HIPAA Privacy Rule
NYS Office of Mental Health Preemption Analysis

Because the knowledge base surrounding, and interpretation of, HIPAA continues to evolve, determinations contained in the Preemption Analysis are subject to revision and change. This table captures a list of changes made since the Analysis was first published, and will be updated as needed.

UPDATES AND REVISIONS:

Date of Action	NYS Law Section	Comments, Notes
December 11, 2002	Mental Hygiene Law §43.05	Preemption Analysis inaccurately cites MHL §43.05 and concludes State law requires patient consent to investigate resources for payment purposes. Such consent is not required under this section of State law. Hence, State law and HIPAA provisions are consistent, and patient consent is not needed to use/disclose PHI for payment purposes.
December 11, 2002	Mental Hygiene Law §33.13 (c)(2) - Mental Hygiene Legal Services access to patient records	The Preemption Analysis concludes that, unless required by law, access by MHLS to patient records requires patient authorization. However, this determination is ***not final*** and continues to be explored by OMH. **It remains unclear to OMH whether or not language in MHL §47.03 that defers to more stringent federal law in relation to MHLS' access to records drives this conclusion.** In this regard, MHLS has been asked to obtain interpretive guidance from HHS, and OMH will defer to this determination. **The conclusion in the Preemption Analysis, therefore, is only preliminary and is under review.**