

# New York State Office of Mental Health HIPAA Preemption Analysis

NYS Statute	HIPAA Regulation (45 CFR Parts 160, 164)	Preemption Analysis
<b>Civil Practice Law and Rules Section 2302: Subpoenas</b>		
<p><b>CPLR 2302 (a):</b> Subpoenas may be issued without a court order by the clerk of the court, a judge where there is no clerk, the attorney general, an attorney of record for a party to an action, an administrative proceeding or an arbitrator.....provided, however, that a subpoena to compel production of a patient's clinical record maintained pursuant to the provisions of section 33.13 of the MHL shall be accompanied by a court order...</p>	<p><b>§164.512(a)</b></p> <p>(a) Standard: Uses and disclosures required by law.</p> <p>(1) A covered entity may use or disclose protected health information to the extent that such use or disclosure is required by law and the use or disclosure complies with and is limited to the relevant requirements of such law.</p> <p>(2) A covered entity must meet the requirements described in paragraph(c) (Disclosures about victims of abuse, neglect or domestic violence); (e) (Disclosures for judicial or administrative proceedings); or (f) (Disclosures for law enforcement purposes) of Section 164.512 for uses or disclosures required by law</p>	<p><b>No Preemption</b> State law applies, since it is more stringent by preventing disclosure without an accompanying court order, which can only be made after specific findings have been made.</p>
<b>Penal Law Section 400: Firearms</b>		
<p><b>Penal Law §400(4)</b> Investigation. Before a license( to possess or deal in firearms) is issued or renewed, there shall be an investigation of all statements required in the application by the duly constituted</p>	<p><b>§164.512(a)</b></p> <p>(a) Standard: Uses and disclosures required by law.</p> <p>(1) A covered entity may use or disclose protected health</p>	<p><b>No Preemption:</b> Because of the nexus between the need for the disclosure by law enforcement and public safety, State law and the HIPAA Privacy regulation are</p>

<p>police authorities of the locality where such application is made. For that purpose, the records of the appropriate office of the department of mental hygiene concerning previous or present mental illness of the applicant shall be available for inspection by the investigating officer of the police authority....Upon completion of the investigation, the police authority shall report the results to the licensing officer without unnecessary delay.</p>	<p>information to the extent that such use or disclosure is required by law and the use or disclosure complies with and is limited to the relevant requirements of such law.</p> <p>(2) A covered entity must meet the requirements described in paragraph(c) (Disclosures about victims of abuse, neglect or domestic violence); (e) (Disclosures for judicial or administrative proceedings); or (f) (Disclosures for law enforcement purposes) of Section 164.512 for uses or disclosures required by law</p> <p><b>§164.512(f)</b> Disclosures for law enforcement purposes. A covered entity may disclose PHI: (i) as required by law including laws that require the reporting of certain types of wounds...(ii) In compliance with and as limited by the relevant requirements of...(C) an administrative request..., provided that: (1) the information sought is relevant and material to a legitimate law enforcement inquiry; (2) the request is specific and limited in scope to the extent reasonably practicable in light of the purpose for which the information is sought; and (3) De-identified information could not reasonably be used.</p> <p><i>Preamble:</i> "The importance and legitimacy of law enforcement activities are beyond question, and they are not at issue in this regulation. We permit disclosure of protected health information to</p>	<p>consistent and State law applies. Additionally, though not legally necessary, it is possible that through the application process the individual is authorizing this disclosure.</p>
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<b>Labor Law Sections 458,459: Explosives</b>		
<p>Labor Law §458(5): Before a license or certificate (to deal in explosives) is issued, the Commissioner of Labor shall have the authority to request and receive from any department, division, board, bureau, commission or agency of the state or local government thereof such assistance and information as will enable him properly and effectively to carry out his powers and duties under this article.</p> <p>Labor Law §459 (1): A license or certificate (to deal in explosives) may be denied where the Commissioner of Labor has probable reason to believe...after due investigation...that the applicant...has been confined as a patient or inmate in a public or private institution for the treatment of mental diseases...</p>	<p><b>§164.512(a)</b></p> <p>(a) Standard: Uses and disclosures required by law.</p> <p>(1) A covered entity may use or disclose protected health information to the extent that such use or disclosure is required by law and the use or disclosure complies with and is limited to the relevant requirements of such law.</p> <p>(2) A covered entity must meet the requirements described in paragraph(c) (Disclosures about victims of abuse, neglect or domestic violence); (e) (Disclosures for judicial or administrative proceedings); or (f) (Disclosures for law enforcement purposes) of Section 164.512 for uses or disclosures required by law</p> <p><b>§164.512(f)</b> Disclosures for law enforcement purposes. A covered entity may disclose PHI: (i) as required by law including laws that require the reporting of certain types of wounds...(ii) In compliance with and as limited by the relevant requirements of...(C) an administrative request..., provided that: (1) the information sought is relevant and material to</p>	<p><b>No Preemption:</b> Because of the nexus between the need for the disclosure by law enforcement and public safety, State law and the HIPAA Privacy regulation are consistent and State law applies. Additionally, though not legally necessary, it is possible that through the application process the individual is authorizing this disclosure.</p>

	<p>a legitimate law enforcement inquiry; (2) the request is specific and limited in scope to the extent reasonably practicable in light of the purpose for which the information is sought; and (3) De-identified information could not reasonably be used.</p> <p><i>Preamble:</i> "The importance and legitimacy of law enforcement activities are beyond question, and they are not at issue in this regulation. We permit disclosure of protected health information to law enforcement officials without authorization in some situations precisely because of the importance of these activities to public safety."</p>	
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