

IOWA HIPAA SNIP

IOWA HIPAA PREEMPTION ANALYSIS

**A Report on the Relationship Between
HIPAA's Privacy Rule and Iowa Statutory Law**

Prepared through the voluntary and cooperative efforts of the:

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INTRODUCTION

The Health Insurance Portability and Accountability Act of 1996 (HIPAA), Public Law 104-191, is a federal law governing, among other things, the privacy practices of health care providers, health care clearinghouses, and health plans that are covered entities subject to HIPAA's requirements. Regulatory requirements implementing HIPAA's privacy provisions were issued by the U. S. Department of Health and Human Services' (HHS) Office of Civil Rights (OCR) on December 28, 2000, 65 *Federal Register* 82462-82829, and modified on August 14, 2002, 67 *Federal Register* 53181 ("Privacy Rule"). The Privacy Rule is available from the Code of Federal Regulations, 45 CFR Parts 160 and 164, and from the OCR at <http://www.hhs.gov/ocr/combinedregtext.pdf>.

HIPAA's Privacy Rule is comprehensive and meant to be uniform throughout the nation. Yet HIPAA does not repeal state law. Over time, legislatures of each state have adopted privacy policies of their own that are binding upon health care providers, health plans, and others in their respective states. Covered entities need to know when they are bound either by state law, by HIPAA or by both. This is no easy task.

This Preemption Report has been prepared to assist Iowa covered entities and other persons affected by HIPAA in identifying whether a conflict exists between an Iowa privacy law and a HIPAA privacy standard or implementation specification and, if so, in determining whether Iowa law or HIPAA prevails. *Please note:* in most instances, Iowa law and HIPAA's requirements can be reconciled. Ordinarily HIPAA covered entities must follow the requirements of *both* the HIPAA Privacy Rule and Iowa law.

This Report is dynamic in nature and will change from time to time as additional Iowa laws are identified or new information regarding HIPAA comes to light. Further, the HIPAA Privacy Rule defines "state law" to include statutes, regulations, case law, and other state action having binding legal effect. This Report *only* addresses statutory law.

While this Report does not constitute legal advice and cannot be relied upon as such, it is hoped that its findings and conclusions will be a uniform and consistent guide for all Iowa covered entities. Legal advice regarding HIPAA and its requirements should be obtained from an attorney representing the person or entity seeking such advice.

THE PREEMPTION ANALYSIS – ITS STEPS

"Preemption" is a technical legal term that, for purposes of this analysis, is governed by the definitions and directions of the HIPAA Privacy Rule. Rule 160.203 says that a standard, requirement, or implementation specification adopted in the Privacy Rule that is *contrary* to a provision of state law preempts the provision of state law. Exceptions to this general rule are set out in Rules 160.203(a)-(d). Definitions key to a HIPAA preemption analysis are found in Rules 160.201-.205.

The following five (5) steps were followed in preparing this Report:

1) Identify and interpret existing state privacy laws.

Effort was made to assure that the state law identification process was comprehensive and complete. Undoubtedly, however, a few laws may have been missed. Users are encouraged to

notify the Preemption Workgroup through the Iowa HIPAA SNIP website (www.iowasnip.org) of any law the user believes merits preemption evaluation.

The Preemption Workgroup was guided in its analysis by the actual language of Iowa law. When relevant, however, the Workgroup looked beyond the statutory language itself to the practical ways in which covered entities ordinarily are impacted by or govern themselves under the law. As a result, from time to time the Report will include guiding “notes” to covered entities.

This Report also includes the Workgroup’s analysis of those state privacy laws to which HIPAA is not applicable (usually because state law does not address protected health information (PHI) or does not involve a covered entity) to assure users of this Report that those laws have been addressed.

2) Determine whether the provisions of state law are consistent with or contrary to HIPAA’s privacy standards or implementation specifications.

The Privacy Rule says that a state law is “contrary” to HIPAA’s privacy standards or implementation specifications if a covered entity would find it impossible to comply with both state and federal requirements or if state law stands as an obstacle to the accomplishment of HIPAA’s full purpose and objectives. Rule 160.202. If it is possible, however, for a covered entity to meet *both* the obligations of state law and the requirements of HIPAA, then no preemption exists and the covered entity must comply with both. In certain instances, the Privacy Rule, itself, gives way to state law and does not regulate in those areas of state law activity.

3) If contrary, determine whether a HIPAA exception “saves” the state law from HIPAA preemption.

The Privacy Rule sets forth three instances in which a state law that is contrary to HIPAA can be “saved”: i) state law is “more stringent” than HIPAA (Rules 160.203(b) and 160.202 - definition of “more stringent”); ii) state law provides for the reporting of disease or injury, child abuse, birth, or death, or for the conduct of public health surveillance, investigation, or intervention (Rule 160.203(c)); or iii) state law requires a health plan to report, or to provide access to, information for the purpose of management audits, financial audits, program monitoring and evaluation, or the licensure or certification of facilities or individuals (Rule 160.203(d)).

4) Assess whether clarification or exemption from HIPAA’s requirements should be sought from HHS to preserve Iowa law.

The Privacy Rule sets forth a formal process for seeking a HHS determination that state law that is contrary to HIPAA nonetheless should prevail. HHS will consider such exceptions only in certain defined instances such as to prevent fraud and abuse in governmental health care programs; to ensure appropriate state regulation of insurance and health plans; for reporting on health care delivery or costs; for serving a compelling need related to public health, safety, or welfare; or where state law has as its principal purpose regulation of controlled substances. Rule 160.203-.204. There are several instances in which this Report suggests seeking either clarification or exemption from HHS through the Office of Civil Rights (OCR), the unit within HHS assigned responsibility for enforcement of the HIPAA Privacy Rule.

5) Assess whether an amendment to Iowa law should be sought to make it consistent with HIPAA.

Generally if state law is contrary to HIPAA, it is due to technical provisions of either or both the state and federal provisions. Conforming amendments to state law would be sought to remove technical or, if necessary, substantive barriers to make state law consistent with the HIPAA Privacy Rule or to make state law meet one of the HIPAA Privacy Rule exceptions outlined in section 3 above. This Report periodically proposes consideration of state law amendments.

READING THE REPORT AND ITS CHARTS

This Report's preemption analysis seeks to be uniform in its approach on each state law subject to review. The Report is prepared in "chart" form and organized as follows:

- The Report is alphabetically organized according to subject matter of the state law under review, followed by citation to the specific Iowa Code section(s) analyzed.
- Regulations relevant to each state law are noted. These regulations have *not* yet been reviewed or analyzed for consistency with HIPAA, a matter left for another preemption report.
- A summary of the state law under review is provided. As noted above, however, the Preemption Workgroup based its analysis on the actual language of each state law reviewed. From time to time it may be helpful to consult the statutory provisions themselves.
- A "chart" report of the preemption analysis including the following:
 1. A "Preemption" determination is provided, indicating that state law is either "Preempted" or "Not preempted" or "Partially preempted." As noted above, "preemption" primarily depends upon whether a state law is "contrary" to and cannot otherwise be reconciled with a HIPAA standard or implementation specification or exception.
 2. A brief "Explanation" supporting the preemption determination is set out, referencing relevant sections of the HIPAA Privacy Rule.
 3. The "Practical Effect" of the preemption determination is noted, generally directing covered entities to "Follow state law" or "Follow HIPAA," or "Follow both." Additional notes are included from time to time to assist the user in understanding related requirements.
 4. Notation periodically is made at the bottom of a chart re: seeking either a clarification or exception determination from HHS or seeking a change in Iowa law.

Please note: The chart analysis represents the best judgment of the Preemption Workgroup on the issue of preemption. The chart analysis *only* addresses preemption and *only* directs the user on whether to follow HIPAA, follow state law, or follow both. The chart analysis does *not* address other HIPAA responsibilities that a covered entity has such as use and disclosure of information minimally necessary to accomplish the purposes of the use or disclosure or instances

in which reference to a state law or category of state law must be included in a covered entity's notice of privacy practices.

IS THIS REPORT LEGALLY BINDING?

No, it is not. The Preemption Workgroup has not been empowered by any governmental agency to conduct this analysis. Further, HHS, the regulatory agency responsible for HIPAA implementation, has not authorized any one person or organization to conduct HIPAA preemption analyses on state law, nor has HHS agreed to be bound by this Report or any other preemption report that may be prepared.

Please note: A preemption analysis such as this is complex and difficult. The end-result of each statutory review in this Report is the product of careful analysis of both Iowa statutory language and HIPAA's requirements. This Report's conclusions, reached after considerable discussion and debate, represent the good faith, knowledge-based, and consensus views of the Preemption Workgroup. While this Report does not constitute legal advice and may not be binding, the Preemption Workgroup believes that the conclusions of this Report may be considered in an enforcement action. It is hoped that the Report and its analyses will minimize preemption disagreements among covered entities, business associates, non-covered entities (i.e., attorneys), consumers, and regulatory agencies.

COMMENTS OR QUESTIONS ABOUT THIS REPORT?

Again, the Preemption Workgroup cannot provide legal advice regarding this analysis; entities must consult their own legal counsel on matters requiring a legal opinion. A user of this Report that identifies a question or issue of general interest, including a state law not included in this Report that should be analyzed for its HIPAA preemptive effect, should contact the Preemption Workgroup by means of the Iowa HIPAA SNIP website at www.iowasnip.org. All inquiries will be forwarded to the Preemption Workgroup. While the Preemption Workgroup, either individually or collectively, will not be able to answer each question that may be submitted via the website, from time to time the Workgroup may issue general guidance on matters of common interest, concern, or clarification. Workgroup guidance statements, if issued, will be posted on the website.

A LISTING OF IOWA LAWS PREEMPTED BY HIPAA

For the convenience of the users of this Report, below is a listing of those Iowa statutory provisions the Preemption Workgroup determined were preempted or partially preempted by HIPAA.

- Iowa Code section 135.40-.42, Morbidity and Mortality/Quality Assurance Data (pp. 35-36) – *Partially Preempted.*
- Iowa Code section 147.135, Peer Review Committees (pp. 36-37) – *Partially Preempted.*
- Iowa Code section 228.3, Voluntary Disclosure of Mental Health Information (p. 28) – *Partially Preempted.*
- Iowa Code section 228.9, Disclosure of Psychological Test Material (p. 33) – *Partially Preempted.*

- Iowa Code section 229.25, Hospitalization of Persons with Mental Illness – Medical Records/Confidential/Exceptions (pp. 34-35) – *Partially Preempted*.
- Iowa Code section 235B.3, Dependent Adult Abuse Reporting/Investigation (p. 12) – *Partially Preempted*.
- Iowa Code section 514B.30, Health Maintenance Organizations (HMO) – Confidential Communications (pp. 15-16) – *Partially Preempted*.
- Iowa Code section 141A.9(1)(I), Confidentiality of HIV/AIDS Information/Release to Employer (p. 20) – *Preempted*.

A LISTING OF IOWA LAWS FOR WHICH HHS CLARIFICATION OR EXCEPTION SHOULD BE CONSIDERED

Again, for user convenience, below is a listing of those Iowa statutory provisions that the Preemption Workgroup recommends HHS clarification or exception should be considered in order to either resolve a HIPAA conflict through guidance from HHS or to allow Iowa law to prevail despite a requirement of HIPAA to the contrary.

- Iowa Code section 135.28-.29, Substitute Medical Decision-Making Board – Release of Medical Records – Confidentiality (p. 43).
- Iowa Code section 148.6(2)(h), Physician Licensure – Physical or Mental Examination/Substance Abuse Screening (p. 38).
- Iowa Code section 155A.39(7)(c), Pharmacists – Impaired Pharmacists’ Assistance Program (p. 37).
- Iowa Code chapter 228, Disclosure of Mental Health Information (pp. 27-33).
- Iowa Code section 229.25, Hospitalization of Persons with Mental Illness – Medical Records/Confidential/Exceptions (pp. 34-35).
- Iowa Code section 235A.15-19, Child Abuse Registry (p. 5).
- Iowa Code section 235B.3, Dependent Adult Abuse Reporting/Investigation (p. 12).
- Iowa Code section 235B.6, Dependent Adult Abuse Central Registry (p. 13).
- Iowa Code section 272C.9(1), Health Professional Licensure – Physical or Mental Examination (pp. 16-17).
- Iowa Code section 321.186, Impaired Drivers – Reports by Physicians/Optometrists (pp. 24-25).
- Iowa Code section 514B.30, Health Maintenance Organizations (HMO) – Confidential Communications (pp. 15-16).

**A LISTING OF IOWA LAWS THAT SHOULD BE CONSIDERED FOR AMENDMENT
BY THE IOWA GENERAL ASSEMBLY**

The Preemption Workgroup recommends that certain state laws be considered for amendment by the Iowa General Assembly to assure consistency with HIPAA and/or to ease the burden of HIPAA compliance on Iowa covered entities.

- Iowa Code section 142C.7, Uniform Anatomical Gift Act – Confidential Information (p. 44).
- Iowa Code section 148.6(2)(h), Physician Licensure – Physical or Mental Examination/Substance Abuse Screening (p. 38).
- Iowa Code section 155A.39(7)(c), Pharmacists – Impaired Pharmacists’ Assistance Program (p. 37).
- Iowa Code chapter 228, Disclosure of Mental Health Information (pp. 27-33).
- Iowa Code section 125, Chemical Substance Abuse – Commitment Records (pp. 3-5).
- Iowa Code section 235B.6, Dependent Adult Abuse Central Registry (p. 13).
- Iowa Code section 272C.9(1), Health Professional Licensure – Physical or Mental Examination (pp. 16-17).
- Iowa Code section 272C.9(2), Health Professional Licensure – Reporting of Impaired/Incompetent Colleagues (pp. 17-18).

**HIPAA PREEMPTION REVIEW
IOWA STATUTORY LAW
Report – January 2003**

Abortion – Parental Notification

Iowa Code section 135L.3

Related regulations: Iowa Administrative Code 641-89.21-26

Iowa Code section 135L.3 requires a physician to notify a parent at least 48 hours prior to the performance of an abortion on a pregnant minor. The Code sets out requirements for the notification. The pregnant minor may petition the court to authorize waiver of the notification requirements. Court proceedings are conducted to protect the confidentiality of the minor. In addition, the Code sets out conditions under which the notification procedures do not apply. A provider who knowingly performs an abortion in violation of this chapter is guilty of a serious misdemeanor. A person who violates the confidentiality of requirements of the court proceedings and court documents is guilty of a serious misdemeanor.

PREEMPTIVE EFFECT	EXPLANATION/COMMENT	PRACTICAL EFFECT
Not preempted.	Not contrary. HIPAA permits state law that authorizes or prohibits disclosure of a minor’s PHI to parents, guardians, or persons acting in <i>loco parentis</i> of such minor. Rule 164.502(g)(3). Also HIPAA gives way to state law that is more stringent than HIPAA. Rule 160.203(b).	Follow state law.

Abortion Reporting

Iowa Code section 144.29A

Related regulations: Iowa Administrative Code 641-106

Iowa Code section 144.29A requires a health care provider who initially identifies and diagnosis a spontaneous termination of pregnancy or who induces a termination of a pregnancy to file a report with the Department of Public Health. The information to be reported is specified in this section. The Department shall ensure the anonymity of the patient, health care provider and hospital, clinic, or other health facility in which the termination of pregnancy is identified or induced. The Department is required to publish an annual report summarizing this information, but shall, with any uses or releases of information, maintain the anonymity of the patient, provider, hospital, clinic or other health facility. This information is considered confidential and shall not be released upon subpoena, search warrant, discovery proceedings, or by any other means.

PREEMPTIVE EFFECT	EXPLANATION/COMMENT	PRACTICAL EFFECT
Not preempted.	Not contrary. HIPAA allows disclosures as required by law. Rule 164.512(a)(1). In addition, the information to be reported does not include any identifiers and, as such, meets the standard for de-identification of PHI data. Rule 164.514.	Follow state law.

Adoption Records

Iowa Code sections 600.16, 600.16A, 600.24

Related regulations: None

These sections govern release of medical record and other information in the course of the adoption process to persons delineated in the statute by the Department of Human Services, any adoption agency, or the courts in the course of the adoption process. Persons disclosing information in violation of these sections are subject to criminal penalty. These sections further establish a process for sealing of adoption records and subsequent access to them. The Department may allow access to adoption records held by it or any other agency for purposes of conducting medical research or treatment of a patient in a medical facility so long as the identity of the biological parents is not revealed.

PREEMPTIVE EFFECT	EXPLANATION/COMMENT	PRACTICAL EFFECT
Not preempted.	Department (for this purpose), adoption agencies, and the courts are not HIPAA covered entities.	HIPAA is not applicable. Follow state law. <i>Note to covered entities:</i> Health care provider covered entities releasing PHI for adoption purposes must comply with HIPAA.

Birth Defects Institute

Iowa Code section 136A.6

Related regulations: Iowa Administrative Code 641-4

This statutory provision authorizes the Iowa Birth Defects Institute to maintain a central registry for collecting and storing report data for statistical purposes on the causes, treatment, prevention, and cure of genetic disorders and birth defects. Identifying information collected by the registry shall remain confidential consistent with Iowa's public records statute, Iowa Code section 22.7(2).

PREEMPTIVE EFFECT	EXPLANATION/COMMENT	PRACTICAL EFFECT
Not preempted.	Not contrary. HIPAA permits reports under state law for public health surveillance. Rule 164.512(b)(1)(i).	Follow state law.

Brain and Spinal Cord Injuries – Reports to Central Registry

Iowa Code section 135.22

Related regulations: Iowa Administrative Code 641-21

This provision requires hospitals to report patients who are admitted with brain or spinal cord injuries and their diagnoses to the Department of Public Health. The Department shall maintain the confidentiality of reported information. The Department may release identifying information for research purposes so long as the research entity maintains its confidentiality.

PREEMPTIVE EFFECT	EXPLANATION/COMMENT	PRACTICAL EFFECT
Not preempted.	Not contrary. HIPAA permits reports under state law for public health surveillance. Rule 164.512(b)(1)(i). In this case, Department of Public Health may be a covered entity.	Follow state law.

Chemical Substance Abuse – Commitment Records

Iowa Code sections 125.33; 125.37 and 125.93

Related regulations: Iowa Administrative Code 643-3.21; 643-6.3; 643-8.3

Iowa Code section 125.33 provides, among other things, that a facility or licensed physician or surgeon shall not disclose information regarding a substance abuser or chronic substance abuser to any law enforcement officer or law enforcement agency. In addition, such information shall not be admissible as evidence in any court or administrative proceeding unless authorized by the person seeking treatment. If the person seeking treatment is a minor who personally made the application for treatment, the fact that the minor sought treatment or rehabilitation shall not be reported or disclosed to the parents or legal guardian of such minor without the minor’s consent. Any person who reports or discloses the name of a person receiving treatment or rehabilitation services to a law enforcement officer or agency without the written consent of that person may be guilty of a simple misdemeanor.

PREEMPTIVE EFFECT	EXPLANATION/COMMENT	PRACTICAL EFFECT
Not preempted.	State law is more stringent and controls. Rule 160.203(b).	Follow both. Disclosure of PHI, including disclosure consented to by a minor,

		should be made consistent with HIPAA authorization.

Iowa Code section 125.37(1) requires that registration and other records of chemical substance abuse facilities remain confidential and privileged to the patient.

Iowa Code section 125.37(2) authorizes the director of the Department of Public Health to make available information from patient records for research; such information shall not be published in a way that discloses patient names or other identifying information.

Iowa Code section 125.37(3) authorizes the disclosure of patient records otherwise confidential to medical personnel in a medical emergency with or without patient consent.

PREEMPTIVE EFFECT	EXPLANATION/COMMENT	PRACTICAL EFFECT
Section 125.37 (1) - Not preempted.	Not contrary. State law is more stringent, in which event HIPAA gives way to state law. Rule 160.203(b).	Follow both. Disclosure of PHI, including disclosure consented to by a minor, should be made consistent with HIPAA authorization.
Section 125.37(2) - Not preempted.	Not contrary. Disclosure involves de-identified health information; PHI is not involved. Rule 164.514.	Follow both.
Section 125.37(3) - Not preempted.	Not contrary. TPO includes medical emergencies for which consent is not required. Rule 164.506(c)(2).	Follow state law.

Iowa Code section 125.93 states that chemical substance abuse records (including identity, diagnosis, prognosis or treatment) relating to the provision of substance abuse treatment shall be confidential, consistent with the requirements of Iowa Code section 125.37, and the federal law (21 U.S.C. section 1175 and 42 U.S.C. section 4582).

PREEMPTIVE EFFECT	EXPLANATION/COMMENT	PRACTICAL EFFECT
Not preempted.	Not contrary. State law references federal substance abuse requirements relating to compliance.	Follow both. <i>Note:</i> Covered entity health providers subject to federal substance abuse regulations must first comply with federal regulations (42 C.F.R. Part 2). Those not subject to

		the federal substance abuse regulations should follow HIPAA and state law.

Note: Amend Iowa Code chapter 125 to expressly reference HIPAA privacy rule.

Child Abuse Registry

Iowa Code section 235A.15-19

Related regulations: Iowa Administrative Code 441-175.41

This section addresses report and disposition data on cases of reported child abuse maintained by the Department of Human Services, requiring the Department to keep it confidential except as specifically authorized by the section. The section goes on to specify to whom, upon request, report and disposition data may be released, including health practitioners or mental health professionals examining, attending, or treating a child believed by the practitioner or professional to have been the victim of abuse or a child examined by the practitioner or professional at the request of the Department. Mandatory reporters may receive information regarding a child subject of a report that they made; members of a multidisciplinary team may also receive report/disposition data. Other persons who might access child abuse report and disposition data are enumerated.

PREEMPTIVE EFFECT	EXPLANATION/COMMENT	PRACTICAL EFFECT
Not preempted.	Not contrary. Release of information from the registry by DHS consistent with Iowa law is not preempted to the extent that DHS is not a covered entity; if DHS determines it is a covered entity for child abuse registry purposes, DHS would need to comply with HIPAA's requirements before releasing PHI.	Follow state law. <i>Note:</i> Covered entities that receive registry data from DHS that is PHI must comply with HIPAA in further release of that data by the covered entity.

Note: If needed, seek HHS exception for this state law as serving a compelling need in public health, safety and welfare. Rule 160.203(a)(1)(iv). Another option may be to seek a change in Iowa law.

Child Abuse – Mandatory Reporting/Investigations/Assessments

Iowa Code section 232.69(1), (2); 232.71B(7)(a)

Related regulations: Iowa Administrative Code 441-175.21-23

Sections 232.69(1) and (2) detail mandatory and permissive reporting requirements related to child abuse. Every health care practitioner who in the scope of professional practice examines, attends, or treats a child and who reasonably believes the child has been abused is a mandatory reporter of child abuse.

PREEMPTIVE EFFECT	EXPLANATION/COMMENT	PRACTICAL EFFECT
Not preempted.	Not contrary. HIPAA gives way to state law governing child abuse reporting. Rule 160.203(c).	Follow state law.

Section 232.71B(7)(a) requires mandatory reporters to cooperate in follow-up investigations and assessments of reported abuse in all child abuse investigations whether they were or were not the reporter of the suspected abuse.

PREEMPTIVE EFFECT	EXPLANATION/COMMENT	PRACTICAL EFFECT
Not preempted.	Not contrary. HIPAA permits uses/disclosures of PHI required by state law. Rules 164.512(a), 164.512(b)(1)(ii).	Follow state law.

Child Death Review Team

Iowa Code section 135.43

Related regulations: Iowa Administrative Code 641- 90, 641-92

This statutory provision details the duties of the Iowa Child Death Review Team, including collecting, reviewing, and analyzing child death certificates and supporting patient records as well as other confidential information relating to the death of children under age 18. The review team shall prepare an annual report and make recommendations to the Iowa General Assembly and Governor on interventions to prevent child deaths. Patient records and other confidential information accessed by the review team shall be maintained as confidential. An appointed child fatality review committee may include confidential medical treatment information regarding a child who has died in its report. A person with custody of medical and other information pertaining to a child death and child abuse must allow access to that information by the Department of Public Health upon its request, which information is to be used solely for child death review purposes. No legal liability attaches for a release of medical and other information as required under these sections. The confidentiality provisions of the section must be adhered to subject to criminal penalty.

PREEMPTIVE EFFECT	EXPLANATION/COMMENT	PRACTICAL EFFECT
Not preempted.	Not contrary. Release of PHI consistent with this section is exempted under HIPAA as required by state law, Rule 164.512(a); as consistent with child abuse reporting and public health surveillance, Rule 160.203(c); and as more stringent than HIPAA in that criminal penalties attach for inappropriate release of confidential information. Rule	Follow state law. <i>Note:</i> If the Department of Public Health determines that it is a covered entity, it then must comply with HIPAA in any release it might make of PHI received by it under this section.

	160.203(b).	

Commitment Of Sexually Violent Predators – Release of Confidential or Privileged Information and Records.

Iowa Code Section 229A.14

Related regulations: Iowa Administrative Code 201-38

Iowa Code section 229A.14 provides that relevant information or records otherwise confidential or privileged shall be released to the agency with jurisdiction or the attorney general for purposes of compliance with Iowa Code section 229A.3 (notice of discharge of sexually violent predators) in determining whether a person is or continues to be a sexually violent predator.

PREEMPTIVE EFFECT	EXPLANATION/COMMENT	PRACTICAL EFFECT
Not preempted.	Not contrary. Even if the “agency with jurisdiction” is a covered entity and if information released contains PHI, HIPAA permits disclosures required by state law. Rule 164.512(a).	Follow state law.

Communicable and Infectious Diseases

Iowa Code section 139A.3 *Mandatory Reporting*

Related regulations: Iowa Administrative Code 641-1

Iowa Code section 139A.3 requires reports to the Department of Public Health or to local health departments by providers attending persons infected with reportable diseases defined by Iowa Code section 139A.2(20) as "any disease designated by rule adopted by the department [of public health] requiring its occurrence to be reported to an appropriate authority."

PREEMPTIVE EFFECT	EXPLANATION/COMMENT	PRACTICAL EFFECT
Not preempted.	Not contrary. HIPAA gives way to state law that provides for the reporting of disease or injury or for public health surveillance purposes. Rule 160.203(c). Also, HIPAA permits use/disclosure of PHI required by state law. Rule 164.512(a).	Follow state law.

Iowa Code Section 139A.19 *Care Provider Notification*

Related regulations: Iowa Administrative Code 641-11.45-.53

Iowa Code section 139A.19 requires in certain instances and permits in others disclosure by a hospital or health care provider to notify a care provider (whether paid or volunteer) who renders assistance or treatment to an individual diagnosed or confirmed as having a contagious or infectious disease. Notification shall not include the name of the individual tested for the contagious or infectious disease unless the individual consents.

PREEMPTIVE EFFECT	EXPLANATION/COMMENT	PRACTICAL EFFECT
Not preempted.	Not contrary. HIPAA permits disclosure of PHI where, in cases of persons exposed to a communicable disease or at risk of contracting or spreading a disease or condition, a covered entity or public health agency is authorized by law to notify such person as necessary in the conduct of a public health intervention. Section 164. 512(b)(iv).	Follow state law.

Iowa Code section 139A.22 *Prevention of Transmission of HIV or HBV to Patients*

Related regulations: Iowa Administrative Code 641-11.45-.53

Iowa Code Section 139A.22 requires a hospital and a health care facility to adopt procedures to be followed when a health care provider who ordinarily performs exposure prone procedures in the hospital or health care facility is determined to be HIV or HBV positive. The purpose of this provision is to prevent the transmission of HIV or HBV to patients by assuring, through case-by-case review and protocols established by an expert review panel of either the hospital or the Department of Public Health, that the infected health care provider can safely provide care. "Health care provider" is defined for the purpose of this section as a "person licensed to practice medicine and surgery, osteopathic medicine and surgery, osteopathy, chiropractic, podiatry, nursing dentistry, optometry or as a physician assistant, dental hygienist, or acupuncturist." Report shall be made to the provider's respective licensing board in cases of noncompliance with the protocol; the licensing boards are to require licensee compliance with the panel's protocol and procedures of hospitals and health care facilities operating under this section. Confidentiality is provided for.

PREEMPTIVE EFFECT	EXPLANATION/COMMENT	PRACTICAL EFFECT
Not preempted.	Not contrary. HIPAA permits use/disclosure of PHI as required by state law. Rule 164.512(a). Further, IIHI is neither obtained nor released as required by this section in the course of direct or indirect	Follow state law.

	treatment relationship. Rules 164.502(d), 164.514.	

Iowa Code section 139A.30 *Confidential Reports*

Related regulations: Iowa Administrative Code 641-1

This subsection requires the Department of Public Health to keep confidential reports and all related information and records received by it that identify persons infected with a sexually transmitted disease or infection. Such reports, information and records shall be maintained as confidential only to the extent necessary to prevent identification of persons named in such reports and related information; other portions of such reports and related information shall be public records.

PREEMPTIVE EFFECT	EXPLANATION/COMMENT	PRACTICAL EFFECT
Not preempted.	This section addresses the responsibilities of the Department which is not a HIPAA covered entity for this purpose.	HIPAA is not applicable. Follow state law. <i>Note:</i> If the Department determines it is a covered entity for this purpose, it must assure that de-identified releases are consistent with HIPAA requirements. Rules 164.502(d), 164.514.

Iowa Code section 139A.31 *Reports to the Department*

Related regulations: Iowa Administrative Code 641-1

This section sets forth information required to be in a report of a sexually transmitted disease or infection submitted by a health care provider to the Department or local health department, including the name of the subject patient and other identifying information regarding that patient. Reports shall be confidential. Immunity from civil and criminal liability is afforded persons filing a report as required by this section.

PREEMPTIVE EFFECT	EXPLANATION/COMMENT	PRACTICAL EFFECT
Not preempted.	Not contrary. HIPAA permits disclosure of PHI required by state law to a public health authority for disease prevention, control or surveillance. Rule 164.512 (b)(1)(i).	Follow state law.

Iowa Code section 139A.35 *Minors*

Related regulations: None

This section provides that minors may seek diagnosis or treatment for a sexually transmitted disease or infection; the consent of a parent or other person is not necessary.

PREEMPTIVE EFFECT	EXPLANATION/COMMENT	PRACTICAL EFFECT
Not preempted.	HIPAA addresses uses and disclosures of PHI, not consent to medical care.	HIPAA is not applicable. Follow state law. <i>Note:</i> For uses/disclosure of PHI involving minors' health care, <i>see</i> Rules 164.502(g)(2),(3).

Council on Chemically Exposed Infants and Children

Iowa Code Section 235C.3

Related regulations: None

This section requires the Council on Chemically Exposed Infants and Children to assemble relevant materials regarding the extent to which infants born in Iowa are chemically exposed, services currently available to meet their needs, and costs associated with their care. Data collected by the Council shall be maintained as confidential to the extent necessary to protect the identity of persons who are the subjects of the collected data. This section does not address how data is collected, nor are health care providers authorized by the statute to release medical care and treatment records on chemically exposed children to the Council.

PREEMPTIVE EFFECT	EXPLANATION/COMMENT	PRACTICAL EFFECT
Not preempted.	The Council, itself, is not a covered entity. The Council is located within the administrative structure of the Iowa Department of Public Health. If the Department determines it is a covered entity for this purpose, release of PHI in the possession of the Council must be consistent with HIPAA.	HIPAA not applicable unless or until the Department determines that it is a covered entity, in which case, HIPAA must be complied with. <i>Note:</i> A covered entity asked to release PHI to the Council must assure that such release is consistent with HIPAA. <i>See</i> Rule 164.512(b)(i), permitting disclosures to a public health authority authorized to collect or receive information for public health purposes.

County Medical Examiner – Deaths Reported and Investigated

Iowa Code Sections 331.802

Related regulations: Iowa Administrative Code 641-127

Iowa Code section 331.802 requires the reporting of a death that affects the public interest as defined in 331.802(3) to the county or state medical examiner by the physician in attendance, any law enforcement officer with knowledge of the death, the embalmer, or any person present. The medical examiner shall notify law enforcement authorities. This section further outlines the procedure for performing an investigation and, where required, an autopsy and provides for the admissibility of records and reports into evidence.

PREEMPTIVE EFFECT	EXPLANATION/COMMENT	PRACTICAL EFFECT
Not preempted.	Not contrary. HIPAA gives way to state law that allows for the reporting of death. Rule 160.203(c).	Follow state law.

Corrections Department – Confidentiality of Records

Iowa Code section 904.602

Related regulations: None

Iowa Code section 904.602 identifies information in the possession of the Department of Corrections or by a community-based correctional program regarding individuals receiving or who have received services, noting that certain information (which does not appear to include PHI) is public information while other information (which does appear to include PHI) is confidential.

PREEMPTIVE EFFECT	EXPLANATION/COMMENT	PRACTICAL EFFECT
Not preempted.	The Department of Corrections is not a covered entity under HIPAA for this purpose.	HIPAA not applicable. Follow state law. <i>Note:</i> To the extent a covered entity (i.e., medical clinic on the premises of a correctional institution) is implicated by this statute, the covered entity is not relieved of its HIPAA obligations in its release of PHI under authority of this statute.

Criminal Sentencing – Presentence Investigative Reports

Iowa Code section 901.4

Related regulations: None

This section states that a presentence report in a criminal matter is confidential and requires a court to provide safeguards to protect its confidentiality. The report of a medical examination or psychological or psychiatric evaluation shall be made available to the attorney for the state and to the defendant upon request but otherwise shall be sealed and opened only on order of the court.

PREEMPTIVE EFFECT	EXPLANATION/COMMENT	PRACTICAL EFFECT
Not preempted.	This section addresses reports, including medical reports, issued by a court. Courts are not HIPAA covered entities.	Follow state law.

Dependent Adult Abuse – Mandatory Reporting/Investigations/Assessments

Iowa Code sections 235B.3(2), 235B.3(7)

Related regulations: Iowa Administrative Code 441-176.1, .4, .5

This section details mandatory and permissive reporting requirements related to dependent adult abuse. Every health care practitioner who in the scope of professional practice examines, attends, or treats adults and who reasonably believes a dependent adult has been abused is a mandatory reporter of child abuse. In addition to their reporting responsibilities, mandatory reporters must cooperate in follow-up investigations and assessments of reported abuse even if they were not the person who reported the suspected abuse.

PREEMPTIVE EFFECT	EXPLANATION/COMMENT	PRACTICAL EFFECT
Partially preempted.	Not contrary if a report is made and cooperation in an investigation is done by a covered entity in its capacity as a mandatory reporter. Such report/cooperation is permitted by HIPAA since required by state law. Rule 164.512(a). Contrary and, thus, preempted if a report is filed by a covered entity as a permissive reporter. Permissive reporting is not required by state law. Release of PHI in a permissive report must comply with HIPAA. <i>See</i> Rule 164.512(c)(1).	Follow state law when release/cooperation with investigation is done as a mandatory reporter. Follow HIPAA if release as a permissive reporter.

Note: Seek clarification from HHS/OCR regarding Iowa’s law on reporting dependent adult abuse as an exception under HIPAA as public health surveillance, investigation, or intervention. Rules 160.203(c), 160.204.

Dependent Adult Abuse Central Registry

Iowa Code section 235B.6

Related regulations: Iowa Administrative Code 441-176.10, .13

This section provides that all dependent adult abuse information maintained in the central registry shall be confidential except as specifically provided. The section goes on to specify to whom, upon request, report and disposition data may be released, including health practitioners or mental health professionals examining, attending, or treating an adult believed by the practitioner or professional to be the victim of abuse as well as to a person providing care to an adult as provided by statute. Other persons who might access dependent adult abuse information from the registry are enumerated.

PREEMPTIVE EFFECT	EXPLANATION/COMMENT	PRACTICAL EFFECT
Not preempted.	Not contrary. Release of information from the registry by DHS consistent with Iowa law is not preempted to the extent that DHS is not a HIPAA covered entity; if DHS determines it is a covered entity for dependent adult abuse registry purposes, DHS would need to comply with HIPAA's requirements before releasing PHI from it.	Follow state law. <i>Note:</i> Covered entity that receive registry data from DHS that is PHI must comply with HIPAA in further release of that data by the covered entity.

Note: If needed, seek HHS exception for this state law as serving a compelling need in public health, safety and welfare. Rule 160.203(a)(1)(iv). Another option may be to seek a change in the Iowa law.

Domestic Abuse Death Review Team

Iowa Code section 135.110-111

Related regulations: Iowa Administrative Code 641-91

These statutory provisions detail the duties of the Iowa Domestic Death Review Team, including preparing an annual report on the causes and manner of domestic abuse deaths, utilizing death data, patient records, and other confidential information. A person with custody of medical or other confidential information pertaining to a domestic death shall allow for inspection of the information by the Department upon request; confidential information remains confidential in the custody of the review team. A release or disclosure of confidential information in violation of this statute is subject to criminal penalty.

PREEMPTIVE EFFECT	EXPLANATION/COMMENT	PRACTICAL EFFECT
Not preempted.	Not contrary. HIPAA permits disclosure of PHI as required by state law. Rule	Follow state law.

	164.512(a).	

Employee Drug Screening

Iowa Code section 730.5(13)

Related regulations: Iowa Administrative Code 641-12 (approval of laboratories for employee drug screening purposes)

Communications received by an employer relevant to an employee or prospective employee’s drug or alcohol test results are confidential and shall not be used or received in evidence, obtained in discovery, or disclosed in any public or private proceeding except as otherwise authorized by the section. The employee or prospective employee subject of the test, upon request, shall have access to any records relating to the employee’s drug or alcohol test subject to conditions set out in this section. Except as permitted by this section, a laboratory and a medical review officer conducting drug or alcohol testing shall not use or disclose to any person any personally identifiable information regarding such testing, including the names of individuals tested, even if unaccompanied by the results of the test. An employer may use and disclose information concerning the results of a drug or alcohol test in those circumstances set forth in the section. Positive test results from an employer drug or alcohol testing program shall not be used as evidence in any criminal action against the employee or prospective employee tested.

PREEMPTIVE EFFECT	EXPLANATION/COMMENT	PRACTICAL EFFECT
Not preempted.	The employer and employee are not HIPAA covered entities and, as such, HIPAA does not come into play.	<p>HIPAA not applicable. Follow state law.</p> <p><i>Note:</i> Be aware of other state or federal employee drug testing laws that might be implicated.</p> <p><i>Note:</i> Covered entities such as hospitals are cautioned to distinguish PHI in personnel records, to which HIPAA does not apply, Rule 164.501, from PHI in patient records, in which case HIPAA comes into play.</p> <p><i>Note:</i> Covered entities that are health providers need HIPAA authorization to release employee testing results to employers.</p>

Health Care Facilities – Inspections

Iowa Code section 135C.16

Related regulations: Iowa Administrative Code chapter 481-50

This section requires inspections of health care facilities in the state. State inspectors are authorized to enter a health care facility without a warrant and to examine all records pertaining to resident care.

PREEMPTIVE EFFECT	EXPLANATION/COMMENT	PRACTICAL EFFECT
Not preempted.	Not contrary. HIPAA permits disclosure of PHI required by law, Rule 164.512(a), as well as disclosure to a health care agency for oversight activities authorized by law. Rule 164.512(d)(1)(iii).	Follow state law.

Health Maintenance Organizations (HMO) – Confidential Communications

Iowa Code section 514B.30

Related regulations: Iowa Administrative Code 191-40

This section protects the confidentiality of any communication made to a provider and deemed privileged under Iowa Code 622.10 by prohibiting individuals who are officers, directors, trustees, partners, or employees of an HMO from testifying or making any other disclosure of such privileged information. The insurance commissioner is authorized as part of a regulatory audit to examine medical or hospital records of a person but the commissioner is prohibited from testifying to or otherwise disclosing the confidential communications contained in them absent the express consent of the subject of the privileged communication. Section 622.10 waivers apply to this section. A HMO is prohibited from releasing the names of its enrollees except when necessary to effectuate the purposes of chapter 514B or to conduct research or analysis regarding cost or quality.

PREEMPTIVE EFFECT	EXPLANATION/COMMENT	PRACTICAL EFFECT
Partially preempted.	That portion of this statute granting confidentiality through the section 622.10 statutory privilege is consistent with HIPAA and not preempted. <i>See below</i> the preemption analysis on Iowa Code section 622.10.	Follow state law.
	That portion of this statute authorizing the insurance commissioner to examine PHI in HMO records as part of a	Follow state law.

	<p>regulatory audit is consistent with HIPAA and not preempted. Rule 164.512(d) oversight activities and Rule 160.203(d) regulatory audits of health plans.</p> <p>That portion of this statute authorizing a HMO to release names of enrollees to conduct research or analysis for cost or quality purposes is potentially preempted by HIPAA if the context in which the name is kept is PHI and if release occurs outside the context of permissible TPO or as otherwise allowed by HIPAA, in which case authorization may be required. <i>See</i> Rule 164.508.</p>	Follow HIPAA.

Note: Seek clarification or exception from HHS regarding HMO release of enrollee names for research/analysis regarding cost or quality.

Health Professional Licensure – Physical or Mental Examinations

Iowa Code section 272C.9(1)

Related regulations: Iowa Administrative Code for each health professional licensing board

This section requires persons licensed by professional licensure boards to submit to a physical or mental examination when directed in writing to do so by their respective professional licensing board upon a showing of probable cause. The licensee, by statute, waives any objection to the admissibility of the examining physician’s testimony or reports on the grounds of privileged communication. The medical testimony or report shall not be used against a licensee in any proceeding other than one related to licensee discipline. A licensee who fails to comply as required by the board is subject to disciplinary action.

PREEMPTIVE EFFECT	EXPLANATION/COMMENT	PRACTICAL EFFECT
Not preempted.	Not contrary. HIPAA permits disclosures of PHI required by law, including to public health authorities authorized to collect or receive it. Rule 164.512(b)(1)(i). <i>See also</i> Rule 160.203(c) under which HIPAA gives way to state law providing for the conduct of public health surveillance, investigation, or intervention.	Follow state law. <i>Note:</i> The examining health professional is not authorized or required under state law to release information on the licensee subject of the examination. As such, the examining health professional should seek authorization consistent with HIPPA

		<p>from the licensee subject of the exam; the licensing board can obtain that authorization from the subject licensee consistent with its authority under this section.</p> <p><i>See also</i> “Physician Licensure” under Iowa Code 148.6.</p>

Note: Either seek clarification or exception from HHS or seek amendment to Iowa law to require the release of medical testimony and reports by the examining health professional.

Health Professional Licensure – Reporting of Impaired/Incompetent Colleagues

Iowa Code section 272C.9(2)

Related regulations: Iowa Administrative Code for each health professional licensing board

This section requires persons licensed by a professional licensure board in this state to report professional incompetency, impairments, or other acts of licensed colleagues for which a licensed professional could be disciplined to the licensee’s respective professional licensing board. A licensee who fails to comply as required by the board is subject to disciplinary action. The reports are kept confidential by the licensing board as investigative information. *Note:* This section does not address colleague reporting by a licensee involving information gathered in the course of medical treatment of the colleague subject to the report. Rules of the Iowa Board of Medical Examiners, as an example, specify that no licensee is required to report information deemed to be a confidential communication as a result of the physician-patient relationship or which is prohibited by federal or state statute.

PREEMPTIVE EFFECT	EXPLANATION/COMMENT	PRACTICAL EFFECT
Not preempted.	<p>Not contrary. HIPAA permits disclosure of PHI as required by state law. Rule 164.512(a).</p> <p><i>Caution:</i> A report by one licensee on a colleague licensee generally does not implicate PHI gathered in the course of a confidential treatment relationship between the two licensees, in which event HIPAA does not come into play. To the extent that PHI gathered in the course of a treatment relationship serves as the basis of colleague reporting, state law may not prevail, in which event HIPAA</p>	<p>Follow state law.</p> <p>However, if the basis of reporting is information obtained in the course of a physician-patient or other privileged health care relationship, HIPAA may not give way to state law and a HIPAA authorization may be required. Check regulations of the respective licensing</p>

	authorization is required. Rule 164.508(a). For instance, rules of the Board of Medical Examiners specifically exclude reporting under this section where information is derived in the course of a physician-patient relationship.	boards.

Note: Clarification through amendment to state law may be necessary.

HIV/AIDS

Iowa Code section 141A.5 *Partner Notification*

Related regulations: Iowa Administrative Code 641-11.40

This section describes the partner notification program for persons known to have tested positive for HIV administered through the Iowa Department of Public Health as well as those circumstances under which a physician may notify an affected partner of a HIV-positive patient of likely exposure to HIV/AIDS. A physician or other health care provider attending the HIV-positive patient may release to the Department any relevant information provided by the person regarding any person with whom the tested person has had sexual relations or has shared drug-injecting equipment. The Department or a physician may reveal the identity of a person who has tested positive for the HIV infection pursuant to this subsection only to the extent necessary to protect a third party from the direct threat of transmission. A county or state medical examiner who determines through an investigation that a deceased person was infected with HIV may directly notify, or request that the Department notify, the immediate family of the deceased or any person known to have had a significant exposure from the deceased of the finding.

PREEMPTIVE EFFECT	EXPLANATION/COMMENT	PRACTICAL EFFECT
Not preempted.	Not contrary. HIPAA permits disclosure under state law that authorizes disclosure of PHI to a person who may have been exposed to a communicable disease. Rule 164.512 (b)(1)(iv). HIPAA also gives way to state law that is more restrictive than HIPAA. Rule 160.203(b).	Follow state law.

Iowa Code section 141A.8 *Care Provider Notification*

Related regulations: Iowa Administrative Code 641-11.45-11.53

This section sets forth a process for notifying a care provider who sustains a significant exposure from an individual of the individual's positive HIV status. The individual is deemed by law to have consented to testing and to notification of the care provider subject to statutory conditions. Hospitals, correctional institutions and jails are required to have written policies and procedures for notification consistent with the law. If the HIV test results of the individual subject are

positive, the hospital or other person performing the test shall notify the care provider or designated representative of the care provider. The notification shall not include the identity of the person tested unless the individual provides a specific release. If the care provider determines the identity of the individual tested, the identity shall be confidential information and shall not be disclosed by the care provider unless the individual specifically consents in writing. A hospital or health care provider may develop its own policies and procedures for notification of its own employees of exposure to HIV infection so long as the notice does not reveal the identity of the patient's name unless the patient consents.

PREEMPTIVE EFFECT	EXPLANATION/COMMENT	PRACTICAL EFFECT
Not preempted.	Not contrary. HIPAA permits authorized disclosure under state law of PHI to a person who may have been exposed to a communicable disease. Rule 164.512 (b)(1)(iv). HIPAA also gives way to state law that is more restrictive than HIPAA. Rule 160.203(b).	Follow state law.

Iowa Code section 141A.9 *Confidentiality of HIV/AIDS Information*

Related regulations:

This section describes the confidentiality protections for HIV information, including permitted disclosure and the conditions for such disclosure. Any information, including reports and records, obtained, submitted, and maintained pursuant to this chapter is strictly confidential medical information and shall not be released, shared with an agency or institution, or made public upon subpoena, search warrant, discovery proceedings, or by any other means except as provided by the chapter. Subsections (a-n) detail those instances in which information shall be made available for release.

PREEMPTIVE EFFECT	EXPLANATION/COMMENT	PRACTICAL EFFECT
141A.9(1)(a) Not preempted.	Not contrary. Release of PHI to the individual is consistent with HIPAA. Rule 164.502(a)(1)(i).	Follow state law.
141A.9(1)(b) Not preempted.	Not contrary. Release with authorization from the individual or legal guardian of the individual is consistent with HIPAA. Rule 164.502(a)(1)(iv).	Follow both.
141A.9(1)(c) Not preempted.	Not contrary. Release for treatment purposes is consistent with disclosures of PHI as TPO under HIPAA. Rule 164.506.	Follow both.
141A.9(1)(d) Not preempted.	Not contrary. Release for treatment purposes is	Follow both.

	consistent with disclosures of PHI as TPO under HIPAA. Rule 164.506.	
141A.9(1)(e) Not preempted.	Not contrary. HIPAA permits reporting as required by state law. Rule 164.512(b)(1)(i).	Follow state law.
141A.9(1)(f) Not preempted.	Not contrary. HIPAA permits authorized release of PHI under state law for organ donation purposes. Rule 164.512(h).	Follow state law.
141A.9(1)(g) Not preempted.	Not contrary. HIPAA does not preclude release of non-identifiable health care information. Rule 164.514(a).	Follow state law.
141A.9(1)(h) Not preempted.	Not contrary. HIPAA permits required reports under state law for public health surveillance purposes. Rule 164.512 (b)(1)(i).	Follow state law.
141A.9(1)(i) Not preempted.	Not contrary. HIPAA permits release of PHI between and among health care providers for treatment purposes. Rules 164.506(c)(1),(2).	Follow state law.
141A.9(1)(j) Not preempted.	Not contrary. HIPAA permits state law that authorizes release of PHI to a person who may have been exposed to a communicable disease. Rule 164.512(b)(1)(iv).	Follow state law.
141A.9(1)(k) Not preempted.	Not contrary. HIPAA permits disclosure of PHI as required by state law, including court orders, Rules 164.501, 164.512(a). HIPAA gives way where state law is more stringent. Section 160.203(b).	Follow state law.
141A.9(1)(l) Preempted.	Contrary. HIPAA generally requires an authorization for use/disclosure of PHI unless another provision permitting release prevails. Rule 164.508. This statute addresses authorized testing.	Follow HIPAA. <i>Note:</i> No Iowa law could be identified to overcome HIPAA's requirements in favor of disclosure required by law.

141A.9(1)(m) Not preempted.	Not contrary. HIPAA permits disclosure of PHI as required by state law to a person who may have been exposed to a communicable disease. Rule 164.512(b)(1)(iv).	Follow state law.
141A.9(1)(n) Not preempted.	Not contrary. HIPAA permits disclosure of PHI as required by state law. Rule 164.512(a).	Follow state law.

HIV – Restrictions on Testing for Insurance

Iowa Code section 505.16

Related regulations: Iowa Administrative Code 191-15.12

An insurer shall not require an HIV test of an individual in connection with an application of insurance unless the individual provides a written release on a form approved by the insurance commissioner. The form must include information regarding the purpose, content, use, and meaning of the test; disclosure of test results; the purpose for which the test may be used; and other information approved by the insurance commissioner.

PREEMPTIVE EFFECT	EXPLANATION/COMMENT	PRACTICAL EFFECT
Not preempted.	This law regulates consent to testing; HIPAA does not address consent to medical procedures.	HIPAA not applicable. Follow state law. <i>Note:</i> A covered entity that is a health care provider testing a person for HIV pursuant to consent given consistent with this section needs HIPAA authorization from the individual tested in order to release the results to the insurer.

HIV – Testing – Victims’ Rights

Iowa Code Section 915.43(1), (4), (5), (7), (13) and (14)

Related regulations: Iowa Administrative Code 641-11.74

Iowa Code Section 915.43(1) requires a provider who orders HIV testing of an offender to disclose the test results to the offender and to the victim counselor or other person designated by the victim to provide counseling who shall disclose the results to the victim.

Iowa Code Section 915.43(4) provides that results of testing performed under this subchapter shall be disclosed only to the provider ordering the tests, the offender, the victim, the victim's counselor, physician of the victim if requested, the parent, guardian or custodian of a minor victim and the county attorney who filed the petition for HIV-related testing. Further disclosure is prohibited.

Iowa Code Section 915.43(5) addresses disclosure of subsequent testing and provides for disclosure of these results to the same individuals as in 915.43(4).

Iowa Code Section 915.43(7) prohibits the fact that an HIV test was performed from being included in the offender's medical/criminal record unless otherwise included in the Department of Corrections' records.

Iowa Code Section 915.43(13) provides for additional persons to whom a victim may disclose the results of the offender's HIV -related test results.

Iowa Code Section 915.43(14) prohibits redisclosure of HIV-related test results by anyone authorized to receive such a disclosure.

PREEMPTIVE EFFECT	EXPLANATION/COMMENT	PRACTICAL EFFECT
915.43(1), (4), (5) Not preempted.	Not contrary. HIPAA permits disclosures of PHI as required by state law. Rule 164.512(a). Here state law requires initial disclosure to individuals other than the victim.	Follow state law.
915.43(7) Not preempted.	This provision does not involve disclosures of PHI by a covered entity.	HIPAA not applicable. Follow state law.
915.43(13) Not preempted.	HIPAA gives way to state law that is more stringent than HIPAA; this provision governs redisclosure of PHI not addressed by HIPAA. Rule 160.203(b). This provision addresses disclosure of PHI by the victim; the victim is not a HIPAA covered entity.	HIPAA not applicable. Follow state law.
915.43(14) Not preempted.	HIPAA gives way to state law that is more stringent. Rule 160.203(b). This provision governs redisclosure of PHI not addressed by HIPAA.	HIPAA not applicable. Follow state law.

Hospitals – Inspections

Iowa Code Section 135B.9

Related regulations: Iowa Administrative Code 481-51.2

Iowa Code section 135B.9 requires the Department of Inspections and Appeals to perform inspections to ensure compliance with hospital licensure rules. In addition, authority is given to the designated protection advocacy agency to investigate certain complaints in state resource centers and state mental health institutes operated by the Department of Human Services. This authority includes examination of patient records.

PREEMPTIVE EFFECT	EXPLANATION/COMMENT	PRACTICAL EFFECT
Not preempted.	Not contrary. HIPAA permits disclosures of PHI as required by state law to regulatory agencies acting in a health oversight capacity. Rule 164.512(d).	Follow both. <i>Note:</i> Hospitals, in providing access by the DIA to PHI, must follow HIPAA.

Hospitals – State Licensure Survey or Accreditation Findings

Iowa Code section 135B.12

Related regulations: Iowa Administrative Code 481-50.8

Iowa Code section 135B.12 requires the Department of Inspections and Appeals to make available to the public the final findings of surveys for licensure or final findings of accreditation by the Joint Commission on Accreditation of Healthcare Organizations (JCAHO) or the American Osteopathic Association (AOA) regarding a hospital’s compliance with state licensure requirements. This section applies only to final findings.

PREEMPTIVE EFFECT	EXPLANATION/COMMENT	PRACTICAL EFFECT
Not preempted.	This section does not involve PHI.	HIPAA not applicable. Follow state law.

Human Rights Department - Confidentiality of Individual Client Advocacy Records

Iowa Code section 216A.6

Related regulations: Iowa Administrative Code 421-2.13; 421-2.14

This section relates to the release of certain information by the Department of Human Rights. Information, including medical or psychiatric data, regarding clients receiving advocacy services from the Department shall be held as confidential.

PREEMPTIVE EFFECT	EXPLANATION/COMMENT	PRACTICAL EFFECT
Not preempted.	This section addresses information held by the Department of Human Rights which is not a HIPAA covered entity.	HIPAA not applicable. Follow state law.

Human Services Department - Confidentiality of Records

Iowa Code section 217.30

Related regulations: Iowa Administrative Code 441-9 *Note:* regulations relating to specific programs and services administered by the Department also may be implicated.

This section requires that information, including medical or psychiatric data, held by the Department of Human Services regarding individuals receiving services or assistance from the Department shall be confidential. Exceptions requiring certain releases/disclosures directly connected with administration of the programs of services and assistance are set forth. Any provision definitely established to place federal funding for the Department in jeopardy shall be limited or restricted as necessary to make such program eligible for the federal funds.

PREEMPTIVE EFFECT	EXPLANATION/COMMENT	PRACTICAL EFFECT
Not preempted.	Not contrary. HIPAA permits disclosure of PHI as required by state law. Rule 164.512(a). Disclosure of PHI by DHS as authorized or required by this state law is consistent with federal program mandates.	Follow state law.

Impaired Drivers – Reports by Physicians/Optometrists

Iowa Code section 321.186

Related regulations: Iowa Administrative Code 761-4.9

This section permits but does not require a physician or an optometrist to report patients with physical or mental impairments that would interfere with their ability to safely operate a motor vehicle. The physician or optometrist is to make a reasonable effort to notify the patient in writing that a report will be made. Immunity from civil or criminal liability is granted to the reporting physician/optometrist. Physicians/optometrists have no duty to report or to warn third parties regarding a patient’s impairment. Reports received by the DOT shall be kept confidential.

PREEMPTIVE EFFECT	EXPLANATION/COMMENT	PRACTICAL EFFECT
Not preempted.	Not contrary. HIPAA permits disclosure of PHI to a public health authority authorized to collect or receive information for public health intervention purposes. Rule 164.512(b)(1)(i). HIPAA permits disclosure of PHI, consistent with state law and ethical standards, if a covered entity	Follow state law.

	believes in good faith that the disclosure is necessary to prevent or lessen a serious or imminent threat to the health or safety of a person or the public. Rule 164.512(j).	

Note: Consider seeking clarification from HHS/OCR.

Indigent Patient Care (State Papers) Program

Iowa Code sections 255.5, 255.24-26

Related regulations: Iowa Administrative Code 641- 82

This chapter outlines processes and procedures for medical treatment and care of indigent persons eligible for participation in the Indigent Patient Care (State Papers) program administered through the University of Iowa Hospitals and Clinics. Medical reports prepared by a physician appointed by a court or clerk of court to examine the person to determine eligibility for the State Papers program are filed with the county clerk. Mechanisms for submission of claims and payment for services are set forth.

Section 255.5 requires the examining physicians to prepare a report of the examination findings and to file the report with the clerk of court.

PREEMPTIVE EFFECT	EXPLANATION/COMMENT	PRACTICAL EFFECT
Section 255. 5 Not preempted.	Not contrary. HIPAA permits disclosure of PHI as required by state law. Rule 164.512(a).	Follow state law.

Sections 255.24-26 set forth administrative program requirements for maintenance of patient records, filing of reports, and submission and payment of expenses by UIHC.

PREEMPTIVE EFFECT	EXPLANATION/COMMENT	PRACTICAL EFFECT
Sections 255.24-.26 Not preempted.	Not contrary. HIPAA permits disclosure of PHI as required by state law. Rule 164.512(a). HIPAA also permits disclosures of PHI absent consent in the course of TPO. Rule 164.506(a).	Follow state law.

Indigent Patient Care (State Papers) Program – Obstetrical/Newborn Care

Iowa Code chapter 255A

Related regulations: Iowa Administrative Code 641-75

This chapter is directed solely to the administration of the quota system for receipt of obstetrical and newborn patient care services in local communities by persons eligible for medical care and treatment under the Indigent Patient Care (State Papers) program at the University of Iowa Hospitals and Clinics.

PREEMPTIVE EFFECT	EXPLANATION/COMMENT	PRACTICAL EFFECT
Not preempted.	Not contrary/not applicable. This state law does not involve disclosure of PHI.	Follow state law.

Medical Durable Power of Attorney

Iowa Code section 144B.7

Related regulations: None

This section, part of Iowa’s Durable Power of Attorney for Health Care law, grants to an attorney in fact named in a properly executed durable power of attorney for health care the same right as the person (principal) who executed the durable power to receive and review the medical records of the principal and to consent to the disclosure of the principal’s medical records when acting pursuant to the durable power for health care.

PREEMPTIVE EFFECT	EXPLANATION/COMMENT	PRACTICAL EFFECT
Not preempted.	Not contrary. HIPAA recognizes the ability of a personal representative to consent on the individual’s behalf. An agent named in accordance with this chapter is a personal representative for HIPAA purposes. Rule 164.502(g)(2).	Follow both.

Medical Necessity – External Review of Denial of Claims

Iowa Code section 514J.7

Related regulations: Iowa Administrative Code 191-76

This section sets forth required processes, including the release of medical record and other information by a health plan or by an enrollee or the enrollee’s treating physician, for conducting an independent review of a denial of a claim based on lack of medical necessity upon request for such a review by the enrollee or the enrollee’s treating physician. Any medical records submitted

as part of the independent review process shall be kept confidential pursuant to applicable state and federal laws.

PREEMPTIVE EFFECT	EXPLANATION/COMMENT	PRACTICAL EFFECT
Not preempted.	Not contrary. HIPAA permits disclosure of PHI as required by state law. Rule 164.512(a).	Follow state law.

Mental Health Records – Disclosure of Mental Health and Psychological Information

Iowa Code chapter 228

Related regulations: None

Iowa Code chapter 228 addresses the disclosure of mental health and psychological information by mental health professionals, data collectors, or employees or agents of such professionals and collectors or a mental health facility. The statute sets forth a general prohibition against disclosure and redisclosure of such information. It provides specific requirements relating to voluntary disclosure of mental health information by the individual or individual’s legal representative and procedures for revocation of a voluntary disclosure; for administrative disclosures; for compulsory disclosures; for disclosures for claims administration and peer review; and for disclosures to family members. The statute prohibits the disclosure of psychological test material to any person, including the individual, but allows the disclosure of such information at the request of the individual to a licensed psychologist.

Section 228.2 – Disclosure of mental health information prohibited – exceptions

This section generally describes how, under what circumstances, and by whom a disclosure of mental health information may occur. This section references other sections of the chapter that must be followed to assure a lawful release. *Note below* the preemption analysis of those specific sections.

PREEMPTIVE EFFECT	EXPLANATION/COMMENT	PRACTICAL EFFECT
Not preempted.	Not contrary. Iowa Code chapter 228, governing disclosures of mental health information, is a complex statute. Section 228.2 sets forth a general framework for disclosure, generally prohibiting disclosure except as otherwise authorized in chapter 228. <i>Note:</i> This section, standing alone, does not conflict with HIPAA. Covered entities, however, must reference analyses below on the remaining sections of chapter 228.	Follow state law.

	<p><i>Note:</i> An area of special note relates to references in chapter 228, both in this section and other sections noted below, to the individual’s “legal representative,” a term that is not defined by chapter 228. For purposes of assuring consistency with HIPAA, “legal representative” should be defined in the same way that “personal representative” is defined under HIPAA. Rule 164.502(g)(1) and preamble discussion regarding “personal representative.”</p>	<p>Follow HIPAA where a person who is a “legal representative” under state law is not a “personal representative” under HIPAA.</p>

Section 228.3 – *Voluntary disclosure of mental health information*

This section sets forth conditions that must be met for a voluntary disclosure of mental health information based upon a voluntary, written authorization of the individual or the individual’s legal representative. “Legal representative” is not defined.

PREEMPTIVE EFFECT	EXPLANATION/COMMENT	PRACTICAL EFFECT
Partially preempted.	<p>Not contrary. Covered entities generally can comply with the requirements for voluntary disclosure of mental health information under this section of Iowa law and HIPAA’s TPO provisions and authorization requirements for disclosure of PHI by individuals or their personal representatives. <i>See</i> Rules 164.506 and 164.508.</p> <p>Potential preemption exists between disclosures by a “legal representative” (i.e., legal counsel) under chapter 228 (a term that is not defined by statute) and disclosures by a “personal representative” under HIPAA. A “legal representative” under Iowa law may not be the same as HIPAA’s personal representative. Rule 164.502(g)(1) and preamble discussion regarding “personal representative.”</p>	<p>Follow both.</p> <p>Follow HIPAA where a person who is a “legal representative” under state law is not a “personal representative” under HIPAA.</p>

Section 228.4 – *Revocation of disclosure authorization*

This section allows the individual or the individuals’ legal representative to revoke an authorization for disclosure subject to conditions set forth in the section.

PREEMPTIVE EFFECT	EXPLANATION/COMMENT	PRACTICAL EFFECT
Not preempted.	<p>Not contrary. Covered entities generally can comply with the requirements of both state law and HIPAA. <i>Note</i> state law is more stringent in its specifications for revocation of authorization for disclosure of mental health information than HIPAA. Rule 164.508(b)(5).</p> <p>Potential preemption exists between disclosures by a “legal representative” (i.e., legal counsel) under chapter 228 (a term that is not defined by statute) and disclosures by a “personal representative” under HIPAA. A “legal representative” under Iowa law may not be the same as HIPAA’s personal representative. Rule 164.502(g)(1) and preamble discussion regarding “personal representative.”</p>	<p>Follow both.</p> <p>Follow HIPAA where a person who is a “legal representative” under state law is not a “personal representative” under HIPAA.</p>

Section 228.5 – *Administrative disclosures*

This section sets forth circumstances and conditions under which disclosure of mental health information may occur for administrative purposes.

PREEMPTIVE EFFECT	EXPLANATION/COMMENT	PRACTICAL EFFECT
Not preempted.	<p>Not contrary. HIPAA permits disclosure of PHI for treatment, payment or healthcare operations. Rule 164.506. Covered entities can comply with the requirements of both state law and HIPAA.</p>	<p>Follow both.</p> <p><i>Note</i> Covered entities should be aware of the nature of the administrative disclosure made under this section of Iowa law and assure compliance with HIPAA’s specific requirements relevant to that particular disclosure. For instance, with regard to</p>

		disclosure for research purposes, covered entities need to assure compliance with HIPAA's research requirement, Rule 164.512(i), or HIPAA's "deidentification" provisions. Rules 164.502(d) and 164.514(a)-(c).

Section 228.6 – *Compulsory disclosures*

This section sets forth circumstances and conditions under which disclosure of mental health information may occur as required by the courts or other related laws.

PREEMPTIVE EFFECT	EXPLANATION/COMMENT	PRACTICAL EFFECT
Section 228.6(1) Not preempted.	Not contrary. This section of Iowa law permits disclosure of mental health information to the extent necessary to meet the requirements of other state laws referenced in this subsection. Covered entities disclosing PHI under this subsection and its referenced legal provisions must comply with both state law requirements and HIPAA's requirements unless disclosure is required by state law, in which event only state law needs to be followed.	Follow both. <i>Note:</i> The preemption analysis on section 228.6(1) is particularly complicated due to its references of other state law provisions. This report concludes that covered entities disclosing PHI consistent with section 228.6(1)'s reference to those provisions of section 229.25 relating to chief medical officers need only comply with state law since such disclosure is required by state law. Disclosures of PHI pursuant to enumerated sections 229.24, 229.25(requirements for next of kin and research), 230.20, 230.21, 230.25, 230.26, 230A.13, 232.74. and 232.147 are not required by state law and, as such, covered entities must satisfy both state law and HIPAA.

<p>Section 228.6(2) Not preempted.</p>	<p>Not contrary. This subsection addresses compulsory disclosure of PHI as part of a court-ordered examination consistent with court rules. HIPAA permits disclosures in the course of judicial proceedings. Rule 512(e).</p>	<p>Follow state law if the disclosure occurs under a court rule that mandates the release. Follow state law and HIPAA if the disclosure occurs under a court rule that allows release unless a conflict between state court rule and HIPAA, then follow HIPAA.</p>
<p>Section 228.6(3) Not preempted.</p>	<p>Not contrary. This subsection addresses compulsory disclosure of PHI to initiate or complete civil commitment proceedings under chapter 229. HIPAA permits disclosure of PHI in the course of judicial proceedings as well as to avert a serious threat to health or safety of a person or the public. Rules 164.512(e), 164.512(j).</p>	<p>Follow both. <i>Note:</i> Release of information for involuntary commitment purposes must meet HIPAA “required by law” requirements. To the extent that the mental health information includes psychotherapy notes, HIPAA allows disclosure of such records without patient authorization “when required to do so by law.” Section 164.508(a).</p>
<p>Section 228.6(4) Not preempted.</p>	<p>Not contrary. This subsection addresses disclosure of mental health information as may be required in the course of a civil or administrative proceeding where the individual’s mental or emotional condition is at issue. HIPAA permits disclosure of PHI in response to court order or other process in a judicial or administrative proceeding. Rule 164.512(e).</p>	<p>Follow both. <i>Note:</i> Follow HIPAA where a “legal representative” under state law is not a “personal representative” under HIPAA.</p>
<p>Section 228.6(5) Not preempted.</p>	<p>Not contrary. This subsection addresses captioning in a judicial proceeding to protect anonymity of the individual or other parties. To the extent that disclosure of PHI is mandated by the court for this purpose, such disclosure is required by state law. Rule 164.512(a).</p>	<p>Follow state law.</p>

Section 228.7 – *Disclosures for claims administration and peer review*

This section permits the disclosure of mental health information with the consent of the individual or the individual’s legal guardian to a third party payer or to a peer review organization so long as the conditions of the section are satisfied.

PREEMPTIVE EFFECT	EXPLANATION/COMMENT	PRACTICAL EFFECT
Not preempted.	<p>Not contrary.</p> <p>Covered entities that are mental health professionals under chapter 228 can comply with both the provisions of this section and the requirements of HIPAA, particularly disclosure of PHI for TPO purposes or disclosure of PHI with authorization. Rules 164.506, 164.508.</p> <p>Compliance with this state law also can be done consistent with HIPAA’s business associates’ requirements. Rules 160.103, 164.502(e), 164.514(e).</p>	<p>Follow both.</p> <p><i>Note:</i> Covered entities must be aware of the nature of the disclosure being made and to whom (i.e., another covered entity or a business associate) and follow HIPAA’s requirements accordingly. <i>See</i> requirements relating to business associate agreements. Rules 160.103, 164.502(e), 164.514(e).</p>

Section 228.8 – *Disclosures to family members*

This section permits the disclosure of mental health information to certain family members of an individual who has a chronic mental illness so long as all conditions of the section are met.

PREEMPTIVE EFFECT	EXPLANATION/COMMENT	PRACTICAL EFFECT
Not preempted.	<p>Not contrary.</p> <p>HIPAA gives way where state law is more stringent. Rule 160.203(b). Section 228.8 sets forth restrictions not required by HIPAA with regard to family member’s access to an individual’s PHI and requires greater detail in verification. At the same time, HIPAA’s rule granting opportunity to the individual with capacity to agree or object to use or disclosure of PHI regarding the individual must be considered. Rule 164.510(b). It is possible for covered entities to comply with both the requirements of state law and HIPAA.</p>	Follow both.

Section 228.9 – *Disclosure of psychological test material*

This section prohibits the disclosure of psychological testing material to any person, including the individual subject of the test, except upon request of the individual subject, in which case the testing material and all associated records shall be disclosed to a certified health service provider in psychology designated by the individual; the individual shall not have the right to inspect the testing materials.

PREEMPTIVE EFFECT	EXPLANATION/COMMENT	PRACTICAL EFFECT
Preempted only to the extent that this section governs disclosure to the individual.	Contrary. This provision of Iowa law prohibits individual access to “psychological test material” and “records associated with a psychological test” regarding the individual. State law is more stringent than HIPAA relative to the exercise of an individual right and, thus, is contrary to and preempted by HIPAA. Rules 160.202, 160.203(b). Under HIPAA access may not be denied to the individual who is the subject of the testing material unless the covered entity believes it is reasonably likely to endanger the life or physical safety of the individual or another person, or to cause substantial harm to such other person. Rule 164.524(d)(3)(i) and (ii).	Follow HIPAA.
Not preempted to the extent that this section governs disclosure to persons other than the individual.	Not contrary.	Follow state law.

Note: Consideration should be given to amending the statute to expressly incorporate HIPAA privacy requirements while protecting the intent and purpose of Iowa law and seeking clarification and/or exception from HHS/OCR re: state law’s term “legal representative” in relationship to HIPAA’s term “personal representative” and state law’s provisions re: release of psychological testing materials.

Mental Illness – Hospitalization of Persons with Mental Illness

Iowa Code sections 229.24 and 229.25

Related regulations: None

Iowa Code chapter 229 sets forth the requirements relating to the hospitalization of persons with mental illness. Sections 229.24 and 229.25 address confidentiality.

Iowa Code section 229.24 – *Records of involuntary hospitalization proceedings – confidential*

This section requires that records of involuntary hospital proceedings be confidential. Inspection of such records is authorized only upon an order by the court for good cause shown or if authorized in writing by the individual who is the subject of the commitment proceeding or the parent or guardian of such person. If the costs of the hospitalization are chargeable (in whole or in part) to a county then certain information may be disclosed to the county.

PREEMPTIVE EFFECT	EXPLANATION/COMMENT	PRACTICAL EFFECT
Section 229.24(1) Not preempted.	Not contrary. HIPAA permits disclosure of PHI in the course of a judicial or administrative proceeding. Rule 164.512(e). HIPAA also permits disclosure for TPO purposes. Rule 164.506(a).	Follow both.
Section 229.24(2) Not preempted.	Not contrary. HIPAA permits disclosure of PHI pursuant to the individual's authorization. Rule 164.508(a).	Follow both.
Section 229.24(3) Not preempted.	Not contrary. This section addresses release of PHI by clerks of court who are not covered entities. Further, HIPAA permits disclosure of PHI as required by state law. Rule 164.512(a).	Follow both.

Iowa Code section 229.25 – *Medical records – confidential – exceptions*

This section requires that records maintained by a hospital or other facility relating to the examination, care and treatment of any person pursuant to chapter 229 shall be confidential except that the chief medical officer may release appropriate information in certain circumstances, including information requested by a licensed physician, attorney, or advocate who provides a written waiver by the person about whom the information is sought; the information is sought pursuant to a court order; or the person who is hospitalized (or the person's guardian, if the person is a minor or not legally competent) signs an informed consent to release the information. Information may also be released for research purposes so long as such information is not provided in any way that discloses patient names or otherwise discloses the identity of patients.

PREEMPTIVE EFFECT	EXPLANATION/COMMENT	PRACTICAL EFFECT
Partially preempted.	<p>Not contrary.</p> <p>Disclosures of PHI under this subsections (1-3) are required by state law and, as such, allowed by HIPAA. Rule 164.512(a). Also, HIPAA permits disclosure of PHI in the course of judicial or administrative proceedings. Rule 164.512(e). Further, in requiring signed consent, state law is more stringent in its requirements than HIPAA.</p> <p>To the extent that this section permits release of de-identified PHI for research purposes, this section is consistent with HIPAA. Sections 164.512(i), 164.502(d), 164.514(a)-(c).</p> <p>The final provision addressing disclosure of PHI to next-of-kin, state law is inconsistent with HIPAA. Under HIPAA, if the individual has the capacity to make healthcare decisions, the individual is to be given the opportunity to agree or object to the use or disclosure of PHI. Section 164.510(b).</p>	<p>Follow state law.</p> <p>Follow both.</p> <p>Follow HIPAA</p>

Note: Consider seeking clarification/exception from HHS/OCR.

Morbidity and Mortality/Quality Assurance Data

Iowa Code sections 135.40-.42

Related regulations: Iowa Administrative Code 641-5

These provisions authorize, but do not require, hospitals, nursing homes, medical clinics, and other entities to release medical treatment information about a patient to the Iowa Department of Public Health; to the Iowa Medical Society or its allied societies or the Iowa Osteopathic Medical Association; or to a hospital committee for quality assurance purposes related to reducing morbidity or mortality. Authorized recipients of this information may use or publish it only for medical research or medical education relating to reducing morbidity and mortality and shall not reveal identifying information about any patient. Patient information released or published as

authorized and findings and conclusions developed based on such information shall not be offered or received into evidence in a legal proceeding of any kind.

PREEMPTIVE EFFECT	EXPLANATION/COMMENT	PRACTICAL EFFECT
Releases to in-hospital committee – Not preempted.	Not contrary. HIPAA permits disclosure of PHI for TPO, including health care operations. Rule 164.506(a).	Follow both. <i>Note:</i> In de-identifying PHI, follow HIPAA. Rule 164.514.
Releases to Department – Not preempted.	Not contrary. HIPAA permits disclosure of PHI to public authorities for public health surveillance/intervention. Rule 164.512(b)(1)(i).	Follow state law.
Releases to medical societies – Preempted.	Contrary. Disclosure of PHI to medical societies absent authorization is not permitted under HIPAA unless a medical society is acting as an agent or under authority of public authority for public health surveillance/intervention purposes. Rule 164.512 (b)(1)(i).	Follow HIPAA.

Peer Review Committees

Iowa Code section 147.135

Related regulations: Iowa Administrative Code 481-51.3(3)(g)

This section addresses confidentiality and privilege for peer review records consistent with the definitions of the statute, liability protections for persons participating in peer review, and those instances in which peer review information may be released to a licensing board for investigation purposes, which board shall keep such peer review information and documents confidential consistent with Iowa Code section 272C.6(4). For purposes of this section, “peer review committee” includes a state or local professional society of a profession for which there is peer review or any organization approved to conduct peer review by such society; the medical staff of a licensed hospital or board of trustees when performing required reporting functions; and a health care entity, including but not limited to a group practice, that provides health care services and follows a formal peer review process for furthering quality health care. Iowa Code section 147.1(5).

PREEMPTIVE EFFECT	EXPLANATION/COMMENT	PRACTICAL EFFECT
Releases including PHI to hospital, medical clinic or other 147.1(5) health care entity for peer review purposes – Not preempted.	Not contrary. This provision is consistent with HIPAA that permits use and disclosure of PHI in the course of TPO, including for health care operations. Rule 164.506(a).	Follow both.

Releases including PHI to medical societies – Preempted.	Contrary. HIPAA does not recognize use or disclosure of PHI to medical societies unless the medical society conducts peer review on behalf of a covered entity engaged in TPO or other purpose recognized under HIPAA. Otherwise, HIPAA authorization for disclosure of PHI is required. Rule 164.508(a).	Follow HIPAA.

Pharmacists – Impaired Pharmacists’ Assistance Program

Iowa Code section 155A.39(7)(c)

Related regulations: Iowa Administrative Code 657-30

This section addresses a program to aid impaired pharmacists, pharmacists-interns, or pharmacy technicians administered by the Iowa Board of Pharmacy Examiners, providing for a reporting mechanism to the Board when another person or pharmaceutical peer review committee believes an impairment exists and for the confidentiality and privilege of records and proceedings of the board or other designated entities regarding the impaired person; permissible disclosures by the Board are set forth. Persons providing information regarding the impaired person to the Board are immune from civil liability.

PREEMPTIVE EFFECT	EXPLANATION/COMMENT	PRACTICAL EFFECT
Not preempted.	Not contrary. The Board of Pharmacy is not a HIPAA covered entity for this purpose.	Follow state law. <i>Note:</i> To release PHI upon request, including evaluation/treatment findings or reports, to an impaired pharmacist review committee or to the board, a health care provider covered entity must have HIPAA authorization unless another provision of Iowa law requires such disclosure.

Note: Consider seeking clarification/exception from HHS/OCR re: medical releases to impaired professional committees established pursuant to state law and/or seeking amendment to Iowa law to conform its provisions to HIPAA.

Physician Licensure – Physical or Mental Examination/Substance Abuse Screening

Iowa Code section 148.6(2)(h)

Related regulations: Iowa Administrative Code 653-12.3, 653-14.9

This provision grants the Iowa Board of Medical Examiners the authority, upon a probable cause showing, to compel a physician to submit to a mental or physical examination or to screening for alcohol or substance abuse. The physician licensee, as a condition of licensure, consents to submission to a mental or physical examination as provided in this section and waives objections to the admissibility of the examining physician’s testimony or examination reports. The medical testimony and examining reports otherwise are confidential and shall not be used against the physician except in cases involving licensure discipline.

PREEMPTIVE EFFECT	EXPLANATION/COMMENT	PRACTICAL EFFECT
Not preempted.	The Board is not a covered entity for this purpose.	HIPAA not applicable. Follow state law. <i>Note:</i> A physician who performs the physical or mental examination must have HIPAA authorization to release findings and reports to the Board.

Note: Seek clarification/exception from HHS/OCR and/or amendment to Iowa law.

Privileged Communications – Testimonial Privilege

Iowa Code 622.10

Related regulation: Iowa Rule of Civil Procedure 1.1701 (Subpoenas)

This section addresses the evidentiary privileges that attach in the course of certain recognized professional relationships, including attorney, counselor, physician, surgeon, physician assistant, advanced registered nurse practitioner, mental health professional, and clergy. The section also addresses consent required for the release of medical records after the commencement of legal action.

Iowa Code 622.10(1) *Testimonial privilege*

This section provides for a privilege in giving testimony, prohibiting certain professionals from giving testimony that discloses confidential communications properly entrusted to the professional. HIPAA covered entities to whom this section applies include physicians, surgeons, physician assistants, advanced registered nurse practitioners, and mental health professionals.

PREEMPTIVE EFFECT	EXPLANATION/COMMENT	PRACTICAL EFFECT
Not preempted.	Not contrary. HIPAA’s provisions addressing permitted disclosures for judicial	Follow state law.

	and administrative proceedings are consistent with state law's testimonial privilege. Rule 164.512(e).	

Iowa Code section 622.10(2) *Waiver of testimonial privilege*

This section provides that the testimonial privilege attaching to professional relationships (here, physicians, surgeons, physician assistants, advanced registered nurse practitioners, and mental health professionals) is waived when a person in whose favor the prohibition is made waives the rights conferred, and is further waived when a person puts his or her physical or mental condition at issue in a civil law suit.

PREEMPTIVE EFFECT	EXPLANATION/COMMENT	PRACTICAL EFFECT
Not preempted.	Not contrary. HIPAA permits disclosures of PHI in the course of judicial and administrative proceedings. Rule 164.512(e). The preamble to the Privacy rule explains: "The provisions in this paragraph are not intended to disrupt current practice whereby an individual who is a party to a proceeding and has put his or her medical condition at issue will not prevail without consenting to the production of his or her protected health information." 65 Federal Register 82530.	Follow state law.

Iowa Code section 622.10 (3) *Disclosure of information upon commencement of civil litigation*

This section provides the mechanics for the disclosure of information, both oral and written, by professionals (here, physicians, surgeons, physician assistants, advanced registered nurse practitioners, mental health professionals) in the context of civil litigation where a party has put his or her condition at issue, i.e. where that condition is an element or factor of the claim or defense of that party.

PREEMPTIVE EFFECT	EXPLANATION/COMMENT	PRACTICAL EFFECT
Not preempted.	Not contrary. HIPAA gives way to state law that is more stringent. Rule 160.203(b).	Follow state law. <i>Note:</i> Releases of information governed by the statutory processes of section 622.10(3) are narrow in scope, relating only to those instances in which a party has raised

		and made his or her condition a factor in the claim (plaintiffs) or in the defense (defendants); other requests for production of documents in a civil case outside the context of section 622.10(3) (i.e., PHI of a person not a party to the litigation or PHI not relating to the condition at issue) would require an authorization consistent with HIPAA, unless another law governs, and must take into account “specially protected” health information (HIV, mental health, substance abuse).

Psychiatric Medical Institutions for Children – Confidential Information

Iowa Code section 135H.13

Related regulations: Iowa Administrative Code 441-85.6, 85.24; 481-41.16

Chapter 135H sets forth requirements for psychiatric medical institutions for children (PMIC). Section 135H.13 allows for the limited disclosure to the public of final findings of the Department of Inspections and Appeals and survey findings of the Joint Commissioner on Accreditation of Healthcare Organizations (JACHO). Other information is not to be made available to the public except in proceedings involving licensure, a civil suit involving a resident, or an administrative action involving a resident. Information regarding a resident who received or is receiving care shall not be disclosed directly or indirectly except as authorized under other sections of the Iowa Code.

PREEMPTIVE EFFECT	EXPLANATION/COMMENT	PRACTICAL EFFECTS
Not preempted.	Not contrary. This provision of state law addresses information, including PHI on a PMIC resident, held by DIA. DIA is not a HIPAA covered entity for this purpose. To the extent that DIA is authorized under this section to disclose PHI, HIPAA permits disclosure of PHI to health oversight agencies for oversight activities authorized by law (including audits, civil, criminal or administrative proceedings). Rule 164.512(d).	Follow state law.

Public Records – Confidential Reports

Iowa Code section 22.7.

Related regulations: Several provisions of the Iowa Administrative Code, the published rules of agencies of state government, relate to various aspects of Iowa’s public records law, chapter 22.

Iowa Code section 22.7(2) *Disclosure of confidential public hospital, medical and professional counselor records*

This section provides that hospital records, medical records and professional counselor records of the condition, diagnosis, care, or treatment of a patient/former patient or counselee/former counselee, including outpatient shall be kept confidential unless ordered by a court, the lawful custodian of the records or another duly authorized person. However, confidential communications between a crime victim and counselor are not subject to disclosure except as provided in Iowa Code Section 915.20A. Further, the Department of Public Health shall adopt rules providing for the sharing of information among agencies/providers regarding the maternal and child health program (for example, child immunization information system) while maintaining an individual’s confidentiality.

PREEMPTIVE EFFECT	EXPLANATION/COMMENT	PRACTICAL EFFECT
Not preempted.	Not contrary. The Iowa Supreme Court confirmed in <i>Head v. Colloton</i> , 331 NW2d 870 (Iowa 1983) that medical record information in the custody of a public health care provider is PHI in the same way as medical record information in the custody of a non-public health care provider. This section’s requirements are consistent with HIPAA’s requirements.	Follow both.

Iowa Code section 22.7(5) *Disclosure of confidential investigative reports of peace officers*

This section provides that investigative reports of law enforcement shall be kept confidential, unless ordered by a court, the lawful custodian of the records or another duly authorized person, except where disclosure is otherwise authorized by state statute. The date, time, specific location, and immediate facts and circumstances surrounding the crime or incident shall not be kept confidential except where disclosure would plainly and seriously jeopardize an investigation or pose a clear and present danger to the safety of an individual.

PREEMPTIVE EFFECT	EXPLANATION/COMMENT	PRACTICAL EFFECT
Not preempted.	Not contrary. Peace officers are not HIPAA covered entities.	Follow state law.

Iowa Code section 22.7(18) *Disclosure of communications made to a government body*

This section deals with confidential informants and provides that the information is confidential unless the person consents to its treatment as a public record or it can be disclosed without identifying the individual, either directly or indirectly. Information contained in the communication is a public record with regard to the date, time, specific location, etc. of a crime or other illegal act, except if the disclosure would jeopardize the continuing investigation or pose a clear and present danger.

PREEMPTIVE EFFECT	EXPLANATION/COMMENT	PRACTICAL EFFECT
Preemption depends on circumstances in each case surrounding communications made to government.	Generally these disclosures will not include PHI and will not involve covered entities.	Evaluate each case to determine the applicability of HIPAA in light of state law and the circumstances of disclosure.

Subpoenas – Civil

Iowa Code section 622.63

Related regulations: None

This section from Iowa’s Evidence Code addresses the process by which a civil subpoena is issued. This section does not specifically address subpoenas for medical record information.

PREEMPTIVE EFFECT	EXPLANATION/COMMENT	PRACTICAL EFFECT
Not preempted.	Not a covered entity.	Covered entity receiving subpoena for PHI must comply with HIPAA.

Substitute Medical Decision-Making Board – Release of Medical Records – Confidentiality

Iowa Code sections 135.28-.29

Related regulations: Iowa Administrative Code 641-83, 84

These provisions establish a process for substitute decision-making by a state or local board and authorizes those boards to issue subpoenas for medical record information regarding the subject of review. Immunity from liability is provided for release of medical records in compliance with a board subpoena. Rules address access to medical record information upon release to a board.

PREEMPTIVE EFFECT	EXPLANATION/COMMENT	PRACTICAL EFFECT
Not preempted.	Not contrary. The clear intent of this law is that a state or local board acts as the patient’s personal representative. Rule 164.502(g). Requirements for disclosure of PHI to the board are more stringent than HIPAA. Rule 160.203(b).	Follow state law.

Note: Consider seeking clarification/exception from HHS/OCR re: the board as a “personal representative” under HIPAA.

Transportation Department – Records Containing Personal Information

Iowa Code section 321.11

Related regulations: Iowa Administrative Code 761-4.9

This section states that Department of Transportation records are open to public inspection except personal information, including medical or disability information, shall not be released to a requestor unless otherwise authorized by federal law or as otherwise permitted by this section.

PREEMPTIVE EFFECT	EXPLANATION/COMMENT	PRACTICAL EFFECT
Not preempted.	DOT is not a HIPAA covered entity.	Follow state law.

Trauma Registry

Iowa Code section 147A.26

Related regulations: Iowa Administrative Code 641-136

This section requires the Department of Public Health to maintain a trauma reporting system to monitor the effectiveness of the Iowa trauma care system. Data collected by and furnished to the Department, including patient records, shall be kept confidential consistent with Iowa’s public records statute, Iowa Code section 22.7(2). The Department may develop compilations of data

for release; such compilations shall not include patient identifying information subject to the confidentiality provisions of state or federal law.

PREEMPTIVE EFFECT	EXPLANATION/COMMENT	PRACTICAL EFFECT
Not preempted.	Not contrary. This state reporting laws for public health surveillance, oversight, and intervention are consistent with HIPAA. Rules 164.512(b)(1)(i) and 164.512(d).	Follow state law. <i>Note:</i> Health care provider covered entities also are governed by state law in their release of PHI to the Department as required by law.

Uniform Anatomical Gift Act – Confidential Information

Iowa Code Section 142C.7

Related regulations: Iowa Administrative Code 481-51.8

This section allows hospitals and various health care providers to release patient information to an organ procurement organization or bank or storage organization.

PREEMPTIVE EFFECT	EXPLANATION/COMMENT	PRACTICAL EFFECT
Not preempted to the extent necessary to facilitate organ, eye, or tissue donation and transplantation.	Not contrary. So long as disclosure of PHI is necessary to facilitate organ, eye, or tissue donation and transplantation, HIPAA permits uses and disclosures for cadaveric organ, eye, or tissue donation purposes. Rule 164.512(h).	Follow state law.

Note: Consider amendment to the last sentence of section 142C.7 broadly addressing confidentiality and disclosure of medical information to assure consistency with HIPAA.

Veterans – Exposure to Chemicals (Agent Orange) – Confidentiality/Release of Information

Iowa Code sections 36.2-5

Related regulations: None

Iowa Code chapter 36 sets forth a process and procedure for release by physicians of information regarding a veteran’s exposure to chemicals such as Agent Orange while serving in the U.S. Armed Forces to the Commission of Veterans Affairs, use of that information by the Commission, liability protections that attach for physicians in releasing information as required by the chapter, and legal action that may be brought by the attorney general on behalf of a veteran for release of information or the veteran’s medical records. A physician shall submit a report to the commissioner at the request of the veteran.

PREEMPTIVE EFFECT	EXPLANATION/COMMENT	PRACTICAL EFFECT
Not preempted.	Not contrary. HIPAA permits reports of disease and injury required by state law. Section 164.512(b)(1)(i). Also, state law requires disclosure of PHI at the request of the individual consistent with HIPAA's authorization processes. Section 164.508.	Follow both. <i>Note:</i> Where applicable, obtain authorization consistent with HIPAA.

Victim/Counselor Privilege

Iowa Code Section 915.20A

Related regulations: None

This section relates to the confidentiality of information shared between a crime victim and a victim counselor within the counseling relationship.

PREEMPTIVE EFFECT	EXPLANATION/COMMENT	PRACTICAL EFFECT
Not preempted.	A crime victim counselor is not a covered entity under HIPAA.	HIPAA not applicable. Follow state law.

Vital Statistics

Iowa Code section 144.11 *Public Access to Records – County Registrar*

Related regulations: Iowa Administrative Code 641-96.6-.8, 641-103

Iowa Code section 144.11 provides that the county registrar shall allow public access to public records it keeps.

PREEMPTIVE EFFECT	EXPLANATION/COMMENT	PRACTICAL EFFECT
Not preempted.	The county registrar is not a covered entity.	HIPAA not applicable. Follow state law.

Iowa Code section 144.43 *Public Access to Records – State Registrar*

Iowa Code section 144.43 directs that certain records of the state registrar are closed to inspection and sets out information which may be released under certain conditions.

PREEMPTIVE EFFECT	EXPLANATION/COMMENT	PRACTICAL EFFECT
Not preempted.	The state registrar is not a covered entity.	HIPAA not applicable. Follow state law.

Workers' Compensation

Iowa Code section 85.27. *Release of information, waiver of privilege, immunity from liability*

Related regulations: Iowa Administrative Code 876-8.9

This section provides, in part, for the release of all information that an employee, employer or insurance carrier has access to concerning the employee's physical or mental condition relative to the claim, for waiver of any privilege for the release of such information; and for immunity from liability by reason of the release.

PREEMPTIVE EFFECT	EXPLANATION/COMMENT	PRACTICAL EFFECT
Not preempted.	Not contrary. HIPAA permits disclosures of PHI under state law in worker compensation cases. Rule 164.512(1).	Follow state law. <i>Note:</i> Covered entity health care providers should reasonably ascertain that disclosure is made in a workers comp matter and limit release to the relevant requirements of the Iowa worker comp statute.

Iowa Code section 86.38 – *Examination and Report by Physician at Request of Industrial Commissioner*

Related regulations: None

This section provides for appointment by the industrial commissioner of a physician to examine the injured worker and to make a report. The examining physician may testify as to the results of the examination and the condition of the worker who was the subject of the exam.

PREEMPTIVE EFFECT	EXPLANATION/COMMENT	PRACTICAL EFFECT
Not preempted.	Not contrary. HIPAA permits disclosure of PHI consistent with state law in worker compensation cases. Rule 164.512(1).	Follow state law.

Wounds of Criminal Violence - Reports

Iowa Code Sections 147.111-113

Related regulations: None

These provisions require professionals licensed under chapter 147 who treat any person suffering from a gunshot or stab wound or other serious injury that appears to have been received in the

commission of a crime to report to law enforcement. The report shall be made no later than twelve hours after the treatment. Persons failing to make this required report are guilty of a simple misdemeanor.

PREEMPTIVE EFFECT	EXPLANATION/COMMENT	PRACTICAL EFFECT
Not preempted.	Not contrary. HIPAA gives way to state law that provides for the reporting of injuries. Rule 160.203 (c).	Follow state law.