

# DRAFT - ABSTRACT



## HEALTHCARE CREDIT PRACTICES WORKGROUP

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### *Workgroup Members:*

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**DRAFT****Statement of Purpose****Mission**

Outline the impact of HIPAA and other privacy regulations on commercial credit for the healthcare segment and recommend policy or regulatory changes, as necessary

**Goals**

- Define HIPAA's impact on "funding" receivables (factoring, financing, securitizing, etc)
- Isolating the new "privacy interest" in receivables as it relates to a "true sale" (i.e., impact on bankruptcy laws, international receivable laws, etc)
- If indicated, authoring a resolution for Congress and other interested regulatory bodies

**DRAFT****Abstract**

HIPAA's Privacy Rule is one in a series of emerging privacy regulations that suggest a new type of ownership interest in medical accounts receivable; namely, the federal rights of an individual that protect against unauthorized access, use or disclosure of personal health information. We believe that the legal boundaries of this right within the context of a commercial transfer of medical receivable may need to be academically developed. In the absence of clarity on this issue, transactional costs, legal costs and ultimately, the costs of impairing access through sophisticated financing vehicles (i.e., asset-backed securitization) may result in further erosion of capital markets for healthcare entities.

Consider that PHI (HIPAA-protected health information) and a medical receivable are intrinsically bound. One cannot exist without the other. Thus we find that in most credit arrangements a transfer of medical receivable constitutes a sale of PHI, which is illegal except under certain circumstance under the Privacy Rule. Unfortunately, an exemption or comparable circumstance for commercial lending and other more complex forms of financing or factoring is not articulated in the Privacy Rule. This creates a blemish in the transfer of ownership rights related to receivable, a common practice in healthcare credits.

In this report, we apply the term "healthcare credits" to denote a broad range of financial instruments including commercial loans, working capital lines of credit, receivable financing, factoring of receivable, securitization and any other form of credit extension which is collateralized in whole or in part, on the value of medical accounts receivable ("AR").

The report seeks to highlight disturbing regulatory issues that affect healthcare credit practices. Further research is necessary and we urge industry leaders to contribute to our collective knowledge. We note that HIPAA, while applying negative pressures, also tends to transform credit in a manner that is favorable for both lenders and the healthcare industry.

**DRAFT****Workgroup Recommendations / Observations**

- HHS should implement a safe harbor for PHI transfers that occur as a result of lending arrangements. The industry needs time to sort this issue.
- We seek clarification of the intentions of the Office of Civil Rights for applying HIPAA in routine lending scenarios, as well as more complex credit instruments (i.e., factoring, securitization, etc.).
- A legal/academic body of work or White Paper should be commissioned that tests a “true sale” within the context of HIPAA’s new privacy rights for customers.