

# **HIPAA Privacy** *An innovative approach to self-implementation* **WorkGroups®**

## **Teleconference** **Advanced** **Preemption and** **Disclosure Issues**

*[Ver 3.0]*

### **Appendix**

Wednesday, January 21, 2004  
10:00 a.m. – 11:00 a.m., CST



**Preemption Conclusions**

<p><b>R.S. 40:1300.14</b> Confidentiality of HIV test result; Disclosure</p>	<p>A. Except as otherwise provided by law, no person who obtains, ...</p>	<p>This statute is <b>not preempted</b> because it is not contrary to the HIPAA Privacy Rule, because it is consistent with HIPAA authorization requirements.</p>
	<p>B. Notwithstanding the provisions of Subsection A, HIV test results may be released to the following:</p> <p>(1) Any person ...</p>	<p>This statute is <b>not preempted</b> because it is not contrary to the HIPAA Privacy Rule, as follows:</p> <p><u>Subsections B (1), (6), (8), (9), (10), (11), and (12)</u> are all limited to the extent authorized by other law and are therefore consistent with § 512.</p> <p>Subsection B (2), (3) and (13) are for treatment and are therefore consistent with § 506.</p> <p>Subsection B (4) involves organ procurement and is consistent with § 512(h).</p> <p>Subsection B (5) involves personnel matters (consistent with § 506) or health oversight (consistent with § 512(d)).</p> <p>Subsection B (7) are public health activities and therefore consistent with § 512(b).</p> <p>Subsection B (14) is for payment and is therefore consistent with § 506.</p>
	<p>C. A state, parish, or local health officer may disclose confidential HIV test results when:</p>	<p>This statute is <b>not preempted</b>. These officials</p>

	(1) Disclosure is ...	are not covered entities when acting in their official capacity
	D. No person to whom confidential HIV test results have been disclosed ...	This statute is <b>not preempted</b> . To the extent that there are disclosures otherwise permitted by §§ 506 or 512 not listed in R.S. 40:1300.14, this subsection makes Louisiana law more restrictive.
	E. (1) A physician may disclose confidential HIV test results under all of the following ....	This statute is <b>not preempted</b> because it is not contrary to the HIPAA Privacy Rule, as <u>Subsection E</u> (1), (2), (3), and (4) are public health activities and therefore consistent with § 512(b).
	(5) A physician may disclose confidential HIV test results pertaining to a patient to a person authorized by law to consent ....	This statute is <b>preempted in part</b> , to the extent that it limits access by personal representatives in situations where such limitation is not allowed by § 502(g).
	F. A physician may choose, notwithstanding ....	This statute is <b>preempted</b> because it limits individual access beyond that allowed by § 524.

<b>R.S. 40:1299.84</b> Participation in Program (Cancer Registry)	A. Any health care provider or radiation center diagnosing or providing treatment to cancer patients shall report each case of ....	This statute is <b>not preempted</b> by the HIPAA Privacy Rule. The disclosure is required by law.
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<b>R.S. 40:1299.87</b> Disclosure	A. Notwithstanding any other provision of law to the contrary, all health care providers and radiation centers shall release an abstract of the patient's record ...	This statute is <b>not preempted</b> by the HIPAA Privacy Rule. A
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<p>of Medical Records to Cancer Registries</p>		<p>Covered Entity is permitted to make the disclosures required in the statute under 45 C.F.R. § 164.512(b).</p>
<p><b>R.S. 40:1099</b> Infectious Diseases; Notification** *</p>	<p>A.(1) If, while treating or transporting an ill or injured patient to a hospital, an emergency medical technician, paramedic, firefighter, police officer, or other person ....</p>	<p>This statute is <b>preempted</b> by the HIPAA Privacy Statute. A Covered Entity is permitted to make these disclosures to the exposed person, but not to the exposed person's employer.</p>
<p><b>Ch.C. Art. 610</b> Reporting Procedure (Child Abuse Reporting and Investigation )</p>	<p>A. Reports of child abuse or neglect or that such was a contributing factor in a child's death, ....</p>	<p><b>Not preempted.</b> Child abuse reporting is excepted in the general preemption rule. Also permitted under § 512(b).</p>
<p><b>R.S. 14:403.2.</b> Abuse and neglect of adults; reports; investigation ; waiver of privileges; penalties; immunity</p>	<p>C. Any person, including but not limited to a health, mental health, and social service practitioner, having cause to believe that an adult's physical or mental health or welfare ....</p>	<p><b>Not preempted,</b> but 45 CFR 164.512(c) may require that the victim be informed.</p>
<p><b>R.S. 40:2009.13</b> Health Care Provider Complaints;</p>	<p style="text-align: center;">* * *</p> <p>B. Any person who has knowledge that a state law, minimum standard, rule, regulation, plan of correction promulgated by the department, or any federal certification rule pertaining to a health care provider has been violated ....</p>	<p>This statute is <b>not preempted</b> by the HIPAA Privacy Rule because it is not contrary to the privacy</p>

<p>Procedure; Immunity</p>		<p>rule. A Covered Entity is permitted to make the disclosures required in the statute under 45 C.F.R. § 164.512(d).</p>
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<p><b>R.S. 13:3715.1.</b> Medical or hospital records of a patient; subpoena duces tecum and court order to a health care provider; reimbursement for records produced</p>	<p>A. As used in this Section, the following terms shall have the respective meanings ascribed thereto: (1) Patient "records" ....</p>	<p><b>Not preempted</b>  Note: HIPAA privacy broader, but definitions are inclusive, not exclusive, so not preempted.</p>
	<p>B. The exclusive method by which medical, hospital, or other records ....</p>	<p><b>Not preempted</b>  Note: Other statutes actually provide other methods.</p>
	<p>B(1) A health care provider shall disclose records of a patient who is a party to litigation pursuant to a subpoena issued in that litigation, ....</p>	<p><b>Not preempted.</b> This provision is more stringent than the HIPAA Privacy Rules.</p>
	<p>(B)(2) Any attorney requesting medical records of a patient, who is not a party to the ....</p>	<p><b>Not preempted.</b> This provision is more stringent than the HIPAA Privacy Rules.</p>
	<p>(B)(3) Any attorney requesting medical records of a patient who is deceased ....</p>	<p><b>Preempted in part.</b> This provision is more stringent than the HIPAA Privacy Rules, since the HIPAA Privacy Rules require less notice. <b>However,</b> this article is preempted to the</p>

		extent that C.C. Art. 2315.1 heirs are not always "personal representatives".
	(B)(5) A court shall issue an order for the production and disclosure of a patient's records, regardless of whether the patient is a party to the litigation, only: after a contradictory hearing with the patient....	<b>Preempted in part.</b> This provision is more stringent than the HIPAA Privacy Rules, since the HIPAA Privacy Rules require less notice. <b>However,</b> this article is preempted to the extent that C.C. Art. 2315.1 heirs are not always "personal representatives".
	G. The health care provider shall be reimbursed by the person causing the issuance of the subpoena, summons, or court order in accordance with the provisions of R.S. 40:1299.96.	<b>Not preempted.</b>  Note: §164.524(c)(4) limits charges to patients for their records, but doesn't apply to others or to charges for certification.
	H. Notwithstanding any other provision of law to the contrary, no health care provider, as defined in R.S. 40:1299.96, shall be required to grant access to or copying of photographs, or both, of any minor or part of a minor's body who is alleged to be the victim of child sexual abuse ....	<b>Preempted in part.</b>  Disclosures to individuals are restricted and the subsection is therefore <b>preempted</b> as it pertains to individuals. Disclosures to others are more restrictive than the HIPAA Privacy Regulations and is therefore <b>not preempted</b> in such cases.
	I. A coroner, deputy coroner, or other assistant, while acting in his official capacity ....	<b>Not preempted.</b>
	J. The Louisiana State Board of Medical Examiners, Louisiana State Board of Dentistry, Louisiana State Board of Psychologists, Louisiana State Board	<b>Not preempted</b>

	of Nursing, Louisiana Board of Pharmacy, Louisiana State Board of Social Work Examiners, and the Louisiana State Board of Chiropractic Examiners, ....	
	L. No provision of this Section shall preclude a patient from personally receiving a copy or synopsis of his medical records as provided by law.	<b>Not preempted</b>

<b>C.C.P. Art. 1437.</b> Deposition upon oral examination; when deposition may be taken	After commencement of the action, any party may take the testimony of any person, including a party, by deposition upon oral examination. ...	This article is <b>not preempted</b> , since it is not contrary to the HIPAA Privacy Rules.  <b>NOTE:</b> Any such deposition must still meet the requirements of §512(e)
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<b>C.C.P. Art. 1460.</b> Option to produce business records	Where the answer to an interrogatory may be derived or ascertained from the business records of the party upon whom the interrogatory has been served or from an examination, ....	This article is <b>preempted</b> , to the extent that the interrogatory is directed to a covered entity and production of the entire medical record exceeds the minimum amount of information necessary to answer the interrogatory.
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<b>C.E. Art. 510.</b> Health care provider-patient privilege F.	Medical malpractice.  (1) There shall be no health care provider-patient privilege in medical malpractice claims ....	<b>Preempted.</b> As to release to one provider of another provider's PHI, there is no exception in §512 which permits it, nor is it allowed by §506.
	(2) In medical malpractice claims information about a patient's current treatment or physical condition may only be disclosed ....	<b>Not preempted</b> , to the extent that each of the listed exceptions are compatible.

<p><b>LA Code of Evidence Art. 510.</b> Health Care Provider-Patient Privilege</p>	<p>(1) General rule of privilege in criminal proceedings. ....</p> <p>(2) Exceptions. There is no privilege under this Article in a criminal case as to a communication:</p> <p style="padding-left: 40px;">(a) When the communication is relevant to an issue of the health condition ....</p>	<p>Subsection C(1) is <b>not preempted</b>, since it is not contrary to the HIPAA Privacy Rules.</p> <p>Subsection C(2) is <b>preempted in part</b>, to the extent that the information is not disclosed pursuant to a court order, as follows:</p> <p>(a) <b>Preempted</b>, to the extent that it allows disclosure of the limited information in § 512(f)(2).</p> <p>(b) <b>Preempted</b>, to the extent that it allows disclosure of the limited information in § 512(j)(1).</p> <p>(c) <b>Not preempted</b>, to the extent that it allows disclosure based on a court order under § 512(f)(1).</p> <p>(d) <b>Preempted</b>. See a, above.</p> <p>(e) <b>Preempted</b>, to the extent that tangible objects are “health information.”</p> <p>(f) <b>Preempted</b>, to the extent that the information exceeds the “reporting” authorizations in Louisiana law and §512(b) and (c).</p>
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<p><b>R.S. 14:403.4.</b> Burn injuries and wounds; reports; registry; immunity; penalties</p>	<p style="text-align: center;">* * *</p> <p>B. In every case of a burn injury or wound in which the victim sustains second or third degree burns to five percent or more of the body or any burns to the upper respiratory tract or laryngeal edema due to the inhalation of super-heated air, and every case of a burn injury or wound which is likely to or may result in death ....</p>	<p><b>Not preempted.</b> Reporting of certain types of wounds or other physical injuries specifically authorized.</p>
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## OCR Frequently Asked Questions on Preemption

**Answer ID:** 403

**Category:** Privacy of Health Information/HIPAA  
Preemption of State Law

**Date Updated:** 03/13/2003 10:53 AM

### **How do I know if a State law is "more stringent" than the HIPAA Privacy Rule?**

In general, a State law is "more stringent" than the HIPAA Privacy Rule if it relates to the privacy of individually identifiable health information and provides greater privacy protections for individuals' identifiable health information, or greater rights to individuals with respect to that information, than the Privacy Rule does. See the definition of "more stringent" at 45 C.F.R. 160.202 for the specific criteria. For example, a State law that provides individuals with a right to inspect and obtain a copy of their medical records in a more timely manner than the Privacy Rule is "more stringent" than the Privacy Rule.

In the unusual case where a more stringent provision of State law is contrary to a provision of the Privacy Rule, the Privacy Rule provides an exception to preemption for the more stringent provision of State law, and the State law prevails. Where the more stringent State law and Privacy Rule are not contrary, covered entities must comply with both laws.

See 45 C.F.R. Part 160, Subpart B, for specific requirements related to preemption of State law. An unofficial version of the Privacy Rule and the preemption requirements may be accessed at <http://www.hhs.gov/ocr/combinedregtext.pdf>.

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**Answer ID:** 406

**Category:** Privacy of Health Information/HIPAA  
Preemption of State Law

**Date Updated:** 03/13/2003 11:01 AM

### **My State law authorizes health care providers to report suspected child abuse to the State Department of Health and Social Services. Does the HIPAA Privacy Rule preempt this State law?**

No. The Privacy Rule permits covered health care providers and other covered entities to disclose reports of child abuse or neglect to public health authorities or other appropriate government authorities. See 45 C.F.R. 164.512(b)(1)(ii). Thus, there is no conflict between the State law and the Privacy Rule, and no preemption. Covered entities may report such information and be in compliance with both the State law and the Privacy Rule.

Further, even in the unusual case where a State law that provides for the reporting of disease or injury, child abuse, birth, or death, or for public health surveillance, investigation, or intervention is contrary to a provision of the Privacy Rule – that is, it is impossible for a covered entity to comply with both the Privacy Rule and the State law, or the State law is an obstacle to accomplishing the full purposes and objectives of HIPAA's Administrative Simplification provisions – the Administrative Simplification Rules specifically provide an exception to preemption of State law. Thus, if a provision of State law provided for public health surveillance and was contrary to the Privacy Rule, the State law would prevail. Because the Administrative Simplification Rules except such contrary State laws from preemption, it is neither necessary nor appropriate to request a preemption exception determination from the Department of Health and Human Services. See 45 C.F.R. 160.202 for the definition of "contrary" and 45 C.F.R. 160.203 for the general rule and exceptions to preemption. An unofficial version of the Privacy Rule and the preemption requirements may be accessed at <http://www.hhs.gov/ocr/combinedregtext.pdf>.

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**Answer ID:** 399

**Category:** Privacy of Health Information/HIPAA  
Preemption of State Law

**Date Updated:** 03/13/2003 10:49 AM

## **Does the HIPAA Privacy Rule preempt State laws?**

The HIPAA Privacy Rule provides a Federal floor of privacy protections for individuals' individually identifiable health information where that information is held by a covered entity or by a business associate of the covered entity. State laws that are contrary to the Privacy Rule are preempted by the Federal requirements, unless a specific exception applies. These exceptions include if the State law (1) relates to the privacy of individually identifiable health information and provides greater privacy protections or privacy rights with respect to such information, (2) provides for the reporting of disease or injury, child abuse, birth, or death, or for public health surveillance, investigation, or intervention, or (3) requires certain health plan reporting, such as for management or financial audits. In these circumstances, a covered entity is not required to comply with a contrary provision of the Privacy Rule.

In addition, the Department of Health and Human Services (HHS) may, upon specific request from a State or other entity or person, determine that a provision of State law which is "contrary" to the Federal requirements – as defined by the HIPAA Administrative Simplification Rules – and which meets certain additional criteria, will not be preempted by the Federal requirements. Thus, preemption of a contrary State law will not occur if the Secretary or designated HHS official determines, in response to a request, that one of the following criteria apply: the State law (1) is necessary to prevent fraud and abuse related to the provision of or payment for health care, (2) is necessary to ensure appropriate State regulation of insurance and health plans to the extent expressly authorized by statute or regulation, (3) is necessary for State reporting on health care delivery or costs, (4) is necessary for purposes of serving a compelling public health, safety, or welfare need, and, if a Privacy Rule provision is at issue, if the Secretary determines that the intrusion into privacy is warranted when balanced against the need to be served; or (5) has as its principal purpose the regulation of the manufacture, registration, distribution, dispensing, or other control of any controlled substances (as defined in 21 U.S.C. 802), or that is deemed a controlled substance by State law.

It is important to recognize that only State laws that are "contrary" to the Federal requirements are eligible for an exemption determination. As defined by the Administrative Simplification Rules, contrary means that it would be impossible for a covered entity to comply with both the State and Federal requirements, or that the provision of State law is an obstacle to accomplishing the full purposes and objectives of the Administrative Simplification provisions of HIPAA.

See 45 C.F.R. Part 160, Subpart B, for specific requirements related to preemption of State law. An unofficial version of the Privacy Rule and the preemption requirements may be accessed at <http://www.hhs.gov/ocr/combinedregtext.pdf>.

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**Answer ID:** 405

**Category:** Privacy of Health Information/HIPAA  
Preemption of State Law

**Date Updated:** 03/13/2003 10:58 AM

**My State law provides greater privacy protections on patients' HIV information than the HIPAA Privacy Rule. Is this more protective State law preempted by the Privacy Rule?**

No. The Privacy Rule establishes a floor of Federal privacy protections and rights for individuals. If a provision of State law provides greater privacy protection than a provision of the Privacy Rule, and it is possible to comply with both the State law and the Privacy Rule (e.g., where a State law prohibits the disclosure of HIV status while the Privacy Rule permits such disclosure), there is no conflict between the State law and the Privacy Rule, and no preemption.

Further, even in the unusual case where a "more stringent" provision of a State law is "contrary" to a provision of the Privacy Rule – that is, it is impossible to comply with both the Privacy Rule and the State law, or the State law is an obstacle to accomplishing the full purposes and objectives of HIPAA's Administrative Simplification provisions – the Administrative Simplification Rules specifically provide an exception to preemption of State law. Thus, if a more stringent provision of State law protects HIV patient information and is contrary to the Privacy Rule, the "more stringent" State law would prevail. Because HIPAA's Administrative Simplification Rules themselves except more stringent, contrary State law from preemption, it is neither necessary nor appropriate to request a preemption exception determination from the Department of Health and Human Services. See 45 C.F.R. 160.202 for the definitions of "more stringent" and "contrary," and 45 C.F.R. 160.203 for the general rule and exceptions to preemption. An unofficial version of the Privacy Rule and the preemption requirements may be accessed at <http://www.hhs.gov/ocr/combinedregtext.pdf>.

**Answer ID:** 402

**Category:** Privacy of Health Information/HIPAA  
Preemption of State Law

**Date Updated:** 03/13/2003 10:52 AM

## How do I know if a State law is "contrary" to the HIPAA Privacy Rule?

A State law is "contrary" to the HIPAA Privacy Rule if it would be impossible for a covered entity to comply with both the State law and the Federal Privacy Rule requirements, or if the State law is an obstacle to accomplishing the full purposes and objectives of the Administrative Simplification provisions of HIPAA. See the definition of "contrary" at 45 C.F.R. 160.202. For example, a State law that prohibits the disclosure of protected health information to an individual who is the subject of the information may be contrary to the Privacy Rule, which requires the disclosure of protected health information to an individual in certain circumstances. With certain exceptions, the Privacy Rule preempts "contrary" State laws. See 45 C.F.R. Part 160, Subpart B, which may be accessed (in unofficial version) at <http://www.hhs.gov/ocr/combinedregtext.pdf>.

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**Answer ID:** 401

**Category:** Privacy of Health Information/HIPAA  
Preemption of State Law

**Date Updated:** 03/13/2003 10:51 AM

How does the HIPAA Privacy Rule reduce the potential for conflict with State laws?

The Privacy Rule is designed to minimize conflicts between Federal requirements and those of State law in the following ways:

- The Privacy Rule establishes a floor of Federal privacy protections and individual rights with respect to individually identifiable health information held by covered entities and their business associates. Covered entities may provide greater privacy rights to individuals and greater protections on such information. In addition, covered entities may comply with State laws that provide greater protections for individually identifiable health information and greater privacy rights for individuals.
- The Privacy Rule permits a covered entity to use or disclose protected health information if a State law requires the use or disclosure. See 45 C.F.R. 164.512(a).
- The Privacy Rule permits a covered entity to disclose protected health information to a public health authority who is authorized by law to collect such information for the purposes of preventing or controlling disease, injury, or disability, including, but not limited to, the reporting of disease, injury, vital events such as birth or death, and the conduct of public health surveillance, public health investigations, and public health interventions. (See 45 C.F.R. 164.512(b) for all of the public health disclosures permitted by the Privacy Rule.) Thus, State laws that provide for the reporting of disease or injury, child abuse, birth or death, or for the conduct of public health surveillance, investigation, or

intervention, likely will not conflict with the Privacy Rule. In the unusual case where there is a conflict, the State law would stand. See 45 C.F.R. 160.203(c). Because the Administrative Simplification Rules themselves exempt such State laws from preemption, a request for the Department of Health and Human Services (HHS) to issue a preemption exception determination is unnecessary and inappropriate.

· The Privacy Rule permits a covered entity to disclose protected health information to a health oversight agency for oversight activities authorized by law, such as audits and licensure activities. See 45 C.F.R. 164.512(d). Thus, State laws that provide for certain health plan reporting for the purpose of management or financial audits, program monitoring and evaluation, or the licensure or certification of facilities or individuals, likely will not conflict with the Privacy Rule. In the unusual case where there is a conflict, the State law would stand. See 45 C.F.R. 160.203(d). Because the Administrative Simplification Rules themselves exempt such State laws from preemption, a request for the Department of Health and Human Services (HHS) to issue a preemption exception determination is unnecessary and inappropriate.

An unofficial version of the Privacy Rule and the preemption requirements may be accessed at <http://www.hhs.gov/ocr/combinedregtext.pdf>.

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**Answer ID:** 409

**Category:** Privacy of Health Information/HIPAA  
Preemption of State Law

**Date Updated:** 03/13/2003 11:03 AM

### **Will HHS publish exception determinations?**

Yes. The Department of Health and Human Services (HHS) will promptly inform the public of exception determinations through publication of notice in the Federal Register, and on HHS' web sites, including the OCR Privacy web site at <http://www.hhs.gov/ocr/hipaa/>.

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**Answer ID:** 404

**Category:** Privacy of Health Information/HIPAA  
Preemption of State Law

**Date Updated:** 03/13/2003 10:56 AM

### **Under what circumstances will HHS grant a State law preemption exception determination?**

The Department of Health and Human Services (HHS) may, upon specific request from a State or other entity or person, issue a determination that a contrary State law which meets certain criteria will not be preempted by the Federal requirements. Only State laws that are "contrary" to the Federal requirements are eligible for an exemption determination. As defined by HIPAA's Administrative Simplification Rules, "contrary" means that it would be impossible for a covered entity to comply with both the State and Federal requirements, or that the State law is an obstacle to accomplishing the full purposes and objectives of the Administrative Simplification provisions of HIPAA. See 45 C.F.R. 160.202.

A contrary State law is not preempted by the Federal requirements if the Secretary or designated HHS official determines that the request meets one or more of the following criteria, which are set forth in 45 C.F.R. 160.203(a):

- (1) The provision of State law is necessary
  - to prevent fraud and abuse related to the provision of or payment for health care,
  - to ensure appropriate State regulation of insurance and health plans to the extent expressly authorized by statute or regulation,
  - for State reporting on health care delivery and costs, or
  - for purposes of serving a compelling public health, safety, or welfare need, and, if a Privacy Rule provision is at issue, if the Secretary determines that the intrusion into privacy is warranted when balanced against the need to be served; or
  
- (2) The principal purpose of the provision of State law is to regulate the manufacture, registration, distribution, dispensing, or other control of any controlled substances (as defined in 21 U.S.C. 802), or that is deemed a controlled substance by State law.

Thus, States and other persons may request in writing that HHS except certain contrary provisions of State law from preemption by the Privacy Rule. The request for exception must explain how the State law in question is actually contrary to the Federal requirements, and how the contrary State law meets one or more of the specific criteria for which exceptions may be granted. Title 45 C.F.R. Part 160, Subpart B, sets forth the specific requirements related to preemption of State law and the criteria and process for requesting exception determinations.

HHS will not make determinations as to whether a provision of State law is "more stringent" than a provision of the HIPAA Privacy Rule, and will not determine whether a provision is "contrary" to the Privacy Rule, except in the context of, and as necessary to, making an exception determination.

See 45 C.F.R. Part 160, Subpart B, for specific requirements related to preemption of State law. An unofficial version of the Privacy Rule and the preemption requirements may be accessed at <http://www.hhs.gov/ocr/combinedregtext.pdf>.

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**Answer ID:** 408

**Category:** Privacy of Health Information/HIPAA  
Preemption of State Law

**Date Updated:** 03/13/2003 11:03 AM

## **Will HHS make determinations as to whether a provision of State law is “more stringent” than or “contrary” to a provision of the HIPAA Privacy Rule?**

The Department of Health and Human Services (HHS) will not make determinations as to whether a provision of State law is "more stringent" than a provision of the Privacy Rule. HIPAA's Administrative Simplification Rules provide a general exception to preemption for more stringent, contrary State laws. Because such an exception already exists, it is neither necessary nor appropriate to request a preemption exception determination from HHS. Further, HHS will not determine whether a provision is "contrary" to the Privacy Rule, except in the context of, and as necessary to, making an exception determination for State laws that meet one or more of the criteria listed at 45 CFR 160.203(a). See 45 C.F.R. 160.202 for the definitions of "more stringent" and "contrary." An unofficial version of the Privacy Rule and the preemption requirements may be accessed at <http://www.hhs.gov/ocr/combinedregtext.pdf>.

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**Answer ID:** 407

**Category:** Privacy of Health Information/HIPAA  
Preemption of State Law

**Date Updated:** 03/13/2003 11:02 AM

## **Will a State law preemption exception determination apply only to the entity that requested the determination?**

No. Preemption exception determinations issued by the Department of Health and Human Services (HHS) will apply generally to all persons subject to the particular provision of State law for which the exception was granted. When an exception determination is made, HHS will promptly inform the public through publication of notice in the Federal Register, and on HHS' web sites, including the OCR Privacy web site at <http://www.hhs.gov/ocr/hipaa/>.