

New Mexico HIPAA Awareness & Preparedness Program

NEW MEXICO STATE LAW PREEMPTION ANALYSES

The Health Insurance Portability and Accountability Act (HIPAA) requires a detailed comparison of the provisions of HIPAA and state law in order to identify those state laws that are contrary to the HIPAA requirements. This comparison is known as a HIPAA Preemption Analysis.

NM Regulation/Statute	Agency	Summary	Conclusion	Entities Affected	Impact
<i>Abuse and Neglect Act</i>	Children, Youth and Families	Requires reporting of suspected child abuse or neglect; establishes procedures for addressing a child's needs when there is a suspicion or finding of abuse or neglect.	Not preempted.	All	State law applies.
<i>Adoption Act</i>	Children, Youth and Families	Governs adoption proceedings and regulates access to records maintained in connection with such proceedings.	The provisions of the Act that relate to the confidentiality of and access to records address records that are maintained by a court, an agency or by the Department. They aren't records of a Covered Entity. The Act does require counseling and the filing of a counseling narrative, which may involve treatment by a Covered Entity.	Health Care Providers, but only to the extent a Covered Entity provides counseling required under the Act.	None
<i>Adult Protective Services Act: Provisions other than Reporting Provisions</i>	Children, Youth and Families	Authorizes the reporting and investigation of allegations of exploitation, abuse or neglect of adults and the provision of protective services, including	Not preempted, except to the extent that the Act would prohibit the disclosure of PHI by a Covered Entity to the Secretary of HHS pursuant to § 164.502(a)(2)(ii)	All	State law & HIPAA requirements apply; HIPAA modifies some of the disclosure provisions of the state statute.

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		health care services.			
<i>Adult Protective Services Act: Reporting Provisions</i>	Children, Youth and Family	Requires any person who has reasonable cause to believe that an incapacitated adult is being abused, neglected or exploited to report relevant information to the Department.	Not preempted.	All	State law and HIPAA requirements apply. Reporting is required per state law and allowed under HIPAA without consent, authorization or the opportunity to agree or object; however, under HIPAA § 164.512(c)(2), a Covered Entity must also promptly inform the individual or his personal representative of the report except to the extent excused under that section.
<i>Alcoholic and Intoxicated Persons, Detoxification (Commitment Procedures):</i> Emergency Commitment; Commitment; Voluntary Services	N/A	Involve disclosure of PHI through the examination, certification and testimony of physicians in support of emergency and non-emergency commitment proceedings affecting intoxicated or drug-impaired persons.	Not preempted.	Healthcare Providers, including physicians and licensed alcohol/drug treatment facilities	State law and HIPAA requirements apply

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<i>Cardiac Arrest Response Act</i>	Department of Health	Establishes a program to encourage use of automatic external defibrillators and semi-automatic external defibrillation (AED)	Not preempted.	Health Care Providers that own/use AEDs or who act as medical directors of AED programs	State law and HIPAA requirements apply
<i>Children's Mental Health and Developmental Disabilities Act</i>	Children, Youth and Family	Governs the provision to children of mental health and habilitation services.	Section 32A-4-15(F) of the Act is preempted to the extent it prohibits disclosure to the Secretary of HHS. No other provision of the Act is preempted, although because the requirements of the Act and HIPAA differ in several instances, the federal rule affects the existing requirements of state law.	Health Care Providers	See detailed table in Presbyterian preemption located in the Document Library on the NM CHILI website. healthlinknm.org/nmchili

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<i>Consent to Medical Care</i>	N/A	Recognizes the right of an emancipated or married minor to consent to health care treatment (without limiting cases in which consent may otherwise be obtained or is not required) and authorizes a person standing in loco parentis to the minor to give consent for emergency care if the minor's parents cannot be located.	Not preempted.	Health Care Providers	State law and HIPAA requirements apply
<i>Controlled Substances Act</i> and <i>Controlled Substances Reporting Regulation</i>	Board of Pharmacy	Requires pharmacies/ pharmacists to report prescription information regarding dispensing of controlled substances to Board of Pharmacy	Not preempted <i>except</i> to the extent that § 30-31-40(D) of the Act, which allows a practitioner engaged in medical practice or research not to disclose the name or identity of a patient or research subject Would prohibit disclosure to the Secretary of HHS as required by HIPAA.	Pharmacies, including those maintained by other Covered Entities	State law and HIPAA requirements apply.
<i>Delinquency Act</i>	Children, Youth and Families	Intended to remove the adult consequences of criminal behavior from children committing delinquent acts; to hold children accountable for	Not preempted.	The records protected by this Act are not records of a Covered Entity;	None

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		such acts and to provide a program of supervision, care and rehabilitation; and to provide effective deterrents to acts of juvenile delinquency.		treating health care professionals are authorized to access these records	
<i>Detoxification Act</i>	N/A	Authorizes peace or public service officer to transport an intoxicated person to his residence, a health care facility or a city or county jail; requires the person in charge of a health care facility to see that a responsible member of the person's family is notified.	Not preempted.	Health Care Providers	State law and HIPAA requirements apply.
<i>Physician-Patient and Psychotherapist-Patient Privilege Rules of Evidence</i>	Supreme Court	Establishes an evidentiary privilege for confidential communication if not intended to be disclosed to third persons other than those present to further the interests of the patient in the consultation, examination or interview, persons reasonably necessary for	Not preempted.	Health Care Providers	None

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		the transmission of the communication, or persons who are participating in the diagnosis and treatment under the direction of the physician or psychotherapist.			
<i>Families in Need of Court-Ordered Services</i>	Children, Youth and Families	Provides for court-ordered services for families when voluntary services have been exhausted and court intervention is required. Protects as confidential the records of the court and of the department.	The records protected by this Act are not records of a Covered Entity; treating health care professionals are authorized to access these records and may use them with HIPAA consent.	None in connection with disclosure; Health Care Providers in connection with use.	None.

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<i>Genetic Information Privacy Act</i>	N/A	Governs the collection, retention, transmission and use of genetic information	<p>The Act is not preempted except to the extent it would prohibit disclosure to the Secretary of HHS as required by HIPAA.</p> <p>HIPAA prevents disclosure of genetic information in many instances where state law would allow it. These provisions are not preempted because the statute only allows for disclosure (disclosure is not <i>required</i>). A Covered Entity may comply both with the statute and with HIPAA by simply choosing not to make the disclosure.</p>	All	<p>See detailed table in Presbyterian preemption located in the Document Library on the NM CHILI website. healthlinknm.org/nmchili</p>
<i>Health and Hospital Records:</i> Access to records by applicants for disability benefits.	Department of Health	Requires a healthcare provider to provide copies of medical records to any person applying for disability benefits or appealing a denial of same, provided that documentation of the appeal or denial is provided; a violation of the statute may be punished by the imposition of a civil penalty of up to \$100.	Not preempted, although individual may also proceed under HIPAA.	Health Care Providers	State law and HIPAA requirements apply.

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<p><i>Health and Hospital Records:</i> Health information, confidentiality and <i>DOH Regulation Relating to Health Records</i></p>	<p>Department of Health, others</p>	<p>Protects health information as confidential and excepted from Public Records Act, but authorizes disclosure to government agencies, educational institutions, state medical/dental associations, and health facilities; authorizes disclosure and publication of statistical studies and research reports provided that individual patients are not identified directly or indirectly.</p>	<p>Protection of health information as confidential: Not contrary to HIPAA; HIPAA and state requirements can both be met so both apply.</p> <p>Authorization for disclosure: Not contrary to HIPAA except to the extent the statute could be construed to affect penalties otherwise imposed by HIPAA for wrongful disclosure; HIPAA and state requirements can both be met so both apply; HIPAA requirements for disclosure apply as do HIPAA requirements applicable to Covered Entities making the request for information.</p> <p>Statistical studies and research reports: Not contrary to HIPAA; HIPAA and state requirements can both be met so both apply.</p>	<p>All, but principally Health Care Providers</p>	<p>The state confidentiality protection remains in place; however, health information may no longer be provided to specified entities “on request;”</p> <p>HIPAA authorization requirements apply to individual situations as if the state provision authorizing disclosure did not exist.</p> <p>HIPAA requirements for de-identification apply to published reports of statistical information and research reports.</p>

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<i>Health Information System Act and Data Reporting Requirements for Health Care Facilities and Access to Health Information System Data and Reports</i>	Health Policy Commission	Establishes a Health Information System, under the direction of the Health Policy Commission	Not preempted, although HIPAA limits the circumstances under which a government agency may be granted access to a linking data base	Health Plans, Health Care Providers and Health Care Clearinghouse	State law and HIPAA requirements apply.
<i>Health Maintenance Organizations Act</i>	Department of Insurance	Requires an HMO to obtain a license to operate from the Division of Insurance; imposes organizational and operational standards; authorizes the Superintendent of Insurance to regulate the conduct of HMOs.	Not preempted.	Health Plans (HMOs)	State law and HIPAA requirements apply.
<i>Human Immunodeficiency Virus Test Act</i>	N/A	Specifies when informed consent for HIV test is/is not required; describes to whom and how disclosure of test results may be made.	The provisions of the Act are not pre-empted <u>except</u> to the extent the Act would prohibit disclosure of PHI to the Secretary of HHS in connection with ascertaining compliance with HIPAA. Additional requirements imposed by HIPAA apply to certain sections.	All	State law and HIPAA requirements apply. Except to the extent that HIPAA requires disclosure of PHI to the Secretary of HHS, state law restrictions on disclosure remain in effect; however, HIPAA imposes conditions on making some of those disclosures. See detailed table in Presbyterian preemption analysis

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<i>Insurance Administrators</i>	Division of Insurance	Imposes licensure requirements on third-party administrators, including administrators of both insured and self-funded health plans; requires administrators to submit to the jurisdiction of the Division of Insurance and comply with specified provisions of the Insurance Code.	The statute is preempted, but only to the extent that it authorizes disclosure to a plan sponsor beyond the disclosures allowed, and without the restrictions on such disclosures required by, HIPAA.	Health Plans and Health Care Clearinghouse	HIPAA requirements apply.
<i>Long-Term Care Ombudsman Act</i>	State Agency on Aging	The Act establishes a long-term care ombudsman program pursuant to the requirements of the federal Older Americans Act, 42 USC §§ 3001 <i>et seq.</i>	Not preempted.	Health Care Providers, specifically long-term care facilities as defined in § 28-17-3(F).	State law and HIPAA requirements apply
<i>Managed Health Rule and Grievance Procedures Rule</i>	Department of Insurance	Regulates the operations of HMOs and other managed care plans.	Not preempted.	All	State law and HIPAA requirements apply

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<i>Medical Investigations</i>	Board of Medical Investigators	Requires reporting of certain deaths to the Board of Medical Investigators	Not preempted.	Health Care Providers	None.
<i>Medical Malpractice Act</i>	Medical Review Commission; Division of Insurance	Provides for pre-litigation review of malpractice claims asserted against health care providers qualified under the act; establishes a patient compensation fund from which to pay excess judgments.	Not preempted	Health Care Providers	State law and HIPAA requirements apply
<i>Mental Health and Developmental Disabilities Code</i>	Department of Health	The Code governs the provision to adults of mental health and habilitation services.	Not preempted except to the extent that § 43-1-19(F) would prohibit disclosure to the Secretary of HHS. Because the requirements of the Act and HIPAA differ in several instances, however, HIPAA rule affects the existing requirements of state law. See detail in attached table.	Health Care Providers	See detailed table in Presbyterian preemption analysis, located in the Document Library on the NM CHILI website. . healthlinknm.org/nmchili
<i>Acupuncture and Oriental Med. Practice</i> , NMSA §§ 61-14A-1 to -22 (1993) <i>Athletic Trainer Practice</i> , NMSA §§ 61-14D-1 to -19 (1993) <i>Chiropractic</i> , NMSA §§ 61-4-1 to -17 (1979)	Multiple	Establish boards/agencies that license and oversee various health care providers, detail grounds for initial licensure and	Not preempted; statutes remain in effect except to the extent any provision would prohibit the disclosure to the Secretary of HHS of PHI maintained by Covered Entities that report to or are	Health Care Providers; Health Plans	State rules and HIPAA apply.

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<p><i>Counseling and Therapy</i>, NMSA §§ 61-9A-1 to –30 (1993) <i>Dental Health Care</i>, NMSA §§ 61-5A-1 to –30 (1994) <i>Impaired Dentists and Dental Hygienists</i>, NMSA §§ 61-5B-1 to –11 (1994) <i>Impaired Health Care Provider</i>, NMSA §§ 61-7-1 to –12 (1976) <i>Impaired Pharmacists</i>, NMSA §§ 61-11A-1 to –8 (1987) <i>Massage Therapy Practice</i>, NMSA §§ 61-12C-1 to –28 (1991) <i>Medical Radiation Health and Safety</i>, NMSA §§ 61-14E-1 –12 (1983) <i>Medicine and Surgery</i>, NMSA §§ 61-6-1 to –35 (1989) <i>Nursing Home Administrators</i>, NMSA §§ 61-13-1 to –17 (1970) <i>Nursing</i>, NMSA §§ 61-3-1 to –31 (1968) <i>Nutrition and Dietetics Practices</i>, NMSA §§ 61-7A-1 to –15 (1989) <i>Occupational Therapy</i>, NMSA §§ 61-12A-1 to –24 (1996) <i>Optometry</i>, NMSA §§ 61-2-1 to –18 (1979) <i>Osteopathic Medicine and Surgery</i>, NMSA §§ 61-10-1 to –22 (1993) <i>Osteopathic Physicians’ Assistants Act</i>, NMSA 61-10A-1 to –7 (1979) <i>Pharmacist Prescriptive Authority Act</i>, NMSA §§ 61-11B-1 to –3 (1993)</p>		<p>disciplinary action, establish due process procedures in connection therewith, and establish mechanisms and procedures to support the treatment and monitoring of impaired providers.</p>	<p>subject to the oversight of these boards and agencies.</p>		

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<p><i>Pharmacy</i>, NMSA §§ 61-11-1 to –29 (1969) <i>Physical Therapy Act</i>, NMSA §§ 61-12D-1 to –19 (1997) <i>Podiatry</i>, NMSA §§ 61-8-1 to –17 (1977) <i>Psychologists</i>, NMSA §§ 61-9-1 to –19 (1963) <i>Respiratory Care</i>, NMSA §§ 61-12B-1 to –17 (1984) <i>Social Work Practice Act</i>, NMSA §§ 61-31-1 to –25 (1989) <i>Speech-Language Pathology, Audiology and Hearing Aid Dispensing</i>, NMSA §§ 61-14B-1 to –25 (1996)</p>					
<p><i>Public Health Act</i></p>	<p>Department of Health Children, Youth and Families w/ respect to child-care facilities</p>	<p>Identifies Department of Health as public health authority; establishes health facility licensing functions; includes provisions relating to various public health activities and treatment of specific conditions</p>	<p>Not preempted <i>except</i> to the extent any provision would prohibit the disclosure of PHI by a Covered Entity to the Secretary of HHS. The provisions of HIPAA, affect the existing requirements of state law.</p>	<p>All, including agency when acting as a Covered Entity</p>	<p>See detailed table in Presbyterian preemption analysis, located in the Document Library on the NM CHILI website. . healthlinknm.org/nmchili</p>

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<i>Review Organization Immunity Act</i>	N/A	Provides that review organization proceedings are confidential; limits the liability of members of review organizations and persons who provide information to a review organizations	Not preempted <i>except</i> to the extent it would prohibit the disclosure of PHI by a Covered Entity to the Secretary of HHS	Health Care Providers and Health Plans	None, other than disclosure to the Secretary is required <i>if</i> records otherwise shielded from disclosure contain PHI.
<i>Traffic Safety Act</i>	Traffic Safety Bureau	Establishes a traffic safety bureau to coordinate traffic safety and accident prevention programs, and authorizes the bureau to designate “approved accident-investigation unit.”	Not applicable to Covered Entities	None	None
<i>Uniform Health-Care Decisions Act</i>	N/A	Addresses advance directives and surrogate decision-making.	Not preempted.	Health Care Providers	None
Uniform Parentage Act	N/A	Addresses how the parent/child relationship is established and recognizes certain presumptions to be used in making determinations of parentage. Section 6 provides for the filing of information relating to an artificial	Not preempted, except to the extent § 40-11-6(C) would prohibit a Covered Entity from disclosing protected health information to the Secretary or (if in a designated record set) to the individual.	Health Care Providers	State law and HIPAA requirements apply. The Covered Entity must disclose PHI to the individual and the Secretary, notwithstanding the prohibition of the state statute.

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		insemination with the vital statistics bureau and prohibits access except by court order to all papers and records pertaining to artificial insemination.			
<i>Vital Statistics Act; Rules relating to Vital Records and Statistics</i>	Department of Health	Requires the reporting of vital statistics	Not preempted.	Health Care Providers	State law applies.
<i>Workers' Compensation Act: Release of Medical Records</i>	N/A	Requires a health care provider to release PHI to a worker, employer, employer's insurer, the appropriate peer review organization or the health care selection board.	Not preempted.	Health Care Providers	State law and HIPAA requirements apply.

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