

HIPAA Privacy Rule

NYS Office of Mental Health Preemption Analysis

Background:

In 1996, the federal Health Insurance Portability and Accountability Act (HIPAA) was signed into law as PL 104-191. Implementing regulations were subsequently promulgated by the U.S. Department of Health and Human Services (HHS) at 45 C.F.R. Parts 160 and 164. Following the passage of HIPAA, the federal American Recovery and Reinvestment Act of 2009 was enacted, Subtitle D of which included the Health Information Technology for Economic and Clinical Health Act (HITECH). HITECH further addressed the privacy and security concerns associated with the electronic transmission of health information through several provisions that strengthen the civil and criminal enforcement of the HIPAA regulations. In 2013, additional amendments, commonly referred to as the "HIPAA Omnibus Rule," were adopted by HHS to make changes to existing privacy, security and breach notification requirements.

HIPAA includes provisions which govern the development of uniform health information data standards and privacy standards. This federal statute will "preempt," or take precedence over, any contrary state law unless the state law is more stringent than federal law or a specific exception applies. Therefore, in order for entities in New York State to be able to comply with the HIPAA privacy law and regulations, it is necessary to first determine how HIPAA affects New York State laws and rules that govern the privacy of health information.

Scope of Analysis:

This analysis compares various sections of New York State law, most significantly the New York State Mental Hygiene Law, that relate to the use or disclosure of health information. It is not, however, intended to be a comprehensive review of all statutes in New York State that govern the use or disclosure of health information. Instead, it reflects the authority most commonly consulted by providers of mental health services. This analysis also does not examine a variety of other sources that may have the "force and effect" of law and which also require a preemption analysis, such as the NYS Constitution, NYS Attorney General Opinions, or case law. It is important to note that the analysis presented here was drafted for internal use by New York State Office of Mental Health employees, and is intended to provide initial guidance to others undertaking an examination of New York State law.

Comments:

The New York State Office of Mental Health encourages individuals and entities that review this document to provide us with your feedback. There may be instances where others have a differing opinion or interpretation with regard to the application of the laws analyzed here and how they may be affected by HIPAA; if so, we are interested in reviewing your analysis. Please submit your comments in writing to: NYS Office of Mental Health Counsel's Office; ATTN: HIPAA Preemption Analysis; 44 Holland Avenue; Albany, NY 12229.

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