Introduction

The Health Insurance Portability and Accountability Act of 1996 (HIPAA) is a federal statute governing, among other things, development of national health information data standards and privacy standards. In adopting the Act, Congress determined that this federal law takes precedence over or “preempts” contrary state law unless state law is more stringent than federal law or unless a specific exception applies. In order for health plans, health care providers and health care clearinghouses to comply with the HIPAA statute and rules, these entities must determine whether and how HIPAA affects Ohio law.

The Ohio State Bar Association Health Law Committee and the Ohio State Medical Association, with the support of other organizations, organized a workgroup that developed this Ohio law analysis to assist the health care industry and the state of Ohio in assessing the impact of the HIPAA privacy standards on current Ohio law related to the use or disclosure of health information. The workgroup has determined that in most instances, existing Ohio law will not be preempted by the new HIPAA privacy standards.

Scope of Work

The first step in any preemption analysis is to determine whether the “state law” being compared to the HIPAA privacy standards is a “constitution, statute, regulation, rule, common law or case law, or other state action having the force and effect of law” (45 C.F.R. §160.202 and §160.203). This analysis compares HIPAA privacy standards only to Ohio statutes (Ohio Revised Code) and selected rules (Ohio Administrative Code) that relate to the use or disclosure of health information. The workgroup did not examine the Constitution of the State of Ohio, Ohio case law, Ohio Attorney General Opinions, or any other sources that may have the “force and effect of law.” Although such sources may fall within the HIPAA definition of state law and require a preemption analysis, we intend for this analysis to provide a starting point for further examination of Ohio law. Also, this analysis is based on the federal (HIPAA) and state statutes and rules in effect as of December 2002. Users are reminded to review the most current versions of cited statutes or rules.

The Ohio Revised Code and Ohio Administrative Code sections may be found at [http://www.state.oh.us/ohio/ohiolaws.htm](http://www.state.oh.us/ohio/ohiolaws.htm).


How to Use This Information

This preemption analysis is divided into three parts. Part 1 is a chart of Ohio Revised Code and Ohio Administrative Code sections that relate to the use or disclosure of health information. The chart briefly describes the law or rule, indicates whether or not the state law or rule is preempted and
explains the rationale behind such conclusion, lists the related HIPAA provisions and briefly describes implementation actions that covered entities may wish to consider. The chart also directs the reader to a more thorough analysis of the section, found in Part 2.

Part 2 is a compilation of the more detailed analyses and comments related to each section of the Ohio Revised Code and Ohio Administrative Code that the workgroup examined.

Part 3 is a reference section that includes a summary of the HIPAA preemption requirements, a flow chart for use in determining how Ohio law is affected by HIPAA privacy rules, and the text of the HIPAA preemption provisions in both the HIPAA statute and the HIPAA privacy rules.

Analysis of Disclosures “Required by Law”

One provision of the HIPAA privacy rules warranting special mention in connection with this analysis is 45 C.F.R. §164.512(a), which allows for use and disclosure of protected health information without a person’s authorization if such use or disclosure is required by law. The preamble to the HIPAA privacy regulations specifically discusses the application of 45 C.F.R. §164.512(a). In essence, the preamble indicates that the privacy regulations will not supersede any state law requiring use or disclosure of protected health information (see 65 Fed. Reg. 82524, “nothing in the final rule provides authority for a covered entity to restrict or refuse to make a use or disclosure mandated by other law”). The preamble further states:

To more clearly address where the substantive and procedural requirements of other provisions in this section apply, we have deleted the general sentence from the NPRM which stated that the provision “does not apply to uses or disclosures that are covered by paragraphs (b) through (m)” of proposed §164.510. Instead, in §164.512 (a)(2) we list the specific paragraphs that have additional requirements with which covered entities must comply. They are disclosures about victims of abuse, neglect or domestic violence (§164.512(c)), for judicial and administrative proceedings (§164.512(e)), and for law enforcement purposes (§164.512(f)). (65 Fed. Reg. 82525.)

From the preamble discussion, it appears that the intent of the Department of Health and Human Services is to permit all uses and disclosures that are “required” or mandated by law. Further, if a required disclosure relates to disclosures about victims of abuse, neglect or domestic violence; judicial and administrative proceedings; or law enforcement, paragraph (a)(2) of §164.512 states that the additional requirements of §164.512 (c), (e) and (f) apply.

1Under the heading, “Other Mandatory Federal or State Laws,” the preamble states, “When a covered entity is faced with a question as to whether the privacy regulation would prohibit the disclosure of protected health information that it seeks to disclose pursuant to a federal law, the covered entity should determine if the disclosure is required by that law. In other words, it must determine if the disclosure is mandatory rather than merely permissible. If it is mandatory, a covered entity may disclose the protected health information pursuant to Sec. 164.512(a), which permits covered entities to disclose protected health information without an authorization when the disclosure is required by law. If the disclosure is not required (but only permitted) by the federal law, the covered entity must determine if the disclosure comes within one of the other permissible disclosures. If the disclosure [that is permitted under the other law] does not come within one of the provisions for permissible disclosures [under the HIPAA privacy regulations], the covered entity must obtain an authorization from the individual who is the subject of the information or de-identify the information before disclosing it.” 65 Fed. Reg. 82485. Although the above text makes reference only to “federal law,” the definition of the term “required by law” includes state law.
However, §164.512(a), read on its own and without the preamble commentary, could be interpreted to permit uses and disclosures under §164.512(a) only under those circumstances in which the requirements of section 164.512(c), (e) or (f) are met. Paragraph (a)(1) of §164.512 permits uses and disclosures required by law, but paragraph (a)(2) of §164.512 provides, “A covered entity must meet the requirements described in paragraph (c), (e), or (f) of this section for uses or disclosures required by law.”

As between these two interpretations, the workgroup recommends the interpretation that permits all uses and disclosures that are required or mandated by state law and that the additional requirements of §§164.512(c), (e) and (f) apply if the use and disclosure relates to abuse, judicial and administrative proceedings and law enforcement.

Disclaimer

The information provided here is for reference only and does not constitute the rendering of legal, financial or other professional advice by the Ohio State Bar Association (OSBA) or the Ohio State Medical Association (OSMA). Further, any links or references in these materials are not endorsements by the OSBA or OSMA of those sources or materials. Users are cautioned to review and update application and implementation of federal and Ohio privacy laws when these laws are amended or new law is created.

Acknowledgments

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### Part 1 – Preemption Analysis Chart

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| 119.09 Adjudication Hearing       | Agency responsible for adjudication hearing may compel the production of records through the issuance of subpoenas duces tecum. | No. | 1. **Rationale** - O.R.C. §119.09 is not contrary to the HIPAA privacy rules, nor is it an obstacle to accomplishing the purposes and objectives of the HIPAA privacy standards. While compliance with both Ohio and federal law is possible, further action will have to be taken by covered entities in order to comply with both Ohio law and the HIPAA privacy standards.  
3. **Action by Covered Entities** - Covered entities must respond to a subpoena for a witness or a subpoena duces tecum issued by the agency conducting the adjudication hearing. However, a covered entity may only disclose protected health information in response to the subpoena if it receives satisfactory assurance that the party seeking the information has notified the individual in accordance with 45 C.F.R. §164.512(e)(ii)(A) or that the party seeking the information has made reasonable efforts to secure a qualified protective order in accordance with 45 C.F.R. §164.512(e)(ii)(B). In the alternative, the covered entity may disclose the protected health information in response to a subpoena issued under O.R.C. §119.09 if the covered entity makes reasonable efforts to notify the individual in accordance with 45 C.F.R. §164.512(e)(iii) or to seek a qualified protective order in accordance with 45 C.F.R. §164.512(e)(iv). |
<p>| 121.37 Ohio Family and Children First Program | The Ohio Family and Children First Cabinet Council, which deals at the state level with children who need services from multiple agencies, is required to maintain the confidentiality of any records it maintains that identify individual children. | No. | 1. <strong>Rationale</strong> - O.R.C. §121.37 is not contrary to the HIPAA privacy rules. Compliance with both Ohio and federal law is possible. This statute provides that records of meetings shall be maintained, but that those records identifying individual children shall not be disclosed unless otherwise provided by law. Because it does not compel the disclosure of protected health information and because it maintains the confidentiality of the individual child, this provision is not an obstacle to accomplishing the purposes and objectives of the HIPAA privacy standards. |</p>
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<td>3. Action by Covered Entities - A covered entity cannot be compelled by the Cabinet Council or the county council to disclose protected health information under Ohio law. The discretionary disclosure of protected health information by a covered entity to the Cabinet or county council would necessarily be controlled by the applicable state law which would have to be compared to the HIPAA privacy regulations for preemption determination.</td>
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<td>4. Note – The statute provides that the Cabinet Council or County Council shall not disclose and shall protect the confidentiality of those records that identify individual children, unless disclosure is otherwise permitted by law.</td>
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<td>Example: O.R.C. §2151.141 provides that, if anyone files a complaint that a child is abused, neglected, or dependent, any of the following entities may, if such entity is investigating the complaint, has custody of the child, is preparing a social history for the child, or is providing any service for the child, request any board of education, governing body of a chartered nonpublic school, public children services agency, private child placing agency, probation department, law enforcement agency, or prosecuting attorney that has any records related to the child to provide the individual or entity with a copy of the records:</td>
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<td>(a) The child;</td>
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<td>(b) The attorney or guardian ad litem of the child;</td>
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<td>(c) A parent, guardian, or custodian of the child;</td>
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<td>(d) A prosecuting attorney;</td>
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<td>(e) A board of education of a public school district;</td>
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<td>(f) A probation department of a juvenile court;</td>
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<td>(g) A public children services agency or private child placing agency that has custody of the child, is providing services to the child or the child's family, or is preparing a social history or performing any other function for the juvenile court;</td>
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<td>(h) The department of youth services when the department has custody of the child or is performing any services for the child that are required by the juvenile court or by statute;</td>
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<td>(i) The individual in control of a juvenile detention or rehabilitation</td>
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| 145.07, 145.27, 742.07, 742.41, 3307.09, 3307.20, 3309.09, 3309.22 and 5505.04 State Retirement Systems | Meetings of the boards governing the state retirement systems must be open to the public, except when discussing an individual's medical records or degree of disability. Records of the boards are open to public inspection, except for information determined by the boards to be confidential, personal history records. All medical reports and recommendations required by the boards are privileged. | No. | 1. **Rationale** – These statutes are substantially the same and impose the same requirements on the public employees retirement board, the board of trustees of the Ohio police and fire pension fund, the state teachers retirement board, school employees retirement board, and the state highway patrol retirement board. These statutes are not contrary to the HIPAA privacy rules. Compliance with both Ohio and federal law is possible. Because these statutes do not compel the disclosure of protected health information without authorization of the individual that is the subject of the information or for purposes for which no said authorization is required, this provision is not an obstacle to accomplishing the purposes and objectives of the HIPAA privacy standards.  
3. **Action by Covered Entities** - No action needed. |
| 149.43(A)(1) and (3) and 149.431(A)(1) Open Records Law | Medical records are specifically excluded from the public records that, on request, must be made available. | No. | 1. **Rationale** - O.R.C. §§149.43 and 149.431, as they relate to protected health information, are consistent with the HIPAA privacy standards in that they restrict disclosure of protected health information. Compliance with both O.R.C. §149.43 and 149.431 and the HIPAA privacy standards is possible.  
3. **Action by Covered Entities** - For entities that are both “public
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<td>offices” under Ohio law and covered entities under HIPAA, adopt and implement policies to ensure that protected health information is excluded from “public records” as provided in O.R.C. §§149.43 and 149.431 and not improperly disclosed under the HIPAA privacy standards. For covered entities that are not public offices but that have business associates that are public offices under Ohio law, include a provision in the business associate agreement that protected health information will be excluded from public records as provided in O.R.C. §§149.43 and 149.431</td>
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| 173.20(A), (B) and (C) and 173.22 Long-Term Care Ombudsman Program | Medical records of long-term care facility residents may be inspected by the state Long-Term Care Ombudsman Program, if consent is given or other conditions are met. The Program must protect confidential records when it collects or disseminates information. | No.       | 1. **Rationale** - 45 C.F.R. §160.203 provides that the HIPAA privacy standards preempt a contrary state law except when “the provision of state law…provides for the reporting of disease, injury, child abuse, birth, or death, or for the conduct of public health surveillance, investigation or intervention.” O.R.C. §§173.20 and 173.22 are statutes providing for “the conduct of public health surveillance, investigation or intervention.”
3. **Action by Covered Entities** - Long-term care facilities (and other entities subject to O.R.C. §§173.20 and 173.22) should comply with O.R.C. §§173.20 and 173.22, including using or disclosing protected health information when required by O.R.C. §§173.20 and 173.22 in accordance with these statutes. |
| 313.10 Coroner's Records | Coroner's records are public records except for medical and psychiatric records. | No.       | 1. **Rationale** – Coroners are not covered entities under HIPAA’s privacy regulations. Even if coroners are intended to be covered entities, state laws that require disclosure of protected health information for the purposes described in O.R.C. § 313.10 are expressly not subject to preemption under HIPAA’s privacy regulations (see, 42 C.F.R. § 160.203(c)). Assuming that coroners are covered entities, O.R.C. § 313.10 is not contrary to HIPAA’s privacy regulations because compliance with both Ohio and Federal law is possible because the O.R.C. § 313.10 requires a disclosure, and such a disclosure is permissible under 42 C.F.R. § 164.512(a).
2. **HIPAA cites** - 42 C.F.R. §§ 160.203(c), 164.512(a), 164.512(g), 164.501 (definition of “required by law”).
3. **Action by Covered Entities** – No additional actions need be taken to comply with HIPAA’s privacy regulations. |
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| 313.12 and 313.121 Reports to Coroner and Coroner Reports | Criminal, violent, suicide and suspicious or unusual deaths must be reported to coroner. In certain cases coroner must release autopsy results. | No. | 1. **Rationale** - State laws that require disclosure of protected health information for the purposes described in O.R.C. §§ 313.12 and 313.121 are expressly not subject to preemption under HIPAA’s privacy regulations (see, 42 C.F.R. § 160.203(c)). Additionally, compliance with both Ohio and Federal law is possible because O.R.C. §§ 313.12 and 313.121 require disclosures that are specifically permissible under HIPAA’s privacy regulations (see, 42 C.F.R. §§ 164.512(g) and 164.512(a)). Additionally, O.R.C. §§ 313.12 and 313.121 are consistent with the requirements and goals of the HIPAA privacy regulations.  
2. **HIPAA cites** - 42 C.F.R. §§ 160.203(c), 164.512(a), and 164.512(g).  
3. **Action by Covered Entities** - Covered entities do not need to alter their practices. |
| 313.19 ?? | ?? | No. | 1. **Rationale**: This statute does not govern the use or disclosure of protected health information by covered entities. We recommend removing this statute from the analysis.  
2. **HIPAA Cites**: None.  
3. **Action by Covered Entities**: None. |
| 339.77 Tuberculosis | The Director of Health must be given access to medical records to verify the accuracy of information submitted by counties to justify financial assistance for tuberculosis programs. | No. | 1. **Rationale**: State laws that require disclosure of protected health information for the purposes described in O.R.C. § 339.77 are expressly not subject to preemption under HIPAA’s privacy regulations (see, 42 C.F.R. § 160.203(c)). Further, O.R.C. § 339.77 is consistent with the requirements and goals of HIPAA’s privacy regulations, and compliance with both Ohio and Federal law is possible because 42 C.F.R. § 164.512(d) allows disclosure of protected health information to health oversight agencies for use in audits.  
2. **HIPAA Cites**: 42 C.F.R. §§ 160.203(c) and 164.512(d).  
3. **Action by Covered Entities**: Covered entities will need to make reasonable efforts to ensure that the protected health information provided to the director of health under O.R.C. § 339.77 is the minimum amount necessary to fulfill the purpose of the disclosure. |
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<td>339.81 Hospital/Tuberculosis Control Units: Confidentiality of Information</td>
<td>Information and reports with respect to a case of tuberculosis that are furnished to, or procured by, a county or district tuberculosis control unit or the Department of Health shall be confidential and used only for statistical, scientific, and medical research for the purpose of controlling tuberculosis in this state.</td>
<td>No.</td>
<td>Thus, the covered entity needs to establish and follow policies and procedures for ensuring that the disclosure of information is limited to the minimum amount necessary for the stated purpose of O.R.C. § 339.77. Covered entities also need to comply with the verification requirements of 42 C.F.R § 164.514(h).</td>
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<td>339.82(C) Duties of Individuals with Tuberculosis</td>
<td>A person with active tuberculosis who intends to travel or relocate shall disclose this information to the county or district tuberculosis control unit. The unit shall notify the Ohio Department of Health when an individual with active tuberculosis relocates.</td>
<td>No.</td>
<td>1. <strong>Rationale</strong> - State laws that require disclosure of protected health information for the purposes described in O.R.C. § 339.81 are expressly not subject to preemption under HIPAA’s privacy regulations (see, 42 C.F.R. § 160.203(c)). O.R.C. § 339.81 is consistent with the goals of HIPAA’s privacy standards, and compliance with both Ohio and Federal law is possible because 42 C.F.R. § 164.512(b) allows disclosure of protected health information by covered entities to public health authorities for use in public health activities such as controlling disease.</td>
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<td>1337.13(A)(3) and 1337.17 Power of Attorney for Health Care</td>
<td>An attorney-in-fact acting under a durable power of attorney for health care has the same right as the individual being represented to (1) receive information about proposed health care, (2) review health care records, and (3) consent to</td>
<td>No.</td>
<td>1. <strong>Rationale</strong> - This statute deals with disclosures of protected health information by individuals, the Department of Health or county/district tuberculosis control unit, none of which is likely to be a covered entity. Even if these entities are deemed to be covered entities, the disclosures would be permissible under 42 C.F.R. § 164.512(b).</td>
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3. **Action by Covered Entities** - None. |
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| 1347.08(A)(2) Personal Information Systems            | A state or local agency that maintains a personal information system is required to permit a person to inspect all information in the system that pertains to the person. | No.        | 1. Rationale - O.R.C. §1347.08(A)(2) covers disclosures of protected health information by state and local agencies, all or most of which are unlikely to fall within the definition of covered entity in HIPAA. Even if a state or local agency is a covered entity, the statutory provision is not contrary to HIPAA.  
3. Action by Covered Entities - No action needed.       |
| 1731.04(B)(15) Employer Health Care Alliances         | An agreement between a small employer health care alliance and an insurer may contain a provision regarding the ownership, use, availability, and confidentiality of data and records relating to the alliance program. | No.        | 1. Rationale - O.R.C. §1731.04(B)(15) is not contrary to HIPAA privacy rules. Compliance with both Ohio and federal law is possible and the Section is not an obstacle to accomplishing the purposes and objectives of the HIPAA privacy standards.  
3. Action by Covered Entities - Covered entities must, to the extent that they include a provision in an agreement relating to the use and maintenance of confidentiality of data and records relating to the alliance program, comply with applicable HIPAA and state law confidentiality, privacy and security requirements. |
| 1751.13(C)(5) and (H)(2) Contracts with Health Insuring Corporations | Each contract that a health insuring corporation (an HMO) enters into with a health care provider or facility must contain a provision regarding the availability and confidentiality of health care records maintained by the provider or facility. A contract with an intermediary organization must require the intermediary to provide the Superintendent of Insurance with regulatory access to all records pertaining to the provision of health care. | No.        | 1. Rationale - O.R.C. §1751.13(C)(5) is either (a) not contrary to HIPAA, or (b) otherwise appears to meet a HIPAA preemption exception.  
O.R.C. §1751.13(H)(2) appears to meet an exception from HIPAA preemption because the state law provision requires a health plan to report or provide access to information for the purpose of financial audits, program monitoring and evaluation (see 45 C.F.R. §160.203(d)). In addition, this Section may be exempt if the Secretary of the Department of Health and Human Services issues an exception determination.  
2. HIPAA cites - 45 C.F.R. §160.203(d).  
3. Action by Covered Entities - Covered entities must, to the extent that they include a provision in an agreement relating to the use and maintenance of confidentiality of data and records relating to the alliance program, comply with applicable HIPAA and state law confidentiality, privacy and security requirements. |
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| 1751.19(C) Complaints Regarding Health Insuring Corporations | Copies of records, including medical records that pertain to complaints filed against a health insuring corporation must be made available for inspection by the Superintendent of Insurance and Director of Health. | No. | 1. **Rationale** – O.R.C. §1751.19(C) appears to be saved from HIPAA preemption pursuant to specific exceptions contained in the HIPAA statute, including those relating to conduct of public health investigations and program monitoring and evaluation.  
3. **Action by Covered Entities** - Covered entities should continue to comply with relevant Ohio law, subject to applicable disclosure requirements under HIPAA. |
| 1751.21(A) Peer Review Committee Records | The peer review committees of health insuring corporations may be given access to the peer review committee records of any hospital or other entity under contract with the health insuring corporation. | No. | 1. **Rationale** – O.R.C. §1751.21(A) is not contrary to HIPAA privacy rules. Compliance with both Ohio and federal law is possible and the Section is not an obstacle to accomplishing the purposes and objectives of the HIPAA privacy standards.  
3. **Action by Covered Entities** - Covered health care providers may disclose protected health information to the peer review committee of a health insuring corporation. This is a permitted disclosure under HIPAA. |
| 1751.521 Release of Information to Health Insuring Corporations | If a health insuring corporation requests that a person consent to a release of medical information, the release that the person signs must clearly explain what information may be disclosed. [CTD NOTE – 1751.52 should be added to the chart.] | No. | 1. **Rationale** – O.R.C. §1751.521 is not contrary to HIPAA privacy rules. Compliance with both Ohio and federal law is possible and the Section is not an obstacle to accomplishing the purposes and objectives of the HIPAA privacy standards.  
3. **Action by Covered Entities** - Health insuring corporations should continue to comply with Ohio law regarding clearly explaining information that may be disclosed under the terms of a... |
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| 1751.84 Access to Records Held by Providers | Each health care provider or facility participating with a health insuring corporation must provide the corporation access to the medical records of any person enrolled in the corporation's health plans. [CTD NOTE – I do not see this in the statute – look at again and consider revising summary.] | No. | 1. **Rationale** - O.R.C. §1751.84 is not contrary to the HIPAA privacy rules. Compliance with both Ohio and federal law is possible and the Section is not an obstacle to accomplishing the purposes and objectives of the HIPAA privacy standards. Furthermore, external reviews are remedial in nature and provide additional rights to the individual. 
3. **Action by Covered Entities** - Health insuring corporations and providers required by this statute to provide information to the independent review organization may do so to the extent required by this statute. |
| 1751.85 External Review of Experimental Treatment of Terminal Illnesses | A health insuring corporation is required to provide all medical records in its possession to the independent entity that is reviewing a terminally ill enrollee's request for coverage of an experimental or investigational procedure. | No. | 1. **Rationale** – O.R.C. §1751.85 is not contrary to HIPAA privacy rules. Compliance with both Ohio and federal law is possible and the Section is not an obstacle to accomplishing the purposes and objectives of the HIPAA privacy standards. 
3. **Action by Covered Entities** – Health insuring corporations and providers required by this statute to provide information to the independent review organization or expert reviewers may do so to the extent required by this statute. Disclosure by other providers from whom information may be requested would be provided for purposes of treatment, payment or health care operations and would therefore be permitted under HIPAA. |
| 1753.14(C) Determinations of Care by Specialists | Determinations by a health insuring corporation of whether a person should receive a standing referral to a specialist or be permitted to have a specialist coordinate a person's care do not have to be made until all appropriate medical records necessary to make the determination have been provided. | No. | 1. **Rationale** - O.R.C. §1753.14(C) is not contrary to HIPAA privacy rules. Compliance with both Ohio and federal law is possible and the Section is not an obstacle to accomplishing the purposes and objectives of the HIPAA privacy standards. 
3. **Action by Covered Entities** – This is a permitted disclosure |
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| 2108.021 Anatomical Gifts         | Patient-identifying information in the records of hospital requests for anatomical gifts are not public records. | No. | 1. **Rationale** - O.R.C. §2108.021 is not contrary to HIPAA privacy rules. Compliance with both Ohio and federal law is possible and the section is not an obstacle to accomplishing the purposes and objectives of the HIPAA privacy standards.  
3. **Action by Covered Entities** - Covered entities that are hospitals may use or disclose protected health information without individual authorization to organ procurement organizations or other entities engaged in the procurement, banking, or transplantation of cadaveric organs, eyes, or tissue for the purpose of facilitating organ, eye or tissue donation and transplantation. This is a permitted use/disclosure pursuant to 45 C.F.R. §164.512(a) and (f). |
| 2133.02 Rights of the Terminally Ill | Requirements for inclusion in a declaration to withhold life-sustaining treatment. | No. | 1. **Rationale** - O.R.C. §2133.02 is not contrary to HIPAA privacy rules. Compliance with both Ohio and federal law is possible and the section is not an obstacle to accomplishing the purposes and objectives of the HIPAA privacy standards.  
3. **Action by Covered Entities** - A living will that has been incorporated into the medical record of a patient is subject to all of the HIPAA privacy standards related to use and disclosure of protected health information. |
| 2151.14(C) Juvenile Sex Offenders | When it is learned that a juvenile sex offender has a communicable disease, the victim of the offense must be notified. | No. | 1. **Rationale** – O.R.C. §2151.14 (C) is not affected by the HIPAA privacy rules because communicable disease information that must be disclosed pursuant to this section is disclosed by non-covered entities not subject to HIPAA.  
2. **HIPAA cites** – None.  
3. **Action by Covered Entities** – No action needed. |
<p>| 2151.421 Child Abuse Reports      | Physicians and other health care personnel are required to make reports of suspected child abuse or neglect. | No. | 1. <strong>Rationale</strong> – O.R.C. §2151.421 is not contrary to HIPAA privacy rules. Compliance with both Ohio and federal law is possible and the section is not an obstacle to accomplishing the purposes and objectives of the HIPAA privacy standards. |</p>
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| 2151.85(F) and 2505.073(B) Minors Without Parental Consent for Abortions | A hearing, including appeal proceedings, held to allow a person under age 18 to have an abortion without parental consent must be conducted in a manner that preserves her anonymity. Records must be kept confidential. | No. | 1. **Rationale** - O.R.C. §§2151.85 & 2505.073 are not contrary to HIPAA privacy rules. Compliance with both Ohio and federal law is possible and the section is not an obstacle to accomplishing the purposes and objectives of the HIPAA privacy standards.  
3. **Action by Covered Entities** - Covered entities should continue to comply with O.R.C. §2151.421 requirements to report known or suspected cases of child abuse or neglect. This is a permitted disclosure under 45 C.F.R. §164.512(b)(1)(ii). |
| 2305.24 and 2305.25 et. seq. Quality Assurance, Peer Review and Utilization Review | Records furnished by an attending physician are confidential when given to a hospital’s quality assurance or utilization review committee or to a medical society’s utilization review committee. Proceedings and records of peer review and utilization review committees are confidential. | No. | 1. **Rationale** - O.R.C. §2305.24 is not contrary to any provision of the HIPAA privacy rules. Compliance with the Ohio and federal law is possible and the section is not an obstacle to accomplishing the purposes and objectives of the HIPAA privacy standards.  
2. **HIPAA cites** – 45 C.F.R. §160.203.  
3. **Action by Covered Entities** - Covered entities should observe the confidentiality requirements of O.R.C. §§2305.24 and 2305.251 and the HIPAA privacy standards. |
<p>| 2305.251 Confidentiality of Proceedings and Records | Provides immunity to various utilization review and peer review committees and persons serving on those committees. Prohibits discovery of peer review records. | No. | 1. <strong>Rationale</strong> - O.R.C. §2305.251 provides protection against the discovery of the proceedings and records of utilization review and peer review committees and requires that these documents be held in confidence. As this “peer review privilege” restricts the access to information (including protected health information), this statute will generally not conflict with the HIPAA privacy standards. In those instances when the HIPAA privacy standards permit (but do not |</p>
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<td>require disclosure of protected health information, the HIPAA privacy standards do not preempt O.R.C. §2305.251 because the state law (prohibiting disclosure) is more stringent.</td>
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<tr>
<td>1. <strong>Rationale</strong> - Compliance with both Ohio and federal law is possible. O.R.C. §2305.33 neither prohibits nor permits the use and/or disclosure of protected health information.</td>
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<td>3. <strong>Action by Covered Entities</strong> - Covered entities should comply with both O.R.C. §2305.251 and the HIPAA privacy standards by keeping utilization review and peer review records confidential. Covered entities should adopt policies clearly describing the protections of peer review and utilization review committee proceedings and records. The policies should expressly state that the utilization review or peer review proceedings or records are not used to make decisions about “individuals,” but rather are used for quality assessment. The policies should state that documents that are always part of the designated record set (such as the medical record) that are also contained in a peer review record are separate and distinct from the peer review record (i.e., these documents are a part of the peer review record, the peer review record is not a part of these documents). Further, covered entities should closely follow these policies so that peer review and utilization review committee proceedings and records are not used, in any way, to make decisions about “individuals.”</td>
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**2305.33 Reports of Drug Abuse to Public Transportation Employers**

Physicians are immune from civil liability for notifying the employer of a public transportation employee that the employee is abusing drugs.

| No. | 1. **Rationale** - Compliance with both Ohio and federal law is possible. O.R.C. §2305.33 neither prohibits nor permits the use and/or disclosure of protected health information. |
| 2. **HIPAA cites** - 45 C.F.R. §164.508 |
| 3. **Action by Covered Entities** - O.R.C. §2305.33 provides immunity for disclosures made by a physician in the following circumstances:

1. The physician has determined that the employee is abusing a prescription drug that raises a potential risk of harm to his or her passengers.
2. The physician has determined that the employee is abusing a drug other than a prescription drug.
3. The physician has determined that the employee has a condition,
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<td>2307.46 Civil Actions Regarding Abortion</td>
<td>In any civil action related to an injury, death, or loss suffered as the result of an abortion, the woman may file a motion to have her name kept confidential.</td>
<td>No.</td>
<td>other than one involving drug abuse, which represents a potential risk of harm to his or her passengers. Although HIPAA is not directly implicated by this statute, covered entities should consider the underlying situation the statute contemplates. A physician will need to have an authorization, consistent with HIPAA requirements, in order to disclose this information. In order to protect physicians from liability in this situation, the covered entity’s internal HIPAA authorization policy and procedure should address this situation and provide for patient/employee authorization, consistent with HIPAA requirements in 45 C.F.R. §164.508, before the covered entity discloses the protected health information.</td>
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</table>
| 2307.46 Civil Actions Regarding Abortion | In any civil action related to an injury, death, or loss suffered as the result of an abortion, the woman may file a motion to have her name kept confidential. | No. | 1. **Rationale** - Consistent with the goals of the HIPAA privacy standards, compliance with both Ohio and federal law is possible, and in some aspects, the Ohio statute provides individuals greater protection of their protected health information.  
2. **HIPAA cites** - 45 C.F.R. §164.512(e)  
3. **Action by Covered Entities** - This statute does not require any specific action by covered entities other than that which will already be covered in the entities’ policy and procedure regarding disclosure of protected health information in judicial and administrative proceedings, 45 C.F.R. §164.512(e). |
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| 2317.02(B) Privileged Communications | A physician, podiatrist, or dentist is not required to testify concerning communications with a patient. | Yes, in part. | 1. **Rationale** - For most provisions, compliance with both Ohio and federal law is possible provided that additional steps are taken to implement HIPAA privacy standards. However, a provision in connection with workers' compensation and certain civil actions provides for implied consent relating to disclosures, a concept not recognized in HIPAA, will likely be preempted. Another provision regarding criminal actions against physicians will likely be preempted as well.  
2. **HIPAA cites** - 45 C.F.R. §§164.508 and 164.512(a), (e) and (f).  
3. **Action by Covered Entities** - Adopt and implement disclosure policies that concurrently comply with the requirements of Ohio and federal law, taking into consideration the likely preemption of subsections (B)(1)(a)(iii) and (B)(1)(d). The covered entity should have policies and/or procedures regarding disclosures for judicial and administrative proceedings. |
| 2317.022 Law Enforcement Requests for Drug and Alcohol Test Results | A law enforcement officer conducting an official criminal investigation may request, and the provider must disclose, results of tests for the presence or concentration of drugs or alcohol. | No. | 1. **Rationale** - Consistent with the goals of the HIPAA privacy standards, compliance with both Ohio and federal law is possible. In some ways, Ohio law provides individuals greater protection against disclosure of protected health information. Additional steps will need to be taken, however, to also comply with HIPAA.  
2. **HIPAA cites** – 45 C.F.R. §§164.512(a) and (f), and 164.514(h)  
3. **Action by Covered Entities** - Adopt and implement disclosure policies that concurrently comply with the requirements of Ohio and federal law. The covered entity’s policies and/or procedures regarding disclosures to law enforcement officials should include the definition of “law enforcement official” as found in the HIPAA privacy standards at §164.501, as well as the identity and authority verification requirements in §164.514(h). |
| 2317.54 Standards for Informed Consent | Written consent to a medical procedure is considered valid and effective if it is signed by the patient and made pursuant to receipt of proper information. | No. | 1. **Rationale** - Consistent with the goals of the HIPAA privacy standards, compliance with both Ohio and federal law is possible.  
2. **HIPAA cites** - 45 C.F.R. §§164.502(g) and 164.514(h)  
3. **Action by Covered Entities** - Adopt and implement policy on disclosures to patients’ legal representatives that concurrently... |
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<td>composes with the requirements of Ohio and federal law. The policy should include the HIPAA verification requirements.</td>
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<td>2743.62 Medical Reports of Victims</td>
<td>As a general rule, subject to certain exceptions, communications and records pertaining to the physical, mental or emotional condition of a claimant or victim are not privileged.</td>
<td>No.</td>
<td>1. <strong>Rationale</strong> - Consistent with the goals of the HIPAA privacy standards, compliance with both Ohio and federal law is possible.</td>
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<td>2. <strong>HIPAA cites</strong> - 45 C.F.R. §164.512(e)</td>
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<td>3. <strong>Action by Covered Entities</strong> - This statute does not require any specific action by covered entities other than that which will already be covered by their policy and procedure regarding disclosure of protected health information in judicial and administrative proceedings. 45 C.F.R. §164.512(e).</td>
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<td>2907.27 Examination and Treatment for Venereal Disease and AIDS</td>
<td>Individuals charged with certain offenses may at the request to the prosecutor or victim be tested for venereal diseases and/or AIDS and such individual may be required to undergo treatment for such disease(s). The results of such AIDS test may be disclosed to individuals to whom the disease may have been transmitted.</td>
<td>No.</td>
<td>1. <strong>Rationale</strong> - O.R.C. §2907.27 is not contrary to HIPAA privacy rules. Compliance with both Ohio and federal law is possible and the section is not an obstacle to accomplishing the purposes and objectives of the HIPAA privacy standards.</td>
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<td>3. <strong>Action by Covered Entities</strong> – Though O.R.C. §2907.27 does not directly govern covered entities, covered entities should continue to comply with requests for venereal disease and HIV tests, and may disclose results of those tests, as required by O.R.C. §2907.27. Disclosures of protected health information by covered entities in these situations are permitted disclosures under 45 C.F.R. §164.512 (a), (e) and (f).</td>
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<td>2907.29 Emergency Medical Services for Victims</td>
<td>Emergency medical services and other medical services must be available to victims of sexual offenses and minor victims can consent to examination.</td>
<td>No.</td>
<td>1. <strong>Rationale</strong> - O.R.C. §2907.29 is not contrary to HIPAA privacy rules. Compliance with both Ohio and federal law is possible and the section is not an obstacle to accomplishing the purposes and objectives of the HIPAA privacy standards.</td>
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<td>3. <strong>Action by Covered Entities</strong> – Covered entities that are subject to O.R.C. 2907.29 should develop a policy for disclosure of medical information/evidence about victims of sexual offenses, including an appropriate authorization form allowing the covered entity to</td>
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| 2907.30 Adult Sex Offenders       | When it is learned that an adult sex offender has a communicable disease, the victim must be notified. | No. | **1. Rationale** - O.R.C. §2907.30 is not affected by the HIPAA privacy rules because communicable disease information that is disclosed pursuant to this section is disclosed by non-covered entities not subject to HIPAA.  

**2. HIPAA cites** - None.  

**3. Action by Covered Entities –** None. |
| 2913.40(D) Medicaid Fraud        | Anyone seeking Medicaid reimbursement is prohibited from concealing relevant medical records. | No. | **1. Rationale** - O.R.C. §2913.40(D) is not contrary to HIPAA privacy rules. Compliance with both Ohio and federal law is possible and the section is not an obstacle to accomplishing the purposes and objectives of the HIPAA privacy standards.  


**3. Action by Covered Entities –** Covered entities may deny inappropriate requests to alter Medicaid records consistent with O.R.C. §2913.40(D) and 45 C.F.R. §164.526(a). |
| 2913.48(A)(3) Workers’ Compensation Fraud | Anyone seeking workers’ compensation is prohibited from concealing relevant medical records. | No. | **1. Rationale** - O.R.C. §2913.48 is consistent with the HIPAA privacy standards and compliance with both Ohio and federal law is possible. A disclosure under O.R.C. §2913.48 would be a permissible disclosure under the HIPAA privacy standards to comply with Ohio’s workers compensation laws.  

**2. HIPAA cites** - 45 C.F.R. §164.512(l).  

**3. Action by Covered Entities –** Implement policies that comply with the requirements of O.R.C. §2913.48(A)(3). |
| 2921.22 Injury from Gunshot, Stabbing, Burn or Domestic Violence | Physicians and other health care personnel are required to report to the appropriate authorities a gunshot or stab wound or burn inflicted by an explosion or other incendiary device. Suspicion of domestic violence must be recorded in the patient's medical record and may be admitted in court as evidence. | No. | **1. Rationale** - O.R.C. §2921.22 is consistent with the HIPAA privacy standards and compliance with both Ohio and federal law is possible.  


**3. Action by Covered Entities –** Adopt and implement policies that concurrently comply with the requirements of O.R.C. §2921.22 and 45 C.F.R. §164.512(f)(1)(i). |
<p>| 2945.40(C) | In any hearing conducted in connection with a disclosure such medical evidence to law enforcement officials. | No. | <strong>1. Rationale</strong> - O.R.C. §2945.40(C) is consistent with the HIPAA |</p>
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<td>Persons Not Guilty by Reason of Insanity</td>
<td>plea of not guilty by reason of insanity, the defendant must be informed by the court of the right to have copies of any relevant medical or mental health document in the custody of the state or place of commitment.</td>
<td>Yes</td>
<td>privacy standards and compliance with both Ohio and federal law is possible.</td>
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<td>3107.09 Social and Medical Histories of Biological Parents</td>
<td>Medical histories of biological parents of a minor available for adoption shall not include identifying information.</td>
<td>No</td>
<td>1. Rationale - This statute does not directly regulate covered entities.</td>
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<td>3107.17 ??</td>
<td>??</td>
<td>No</td>
<td>1. Rationale - Covered entities are not implicated by this statute. Recommend removing this section from the analysis.</td>
</tr>
<tr>
<td>3109.051(H) and (N) Access to Child’s Records by Nonresidential Parent</td>
<td>The parent with whom a child does not reside must be given access to the child's medical and other records to the same extent as the residential parent is given access.</td>
<td>No</td>
<td>1. Rationale - Under 42 C.F.R. § 160.202 (definition of “more stringent”), HIPAA’s privacy regulations state, “nothing in this subchapter may be construed to preempt any State law to the extent that it authorizes or prohibits disclosure of protected health information about a minor to a parent.” Further, under 42 C.F.R. § 164.512(a) disclosures that are required by law are permissible under HIPAA’s privacy regulations.</td>
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2. HIPAA cites - 42 C.F.R. §§ 160.103, 164.512(d). |

3. Action by Covered Entities - If a covered entity is asked to provide a medical exam by an “assessor” under O.R.C. § 3107.09, the covered entity can, and should, condition the performance of the exam on the individual giving an authorization for the disclosure of protected health information to the assessor (and the government agency). |

3. Action by Covered Entities - Covered entities should grant “nonresidential parents” the same rights of access to his/her child’s medical records as the “residential” parent -- unless there is a court
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| 3111.12(B) Paternity Actions | In an action brought to determine parentage, the testimony of a physician concerning a mother's pregnancy and the child at birth is not privileged. | No. | 1. **Rationale** - O.R.C. § 3111.12(B) states that the doctor-patient privilege does not extend to a physician’s testimony (including testimony disclosing protected health information) in a paternity action. HIPAA’s privacy regulations allow for disclosure of protected health information in judicial proceedings only in response to (i) a court order or (ii) other lawful process, if the covered entity has assurances that the person seeking the disclosure has made reasonable efforts to notify the subject of the protected health information or to secure a protective order. 
2. **HIPAA cites** - 42 C.F.R. §§ 164.512(e). 
3. **Action by Covered Entities** - Covered entities may comply with O.R.C. § 3111.12(B) and testify in a paternity hearing regarding the child’s characteristics and condition at birth and the medical circumstances of the mother’s pregnancy. |
| 3111.35 and 3111.36 Artificial Insemination | Consent to non-spousal artificial insemination must be obtained. Records pertaining to the insemination are confidential and must be kept separate from the recipient's other medical records. | No. | 1. **Rationale** - The O.R.C. § 3111.35 consent form requirements are more stringent than HIPAA’s privacy regulations and therefore are not preempted. O.R.C. §§ 3111.35 and 3111.36 require physicians to disclose protected health information and HIPAA’s privacy regulations allow disclosures that are required by law. Further, these Ohio statutes are consistent with the requirements and goals of HIPAA privacy standards, and compliance with both Ohio and Federal law is possible. 
2. **HIPAA cites** - 42 C.F.R. §§ 164.501, 164.508, 164.512(a), 164.512(e). 
3. **Action by Covered Entities** – Comply with O.R.C. §§ 3111.35 and 3111.36. For added safety, add an authorization to the paper work required to be filled out by donors that specifies that the donor authorizes the disclosure of the information described in O.R.C. § 3111.35 to the recipient and, if applicable, her spouse. |
<p>| 3111.91? | ?? | No. | 1. <strong>Rationale</strong> - This section of the O.R.C. does not involve the use or disclosure of protected health information. Recommend removing |</p>
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<td>this section from the analysis.</td>
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<td>2. HIPAA cites – None.</td>
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<td>3. Action by Covered Entities – N/A</td>
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<td>3113.39</td>
<td>??</td>
<td>No.</td>
<td>1. Rationale - This section of the O.R.C. does not govern covered entities and does not appear to involve the use or disclosure of individually identifiable health information. Recommend removing this section from the analysis.</td>
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<td>2. HIPAA cites – None.</td>
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<td>3. Action by Covered Entities – N/A</td>
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<td>3304.21</td>
<td>??</td>
<td>No.</td>
<td>1. Rationale - This section of the O.R.C. does not govern the use or disclosure of protected health information by covered entities. Recommend removing this section from the analysis.</td>
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<td>2. HIPAA cites – None.</td>
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<td>3. Action by Covered Entities – N/A</td>
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<tr>
<td>3313.50</td>
<td>Childhood Hearing and Vision Tests</td>
<td>No.</td>
<td>1. Rationale - O.R.C. §3313.50 does not implicate HIPAA because the records created are considered “educational records,” which fall outside the definition of protected health information under the HIPAA privacy regulations. Even if protected health information exists it is highly unlikely that the school will be a covered entity.</td>
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<td>3. Action by Covered Entities – No action needed.</td>
</tr>
<tr>
<td>3313.67</td>
<td>School Records on Childhood Immunizations</td>
<td>No.</td>
<td>1. Rationale - O.R.C. § 3313.67 does not implicate HIPAA because the records created are considered “educational records,” which fall outside the definition of protected health information under HIPAA’s privacy regulations. Even if protected health information exists it seems highly unlikely that the school will be a covered entity.</td>
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<td>2. HIPAA cites – None.</td>
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<td>3. Action by Covered Entities – N/A</td>
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<td>3313.71</td>
<td>Records maintained by a school physician on a</td>
<td>No.</td>
<td>1. Rationale - O.R.C. § 3313.71 does not implicate HIPAA because</td>
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<td>Tuberculosis Records in Schools</td>
<td>pupil, teacher, or school employee with tuberculosis are not open to the public.</td>
<td>Yes, in part.</td>
<td>the records created are considered “educational records,” which fall outside the definition of protected health information under HIPAA’s privacy regulations. Even if protected health information exists it seems highly unlikely that the school will be a covered entity.</td>
</tr>
<tr>
<td>3319.32(B) and (C) Limits on Public Access to Student Records</td>
<td>In general, personally identifiable information held by elementary and secondary schools cannot be released. Law enforcement officers are specifically given access.</td>
<td>No.</td>
<td>1. <strong>Rationale</strong> - O.R.C. § 3319.32(B) and (C) do not implicate HIPAA because the records created are considered “educational records,” which fall outside the definition of protected health information under HIPAA’s privacy regulations. Even if protected health information exists it seems highly unlikely that the school will be a covered entity.</td>
</tr>
<tr>
<td>3323.06 Education of Handicapped Children</td>
<td>The state plan for the education of handicapped children must include procedures for protecting the confidentiality of personally identifiable information.</td>
<td>Yes, in part.</td>
<td>1. <strong>Rationale</strong> - This statute does not govern the use or disclosure of protected health information by covered entities. We recommend removing this statute from the analysis.</td>
</tr>
<tr>
<td>3701.028 Program for Medically Handicapped Children</td>
<td>The records held by the Ohio Department of Health for purposes of its Program for Medically Handicapped Children and the programs funded through federal block grants for maternal and child health are confidential and cannot be released without consent.</td>
<td>Yes, in part.</td>
<td>1. <strong>Rationale</strong> - O.R.C. §3701.028 authorizes a public health worker to disclose protected health information without consent to coordinate services or payment. In this respect, it conflicts with the requirements of the HIPAA privacy regulations that consent be obtained for any disclosures for purposes of treatment or payment.</td>
</tr>
<tr>
<td>3701.041 Employee Assistance</td>
<td>Records maintained in connection with the Employee Assistance Program, a program for</td>
<td>Yes, in part.</td>
<td>1. <strong>Rationale</strong> - O.R.C. §3701.041 is consistent with the goals of the HIPAA privacy regulations as the statute requires a consent to be</td>
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<td>Program</td>
<td>referring state employees to providers of medical, social, or other services, are generally not to be disclosed.</td>
<td>Yes.</td>
<td>executed prior to disclosure of protected health information, except in certain instances, which exceptions coincide with exceptions to the federal law (medical emergency, court order, research and audit). Therefore, compliance with both Ohio and federal law is possible. However, because the federal exceptions are far more complex than the state law exceptions, the Ohio statute may be partially preempted.</td>
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<tr>
<td>3701.24(B) Reports of Diseases</td>
<td>Local boards of health are required to report to the Ohio Department of Health the following: Asiatic cholera, yellow fever, diphtheria, typhus or typhoid fever, and other contagious or infectious diseases that are specified in administrative rules, including venereal diseases, hepatitis, measles, mumps, and rabies (see Ohio Administrative Code 3701-3-02).</td>
<td>No.</td>
<td>1. <strong>Rationale</strong> - O.R.C. §3701.24 is not contrary to federal law. The statute provides for mandatory reporting of certain types of diseases. The exceptions to disclosure for court orders for testing or disclosure, criminal investigations, and treatment are permitted disclosures under the HIPAA privacy standards. The exception allowing disclosure to ensure accuracy is consistent with the goals of the HIPAA privacy rules. 2. <strong>HIPAA cites</strong> - 45 C.F.R. §§160.202, 160.203 and 164.512. 3. <strong>Action by Covered Entities</strong> - Covered entities must report incidents of any of the diseases set forth in the statute to the Department of Health.</td>
</tr>
<tr>
<td>3701.24(C), 3701.24(A)(3), 3701.231, 3701.242, and 3701.243 HIV Testing and AIDS Information</td>
<td>Informed consent must be obtained prior to performing an HIV test. With certain exceptions, individuals and government entities are prohibited from disclosing or compelling another to disclose the identity of a person who has taken an HIV test, the results of an HIV test, or the identity of a person with AIDS. Identifying information contained in reports of positive HIV tests and AIDS cases made to the Ohio Department of Health is confidential. Nonidentifying information can be released in</td>
<td>No.</td>
<td>1. <strong>Rationale</strong> - The HIPAA privacy regulations do not address issues related to consent for tests or treatment; rather, they govern consent for use or disclosure of protected health information. O.R.C. §3701.242 pertains to testing for HIV and does not directly address areas covered by the HIPAA privacy regulations. O.R.C. §3701.243 is more stringent than federal law because it increases the privacy protections associated with disclosure even in cases when disclosure is permitted without consent. 2. <strong>HIPAA cites</strong> - 45 C.F.R. §§160.202 and 160.203.</td>
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<td>summary or statistical form. The Department must administer a confidential system of notifying the partners of HIV-positive persons information maintained under the partner notification system is not a public record.</td>
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<td>3. <strong>Action by Covered Entities</strong> – Covered entities must obtain consent when necessary prior to performing an HIV test and must incorporate an appropriate disclosure statement into their notice of privacy practices, consent forms and authorization forms.</td>
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<td>An emergency medical or funeral services worker who believes that significant exposure has occurred through contact with a person or body may request notice of the results of any test for contagious or infectious diseases that may have been performed.</td>
<td>No.</td>
<td>1. <strong>Rationale</strong> – O.R.C. §370.248(B) is not contrary to the HIPAA privacy rules. O.R.C. §370.248 allows health care providers to disclose information to health care workers when an individual has refused to consent to the disclosure. Such a disclosure is permitted under 45 C.F.R. §164.512(b)(1)(iv).</td>
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<td>Attending physicians are required to report to the Ohio Department of Health all of the following: (1) poisoning from lead, cadmium, phosphorous, arsenic, brass, wood alcohol, or mercury; (2) anthrax; and (3) compressed air illness and other occupational diseases specified by the Department.</td>
<td>No.</td>
<td>1. <strong>Rationale</strong> – O.R.C. §3701.25 is not contrary to the HIPAA privacy rules. O.R.C. §3701.25 requires certain entities to report the occurrence of certain occupational diseases. Such disclosures are expressly permitted under 45 C.F.R. §164.512(f)(1)(i).</td>
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<td>Physicians, dentists, hospitals, and other providers are required to report all cases of cancer to the Ohio Department of Health. The Department must be given access to patient records. All data held by the Department and the state's cancer registry regarding individual patients is confidential. The information can be used only for medical research.</td>
<td>No.</td>
<td>1. <strong>Rationale</strong> – O.R.C. §§3701.262 and 3701.263 are not contrary to the HIPAA privacy rules. O.R.C. §§3701.262 and 3701.263 require covered entities to report all cases of cancer to the Department of Health and to grant the Department access to all records regarding cancer treatment for a patient. Such disclosures are permitted under 45 C.F.R. §164.512(b)(1)(i). Any subsequent disclosure by the Department would not be covered by the HIPAA privacy regulations, as the Department of Health is not a covered entity.</td>
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<td>3701.51 and 3701.52 Reports of Eye Inflammation in Newborns</td>
<td>A physician or other person attending an infant who is less than two weeks old and has inflammation of the eyes must make a report to the local health Department.</td>
<td>No.</td>
<td>3. <strong>Action by Covered Entities</strong> - Covered entities must report cancer cases as required by O.R.C. §§3701.262 and 3701.263. When consent is sought for a further disclosure, covered entities should ensure that patient consent is obtained prior to granting their own consent to disclosure. Covered entities may wish to develop an appropriate authorization that can be executed by patients in such circumstances.</td>
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<tr>
<td>3701.741 Fee Limitations on Copies of Medical Records</td>
<td>Each health care provider and medical records company that receives a request for a patient's medical record shall provide copies of those possible.</td>
<td>Possible.</td>
<td>1. <strong>Rationale</strong> - O.R.C. §3701.741 sets the maximum fee that may be charged by providers for copies of medical records absent agreement. The HIPAA privacy regulations allow providers to</td>
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<td>records in accordance with set fee limits.</td>
<td>charge a reasonable fee for providing copies so long as the fee includes only the cost of copying, including labor and supplies and postage. The statute may be partially preempted as a result of the allowance of its fifteen dollar initial search fee, since the HIPAA privacy regulations specifically prohibit charges other than actual costs for supplies, labor and postage.</td>
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<td>3702.18 Quality-of-Care Data on Health Services</td>
<td>In the collection of data pertaining to the quality of care provided by certain types of health facilities, the Director of Health may not make public any record that identifies or would tend to identify a specific patient.</td>
<td>No.</td>
<td>1. <strong>Rationale</strong> - O.R.C. §3702.18 is not contrary to the HIPAA privacy regulations. The statute governs use and disclosure of protected health information by the Department of Health, not by any covered entity. Any reports submitted by any covered entity under the statute or state regulations are permitted by 45 C.F.R. §164.512(b)(i).</td>
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<tr>
<td>3702.531 Certificate of Need Investigations of Nursing Homes</td>
<td>An investigation of whether a nursing home has been built or expanded without proper authority from the Ohio Department of Health must be conducted in a manner that protects patient confidentiality.</td>
<td>No.</td>
<td>1. <strong>Rationale</strong> - O.R.C. §3702.531 is not contrary to the HIPAA privacy regulations. Covered entities are permitted to disclose information for public health oversight activities authorized by law under 45 C.F.R. §164.512(d).</td>
</tr>
<tr>
<td>3705.23(A)(4)(b) Confidentiality of Parts of Birth Records</td>
<td>The information contained in the &quot;information for medical and health use only&quot; Section of a birth record cannot be disclosed except under court order or when the state Registrar of Vital Statistics authorizes the release for statistical or 1. <strong>Rationale</strong> - The state registrar is not a covered entity under the HIPAA privacy regulations.</td>
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| 3705.30 and 3705.32 Birth Defects Information System | Records received by the Birth Defects Information System are confidential medical records. | No. | 1. **Rationale** – O.R.C. §3705.32 is not contrary to the HIPAA privacy rules. Covered entities are permitted to disclose information under the HIPAA privacy regulations to public health authorities for purposes of preventing or controlling disease. A disclosure to the Department of Health pursuant to O.R.C. §3705.32 is expressly permitted under 45 C.F.R. §164.512(B). Any subsequent disclosure by the Department of Health would not be covered by the HIPAA privacy regulations.  
3. **Action by Covered Entities** - No action needed. |
| 3707.06 Physician Reports of Diseases | Attending physicians are required to report to the local health Department each case of cholera, plague, yellow fever, or other diseases dangerous to the public. | No. | 1. **Rationale** – O.R.C. §3707.06 is not contrary to the HIPAA privacy rules. O.R.C. §3707.06 establishes mandatory reporting of certain infectious diseases. Such disclosures to public health authorities are expressly permitted under 45 C.F.R. §164.512(b)(1)(i).  
3. **Action by Covered Entities** – Covered entities must report any occurrence of the identified infectious diseases. |
| 3709.22 Records of Diseases | Local boards of health are required to maintain records on the prevalence of disease. | No. | 1. **Rationale** - O.R.C. §3709.22 provides that treatment may be provided to a school child based upon the written request of a parent or guardian. Any information gained as a result of such treatment may be disclosed to the parent or guardian provided that, if communicated in writing, it shall be placed in a sealed envelope. The HIPAA privacy regulations allow disclosure to the parent or guardian of a minor. 45 C.F.R. 501(g)  
3. **Action by Covered Entities** - Covered entities should obtain a consent to use and disclosure from the parent or guardian at the time of the request for treatment. Any written information communicated to the parent or guardian should satisfy the form required by O.R.C. |
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<td>§3709.22, i.e. it should be placed in a sealed envelope addressed to the parent or guardian.</td>
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</table>
| 3711.11 Records of Maternity Boardinghouses | The contents of records held by homes or hospitals licensed as "maternity boardinghouses" generally cannot be divulged. | Yes, in part. | 1. **Rationale** - O.R.C. §3711.11 prohibits disclosure of records of a maternity hospital to an individual except upon court order. Thus, this statute limits access of an individual to his or her medical records and is contrary to 45 C.F.R. §164.524. Because the statute is inconsistent with the goals of the HIPAA privacy regulations, it is preempted in part.  
3. **Action by Covered Entities** - Covered entities must permit individuals to access their medical records as required under 45 C.F.R. §164.524. |
| 3719.13 Drug Prescriptions | Prescriptions for dangerous drugs and controlled substances are open for inspection only to federal, state, and local officers, the State Board of Pharmacy, the state Medical Board, and the State Board of Nursing. The information cannot be divulged. | Yes, in part. | 1. **Rationale** - O.R.C. §3719.13 prohibits a pharmacist from disclosing a prescription or order. Such information is required to be disclosed to the individual who is the subject of the information under the HIPAA privacy regulations.  
3. **Action by Covered Entities** - Covered entities must disclose information regarding prescriptions and orders to the subject of the information. Otherwise, such information shall be maintained as confidential and cannot be disclosed except to law enforcement officials and in a court proceeding. |
| 3721.031 and 3721.13(A)(8) and (10) and OAC §3701-17-67 Long-term Care Facilities | A resident of a nursing home or residential care facility [rest home] has the right of access to his or her medical records and the right to confidential treatment of medical records. If a complaint is investigated, the Ohio Department of Health may not release any identifying information. Certain records maintained by nursing homes and rest homes must be released to the Director of the Department of Health. | No. | 1. **Rationale** - O.R.C. §3721.031 addresses information gathered by the Director of Health in connection with an investigation of a nursing home and places certain limitations on the Director regarding further use of the information. The Director of Health is not a covered entity under the HIPAA privacy regulations. O.R.C. §3721.13 grants individuals a right to access their medical records and limit further disclosures of their records. These rights are consistent with the goals of the HIPAA privacy regulations.  
3. **Action by Covered Entities** - Covered entities should cooperate with any investigation regarding their nursing home, but are not required by this statute to disclose any protected health information.
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| **3724.05(H) and 3724.07(B)(5)** Community Alternative Homes | A resident of a community alternative home, which is a type of home operated for AIDS patients, has the right to confidential treatment of medical records. The home must comply with rules on maintaining the confidentiality of records. | No. | 1. **Rationale** - O.R.C. §3724.07(B) is not contrary to the HIPAA privacy regulations. The statute grants individuals a right to access their medical records and limits further disclosures of their records in a manner consistent with the requirements of the HIPAA privacy standards.  
3. **Action by Covered Entities** - Covered entities must grant residents of community alternative homes a right to access their medical records consistent with the HIPAA privacy regulations and O.R.C. §3701.74. |
| **3727.14 and 3727.15** Reports on Hospitals | The Ohio Department of Health is authorized to issue reports on hospitals, and in collecting and disseminating information, the Department must protect the confidentiality of patients and physicians. Names are not to be disclosed by the hospital in providing information to the Department. | No. | 1. **Rationale** - O.R.C. §3727.14 is consistent with the goals of the HIPAA privacy regulation because the information required to be submitted does not contain patient identifying information. Further, the required disclosure is permitted pursuant to 45 C.F.R. §164.512(d).  
3. **Action by Covered Entities** - Hospitals must report the information required. |
| **3742.03(E)(3)** Lead Poisoning | Information reported to the Ohio Department of Health regarding lead poisoning that is a medical record cannot be released, except in aggregate statistical form. | No. | 1. **Rationale** - The statute does not regulate covered entities in their use and disclosure of protected health information.  
3. **Action by Covered Entities** - No action needed. |
| **3793.13** Methadone Treatment | Records pertaining to methadone treatment can be disclosed only under specified circumstances, including scientific research. | Yes. | 1. **Rationale** - O.R.C. §3793.13 allows disclosure of records without patient consent for patients who have agreed to treatment as a condition of parole. Such a disclosure is inconsistent with the HIPAA privacy regulation, which requires consent to be obtained prior to disclosure.  
3. **Action by Covered Entities** - No action needed. |
<p>| <strong>3793.14</strong> Alcohol and Drug | Persons treated through programs approved by the Ohio Department of Alcohol and Drug | No. | 1. <strong>Rationale</strong> - O.R.C. §3793.14 is consistent with the HIPAA privacy regulations in recognizing a right of confidentiality of |</p>
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<tr>
<td><strong>Addiction Treatment</strong></td>
<td>Addiction Services have the right to confidentiality of health and medical records.</td>
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<td>medical records.</td>
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<td>3. <strong>Action by Covered Entities</strong> - No action needed.</td>
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<td><strong>3901.44 and 3903.11 Insurance Investigations</strong></td>
<td>The records and work papers produced in auditing or investigating an insurer, including investigation of alleged fraud and proceedings involving delinquency, are confidential.</td>
<td>No.</td>
<td>1. <strong>Rationale</strong> - O.R.C. §3901.44 and 3903.11 do not appear to be preempted by HIPAA for a variety of reasons. First, the Ohio Department of Insurance is not a covered entity, and therefore statutory Sections describing the duties of the Department are not within the ambit of HIPAA. Second, HIPAA expressly saves from preemption provisions of state law relating to duties of a health plan to report or provide access to information for the purposes of management and financial audits and program monitoring and evaluation. Third, a health plan is not required to obtain consent or authorization to disclose information to a court or as part of an administrative procedure.</td>
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<td>3. <strong>Action by Covered Entities</strong> - Because these Sections do not appear to impose disclosure requirements on covered entities, no action appears required based on these statutory provisions.</td>
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<td><strong>3901.83 Records Submitted to Superintendent of Insurance</strong></td>
<td>The medical records of an enrollee of a health insuring corporation, insured of an insurer, or plan member of a public employee benefit plan, submitted to the Superintendent of Insurance, are not public records.</td>
<td>No.</td>
<td>1. <strong>Rationale</strong> - O.R.C. §3901.83 does not fall within the ambit of HIPAA, because it only imposes a duty on the Superintendent, which is not a covered entity.</td>
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<td>3. <strong>Action by Covered Entities</strong> - No action needed.</td>
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<td><strong>3904.08 Personal Information Recorded by Insurers</strong></td>
<td>On request a person must be given access to information about the person that has been recorded by an insurance institution, agent, or support organization. &quot;Personal information&quot; is defined as including medical record information.</td>
<td>No.</td>
<td>1. <strong>Rationale</strong> - O.R.C. §3904.08 should not be preempted by HIPAA on one of two alternative grounds: (a) the statute is not contrary to HIPAA; or (b) the state law provision provides an individual with greater rights of access, or information about a use, disclosure rights or remedies, than is provided through HIPAA.</td>
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<td>3. <strong>Action by Covered Entities</strong> - In their privacy policies, covered</td>
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<td>3904.13 Prohibitions Against Disclosure by Insurers</td>
<td>An insurance institution, agent, or support organization is prohibited, except for research and other purposes, from disclosing any personal or privileged information collected or received in connection with an insurance transaction.</td>
<td>Some are preempted (exceptions).</td>
<td>Rationale – O.R.C. §3904.13 is not contrary to the HIPAA privacy rules. Compliance with both Ohio and federal law is possible and the Section is not an obstacle to accomplishing the purposes and objectives of the HIPAA privacy standards. 2. HIPAA cites – 45 C.F.R. §160.203. 3. Action by Covered Entities - Adopt and implement policies that concurrently comply with the requirements of Ohio and federal law.</td>
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<td>4113.23 Employee Access to Medical Records</td>
<td>An employee cannot be refused a copy of any medical information held about the employee by an employer or by a physician or other health care provider or facility under contract with an employer.</td>
<td>No.</td>
<td>1. Rationale - O.R.C. §4113.23 is consistent with the HIPAA privacy standards and compliance with both Ohio and federal law is possible. 2. HIPAA cites - 45 C.F.R. §164.524. 3. Action by Covered Entities - Adopt and implement access policies that concurrently comply with the requirements of 45 C.F.R. §164.524 and O.R.C. §4113.23.</td>
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<td>Chapter 4121 Industrial Commission; Bureau of Workers' Compensation</td>
<td>[To be completed.]</td>
<td>1. Rationale - 2. HIPAA cites - 3. Action by Covered Entities -</td>
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<tr>
<td>Chapter 4123 Workers' Compensation</td>
<td>[To be completed.]</td>
<td>1. Rationale - 2. HIPAA cites - 3. Action by Covered Entities -</td>
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<td>4715.03 Ohio State Dental Board Investigations</td>
<td>O.R.C. §4715.03 excepts from Ohio’s open meetings law Ohio State Dental Board investigatory proceedings against licensees.</td>
<td>No.</td>
<td>1. Rationale - O.R.C. §4715.03 is not contrary to the HIPAA privacy rules. Compliance with both Ohio and federal law is possible and the Section is not an obstacle to accomplishing the purposes and objectives of the HIPAA privacy standards. 2. HIPAA Cites - 45 C.F.R. §§160.202, 160.203, 164.501, 164.502 and §164.512. 3. Action by Covered Entities - Covered entities must respond to</td>
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| O.R.C. §4715.301 and O.A.C. §4715-21-01 Treatment Providers for Dentists and Hygienists | O.R.C. §4715.301 and O.A.C. §4715-21-01 establish standards for approving and designating treatment providers for dentists and dental hygienists with substance abuse problems. These laws also require approved treatment providers to report certain information to the Dental Board that would be considered protected health information. | No. | 1. **Rationale** - O.R.C. §4715.301 and O.A.C. §4715-21-01 are not contrary to HIPAA privacy rules because compliance with both Ohio and federal law is possible and these Sections are not an obstacle to accomplishing the purposes and objectives of the HIPAA privacy standards.  
3. **Action by Covered Entities** - Board approved substance abuse treatment providers must continue to follow the requirements of O.R.C. §4715.301 and O.A.C. §4715-21-01 as permitted by 45 C.F.R. 164.512(d). |
| O.R.C. §4723.28 Board of Nursing Investigations | If a Board of Nursing investigation requires a review of patient records, the investigation and proceeding must be conducted in a manner that protects patient confidentiality. Information may be shared with law enforcement officials and other investigators. | No. | 1. **Rationale** - O.R.C. §4723.28 is not contrary to HIPAA privacy rules. Compliance with both Ohio and federal law is possible and the Section is not an obstacle to accomplishing the purposes and objectives of the HIPAA privacy standards.  
3. **Action by Covered Entities** - Covered entities that examine Nursing Board licensees for the purposes of determining the licensees' ability to practice must submit examination reports to the Board. Covered entities must also respond to Nursing Board subpoenas for information. These activities are permitted disclosures under C.F.R. §164.512(d). |
| O.R.C. §4723.282 Review of Practice Deficiencies by Board of Nursing | All records held by the Board of Nursing for purposes of investigating practice deficiencies are confidential and are not public records. | No. | 1. **Rationale** - O.R.C. §4723.282 is not contrary to HIPAA privacy rules. Compliance with both Ohio and federal law is possible and the section is not an obstacle to accomplishing the purposes and objectives of the HIPAA privacy standards.  
3. **Action by Covered Entities** - Covered entities that must submit to the Nursing Board progress reports that may include protected health information that may include protected health information. This is a permitted disclosure under 45 C.F.R §164.512(d). |
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| **4723.29** Subpoenas by the Board of Nursing | The Board of Nursing may subpoena patient record information only after consulting with the Board's executive Director, the Board's president, and the Attorney General. | No. | **1. Rationale** - O.R.C. §4723.29 is not contrary to the HIPAA privacy rules. Compliance with both Ohio and federal law is possible and the Section is not an obstacle to accomplishing the purposes and objectives of the HIPAA privacy standards. Responses to Board of Nursing Subpoenas are permitted disclosures under 45 C.F.R. §164.512(d).  
**3. Action by Covered Entities** - Covered entities are required to respond to Nursing Board subpoenas for patient information. |
| **4723.35 & O.A.C. 4723-6-02, 4723-6-03, & 4723-6-06** Chemically Dependent Nurses | Records of nurses participating in the Board of Nursing’s Alternative Program for Chemically Dependent Nurses are not public records and must be kept confidential. | No. | **1. Rationale** - O.R.C. §4723.35 and O.A.C. chapter 4723-6 implementing rules are not contrary to the HIPAA privacy rules. Compliance with both Ohio and federal law is possible and these Sections are not an obstacle to accomplishing the purposes and objectives of the HIPAA privacy standards.  
**3. Action by Covered Entities** - Covered entities should respond to an Ohio Board of Nursing or licensee’s request for information related to a licensee’s participation in a chemical monitoring program. |
| **4725.19 & O.A.C. 4725-5-11** Optometrists | O.R.C. §4725.19 allows the Ohio Optometry Board to take action against an optometrist’s license for being guilty of dishonesty or unprofessional conduct. O.A.C. §4725-5-11 requires optometrists to give to a patient, or a third party designated by the patient, a copy of the patient’s records when requested. For records sent to a third party, the optometrist may require that the patient sign a record release or waiver form. Failure to timely release patient health information about a nurse who is participating in the Board’s practice remediation program are permitted to submit those reports under HIPAA. Release of protected health information that might be included in these progress reports is a permitted disclosure under 45 C.F.R.§164.512 (d). | No. | **1. Rationale** - O.R.C. §4725.19 and O.A.C. §4725-5-11 are not contrary to the HIPAA privacy rules. Compliance with both Ohio and federal law is possible and these Sections are not an obstacle to accomplishing the purposes and objectives of the HIPAA privacy standards.  
**3. Action by Covered Entities** - Covered entities to which these
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| 4725.21 Optometrists              | An optometrist who is aware that another optometrist has engaged in a course of treatment to a patient that is inappropriate must notify the State Board of Optometry. | No. | 1. **Rationale** - O.R.C. §4725.21 is not contrary to HIPAA privacy rules. Compliance with both Ohio and federal law is possible and the section is not an obstacle to accomplishing the purposes and objectives of the HIPAA privacy standards.  
3. **Action by Covered Entities** - Covered entities may be required to report protected health information of patients to the State Board of Optometry (Board) as part of required or voluntary reports to the Board concerning the unprofessional conduct or addiction of an optometrist or the reporting of other violations of the laws governing the practice of optometry. This disclosure is permitted under HIPAA. |
| 4725.23 Board of Optometry Subpoenas | O.R.C. §4725.23 grants to the Ohio Optometry Board the authority to take depositions, issue subpoenas, compel attendance of witnesses and compel production of documents. | No. | 1. **Rationale** - O.R.C. §4725.23 is not contrary to HIPAA privacy rules. Compliance with both Ohio and federal law is possible and the Section is not an obstacle to accomplishing the purposes and objectives of the HIPAA privacy standards. Responses to Optometry Board Subpoenas are permitted disclosures under 45 C.F.R. §164.512(d).  
3. **Action by Covered Entities** - Covered entities are required to respond to Ohio Optometry Board subpoenas for patient information. Such responses are permitted disclosures under HIPAA. |
| 4725.28 Optometrist Prescriptions for Vision Correcting | O.R.C. §4725.28 requires licensed optometrists to give patients a copy of a prescription for a vision correcting device or procedure issued by | No. | 1. **Rationale** - O.R.C. §4725.28 not contrary to the HIPAA privacy rules. Compliance with both Ohio and federal law is possible and this Section is not an obstacle to accomplishing the purposes and objectives of the HIPAA privacy standards.  
3. **Action by Covered Entities** - Covered entities are required to respond to Ohio Optometry Board subpoenas for patient information. Such responses are permitted disclosures under HIPAA. |
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<td>Device or Procedure</td>
<td>the optometrist.</td>
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<td>objectives of the HIPAA privacy standards.</td>
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<td>3. Action by Covered Entities - Covered entities to which this Section applies must give patients one copy of their prescription for a vision-correcting device as required by both Ohio and federal law.</td>
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<td>4725.31 &amp; O.A.C. 4725-14 Optometrists Reports</td>
<td>Optometrists must report to the Board any adverse side effects caused by the administration of authorized drugs. The reports cannot contain patient identifiers.</td>
<td>No.</td>
<td>1. Rationale - O.R.C. §4725.31 and O.A.C. §4725-5-14 are not contrary to the HIPAA privacy rules. Compliance with both Ohio and federal law is possible and these Sections are not an obstacle to accomplishing the purposes and objectives of the HIPAA privacy standards.</td>
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<td>3. Action by Covered Entities - Covered entities (i.e., optometrists) to whom these Sections apply must notify the Ohio Optometry Board of any instance of a clinically significant drug-induced side effect in a patient resulting from use of a topical ocular or therapeutic pharmaceutical agent.</td>
</tr>
<tr>
<td>O.A.C. 4725-7-06 Optometrists</td>
<td>O.A.C. §4725-7-06 requires licensed optometrists to give patients a copy of a prescription for a vision correcting device or procedure issued by the optometrist and includes an exception if significant medical reasons would prohibit immediate release.</td>
<td>Yes, in part.</td>
<td>1. Rationale - O.A.C. §4725-7-06 is contrary to HIPAA privacy rules. Compliance with both Ohio and federal law is not possible and this Section is an obstacle to accomplishing the purposes and objectives of the HIPAA privacy standards.</td>
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<td>3. Action by Covered Entities - Covered entities to which this Section applies must give patients one copy of their prescription for a vision-correcting device as required by both Ohio statutes and HIPAA privacy standards.</td>
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<td>4729.18 &amp; O.A.C. Chapter 4729-6 Pharmacists</td>
<td>O.R.C. §4729.18 requires the Ohio Board of Pharmacy to approve and designate physicians and facilities as treatment providers for pharmacists with substance abuse problems. O.A.C. Chapter 4729-6 establishes standards for such programs and expands upon the program</td>
<td>No.</td>
<td>1. Rationale - O.R.C. §4729.18 and O.A.C. Chapter 4729-6 are not contrary to the HIPAA privacy rules. Compliance with both Ohio and federal law is possible and these Sections are not an obstacle to accomplishing the purposes and objectives of the HIPAA privacy standards. Reports required by these sections are permitted disclosures under 45 C.F.R. §164.512(d).</td>
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<td>4729.19 Pharmacists</td>
<td>O.R.C. §4729.19 requires pharmacists to cooperate with federal, state, and local government investigations and release all relevant information when requested by a government agency regardless of any testimonial privilege that might apply to the release of the information.</td>
<td>No.</td>
<td>1. Rationale - O.R.C. §4729.19 is not contrary to the HIPAA privacy rules. Compliance with both Ohio and federal law is possible and the Section is not an obstacle to accomplishing the purposes and objectives of the HIPAA privacy standards. Disclosures required under these sections are permitted under 45 C.F.R. §164.512(a), (d) and (f).</td>
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<td>4729.39 &amp; O.A.C. Chapter 4729-29 Pharmacists</td>
<td>O.R.C. §4729.39 &amp; O.A.C. Chapter 4729-29 permit pharmacists and physicians to enter into consult agreements for purposes of managing a patient’s drug therapy. The patient whose drug therapy is being managed must consent to the consult agreement.</td>
<td>No.</td>
<td>1. Rationale - O.R.C. §4729.39 and O.A.C. Chapter 4729-29 are not contrary to the HIPAA privacy rules. Compliance with both Ohio and federal law is possible and these Sections are not an obstacle to accomplishing the purposes and objectives of the HIPAA privacy standards.</td>
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<td>4729.41 and O.A.C. 4729-5-37 Pharmacists</td>
<td>O.R.C. §4729.41 &amp; O.A.C. §4729-5-37 require pharmacists who administer adult immunizations to an individual to notify the individual’s family physician, or if the individual has no family physician, the local board of health.</td>
<td>No.</td>
<td>1. Rationale - O.R.C. §4729.41 is not contrary to the HIPAA privacy rules. Compliance with both Ohio and federal law is possible and this Section is not an obstacle to accomplishing the purposes and objectives of the HIPAA privacy standards. Reports required by this section are permitted disclosures under 45 C.F.R. 164.512(d).</td>
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| OAC §4729-5-29 State Board of Pharmacy | Records related to the practice of pharmacy or administering of drugs are not public records and shall not be divulged except in certain specified cases. | No. | 2. **HIPAA Cites** - 45 C.F.R. §§160.202, 160.203, 164.501, 164.502 and 164.512.  
3. **Action by Covered Entities** - Covered entities who are pharmacists administering adult immunizations must report certain protected health information to a patient’s physician or to a local board of health. |
| 4730.25 Physician Assistant/Patient Relationship; Board-Ordered Examinations | Willfully betraying a professional confidence is reason for the state Medical Board to take disciplinary action against a physician or physician assistant. The Medical Board may compel a licensee to submit to a mental and/or physical examination to determine ability to practice. | No. | 1. **Rationale** - O.R.C. §4730.25 is not contrary to the HIPAA privacy rules. Compliance with both Ohio and federal law is possible and this Section is not an obstacle to accomplishing the purposes and objectives of the HIPAA privacy standards.  
3. **Action by Covered Entities** - No action needed. |
| 4730.26, 4731.22(C) and OAC Chapter 4731-15-01 Investigations of State Medical Board | The state Medical Board is required to conduct all investigations and proceedings in such a manner as to protect patient confidentiality. Subpoenas for patient record information can be issued only after consulting with the Attorney General and three members of the Board. Violations of Chapters 4731 and 4730 must be reported to the state Medical Board. | No. | 1. **Rationale** - O.R.C. §4730.26 and O.R.C. Chapter 4731-15 are not contrary to HIPAA privacy rules. Compliance with both Ohio and federal law is possible and these Sections are not an obstacle to accomplishing the purposes and objectives of the HIPAA privacy standards.  
3. **Action by Covered Entities** - Covered entities must respond to Medical Board subpoenas for information. This disclosure is |
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| 4730.32 and O.A.C. Chapter 4731-15 Reports Regarding Physician Assistants | Reports from hospitals to the state Medical Board about disciplinary actions taken against physician assistants must not include patient identifiers. The records maintained by the Board can be released only to other hospitals considering whether to grant practice privileges to a physician assistant. | No. | 1. *Rationale* - O.R.C. §4730.32 and O.R.C. Chapter 4731-15 are not contrary to the HIPAA privacy rules. Compliance with both Ohio and federal law is possible and these chapters are not an obstacle to accomplishing the purposes and objectives of the HIPAA privacy standards. The reports required under this chapter are permitted under 45 C.F.R. §164.512(d).  
3. *Action by Covered Entities* - Covered entities may be required to report protected health information of patients to the Medical Board of Ohio as part of required reports to the Board concerning disciplinary actions taken by health care facilities against a physician assistant. |
| O.A.C. Chapter 4731-19 Duty of Licensee to Report HIV or HBV Infection; Confidentiality | O.A.C. Chapter 4731-19 mandates the reporting of a Medical Board licensee’s infection with HIV or HBV. The Board maintains the confidentiality of all information relating to the HIV and HBV status of a licensee unless it is necessary to disclose the status during disciplinary actions against the licensee. This chapter also establishes a confidential monitoring program in which an HIV or HBV infected licensee who performs invasive procedures must participate unless the licensee participates in a monitoring program run by or approved by the Ohio Department of Health. | No. | 1. *Rationale* - O.A.C. Chapter 4731-19 is not contrary to the HIPAA privacy rules. Compliance with both Ohio and federal law is possible and this Chapter is not an obstacle to accomplishing the purposes and objectives of the HIPAA privacy standards. The reports required under this Chapter are permitted under 45 C.F.R. §164.512(d).  
3. *Action by Covered Entities* - Covered entities may be required to report protected health information of Medical Board of Ohio licensees to the Board as part of required reports concerning HIV/HBV monitoring. |
| 4731.22 Doctor-Patient Relationship; Board-Ordered Examinations | Willfully betraying a professional confidence is reason for the state Medical Board to take disciplinary action against a physician or physician assistant. The Board may compel a licensee to submit to a mental and/or physical examination to determine ability to practice. This Section also authorizes the Board to issue subpoenas. | No. | 1. *Rationale* - O.R.C. §4731.22 is not contrary to the HIPAA privacy rules. Compliance with both Ohio and federal law is possible and this Section is not an obstacle to accomplishing the purposes and objectives of the HIPAA privacy standards.  
3. *Action by Covered Entities* - Covered entities that examine Medical Board licensees for the purposes of determining the
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<td>4731.224 &amp; O.A.C. Chapter 4731-15 Reports Regarding Physicians</td>
<td>O.R.C. §4731.224 requires health care facilities, professional associations or professional liability insurers that take disciplinary actions or reach final disposition of any claims against a physician to report to the Board the name of the physician, the action taken or final disposition of any claims and if a professional association reports, a summary of the underlying facts leading to the action taken.</td>
<td>No.</td>
<td>1. <strong>Rationale</strong> - O.R.C. §4731.224 and O.R.C. Chapter 4731-15 are not contrary to HIPAA privacy rules. Compliance with both Ohio and federal law is possible and these Sections are not an obstacle to accomplishing the purposes and objectives of the HIPAA privacy standards. The disclosures required under these Sections are permitted under 45 C.F.R. §164.512(d). 2. <strong>HIPAA Cites</strong> - 45 C.F.R. §§160.202, 160.203, 164.501, 164.502 and 164.512. 3. <strong>Action by Covered Entities</strong> - Covered entities must also respond to Medical Board subpoenas for information.</td>
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<tr>
<td>4731.25 and O.A.C. Chapter 4731-16 Treatment Providers for Practitioners with Substance Abuse Problems</td>
<td>O.R.C. §4731.25 requires the state Medical Board to approve and designate physicians and facilities as treatment providers for practitioners (physicians, physician assistants, anesthesiology assistants and acupuncturists) with substance abuse problems. O.A.C. Chapter 4731-16 establishes standards for such programs and expands upon the program requirements set forth in law.</td>
<td>No.</td>
<td>1. <strong>Rationale</strong> - O.R.C. §4731.25 and O.A.C. Chapter 4731-16 are not contrary to HIPAA privacy rules. Compliance with both Ohio and federal law is possible and these Sections are not an obstacle to accomplishing the purposes and objectives of the HIPAA privacy standards. Reports required by these Sections are permitted disclosures under 45 C.F.R. §164.512(d). 2. <strong>HIPAA Cites</strong> - 45 C.F.R. §§160.202, 160.203, 164.501, 164.502 and 164.512. 3. <strong>Action by Covered Entities</strong> - Covered entities may be required to report protected health information of patients to the Medical Board of Ohio as part of required reports to the Board concerning disciplinary actions taken by health care facilities against a physician.</td>
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<td>4731.44 Physician Prescriptions for Vision Correcting Device or Procedure</td>
<td>O.R.C. §4731.44 requires physicians to give patients a copy of a prescription for a vision correcting device or procedure issued by the physician.</td>
<td>No.</td>
<td>1. <strong>Rationale</strong> - O.R.C. §4731.44 is not contrary to the HIPAA privacy rules. Compliance with both Ohio and federal law is possible and this Section is not an obstacle to accomplishing the purposes and objectives of the HIPAA privacy standards. 2. <strong>HIPAA Cites</strong> - 45 C.F.R. §§160.202, 160.203, 164.502 and 164.524.</td>
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<td><strong>3. Action by Covered Entities</strong> – Covered entities to which this Section applies must give patients one copy of their prescription for a vision-correcting device as required by both Ohio and federal law.</td>
<td>No.</td>
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<td><strong>4732.17</strong> Psychologists</td>
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<td>O.R.C. §4732.17 authorizes the Ohio Board of Psychology to discipline psychologists for specific practice violations, including willful unauthorized communication of information received in professional confidence, impairment resulting from substance abuse, and incompetence.</td>
<td>No.</td>
<td>1. <strong>Rationale</strong> - O.R.C. §4732.17 is not contrary to the HIPAA privacy rules. Compliance with both Ohio and federal law is possible and this Section is not an obstacle to accomplishing the purposes and objectives of the HIPAA privacy standards. 2. <strong>HIPAA Cites</strong> - 45 C.F.R. §§160.202, 160.203, 164.501, 164.502 and 164.512. 3. <strong>Action by Covered Entities</strong> – No action needed.</td>
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<td><strong>4732.19 &amp; O.A.C. 4732-17-01 Psychologists</strong></td>
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<td>O.R.C. §4732.19 &amp; O.A.C. §4732-17-01 establishes the confidentiality of communications between a psychologist and a client and nothing in the psychology licensure statute or rules requires confidential communications to be disclosed unless the client has consented. O.A.C. §4732-17-01 establishes a variety of requirements with respect to maintenance and retention of client records, further clarifies the responsibility of psychologists to maintain client confidentiality and sets forth exceptions or limitations to the requirement to maintain confidentiality.</td>
<td>No.</td>
<td>1. <strong>Rationale</strong> - O.R.C. §4732.19 and O.A.C. §4732-17-01 are not contrary to the HIPAA privacy rules. Compliance with both Ohio and federal law is possible and these Sections are not obstacles to accomplishing the purposes and objectives of the HIPAA privacy standards. 2. <strong>HIPAA Cites</strong> - 45 C.F.R. §§160.202, 160.203, 164.501, 164.502, 164.506, 164.508 and 164.512. 3. <strong>Action by Covered Entities</strong> - Covered entities (psychologists) will need to comply with both Ohio law and HIPAA privacy standards related to authorization of release of psychotherapy notes. Covered entities will need to review existing release of information forms and revise them as necessary to meet HIPAA authorization form requirements.</td>
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<td><strong>4734.31 &amp; O.A.C. 4734-1-16 Chiropractors</strong></td>
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<td>O.R.C. §4734.31 &amp; O.A.C. §4734-1-16 authorize the Ohio Chiropractic Board to discipline chiropractors for specific practice violations, including disclosing patient information gained during the chiropractor’s professional relationship with a patient without obtaining the patient’s authorization for the disclosure; inability to practice by reason of chemical dependency, mental or physical illness; and failing to respond to a Board subpoena or to cooperate with a Board investigation.</td>
<td>No.</td>
<td>1. <strong>Rationale</strong> - O.R.C. §4734.31 &amp; O.A.C. §4734-1-16 are not contrary to the HIPAA privacy rules. Compliance with both Ohio and federal law is possible and these Sections are not an obstacle to accomplishing the purposes and objectives of the HIPAA privacy standards. 2. <strong>HIPAA Cites</strong> - 45 C.F.R. §§160.202, 160.203, 164.501, 164.502 and 164.512. 3. <strong>Action by Covered Entities</strong> – Covered entities that are licensees must cooperate with Ohio Chiropractic Board investigations and respond to requests for information.</td>
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| 4734.32 Chiropractors              | O.R.C. §4734.32 requires health care facilities, professional associations or professional liability insurers that take disciplinary actions or reach final disposition of any claims against a chiropractor to report to the Ohio Chiropractic Board the name of the chiropractor, the action taken and, if a facility or professional association, a summary of the underlying facts leading to the action taken. | No. | 1. **Rationale** - O.R.C. §4734.32 is not contrary to the HIPAA privacy rules. Compliance with both Ohio and federal law is possible and this Section is not an obstacle to accomplishing the purposes and objectives of the HIPAA privacy standards. Reports to the Ohio Chiropractic Board required under this section are permitted under 45 C.F.R. §164.512(d).


3. **Action by Covered Entities** - Covered entities may be required to report protected health information of patients to the Ohio Chiropractic Board as part of required reports to the Board concerning disciplinary actions taken by health care facilities against a chiropractor. |

| 4734.39 Chiropractors              | O.R.C. §4734.39 permits the Ohio Chiropractic Board to compel a licensee to submit to a mental and/or physical examination to determine ability to practice. | No. | 1. **Rationale** - O.R.C. §4734.39 is not contrary to the HIPAA privacy rules. Compliance with both Ohio and federal law is possible and this Section is not an obstacle to accomplishing the purposes and objectives of the HIPAA privacy standards. The disclosures required under this Section are permitted under 45 C.F.R. §164.512(d).


3. **Action by Covered Entities** - Covered entities that examine Ohio Chiropractic Board licensees for the purposes of determining the licensees’ ability to practice must submit examination reports and other information to the Board. |

| 4734.40 Chiropractors              | O.R.C. §4734.40 authorizes the Ohio Chiropractic Board to adopt rules to approve and designate treatment providers for impaired chiropractors. | No. | 1. **Rationale** - O.R.C. §4734.40 is not contrary to the HIPAA privacy rules. Compliance with both Ohio and federal law is possible and this Section is not an obstacle to accomplishing the purposes and objectives of the HIPAA privacy standards. Reports required by these Sections are permitted disclosures under 45 C.F.R. §164.512(d).


3. **Action by Covered Entities** - Covered entities that are substance
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| RULE/TOpic |
| DESCRIPTION |
| PREEMPTED? |
| HIPAA |
| PREEMPTION ANALYSIS |

<p>| 4734.41 | Chiropractors | O.R.C. §4734.41 requires the Ohio Chiropractic Board to establish a chemical dependency and mental illness monitoring program as an alternative to imposing disciplinary action against licensees with a chemical dependency. | No. | 1. <strong>Rationale</strong> - O.R.C. §4734.41 is not contrary to the HIPAA privacy rules. Compliance with both Ohio and federal law is possible and this Section is not an obstacle to accomplishing the purposes and objectives of the HIPAA privacy standards. The disclosures required under this Section are permitted under 45 C.F.R. §164.512(d). |
| 4734.45 | Chiropractors | O.R.C. §4734.45 grants to the Ohio Chiropractic Board the authority to investigate violations of the law governing chiropractors. | No. | 1. <strong>Rationale</strong> - O.R.C. §4734.45 is not contrary to the HIPAA privacy rules. Compliance with both Ohio and federal law is possible and this Section is not an obstacle to accomplishing the purposes and objectives of the HIPAA privacy standards. |
| 4755.10 &amp; O.A.C. 4755-7-05 | Occupational Therapists | O.R.C. §4755.10 authorizes the Occupational Therapy Section of the Ohio Occupational Therapy, Physical Therapy and Athletic Trainers Board to discipline occupational therapists for specific practice violations, including willful unauthorized communication of information received in professional confidence and impairment resulting from substance abuse. O.A.C. §4755-7-05 prohibits disclosure of confidential patient information to unauthorized persons unless that patient has given written consent. | No. | 1. <strong>Rationale</strong> - O.R.C. §4755.10 &amp; O.A.C. §4755-7-05 are not contrary to the HIPAA privacy rules. Compliance with both Ohio and federal law is possible and these Sections are not an obstacle to accomplishing the purposes and objectives of the HIPAA privacy standards. |</p>
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<td>Codes of Ethical Practice</td>
<td>and social workers that include protecting the confidentiality of communications between counselors and social workers and a client, and addressing practice issues such as impairment due to substance abuse or mental or physical conditions, conduct of research using human subjects and record keeping.</td>
<td>No.</td>
<td>and federal law is possible and these Sections are not obstacles to accomplishing the purposes and objectives of the HIPAA privacy standards.</td>
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<td>4757.36 &amp; O.A.C. 4757-11-01 Disciplinary Action</td>
<td>O.R.C. §4757.36 &amp; O.A.C. §4757-11-01 authorize the Counselor and Social Worker Board to discipline licensees for specific practice violations, including violating codes of ethical practice as adopted under O.R.C. §4757.11 &amp; O.A.C. §4757-5-01, impairment due to substance abuse or to a physical or mental condition and being adjudicated mentally incompetent.</td>
<td>No.</td>
<td>1. Rationale - O.R.C. §4757.36 &amp; O.A.C. §4757-11-01 are not contrary to the HIPAA privacy rules. Compliance with both Ohio and federal law is possible and these Sections are not an obstacle to accomplishing the purposes and objectives of the HIPAA privacy standards. Disclosures to the Counselor and Social Worker Board required under these Sections are permitted disclosures under 45 C.F.R. §164.512(d).</td>
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<td>4757.38 &amp; O.A.C. 4757-00-03 Counselor and Social Worker Board Investigations</td>
<td>The Board can receive any information necessary to conduct an investigation, but its investigatory records must remain confidential.</td>
<td>No.</td>
<td>1. Rationale - O.R.C. §4757.38 &amp; O.A.C. §4757-11-03 are not contrary to the HIPAA privacy rules. Compliance with both Ohio and federal law is possible and these Sections are not an obstacle to accomplishing the purposes and objectives of the HIPAA privacy standards. Disclosures to the Counselor and Social Worker Board required under these Sections are permitted disclosures under 45 C.F.R. §164.512(d).</td>
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3. Action by Covered Entities - Covered entities (counselors and social workers) will need to comply with both Ohio law and HIPAA privacy standards related to authorization for release of psychotherapy notes. Covered entities will need to review existing release of information forms and revise them as necessary to meet HIPAA authorization form requirements. Covered entities should also review HIPAA requirements related to research and individual access to protected health information to ensure compliance with federal law.  

3. Action by Covered Entities - Covered entities must respond to Ohio Counselor and Social Worker Board requests and subpoenas for protected health information.  

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<td><strong>3. Action by Covered Entities</strong></td>
<td>Covered entities must respond to Ohio Counselor and Social Worker Board (Board) subpoenas for information.</td>
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<td>4760.13 Anesthesiology Assistants/Disciplinary Authority of State Medical Board</td>
<td>O.R.C. §4760.13 authorizes the State Medical Board of Ohio to discipline anesthesiology assistants for specific practice violations, including willfully betraying a professional confidence and inability to practice due to mental or physical illness or impairment due to substance abuse.</td>
<td>No.</td>
<td><strong>Rationale</strong> - O.R.C. §4760.13 is not contrary to HIPAA privacy rules. Compliance with both Ohio and federal law is possible and this Section is not an obstacle to accomplishing the purposes and objectives of the HIPAA privacy standards. Disclosures to the State Medical Board of Ohio required under this Section are permitted disclosures under 45 C.F.R. §164.512(d).</td>
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<tr>
<td><strong>4760.14 State Medical Board Investigations</strong></td>
<td>O.R.C. §4760.14 authorizes the State Medical Board of Ohio to investigate violations of the law governing the practice of anesthesiologist assistants and authorizes the Board to take depositions, issue subpoenas and compel the attendance of witnesses and production of documents.</td>
<td>No.</td>
<td><strong>1. Rationale</strong> - O.R.C. §4760.14 is not contrary to the HIPAA privacy rules. Compliance with both Ohio and federal law is possible and this Section is not an obstacle to accomplishing the purposes and objectives of the HIPAA privacy standards. Disclosures to the State Medical Board of Ohio required under this Section are permitted disclosures under 45 C.F.R. §164.512(d).</td>
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<tr>
<td><strong>4760.16 Reporting Requirements</strong></td>
<td>O.R.C. §4760.16 requires health care facilities, professional associations or professional liability insurers that take disciplinary actions or reach final disposition of any claims against an anesthesiology assistant to report to the State Medical Board of Ohio the name of the anesthesiology assistant, the action taken and if a facility or a professional association reports, a summary of the underlying facts leading to the action.</td>
<td>No.</td>
<td><strong>1. Rationale</strong> - O.R.C. §4760.16 is not contrary to the HIPAA privacy rules. Compliance with both Ohio and federal law is possible and this Section is not an obstacle to accomplishing the purposes and objectives of the HIPAA privacy standards. Disclosures to the State Medical Board of Ohio required under this Section are permitted disclosures under 45 C.F.R. §164.512(d).</td>
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<td>4761.03 &amp; O.A.C. 4761-10-01 Respiratory Care</td>
<td>O.R.C. §4761.03 authorizes the Ohio Respiratory Care Board to adopt rules governing standards of ethical conduct for the practice of respiratory care. O.A.C. §4761-10-01 includes as professional standards a requirement that respiratory care professionals hold as confidential all patient information and disclose such information only to other health care professionals responsible for providing care to the patient.</td>
<td>No.</td>
<td>3. Action by Covered Entities - Covered entities may be required to report protected health information of patients to the State Medical Board of Ohio as part of required reports to the Board concerning disciplinary actions taken by health care facilities against an anesthesiology assistant.</td>
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<td>4761.03 &amp; O.A.C. 4761-11-05 Respiratory Care</td>
<td>O.R.C. §4761.03 authorizes the Ohio Respiratory Care Board to adopt rules governing the conduct of hearings on licensure actions and authorizes the Board to investigate complaints of violations of the laws governing respiratory care.</td>
<td>No.</td>
<td>1. Rationale - O.R.C. §4761.03 &amp; O.A.C. §4761-11-05 are not contrary to the HIPAA privacy rules. Compliance with both Ohio and federal law is possible and these Sections are not an obstacle to accomplishing the purposes and objectives of the HIPAA privacy standards. 2. HIPAA Cites - 45 C.F.R. §§160.202, 160.203, 164.501, and 164.502. 3. Action by Covered Entities – When releasing confidential patient information, covered entities must comply with both Ohio law and HIPAA requirements.</td>
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<td>4761.031 Respiratory Care</td>
<td>O.R.C. §4761.031 authorizes the Ohio Respiratory Care Board to share information, including patient record information, it receives pursuant to investigations of violations of the law related to practice of respiratory care with other regulatory boards or law enforcement agencies.</td>
<td>No.</td>
<td>1. Rationale - O.R.C. §4761.031 is not contrary to the HIPAA privacy rules. Compliance with both Ohio and federal law is possible and this Section is not an obstacle to accomplishing the purposes and objectives of the HIPAA privacy standards. 2. HIPAA Cites - 45 C.F.R. §§160.202, 160.203, 164.501, 164.502 and 164.512. 3. Action by Covered Entities - No action needed.</td>
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<td>4762.10 Acupuncturists</td>
<td>O.R.C. §4762.10 requires acupuncturists to report a patient’s treatment progress to the referring physician and sets forth patient record</td>
<td>No.</td>
<td>1. Rationale - O.R.C. §4762.10 is not contrary to the HIPAA privacy rules. Compliance with both Ohio and federal law is possible and this Section is not an obstacle to accomplishing the</td>
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<td>maintenance and retention requirements. This Section also establishes the confidentiality of patient records.</td>
<td>No.</td>
<td>HIPAA purposes and objectives of the HIPAA privacy standards. 2. HIPAA Cites - 45 C.F.R. §§160.202, 160.203, 164.501, 164.502, 164.506 and 164.508. 3. Action by Covered Entities - No action needed.</td>
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<td>4762.13 Acupuncturists</td>
<td>O.R.C. §4762.13 authorizes the State Medical Board of Ohio to discipline acupuncturists for specific practice violations, including willfully betraying a professional confidence and inability to practice due to mental or physical illness or impairment due to substance abuse.</td>
<td>No.</td>
<td>1. Rationale - O.R.C. §4762.13 is not contrary to the HIPAA privacy rules. Compliance with both Ohio and federal law is possible and this Section is not an obstacle to accomplishing the purposes and objectives of the HIPAA privacy standards. Disclosures to the State Medical Board of Ohio required under this Section are permitted disclosures under 45 C.F.R. §164.512(d). 2. HIPAA Cites - 45 C.F.R. §§160.202, 160.203, 164.501, 164.502 and 164.512. 3. Action by Covered Entities - Covered entities must respond to State Medical Board of Ohio subpoenas for information. Covered entities that are licensees must cooperate with Board investigations and must comply with requests for mental or physical examinations when required to determine the licensee’s ability to practice.</td>
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<td>4762.14 Acupuncturists</td>
<td>O.R.C. §4762.14 authorizes the State Medical Board of Ohio to investigate violations of the law governing the practice of acupuncturists and authorizes the Board to take depositions, issue subpoenas and compel the attendance of witnesses and production of documents.</td>
<td>No.</td>
<td>1. Rationale - O.R.C. §4762.14 is not contrary to the HIPAA privacy rules. Compliance with both Ohio and federal law is possible and this Section is not an obstacle to accomplishing the purposes and objectives of the HIPAA privacy standards. Disclosures to the State Medical Board of Ohio required under this Section are permitted disclosures under 45 C.F.R. §164.512(d). 2. HIPAA Cites - 45 C.F.R. §§160.202, 160.203, 164.501, 164.502 and 164.512. 3. Action by Covered Entities - Covered entities must respond to State Medical Board of Ohio subpoenas for information.</td>
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<tr>
<td>4762.16 Acupuncturists</td>
<td>O.R.C. §4762.16 requires health care facilities, professional associations or professional liability insurers that take disciplinary actions or reach final disposition of any claims against an acupuncturist to report to the Board the name of the acupuncturist, the action taken and if a facility or professional association reports, a</td>
<td>No.</td>
<td>1. Rationale - O.R.C. §4762.16 is not contrary to the HIPAA privacy rules. Compliance with both Ohio and federal law is possible and this Section is not an obstacle to accomplishing the purposes and objectives of the HIPAA privacy standards. Disclosures to the State Medical Board of Ohio required under this Section are permitted disclosures under 45 C.F.R. §164.512(d).</td>
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<td>3. <strong>Action by Covered Entities</strong> - Covered entities may be required to report protected health information of patients to the State Medical Board of Ohio as part of required reports to the Board concerning disciplinary actions taken by health care facilities against an acupuncturist.</td>
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<td>4765.06 Emergency and Trauma Care</td>
<td>O.R.C. §4765.06 authorizes the State Board of Emergency Medical Services to establish an emergency medical services incidence reporting system to collect information about the delivery of emergency medical services in Ohio.</td>
<td>No.</td>
<td>1. <strong>Rationale</strong> - O.R.C. §4765.06 is not contrary to the HIPAA privacy rules. Compliance with both Ohio and federal law is possible and this Section is not an obstacle to accomplishing the purposes and objectives of the HIPAA privacy standards. Disclosure of protected health information pursuant to the reporting requirements under this Section are permitted disclosures under 45 C.F.R. §164.512(d).</td>
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<td>4765.12 Emergency and Trauma Care</td>
<td>O.R.C. §4765.12 requires emergency medical service organizations to implement ongoing peer review and quality assurance programs designed to improve the availability and quality of emergency medical services provided.</td>
<td>No.</td>
<td>1. <strong>Rationale</strong> - O.R.C. §4765.12 is not contrary to the HIPAA privacy rules. Compliance with both Ohio and federal law is possible and this Section is not an obstacle to accomplishing the purposes and objectives of the HIPAA privacy standards.</td>
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<td>O.A.C. 4765-9-01 Emergency and Trauma Care</td>
<td>O.A.C. §4765-9-01 establishes ethical standards of conduct for emergency medical technicians (EMTs), including a requirement that EMTs maintain the confidentiality of patient information.</td>
<td>No.</td>
<td>1. <strong>Rationale</strong> - O.A.C. §4765-9-01 is not contrary to the HIPAA privacy rules. Compliance with both Ohio and federal law is possible and this Section is not an obstacle to accomplishing the purposes and objectives of the HIPAA privacy standards.</td>
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| information. EMTs may not release a medical report or any supporting documentation, or otherwise disclose the contents of a medical report to anyone other than those authorized by law to receive them. | No. | 2. **HIPAA Cites** - 45 C.F.R. §§160.202, 160.203, 164.501 and 164.502.  
3. **Action by Covered Entities** - Release of confidential patient information by emergency medical technicians must comply with both O.A.C. §4765-9-01 and the HIPAA requirements for use and disclosure of protected health information. |
| O.R.C. Chapter 4769 Medicare Balance Billing | O.R.C. §4769.02 prohibits a health care practitioner from balance billing for any supplies or services provided to a Medicare beneficiary. O.R.C. §§4769.05-4769.07 require health care practitioners to make medical, professional, financial and business records available to the Department of Health for purposes of determining whether the practitioner has violated the balance billing prohibition. | No. | 1. **Rationale** - O.R.C. Chapter 4769 is not contrary to the HIPAA privacy rules. Compliance with both Ohio and federal law is possible and these Sections are not an obstacle to accomplishing the purposes and objectives of the HIPAA privacy standards.  
3. **Action by Covered Entities** - Covered entities must comply with Ohio’s balance billing prohibition and must comply with Ohio Department of Health requests for protected health information to the extent such information is necessary to investigate and prosecute violations. Disclosure of protected health information in this instance is a permitted disclosure under HIPAA for purposes of health care oversight activities. |
| 4779.28 Orthotics, Prosthetics, and Pedorthics | O.R.C. §4779.28 grants to the State Board of Orthotics, Prosthetics, and Pedorthics the authority to take depositions, issue subpoenas, compel attendance of witnesses and compel production of documents. | No. | 1. **Rationale** - O.R.C. §4779.28 is not contrary to the HIPAA privacy rules. Compliance with both Ohio and federal law is possible and the Section is not an obstacle to accomplishing the purposes and objectives of the HIPAA privacy standards. Disclosures to the State Board of Orthotics, Prosthetics and Pedorthics required under this Section are permitted disclosures under 45 C.F.R. §164.512(d).  
3. **Action by Covered Entities** - Covered entities are required to respond to State Board of Orthotics, Prosthetics, and Pedorthics Board subpoenas for patient information. |
<p>| 5101.27 and 5101.572 Medicaid Information | The Ohio Department of Human Services and county departments of human services must provide a Medicaid recipient access to | No. | 1. <strong>Rationale</strong> – O.R.C. §§5101.27 and 5101.572 are not contrary to the HIPAA privacy rules. Compliance with both Ohio and federal law is possible and the Section is not an obstacle to accomplishing |</p>
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| **5101.61** Reports of Abuse and Neglect of the Elderly | Physicians and other health care personnel are required to report to the county department of human services any suspicion that an adult (defined as being age 60 or older) is the subject of abuse, neglect, or exploitation. | No. | **1. Rationale** – O.R.C. §5101.61 is not contrary to the HIPAA privacy rules and compliance with both Ohio and federal law is possible. However, unlike Ohio law, federal law requires that when protected health information about an individual whom the covered entity reasonably believes to be a victim of abuse, neglect, or domestic violence is disclosed to the appropriate government authority, the entity making the disclosure must promptly inform the alleged victim that the report has been or will be made.  
**2. HIPAA cites** - 42 C.F.R §164.512.  
**3. Action by Covered Entities** - Adopt and implement policies that concurrently comply with the requirements of O.R.C. §§5101.27 and 5101.572, and 45 C.F.R. §§164.508 and 164.512. |
| **5103.16(B)** Children Placed for Foster Care or Adoption | When a child is subject to foster care or adoption, the records maintained by the entity placing the child, including information on the child's medical and mental history, are available for "separate statistics." | No. | **1. Rationale** - Associations and institutions subject to regulation under O.R.C. §5103.16(B) are not “covered entities” under 45 C.F.R. §160.103 and, therefore, are not required to comply with the HIPAA privacy standards. Even if a child placement agency is deemed to be a covered entity, O.R.C. §5103.16(B) would not be preempted because compliance with both federal and Ohio law is possible.  
**3. Action by Covered Entities** – No action needed. |
<p>| <strong>5104.011(C)(2)</strong> Day Care Centers | Health records maintained on children attending day care centers must be kept confidential, in general. | No. | <strong>1. Rationale</strong> - In the vast majority of cases, child care providers are not “covered entities” under HIPAA. Even if a child care provider could be considered a covered entity, O.R.C. §5104.011 would not |</p>
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<td>5119.81(G) Mental Institution Advisory Councils</td>
<td>The citizen's advisory council of each mental health institution has access, with consent, to patient records.</td>
<td>No.</td>
<td>be preempted because it is consistent with the privacy standards and it is possible to comply with both Ohio and federal law.</td>
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| 5120.17(K) Prisoners with Mental Illness or Mental Retardation | The records pertaining to a prisoner who is subject to institutionalization in a psychiatric hospital are confidential and cannot be disclosed except under specified circumstances, including when the inmate seeks personal access and when exchanging information with county sheriffs and mental health facilities. | No. | 1. **Rationale** - O. R. C. §5119.81 is not contrary to the HIPAA privacy standards. Compliance with both Ohio and federal law is possible and the Section is not an obstacle to accomplishing the purposes and objectives of the HIPAA standards.  
2. **HIPAA cites** - 45 C. F. R. §164.508.  
3. **Action by Covered Entities** - Adopt and implement policies that concurrently comply with the requirements of O.R.C. §5119.81 and 45 C.F.R. §164.508. |
| 5120.21(C) Medical Records of Prisoners | Separate medical records on every inmate must be kept and can be accessed once a year by an attorney or physician designated by an inmate. | No. | 1. **Rationale** - §5120.21 is not contrary to the HIPAA privacy standards. Compliance with both Ohio and federal law is possible and the Section is not an obstacle to accomplishing the purposes and objectives of the HIPAA privacy standards.  
2. **HIPAA cites** - 45 C.F.R. §164.524(a).  
3. **Action by Covered Entities** - Adopt and implement policies that comply with the requirements of 45 C.F.R. §164.524(a)(2)(ii) to ensure that access is allowed except in those cases where denial of access is authorized by federal law. |
<p>| 5120.211 Prison Quality Assurance | The committees appointed to review the quality of medical and mental health services within | No. | 1. <strong>Rationale</strong> – O.R.C. §5120.211 is not contrary to the HIPAA privacy standards. Compliance with both Ohio and federal law is |</p>
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<td>Committees</td>
<td>state prisons have access to health records. The committees' records are confidential. Aggregate statistical information may be disclosed.</td>
<td>No.</td>
<td>possible and the Section is not an obstacle to accomplishing the purposes and objectives of the HIPAA privacy standards. 2. HIPAA cites - 45 C.F.R. §§160.203, 164.501, 164.506 and 164.512. 3. Action by Covered Entities - Implement policies that comply with the requirements of O.R.C. §5120.211 and federal law.</td>
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<td>5121.04(B)(8) Reimbursement for Care of Institutionalized Persons</td>
<td>Regardless of any law on confidentiality of records, the managing officer of an institution operated by the Ohio Department of Mental Health or Ohio Department of Mental Retardation and Developmental Disabilities is required to disclose to insurers any medical information necessary to obtain reimbursement.</td>
<td>No.</td>
<td>1. Rationale – A disclosure pursuant to O.R.C. §5121.04(B) is permissible as a disclosure “required by law” in accordance with 45 C.F.R. §164.512(a). 45 C.F.R. §164.512(a) permits a covered entity to disclose protected health information if required by law, assuming the disclosure is in compliance with, and is limited to, the requirements of such law. Therefore, O.R.C. §5121.04(B) does not stand as an obstacles to accomplishing the goals of the HIPAA privacy standards. 2. HIPAA cites - 45 C.F.R. §164.512(a). 3. Action by Covered Entities - Implement policies that comply with the requirements of O.R.C. §5121.04.</td>
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<td>5122.31 Institutionalization of the Mentally Ill</td>
<td>Records pertaining to a mentally ill person subject to institutionalization by court order are confidential, except when disclosure is expressly authorized, which includes patient access to his or her own records and release of records to insurers.</td>
<td>No.</td>
<td>1. Rationale - O.R.C. §5122.31(A) permits a lesser right of access to an individual’s protected health information than is required under the HIPAA privacy standards. However, §5122.31(A) is merely another method for an individual to obtain disclosure and does not limit his or her general right of access under O.R.C. §5122.31(E). 2. HIPAA cites - 45 C.F.R. §§164.501, 164.502, 164.506, 164.508, 164.512 and 164.524. 3. Action by Covered Entities - Adopt and implement policies that comply with the requirements of O.R.C. §5122.31 and 45 C.F.R. §§164.501, 164.502, 164.506, 164.508, 164.512 and 164.524. Implement policies that grant an individual the same right to access their protected health information as provided for in the HIPAA privacy standards.</td>
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<tr>
<td>5122.32(B) Quality Assurance Records of State Mental Health Services</td>
<td>Records emanating from quality assurance activities involving services provided through the Ohio Department of Mental Health's hospitals and community programs are</td>
<td>No.</td>
<td>1. Rationale – O.R.C. §5122.32 is not contrary to the HIPAA privacy standards. Compliance with both Ohio and federal law is possible and the Section is not an obstacle to accomplishing the purposes and objectives of the HIPAA privacy standards.</td>
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| 5123.092(G) Mental Retardation Institution Advisory Councils | The citizen's advisory council of each institution under the control of the Ohio Department of Mental Retardation and Developmental Disabilities has access, with consent, to patient records. | No. | 1. Rationale – O.R.C. §5123.092 is not contrary to the HIPAA privacy standards. Compliance with both Ohio and federal law is possible and the Section is not an obstacle to accomplishing the purposes and objectives of the HIPAA privacy standards.  
3. Action by Covered Entities - Adopt and implement policies that concurrently comply with the requirements of O.R.C. §5122.32(B) and 45 C.F.R. §164.512. |
| 5123.60(E), 5123.602 and 5123.603 Ohio Legal Rights Service | The Legal Rights Service, a state-operated advocacy program for the disabled, has access to the commitment, care, treatment, and habilitation records of any person it represents. The Service's Ombudsman Section must be afforded ready access to the records of providers and must maintain the confidentiality of all of its records. | No. | 1. Rationale - O.R.C. §§5123.60(E), 5123.602 and 5123.603 are not contrary to the HIPAA privacy standards. Compliance with both Ohio and federal law is possible and these Sections are not an obstacle to accomplishing the purposes and objectives of the HIPAA privacy standards.  
3. Action by Covered Entities - Adopt and implement policies that concurrently comply with the requirements of O.R.C. §5123.092 and 45 C.F.R. §§164.506 and 164.508. |
| 5123.61(C) Reports of Abuse and Neglect of Persons with MR/DD | Physicians and other health care personnel are required to make reports of suspected abuse or neglect of persons with mental retardation and developmental disabilities. | No. | 1. Rationale - O.R.C. §5123.61 is not contrary to the HIPAA privacy standards and compliance with both Ohio and federal law is possible. However, unlike Ohio law, federal law requires that when protected health information about an individual whom the covered entity reasonably believes to be a victim of abuse or neglect is disclosed to the appropriate government authority, the covered entity making the disclosure must promptly inform the alleged victim that the report has been or will be made.  
2. HIPAA cites - 45 C.F.R. §164.512.  
3. Action by Covered Entities - Adopt and implement policies that concurrently comply with the requirements of O.R.C. §5123.61 and 45 C.F.R. §164.512. |
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| 5123.62(T) Rights of Persons with MR/DD | Persons with mental retardation and developmental disabilities have the right to confidential treatment of all information in their personal and medical records, except in circumstances when disclosure is authorized. | No. | 1. **Rationale** - See preemption analysis for O.R.C. §§5123.89 and 5126.044.  
3. **Action by Covered Entities** - Adopt and implement policies that comply with the requirements of O.R.C. §5123.62(T). |
| 5123.89 Institutionalization of the Mentally Retarded | Records pertaining to a mentally retarded person subject to institutionalization by court order are confidential and generally cannot be disclosed. | No. | 1. **Rationale** - O.R.C. §5123.89 is not contrary to the HIPAA privacy standards. Compliance with both Ohio and federal law is possible and the Section is not an obstacle to accomplishing the purposes and objectives of the HIPAA privacy standards.  
3. **Action by Covered Entities** - Adopt and implement policies that comply with the requirements of 45 C.F.R. §§164.502 and 164.524. Ensure that an individual is granted access to their protected health information to the extent required under the HIPAA privacy standards. |
| 5126.044 Local Services for Mental Retardation and Developmental Disabilities | A person is prohibited from disclosing any information about a person who receives services through a county board of mental retardation and developmental disabilities. | No. | 1. **Rationale** - O.R.C. §5126.044 is not contrary to the HIPAA privacy standards. Compliance with both Ohio and federal law is possible and the Section is not an obstacle to accomplishing the purposes and objectives of the HIPAA privacy standards.  
3. **Action by Covered Entities** - Adopt and implement policies that concurrently comply with the requirements of O.R.C. §5126.044 and the HIPAA privacy standards. |
| 5139.05(C) and (D) Department of Youth Services | Records, including medical records, that are maintained by the Ohio Department of Youth Services pertaining to the children in its custody cannot be accessed by anyone other than the Department's employees and the court. | No. | 1. **Rationale** - §5139.05 is not contrary to the HIPAA privacy standards. Compliance with both Ohio and federal law is possible and the Section is not an obstacle to accomplishing the purposes and objectives of the HIPAA privacy standards.  
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<tr>
<td>5153.17 Public Children Services Agencies</td>
<td>Public children services agencies are required to keep written records of the care, training and treatment afforded children and to keep the records confidential.</td>
<td>No.</td>
<td>3. <strong>Action by Covered Entities</strong> – Adopt and implement policies that concurrently comply with the requirements of O.R.C. §5139.05 and 45 C.F.R. §164.512(k)(5).</td>
</tr>
<tr>
<td>Ohio Rules of Civil Procedure 26 &amp; 45 and Ohio Rules of Criminal Procedure 16 &amp; 17</td>
<td>Rules regarding discovery and subpoenas in both civil and criminal actions.</td>
<td>See individual sections for preemption determinations.</td>
<td>Although each of these rules is discussed in greater detail below and in Part 2, we have also prepared a more general discussion of discovery and subpoenas, which appears in Part 2 immediately before the preemption analysis for Civil Rule 26.</td>
</tr>
<tr>
<td>Ohio Rule of Civil Procedure 26 Discovery</td>
<td>Parties may obtain discovery regarding any matter that is not privileged, which is relevant to the subject matter of the pending action. Allows for the issuance of protective orders by the courts.</td>
<td>No.</td>
<td>1. <strong>Rationale</strong> - Ohio Civil Rule 26 is not contrary to the HIPAA privacy rules. Compliance with both Ohio and federal law is possible, and the Section is not an obstacle to accomplishing the purposes and objectives of the HIPAA privacy standards. Furthermore, HIPAA regulations contain a specific provision that allows a covered entity to comply with discovery requests. However, covered entities need to be mindful of the HIPAA requirement to make reasonable efforts to notify the individual in accordance with 45 C.F.R. §164.512(e)(iii) or to seek a qualified protective order in accordance with 45 C.F.R. §164.512(e)(iv).</td>
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<td>2. <strong>HIPAA cites</strong> - 45 C.F.R. §164.512(e).</td>
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<td>3. <strong>Action by Covered Entities</strong> - Covered entities must respond to a subpoena, discovery request or other lawful order if the covered entity either receives satisfactory assurance (as defined by the HIPAA privacy rules) from the party seeking the information that reasonable efforts have been made by such party to ensure that the individual who is subject of the protected health information has been given notice, or the party seeking the information has made a reasonable effort to secure a qualified protective order (as defined by the HIPAA privacy rules) or the covered entity takes comparable steps.</td>
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<td>Ohio Rule of Civil Procedure 45</td>
<td>The courts may quash or modify subpoenas that require the disclosure of privileged or otherwise protected matter.</td>
<td>No.</td>
<td>1. <strong>Rationale</strong> - Ohio Rule of Civil Procedure 45 provides protections to persons subject to a subpoena. Through Rule 45, a covered entity receives protection from disclosing protected health information that is privileged under state law (even if the covered entity could permissibly disclose the protected health information under the HIPAA privacy standards). Nevertheless, the HIPAA privacy standards are not contrary to Rule 45 because the HIPAA privacy standards do not require disclosure of protected health information in response to a subpoena even when the HIPAA privacy standards permit such disclosure. To the extent that Rule 45 allows (and Ohio law on privilege requires) a covered entity to refuse disclosure of protected health information when 45 C.F.R. §§164.512(e) and 164.512(f) would permit such disclosure, state law is more stringent and Ohio law on privilege (as invoked through Rule 45) will control. Conversely, when protected health information is not privileged under Ohio law but is subpoenaed in a manner inconsistent with the procedures set forth in 45 C.F.R. §§164.512(e) and 164.512(f), Rule 45 affords protection from disclosing the information. A covered entity may use Rule 45(C)(2)(b) to object to the subpoena or Rule 45(C)(3)(b) to quash the subpoena on the grounds that the subpoena requires disclosure of information “otherwise protected” by the HIPAA privacy standards. Therefore, Rule 45 is not preempted.</td>
</tr>
<tr>
<td>Ohio Rule of Criminal Procedure 16</td>
<td>The court may order defendant to provide reports of physical or mental examinations under</td>
<td>No.</td>
<td>1. <strong>Rationale</strong> - Ohio Rule of Criminal Procedure 16 is consistent with the HIPAA privacy standards and compliance with both Ohio</td>
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3. **Action by Covered Entities** - Covered entities should develop policies and procedures governing how to respond to subpoenas requesting protected health information. The policies and procedures should take into account Ohio laws on privilege, 45 C.F.R. §§164.512(e) and 164.512(f), and Rule 45, so as to use Rule 45 effectively and appropriately to object to subpoenas seeking an impermissible disclosure of privileged material (regardless of whether such could be permissibly disclosed under HIPAA) and to object to subpoenas seeking an impermissible disclosure of protected health information under HIPAA (regardless of whether such could be permissibly disclosed under state law on privilege).
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<td>Discovery and Inspection</td>
<td>certain circumstances.</td>
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<td>and federal law is possible.</td>
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<td>3. Action by Covered Entities - Adopt and implement policies that comply with the requirements of Ohio Rule of Criminal Procedure 16. Ensure that disclosures are limited to what is expressly authorized by the court order.</td>
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<td>Ohio Rule of Criminal Procedure 17 Subpoena</td>
<td>The courts may quash or modify subpoenas if compliance would be unreasonable or oppressive.</td>
<td>No.</td>
<td>1. Rationale - Ohio Rule of Criminal Procedure 17 is consistent with the HIPAA privacy standards and compliance with both Ohio and federal law is possible.</td>
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<tr>
<td>3. Action by Covered Entities - Adopt and implement policies that comply with the requirements of Ohio Rule of Criminal Procedure 17 and 45 C.F.R. §164.512(e)(1). Ensure that disclosures pursuant to a non-court ordered subpoena comply with the additional requirements set forth in 45 C.F.R. §164.512(e)(1)(ii).</td>
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**PART 2 – SUPPLEMENTAL ANALYSIS & COMMENT**

**O.R.C. §119.09**

**Adjudication Hearing**

**Ohio Law:** O.R.C. §119.09 authorizes the agency empowered to conduct the adjudication hearing to require the attendance of a witness or the production of any books, records and papers it desires via discretionary use of its subpoena powers. In addition to obtaining whatever information it deems necessary, the agency is required to issue a subpoena for a witness or a subpoena duces tecum at the request of any party receiving notice of the hearing as required by §119.07. O.R.C. §119.01 defines a hearing as a "…public hearing by any agency in compliance with procedural safeguards afforded by Sections 119.01 to 119.13 of the Revised Code.” Thus, any protected health information disclosed during the hearing would not be maintained confidentially.

**Preemption:** O.R.C. §119.09 is not contrary to HIPAA privacy rules, nor is it an obstacle to the accomplishment and execution of the HIPAA privacy standards. While compliance with both Ohio and federal law is possible, further action will have to be taken by covered entities in order to comply with both Ohio law and the HIPAA privacy standards.

**Rationale:** In the strictest sense of the definition, O.R.C. §119.09 is not contrary to the HIPAA privacy regulations. It is possible to comply with both laws and Ohio law is not an obstacle to the accomplishment and execution of the HIPAA privacy principles. Thus, the Ohio law is not preempted by HIPAA. Notwithstanding this, it is important for covered entities to be advised regarding the more stringent privacy protections contained in HIPAA that pertain to the disclosure of protected health information for judicial and administrative hearings. Specifically, prior to the release of protected health information requested pursuant to subpoena, the covered entity must receive satisfactory assurance that the party seeking the information has complied with the HIPAA privacy regulations for the disclosure of protected health information in judicial and administrative hearings. In the alternative, the covered entity may disclose the protected health information pursuant to subpoena if the covered entity itself complies with the HIPAA privacy regulations.

**Action by Covered Entities:** Covered entities must respond to a subpoena for a witness or a subpoena duces tecum issued by the agency conducting the adjudication hearing. However, a covered entity may only disclose protected health information in response to the subpoena if it has received satisfactory assurance that the party seeking the information has notified the individual in accordance with 45 C.F.R. §164.512(e)(ii)(A) or that the party seeking the information has made reasonable efforts to secure a qualified protective order in accordance with 45 C.F.R. §164.512(e)(ii)(B). In the alternative, the covered entity may disclose the protected health information in response to a subpoena issued under O.R.C. §119.09 if the covered entity makes reasonable efforts to notify the individual in accordance with 45 C.F.R. §164.512(e)(iii) or to seek a qualified protective order in accordance with 45 C.F.R. §164.512(e)(iv).

**Exception Determination/Other Remedy:** Not required.
O.R.C. §121.37
Ohio Family and Children First Program

Ohio Law: O.R.C. §121.37 creates the Ohio Family and Children First Cabinet Council and empowers each board of county commissioners to establish a county family and children first council. In both levels of council, the membership is to be composed of representatives of the various child-serving systems. It is therefore possible that a representative entity to either the Cabinet Council or to the county family and children first council could itself be a covered entity. However, this analysis only addresses the statutory provision creating the Cabinet level and county level councils as a whole.

The purpose of the Cabinet and county councils is to help families seeking governmental services. By statute, the Cabinet Council may hold meetings and maintain records of the meetings, except that records identifying individual children are confidential and shall be disclosed only as provided by law. Consistent with this provision, the Ohio Administrative Code contains the following rule requiring that “…case records held by the cabinet council and each local cluster and/or county council are confidential. Each member of a cluster and/or council shall follow the applicable confidentiality procedures when exercising its responsibilities. Nongovernmental parties to state or local cluster and/or council proceedings shall maintain the confidentiality of case records.” The identical provision appears in O.A.C. §§3701-65-01 (Board of Health), 5101:2-39-50 (County Department of Jobs and Family Services or Children Service’s Board depending upon which entity carries out children’s protective services), 5122:2-1-10 (Department of Mental Health), 5123:2-1-10 (Board of Mental Retardation and Developmental Disabilities), and 3793:1-1-03 (Board of Alcohol and Drug Addiction Services).

In conducting their duties, neither the Cabinet Council nor any of the county councils have investigative or subpoena powers. Accordingly, a covered entity cannot be compelled by the Cabinet Council or the county council to disclose protected health information under Ohio law. The discretionary disclosure of protected health information by a covered entity to the Cabinet or county council would necessarily be controlled by the applicable state law which would have to be compared to the HIPAA privacy regulations for preemption determination.

Preemption: No.

Rationale: O.R.C. §121.37 is not contrary to HIPAA privacy rules. Compliance with both Ohio and federal law is possible. Because it does not compel the disclosure of protected health information and because it maintains the confidentiality of the individual child, this provision is not an obstacle to the accomplishment and execution of the purposes and objectives of the HIPAA privacy standards.

Action by Covered Entities: In conducting its duties, neither the Cabinet Council nor any of the county councils have investigative or subpoena powers. Accordingly, a covered entity cannot be compelled by the Cabinet Council or the county council to disclose protected health information under Ohio law. The discretionary disclosure of protected health information by a covered entity to the Cabinet or county council would necessarily be controlled by the applicable
Exception Determination/Other Remedy: Not Required.

Exception Determination:

The law which would have to be compared to the HIPAA Privacy General Rules for preemption is:

Not Required.
Ohio Law: Under these statutes, records of the boards governing the state retirement systems are open to public inspection, except for an individual’s personal history record, which typically includes member’s, former member’s, contributor’s, former contributor’s, or other system retirant’s or beneficiary’s name, address, telephone number, social security number, record of contributions, correspondence with the board, status of any application for benefits, and any other information deemed confidential by the board. These statutes are substantially the same and impose the same requirements on the public employees retirement board, the board of trustees of the Ohio police and fire pension fund, the state teachers retirement board, school employees retirement board, and the state highway patrol retirement board. Slight variations in terminology exist with respect to each board’s description of “personal history record,” but such discrepancies are insignificant for purposes of analysis here. These statutes also provide that medical records and recommendations are privileged, except that the individual may authorize release to the individual’s personal physician, attorney, or other authorized agent; however, no such authorization is necessary where disclosure is made to the board assigned physician for purposes of board administration. In addition, the board may furnish information without authorization for certain other public purposes, including where a member, former member, contributor, former contributor, or retirant is ordered to make restitution for a sexual assault, is convicted of or pleads guilty to the offense of theft in public office, upon the written request of the prosecutor, or pursuant to a court order or administrative order with respect to child support issues.

Preemption: No.

Rationale: These statutes are not contrary to the HIPAA privacy rules. Compliance with both Ohio and federal law is possible. Because these statutes do not compel the disclosure of protected health information without authorization of the individual that is the subject of the information or for purposes for which no such authorization is required, this provision is not an obstacle to accomplishing the purposes and objectives of the HIPAA privacy standards.

Exception Determination/Other Remedy: Not required.
Ohio Law: O.R.C. §149.43(B) requires that public records be made available for inspection by the public and that public offices provide copies of public records upon request by any person, with some limitations. O.R.C. §149.43(A)(1) defines “public record” as “any record that is kept by any public office, including, but not limited to, state, county, city, village, township, and school district units, except that ‘public record’ does not mean any of the following: (a) Medical records…”.

O.R.C. §149.431 provides that any government entity or agency and any nonprofit corporation or association that enters into a contract or agreement for services with the federal government, a unit of the state government, or a political subdivision or taxing unit of Ohio shall keep financial records relating to these services. The contract or agreement and these records are “public records” as used in O.R.C. §149.43. However, O.R.C. §149.431(A)(1) and (A)(2) exempts protected health information from inclusion in these records. O.R.C. §149.431(A) states: “Such contract or agreement and such financial records shall be deemed to be public records… except that: (1) Any information directly or indirectly identifying a present or former individual patient or client or his or her diagnosis, prognosis, or medical treatment, treatment for mental or emotional disorder, treatment for mental retardation or a developmental disability, treatment for drug abuse or alcoholism, or counseling for personal or social problems is not a public record; (2) If disclosure of the contract or agreement or financial records is requested at a time when confidential professional services are being provided to a patient or client whose confidentiality might be violated if disclosure were made at that time, disclosure may be deferred if reasonable times are established when the contract or agreement or financial records will be disclosed.”

Preemption: No. O.R.C. §§149.43 and 149.431 are not contrary to the HIPAA privacy standards. Compliance with both the Ohio Revised Code and the HIPAA privacy standards is possible. O.R.C. §149.43 and O.R.C §149.431 are not preempted by HIPAA.

Rationale: Nothing in the HIPAA privacy standards requires protected health information or other medical information to be considered a public record or available for public inspection. The main purpose of O.R.C. §§149.43 and 149.431 is to make information kept by public offices available for public inspection. However, regarding protected health information, O.R.C. §§149.43 and 149.431 specifically exclude medical information entirely from inclusion in the term “public records.” As public offices are instructed not to consider medical information to be public records, public offices should use and disclose medical information in accordance with other applicable state and federal laws including the HIPAA privacy standards. In relation to protected health information, O.R.C. §§149.43 and 149.431 serve only to make clear that disclosure of protected health information is not mandated by these state laws and thereby restrict access to protected health information. The statutes are, therefore, entirely consistent with the HIPAA privacy standards. Because these state laws are not contrary to the HIPAA privacy standards, O.R.C. §§149.43 and 149.431 are not preempted. 45 C.F.R. §160.203.
Action by Covered Entities: For entities that are both “public offices” under Ohio law and covered entities under HIPAA, adopt and implement policies to ensure that protected health information is excluded from “public records” as provided in O.R.C. §§149.43 and 149.431 and not improperly disclosed under the HIPAA privacy standards. For covered entities that are not public offices but that have business associates that are public offices under Ohio law, include a provision in the business associate agreement that protected health information will be excluded from public records as provided in O.R.C. §§ 149.43 and 149.431 and not improperly disclosed under the HIPAA privacy standards.

Exception Determination/Other Remedy: Not required.
O.R.C. §§173.20(A), (B) and (C) and 173.22
Long-Term Care Ombudsman Program

Ohio Law: O.R.C. §173.20 grants a representative of the state office of long-term care ombudsman program access to any medical records of residents or recipients of a long-term care facility for the investigation of a complaint. The statute outlines what consents, if any, are required by the representative, which vary depending on the facts of the case. Additionally, O.R.C. §173.20(G) grants a representative of the state office of long-term care ombudsman program access to any record of a state or local government agency or entity relevant to a complaint or investigation conducted by a representative. Although not specified, this access presumably includes access to medical information contained in the records of a state or local government agency or entity.

O.R.C. §173.22 requires the state office of long-term care ombudsman to perform its functions in a manner protecting the confidentiality of complainants, individuals providing information about a complaint, public entities, and confidential records of residents or recipients. Further, O.R.C. §173.22 provides that the investigative files, including any proprietary records of a long-term care provider contained in the files, of the office of long-term care ombudsman are not public records subject to inspection or copying under O.R.C. §149.43.

Preemption: No. 45 C.F.R. §160.203 provides that the HIPAA privacy standards will preempt a contrary state law except when “the provision of state law…provides for the reporting of disease, injury, child abuse, birth, or death, or for the conduct of public health surveillance, investigation or intervention.”

Rationale: O.R.C. §§173.20 and 173.22 are statutes providing for “the conduct of public health surveillance, investigation or intervention” and therefore not preempted by HIPAA even if the HIPAA privacy standards are contrary to these state laws.

Moreover, the HIPAA privacy standards are consistent with O.R.C. §§173.20 and 173.22 in that they permit a covered entity, without requiring consent, authorization or opportunity to agree or object, to disclose protected health information “to a health oversight agency for oversight activities authorized by law, including audits; civil, administrative, or criminal investigations; inspections; licensure or disciplinary actions; civil, administrative, or criminal proceedings or actions; or other activities necessary for appropriate oversight of: (1) The health care system; (2) Government benefit programs for which health information is relevant to beneficiary eligibility; (3) Entities subject to government regulatory programs for which health information is necessary for determining compliance with program standards; or (4) Entities subject to civil rights laws for which health information is necessary for determining compliance.” 45 C.F.R. §164.512(d).

Action by Covered Entities: Long-term care facilities (and other entities subject to O.R.C. §§173.20 and 173.22) should comply with O.R.C. §§173.20 and 173.22, including using or disclosing protected health information when required by O.R.C. §§173.20 and 173.22 in accordance with these statutes.

Exception Determination/Other: Not required.
Ohio Law: O.R.C. §313.10 requires coroners to make all coroners’ records public.

Preemption: No. Coroners are not covered entities under HIPAA’s privacy regulations, so HIPAA’s privacy regulations do not apply to coroners’ records. Even if coroners are interpreted to be covered entities, 42 C.F.R. § 160.203(c) provides that State laws concerning the reporting of death and/or reporting for the conduct of public health surveillance, investigation or intervention are not preempted by HIPAA’s privacy regulations. If the disclosure goes beyond what is permitted under 42 C.F.R. § 160.203(c), a coroner would be permitted to disclose his/her records because such disclosure is “required by law” and therefore permissible under 42 C.F.R. § 164.512(a). Therefore, compliance with both Ohio and Federal law is possible, and O.R.C. § 313.10 does not stand as an obstacle to accomplishing the goals of HIPAA.

Rationale: A physician (acting as a coroner) would not be a covered entity because in performing such activities he/she is not a “health care provider” as defined under HIPAA’s privacy regulations because he/she is arguably not providing “physician services” as defined under HIPAA’s privacy regulations. The privacy regulations discuss coroners in limited detail. Under 42 C.F.R. § 164.512(g), the privacy regulations allow covered entities to disclose protected health information to coroners for the “purpose of identifying a deceased person, determining a cause of death or other duties authorized by law.” The second sentence of 42 C.F.R. § 164.512(g), however, seems to intimate that coroners may be covered entities by stating that a “covered entity that also performs the duties of a coroner or medical examiner may use protected health information” for identifying a deceased person, determining a cause of death or other duties authorized by law. Notwithstanding this ambiguous language, we believe the best interpretation is that while a physician is a covered entity while performing physician services, he/she is not a covered entity with respect to the activities he/she undertakes as a coroner.

Even if the Department of Health and Human Services takes the position that a coroner is a covered entity while acting as a coroner, O.R.C § 313.10 is not preempted by HIPAA’s privacy regulations. Under HIPAA’s privacy regulations, a State law that provides for the “reporting” of death and/or reporting for the conduct of public health surveillance, investigation or intervention is not preempted by HIPAA’s privacy law. (42 C.F.R. § 160.203(c)). Because the disclosures required by O.R.C. § 313.10 would likely be for the purpose of reporting death and potentially for the conduct of public health surveillance, this State law would not be preempted by HIPAA’s privacy regulations even if coroners are intended to be covered entities.

Finally, additional support for the position that O.R.C § 313.10 is not preempted by HIPAA’s privacy regulations comes from 42 C.F.R. § 164.512(a), which allows for use and disclosure of protected health information without a person’s authorization if such use or disclosure is required by law.¹ 42 C.F.R. § 164.512(a) specifically anticipates and allows for the use and disclosure of

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¹ The preamble to HIPAA’s privacy regulations specifically discusses the application of 42 C.F.R. § 160.512(a). In essence, the preamble to HIPAA’s privacy regulations indicates that the privacy regulations will not supersede any state law requiring use or disclosure of protected health information (see 65 Fed. Reg. 82524, “nothing in the final rule provides authority for a covered entity to restrict or refuse to make a use or disclosure mandated by other law”). Further, under the heading of “Other Mandatory Federal or State Laws,” the preamble
protected health information by covered entities if required by law as long as the use and
disclosure complies with and is limited to the relevant requirements of such law.² The phrase
“required by law” is defined in 42 C.F.R. § 164.501 as a “mandate contained in law that compels
a covered entity to make a use or disclosure of protected health information and that is
enforceable in a court of law . . . including statutes or regulations that require the production of
information.” The preamble to HIPAA’s privacy regulations specifically indicates that “law”
includes State law (including common law and statutory law). 65 Fed. Reg. 82668.

**Action by Covered Entities:** No additional actions need be taken to comply with HIPAA’s
privacy regulations. Coroners simply need to comply with the requirements of O.R.C. § 313.10
by making the coroner’s records publicly available.

**Exception Determination/Other Remedy:** Not required because the preamble to the final
HIPAA privacy regulations specifically states that “We clarify that no Secretarial determination
is required for activities that fall into one of the statutory carve-outs [including 42 C.F.R. §.

² The preamble to the final HIPAA privacy regulations states that “In Sec. 164.512(a) of the final rule, we
retain the proposed approach, and we permit covered entities to comply with laws requiring the use or disclosure of
protected health information, provided the use or disclosure meets and is limited to the relevant requirements of such
Ohio Law: O.R.C. §§ 313.12 and 313.121(B), in relevant parts, require those persons (including covered entities such as physicians and hospitals) who, through the performance of their duties, obtain knowledge of the time, place, manner, and circumstances of a violent, suspicious, unusual or sudden death to report those facts to the coroner’s office.

O.R.C. § 313.121 requires the coroner to release the results of the autopsies resulting from the deaths of apparently healthy children under the age of two to (i) the health department (ii) the deceased child’s parents upon the parents’ request, and (iii) to the deceased child’s physician at the parents’ request.

Preemption: No. O.R.C. §§ 313.12 and 313.121 are not preempted by HIPAA’s privacy regulations because 42 C.F.R. § 160.203(c) specifically excludes from preemption State laws providing for reporting of injury, child abuse, or death and/or reporting for the conduct of public health surveillance, investigation or intervention. For the reasons described in the analysis of O.R.C. § 313.10, the provisions of O.R.C. § 313.121(D) that concern disclosures by coroners will not be preempted because coroners are not covered entities. Alternatively, such disclosures are permissible under 42 C.F.R. §§ 164.512(a).

Rationale: O.R.C. § 313.12 and 313.121(B) are not subject to preemption because they provide for reporting of injury, child abuse, or death and/or reporting for the conduct of public health surveillance, investigation or intervention. State laws that concern such types of disclosures are explicitly exempted from HIPAA preemption under 42 C.F.R. § 160.203(c). Further, the disclosures to a coroner required under O.R.C. § 313.12 are permissible under 42 C.F.R. § 164.512(g), which explicitly allows disclosures by covered entities to coroners for the “purpose of identifying a deceased person, determining a cause of death or other duties authorized by law.”

If a coroner is also a covered entity, the disclosures required under O.R.C. § 313.121(D) are permissible by 42 C.F.R. §§ 164.512(a) because 42 C.F.R. § 164.512(a) permits a covered entity to disclose protected health information if required by law as long as the disclosure is in compliance with and is limited to the requirements of ORC § 313.121(D). Therefore, compliance with both Ohio and Federal law is possible, and O.R.C. §§ 313.12 and 313.121 do not stand as obstacles to accomplishing the goals of HIPAA.

Action by Covered Entities: If disclosures are permissible under 42 C.F.R. § 164.512(g), covered entities will need to make reasonable efforts to ensure that the protected health information provided under O.R.C. §§ 313.12 and 313.121 is the minimum amount necessary to fulfill the purpose of the disclosure. Thus, the covered entity needs to establish and follow policies and procedures for ensuring that the disclosure of information is limited to the minimum amount necessary for the stated purpose of O.R.C. §§ 313.12 and 313.121.

Exception Determination/Other Remedy: Not required.
Ohio Law: O.R.C. § 313.19 mandates that the coroner’s verdict is the legally accepted cause of death unless, after a hearing, the county common pleas court directs the coroner to change the verdict. This statute perfunctorily mentions that the death certificate is filed with the division of vital statistics.

Is Statute Preempted: No.

Rationale: This statute does not deal with the use of disclosure of protected health information by covered entities. We recommend removing this statute from the analysis.

Action by Covered Entities: None.

Exception Determination/Other Remedy: Not required.
Ohio Law: O.R.C. § 339.77, in relevant part, allows the director of health or the director’s authorized agent to access the medical records of any patient participating in a county’s tuberculosis program in order to verify the information submitted to the director to justify financial assistance for the program.

Preemption: No. A disclosure pursuant to O.R.C. § 339.77 would not be preempted by HIPAA’s privacy regulations under 42 C.F.R. § 160.203(c), which excepts from preemption state laws that provide for the conduct of public health surveillance, investigation or intervention. Further, HIPAA’s privacy regulations are not inconsistent with O.R.C. § 339.77 because 42 C.F.R. § 164.512(d) allows for disclosure of protected health information to health oversight agencies for use in audits. Therefore, compliance with both Ohio and Federal law is possible, and O.R.C. § 339.77 does not stand as an obstacle to accomplishing the goals of HIPAA.

Rationale: Because a disclosure made pursuant to O.R.C. § 339.77 is for the purpose of public health surveillance, it should not be subject to preemption because of 42 C.F.R. § 160.203(c), which excepts from preemption state laws that provide for the conduct of public health surveillance, investigation or intervention. Even if it is determined that 42 C.F.R. § 160.203(c) does not apply, O.R.C. § 339.77 is permissible under 42 C.F.R. § 164.512(d), which specifically allows for disclosure of protected health information to health oversight agencies for use in audits. Assuming that the director of health is not a covered entity, the minimum necessary standard will apply to disclosures made pursuant to O.R.C. § 339.77 (and permissible under 42 C.F.R. § 164.512(d)).

Action by Covered Entities: Covered entities that hold the medical records of patients participating in a county’s tuberculosis program may, in accordance with 42 C.F.R. § 164.512(d) and O.R.C. § 339.77, disclose the patient’s medical records to the director or the director’s agent if they so request in order to verify the accuracy of the information submitted to justify the program. Covered entities will need to make reasonable efforts to ensure that the protected health information provided under O.R.C. § 339.77 is the minimum amount necessary to fulfill the purpose of the disclosure. Thus, the physician needs to establish and follow policies and procedures for ensuring that the disclosure of information is limited to the minimum amount necessary for the stated purpose of O.R.C. § 339.77. Covered entities also need to comply with the verification requirements of 42 C.F.R § 164.514(h), which allows covered entities to rely on requests for disclosures made in writing on appropriate government letterhead or oral requests for disclosures by a person with appropriate credentials (e.g., an agency identification badge, official credentials or other proof of government status).

Exception Determination/Other Remedy: Not required.
Ohio Law: O.R.C. § 339.81, in relevant part, essentially provides immunity to physicians and hospitals that disclose information concerning tuberculosis patients to the county or district tuberculosis control unit. Further, O.R.C. § 339.81 requires all information with respect to tuberculosis cases acquired by public health officials to be confidential and used only for enumerated purposes to control tuberculosis.

Preemption: No.

Rationale: Because a disclosure made pursuant to O.R.C. § 339.81 is for the purpose of public health surveillance, it is not subject to preemption because of 42 C.F.R. § 160.203(c), which excepts from preemption state laws that provide for the conduct of public health surveillance, investigation or intervention. In addition, no preemption exists because HIPAA’s privacy regulations are not inconsistent with O.R.C. § 339.81. HIPAA’s privacy regulations (42 C.F.R. § 164.512(b)) specifically allow for disclosure of protected health information without the patient’s authorization to public health authorities for use in public health activities such as controlling disease. Therefore, compliance with both Ohio and Federal law is possible, and O.R.C. § 339.81 does not stand as an obstacle to accomplishing the goals of HIPAA.

Action by Covered Entities: Covered entities may, in compliance with HIPAA, disclose protected health information to public health authorities for use in public health activities such as those contemplated by O.R.C. § 339.81, subject to the minimum necessary standards of HIPAA’s privacy regulations. Covered entities also need to comply with the verification requirements of 42 C.F.R § 164.514(h), which allows covered entities to rely on requests for disclosures made in writing on appropriate government letterhead or oral requests for disclosures by a person with appropriate credentials (e.g., an agency identification badge, official credentials or other proof of government status).

Exception Determination/Other Remedy: Not required.
O.R.C. § 339.82(C)
Duties of Individuals with Tuberculosis

Ohio Law: O.R.C. § 339.82(C) requires individuals with active tuberculosis who desire to travel or relocate to notify their local tuberculosis control unit prior to doing so. That unit must then notify the proper public health authorities of the individual’s intended destination.

Preemption: No. The statute does not govern covered entities. Even if the Department of Health or a county/district tuberculosis control unit is determined to be a covered entity, O.R.C. § 339.82(C) would not be preempted because of 42 C.F.R. § 160.203(c), which excepts from preemption state laws that provide for the conduct of public health surveillance, investigation or intervention. Therefore, compliance with both Ohio and Federal law is possible, and O.R.C. § 339.82(C) does not stand as an obstacle to accomplishing the goals of HIPAA.

Rationale: O.R.C. § 339.82(C) requires disclosure of protected health information by the individual who is the subject of the information and by public health agencies, neither of which are covered entities under 42 C.F.R. § 160.103 and are thus not regulated by HIPAA. Additionally, even if the Department of Health or a county/district tuberculosis control unit is a covered entity, O.R.C. § 339.82(C) would not be preempted because it concerns disclosures that are made for the conduct of public health surveillance, and such disclosures are expressly permissible under 42 C.F.R. § 164.512(b). Therefore, compliance with both Ohio and Federal law is possible.

Action by Covered Entities: Assuming that a covered entity is implicated by O.R.C. § 339.82, the disclosures would be permissible under 42 C.F.R. § 164.512(b), and the covered entity will need to make reasonable efforts to ensure that the protected health information provided under O.R.C. § 339.82 is the minimum amount necessary to fulfill the purpose of the disclosure. Thus, the covered entity needs to establish and follow policies and procedures for ensuring that the disclosure of information is limited to the minimum amount necessary for the stated purpose of O.R.C. § 339.82.

Exception Determination/Other Remedy: Not required.
SUPPLEMENTAL MEMORANDUM

Ohio Law:  O.R.C. §1337.13(A)(3) provides that, except to the extent that the principal limits the right, when acting pursuant to a durable power of attorney for health care, the attorney in fact has the same right as the principal to receive information about proposed health care, to review health care records, and to consent to the disclosure of health care records.  O.R.C. §1337.17 prescribes the form of a durable power of attorney for health care and associated disclosure notice to the principal.

Preemption:  No.  The HIPAA privacy standards only preempt contrary state law.  O.R.C. §§1337.13(A)(3) and 1337.17 are not contrary to HIPAA because compliance with both Ohio and federal law is possible and the Ohio statutory Sections do not stand as an obstacle to accomplishing the objectives of the federal privacy laws.

Rationale:  O.R.C. §1337.13(A)(3) is consistent with the goals of the HIPAA privacy standards primarily because 45 C.F.R. §164.502(g) specifically requires covered entities to treat a personal representative of an individual as the individual for all purposes of the HIPAA statute.  Furthermore, 45 C.F.R. §164.502(g)(2) provides that if under applicable law a person has authority to act on behalf of an individual in making decisions related to health care, a covered entity must treat such person as a personal representative under HIPAA. Therefore, it appears under applicable Ohio law that an attorney in fact under a durable power of attorney must be treated as a personal representative under HIPAA.

HIPAA also provides an implementation specification in cases of abuse, neglect and endangerment.  45 C.F.R. §164.502(g)(5) provides that notwithstanding a state law or any requirement of this paragraph to the contrary, a covered entity may elect not to treat a person as the personal representative of an individual in cases where the covered entity has a reasonable belief that the purported personal representative has subjected the individual to domestic violence, abuse or neglect or if treating such person as the personal representative could endanger the individual.  While at first blush this provision may appear to allow a restriction to disclosure under HIPAA that is not provided for under state law, O.R.C. §1337.16(B)(1) provides, in relevant part, that an attending physician of a principal or a health care facility in which a principal is confined, may refuse to comply or allow compliance with the instructions of an attorney in fact under a durable power of attorney for health care on the basis of the matter of conscience, or on another basis.  Therefore, it appears that Ohio law is not contrary to the permissive limitation under the federal HIPAA law with regard to abuse, neglect and endangerment situations, as those bases may be used as a rationale under Ohio law to refuse to comply with the instructions of the attorney in fact/personal representative.

Action by Covered Entities:  Covered entities may treat the attorney in fact of an individual as a personal representative, and thus disclose health information to the attorney in fact.

Exemption Determination/Other Remedy:  Not required.
Ohio Law: O.R.C. §1347.08(A)(2) provides that every state or local agency that maintains a personal information system, upon the request and proper identification of any person who is the subject of personal information in the system, shall permit the person or the person’s legal guardian or an attorney who presents a signed written authorization made by the person to inspect all personal information in the system of which the person is a subject. The statute provides an exception relating to medical, psychiatric or psychological information with regard to a person if a physician, psychiatrist or psychologist determines for the agency that the disclosure of such information is likely to have an adverse effect on the person, in which case the information is to be released to a physician, psychiatrist or psychologist designated by the person or the person’s legal guardian.

Preemption: No. The HIPAA privacy standards only preempt contrary provisions of state law. O.R.C. §1347.08(A)(2) is not contrary because compliance with both state and federal law is possible and state law does not stand as an obstacle to accomplishing the objectives of HIPAA. In addition, the HIPAA privacy standards only apply to covered entities. In most cases, the state and local agencies will likely not fit the definition of covered entity under HIPAA.

Rationale: First, HIPAA only applies to covered entities. Covered entities include only health care providers, health care clearinghouses, and health plans. Based on the definitions contained in 45 C.F.R. §160.103, it does not appear that a state or local agency, as defined under O.R.C. §1347.01, would meet the definition of a health care provider or health care clearinghouse. In most cases, it is also likely that the state agency at issue would not fit the definition of health plan. Therefore, most state and local agencies are not subject to and will not have to comply with HIPAA, and HIPAA preemption will not be an issue.

It is possible that some state agencies may fit within the definition of covered entity, particularly by meeting the definition of health plan. For example, the definition of health plan includes an individual or group plan that provides or pays for the cost of medical care. It also includes an approved state child health plan under Title 21 of the Social Security Act, as well as a high risk pool established as a mechanism under state law to provide health insurance coverage or comparable coverage to eligible individuals.

Even if the state agency or local agency at issue qualifies as a covered entity under HIPAA, O.R.C. §1347.08(A)(2) does not appear to be contrary to HIPAA, as the covered entity should be able to comply with both state and federal requirements, and the state law does not appear to stand as an obstacle to the accomplishment and execution of the full purposes and objectives of the federal law. The state statute at issue permits individuals to inspect their own personal information. This is consistent with 45 C.F.R. §164.502(a)(1)(i), which provides that a covered entity is permitted to disclose protected health information to the individual. Furthermore, 45 C.F.R. §164.502(b)(2)(ii) provides that the minimum necessary standard, which usually applies to any use or disclosure, does not apply to a use or disclosure made to an individual. HIPAA
also provides individuals with access rights to their own protected health information. 45 C.F.R. §164.524.

The state statute at issue also allows legal guardians and attorneys to access such information as well. These individuals would appear to meet the definition of personal representatives under HIPAA pursuant to 45 C.F.R. §164.502(g).

**Action by Covered Entities:** State and local agencies that in fact meet the definition of covered entities pursuant to HIPAA may continue to disclose information to the individual or the personal representative of the individual pursuant to state law. They will need to consider revising their policies and procedures to incorporate HIPAA access rights pursuant to 45 C.F.R. §164.524.

**Exception Determination/Other Remedy:** Not required.
Ohio Law: O.R.C. §1731.04(B)(15) allows, on a discretionary basis, an agreement between a small employer health care alliance and an insurer to contain a provision relating to the ownership, use, availability and maintenance of confidentiality of data and records relating to the alliance program.

Preemption: No. The HIPAA privacy standards only preempt contrary state law. O.R.C. §1731.04(B)(15) is not contrary to HIPAA privacy standards because compliance with both Ohio and federal law is possible and applicable Ohio law does not stand as an obstacle to accomplishing the objectives of HIPAA.

Rationale: O.R.C. §1731.04(B)(15) does not require any particular type or form of provision to be inserted in an agreement between a small employer health care alliance and an insurer relating to ownership, use, availability and maintenance of confidentiality of data and records. To the extent that a small employer health care alliance and an insurer, each as defined by O.R.C. Chapter 1731, are covered entities under HIPAA, a permissive state law statutory provision regarding the ability of these organizations to include a provision relating to confidentiality and use of data and records does not conflict with the goals of the HIPAA privacy standards. Therefore, nothing in the statutory Section stands as an obstacle to accomplishing the objectives of the statute, and compliance with each is possible.

Action by Covered Entities: Covered entities may continue to include contractual provisions relating to ownership, use, availability and maintenance of confidentiality of data and records relating to the alliance program, so long as such contractual provision otherwise complies with the requirements of the HIPAA statute.

Exception Determination/Other Remedy: Not required.
Contracts with Health Insuring Corporations

Ohio Law: O.R.C. §1751.13(C)(5) requires a health insuring corporation to file an annual certificate with the Superintendent of the Ohio Department of Insurance (the “Superintendent”) certifying that all provider contracts and contracts with health care facilities through which health care services are provided contain a provision regarding the availability and confidentiality of those health records maintained by providers and health care facilities in order to monitor and evaluate the quality of care, to conduct evaluations and audits, and to determine on a concurrent or retrospective basis the necessity and appropriateness of health care services provided to enrollees. The provision must include terms requiring the provider or health care facility to make health care records available to appropriate state and federal authorities involved in assessing the quality of care or in investigating grievances or complaints of enrollees, and must also require the provider or health care facility to comply with applicable state and federal laws related to the confidentiality of medical or health records.

O.R.C. §1751.13(H)(2) requires that health insuring corporations include provisions in their contracts with intermediary organizations requiring the intermediary organizations to provide the Superintendent with regulatory access to books, records, financial information, and documents relating to the provision of health care services to subscribers and enrollees.

Preemption: No. With regard to O.R.C. §1751.13(C)(5), the HIPAA privacy standards only preempt contrary state law. O.R.C. §1751.13(C)(5) is not contrary to HIPAA because it is possible for covered entities to comply with both state and federal requirements. In addition, the state law is not an obstacle to the accomplishment and execution of the purposes of the HIPAA statutes. As an alternative or additional basis for saving the Ohio law provision, exceptions to HIPAA preemption exists relating to conduct of public health investigation or intervention, and to provide access to health plan information for the purpose of audits, program monitoring or ??.

With regard to O.R.C. §1751.13(H)(2), an exception to HIPAA preemption exists relating to the provision of a state law requiring a health plan to report or provide access to information for the purpose of management audits, financial audits, program monitoring and evaluation. In addition, this provision may be exempt from HIPAA preemption if the Secretary makes an exception determination that the state law is necessary either (a) to prevent fraud and abuse relating to the provision of or payment for health care, or (b) to ensure appropriate state regulation of insurance and health plans to the extent expressly authorized by statute or regulation.

Rationale: O.R.C. §1751.13(C)(5) appears to be consistent with the goals of the HIPAA privacy standards in that it requires the provider or health care facility to comply with applicable state and federal laws related to confidentiality of medical or health records. In addition, this Section requires providers and facilities to make available certain health records to the health insuring corporation in order to facilitate the evaluation of quality of care, conduct evaluations and audits and determine the necessity and appropriateness of health care services provided to enrollees. Such procedures appear to meet the definition of health care operations pursuant to 45 C.F.R. §164.501. See 45 C.F.R. §§164.502 and 164.506. Finally, the HIPAA preemption rule specifically saves provisions of state law relating to the conduct of public health investigations.
See 45 C.F.R. §160.203(c). This exception to preemption appears to save the last clause of O.R.C. §1751.13(C)(5) requiring a provider or health care facility to make records available to state and federal authorities involved in assessing quality of care, enrollee grievances or complaints.

HIPAA does not appear to preempt O.R.C. §1751.13(H)(2) pursuant to 45 C.F.R. §160.203(d). This Section saves from preemption the provision of any state law requiring 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. The state statute requires health insuring corporations to include in their contracts with intermediary organizations a provision that allows the Superintendent to have regulatory access to books, records, financial information and documents related to the provision of health care services. This provision allows the Superintendent to conduct periodic management and financial audits of the health insuring corporation. In addition, this provision of state law may also be saved from HIPAA preemption pursuant to an exception determination by the Secretary, based on either of the following grounds: (a) that the state law is necessary to prevent fraud and abuse related to the provision of or payment for health care, or (b) to ensure appropriate state regulation of insurance and health plans to the extent expressly authorized by statute or regulation. See 45 C.F.R. §160.203(a)(1)(i-ii). However, it does not appear necessary to rely on an exception determination given the express language of 45 C.F.R. §160.203(d) saving state law provisions relating to access to information for management and financial audits.

**Action by Covered Entities:** No particular action required.

**Exception Determination/Other Remedy:** It does not appear that an exception determination is necessary in this circumstance. However, if the Superintendent felt that an exception determination was necessary in order for it to conclude that O.R.C. §1751.13(H)(2) was not preempted, a strong argument could be made to the Secretary that the exception determination should be granted.
O.R.C. §1751.19(C)
Complaints Regarding Health Insuring Corporations

Ohio Law: O.R.C. §1751.19 generally provides that a health ensuring corporation must establish and maintain a complaint system to resolve subscriber and enrollee complaints. This complaint system does not relate to appeals from medical management or utilization decisions, which are covered by another area of the Revised Code. O.R.C. §1751.19(C) requires that the health insuring corporation make copies of complaints and responses, including medical records related to those complaints, available to the Superintendent of the Department of Insurance and the Director of Health for inspection for three years. This statutory provision also provides that any documents containing a medical record are confidential, and not subject to public record disclosure requirements.

Preemption: No. The HIPAA requirements only preempt state law that is contrary to a provision of HIPAA. There are specific exceptions to this general rule. It appears that at least two of the exceptions contained within the HIPAA regulations save the statute from preemption.

Rationale: O.R.C. §1751.19(C) serves a remedial function allowing the Director and the Superintendent access to complaint files of enrollees for purposes of conducting audits and investigations relating to public health matters. As such, it appears that this Ohio law Section is saved from federal HIPAA preemption pursuant to the regulatory exceptions described in 45 C.F.R. §§160.203(c) and 160.203(d). 45 C.F.R. §160.203(c) saves from preemption provisions of state law providing for, among other things, the conduct of public health investigations. 45 C.F.R. §160.203(d) saves from preemption the provisions of state law requiring health plans to report or provide access to information for the purposes of management audits, financial audits, program monitoring and evaluation, as well as for other purposes. Providing access to the Superintendent and Director clearly appears to fall within the scope of the preemption exceptions relating to auditing, evaluation and investigation.

Action by Covered Entities: Health plans in Ohio should continue to follow applicable Ohio law.

Exception Determination/Other Remedy: Not required.
O.R.C. §1751.21(A)
Peer Review Committee Records

Ohio Law:  O.R.C. §1751.21(A) provides that if a hospital, intermediary organization, health delivery network, or other provider has a contract with a health insuring corporation, the peer review committee of such organization may provide to the peer review committee of the health insuring corporation information and records relating to any matter that is the subject of evaluation or review by the peer review committee. The health care facility and any physician or provider whose professional qualifications or activities are the subject of evaluation or review must provide consent prior to the disclosure of such records.

Preemption:  No. The HIPAA privacy standards only preempt contrary state law. In this instance the state law is not contrary because compliance with both Ohio and federal law is possible and O.R.C. §1751.21(A) does not stand as an obstacle to accomplishing the objectives of HIPAA.

Rationale:  O.R.C. §1751.21(A) is consistent with the goals of the HIPAA privacy standards to the extent it relates to a disclosure of protected health information. To the extent the disclosures of information by the peer review committees are de-identified health information, credentialing records, and other information relating to the health care provider who is the subject of the peer review process, such disclosures either are not within the ambit of HIPAA or are allowed by HIPAA (see e.g. 45 C.F.R. §164.502(d)). To the extent that the peer review committee of the organization that contracts with the health insuring corporation discloses protected health information of an individual, such disclosure would appear to fit within the definition of health care operations under 45 C.F.R. §164.501 (reviewing the competence or qualifications of health care professionals, evaluating practitioner and provider performance, and credentialing activities). As such, in accordance with 45 C.F.R. §164.502, the covered health care provider will be allowed to disclose such protected health information pursuant to and in compliance with a consent that complies with 45 C.F.R. §164.506.

Action by Covered Entities:  Health plans should continue to follow state law.

Exception Determination/Other Remedy:  Not required.
O.R.C. §1751.521
Release of Information to Health Insuring Corporations

Ohio Law: O.R.C. §1751.521 requires a health insuring corporation to clearly explain information that may be disclosed and the terms of any medical information release signed by an enrollee. If the health insuring corporation utilizes this release to request medical information from a health care facility or provider, the health insuring corporation must provide a copy of the release to the provider or facility, upon request.

Preemption: No. The HIPAA privacy standards only preempt contrary state law. In this instance the state law is not contrary because compliance with both Ohio and federal law is possible and O.R.C. §1751.521 does not stand as an obstacle to accomplishing the objectives of HIPAA.

Rationale: O.R.C. §1751.521 is consistent with the goals of the HIPAA privacy standards because those standards clearly require a form of release of medical information to clearly explain information that may be disclosed under the terms of the release. Because the Ohio statutory provision only requires that the form provide a clear explanation of what may be released as opposed to mandating specific provisions that the form must contain, the Ohio statutory provision does not appear to be in conflict with HIPAA.

Action by Covered Entities: No special action required.

Exception Determination/Other Remedy: Not required.
Ohio Law:  O.R.C. §1751.84, the Ohio external review statute, represents an integral part of the Ohio Patient Bill of Rights legislation effective May 2000. The legislation created an internal review process within the health plan to review adverse medical management and utilization decisions. This internal process may be followed by an external review process. This external process is conducted by an independent external review organization. O.R.C. §1751.84(D)(6)(a) provides that the health insuring corporation shall provide to the independent review organization conducting the review copies of records in its possession relevant to the enrollee’s medical condition, to be used solely for the purpose of the external review process. In addition, at the request of the review organization, the health insuring corporation, enrollee, or provider or health care facility rendering health care services to the enrollee shall provide additional information to the review organization in order for it to complete the review.

Preemption:  No. The HIPAA privacy standards only preempt contrary state law. In this instance the state law is not contrary because compliance with both Ohio and federal law is possible and O.R.C. §1751.84 does not stand as an obstacle to accomplishing the objectives of HIPAA. In addition, given that the very nature of an external review is a remedial process solely accruing to the benefit of the enrollee/individual, it would be a perversion of HIPAA to argue that HIPAA preempts the external review function.

Rationale:  O.R.C. §1751.84 is not contrary to HIPAA. Covered entities will not find it impossible to comply with both the state and federal requirements, and the provision of state law does not stand as an obstacle to the accomplishment and execution of the full purposes and objectives of HIPAA. O.R.C. §1751.84(D)(6)(a) requires covered health care providers and covered health plans to provide protected health information to the independent review organization. The external review process ultimately is part of the process to determine whether payment will be made by a health plan for certain health care services. As for disclosures by covered health care providers, disclosures under O.R.C. §1751.84 would be disclosures relating to payment which are permitted under the regulations. Moreover, because disclosures by health plans and providers to the independent review organization are required under O.R.C. §1751.84, the disclosures are permitted under 45 C.F.R. §164.512(a). 45 C.F.R. §164.512(a) permits a covered entity to disclose protected health information if required by law, assuming the disclosure is in compliance with, and is limited to, the requirements of such law. As a result, it should be possible for the covered health care provider to comply with state and federal requirements, and the state law should not act as an obstacle or barrier to the accomplishment of the goals of the HIPAA law.

Action by Covered Entities: Health insuring corporations and providers required by this statute to provide information to the independent review organization may do so to the extent required by this statute.

Exception Determination/Other Remedy:  Not required.
O.R.C. §1751.85
External Review of Experimental Treatment for Terminal Illnesses

**Ohio Law:** O.R.C. §1751.85 (previously O.R.C. §1753.24) provides for a right of external, independent review of coverage, utilization and medical management decisions regarding enrollees with terminal conditions. O.R.C. §1751.85(C)(6) requires that the health insuring corporation provide to the independent review organization that arranges for the experts’ review a copy of those records in the health insuring corporation’s possession that are relevant to the enrollee’s medical condition. These records shall be disclosed solely to the expert reviewers and must be used solely for the purposes of the external review. At the request of the expert reviewers, the health insuring corporation and the physician recommending the therapy are required to provide additional information in order to complete the review.

**Preemption:** No. The HIPAA privacy standards only preempt contrary state law. In this instance the state law is not contrary because compliance with both Ohio and federal law is possible. O.R.C. §1751.85 does not stand as an obstacle to accomplishing the objectives of HIPAA. In addition, given that the very nature of an external review, particularly in the situation of a terminal condition, is a remedial process solely accruing to the benefit of the terminally ill patient, it would be a perversion of HIPAA to argue that HIPAA preempts the external review function with regard to coverage decisions relating to such patients.

**Rationale:** O.R.C. §1751.85 is not contrary to HIPAA. Covered entities will not find it impossible to comply with both the state and federal requirements, and the provision of state law will not stand as an obstacle to the accomplishment and execution of the full purposes and objectives of HIPAA. O.R.C. §1751.85(C)(6) requires covered health plans, and, in certain situations, covered health care providers, to provide protected health information to the independent review organization or the expert reviewers in charge of conducting the external review. The external review process ultimately is part of the process to determine whether payment will be made by a health plan for certain health care services. Disclosures by the health insuring corporation under the applicable state statutory provision should not be affected by HIPAA. As for disclosures by covered health care providers, disclosures under O.R.C. §1751.85 would be disclosures relating to payment, which are permitted under the regulations. Moreover, to the extent that disclosures by health plans and providers to the independent review organization are required under O.R.C. §1751.85, the disclosures are permitted under 45 C.F.R. §164.512(a). 45 C.F.R. §164.512(a) permits a covered entity to disclose protected health information if required by law, assuming the disclosure is in compliance with, and is limited to, the requirements of such law. As a result, it should not be impossible for the covered health care provider to comply with state and federal requirements, and the state law should not act as an obstacle or barrier to the accomplishment of the goals of the HIPAA law.

**Action by Covered Entities:** Health insuring corporations and providers required by this statute to provide information to the independent review organization or expert reviewers may do so to the extent required by this statute.
Exception Determination/Other Remedy: Not required.
O.R.C. §1753.14(C)
Determinations of Care by Specialists

Ohio Law: O.R.C. §1753.14 generally provides for a procedure by which an enrollee may receive a standing referral to a specialist in cases where a health insuring corporation does not allow direct access to specialists. O.R.C. §1753.14 also provides for a procedure by which an enrollee with a condition or disease requiring specialized medical care over a prolonged period of time, and which disease is life-threatening, degenerative, or disabling, may receive a referral to a specialist with expertise in treating the condition.

O.R.C. §1753.14(C) requires that the health insuring corporation make all determinations with regard to such referrals within three business days after a request, provided that all appropriate medical records and other items of information necessary to make the determination have been provided to the health insuring corporation.

Preemption: No. The HIPAA privacy standards only preempt contrary state law. In this instance the state law is not contrary because compliance with both Ohio and federal law is possible and O.R.C. §1753.14 does not stand as an obstacle to accomplishing the goals and objectives of the HIPAA law.

Rationale: O.R.C. §1753.14(C) is not contrary to HIPAA. The referral requirement is necessary for the provider to receive payment under the health plan, and, therefore, the information may be disclosed under HIPAA.

Action by Covered Entities: Health insuring corporations and providers should comply with state law.

Exception Determination/Other Remedy: Not required.
SUPPLEMENTAL MEMORANDUM

Ohio Law: O.R.C. §2108.021 requires hospitals to develop a protocol, consistent with Medicare Conditions of Participation for hospitals, that addresses facilitating procurement of anatomical gifts. Medicare conditions of participation, at 42 C.F.R. §482.45, require hospitals to have written protocols that, in part: incorporate agreements with organ procurement organizations under which the hospital must notify organ procurement organizations of the imminent or actual death of hospital patients; incorporate an agreement with at least one tissue and one eye bank to cooperate in the retrieval and distribution of tissues and eyes; ensure that the family of each potential donor is informed of its options to donate or decline to donate organs, tissues and eyes; and ensure that the hospital works cooperatively with organ procurement organizations to review death records to improve identification of potential donors.

Separately, under Medicare conditions of participation, hospitals that perform organ transplantation must be a member of the Organ Procurement and Transplantation Network and if a hospital performs any type of transplants, it must provide organ transplant data to various organizations as requested.

Preemption: No. The HIPAA privacy standards only preempt contrary state law. In this instance the state law is not contrary because compliance with both Ohio and federal law is possible and O.R.C. §2108.021 does not stand as an obstacle to accomplishing the objectives of HIPAA.

Rationale: O.R.C. §2108.021 is not contrary to HIPAA because §164.512(a) permits a covered entity to disclose protected health information when required by law and the use and disclosure complies with and is limited to the relevant requirements of the law. O.R.C. §2108.02 and federal Medicare conditions of participation for hospitals require hospitals to have protocols and agreements with organ procurement organizations that require the hospital to disclose certain protected health information for the purpose of facilitating organ donation and transplantation. Further, HIPAA §164.512(h) permits a covered entity to use or disclose protected health information without individual authorization to organ procurement organizations or other entities engaged in the procurement, banking, or transplantation of cadaveric organs, eyes, or tissue for the purpose of facilitating organ, eye or tissue donation and transplantation. According to the preamble of the privacy rule, this provision is intended to address situations in which an individual has not previously indicated whether he or she seeks to donate organs, eyes, or tissues and therefore authorized release of protected health information for this purpose. In such situations, this provision is intended to allow covered entities to initiate contact with organ and tissue donation and transplantation organizations to facilitate transplantation of cadaveric organs, eyes, and tissues.

Action by Covered Entities: Covered entities that are hospitals may use or disclose protected health information without individual authorization to organ procurement organizations or other entities engaged in the procurement, banking, or transplantation of cadaveric organs, eyes, or
tissue for the purpose of facilitating organ, eye or tissue donation and transplantation. This is a permitted use/disclosure pursuant to 45 C.F.R. §164.512(a) and (f).

**Exception Determination/Other Remedy:** Not required.
O.R.C. §2133.02  
Rights of the Terminally Ill

SUPPLEMENTAL MEMORANDUM

Ohio Law: O.R.C. §2133.02 authorizes an individual to execute a “declaration” or living will indicating the individual’s wishes with respect to the use or continuation, or the withholding or withdrawal, of life-sustaining treatment when the individual is in a terminal condition or permanently unconscious state. This statute further prescribes certain information that must be included in the declaration, requires the declaration to be witnessed or acknowledged, and requires that the declaration become part of the individual’s medical record when the individual’s attending physician is given a copy of the declaration.

Preemption: No. The HIPAA privacy standards only preempt contrary state law. In this instance the state law is not contrary because compliance with both Ohio and federal law is possible and O.R.C. §2133.02 does not stand as an obstacle to accomplishing the objectives of HIPAA.

Rationale: O.R.C. §2133.02 is not directly affected by HIPAA privacy standards, nor is compliance with HIPAA privacy standards directly affected by O.R.C. §2133.02. To the extent that an individual has executed a valid living will under Ohio law, the individual’s wishes as expressed in the living will with respect to life-sustaining treatment when the individual is terminal or permanently unconscious will govern the actions of health care providers treating the individual. The living will does become part of the patient’s medical record and, as such, is subject to all of the HIPAA privacy standards related to use and disclosure of protected health information.

Action by Covered Entities: A living will that has been incorporated into the medical record of a patient is subject to all of the HIPAA privacy standards related to use and disclosure of protected health information.

Exception Determination/Other Remedy: Not required.
O.R.C. §2151.14(C)
Juvenile Sex Offenders

Ohio Law: Under O.R.C. §2151.14(C), when an arresting authority, a court, or a probation officer discovers that a child who allegedly has committed a sex offense, or the person whom the child caused to engage in the sexual activity, has a communicable disease, the arresting authority, court or probation officer must notify the victim of the sex offense of the nature of the disease.

Preemption: No.

Rationale: O.R.C. §2151.14 (C) is not affected by the HIPAA privacy rules because communicable disease information that must be disclosed pursuant to this section is disclosed by non-covered entities not subject to HIPAA.

Action by Covered Entities: None

Exception Determination/Other Remedy: Not required.
Ohio Law:  O.R.C. §2151.421 requires any person acting in an official or professional capacity to report known or suspected child abuse or neglect to a public children services agency or local law enforcement. Medical professionals subject to this requirement include physicians, dentists, podiatrists, nurses, psychologists, coroners and other health care professionals. A physician may avoid the reporting requirement, in limited circumstances, if the physician learns of the known or suspected abuse or neglect as a result of information exchanged in the context of a physician-patient relationship and Ohio’s testimonial privilege statute (O.R.C. §2317.02) would prohibit the physician from testifying in court concerning the information. This section also grants immunity from civil or criminal liability to those person or facilities that participate, in good faith, in making the required reports. As a general rule, reports made under this section are confidential.

Preemption: No. The HIPAA privacy standards only preemt contrary state law. In this instance the state law is not contrary because compliance with both Ohio and federal law is possible and O.R.C. §2151.421 does not stand as an obstacle to accomplishing the objectives of HIPAA.

Rationale: O.R.C. §2151.421 is not contrary to HIPAA because §164.512(b)(1)(ii) permits a covered entity to disclose protected health information to a public health authority or appropriate government authority authorized by law to receive reports of child abuse or neglect. Further, O.R.C. §2151.421 is consistent with the goals of the HIPAA privacy standards because reports required by this section are, as a general rule, are confidential.

Action by Covered Entities: Covered entities should continue to comply with O.R.C. §2151.421 requirements to report known or suspected cases of child abuse or neglect. This is a permitted disclosure under 45 C.F.R. §164.512(b)(1)(ii).

Exception Determination/Other Remedy: Not required.
Ohio Law: O.R.C. §§2151.85 & 2505.073 set forth a court procedure to be followed when a pregnant, unmarried, unemancipated minor wishes to have an abortion without notifying her parents, guardian or custodian. The minor must request an order from a juvenile court that authorizes her to consent to the abortion without parental notification. If a juvenile court dismisses the minor’s request, the minor has the right to appeal the decision. Court hearings conducted under these sections must be conducted in a manner that preserves the anonymity of the minor. All papers and records that pertain to the court proceedings are kept confidential and are not public records.

Preemption: No. The HIPAA privacy standards only preempt contrary state law. In this instance the state law is not contrary because compliance with both Ohio and federal law is possible and O.R.C. §§2151.85 & 2505.073 do not stand as an obstacle to accomplishing the objectives of HIPAA.

Rationale: O.R.C. §§2151.85 & 2505.073 are not contrary to HIPAA because 45 C.F.R. §164.502(g)(3) recognizes situations in which a minor may consent to use and disclosure of their protected health information without parental consent. Specifically, §164.502(g)(3)(i)(b) recognizes the ability of a minor to act on his/her own behalf when the minor may lawfully obtain a health care service without the consent of a parent, guardian, or other person acting in loco parentis, and the minor, a court, or another person authorized by law consents to such health care service.

Further, the Department of Health and Human Services has publicly indicated that it intends State or other applicable law regarding disclosure of health information about a minor child to a parent takes precedence where such law exists.

Finally, in the event that specific circumstances would warrant such action, §164.512(j) permits a covered entity to disclose protected health information if the entity, in good faith, believes that disclosure is necessary to prevent or lessen a serious and imminent threat to the health or safety of a person.

Action by Covered Entities: Covered entities should continue to recognize and comply with court orders permitting an unmarried, unemancipated minor to consent to an abortion without parental notification. In this situation that minor also has the right to consent to use and disclosure of information related to the abortion procedure. Minors may act on their own behalf, without parental involvement, as recognized by 45 C.F.R. §164.502(g).

Exception Determination/Other Remedy: Not required.
Ohio Law: O.R.C. §2305.24 provides a right of action against members of quality assurance committees or utilization committees for the misuse of any information, data, reports, or records furnished to the committee by an attending physician. (O.R.C. §2305.24 also contains language recognizing the confidentiality requirement of quality assurance committee or utilization committee records or proceedings (as further provided in O.R.C. §2305.251), and recognizing the immunity granted to those participating in quality assurance committee or utilization committee proceedings (as further provided in O.R.C. §2305.25), however, the right of action is the primary provision of this statute. The analysis of HIPAA preemption for these Sections is the same as for O.R.C. §§2305.251 and 2305.25 respectively.)

Preemption: The right of action provided in O.R.C. §2305.24 does not contradict the HIPAA privacy standards and is therefore not preempted. 45 C.F.R. §160.203. The right of action addresses misuse of confidential information and is consistent with the purpose of the HIPAA privacy standards in protecting patients’ medical information.

Rationale: Only state laws that contradict the HIPAA privacy standards are subject to preemption under 45 C.F.R. 160.203. The right of action established by O.R.C. §2305.24 is not in conflict with any of the HIPAA privacy standards. While the HIPAA privacy standards do not provide a private right of action, HIPAA does not prohibit the type of action provided for in O.R.C. §2305.24. Indeed, O.R.C. §2305.24 comports with the principles of the HIPAA privacy standards in requiring information of quality assurance committees and utilization committees (which may likely include protected health information) to be kept confidential.

Action by Covered Entities: Covered entities, and the quality assurance committees and utilization committees of covered entities, should observe the confidentiality requirements of O.R.C. §§2305.24 and 2305.251 and the HIPAA privacy standards.

Exception Determination/Other Remedy: Not required.
O.R.C. §2305.251
Confidentiality of Proceedings and Records

Ohio Law: O.R.C. §2305.251 provides immunity to various utilization review and peer review committees and persons serving on these committees for the acts, decisions, omissions, or other conduct within the scope and functions of the committees, and prohibits discovery of peer review records. Please note that while some of the committees as described in the statute are committees of covered entities, many are not. Those committees that are not covered entities are not governed by the HIPAA privacy standards.

Preemption: Permissible disclosures of protected health information under the HIPAA privacy standards that are prohibited by this state law do not preempt the state law because O.R.C. §2305.251 is more stringent. 45 C.F.R. §160.203(b).

Rationale: O.R.C. §2305.251 prohibits discovery of peer review records. Peer review records often include protected health information. There are, of course, numerous provisions in the HIPAA privacy standards when disclosure of protected health information by a covered entity is permitted (a pertinent example would be the permission found in 45 C.F.R. §164.512(e) to disclose protected health information in response to a subpoena in certain circumstances). In these instances O.R.C. §2305.251 is not preempted because state law is more stringent. 45 C.F.R. §160.203(b).

The HIPAA privacy standards require covered entities to allow a patient access to his or her “designated record set.” 45 C.F.R. §164.524. O.R.C. §2305.251 would prohibit such access to peer review records by the patient. The comment Section to 45 C.F.R. §164.501 indicates that the Department of Health and Human Services does not consider peer review records to be part of the designated record set. 45 C.F.R. §164.501 provides the following definition of “designated record set”:

Designated record set means:
1. A group of records maintained by or for a covered entity that is:
   i. The medical records and billing records about individuals maintained by or for a covered health care provider;
   ii. The enrollment, payment, claims adjudication, and case or medical management record systems maintained by or for a health plan; or
   iii. Used, in whole or in part, by or for the covered entity to make decisions about individuals.

In the Department of Health and Human Services response to comments received for 45 C.F.R. §164.501, the Department stated:

We do not require a covered entity to provide access to all individually identifiable health information, because the benefits of access to information not used to make decisions about individuals is limited and is outweighed by the burdens on covered entities of locating, retrieving, and providing access to such information. Such information may be found in many types of records that
include significant information not relevant to the individual as well as
information about other persons. *For example, a hospital’s peer review files that
include protected health information about many patients but are used only to
improve patient care at the hospital, and not to make decisions about individuals,
are not part of that hospital’s designated record sets.* (Emphasis added)

Further, in the description to 45 C.F.R. §164.524(a), the Department provides:

Covered entities often incorporate the same protected health information into a variety of
different data systems, not all of which will be utilized to make decisions about
individuals. *For example, information systems that are used for quality control or peer
review analyses may not be used to make decisions about individuals. In that case, the
information systems would not fall within the definition of designated record set. We do
not require entities to grant an individual access to protected health information
maintained in these types of information systems.* (Emphasis added)

It seems clear that peer review records that are not used to make decisions about "individuals"
will not be part of the “designated record set.” In these cases 45 C.F.R. §164.524 does not
require access to these peer review records and there is no conflict between O.R.C. §2305.251
and the HIPAA privacy standards. However, if a covered entity does use a peer review record to
make decisions about patients, the covered entity might make the peer review record a part of the
designated record set. For example, it is not clear whether an incident or occurrence report
would be deemed part of a "designated record set" to the extent this report is reviewed and acted
upon concurrent with patient treatment. Also, please note that the same documents contained in
the peer review records may be those which are always considered part of the designated record
set under 45 C.F.R. §164.501 (such as the medical record). Those documents, as part of the
designated record set, will remain accessible to the patient (but this will not make the entire peer
review record part of the designated record set). Furthermore, provided that the patient is able to
obtain the designated information from the original source, the state statute's requirement that
such documents be obtained from the original source and not from the peer review file should be
viewed as not in conflict. HIPAA privacy standards would, however, preempt this requirement
in the event documents are not available from the original source.

**Action by Covered Entities:** Covered entities should comply with both O.R.C. §2305.251 and
the HIPAA privacy standards by keeping utilization review and peer review records confidential.
Covered entities should adopt policies clearly describing the protections of peer review and
utilization review committee proceedings and records. The policies should expressly state that
the utilization review or peer review proceedings or records are not used to make decisions about
"individuals," but rather are used for quality assessment. The policies should state that
documents that are always part of the designated record set (such as the medical record) that are
also contained in a peer review record are separate and distinct from the peer review record (i.e.,
these documents are a part of the peer review record, the peer review record is not a part of these
documents). Further, covered entities should closely follow these policies so that peer review
and utilization review committee proceedings and records are not used, in any way, to make
decisions about "individuals."
Exception Determination/Other Remedy: Not required.
O.R.C. §2305.33
Reports of Drug Abuse to Public Transportation Employers

Ohio Law: O.R.C. §2305.33 grants physicians immunity when they disclose certain information regarding drug tests to an individual’s employer when the individual is employed to operate an aircraft, train, bus, taxicab or other common carrier.

Preemption: No.

Rationale: The statute is not contrary to a HIPAA provision, because the statute does not address the duty of the physician to keep the information confidential. Rather, the statute provides for immunity in certain situations where a disclosure of information has been made. Although HIPAA may prevent the disclosure of this information, there is no duty created by this statute that either requires or prohibits the physician to disclose the information.

To the extent that this statute impliedly permits physicians to disclose protected health information, covered entities should make such disclosures only in accordance with the authorization requirements in 45 C.F.R. §164.508.

Action by Covered Entities: Although HIPAA is not directly implicated by this statute, covered entities should consider the underlying situation the statute contemplates. A physician will need to have an authorization, consistent with HIPAA requirements, in order to disclose this information. In order to protect physicians from liability in this situation, the covered entity’s internal HIPAA authorization policy and procedure should address this situation and provide for patient/employee authorization, consistent with HIPAA requirements in 45 C.F.R. §164.508, before the covered entity discloses the protected health information.

Exception Determination/Other Remedy: Not required
O.R.C. §2307.46
Civil Actions Regarding Abortion

**Ohio Law:**  O.R.C. §2307.46 gives plaintiffs in injury actions concerning abortions the ability to file a motion with a court requesting that the plaintiff’s identity be held confidential.

**Preemption:**  No.

**Rationale:**  This statute is not contrary to any provision under HIPAA, because the statute addresses disclosures made by a court, not disclosures made by a covered entity. Further, to the extent that this statute provides heightened protection of protected health information in certain circumstances, it is consistent with the goals of the HIPAA privacy standards.

**Action by Covered Entities:**  This statute does not require any specific action by covered entities other than that which will already be covered in the entities’ policy and procedure regarding disclosure of protected health information in judicial and administrative proceedings (45 C.F.R. §164.512(e)).

**Exception Determination/Other Remedy:**  Not required.
**Ohio Law:** O.R.C. §2317.02(B) addresses physician/patient privilege. Under the statute, a physician cannot testify regarding communications between him/her and the patient, with several exceptions. In civil and workers’ compensation actions, the exceptions include (i) if the patient, guardian, or legal representative of the patient gives express consent; (ii) if the patient is deceased and the surviving spouse or executor/administrator gives express consent; and (iii) if a medical claim, claim for wrongful death, or workers’ compensation claim is filed by the patient, patient’s guardian or other legal representative, or the personal representative of the estate if deceased (Section (B)(1)(a)). Section (B)(1)(b) provides another exception for civil actions concerning court-ordered treatment or services, if the treatment or services were ordered as part of a case plan in juvenile court. Section (B)(1)(c) provides an exception for criminal actions concerning drug or alcohol testing. Section (B)(1)(d) provides an exception for criminal actions against the physician. Finally, Section (B)(2) requires health care providers to supply a copy of records properly requested by law enforcement officers.

**Preemption:** O.R.C. §2317.02(B)(1)(a)(iii) and §2317.02(B)(1)(d) are preempted. Compliance with both Ohio and federal law is otherwise possible.

**Rationale:** This Ohio Revised Code Section discusses when the physician/patient testimonial privilege does and does not apply. The statute provides that the physician may testify, or may be compelled to testify, in certain situations. It is important to note that this statute, on its own, does not require the physician to disclose protected health information about his or her patient. Instead, it removes one roadblock for opposing counsel to compel the physician’s testimony. The HIPAA requirements are not necessarily inconsistent with this code Section, but rather, are another objection a physician may raise when being asked to waive physician/patient privilege. For the sake of discussion, we have analyzed the exceptions assuming this distinction is invalid.

**(B)(1)(a)** The first two exceptions, (i) and (ii), are exceptions to the physician/patient privilege based on express consent. Sections (i) and (ii) may not necessarily be inconsistent with HIPAA, as long as the patient consent meets the HIPAA authorization requirements found in 45 C.F.R. §164.508. The third exception, (iii), allows the physician to testify because there is implied consent by the patient, patient’s guardian, or other legal representative. Under HIPAA, in order for protected health information to be disclosed in this manner, the patient will have had to sign an authorization. There is no provision in HIPAA providing for implied consent. Accordingly, Section (iii) is preempted.

**(B)(1)(b)** This Section provides an exception to physician/patient privilege where there is a civil action concerning court ordered treatment or services as part of a case plan in juvenile court. Since the treatment in this situation is court-ordered, presumably the disclosure of patient information would also be pursuant to a court order 45 C.F.R. §164.512(e)(1)(i) and, therefore, permissible under HIPAA.
(B)(1)(c) This Section provides an exception to the privilege in criminal actions for disclosure of drug and/or alcohol test results. Disclosure of such results is required under O.R.C. §2317.022. HIPAA permits covered entities to disclose protected health information without patient consent or authorization if such disclosure is required by law. 45 C.F.R. §164.512(a) and (f).

(B)(1)(d) This Section provides an exception to the privilege in criminal actions against a physician. The testimonial privilege does not bar the admission of medical records related to the action and obtained by “subpoena, search warrant or other lawful means.” HIPAA allows disclosure of records in response to a subpoena, discovery request, or other lawful process, provided the covered entity obtains an additional safeguard. The covered entity must either (1) receive satisfactory assurance from the party seeking the information that reasonable efforts have been made by the party to ensure that the subject of the requested information has been given notice of the request, or (2) receive satisfactory assurance from the party seeking the information that reasonable efforts have been made by the party to secure a qualified protective order. “Satisfactory assurance” requires several components in a written statement and accompanying documentation from the party seeking the information. As a third alternative, the covered entity could itself take the steps underlying the assurance.

O.R.C. §2317.02(B)(1)(d) only obliges courts to “require that appropriate measures be taken to ensure that the confidentiality of any patient named or otherwise identified in the records is maintained.” Due to HIPAA's “satisfactory assurance” requirement, additional steps must be taken in order to meet HIPAA standards. Accordingly, although Ohio law does not stand as a bar to enforcement of HIPAA standards, standing alone this Section does not comply with federal law.

See also the analysis of Criminal Rule of Procedure 17.

**Action by Covered Entities:** Adopt and implement disclosure policies that concurrently comply with the requirements of Ohio and federal law, taking into consideration the preemption of Sections (B)(1)(a)(iii) and (B)(1)(d). The covered entity should have policies and/or procedures regarding disclosures for judicial and administrative proceedings.

**Exception Determination/Other Remedy:** Not required.
O.R.C. §2317.022
Law Enforcement Requests for Drug and Alcohol Test

Ohio Law:  O.R.C. §2317.022 requires health care providers to disclose information regarding alcohol and drug tests to law enforcement officials if a written statement is submitted and an official criminal investigation has begun.

Preemption:  No.

Rationale:  HIPAA permits covered entities to disclose protected health information without patient consent or authorization if such disclosure is required by law.  45 C.F.R. §164.512(a) and (f).  Ohio law requires the disclosure, provided the law enforcement official properly requests it.

Each of Ohio and federal law provides more protection than the other in different areas. Ohio law provides individuals greater protection than that provided in the HIPAA privacy standards because of the requirement that the law enforcement officer submit a written statement and begin a criminal investigation. On the other hand, HIPAA provides individuals greater protection than Ohio law because of the verification requirements for identity and authority of law enforcement officials.

In order to be consistent with the goals of HIPAA, it seems logical that the different parts of both Ohio and federal law that are more stringent than the other should apply. However, this approach is piecemeal and confusing.

Action by Covered Entities:  Adopt and implement policies that concurrently comply with the requirements of Ohio and federal law. The covered entity’s policies and/or procedures regarding disclosures to law enforcement officials should include the definition of “law enforcement official” as found in the HIPAA privacy standards at §164.501, as well as the identity and authority verification requirements in §164.514(h).

Exception Determination/Other Remedy:  Not required.
O.R.C. §2317.54
Standards for Informed Consent

Ohio Law: O.R.C. §2317.54 creates a presumption of validity for informed consent to surgical or medical procedures, and discusses those individuals who may give such informed consent on behalf of the patient.

Preemption: No.

Rationale: The texts of the Ohio and federal provisions are largely the same. 45 C.F.R. §164.502(g) requires covered entities to treat people who have the legal authority to act on behalf of a patient in making health care decisions as the individual him/herself with respect to protected health information. O.R.C. §2317.54(C) allows a legally authorized individual to give informed consent if the patient lacks the legal capacity to do so.

However, HIPAA further requires verification of the identity of people requesting protected health information. HIPAA requires covered entities to verify the identity of a person requesting protected health information and the authority of such person to have access to protected health information of the patient if unknown to the covered entity. The covered entity must also obtain any documentation, statements, or representations from the person requesting the protected health information when such documentation, statement, or representation is a condition of the disclosure under the privacy standards. Accordingly, although not preempted, these additional steps will need to be taken in order to be in compliance with the HIPAA privacy standards.

Action by Covered Entities: Adopt and implement policy on disclosures to patients’ legal representatives that concurrently complies with the requirements of Ohio and federal law. The policy should include the HIPAA verification requirements.

Exception Determination/Other Remedy: Not required.
Ohio Law:  O.R.C. §2743.62 deals with actions involving the victims of crimes. Section (A) exempts medical records from the public records disclosure law in O.R.C. §149.43, but provides for disclosure by certain parties, including the Ohio Attorney General, a panel of commissioners, or a court of claims judge. Section (B) allows certain parties to order the victim or claimant to submit to mental or physical examination (or an autopsy for a deceased victim). Section (C) allows disclosure of a copy of the report to the person examined or the claimant if the victim is deceased. Section (D) gives certain parties the ability to require supplemental medical or psychological reports related to the injury from the claimant. Section (E) delineates specific information that may not be requested.

Preemption:  No.

Rationale:  This statute is not contrary to any provision under HIPAA because the statute addresses disclosures made by a court, not disclosures made by a covered entity. To the extent that this statute provides heightened protection of personal health information in certain circumstances, it is consistent with the goals of the HIPAA privacy standards.

Action by Covered Entities:  This statute does not require any specific action by covered entities other than that which will already be covered by their policy and procedure regarding disclosure of protected health information in judicial and administrative proceedings. 45 C.F.R. §164.512(e).

Exception Determination/Other Remedy:  Not required.
Ohio Law: Under O.R.C. §2907.27, persons charged with certain sex offenses must submit to appropriate testing for venereal disease when requested by a prosecutor or a victim. If the test results show the accused has a venereal disease in an infectious stage, the accused must submit to treatment. Submission to treatment may also be a condition of probation or a requirement during incarceration if the person is convicted.

Also, persons charged with certain sex offenses as well as other types of violations where the circumstances might result in transmission of the HIV virus must submit to HIV testing, notwithstanding Ohio’s requirements for informed consent for HIV testing, when requested by a prosecutor, a victim, or any other person who might reasonably have had contact with the accused in circumstances related to the violation that could have resulted in transmission of the virus. HIV test results must be communicated in confidence to the court and the court informs the accused and the victims, upon request. Positive test results must also be reported to the Department of Health, to correctional facilities in which the person is incarcerated, and to law enforcement officials in certain circumstances for purposes of further prosecuting the individual for certain offenses.

Preemption: No. The HIPAA privacy standards only preempt contrary state law. In this instance the state law is not contrary because compliance with both Ohio and federal law is possible and O.R.C. §2907.27 does not stand as an obstacle to accomplishing the objectives of HIPAA.

Rationale: O.R.C. §2907.27 is not contrary to HIPAA because §164.512(a) permits a covered entity to disclose protected health information when required by law and the use and disclosure complies with and is limited to the relevant requirements of the law. Further, §164.512(e)(1)(i) permits a covered entity to disclose protected health information in the course of any judicial or administrative proceeding in response to an order of a court or administrative tribunal, provided that the covered entity discloses only the protected health information expressly authorized by such order, and §164.512(f)(1) permits a covered entity to disclose protected health information for a law enforcement purpose to a law enforcement official as required by law.

Action by Covered Entities: Though O.R.C. §2907.27 does not directly govern covered entities, covered entities should continue to comply with requests for venereal disease and HIV tests, and may disclose results of those tests, as required by O.R.C. §2907.27. Disclosures of protected health information by covered entities in these situations are permitted disclosures under 45 C.F.R. §164.512 (a), (e) and (f).

Exception Determination/Other Remedy: Not required.
Ohio Law: O.R.C. §2907.29 requires Ohio hospitals that offer organized emergency services to have a physician on call twenty-four hours a day to examine victims of sexual offenses for the purpose of gathering physical evidence of the crime. Examinations occur at the request of a peace officer, prosecutor or the victim and with the victim’s consent. This section also specifically allows a minor to consent to this evidence-gathering examination without the consent of a parent or guardian. However, if a minor consents to the examination, the hospital must give written notice to the parent(s) or guardian that the examination has occurred.

Preemption: No. The HIPAA privacy standards only preempt contrary state law. In this instance the state law is not contrary because compliance with both Ohio and federal law is possible and O.R.C. does §2907.29 not stand as an obstacle to accomplishing the objectives of HIPAA.

Rationale: O.R.C §2907.29 is not contrary to HIPAA because Ohio law addresses consent to examination for purposes of evidence gathering and §164.512(f)(3) permits a covered entity to disclose protected health information concerning crime victims. Specifically, §164.512(f)(3) permits disclosure of protected health information in response to a law enforcement official's request for such information about an individual who is or is suspected to be a victim of a crime if: (1) The individual agrees to the disclosure; or (2) The covered entity is unable to obtain the individual's agreement because of incapacity or other emergency circumstance, provided that:

1) The law enforcement official represents that such information is needed to determine whether a violation of law by a person other than the victim has occurred, and such information is not intended to be used against the victim;

2) The law enforcement official represents that immediate law enforcement activity that depends upon the disclosure would be materially and adversely affected by waiting until the individual is able to agree to the disclosure; and

3) The disclosure is in the best interests of the individual as determined by the covered entity, in the exercise of professional judgment.

Under this HIPAA section, the release of medical information/evidence about victims of sexual offenses by the covered entity is permissive. The covered entity may either release the information if the patient/victim agrees to the disclosure or may choose not to release the information if the patient/victim does not agree to the disclosure.

Further, HIPAA §164.502(g) addresses disclosure of protected health information about minors and recognizes that when a minor can consent to treatment without parental consent, the minor can also consent to use and disclosure of their information. This section also states that a covered entity may disclose protected health information about an unemancipated minor to a parent or guardian if State law permits or requires the disclosure. O.R.C. 2907.29 permits a minor who is the victim of a sexual offense to consent to an evidence-gathering medical
examination and further requires the hospital to notify the parents that an examination has occurred. Thus, a minor can consent to the disclosure of examination information to law enforcement officials and the hospital must disclose to the minor’s parents or guardian that an examination has occurred.

**Action by Covered Entities:** Covered entities that are subject to O.R.C. 2907.29 should develop a policy for disclosure of medical information/evidence about victims of sexual offenses, including an appropriate authorization form allowing the covered entity to disclose such medical evidence to law enforcement officials.

**Exception Determination/Other Remedy:** Not required.
O.R.C. §2907.30
Adult Sex Offenders

Ohio Law: O.R.C. §2907.30 regulates the activities of law enforcement agencies when interviewing victims of sexual offenses and informing victims of communicable diseases. Law enforcement agencies are not covered entities and HIPAA privacy standards do not apply.

Preemption: No. The HIPAA privacy standards do not apply to activities regulated by O.R.C. §2907.30.

Rationale: O.R.C. §2907.30 is not affected by the HIPAA privacy rules because communicable disease information that is disclosed pursuant to this section is disclosed by non-covered entities not subject to HIPAA.

Action by Covered Entities: None.

Exception Determination/Other Remedy: Not required.
O.R.C. §2913.40(D)
Medicaid Fraud

Ohio Law: O.R.C. §2913.40(D) sets forth actions that are fraudulent and subject to civil and criminal enforcement as Medicaid fraud, including knowingly altering records necessary to fully disclose the nature of goods or services or reimbursement received under the Medicaid program.

Preemption: No. The HIPAA privacy standards only preempt contrary state law. In this instance the state law is not contrary because compliance with both Ohio and federal law is possible and O.R.C. §2913.40(D) does not stand as an obstacle to accomplishing the objectives of HIPAA.

Rationale: O.R.C. §2913.40(D) is not contrary to HIPAA. HIPAA §164.526(a) gives an individual the right to request amendment of their medical records. However, a covered entity may deny a request to amend when, among other factors, the record is accurate and complete. In any event, certain procedures and documentation must be followed when granting or denying an amendment request. O.R.C. §2913.40(D) prohibits alteration of Medicaid records and HIPAA permits a covered entity to deny any patient request to inappropriately alter such records. Thus, covered entities can comply with both state and federal law regarding alteration of Medicaid records.

Action by Covered Entities: Covered entities may deny inappropriate requests to alter Medicaid records consistent with O.R.C. §2913.40(D) and 45 C.F.R. §164.526(a).

Exception Determination/Other Remedy: Not required.
Ohio Law Subject to Analysis: O.R.C. §2913.48(A)(3) provides that no person, with purpose to defraud or knowing that the person is facilitating a fraud shall alter, falsify, destroy, conceal, or remove any record or document that is necessary to fully establish the validity of any claim filed with, or necessary to establish the nature and validity of all goods and services for which reimbursement or payment was received or requested from the Bureau of Worker’s Compensation, or a self-insuring employer under Ohio law.

Is Statute Preempted: No. O.R.C. §2913.48 is consistent with the HIPAA privacy standards and compliance with both Ohio and federal law is possible.

Rationale: 45 C.F.R. §164.512(l) provides that a covered entity may disclose protected health information as authorized by, and to the extent necessary, to comply with laws relating to worker’s compensation or other similar programs, established by law, that provides benefits for work-related injuries or illness without regard to fault. Under the HIPAA privacy standards, therefore, a covered entity may disclose protected health information without an individual's consent or authorization to a party responsible for payment of workers’ compensation benefits to the individual and to an agency responsible for administering and/or adjudicating the individual’s claim for workers’ compensation benefits (see 65 Fed. Reg. 82542). O.R.C. §2913.48(A)(3) provides that no person shall fraudulently conceal relevant medical records necessary to establish the validity of a worker’s compensation claim. In order to comply with O.R.C. §2913.48(A)(3), a covered entity would be required to disclose (i.e. not conceal) an individual’s protected health information if necessary to establish the validity of a worker’s compensation claim. Such disclosure is a permissible disclosure pursuant to 45 C.F.R. §165.512(l), and O.R.C. §2913.48 would not be subject to preemption.

Action by Covered Entities: Adopt and implement policies that comply with the requirements of O.R.C. §2913.48.

Exception Determination/Other Remedy: Not required.
O.R.C. §2921.22
Injury from Gunshot, Stabbing, Burn or Domestic Violence

Ohio Law Subject to Analysis: O.R.C. §2921.22 provides in relevant part that physicians and other health care professionals giving aid to a sick or injured person are required to report to the appropriate law enforcement authorities a gunshot or stab wound which the health care provider has reasonable cause to believe resulted from an offense of violence. O.R.C. §2921.22 also requires that health care professionals treating a burn injury inflicted by an explosion or other incendiary device, or that shows evidence of having been inflicted in a violent, malicious or criminal manner, report the burn to the local arson bureau or other appropriate law enforcement.

Is Statute Preempted: No.

Rationale: O.R.C. §2921.22 is consistent with the HIPAA privacy standards and compliance with both Ohio and federal law is possible.

The privacy standards set forth in 45 C.F.R. §164.512(f)(1)(i), provide that a covered entity may disclose protected health information about an individual for a law enforcement purpose to a law enforcement official as required by law, including laws that require the reporting of certain types of wounds or other physical injuries. O.R.C. §2921.22 is similar in that it requires various individuals, including physicians and other health care professionals, to report to the appropriate authorities a gunshot, stab wound or burn. To ensure compliance with both 45 C.F.R. §164.512(f)(1) and O.R.C. §2921.22, covered entities making disclosures pursuant to O.R.C. §2921.22, should limit such disclosure to the requirements of O.R.C. §2921.22.

[Cathy-- Do you think that 164.512(c) would also apply to this section, and therefore require covered entity to notify individuals/victims when making a disclosure pursuant to O.R.C §2921.22? Or is just 164.512(f) applicable? ]

Action by Covered Entities: Adopt and implement policies that concurrently comply with the requirements of O.R.C. §2921.22 and 45 C.F.R. §164.512(f)(1) to ensure that disclosure is allowed except in those cases where disclosure is not authorized by both Ohio and federal law.

Exception Determination/Other Remedy: Not required.
O.R.C. §2945.40(C)
Persons Not Guilty by Reason of Insanity

Ohio Law Subject to Analysis: O.R.C. §2945.40(C)(5) provides that in any hearing conducted in connection with a verdict of not guilty by reason of insanity, the defendant must be informed by the court of the right to have copies of any relevant medical or mental health document in the custody of the state or place of commitment, other than a document for which the court finds that the release to the person of information contained in the document would create a substantial risk of harm to any person.

Is Statute Preempted: No. The HIPAA privacy standards mandate requirements in addition to the requirements set forth in O.R.C. §2945.40(C)(5) but the two are not inconsistent, and compliance with both Ohio and federal law is possible.

Rationale: O.R.C. §2945.40 is consistent with the HIPAA privacy standards.

The HIPAA privacy standard set forth in 45 C.F.R. §164.524 mandates that an individual have the right of access to inspect and obtain a copy of protected health information about the individual in a designated record set, for as long as the protected health information is maintained. However, this general mandate includes exceptions for: (i) psychotherapy notes; (ii) information compiled in reasonable anticipation of, or for use in a civil, criminal, or administrative action; and (ii) certain information subject to or exempt from the Clinical Laboratory Improvement Amendments of 1988. A denial of an individual's request for access for any of these reasons is unreviewable.

In addition, under the HIPAA privacy standard, an individual may be denied the right to access his or her protected health information if: (i) a licensed health care professional has determined, in the exercise of professional judgment, that the access requested is reasonably likely to endanger the life or physical safety of the individual or another person; (ii) the protected health information makes reference to another person (unless such other person is a health care provider) and a licensed health care professional has determined, in the exercise of professional judgment, that the access requested is reasonably likely to cause substantial harm to such other person; or (iii) the request for access is made by the individual's personal representative and a licensed health care professional has determined, in the exercise of professional judgment, that the access requested is reasonably likely to cause substantial harm to the individual or another person.

If access is denied for any of the reasons set forth in the preceding paragraph, the individual is entitled to have the denial reviewed by a licensed health care professional who is designated by the covered entity to act as a reviewing official and who did not participate in the original decision to deny access and the covered entity must provide or deny access in accordance with the determination of the reviewing official. 45 C.F.R. §164.524 also includes the express right to copy and the requirement that the covered entity respond to an individual’s request in a timely manner.
O.R.C. §2945.40(C)(5) provides that in hearings conducted in connection with a verdict of not guilty by reason of insanity, the individual must be informed by the court of the right to have copies of relevant medical or mental health documents in the custody of the state or of any place of commitment, unless the court finds that the release to the person of such information would create a substantial risk of harm to any person. For purposes of insuring compliance with both O.R.C. §2945.40(C)(5) and 45 C.F.R. §164.524, covered entities that maintain such records should adopt policies specifying that when deciding whether to disclose records to such individual, the covered entity should only deny access pursuant to the authorized reasons for denial set forth in 45 C.F.R. §164.524. Denying an individual access to his or her medical or mental health records in accordance with O.R.C. §2945.40(C)(5) (because the access requested is reasonably likely to endanger the life or physical safety of the individual or another person) would be consistent with the authorized reasons for denial of individual access set forth in the HIPAA privacy standards. To the extent that psychotherapy notes must be made available under O.R.C. §2945.40(c), such records must be made available despite the exception in 45 C.F.R. §164.524. This provision of Ohio law is not preempted because it is more stringent under the test of 45 C.F.R. §____, in that it allows greater rights of access to the individual. To further insure compliance with both O.R.C. §2945.40(C)(5), and 45 C.F.R. §164.524, covered entities that maintain such medical or mental health records should adopt policies that comply with the additional reviewability, copying and timeliness requirements set forth in 45 C.F.R. §164.524.

**Action by Covered Entities:** Adopt and implement policies that concurrently comply with the requirements of O.R.C. §2945.40(C)(5) and 45 C.F.R. §164.524 to ensure that access is allowed except in those cases where denial is authorized by both Ohio and federal laws. Ensure that policies comply with the additional reviewability, copying and timeliness requirements set forth in 45 C.F.R. §164.524.

**Exception Determination/Other Remedy:** Not required.
O.R.C. §3107.09
Social and Medical Histories of Biological Parents

Ohio Law: O.R.C. § 3107.09 outlines the procedure for taking and filing social and medical histories of the biological parents of minors available for adoption. The histories are taken by an “assessor” and filed with the court handling the adoption. O.R.C. § 3107.09(B) requires that the histories not include any identifying information about the subjects. The only way a covered entity could be implicated by this statute is if the assessor requests a medical examination, which would require a covered entity to disclose protected health information.

Preemption: No. Covered entities are not regulated by O.R.C. § 3107.09.

Rationale: Covered entities are not implicated. If covered entity performs a medical examination at the assessor’s request, the subsequent disclosures may fall under 42 C.F.R. § 164.512(b) as a disclosure to a health oversight agency.

Action by Covered Entities: If a covered entity is asked to provide a medical exam by an “assessor”, the covered entity can, and should, condition the performance of the exam on the individual giving an authorization for the disclosure of protected health information to the assessor (and the government agency).

Exception Determination/Other Remedy: Not required.
O.R.C. §3107.17

Ohio Law: O.R.C. § 3107.17 provides for confidentiality in adoption proceedings. All court records that pertain to the medical history of the biological parents may only be accessed by the adopted parents or the adopted person, once he or she reaches majority. This statute covers the collection and maintenance of protected health information by the courts.

Preemption: No.

Rationale: Courts are not covered entities.

Action by Covered Entities: None.

Exception Determination/Other Remedy: Not required.
O.R.C. §3109.051(H) and (N)  
Access to Child’s Records by Nonresidential Parent

Ohio Law: O.R.C. § 3109.051(H) requires record keepers to give the nonresidential parent of a child the same access to the child’s records that is given to the residential parent unless a court, in the best interest of the child, issues an order restricting the nonresidential parent’s access. O.R.C. § 3109.051(N) defines records to include medical records that may contain protected health information.

Preemption: No. 42 C.F.R. § 160.202 indicates that O.R.C. § 3109.051(H) is not preempted because O.R.C. § 3109.051(H) regulates disclosure of protected health information about minors to parents. 42 C.F.R. § 160.202 clearly states that HIPAA does not preempt such laws.

Rationale: HIPAA’s privacy regulations are clear that they will not preempt State law that authorizes or prohibits disclosure of information to parents (42 C.F.R. §. 160.202). O.R.C. § 3109.051(H) requires record keepers to grant access to the information to a “nonresidential” parent, which is a de facto authorized disclosure of a minor’s protected health information. Therefore, under the specific language of 42 C.F.R. § 160.202, no preemption analysis needs to occur because HIPAA’s privacy regulations state that “nothing in this subchapter may be construed to preempt any State law to the extent that it authorizes or prohibits disclosure of protected health information about a minor to a parent.”

Further, such disclosure is permissible under 42 C.F.R. § 164.512(a), which allows covered entities to use or disclose protected health information without patient authorization if the use or disclosure is “required by law” and if the disclosure is in compliance with and limited to the requirements of the applicable law. In this instance, the disclosure to a nonresidential parent under O.R.C. § 3109.051(H) will be required by law for purposes of HIPAA’s privacy regulations and, if the disclosure is in compliance with and limited to the requirements of O.R.C. § 3109.051(H), it will be permissible under HIPAA’s privacy regulations.

However, 42 C.F.R. § 164.502(g)(5) states that “[n]otwithstanding a State law or any requirement of this paragraph to the contrary a covered entity may elect not to treat a person as the personal representative of an individual” if (i) the covered entity has a reasonable belief that the individual is the victim of domestic violence, abuse or neglect or that treating such person as the personal representative could endanger the individual or (ii) in the professional judgment of the covered entity it is not in the individual’s best interest to treat the person as the individual’s personal representative. The language under 42 C.F.R. § 164.502(g)(5) simply grants covered entities the ability to make an election notwithstanding State law (this provision applies to all individuals and their personal representatives, not just minors); it does not require that the covered entity make the election to not treat a person as an individual’s personal representative. Therefore, the covered entity can comply with State law and HIPAA’s privacy regulations by not electing to prevent such a disclosure. This leaves the physician with the choice of disclosing the information to the nonresidential parent or seeking a court order to support the physician’s nondisclosure.
Action by Covered Entities:  Covered entities should grant “nonresidential parents” the same rights of access to his/her child’s medical records as the “residential” parent -- unless there is a court order limiting such access. If a covered entity makes a determination that it is going to exercise its rights under 42 C.F.R. § 164.502(g)(5) and elect not to grant such access, the covered entity should seek a court order to ensure compliance with Ohio law.

Exception Determination/Other Remedy:  Not required.
Ohio Law: O.R.C. § 3111.12(B) states that, in a paternity hearing, the physician’s testimony concerning the child’s characteristics and condition at birth and the medical circumstances of the mother’s pregnancy are not privileged. This statute removes a barrier from a physician testifying on such matters.

Preemption: No. From a practical perspective, compliance with 42 C.F.R. § 164.512(e) and O.R.C. § 3111.12(B) is possible and O.R.C. § 3111.12(B) does not stand as an obstacle to accomplishing the goals of HIPAA.

Rationale: O.R.C. § 3111.12(B) states that a physician’s testimony concerning the mother’s pregnancy and the condition and characteristics of the child upon birth are not privileged. This statute removes a barrier from testifying (and disclosing protected health information) about a patient’s condition. Similarly, HIPAA’s privacy regulations also allow disclosures of protected health information without a patient’s authorization in judicial proceedings if certain conditions are met. Specifically, 42 C.F.R. § 164.512(e) allows covered entities to disclose protected health information in judicial proceedings only in response to a court order or other lawful process if the covered entity receives satisfactory assurance that the party seeking disclosure has made reasonable efforts to notify the subject of the protected health information or to secure a protective order. In the setting of a paternity suit, it is certain that the mother will have the level notice of notice required by HIPAA’s privacy regulations, and because the mother will likely be the personal representative of the child, the notice should be sufficient for the disclosure of the child’s protected health information.

Action by Covered Entities: No additional action necessary.

Exception Determination/Other Remedy: Not required.
Ohio Law: O.R.C. § 3111.35 describes the required elements of the consent form for a non-spousal artificial insemination and provides for the disclosure of some of the donor’s medical and social background, as well as any other information that the donor approved for disclosure. It prohibits the medical care provider from disclosing the identity of the donor to the recipient and her husband and vice versa. O.R.C. § 3111.36 states that all information pertaining to the artificial insemination shall be kept in a separate file and kept confidential except that the recipient and her husband may access their consent form and all information shared under O.R.C. § 3111.35 until the child born as a result of the insemination is twenty-one. All other information regarding the artificial insemination will be kept separately and completely confidential, and will be destroyed after five years. Notwithstanding the preceding sentence, the separately stored confidential information can be disclosed in certain instances (e.g., a disclosure of any information “necessary for or helpful in the medical treatment of the child” in response to a court order is permissible (O.R.C. § 3111.36(C))).

Preemption: No. O.R.C. §§ 3111.35 and 3111.36 are not contrary to HIPAA’s privacy regulations and compliance with HIPAA’s privacy regulations and Ohio law is possible.

Rationale: O.R.C. § 3111.35 sets forth additional consent form requirements. Such additional requirements are considered to be “more stringent” under HIPAA’s privacy regulations and therefore not preempted by HIPAA’s privacy regulations. O.R.C. § 3111.35 also requires the physician to disclose the donor’s protected health information to the recipient (and her spouse). Such disclosure is permissible under 42 C.F.R. § 164.512(a), which allows covered entities to use or disclose protected health information without patient authorization if the use or disclosure is “required by law” and if the disclosure is in compliance with and limited to the requirements of the applicable law.

With respect to disclosures of the separately stored confidential information (as required under O.R.C. § 3111.36(C)), the physician should not disclose the protected health information except pursuant to an appropriate court order (which is required under O.R.C. § 3111.36). A disclosure would be permissible without patient authorization under 42 C.F.R. § 164.512(e), if the disclosure is limited to the specific information demanded by the order. Thus, the physician can comply with both HIPAA’s privacy regulations and Ohio law.

Action by Covered Entities: Covered entities should continue to comply with O.R.C. §§ 3111.35 and 3111.36. HIPAA’s privacy regulations do not add additional burdens on the physicians with respect to disclosures pursuant to O.R.C. §§ 3111.35 and 3111.36. For added safety, add an authorization to the paper work required to be filled out by donors that specifies that the donor authorizes the disclosure of the information described in O.R.C. § 3111.35 to the recipient and, if applicable, her spouse.

Exception Determination/Other Remedy: None.
O.R.C. §3111.91

Ohio Law:  O.R.C. § 3111.91 states that in order for a physician to use fresh semen for purposes of non-spousal artificial insemination, the physician must have performed a complete physical on the donor within one year prior to the donor supplying the semen.

Preemption:  No.

Rationale: Statute does not involve the use or disclosure of protected health information.

Action by Covered Entities:  None.

Exception Determination/Other Remedy:  Not required.
Ohio Law: O.R.C. § 3113.39 states that certain domestic violence shelters have annual reporting obligations with respect to referrals made for medical, psychological, and other services. No information contained in any report may identify any person served by the shelter.

Preemption: No.

Rationale: O.R.C. § 3113.39 governs domestic violence shelters, which are not covered entities, nor does O.R.C. § 3113.39 involve the use or disclosure of individually identifiable health information.

Action by Covered Entities: None.

Exception Determination/Other Remedy: Not required.
O.R.C. § 3304.21

Ohio Law: O.R.C. § 3304.21 states that no person shall “solicit disclose, recover, make use of, authorize . . . or acquiesce in the use of any list of names or information concerning persons applying for or receiving services from the [rehabilitation services] commission."

Preemption: No.

Rationale: O.R.C. § 3304.21 does not govern the use or disclosure of protected health information by covered entities because the rehabilitation services commission is not a health care provider.

Action by Covered Entities: None.

Exception Determination/Other Remedy: Not required.
Ohio Law: O.R.C. § 3313.50 requires boards of education and boards of health that perform vision and hearing testing to maintain accurate records of such tests and statistical reports (presumably involving de-identified information). These records are to be made available to state and local health education and human services departments and agencies. Individual records must be made available to such departments and agencies if there is evidence that no corrective measures were taken or if school authorities deem such records essential to establishing special education programs for children with hearing or visual defects.

Preemption: No.

Rationale: If the educational institution receives federal funds, the records described in O.R.C. § 3313.50 are educational records, which fall outside the definition of “protected health information” under HIPAA’s privacy regulations (see, 42 CFR§ 164.501). These records are therefore not governed by HIPAA’s privacy regulations. HIPAA’s privacy regulations explicitly indicate these records are education records that are to be governed by Federal Educational Rights and Privacy Act, 20 C.F.R. 1232g (“FERPA”). If the educational institution does not receive federal funds (and FERPA would therefore not apply), HIPAA’s privacy regulations will apply only if the institution is a covered entity -- that is, the educational institution acts as a health care provider and transmits health information in connection with a transaction covered by HIPAA. If an educational institution is not covered by FERPA and is deemed to be a covered entity, the disclosure of such records contemplated by O.R.C. § 3313.50 is required by law, and therefore such disclosure permissible under 42 C.F.R. § 164.512(a), which allows covered entities to use or disclose protected health information without patient authorization if the use or disclosure is “required by law” and if the disclosure is in compliance with and limited to the requirements of the applicable law. Thus, no preemption issue exists because the educational institution could comply with both State law and HIPAA’s privacy regulations.

Action by Covered Entities: None, assuming the educational institution is not a covered entity. If the educational institution is a covered entity, it needs to comply with the verification requirements of 42 C.F.R § 164.514(h), which allows covered entities to rely on requests for disclosures made in writing on appropriate government letterhead or oral requests for disclosures by a person with appropriate credentials (e.g., an agency identification badge, official credentials or other proof of government status).

Exception Determination/Other Remedy: Not required.
O.R.C. §3313.67
School Records on Childhood Immunizations

Ohio Law: O.R.C. § 3313.67(B) requires that the board of education keep an immunization record for each pupil, available in writing to the pupil’s parent or guardian upon request, which shall include:

1. Immunizations against the diseases mentioned in division (A) of section 3313.671 of the Revised Code;
2. Any tuberculin tests given pursuant to section 3313.71 of the Revised Code;
3. Any other immunizations required by the board pursuant to division (A) of this section.

O.R.C. § 3313.67 (C) requires that, annually by the fifteenth day of October, the board shall report a summary, by school, of the immunization records of all initial entry pupils in the district to the director of health, on forms prescribed by the director.

Preemption: No.

Rationale: If the educational institution receives federal funds, the records described in O.R.C. § 3313.67 are educational records, which fall outside the definition of “protected health information” under HIPAA’s privacy regulations (see, 42 CFR§ 164.501). These records are therefore not governed by HIPAA’s privacy regulations. HIPAA’s privacy regulations explicitly indicate these records are education records that are to be governed by Federal Educational Rights and Privacy Act, 20 C.F.R. 1232g (“FERPA”). If the educational institution does not receive federal funds (and FERPA would therefore not apply), HIPAA’s privacy regulations will apply only if the institution is a covered entity -- that is, the educational institution acts as a health care provider and transmits health information in connection with a transaction covered by HIPAA. If an educational institution is not covered by FERPA and is deemed to be a covered entity, (i) the disclosure of records to a parent or guardian under O.R.C. § 3313.67(B) would not be preempted because 42 C.F.R. § 160.202 specifically states that HIPAA’s privacy regulations will not preempt State law that authorizes or prohibits disclosure of information to parents or guardians, and (ii) the disclosure of information under O.R.C. § 3313.67(C) is in “summary” form and should not include any individually identifiable information (and therefore HIPAA’s privacy regulations do not apply). Even if the HIPAA privacy regulations apply, the disclosure is required by law, and therefore such disclosure permissible under 42 C.F.R. § 164.512(a), which allows covered entities to use or disclose protected health information without patient authorization if the use or disclosure is “required by law” and if the disclosure is in compliance with and limited to the requirements of the applicable law.

Action by Covered Entities: None, assuming the educational institution is not a covered entity. If it is a covered entity and the disclosure is to a government agency under O.R.C. § 3313.67, the educational institution needs to comply with the verification requirements of 42 C.F.R § 164.514(h), which allows covered entities to rely on requests for disclosures made in writing on appropriate government letterhead or oral requests for disclosures by a person with appropriate
credentials (e.g., an agency identification badge, official credentials or other proof of government status).

**Exception Determination/Other Remedy:** Not required.
Ohio Law: O.R.C. § 3313.71

Whenever a pupil, teacher, or other school employee is found to be ill or suffering from tuberculosis in a communicable stage or other communicable disease, the school physician shall promptly send such pupil, teacher, or other school employee home, with a statement, in the case of a pupil, to the pupil’s parents or guardian, briefly setting forth the discovered facts, and advising that the family physician be consulted. School physicians shall keep accurate card index records of all examinations, and said records, that they may be uniform throughout the state, shall be according to the form prescribed by the state board of education, and the reports shall be made according to the method of said form. Such individual records shall not be open to the public and shall be solely for the use of the boards of education and boards of health officer.

Preemption: No.

Rationale: If the educational institution receives federal funds, the records described in O.R.C. § 3313.71 are educational records, which fall outside the definition of “protected health information” under HIPAA’s privacy regulations (see, 42 CFR § 164.501). These records are therefore not governed by HIPAA’s privacy regulations. HIPAA’s privacy regulations explicitly indicate these records are education records that are to be governed by Federal Educational Rights and Privacy Act, 20 C.F.R. 1232g (“FERPA”). If the educational institution does not receive federal funds (and FERPA would therefore not apply), HIPAA’s privacy regulations will apply only if the institution is a covered entity -- that is, the educational institution acts as a health care provider and transmits health information in connection with a transaction covered by HIPAA. If an educational institution is not covered by FERPA and is deemed to be a covered entity, the disclosure of records under O.R.C. § 3313.71 is to a parent and would not be preempted because 42 C.F.R. § 160.202 specifically states that HIPAA’s privacy regulations will not preempt State law that authorizes or prohibits disclosure of information to parents.

Action by Covered Entities: None.

Exception Determination/Other Remedy: Not required.
O.R.C. §3319.32(B) and (C)
Limits on Public Access to Student Records

Ohio Law: O.R.C. § 3319.32(B) and (C) concern the use and disclosure of student records (some of which may contain protected health information) by public schools.

Preemption: No.

Rationale: O.R.C. § 3319.32(B) and (C) clearly states that it is applicable to public schools, which leads to the conclusion that the educational institution receives federal funds. Therefore, the records described in O.R.C. § 3313.32 are educational records, which fall outside the definition of “protected health information under HIPAA’s privacy regulations (see, 42 CFR§ 164.501). These records are therefore not governed by HIPAA’s privacy regulations. HIPAA’s privacy regulations explicitly indicate these records are education records that are to be governed by Federal Educational Rights and Privacy Act, 20 C.F.R. 1232g (“FERPA”).

Action by Covered Entities: None.

Exception Determination/Other Remedy: Not required.
Ohio Law:  O.R.C. §3323.06 provides as follows:

(A) The state board of education shall develop, implement, provide general supervision of, and assure compliance with a state plan for the identification, location, and evaluation of all handicapped children in the state, for the placement and provision of special education and related services for all handicapped children three to twenty-one years of age, and for the availability of education placement and special education for handicapped children under three years of age. The state plan shall include all procedures, standards, and guidelines required under this chapter or necessary or appropriate to develop, implement, monitor, and assure compliance with the state plan.

The plan shall provide for the development and implementation of a comprehensive system of personnel development, which shall include the in-service training of general and special education instruction and support personnel. The plan shall include procedures to assure the protection of the confidentiality of any personally identifiable data, information, and records collected and maintained under this chapter.

Copies of any proposed plan shall be made available upon request to any interested party at least thirty days prior to its adoption by the state board of education.

(B) In addition to the programs authorized under division (A) of this section, the state board may, upon application, grant permission to establish and maintain identification and diagnostic services for persons below the age of three and may offer parental counseling service to their parents. The application shall specify the goals and objectives of the services, and in June of each year following the commencement of the offering of such services, a report shall be submitted to the state board of education outlining the extent to which the goals and objectives were met, in addition to any other information the state board may require with regard to such services. The state board of education shall take such report into consideration when making a determination whether to grant approval to continue the services in succeeding years.

(C) The state board of education shall select competent persons to inspect all classes or programs and to provide such other services established under this chapter, and to report concerning the instruction in such classes, the conditions under which they are maintained, the conditions under which any persons enrolled in such classes are boarded, and the extent and nature of all other services related to education affecting handicapped children.

Preemption:  No.

Rationale:  This statute does not govern the use or disclosure of protected health information by covered entities. We recommend removing this statute from the analysis.

Action by Covered Entities:  N/A

Exception Determination/Other Remedy:  Not required.
O.R.C. §3701.028  
Program for Medically Handicapped Children

**Ohio Law:** O.R.C. §3701.028 excepts certain records maintained by the Ohio Department of Health in administering the program for mentally handicapped children and certain programs funded by the Maternal and Child Health Block Grant from the definition of public records under Ohio’s Public Records law. The particular categories of records excepted include records regarding medical or psychological history, diagnosis and treatment and reports of public health workers. The statute prohibits the release of such records without consent of the subject, or for minors, their parent or guardian, unless such disclosure is made to administer the program, to coordinate the provision of services with other programs, or to coordinate payment.

**Preemption:** Preempted in part.

**Rationale:** O.R.C. §3701.028 authorizes a public health worker to disclose protected health information without consent to coordinate services or payment. In this respect, it conflicts with the requirements of the HIPAA privacy regulations that consent be obtained for any disclosures for purposes of treatment or payment.

**Action by Covered Entities:** Covered entities must obtain consent to use and disclose protected health information for purposes of coordinating treatment and obtaining payment for services rendered to recipients of certain publicly funded health care.

**Exception Determination/Other Remedy:** Not recommended as compliance with HIPAA will permit the disclosure contemplated under the statute.
O.R.C. §3701.041
Employee Assistance Program

Ohio Law: O.R.C. §3701.041 establishes an employee assistance program and requires that records pertaining to the identity, diagnosis, prognosis and treatment of employees who utilize the program are not public records and shall not be subject to the Ohio Public Records Statute. Such records may only be disclosed as follows: 1) with individual consent; 2) in cases of medical emergency; 3) to qualified personnel for purposes of research, audit, or evaluation, provided the identity of the individual is not released in the research, audit or evaluation; and 4) upon court order based upon a showing of good cause.

Preemption: Yes, in part. Although the statute is not directly contrary to the HIPAA privacy regulation requirements, so that compliance with both the state and federal law is possible, the exceptions under the privacy regulation are more complex than the state law exceptions, such that state law may be preempted in part.

Rationale: O.R.C. §3701.041 is consistent with the goals of the HIPAA privacy regulations as the statute requires a consent to be executed prior to disclosure of protected health information, except in certain instances. These exceptions include bona fide medical emergencies, research and audits, provided the individual’s identity is not disclosed as part of the research or audit, or upon court order upon a showing of good cause. Under the privacy regulations, such disclosures are also permitted, but several requirements must be satisfied in order to qualify for the exception. For example, the exception for research under HIPAA requires that the use of the information without an authorization has been approved by either a privacy board or an institutional review board. 45 C.F.R. 164.512(i). Therefore, while compliance with both state and federal law is possible, compliance with state law is not tantamount to compliance with the privacy regulations.

Action by Covered Entities: Covered entities must obtain standard HIPAA consents in connection with any treatment provided under an employee assistance program. Disclosure of such information is not permitted without consent unless a HIPAA exception is satisfied.

Exception Determination/Other Remedy: Not required.
O.R.C. §3701.24(B)
Reports of Diseases

Ohio Law: O.R.C. §3701.24 requires boards of health, physicians, and other health authorities to report any of the following diseases: Asiatic cholera, yellow fever, diphtheria, typhus or typhoid fever, certain venereal diseases, hepatitis, mumps, and rabies. Such information is confidential and may not be disclosed except as follows: to ensure the accuracy of the information; as necessary to provide treatment to the individual; pursuant to court order for testing or disclosure as provided by Ohio law; or pursuant to search warrant or subpoena in connection with a criminal investigation. Non-identifying information may be released in summary, statistical, or other form.

Preemption: No.

Rationale: O.R.C. §3701.24 is not contrary to federal law. The statute provides for mandatory reporting of certain types of diseases. The exceptions to disclosure for court orders for testing or disclosure, criminal investigations, and treatment are permitted disclosures under HIPAA. The exception allowing disclosure to ensure accuracy is consistent with the goals of HIPAA.

Action by Covered Entities: Covered entities must report incidents of any of the diseases set forth in the statute to the Department of Health.

Exception Determination/Other Remedy: Not required.
O.R.C. §§3701.24(C), 3701.24(a)(3), 3701.231, 3701.242, and 3701.243

HIV Testing and AIDS Information

Ohio Law:

O.R.C. §3701.242 requires that informed consent be obtained prior to performing an HIV test. Consent is not necessary in the following circumstances:

- Medical emergency, when the test results are medically necessary to avoid or minimize an immediate danger to an individual's health or safety;
- When performed for the purpose of research if the researcher does not know the identity of the individual tested;
- When performed to determine the suitability of an organ for donation;
- When performed on a prisoner if determined to be necessary;
- When determined to be necessary by a physician who has been given consent for treatment;
- Pursuant to a determination of a significant exposure to blood or bodily fluids of a health care provider, EMS worker, or peace officer while rendering care and treatment, if consent is refused. Minors may consent to a test; however, absent consent by the parents, the parents are not responsible for payment.

O.R.C. §3701.243 provides that information pertaining to the identity of any individual tested or the results of such test is confidential. Such information can be disclosed to:

- The individual tested or his or her legal guardian and his or her spouse or any sexual partner;
- Any person to whom disclosure is authorized by a specific release by the individual or his or her guardian;
- The individual's physician;
- The Department of Health as required by reporting statutes;
- A health care facility that procures organ or tissue from the individual to determine suitability; and
- To providers, EMS workers or peace officers, if an individual was tested based upon O.R.C. §3701.242 (allowing testing based upon a significant exposure to bodily fluids).

Disclosure of access:

Any disclosure of medical and medical representations or any other protected information must be accompanied by the following (or a similar) statement:

"This information has been disclosed to you from confidential records protected from disclosure by state law. You shall not disclose this information to any person except for the purpose of the treatment or care of an individual to whom it pertains, or as otherwise permitted by state law. A general authorization for the release of medical or other information is not sufficient for the purpose of the release of HIV test results or diagnosis. Health care providers must establish a protocol to be followed by employees in determining whether to disclose certain information in accordance with the protocol developed."
**Action by Covered Entities:** Covered entities must obtain consent when necessary prior to performing an HIV test. Covered entities must incorporate a disclosure statement into their notice of privacy practices, consent forms, and authorization form that demonstrates the individual’s specific consent to release of HIV information. The statutory language set forth above must accompany any disclosure of such information. Covered entities must develop a protocol (if they haven’t already done so) to be followed by employees in disclosing HIV information.

**Exception Determination/Other Remedy:** Not required.
O.R.C. §3701.248(B)
Exposure to Disease by Emergency Medical or Funeral Personnel

Ohio Law: O.R.C. §3701.248 establishes a procedure to allow an EMS worker or funeral services worker who believes that significant exposure to bodily fluids or infectious or contagious disease of an individual during the course of treatment may submit a request to a health care facility to be notified of the results of any test performed on the individual to determine the presence of such disease. Any notification of the results of any test shall not include the name of the patient. A funeral services worker is permitted to have a test performed on the patient if no test has been performed.

Preemption: No.

Rationale: O.R.C. §3701.248 allows health care providers to disclose information to health care workers when an individual has refused to consent to the disclosure. Such a disclosure is permitted under 45 C.F.R. §164.512(b)(1)(iv).

Action by Covered Entities: Covered entities may disclose test results as permitted under O.R.C. §3701.248, provided they do not disclose the identity of the patient.

Exception Determination/Other Remedy: Not required.
O.R.C. §3701.25
Physician Reports of Poisonings and Diseases

Ohio Law: O.R.C. §3701.25 requires all attending physicians or physicians called in to visit a patient whom the physician believes to be suffering from certain occupational diseases, including poisoning from lead, cadmium, phosphorus, arsenic, brass, wood alcohol, mercury, anthrax, and other diseases, to report such information to the Department of Health within 48 hours of first seeing the patient.

Preemption: No.


Action by Covered Entities: Covered entities must report appropriate cases to the Department of Health as required by O.R.C. §3701.25.

Exception Determination/Other Remedy: Not required.
Ohio Law: O.R.C. §§3701.262 and 3701.263 establish a cancer incidence surveillance system and require physicians, dentists, hospitals, and other care providers to report each case of cancer to the Department of Health. The Department of Health shall record all cases of cancer received by it. Physicians, dentists, and hospitals must grant to the Department or its representatives access to all records that identify cases of cancer, establish characteristics of cancer, treatment of cancer, or the medical status of any identified cancer patient. Such disclosures do not render the physician, hospital, or dentist liable for damages or other relief. Information provided to the Department pursuant to the statute is confidential and cannot be disclosed except as follows: to medical researchers, if information is provided about the project, the data to be collected and how it will be analyzed, the records sought to be reviewed, and the safeguards to be taken to protect the identity of the subject of the records reviewed; the Director of Health believes the safeguards are adequate to protect the identity of the patient whose records will be reviewed; and an agreement is reached specifying the use of the information and prohibiting publication of any facts that would identify the patients. With Department approval, a researcher is also permitted to use patient names when requesting additional information for purposes of research or soliciting a patient’s participation in a research project, provided the researcher first obtains the oral consent of the patient’s attending physician and then the written consent of the patient. The Department may release information concerning diagnosis and treatment if the attending physician provides consent and the patient provides written consent. The Department is authorized to release information regarding individual cancer patients to another state’s registry if the states have entered reciprocal agreements regarding the information to be provided and assuring compliance with the statute.

Preemption: No.

Rationale: O.R.C. §§3701.262 and 3701.263 require covered entities to report all cases of cancer to the Department of Health and to grant the Department access to all records regarding cancer treatment for a patient. Such disclosures are permitted under 45 C.F.R. §164.512(b)(1)(i). Any subsequent disclosure by the Department would not be covered by the HIPAA privacy regulations, as the Department of Health is not a covered entity. Such disclosures require both the consent of the physician and the written consent of the patient.

Action by Covered Entities: Covered entities must report cancer cases as required by O.R.C. §§3701.262 and 3701.263. When consent is sought for a further disclosure, covered entities should ensure that patient consent is obtained prior to granting their own consent to disclosure. Covered entities may wish to develop an appropriate authorization that can be executed by patients in such circumstances.

Exception Determination/Other Remedy: Not required.
O.R.C. §§3701.51 and 3701.52
Reports of Eye Inflammation in Newborns

Ohio Law: O.R.C. §3701.52 requires a physician, surgeon, obstetrician, certified nurse midwife, nurse, maternity home, hospital, parent or relative who knows of the condition, to report an inflammation of the eyes of an infant.

Preemption: No.

Rationale: O.R.C. §3701.52 is not contrary to the HIPAA privacy regulations. The statute establishes a mandatory reporting requirement for eye infections in children. Such reporting is expressly permitted under 45 C.F.R. §164.512(b)(1)(i).

Action by Covered Entities: Covered entities must satisfy their reporting obligations under O.R.C. §3701.52.

Exception Determination/Other Remedy: Not required.
O.R.C. §3701.74
Patient Access to Records of Hospitals and Health Care Practitioners

**Ohio Law:** O.R.C. §3701.74 requires a hospital or practitioner to prepare a finalized medical record within a reasonable time after treating a patient. The statute also provides the patient with a right to examine his or her medical record by submitting a request which must be dated not more than 60 days before it is submitted. The patient may designate whether the copy should be sent to the patient’s residence or held for the patient in the hospital or by the practitioner. The hospital or practitioner must take reasonable steps to establish the identity of the party seeking the record.

**Preemption:** No

**Rationale:** O.R.C. §3701.74 provides patients a right to access and copy their medical records. This right is consistent with the general right granted under 45 C.F.R. §164.524(a)(1). However, 45 C.F.R. §164.524(a)(1) provides several bases upon which a request for access may be denied and categorically excludes psychotherapy notes from the information to be disclosed. The only basis upon which a request for information may be denied under state law is a finding that disclosure may have an adverse effect on the patient. In such cases, the provider must provide the information to a physician or chiropractor designated by the patient. In this respect, state law grants individuals greater rights of access than federal law.

**Action by Covered Entities:** Covered entities must incorporate the requirements of O.R.C. §3701.74 into their policy on rights of access and amendment to medical records.

**Exception Determination/Other Remedy:** Not required.
Ohio Law:  O.R.C. §3701.741 establishes the fees that may be charged by providers or medical records companies that receive requests for copies of patient medical records. Except as provided by contract between the parties, a health care provider or medical records company may charge as follows: an initial fee of fifteen dollars, and for paper records, one dollar per page for the first ten pages, fifty cents per page for pages eleven through fifty, and twenty cents per page for pages fifty-one and higher. For non-paper records, the actual cost of making the copy can be charged. In addition, the cost of any postage may be charged. A health care provider or medical records company must provide a copy without charge as required by statute: to the Bureau of Workers’ Compensation; to the Industrial Commission; to the Department of Jobs and Family Services; and to the patient or patient’s representative when necessary to support a claim under the Social Security Act, if the request is accompanied by documentation that a claim has been filed. The statute does not apply to copies of medical records provided to insurers licensed under O.R.C. Chapter 39, to health insuring corporations, or to medical records the copying of which is governed by O.R.C. §173.20 or the Medicare Conditions of Participation.

Preemption:  Possible

Rationale:  O.R.C. §3701.741 sets the maximum fee that may be charged by providers for copies of medical records absent agreement. The HIPAA privacy regulations allow providers to charge a reasonable fee for providing copies so long as the fee includes only the cost of copying, including labor and supplies and postage. An argument can be made that Ohio law establishes the maximum reasonable fee that can be charged under HIPAA. On the other hand, the fifteen dollar initial fee that is specifically permitted under Ohio law as compensation for the search can be argued to constitute an administrative search fee. The HIPAA privacy regulations prohibit covered entities from charging any type of fee unrelated to the actual costs of copying, including labor, supplies and postage. Under this rationale, the privacy regulations would preempt state law.

Action by Covered Entities:  Covered entities should charge their actual cost for providing copies, but no more than the costs permitted by the Ohio statute. Absent further clarification, the initial fee of fifteen dollars should not be included as part of the actual costs.

Exception Determination/Other Remedy:  We recommend that the Ohio Legislature address the conflict created by the Ohio statute’s allowance of an initial/search fee.
O.R.C. §3702.18
Quality-of-Care Data on Health Services

Ohio Law: O.R.C. §3702.18 provides that any quality of care data reported to the Department of Health pursuant to O.R.C. §3702.11 or any record copied in connection with the Department's investigatory powers, shall not be made public if it identifies or would tend to identify patients.

Preemption: No.

Rationale: O.R.C. §3702.18 is not contrary to the HIPAA privacy regulations. The statute governs use and disclosure of protected health information by the Department of Health, not by any covered entity. Any reports submitted by any covered entity under the statute or state regulations are permitted by 45 C.F.R. §164.512(b)(1)(i).

Action by Covered Entities: Covered entities must report required quality of care information to the Department of Health.

Exception Determination/Other Remedy: Not required.
Ohio Law:  O.R.C §3702.531 authorizes the Director of Health to investigate any violation of the certificate of need laws. In conducting such investigations, the Director may examine any relevant information. A person must respond to a request within 45 days. The Director may issue subpoenas to obtain such documents. However, any patient identifying information may not be made public without the written consent of the patient or his or her guardian (or parent if the patient is a minor).

Preemption:  No.

Rationale:  O.R.C. §3702.531 is not contrary to the HIPAA privacy regulations. Covered entities are permitted to disclose information for public health oversight activities authorized by law under 45 C.F.R. §164.512(d).

Action by Covered Entities: Covered entities must respond to subpoenas for information by the Director of Health in connection with an investigation.

Exception Determination/Other Remedy: Not required.
O.R.C. §3705.23(A)(4)(b)
Confidentiality of Parts of Birth Records

Ohio Law: O.R.C. §3705.23(A)(4)(b) provides that the information contained in a birth record in the Section labeled “information for medical and health use only” shall not be included by the state registrar as part of the certified copy of the birth record unless the information is specifically requested by the individual who is the subject of the birth certificate, his or her parent or guardian, a lineal descendant, or an official of state or federal government charged to investigate a crime. Otherwise, this information cannot be disclosed except upon court order or if the state registrar authorizes release for purposes of statistical information or research.

Preemption: No

Rationale: The state registrar is not a covered entity under the HIPAA privacy regulations.

Action by Covered Entities: No action needed.

Exception Determination/Other Remedy: Not required.
Ohio Law: O.R.C. §3705.30 establishes a birth defects information system, under which physicians, hospitals, and birthing centers may be required to report information concerning all patients under five years of age with a birth defect. Physicians, hospitals, and freestanding birthing centers are required to grant the Department of Health access to the records of any patient for whom a report is made. These entities are immune from liability associated with reporting such information. O.R.C. §3705.32 provides that the information maintained in the system is confidential and may not be disclosed except to the Director of Health and his or her authorized employees, and to qualified persons or government entities engaged in studies related to the provision of health care who execute an agreement to maintain confidentiality. Information that does not identify patients may be disclosed in summary or statistical form. The Director shall maintain a log showing who accessed the system; who authorized access; the dates of access; and the purpose of any access.

Preemption: No.

Rationale: Covered entities are permitted to disclose information under the privacy regulation to public health authorities for purposes of preventing or controlling disease. A disclosure to the Department of Health pursuant to O.R.C. §3705.32 is expressly permitted under 45 C.F.R. §164.512(b). Any subsequent disclosure by the Department of Health would not be covered by the HIPAA privacy regulations.

Action by Covered Entities: Covered entities must report birth defects to the Department of Health and grant access to the records regarding the subject of the report as required by O.R.C. §3705.32.

Exception Determination/Other Remedy: Not required.
Ohio Law: O.R.C. §3707.06 requires physicians to report to the health commissioner the name, age, sex, color, and location of a patient suffering from cholera, plague, yellow fever, typhus fever, diphtheria, typhoid fever, or other infectious diseases. Building owners who have knowledge of a resident with any of the above-mentioned diseases must also report this information to the health commissioner.

Preemption: No.

Rationale: O.R.C. §3707.06 establishes mandatory reporting of certain infectious diseases. Such disclosures are expressly permitted under 45 C.F.R. §164.512(b)(1)(i).

Action by Covered Entities: Covered entities must report any occurrence of the identified infectious diseases.

Exception Determination/Other Remedy: Not required.
Ohio Law: O.R.C. §3709.22 allows the board of health to provide medical and dental supervision of school children, provided that no treatment shall be administered except upon written request of a parent or guardian. Any information learned as a result of medical examination shall be communicated only to the parent or guardian and in writing, in a sealed envelope addressed to the parent or guardian. O.R.C. §3709.22 allows the board of health to provide medical and dental supervision of school children, provided that no treatment shall be administered except upon written request of a parent or guardian. Any information learned as a result of medical examination shall be communicated only to the parent or guardian and in writing, in a sealed envelope addressed to the parent or guardian. O.R.C. §3709.22 allows the board of health to provide medical and dental supervision of school children, provided that no treatment shall be administered except upon written request of a parent or guardian. Any information learned as a result of medical examination shall be communicated only to the parent or guardian and in writing, in a sealed envelope addressed to the parent or guardian.

Exception Determination/Other Remedy: Not required.

Written consent to disclosure from the parent or guardian is required. Any written information communicated to the parent or guardian shall be placed in a sealed envelope addressed to the parent or guardian.

Preemption: No.
O.R.C. §3711.11
Records of Maternity Boarding Houses

Ohio Law: O.R.C. §3711.11 prohibits disclosure of the records of a maternity hospital or home except upon court inquiry, coroner’s request, or to the Department of Health or board of health.

Preemption: Yes, in part.

Rationale: O.R.C. §3711.11 prohibits disclosure of records of a maternity hospital to an individual except upon court order. In this manner, the statute is inconsistent with the goals of the HIPAA privacy regulations and is preempted.

Action by Covered Entities: Covered entities must permit individuals to access their medical records as required under 45 C.F.R. §164.524.

Exception Determination/Other Remedy: Not required.
Ohio Law: O.R.C. §3719.13 provides that prescriptions, orders, and stocks of dangerous drugs shall be kept confidential and shall be open for inspection only to federal, state, and county officials, employees of the State Board of Pharmacy and others who are duty bound to enforce the laws relating to controlled substances. No person may disclose any knowledge regarding a prescription or order except in court or licensure proceedings pertaining to the person to whom the prescriptions relate.

Preemption: Preempted in part.

Rationale: O.R.C. §3719.13 prohibits a pharmacist from disclosing a prescription or order. Such information is required to be disclosed to the individual who is the subject of the information under the HIPAA privacy regulations.

Action by Covered Entities: Covered entities must disclose information regarding prescriptions and orders to the subject of the information. Otherwise, such information shall be maintained as confidential and cannot be disclosed except to law enforcement officials and in a court proceeding.

Exception Determination/Other Remedy: Not required.
Ohio Law: O.R.C. §3721.031 allows the Director of Health to investigate any complaints regarding nursing homes. The statute further provides that the following information related to the investigation may not be disclosed by the Director without consent of the individual or his or her legal representative: the identity of the patient or resident; the identity of an individual who submits a complaint about a home; the identity of an individual who provides information to the Director and requests confidentiality; or any other information that would tend to disclose the identity of an individual.

O.R.C. §3721.13 grants nursing home and residential care facility residents a number of rights, including the right to access their medical record, the right to confidentiality of their medical record, and the right to approve or refuse release of the medical record.

Preemption: No.

Rationale: O.R.C. §3721.031 addresses information gathered by the Director of Health in connection with an investigation of a nursing home and places certain limitations on the Director regarding further use of the information. The Director of Health is not a covered entity under the HIPAA privacy regulations.

O.R.C. §3721.13 is not contrary to the HIPAA privacy regulations. The statute grants individuals a right to access their medical records and limit further disclosures of their records.

Action by Covered Entities: Covered entities should cooperate with any investigation regarding their nursing home, but are not required by this statute to disclose any protected health information to the Department of Health.

Covered entities must grant nursing home residents a right to access their medical records consistent with the HIPAA privacy regulations and O.R.C. §3721.13.

Exception Determination/Other Remedy: Not required.
O.R.C. §3724.05(H) and 3724.07(B)(5)
Community Alternative Homes

Ohio Law: O.R.C. §3724.05(H) requires the public health council to establish requirements for record keeping and maintaining the confidentiality of records of residents of community alternative homes, and O.R.C. §3724.07(B) grants residents the right to confidential treatment of personal and medical records.

Preemption: No

Rationale: O.R.C. §3724.07(B) is not contrary to the HIPAA privacy regulations. The statute grants individuals a right to access their medical records and limit further disclosures of their records.

Action by Covered Entities: Covered entities must grant residents of community alternative homes a right to access their medical records consistent with the HIPAA privacy regulations and O.R.C. §3701.74.

Exception Determination/Other Remedy: Not required.
O.R.C. §§3727.14 and 3727.15
Reports on Hospitals

Ohio Law:  O.R.C. §3727.14 requires hospitals to disclose certain information regarding admissions, discharges, and lengths of stay for certain diagnosis-related groups. Such information shall not include the name or social security number of a patient or physician. A database of such information shall be maintained as a public record, but no information may be disclosed except on an aggregate basis by geographic area, institution or other designation. Any collection, compilation, analysis, or release of information by the Department shall protect the confidentiality of patients and physicians.

Preemption:  No.

Rationale:  O.R.C. §3727.14 is consistent with the goals of the privacy regulations because the information required to be submitted does not contain patient identifying information. Further, the required disclosure is permitted pursuant to 45 C.F.R. §164.512(d).

Action by Covered Entities:  Hospitals must report the information required.

Exception Determination/Other Remedy:  Not required.
O.R.C. §3742.03(E)(3)

Lead Poisoning

Ohio Law: O.R.C. §3742.03(E) and its implementing regulations require the Department of Health to maintain the confidentiality of medical records regarding lead poisoning. Such information cannot be released except in aggregate statistical form.

Preemption: No.

Rationale: The statute does not regulate covered entities in their use and disclosure of protected health information.

Action by Covered Entities: No action needed.

Exception Determination/Other Remedy: Not required.
O.R.C. §3793.13
Methadone Treatment

Ohio Law: O.R.C. §3793.13 provides that information pertaining to the identity, diagnosis, or treatment of any patient which is maintained in connection with an alcohol or drug treatment program shall be maintained as confidential and shall not be disclosed except with patient consent or without consent if the patient has agreed to treatment as a condition of parole. Disclosure may also be made without consent for purposes of research, management, audits, or program evaluation, provided patient identity is not disclosed.

Preemption: Yes.

Rationale: O.R.C. §3793.13 allows disclosure of records without patient consent for patients who have agreed to treatment as a condition of parole. Such a disclosure is inconsistent with the HIPAA privacy regulation, which requires consent to be obtained prior to disclosure.

Action by Covered Entities: Because these Sections do not appear to impose disclosure requirements on covered entities, no action appears required based on these statutory provisions.

Exception Determination/Other Remedy: None required.
O.R.C. §3793.14
Alcohol and Drug Addiction Treatment

SUPPLEMENTAL MEMORANDUM

Ohio Law: O.R.C. §3793.14 grants patients a right of confidentiality to their records pertaining to drug and alcohol treatment.

Preemption: No.

Rationale: O.R.C. §3793.14 is consistent with the HIPAA privacy regulations.

Action by Covered Entities: No specific action required.

Exception Determination/Other Remedy: Not required.
**O.R.C. §§3901.44 and 3903.11**

Insurance Investigations

**Ohio Law:** O.R.C. §3901.44 provides that all papers, documents, reports and evidence in the possession of the Ohio Department of Insurance that pertain to an insurance fraud investigation are confidential law enforcement investigatory records. All papers, documents, reports and evidence in the possession of the Department that do not pertain to an insurance fraud investigation are subject to Ohio public records laws.

O.R.C. §3903.11 provides that all records of the insurer, other documents and all Department files, court records and papers, so far as they pertain to or are a part of the record of a proceeding or judicial review pursuant to a supervision of an insurance company are confidential except as necessary to enforce compliance with the supervision.

**Preemption:** No. The HIPAA privacy standards only preempt contrary state law. Furthermore, they only apply to covered entities. The Ohio Department of Insurance is not a covered entity under HIPAA. Finally, in any event, the HIPAA regulations expressly provide that neither consent nor authorization is required for a covered entity to disclose protected health information as a part of an administrative or judicial proceeding.

**Rationale:** O.R.C. §3901.44 does not appear to fall within the ambit of HIPAA. This Section merely provides for a process to determine whether papers, documents, reports and evidence in the possession of The Ohio Department of Insurance is confidential law enforcement investigatory records or public records. However, the HIPAA statute only applies to covered entities. The Department does not meet the definition of a covered entity under HIPAA because it is not a provider, health plan or clearinghouse. Nothing in O.R.C. §3901.44 requires any particular disclosure by a covered entity. Therefore, this Section does not appear to be affected by HIPAA.

O.R.C. §3903.11 essentially provides that all supervision proceedings are confidential. Once again, this provision does not appear to fall within the ambit of HIPAA. This provision does not require any particular use or disclosure to be made by or on behalf of a covered entity. It merely states that any documents or records that are a part of or pertain to an actual supervision proceeding must remain confidential except in certain limited circumstances.

It is also worth noting that the HIPAA preemption regulation saves from preemption any provision of state law requiring a health plan to report or provide access to information for the purposes of management or financial audits, program monitoring and evaluation. See 45 C.F.R. §160.203(d). Therefore, even if an argument could be made that these Ohio statutory provisions are contrary to HIPAA, they would be saved from preemption as part of the general scheme of HIPAA to allow for appropriate management and financial audits of health plans. In addition, 45 C.F.R. §164.512(a) provides that no authorization is required for a disclosure required by law. Such disclosures include disclosures relating to judicial and administrative proceedings. See 45 C.F.R. §164.512(e). The fact that Ohio law specifically states in each of these provisions that
disclosures relating to fraud investigations or pursuant to a supervision are confidential provides additional support for the argument that such statutes are consistent with HIPAA.

**Action by Covered Entities:** No action necessary, because covered entities are not subject to these statutes.

**Exception Determination/Other Remedy:** Not required.
O.R.C. §3901.83
Records Submitted to Superintendent of Insurance

Ohio Law: O.R.C. §3901.83 provides that when a record that contains information relating to medical history, diagnosis, prognosis or the medical condition of an enrollee of a health insuring corporation, an insured of an insurer, or a plan member of a public employee benefit plan is provided to the Superintendent of the Ohio Department of Insurance, that the Superintendent shall maintain the confidentiality of the record.

Preemption: No. The HIPAA privacy standards only apply to covered entities. In this instance the Ohio law only applies a confidentiality requirement to the Superintendent, who is not a covered entity under HIPAA.

Rationale: O.R.C. §3901.83 does not fall within the ambit of HIPAA. HIPAA only applies to covered entities, which include health plans, health care clearinghouses and most health care providers. See 45 C.F.R. §160.103. However, O.R.C. §3901.83 only imposes a confidentiality requirement on the Superintendent. This statutory Section does not provide or require any particular use or disclosure by a covered entity.

Action by Covered Entities: Because this statute does not apply to covered entities, no action is required.

Exception Determination/Other Remedy: Not required.
O.R.C. §3904.08
Personal Information Recorded by Insurers

Ohio Law: O.R.C. §3904.08 provides that an insurance institution, agent, or insurance support organization must provide access to recorded personal information about individuals to individuals under certain circumstances and conditions.

Preemption: No. The HIPAA privacy standards only preempt contrary state law. In this instance the state law is not contrary because compliance with both Ohio and federal law is possible and O.R.C. §3904.08 should not stand as an obstacle to accomplishing the objectives of HIPAA. Alternatively if it is determined that the Ohio law provision is contrary to HIPAA, it appears that the Ohio provision would be saved from preemption pursuant to a HIPAA preemption exception that provides that a provision of state law relating to privacy of health information that is more stringent than HIPAA is saved.

Rationale: O.R.C. §3904.08 is consistent with the goals of the HIPAA privacy standards. O.R.C. §3904.08 is largely a mirror image of 45 C.F.R. §164.524, which describes the rights of access under HIPAA that individuals have to their protected health information. It is worth noting that HIPAA only applies to covered entities (see 45 C.F.R. §160.103), whereas the Ohio statute applies to insurance institutions, agents and insurance support organizations. Such insurance support organizations (which include consumer reporting agencies) or agents may not meet the definition of a health plan (and thus would not meet the definition of covered entity) for purposes of HIPAA, and may also not be the type of organization subject to the business associate rule. To the extent that such an organization does not meet the definition of health plan and is not subject to HIPAA by some other means, such organization would not be subject to the HIPAA requirements, but would continue to be subject to Ohio law.

The provisions of state law are largely consistent with the provisions of federal law. The time period for compliance, the ability to charge a reasonable fee, and the nature of disclosures all are essentially consistent between the Ohio statutory Section and the HIPAA regulatory provision. However, it also appears that the Ohio statute allows for rights of additional access and disclosure beyond that provided in 45 C.F.R. §164.524. For example, under 45 C.F.R. §164.524, a covered entity is not required to disclose to an individual certain types of protected health information, including psychotherapy notes, protected health information subject to CLIA, information that would not be subject to a right of access under the federal Privacy Act, 5 U.S.C. §552a, or if the protected health information was obtained from someone other than a health care provider under a promise of confidentiality and the access requested would be reasonably likely to reveal the source of the information. For these reasons, the Ohio statutory provision could be considered in some respects to be contrary to HIPAA.

To the extent that the Ohio statutory provision is considered to be contrary to HIPAA, it appears that the Ohio provision should be saved from preemption pursuant to 45 C.F.R. §160.203(b), which provides that provisions of state law relating to the privacy of health information that are more stringent than a standard, requirement or implementation specification adopted under HIPAA should not be preempted. 45 C.F.R. §160.202 defines more stringent to mean, in the
context of a comparison of a provision of state law and a HIPAA standard, that the state law meets one or more of six separate criteria. In particular, with respect to such comparison, the second criterion under the more stringent standard saves from preemption state law provisions that permit individuals greater rights of access or amendment, as applicable, to their protected health information. In addition, the third criterion under the more stringent analysis saves from preemption state law provisions that provide a greater amount of information to an individual about a use, disclosure, rights or remedies. O.R.C. §3904.08 appears to meet these two criteria under the more stringent analysis standard, particularly because the state law standard appears to allow for expanded rights of access by individuals to certain of their protected health information than would otherwise be allowed under the federal HIPAA regulations.

**Action by Covered Entities:** To the extent covered health plans and other covered entities under HIPAA that are also subject to O.R.C. §3904.08 already have procedures in place for information disclosures pursuant to O.R.C. §3904.08, such covered entities should revisit their policies and procedures and incorporate, where appropriate, HIPAA requirements pursuant to 45 C.F.R. §164.524.

**Exception Determination/Other Remedy:** Not required.
Ohio Law: O.R.C. §3904.13 generally prohibits insurance institutions, agents and insurance support organizations from disclosing any personal or privileged information about an individual collected or received in connection with an insurance transaction, except with the written authorization of the individual. See O.R.C. §3904.13(A). Disclosure of such information may be made without such an authorization under certain circumstances that are further outlined hereafter.

Disclosure may be made to a person other than an insurance institution, agent, or insurance support organization if reasonably necessary for one of the following reasons:

1. To enable such person to perform a business, professional or insurance function for the disclosing organization;
2. To enable eligibility determinations to be made, or to prevent fraud or criminal action.

Disclosure may be made to an insurance institution, agent or insurance support organization or self-insurer, provided such disclosed information is reasonably necessary to prevent fraud or criminal action, or to perform a function in connection with an insurance function involving the individual. See O.R.C. §3904.13(B-C).

Disclosure may be made to a health care provider in order to verify coverage or benefits, to inform an individual of a health problem of which the individual may not be aware, or to conduct audits. Only information reasonably necessary to accomplish any of these purposes may be disclosed. See O.R.C. §3904.13(D).

Disclosure may be made to an insurance regulatory authority, to a law enforcement officer to prevent criminal action or fraud, in response to a subpoena or judicial order, and to a peer review organization for the purpose of reviewing a medical facility or professional, or as otherwise may be permitted or required by law. See O.R.C. §3904.13(E-H, O).

Disclosure may be made for the purpose of actuarial or research studies, provided that no individuals are identified in any report, individually identifiable information is destroyed as soon as no longer needed, and the actuarial or research organization agrees not to disclose such information. See O.R.C §3904.13(I).

Disclosure may be made pursuant to a merger or acquisition transaction, provided that only such information is provided, prior to closing, as is reasonably necessary to enable the recipient to make a business decision regarding the transaction, and the recipient agrees not to further disclose such information. See O.R.C. §3904.13(J).

Disclosure may be made to a person for marketing purposes, provided that no medical record information, privileged information, or personal information relating to character, personal habits, mode of living, or general reputation is disclosed, and no classification derived from such
information is disclosed. The individual must be given an opportunity to request that any disclosure for marketing purposes not occur, and must give no indication that such information should not be disclosed for these purposes. See O.R.C. §3904.13(K).

Disclosure may be made to an affiliate in order to allow the affiliate to conduct audits or market an insurance product or service, and the affiliate must agree not to disclose the information for any other purpose or to unaffiliated persons. See O.R.C. §3904.13(L).

Disclosure may be made to group policy holders, governmental organizations, and policyholders for the purpose of determining eligibility, benefit coverage and similar insurance operations. See O.R.C. §3904.13(N,P,Q).

Disclosure may be made by a consumer reporting agency, provided that such disclosure is to other than an agent or insurance institution. See O.R.C. §3904.13(M).

Disclosure may be made to certain persons holding a legal or beneficial interest in a policy of insurance, provided that no medical record information is disclosed unless otherwise permitted by law, and that such disclosure of information is limited to that reasonably necessary to permit such persons to protect their interest in such policy. See O.R.C. §3904.13(R).

**Preemption:** No. O.R.C. §3904.13 is not contrary to the HIPAA privacy standards. Compliance with both the Ohio Revised Code and the HIPAA privacy standards is possible. O.R.C. §3904.13 is not preempted by HIPAA.

**Rationale:** O.R.C §3904.13 does not mandate or require disclosure in any instance. Instead, O.R.C. §3904.13 requires, in most instances prior to any disclosure, individual authorization. Even in those cases in which individual authorization is not required, disclosure is still not mandated or required by the statute. As such, it appears that O.R.C. §3904.13 is not preempted by HIPAA because it is not contrary to any HIPAA standard. See 45 C.F.R. §160.203. The HIPAA regulations provide that a state law is contrary to a HIPAA standard only when a covered entity would find it impossible to comply with both the state and federal requirements or the provision of the state law acts as an obstacle to the accomplishment and execution of the HIPAA scheme. O.R.C. §3904.13 only provides circumstances in which disclosures may be permissible. It does not mandate disclosure in these circumstances, or provide an avenue for a disclosure otherwise prohibited under other applicable law. Therefore, covered entities should be able to comply with both state and federal requirements relating to privacy in each instance. The statute is, therefore, not contrary to the HIPAA privacy standards, and therefore O.R.C. §3904.13 is not preempted. 45 C.F.R. §160.203.

**Action by Covered Entities:** For covered entities under HIPAA, adopt and implement policies to ensure that disclosures are made in accordance with applicable state and federal law.

**Exception Determination/Other Remedy:** Not required.
SUPPLEMENTAL MEMORANDUM

Ohio Law Subject to Analysis: O.R.C. §4113.23 provides that an employee cannot be refused a copy of any medical information held about the employee by an employer or by a physician or other health care provider or facility under contract with an employer. The requirements of O.R.C. §4113.23 extend to any medical report arising out of any physical examination by a physician or other health care professional and any hospital or laboratory tests which examinations or tests are required by the employer as a condition of employment or arising out of any injury or disease related to the employee’s employment. However, if a physician concludes that presentation of all or any part of an employee’s medical record directly to the employee will result in serious medical harm to the employee, he or she shall so indicate on the medical record, in which case a copy of the records must be given to a physician designed in writing by the employee. O.R.C. §4113.23(B) permits the employer to require that the employee pay the cost of furnishing copies of the medical reports, in an amount not to exceed twenty-five cents for each page.

Is Statute Preempted: No.

Rationale: O.R.C. §4113.23 is consistent with the HIPAA privacy standards and compliance with both Ohio and federal law is possible.

The HIPAA privacy standard set forth in 45 C.F.R. §164.524 mandates that an individual have the right of access to inspect and obtain a copy of protected health information about the individual in a designated record set, for as long as the protected health information is maintained. However, this general mandate includes exceptions for: (i) psychotherapy notes; (ii) information compiled in reasonable anticipation of, or for use in a civil, criminal, or administrative action; and (ii) certain information subject to or exempt from the Clinical Laboratory Improvement Amendments of 1988. A denial of an individual's request for access for any of these reasons is unreviewable.

In addition, under the HIPAA privacy standard, an individual may be denied the right to access his/her protected health information if: (i) a licensed health care professional has determined, in the exercise of professional judgment, that the access requested is reasonably likely to endanger the life or physical safety of the individual or another person; (ii) the protected health information makes reference to another person (unless such other person is a health care provider) and a licensed health care professional has determined, in the exercise of professional judgment, that the access requested is reasonably likely to cause substantial harm to such other person; or (iii) the request for access is made by the individual's personal representative and a licensed health care professional has determined, in the exercise of professional judgment, that the access requested is reasonably likely to cause substantial harm to the individual or another person.
If access is denied for any of the reasons set forth in the proceeding paragraph, the individual is entitled to have the denial reviewed by a licensed health care professional who is designated by the covered entity to act as a reviewing official and who did not participate in the original decision to deny access and the covered entity must provide or deny access in accordance with the determination of the reviewing official. 45 C.F.R. §164.524 includes the express right to copy and the requirement that the covered entity respond to an individual’s request in a timely manner. 45 C.F.R. §164.524 also permits covered entities to charge a reasonable cost-based fee for copying.

O.R.C. §4113.23(A) provides that an employee cannot be refused a copy of any medical information held about the employee by an employer or by a physician or other health care provider or facility under contract with an employer, unless a physician concludes that presentation of all or any part of an employee’s medical record directly to the employee will result in serious medical harm to the employee and indicate on the individual’s medical record. In such instances, the physician shall give a copy of the medical information to a physician designed in writing by the employee. For purposes of insuring compliance with both O.R.C. §4113.23(A), and 45 C.F.R. §164.524, covered entities that maintain such records should adopt access policies specifying that when deciding whether to disclose records to an employee/individual, the covered entity should only deny access pursuant to the authorized reasons for denial set forth in 45 C.F.R. §164.524. Denying an employee/individual access to his/her medical health records in accordance with O.R.C. §4113.23 (because that the access requested is reasonably likely to result in serious medical harm to the employee/individual) would be consistent with the authorized reasons for denial of individual access set forth in the HIPAA privacy standards. To further insure compliance with both O.R.C. §4113.23 and 45 C.F.R. §164.524, covered entities that maintain such medical records should adopt access policies that comply with the reviewability, copying and timeliness requirements set forth in 45 C.F.R. §164.524.

**Action by Covered Entities:** Adopt and implement access policies that concurrently comply with the requirements of O.R.C. §4113.23 and 45 C.F.R. §164.524 to ensure that access is allowed except in those cases where denial is authorized by both Ohio and federal laws. Ensure that policies comply with the reviewability, copying and timeliness requirements set forth in 45 C.F.R. §164.524.

**Exception Determination/Other Remedy:** Not required.
Exception Determination/Other Remedy:

Action by Covered Entities:

Rationale:

Preemption:

Ohio Law:

[To be completed]
O.R.C. Chapter 4123
Workers' Compensation

[To be completed]

Ohio Law Subject to Analysis:

Is Statute Preempted:

Rationale:

Action by Covered Entities:

Exception Determination/Other Remedy:
O.R.C. §4715.03
Ohio State Dental Board Investigations

I. ANALYSIS CHART INFORMATION

Preempted: No

Rationale: O.R.C. §4715.03 is not contrary to HIPAA privacy rules. Compliance with both Ohio and federal law is possible and the section is not an obstacle to accomplishing the purposes and objectives of the HIPAA privacy standards.


Action by Covered Entities: Covered entities must respond to Dental Board subpoenas for information that may include protected health information. This is a permitted disclosure under HIPAA.

II. SUPPLEMENTAL MEMORANDUM

Ohio Law: O.R.C. §4715.03 authorizes the Ohio State Dental Board (Board) to investigate and discipline licensees for violations of the Dental Practice Act. This section also authorizes the Board to take depositions, issue subpoenas and compel the attendance of witnesses and production of documents related to Board investigations and proceedings. Board investigations and proceedings are exempt from Ohio’s open meetings law and Board investigations of complaints about a violation of the Dental Practice Act are confidential and not subject to discovery in civil actions. Any protected health information received by the Board during the course of an investigation of a licensee would also be protected from disclosure.

Preemption: No. The HIPAA privacy standards only preempt contrary state law. In this instance the state law is not contrary because compliance with both Ohio and federal law is possible and O.R.C. §4715.03 does not stand as an obstacle to accomplishing the objectives of HIPAA.

Rationale: O.R.C. §4715.03 is consistent with the goals of the HIPAA privacy standards because protected health information to which the Dental Board might have access during the course of an investigation against a licensee is treated as confidential and is not subject to discovery in a civil action. Further, under HIPAA a covered entity is permitted to disclose protected health information without a consent or authorization for health oversight activities (45 C.F.R. §164.512(d)).

Action by Covered Entities: Covered entities must respond to Dental Board subpoenas for information that may include protected health information. This is a permitted disclosure under HIPAA.

Exception Determination/Other Remedy: Not required.
I. ANALYSIS CHART INFORMATION

Preempted: No

Rationale: O.R.C. §4715.301 and O.A.C. §4715-21-01 are not contrary to HIPAA privacy rules because compliance with both Ohio and federal law is possible and these sections are not an obstacle to accomplishing the purposes and objectives of the HIPAA privacy standards.


Action by Covered Entities: Board approved substance abuse treatment providers must continue to follow the requirements of O.R.C. §4715.301 and O.A.C. §4715-21-01 as permitted by 45 C.F.R. 164.512 (d).

II. SUPPLEMENTAL MEMORANDUM

Ohio Law: O.R.C. §4715.301 and O.A.C. §4715-21-01 establish standards for approving and designating treatment providers for dentists and dental hygienists with substance abuse problems. These laws also require approved treatment providers to report certain information to the Dental Board that would be considered protected health information. Information to be reported includes the names of dentists or dental hygienists who fail to comply with referrals for examination, who fail to enter treatment following a determination that treatment is needed, relapses at any time during or following aftercare, and other information. Dentists and dental hygienists who enter into approved treatment programs are deemed to have waived any confidentiality requirements that would otherwise prevent the treatment provider from making reports required under this section.

Preemption: No. The HIPAA privacy standards only preempt contrary state law. In this instance the state law is not contrary because compliance with both Ohio and Federal law is possible and these sections are not an obstacle to accomplishing the purposes and objectives of the HIPAA privacy standards.

Rationale: O.R.C. §4715.301 and O.A.C. §4715-21-01 are not contrary to HIPAA because a covered entity (in this case a substance abuse treatment provider) is permitted to disclose protected health information without a consent or authorization for purposes of health oversight activities (45 C.F.R. §164.512 (d)).

Action by Covered Entities: Board approved substance abuse treatment providers must continue to follow the requirements of O.R.C. §4715.301 and O.A.C. §4715-21-01 as permitted by 45 C.F.R. 164.512 (d).

Exception Determination/Other Remedy: Not required.
O.R.C. §4723.28
Board of Nursing Investigations

I. ANALYSIS CHART INFORMATION

Preempted: No

Rationale: O.R.C. §4723.28 is not contrary to HIPAA privacy rules. Compliance with both Ohio and federal law is possible and the section is not an obstacle to accomplishing the purposes and objectives of the HIPAA privacy standards.


Action by Covered Entities: Covered entities that examine Nursing Board licensees for the purposes of determining the licensees’ ability to practice must submit examination reports to the Board. Covered entities must also respond to Nursing Board subpoenas for information. These activities are permitted disclosures under HIPAA.

II. SUPPLEMENTAL MEMORANDUM

Ohio Law: O.R.C. §4723.28 grants to the Ohio Board of Nursing (Board) the authority to take action against its licensees for a variety of reasons, including impairment of the ability to practice because of chemical dependency, or physical or mental disability. During the course of an investigation, the Board has the authority to compel the licensee or applicant to submit to a mental or physical examination. Licensees or applicants must submit to these examinations and are automatically considered as having consented to the examination and waived all objections to the Board receiving any privileged communications resulting from these examinations. Privileged communications would likely include protected health information about the licensee or applicant as defined by HIPAA. Further, this section provides that information received by the Board pursuant to an investigation is confidential and not subject to discovery in civil actions, but may be further disclosed to law enforcement officials investigating the unauthorized practice of nursing. Law enforcement agencies are prohibited from further disclosing confidential information except for purposes of adjudications by a court or other licensing agency involving the person to whom the information relates. If the Board engages in continued monitoring of a licensee’s physical or mental health as part of a disciplinary action, information that is received is treated as confidential and not subject to discovery, and actions taken by the Board must be conducted in a manner that maintains the individual’s confidentiality.

Separately, if a Board investigation requires a review of patient records, the investigation and proceedings of the Board must be conducted in a manner that protects patient confidentiality. Therefore, any protected health information of a patient reviewed by the Board during an investigation of a licensee would be protected from disclosure.

Preemption: No. The HIPAA privacy standards only preempt contrary state law. In this instance the state law is not contrary because compliance with both Ohio and federal law is
possible and O.R.C. §4723.28 does not stand as an obstacle to accomplishing the objectives of HIPAA.

Rationale: O.R.C. §4723.28 is consistent with the goals of the HIPAA privacy standards because protected health information to which the Nursing Board might gain access during the course of an investigation against a licensee is treated as confidential and is not subject to discovery in a civil action. Also, as a condition of obtaining a license, licensees agree to be subject to the authority of the Board to investigate their conduct and impose discipline where appropriate. In the case of Board mandated physical or mental health examinations, the individual agrees to submit to the examinations and agrees to transmit protected health information to the Board to the extent necessary to conduct the investigation. Further, under HIPAA a covered entity is permitted to disclose protected health information without a consent or authorization for purposes of health oversight activities (45 C.F.R. §164.512 (d)).

Action by Covered Entities: Covered entities that examine Nursing Board licensees for the purposes of determining the licensees’ ability to practice must submit examination reports to the Board. Covered entities must also respond to Nursing Board subpoenas for information. These activities are permitted disclosures under HIPAA.

Exception Determination/Other Remedy: Not required.
O.R.C. §4723.282
Review of Practice Deficiencies by Board of Nursing

Ohio Law: O.R.C. §4723.282 authorizes the Ohio Board of Nursing (Board) to create a practice intervention and improvement (remediation) program that the Board may use in lieu of taking disciplinary action against nurses. The program is only used when the Board has reason to believe that a nurse’s practice deficiency can be corrected through remediation. All records held by the Board for the purpose of the remediation program are confidential, are exempt from Ohio’s public records statute, and are not subject to discovery by subpoena or admissible as evidence in any judicial proceeding. Also, nurses participating in the program must sign a waiver that permits any entity that provides services related to the remediation to release to the Board information about the individual’s progress. Progress reports could potentially include protected health information.

Preemption: No. The HIPAA privacy standards only preempt contrary state law. In this instance O.R.C. §4723.282 is not contrary to HIPAA because compliance with both Ohio and federal law is possible and O.R.C. §4723.282 does not stand as an obstacle to accomplishing the objectives of HIPAA.

Rationale: O.R.C. §4723.282 is consistent with the goals of the HIPAA privacy standards because protected health information to which the Nursing Board might gain access as part of the progress reports that must be submitted when nurses participate in a practice remediation program is contained in progress reports to the Board that are kept confidential, are exempt from Ohio’s public records statute, and are not subject to discovery by subpoena and are not admissible in evidence in any judicial proceeding. Further, as a condition of participating in the remediation program in lieu of discipline, nurses must sign a waiver that permits progress reports to be submitted to the Board. Reports to the Nursing Board that include protected health information are permitted disclosures under 45 C.F.R.§164.512 (d). This section permits disclosures without a consent or authorization for purposes of health oversight activities.

Action by Covered Entities: Covered entities that must submit to the Nursing Board progress reports that may include protected health information about a nurse who is participating in the Board’s practice remediation program may submit those reports under HIPAA. Release of protected health information that might be included in progress reports is a permitted disclosure under 45 C.F.R.§164.512 (d).

Exception Determination/Other Remedy: Not required.
I. ANALYSIS CHART INFORMATION

Preempted: No

Rationale: O.R.C. §4723.29 is not contrary to HIPAA privacy rules. Compliance with both Ohio and federal law is possible and the section is not an obstacle to accomplishing the purposes and objectives of the HIPAA privacy standards.


Action by Covered Entities: Covered entities are required to respond to Nursing Board subpoenas for patient information. Such responses are permitted disclosures under HIPAA.

II. SUPPLEMENTAL MEMORANDUM

Ohio Law: O.R.C. §4723.29 grants to the Ohio Board of Nursing (Board) the authority to subpoena witnesses, compel attendance and testimony of witnesses and compel production of documents. Subpoenas for patient record information may only be issued with the approval of the Board’s executive director and the president or another member of the Board in consultation with the Attorney General. Patient information sought must be relevant and material to a Board investigation.

Separately, under O.R.C. §4723.28, if a Board investigation requires a review of patient records, the investigation and proceedings of the Board must be conducted in a manner that protects patient confidentiality. Therefore, any protected health information of a patient reviewed by the Board during an investigation of a licensee would be protected from disclosure.

Preemption: No. The HIPAA privacy standards only preempt contrary state law. In this instance the state law is not contrary because compliance with both Ohio and federal law is possible and O.R.C. §4723.29 does not stand as an obstacle to accomplishing the objectives of HIPAA.

Rationale: O.R.C. §4723.29 is consistent with the goals of the HIPAA privacy standards because protected health information to which the Nursing Board might gain access during the course of an investigation is confidential. Further, under HIPAA a covered entity is permitted to disclose protected health information without a consent or authorization for purposes of health oversight activities (45 C.F.R. §164.512 (d)).

Action by Covered Entities: Covered entities are required to respond to Nursing Board subpoenas for patient information. Such responses are permitted disclosures under HIPAA.

Exception Determination/Other Remedy: Not required.
O.R.C. §4723.35 and OAC 4723-6-02, 4723-6-03, and 4723-6-06
Chemically Dependent Nurses

I. ANALYSIS CHART INFORMATION

Preempted:  No

Rationale:  O.R.C. §4723.35 and O.A.C. Chapter 4723-6 implementing rules are not contrary to HIPAA privacy rules. Compliance with both Ohio and federal law is possible and these sections are not an obstacle to accomplishing the purposes and objectives of the HIPAA privacy standards.


Action by Covered Entities: Covered entities should respond to an Ohio Board of Nursing (Board) or licensee’s request for information related to a licensee’s participation in a chemical monitoring program.

II. SUPPLEMENTAL MEMORANDUM

Ohio Law: O.R.C. §4723.35 authorizes the Ohio Board of Nursing to establish a chemical dependency monitoring program as an alternative to imposing disciplinary action against licensees with a chemical dependency. Licensees who apply to participate in the program sign a waiver permitting the program to receive and release certain information, including information that would be protected health information under HIPAA. Licensees must also sign a participation agreement that requires that information be provided to the program. All records pertaining to an individual’s participation in the program are confidential, including medical records, treatment records and mental health records. These records are not public records and are not subject to discovery by subpoena or admissible as evidence in any judicial proceeding. Further, participants in the program may authorize disclosure of their program records, but such disclosure does not include confidential medical, mental health or substance abuse records.

Preemption: No. The HIPAA privacy standards only preempt contrary state law. In this instance the state law is not contrary because compliance with both Ohio and federal law is possible and O.R.C. §4723.35 and O.A.C. Chapter 4723-6 do not stand as obstacles to accomplishing the objectives of HIPAA.

Rationale: O.R.C. §4723.35 and O.A.C. Chapter 4723-6 are consistent with the goals of the HIPAA privacy standards because protected health information to which the Nursing Board or the chemical dependency monitoring program might gain access is treated as confidential and is not subject to discovery in a civil action. Also, as a condition of being admitted to the monitoring program, licensees agree to have certain protected health information released to the Board. Disclosure of protected health information to the Board is permitted under (45 C.F.R. §164.512 (d)) that allows a covered entity to disclose protected health information without a consent or authorization for purposes of health oversight activities.
**Action by Covered Entities:** Covered entities should respond to a Nursing Board or licensee’s request for information related to a licensee’s participation in a chemical monitoring program.

**Exception Determination/Other Remedy:** No.
O.R.C. §4725.19 and O.A.C. §4725-5-11
Optometrists

I. ANALYSIS CHART INFORMATION

Preempted:  No

Rationale:  O.R.C. §4725.19 and O.A.C. §4725-5-11 are not contrary to HIPAA privacy rules. Compliance with both Ohio and federal law is possible and these sections are not an obstacle to accomplishing the purposes and objectives of the HIPAA privacy standards.


Action by Covered Entities:  Covered entities to which these sections apply must release copies of confidential patient records to the patient or to a third party upon the request of the patient as required by both Ohio and federal law. Covered entities may need to revise the record release or waiver forms currently used to comply with Ohio law to ensure that the documents meet the requirements for a valid consent or authorization under HIPAA.

II. SUPPLEMENTAL MEMORANDUM

Ohio Law:  O.R.C. §4725.19 allows the Ohio Optometry Board (Board) to take action against an optometrist’s license for being guilty of dishonesty or unprofessional conduct. O.A.C. §4725-5-11 requires optometrists to give to a patient, or a third party designated by the patient, a copy of the patient’s records when requested. For records sent to a third party, the optometrist may require that the patient sign a record release or waiver form. Failure to timely release patient records constitutes “dishonesty or unprofessional conduct” for which the optometrist may be disciplined.

Preemption:  No. The HIPAA privacy standards only preempt contrary state law. In this instance state law is not contrary because compliance with both Ohio and federal law is possible and O.R.C. §4725.19 and O.A.C. §4725-5-11 do not stand as obstacles to accomplishing the objectives of HIPAA.

Rationale:  O.R.C. §4725.19 and O.A.C. §4725-5-11 are consistent with the goals of the HIPAA privacy standards because copies of an optometrist’s confidential patient records must be given to a patient upon request or to a third party the patient designates. These records are protected health information to which the patient also has access under HIPAA 45 C.F.R. §164.502 and 45 C.F.R. §164.524. Both Ohio law and HIPAA give the patient a right of access to their protected health information.

Action by Covered Entities:  Covered entities to which these sections apply must release copies of confidential patient records to the patient or to a third party upon the request of the patient as required by both Ohio and federal law. Covered entities may need to revise the record release or
waiver forms currently used to comply with Ohio law to ensure that the documents meet the requirements for a valid consent or authorization under HIPAA.

**Exception Determination/Other Remedy:** Not required.
O.R.C. §4725.21
Optometrists

Ohio Law: O.R.C. §4725.21 requires a licensed optometrist to report to the Board the optometrist’s belief that another optometrist has engaged in unprofessional conduct in the course of treating patients or has an addiction that would be subject to Board action. Also, this section authorizes any other person to report any information that the person may have that appears to show a violation of the laws governing the practice of optometry.

Preemption: No. The HIPAA privacy standards only preempt contrary state law. In this instance O.R.C. §4725.21 is not contrary to HIPAA because compliance with both Ohio and federal law is possible and O.R.C. §4725.21 does not stand as an obstacle to accomplishing the objectives of HIPAA.

Rationale: O.R.C. §4725.21 is consistent with the goals of the HIPAA privacy standards because disclosure of protected health information of patients that might occur as a result of a required or permitted report of an optometric practice violation is a permissible disclosure without a patient’s consent or authorization under HIPAA 45 C.F.R. §164.512 (d) for purposes of health oversight activities.

Action by Covered Entities: Covered entities may be required to report protected health information of patients to the State Board of Optometry (Board) as part of required or voluntary reports to the Board concerning the unprofessional conduct or addiction of an optometrist or the reporting of other violations of the laws governing the practice of optometry. This disclosure is permitted under HIPAA.

Exception Determination/Other Remedy: Not required.
O.R.C. §4725.23
Board of Optometry Subpoenas

I. ANALYSIS CHART INFORMATION

Preempted: No

Rationale: O.R.C. §4725.23 is not contrary to HIPAA privacy rules. Compliance with both Ohio and federal law is possible and the section is not an obstacle to accomplishing the purposes and objectives of the HIPAA privacy standards.


Action by Covered Entities: Covered entities are required to respond to Ohio Optometry Board (Board) subpoenas for patient information. Such responses are permitted disclosures under HIPAA.

II. SUPPLEMENTAL MEMORANDUM

Ohio Law: O.R.C. §4725.23 grants to the Ohio Board of Optometry the authority to take depositions, issue subpoenas, compel attendance of witnesses and compel production of documents. Subpoenas for patient record information may only be issued with the approval of the Board’s secretary and supervising member of investigations in consultation with the Attorney General. Patient information sought must be relevant and material to a Board investigation. Information received by the Board pursuant to an investigation is confidential and not subject to discovery in a civil action. Further the Board must conduct all investigations and proceedings in a manner that protects the confidentiality of patients and persons who file complaints with the Board. This section also prohibits the Board from making public any names or identifying information about patients or complainants unless proper consent is given. Therefore, any protected health information of a patient reviewed by the Board during an investigation of a licensee would be protected from disclosure unless the person consented to disclosure of identifying information.

Preemption: No. The HIPAA privacy standards only preempt contrary state law. In this instance the state law is not contrary because compliance with both Ohio and federal law is possible and O.R.C. §4725.23 does not stand as an obstacle to accomplishing the objectives of HIPAA.

Rationale: O.R.C. §4725.23 is consistent with the goals of the HIPAA privacy standards because protected health information to which the Board might gain access during the course of an investigation pursuant to an administrative subpoena or process is a permissible disclosure under HIPAA 45 C.F.R. §164.512(d) that allows a covered entity to disclose protected health information without a consent or authorization for purposes of health oversight activities.
**Action by Covered Entities:** Covered entities are required to respond to Ohio Optometry Board subpoenas for patient information. Such responses are permitted disclosures under HIPAA.

**Exception Determination/Other Remedy:** Not required.
O.R.C. §4725.28
Optometrist Prescription for Vision Correcting Device or Procedure

I. ANALYSIS CHART INFORMATION

Preempted: No

Rationale: O.R.C. §4725.28 not contrary to HIPAA privacy rules. Compliance with both Ohio and federal law is possible and this section is not an obstacle to accomplishing the purposes and objectives of the HIPAA privacy standards.


Action by Covered Entities: Covered entities to which this section applies must give patients one copy of their prescription for a vision-correcting device as required by both Ohio and federal law.

II. SUPPLEMENTAL MEMORANDUM

Ohio Law: O.R.C. §4725.28 requires licensed optometrists to give patients a copy of a prescription for a vision correcting device or procedure issued by the optometrist.

Preemption: No. The HIPAA privacy standards only preempt contrary state law. In this instance the state law is not contrary because compliance with both Ohio and federal law is possible and O.R.C. §4725.28 does not stand as an obstacle to accomplishing the objectives of HIPAA.

Rationale: O.R.C. §4725.28 is consistent with the goals of the HIPAA privacy standards because copies of prescriptions for vision correcting devices or procedures must be given to patients. These prescriptions are protected health information to which the patient also has access under HIPAA 45 C.F.R. §164.502 and 45 C.F.R. §164.524.

Action by Covered Entities: Covered entities to which this section applies must give patients one copy of their prescription for a vision-correcting device as required by both Ohio and federal law.

Exception Determination/Other Remedy: Not required.
O.R.C. §4725.31 and O.A.C. §4725-5-14
Optometrists Reports

I. ANALYSIS CHART INFORMATION

Preempted: No

Rationale: O.R.C. §4725.31 and O.A.C. §4725-5-14 are not contrary to HIPAA Privacy rules. Compliance with both Ohio and federal law is possible and these sections are not an obstacle to accomplishing the purposes and objectives of the HIPAA privacy standards.


Action by Covered Entities: Covered entities (i.e., optometrists) to whom these sections apply must notify the Ohio Optometry Board (Board) of any instance of a clinically significant drug-induced side effect in a patient resulting from use of a topical ocular or therapeutic pharmaceutical agent.

II. SUPPLEMENTAL MEMORANDUM

Ohio Law: O.R.C. §4725.31 requires optometrists to report to the Ohio Optometry Board any instance of a clinically significant drug-induced side effect in a patient due to the optometrists’ use of a topical ocular or therapeutic pharmaceutical agent for the patient. The information provided to the Board must not include the name or any identifying information about the patient. O.A.C. §4725-5-14 expands upon this requirement by requiring that initial reports be submitted within 72 hours and that the optometrist complete specific report forms.

Preemption: No. The HIPAA privacy standards only preempt contrary state law. In this instance state law is not contrary because compliance with both Ohio and federal law is possible and O.R.C. §4725.31 and O.A.C. §4725-5-14 do not stand as obstacles to accomplishing the objectives of HIPAA.

Rationale: O.R.C. §4725.31 and O.A.C. §4725-5-14 are consistent with the goals of the HIPAA privacy standards because the reports that are required to be submitted do not contain patient identifying information. Even if the reports contain individually identifiable health information as defined by HIPAA, the reports are a disclosure permitted under HIPAA 45 C.F.R. §164.512 (d) as a disclosure for health oversight activities.

Action by Covered Entities: Covered entities (i.e., optometrists) to whom these sections apply must notify the Ohio Optometry Board (Board) of any instance of a clinically significant drug-induced side effect in a patient resulting from use of a topical ocular or therapeutic pharmaceutical agent.

Exception Determination/Other Remedy: Not required.
O.A.C. §4725-7-06
Optometrists

I. ANALYSIS CHART INFORMATION

Preempted: Yes

Rationale: O.A.C. §4725-7-06 is contrary to HIPAA privacy rules. Compliance with both Ohio and federal law is not possible and this section is an obstacle to accomplishing the purposes and objectives of the HIPAA privacy standards.


Action by Covered Entities: Covered entities to which this section applies must give patients one copy of their prescription for a vision-correcting device as required by both Ohio statutes and HIPAA privacy standards.

II. SUPPLEMENTAL MEMORANDUM

Ohio Law: O.R.C. §4725.28 and O.A.C. §4725-7-06 require licensed optometrists to give patients a copy of a prescription for a vision correcting device or procedure issued by the optometrist. O.A.C. §4725-7-06 includes an exception that the prescription may be withheld if significant medical reasons would prohibit the immediate release of the prescription. These reasons must be documented in the patient’s record.

Preemption: Yes. The HIPAA privacy standards preempt contrary state law. In this instance the state law is contrary because compliance with both O.A.C. §4725-7-06 and federal law is not possible and O.A.C. §4725-7-06 is an obstacle to accomplishing the purposes and objectives of HIPAA privacy standards. Further, O.A.C. §4725-7-06 is less stringent than HIPAA privacy standards 45 C.F.R. §164.524 because it gives the individual less right of access to vision prescription information.

Rationale: O.A.C. §4725-7-06 is not consistent with the goals of the HIPAA privacy standards because this rule permits an optometrist to withhold prescriptions for vision correcting devices or procedures “if significant medical reasons would prohibit the release of the prescription.” This appears to allow optometrists a broader right to restrict patient access to prescription information that is permitted under HIPAA. Individuals (patients) have a right of access to protected health information, including prescriptions, under HIPAA 45 C.F.R. §164.502 and 45 C.F.R. §164.524. Section 164.524 permits covered entities to deny an individual access to their protected health information in limited circumstances. 45 C.F.R. §164.524(a)(3) permits denial of access when a licensed health professional determines that access to the information is reasonable likely to endanger the life or physical safety of the individual or another person, the information references another person and access is reasonably likely to harm that other person, or the request is made by a personal representative of the patient and releasing information to the personal representative is reasonably likely to cause substantial
harm to the individual or another person. In all of these instances, if access is denied, the patient has a right to have the denial reviewed.

The privacy rule preamble includes a discussion of the exceptions listed in 45 C.F.R. §164.524 (a)(3). With respect to a denial because access to information is reasonably likely to endanger the life or safety of the individual or another person, the preamble cites examples such as suicidal or homicidal tendencies or the threat of physical violence. Under this reason for denial, covered entities may not deny access on the basis of the sensitivity of the health information or the potential for causing emotional or psychological harm. With respect to denials because the information might reference another person and access might cause substantial harm to that other person, the preamble cites examples such as information from group therapy sessions and information about illnesses with a genetic component. This provision permits a covered entity to withhold information in such cases if the release of such information is reasonably likely to cause substantial physical, emotional, or psychological harm. With respect to release of information to a personal representative, the preamble states a covered entity may deny a request to inspect or copy protected health information if the information is requested by a personal representative of the individual and a licensed health-care professional has determined that, in the exercise of professional judgment, such access is reasonably likely to cause substantial harm to the individual who is the subject of the information or to another person. The health-care professional need not have a reasonable belief that the personal representative has abused or neglected the individuals and the harm that is likely to result need not be limited to the individual who is the subject of the requested protected health information. It does not appear that denying access to prescription vision correcting devices or procedures because “significant medical reasons would prohibit the immediate release of the prescription,” in most cases, is the type of denial of access to protected health information that HIPAA permits. It appears that the right of an optometrist to deny access based on O.A.C. §4725-7-06 is not a denial that is permitted by 45 C.F.R. §164.524.

**Action by Covered Entities:** Covered entities to which this section applies must give patients one copy of their prescription for a vision-correcting device as required by both Ohio statutes and HIPAA privacy standards.

**Exception Determination/Other Remedy:** Not recommended because denials of access to prescription for vision correcting devices and procedures as permitted by HIPAA are probably sufficient to cover the types of denials that are most often warranted.
O.R.C. §4729.18 and O.A.C. Chapter 4729-6
Pharmacists

I. ANALYSIS CHART INFORMATION

Preempted: No

Rationale: O.R.C. §4729.18 and O.A.C. Chapter 4729-6 are not contrary to HIPAA privacy rules. Compliance with both Ohio and federal law is possible and these sections are not an obstacle to accomplishing the purposes and objectives of the HIPAA privacy standards.


Action by Covered Entities: Covered entities that are substance abuse treatment providers approved by the Ohio Board of Pharmacy (Board) must report certain protected health information to the Board as required by law and Board rules. Reports required by these sections are permitted disclosures under HIPAA.

II. SUPPLEMENTAL MEMORANDUM

Ohio Law: O.R.C. §4729.18 requires the Ohio Board of Pharmacy to approve and designate physicians and facilities as treatment providers for pharmacists with substance abuse problems. O.A.C. Chapter 4729-6 establishes standards for such programs and expands upon the program requirements set forth in law. Board approved providers must assure the confidentiality of the pharmacist except that approved providers must report to the board certain information that would be considered protected health information under HIPAA such as the names of impaired pharmacists who fail to enter treatment following a referral, failure of pharmacists to comply with a treatment contract, relapses, etc. A pharmacist who enters into an approved treatment program is deemed to have waived any confidentiality requirements that would otherwise prohibit a treatment provider from making the reports required by law. The Pharmacy Board may also compel a pharmacist suspected of impairment to be examined by an approved treatment provider.

Preemption: No. The HIPAA privacy standards only preempt contrary state law. In this instance state law is not contrary because compliance with both Ohio and federal law is possible and O.R.C. §4729.18 and O.A.C. Chapter 4729-6 do not stand as obstacles to accomplishing the objectives of HIPAA.

Rationale: O.R.C. §4729.18 and O.A.C. Chapter 4729-6 are consistent with the goals of the HIPAA privacy standards because approved treatment providers must assure the confidentiality of pharmacists participating in treatment programs except when certain protected health information must be reported to the Board. Disclosure of protected health information to the Pharmacy Board by an approved treatment provider is a permissible disclosure under 45 C.F.R. §164.512 (d) that allows a covered entity to disclose protected health information without a consent or authorization for purposes of health oversight activities.
**Action by Covered Entities:** Covered entities that are substance abuse treatment providers approved by the Ohio Board of Pharmacy must report certain protected health information to the Pharmacy Board as required by law and Board rules. Reports required by these sections are permitted disclosures under HIPAA.

**Exception Determination/Other Remedy:** Not required.
I. ANALYSIS CHART INFORMATION

Preempted: No

Rationale: O.R.C. §4729.19 is not contrary to HIPAA privacy rules. Compliance with both Ohio and federal law is possible and the section is not an obstacle to accomplishing the purposes and objectives of the HIPAA privacy standards.


Action by Covered Entities: Covered entities (pharmacists) must cooperate with government investigations and disclose relevant information when requested by a government agency. Such responses are permitted disclosures under HIPAA.

II. SUPPLEMENTAL MEMORANDUM

Ohio Law: O.R.C. §4729.19 requires pharmacists to cooperate with federal, state, and local government investigations and release all relevant information when requested by a government agency regardless of any testimonial privilege that might apply to the release of the information.

Preemption: No. The HIPAA privacy standards only preempt contrary state law. In this instance the state law is not contrary because compliance with both Ohio and federal law is possible and O.R.C. §4729.19 does not stand as an obstacle to accomplishing the objectives of HIPAA.

Rationale: O.R.C. §4729.19 is consistent with the goals of the HIPAA privacy standards because HIPAA recognizes the right of law enforcement officials to have limited access to protected health information for law enforcement purposes. Under HIPAA a covered entity is permitted to disclose protected health information without a consent or authorization for purposes of health oversight activities (45 C.F.R. §164.512 (d)) or when required by law (45 C.F.R. §164.512 (a) & (f)). Disclosures required by law include disclosures of protected health information to a law enforcement official pursuant to a court order, warrant or subpoena; a grand jury subpoena; or an administrative request, subpoena or summons, investigative demand or similar process provided that the information sought is relevant and material to a legitimate enforcement inquiry, the request is specific and limited in scope in light of the purpose for which the information is sought, and de-identified information could not reasonably be used.

Action by Covered Entities: Covered entities (pharmacists) must cooperate with government investigations and disclose relevant information when requested by a government agency. Such responses are permitted disclosures under HIPAA.
Exception Determination/Other Remedy: Not required.
O.R.C. §4729.39 and O.A.C. Chapter 4729-29
Pharmacists

I. ANALYSIS CHART INFORMATION

Preempted: No

Rationale: O.R.C. §4729.39 and O.A.C. Chapter 4729-29 are not contrary to HIPAA privacy rules. Compliance with both Ohio and federal law is possible and the section is not an obstacle to accomplishing the purposes and objectives of the HIPAA privacy standards.


Action by Covered Entities: Covered entities that enter into consult agreements for purposes of managing a patient’s drug therapy may wish to consider whether a patient’s consent to use and disclosure of protected information should or could be combined with a consult agreement for management of drug therapy.

II. SUPPLEMENTAL MEMORANDUM

Ohio Law: O.R.C. §4729.39 & O.A.C. Chapter 4729-29 permit pharmacists and physicians to enter into consult agreements for purposes of managing a patient’s drug therapy. The patient whose drug therapy is being managed must consent to the consult agreement.

Preemption: No. The HIPAA privacy standards only preempt contrary state law. In this instance the state law is not contrary because compliance with both Ohio and federal law is possible and O.R.C. §4729.39 & O.A.C. Chapter 4729-29 do not stand as obstacles to accomplishing the objectives of HIPAA.

Rationale: O.R.C. §4729.39 & O.A.C. Chapter 4729-29 only relate to the HIPAA privacy standards to the extent that treating pharmacists and physicians have access to protected health information in order to manage a patient’s drug therapy pursuant to a consult agreement. Otherwise consult agreements govern the interaction between the pharmacist and the physician with respect to drug therapy management. Because patients must consent to use and disclosure of protected health information for treatment purposes and because patients also must consent to the consult agreement, covered entities that frequently use consult agreements may wish to consider whether it would be appropriate to combine the consent to use and disclose protected health information with the patient’s consent to the consult agreement. Covered entities may also need to consider whether the entity’s Notice of Privacy Practices should reference consult agreements.

Action by Covered Entities: Covered entities that enter into consult agreements for purposes of managing a patient’s drug therapy may wish to consider whether a patient’s consent to use and disclosure of protected information should or could be combined with a consult agreement for management of drug therapy.
Exception Determination/Other Remedy: Not required.
I. ANALYSIS CHART INFORMATION

Preempted: No

Rationale: O.R.C. §4729.41 is not contrary to HIPAA privacy rules. Compliance with both Ohio and federal law is possible and this section is not an obstacle to accomplishing the purposes and objectives of the HIPAA privacy standards.


Action by Covered Entities: Covered entities who are pharmacists administering adult immunizations must report certain protected health information to a patient’s physician or to a local board of health. Reports required by this section are permitted disclosures under HIPAA.

II. SUPPLEMENTAL MEMORANDUM

Ohio Law: O.R.C. §4729.41 requires pharmacists who administer adult immunizations to an individual to notify the individual’s family physician, or if the individual has no family physician, the local board of health.

Preemption: No. The HIPAA privacy standards only preempt contrary state law. In this instance state law is not contrary because compliance with both Ohio and federal law is possible and O.R.C. §4729.41 does not stand as an obstacle to accomplishing the objectives of HIPAA.

Rationale: O.R.C. §4729.41 is consistent with the goals of the HIPAA privacy standards because HIPAA permits uses and disclosures of protected health information without a consent or authorization for health oversight activities (45 C.F.R. §164.512 (d)). Reporting of the administering of an immunization to an individual’s physician or to a board of health would be considered a necessary and appropriate oversight activity of pharmacists engaged in this activity.

Action by Covered Entities: Covered entities who are pharmacists administering adult immunizations must report certain protected health information to a patient’s physician or to a local board of health. Reports required by this section are permitted disclosures under HIPAA.

Exception Determination/Other Remedy: Not required.
O.A.C. §4729-5-29
State Board of Pharmacy

I. ANALYSIS CHART INFORMATION

Preempted: No

Rationale: O.A.C. §4729-5-29 is not contrary to HIPAA privacy rules. Compliance with both Ohio and federal law is possible and the section is not an obstacle to accomplishing the purposes and objectives of the HIPAA privacy standards.


Action by Covered Entities: No action required.

II. SUPPLEMENTAL MEMORANDUM

Ohio Law: O.A.C. §4729-5-29 establishes the confidentiality of records relating to the practice of pharmacy. Such records are not public records and they may not be disclosed to anyone except the patient for whom a prescription is issued, the prescriber who issued the prescription, health-care workers responsible for caring for a patient, the Ohio Board of Pharmacy and other law enforcement officials responsible for enforcing drug laws, the State Medical Board of Ohio, government agencies providing medical care, insurance companies providing prescription coverage, and any other person when the patient has given written consent for such disclosure. This section requires that consents be signed by the patient and dated. Also, pharmacists may orally disclose prescription information in emergencies provided that pharmacists subsequently document such emergency disclosures.

Preemption: No. The HIPAA privacy standards only preempt contrary state law. In this instance the state law is not contrary because compliance with both Ohio and federal law is possible and O.A.C. §4729-5-29 does not stand as an obstacle to accomplishing the objectives of HIPAA.

Rationale: O.A.C. §4729-5-29 is consistent with the goals of the HIPAA privacy standards because this section protects the confidentiality of prescription information that is considered protected health information under HIPAA. Disclosure by a prescriber, pharmacist or any other person having custody of confidential prescription information and other confidential information related to the practice of pharmacy is limited to disclosures that are also permitted or required under HIPAA. For example, 45 C.F.R. §§164.502 & 164.524 require disclosure to the individual; 45 C.F.R. §§164.502, 164.506 & 164.508 permit disclosures with the patient’s consent or authorization; 45 C.F.R. §164.502 permits disclosure without consent in emergencies and other limited circumstances; and 45 C.F.R. §164.512 permits disclosure without consent or authorization for health oversight activities (45 C.F.R. §164.512 (d)) and for law enforcement purposes (45 C.F.R. 164.512 (a) & (f)).
Action by Covered Entities:  No action required.

Exception Determination/Other Remedy:  Not required.
O.R.C. §4730.25
Doctor-Patient Relationship; Physician Assistant/Patient Relationship

I. ANALYSIS CHART INFORMATION

Preempted: No

Rationale: O.R.C. §4730.25 is not contrary to HIPAA privacy rules. Compliance with both Ohio and federal law is possible and this section is not an obstacle to accomplishing the purposes and objectives of the HIPAA privacy standards.


Action by Covered Entities: Covered entities that examine Medical Board licensees for the purposes of determining the licensees’ ability to practice must submit examination reports to the Board. These reports are permitted disclosures under HIPAA.

II. SUPPLEMENTAL MEMORANDUM

Ohio Law: O.R.C. §4730.25 authorizes the State Medical Board of Ohio (Board) to discipline physician assistants for specific practice violations, including willfully betraying a professional confidence. Also, this section permits the Board to compel a licensee to submit to a mental and/or physical examination to determine ability to practice. When so compelled, licensees waive all objections to the admissibility of testimony or examination reports that constitute privileged, i.e., confidential, communications. If the Board determines the licensee is unable to practice because of a mental or physical illness or impairment, the Board shall require the individual to submit to treatment as a condition of licensure.

Preemption: No. The HIPAA privacy standards only preempt contrary state law. In this instance state law is not contrary because compliance with both Ohio and federal law is possible and O.R.C. §4730.25 does not stand as an obstacle to accomplishing the objectives of HIPAA.

Rationale: O.R.C. §4730.25 is consistent with the goals of the HIPAA privacy standards because physician assistants can be disciplined for willfully breaching patient confidentiality. Further, examination reports that include protected health information about a licensee that are submitted to the Board as a result of an examination to determine ability to practice are permitted disclosures under 45 C.F.R. §164.512 (d) that allows a covered entity to disclose protected health information without a consent or authorization for purposes of health oversight activities.

Action by Covered Entities: Covered entities that examine Medical Board licensees for the purposes of determining the licensees’ ability to practice must submit examination reports to the Board. These reports are permitted disclosures under HIPAA.

Exception Determination/Other Remedy: Not required.
O.R.C. §4730.26 and O.A.C. Chapter 4731-15  
Investigations of State Medical Board  

I. ANALYSIS CHART INFORMATION  

Preempted: No  

Rationale: O.R.C. §4730.26 is not contrary to HIPAA privacy rules. Compliance with both Ohio and federal law is possible and this section is not an obstacle to accomplishing the purposes and objectives of the HIPAA privacy standards.  


Action by Covered Entities: Covered entities must respond to Medical Board subpoenas for information. This disclosure is permitted under HIPAA.  

II. SUPPLEMENTAL MEMORANDUM  

Ohio Law: O.R.C. §4730.26 grants the State Medical Board of Ohio the authority to investigate violations of the law governing physician assistants. This section authorizes the Board to take depositions, issue subpoenas and compel the attendance of witnesses and production of documents related to Medical Board investigations. Subpoenas for patient record information are only issued in consultation with the Attorney General and with the approval of the Board secretary and supervising member. Patient records sought must be relevant to the alleged violation and material to the investigation. Information received by the Board pursuant to an investigation is confidential and not subject to discovery in any civil action. Also, the Board must conduct all investigations and proceedings in a manner that protects the confidentiality of patients and persons who file complaints with the Board. The Board cannot make public the names or any other identifying information about patients or complainants unless proper consent is given, or a waiver of the physician-patient privilege applies (see O.R.C. §2317.02). The Board may share confidential patient information with other regulatory boards or law enforcement agencies, but those boards and agencies must maintain the confidentiality of patient information to the same extent required of the Board. Courts dealing with confidential patient information obtained from the Board must also take measures to ensure confidentiality is maintained.  

Preemption: No. The HIPAA privacy standards only preempt contrary state law. In this instance state law is not contrary because compliance with both Ohio and federal law is possible and O.R.C. §4730.26 does not stand as an obstacle to accomplishing the objectives of HIPAA.  

Rationale: O.R.C. §4730.26 is consistent with the goals of the HIPAA privacy standards because protected health information that the Medical Board obtains as a result of an investigation is kept confidential by the Board. Protected health information to which the Board might gain access during the course of an investigation pursuant to an administrative subpoena is
a permissible disclosure without a consent or authorization under HIPAA 45 C.F.R. §164.512 (d) for purposes of health oversight activities.

**Action by Covered Entities:** Covered entities must respond to Medical Board subpoenas for information. This disclosure is permitted under HIPAA.

**Exception Determination/Other Remedy:** Not required.
I. ANALYSIS CHART INFORMATION

Preempted: No

Rationale: O.R.C. §4730.32 is not contrary to HIPAA privacy rules. Compliance with both Ohio and federal law is possible and this section is not an obstacle to accomplishing the purposes and objectives of the HIPAA privacy standards.


Action by Covered Entities: Covered entities may be required to report protected health information of patients to the State Medical Board of Ohio (Board) as part of required reports to the Board concerning disciplinary actions taken by health-care facilities against a physician assistant. This disclosure is permitted under HIPAA.

II. SUPPLEMENTAL MEMORANDUM

Ohio Law: O.R.C. §4730.32 requires health-care facilities, professional associations and professional liability insurers that take disciplinary actions or reach final disposition of any claims against a physician assistant to report to the Board the name of the physician assistant, the action taken and, if a facility or professional association is reporting, a summary of the underlying facts leading to the action taken. Upon request, facilities must submit to the Board certified copies of the patient records that were the basis for the facility’s action. All summaries, reports and records received and maintained by the Board are confidential and not subject to discovery in civil actions related to the required reports. The Board may further disclose the summaries and reports it receives under this section to other facilities within or outside the state that are involved in credentialing or recredentialing a physician assistant. Information transmitted to other facilities is subject to the same confidentiality provisions as when maintained by the Board.

Preemption: No. The HIPAA privacy standards only preempt contrary state law. In this instance state law is not contrary because compliance with both Ohio and federal law is possible and O.R.C. §4730.32 does not stand as an obstacle to accomplishing the objectives of HIPAA.

Rationale: O.R.C. §4730.32 is consistent with the goals of the HIPAA privacy standards because protected health information that the Medical Board receives as a result of reports under this section is kept confidential by the Board. Disclosure of protected health information of patients in this instance is a permissible disclosure without a consent or authorization under HIPAA 45 C.F.R. §164.512 (d) for purposes of health oversight activities.

Action by Covered Entities: Covered entities may be required to report protected health information of patients to the Medical Board as part of required reports to the Board concerning
disciplinary actions taken by health-care facilities against a physician assistant. This disclosure is permitted under HIPAA.

**Exception Determination/Other Remedy:** Not required.
O.A.C. Chapter 4731-19
Duty of Licensee to Report HIV or HBV Infection; Confidentiality

I. ANALYSIS CHART INFORMATION

Preempted: No

Rationale: O.A.C. Chapter 4731-19 is not contrary to HIPAA privacy rules. Compliance with both Ohio and federal law is possible and this section is not an obstacle to accomplishing the purposes and objectives of the HIPAA privacy standards.


Action by Covered Entities: Covered entities may be required to report protected health information of State Medical Board of Ohio (Board) licensees to the Board as part of required reports concerning HIV/HBV monitoring. This disclosure is permitted under HIPAA.

II. SUPPLEMENTAL MEMORANDUM

Ohio Law: O.A.C. Chapter 4731-19 mandates the reporting of a Medical Board licensee’s infection with HIV or HBV. The Board maintains the confidentiality of all information relating to the HIV and HBV status of a licensee unless it is necessary to disclose the status during disciplinary actions against the licensee. This chapter also establishes a confidential monitoring program in which an HIV or HBV infected licensee who performs invasive procedures must participate unless the licensee participates in a monitoring program run by or approved by the Ohio Department of Health. All information concerning licensee monitoring is confidential. The licensee must authorize release of information to the Board as requested and the licensee’s treating physician as well as the monitoring program must release this information, which may include protected health information. The reports related to confidential monitoring are maintained in a secure, locked location with access limited to specific Board personnel.

Preemption: No. The HIPAA privacy standards only preempt contrary state law. In this instance state law is not contrary because compliance with both Ohio and federal law is possible and O.A.C. Chapter 4731-19 does not stand as an obstacle to accomplishing the objectives of HIPAA.

Rationale: O.A.C. Chapter 4731-19 is consistent with the goals of the HIPAA privacy standards because protected health information that the Medical Board receives as a result of reports mandated by this chapter are kept confidential by the Board. Disclosure of protected health information of licensees in this instance is a permissible disclosure without a consent or authorization under HIPAA 45 C.F.R. §164.512 (d) for purposes of health oversight activities.

Action by Covered Entities: Covered entities may be required to report protected health information of Medical Board licensees to the Medical Board as part of required reports concerning HIV/HBV monitoring. This disclosure is permitted under HIPAA.
Exception Determination/Other Remedy: Not required.
O.R.C. §4731.22
Doctor-Patient Relationship; Physician Assistant/Patient Relationship

I. ANALYSIS CHART INFORMATION

Preempted: No

Rationale: O.R.C. §4731.22 is not contrary to HIPAA privacy rules. Compliance with both Ohio and federal law is possible and this section is not an obstacle to accomplishing the purposes and objectives of the HIPAA privacy standards.


Action by Covered Entities: Covered entities that examine Medical Board licensees for the purpose of determining the licensees’ ability to practice must submit examination reports to the Board. Covered entities must also respond to Medical Board subpoenas for information. These activities are permitted disclosures under HIPAA.

II. SUPPLEMENTAL MEMORANDUM

Ohio Law: O.R.C. §4731.22 authorizes the State Medical Board of Ohio (Board) to discipline physicians for specific practice violations, including willfully betraying a professional confidence. Also, this section permits the Board to compel a licensee to submit to a mental and/or physical examination to determine ability to practice. When so compelled, licensees waive all objections to the admissibility of testimony or examination reports that constitute privileged, i.e., confidential, communications. If the Board determines the licensee is unable to practice because of a mental or physical illness or impairment, the Board shall require the individual to submit to treatment as a condition of licensure.

Separately, this section authorizes the Board to take depositions, issue subpoenas and compel the attendance of witnesses and production of documents related to Medical Board investigations of violations of the Medical Practice Act. Subpoenas for patient record information are only issued in consultation with the Attorney General and with the approval of the Board secretary and supervising member. Patient records sought must be relevant to the alleged violation and material to the investigation. Information received by the Board pursuant to an investigation is confidential and not subject to discovery in any civil action. Also, the Board must conduct all investigations and proceedings in a manner that protects the confidentiality of patients and persons who file complaints with the Board. The Board cannot make public the names or any other identifying information about patients or complainants unless proper consent is given, or a waiver of the physician-patient privilege applies (see O.R.C. §2317.02). The Board may share confidential patient information with other regulatory boards or law enforcement agencies, but those boards and agencies must maintain the confidentiality of patient information to the same extent required of the Board. Courts dealing with confidential patient information obtained from the Board must also take measures to ensure confidentiality is maintained.
Preemption:  No. The HIPAA privacy standards only preempt contrary state law. In this instance state law is not contrary because compliance with both Ohio and federal law is possible and O.R.C. §4731.22 does not stand as an obstacle to accomplishing the objectives of HIPAA.

Rationale:  O.R.C. §4731.22 is consistent with the goals of the HIPAA privacy standards for the following reasons:  1) the Board has the authority to discipline physicians for willfully breaching patient confidentiality; 2) protected health information about an individual that the Medical Board obtains as a result of an investigation is kept confidential by the Board and is a permissible disclosure without a consent or authorization under HIPAA 45 C.F.R. §164.512 (d) for purposes of health oversight activities; and 3) examination reports that include protected health information about a licensee that are submitted to the Board as a result of an examination to determine ability to practice are also permitted disclosures under 45 C.F.R. §164.512 (d) that allows a covered entity to disclose protected health information without a consent or authorization for purposes of health oversight activities.

Action by Covered Entities:  Covered entities that examine Medical Board licensees for the purpose of determining the licensees’ ability to practice must submit examination reports to the Board. Covered entities must also respond to Medical Board subpoenas for information. These activities are permitted disclosures under HIPAA.

Exception Determination/Other Remedy:  Not required.
O.R.C. §4731.224 and O.A.C. Chapter 4731-15
Reports Regarding Physicians

I. ANALYSIS CHART INFORMATION

Preempted: No

Rationale: O.R.C. §4731.224 is not contrary to HIPAA privacy rules. Compliance with both Ohio and federal law is possible and this section is not an obstacle to accomplishing the purposes and objectives of the HIPAA privacy standards.


Action by Covered Entities: Covered entities may be required to report protected health information of patients to the State Medical Board of Ohio (Board) as part of required reports to the Board concerning disciplinary actions taken by health-care facilities against a physician. This disclosure is permitted under HIPAA.

II. SUPPLEMENTAL MEMORANDUM

Ohio Law: O.R.C. §4731.224 requires health-care facilities, professional associations or professional liability insurers that take disciplinary actions or reach final disposition of any claims against a physician to report to the Board the name of the physician, the action taken or final disposition of any claims and if a professional association reports, a summary of the underlying facts leading to the action taken.

Preemption: No. The HIPAA privacy standards only preempt contrary state law. In this instance state law is not contrary because compliance with both Ohio and federal law is possible and O.R.C. §4731.224 does not stand as an obstacle to accomplishing the objectives of HIPAA.

Rationale: O.R.C. §4731.224 is consistent with the goals of the HIPAA privacy standards because protected health information that the Medical Board receives as a result of reports under this section is kept confidential by the Board. Disclosure of protected health information of patients in this instance is a permissible disclosure without a consent or authorization under HIPAA 45 C.F.R. §164.512 (d) for purposes of health oversight activities.

Action by Covered Entities: Covered entities may be required to report protected health information of patients to the Medical Board as part of required reports to the Board concerning disciplinary actions taken by health-care facilities against a physician. This disclosure is permitted under HIPAA.

Exception Determination/Other Remedy: Not required.
O.R.C. §4731.25 and O.A.C. Chapter 4731-16
Treatment Providers for Practitioners with Substance Abuse Problems

I. ANALYSIS CHART INFORMATION

Preempted: No

Rationale: O.R.C. §4731.25 and O.A.C. Chapter 4731-16 are not contrary to HIPAA privacy rules. Compliance with both Ohio and federal law is possible and these sections are not an obstacle to accomplishing the purposes and objectives of the HIPAA privacy standards.


Action by Covered Entities: Covered entities that are substance abuse treatment providers approved by the State Medical Board of Ohio (Board) must report certain protected health information to the Medical Board as required by law and Board rules. Reports required by these sections are permitted disclosures under HIPAA.

II. SUPPLEMENTAL MEMORANDUM

Ohio Law: O.R.C. §4731.25 requires the State Medical Board to approve and designate physicians and facilities as treatment providers for practitioners (physicians, physician assistants, anesthesiology assistants and acupuncturists) with substance abuse problems. O.A.C. Chapter 4731-16 establishes standards for such programs and expands upon the program requirements set forth in law. Board approved providers must report to the board certain information that would be considered protected health information under HIPAA such as the names of impaired practitioners who fail to enter treatment following a referral, failure of practitioners to comply with a treatment contract, relapses, etc. A practitioner who enters into an approved treatment program is deemed to have waived any confidentiality requirements that would otherwise prohibit a treatment provider from making the reports required by law. Further, practitioners who enter a treatment program must execute releases permitting reports to be made to the Board. The Medical Board may also compel a practitioner suspected of impairment to be examined by an approved treatment provider.

Preemption: No. The HIPAA privacy standards only preempt contrary state law. In this instance state law is not contrary because compliance with both Ohio and federal law is possible and O.R.C. §4731.25 and O.A.C. Chapter 4731-16 do not stand as obstacles to accomplishing the objectives of HIPAA.

Rationale: O.R.C. §4731.25 and O.A.C. Chapter 4731-16 are consistent with the goals of the HIPAA privacy standards because disclosure of protected health information to the Medical Board by an approved treatment provider is a permissible disclosure under 45 C.F.R. §164.512 (d) that allows a covered entity to disclose protected health information without a consent or authorization for purposes of health oversight activities.
**Action by Covered Entities:**  Covered entities that are substance abuse treatment providers approved by the State Medical Board must report certain protected health information to the Medical Board as required by law and Board rules. Reports required by these sections are permitted disclosures under HIPAA.

**Exception Determination/Other Remedy:** Not required.
O.R.C. §4731.44
Physician Prescriptions for Vision Correcting Device or Procedure

I. ANALYSIS CHART INFORMATION

Preempted: No

Rationale: O.R.C. §4731.44 is not contrary to HIPAA privacy rules. Compliance with both Ohio and federal law is possible and this section is not an obstacle to accomplishing the purposes and objectives of the HIPAA privacy standards.


Action by Covered Entities: Covered entities to which this section applies must give patients one copy of their prescription for a vision-correcting device as required by both Ohio and federal law.

II. SUPPLEMENTAL MEMORANDUM

Ohio Law: O.R.C. §4731.44 requires physicians to give patients a copy of a prescription for a vision correcting device or procedure issued by the physician.

Preemption: No. The HIPAA privacy standards only preempt contrary state law. In this instance the state law is not contrary because compliance with both Ohio and federal law is possible and O.R.C. §4731.44 does not stand as an obstacle to accomplishing the objectives of HIPAA.

Rationale: O.R.C. §4731.44 is consistent with the goals of the HIPAA privacy standards because copies of prescriptions for vision correcting devices or procedures must be given to patients. These prescriptions are protected health information to which the patient also has access under HIPAA 45 C.F.R. §164.502 and 45 C.F.R. §164.524.

Action by Covered Entities: Covered entities to which this section applies must give patients one copy of their prescription for a vision-correcting device as required by both Ohio and federal law.

Exception Determination/Other Remedy: Not required.
I. ANALYSIS CHART INFORMATION

Preempted: No

Rationale: O.R.C. §4732.17 is not contrary to HIPAA privacy rules. Compliance with both Ohio and federal law is possible and this section is not an obstacle to accomplishing the purposes and objectives of the HIPAA privacy standards.


Action by Covered Entities: No action required.

II. SUPPLEMENTAL MEMORANDUM

Ohio Law: O.R.C. §4732.17 authorizes the State Board of Psychology (Board) to discipline psychologists for specific practice violations, including willful unauthorized communication of information received in professional confidence, impairment resulting from substance abuse, and incompetence.

Preemption: No. The HIPAA privacy standards only preempt contrary state law. In this instance state law is not contrary because compliance with both Ohio and federal law is possible and O.R.C. §4732.17 does not stand as an obstacle to accomplishing the objectives of HIPAA.

Rationale: O.R.C. §4732.17 is consistent with the goals of the HIPAA privacy standards because the Board has the authority to discipline psychologists for willfully breaching patient confidentiality. Also, protected health information to which the Board might gain access during the course of a disciplinary action is a permitted disclosure under 45 C.F.R. §164.512 (d) that allows a covered entity to disclose protected health information without a consent or authorization for purposes of health oversight activities.

Action by Covered Entities: No action required.

Exception Determination/Other Remedy: Not required.
O.R.C. §4732.19 and O.A.C. §4732-17-01
Psychologists

I. ANALYSIS CHART INFORMATION

Preempted: No

Rationale: O.R.C. §4732.19 & O.A.C. §4732-17-01 are not contrary to HIPAA privacy rules. Compliance with both Ohio and federal law is possible and these sections are not obstacles to accomplishing the purposes and objectives of the HIPAA privacy standards.


Action by Covered Entities: Covered entities (psychologists) will need to comply with both Ohio law and HIPAA privacy standards related to consent and authorization of release of psychotherapy notes. Covered entities will need to review existing release of information forms and revise them as necessary to meet HIPAA consent and authorization form requirements.

II. SUPPLEMENTAL MEMORANDUM

Ohio Law: O.R.C. §4732.19 & O.A.C. §4732-17-01 establish the confidentiality of communications between a psychologist and a client and nothing in the psychology licensure statute or rules requires confidential communications to be disclosed unless the client has consented. O.A.C. §4732-17-01 establishes a variety of requirements with respect to maintenance and retention of client records, further clarifies the responsibility of psychologists to maintain client confidentiality and sets forth exceptions or limitations to the requirement to maintain confidentiality.

Preemption: No. The HIPAA privacy standards only preempt contrary state law. In this instance state law is not contrary because compliance with both Ohio and Federal law is possible and O.R.C. §4732.19 & O.A.C. §4732-17-01 do not stand as obstacles to accomplishing the objectives of HIPAA.

Rationale: O.R.C. §4732.19 & O.A.C. §4732-17-01 are consistent with the goals of the HIPAA privacy standards because they impose confidentiality requirements upon psychologists that are similar to those found in the HIPAA privacy rules. Psychologists may need to revise release of records forms or informed consent to release of information forms to comply with HIPAA’s requirements for a consent form for treatment, payment and health care operations and an authorization form for other purposes including release of psychotherapy notes. Uses and disclosures required by law (i.e., to report abuse, neglect or domestic violence; judicial and administrative proceedings or law enforcement purposes), releases of information to coroners, and disclosure to avert a serious threat to health or safety and releases for purposes of oversight of psychologists by the State Board of Psychology are still permitted.
**Action by Covered Entities:** Covered entities (psychologists) will need to comply with both Ohio law and HIPAA privacy standards related to consent and authorization of release of psychotherapy notes. Covered entities will need to review existing release of information forms and revise them as necessary to meet HIPAA consent and authorization form requirements.

**Exception Determination/Other Remedy:** Not required.
I. ANALYSIS CHART INFORMATION

Preempted: No

Rationale: O.R.C. §4734.31 & O.A.C. §4734-1-16 are not contrary to HIPAA privacy rules. Compliance with both Ohio and federal law is possible and these sections are not an obstacle to accomplishing the purposes and objectives of the HIPAA privacy standards.


Action by Covered Entities: Covered entities that are licensees must cooperate with Ohio Chiropractic Board (Board) investigations and respond to requests for information.

II. SUPPLEMENTAL MEMORANDUM

Ohio Law: O.R.C. §4734.31 & O.A.C. §4734-1-16 authorize the Chiropractic Board to discipline chiropractors for specific practice violations, including disclosing patient information gained during the chiropractor’s professional relationship with a patient without obtaining the patient’s authorization for the disclosure; inability to practice by reason of chemical dependency, mental or physical illness; and failing to respond to a Board subpoena or to cooperate with a Board investigation. Board requests for information might possibly include requests for protected health information.

Preemption: No. The HIPAA privacy standards only preempt contrary state law. In this instance state law is not contrary because compliance with both Ohio and federal law is possible and O.R.C. §4734.31 & O.A.C. §4734-1-16 do not stand as obstacles to accomplishing the objectives of HIPAA.

Rationale: O.R.C. §4734.31 & O.A.C. 4734-1-16 are consistent with the goals of the HIPAA privacy standards because the Board has the authority to discipline chiropractors for unauthorized disclosure of confidential patient information. Also disclosure to the Board of protected health information about licensees or patients that is necessary to enable the Board to investigate a licensee’s conduct or take disciplinary action against a licensee are permitted disclosures under 45 C.F.R. §164.512 (d) that allows a covered entity to disclose protected health information without a consent or authorization for purposes of health oversight activities.

Action by Covered Entities: Covered entities that are licensees must cooperate with Board investigations and respond to requests for information.

Exception Determination/Other Remedy: Not required.
I. ANALYSIS CHART INFORMATION

Preempted: No

Rationale: O.R.C. §4734.32 is not contrary to HIPAA privacy rules. Compliance with both Ohio and federal law is possible and this section is not an obstacle to accomplishing the purposes and objectives of the HIPAA privacy standards.


Action by Covered Entities: Covered entities may be required to report protected health information of patients to the State Chiropractic Board of Ohio (Board) as part of required reports to the Board concerning disciplinary actions taken by health-care facilities against a chiropractor. This disclosure is permitted under HIPAA.

II. SUPPLEMENTAL MEMORANDUM

Ohio Law: O.R.C. §4734.32 requires health-care facilities, professional associations or professional liability insurers that take disciplinary actions or reach final disposition of any claims against a chiropractor to report to the Board the name of the chiropractor, the action taken and, if a facility or professional association, a summary of the underlying facts leading to the action taken. Upon request, facilities must submit to the Board certified copies of the patient records that were the basis for the facility’s action. All summaries, reports and records received and maintained by the Board are confidential and not subject to discovery in civil actions related to the required reports. The Board may further disclose the summaries and reports it receives under this section to other facilities within or outside the state that are involved in credentialing or recredentialing a chiropractor. Information transmitted to other facilities is subject to the same confidentiality provisions as when maintained by the Board.

Preemption: No. The HIPAA privacy standards only preempt contrary state law. In this instance state law is not contrary because compliance with both Ohio and federal law is possible and O.R.C. §4734.32 does not stand as an obstacle to accomplishing the objectives of HIPAA.

Rationale: O.R.C. §4734.32 is consistent with the goals of the HIPAA privacy standards because protected health information that the Board receives as a result of reports made under this section is kept confidential by the Board. Disclosure of protected health information of patients in this instance is a permissible disclosure without a consent or authorization under HIPAA 45 C.F.R. §164.512 (d) for purposes of health oversight activities.

Action by Covered Entities: Covered entities may be required to report protected health information of patients to the Chiropractic Board as part of required reports to the Board.
concerning disciplinary actions taken by health-care facilities against a chiropractor. This disclosure is permitted under HIPAA.

**Exception Determination/Other Remedy:** Not required.
I. ANALYSIS CHART INFORMATION

Preempted: No

Rationale: O.R.C. §4734.39 is not contrary to HIPAA privacy rules. Compliance with both Ohio and federal law is possible and this section is not an obstacle to accomplishing the purposes and objectives of the HIPAA privacy standards.


Action by Covered Entities: Covered entities that examine Ohio Chiropractic Board (Board) licensees for the purposes of determining the licensees’ ability to practice must submit examination reports and other information to the Board. These activities are permitted disclosures under HIPAA.

II. SUPPLEMENTAL MEMORANDUM

Ohio Law: O.R.C. §4734.39 permits the Ohio Chiropractic Board (Board) to compel a licensee to submit to a mental and/or physical examination to determine ability to practice. When so compelled, licensees are deemed to have consented to the examination and waive all objections to the admissibility of testimony or examination reports that constitute privileged, i.e., confidential, communications. If the Board determines the licensee is unable to practice because of a mental or physical illness or impairment, the Board shall require the individual to submit to treatment as a condition of licensure. Reports regarding a licensee’s compliance with treatment must also be submitted to the Board.

Preemption: No. The HIPAA privacy standards only preempt contrary state law. In this instance state law is not contrary because compliance with both Ohio and federal law is possible and O.R.C. §4734.39 does not stand as an obstacle to accomplishing the objectives of HIPAA.

Rationale: O.R.C. §4734.39 is consistent with the goals of the HIPAA privacy standards because examination reports that include protected health information about a licensee that are submitted to the Board as a result of an examination to determine ability to practice are permitted disclosures under 45 C.F.R. §164.512 (d) that allows a covered entity to disclose protected health information without a consent or authorization for purposes of health oversight activities.

Action by Covered Entities: Covered entities that examine Chiropractic Board licensees for the purposes of determining the licensees’ ability to practice must submit examination reports and other information to the Board. These activities are permitted disclosures under HIPAA.

Exception Determination/Other Remedy: Not required.
O.R.C. §4734.40
Chiropractors

I. ANALYSIS CHART INFORMATION

Preempted: No

Rationale: O.R.C. §4734.40 is not contrary to HIPAA privacy rules. Compliance with both Ohio and federal law is possible and this section is not an obstacle to accomplishing the purposes and objectives of the HIPAA privacy standards.


Action by Covered Entities: Covered entities that are substance abuse treatment providers approved by the State Chiropractic Board (Board) must report certain protected health information to the Board as required by law. Reports required by these sections are permitted disclosures under HIPAA.

II. SUPPLEMENTAL MEMORANDUM

Ohio Law: O.R.C. §4734.40 authorizes the Chiropractic Board to adopt rules to approve and designate treatment providers for impaired chiropractors. A chiropractor who enters into treatment by an approved treatment provider is deemed to have waived any confidentiality requirements that would otherwise prevent the treatment provider from making reports required by this section.

Preemption: No. The HIPAA privacy standards only preempt contrary state law. In this instance state law is not contrary because compliance with both Ohio and federal law is possible and O.R.C. §4734.40 does not stand as an obstacle to accomplishing the objectives of HIPAA.

Rationale: O.R.C. §4734.40 is consistent with the goals of the HIPAA privacy standards because chiropractors who enter a treatment program are deemed to have consented to the disclosure of protected health information to the Board and also because disclosure of protected health information to the Board by an approved treatment provider is a permissible disclosure under 45 C.F.R. §164.512 (d) that allows a covered entity to disclose protected health information without a consent or authorization for purposes of health oversight activities.

Action by Covered Entities: Covered entities that are substance abuse treatment providers approved by the Board must report certain protected health information to the Board as required by law. Reports required by these sections are permitted disclosures under HIPAA.

Exception Determination/Other Remedy: Not required.
O.R.C. §4734.41
Chiropractors

I. ANALYSIS CHART INFORMATION

Preempted: No

Rationale: O.R.C. §4734.41 is not contrary to HIPAA privacy rules. Compliance with both Ohio and federal law is possible and this section is not an obstacle to accomplishing the purposes and objectives of the HIPAA privacy standards.


Action by Covered Entities: Covered entities may be required to report protected health information to the Ohio State Chiropractic Board’s (Board) chemical dependency and mental illness monitoring program. These disclosures are permitted under HIPAA.

II. SUPPLEMENTAL MEMORANDUM

Ohio Law: O.R.C. §4734.41 requires the Ohio State Chiropractic Board to establish a chemical dependency and mental illness monitoring program as an alternative to imposing disciplinary action against licensees with a chemical dependency. All records of an individual’s participation in the program, including medical records, chemical dependency records, and mental health records, are confidential, are not public records, and are not subject to discovery or admissible as evidence in any judicial proceeding. The program coordinator may disclose records regarding an individual’s progress and status in the program to the Board’s disciplinary section and to any person or entity authorized by the individual participant. The program is not permitted to disclose records protected under O.R.C. §3793.13 (governing drug treatment records) or any federal statute or regulation that provides for the confidentiality of mental health or substance abuse records.

Preemption: No. The HIPAA privacy standards only preempt contrary state law. In this instance state law is not contrary because compliance with both Ohio and federal law is possible and O.R.C. §4734.41 does not stand as an obstacle to accomplishing the objectives of HIPAA.

Rationale: O.R.C. §4734.41 is consistent with the goals of the HIPAA privacy standards because any disclosure of protected health information to the Chiropractic Board’s monitoring program is a permissible disclosure under 45 C.F.R. §164.512 (d) that allows a covered entity to disclose protected health information without a consent or authorization for purposes of health oversight activities. Also, protected health information obtained by the monitoring program is confidential and can only be released 1) to the Board, or 2) to another person if authorized by the individual who is the subject of the information.
**Action by Covered Entities:** Covered entities may be required to report protected health information to the State Chiropractic Board’s chemical dependency and mental illness monitoring program. These disclosures are permitted under HIPAA.

**Exception Determination/Other Remedy:** Not required.
O.R.C. §4734.45
Chiropractors

I. ANALYSIS CHART INFORMATION

Preempted: No

Rationale: O.R.C. §4734.45 is not contrary to HIPAA privacy rules. Compliance with both Ohio and federal law is possible and this section is not an obstacle to accomplishing the purposes and objectives of the HIPAA privacy standards.


Action by Covered Entities: No action required.

II. SUPPLEMENTAL MEMORANDUM

Ohio Law: O.R.C. §4734.45 grants to the Ohio State Chiropractic Board (Board) the authority to investigate violations of the law governing chiropractors. Information received by the Board pursuant to an investigation is confidential and not subject to discovery in any civil action, unless the Board determines that, for good cause, disclosure is appropriate. Also, the Board may share appropriate information with other regulatory boards or law enforcement agencies engaging in an investigation, but those boards and agencies must maintain the confidentiality of information to the same extent required of the Board. Courts dealing with confidential patient information obtained from the Board must also take measures to ensure confidentiality is maintained.

Preemption: No. The HIPAA privacy standards only preempt contrary state law. In this instance state law is not contrary because compliance with both Ohio and federal law is possible and O.R.C. §4734.45 does not stand as an obstacle to accomplishing the objectives of HIPAA.

Rationale: O.R.C. §4734.45 is consistent with the goals of the HIPAA privacy standards because protected health information that the Chiropractic Board obtains as a result of an investigation is kept confidential by the Board. Protected health information to which the Board might gain access during the course of an investigation is a permissible disclosure without a consent or authorization under HIPAA 45 C.F.R. §164.512 (d) for purposes of health oversight activities.

Action by Covered Entities: No action required.

Exception Determination/Other Remedy: Not required.
O.R.C. §4755.10 and O.A.C. §4755-7-05
Occupational Therapists

I. ANALYSIS CHART INFORMATION

Preempted: No

Rationale: O.R.C. §4755.10 and O.A.C. §4755-7-05 are not contrary to HIPAA privacy rules. Compliance with both Ohio and federal law is possible and these sections are not an obstacle to accomplishing the purposes and objectives of the HIPAA privacy standards.


Action by Covered Entities: No action required.

II. SUPPLEMENTAL MEMORANDUM

Ohio Law: O.R.C. §4755.10 authorizes the Occupational Therapy Section of the Ohio Occupational Therapy, Physical Therapy and Athletic Trainers Board (Board) to discipline occupational therapists for specific practice violations, including willful unauthorized communication of information received in professional confidence and impairment resulting from substance abuse. O.A.C. §4755-7-05 prohibits disclosure of confidential patient information to unauthorized persons unless that patient has given written consent.

Preemption: No. The HIPAA privacy standards only preempt contrary state law. In this instance state law is not contrary because compliance with both Ohio and federal law is possible and O.R.C. §4755.10 does not stand as an obstacle to accomplishing the objectives of HIPAA.

Rationale: O.R.C. §4755.10 and O.A.C. §4755-7-05 are consistent with the goals of the HIPAA privacy standards because the Board has the authority to discipline occupational therapists for willfully breaching patient confidentiality. Also, protected health information to which the Board might gain access during the course of a disciplinary action is a permitted disclosure under 45 C.F.R. §164.512 (d) that allows a covered entity to disclose protected health information without a consent or authorization for purposes of health oversight activities.

Action by Covered Entities: No action required.

Exception Determination/Other Remedy: Not required.
I. ANALYSIS CHART INFORMATION

Preempted: No

Rationale: O.R.C. § 4757.11 & O.A.C. 4757-5-01 are not contrary to HIPAA Privacy rules. Compliance with both Ohio and federal law is possible and these sections are not obstacles to accomplishing the purposes and objectives of the HIPAA privacy standards.


Action by Covered Entities: Covered entities (counselors and social workers) will need to comply with both Ohio law and HIPAA privacy standards related to consent and authorization of release of psychotherapy notes. Covered entities will need to review existing release of information forms and revise them as necessary to meet HIPAA consent and authorization form requirements. Covered entities should also review HIPAA requirements related to research and individual access to protected health information to ensure compliance with federal law.

II. SUPPLEMENTAL MEMORANDUM

Ohio Law: O.R.C. § 4757.11 & O.A.C. 4757-5-01 establish codes of ethical practice for counselors and social workers that include protecting the confidentiality of communications between counselors and social workers and a client, and addressing practice issues such as impairment due to substance abuse or mental or physical conditions, conduct of research using human subjects and record keeping.

Counselors and social workers must protect a client’s right to confidentiality. Confidential information is only revealed to others when the client consents in writing or when failure to release information would violate the law or result in clear and present danger to the client or others. Electronic technology must not compromise the client’s right to privileged communications and confidentiality.

Rules related to research require counselors and social workers to plan, design, conduct, and report research in a manner consistent with ethical principles, state and federal law and other professional, scientific and other regulations. The rule also identifies elements and information that are necessary in order for the client to give informed consent for research, including limitations on confidentiality that might apply and disclosure of the extent to which others might obtain access to confidential information.

The ethical and professional conduct rule also addresses record keeping and includes requirements related to protecting privacy and access to records by clients.
Preemption: No. The HIPAA privacy standards only preempt contrary state law. In this instance state law is not contrary because compliance with both Ohio and federal law is possible and O.R.C. §4757.11 & O.A.C. 4757-5-01 do not stand as obstacles to accomplishing the objectives of HIPAA.

Rationale: O.R.C. §4757.11 & O.A.C. 4757-5-01 are consistent with the goals of the HIPAA privacy standards because they impose confidentiality requirements upon counselors and social workers that are similar to those found in the HIPAA privacy rules. Counselors and social workers may need to revise release of records forms or informed consent to release of information forms to comply with HIPAA’s requirements for a consent form for treatment, payment and health care operations and an authorization form for other purposes including release of psychotherapy notes. See 45 C.F.R.§§164.506 and 164.508. Uses and disclosures required by law (i.e., to report abuse, neglect or domestic violence; judicial and administrative proceedings or law enforcement purposes), releases of information to coroners, and disclosure to avert a serious threat to health or safety, and releases for purposes of oversight of counselors and social workers by the Counselor and Social Worker Board are still permitted. See 45 C.F.R. §164.512. HIPAA privacy rules also permit use and disclosure of protected health information without a consent or authorization for research if certain requirements are met. See 45 C.F.R. §164.512. The counselor and social worker rules of professional conduct that relate to record keeping appear to be similar to the requirements for access and reasons for denial of access found at 45 C.F.R. §164.524.

Action by Covered Entities: Covered entities (counselors and social workers) will need to comply with both Ohio law and HIPAA privacy standards related to consent and authorization of release of psychotherapy notes. Covered entities will need to review existing release of information forms and revise them as necessary to meet HIPAA consent and authorization form requirements. Covered entities should also review HIPAA requirements related to research and individual access to protected health information to ensure compliance with federal law.

Exception Determination/Other Remedy: Not required.
I. ANALYSIS CHART INFORMATION

Preempted: No

Rationale: O.R.C. §4757.36 & O.A.C. §4757-11-01 are not contrary to HIPAA Privacy rules. Compliance with both Ohio and Federal law is possible and these sections are not an obstacle to accomplishing the purposes and objectives of the HIPAA privacy standards.


Action by Covered Entities: Covered entities must respond to Ohio Counselor and Social Worker Board (Board) requests and subpoenas for protected health information. This disclosure is permitted under HIPAA.

II. SUPPLEMENTAL MEMORANDUM

Ohio Law: O.R.C. §4757.36 & O.A.C. §4757-11-01 authorize the Counselor and Social Worker Board to discipline licensees for specific practice violations, including violating codes of ethical practice as adopted under O.R.C. §4757.11 & O.A.C. §4757-5-01, impairment due to substance abuse or to a physical or mental condition and being adjudicated mentally incompetent. The Board has the authority to investigate licensees and any information received by the Board pursuant to an investigation is confidential and is not subject to discovery in a civil action. If an investigation requires a review of client records, the investigation and proceedings are conducted in a manner that protects client confidentiality.

Preemption: No. The HIPAA privacy standards only preempt contrary state law. In this instance state law is not contrary because compliance with both Ohio and Federal law is possible and O.R.C. §4757.36 & O.A.C. §4757-11-01 do not stand as obstacles to accomplishing the objectives of HIPAA.

Rationale: O.R.C. §4757.36 & O.A.C. §4757-11-01 are consistent with the goals of the HIPAA privacy standards because the Board has the authority to discipline counselors and social workers for violations of client confidentiality. Also, protected health information that the Board might obtain during the course of an investigation is kept confidential by the Board and is a permissible disclosure without a consent or authorization under HIPAA 45 C.F.R. §164.512 (d) for purposes of health oversight activities.

Action by Covered Entities: Covered entities must respond to Counselor and Social Worker Board requests and subpoenas for protected health information. This disclosure is permitted under HIPAA.

Exception Determination/Other Remedy: Not required.
O.R.C. §4757.38 and O.A.C. §4757-11-03
Counselor and Social Worker Board Investigations

I. ANALYSIS CHART INFORMATION

Preempted: No

Rationale: O.R.C. §4757.38 & 4757-11-03 are not contrary to HIPAA privacy rules. Compliance with both Ohio and federal law is possible and this section is not an obstacle to accomplishing the purposes and objectives of the HIPAA privacy standards.


Action by Covered Entities: Covered entities must respond to Ohio Counselor and Social Worker Board (Board) subpoenas for information. This is a permitted disclosure under HIPAA.

II. SUPPLEMENTAL MEMORANDUM

Ohio Law: O.R.C. §4757.38 authorizes the Counselor and Social Worker Board to investigate licensees and the practice of professional counseling or social work. For the purpose of conducting investigations, the Board has the authority to issue subpoenas and examine witnesses. All Board investigative records are confidential. O.A.C. §4757-11-03 establishes procedures for internal Board management of confidential investigative records. The Board is permitted to release records to another enforcement or licensing agency. If records are released to another state agency, the entity must enter into a written agreement to protect the confidentiality of the information and not further disclose the information. Client information may be released to the Board to determine whether any violation of counselor or social work practice has occurred. Client information is reviewed in camera and is not disclosed to the public.

Preemption: No. The HIPAA privacy standards only preempt contrary state law. In this instance state law is not contrary because compliance with both Ohio and federal law is possible and O.R.C. §4757.38 & O.A.C. §4757-11-03 do not stand as obstacles to accomplishing the objectives of HIPAA.

Rationale: O.R.C. §4757.38 & O.A.C. §4757-11-03 are consistent with the goals of the HIPAA privacy standards because protected health information that the Counselor and Social Worker Board obtains as a result of an investigation is kept confidential by the Board and these disclosures are permitted under 45 C.F.R. §164.512 (d) that allows a covered entity to disclose protected health information without a consent or authorization for purposes of health oversight activities.

Action by Covered Entities: Covered entities must respond to Counselor and Social Worker Board subpoenas for information. This is a permitted disclosure under HIPAA.
Exception Determination/Other Remedy: Not required.
O.R.C. §4760.13
Disciplinary Authority of State Medical Board

I. ANALYSIS CHART INFORMATION

Preempted: No

Rationale: O.R.C. §4760.13 is not contrary to HIPAA privacy rules. Compliance with both Ohio and federal law is possible and this section is not an obstacle to accomplishing the purposes and objectives of the HIPAA privacy standards.


Action by Covered Entities: Covered entities must respond to State Medical Board of Ohio (Board) subpoenas for information. Covered entities that are licensees must cooperate with Board investigations and must comply with requests for mental or physical examinations when required to determine the licensee’s ability to practice. These activities are permitted disclosures under HIPAA.

II. SUPPLEMENTAL MEMORANDUM

Ohio Law: O.R.C. §4760.13 authorizes the State Medical Board of Ohio to discipline anesthesiology assistants for specific practice violations, including willfully betraying a professional confidence and inability to practice due to mental or physical illness or impairment due to substance abuse. This section also permits the Board to compel a licensee to submit to a mental and/or physical examination to determine ability to practice. When so compelled, licensees are deemed to have consented to the examination and waive all objections to the admissibility of testimony or examination reports that constitute privileged, i.e., confidential, communications. If the Board determines the licensee is unable to practice because of a mental or physical illness or impairment, the Board shall require the individual to submit to treatment as a condition of licensure. Licensees also must cooperate with Board investigations and must comply with a subpoena or order issued by the Board.

Preemption: No. The HIPAA privacy standards only preempt contrary state law. In this instance state law is not contrary because compliance with both Ohio and federal law is possible and O.R.C. §4760.13 does not stand as an obstacle to accomplishing the objectives of HIPAA.

Rationale: O.R.C. §4760.13 is consistent with the goals of the HIPAA privacy standards for the following because the Board has the authority to discipline acupuncturists for willfully breaching patient confidentiality. Further, examination reports that include protected health information about a licensee that are submitted to the Board as a result of an examination to determine ability to practice are permitted disclosures under 45 C.F.R. §164.512 (d) that allows a covered entity to disclose protected health information without a consent or authorization for purposes of health oversight activities.
**Action by Covered Entities:** Covered entities must respond to Medical Board subpoenas for information. Covered entities that are licensees must cooperate with Board investigations and must comply with requests for mental or physical examinations when required to determine the licensee’s ability to practice. These activities are permitted disclosures under HIPAA.

**Exception Determination/Other Remedy:** Not required.
O.R.C. §4760.14
State Medical Board Investigations

I. ANALYSIS CHART INFORMATION

Preempted: No

Rationale: O.R.C. §4760.14 is not contrary to HIPAA privacy rules. Compliance with both Ohio and federal law is possible and this section is not an obstacle to accomplishing the purposes and objectives of the HIPAA privacy standards.


Action by Covered Entities: Covered entities must respond to State Medical Board of Ohio (Board) subpoenas for information. These activities are permitted disclosures under HIPAA.

II. SUPPLEMENTAL MEMORANDUM

Ohio Law: O.R.C. §4760.14 authorizes the State Medical Board of Ohio to investigate violations of the law governing the practice of anesthesiologist assistants and authorizes the Board to take depositions, issue subpoenas and compel the attendance of witnesses and production of documents. Subpoenas for patient record information are only issued in consultation with the Attorney General and with the approval of the Board secretary and supervising member. Patient records sought must be relevant to the alleged violation and material to the investigation. Information received by the Board pursuant to an investigation is confidential and not subject to discovery in any civil action. Also, the Board must conduct all investigations and proceedings in a manner that protects the confidentiality of patients and persons who file complaints with the Board. The Board cannot make public the names or any other identifying information about patients or complainants unless proper consent is given. The Board may share confidential patient information with other regulatory boards or law enforcement agencies, but those boards and agencies must maintain the confidentiality of patient information to the same extent required of the Board. Courts dealing with confidential patient information obtained from the Board must also take measures to ensure confidentiality is maintained.

Preemption: No. The HIPAA privacy standards only preempt contrary state law. In this instance state law is not contrary because compliance with both Ohio and federal law is possible and O.R.C. §4760.14 does not stand as an obstacle to accomplishing the objectives of HIPAA.

Rationale: O.R.C. §4760.14 is consistent with the goals of the HIPAA privacy standards because protected health information about an individual that the Medical Board obtains as a result of an investigation is kept confidential by the Board and is a permissible disclosure without a consent or authorization under HIPAA 45 C.F.R. §164.512 (d) for purposes of health oversight activities.
**Action by Covered Entities:** Covered entities must respond to Medical Board subpoenas for information. These activities are permitted disclosures under HIPAA.

**Exception Determination/Other Remedy:** Not required.
O.R.C. §4760.16
Reporting Requirements

I. ANALYSIS CHART INFORMATION

Preempted: No

Rationale: O.R.C. §4760.16 is not contrary to HIPAA privacy rules. Compliance with both Ohio and federal law is possible and this section is not an obstacle to accomplishing the purposes and objectives of the HIPAA privacy standards.


Action by Covered Entities: Covered entities may be required to report protected health information of patients to the State Medical Board of Ohio (Board) as part of required reports to the Board concerning disciplinary actions taken by health-care facilities against an anesthesiology assistant. This disclosure is permitted under HIPAA.

II. SUPPLEMENTAL MEMORANDUM

Ohio Law: O.R.C. §4760.16 requires health-care facilities, professional associations or professional liability insurers that take disciplinary actions or reach final disposition of any claims against an anesthesiology assistant to report to the Board the name of the anesthesiology assistant, the action taken if a facility or a professional association reports, and a summary of the underlying facts leading to the action taken. Upon request, facilities must submit to the Board certified copies of the patient records that were the basis for the facility’s action. All summaries, reports and records received and maintained by the Board are confidential and not subject to discovery in civil actions related to the required reports. The Board may further disclose the summaries and reports it receives under this section to other facilities within or outside the state that are involved in credentialing or recredentialing an anesthesiology assistant. Information transmitted to other facilities is subject to the same confidentiality provisions as when maintained by the Board.

Preemption: No. The HIPAA privacy standards only preempt contrary state law. In this instance state law is not contrary because compliance with both Ohio and federal law is possible and O.R.C. §4760.16 does not stand as an obstacle to accomplishing the objectives of HIPAA.

Rationale: O.R.C. §4760.16 is consistent with the goals of the HIPAA privacy standards because protected health information that the Medical Board receives as a result of reports submitted pursuant to this section is kept confidential by the Board. Disclosure of protected health information of patients in this instance is a permissible disclosure without a consent or authorization under HIPAA 45 C.F.R. §164.512 (d) for purposes of health oversight activities.

Action by Covered Entities: Covered entities may be required to report protected health information of patients to the Medical Board as part of required reports to the Board concerning
disciplinary actions taken by health-care facilities against an anesthesiology assistant. This disclosure is permitted under HIPAA.

**Exception Determination/Other Remedy:** Not required.
O.R.C. §4761.03 and O.A.C. §4761-10-01
Respiratory Care

I. ANALYSIS CHART INFORMATION

Preempted: No

Rationale: O.R.C. §4761.03 & O.A.C. §4761-10-01 are not contrary to HIPAA privacy rules. Compliance with both Ohio and federal law is possible and these sections are not an obstacle to accomplishing the purposes and objectives of the HIPAA privacy standards.


Action by Covered Entities: When releasing confidential patient information, covered entities must comply with both Ohio law and HIPAA consent and authorization requirements.

II. SUPPLEMENTAL MEMORANDUM

Ohio Law: O.R.C. §4761.03 authorizes the Ohio Respiratory Care Board (Board) to adopt rules governing standards of ethical conduct for the practice of respiratory care. O.A.C. §4761-10-01 includes as professional standards a requirement that respiratory care professionals hold as confidential all patient information and disclose such information only to other health-care professionals responsible for providing care to the patient. Further, a respiratory care professional must only access patient information that is necessary and relevant to their function and authority as a respiratory care provider.

Preemption: No. The HIPAA privacy standards only preempt contrary state law. In this instance state law is not contrary because compliance with both Ohio and federal law is possible and O.R.C. §4761.03 & O.A.C. §4761-10-01 do not stand as obstacles to accomplishing the objectives of HIPAA.

Rationale: O.R.C. §4761.03 & O.A.C. §4761-10-01 are consistent with the goals of the HIPAA privacy standards because these sections establish the confidentiality of patient records and address the limitations on access to patient information by respiratory care providers and disclosure to other health-care professionals.

Action by Covered Entities: When releasing confidential patient information, covered entities must comply with both Ohio law and HIPAA consent and authorization requirements.

Exception Determination/Other Remedy: Not required.
I. ANALYSIS CHART INFORMATION

Preempted: No

Rationale: O.R.C. §4761.03 & O.A.C. 4761-11-05 are not contrary to HIPAA privacy rules. Compliance with both Ohio and federal law is possible and these sections are not an obstacle to accomplishing the purposes and objectives of the HIPAA privacy standards.


Action by Covered Entities: No action required.

II. SUPPLEMENTAL MEMORANDUM

Ohio Law: O.R.C. §4761.03 authorizes the Ohio Respiratory Care Board (Board) to adopt rules governing the conduct of hearings on licensure actions and authorizes the Board to investigate complaints of violations of the laws governing respiratory care. Except when required by court order, the Board must not disclose confidential information obtained during an investigation or the identifying information about any person who files a complaint. The Board may also issue subpoenas pursuant to an investigation and during an adjudication hearing.

Preemption: No. The HIPAA privacy standards only preempt contrary state law. In this instance state law is not contrary because compliance with both Ohio and federal law is possible and O.R.C. §4761.03 & O.A.C. §4761-11-05 do not stand as obstacles to accomplishing the objectives of HIPAA.

Rationale: O.R.C. §4761.03 & O.A.C. §4761-11-05 are consistent with the goals of the HIPAA privacy standards because the Board is required to maintain the confidentiality of information obtained during an investigation. Also, protected health information disclosed to the Board as a result of an investigation is a permitted disclosure under 45 C.F.R. §164.512 (d) that allows a covered entity to disclose protected health information without a consent or authorization for purposes of health oversight activities.

Action by Covered Entities: No action required.

Exception Determination/Other Remedy: Not required.
O.R.C. §4761.031
Respiratory Care

I. ANALYSIS CHART INFORMATION

Preempted: No

Rationale: O.R.C. §4761.031 is not contrary to HIPAA privacy rules. Compliance with both Ohio and federal law is possible and this section is not an obstacle to accomplishing the purposes and objectives of the HIPAA privacy standards.


Action by Covered Entities: No action required.

II. SUPPLEMENTAL MEMORANDUM

Ohio Law: O.R.C. §4761.031 authorizes the Ohio Respiratory Care Board (Board) to share information, including patient record information, it receives pursuant to investigations of violations of the law related to practice of respiratory care with other regulatory boards or law enforcement agencies. Any board or agency that receives information from the Board must maintain the confidentiality information to the same extent required of the Board. Courts dealing with confidential information obtained from the Board must also take measures to ensure confidentiality is maintained.

Preemption: No. The HIPAA privacy standards only preempt contrary state law. In this instance state law is not contrary because compliance with both Ohio and federal law is possible and O.R.C. §4761.031 does not stand as an obstacle to accomplishing the objectives of HIPAA.

Rationale: O.R.C. §4761.031 is consistent with the goals of the HIPAA privacy standards because protected health information that the Board might obtain as a result of an investigation is kept confidential by the Board. Disclosure of this information to the Board is a permissible disclosure without a consent or authorization under HIPAA 45 C.F.R. §164.512 (d) for purposes of health oversight activities. Disclosure of confidential information by the Board to other licensing and governmental entities is not regulated by HIPAA, but is consistent with the intent of HIPAA to not impede regulatory oversight of the health care system or law enforcement activities.

Action by Covered Entities: No action required.

Exception Determination/Other Remedy: Not required.
O.R.C. §4762.10  
Acupuncturists

I. ANALYSIS CHART INFORMATION

Preempted: No

Rationale: O.R.C. §4762.10 is not contrary to HIPAA privacy rules. Compliance with both Ohio and federal law is possible and this section is not an obstacle to accomplishing the purposes and objectives of the HIPAA privacy standards.


Action by Covered Entities: No action required.

II. SUPPLEMENTAL MEMORANDUM

Ohio Law: O.R.C. §4762.10 requires acupuncturists to report a patient’s treatment progress to the referring physician and sets forth patient record maintenance and retention requirements. This section also establishes the confidentiality of patient records.

Preemption: No. The HIPAA privacy standards only preempt contrary state law. In this instance state law is not contrary because compliance with both Ohio and federal law is possible and O.R.C. §4762.10 does not stand as an obstacle to accomplishing the objectives of HIPAA.

Rationale: O.R.C. §4762.10 is consistent with the goals of the HIPAA privacy standards because the section establishes the confidentiality of patient records. Release of confidential patient information must comply with HIPAA consent and authorization requirements.

Action by Covered Entities: No action required.

Exception Determination/Other Remedy: Not required.
I. ANALYSIS CHART INFORMATION

Preempted: No

Rationale: O.R.C. §4762.13 is not contrary to HIPAA privacy rules. Compliance with both Ohio and federal law is possible and this section is not an obstacle to accomplishing the purposes and objectives of the HIPAA privacy standards.


Action by Covered Entities: Covered entities must respond to State Medical Board of Ohio (Board) subpoenas for information. Covered entities that are licensees must cooperate with Board investigations and must comply with requests for mental or physical examinations when required to determine the licensee’s ability to practice. These activities are permitted disclosures under HIPAA.

II. SUPPLEMENTAL MEMORANDUM

Ohio Law: O.R.C. §4762.13 authorizes the State Medical Board of Ohio to discipline acupuncturists for specific practice violations, including willfully betraying a professional confidence and inability to practice due to mental or physical illness or impairment due to substance abuse. This section also permits the Board to compel a licensee to submit to a mental and/or physical examination to determine ability to practice. When so compelled, licensees are deemed to have consented to the examination and waive all objections to the admissibility of testimony or examination reports that constitute privileged, i.e., confidential, communications. If the Board determines the licensee is unable to practice because of a mental or physical illness or impairment, the Board shall require the individual to submit to treatment as a condition of licensure. Licensees also must cooperate with Board investigations and must comply with a subpoena or order issued by the Board.

Preemption: No. The HIPAA privacy standards only preempt contrary state law. In this instance state law is not contrary because compliance with both Ohio and federal law is possible and O.R.C. §4762.13 does not stand as an obstacle to accomplishing the objectives of HIPAA.

Rationale: O.R.C. §4762.13 is consistent with the goals of the HIPAA privacy standards because the Board has the authority to discipline acupuncturists for willfully breaching patient confidentiality. Further, examination reports that include protected health information about a licensee that are submitted to the Board as a result of an examination to determine ability to practice are permitted disclosures under 45 C.F.R. §164.512 (d) that allows a covered entity to disclose protected health information without a consent or authorization for purposes of health oversight activities.
**Action by Covered Entities:** Covered entities must respond to Medical Board subpoenas for information. Covered entities that are licensees must cooperate with Board investigations and must comply with requests for mental or physical examinations when required to determine the licensee’s ability to practice. These activities are permitted disclosures under HIPAA.

**Exception Determination/Other Remedy:** Not required.
I. ANALYSIS CHART INFORMATION

Preempted: No

Rationale: O.R.C. §4762.14 is not contrary to HIPAA privacy rules. Compliance with both Ohio and federal law is possible and this section is not an obstacle to accomplishing the purposes and objectives of the HIPAA privacy standards.


Action by Covered Entities: Covered entities must respond to State Medical Board of Ohio (Board) subpoenas for information. These activities are permitted disclosures under HIPAA.

II. SUPPLEMENTAL MEMORANDUM

Ohio Law: O.R.C. §4762.14 authorizes the State Medical Board of Ohio to investigate violations of the law governing the practice of acupuncturists and authorizes the Board to take depositions, issue subpoenas and compel the attendance of witnesses and production of documents. Subpoenas for patient record information are only issued in consultation with the Attorney General and with the approval of the Board secretary and supervising member. Patient records sought must be relevant to the alleged violation and material to the investigation. Information received by the Board pursuant to an investigation is confidential and not subject to discovery in any civil action. Also, the Board must conduct all investigations and proceedings in a manner that protects the confidentiality of patients and persons who file complaints with the Board. The Board cannot make public the names or any other identifying information about patients or complainants unless proper consent is given. The Board may share confidential patient information with other regulatory boards or law enforcement agencies, but those boards and agencies must maintain the confidentiality of patient information to the same extent required of the Board. Courts dealing with confidential patient information obtained from the Board must also take measures to ensure confidentiality is maintained.

Preemption: No. The HIPAA privacy standards only preempt contrary state law. In this instance state law is not contrary because compliance with both Ohio and federal law is possible and O.R.C. §4762.14 does not stand as an obstacle to accomplishing the objectives of HIPAA.

Rationale: O.R.C. §4762.14 is consistent with the goals of the HIPAA privacy standards because protected health information about an individual that the Medical Board obtains as a result of an investigation is kept confidential by the Board and is a permissible disclosure without a consent or authorization under HIPAA 45 C.F.R. §164.512 (d) for purposes of health oversight activities.
**Action by Covered Entities:** Covered entities must respond to Medical Board subpoenas for information. These activities are permitted disclosures under HIPAA.

**Exception Determination/Other Remedy:** Not required.
O.R.C. §4762.16
Acupuncturists

I. ANALYSIS CHART INFORMATION

Preempted: No

Rationale: O.R.C. §4762.16 is not contrary to HIPAA privacy rules. Compliance with both Ohio and federal law is possible and this section is not an obstacle to accomplishing the purposes and objectives of the HIPAA privacy standards.


Action by Covered Entities: Covered entities may be required to report protected health information of patients to the State Medical Board of Ohio (Board) as part of required reports to the Board concerning disciplinary actions taken by health-care facilities against an acupuncturist. This disclosure is permitted under HIPAA.

II. SUPPLEMENTAL MEMORANDUM

Ohio Law: O.R.C. §4762.16 requires health-care facilities, professional associations or professional liability insurers that take disciplinary actions or reach final disposition of any claims against an acupuncturist to report to the Board the name of the acupuncturist, the action taken and if a facility or professional association reports, a summary of the underlying facts leading to the action taken. Upon request, facilities must submit to the Board certified copies of the patient records that were the basis for the facility’s action. All summaries, reports and records received and maintained by the Board are confidential and not subject to discovery in civil actions related to the required reports. The Board may further disclose the summaries and reports it receives under this section to other facilities within or outside the state that are involved in credentialing or recredentialing an acupuncturist. Information transmitted to other facilities is subject to the same confidentiality provisions as when maintained by the Board.

Preemption: No. The HIPAA privacy standards only preempt contrary state law. In this instance state law is not contrary because compliance with both Ohio and federal law is possible and O.R.C. §4762.16 does not stand as an obstacle to accomplishing the objectives of HIPAA.

Rationale: O.R.C. §4762.16 is consistent with the goals of the HIPAA privacy standards because protected health information that the Medical Board receives as a result of reports submitted pursuant to this section is kept confidential by the Board. Disclosure of protected health information of patients in this instance is a permissible disclosure without a consent or authorization under HIPAA 45 C.F.R. §164.512 (d) for purposes of health oversight activities.

Action by Covered Entities: Covered entities may be required to report protected health information of patients to the Medical Board as part of required reports to the Board concerning
disciplinary actions taken by health-care facilities against an acupuncturist. This disclosure is permitted under HIPAA.

**Exception Determination/Other Remedy:** Not required.
I. ANALYSIS CHART INFORMATION

Preempted: No

Rationale: O.R.C. §4765.06 is not contrary to HIPAA privacy rules. Compliance with both Ohio and federal law is possible and this section is not an obstacle to accomplishing the purposes and objectives of the HIPAA privacy standards.


Action by Covered Entities: Covered entities subject to the reporting requirements established for the emergency medical services incidence reporting system and state trauma registry must comply with those requirements. Disclosure of protected health information pursuant to these reporting requirements are permitted disclosures under HIPAA.

II. SUPPLEMENTAL MEMORANDUM

Ohio Law: O.R.C. §4765.06 authorizes the State Board of Emergency Medical Services (Board) to establish an emergency medical services incidence reporting system to collect information about the delivery of emergency medical services in Ohio. Emergency medical services organizations are required to report to the Board any information the Board determines is necessary for the reporting system. The Board must also establish a state trauma registry to collect information about the care of trauma patients in Ohio. Information collected includes reports of trauma-related deaths, identification of trauma patients, monitoring of patient care and the amount of uncompensated trauma care and other information specified by the Board. The Board is not permitted to make public any information it receives that identifies or would tend to identify a specific recipient of emergency medical services or trauma care. The Board must also adopt rules that specify procedures for protecting the confidentiality of information that is not to be made public.

Preemption: No. The HIPAA privacy standards only preempt contrary state law. In this instance state law is not contrary because compliance with both Ohio and federal law is possible and O.R.C. §4765.06 does not stand as an obstacle to accomplishing the objectives of HIPAA.

Rationale: O.R.C. §4765.06 is consistent with the goals of the HIPAA privacy standards because the Board is required to maintain the confidentiality of individually identifiable health information that may be reported to the Board. Also, protected health information disclosed to the Board as required for emergency medical services incidence reporting or for the state trauma registry is a permitted disclosure under 45 C.F.R. §164.512 (d) that allows a covered entity to disclose protected health information without a consent or authorization for purposes of health oversight activities.
**Action by Covered Entities:** Covered entities subject to the reporting requirements established for the emergency medical services incidence reporting system and state trauma registry must comply with those requirements. Disclosure of protected health information pursuant to these reporting requirements are permitted disclosures under HIPAA.

**Exception Determination/Other Remedy:** Not required.
O.R.C. §4765.12
Emergency and Trauma Care

I. ANALYSIS CHART INFORMATION

Preempted: No

Rationale: O.R.C. §4765.12 is not contrary to HIPAA privacy rules. Compliance with both Ohio and federal law is possible and this section is not an obstacle to accomplishing the purposes and objectives of the HIPAA privacy standards.


Action by Covered Entities: Covered entities that are emergency medical services providers must comply with Ohio’s requirement to conduct peer review and quality assurance activities. These activities are considered health-care operations under HIPAA and may be conducted using protected health information where a patient consent has been obtained.

II. SUPPLEMENTAL MEMORANDUM

Ohio Law: O.R.C. §4765.12 requires emergency medical service organizations to implement ongoing peer review and quality assurance programs designed to improve the availability and quality of emergency medical services provided. Information generated solely for use in a peer review or quality assurance program is not a public record under Ohio’s public records law. Thus, protected health information that an emergency services organization might obtain in the course of conducting peer review or quality assurance activities is confidential and not subject to discovery in a civil action. Further, disclosure of confidential information by an emergency services provider for purposes of a peer review or quality assurance activity is not treated as a willful betrayal of a professional confidence.

Preemption: No. The HIPAA privacy standards only preempt contrary state law. In this instance state law is not contrary because compliance with both Ohio and federal law is possible and O.R.C. §4765.12 does not stand as an obstacle to accomplishing the objectives of HIPAA.

Rationale: O.R.C. §4765.12 is consistent with the goals of the HIPAA privacy standards because protected health information that might be disclosed for purposes of a peer review or quality assurance activity conducted by an emergency services organization is confidential and protected from disclosure as a public record. Emergency services organizations may use protected health information pursuant to a consent obtained under 45 C.F.R. §§164.502 and 164.506 for health-care operations.

Action by Covered Entities: Covered entities that are emergency medical services providers must comply with Ohio’s requirement to conduct peer review and quality assurance activities. These activities are considered health-care operations under HIPAA and may be conducted using protected health information where a patient consent has been obtained.
**Exception Determination/Other Remedy:** Not required.
O.A.C. §4765-9-01
Emergency and Trauma Care

I. ANALYSIS CHART INFORMATION

Preempted: No

Rationale: O.A.C. §4765-9-01 is not contrary to HIPAA privacy rules. Compliance with both Ohio and federal law is possible and this section is not an obstacle to accomplishing the purposes and objectives of the HIPAA privacy standards.


Action by Covered Entities: Release of confidential patient information by emergency medical technicians must comply with both O.A.C. §4765-9-01 and HIPAA requirements for use and disclosure of protected health information.

II. SUPPLEMENTAL MEMORANDUM

Ohio Law: O.A.C. §4765-9-01 establishes ethical standards of conduct for emergency medical technicians (EMTs), including a requirement that EMTs maintain the confidentiality of patient information. EMTs may not release a medical report or any supporting documentation, or otherwise disclose the contents of a medical report to anyone other than those authorized by law to receive them.

Preemption: No. The HIPAA privacy standards only preempt contrary state law. In this instance state law is not contrary because compliance with both Ohio and federal law is possible and O.A.C. §4765-9-01 does not stand as an obstacle to accomplishing the objectives of HIPAA.

Rationale: O.A.C. §4765-9-01 is consistent with the goals of the HIPAA privacy standards because this section establishes the confidentiality of patient records used and disclosed by EMTs. Release of confidential patient information by EMTs must comply with HIPAA requirements for use and disclosure of protected health information.

Action by Covered Entities: Release of confidential patient information by emergency medical technicians must comply with both O.A.C. §4765-9-01 and HIPAA requirements for use and disclosure of protected health information.

Exception Determination/Other Remedy: Not required.
O.R.C. Chapter 4769  
Medicare Balance Billing

I. ANALYSIS CHART INFORMATION

Preempted: No

Rationale: O.R.C. Chapter 4769 is not contrary to HIPAA privacy rules. Compliance with both Ohio and federal law is possible and these sections are not an obstacle to accomplishing the purposes and objectives of the HIPAA privacy standards.


Action by Covered Entities: Covered entities must comply with Ohio’s balance billing prohibition and must comply with Ohio Department of Health (Department) requests for protected health information to the extent such information is necessary to investigate and prosecute violations. Disclosure of protected health information in this instance is a permitted disclosure under HIPAA for purposes of health-care oversight activities.

II. SUPPLEMENTAL MEMORANDUM

Ohio Law: O.R.C. §4769.02 prohibits a health-care practitioner from balance billing for any supplies or services provided to a Medicare beneficiary. O.R.C. §§4769.05-4769.07 require health-care practitioners to make medical, professional, financial and business records available to the Department of Health for purposes of determining whether the practitioner has violated the balance billing prohibition. The Department of Health is also authorized to investigate violations and take depositions, issue subpoenas and compel attendance of witnesses or production of documents. The Department must conduct all investigations in a manner that protects the confidentiality of patient information that may be included in the records to which the Department may have access. The Department may not make public the names or other identifying information about a patient unless the patient consents.

Preemption: No. The HIPAA privacy standards only preempt contrary state law. In this instance state law is not contrary because compliance with both Ohio and federal law is possible and O.R.C. Chapter 4769 does not stand as an obstacle to accomplishing the objectives of HIPAA.

Rationale: O.R.C. Chapter 4769 is consistent with the goals of the HIPAA privacy standards because protected health information that might be disclosed pursuant to an investigation of or prosecution of a violation of Ohio’s Medicare balance billing prohibition is maintained as confidential by the Department of Health. Further, disclosure of protected health information pursuant to these sections is a permitted disclosure under 45 C.F.R. §164.512 (d) that allows a covered entity to disclose protected health information without a consent or authorization for purposes of health oversight activities.
**Action by Covered Entities:** Covered entities must comply with Ohio’s balance billing prohibition and must comply with Department of Health requests for protected health information to the extent such information is necessary to investigate and prosecute violations. Disclosure of protected health information in this instance is a permitted disclosure under HIPAA for purposes of health-care oversight activities.

**Exception Determination/Other Remedy:** Not required.
O.R.C. §4779.28
Orthotics, Prosthetics, and Pedorthics

I. ANALYSIS CHART INFORMATION

Preempted: No

Rationale: O.R.C. §4779.28 is not contrary to HIPAA privacy rules. Compliance with both Ohio and federal law is possible and the section is not an obstacle to accomplishing the purposes and objectives of the HIPAA privacy standards.


Action by Covered Entities: Covered entities are required to respond to State Board of Orthotics, Prosthetics, and Pedorthics (Board) subpoenas for patient information. Such responses are permitted disclosures under HIPAA.

II. SUPPLEMENTAL MEMORANDUM

Ohio Law: O.R.C. §4779.28 grants to the State Board of Orthotics, Prosthetics, and Pedorthics the authority to take depositions, issue subpoenas, compel attendance of witnesses and compel production of documents.

Preemption: No. The HIPAA privacy standards only preempt contrary state law. In this instance the state law is not contrary because compliance with both Ohio and federal law is possible and O.R.C. §4779.28 does not stand as an obstacle to accomplishing the objectives of HIPAA.

Rationale: O.R.C. §4779.28 is consistent with the goals of the HIPAA privacy standards because protected health information to which the Board might gain access during the course of an investigation pursuant to an administrative subpoena or process is a permissible disclosure under HIPAA 45 C.F.R. §164.512(d) that allows a covered entity to disclose protected health information without a consent or authorization for purposes of health oversight activities.

Action by Covered Entities: Covered entities are required to respond to State Board of Orthotics, Prosthetics, and Pedorthics subpoenas for patient information. Such responses are permitted disclosures under HIPAA.

Exception Determination/Other Remedy: Not required.
**O.R.C. §5101.27 & 5101.572**

**Medicaid Information**

**Ohio Law:** O.R.C. §5101.27 imposes restrictions on disclosure of information regarding public assistance recipients. Information regarding a public assistance recipient: (a) can not be disclosed for any purpose not directly connected with the administration of a public assistance program; (b) must be released for purposes directly connected to the administration of the program to a government entity responsible for administering a public assistance program or any other state or federal need based program or to the agency responsible for administering a children’s protective services program for the purpose of protecting children; and (c) must be released to law enforcement agencies for the purpose of investigation, prosecution, or criminal or civil proceeding relating to the administration of a public assistance program.

Access to information regarding a public assistance recipient is permitted by (1) the recipient, (2) the authorized representative of the recipient, (3) the parent or guardian of the recipient and (4) the attorney of the recipient, if the attorney has written authorization from the recipient. Information can also be released if the recipient gives voluntary, written consent that specifically identifies the persons or government entities to which the information may be released. In addition, information concerning a recipient of medical assistance will only be released if (1) the release of information is for purposes directly connected to the administration of a program created under Ohio Law, Chapter 5111 (Medical Assistance Programs) and (2) the information is released to persons or governmental entities that are subject to standards of confidentiality and safeguarding information substantially comparable to those established for programs created under Chapter 5111 of the Revised Code.

O.R.C. §5101.572 provides that upon request of the Ohio Department of Jobs and Family Services, any third party shall cooperate with the Department in identifying individuals for the purpose of establishing third party liability pursuant to Title XIX of the Social Security Act. “Third parties” are defined as any health insurer (defined in §3924.41 of the Revised Code), individual, entity, or public or private program, that is or may be liable to pay all or part of the medical cost of injury, disease, or disability of an applicant or recipient. The Department limits its use of the information gained from third parties to purposes directly related to the administration of the Medicaid program. No third party can disclose to other parties or make use of any information regarding recipients of aid.

**Preemption:** No.

**Rationale:** O.R.C. §5101.27 and O.R.C. §5101.572 are consistent with the goals of the HIPAA privacy standards and compliance with both Ohio and federal law is possible.

**Action by Covered Entities:** Adopt and implement policies that concurrently comply with the requirements of O.R.C. §§5101.27 and 5101.572 and 45 C.F.R. §§164.508 and 164.512.

**Exception Determination/Other Remedy:** Not required.
O.R.C. §5101.61
Reports of Abuse and Neglect of the Elderly

**Ohio Law:** O.R.C. §5101.61 requires the reporting to the county department of job and family services of all reasonable beliefs that an adult is being abused, neglected, or exploited, or is in a condition which is the result of abuse, neglect or exploitation. The reports shall be made orally or in writing except that oral reports shall be followed by a written report if a written report is requested by the department. This Section protects the reporting individual by providing for civil and criminal immunity on account of any resulting investigation and protects against retaliation by employers against a reporting employee.

**Preemption:** No. Under O.R.C. §5101.61 disclosures of reasonable beliefs of abuse to the appropriate governmental authority is a required disclosure, whereas under C.F.R. §164.512, disclosure of suspected abuse is not required, and is only a permissive disclosure. C.F.R. §164.512 does, however, require that when a report of abuse is made, the reporting covered entity must inform the alleged victim that a report has been or will be made, unless disclosure would not be in the best interests of the individual. O.R.C. §5101.61 does not have a requirement that the individual be informed that such a report has been or will be made. However, the requirements under O.R.C §5101.61 and 45 C.F.R. §164.512 are not inconsistent. Compliance with both is possible and O.R.C. §5101.61 does not stand as an obstacle to accomplishing the goals of HIPAA.

**Rationale:** O.R.C. §5101.61 is consistent with the goals of the HIPAA privacy standards.

The privacy standards set forth in 45 C.F.R. §164.512(c)(1) provide that a covered entity may disclose protected health information about an individual whom the covered entity reasonably believes to be a victim of abuse, neglect, or domestic violence to a government authority, including a social service or protective services agency, authorized by law to receive reports of such abuse, neglect or domestic violence. O.R.C. §5101.61(1)(g) is similar in that it requires various individuals, including attorneys, physicians, and employees of a hospital who have reasonable cause to believe that an adult is being abused, neglected, or exploited, or is in a condition which is the result of abuse, neglect, or exploitation, to immediately report such belief to the county department of job and family services. Disclosure of such conditions is allowed as a permissible disclosure under the HIPAA privacy standards.

Unlike Ohio law, the privacy standards set forth in 45 C.F.R. §164.12(c)(2) also require that a covered entity making a disclosure promptly inform the individual that such a report has been or will be made, except if: (i) the covered entity, in the exercise of professional judgment, believes informing the individual would place the individual at risk of serious harm; or (ii) the covered entity would be informing a personal representative, and the covered entity reasonably believes the personal representative is responsible for the abuse, neglect or other injury and that informing such person would not be in the best interests of the individual as determined by the covered entity, through the exercise of professional judgment.
O.R.C. §5101.61 does not have a requirement that the reporting entity inform the individual that such a report was made or will be made. Ohio law only requires that information contained in the report be made available to the adult who is the subject of the report, to agencies authorized by the department to receive information contained in the report, and to legal counsel for the adult. In order to comply with the HIPAA privacy standards, a covered entity must comply with the additional notification requirement set forth in 45 C.F.R. §164.512(c)(2) and ensure that disclosure is only made to agencies authorized under the HIPAA privacy standards.

**Action by Covered Entities:** Adopt and implement policies that concurrently comply with the requirements of O.R.C. §5101.61 and 45 C.F.R. §164.512(c)(2) to ensure that access is allowed except in those cases where denial of access is authorized by both Ohio and federal law. Ensure that policies comply with the additional notification requirement set forth in 45 C.F.R §164.512(c)(2).

**Exception Determination/Other Remedy:** Not required.
Ohio Law: O.R.C. §5103.16(B) provides that associations and institutions certified to place children in free foster homes or for legal adoption must keep a record of the temporary and permanent surrenders of children. The records must be available for “separate statistics” which shall include a copy of an official record and all information concerning the social, mental, and medical history of the child that will aid in an intelligent disposition of the child in case that becomes necessary because the parents or guardians fail or are unable to reassume custody.

Preemption: No.

Rationale: In the vast majority of cases, an association or institution placing children in free foster homes or for legal adoption would not be deemed a “covered entity” and thus, not subject to HIPAA regulation or preemption.

The HIPAA privacy standards only regulate the activities of “covered entities.” A “covered entity” (as defined in 45 C.F.R. §160.103) is (i) a health plan, (ii) a health care clearinghouse, or (iii) a health care provider who transmits any health information in electronic form in connection with a covered transaction. A transaction is defined in 45 C.F.R. §160.103 as the transmission of information between two parties to carry out financial or administrative activities related to health care. Transactions include the following types of information transmissions: (i) health care claims or equivalent encounter information, (ii) health care payment and remittance advice, (iii) coordination of benefits, (iv) health care claim status, (v) enrollment and disenrollment in a health plan, (vi) eligibility for a health plan, (vii) health plan premium payments, (viii) referral certification and authorization, (ix) first report of injury, (x) health claims attachments, and (xi) other transactions that the Secretary may prescribe by regulation.

An association or institution placing children in free foster homes or for legal adoption pursuant to O.R.C. §5103.16 would likely not be viewed as a covered entity unless the association or institution also performed services as a health care provider or could be classified as a “hybrid entity.” An association or institution under O.R.C. §5103.16 might be a hybrid entity (defined in 45 C.F.R. §164.504(a) as a single legal entity that is a covered entity and whose business activities include both covered and non-covered functions and that designates healthcare components) if it provides health care to the children placed in foster homes or for adoption even though it also serves as a placement agency. In the case of a hybrid entity, only the health care component of the organization would be required to comply with the HIPAA privacy standards pursuant to 45 C.F.R. §164.504(b)-(c). An association or institution placing children pursuant to O.R.C. §5103.16 would have to actually provide health services to children to fall under the definition of a hybrid entity.

Even if an association or institution placing children in foster care or for adoption could be classified as a covered entity and thus subject to the HIPAA privacy standards, O.R.C. §5103.16 would likely not be preempted because either the “separate statistics” do not use individually identifiable health information or the association or institution placing children de-identifies the health information. The disclosure of “separate statistics” (including the child’s medical history)
for placement purposes would be permissible under the HIPAA privacy standards if the “separate statistics” do not disclose individually identifiable health information. The HIPAA privacy standards only regulate uses and disclosures of “protected health information” defined in 45 C.F.R. §164.501 as “individually identifiable health information which is transmitted by electronic media or maintained in any medium described in the definition of electronic media or transmitted or maintained in any other form or medium.” In order to be deemed “individually identifiable health information” 45 C.F.R. §164.501 requires that the subset of health information identify the individual or there exist a reasonable basis to believe the information can be used to identify the individual. Thus, if the separate statistics created pursuant to O.R.C. §5103.16(B) do not disclose the identity of the child (and there is no reasonable basis to believe the information can be used to identify the child) then the separate statistics will not be deemed “individually identifiable health information” and the HIPAA privacy standards will not be implicated. Alternatively, covered entities can de-identify the protected health information pursuant to 45 C.F.R. §164.514 before disclosing the information for separate statistics. By de-identifying the health information, it is no longer “individually identifiable health information” protected by the HIPAA privacy standards.

**Action by Covered Entities:** If child placement agencies subject to regulation under O.R.C. §5103.16(B) are covered entities, then in order to comply with the HIPAA privacy standards, separate statistics created pursuant to O.R.C. §5103.16 must not disclose the identity of the child or make it possible for the information to be used to identify the child.

**Exception Determination/Other Remedy:** Not required.
**O.R.C. §5104.011(C)(2)**

**Day Care Centers**

**Ohio Law:** O.R.C. §5104.011(C)(2) mandates that the administrator of each child day care center maintain enrollment, health, and attendance records for all children attending the center and health and employment records for all center employees. The records shall be confidential except (i) to prepare annually for each group of children at the center a roster of names and telephone numbers of parents and (ii) as shall be disclosed by the administrator to the Director of the Ohio Department of Jobs and Family Services upon request for the purpose of administering and enforcing rules regulating child day centers.

**Preemption:** No. A child care provider would not be considered a “covered entity” and thus, not subject to HIPAA regulation or preemption. The HIPAA privacy standards only regulate the activities of “covered entities”. A child care provider would only be a covered entity if it performed services as a health care provider.

**Rationale:** A “covered entity” as defined in 45 C.F.R. §160.103 is (i) a health plan, (ii) a health care clearinghouse, or a (3) a health care provider who transmits any health information in electronic form in connection with a covered transaction. A health care provider is defined to include any person or organization who furnishes, bills, or is paid for health care in the normal course of business. A child day care center would not fall under this definition unless the child care provider performed services as a health care provider and transmitted health information in electronic form. Thus, even if a child day care center could somehow be viewed as furnishing health care (because it administers first aid, for example) it would still have to transmit health information in electronic form to be a covered entity under the HIPAA privacy standards.

Even if a child day care center was a covered entity and subject to the HIPAA privacy standard, O.R.C. §5104.011 would likely not be preempted because it is consistent with the HIPAA privacy standards and does not stand as an obstacle to accomplishing the goals of HIPAA. The disclosures required in O.R.C. §5104.011 would likely be permissible either because they are disclosed to a public health authority (in this case, the Ohio Department of Jobs and Family Services) for the purpose of preventing or controlling disease pursuant to 45 C.F.R. §164.512(b)(1)(ii), or because the protected health information is disclosed to a health oversight agency for oversight activities authorized by law for appropriate oversight of entities subject to government regulatory programs for which health information is necessary for determining compliance with programs standards pursuant to 45 C.F.R. §164.512(d)(1)(iii).

**Action by Covered Entities:** No action needed.

**Exception Determination/Other remedy:** Not required.
**O.R.C. §5119.81**

**Mental Institution Advisory Councils**

**Ohio Law:**  O.R.C. §5119.81 establishes a citizen’s advisory council at each institution and branch institution under the control of the Ohio Department of Mental Health. The council consists of thirteen members, at least seven of which are not providers of mental health services. The council must have reasonable access to all patient treatment and living areas and records of the institution, except records of a strictly personal or confidential nature. The council may have access to a patient’s personal records only if it gets consent from the patient or the patient’s legal guardian, or if the patient is a minor, with the consent of the parent or legal guardian of the patient.

**Preemption:**  No. Compliance with both Ohio and federal law is possible, and O.R.C. §5119.81 does not stand as an obstacle to accomplishing the goals of HIPAA.

**Rationale:**  O.R.C. §5119.81 is consistent with the goals of the HIPAA privacy standards.

Pursuant to the HIPAA privacy standards set forth in 45 C.F.R. §160.102, a covered entity includes a health care provider who transmits any health information in electronic form in connection with a covered transaction. Citizen’s advisory councils established at institutions of the Ohio Department of Mental Health do not act as providers of medical or health services and, therefore, are not likely to be classified as covered entities under the HIPAA privacy standards. However, to the extent the citizen advisory councils seek access to records held by covered entities, O.R.C. §5119.81 is subject to the HIPAA privacy standards.

The HIPAA privacy standards set forth in 45 C.F.R. §164.508 require that a covered entity obtain a valid authorization (subject to certain exceptions) prior to using or disclosing the protected health information of a patient. Prior to disclosing a patient's personal records to a citizen's advisory council, consistent with 45 C.F.R. §164.508, a covered entity must obtain a valid authorization from the patient (or the patient's representative).

O.R.C. §5119.81 is consistent with 45 C.F.R. §164.508 in that it requires that the citizen’s advisory council obtain consent from a patient or the patient’s legal guardian before accessing the patient’s personal records. The citizen’s advisory council seeking consent from an individual must ensure that the "consent" it obtains from the individual complies with the requirements for a valid authorization set forth in 45 C.F.R. §164.508.

**Action by Covered Entities:**  Adopt and implement policies that concurrently comply with the requirements of O.R.C. §5119.81 and 45 C.F.R. §164.508. Ensure that policies comply with the authorization content requirements set forth in 45 C.F.R. §164.508(c).

**Exception Determination/Other Remedy:**  Not required.
O.R.C. §5120.17(K)
Prisoners with Mental Illness or Mental Retardation

Ohio Law: O.R.C. §5120.17 addresses the procedures and requirements that must be met when a state correctional institution believes that an inmate should be transferred from the institution to a psychiatric hospital due to mental illness.

O.R.C. §5120.17(K) requires that a certificate, application, record, or report that is made in compliance with the Section and that directly or indirectly identifies an inmate or former inmate whose hospitalization has been sought under the Section be kept confidential.

However, disclosure is permitted when: (1) the person identified, or the person's legal guardian, consents to disclosure, and the director of clinical services and psychiatry of the Department of Rehabilitation and Corrections determines that disclosure is in the best interests of the person; (2) disclosure is required by court order; (3) an inmate seeks access to the inmate’s own psychiatric and medical records, unless access is specifically restricted in the treatment plan for clear treatment reasons; (4) hospitals and other institutions and facilities within the Department exchange psychiatric records with other hospital, institutions, and facilities of the Department; (5) requested by an inmate’s family member who is involved with the inmate’s care and the attending physician determines that disclosure would be in the best interest of the inmate and the inmate is notified, receives the information to be disclosed, and does not object; (6) the Department exchanges psychiatric hospitalization records, other mental health treatment records, and other pertinent information with county sheriffs’ offices, hospital institutions, facilities of the Department of Mental Health, community mental health agencies, and boards of alcohol, drug addiction, and mental health services (no office, department, agency, or board shall disclose the records and other information unless one of the following applies: (a) the inmate is notified of the possible disclosure and consents to the disclosure or (b) the inmate is notified of the possible disclosure, an attempt has been made to gain the consent of the inmate, and the inmate’s objections, if any, and the reasons for disclosure in spite of the inmate’s objections are documented); (7) staff members, designated by the director of rehabilitation and correction, seek the information for the purpose of evaluating the quality, effectiveness, and efficiency of services or determining if the services meet minimum standards. The name of an inmate patient can not be retained with information obtained during evaluations of the quality, effectiveness, and efficiency of services provided to inmate patients.

Preemption: No.

Rationale: O.R.C. §5120.17 is consistent with the HIPAA privacy standards. Compliance with both Ohio and federal law is possible.

The HIPAA privacy standard set forth in 45 C.F.R. §164.524 mandates that an individual have the right of access to inspect and obtain a copy of protected health information about the individual in a designated record set, for as long as the protected health information is maintained. However, this general mandate includes exceptions for: (i) psychotherapy notes; (ii) information compiled in reasonable anticipation of, or for use in a civil, criminal, or
administrative action; and (ii) certain information subject to or exempt from the Clinical Laboratory Improvement Amendments of 1988. A denial of an individual's request for access for any of these reasons is unreviewable.

In addition, under the HIPAA privacy standard, an individual may be denied the right to access his or her protected health information if: (i) a licensed health care professional has determined, in the exercise of professional judgment, that the access requested is reasonably likely to endanger the life or physical safety of the individual or another person; (ii) the protected health information makes reference to another person (unless such other person is a health care provider) and a licensed health care professional has determined, in the exercise of professional judgment, that the access requested is reasonably likely to cause substantial harm to such other person; or (iii) the request for access is made by the individual's personal representative and a licensed health care professional has determined, in the exercise of professional judgment, that the access requested is reasonably likely to cause substantial harm to the individual or another person.

If access is denied for any of the reasons set forth in the preceding paragraph, the individual is entitled to have the denial reviewed by a licensed health care professional who is designated by the covered entity to act as a reviewing official and who did not participate in the original decision to deny access and the covered entity must provide or deny access in accordance with the determination of the reviewing official. 45 C.F.R. §164.524 also includes the express right of an inmate to copy his or her records and the requirement that the covered entity respond to an individual's request in a timely manner unless obtaining such copy would jeopardize the health, safety, security, custody or rehabilitation of the individual or of other inmates, or the safety of any officer, employee, or other person at the correctional institution or responsible for the transporting of an inmate.

O.R.C. §5120.17(K)(1) provides that before a disclosure can be made, the person identified, or the person’s legal guardian, must consent to disclosure and the chief clinical officer or designee of mental health services of the Department of Rehabilitation and Correction must determine that disclosure is in the best interests of the person identified. For purposes of insuring compliance with both O.R.C. §5120.17(K)(1), and 45 C.F.R. §164.524, the Department should adopt policies specifying that when deciding whether disclosure would be in the “best interests” of the person identified, the Director can only deny access pursuant to the authorized reasons for denial set forth in 45 C.F.R. §164.524. Thus, the “best interests” reasons for denying access must be consistent with the authorized reasons for denial of individual access set forth in the HIPAA privacy standards.

45 C.F.R. §164.512(e) provides for permissible disclosure by a covered entity of protected health information in the course of any judicial or administrative proceeding in response to an order of a court or administrative tribunal, provided that the covered entity disclose only the protected health information expressly authorized by such order. Likewise, O.R.C §5120.17(K)(2) provides for disclosure of information contained in documents related to the hospitalization of an inmate patient if disclosure is required by a court order signed by a judge. Thus, O.R.C. §5120.17 is consistent with the HIPAA privacy standards (assuming disclosure is limited to what
is expressly authorized in the court order) and compliance with both Ohio and federal law is possible.

As discussed above, an individual must be granted access to his or her protected health information, unless one of the authorized reasons for denial is present. Moreover, as discussed above under 45 C.F.R. §164.524, an inmate has a right to copy his or her records unless obtaining a copy would jeopardize the health, safety, security, custody or rehabilitation of the individual or others. O.R.C. §5120.17(K)(3) provides that the contents of a record, application, certificate or report made in connection with the transfer of an inmate to a hospital for treatment of mental illness can be disclosed to an inmate patient seeking access to the inmate patient’s own psychiatric and medical records, unless access is specifically restricted in the treatment plan for “clear treatment reasons.” Thus, in order to comply with the HIPAA privacy standards, the “clear treatment reasons” for restricting an inmate patient’s access must be consistent with the authorized reasons for denying an individual access to his or her protected health information (e.g., psychotherapy notes) or consistent with the authorized reasons for denying an inmate access to protected health information under 45 C.F.R. §164.524.

Pursuant to the HIPAA privacy standards set forth in 45 C.F.R. § 164.506(c)(2), a covered entity may disclose protected health information for treatment activities of a health care provider. O.R.C. §5120.17(K)(4) permits disclosure of an inmate’s protected health information by hospitals and other institutions and facilities within the Department of Rehabilitation & Correction to other hospitals, institutions and facilities of the Department. Thus, if the exchange of psychiatric records and other pertinent information within the Department (pursuant to O.R.C. §5120.17(K)(4)) is between two covered health care providers (and is related to treatment of the inmate) then it is consistent with the HIPAA privacy standards and not preempted.

The HIPAA privacy standards set forth in 45 C.F.R. § 164.506(c)(4) provide that a covered entity may disclose protected health information to another covered entity for health care operations activities of the entity that receives the information, if each entity either has or had a relationship with the individual who is the subject of the protected health information being requested, the protected health information pertains to such relationship, and the disclosure is: (i) for a purpose listed in paragraph (1) or (2) of the definition of health care operations; or (ii) for the purpose of health care fraud and abuse detection or compliance. Thus, if the exchange of psychiatric records and other pertinent information within the Department (pursuant to O.R.C. §5120.17(K)(4)) is between two covered health care providers (is for the limited health care operations of the receiving entity as permitted by 45 C.F.R. § 506(c)(4)) and satisfies the other requirements of 45 C.F.R. § 506(c)(4), then it is consistent with the HIPAA privacy standards and not preempted.

The HIPAA privacy standards set forth in 45 C.F.R. § 164.506(c)(4) further provide that a covered entity that participates in an organized health care arrangement may disclose protected health information about an individual to another covered entity that participates in the organized health care arrangement for any health care operations activities of the organized health care arrangement. An organized health care arrangement is defined in 45 C.F.R. §164.501 as (1) a clinically integrated care setting in which individuals typically receive health care from more than one health care provider; (2) an organized system of health care in which more than one
covered entity participates, and in which the participating covered entities: (i) hold themselves out to the public as participating in a joint arrangement; and (ii) participate in various defined joint activities. Thus, if hospitals and institutions and facilities within the Department (pursuant to O.R.C. §5120.17(K)(4)) exchange psychiatric records and other pertinent information with other entities of the Department for the Department's health care operations (and the Department meets the definition of an organization health care arrangement) then O.R.C. § 5120.17(K)(4) is consistent with the HIPAA privacy standards and not preempted.

The HIPAA privacy standards set forth in 45 C.F.R. §164.510(b) permit a covered entity to disclose to a family member, other relative, or a close personal friend of the individual, or any other person identified by the individual, the protected health information directly relevant to such person’s involvement with the individual’s care or payment related to the individual’s health care. When the individual is present and can make his or her own decisions, a covered entity may disclose protected health information only if the covered entity: (1) obtains the individual's agreement to disclose to the third parties involved in the individual's care; (2) provides the individual with the opportunity to object to the disclosure, and the individual does not express an objection; or (3) reasonably infers from the circumstances, based on the exercise of professional judgment, that the individual does not object to the disclosure. Disclosure is also permitted in circumstances when the individual is not present or when the opportunity to agree or object to the use or disclosure cannot practicably be provided due to the individual's incapacity or an emergency circumstance. In such instances, covered entities may, in the exercise of professional judgment, determine whether the disclosure is in the individual's best interests and if so, disclose only the protected health information that is directly relevant to the person's involvement with the individual's health care.

O.R.C. §5120.17(K)(5) provides that no disclosure can be made to the inmate’s family unless the inmate is notified of the possible disclosure, receives the information to be disclosed, and does not object to the disclosure. By requiring that the inmate be notified and given the opportunity to object to the disclosure, O.R.C. §5120.17(K)(5) is consistent with the HIPAA privacy standards. Moreover, by also requiring that the attending physician determine that disclosure would be in the best interest of the inmate patient before a disclosure is made, O.R.C. §5120.17 is more stringent then the permissible disclosures set forth in 45 C.F.R. §164.510(b) because it restricts disclosures of an individual’s protected health information to a third party in circumstances under which such disclosure otherwise would be permitted pursuant to the HIPAA privacy standards set forth in 45 C.F.R. §164.510(b).

O.R.C. §5120.17(K)(6) permits disclosure of an inmate's health information for continuance of the inmate’s care and requires that the inmate's consent be obtained, when possible. The privacy standards set forth in 45 C.F.R. §164.506(c)(2) permits disclosure of protected health information for treatment activities of a health care provider without a patient's authorization. Thus, to the extent disclosures for the continuance of care (pursuant to O.R.C. § 5120.17(K)(6)) are disclosures for “treatment” and made to a health care provider, O.R.C. §5120.17(K)(6) is more stringent than the HIPAA privacy standards set forth in 45 C.F.R. § 164.506(c)(2) and not preempted. To the extent disclosures are made (pursuant to O.R.C. § 5120.17(K)(6)) to a non-health care provider, the "consent" obtained by the Department must comply with the content requirements set forth in 45 C.F.R. §164.508 for a valid authorization.
The HIPAA privacy standards set forth in 45 C.F.R. §164.508 require a covered entity to obtain a valid authorization (subject to certain exceptions) prior to using or disclosing protected health information of a patient. One such exception, set forth in 45 C.F.R. §164.506 (c)(1), is when the covered health care provider uses or discloses protected health information for its own treatment, payment or health care operations. “Health care operations” is defined in 45 C.F.R. §164.501 as activities of the covered entity to the extent such activities are related to covered functions, including conducting quality assessment and improvement activities. O.R.C. §5120.17(K)(7) is consistent with the HIPAA privacy standards by permitting disclosure of protected health information to staff members of the Department of Rehabilitation and Correction for purposes of determining quality and efficiency of the services provided. Such activities are “health care operations” and can be conducted without the authorization of the inmate. Moreover, O.R.C. §5120.17(K)(7) provides that the name of an inmate patient must not be retained with the information obtained during the evaluations. Thus, to the extent the health information used in the evaluations is “de-identified” in accordance with 45 C.F.R. §164.514(a) (and is no longer individually identifiable health information) the HIPAA privacy standards are not even implicated.

**Action by Covered Entities:** Adopt and implement policies that concurrently comply with the requirements of O.R.C. §5120.17 and 45 C.F.R. §§164.501, 164.506, 164.508, 164.510, 164.512, 164.514, and 164.524.

**Exception Determination/Other Remedy:** Not required.
Ohio Law Subject to Analysis: O.R.C. §5120.21(C) requires that a separate medical record of every inmate in an institution governed by the Department of Rehabilitation and Correction be compiled, maintained, and kept apart from any other record pertaining to the inmate. Upon the signed written request of the inmate together with the written request of either (i) a licensed attorney or (ii) a licensed physician designated by the inmate, the department shall make the inmate’s medical record available to the designated attorney or physician. The record may be inspected or copied by the inmate’s designate. The department can charge a reasonable fee for the copying of any medical records. If a physician concludes that presentation of all or any part of the medical record to the inmate will result in serious medical harm to the inmate, the physician must indicate on the medical record. An inmate’s medical record must be made available to the physician or to an attorney designated by the inmate not more than once every twelve months.

Is Statute Preempted: No.

Rationale: O.R.C. §5120.21 is consistent with the goals of the HIPAA privacy standards and when read together with O.R.C. §1347.08(A), the section imposes a duty on the Department of Rehabilitation and Corrections to provide reasonable access to records for inspection by an inmate, unless such access would jeopardize the health, safety, security, custody, or rehabilitation of the individual, or others. O.R.C. §5120.21 is consistent with the HIPAA privacy standards, assuming O.R.C. §5120.21 is construed with O.R.C. §1347.08(A), as only limiting the right of a third party to access an inmate’s protected health information and not as a limitation on the right of an individual inmate to access his or her protected health information.

The HIPAA privacy standard set forth in 45 C.F.R. §164.524 provides that a covered entity that is a correctional institution may deny, in whole or in part, an inmate’s request to obtain a copy of protected health information if obtaining such copy would jeopardize the health, safety, security, custody, or rehabilitation of the individual or of other inmates, or the safety of any officer, employee, or other person at the correctional institution or responsible for the transporting of the inmate.

The section by section description of the HIPAA privacy rule points out that the ground for denial in 45 C.F.R. §164.524 is restricted to an inmate’s request to obtain a copy of protected health information. If an inmate requests inspection of protection health information, the request must be granted unless one of the other grounds for denial applies. The purpose of this exception and the reason that the exception is limited to denying an inmate a right to copy and not to denying a right to inspect, is to give correctional institutions the ability to maintain order in these facilities and among inmates without denying an inmate the right to review his or her protected health information. See 65 Fed. Reg. 82462, 82555 (section by section description of rule provisions).
O.R.C. §5120.21 only restricts an inmates' right to access his or her medical information via his physician or attorney to once a year. O.R.C. §1347.08 (A) provides that every state agency that maintains a personal information system, upon the request and the proper identification of any person who is the subject of the personal information in the system, shall permit the person to inspect all personal information in the system of which the person is the subject. The Department of Rehabilitation and Corrections, as a department of the state, is required to comply with the requirements of O.R.C. §1347.08. In order to comply with the HIPAA privacy standards, O.R.C. §5120.21 must be construed (together with O.R.C. §1347.08) as requiring that an inmate be granted reasonable access to his or her protected health information, unless one of the reasons for denial of access, as set forth in 45 C.F.R. §164.524, is present.

**Action by Covered Entities:** Implement policies that comply with the requirements of 45 C.F.R. §164.524 and O.R.C. §§5120.21 and 1347.08. Grant an inmate reasonable access to copy and inspect his or her protected health information.

**Exception/Determination/Other remedy:** None.
Ohio Law: O.R.C. §5120.211 regulates the records maintained by committees designed to carry out quality assurance program activities for the Department of Rehabilitation and Correction. The committee’s purpose is to review and improve the quality of medical and mental health services within the Department. Quality assurance activities include credentialing, infection control, utilization review, patient care assessments, medical and mental health records, medical and mental health resource management, mortality and morbidity review, and identification and prevention of medical or mental health incidents and risks.

O.R.C. §5120.211(E) provides that quality assurance records may only be disclosed to certain persons or entities, including: (1) employees of the Department, (2) public or private agencies or organizations if needed to perform a licensing or accreditation function related to state correctional institutions or to perform monitoring of state correctional institutions as required by law, (3) a governmental board or agency, a professional health care society or organization, or a professional standards review organization, if the records or testimony are needed to perform licensing, credentialing, or monitoring of professional standards with respect to medical or mental health professionals employed or retained by the Department, (4) a criminal or civil law enforcement agency or public health agency charged by law with the protection of public health or safety and (5) in a judicial or administrative proceeding commenced by an entity that is allowed access to the records, but only with respect to the subject of the proceeding.

Preemption: No.

Rationale: Even assuming a quality assurance committee is a covered entity because the correctional institution itself is a health care provider to inmates and the committee is a part of, or associate of, the institution, O.R.C. §5120.211 is still not preempted because it is consistent with the HIPAA privacy standards.

The HIPAA privacy standards set forth in 45 C.F.R. §164.508 require a covered entity to obtain a valid authorization (subject to certain exceptions) prior to using or disclosing protected health information of a patient. One such exception, set forth in 45 C.F.R. § 164.506(c)(1), is when the covered entity uses or discloses protected health information for its own treatment, payment or health care operations. “Health care operations” is broadly defined under 45 C.F.R. §164.501 and includes activities such as quality assessment and improvement activities, reviewing the competence or qualifications of health care professionals, evaluating practitioner and provider performance, underwriting, premium rating, conducting or arranging for legal services, business planning and development and customer service. O.R.C. §5120.211(E)(1) provides for the disclosure of quality assurance records to employees of the Department for the purpose of evaluating or implementing recommendations of a quality assurance committee. Such disclosures can be classified as “health care operations.” Thus, to the extent the quality assurance committees are covered entities, O.R.C. §5120.211(E)(1) is consistent with the HIPAA privacy standards set forth in 45 C.F.R. §164.506.
Further, 45 C.F.R. §164.512(b) allows for disclosure of protected health information to a public health authority for the purpose of preventing or controlling disease, injury or disability, and the conduct of public health surveillance, public health investigations, and public health interventions. A “public health authority,” as defined in 45 C.F.R. §164.501, means “an agency or authority of the United states, a state, a territory, a political subdivision of a state or territory, or an Indian tribe, or a person or entity acting under a grant of authority from or contract with such public agency, including the employees or agent of such public agency or its contractors or persons or entities to whom it has been granted authority, that is responsible for public health matters as part of its official mandate.” The entities and persons permitted access to the quality assurance committee’s records under O.R.C. §5120.211(E)(2), (3) and (4) would fit the definition of a “public health authority” set forth in 45 C.F.R. §164.501.

Moreover, the disclosures permitted for judicial and administrative proceedings and criminal and civil law enforcement agencies in O.R.C. §5120.211(E)(4) and (5), are consistent with 45 C.F.R. §164.512(d)(1) (which permits a covered entity to disclose protected health information to a health oversight agency for oversight activities authorized by law, including audits; civil, administrative, or criminal investigations; inspections; licensure or disciplinary actions) and 45 C.F.R. §164.512(e) (which permits a covered entity to disclose protected health information in the course of any judicial or administrative proceeding, under certain conditions). Thus, because O.R.C. §5120.11 is consistent with the HIPAA privacy standards and compliance with both statutes is possible, O.R.C. §5120.211 is not preempted.

**Action by Covered Entities:** Adopt and implement policies that concurrently comply with the requirements of O.R.C. §5120.211 and the HIPAA privacy standards to ensure that access is allowed except in those cases where denial of access is authorized by Ohio and federal law.

**Exception Determination/Other Remedy:** Not required.
O.R.C. §5121.04(B)(8)
Reimbursement for Care of Institutionalized Persons

Ohio Law:  O.R.C. §5121.04(B)(8) provides that notwithstanding any law relating to confidentiality of records, the managing officer of the institution or facility where a person (with mental retardation or developmental disabilities) is or has been a patient or resident, or the managing officer of the state-operated community mental health services from which the patient receives services, shall disclose pertinent medical information concerning the resident to the insurance carrier or other third party payer in order to effect collection from the carrier or payer of the state’s claim for care and treatment.

Preemption:  No. A disclosure pursuant to O.R.C. §5121.04(B)(8) is permissible under 45 C.F.R. §164.512(a), which allows covered entities to use or disclose protected health information without patient consent or authorization if the use or disclosure is “required by law” and if the disclosure is in compliance with, and limited to, the requirements of the applicable law.

Rationale:  45 C.F.R. §164.512(a) allows covered entities to use or disclose protected health information without a patient's written authorization or the opportunity for the patient to agree or object, if the use or disclosure is “required by law” and if the disclosure is in compliance with, and limited to, the requirements of the applicable law. A disclosure to insurance carriers and third party payers in accordance with O.R.C. §5121.04(B)(8) would be a disclosure “required by law” for purposes of the HIPAA privacy regulations and, if the disclosure is in compliance with, and limited to, the requirements of O.R.C. §5121.04(B)(8), it would be permissible under the HIPAA privacy regulations.

Action by Covered Entities:  Adopt and implement policies that comply with the requirements of O.R.C. §5121.04 and ensure that disclosure is in compliance with, and limited to, the requirements of O.R.C. §5121.04.

Exception Determination/Other Remedy:  Not required.
O.R.C. §5122.31
Institutionalization of the Mentally Ill

Ohio Law Subject to Analysis:  O.R.C. §5122.31 addresses the confidentiality of records pertaining to mentally ill persons subject to institutionalization by court order. Records that directly or indirectly identify a patient or former patient or persons whose hospitalization has been sought, must be kept confidential and must not be disclosed by any person except:

(A) If the person identified, or the person's legal guardian, if any, or if the person is a minor, the person's parent or legal guardian, consents, and if the disclosure is in the best interests of the person, as may be determined by the court for judicial records and by the chief clinical officer for medical records; (B) when disclosure is provided for in this chapter or section 5123.60 of the Revised Code; (C) hospitals, boards of alcohol, drug addiction, and mental health services, and community mental health agencies may release necessary medical information to insurers and other third-party payers, including government entities responsible for processing and authorizing payment, to obtain payment for goods and services furnished to the patient; (D) pursuant to a court order signed by a judge; (E) a patient shall be granted access to the patient's own psychiatric and medical records, unless access specifically is restricted in a patient's treatment plan for clear treatment reasons; (F) hospitals and other institutions and facilities within the department of mental health may exchange psychiatric records and other pertinent information with other hospitals, institutions, and facilities of the department, and with community mental health agencies and boards of alcohol, drug addiction, and mental health services with which the department has a current agreement for patient care or services; (G) a patient's family member who is involved in the provision, planning, and monitoring of services to the patient may receive medication information, a summary of the patient's diagnosis and prognosis, and a list of the services and personnel available to assist the patient and the patient's family, if the patient's treating physician determines that the disclosure would be in the best interests of the patient; (H) community mental health agencies may exchange psychiatric records and certain other information with the board of alcohol, drug addiction, and mental health services and other agencies in order to provide services to a person involuntarily committed to a board. (I) information may be disclosed to the executor or the administrator of an estate of a deceased patient when the information is necessary to administer the estate; (J) records in the possession of the Ohio historical society may be released to the closest living relative of a deceased patient upon request of that relative; (K) information may be disclosed to staff members of the appropriate board or to staff members designated by the director of mental health for the purpose of evaluating the quality, effectiveness, and efficiency of services and determining if the services meet minimum standards; (L) records pertaining to the patient's diagnosis, course of treatment, treatment needs, and prognosis shall be disclosed and released to the appropriate prosecuting attorney if the patient was committed or to the attorney designated by the board for proceedings pursuant to involuntary commitment under this chapter; (M) the department of mental health may exchange psychiatric hospitalization records, other mental health treatment records, and other pertinent information with the department of rehabilitation and correction to ensure continuity of care for inmates who are receiving mental health services in an institution of the department of rehabilitation and correction; (N) a community mental health agency that ceases to operate may transfer to either a community mental health agency
that assumes its caseload or to the board of alcohol, drug addiction, and mental health services of the service district in which the patient resided at the time services were most recently provided any treatment records that have not been transferred elsewhere at the patient's request; (O) before records are disclosed pursuant to divisions (C), (F), and (H) of this section, the custodian of the records shall attempt to obtain the patient's consent for the disclosure. No person shall reveal the contents of a medical record of a patient except as authorized by law.

**Is Statute Preempted:** No. O.R.C. §5122.31 is consistent with the HIPAA privacy standards and compliance with both Ohio and Federal law is possible.

**Rationale:** The HIPAA privacy standards set forth in 45 C.F.R. §164.524 mandate that an individual have the right of access to inspect and obtain a copy of protected health information about the individual in a designated record set, for as long as the protected health information is maintained. However, this general mandate includes exceptions for: (i) psychotherapy notes; (ii) information compiled in reasonable anticipation of, or for use in a civil, criminal, or administrative action; and (ii) certain information subject to or exempt from the Clinical Laboratory Improvement Amendments of 1988. A denial of an individual's request for access for any of these reasons is unreviewable.

In addition, an individual may be denied the right to access his/her protected health information if: (i) a licensed health care professional has determined, in the exercise of professional judgment, that the access requested is reasonably likely to endanger the life or physical safety of the individual or another person; (ii) the protected health information makes reference to another person (unless such other person is a health care provider) and a licensed health care professional has determined, in the exercise of professional judgment, that the access requested is reasonably likely to cause substantial harm to such other person; or (iii) the request for access is made by the individual's personal representative and a licensed health care professional has determined, in the exercise of professional judgment, that the access requested is reasonably likely to cause substantial harm to the individual or another person.

If access is denied for any of the reasons set forth in the preceding paragraph, the individual is entitled to have the denial reviewed by a licensed health care professional who is designated by the covered entity to act as a reviewing official and who did not participate in the original decision to deny access and the covered entity must provide or deny access in accordance with the determination of the reviewing official. 45 C.F.R. §164.524 also includes the express right to copy and the requirement that the covered entity respond to an individual's request in a timely manner.

O.R.C. §5122.31(E) provides that a patient shall be granted access to their own records, unless access is restricted in a patient’s treatment plan for clear treatment reasons. For purposes of insuring compliance with both O.R.C. §5122.31(E) and 45 C.F.R. §164.524, Ohio mental health authorities should adopt policies that specify that the "clear treatment reasons" for restricting a patient’s access to records, other than those for which access may be universally denied pursuant to the HIPAA privacy standards (e.g., psychotherapy notes), must be consistent with the authorized reasons for denial set forth in the HIPAA privacy standards.
O.R.C. §5122.31(A) requires that before disclosure can be made to the person identified, the court for judicial records and the chief clinical officer for medical records must determine that disclosure would be in the best interests of the person. O.R.C. §5122.31(A) only provides an individual another means of access to his/her personal health information, but does not limit the individual’s general right of access in O.R.C. §5122.31(E). Therefore, O.R.C. §5122.31(A) is consistent with the HIPAA privacy standards.

O.R.C. §5123.60 provides that the legal rights service, which is completely independent of the Ohio Department of Mental Health and the Department of Mental Retardation and Developmental Disabilities, shall have ready access to records relating to expenditures of state and federal funds or to the commitment, care, treatment, and habilitation of all persons represented by the legal rights service and other entities providing services to persons who may be represented by the service. Disclosures by covered entities to the Legal Rights Services is consistent with the HIPAA privacy standards as a disclosure to a health oversight agency pursuant to 45 C.F.R. §164.512. Thus, O.R.C. §5122.31(B) which permits disclosures when provided for in section 5123.60 of the Revised Code, is consistent with the HIPAA privacy standards.

The HIPAA privacy standards set forth in 45 C.F.R. §164.506(c)(1) permit disclosure by a covered entity of a patient's protected health information for its own payment activities without obtaining a patient's authorization. O.R.C. §5122.31(C) is consistent with the HIPAA privacy standards in that it provides for disclosure of a patient's medical information to obtain payment for good and services furnished to the patients.

Pursuant to 45 C.F.R. §164.506(c)(2), a covered entity may disclose protected health information for treatment activities of a health care provider. O.R.C. §5122.31(H) permits disclosure of an individual's psychiatric records and certain other information between community mental health agencies with the board of alcohol, drug addition, and mental health services in order to provide services to a person involuntarily committed to a board. If the exchange of psychiatric records and other pertinent information (pursuant to O.R.C. §5122.31(H)) is between two covered health care providers then disclosure for treatment of an involuntarily committed individual is consistent with the HIPAA privacy standards and not preempted. Further, the psychiatric records that can be exchanged pursuant to O.R.C. §5122.31(H) do not include any psychotherapy notes (as defined in 45 C.F.R. §164.501). Therefore, an individual’s authorization is not required before their psychiatric records are exchanged pursuant to O.R.C. §5122.31(H).

The HIPAA privacy standards set forth in 45 C.F.R. §164.512(e) provides that a covered entity may disclose protected health information in the course of any judicial proceeding in response to an order of a court, provided that the covered entity disclose only the protected health information expressly authorized by such order. O.R.C. §5122.31(D) is consistent with the HIPAA privacy standards in that it provides for disclosure of records pursuant to a court order signed by a judge. Moreover, O.R.C. §5122.31(L), is consistent with the HIPAA privacy standards set forth in 45 C.F.R. §164.512(e) as long as covered entities comply with the confidentiality requirements set forth in 45 C.F.R. §164.512(e) when disclosing records
pertaining to the patient’s diagnosis, course of treatment, treatment needs, and prognosis to the appropriate prosecuting attorney.

Pursuant to 45 C.F.R. § 164.506(c)(2), a covered entity may disclose protected health information for treatment activities of a health care provider. Thus, if hospitals and institutions and facilities within the department of mental health (pursuant to O.R.C. §5122.31(F)) exchange psychiatric records and other information with other entities of the department and with community mental health agencies with which the department has a current agreement for patient care or services (and the agencies meet the definition of a health care provider), the psychiatric records and other information can be disclosed without a patient's authorization as long as the information is disclosed for treatment activities. The psychiatric records that can be exchanged pursuant to O.R.C. §5122.31(F) do not include any psychotherapy notes (as defined in 45 C.F.R. §164.501). Therefore, an individual’s authorization is not required before their psychiatric records are exchanged pursuant to O.R.C. §5122.31(F).

O.R.C. §5122.31(N) permits transfer of a patient's records upon the cessation of operations of a community mental health agency. Assuming the transfer of records is to another health care provider for treatment reasons, O.R.C. § 5122.31(N) is consistent with the HIPAA privacy standards set forth in 45 C.F.R. §164.506(c)(2) and not preempted. O.R.C. §5122.31(O) provides that before records are disclosed pursuant to divisions (C) (F), and (H), the custodian of the records shall attempt to obtain the patient’s consent for the disclosure. To the extent disclosures made pursuant to O.R.C. §5122.31 (C), (F) and (H) do not require a patient's authorization consistent with the HIPAA privacy standards, O.R.C. § 5122.31(O) is more stringent (by requiring patient consent) than the HIPAA privacy standards and not preempted. However, if an authorization is required prior to disclosure of protected health information (pursuant to O.R.C. §5122.31(C), (F) and (H)), then the "consent" obtained by the custodian of the records must comply with the content requirements set forth in 45 C.F.R. § 164.508 for a valid authorization.

45 C.F.R. §164.510(b) provides that a covered entity may disclose to a family member, other relative, or a close personal friend of the individual, or any other person identified by the individual, the protected health information directly relevant to such person’s involvement with the individual’s care or payment related to the individual’s health care. It the individual is present for, or otherwise available prior to a use or disclosure permitted by the statute, and has the capacity to make health care decisions, the covered entity may use or disclose the protected health information if it: (i) obtains the individual’s agreement; (ii) provides the individual with the opportunity to object to the disclosure, and the individual does not express an objection; or (iii) reasonably infers from the circumstances, based on the exercise of professional judgement, that the individual does not object to the disclosure. O.R.C. §5122.31(G) is consistent with the HIPAA privacy standards in that it requires the patient be notified and receive the information and have the opportunity to object before a disclosure is made.

O.R.C. §5122.31(I) is consistent with the HIPAA privacy standards set forth in 45 C.F.R. §164.502(g) which permit the disclosure of protected health information of a deceased individual for purposes of administrating the deceased's estate. With respect to the disclosures permitted under O.R.C. §5122.31(J), the HIPAA privacy standards would not apply because the Ohio
Historical Society is not a “covered entity” regulated by the HIPAA privacy standards. O.R.C. §5122.31 (K) is consistent with the HIPAA privacy standards set forth in 45 C.F.R. §164.512(d) in that it allows a covered entity that is also a health oversight agency to use protected health information for health oversight activities. O.R.C. §5122.31(M) is consistent with the HIPAA privacy standards set forth in 45 C.F.R. §164.512(K)(5) with respect to the release of medical information to the department of rehabilitation and correction for treatment purposes.

**Action by Covered Entities:** Adopt and implement policies that comply with the requirements of 45 C.F.R. §§164.501, 164.502, 164.506, 164.508, 164.512, and 164.524. Ensure that an individual is permitted access to their protected health information to the same extent provided for under the HIPAA privacy standards.

**Exception Determination/Other Remedy:** Not required.
Ohio Law: O.R.C. §5122.32(B) provides that quality assurance records (made by a quality assurance committee formed to review and improve the medical and mental health services within the Ohio Department of Mental Health and its hospitals and community setting programs) are confidential and not public records and shall be used only in the course of the proper functions of a quality assurance program. No person who possesses or has access to quality assurance records and who knows that the record are quality assurance records shall willfully disclose the contents of the records to any person or entity.

Quality assurance records may be disclosed and testimony provided to (i) persons who are employed or retained by the Ohio Department of Mental Health and who have authority to evaluate or implement the recommendations of a state-operated hospital, community setting program, or central office quality assurance committee; and (ii) public or private agencies or organizations if needed to perform a licensing or accreditation function related to Ohio Department of Mental Health hospitals or community setting programs, or to perform monitoring of a hospital or program of that nature as required by law.

Preemption: No.

Rationale: O.R.C. §5122.32(B) is consistent with the HIPAA privacy standards and compliance with both Ohio and federal law is possible.

The HIPAA privacy standards set forth in 45 C.F.R. §164.512(b) provide that a covered entity may disclose protected health information for public health activities and purposes to a “public health authority” that is authorized by law to collect or receive such information for the purpose of preventing or controlling disease, injury, or disability, including, but not limited to, the reporting of disease, injury, vital event, and the conduct of public health surveillance, public health investigations, and public health interventions. A “public health authority” is defined in 45 C.F.R. §164.501, as "an agency or authority of the United States, a state, a territory, a political subdivision of a state or territory, or an Indian Tribe, or a person or entity acting under a grant of authority from or contract with such public agency, including the employees or agents of such public agency or its contractors or persons or entities to whom it has granted authority, that is responsible for public health matters as part of its official mandate."

O.R.C. §5122.32(B) is consistent with the HIPAA privacy standards by providing that quality assurance records maintained by the Ohio Department of Mental Health are confidential and shall only be disclosed to persons retained by the Ohio Department of Mental Health and who have authority to evaluate or implement the recommendations of a state operated hospital, and if needed to perform a licensing or accreditation function related to Department hospitals. The Ohio Department of Mental Health is itself a “public health authority” (because it is an agency of a state and responsible for public health matters, specifically mental health). Thus, because the Ohio Department of Health is a public health authority, as defined under the HIPAA privacy standards, it can access the information created by its quality assurance committees if it accesses the information for one of the permissible purposes set forth in 45 C.F.R. §164.512(b).
Moreover, the Ohio Department of Mental Health can also disclose its quality assurance records to other public health authorities for the public health activities set forth in 45 C.F.R. §164.512(b).

The Ohio Department of Mental Health is also a “health oversight agency” under the HIPAA privacy standards. The HIPAA privacy standards, as set forth in 45 C.F.R. §164.501, define a “health oversight agency” to include an agency or authority of the United States, a state, a territory, a political subdivision of a state or territory, or an Indian tribe, or a person or entity acting under a grant of authority from or contract with such public agency, including the employees or agents of such public agency or its contractors or person or entities to whom it has granted authority, that is authorized by law to oversee the health care system (whether public or private) or government programs in which health information is necessary to determine eligibility or compliance, or to enforce civil rights laws for which health information is relevant. “Health oversight activities” is defined in 45 C.F.R. §164.512(d)(1) to include activities authorized by law, including audits; civil, administrative, or criminal investigations; inspections; licensure or disciplinary actions; civil, administrative, or criminal proceeding; or other activities necessary for appropriate oversight of (i) the health care system; (ii) government benefit programs for which health information is relevant to beneficiary eligibility; (iii) entities subject to government regulatory programs for which health information is necessary for determining compliance with program standards; or (iv) entities subject to civil rights laws for which health information is necessary for determining compliance. The Ohio Department of Mental Health and quality assurance committees established pursuant to the Department’s direction are “health oversight agencies” as defined in 45 C.F.R. §164.501.

45 C.F.R. §164.512(d)(4) provides that if a covered entity is also a health oversight agency, the covered entity may use protected health information for health oversight activities as permitted by paragraph (d) of 45 C.F.R. §164.512. O.R.C. §5112.32(B) is consistent with 45 C.F.R. §164.512(d)(4) by permitting disclosure of quality assurance records to persons retained by the Ohio Department of Mental Health and who have authority to evaluate or implement the recommendations of a state operated hospital, and if needed to perform a licensing or accreditation function related to Department hospitals. The Ohio Department of Mental Health, as a health oversight agency, can access its quality assurance records for such health oversight activities, as set forth in the HIPAA privacy standards.

**Action by Covered Entities:** Implement policies that concurrently comply with the requirements of O.R.C. §5122.32(B) and 45 C.F.R. §164.512.

**Exception Determination/Other Remedy:** Not required.
O.R.C. §5123.092(G)
Mental Retardation Institution Advisory Councils

Ohio Law: O.R.C. §5123.092(G) provides that citizen advisory councils established at each institution and branch institution under the control of the Ohio Department of Mental Retardation and Developmental Disabilities shall have reasonable access to all patient treatment and living areas and records of the institution, except those records of a strictly personal or confidential nature. The councils shall have access to a patient’s personal records with the consent of the patient or the patient’s legal guardian, or if the parent is a minor, with the consent of the parent or legal guardian of the patient.

Preemption: No. Compliance with both Ohio and federal law is possible, and O.R.C. §5123.092(G) does not stand as an obstacle to accomplishing the goals of HIPAA.

Rationale: O.R.C. §5123.092(G) is consistent with the goals of the HIPAA privacy standards.

The HIPAA privacy standards set forth in 45 C.F.R. § 164.506 permit a covered entity to use or disclose protected health information for its own treatment, payment, or health care operations without a patient's authorization. Citizen advisory councils, pursuant to O.R.C. §5123.093, perform various activities which can be classified as “health care operations.” The citizen advisory council’s activities include the evaluation of institutional employee training and continuing education programs, reporting on allegations of dehumanizing practices, and review of institutional budgets, programs, philosophy and long range goals. Thus, to the extent that the citizen advisory councils are themselves considered covered entities under the HIPAA privacy standards (and the patient's personal records are considered records of the citizen advisory council) then the councils can have access to the records to conduct health care operations without obtaining a patient's authorization. If this is the case, by requiring a patient's consent be obtained prior to accessing the patient's personal records, O.R.C. § 5123.093 is more stringent than the HIPAA privacy standards set forth in 45 C.F.R. § 164.506 and not preempted.

If however, citizen advisory councils are not covered health care providers as set forth in 45 C.F.R. § 160.102, then in order to comply with the HIPAA privacy standards, the citizen advisory council must obtain a valid authorization prior to accessing the patient's personal records. A citizen advisory council seeking consent from an individual (pursuant to O.R.C. § 5123.092) must ensure that the "consent" obtained from the individual complies with the content requirements for authorizations set forth in 45 C.F.R. §164.508.

Action by Covered Entities: Adopt and implement policies that concurrently comply with the requirements of O.R.C. §5123.092(G) and 45 C.F.R. §164.506 or 164.508, as applicable. Ensure that policies comply with the authorization content requirements set forth in 45 C.F.R. §164.508, if applicable.

Exception Determination/Other Remedy: Not required.
O.R.C. §5123.60(E), 5123.602 and 5123.603
Ohio Legal Rights Service

Ohio Law: O.R.C. §5123.60(E) provides that the Legal Rights Service, which is completely independent of the Ohio Department of Mental Health and the Department of Mental Retardation and Developmental Disabilities, shall have ready access to records relating to expenditures of state and federal funds or to the commitment, care, treatment, and habilitation of all persons represented by the legal rights service and other entities providing services to persons who may be represented by the service.

O.R.C. §5123.602 provides that the ombudsman section of the Legal Rights Service may make necessary inquiries and obtain information that it considers necessary. The ombudsman must have ready access to the premises and records of all providers of services to mentally retarded, developmentally disabled, or mentally ill persons.

O.R.C. §5123.603 provides that the ombudsman section of the Legal Rights Service shall maintain the confidentiality of all its records and files and not be required to testify in any court with respect to any matters it is required to maintain as confidential.

Preemption: No.

Rationale: Disclosure by covered entities to the Legal Rights Services is consistent with the HIPAA privacy standards as a disclosure to a health oversight agency pursuant to 45 C.F.R. §164.512.

45 C.F.R. §164.501 defines a “health oversight agency” to include an agency or authority of the United States, a state, a territory, a political subdivision of a state or territory, or an Indian tribe, or a person or entity acting under a grant of authority from or contract with such public agency, including the employees or agents of such public agency or its contractors or person or entities to whom it has granted authority, that is authorized by law to oversee the health care system (whether public or private) or government programs in which health information is necessary to determine eligibility or compliance, or to enforce civil rights laws for which health information is relevant. “Health oversight activities” is defined in 45 C.F.R. §164.512(d) to include activities authorized by law, including audits; civil, administrative, or criminal investigations; inspections; licensure or disciplinary actions; civil, administrative, or criminal proceeding or actions; or other activities necessary for appropriate oversight of (i) the health care system; (ii) government benefit programs for which health information is relevant to beneficiary eligibility; (iii) entities subject to government regulatory programs for which health information is necessary for determining compliance with program standards; or (iv) entities subject to civil rights laws for which health information is necessary for determining compliance.

O.R.C. §5123.602 mandates that all providers of services to mentally retarded, developmentally disabled, or mentally ill persons must grant the ombudsman section of the Legal Rights Service access to patients records which the ombudsman section considers necessary to carry out its duties. O.R.C. §5123.603(D) provides that the ombudsman section of the Legal Rights Service shall collect data relating to complaints, investigations or other actions or conditions for the
purpose of resolving significant systemic problems affecting mentally retarded, developmentally disabled, or mentally ill persons. Pursuant to O.R.C. §5123.603(E), the ombudsman section must also recommend or propose to other governmental agencies changes in policies and rules that affect mentally retarded, developmentally disabled, or mentally ill persons. Such investigation activities conducted by the ombudsman section can be classified as “health oversight activities” of a health oversight agency. Therefore, disclosures of protected health information to the Legal Right Service for these activities is permissible under the HIPAA privacy standards.

**Action by Covered Entities:** Adopt and implement policies that concurrently comply with the requirements of 45 C.F.R. §164.512 and O.R.C. §§5123.601, 602 and 603.

**Exception Determination/Other Remedy:** Not required.
O.R.C. §5123.61(C)
Reports of Abuse and Neglect of Persons with MR/DD

Ohio Law: O.R.C. §5123.61(C) requires various persons (such as physicians, dentists, and school teachers) having reason to believe that a person with mental retardation or a developmental disability has suffered any wound, injury, disability, or condition of such a nature as to reasonably indicate abuse or neglect of that person, to immediately report such information to a law enforcement agency or to the county board of mental retardation and developmental disabilities, except if the report concerns a resident of a facility operated by the Department of Mental Retardation and Developmental Disabilities in which case the report must be made to either a law enforcement agency or to the Department.

Preemption: No. Under O.R.C. §5123.61(C) reports of abuse or neglect of a person with mental retardation and developmental disabilities is a required disclosure. Under 45 C.F.R. §164.512, disclosure of suspected abuse is not required, but only a permissive disclosure. 45 C.F.R. §164.512 requires that when a report of abuse is made, the reporting entity must inform the alleged victim that a report has been or will be made, subject to limited exceptions.

Rationale: The privacy standards set forth in 45 C.F.R. §164.512(c)(1) provide that a covered entity may disclose protected health information about an individual whom the covered entity reasonably believes to be a victim of abuse, neglect, or domestic violence to a government authority, including a social service or protective services agency, authorized by law to receive reports of such abuse, neglect or domestic violence (i) to the extent the disclosure is required by law and the disclosure complies with and is limited to the relevant requirements of such law; (ii) if the individual agrees to the disclosure; or (iii) to the extent the disclosure is expressly authorized by statute or regulation, and, in addition: (A) the covered entity, in the exercise of professional judgment, believes the disclosure is necessary to prevent serious harm to the individual or other potential victims; or (B) if the individual is unable to agree because of incapacity, and the information will not be used against the individual and that an immediate enforcement activity that depends upon the disclosure would be materially and adversely affected by waiting until the individual is able to agree to the disclosure. O.R.C. §5123.61 (C) is similar in that it requires various individuals, including physician and employees of a hospital who have reasonable cause to believe that a person with mental retardation or a developmental disability has suffered any wound, injury, disability, or condition of such a nature as to reasonably indicate abuse or neglect to immediately report such belief to a law enforcement agency or to the county board of mental retardation and developmental disabilities.

Unlike Ohio law, the privacy standards set forth in 45 C.F.R. §164.512(c)(2) also require that a covered entity making a disclosure pursuant to (c)(1) promptly inform the individual that such a report has been or will be made, except if: (i) the covered entity, in the exercise of professional judgment, believes informing the individual would place the individual at risk of serious harm; or (ii) the covered entity would be informing a personal representative, and the covered entity reasonably believes the personal representative is responsible for the abuse, neglect or other injury and that informing such person would not be in the best interests of the individual as determined by the covered entity, in the exercise of professional judgment. O.R.C. §5123.61
does not have a requirement that the reporting entity inform the individual that such a report was made or will be made. Thus, in order to comply with the HIPAA privacy standards, the covered entity making the report must also inform the alleged victim that such a report has been or will be made, unless one of the exceptions for not informing the individual applies.

**Action by Covered Entities:** Adopt and implement policies that concurrently comply with the requirements of O.R.C. §5123.61 and 45 C.F.R. §164.512(c)(2). Ensure that policies comply with the additional notification requirement set forth in 45 C.F.R §164.512(c)(2) by informing an individual that a report has been or will be made, unless one of the exceptions for not informing the individual applies.

**Exception Determination/Other Remedy:** Not required.
O.R.C. §5123.62(T)
Rights of Persons with MR/DD

Ohio Law: O.R.C. §5123.62(T) provides that persons with mental retardation or a developmental disability have the right to confidential treatment of all information in their personal and medical records, except to the extent disclosure or release of records is permitted under §§5123.89 and 5126.044 of the Revised Code.

Preemption: No.

Rationale: See preemption analysis for O.R.C. §§5123.89 and 5126.044.

Action by Covered Entities: Adopt and implement policies that comply with the requirements of O.R.C. §5123.62(T).

Exception Determination/Other Remedy: Not required.
O.R.C. §5123.89
Institutionalization of the Mentally Retarded

Ohio Law Subject to Analysis: O.R.C. §5123.89 provides for the confidentiality of records of individuals with mental retardation and developmental disabilities. O.R.C. §5123.89 provides that all certificates, applications, records, and reports made (other than court journal entries or court docket entries) which directly or indirectly identify a resident or former resident of an institution for the mentally retarded or person whose institutionalization has been sought must be kept confidential and not disclosed to any person.

Exceptions to the rule allow disclosure (i) when it is the judgment of the court for judicial records, and the managing officer for institution records, that disclosure is in the best interests of the person identified, and that person or that person’s guardian or, if the person is a minor, that person’s parent or guardian consents, or (ii) if disclosure is provided for elsewhere in the chapter regulating the department of mental retardation and developmental disabilities, or (iii) it is the judgment of the managing officer for the institution records that disclosure to a mental health facility is in the best interests of the person identified.

O.R.C. §5123.89 also provides that upon the death of a resident or former resident of an institution for the mentally retarded or a person whose institutionalization was sought, the managing officer of an institution must provide access to the records and reports made to the former resident’s or person’s guardian if the guardian makes a written request. If a deceased resident, former resident, or person whose institutionalization was sought did not have a guardian at the time of death, the managing officer must provide access to the records and reports to a member of the person’s family, upon that family member’s written request.

Is Statute Preempted: No.

Rationale: The HIPAA privacy standard set forth in 45 C.F.R. §164.524 mandates that an individual have the right of access to inspect and obtain a copy of protected health information about the individual in a designated record set, for as long as the protected health information is maintained. However, this general mandate includes exceptions for: (i) psychotherapy notes; (ii) information compiled in reasonable anticipation of, or for use in a civil, criminal, or administrative action; and (ii) certain information subject to or exempt from the Clinical Laboratory Improvement Amendments of 1988. A denial of an individual's request for access for any of these reasons is unreviewable.

In addition, under the HIPAA privacy standards, an individual may be denied the right to access his/her protected health information if: (i) a licensed health care professional has determined, in the exercise of professional judgment, that the access requested is reasonably likely to endanger the life or physical safety of the individual or another person; (ii) the protected health information makes reference to another person (unless such other person is a health care provider) and a licensed health care professional has determined, in the exercise of professional judgment, that the access requested is reasonably likely to cause substantial harm to such other person; or (iii) the request for access is made by the individual's personal representative and a licensed health care professional has determined, in the exercise of professional judgment, that
the access requested is reasonably likely to cause substantial harm to the individual or another person.

If access is denied for any of the reasons set forth in the preceding paragraph, the individual is entitled to have the denial reviewed by a licensed health care professional who is designated by the covered entity to act as a reviewing official and who did not participate in the original decision to deny access and the covered entity must provide or deny access in accordance with the determination of the reviewing official. 45 C.F.R. §164.524 also includes the express right to copy and the requirement that the covered entity respond to an individual's request in a timely manner.

O.R.C. §5123.89(A) limits an individual’s right of access to (and ability to consent to the release of) their protected health information and imposes restrictions beyond the scope allowed under the HIPAA privacy standards. By requiring that the court for judicial records and the managing officer for institution records determine that disclosure would be in the best interests of the person identified before disclosure can be made, O.R.C. §5123.89(A) imposes additional restrictions on the ability of an individual to access his or her protected health information beyond the restrictions permitted under HIPAA. However, O.R.C. §1347.08 provides that every state or local agency, that maintains a personal information system, upon the request and the proper identification of any person who is the subject of personal information in the system (subject to certain exceptions) shall permit the person, the person’s legal guardian, or an attorney who presents a signed written authorization made by the person, to inspect all personal information in the system of which the person is the subject. The department of mental retardation and developmental disabilities, as a state agency, must permit an individual access to all personal information in the system of which the person is the subject pursuant to O.R.C. §1347.08. Thus, to the extent O.R.C. §5123.89(A) and O.R.C. §1347.08 are construed together to permit an individual a right of access to his or her protected health information consistent with the HIPAA privacy standards, O.R.C. §5123.89 is not preempted.

With the possible exception of division (A), O.R.C. §5123.89 is consistent with the HIPAA privacy standards and compliance with both Ohio and Federal law is possible. 45 C.F.R. §164.502(g)(1) provides that subject to exceptions for unemancipated minors and abuse situations, a covered entity must “treat a personal representative as the individual for purposes of this subchapter.” 45 C.F.R. §164.502(g)(4) provides “that if under applicable law an executor, administrator, or other person has authority to act on behalf of a deceased individual or of the individual’s estate, a covered entity must treat such person as a personal representative under this subchapter, with respect to protected health information relevant to such personal representative.” O.R.C. §5123.89(C) is consistent with the HIPAA privacy standards in allowing disclosure of a deceased individual’s protected health information to his or her guardian and to certain members of the deceased’s family.

Action by Covered Entities: Adopt and implement policies that concurrently comply with the requirements of O.R.C. §5123.89 and 45 C.F.R. §§164.502, and 164.524. In order to comply with the HIPAA privacy standards, grant an individual the same right of access to his or her protected health information as required under 45 C.F.R. §164.524.
Exception Determination/Other Remedy: Amend O.R.C. §5123.89 to explicitly provide that disclosure of, and access to, an individual’s protected health information under the section is subject to the disclosure requirements set forth in O.R.C. §1347.08 and 45 C.F.R. §524.
**O.R.C. §5126.044**  
*Local Services for Mental Retardation and Developmental Disabilities*

**Ohio Law:** O.R.C. §5126.044(B) provides that no person shall disclose the identity of an individual who requests programs or services from the county boards of mental retardation and developmental disabilities or release a record or report regarding an eligible person that is maintained by a county board of mental retardation and developmental disabilities or an entity under contract with a county board unless one of the following circumstances exists: (1) the individual, eligible person, or the individual’s guardian, or if the individual is a minor, the individual’s parents or guardian, makes a written request to the county board or entity for or approves in writing disclosure of the individual’s identity or release of the records or report regarding the eligible person, (2) disclosure of the identity is needed for approval of a direct services contract and the county board shall only release the individual’s name and the general nature of the services to be provided or (3) disclosure of the identity of the individual is needed for purposes related to the county board’s waiting list for programs and services.

O.R.C. §5126.044(D) provides exceptions to the confidentiality requirements set forth in O.R.C. §5126.044 (B). Division (D)(1) provides that at the request of an eligible person or the person’s guardian, a county board or entity under contract with a county board shall provide the person who made the request access to records and reports regarding the eligible person. The county board shall also provide copies of the records and reports upon written request and a reasonable fee can be charged for copying. O.R.C. §5126.044(D)(2) provides that the county board shall provide governmental agencies responsible for monitoring and reviewing programs and services provided by the county board access to any waiting list or record or report regarding an eligible person maintained by the board. O.R.C. §5126.044(D)(3) provides for disclosure of reports and records of deceased individuals for purposes of administering the estate of the person who is the subject of the reports and records and to the individual’s guardian or certain specified family members of the deceased.

**Preemption:** No.

**Rationale:** Compliance with both Ohio and federal law is possible and O.R.C. §5126.044 does not stand as an obstacle to accomplishing the goals of the HIPAA privacy standards.

The HIPAA privacy standards only regulate the activities of “covered entities.” A “covered entity” (as defined in 45 C.F.R. §160.103) is (i) a health plan, (ii) a health care clearinghouse, or (iii) a health care provider who transmits any health information in electronic form in connection with a covered transaction. A transaction is defined in 45 C.F.R. §160.103 as the transmission of information between two parties to carry out financial or administrative activities related to health care. Transactions includes the following types of information transmissions: (i) health care claims or equivalent encounter information, (ii) health care payment and remittance advice, (iii) coordination of benefits, (iv) health care claim status, (v) enrollment and disenrollment in a health plan, (vi) eligibility for a health plan, (vii) health plan premium payments, (viii) referral certification and authorization, (ix) first report of injury, (x) health claims attachments, and (xi) other transactions that the Secretary may prescribe by regulation.
The county boards of mental retardation and developmental disabilities would likely not be viewed as covered entities unless the agencies also performed services as a health care provider or could be classified as a “hybrid entity.” The county boards of mental retardation and developmental disabilities might be a hybrid entity (defined in 45 C.F.R. §164.504(a) as a single legal entity that is a covered entity, whose business activities include both covered and non-covered functions, and that designates health care components) if they provide health care to individuals with mental retardation or development disabilities even though they also function as county boards of mental retardation and developmental disabilities. In the case of a hybrid entity, only the health care component of the organization would be required to comply with the HIPAA privacy standards pursuant to 45 C.F.R. §164.504(b)-(c). The county boards of mental retardation and developmental disabilities are unlikely to be hybrid entities because, presumably, they do not provide health care services or transmit information in electronic form in connection with a covered transaction.

However, even if the county boards of mental retardation and developmental disabilities could be viewed as covered entities, O.R.C. §5126.044(B) would still not be preempted because it is consistent with the HIPAA privacy standards. The HIPAA privacy standard set forth in 45 C.F.R. §164.524 mandates that an individual has the right to access, inspect, and obtain a copy of protected health information about the individual in a designated record set, for as long as the protected health information is maintained.

45 C.F.R. §164.524 also includes the express right to copy and the requirement that the covered entity respond to an individual's request in a timely manner. O.R.C. §5126.044 is consistent with the HIPAA privacy standards set forth in 45 C.F.R. §164.524 in that it allows an individual access to his or her protected health information maintained by the county boards of mental retardation and developmental disabilities upon written request.

A county board of mental retardation and developmental disabilities falls under the definition of a “health oversight agency” pursuant to 45 C.F.R. §164.501. 45 C.F.R. §164.501 defines a “health oversight agency” to include an agency or authority of the United States or state that is authorized by law to oversee the health care system or government programs in which health information is necessary to determine eligibility or compliance, or to enforce civil rights laws for which health information is relevant. A covered entity that is also a health oversight agency may use protected health information for health oversight activities pursuant to 45 C.F.R. §164.512 without a consent, authorization, or opportunity to agree or object. “Health oversight activities” include administrative or criminal investigations or other activities necessary for appropriate oversight of government benefit programs for which health information is relevant to beneficiary eligibility and entities subject to government regulatory programs for which health information is necessary for determining compliance with program standards. O.R.C. §5126.044(B) permits disclosures of information for approval of direct services contracts and for purposes related to the county board’s waiting lists for programs and services. These activities can be classified as “health oversight activities” and, therefore, disclosures of protected health information for these activities is permissible under the HIPAA privacy standards.

The disclosures permitted under O.R.C. §5126.044(D)(1) are consistent with the HIPAA privacy standards set forth in 45 C.F.R. §164.524 allowing an individual access to his or her protected
health information. O.R.C. §5126.044(D)(2) permits disclosures of protected health information to agencies responsible for monitoring and reviewing programs and services of the county boards and is consistent with 45 C.F.R. §164.512(d). The HIPAA privacy standards set forth in 45 C.F.R. §164.512(d) permit disclosures of protected health information to a health oversight agency for oversight activities authorized by law, including oversight of the health care system and entities subject to government regulatory programs for which health information is necessary for determining compliance with program standards. Finally, O.R.C §5126.044(D)(3) is consistent with the HIPAA privacy standards set forth in 45 C.F.R. §164.502(f)-(g), which permit disclosure of a deceased individual’s protected health information to persons having authority to act on behalf of a deceased individual or the individual’s estate, as provided by applicable law.

**Action by Covered Entities:** Adopt and implement policies that concurrently comply with the requirements of O.R.C. §5126.044 and 45 C.F.R. §§164.501, 164.502, 164.512 and 164.524.

**Exception Determination/Other Remedy:** Not required.
O.R.C. §5139.05(C) & (D)  
Department of Youth Services

Ohio Law:  O.R.C. §5139.05 (c) provides that a child committed to the Ohio Department of Youth Services can be assigned to a hospital for mental, physical, or other examination, inquiry, or treatment. Reports must be made by a treating hospital in connection with the child’s assignment to the hospital and include a record of observation, treatment and medical history, and a recommendation for future treatment, custody, and maintenance. The Department of Youth Services will then make a placement and treatment decision. The committing court and all public authorities must make available to the Department all pertinent data in their possession with respect to the case.

O.R.C. §5139.05(d) provides that records maintained by the Department of Youth Services pertaining to the children in its custody shall be accessible only to Department employees, except by consent of the Department or upon the order of the judge of a court of record. The Department of Youth Services can release records that pertain to children in its custody to the Department of Rehabilitation and Corrections regarding persons who are under the jurisdiction of the Department of Rehabilitation and Correction and who have previously been committed to the Department of Youth Services. The Department of Rehabilitation and Correction can only use those records for the limited purpose of carrying out the duties of the Department of Rehabilitation and Correction.

Preemption:  No.

Rationale:  O.R.C. §5139.05 is consistent with the goals of the HIPAA privacy standards and compliance with both Ohio and federal law is possible.

The HIPAA privacy regulations set forth in 45 C.F.R. §164.512(k)(5) provide that a covered entity may disclose to a correctional institution having lawful custody of an inmate or other individual protected health information about such inmate or individual, if the correctional institution represents that such protected health information is necessary for (A) the provision of health care to such individual; (B) the health and safety of such individual or other inmates; (C) the health and safety of the officers or employees of or other at the correctional institution; (D) the health and safety of such individuals and officers or others persons responsible for the transporting of inmates or their transfer from one institution, facility, or setting to another; (E) law enforcement on the premises of the correctional institution; or (F) the administration and maintenance of the safety, security, and good order of the correctional institution. 45 C.F.R. §164.501 defines “correctional institution” to include any correctional facility, jail, reformatory, and detention center. “Other Persons” as used in 45 C.F.R. §164. 512(k)(5), is defined to include “juvenile offenders adjudicated delinquent.”

O.R.C. §5139.05(C) is consistent with the HIPAA privacy standards regarding the disclosure of records by a covered entity to a correctional institution. O.R.C. §5139.05(C) provides that the committing court and all public authorities shall make available to the Department of Youth Services data with respect to the care of a child committed to the Department of Youth Services.
The Department of Youth Services falls under the definition of a correctional institution, as set forth in the HIPAA privacy standards. Thus, Ohio public authorities that are “covered entities” under HIPAA can release medical records to the Department of Youth Services, assuming the Department of Youth Services seeks the records for one of the aforementioned reasons in 45 C.F.R. §164.512(k)(5).

O.R.C. §5139.05(D) would not be subject to preemption under HIPAA because the Department of Youth Services does not fall within the definition of a “covered entity.” A “covered entity” as defined in 45 C.F.R. §160.103 is (i) a health plan (ii) a health care clearinghouse or (iii) a health care provider who transmits any health information in electronic form in connection with a covered transaction. The Department of Youth Services does not maintain or transfer medical records electronically. See Information Technology Plan, Ohio Department of Youth Services, FY 2001-2003. Therefore, the Department of Youth Services is not a covered entity and thus, HIPAA does not apply to O.R.C. §5139.05(D).

**Action by Covered Entities:** Covered entities should permit the Department of Youth Services access to all pertinent data in their possession with respect to the care of a child committed to the Department if the request for access is based on one of the reasons set forth in the HIPAA privacy standards.

**Exception Determination/Other Remedy:** Not required.
O.R.C. §5153.17
Public Children Services Agencies

Ohio Law: O.R.C. §5153.17 requires a public children services agency to keep records of investigations of families, children, and foster homes, and of the care, training, and treatment afforded children, confidential. However, except as provided in O.R.C. §3107.17(B) (requiring confidentiality of records pertaining to the placement of a child in foster care or placed for adoption), the records must be open to inspection by the agency, the director of the county department of job and family services, and by other persons, upon the written permission of the executive secretary.

Preemption: No. A public children services agency is not a covered entity under HIPAA and is therefore not subject to HIPAA regulation or preemption. Moreover, even if the public children services agency could be considered a covered entity, O.R.C. §5153.17 would not be preempted because it would fall under an exception to preemption.

The HIPAA privacy standards only regulate the activities of “covered entities.” A “covered entity” (as defined in 45 C.F.R. §160.103) is (i) a health plan, (ii) a health care clearinghouse, or (iii) a health care provider who transmits any health information in electronic form in connection with a covered transaction. A transaction is defined in 45 C.F.R. §160.103 as the transmission of information between two parties to carry out financial or administrative activities related to health care. Transactions includes the following types of information transmissions: (i) health care claims or equivalent encounter information, (ii) health care payment and remittance advice, (iii) coordination of benefits, (iv) health care claim status, (v) enrollment and disenrollment in a health plan, (vi) eligibility for a health plan, (vii) health plan premium payments, (viii) referral certification and authorization, (ix) first report of injury, (x) health claims attachments, and (xi) other transactions that the Secretary may prescribe by regulation.

The public children services agency would likely not be viewed as a covered entity unless the agency also performed services as a health care provider or could be classified as a “hybrid entity.” The public children services agency might be a hybrid entity (defined in 45 C.F.R. §164.504(a) as a single legal entity that is a covered entity and whose covered functions are not its primary functions) if it provides health care to the children even though its primary function is not as a health care provider but as a children’s services agency. In the case of a hybrid entity, only the health care component of the organization would be required to comply with the HIPAA privacy standards pursuant to 45 C.F.R. §164.504(b)-(c). The public children’s services agency is unlikely to be a hybrid entity because, presumably, it does not provide health care services or transmit health information in electronic form in connection with a covered transaction.

Even if the public children’s agency could be viewed as a covered entity, O.R.C. §5153.17 falls under an exception to preemption in 45 C.F.R. §160.203(c). 45 C.F.R. §160.203 provides an exception to HIPAA preemption when a contrary state law provides for the reporting of child abuse, or for the conduct of public health surveillance, investigation, or intervention. The public
children agency’s activities can be classified as engaging in reporting of child abuse, and public health surveillance, investigation, or intervention.

**Action by Covered Entities:** Not applicable.
General Discussion of
Ohio Rules of Civil Procedure 26 & 45
and
Ohio Rules of Criminal Procedure 16 & 17


Preemption: Each of these rules is discussed in greater detail below. With a few exceptions, compliance with both state law and the HIPAA privacy standards is possible. The rules analyzed here are generally not preempted by HIPAA because they are not contrary to the HIPAA privacy standards. However, covered entities may need to implement policies and procedures to ensure compliance.

Discussion: In most instances, a covered entity can comply with both the HIPAA privacy standards and Ohio Rules of Civil and Criminal Procedure. This discussion examines 45 C.F.R. §§164.512(e) and (f), regarding disclosures for judicial and administrative proceedings and disclosures for law enforcement purposes.

45 C.F.R. §164.512(e) permits covered entities to make disclosures for judicial and administrative proceedings in response to court orders and subpoenas. Pursuant to §164.512(e)(1)(i), covered entities may disclose protected health information in a judicial or administrative proceeding if the request for such protected health information is made through, or pursuant to, an order from a court or administrative tribunal or in response to a subpoena or discovery request from, or other lawful process by, a party to the proceeding. When a request is made pursuant to an order from a court or administrative tribunal, a covered entity may disclose the information requested without additional process. See 65 F.R. 82529.

In the absence of an order of a court or administrative tribunal, §§164.512(e)(1)(ii)-(iv) and 164.512(f) establish criteria that, if met, permit covered entities to disclose protected health information in response to a subpoena, discovery request, or other lawful process. A covered entity may respond to a subpoena or discovery request from, or other lawful process by, a party to the proceeding only if the covered entity obtains either: (1) satisfactory assurances that reasonable efforts have been made to give the individual whose information has been requested notice of the request; or (2) satisfactory assurances that the party seeking such information has made reasonable efforts to secure a protective order that will guard the confidentiality of the information (as described below). In meeting the first test, a covered entity is considered to have received satisfactory assurances from the party seeking the information if that party demonstrates that it has made a good faith effort (such as by sending a notice to the individual's last known address) to provide written notice to the individual whose information is the subject of the request, that the written notice included sufficient information about the proceeding to permit the individual to raise an objection, and that the time for the individual to raise objections to the court or administrative tribunal has elapsed and no objections were filed or any objections filed.
by the individual have been resolved. Unless required to do so by other law, the covered entity is
not required to explain the procedures (if any) available for the individual to object to the
disclosure.

A covered entity may also disclose protected health information in response to a subpoena,
discovery request, or other lawful process if the covered entity receives satisfactory assurances
that the party seeking the information has made reasonable efforts to seek a qualified protective
order that would protect the privacy of the information. A “qualified protective order” means an
order of a court or of an administrative tribunal or a stipulation that: (1) prohibits the parties from
using or disclosing the protected health information for any purpose other than the litigation or
proceeding for which the records are requested; and (2) requires the return to the covered entity
or destruction of the protected health information (including all copies made) at the end of the
litigation or proceeding. Satisfactory assurances of reasonable efforts to secure a qualified
protective order are a statement and documentation that the parties to the dispute have agreed to
a protective order and that it has been submitted to the court or administrative tribunal with
jurisdiction, or that the party seeking the protected health information has requested a qualified
protective order from such court or tribunal. See 65 Fed. Reg. 82529-30.

The HIPAA privacy rules as set forth in 45 C.F.R. §164.512(e)(ii) also permit a covered entity
itself to satisfy the requirement to make reasonable efforts to notify the individual whose
information has been requested or to seek a qualified protective order; however, covered entities
are not required to undertake these efforts in response to a subpoena, discovery request, or
similar process (other than an order from a court or administrative tribunal). If a covered entity
receives such a request without receiving the satisfactory assurances described above from the
party requesting the information, the covered entity is free to object to the disclosure and is not

Importantly, 45 C.F.R. §164.512(e) and §164.512(f) merely give a covered entity permission to
disclose protected health information without an individual’s consent, authorization or
opportunity to agree or object. They do not require disclosure by a covered entity. 45 C.F.R.
§164.512(e) states “a covered entity may disclose protected health information in the course of
any judicial or administrative hearing” in the scenarios outlined thereafter. The Health and
Human Services response to comments regarding this standard explained that:

[T]he final rule permits, but does not require, disclosure of protected health information
pursuant to a court order. Under the applicable preemption provisions of HIPAA, state
laws relating to the privacy of medical information that are more stringent than the
federal rules are not preempted. To the extent that an applicable state law precludes
disclosure of protected health information that would otherwise be permitted under the
final rule, state law governs.


The preemption analysis of Civil Rules 26 and 45 and Criminal Rules 16 and 17 are provided
below with this discussion as a backdrop.
Ohio Rule of Civil Procedure 26
Discovery

Ohio Law: Ohio Civil Rule 26 permits discovery of all matters, not privileged, that are relevant to the subject matter involved in the pending action whether they relate to the claim or defense of the party seeking the discovery. It is not a ground for an objection that the information sought will be inadmissible at the trial if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.

Preemption: No. The HIPAA privacy standards only preempt contrary state law. In this instance, the state law is not contrary because compliance with both Ohio and federal law is possible, and Ohio Civil Rule 26 is not an obstacle to accomplishing the HIPAA objectives. Furthermore, HIPAA regulations contain a specific provision that allows a covered entity to comply with discovery requests.

Rationale: Rule 26 is consistent with the goals of the HIPAA privacy standards because it allows a party to obtain a protective order that would protect individual medical information that is the subject of HIPAA. Further, under HIPAA, a covered entity is permitted to disclose protected health information subject to a subpoena, discovery request or other lawful order so long as the covered entity receives assurance either that the person who is the subject of the records receives notice of the request, or a qualified protective order was sought. 45 C.F.R. §164.512(e).

Action by Covered Entities: Covered entities must respond to a subpoena, discovery request or other lawful order if the covered entity either receives satisfactory assurance (as defined by the statute) from the party seeking the information that reasonable efforts have been made by such party to ensure that the individual, who is subject of the protected health information, has been given notice, or the party seeking the information has made a reasonable effort to secure a qualified protective order (as defined by the statute) or the covered entity takes comparable steps.

Exception Determination/Other Remedy: Not required.
Ohio Rule of Civil Procedure 45

Subpoena

Ohio Law: Ohio Rule of Civil Procedure 45 provides rules regarding issuance of subpoenas in civil proceedings. Rule 45(C) grants protections afforded to persons subject to a subpoena. Rule 45(C)(2)(b), in conjunction with Rule 45(D)(2), permits a person subpoenaed to produce materials to give written objection to the production on the grounds that the materials sought are protected by privilege so long as this claim of privilege is made expressly and is supported by a description of the nature of the documents, communications or things not produced sufficient to enable the demanding party to contest the claim. Rule 45(C)(3) allows a person to move the court to quash or modify a subpoena requiring disclosure of privileged or otherwise protected matter when no exception or waiver applies. Finally, Rule 45(F) specifically states that nothing in Rule of Civil Procedure 45 is to be construed to authorize a party to obtain information protected by privilege recognized by law or to authorize any person to disclose such information.

Preemption: Because the HIPAA privacy standards are not contrary to Ohio Rule of Civil Procedure 45, Rule 45 is not preempted. 45 C.F.R. §160.203.

Rationale: A covered entity can comply with both the HIPAA privacy standards and Ohio Rule of Civil Procedure 45. 45 C.F.R. §§164.512(e) and 164.512(f) establish criteria regarding subpoenas requesting production of protected health information, that, if met, permit covered entities to disclose protected health information in response to a subpoena. Some of the scenarios in which a covered entity is permitted to disclose protected health information might not comport with Ohio law on the patient-physician privilege. (See the preemption analysis of O.R.C. §2317.02). For example, 45 C.F.R. §164.512(e)(1)(ii) allows a covered entity to disclose medical information in response to a subpoena without a waiver of the privilege by the patient or a court order determining no privilege exists so long as the covered entity receives written satisfactory assurance from the demanding party that reasonable efforts have been made to give the individual who is the subject of the medical information notice of the subpoena; however, Ohio case law generally requires a waiver of the physician-patient privilege by the individual authorizing disclosure of the privileged information or a court order authorizing disclosure. See Pacheco v. Ortiz, 11 Misc. 2d 1 (1983) (“The law is quite clear that any hospital records of a party…may not be released to anyone if such matters are privileged unless such privilege is waived by the party being treated”). As previously discussed, 45 C.F.R. §164.512(e) and §164.521(f) merely give a covered entity permission to disclose protected health information without an individual’s consent, authorization or opportunity to agree or object. They do not require disclosure by a covered entity. 45 C.F.R. §164.512(e) states “a covered entity may disclose protected health information in the course of any judicial or administrative hearing” in the scenarios outlined thereafter. The Health and Human Services response to comments regarding this standard explained that:

[T]he final rule permits, but does not require, disclosure of protected health information pursuant to a court order. Under the applicable preemption provisions of HIPAA, state laws relating to the privacy of medical information that are more stringent than the federal rules are not preempted. To the extent that an applicable state law precludes
disclosure of protected health information that would otherwise be permitted under the final rule, state law governs.

65 Fed. Reg. 82677. When a covered entity is permitted under 45 C.F.R. §164.512(e) and §164.512(f) to disclose protected health information in response to a subpoena, the covered entity should still use Rule 45(C) to object to the subpoena if Ohio law prohibits disclosure by the covered entity. When a covered entity is permitted under Ohio law to disclose protected health information in response to a subpoena, the covered entity should still use Rule 45(C) to object to the subpoena if the HIPAA privacy standards prohibit disclosure by the covered entity.
Ohio Rule of Criminal Procedure 16
Discovery and Inspection

SUPPLEMENTAL MEMORANDUM

Ohio Law Subject to Analysis: Ohio Rule of Criminal Procedure 16 provides that both the prosecuting attorney and the defendant can be ordered by the court, upon motion of the opposing party, to permit the opposing party to inspect and copy any results or reports of physical or mental examinations made in connection with a particular case, within the party’s possession or control and which the party intends to introduce at trial, or which were prepared by a witness whom the party intends to call at trial, when such results or reports relate to his or her testimony.

Preemption: Because the HIPAA privacy standards are not contrary to Ohio Rule of Criminal Procedure 16, Rule 16 is not preempted. 45 C.F.R. §160.203.

Rationale: Pursuant to 45 C.F.R. §164.512(e)(1)(i), covered entities may disclose protected health information in a judicial or administrative proceeding if the request for such protected health information is made through, or pursuant to, an order from a court or administrative tribunal or in response to a subpoena or discovery request from, or other lawful process by, a party to the proceeding. When a request is made pursuant to an order from a court or administrative tribunal, a covered entity may disclose the information requested without additional process. See 65 F.R. 82529. Therefore, disclosure by a covered entity of protected health information pursuant to a court order issued in accordance with Ohio Rule of Criminal Procedure 16 is a permissible disclosure under the HIPAA privacy standards, as long as such disclosure is expressly authorized by such order.

Action by Covered Entities: Adopt and implement policies that comply with the requirements of Ohio Rule of Criminal Procedure 16. Ensure that all disclosures are in compliance with, and limited to, the relevant requirements of the court order.

Exception Determination/Other Remedy: Not required.
SUPPLEMENTAL MEMORANDUM

Ohio Law Subject to Analysis: Ohio Rule of Criminal Procedure 17(C) provides that a subpoena may command an individual to produce books, papers, documents, or other objects as described in the subpoena, but the court, upon a motion, may quash or modify the subpoena if compliance would be unreasonable or oppressive.

Is Statute Preempted: Because the HIPAA privacy standards are not contrary to Ohio Rule of Criminal Procedure 17(C), Rule 17 is not preempted. 45 C.F.R. §160.203.No.

Rationale: Pursuant to 45 C.F.R. §164.512(e), covered entities may disclose protected health information in a judicial or administrative proceeding if the request for such protected health information is made through, or pursuant to, an order from a court or administrative tribunal or in response to a subpoena or discovery request from, or other lawful process by a party to the proceeding. When a request is made pursuant to an order from a court or administrative tribunal, a covered entity may disclose the information requested without additional process. A subpoena issued by a court constitutes a disclosure that is required by law as defined in 45 C.F.R. §164.512, and does not interfere with the ability of a covered entity to comply with such subpoena. See 65 Fed. Reg. 82529. Therefore, disclosure by a covered entity of protected health information pursuant to a subpoena issued by the court (and in accordance with Ohio Rule of Criminal Procedure 17(C)) is a permissible disclosure under the HIPAA privacy standards, as long as such disclosure is expressly authorized by the court-ordered subpoena.

However, absent a subpoena issued by a court or administrative tribunal, pursuant to the HIPAA privacy standards as set forth in 45 C.F.R. §164.512(e)(1)(ii), a covered entity may respond to a subpoena or discovery request from, or other lawful process by, a party to the proceeding only if the covered entity obtains either: (1) satisfactory assurances that reasonable efforts have been made to give the individual whose information has been requested notice of the request; or (2) satisfactory assurances that the party seeking such information has made reasonable efforts to secure a protective order that will guard the confidentiality of the information (as described below). In meeting the first test, a covered entity is considered to have received satisfactory assurances from the party seeking the information if that party demonstrates that it has made a good faith effort (such as by sending a notice to the individual's last known address) to provide written notice to the individual whose information is the subject of the request, that the written notice included sufficient information about the proceeding to permit the individual to raise an objection, and that the time for the individual to raise objections to the court or administrative tribunal has elapsed and no objections were filed or any objections filed by the individual have been resolved. Unless required to do so by other law, the covered entity is not required to explain the procedures (if any) available for the individual to object to the disclosure.

A covered entity may also disclose protected health information in response to a subpoena, discovery request, or other lawful process if the covered entity receives satisfactory assurances that the party seeking the information has made reasonable efforts to seek a qualified protective
order that would protect the privacy of the information. A “qualified protective order” means an order of a court or of an administrative tribunal or a stipulation that: (1) prohibits the parties from using or disclosing the protected health information for any purpose other than the litigation or proceeding for which the records are requested; and (2) requires the return to the covered entity or destruction of the protected health information (including all copies made) at the end of the litigation or proceeding. Satisfactory assurances of reasonable efforts to secure a qualified protective order are a statement and documentation that the parties to the dispute have agreed to a protective order and that it has been submitted to the court or administrative tribunal with jurisdiction, or that the party seeking the protected health information has requested a qualified protective order from such court or tribunal. See 65 Fed. Reg. 82529-30.

The HIPAA privacy rules as set forth in 45 C.F.R. §164.512(e)(ii) also permit a covered entity itself to satisfy the requirement to make reasonable efforts to notify the individual whose information has been requested or to seek a qualified protective order; however, covered entities are not required to undertake these efforts in response to a subpoena, discovery request, or similar process (other than an order from a court or administrative tribunal). If a covered entity receives such a request without receiving the satisfactory assurances described above from the party requesting the information, the covered entity is free to object to the disclosure and is not required to undertake the reasonable efforts itself. See 65 Fed. Reg. 82529-30. In order to ensure compliance with both 45 C.F.R. §164.512(e) and Ohio Rule of Criminal Procedure 17, a covered entity should obtain satisfactory assurances, as required by 45 C.F.R. §164.512, when disclosing an individual’s protected health information pursuant to a non-court issued subpoena.

**Action by Covered Entities:** Adopt and implement policies that concurrently comply with the requirements of Ohio Rule of Criminal Procedure 17 and 45 C.F.R. §164.512(e). Ensure that all disclosures pursuant to a non-court issued subpoena satisfy the additional requirements of 45 C.F.R 165.512(e) with respect to obtaining satisfactory assurances.

**Exception Determination/Other Remedy:** Not required
HIPAA Privacy Standards Preemption Requirements Summary (45 C.F.R. §§160.201 - 160.205)

HIPAA privacy standards pre-empt contrary state law unless one of four exceptions listed below applies. “Contrary” means 1) a covered entity would find it impossible to comply with both the State and federal requirements; 2) state law stands as an obstacle to accomplishing the goals of HIPAA.

I. **DHHS determines** that State law
   - Is necessary to:
     A. Prevent fraud and abuse related to provision of or payment for health care;
     B. Ensure appropriate state regulation of insurance and health plans to the extent expressly authorized by law;
     C. For state reporting on health care delivery or costs; or
     D. Serve a compelling need related to public health, safety or welfare, and the Secretary determines that the intrusion into privacy is warranted when balanced against the need to be served.
   - Has as its principal purpose the regulation of the manufacture, registration, distribution, dispensing or other control of controlled substances.

II. State law relates to the privacy of health information and is more stringent than the federal privacy standards. A state law is more stringent if:
   - A. It provides additional restrictions on use and disclosure unless the disclosure is to the individual or the disclosure to DHHS is required to determine if an entity is in compliance with privacy standards;
   - B. It gives the individual greater rights of access or amendment;
   - C. With respect to disclosures of information to the individual who is the subject of the information, provides the individual with more information about uses, disclosures, rights and remedies;
   - D. With respect to the form, substance, or the need for express legal permission from an individual for use or disclosure of individually identifiable health information, narrows the scope or duration, increases the privacy protections, or reduces the coercive effect of the circumstances surrounding the express legal permission;
   - E. With respect to recordkeeping requirements related to accounting of disclosures, provides for the retention or reporting of more detailed information or for a longer duration;
   - F. With respect to any other matter, provides greater privacy protection for the individual who is the subject of the information.

III. State laws providing for the reporting of disease or injury, child abuse, birth, or death, or for the conduct of public health surveillance, investigation, or intervention.
IV. State laws requiring health plans to report, or provide access to, information for the purpose of management audits, financial audits, program monitoring and evaluation, or the licensure of facilities or individuals.
Text of HIPAA Statute and Rules on Preemption

Please note that the text provided below is current as of December 1, 2002.

Public Law 104-191, Health Insurance Portability and Accountability Act of 1996
TITLE II, Subtitle F – Administrative Simplification

SEC. 262. ADMINISTRATIVE SIMPLIFICATION.

(a) IN GENERAL.--Title XI (42 U.S.C. 1301 et seq.) is amended by adding at the end the following:

PART C--ADMINISTRATIVE SIMPLIFICATION

SEC. 1178. EFFECT ON STATE LAW

(a) GENERAL EFFECT.--
(1) GENERAL RULE.--Except as provided in paragraph (2), a provision or requirement under this part, or a standard or implementation specification adopted or established under sections 1172 through 1174, shall supersede any contrary provision of State law, including a provision of State law that requires medical or health plan records (including billing information) to be maintained or transmitted in written rather than electronic form.

(2) EXCEPTIONS.--A provision or requirement under this part, or a standard or implementation specification adopted or established under sections 1172 through 1174, shall not supersede a contrary provision of State law, if the provision of State law--
   (A) is a provision the Secretary determines--
      (i) is necessary--
         (I) to prevent fraud and abuse;
         (II) to ensure appropriate State regulation of insurance and health plans;
         (III) for State reporting on health care delivery or costs; or
         (IV) for other purposes; or
      (ii) addresses controlled substances; or
   (B) subject to section 264(c)(2) of the Health Insurance Portability and Accountability Act of 1996, relates to the privacy of individually identifiable health information.

(b) PUBLIC HEALTH.--Nothing in this part shall be construed to invalidate or limit the authority, power, or procedures established under any law providing for the reporting of disease or injury, child abuse, birth, or death, public health surveillance, or public health investigation or intervention.

(c) STATE REGULATORY REPORTING.--Nothing in this part shall limit the ability of a State to require a health plan to report, or to provide access to, information for management audits, financial audits, program monitoring and evaluation, facility licensure or certification, or individual licensure or certification.
SEC. 264. RECOMMENDATIONS WITH RESPECT TO PRIVACY OF CERTAIN HEALTH INFORMATION.

(a) IN GENERAL.--Not later than the date that is 12 months after the date of the enactment of this Act, the Secretary of Health and Human Services shall submit to the Committee on Labor and Human Resources and the Committee on Finance of the Senate and the Committee on Commerce and the Committee on Ways and Means of the House of Representatives detailed recommendations on standards with respect to the privacy of individually identifiable health information.

(b) SUBJECTS FOR RECOMMENDATIONS.--The recommendations under subsection (a) shall address at least the following:

(1) The rights that an individual who is a subject of individually identifiable health information should have.

(2) The procedures that should be established for the exercise of such rights.

(3) The uses and disclosures of such information that should be authorized or required.

(c) REGULATIONS.--

(1) IN GENERAL.--If legislation governing standards with respect to the privacy of individually identifiable health information transmitted in connection with the transactions described in section 1173(a) of the Social Security Act (as added by section 262) is not enacted by the date that is 36 months after the date of the enactment of this Act, the Secretary of Health and Human Services shall promulgate final regulations containing such standards not later than the date that is 42 months after the date of the enactment of this Act. Such regulations shall address at least the subjects described in subsection (b).

(2) PREEMPTION.--A regulation promulgated under paragraph (1) shall not supercede a contrary provision of State law, if the provision of State law imposes requirements, standards, or implementation specifications that are more stringent than the requirements, standards, or implementation specifications imposed under the regulation.

(d) CONSULTATION.--In carrying out this section, the Secretary of Health and Human Services shall consult with--

(1) the National Committee on Vital and Health Statistics established under section 306(k) of the Public Health Service Act (42 U.S.C. 242k(k)); and

(2) the Attorney General.
§160.201 Applicability.
The provisions of this subpart implement section 1178 of the Act, as added by section 262 of Public Law 104–191.

§160.202 Definitions.
For purposes of this subpart, the following terms have the following meanings:

Contrary, when used to compare a provision of State law to a standard, requirement, or implementation specification adopted under this subchapter, means: (1) A covered entity would find it impossible to comply with both the State and federal requirements; or (2) The provision of State law stands as an obstacle to the accomplishment and execution of the full purposes and objectives of part C of title XI of the Act or section 264 of Pub. L. 104–191, as applicable.

More stringent means, in the context of a comparison of a provision of State law and a standard, requirement, or implementation specification adopted under subpart E of part 164 of this subchapter, a State law that meets one or more of the following criteria:

(1) With respect to a use or disclosure, the law prohibits or restricts a use or disclosure in circumstances under which such use or disclosure otherwise would be permitted under this subchapter, except if the disclosure is: (i) Required by the Secretary in connection with determining whether a covered entity is in compliance with this subchapter; or (ii) To the individual who is the subject of the individually identifiable health information.

(2) With respect to the rights of an individual, who is the subject of the individually identifiable health information, regarding access to or amendment of individually identifiable health information, permits greater rights of access or amendment, as applicable.

(3) With respect to information to be provided to an individual who is the subject of the individually identifiable health information about a use, a disclosure, rights, and remedies, provides the greater amount of information.

(4) With respect to the form, substance, or the need for express legal permission from an individual, who is the subject of the individually identifiable health information, for use or disclosure of individually identifiable information, provides requirements that narrow the scope or duration, increase the privacy protections afforded (such as by expanding the criteria for), or reduce the coercive effect of the circumstances surrounding the express legal permission, as applicable.

(5) With respect to recordkeeping or requirements relating to accounting of disclosures, provides for the retention or reporting of more detailed information or for a longer duration.

(6) With respect to any other matter, provides greater privacy protection for the individual who is the subject of the individually identifiable health information.

Relates to the privacy of individually identifiable health information means, with respect to a State law, that the State law has the specific purpose of protecting the privacy of health information or affects the privacy of health information in a direct, clear, and substantial way.

State law means a constitution, statute, regulation, rule, common law, or other State action having the force and effect of law.
§160.203 General rule and exceptions.
A standard, requirement, or implementation specification adopted under this subchapter that is contrary to a provision of State law preempts the provision of State law. This general rule applies, except if one or more of the following conditions is met:

(a) A determination is made by the Secretary under §160.204 that the provision of State law: (1) Is necessary: (i) To prevent fraud and abuse related to the provision of or payment for health care; (ii) To ensure appropriate State regulation of insurance and health plans to the extent expressly authorized by statute or regulation; (iii) For State reporting on health care delivery or costs; or (iv) For purposes of serving a compelling need related to public health, safety, or welfare, and, if a standard, requirement, or implementation specification under part 164 of this subchapter is at issue, if the Secretary determines that the intrusion into privacy is warranted when balanced against the need to be served; or (2) Has as its principal purpose the regulation of the manufacture, registration, distribution, dispensing, or other control of any controlled substances (as defined in 21 U.S.C. 802), or that is deemed a controlled substance by State law.

(b) The provision of State law relates to the privacy of individually identifiable health information and is more stringent than a standard, requirement, or implementation specification adopted under subpart E of part 164 of this subchapter.

(c) The provision of State law, including State procedures established under such law, as applicable, provides for the reporting of disease or injury, child abuse, birth, or death, or for the conduct of public health surveillance, investigation, or intervention.

(d) The provision of 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.

§160.204 Process for requesting exception determinations.
(a) A request to except a provision of State law from preemption under §160.203(a) may be submitted to the Secretary. A request by a State must be submitted through its chief elected official, or his or her designee. The request must be in writing and include the following information: (1) The State law for which the exception is requested; (2) The particular standard, requirement, or implementation specification for which the exception is requested; (3) The part of the standard or other provision that will not be implemented based on the exception or the additional data to be collected based on the exception, as appropriate; (4) How health care providers, health plans, and other entities would be affected by the exception; (5) The reasons why the State law should not be preempted by the federal standard, requirement, or implementation specification, including how the State law meets one or more of the criteria at §160.203(a); and (6) Any other information the Secretary may request in order to make the determination.

(b) Requests for exception under this section must be submitted to the Secretary at an address that will be published in the Federal Register. Until the Secretary’s determination is made, the standard, requirement, or implementation specification under this subchapter remains in effect.

(c) The Secretary’s determination under this section will be made on the basis of the extent to which the information provided and other factors demonstrate that one or more of the criteria at §160.203(a) has been met.

§160.205 Duration of effectiveness of exception determinations.
An exception granted under this subpart remains in effect until:
(a) Either the State law or the federal standard, requirement, or implementation specification that provided the basis for the exception is materially changed such that the ground for the exception no longer exists; or
(b) The Secretary revokes the exception, based on a determination that the ground supporting the need for the exception no longer exists.