



HIPAA Summit VII

The Hidden Trap: Compliance with State Law

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HIPAA Preemption--General Rule

1. HIPAA's administrative simplification provisions preempt contrary state law provisions, unless one of four exceptions are met



HIPAA Preemption -- Exceptions

1. DHHS Secretary exceptions determinations
2. More stringent state health privacy provisions
3. State reporting laws
4. Health plan reporting and information



HIPAA Preemption -- Exceptions

1. “More Stringent” state law provisions
 - prohibit or restrict disclosure
 - permit greater access/amendment rights
 - require tighter consents/authorizations
 - require longer/more detailed accountings of disclosures
 - provide more privacy protection



HIPAA Preemption -- Not Just Theoretical

1. State law provisions must be factored into HIPAA compliance
 - Notice of privacy practices must reflect more stringent state laws
 - Policies and procedures need to operationalize compliance with all relevant laws and regulations



FAQ September 3, 2003

- NPP must reflect more stringent state laws
- Multi-state implications
- Covered entities need to track changes in state law



HIPAA Definition of State Law Includes:

1. constitution
2. statutes
3. regulations
4. rules
5. common law
6. other state actions having force and effect of law



State Health Privacy Provisions Found in Numerous Laws/Regulations

- Professional licensure/certification
- Facility licensure/certification
- Condition or disease-specific (i.e., mental health, drug and alcohol, HIV/AIDS)
- Program-specific (i.e., Medical Assistance, Drug & Alcohol Services, prescription programs)
- Statutory privileges



HIPAA Preemption--Challenges

1. Locating relevant state health privacy provisions
2. Provision-by-provision analysis required
3. Implications for multi-state entities
4. Lack of regulatory guidance



HIPAA Preemption-- Practical considerations

1. Cost
2. Time
3. Staying Current



HIPAA Preemption--Collaborations

1. State associations
2. Industry-specific
3. “Mandated” approaches
i.e., Texas S.B. 1136



50 State HIPAA Privacy Study

- Comprehensive national privacy study
- Sponsored by the Healthcare Leadership Council
- Funded by numerous health care organizations, including the AHA
- Covers 32 types of entities (hospitals, professional providers, insurers, nursing homes, pharmacies and more)
- Web-based; searchable by state, topic, type of entity



50 State HIPAA Privacy Study

www.statehipaastudy.com



Preempted? More Stringent? Selected Issues

- HIPAA does not require consent for TPO disclosures, but many state rules do
- Patient access: grounds for denial, fees and costs
- Who tells the police they can't have DNA information?
- Abuse reporting and HIPAA - required victim notice: a chilling effect?