

New York State Office of Mental Health HIPAA Preemption Analysis

NYS Statute	HIPAA Regulation (45 CFR Parts 160, 164)	Preemption Analysis
MHL Article 7 - Office of Mental Health		
<p>Directors of Facilities: Subpoena Authority:</p> <p>MHL §7.21 (c): In any investigation into treatment and care of patients or the conduct, performance, or neglect of duty of officers or employees, the director of a department hospital shall be authorized to subpoena witnesses, compel their attendance, administer oaths to witnesses, examine witnesses under oath, and require the production of any books or papers deemed relevant to the inquiry or investigation. A subpoena issued under this section shall be regulated by the civil practice law and rules.</p>	<p>§164.501: Health oversight agency means an agency or authority of the United States, a State, a territory, a political subdivision of a State or territory...or a person or entity operating under a grant of authority from or contract with such public agency....that is authorized by law to oversee the health care system (whether public or private) or government programs in which health information is necessary to determine eligibility or compliance, or to enforce civil rights laws for which health information is relevant.</p> <p>§164.512(d) A covered entity may disclose PHI to a health oversight agency for oversight activities authorized by law.</p> <p>§164.512(e): PHI can be released w/out patient consent in the course of any judicial or administrative proceeding(1)in response to an order of a court or administrative tribunal, provided release is limited to that PHI expressly authorized in the order; or(2) in response to a subpoena, discovery request, or other lawful process if the covered entity has received satisfactory assurances from the party making the request that reasonable efforts have been made to give the</p>	<p>No preemption. Disclosures to facility directors under these circumstances can be made consistent with the "health oversight agency" and "in the course of administrative proceedings" exceptions to the HIPAA regulations. As such, the State law is not contrary to the Federal regulations and State law applies.</p>

	<p>patient notice of the request or the covered entity is assured that reasonable efforts have been made to secure a qualified protective order.</p>	
<p>Board of Visitors:</p> <p>MHL §7.33 (h): Any member of the Board of Visitors of an OMH facility may visit and inspect such facility at any timethe board shall have the power to investigate all charges against the director and all cases of alleged patient abuse or mistreatment.....in conducting such an investigation, the board shall have the power, in accordance with the civil practice law and rules, to subpoena witnesses, compel their testimony,....and require the production of any books or records deemed relevant to the investigation.</p>	<p>§164.501: Health oversight agency means an agency or authority of the United States, a State, a territory, a political subdivision of a State or territory...or a person or entity operating under a grant of authority from or contract with such public agency....that is authorized by law to oversee the health care system (whether public or private) or government programs in which health information is necessary to determine eligibility or compliance, or to enforce civil rights laws for which health information is relevant.</p> <p>§164.512(a)</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)</p>	<p>No preemption. Disclosures to the Board of Visitors can be made consistent with the "health oversight agency" and "required by law" exceptions to the HIPAA regulations. As such, the State law is not contrary to the Federal regulations and State law applies.</p>

	<p>(Disclosures for law enforcement purposes) of Section 164.512 for uses or disclosures required by law</p> <p>§164.512(d) A covered entity may disclose PHI to a health oversight agency for oversight activities authorized by law.</p>	
<p>Transitional Care: MHL §7.38 (c),(f)</p> <p>(c) The Office shall enter into a memorandum of understanding with the department of social services to facilitate access by the office to child care facilities providing transitional care to young adults as may be necessary by the office to meet its responsibilities for monitoring the care of young adults.</p> <p>(f) In any case where an individual receiving transitional funding is about to be transferred from one facility to another, a transfer plan shall be prepared by the sending facility and forwarded to the receiving facility and the individual, and unless the individual objects, parents, guardians or other persons interested in the care of such person prior to the transfer. The transfer plan shall include any information necessary to facilitate a safe transfer, such as specific problems, a schedule for administering medications and behavior unique to the individual.</p>	<p><i>re: (c):</i> §164.501: Health oversight agency means an agency or authority of the United States, a State, a territory, a political subdivision of a State or territory...or a person or entity operating under a grant of authority from or contract with such public agency....that is authorized by law to oversee the health care system (whether public or private) or government programs in which health information is necessary to determine eligibility or compliance, or to enforce civil rights laws for which health information is relevant.</p> <p><i>re: (f):</i> §164.512(a)</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</p>	<p><i>re: (c):</i></p> <p>No Preemption. Access to PHI by OMH can be obtained consistent with the "health oversight agency" exception to the HIPAA regulations. As such, the State law is not contrary to the Federal regulations and State law applies.</p> <p><i>re: (f):</i> No Preemption: The state law requirement mandating that a transfer plan be submitted from a sending facility to both a receiving facility and the individual is permitted via the "required by law" exception in HIPAA and hence this part of the State law is not preempted. Under HIPAA, there is no requirement for obtaining patient consent to use/disclose PHI for treatment purposes; thus, this provision is consistent with HIPAA.</p> <p>With regard to notifications of parents, guardians, and other interested persons, the State law provision which affords an opportunity for the patient to object to such notifications is consistent with HIPAA. As such, State law applies.</p>

	<p>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>§164.506(c):(1) A covered entity may use/disclose PHI for its own treatment, payment, or health care operations. (2) A covered entity may disclose PHI for treatment activities of a health care provider. (3) A covered entity may disclose PHI to another covered entity or health care provider for the payment activities of the entity that receives the information</p> <p>§164.510(b)(1): A covered entity may disclose to a family member, other relative, close personal friend of the individual or any other person identified by the individual, the PHI directly relevant to such persons involvement with the individual's care or payment related to the individual's care, if the individual is given the opportunity to agree, prohibit, or restrict the disclosure.</p>	
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