

insured's claim. Accordingly, a thorough knowledge of the particular policy at issue is essential for determining if a particular subrogation action is essential or appropriate in a given case.

## 6 PRIVACY ISSUES

- A. **Non-Public Personal Financial Information.** Texas law requires the Texas Insurance Commissioner to enact regulations for insurance companies that will safeguard consumer financial information to the extent of Federal privacy laws governing financial institutions.<sup>115</sup> The Department issued detailed regulations regarding the disclosure of personal financial information to non-affiliated third parties.<sup>116</sup> These regulations primarily concern the use of information gathered in the course of financial transactions with insurance consumers and set forth procedures for providing privacy notices to consumers with respect to use of personal financial information. Carriers now provide, as a matter of course, a privacy policy statement with the issuance of the insurance policy. These issues are not routinely encountered in claims handling context. However, care should be taken when personal financial records, such as tax returns, are produced to the carrier as a part of the claims process. Such records should normally be safeguarded and not disclosed to third-parties who are not involved in the claims process.
- B. **Non-Public Personal Health Information.** The general rule is that carriers must obtain an authorization from the subject person before disclosing any non-public personal health information about the person to a third party.<sup>117</sup> However, there are a number of exceptions to this rule, including as necessary for claims administration, adjustment, and management.<sup>118</sup> But note that a carrier does have a responsibility, before the disclosure of any such information, to have the receiving third-party agree not to disclose the protected information other than as necessary to carry out the purposes for which the covered entity disclosed the information.<sup>119</sup>
- 1) The use of health information, such as medical records, is essential to the claims evaluation process in a bodily injury claim. These records contain confidential health information. Carriers routinely use evaluators to review medical records to opine on the appropriateness of treatment, charges, diagnosis, etc. Such activities are permissible under Texas law, without any further authorization from the claimant. But any use of the protected records beyond the claims context, is likely not permissible. Further information on the Texas regulations regarding insurance companies and privacy can be found on the internet at: <http://www.tdi.state.tx.us/webinfo/08qbulletins.html>.

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<sup>115</sup> TEX. INS. CODE ANN. § 601.051.

<sup>116</sup> 28 TAC Chapter 22.

<sup>117</sup> 28 TAC § 22.53.

<sup>118</sup> 28 TAC § 22.57.

<sup>119</sup> 28 TAC § 22.60.