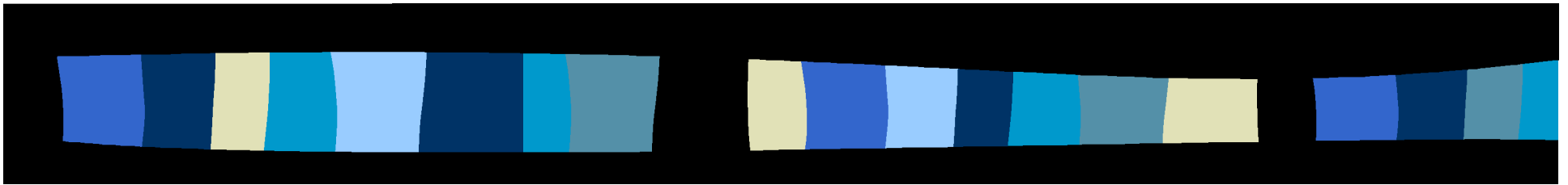


State Privacy: Texas



Presented by:

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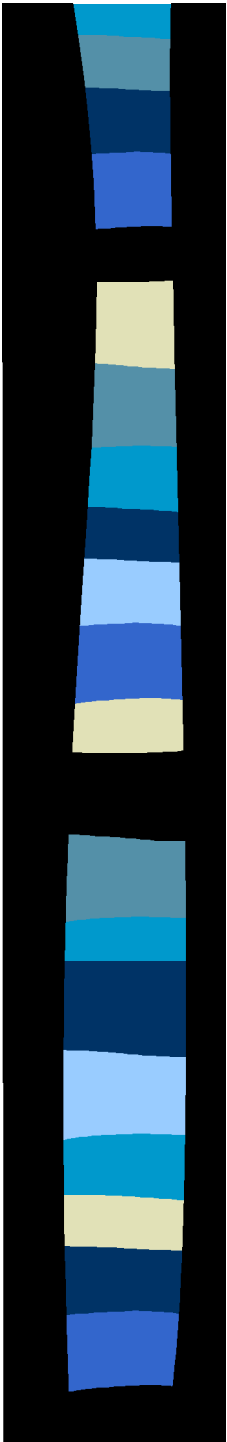


Texas

- Texas previously had a patchwork of comprehensive confidentiality/privacy laws.
- However, Texas recently passed SB11 and changed the way privacy must be analyzed in Texas.

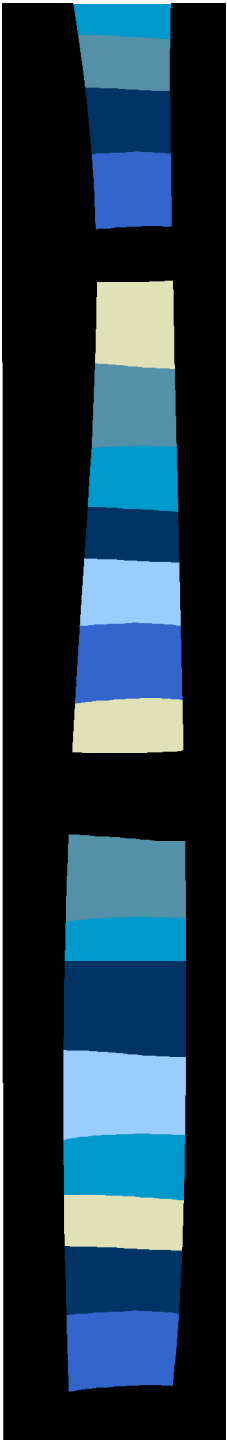
Texas

Three TIERS of Privacy in Texas.



Texas

1. Federal (HIPAA privacy standards)
2. Senate Bill 11 (the new Texas privacy law)
3. Preexisting Texas law





Texas

HIPAA is the national, default standard,
but:

- If SB 11 is more restrictive than HIPAA, it controls.
- If preexisting state law is more restrictive than federal or state law, it control.

*Problems determining what is more restrictive
and what is just *different*.



Covered Entity: Examples

■ Federal Law

- Health Care Provider
- Health Plan
- Health Care Clearinghouse

■ State Law

- Anyone assembling, collecting, analyzing, using, evaluating, storing, or transmitting PHI



Texas: Examples

Patient Rights

SB 11 specifically adopts the HIPAA privacy standards relating to:

- An individual's access to the individual's PHI;
- Amendment of PHI;
- Uses and disclosures of PHI, (including consent requirements), and
- Notice of privacy practices for PHI



Texas: Examples

Marketing

SB11 is stricter than and therefore preempts, the HIPAA standards for marketing communications.

HIPAA would allow one exception to the prohibition of use or disclosure of PHI without authorization for marketing communications, SB 11 does not allow for that exception



Texas: Examples

- Requirement for Disclosure
 - Federal
 - Marketing must meet certain disclosure requirements and contain an opt-out option
 - State
 - Must have consent or authorization



Texas: Examples

Disclosure to Family Members

(preexisting Texas law stricter)

HIPAA (Sec.510(b)) allows a covered entity to disclose:

- to a family member, other relative, or
- a close personal friend of the individual, or
- any other person identified by the individual,

The PHI directly relevant to such person's involvement with the individual's care or payment

**Texas allows no such disclosure and therefore
Texas law controls.**

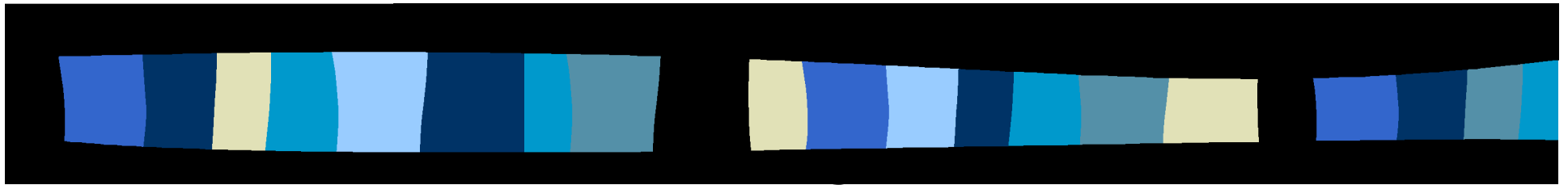


Texas: Remedies and Penalties

Under SB 11:

- Attorney General may institute an action:
 - for injunctive relief, and/or
 - civil penalties (not to exceed \$3,000 per violation)
 - If the court finds that the violations constitute a pattern or practice, it can
 - assess additional penalties (not to exceed \$250,000);
 - suspend or revoke the facility's license;
 - exclude the covered entity from state-funded health care programs.
- * Additionally, individuals may bring a cause of action under other law for violations under SB 11

Questions?



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