

New York State Office of Mental Health HIPAA Preemption Analysis

NYS Statute	HIPAA Regulation (45 CFR Parts 160, 164)	Preemption Analysis
MHL Article 10: Sex Offenders – Commitment, Supervision		
<p data-bbox="181 699 402 730" style="background-color: yellow;">MHL §10.05-10.13</p> <p data-bbox="181 772 467 840" style="background-color: yellow;">MHL §10.17 Release of information authorized</p> <p data-bbox="181 884 587 1623">The commissioner is authorized to release information in accordance with subparagraph (vii) of paragraph 9 of subdivision (c) of section 33,13 of this chapter to appropriate persons and entities when necessary to protect the public concerning a specific sex offender requiring civil management under this article, and to release information in accordance with subparagraph (viii) of paragraph 9 of subdivision (c) of section 33.13 of this chapter to the attorney general and case review panel when such persons or entities request such information in the exercise of their statutory functions, powers, and duties under this article.</p>	<p data-bbox="604 558 748 590">§164.512(a)</p> <p data-bbox="604 632 935 699">(a) Standard: Uses and disclosures required by law.</p> <p data-bbox="604 743 914 1094">(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 data-bbox="604 1136 959 1556">(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 data-bbox="604 1598 1008 1875">§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;</p>	<p data-bbox="1021 783 1417 894">No Preemption: HIPAA and State law are consistent; State law applies.</p> <p data-bbox="1021 940 1425 1291">1. To the extent covered entities are required to disclose PHI in the course of the commitment and supervision procedures identified in MHL §§10.05-10.13, the disclosures of information are permitted by HIPAA because they are required by law and are necessary in the course of a judicial proceeding.</p> <p data-bbox="1021 1337 1425 1654">2. Disclosures made by a covered entity to appropriate persons and entities when necessary to protect the public are permitted under HIPAA when circumstances are such that the disclosure is being made to avert a serious & imminent threat to public health and safety..</p>

	<p>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 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>§164.512(j):A covered entity may use/disclose PHI (consistent with law & professional conduct) if it believes in good faith that the disclosure is necessary to prevent or lessen a serious & imminent threat to the health or safety of a person (per preamble, consistent with Tarasoff) or the public and is being made to a person or persons reasonably able to prevent or lessen the threat or is necessary for law enforcement authorities to identify/apprehend an individual. If disclosure is to be made to one other than the target, the information cannot have been obtained in the course of treatment to affect the propensity to commit the criminal conduct or through a request by the person to initiate or be referred to treatment.</p>	