Health Information Management Association’s Suggested Retention Periods for Hospitals and Related Institutions | 27 |
| | Appendix D: Sample Certificate of Destruction | 28 |

Chapter 12: Electronic Medical Information and Patient Records

| | | |
|----|--|---|
| 1. | Use of Electronic Medical Records and Electronic Signatures..... | 1 |
| a. | <i>Generally</i> | 1 |
| b. | <i>Federal Electronic Signatures in Global and National Commerce Act</i> | 1 |
| c. | <i>Arkansas Electronic Records and Signatures Act</i> | 2 |
| d. | <i>Arkansas Uniform Electronic Transactions Act</i> | 2 |

| | | |
|----|--|----|
| e. | <i>Arkansas Regulations</i> | 3 |
| f. | <i>Federal Requirements</i> | 5 |
| 2. | HIPAA Security Regulations | 8 |
| a. | <i>Background</i> | 8 |
| b. | <i>HIPAA Privacy vs. HIPAA Security</i> | 9 |
| c. | <i>Approach to Compliance</i> | 10 |
| d. | <i>General Requirements</i> | 10 |
| e. | <i>Organization of the HIPAA Security Regulations</i> | 10 |
| f. | <i>Overview of the Process for Compliance</i> | 12 |
| g. | <i>Administrative Safeguards and Implementation Specifications</i> | 12 |
| h. | <i>Physical Safeguards and Implementation Specifications</i> | 24 |
| i. | <i>Technical Safeguards and Implementation Specifications</i> | 29 |
| j. | <i>Organizational Requirements and Implementation Specifications</i> | 34 |
| 3. | Special Areas of Concern | 35 |
| a. | <i>Transmission of Patient Data by Electronic Mail</i> | 35 |
| b. | <i>Web Sites</i> | 35 |

Chapter 13: Managing Medical Information in Employee Records

| | | |
|----|--|----|
| 1. | Occupational Safety and Health Act | 1 |
| a. | <i>Scope and Application</i> | 1 |
| b. | <i>Retention of OSHA Records</i> | 1 |
| c. | <i>Access to OSHA Records</i> | 2 |
| d. | <i>Access to Exposure Records</i> | 2 |
| e. | <i>Employer Physician Review</i> | 3 |
| f. | <i>Redacting Records</i> | 3 |
| g. | <i>OSHA Access</i> | 3 |
| h. | <i>Employer's Responsibility to Provide Information Upon Employment</i> | 3 |
| i. | <i>Transfer and Disposal of Records</i> | 4 |
| j. | <i>Recording and Reporting Occupational Injuries and Illnesses</i> | 4 |
| k. | <i>Retention and Updating Reports</i> | 5 |
| l. | <i>Employee Access to OSHA Records</i> | 6 |
| m. | <i>Reporting Fatalities and Multiple Hospitalization Incidents to OSHA</i> | 6 |
| n. | <i>Bloodborne Pathogens</i> | 7 |
| 2. | Americans with Disabilities Act | 8 |
| a. | <i>Generally</i> | 8 |
| b. | <i>"Disability" Defined</i> | 8 |
| c. | <i>Pre-employment Medical Examinations</i> | 8 |
| d. | <i>Medical Examinations or Inquiries</i> | 8 |
| e. | <i>Post-Offer Employment Entrance Examinations</i> | 8 |
| f. | <i>Maintaining Separate Employee Medical Records</i> | 9 |
| g. | <i>Examination of Employees</i> | 9 |
| h. | <i>Drug Testing</i> | 9 |
| i. | <i>Infectious and Communicable Diseases and Food Handling Jobs</i> | 9 |
| j. | <i>Employee Access to Own Medical Files</i> | 9 |
| 3. | Workers' Compensation and Confidentiality | 10 |
| a. | <i>Reporting Injuries or Death</i> | 10 |
| b. | <i>Physician Testimony and Reports</i> | 10 |

- c. *Employees Treated at Veterans Administration Hospitals* 10
- d. *Confidentiality*..... 10
- e. *HIPAA and Workers' Compensation Disclosures*..... 10
- 4. HIPAA and Employee Medical Records..... 11
 - a. *HIPAA's Inapplicability to Health Care Providers as Employers*..... 11
 - b. *Disclosures for Public Health Purposes*..... 11
 - c. *Employer Medical Services or Benefit Plans*..... 12