HIPAA Preemption Analysis of State Privacy Laws

**Background:**

- HIPAA's privacy regulations set the "floor" for compliance - that is, they do not preempt state laws that are more stringent than the federal requirements. As a result, if a state law is not preempted, pharmacies are required to maintain compliance with the state law requirement in addition to the HIPAA privacy regulations. Non-preempted state laws may necessitate programmatic changes to pharmacy management systems, a revised notice of privacy practices, differing practices with respect to minors' prescription records, and state-specific procedures.

- Unlike a typical survey of state law, a pharmacy-specific survey and analysis for HIPAA purposes require knowledge of the HIPAA requirements to determine whether a state law is applicable, and whether it is stringent than," and/or "contrary to" the HIPAA privacy standards. Moreover, to conduct this survey effective knowledge of the privacy regulations' impact on specific pharmacy operations is essential.

---

http://www.nacdsfoundation.org/conferences/nacds_main.cfm?page_id=1520

3/10/2003
HIPAA Preemption Analysis of State Privacy Laws

**Project Funding**
- Funding for this legal analysis was provided, in part, by many community pharmacy companies and a generous grant from the Community Pharmacy Foundation.
- The NACDS Foundation requested that pharmacy companies contribute based upon the number of states in which the company operates:
  - 1-9 states: $2,000 per state
  - 10-19 states: $25,000 total
  - 20+ states: $50,000 total

The NACDS Foundation is still taking contributions to cover the costs of the analysis, updating and maintaining the analysis in subsequent years. Contributions do not have to follow the suggested amounts, any contribution would be helpful.

If you are willing to help fund this project, please email Joyce Garlington at the NACDS Foundation and include the following in your email:

- Company name
- Amount of commitment
- Contact person’s name and contact information

Contributions should be payable to "NACDS Foundation" and may be sent to:
NACDS Foundation
P.O. Box 1417-D49
Alexandria, VA 22313-1480

---

Registration Form

Name: ____________________________

Title: ____________________________

Company: _________________________

Email Address: ____________________

Is your company/organization:
- [ ] A chain pharmacy (4 or more)
- [ ] An independent pharmacist
- [ ] Other: ________________________

To read complete HIPAA Preemption Analysis Access Agreement, click here.

I read and understand the HIPAA Preemption Analysis Access Agreement.
- [ ] I Agree *Required
- [ ] I Disagree

[Submit]
HIPAA Preemption Analysis of State Privacy Laws

Mintz Levin has compiled all privacy and confidentiality laws that govern pharmacies, including statutes, regulations, court decisions, and attorney general opinions. Mintz Levin reviewed all laws that are relevant to the requirements of the HIPAA privacy regulations, including but not limited to the following areas:

- individual permissions (authorization, etc.);
- individual rights such as access, amendment, confidential communications, accounting of disclosures, and notices;
- use and disclosure restrictions;
- patient communications (e.g., refill reminders, marketing, log books, research recruitment, etc.);
- business associate requirements;
- disclosures to third parties; and
- record retention requirements.

Mintz Levin has also researched state laws regarding the treatment of minors and addressed such issues: minor may provide lawful consent to treatment, the rules regarding emancipation, and whether a pharmacist disclose to a parent, guardian or other lawful representative a minor's records related to treatments for minor may provide lawful consent.

In addition, Mintz Levin has attempted to confirm its research findings with each state's Board of Pharmacist other agencies charged with enforcement of the applicable statutes or regulations.

After compiling this information, Mintz Levin performed a preemption analysis and is presenting its findings matrices and easy-to-follow narratives for each of the 50 states plus DC and Puerto Rico.
HIPAA Preemption Analysis of State Privacy Laws

Legal Disclaimer. The analysis is provided for general education and information, and is not intended to be legal advice. The authors have attempted to assure that the information presented in the analysis is accurate as of the date of publication. However, the HIPAA privacy standards and state privacy standards are voluminous, vague, and subject to change, and the applicability or inapplicability of a particular standard depends upon the precise factual circumstances. Contact an attorney at Mintz Levin or another experienced privacy attorney to discuss legal advice regarding implementation of the HIPAA requirements as they relate to your unique

Project Funding
Funding for this legal analysis was provided, in part, by many community pharmacy companies and a generous grant from the Community Pharmacy Foundation.

The NACDS Foundation requested that pharmacy companies contribute based upon the number of states in which the company operates:

- 1-9 states: $2,000 per state
- 10-19 states: $25,000 total
- 20+ states: $50,000 total

The NACDS Foundation is still taking contributions to cover the costs of the analysis, updating and main analysis in subsequent years. Contributions do not have to follow the suggested amounts, any contribut helpful.

If you are willing to help fund this project, please email Joyce Garlington at the NACDS Foundation and following in your email:

- Company name
- Amount of commitment
- Contact person’s name and contact information

Contributions should be payable to “NACDS Foundation” and may be sent to:
NACDS Foundation
P.O. Box 1417-D49
Alexandria, VA 22313-1480

http://www.nacdsfoundation.org/conferences/nacds_main.cfm?page_id=1669

3/10/2003
HIPAA Preemption Analysis Access Agreement

As a public service, the NACDS Foundation licenses the use of the HIPAA preemption analysis to you without charge. But in order to access and use the HIPAA preemption analysis, you must carefully read and abide by the agreement set forth below. By clicking the "I Agree" button, you agree to be bound by the following agreement:

1. Definitions
As used herein, the term "analysis" refers to the HIPAA preemption analysis of laws from multiple jurisdictions that is posted on the NACDS Foundation website. The terms "you" and "your" collectively refer to the individual who clicks the "I Agree" button, or who otherwise accesses the analysis, as well as any business, association or other entity or entities on whose behalf the individual accesses the analysis.

2. Legal Disclaimer
The analysis is provided for general education and information, and is not intended to be legal advice. The authors have attempted to assure that the information presented in the analysis is accurate as of the date of publication. However, the HIPAA privacy standards and state privacy standards are voluminous, vague, and subject to change, and the applicability or inapplicability of a particular standard depends upon the precise factual circumstances. Contact an attorney at Mintz Levin or another experienced privacy attorney to discuss legal advice regarding implementation of the HIPAA requirements as they relate to your unique situation.

3. License
You are hereby granted a non-exclusive, non-transferable, limited license to download, display and print the analysis, in whole or in part, for your individual or professional use only. You are not licensed to sell, barter or exchange the analysis or any portion thereof. The analysis remains the property of the NACDS Foundation, so any unauthorized use of the analysis may violate copyright, trademark or other laws. You agree not to remove any copyright, trademark or other intellectual property or proprietary notice or legend contained in the analysis. All rights not expressly granted by this agreement are reserved by the NACDS Foundation.

4. No Warranty
THE NACDS FOUNDATION PROVIDES THE ANALYSIS "AS IS" WITHOUT ANY WARRANTY OR CONDITION, EXPRESS, IMPLIED OR STATUTORY. THE NACDS FOUNDATION SPECIFICALLY DISCLAIMS ANY IMPLIED WARRANTIES OF TITLE, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT. YOU ASSUME TOTAL RESPONSIBILITY AND RISK FOR USE OF THE ANALYSIS. THE NACDS FOUNDATION MAKES NO WARRANTY AS TO THE RESULTS THAT MAY BE OBTAINED FROM THE USE OF THE ANALYSIS, OR AS TO THE ACCURACY OR RELIABILITY OF ANY INFORMATION IN THE ANALYSIS, OR THAT ANY DEFECTS WILL BE CORRECTED. NO ADVICE OR INFORMATION OBTAINED BY YOU FROM THE NACDS FOUNDATION SHALL CREATE ANY WARRANTY.

5. Limitation of Liability
IN NO EVENT WHATSOEVER SHALL THE NACDS FOUNDATION OR ITS AUTHORIZED REPRESENTATIVES BE LIABLE OR RESPONSIBLE IN ANY WAY FOR ANY LOSS, CLAIM, DAMAGE, OR ANY SPECIAL PUNITIVE, EXEMPLARY, DIRECT, INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES OF ANY KIND ARISING OUT OF, OR IN ANY WAY CONNECTED WITH, USE OF THE ANALYSIS.

6. Indemnification
http://meetings.nacds.org/NACDSfoundation/2002/anylas_agreement.htm

3/10/2003
You agree to defend, hold harmless, and indemnify the NACDS Foundation and its officers, directors, employees and agents, from and against any claim, cause of action or demand asserted against the NACDS Foundation that results, directly or indirectly, from your use of the analysis.

7. Dispute Resolution
You agree that any dispute between the NACDS Foundation and you arising out of or in connection with this agreement or the analysis shall be settled by a binding arbitration in Alexandria, Virginia in accordance with the then-current rules and procedures of the American Arbitration Association. Judgment on the award rendered by the arbitrator may be entered in any court of competent jurisdiction.

8. Governing Law; Attorneys’ Fees
This agreement shall be governed by and construed in accordance with the laws of Virginia, exclusive of its choice of law rules and matters affecting copyrights, trademarks and patents under U.S. federal law. In any action to enforce this Agreement, the prevailing party will be entitled to costs and attorneys' fees.

9. Miscellaneous
This written agreement constitutes the entire agreement between you and the NACDS Foundation pertaining to the analysis, and supersedes all prior or contemporaneous communications, (whether written, electronic or oral) between you and representative(s) of the NACDS Foundation. Notwithstanding the foregoing, the NACDS Foundation reserves the right to alter the terms and conditions of this agreement at any time, without prior notice. Upon posting a new version of this agreement on this website, your continued use of the website and/or the analysis constitutes your acceptance of such modifications. If any part of this agreement is found to be invalid or unenforceable pursuant to applicable law, the remainder of the agreement will continue in effect.