

Preemption Analysis
of Texas Laws Relating to the
Privacy of Health Information
& the Health Insurance
Portability & Accountability Act
& Privacy Rules (HIPAA)

November 1, 2004



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

REPORT OF THE OFFICE OF THE ATTORNEY GENERAL OF TEXAS

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TABLE OF CONTENTS

	<u>Page</u>
Preface	1
HIPAA and Senate Bill 1136	1
The Task Force	1
Process For Review and Analysis of State Law	5
Scope of Review	6
Recurring Issues	11
<i>Written Authorizations</i>	11
<i>Decedents</i>	12
<i>Costs for Copies</i>	12
<i>Records Retention</i>	13
<i>Authorized Representatives</i>	14
Notes Relevant to Particular Codes	15
<i>Health & Safety Code</i>	15
<i>Occupations Code</i>	16
<i>Government Code - The Public Information Act</i>	16
Legislative Recommendations	18
Table of State Laws Reviewed	20
Texas Administrative Code	21
Texas Business & Commerce Code	68
Texas Cases & Common Law Principles	71
Texas Civil Practice & Remedies Code	75
Texas Civil Statutes	77
Texas Code of Criminal Procedure	78
Texas Education Code	81
Texas Family Code	82
Texas Government Code	116
Texas Health & Safety Code	130
Texas Human Resources Code	319
Texas Insurance Code	337
Texas Labor Code	349
Texas Occupations Code	380
Texas Penal Code	460
Texas Rules of Appellate Procedure	461
Texas Rules of Disciplinary Procedure	462
Texas Rules of Evidence	463
Texas Transportation Code	465

PREFACE

HIPAA and Senate Bill 1136

Congress enacted the Health Insurance Portability and Accountability Act of 1996 (the “HIPAA statute”) to improve the portability and continuity of health insurance coverage and establish standards for administrative simplification. The HIPAA statute directs the U.S. Department of Health and Human Services (HHS) to promulgate standards for the electronic exchange, privacy and security of health information. Pursuant to that directive, HHS issued regulations, known as the HIPAA Privacy Rule, that establish national standards for the protection of certain health information. The HIPAA statute and the HIPAA Privacy Rule are referred to collectively as “HIPAA” in this report, except as context indicates otherwise.

HIPAA contains express preemption provisions. Senate Bill 1136, passed in 2003 by the 78th Texas Legislature, requires the Office of the Attorney General (OAG) to perform an analysis of state law to determine which provisions related to the privacy of individually identifiable health information are “preempted by the Health Insurance Portability and Accountability Act and Privacy Standards.” *See* TEX. HEALTH & SAFETY CODE ANN. § 181.251 (Vernon Supp. 2004-05). Senate Bill 1136 allows the OAG to establish a Task Force to assist and advise the Attorney General in performing the preemption analysis. *Id.* § 181.252(a). The legislation requires that the Task Force include a public member, a member from the Texas State Board of Medical Examiners, a member employed by a hospital licensed in Texas, and a member employed by a pharmaceutical manufacturer. *Id.* § 181.252(c)(1)-(4).

No later than November 1, 2004, the Attorney General is required to file a report with the presiding officer of each house of the Legislature that identifies the state laws the Attorney General believes are preempted by HIPAA and which must contain the Attorney General’s recommendations for legislation to make the state laws consistent with HIPAA. *Id.* § 181.252(a), (b).

The Task Force

Potential members of the Task Force were asked to respond to a questionnaire seeking information regarding their experience with HIPAA and state privacy laws. Several Task Force members also submitted articles, reports, manuals, and other documentation evidencing their experience with HIPAA and state privacy laws. The OAG selected a balanced group of appointees with varied experience in both the private and public arenas and with experience in working with state privacy laws and/or having substantive knowledge of HIPAA.

The members of the Task Force and a brief summary of their qualifications are as follows:

1. Joan Carol Bates – Assistant General Counsel, Texas Department of Health (TDH) (now Department of State Health Services). Ms. Bates is the lead attorney for ensuring TDH compliance with HIPAA and worked on the adoption of agency

rules, policies, and procedures. She also reviewed and analyzed all statutes affecting any program or function within TDH or related HHS agencies that use or disclose private health information.

2. Pamela Laura Beach – Attorney. Ms. Beach serves as privacy counsel for 34 community mental health and mental retardation centers around Texas. She assisted the Texas Department of Mental Health & Mental Retardation (MHMR) in developing its preemption analysis and interpretive guidelines and has organized two statewide workshops on HIPAA.
3. Bill Bingham – Deputy for Regulatory Matters, Texas Department of Insurance (TDI). Mr. Bingham has worked for 5 ½ years interpreting confidentiality/privacy statutes for TDI.
4. Jeffrey Boyd – Partner, Thompson & Knight. As former Deputy Attorney General for Litigation, Mr. Boyd routinely dealt with issues under the Texas Public Information Act, several of which dealt with the Health & Safety Code and HIPAA. He also assisted some state agencies in determining whether they were a HIPAA-covered entity and whether certain information was subject to HIPAA’s non-disclosure requirements.
5. Kim Alan Caldwell – R.Ph., Novartis Pharmaceuticals Corporation. Mr. Caldwell is a member of the Texas State Board of Pharmacy and has served as privacy officer for an electronic prescription company.¹
6. James S. Cole – D.D.S., Texas A&M University System, Dean, Baylor College. Dr. Cole served as chair, Texas A&M University System Task Force on HIPAA Compliance.
7. Lee Dickinson – Assistant General Counsel, Texas Health & Human Services Commission. Ms. Dickinson wrote the initial HIPAA policies for Medicaid acute care services and the Children’s Health Insurance Program (CHIP).
8. David E. Garza – D.O., Member, Board of Medical Examiners. Dr. Garza is a family practitioner.²
9. R. Kenneth Gordon – Shareholder, Baker & McKenzie (formerly with Jenkins & Gilchrist). Mr. Gordon is lead author of a HIPAA privacy manual, *HIPAA Privacy: Navigating Texas & Federal Regulations*, and has spoken on HIPAA at various seminars, including the UT Health Law Conference and the Texas

¹ Kirsten Arnold, Assistant General Counsel to the Texas State Board of Pharmacy, assisted the Task Force.

² Jennifer Kauffman, Assistant General Counsel to the Texas State Board of Medical Examiners, also assisted the Task Force.

Hospital Association.

10. Deborah Cortez Hiser – Attorney, Brown McCarroll (formerly with Hilgers & Watkins). Ms. Hiser developed Hilgers & Watkins’ HIPAA Privacy Compliance Manual and has drafted policies and procedures for hospitals, hospital districts, multi-specialty clinics, MHMR centers and a state agency. She served as a member of the Legislative Task Force on Privacy, 78th Legislative Session.
11. Barbara Holthaus – Attorney, Office of General Counsel, The University of Texas System. Ms. Holthaus designed and drafted the HIPAA compliance program for UT System administration which primarily involves the office of Employee Group Insurance’s self-funded health insurance plan.
12. Peter Kennedy – Partner, Graves Dougherty Hearon & Moody (formerly with George & Donaldson, LLP). Mr. Kennedy has served as adjunct professor at The University of Texas School of Law, teaching a seminar on “Free Speech and the Internet.” His firm represents a number of media clients.
13. Noelle C. Letteri – Staff Attorney, General Land Office. Ms. Letteri acts as legal advisor to the Texas State Veterans Homes (TSVH) regarding privacy matters and assisted in writing policies and procedures for HIPAA compliance.
14. Ronald Lindsey – Public Member. Mr. Lindsey retired from state government in 1999. He served in numerous high-level positions including Commissioner, Texas Department of Human Services, and Health and Human Services Policy director for Governor George W. Bush.
15. Margaret O’Donnell – Senior Attorney, CHRISTUS Health Legal & Governance Services. Ms. O’Donnell has served during the past three years on the CHRISTUS Health HIPAA Compliance Action Committee and has trained staff and physicians.
16. Janet E. Smith – Attorney and former Privacy Officer, Texas Department of Mental Health and Mental Retardation (MHMR). Ms. Smith was the staff attorney responsible for MHMR’s compliance with HIPAA and wrote *Interpretive Guidance on Laws Pertaining to Privacy of Mental Health & Mental Retardation Records for the TDMHMR Service Delivery System*.
17. Lee A. Spangler – Associate General Counsel, Texas Medical Association. Mr. Spangler has made presentations on HIPAA to county medical societies and physician associations and is co-author of *HIPAA: Take the Bull By the Horns*.
18. Brenda T. Strama – Partner-in-Charge, Vinson & Elkins health care operations. Ms. Strama has developed privacy policies and procedures for more than 50 health care clients and more than 20 group health plans. She is a noted expert on

health care privacy and has given numerous presentations on HIPAA at national and state seminars and conferences.

19. Helen Timbes – M.B.A., R.H.I.A., former Director of Clinical Information Services and Institutional Privacy Officer, Texas Tech University Health Sciences Center School of Medicine. Ms. Timbes was responsible for coordinating a system-wide effort to become HIPAA compliant.
20. Matthew T. Wall – Associate General Counsel, Texas Hospital Association. Mr. Wall is co-author of a comprehensive HIPAA state preemption manual, *HIPAA Privacy: Navigating Texas & Federal Regulations*.

The Task Force was chaired by Edna Ramón Butts, Special Assistant Attorney General. The Task Force was assisted by the following OAG attorneys and staff:

1. Suzanna Basinger – Assistant Attorney General, General Counsel Division
2. Shelley Dahlberg – Assistant Attorney General, General Counsel Division (now with General Litigation Division)
3. Denise Donnelly – Legislative Liaison, Intergovernmental Relations Division
4. Lesli Ginn – Law Clerk, Antitrust & Civil Medicaid Fraud Division
5. Kay Hastings – Assistant Attorney General, Open Records Division
6. William (Bill) Hill – Assistant Attorney General, Opinions Committee Division
7. Audrey Knight – Assistant Attorney General, General Counsel Division
8. Cynthia O’Keeffe – Assistant Attorney General, Antitrust & Civil Medicaid Fraud Division

Because of the extensive number of state laws to be reviewed, the Task Force was divided into five groups. Each group, which was led by an OAG attorney, was assigned specific statutes and related rules to review. The composition of the groups and their assigned statutes are as follows:

Group 1: *Health & Safety Code*

Bill Hill, Audrey Knight, and Denise Donnelly, OAG
Joan Bates, TDH
Helen Timbes, Texas Tech University Health Sciences Center School of Medicine
Brenda Strama, Vinson & Elkins
Kenneth Gordon, Baker & McKenzie
Ron Lindsey, Public Member

Group 2: *Insurance Code and Civil Statutes*

Edna Ramón Butts, OAG
Bill Bingham, TDI
Barbara Holthaus, UT System
Deborah Cortez Hiser, Brown McCarroll

Group 3: *Occupations Code and Labor Code*

Shelley Dahlberg and Suzanna Basinger, OAG
David Garza, D.O., TSBME
Kim Caldwell, Novartis Pharmaceuticals
Matt Wall, Texas Hospital Association
Lee Spangler, Texas Medical Association

Group 4: *Family Code, Education Code, Civil Practice & Remedies Code, Penal Code, Code of Criminal Procedure*

Cynthia O’Keeffe, OAG
Margaret O’Donnell, CHRISTUS
Pamela Beach, MHMR centers counsel
Janet Smith, MHMR
Peter Kennedy, Graves Dougherty Hearon & Moody

Group 5: *Government Code, Human Resources Code, Business & Commerce Code, Rules of Civil Procedure, Rules of Appellate Procedure, Transportation Code*

Kay Hastings, OAG
Lee Dickinson, HHSC
Noelle Letteri, GLO
James Cole, D.D.S., Texas A&M University System
Jeff Boyd, Thompson & Knight

PROCESS FOR REVIEW AND ANALYSIS OF STATE LAW

The Task Force employed several different search techniques to gather all the state laws relevant to the OAG’s preemption analysis. Attorneys at the OAG searched online legal databases, such as Westlaw, using terms related to the privacy of health information. OAG attorneys also reviewed the table of contents in the various Texas codes to search for any laws that the text search did not capture. In addition, the OAG contacted state agencies that designated themselves as covered entities, both hybrid and wholly covered, to determine whether they had encountered any state laws that conflicted with HIPAA. Laws identified by those agencies that were not already part of the OAG’s list were added. Once the various groups began meeting, they

reviewed their assigned codes to look for any additional statutes that had not been captured by the initial searches. In addition, because HIPAA defines “state law” broadly to include “a constitution, statute, regulation, rule, common law, or other State action having the force and effect of law,” the groups also endeavored to find any relevant provisions outside of Texas’ statutes. *See* 45 C.F.R. § 160.202 for definition of “state law.”

Once the groups identified all provisions of state law that could potentially conflict with HIPAA, they sorted the laws into the following categories:

1. State laws reviewed, but determined not to be related to HIPAA;
2. State laws reviewed and determined to be related to HIPAA, but not contrary to it;
3. State laws reviewed, determined to be related to HIPAA and contrary to it, but excepted from preemption under HIPAA’s exceptions; and
4. State laws reviewed, determined to be related to, contrary to, and preempted by HIPAA.

The table of state laws was prepared as part of this report and includes laws that were found not to be related to or contrary to HIPAA, as well as laws that were found to be preempted by HIPAA. The Task Force designed the table to provide the Legislature with a complete record of the Task Force’s process, not just a list of state laws it found to be preempted by HIPAA.

Scope of Review

Senate Bill 1136 instructed the Attorney General to “perform an analysis of state law to determine which provisions of state law related to the privacy of individually identifiable health information are preempted by the Health Insurance Portability and Accountability Act and Privacy Standards.” TEX. HEALTH & SAFETY CODE ANN. § 181.251 (Vernon Supp. 2004-05). At the same time, the Attorney General was charged with preparing this report to the Legislature, to “identif[y] the laws the attorney general believes are preempted by the Health Insurance Portability and Accountability Act and Privacy Standards.” *Id.* § 181.252. Although the HIPAA statute concerns a number of subjects such as insurance portability and administrative simplification, the Task Force limited its review, pursuant to Senate Bill 1136, to a preemption analysis of the privacy provisions of the HIPAA statute and the HIPAA Privacy Rule only.

The HIPAA Privacy Rule, promulgated pursuant to the HIPAA statute, is a comprehensive and technical set of privacy regulations. Consequently, in each case the principal task was to measure state law against the Privacy Rule.

As a starting point, the Task Force considered the broadest class of state laws that posed a potential for conflict with HIPAA. Senate Bill 1136 specifies a review of “state law related to the privacy of individually identifiable health information,” which is also a HIPAA-defined phrase. HIPAA defines “related to the privacy of individually identifiable health information”

specifically to mean “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.” 45 C.F.R. § 160.202. However, in the course of Task Force review, it became apparent that an analysis confined to state laws strictly meeting the HIPAA definition of “related to” would not fully identify for the Legislature all state laws that might be preempted by HIPAA. In fact, there are only two types of state laws that could be preempted under the first definition of “contrary to” in HIPAA: laws that prohibit an individual’s required access to protected health information (PHI) and laws that prohibit the Secretary’s right of access to PHI. Neither of these types of laws would meet the narrow definition of “related to the privacy of individually identifiable health information.” Moreover, there are several types of exceptions to preemption that would be superfluous if HIPAA preempts only laws related to the privacy of individually identifiable health information (IIHI). Specifically, if only those laws that meet the narrow definition of “related to” could be preempted, there would be no need for the exceptions to preemption contained in subsections (a), (c), and (d) of 45 C.F.R. § 160.203. (*See* discussion *infra* p.10.) Consequently, the Task Force considered not only those state laws that relate to the privacy of individually identifiable health information in the narrow sense, but also other state laws that relate to HIPAA.

While it became apparent that the scope of state laws reviewed should be broad in order to fully inform the Legislature, it also became apparent that the classes of laws that HHS defines as “contrary” likely would be narrow. The HIPAA regulations provide:

‘Contrary’ when used to compare a provision of State law to a standard, requirement, or implementation specification required by the HIPAA regulations, 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 purpose of [HIPAA].

45 C.F.R. § 160.202. As illustrated in the table below, a covered entity will almost never find it impossible to comply with both state law and HIPAA.

HIPAA	STATE LAW	RESULT
Requires a use/disclosure	Prohibits a use/disclosure	State law is contrary .
Prohibits a use/disclosure	Authorizes the prohibited use/disclosure	State law is not contrary under first prong of definition – covered entity could choose not to use or disclose in manner authorized by state law; law may still be contrary under second prong.
Authorizes a use/disclosure	Prohibits a use/disclosure	State law is not contrary under first prong of definition – covered entity could choose not to make disclosure authorized under HIPAA and be in compliance with HIPAA and state law; state law may still be contrary under second prong of definition.
Prohibits a use/disclosure	Requires a use/disclosure	State law is not contrary – the use or disclosure required by state law is permitted under 45 C.F.R. § 164.512 (a)(1), which allows covered entities to use PHI or make disclosures that are required by state law.
Requires a use/disclosure	Authorizes a use/disclosure	State law is not contrary – covered entity could make the disclosure under HIPAA and state law.
Authorizes a use/disclosure	Requires a use/disclosure	State law is not contrary – covered entity could make the disclosure under HIPAA and state law.

Indeed, HHS guidance offers one of the few scenarios that meets the first prong of the definition of “contrary” - when HIPAA requires a use or disclosure, specifically an individual’s access to his or her own records, and state law prohibits the access. The only other scenario for a truly “contrary” law, such that it is impossible to comply with both HIPAA privacy provisions and state law, would appear to be when a state law effectively denies the Secretary of HHS access to a covered entity’s records.

Under the second definition of “contrary,” a state law may be preempted, even though an entity could comply with both the state and federal requirements, because the state law “stands as an obstacle to the accomplishment and execution of the full purpose of” HIPAA. HHS has indicated the importance of the second definition to HIPAA’s administrative simplification provisions, but has provided less guidance about its application to privacy provisions. *See* 64 Fed. Reg. 59918, 59997 (Nov. 3, 1999); OCR Privacy Rule Summary at 17 (available at <http://www.hhs.gov/ocr/privacysummary.pdf> (rev'd 05/03)). Complicating the analysis is the fact that, unlike administrative simplification, which is intended to establish a uniform national standard, HIPAA privacy provisions are intended only to establish a federal “floor.”

Nonetheless, there are many provisions in state law that may not rise to the level of the HHS definition of “contrary,” but that may be in tension or conflict with HIPAA. Such conflicts or differences generally have been noted for several reasons. In instances where state law authorizes that which is prohibited by HIPAA, compliance may be facilitated if the prohibitions of the state law and the federal law are uniform. In this regard, the Task Force noted differences in state and federal law, where concepts that play a central role in HIPAA do not exist in state law. For instance, Texas law does not contain provisions comparable to those in HIPAA such as “business associate contracts” and “organized health care arrangements.” Additionally, Texas law does not incorporate the broad disclosures authorized in HIPAA’s section for “treatment, payment, and health care operations.” The Task Force considered it important to provide the Legislature with the broadest body of information possible in understanding the differences between state law and HIPAA and difficulties that covered entities may have in complying with both sets of laws.

Large classes of state laws are saved from preemption because of the breadth of HIPAA’s permitted uses and disclosures. A non-exhaustive list of those permitted uses and disclosures relied upon most often by the Task Force is as follows:

1. Uses and disclosures to the individual, 45 C.F.R. § 164.502 (a)(2);
2. Uses and disclosures for treatment, payment or health care operations, 45 C.F.R. § 164.506;
3. Uses and disclosures that are required by law, 45 C.F.R. § 164.512 (a);
4. Uses and disclosures for public health activities, 45 C.F.R. § 164.512 (b);
5. Uses and disclosures for health oversight activities, including audits; civil, administrative, or criminal investigations; inspections; licensure or disciplinary actions; civil, administrative, or criminal proceedings or actions, 45 C.F.R. § 164.512(d);
6. Disclosures for judicial and administrative proceedings, 45 C.F.R. § 164.512(e); and
7. Disclosures for law enforcement purposes, 45 C.F.R. § 164.512(f), and in particular § 164.512(f)(1)(ii)(C), which authorizes disclosures pursuant to an administrative request, including an administrative subpoena or summons, a civil or an authorized investigative demand, or similar process authorized by law.

In analyzing whether a law fits into one of the permitted use and disclosure provisions of

HIPAA, the Task Force generally noted the relevant provision in the attached table. It is important to note, however, that enumerating a permitted use and disclosure provision is not tantamount to a conclusion that no other provision applies. Moreover, not specifying a permitted use and disclosure provision should not be construed to mean that one is not applicable.

In many instances in which the Task Force noted that a state statute authorizes (rather than *mandates*) that which is prohibited by HIPAA, no specific recommendations were made. If the Legislature chooses to amend these statutes, it has several options, including: (1) leave the substance of the state law intact, but add a reference to HIPAA's additional requirements or inconsistent provisions, *see, e.g.*, discussion of section 153.371 of the Texas Family Code; (2) make the state law that authorizes use or disclosure mandatory so that the provision of HIPAA that permits use or disclosure if required by law applies, 45 C.F.R. § 164.512(a); or (3) require that the authorized use or disclosure comply with federal law, specifically HIPAA. By choosing the first option, the Legislature could take the opportunity to minimize confusion for Texas' covered entities. By choosing the second option, making use or disclosure mandatory where HIPAA prohibits it or prohibiting use or disclosure where HIPAA permits it, the Legislature would, in effect, allow state law to control. Conversely, by choosing the third option, the Legislature would choose to let HIPAA control. A factor to consider in weighing these options is that HIPAA applies to covered entities only, while state law may apply to non-covered entities as well as to covered entities.

Even where a law is found to be contrary, HIPAA provides certain exceptions from the general rule of preemption. According to this general rule, a state law that is "contrary" to a standard, requirement or implementation specification of HIPAA will be preempted, unless the state law falls under one of the following four categories of exceptions:

1. The state law has been the subject of a determination by the Secretary [of Health and Human Services] in which the state law was held not to be preempted;
2. The state law is more stringent than HIPAA;
3. The 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; or
4. The state law governs accessibility to, or the reporting of information in the possession of health plans for the purpose of certain audits, licensure, or program monitoring and evaluation.

See 45 C.F.R. § 160.203. The exceptions found to apply most often were the second exception, the state law is more stringent than HIPAA, and the third exception, reporting of child abuse. State laws are generally "more stringent" than HIPAA where: (1) they are more restrictive with respect to use and disclosure of PHI by covered entities; (2) they offer individuals who are the subjects of personally identifiable health information greater rights of access to or amendment of their PHI; or (3) they provide an overall greater amount of privacy protection to such individuals.

The general counsels of 37 state agencies that administer, implement or enforce the laws the Task Force reviewed were provided the opportunity to review and comment on this report in draft form before it was made final. This analysis represents the Task Force's best judgment about the interplay between HIPAA and Texas laws that were identified as affecting health information. HIPAA is complex and relatively new and the healthcare legal community's understanding and interpretation of it is still evolving. Additionally, state and federal law is not static, and new legislation, regulations, and judicial and administrative interpretation may affect the analysis. Consequently, this report should be viewed as a "snapshot," and HIPAA preemption analysis should be an ongoing process for private and governmental entities affected by HIPAA.

To complicate matters further, this report was prepared concurrently with implementation of the extensive health and human services agency reorganization under House Bill 2292, 78th Legislature, Regular Session. This 2003 legislation consolidated 12 HHS agencies into five, and transferred and reorganized authority, functions and accountability within the agencies. Although most of the functions these agencies perform will continue under the auspices of a different agency's name, most of these agencies no longer exist effective September 1, 2004. The newly created consolidated agencies are in the process of reassessing authority and functions, as well as covered entity status under HIPAA, as this report is being finalized. In order to reflect the statutory text in effect at the time of this report, the Task Force has retained references to legacy agency names as they appear in the statutes. However, many of the changes called for by House Bill 2292 took effect on an administrative level during the analysis and drafting of this report, resulting in whole or in part in (1) changes to the names of the administrative agencies, (2) changes to the titles of the rules, and (3) amendments or repeal of the rules. Therefore, to the extent possible, every attempt was made to update the table for the Texas Administrative Code so that the Legislature will be directed to the rules as they existed at the time of the printing of this report.

Recurring Issues

Most of the state laws reviewed in these categories were found not to be preempted by HIPAA because it is not impossible to comply with both laws and state law does not appear to pose an obstacle to the purposes of HIPAA. However, because the requirements of state law and HIPAA are different in most cases, there may be some confusion that could be clarified by addressing these issues separately in the text of this report.

1. Written Authorizations

Many state laws address written authorizations a covered entity must receive before it is permitted to disclose PHI to third parties. However, various state laws refer to these written authorizations using different terms, such as "consent," "consent form," "release," "written release," "written consent," and "waiver." *See, e.g.,* TEX. HEALTH & SAFETY CODE ANN. §§ 44.072-073 (Vernon 2001); 47.008 (Vernon Supp. 2004-05); 81.103 (Vernon 2001); 161.0073 (Vernon Supp. 2004-05); 611.004; 611.006; 773.092-093 (Vernon 2003); TEX. OCC. CODE ANN. § 159.005 (Vernon 2004). Using uniform terminology to refer to written authorizations will facilitate compliance.

HIPAA 45 C.F.R. § 164.508(c)(1) describes the core elements for a valid authorization, and 45 C.F.R. § 164.508(c)(2) requires that the authorization contain certain statements, such as the individual's right to revoke the authorization. For an authorization to be consistent with both HIPAA and state laws, it will need to contain HIPAA's core elements and requirements and the requirements of state law.

2. Decedents

HIPAA explicitly states that deceased persons are entitled to HIPAA's privacy protections in 45 C.F.R. § 164.502(f), but allows disclosures in certain situations. For example, HIPAA 45 C.F.R. § 164.512(f)(4) authorizes a covered entity to disclose PHI about a decedent to a law enforcement official if there is a suspicion that the death may have resulted from criminal conduct. HIPAA 45 C.F.R. § 164.512(g) authorizes use and disclosure of information about decedents to a coroner or medical examiner for the purpose of identifying a deceased person, determining cause of death or other duties as authorized by law; to funeral directors if necessary to carry out their duties; to organ procurement organizations for the purpose of facilitating organ, eye or tissue donation and transplantation, and; for research under strict conditions.

Under Texas common law, the right to privacy is purely personal and terminates upon the death of the person whose privacy is invaded.³ However, there are state statutes that confer confidentiality in many instances. In the very limited circumstances where no state statute provides for the confidentiality of the information, this rule of Texas common law stands as an obstacle to the full purposes and intentions of HIPAA. A covered entity must comply with HIPAA's privacy protections for decedents.

3. Costs for Copies

State laws and administrative rules set varied fees for copying records. HIPAA 45 C.F.R. § 164.524 authorizes a covered entity to impose a reasonable, cost-based fee that includes only the cost of copying, including the cost of supplies and labor for copying; postage, if mailed; and preparing an explanation or summary of the protected health information if the explanation or summary is agreed to by the individual.

In the commentary that accompanied the original adoption of the HIPAA privacy regulations, HHS stated that for enforcement purposes "[f]ees for copying and postage provided under state law, but not for other costs excluded under this rule, are presumed reasonable." 65 Fed. Reg. 82557.

Any state laws that allow a covered entity to impose a fee if an individual or his/her authorized representative merely wishes to *inspect* (rather than obtain copies of) those

³ *Cox Texas Newspapers v. Wooten*, 59 S.W. 3d 717 (Tex. App. - Austin 2001, pet. denied); *Moore v. Charles B. Pierce Film Enterprises, Inc.*, 589 S.W.2d 489 (Tex. Civ. App. - Texarkana 1979, writ ref'd n.r.e.).

records are preempted by HIPAA.

4. Records Retention

Many state laws reviewed specify certain time periods for which records must be kept or periods after which destruction of certain records may or even must be destroyed.

HIPAA does not impose a records retention requirement for PHI. 65 Fed. Reg. 82462, 82462 (Dec. 28, 2000). However, HIPAA 45 C.F.R. § 164.530(j)(2) requires a covered entity to maintain its policies and procedures, and for any “action, activity, or designation . . . required by this subpart to be documented, maintain a written or electronic record of such action, activity, or designation.” HIPAA 45 C.F.R. § 160.310(a) requires a covered entity to keep such records to allow HHS’ Office for Civil Rights (OCR) to ensure the covered entity is in compliance with the rules. HIPAA 45 C.F.R. § 160.310(c) specifies that these records may include PHI:

A covered entity must permit access by the Secretary during normal business hours to its facilities, books, records, accounts, and other sources of information, *including protected health information*, that are pertinent to ascertaining compliance with the applicable requirements of this part 160 and the applicable standards, requirements, and implementation specifications of subpart E of part 164 of this subchapter.

45 C.F.R. § 160.310(c)(1). (Emphasis added.)

HIPAA 45 C.F.R. § 160.522 places a six-year statute of limitations upon OCR to bring an action against a covered entity for non-compliance. Commentary indicates the six-year documentation period in 45 C.F.R. § 164.530(j) was selected to complement the six-year statute of limitations on OCR investigations: “We established the retention period at six years because this is the statute of limitations for the civil monetary penalties. This rule does not apply to all pharmacy records, but only to the documentation required by this rule.” 65 Fed. Reg. at 82750.

In addition, under HIPAA 45 C.F.R. § 164.528(d), an individual has a right to an accounting from a covered entity of certain disclosures made by the covered entity during the previous six years. Again, OCR commentary indicates that this six-year requirement was selected to dovetail with the other six-year retention requirements:

In the final rule, we provide that individuals have a right to an accounting of the applicable disclosures that have been made in the six-year period prior to a request for an accounting. We adopt this time frame to conform with the other documentation retention requirements in the rule. We also note that an individual may request, and a covered entity may then provide, an accounting of disclosures for a period of time less than six years from the date of the request.

65 Fed. Reg. at 82744.

OCR also indicated that the accounting requirement is designed to provide a mechanism to provide individuals a red flag that there may be a problem with their records that justifies the filing of a complaint:

The provision serves multiple purposes. It provides a means of informing the individual as to which information has been sent to which recipients. This information, in turn, enables individuals to exercise certain other rights under the rule, such as the rights to inspection and amendment, with greater precision and ease. The accounting also allows individuals to monitor how covered entities are complying with the rule. Though covered entities who deliberately make disclosures in violation of the rule may be unlikely to note such a breach in the accounting, other covered entities may document inappropriate disclosures that they make out of ignorance and not malfeasance. The accounting will enable the individual to address such concerns with the covered entity.

Id. at 82462.

The absence of an explicit records retention period in the Privacy Rule is exceedingly difficult to reconcile with the enforcement rights of HHS and individual rights to a meaningful accounting. In declining to adopt a retention period for the documents underlying an accounting, HHS took note of variation in state retention laws, as well as the cost to some entities of increasing the retention period. 65 Fed. Reg. 82743, 82749-50. HHS declined to balance the financial burden of a records retention period against the interests of enforcement and, more importantly, the interests of individual citizens in a meaningful accounting of the disclosures of their protected health information. This exercise was properly left to state legislatures. In sum, HIPAA's six-year records retention requirements expressly apply to certain records described in the Privacy Rule, not to PHI generally. But a shorter state law retention period applied to a record or documents containing PHI that has been disclosed, arguably would stand as an obstacle to the right to an accounting of disclosures under HIPAA. Because the Task Force wishes to alert the Legislature to instances in which a state law document retention or destruction timetable may conflict with the ability of individuals to obtain a full accounting of disclosures, it has classified such laws as "possibly contrary" under the second prong of the definition.

5. Authorized Representatives

HIPAA 45 C.F.R. § 164.502(g) defines personal representatives as persons who have the authority *under applicable law* to make health care decisions on behalf of adults or emancipated minors, as well as parents, guardians or other persons acting *in loco parentis*, who have the authority *under applicable law* to make health care decisions on

behalf of unemancipated minors.

Persons who are authorized under state law to make health care decisions on behalf of other individuals will also be personal representatives under HIPAA.

Notes Relevant To Particular Codes

1. Health and Safety Code

Commentary: Comments to the Health and Safety Code provisions were made on essentially two levels. In considering any given statute, a line-by-line comparison to the text of HIPAA was done and notes made of relevant differences. There were several provisions, while not contrary to HIPAA, that could benefit from a global approach to statutory revisions.

For instance, the Health and Safety Code has more than 50 statutes expressly concerning confidentiality. Whether HIPAA preempts the confidentiality statutes involving health information is addressed in the Health and Safety Code analysis in tabular form. However, in the course of the Task Force's review it was noted that the various confidentiality statutes in the Code differ within the Code and across Codes, *e.g.*, the Occupations Code. Some Task Force members suggested that a confidentiality provision broadly applicable to healthcare professionals and entities would simplify compliance.

In a similar vein, HIPAA preemption is complicated by the fact that certain constructs in HIPAA, such as business associates, exceptions for health care operations, or organized health care arrangements, have no counterpart in state law. Some Task Force members have suggested incorporating those constructs into state healthcare information privacy law.

House Bill 2292: At the time the Task Force was performing its review, much of the structure of the state's health agencies was in flux owing to changes made during the 78th Legislature, most saliently those changes made pursuant to House Bill 2292. As was the case in Attorney General Opinion GA-0083 (2003), it is not always possible to determine how information will be shared or used when the various organizations have not fully implemented their reorganizations nor their rules. If doubt was ever cast on a provision because of potential changes in the wake of House Bill 2292, a notation was made. Because certain aspects of the transition had not been finalized by the time of this report, certain elements may call for re-analysis.

Categories: Because of the large number of statutes under consideration, subgroups of the larger group initially categorized the statutes. A number of statutes arguably could be categorized as either "not related" (NR) or "related but not contrary" (RNC), but either way would not be contrary to HIPAA.

Generally, statutes were categorized without including commentary when the analysis was

relatively straightforward. In other cases, the group merely noted which provisions of the law under consideration made it relevant to HIPAA's privacy provisions. Other laws that were more difficult to reconcile were given detailed explanations.

Abbreviations: The group made use of several abbreviations, explained below:

RNC:	related, not contrary
NC:	not contrary
NR:	not related
RBL:	required by law
TPO:	permitted disclosures for “treatment, payment, and health care operations” in 45 C.F.R. § 164.506
HCO:	health care operations
OHCA:	organized health care arrangement
BA:	business associate
CE:	covered entity

2. Occupations Code

As was the case with other codes, there were many provisions of the Occupations Code that were different from, but not contrary to, HIPAA and the Privacy Rule. In this context, however, the Task Force felt it especially persuasive to leave state law intact because there are large numbers of health care providers who continue to be outside the scope of HIPAA because they do not engage in any of HIPAA’s standard transactions electronically.

Regarding the Occupations Code provisions for confidentiality of peer review committee records, *see* TEX. OCC. CODE ANN. §§ 160.007, 202.455 (Vernon 2004), the Task Force did not intend to decide that peer review committees necessarily are covered entities under HIPAA. The Task Force’s analysis of those laws considered a peer review committee may have determined that it is a covered entity by virtue of the fact that it is contained within a covered entity such as a hospital.

3. Government Code – The Texas Public Information Act

The Task Force members were faced with numerous situations in which they were forced to confront the interplay of the HIPAA Privacy Rule with the Texas Public Information Act (PIA), chapter 552 of the Government Code. Because some governmental bodies subject to the PIA are also covered entities subject to the Privacy Rule, some information subject to required disclosure under the PIA may also be protected health information subject to the Privacy Rule. In deciding questions about the disclosure of PHI by governmental bodies that are covered entities, the Task Force relied on the Attorney General’s analysis of the interplay of the two laws in Open Records Decision No. 681

(2004).⁴ In that decision, the Attorney General determined, among other things, that when a covered entity that is a governmental body subject to the PIA is presented with a request under the PIA for protected health information from a member of the public, it must evaluate the disclosure under the PIA rather than the Privacy Rule. It merits mention that the decision did *not* conclude that the PIA trumped HIPAA wholesale. Rather, it cited federally issued HIPAA guidelines that advised federal agencies that are also covered entities under HIPAA that, when faced with a request for PHI, to look to the Freedom of Information Act (the federal counterpart to the PIA), not to the HIPAA Privacy Rule, to determine the extent of the required public disclosure of the information. *See* 65 Fed. Reg. 82462, 82482 (2000). By extension, the Attorney General reasoned that state and local governmental bodies in Texas should look to the PIA, not the Privacy Rule, to discern whether and to what degree disclosure is required. The decision also determined that in all other respects, including disclosure of information that is not requested under the PIA, governmental bodies that are covered entities must comply with the Privacy Rule. Consequently, when the Task Force considered a state law that affects the public disclosure of PHI by a governmental body that is a covered entity, in accordance with the Attorney General's analysis in Open Records Decision No. 681, the statute was determined to be not contrary to the Privacy Rule.

Six lawsuits challenging open records rulings of the Attorney General concerning the release of requested information by governmental bodies that are covered entities are pending in Travis County district courts: *Tex. Dept. of Human Services v. Abbott*, GN 302639 (53rd Dist. Ct., Travis County, Texas), *Tex. Dept. of Human Services v. Abbott*, GN 302695 (126th Dist. Ct., Travis County, Texas); *Tex. Dept. of Human Services v. Abbott*, GN 302802 (125th Dist. Ct., Travis County, Texas); *Tex. Dept. of Human Services v. Abbott*, GN 304028 (53rd Dist. Ct., Travis County, Texas); *Texas Dept. of Mental Health and Mental Retardation v. Abbott*, GN 304158 (261st Dist. Ct., Travis County, Texas); and *Texas Dept. of Mental Health and Mental Retardation v. Abbott*, GN 400344 (261st Dist. Ct., Travis County, Texas). Plaintiffs in each case ask the court to declare that information requested under the PIA is made confidential under the Privacy Rule and consequently, is not subject to disclosure under the PIA. Thus, in these six lawsuits brought by two governmental bodies that are covered entities subject to the Privacy Rule, the validity of Open Records Decision No. 681 is called into question.

On August 25, 2004, Judge Patrick Keel heard arguments in the case of *Texas Dept. of Mental Health and Mental Retardation v. Abbott*, GN 400344 (261st Dist. Ct., Travis County, Texas). Plaintiff argued that the HIPAA Privacy Rule prevents it from releasing requested protected health information except pursuant to HIPAA and that information made confidential under HIPAA is confidential under the PIA. On October 19, 2004, the court signed an amended final summary judgment granting plaintiff's motion for summary judgment and finding that the information the Open Records Division ordered released in OR2004-1451 is confidential by law and exempt from disclosure under the

⁴ Available at <http://www.oag.state.tx.us>

Public Information Act because the term “confidential by law” includes HIPAA. As of the date of the printing of this report, the Attorney General intends to appeal the court’s decision. Should it be finally determined in a court of law that the analysis of the interplay of the PIA and the Privacy Rule in Open Records Decision No. 681 is invalid, the statutes for which the Task Force relied on the conclusions of Open Records Decision No. 681, should be reevaluated in light of that court decision.

LEGISLATIVE RECOMMENDATIONS

The attached table contains legislative recommendations in instances in which state laws are preempted by HIPAA and in other instances in which compliance with both state law and HIPAA would be facilitated by clarification of the state law. The table also contains recommendations to changes in the Texas Administrative Code.

It is important to note that in the instances in which the Task Force states that a governmental entity is not a “covered entity” under HIPAA, it relied primarily on the governmental entity’s representation to the OAG. Furthermore, because an entity is responsible for designating itself as “covered,” “non-covered,” or “hybrid,” the Task Force was not in a position to comment on the propriety of a particular agency’s designation. HIPAA applies only to covered entities, or covered functions within hybrid entities. The Task Force’s efforts, therefore, focused on identifying situations in which an agency’s designation affects the way in which state laws apply to it.

For example, many state laws authorize the use or disclosure of information that would be PHI in the hands of a governmental body that is also a covered entity. Such laws fail to meet the physical impossibility prong of the “contrary” definition and are generally not preempted because the entity can simply decline to make the disclosure. In practice, however, this reconciliation has an impact on the flow of information. For instance, section 142.009 of the Health and Safety Code governs surveys and consumer complaints of home and community support services. The section is administered by the Department of Human Services (DHS) (now the Department of Aging and Disability Services (DADS)). Because DHS identified itself as a covered entity, rather than as a hybrid entity with healthcare components that engage in covered functions, it must follow any additional restrictions in HIPAA in using or disclosing PHI. So, although section 142.009 authorizes DHS to release “reports, records, and working papers used or developed in an investigation . . . to a state or federal agency,” a strict reading of the relevant laws means that DHS can only disclose such information to a state or federal agency that would be authorized under HIPAA to receive the information – which effectively operates as a limitation on DHS’ discretion in releasing such documents. This is particularly true in the case of DHS (and DADS), which has taken the position that it may use, but not disclose, information in its capacity as a health oversight agency.

The Task Force recommends changes to the following laws:

Family Code

- § 58.0071: Destruction of Certain Physical Records and Files
- § 82.010: Confidentiality of Application
- § 107.006: Access to Child and Information Relating to Child
- § 160.757: Inspection of Records
- § 162.018: Access to Information
- § 162.414: Matching Procedures
- § 162.422: Immunity From Liability
- § 264.408: Use of Information and Records; Confidentiality and Ownership

Health & Safety Code

- § 142.009: Surveys; Consumer Complaints
- § 181.001: Medical Records Privacy; Definitions
- § 181.053: Non-Profit Agencies
- § 241.153: Disclosure Without Written Authorization
- § 241.154: Request
- § 262.030: Medical Records
- § 281.073: Disposition of District Records
- § 595.001: Confidentiality of Records
- § 595.004: Right to Personal Record
- § 611.002: Confidentiality of Information and Prohibition Against Disclosure
- § 611.0045: Right to Mental Health Record
- § 611.008: Request by Patient

Texas Administrative Code

- 25 TAC § 1.207: Investigations of Abuse, Neglect, or Exploitation of Children or

Elderly or Disabled Persons; Confidentiality of Investigative
Process and Report

40 TAC § 92.106: Abuse, Neglect and Exploitation; Complaint and Incident Reports
and Investigations - General Provisions

TABLE OF STATE LAWS REVIEWED

Texas Administrative Code
Texas Business & Commerce Code
Texas Cases & Common Law Principles
Texas Civil Practice & Remedies Code
Texas Civil Statutes
Texas Code of Criminal Procedure
Texas Education Code
Texas Family Code
Texas Government Code
Texas Health & Safety Code
Texas Human Resources Code
Texas Insurance Code
Texas Labor Code
Texas Occupations Code
Texas Penal Code
Texas Rules of Appellate Procedure
Texas Rules of Disciplinary Procedure
Texas Rules of Evidence
Texas Transportation Code

Texas Administrative Code

Section	Path	Related/ Contrary	Explanation	Preemption Exception	Is State Law Preempted?	Recommendation
Title 1: Administration						
1 TAC § 55.1 Agency and Agency Attorneys in Child Support Cases	Part 3 (OAG) - Ch. 55 (Child Support Enforcement) - Subch. A	Not Related	Addresses the designation of the AG as the appropriate agency to handle certain tasks related to Child Support Enforcement.		No	
1 TAC § 55.2 Title IV-D Agency May Appear as a Party at any Stage of Litigation	Part 3 (OAG) - Ch. 55 (Child Support Enforcement) - Subch. A	Not Related	Allows the Office of Attorney General to appear as a party at any stage of any legal proceeding, regardless of whether the agency was a party at trial.		No	
1 TAC § 55.3 Cooperation Required for Recipients of Child Support Services	Part 3 (OAG) - Ch. 55 (Child Support Enforcement) - Subch. A	Not Related	Requires current or former Temporary Assistance for Needy Families (TANF) and Medical Assistance Only program recipients cooperate with the AG in performing the tasks set out in Chapter 231 of the Family Code, unless good cause exists.		No	
1 TAC § 55.4 Determination of Cooperation	Part 3 (OAG) - Ch. 55 (Child Support Enforcement) - Subch. A	Not Related	Deals with the determination of whether a recipient in § 55.3 is indeed cooperating and the penalties for not doing so.		No	
1 TAC § 55.5 Good Cause for Failure to Cooperate	Part 3 (OAG) - Ch. 55 (Child Support Enforcement) - Subch. A	Not Related	Deals with the determination of whether good cause existed for failing to cooperate.		No	
1 TAC § 64.13 Operation of Local Program	Part 3 (OAG) - Ch. 64 (Standards of Operation for Local Court-Appointed Volunteer Advocate Programs)	Related/Not Contrary	(1) No covered entity. (2) HIPAA permits disclosure to a governmental authority authorized to receive reports of child abuse or neglect. 45 C.F.R. § 164.512(b)(1)(ii).		No	

Texas Administrative Code

Section	Path	Related/ Contrary	Explanation	Preemption Exception	Is State Law Preempted?	Recommendation
1 TAC § 351.501 Definitions Relating to Child Abuse, Neglect, and Exploitation	Part 15 (Tex. Health & Human Services) - Ch. 351 (Coordinated Planning and Delivery of Health and Human Services)	Not Related	Purely a definitional section.		No	
1 TAC § 351.503 Minimum Standards for Investigations	Part 15 (Tex. Health & Human Services) - Ch. 351 (Coordinated Planning and Delivery of Health and Human Services)	Related/Not Contrary	HIPAA permits disclosure to a governmental authority authorized to receive reports of child abuse or neglect. 45 C.F.R. § 164.512(b)(1)(ii).		No	
1 TAC § 351.505 Information Collection; Uniform Data Collection Procedures	Part 15 (Tex. Health & Human Services) - Ch. 351 (Coordinated Planning and Delivery of Health and Human Services)	Not Related	Requires state agencies to document and maintain written reports concerning investigations conducted and maintain statistics on the incidence of child abuse, neglect, and exploitation in every facility investigated.		No	
Title 19: Education						
19 TAC § 61.1051 Reporting Child Abuse and Neglect	Part 2 (Texas Educ. Agency) - Ch. 61 (School Districts) - Subchap. EE	Not Related	The definition of IIHI in 45 C.F.R. § 160.501 specifically excludes IIHI in education records covered by the Family Educational Rights and Privacy Act (FERPA) (20 U.S.C. § 1232g).		No	
19 TAC § 100.1211 Students	Part 2 (Texas Educ. Agency) - Ch. 100 (Charters) - Subchap. AA /Division 6	Not Related	The definition of IIHI in 45 C.F.R. § 160.501 specifically excludes IIHI in education records covered by the Family Educational Rights and Privacy Act (FERPA) (20 U.S.C. § 1232g).		No	

Texas Administrative Code

Section	Path	Related/ Contrary	Explanation	Preemption Exception	Is State Law Preempted?	Recommendation
Title 22: Examining Boards						
22 TAC § 80.3 Request for Information and Records from Licensees	Part 3 (Tex. Board of Chiropractic Examiners) - Ch. 80 (Professional Conduct)	Related/Not Contrary	<p>This regulation requires a chiropractor to release patient records when requested, if the patient signed a release. This regulation also sets requirements for a written release of records.</p> <p>This regulation also requires the BCE to order a chiropractic licensee to submit to tests to determine if the licensee is impaired, and thus unable to practice. "An impaired licensee is considered to be one who is unable to practice chiropractic with reasonable skill and safety to patients by reason of age, illness, drunkenness, excessive use of drugs, narcotics, chemicals, or any other type of material; or as a result of any mental or physical condition."</p>		No	
22 TAC § 165.1 Medical Records	Part 9 (Tex. State Board of Medical Examiners) - Ch. 165 (Medical Records)	Related/Not Contrary	<p>This law is not contrary to HIPAA because a covered entity could comply with this law and with the requirements under HIPAA. Covered entities should note HIPAA contains additional requirements for authorizations under 45 C.F.R. § 164.508.</p> <p>This regulation sets out requirements for contents and maintenance of medical records.</p>		No	
22 TAC § 165.2 Medical Record Release and Charges	Part 9 (Tex. State Board of Medical Examiners) - Ch. 165 (Medical Records)	Related/Not Contrary	<p>This regulation sets out requirements for release of medical records and charges.</p> <p>This law is not contrary to HIPAA because a covered entity could comply with this law and with the requirements under HIPAA.</p>		No	

Texas Administrative Code

Section	Path	Related/ Contrary	Explanation	Preemption Exception	Is State Law Preempted?	Recommendation
22 TAC § 165.3 Patient Access to Diagnostic Imaging Studies in Physician's Office	Part 9 (Tex. State Board of Medical Examiners) - Ch. 165 (Medical Records)	Related/Not Contrary	This regulation sets out requirements for patient access to diagnostic imaging studies. This law is not contrary to HIPAA because a covered entity could comply with this law and with the requirements under HIPAA		No	
22 TAC § 165.4 Appointment of Record Custodian of a Physician's Records	Part 9 (Tex. State Board of Medical Examiners) - Ch. 165 (Medical Records)	Related/Not Contrary	This regulation sets out requirements for record custodian of physician's records. This law is not contrary to HIPAA because a covered entity could comply with this law and with the requirements under HIPAA.		No	
22 TAC § 165.5 Transfer and Disposal of Medical Records	Part 9 (Tex. State Board of Medical Examiners) - Ch. 165 (Medical Records)	Related/Not Contrary	This regulation sets out requirements for transfer and disposal of medical records. This law is not contrary to HIPAA because a covered entity could comply with this law and with the requirements under HIPAA.		No	
22 TAC § 174.5 Notice of Privacy Practices	Part 9 (Tex. State Board of Medical Examiners) - Ch. 174 (Telemedicine)	Related/Not Contrary	This regulation requires a physician to give notice to patients regarding their privacy practices related to use of electronic communications. This regulation relates to privacy of IIHI. This regulation is not contrary to HIPAA because it refers to and requires compliance with Parts 160 and 164 for the notice language.		No	

Texas Administrative Code

Section	Path	Related/ Contrary	Explanation	Preemption Exception	Is State Law Preempted?	Recommendation
22 TAC § 183.8 Investigations	Part 9 (Tex. State Board of Medical Examiners) - Ch. 183 (Acupuncture)	Related/Not Contrary	<p>This law makes confidential the Board's complaint/investigation files relating to acupuncturists; this law also requires a licensee (an acupuncturist who may be a covered entity under HIPAA) to furnish patient records to the Board if requested.</p> <p><u>This law is not contrary to HIPAA because:</u> (1) The Board is not a covered entity; and (2) HIPAA permits appropriately limited disclosure of PHI that is required by law. 45 C.F.R. § 164.512(a)(1).</p>		No	
22 TAC § 183.10 Patient Records	Part 9 (Tex. State Board of Medical Examiners) - Ch. 183 (Acupuncture)	Related/Not Contrary	<p>This law makes acupuncturists' patient records confidential and addresses record retention, written releases, and manner of release of the confidential information.</p> <p>This law is not contrary to HIPAA because a covered entity could comply with both. Covered entities should note HIPAA contains additional requirements for written authorizations under 45 C.F.R. §§ 164.506 and 164.508.</p>		No	
22 TAC § 190.8 Violation Guidelines	Part 9 (Tex. State Board of Medical Examiners) - Ch. 190 (Disciplinary Guidelines) - Subch. B	Related/Not Contrary	<p>This regulation sets out acts that constitute violation of the Medical Practices Act, including (2)(N) failing to maintain patient confidentiality.</p> <p>This law is not contrary to HIPAA because a covered entity could comply with this law and with the requirements under HIPAA.</p>		No	

Texas Administrative Code

Section	Path	Related/ Contrary	Explanation	Preemption Exception	Is State Law Preempted?	Recommendation
22 TAC § 190.14 Disciplinary Sanction Guidelines	Part 9 (Tex. State Board of Medical Examiners) - Ch. 190 (Disciplinary Guidelines) - Subch. C	Related/Not Contrary	<p>This regulation sets out disciplinary sanction guidelines for violations relating to providing copies of medical records, complying with a subpoena from the Texas State Board of Medical Examiners, impairment or inability to practice, acts that constitute violation of the Medical Practices Act, including (2)(N) failing to maintain patient confidentiality.</p> <p>This law is not contrary to HIPAA because a covered entity could comply with this law and with the requirements under HIPAA.</p>		No	
22 TAC § 201.16 Memorandum of Understanding with the Texas Department of Health	Part 10 (Tex. Funeral Service Comm'n) - Ch. 201(Licensing and Enforcement – Practice and Procedure	Related/Not Contrary	<p>Subsection (6) of this regulation identifies unprofessional or dishonorable behaviors for RN's, including "disclosing confidential information or knowledge concerning the client except where required or allowed by law."</p> <p>This law is not contrary to HIPAA because a covered entity could comply with this law and with the requirements under HIPAA.</p>		No	
22 TAC § 217.12 Unprofessional Conduct	Part 11 (Board of Nurse Examiners) - Ch. 217 (Licensure, Peer Assistance, and Practice)	Related/Not Contrary	<p>Covered entities should note HIPAA contains additional provisions for use and disclosure for health oversight activities under 45 C.F.R. § 164.512(d), and for health care operations at 45 C.F.R. § 164.506.</p>		No	

Texas Administrative Code

Section	Path	Related/ Contrary	Explanation	Preemption Exception	Is State Law Preempted?	Recommendation
22 TAC § 343.35 Complaint Investigation and Disposition	Part 16 (Tex. Board of Physical Therapy Examiners) - Ch. 343 (Contested Case Procedure)	Related/Not Contrary	This regulation restates the Board's complaint investigation procedures, and allows the Board to determine when and if a private investigator is needed for processing of a complaint. This regulation relates to privacy of IIHI. This law is not contrary to HIPAA because the Board is not a covered entity.		No	
22 TAC § 343.36 Filing and Receipt of Complaints	Part 16 (Tex. Board of Physical Therapy Examiners) - Ch. 343 (Contested Case Procedure)	Related/Not Contrary	This regulation restates the Board's duty to give notice to the affected parties regarding the status of complaints. This regulation relates to privacy of IIHI. This law is not contrary to HIPAA because the Board is not a covered entity.		No	
22 TAC § 465.37 Compliance with all Applicable Laws	Part 21 (Tex. State Board of Examiners of Psychologists) - Ch. 465 (Rules of Practice)	Related/Not Contrary	HIPAA permits disclosure to a governmental authority authorized to receive reports of child abuse or neglect. 45 C.F.R. § 164.512(b)(1)(ii).		No	
22 TAC § 681.45 Confidentiality and Required Reporting	Part 30 (Tex. State Board of Examiners of Professional Counselors) - Ch. 681 (Professional Counselors - Subch. C	Related/Not Contrary	This regulation makes a counselor's patient records confidential under the provisions of the Texas Health and Safety Code, Chapter 611 and other state or federal statutes or rules where such statutes or rules apply to a licensee's practice. This regulation prohibits disclosure of patient records and patient identity except as provided in Texas Health and Safety Code, Chapter 611 or other state or federal statutes or rules. This regulation requires a licensee to comply with Texas Health and Safety Code, Chapter 611, concerning access to mental health records. This regulation relates to privacy of IIHI. This regulation is not contrary to HIPAA because a covered entity could comply with this law and with the requirements under HIPAA.		No	

Texas Administrative Code

Section	Path	Related/ Contrary	Explanation	Preemption Exception	Is State Law Preempted?	Recommendation
22 TAC § 711.14 Violations, Complaints, and Subsequent Board Actions	Part 31 (Tex. State Board of Examiners of Dietitians) - Ch. 711 (Dietitians)	Related/Not Contrary	This regulation reiterates the Board's duty to keep complaints, and sets out procedures for investigating complaints. This law is not contrary to HIPAA because the Board is not a covered entity.		No	
22 TAC § 741.192 Procedures for Filing a Complaint and Denying, Suspending, or Revoking a License or Registration	Part 32 (State Board of Examiners for Speech-Language Pathology and Audiology) - Ch. 741 (Speech-Language Pathologists and Audiologists) - Subch. N	Related/Not Contrary	This law sets forth the procedures for complaint investigations by the Board. This law is not contrary to HIPAA because the Board is not a covered entity.		No	
22 TAC § 761.15 Violations, Complaints, Investigations, and Procedures	Part 33 (Tex. State Board of Examiners of Perfusionists) - Ch. 761 (Perfusionists)	Related/Not Contrary	This regulation reiterates the Board's duties to keep complaints on file and conduct investigations. This regulation relates to privacy of IIHI. This law is not contrary to HIPAA because the board is not a covered entity.		No	
22 TAC § 781.401 Code of Ethics	Part 34 (Tex. State Board of Social Worker Examiners) - Ch. 781 (Social Worker Licensure) - Subchap. D	Related/Not Contrary	This regulation sets out the code of ethics for social workers. Subsection (7) states, "A social worker shall safeguard the client's rights to confidentiality within the limits of the law." This regulation relates to privacy of IIHI. This regulation is not contrary to HIPAA because it requires full compliance with HIPAA.		No	

Texas Administrative Code

Section	Path	Related/ Contrary	Explanation	Preemption Exception	Is State Law Preempted?	Recommendation
22 TAC § 781.402 Standards of Practice	Part 34 (Tex. State Board of Social Work Examiners) - Ch. 781 (Social Work Licensure) - Subchap. D	Related/Not Contrary	This regulation is not contrary to HIPAA because a covered entity could comply with this law and with the requirements of HIPAA. HIPAA permits disclosure to a governmental authority authorized to receive reports of child abuse or neglect. 45 C.F.R. § 164.512(b)(1)(ii). Also, covered entities should note possible exceptions to preemption in the areas of public health surveillance, investigation, and intervention under 45 C.F.R. § 160.203(c).		No	
22 TAC § 801.48 Confidentiality	Part 35 (Tex. State Board of Examiners of Marriage and Family Therapists) - Ch. 801 (Licensure and Regulation of Marriage and Family Therapists) - Subch. C	Related/Not Contrary	This regulation requires a therapist to follow the rules of confidentiality set forth in Health and Safety Code, Chapter 611, and other applicable laws. This regulation also requires a therapist to retain and dispose of client records in such a way that confidentiality is maintained. This regulation relates to privacy of IIHI. This regulation is not contrary to HIPAA because a covered entity could comply with this law and with the requirements under HIPAA. This law specifically requires a covered entity to follow "other applicable laws" regarding confidentiality.		No	
22 TAC § 821.39 Complaints	Part 37 (Tex. Board of Orthotics and Prosthetics) - Ch. 821 (Orthotics and Prosthetics)	Related/Not Contrary	This regulation reiterates the Board's duties to receive complaints, conduct investigations, and notify the parties of the status. This regulation relates to privacy of IIHI. This law is not contrary to HIPAA because the Board is not a covered entity.		No	

Title 25: Health Services

Texas Administrative Code

Section	Path	Related/ Contrary	Explanation	Preemption Exception	Is State Law Preempted?	Recommendation
25 TAC § 1.152 Operation of the Medical Advisory Board	Part 1 (Tex. Dept. of State Health Services) - Ch. 1 (Tex. Board of Health) - Subch. L	Related/Not Contrary	HIPAA permits disclosure for certain public health activities and health care oversight. 45 C.F.R. § 164.512, 164.512(d).b).		No	
25 TAC § 1.205 Reports and Investigations	Part 1 (Tex. Dept. of State Health Services) - Ch. 1 (Tex. Board of Health) - Subch. Q	Related/Not Contrary	HIPAA permits disclosure to a governmental authority authorized to receive reports of child abuse or neglect (45 C.F.R. § 164.512(b)(1)(ii)) and reports about the abuse/neglect of an elderly or disabled person (45 C.F.R. § 164.512(c)(1)).		No	
25 TAC § 1.206 Completion of Investigation	Part 1 (Tex. Dept. of State Health Services) - Ch. 1 (Tex. Board of Health) - Subch. Q	Related/Not Contrary	HIPAA permits disclosure to a governmental authority authorized to receive reports of child abuse or neglect (45 C.F.R. § 164.512(b)(1)(ii)) and reports about the abuse/neglect of an elderly or disabled person (45 C.F.R. § 164.512(c)(1)).		No	

Texas Administrative Code

Section	Path	Related/ Contrary	Explanation	Preemption Exception	Is State Law Preempted?	Recommendation
25 TAC § 1.207 Confidentiality of Investigative Process and Report	Part 1 (Tex. Dept. of State Health Services) - Ch. 1 (Tex. Board of Health) - Subch. Q	Related/Not Contrary	HIPAA permits disclosure to a governmental authority authorized to receive reports of child abuse or neglect (45 C.F.R. § 164.512(b)(1)(ii)) and reports about the abuse/neglect of an elderly or disabled person (45 C.F.R. § 164.512(c)(1)).		No*	Please consider amending 1.207(c) to read: "The completed investigative report and related documents shall be released by court order."
25 TAC § 13.14 Types of Data To Be Reported	Part 1 (Tex. Dept. of State Health Services) - Ch. 13 (Health Planning and Resource Development) - Subch. B	Related/Not Contrary			No	
25 TAC § 13.19 Confidential Data	Part 1 (Tex. Dept. of State Health Services) - Ch. 13 (Health Planning and Resource Development) - Subch. B	Related/Not Contrary			No	
25 TAC § 37.58 Follow-up and Recordkeeping on Positive Screens	Part 1 (Tex. Dept. of State Health Services) - Ch. 37 (Maternal and Infant Health Services) - Subch. D	Related/Not Contrary	HIPAA permits disclosure for certain public health activities. 45 C.F.R. § 164.512(b).		No	
25 TAC § 37.66 Confidentiality of Information	Part 1 (Tex. Dept. of State Health Services) - Ch. 37 (Maternal and Infant Health Services) - Subch. D	Related/Not Contrary	Authorizes disclosures but not by a covered entity. Furthermore, disclosures are in a non-identifying form.		No	

Texas Administrative Code

Section	Path	Related/ Contrary	Explanation	Preemption Exception	Is State Law Preempted?	Recommendation
25 TAC § 37.119 Confidentiality of Information	Part 1 (Tex. Dept. of State Health Services) - Ch. 37 (Maternal and Infant Health Services) - Subch. F	Related/Not Contrary	This regulation is not contrary to HIPAA because the program is not a covered entity and even if it were, the provision is consistent with HIPAA because it ensures that the information gathered remains confidential as authorized by law and authorizes disclosures only in summary fashion. In addition, HIPAA permits disclosure by covered entities for certain public health activities. 45 C.F.R. § 164.512(b).		No	
25 TAC § 37.151 Confidentiality of Information	Part 1 (Tex. Dept. of State Health Services) - Ch. 37 (Maternal and Infant Health Services) - Subch. G	Related/Not Contrary	This regulation is not contrary to HIPAA because the program is not a covered entity and even if it were, the provision is consistent with HIPAA because it ensures that the information gathered remains confidential as authorized by law and authorizes disclosures only in summary fashion. In addition, HIPAA permits disclosure by covered entities for certain public health activities. 45 C.F.R. § 164.512(b).		No	
25 TAC § 37.302 Policy	Part 1 (Tex. Dept. of State Health Services) - Ch. 37 (Maternal and Infant Health Services) - Subch. P	Related/Not Contrary	This regulation is not contrary to HIPAA because the program is not a covered entity and the only people to whom the information could be disclosed would be employees or people who have gone through the IRB process, which in turn would be consistent with HIPAA protocols. See 45 C.F.R. § 164.512(i).		No.	
25 TAC § 37.303 Definitions	Part 1 (Tex. Dept. of State Health Services) - Ch. 37 (Maternal and Infant Health Services) - Subch. P	Related/Not Contrary	This regulation is not contrary to HIPAA because the program is not a covered entity and the only people to whom the information could be disclosed would be employees or people who have gone through the IRB process, which in turn would be consistent with HIPAA protocols. See 45 C.F.R. § 164.512(i).		No.	
25 TAC § 37.304 Confidentiality of Information Provided to the Department	Part 1 (Tex. Dept. of State Health Services) - Ch. 37 (Maternal and Infant Health Services) - Subch. P	Related/Not Contrary	This regulation is not contrary to HIPAA because the department is not a covered entity. In addition, the department is bound by the common rule, which affords protection to the information. Covered entities may disclose to the registry because HIPAA permits disclosure for certain public health activities. 45 C.F.R. § 164.512(b)		No.	

Texas Administrative Code

Section	Path	Related/ Contrary	Explanation	Preemption Exception	Is State Law Preempted?	Recommendation
25 TAC § 37.305 Surveillance of Birth Defects: Central Registry	Part 1 (Tex. Dept. of State Health Services) - Ch. 37 (Maternal and Infant Health Services) - Subch. P	Related/Not Contrary	This regulation is not contrary to HIPAA because the program is not a covered entity and the only people to whom the information could be disclosed would be employees or people who have gone through the IRB process, which in turn would be consistent with HIPAA protocols. See 45 C.F.R. § 164.512(i).		No.	
25 TAC § 37.306 Access to Information in the Central Registry	Part 1 (Tex. Dept. of State Health Services) - Ch. 37 (Maternal and Infant Health Services) - Subch. P	Related/Not Contrary	This regulation is not contrary to HIPAA because the program is not a covered entity and the only people to whom the information could be disclosed would be employees or people who have gone through the IRB process, which in turn would be consistent with HIPAA protocols. See 45 C.F.R. § 164.512(i).		No.	
25 TAC § 37.333 Confidentiality of Information Provided to the Department	Part 1 (Tex. Dept. of State Health Services) - Ch. 37 (Maternal and Infant Health Services) - Subch. Q	Related/Not Contrary	HIPAA permits disclosure of PHI as required by law. 45 C.F.R. § 164.512(a)(1) and/or certain public health activities. 45 C.F.R. § 164.512(b).		No.	
25 TAC § 37.334 Reportable Health Condition	Part 1 (Tex. Dept. of State Health Services) - Ch. 37 (Maternal and Infant Health Services) - Subch. Q	Related/Not Contrary	HIPAA permits disclosure of PHI as required by law. 45 C.F.R. § 164.512(a)(1) and/or certain public health activities. 45 C.F.R. § 164.512(b). Also, registry is not a covered entity.		No.	
25 TAC § 37.335 Persons Required to Report	Part 1 (Tex. Dept. of State Health Services) - Ch. 37 (Maternal and Infant Health Services) - Subch. Q	Related/Not Contrary	HIPAA permits disclosure for certain public health activities. 45 C.F.R. § 164.512(b).		No.	
25 TAC § 37.336 Reporting Procedures	Part 1 (Tex. Dept. of State Health Services) - Ch. 37 (Maternal and Infant Health Services) - Subch. Q	Related/Not Contrary	HIPAA permits disclosure for certain public health activities. 45 C.F.R. § 164.512(b).		No.	

Texas Administrative Code

Section	Path	Related/ Contrary	Explanation	Preemption Exception	Is State Law Preempted?	Recommendation
25 TAC § 37.503 Newborn Hearing Screening, Tracking, and Intervention Program	Part 1 (Tex. Dept. of State Health Services) - Ch. 37 (Maternal and Infant Health Services) - Subch. S	Related/Not Contrary	This regulation is not contrary to HIPAA because the program is not a covered entity. Even if it were, HIPAA provides for disclosure that is pursuant to a valid authorization. 45 C.F.R. § 164.508.		No	
25 TAC § 37.507 Information Concerning Screening Results and Follow-up Care	Part 1 (Tex. Dept. of State Health Services) - Ch. 37 (Maternal and Infant Health Services) - Subch. S	Related/Not Contrary	HIPAA permits the use and disclosure of IIHI in the course of certain treatment, payment, and health care operations. 45 C.F.R. § 164.506.		No	
25 TAC § 37.509 Information Management, Reporting, and Tracking System	Part 1 (Tex. Dept. of State Health Services) - Ch. 37 (Maternal and Infant Health Services) - Subch. S	Related/Not Contrary	This regulation is not contrary to HIPAA because the program is not a covered entity. Even if it were, the section does not specifically call for a use or disclosure.		No	
25 TAC § 37.510 Texas Department of Health Responsibilities	Part 1 (Tex. Dept. of State Health Services) - Ch. 37 (Maternal and Infant Health Services) - Subch. S	Related/Not Contrary	Uses authorized by this regulation are not contrary to HIPAA because the department is not a covered entity and because, even if it were, HIPAA permits disclosure for certain public health activities. 45 C.F.R. § 164.512(b).		No	
25 TAC § 37.511 Confidentiality and General Access to Data	Part 1 (Tex. Dept. of State Health Services) - Ch. 37 (Maternal and Infant Health Services) - Subch. S	Related/Not Contrary	HIPAA provides for disclosure that is pursuant to a valid authorization. 45 C.F.R. § 164.508. In addition, covered entities making the disclosures could also rely upon 45 C.F.R. § 164.512(b), disclosures for certain public health activities.		No	
25 TAC § 38.3 Eligibility for CSHCN Program Services	Part 1 (Tex. Dept. of State Health Services) - Ch. 38 (Children with Special Health Care Needs Services Program)	Related/Not Contrary	This regulation is not contrary to HIPAA because the program is not a covered entity and even if it were, HIPAA permits the use and disclosure of IIHI in the course of certain treatment, payment, and health care operations. 45 C.F.R. § 164.506.		No	

Texas Administrative Code

Section	Path	Related/ Contrary	Explanation	Preemption Exception	Is State Law Preempted?	Recommendation
25 TAC § 38.12 Denial/Modification/ Suspension/Termin ation of Eligibility for Health Care Benefits and/or Health Care Benefits	Part 1 (Tex. Dept. of State Health Services) - Ch. 38 (Children with Special Health Care Needs Services Program)	Related/Not Contrary	This regulation is not contrary to HIPAA because the program is not a covered entity and even if it were, HIPAA permits the use and disclosure of IIHI in the course of certain treatment, payment, and health care operations. 45 C.F.R. § 164.506.		No	
25 TAC § 38.13 Right of Appeal	Part 1 (Tex. Dept. of State Health Services) - Ch. 38 (Children with Special Health Care Needs Services Program)	Related/Not Contrary	This regulation is not contrary to HIPAA because the program is not a covered entity and even if it were, HIPAA permits the use and disclosure of IIHI in the course of certain treatment, payment, and health care operations, 45 C.F.R. § 164.506 and for disclosures in the course of judicial or administrative proceeding. 45 C.F.R. § 164.512(e).		No	
25 TAC § 39.91 Purpose and Authority	Part 1 (Tex. Dept. of State Health Services) - Ch. 39 (Primary Health Care Services Program) - Subch. D	Not Related	Information handled by clearinghouse seems to be that related to providers, and not PHI.			
25 TAC § 39.92 Definitions	Part 1 (Tex. Dept. of State Health Services) - Ch. 39 (Primary Health Care Services Program) - Subch. D	Not Related	Information handled by clearinghouse seems to be that related to providers, and not PHI.		No	
25 TAC § 39.93 Provider Registration	Part 1 (Tex. Dept. of State Health Services) - Ch. 39 (Primary Health Care Services Program) - Subch. D	Not Related	Information handled by clearinghouse seems to be that related to providers, and not PHI.		No	

Texas Administrative Code

Section	Path	Related/ Contrary	Explanation	Preemption Exception	Is State Law Preempted?	Recommendation
25 TAC § 39.93 Duties of the Department	Part 1 (Tex. Dept. of State Health Services) - Ch. 39 (Primary Health Care Services Program) - Subch. D	Not Related	Information handled by clearinghouse seems to be that related to providers, and not PHI.		No	
25 TAC § 61.78 Patient Rights	Part 1 (Tex. Dept. of State Health Services) - Ch. 61 (Chronic Diseases) - Subchapter E	Related/Not Contrary	This regulation is not contrary to HIPAA because subsection (b) requires the clinics to protect the confidentiality of patient information. To the extent the clinics are covered entities, this should incorporate HIPAA's provisions.		No	
25 TAC § 49.4 Application Process	Part 1 (Tex. Dept. of State Health Services) - Ch. 49 (Oral Health Improvement Services Program)	Related/Not Contrary	Requires referral to program by a third party nominator. To the extent the nominator were a covered entity, HIPAA permits disclosures for the purposes of certain treatment, payment, and health care operations, 45 C.F.R. § 164.506.		No	
25 TAC § 49.13 Confidentiality	Part 1 (Tex. Dept. of State Health Services) - Ch. 49 (Oral Health Improvement Services Program)	Related/Not Contrary	This regulation is not contrary to HIPAA because the department is not a covered entity and even if it were, the medical/dental records covered by the provision are "confidential by law."		No	
25 TAC § 61.2 Recipient Requirements	Part 1 (Tex. Dept. of State Health Services) - Ch. 61 (Chronic Diseases) - Subchapter A	Related/Not Contrary	No covered entity or PHI involved.		No	
25 TAC § 61.14 Confidentiality of Information	Part 1 (Tex. Dept. of State Health Services) - Ch. 61 (Chronic Diseases) - Subchapter A	Related/Not Contrary	This regulation is not contrary to HIPAA because the program is not a covered entity and even if it were, the provision is consistent with HIPAA because it ensures that the information gathered remains confidential as authorized by law and authorizes disclosures only in summary fashion. In addition, HIPAA permits disclosure by covered entities for certain public health activities. 45 C.F.R. § 164.512(b).			

Texas Administrative Code

Section	Path	Related/ Contrary	Explanation	Preemption Exception	Is State Law Preempted?	Recommendation
25 TAC § 73.21 Newborn Screening	Part 1 (Tex. Dept. of State Health Services) - Ch. 73 (Laboratories)	Related/Not Contrary	Sets out procedures for submission of screening kits provided by Bureau of Laboratories & requires inclusion of identifying information by providers. This regulation is not contrary to HIPAA because the disclosures are authorized for purposes of public health. (45 C.F.R. § 164.512(b)).		No	
25 TAC § 91.3 Who Reports, Access to Records	Part 1 (Tex. Dept. of State Health Services) - Ch. 91 (Cancer) - Subch. A	Related/Not Contrary	Covered entities are permitted to use or disclose PHI for certain public health activities and may therefore report this information to the department. 45 C.F.R. § 164.512(b). The disclosure of the information is also required by law. 45 C.F.R. § 164.512(a)(1).		No	
25 TAC § 91.4 What to Report	Part 1 (Tex. Dept. of State Health Services) - Ch. 91 (Cancer) - Subch. A	Related/Not Contrary	Covered entities are permitted to use or disclose PHI for certain public health activities and may therefore report this information to the department. 45 C.F.R. § 164.512(b). The disclosure of the information is also required by law. 45 C.F.R. § 164.512(a)(1).		No	
25 TAC § 91.9 Confidentiality and Disclosure	Part 1 (Tex. Dept. of State Health Services) - Ch. 91 (Cancer) - Subch. A	Related/Not Contrary	No covered entity.		No	To Cancer Registry: section should be amended to delete reference to prior version of Chapter 181, Health & Safety Code.
25 TAC § 91.12 Requests and Release of Personal Cancer Data	Part 1 (Tex. Dept. of State Health Services) - Ch. 91 (Cancer) - Subch. A	Related/Not Contrary	This regulation is not contrary because cancer registry is not a covered entity. Even if it were, HIPAA authorizes uses and disclosure for certain public health activities. (45 C.F.R. ' 164.512(b)). Finally the IRB of the Department, prior to consolidation, chose to be HIPAA-compliant and was also bound by the Common Rule for the Protection of Human Subjects.		No	

Texas Administrative Code

Section	Path	Related/ Contrary	Explanation	Preemption Exception	Is State Law Preempted?	Recommendation
25 TAC § 96.402 Confidentiality Statement	Part 1 (Tex. Dept. of State Health Services) - Ch. 97 (Bloodborne Pathogen Control)	Related/Not Contrary			No	
25 TAC § 97.2 Who Shall Report	Part 1 (Tex. Dept. of State Health Services) - Ch. 97 (Communicable Diseases) - Subch. A	Related/Not Contrary	Covered entities are permitted to use or disclose PHI for certain public health activities. 45 C.F.R. § 164.512(b).		No	
25 TAC § 97.6 Reporting and Other Duties of Local Health Authorities and Regional Directors	Part 1 (Tex. Dept. of State Health Services) - Ch. 97 (Communicable Diseases) - Subch. A	Related/Not Contrary	Covered entities are permitted to use or disclose PHI for certain public health activities. 45 C.F.R. § 164.512(b).		No	
25 TAC § 97.8 General Control Measures for Notifiable Conditions	Part 1 (Tex. Dept. of State Health Services) - Ch. 97 (Communicable Diseases) - Subch. A	Related/Not Contrary	Covered entities are permitted to use or disclose PHI for certain public health activities. 45 C.F.R. § 164.512(b).		No	
25 TAC § 97.10 Confidential Nature of Case Reporting and Records	Part 1 (Tex. Dept. of State Health Services) - Ch. 97 (Communicable Diseases) - Subch. A	Related/Not Contrary	Covered entities are permitted to use or disclose PHI for certain public health activities. 45 C.F.R. § 164.512(b).		No	
25 TAC § 97.11 Notification of Emergency Medical Service Employee, Fire Fighter, or Peace Officer of Possible Exposure to a Disease	Part 1 (Tex. Dept. of State Health Services) - Ch. 97 (Communicable Diseases) - Subch. A	Related/Not Contrary	Covered entities are permitted to use or disclose PHI for certain public health activities. 45 C.F.R. § 164.512(b).		No	

Texas Administrative Code

Section	Path	Related/ Contrary	Explanation	Preemption Exception	Is State Law Preempted?	Recommendation
25 TAC § 97.13 Mandatory Testing of Persons Suspected of Exposing Certain Other Persons Y.	Part 1 (Tex. Dept. of State Health Services) - Ch. 97 (Communicable Diseases) - Subch. A	Related/Not Contrary	The department is not a covered entity.		No	
25 TAC § 97.67 School records	Part 1 (Tex. Dept. of State Health Services) - Ch. 97 (Communicable Diseases) - Subch. B	Related/Not Contrary	Education records excluded from the definition of PHI. 45 C.F.R. § 160.103.		No	
25 TAC § 97.69 Transfer of records	Part 1 (Tex. Dept. of State Health Services) - Ch. 97 (Communicable Diseases) - Subch. B	Related/Not Contrary	Education records excluded from the definition of PHI. 45 C.F.R. § 160.103.		No	
25 TAC § 97.70 Review of Records and Assistance	Part 1 (Tex. Dept. of State Health Services) - Ch. 97 (Communicable Diseases) - Subch. B	Related/Not Contrary	Education records excluded from the definition of PHI. 45 C.F.R. § 160.103.		No	
25 TAC § 97.132 Who Shall Report Sexually Transmitted Diseases	Part 1 (Tex. Dept. of State Health Services) - Ch. 97 (Communicable Diseases) - Subch. F	Related/Not Contrary	Covered entities are permitted to use or disclose PHI for certain public health activities. 45 C.F.R. § 164.512(b).		No	
25 TAC § 97.134 How to Report Sexually Transmitted Diseases	Part 1 (Tex. Dept. of State Health Services) - Ch. 97(Communicable Diseases) - Subch. F	Related/Not Contrary	Covered entities are permitted to use or disclose PHI for certain public health activities. 45 C.F.R. § 164.512(b).		No	

Texas Administrative Code

Section	Path	Related/ Contrary	Explanation	Preemption Exception	Is State Law Preempted?	Recommendation
25 TAC § 97.135 Serological Testing during Pregnancy and Delivery	Part 1 (Tex. Dept. of State Health Services) - Ch. 97(Communicable Diseases) - Subch. F	Related/Not Contrary			No	
25 TAC § 97.138 Guidelines for Testing Certain Indicted Persons for Certain Diseases	Part 1 (Tex. Dept. of State Health Services) - Ch. 97 (Communicable Diseases) - Subch. F	Related/Not Contrary	Covered entities are permitted to use or disclose PHI for certain public health activities. 45 C.F.R. § 164.512(b).		No	
25 TAC § 97.144 Model Policies for the Handling, Care, and Treatment of HIV/AIDS-infected Persons Y	Part 1 (Tex. Dept. of State Health Services) - Ch. 97 (Communicable Diseases) - Subch. F	Not Related			No	
25 TAC § 97.146 Confidentiality of HIV/STD Test Results	Part 1 (Tex. Dept. of State Health Services) - Ch. 97(Communicable Diseases) - Subch. F	Related/Not Contrary	The regulation is consistent with HIPAA; requires confidentiality of information to be protected.		No	
25 TAC § 97.178 Reporting	Part 1 (Tex. Dept. of State Health Services) - Ch. 97 (Communicable Diseases) - Subch. H	Related/Not Contrary	Covered entities are permitted to use or disclose PHI for certain public health activities. 45 C.F.R. § 164.512(b).		No	
25 TAC § 97.179 Tuberculosis Record	Part 1 (Tex. Dept. of State Health Services) - Ch. 97(Communicable Diseases) - Subch. H	Related/Not Contrary	Covered entities are permitted to use or disclose PHI for certain public health activities. 45 C.F.R. § 164.512(b).		No	

Texas Administrative Code

Section	Path	Related/ Contrary	Explanation	Preemption Exception	Is State Law Preempted?	Recommendation
25 TAC § 98.111 Confidentiality	Part 1 (Tex. Dept. of State Health Services) - Ch. 98 (Texas HIV Medication Program) - Subch. C - Division 1	Related/Not Contrary			No	
25 TAC § 99.1 General Provisions	Part 1 (Tex. Dept. of State Health Services) - Ch. 99 (Occupational Diseases)	Related/Not Contrary	Covered entities, including local health authorities, are permitted to use or disclose PHI for certain public health activities. 45 C.F.R. § 164.512(b).		No	
25 TAC § 100.2 Confidentiality	Part 1 (Tex. Dept. of State Health Services) - Ch. 100 (Immunization Registry)	Related/Not Contrary			No	
25 TAC § 100.5 Receipt and Release of Registry Data	Part 1 (Tex. Dept. of State Health Services) - Ch. 100 (Immunization Registry)	Related/Not Contrary			No	
25 TAC § 100.6 Reporting to the Registry	Part 1 (Tex. Dept. of State Health Services) - Ch. 100 (Immunization Registry)	Related/Not Contrary			No	
25 TAC § 100.7 Official Immunization Record	Part 1 (Tex. Dept. of State Health Services) - Ch. 100 (Immunization Registry)	Related/Not Contrary			No	
25 TAC § 103.1-9 Purpose – Technical Advisory Commission on Injury Reporting	Part 1 (Tex. Dept. of State Health Services) - Ch.103 (Injury Prevention and Control)	N/A	Note: sections were promulgated to be effective through Dec. 31, 2001. The effective date has lapsed but the provisions have apparently not been repealed.		No	

Texas Administrative Code

Section	Path	Related/ Contrary	Explanation	Preemption Exception	Is State Law Preempted?	Recommendation
25 TAC § 103.12 List of Reportable Injuries and Conditions	Part 1 (Tex. Dept. of State Health Services) - Ch.103 (Injury Prevention and Control)	Related/Not Contrary	Covered entities are permitted to use or disclose PHI for certain public health activities. 45 C.F.R. § 164.512(b) and as required by law, 45 C.F.R. ' ' 164.512(a).		No	
25 TAC § 103.14 Reporting Requirements for Hospitals	Part 1 (Tex. Dept. of State Health Services) - Ch.103 (Injury Prevention and Control)	Related/Not Contrary	Covered entities are permitted to use or disclose PHI for certain public health activities. 45 C.F.R. § 164.512(b) and as required by law, 45 C.F.R. ' ' 164.512(a).		No	
25 TAC § 103.15 Reporting Requirements for Physicians, Medical Examiners, and Justices of the Peace	Part 1 (Tex. Dept. of State Health Services) - Ch.103 (Injury Prevention and Control)	Related/Not Contrary	Covered entities are permitted to use or disclose PHI for certain public health activities. 45 C.F.R. § 164.512(b) and as required by law, 45 C.F.R. ' ' 164.512(a).		No	
25 TAC § 103.16 Reporting Requirements for Pre-hospital Providers	Part 1 (Tex. Dept. of State Health Services) - Ch.103 (Injury Prevention and Control)	Related/Not Contrary	Covered entities are permitted to use or disclose PHI for certain public health activities. 45 C.F.R. § 164.512(b) and as required by law, 45 C.F.R. ' ' 164.512(a).		No	
25 TAC § 103.17 Reporting Requirements for Rehabilitation Facilities	Part 1 (Tex. Dept. of State Health Services) - Ch.103 (Injury Prevention and Control)	Related/Not Contrary	Covered entities are permitted to use or disclose PHI for certain public health activities. 45 C.F.R. § 164.512(b) and as required by law, 45 C.F.R. ' ' 164.512(a).		No	
25 TAC § 103.18 Reporting by Paper Form	Part 1 (Tex. Dept. of State Health Services) - Ch.103 (Injury Prevention and Control)	Related/Not Contrary	Covered entities are permitted to use or disclose PHI for certain public health activities. 45 C.F.R. § 164.512(b) and as required by law, 45 C.F.R. ' ' 164.512(a).		No	
25 TAC § 103.19 Electronic Reporting	Part 1 (Tex. Dept. of State Health Services) - Ch.103 (Injury Prevention and Control)	Related/Not Contrary	Covered entities are permitted to use or disclose PHI for certain public health activities. 45 C.F.R. § 164.512(b) and as required by law, 45 C.F.R. ' ' 164.512(a).		No	

Texas Administrative Code

Section	Path	Related/ Contrary	Explanation	Preemption Exception	Is State Law Preempted?	Recommendation
25 TAC § 103.20 General Control Measures for Reportable Injuries	Part 1 (Tex. Dept. of State Health Services) - Ch.103 (Injury Prevention and Control)	Related/Not Contrary				
25 TAC § 103.21 Powers and Duties of the Department	Part 1 (Tex. Dept. of State Health Services) - Ch.103 (Injury Prevention and Control)	Related/Not Contrary				
25 TAC § 103.22 Confidential Nature of Case Reporting	Part 1 (Tex. Dept. of State Health Services) - Ch.103 (Injury Prevention and Control)	Related/Not Contrary				
25 TAC § 103.23 Investigations	Part 1 (Tex. Dept. of State Health Services) - Ch.103 (Injury Prevention and Control)	Related/Not Contrary				
25 TAC § 117.16 Inspections	Part 1 (Tex. Dept. of State Health Services) - Ch.117 (End Stage Renal Disease Facilities) - Subch. B	Related/Not Contrary			No	
25 TAC § 117.45 Clinical Records	Part 1 (Tex. Dept. of State Health Services) - Ch.117 (End Stage Renal Disease Facilities) - Subch. D	Related/Not Contrary			No	
25 TAC § 117.46 Reports to the Director	Part 1 (Tex. Dept. of State Health Services) - Ch.117 (End Stage Renal Disease Facilities) - Subch. D	Related/Not Contrary			No	

Texas Administrative Code

Section	Path	Related/ Contrary	Explanation	Preemption Exception	Is State Law Preempted?	Recommendation
25 TAC § 123.12 Professional and Ethical Standards	Part 1 (Department of State Health Services) - Ch. 123 (Respiratory Care Practitioner Certification)	Related/Not Contrary	Subsection (2)(F) of this regulation states the practitioner may not violate laws regarding patient confidentiality. This regulation relates to privacy of IIHI. This regulation is not contrary to HIPAA because it does not impede the effectiveness or objectives of HIPAA in any way.		No	
25 TAC § 125.34 Resident Records	Part 1 (Tex. Dept. of State Health Services) - Ch. 125 (Special Care Facilities) - Subch. C	Related/Not Contrary			No	
25 TAC § 133.45 Miscellaneous Policies and Protocols	Part 1 (Tex. Dept. of State Health Services) - Ch. 133 (Hosp. Licensing) - Subch. C	Related/Not Contrary	HIPAA permits certain disclosures about victims of abuse, neglect, or domestic violence to a government authority authorized to receive such reports but may impose requirements in addition to those of state law. 45 C.F.R. § 164.512(c).		No	
25 TAC § 133.47 Abuse and Neglect Issues	Part 1 (Tex. Dept. of State Health Services) - Ch. 133 (Hosp. Licensing) - Subch. C	Related/Not Contrary	HIPAA permits disclosure to a governmental authority authorized to receive reports of child abuse or neglect (45 C.F.R. § 164.512(b)(1)(ii)) and reports about the abuse/neglect of an elderly or disabled person (45 C.F.R. § 164.512(c)(1)).		No	
25 TAC § 133.101 Inspection and Investigation Procedures	Part 1 (Tex. Dept. of State Health Services) - Ch. 133 (Hosp. Licensing) - Subch. F	Related/Not Contrary	HIPAA permits certain disclosures about victims of abuse, neglect, or domestic violence to a government authority authorized to receive such reports but may impose requirements in addition to those of state law. 45 C.F.R. § 164.512(c).		No	
25 TAC § 134.46 Abuse and Neglect Issues	Part 1 (Tex. Dept. of State Health Services) - Ch. 134 (Private Psychiatric Hosp. and Crisis Stabilization Units) - Subch. C	Related/Not Contrary	HIPAA permits disclosure to a governmental authority authorized to receive reports of child abuse or neglect (45 C.F.R. § 164.512(b)(1)(ii)) and reports about the abuse/neglect of an elderly or disabled person (45 C.F.R. § 164.512(c)(1)).		No	

Texas Administrative Code

Section	Path	Related/ Contrary	Explanation	Preemption Exception	Is State Law Preempted?	Recommendation
25 TAC § 157.4 Audits	Part 1 (Tex. Dept. of State Health Services) - Ch. 157 (Emergency Medical Care) - Subch. A	Related/Not Contrary	HIPAA permits certain disclosures for the purpose of health care oversight. 45 C.F.R. § 164.512(d)(1).		No	
25 TAC § 157.11 Requirements for an EMS Provider License	Part 1 (Tex. Dept. of State Health Services) - Ch. 157 (Emergency Medical Care) - Subch. B	Related/Not Contrary	Provisions, in particular subsection (f)(6), are consistent with HIPAA.		No	
25 TAC § 157.25 Out-of-Hospital Do Not Resuscitate (DNR) Order	Part 1 (Tex. Dept. of State Health Services) - Ch. 157 (Emergency Medical Care) - Subch. B	Related/Not Contrary			No	
25 TAC § 181.9 Access to Paternity Files	Part 1 (Tex. Dept. of State Health Services) - Ch. 181 (Vital Statistics) - Subch. A	Related/Not Contrary			No	
25 TAC § 181.10 Availability of Birth Records to Ensure Confidentiality of Adoption Placement	Part 1 (Tex. Dept. of State Health Services) - Ch. 181 (Vital Statistics) - Subch. A	Related/Not Contrary	None of the provisions of this or other vital statistics chapters is contrary. The Department is not a covered entity. Furthermore, any uses or disclosures required of covered entities who provide information to the Department would come within the permitted disclosures for public health activities, 45 C.F.R. ' 164.512(b).		No	
25 TAC § 181.11 Requests for Personal Data	Part 1 (Tex. Dept. of State Health Services) - Ch. 181 (Vital Statistics) - Subch. A	Related/Not Contrary	None of the provisions of this or other vital statistics chapters is contrary. The Department is not a covered entity. Furthermore, any uses or disclosures required of covered entities who provide information to the Department would come within the permitted disclosures for public health activities, 45 C.F.R. ' 164.512(b).		No	

Texas Administrative Code

Section	Path	Related/ Contrary	Explanation	Preemption Exception	Is State Law Preempted?	Recommendation
25 TAC § 181.21 Refusal To Issue Certified Copies of Records of Birth, Death, or Fetal Death	Part 1 (Tex. Dept. of State Health Services) - Ch. 181 (Vital Statistics) - Subch. B	Related/Not Contrary			No	
25 TAC § 181.23 Indexes for Vital Records	Part 1 (Tex. Dept. of State Health Services) - Ch. 181 (Vital Statistics) - Subch. B	Related/Not Contrary			No	
25 TAC § 181.27 Memorandum of Understanding with the Texas Funeral Service Commission	Part 1 (Tex. Dept. of State Health Services) - Ch. 181 (Vital Statistics) - Subch. B	Related/Not Contrary			No	
25 TAC § 181.28 Instructions and Requirements for Issuance of Certified Copies of Vital Records by the State Registrar, Local Registrar, or County Clerk	Part 1 (Tex. Dept. of State Health Services) - Ch. 181 (Vital Statistics) - Subch. B	Related/Not Contrary			No	
25 TAC § 295.9 Reporting Fatalities and Injuries	Part 1 (Tex. Dept. of State Health Services) - Ch. 295 (Occupational Health) - Subch. A	Not Related			No	

Texas Administrative Code

Section	Path	Related/ Contrary	Explanation	Preemption Exception	Is State Law Preempted?	Recommendation
22 TAC § 871.14 Violations, Complaints, and Disciplinary Actions	Part 40 (Department of State Health Services) - Ch. 871 (Advisory Board of Athletic Trainers) - Subch. A	Related/Not Contrary	This regulation outlines the complaint investigation process and restates that the Advisory Board may subpoena records. This regulation relates to privacy of IIHI. This regulation is not contrary to HIPAA because it makes compliance with the subpoena "required by law," allowable HIPAA use and disclosure under 45 C.F.R. § 164.512(a), and because a covered entity could follow HIPAA's requirements for use and disclosure for health oversight activities, 45 C.F.R. § 164.512(d)(1)(iii).		No	
25 TAC § 339.4 Confidentiality and Consent	Part 1 (Tex. Dept. of State Health Services) - Ch. 339 (Toxicology) - Subch. A	Related/Not Contrary	This regulation is a confidentiality provision and is consistent with HIPAA.		No	
25 TAC § 404.154 Rights of All Persons Receiving Mental Health Services	Part 1 (Tex. Dept. of State Health Services) - Ch.404 (Protection of Clients and Staff--Mental Health Services) - Subch. E	Related/Not Contrary			No	

Texas Administrative Code

Section	Path	Related/ Contrary	Explanation	Preemption Exception	Is State Law Preempted?	Recommendation
25 TAC § 405.284 Policy Overview	Part 1 (Tex. Dept. of State Health Services) - Ch. 405 (Patient Care – Mental Health Services) - Subch. L	Not Related			No	
25 TAC § 411.310 Standards of Administration for Boards of Trustees	Part 1 (Tex. Dept. of State Health Services) - Ch. 411 (State Mental Health Authority Responsibilities) - Subch. G	Related/Not Contrary			No	
25 TAC § 414.6 Interpretive Guidance on Laws Pertaining to Privacy of Mental Health and Mental Retardation Records for the TDMHMR Service Delivery System (Exhibit A)	Part 1 (Tex. Dept. of State Health Services) - Ch. 414 (Rights and Protection of Persons Receiving Mental Health Services) - Subch. A	Related/Not Contrary	HIPAA permits disclosure to a governmental authority authorized to receive reports of child abuse or neglect. 45 C.F.R. § 164.512(b)(1)(ii).		No	
25 TAC § 417.505 Reporting Responsibilities of all TDMHMR Employees, Agents, and Contractors: Reports to Tex. Dept. of Protective and Regulatory Services	Part 1 (Tex. Dept. of State Health Services) - Ch. 417 (TDMHMR and Facility Responsibilities) - Subch. K	Related/Not Contrary	HIPAA permits disclosure to a governmental authority authorized to receive reports of child abuse or neglect. 45 C.F.R. § 164.512(b)(1)(ii).		No	

Texas Administrative Code

Section	Path	Related/ Contrary	Explanation	Preemption Exception	Is State Law Preempted?	Recommendation
25 TAC § 417.508 Responsibilities of the Head of the Facility	Part 2 (Tex. Dept. of Mental Health and Mental Retardation) - Ch. 417 (Agency and Facility Responsibilities) - Subch. K	Related/Not Contrary	(1) HIPAA permits disclosure to a family member or representative. 45 C.F.R. § 164.502. (2) HIPAA permits disclosure to individuals involved in a person's care. 45 C.F.R. § 164.510(b)(1).		No	
25 TAC § 417.509 Peer Review	Part 2 (Tex. Dept. of Mental Health and Mental Retardation) - Ch. 417 (Agency and Facility Responsibilities) - Subch. K	Related/Not Contrary	HIPAA permits certain disclosures for the purpose of health care oversight. 45 C.F.R. § 164.512(d)(1).		No	
25 TAC § 417.511 Confidentiality of Investigative Process and Report	Part 2 (Tex. Dept. of Mental Health and Mental Retardation) - Ch. 417 (Agency and Facility Responsibilities) - Subch. K	Related/Not Contrary	(1) HIPAA permits disclosure to a family member or representative. 45 C.F.R. § 164.502. (2) HIPAA permits disclosure to individuals involved in a person's care. 45 C.F.R. § 164.510(b)(1).		No	
25 TAC § 421.02 Collection of Hospital Discharge Data	Part 1 (Tex. Dept. of State Health Services) - Ch. 421 (Health Care Information Council) - Subch. A	Related/Not Contrary	This regulation is not contrary to HIPAA because: 1) Covered entities are required by law to disclose to the Council; 2) Council may use or disclose information in accordance with state law because it is not a covered entity under HIPAA; 3) Even if the department or the council were covered entities, the disclosures would be authorize because HIPAA permits disclosure of PHI for certain public health purposes. 45 C.F.R. ' 164.512(b).			

Texas Administrative Code

Section	Path	Related/ Contrary	Explanation	Preemption Exception	Is State Law Preempted?	Recommendation
Title 28: Insurance						
28 TAC § 3.1708 Required Disclosure	Part 1 (Tex. Dept. of Insurance) - Ch. 3 (Life, Accident, and Health Insurance and Annuities) - Subch. R	Not Related	Life insurers are not subject to HIPAA.		No	
28 TAC § 3.8002 Purpose and General Provisions	Part 1 (Tex. Dept. of Insurance) - Ch. 3 (Life, Accident, and Health Insurance Annuities) - Subch. HH	Related/Not Contrary			No	
28 TAC § 11.205 Documents To Be Available during Examinations	Part 1 (Tex. Dept. of Insurance) - Ch. 11 (Health Maintenance Organizations) - Subch. C	Related/Not Contrary	TDI is a health oversight agency and the use or disclosure of this information to a health oversight agency is not contrary to HIPAA. (1) HIPAA permits certain disclosures for the purpose of health care oversight. 45 C.F.R. § 164.512(d)(1). (2) HIPAA permits appropriately limited disclosure of PHI that is required by law. 45 C.F.R. § 164.512(a)(1). (3) HIPAA permits disclosure for certain law enforcement purposes. 45 C.F.R. § 164.512(f).		No	

Texas Administrative Code

Section	Path	Related/ Contrary	Explanation	Preemption Exception	Is State Law Preempted?	Recommendation
28 TAC § 11.2601 General Provisions	Part 1 (Tex. Dept. of Insurance) - Ch. 11 (Health Maintenance Organizations) - Subch. AA	Not Related			No	
28 TAC § 11.2603 Requirements for Delegation by HMOs	Part 1 (Tex. Dept. of Insurance) - Ch. 11 (Health Maintenance Organizations) - Subch. AA	Related/Not Contrary	HIPAA permits certain uses and disclosures pursuant to a contract between a covered entity and business associate, including the delegation at issue here. 45 C.F.R. § 164.504(e)(1).		No	
28 TAC § 12.4 - 12.301 Applicability - Complaints and Information	Part 1 (Tex. Dept. of Insurance) - Ch. 12 (Independent Review Organizations) - Subch. A - D	Related/Not Contrary	(1) Independent Review Org. (IRO) is agent of TDI, and is not a covered entity or business associate. (2) Ins. Code art. 21.58A, 6A(2) <u>requires</u> a utilization review agent to provide information to IRO, and HIPAA permits appropriately limited disclosure of PHI that is required by law. 45 C.F.R. § 164.512(a)(1).		No	

Texas Administrative Code

Section	Path	Related/ Contrary	Explanation	Preemption Exception	Is State Law Preempted?	Recommendation
28 TAC § 19.1714 Confidentiality	Part 1 (Tex. Dept. of Insurance) - Ch. 19 (Agents' Licensing) - Subch. R	Related/Not Contrary	Section (b) relates to release of confidential information to individual or third parties. Some elements required by section (b) of the rule for the authorization are as stringent as HIPAA, some are not. See Report, "Recurring Issues - Written Authorizations."			
			Section (c) relates to release of confidential information for health care operations. HIPAA permits the use and disclosure of IHI in the course of certain treatment, payment, and health care operations. 45 C.F.R. § 164.506.			No
			Section (d) relates to responding to a request by the individual for information.			
			Section (g) states records should be destroyed when the agent determines the information is no longer needed and section (m) provides that records should be maintained for at least two years if the information relates to a case for which an adverse decision was made at any point or if the information relates to a case which may be reopened. See text of Report "Recurring Issues-Records Retention."			

Texas Administrative Code

Section	Path	Related/ Contrary	Explanation	Preemption Exception	Is State Law Preempted?	Recommendation
28 TAC § 19.1715 Retrospective Review of Medical Necessity	Part 1 (Tex. Dept. of Insurance) - Ch. 19 (Agents' Licensing) - Subch. R	Related/Not Contrary	URAs are acting as business associates of health plans, and HIPAA permits the use and disclosure of IIHI in the course of certain treatment, payment, and health care operations. 45 C.F.R. § 164.506.		No	
28 TAC § 19.1716 Complaints and Information	Part 1 (Tex. Dept. of Insurance) - Ch. 19 (Agents' Licensing) - Subch. R	Related/Not Contrary	(1) HIPAA permits certain disclosures for the purpose of health care oversight. 45 C.F.R. § 164.512(d)(1). (2) HIPAA permits appropriately limited disclosure of PHI that is required by law. 45 C.F.R. §		No	

Texas Administrative Code

Section	Path	Related/ Contrary	Explanation	Preemption Exception	Is State Law Preempted?	Recommendation
28 TAC § 19.1721 Independent Review of Adverse Determinations	Part 1 (Tex. Dept. of Insurance) - Ch. 19 (Agents' Licensing) - Subch. R	Related/Not Contrary	(1) Independent Review Org. (IRO) is agent of TDI, and is not a covered entity or business associate. (2) Ins. Code art. 21.58A, 6A(2) <u>requires</u> a utilization review agent to provide information to IRO, and HIPAA permits appropriately limited disclosure of PHI that is required by law. 45 C.F.R. § 164.512(a)(1).		No	
28 TAC § 19.1723 Preauthorization	Part 1 (Tex. Dept. of Insurance) - Ch. 19 (Agents' Licensing) - Subch. R	Related/Not Contrary	HIPAA permits the use and disclosure of IIHI in the course of certain treatment, payment, and health care operations. 45 C.F.R. § 164.506.		No	
28 TAC § 19.1724 Verification	Part 1 (Tex. Dept. of Insurance) - Ch. 19 (Agents' Licensing) - Subch. R	Not Related	HIPAA permits the use and disclosure of IIHI in the course of certain treatment, payment, and health care operations. 45 C.F.R. § 164.506.		No	
28 TAC § 19.2001-19.2020 General Provisions - Specialty Utilization Review Agent	Part 1 (Tex. Dept. of Insurance) - Ch. 19 (Agents' Licensing) - Subch. U	Related/Not Contrary	(1) The definition of "health plans" in 45 C.F.R. § 164.103, does not include workers' compensation insurers. (2) Even if a workers' compensation insurer were a covered entity, 45 C.F.R. § 164.512(l) provides that a covered entity may disclose protected health information to the extent necessary to comply with workers' compensation programs.		No	

Texas Administrative Code

Section	Path	Related/ Contrary	Explanation	Preemption Exception	Is State Law Preempted?	Recommendation
			disclosure of this information to a health oversight agency is not contrary to HIPAA.			
28 TAC § 21.3305 Complaints	Part 1 (Tex. Dept. of Insurance) - Ch. 21 (Trade Practices) - Subch. Y	Not Related	(1) HIPAA permits certain disclosures for the purpose of health care oversight. 45 C.F.R. § 164.512(d)(1). (2) HIPAA permits appropriately limited disclosure of PHI that is required by law. 45 C.F.R. § 164.512(a)(1). (3) HIPAA permits disclosure for certain law		No	
28 TAC § 22.51-22.67 Purpose and Scope - Effective Date	Part 1 (Tex. Dept. of Insurance) - Ch. 22 (Privacy) - Subch. B	Not Related	These rules apply only to non-covered entities licensed by TDI. See 28 TAC § 22.61.		No	
28 TAC § 26.201 The Texas Health Reinsurance System Plan of Operation	Part 1 (Tex. Dept. of Insurance) - Ch. 26 (Small Employer Health Insurance Regulations) - Subch. B	Not Related			No	
28 TAC § 33.501 Books and Records	Part 1 (Tex. Dept. of Insurance) - Ch. 28 (Continuing Care Retirement Facilities) - Subch. F	Related/Not Contrary			No	
28 TAC § 33.503 Investigations and Examinations by the Department	Part 1 (Tex. Dept. of Insurance) - Ch. 28 (Continuing Care Retirement Facilities) - Subch. F	Related/Not Contrary			No	

Title 37: Public Safety and Corrections

Texas Administrative Code

Section	Path	Related/ Contrary	Explanation	Preemption Exception	Is State Law Preempted?	Recommendation
37 TAC § 13.2 Other State or Federal Laws, Rules, or Regulations	Part 1 (Tex. Dep't of Public Safety) - Ch. 13 (Controlled Substances) - Subch. A	Related/Not Contrary			No	
37 TAC § 13.4 Notification, Information, and Electronic Transmission	Part 1 (Tex. Dep't of Public Safety) - Ch. 13 (Controlled Substances) - Subch. A	Related/Not Contrary			No	
37 TAC § 13.33 Miscellaneous	Part 1 (Tex. Dep't of Public Safety) - Ch. 13 (Controlled Substances) - Subch. B	Related/Not Contrary			No	
37 TAC § 13.84 Release of Non-statistical Information	Part 1 (Tex. Dep't of Public Safety) - Ch. 13 (Controlled Substances) - Subch. D	Related/Not Contrary			No	
37 TAC § 81.34 Notice of Youth Confessions of Child Abuse	Part 3 (Tex. Youth Commission) - Ch. 81 (Interaction with the Public)	Related/Not Contrary	HIPAA permits disclosure to a governmental authority authorized to receive reports of child abuse or neglect. 45 C.F.R. § 164.512(b)(1)(ii).		No	
Title 40: Social Services and Assistance						
40 TAC § 4.4 Requirements	Part 1 (Department of Aging and Disability Services) - Ch. 4 (Rights and Protection of Individuals Receiving Mental Retardation Services) - Subch. A	Related/Not Contrary	Although these provisions could affect the flow of information, should the components continue to adhere to HIPAA, there is nothing on the face of the law that is contrary.		No	

Texas Administrative Code

Section	Path	Related/ Contrary	Explanation	Preemption Exception	Is State Law Preempted?	Recommendation
40 TAC § 4.5 Regulations and Statutes Governing Confidentiality of Protected Health Information	Part 1 (Department of Aging and Disability Services) - Ch. 4 (Rights and Protection of Individuals Receiving Mental Retardation Services) - Subch. A	Related/Not Contrary	This regulation may affect the flow of information from facilities; but on its face, the regulation is not contrary.		No	
40 TAC § 6.310 Consent to Treatment by Surrogate Decision-Makers	Part 1 (Dept. of Aging and Disability Services) - Ch. 6 (ICF/MR Programs – Contracting) - Subch. G	Related/Not Contrary			No	
40 TAC § 8.624 Rights of All Clients Receiving Mental Retardation Services	Part 1 (Dept. of Human Services) - Ch. 8 (Client Care--Mental Retardation Services) - Subch. Y	Related/Not Contrary			No	
40 TAC § 19.2006 Reporting Incidents and Complaints	Part 1 (Dept. of Human Services) - Ch. 19 (Nursing Facility Requirements for Licensure and Medicaid Certification) - Subch.U	Related/Not Contrary	Completed inspection reports are subject to the Public Information Act. DHS (and now DADS) interprets applicable law to require release of federal inspection reports with only certain information removed. It has also interpreted state law to require the release of state inspection reports with only certain specified information removed, such as names. See also 40 TAC 19.2010(a). Analysis assumes facility address would not be removed.		No	

Texas Administrative Code

Section	Path	Related/ Contrary	Explanation	Preemption Exception	Is State Law Preempted?	Recommendation
40 TAC § 19.2010 General Provisions	Part 1 (Dept. of Human Services) - Ch. 19 (Nursing Facility Requirements for Licensure and Medicaid Certification) - Subch.U	Related/Not Contrary	HIPAA permits disclosure of PHI as required by law. 45 C.F.R. § 164.512(a)(1).		No	
40 TAC § 92.81 Inspections and Surveys	Part 1 (Dept. of Human Services) - Ch. 92 (Licensing Standards for Assisted Living Facilities) - Subch. E	Related/Not Contrary			No	
40 TAC § 92.106 General Provisions	Part 1 (Dept. of Human Services) - Ch. 92 (Licensing Standards for Assisted Living Facilities) - Subch. F	Contrary (92.106(a) (2))	This section does not appear to be contrary ni the first sense of the definition but there may be tension that rises to the level of a conflict in the second sense. Subsection (a)(2) of 92.106 makes completed investigation reports open to the public but requires them to be deidentified. If DHS deidentifies the reports in accordance with HIPAA, the reports may lose usefulness to the public.		No	
40 TAC § 106.671 Confidentiality of Personal Information	Part 2 (Dept. of Assistive and Rehabilitative Services) - Ch. 106 (Blind Services) - Subch. C - Div. 8	Related/Not Contrary	No covered entity and no disclosure of PHI is contemplated.		No	
40 TAC § 106.1433 Reports of Suspected Neglect or Abuse	Part 2 (Dept. of Assistive and Rehabilitative Services) - Ch. 106 (Blind Services) - Subch. I - Div. 2	Related/Not Contrary	(1) No covered entity. (2) HIPAA permits disclosure to a governmental authority authorized to receive reports of child abuse or neglect. 45 C.F.R. § 164.512(b)(1)(ii).		No	

Texas Administrative Code

Section	Path	Related/ Contrary	Explanation	Preemption Exception	Is State Law Preempted?	Recommendation
40 TAC § 108.27 Program Administration for Comprehensive Services	Part 2 (Dept. of Assistive and Rehab. Services) - Ch. 108 (Early Childhood Intervention Services) - Subch. A	Related/Not Contrary	HIPAA permits disclosure to a governmental authority authorized to receive reports of child abuse or neglect. 45 C.F.R. § 164.512(b)(1)(ii).		No	
40 TAC § 108.55 Procedural Safeguards for Comprehensive Services	Part 2 (Dept. of Assistive and Rehab. Services) - Ch. 108 (Early Childhood Intervention Services) - Subch. B	Related/Not Contrary	HIPAA permits disclosure to a governmental authority authorized to receive reports of child abuse or neglect. 45 C.F.R. § 164.512(b)(1)(ii).		No	
40 TAC § 700.104 Child Abuse and Neglect Central Registry	Part 19 (Tex. Dept. of Family and Protective Services) - Ch. 700 (Child Protective Services) - Subch. A	Not Related	Only information that is disclosed from the registry is whether a person is in the registry as a designated or sustained perpetrator, not IIHI.			
40 TAC § 700.106 Retention and Disposal of Case Information	Part 19 (Tex. Dept. of Family and Protective Services) - Ch. 700 (Child Protective Services) - Subch. A	Related/Not Contrary	No covered entity		No	
40 TAC § 700.107 Retention of Conservatorship or Foster Care Case Information	Part 19 (Tex. Dept. of Family and Protective Services) - Ch. 700 (Child Protective Services) - Subch. A	Related/Not Contrary	No covered entity		No	

Texas Administrative Code

Section	Path	Related/ Contrary	Explanation	Preemption Exception	Is State Law Preempted?	Recommendation
40 TAC § 700.108 Retention of Family Preservation Services Case Records	Part 19 (Tex. Dept. of Family and Protective Services) - Ch. 700 (Child Protective Services) - Subch. A	Related/Not Contrary	No covered entity		No	
40 TAC § 700.109 Retention of Case Records for Cases Closed After Investigation	Part 19 (Tex. Dept. of Family and Protective Services) - Ch. 700 (Child Protective Services) - Subch. A	Related/Not Contrary	No covered entity		No	
40 TAC § 700.110 Retention of Closed-After- Investigation/Ruled Out/ Case Records	Part 19 (Tex. Dept. of Family and Protective Services) - Ch. 700 (Child Protective Services) - Subch. A	Related/Not Contrary	No covered entity		No	
40 TAC § 700.111 Closed-After- Investigation/Other Case Records	Part 19 (Tex. Dept. of Family and Protective Services) - Ch. 700 (Child Protective Services) - Subch. A	Related/Not Contrary	No covered entity		No	
40 TAC § 700.112 Case Records Not Involving Abuse/Neglect or Conservatorship	Part 19 (Tex. Dept. of Family and Protective Services) - Ch. 700 (Child Protective Services) - Subch. A	Related/Not Contrary	No covered entity		No	
40 TAC § 700.113 Retention of Case Records Related to Foster and Adoptive Homes	Part 19 (Tex. Dept. of Family and Protective Services) - Ch. 700 (Child Protective Services) - Subch. A	Not Related	Pertains only to the process of retention of case information, not the release of the information to third parties.		No	

Texas Administrative Code

Section	Path	Related/ Contrary	Explanation	Preemption Exception	Is State Law Preempted?	Recommendation
40 TAC § 700.114 Retention of Post-Adoption Services Case Records	Part 19 (Tex. Dept. of Family and Protective Services) - Ch. 700 (Child Protective Services) - Subch. A	Not Related	Pertains only to the process of retention of case information, not the release of the information to third parties.		No	
40 TAC § 700.203 Access to Confidential Information Maintained by TDPRS	Part 19 (Tex. Dept. of Family and Protective Services) - Ch. 700 (Child Protective Services) - Subch. B	Related/Not Contrary	No covered entity		No	
40 TAC § 700.204 Redaction of Records Prior to Release	Part 19 (Tex. Dept. of Family and Protective Services) - Ch. 700 (Child Protective Services) - Subch. B	Related/Not Contrary	No covered entity		No	
40 TAC § 700.205 Procedures for Requesting Access to Confidential Information	Part 19 (Tex. Dept. of Family and Protective Services) - Ch. 700 (Child Protective Services) - Subch. B	Related/Not Contrary	No covered entity		No	
40 TAC § 700.404 Criteria for Accepting Reports and Conducting School Investigations	Part 19 (Tex. Dept. of Family and Protective Services) - Ch. 700 (Child Protective Services) - Subch. D	Not Related	Sets out the criteria that allegations in a report must meet if Child Protective Services (CPS) is to perform an investigation.		No	
40 TAC § 700.405 Notification to Law Enforcement Agencies of Reports of Abuse or Neglect in School Investigations	Part 19 (Tex. Dept. of Family and Protective Services) - Ch. 700 (Child Protective Services) - Subch. D	Related/Not Contrary	(1) No covered entity. (2) HIPAA permits disclosure to a governmental authority authorized to receive reports of child abuse or neglect. 45 C.F.R. § 164.512(b)(1)(ii).		No	

Texas Administrative Code

Section	Path	Related/ Contrary	Explanation	Preemption Exception	Is State Law Preempted?	Recommendation
40 TAC § 700.407 Notification to School Principal of Impending School Investigation	Part 19 (Tex. Dept. of Family and Protective Services) - Ch. 700 (Child Protective Services) - Subch. D	Related/Not Contrary	No covered entity		No	
40 TAC § 700.408 Conducting the School Investigation	Part 19 (Tex. Dept. of Family and Protective Services) - Ch. 700 (Child Protective Services) - Subch. D	Related/Not Contrary	HIPAA permits disclosure to a governmental authority authorized to receive reports of child abuse or neglect. 45 C.F.R. § 164.512(b)(1)(ii).		No	
40 TAC § 700.409 Conducting Interviews or Examinations	Part 19 (Tex. Dept. of Family and Protective Services) - Ch. 700 (Child Protective Services) - Subch. D	Not Related	Prohibits school officials from interfering in any way with a school investigation.		No	
40 TAC § 700.411 Notification to School Officials of Findings in School Investigation	Part 19 (Tex. Dept. of Family and Protective Services) - Ch. 700 (Child Protective Services) - Subch. D	Related/Not Contrary	No covered entity		No	
40 TAC § 700.413 Retention of Investigative Reports	Part 19 (Tex. Dept. of Family and Protective Services) - Ch. 700 (Child Protective Services) - Subch. D	Related/Not Contrary	No covered entity		No	
40 TAC § 700.507 Investigation Interviews	Part 19 (Tex. Dept. of Family and Protective Services) - Ch. 700 (Child Protective Services) - Subch. E	Related/Not Contrary	No covered entity		No	

Texas Administrative Code

Section	Path	Related/ Contrary	Explanation	Preemption Exception	Is State Law Preempted?	Recommendation
40 TAC § 700.508 Interviews With Parents or Other Alleged Perpetrators	Part 19 (Tex. Dept. of Family and Protective Services) - Ch. 700 (Child Protective Services) - Subch. E	Related/Not Contrary	No covered entity		No	
40 TAC § 700.509 Purchase of Medical, Psychological, or Psychiatric Examination	Part 19 (Tex. Dept. of Family and Protective Services) - Ch. 700 (Child Protective Services) - Subch. E	Not Related	Pertains to possible funding sources for examinations.		No	
40 TAC § 700.513 Notification About Results	Part 19 (Tex. Dept. of Family and Protective Services) - Ch. 700 (Child Protective Services) - Subch. E	Related/Not Contrary	No covered entity		No	
40 TAC § 700.516 Administrative Review	Part 19 (Tex. Dept. of Family and Protective Services) - Ch. 700 (Child Protective Services) - Subch. E	Not Related	Provides for an administrative review of the investigation findings at the request of the alleged perpetrator.		No	
40 TAC § 700.517 Investigation of Lack of Medical Care Because of Religious Beliefs	Part 19 (Tex. Dept. of Family and Protective Services) - Ch. 700 (Child Protective Services) - Subch. E	Not Related	Provides for an investigation by TDFPS and allows staff to request a court order that a child receive certain medical care if required by the child's health.		No	
40 TAC § 700.522 Audiotaping or Videotaping Interviews With the Alleged Victims	Part 19 (Tex. Dept. of Family and Protective Services) - Ch. 700 (Child Protective Services) - Subch. E	Not Related	Requires a good faith and reasonable effort to record interviews with child victims of physical or sexual abuse, unless good cause exists to not record it.		No	

Texas Administrative Code

Section	Path	Related/ Contrary	Explanation	Preemption Exception	Is State Law Preempted?	Recommendation
40 TAC § 700.523 Removal of Alleged Perpetrator Role Information	Part 19 (Tex. Dept. of Family and Protective Services) - Ch. 700 (Child Protective Services) - Subch. E	Not Related	Provides for the removal of a person's identification as an alleged perpetrator if the allegations against that person are ruled out through investigation.		No	
40 TAC § 700.602 Sustained Conclusions About Designated Perpetrators and Designated Victims/ Perpetrators	Part 19 (Tex. Dept. of Family and Protective Services) - Ch. 700 (Child Protective Services) - Subch. F	Related/Not Contrary	No covered entity		No	
40 TAC § 700.603 Releasing Information About Designated Perpetrators or Designated Victims/ Perpetrators to Outside Parties	Part 19 (Tex. Dept. of Family and Protective Services) - Ch. 700 (Child Protective Services) - Subch. F	Related/Not Contrary	No covered entity		No	
40 TAC § 700.604 Notice Requirements for Releasing Information to Outside Parties	Part 19 (Tex. Dept. of Family and Protective Services) - Ch. 700 (Child Protective Services) - Subch. F	Not Related	Requires written notice to the perpetrator of DFPS's decision to release information and provides for an appeals process to challenge that decision.		No	
40 TAC § 700.605 Prerequisites for Release Hearing	Part 19 (Tex. Dept. of Family and Protective Services) - Ch. 700 (Child Protective Services) - Subch. F	Not Related	Provides for a hearing to be held after the perpetrator has received notice of the decision to release information and has appealed within the applicable time frame.		No	

Texas Administrative Code

Section	Path	Related/ Contrary	Explanation	Preemption Exception	Is State Law Preempted?	Recommendation
40 TAC § 700.1342 Presenting Records to Prospective Adoptive Parents Before Placing a Child for Adoption	Part 19 (Tex. Dept. of Family and Protective Services) - Ch. 700 (Child Protective Services) - Subch. M	Related/Not Contrary	Describes the information which DFPS may release to prospective adoptive parents, including IIHI.		No	
40 TAC § 700.1343 Deleting Confidential Information Before Releasing a Child's Records to Authorized Parties	Part 19 (Tex. Dept. of Family and Protective Services) - Ch. 700 (Child Protective Services) - Subch. M	Related/Not Contrary	(1) No covered entity. (2) HIPAA permits appropriately limited disclosure of PHI that is required by law. 45 C.F.R. § 164.512(a)(1).		No	
40 TAC § 700.1351 Medical and Dental Services for Children in Substitute Care	Part 19 (Tex. Dept. of Family and Protective Services) - Ch. 700 (Child Protective Services) - Subch. M	Related/Not Contrary	(1) No covered entity. (2) HIPAA permits appropriately limited disclosure of PHI that is required by law. 45 C.F.R. § 164.512(a)(1).		No	
40 TAC § 700.1401 Testing Children in the TDPRS's Conservatorship for HIV Antibodies	Part 19 (Tex. Dept. of Family and Protective Services) - Ch. 700 (Child Protective Services) - Subch. N	Not Related	Discusses criteria for testing but not release of the results.		No	
40 TAC § 700.1402 Treatment and Medical Management	Part 19 (Tex. Dept. of Family and Protective Services) - Ch. 700 (Child Protective Services) - Subch. N	Related/Not Contrary	(1) No covered entity. (2) HIPAA permits the use and disclosure of IIHI in the course of certain treatment and health care operations. 45 C.F.R. § 164.504.		No	
40 TAC § 700.1403 Notification	Part 19 (Tex. Dept. of Family and Protective Services) - Ch. 700 (Child Protective Services) - Subch. N	Related/Not Contrary	(1) No covered entity. (2) HIPAA permits appropriately limited disclosure of PHI that is required by law. 45 C.F.R. § 164.512(a)(1).		No	

Texas Administrative Code

Section	Path	Related/ Contrary	Explanation	Preemption Exception	Is State Law Preempted?	Recommendation
40 TAC § 700.1404 Confidentiality	Part 19 (Tex. Dept. of Family and Protective Services) - Ch. 700 (Child Protective Services) - Subch. N	Related/Not Contrary	No covered entity		No	
40 TAC § 700.1405 Caregiver Training	Part 19 (Tex. Dept. of Family and Protective Services) - Ch. 700 (Child Protective Services) - Subch. N	Not Related	Pertains to the training that a caregiver or foster parent must receive if they are caring for an HIV positive child.		No	
40 TAC § 700.1406 Sex Education and AIDS Prevention	Part 19 (Tex. Dept. of Family and Protective Services) - Ch. 700 (Child Protective Services) - Subch. N	Not Related	Pertains to the required sex education that all children in the conservatorship of DFPS must receive.		No	
40 TAC § 700.1502 Foster and Adoptive Home Inquiry and Screening	Part 19 (Tex. Dept. of Family and Protective Services) - Ch. 700 (Child Protective Services) - Subch. O	Not Related	Governs the criteria for screening adoptive and foster homes.		No	
40 TAC § 700.1731 Post Adoptive Counseling	Part 19 (Tex. Dept. of Family and Protective Services) - Ch. 700 (Child Protective Services) - Subch. Q	Not Related	Outlines the counseling services which need to be made available to children and families post adoption.		No	
40 TAC § 720.912 Admission Policies	Part 19 (Tex. Dept. of Family and Protective Services) - Ch. 720 (24 Hour Care Licensing) - Subch. M	Related/Not Contrary	(1) No covered entity. (2) HIPAA permits disclosure to a governmental authority authorized to receive reports of child abuse or neglect. 45 C.F.R. § 164.512(b)(1)(ii).		No	

Texas Administrative Code

Section	Path	Related/ Contrary	Explanation	Preemption Exception	Is State Law Preempted?	Recommendation
40 TAC § 727.409 Client Rights	Part 19 (Tex. Dept. of Family and Protective Services) - Ch. 727 (Licensing of Maternity Facilities) - Subch. D	Related/Not Contrary			No	
40 TAC § 727.411 Client Records	Part 19 (Tex. Dept. of Family and Protective Services) - Ch. 727 (Licensing of Maternity Facilities) - Subch. D	Related/Not Contrary			No	

Texas Business & Commerce Code

Section	Related/Contrary	Explanation	Preemption Exception	Is State Law Preempted?	Recommendation
Title 2: Competition and Trade Practices					
Chapter 15: Monopolies, Trusts, and Conspiracies in Restraint of Trade					
15.01 Title of Act	Not Related	Simply names the act; no purpose to protect or affect privacy of PHI.		No	
15.02 Applicability of Provisions	Not Related	No purpose to protect or affect privacy of PHI.		No	
15.03 Definitions	Not Related	Does not affect privacy of PHI.		No	
15.04 Purpose and Construction	Not Related	Does not affect privacy of PHI.		No	
15.05 Unlawful Practices	Not Related	Does not affect privacy of PHI.		No	
15.10(g) Civil Investigative Demands	Related/Not Contrary	HIPAA permits appropriately limited disclosure of PHI that is required by law. 45 C.F.R. § 164.512(a)(1).		No	
15.11 Party to Suit May Subpoena Witness	Related/Not Contrary	Allows parties to a suit brought under Chapter 15 to subpoena a witness and it is possible that a witness is a covered entity who testifies about PHI. HIPAA permits a covered entity to disclose PHI in response to court orders, warrants, subpoenas, or summonses. 45 C.F.R. § 164.512(f)(1)(i)(A).		No	
15.12 Additional Procedures	Related/Not Contrary	HIPAA permits appropriately limited disclosure of PHI that is required by law. 45 C.F.R. § 164.512(a)(1).		No	

Texas Business & Commerce Code

Section	Related/Contrary	Explanation	Preemption Exception	Is State Law Preempted?	Recommendation
15.13-15.40 Immunity from Criminal Prosecution -- Authorities, Powers, and Duties of the Attorney General	Not Related	Does not affect privacy of PHI.		No	
15.50 Criteria for Enforceability of Covenants Not To Compete	Related/Not Contrary	This law does not require the release of PHI but establishes criteria for a valid covenant not to compete.		No	
15.51 Procedures and Remedies in Actions to Enforce Covenants Not to Compete	Related/Not Contrary	This law does not require the release of PHI but establishes criteria for a valid covenant not to compete.		No	
15.52 Preemption of Other Law	Related/Not Contrary	This law does not require the release of PHI but establishes criteria for a valid covenant not to compete.		No	
Title 2: Competition and Trade Practices					
Chapter 17: Deceptive Trade Practices					
17.60 Reports and Examinations	Related/Not Contrary	It is highly questionable whether this concerns PHI. To the extent the "person" is a covered entity and to the extent the statement obtained contains PHI, HIPAA permits appropriately limited disclosure of PHI that is required by law. 45 C.F.R. ' 164.512(a)(1).		No	
17.61(e),(h) Civil Investigative Demand	Related/Not Contrary	HIPAA permits appropriately limited disclosure of PHI that is required by law. 45 C.F.R. § 164.512(a)(1).		No	
Title 2: Competition and Trade Practices					
Chapter 20: Regulation of Consumer Credit Reporting Agencies					

Texas Business & Commerce Code

Section	Related/Contrary	Explanation	Preemption Exception	Is State Law Preempted?	Recommendation
20.02 Permissible Purposes; Prohibition; Use of Consumer's Social Security Number	Related/Not Contrary	No covered entity		No	
20.05(c) Reporting of Information Prohibited	Related/Not Contrary	No covered entity		No	
Title 4: Miscellaneous Commercial Provisions					
Chapter 35: Miscellaneous					
35.50 Biometric Identifier	Not Related	A biometric identifier does not appear to be "health information" as that term is defined by 45 C.F.R. § 160.103.		No	
35.58 Confidentiality of Social Security Number	Not Related	Although the purpose of the provision is to protect the privacy of the information, a social security number on an identification card or other identification device does not appear to be "health information" as that term is defined by 45 C.F.R. § 160.103.		No	

Cases & Common Law Principles

Case Name	Relevance	Related/ Contrary	Explanation	Preemption Exception	Is State Law Preempted?	Recommendation
Abrams v. Jones 35 S.W.3d 620 (Tex. 2000).	Recognizes that the right of access to IIHI given to a parent/conservator by § 153.073 of the Family Code may be limited by other laws, such as specific laws about mental health records, found in Texas Health & Safety Code §§ 611.011 - 611.008	Related/Not Contrary	HIPAA permits a covered entity to deny a parent conservator's request for access to his or her child's IIHI if a licensed health care professional has determined, in the exercise of professional judgment, that the provision of access is reasonably likely to cause substantial harm to the child. 45 C.F.R. § 164.502(g)(3)(ii) and § 164.524(a)(3)(iii).		No	
B.K. v. Cox 116 S.W.3d 351 (Tex. App. - Houston [14th Dist.] 2003, no pet. h.).	Holds that a psychiatrist performing court ordered examinations is entitled to derived judicial immunity from mother's claim based on doctor's alleged failure to report suspected child abuse; acknowledges that the duty to report is indeed mandatory.	Related/Not Contrary	(1) HIPAA permits appropriately limited disclosure of PHI that is required by law. 45 C.F.R. § 164.512(a)(1). (2) HIPAA permits disclosure to a governmental authority authorized to receive reports of child abuse or neglect. 45 C.F.R. § 164.512(b)(1)(ii).		No	
Bordman v. State 56 S.W.3d 63 (Tex. App. - Houston [14th Dist.] 2001, pet. ref'd).	Holds that the Texas statutory requirement to report child abuse is an exception to the privilege to refuse to disclose and prevent another from disclosing a confidential communication to a clergy member.	Related/Not Contrary	§§ 261.101 and 261.202 of the Texas Family Code, HIPAA, and this court all authorize a covered entity to disclose PHI in the course of reporting child abuse to proper authorities, even if the disclosure is made by a clergy member who obtained the information in his/her professional role as a spiritual advisor.		No	
Childers v. A.S. 909 S.W.2d 282 (Tex. App. - Fort Worth 1995, no writ).	Addresses failure of a private party to report inappropriate sexual contact between children.	Not Related			No	

Cases & Common Law Principles

Case Name	Relevance	Related/ Contrary	Explanation	Preemption Exception	Is State Law Preempted?	Recommendation
Coachman v. State 692 S.W.2d 940 (Tex. App. - Houston [1st Dist.] 1985, writ ref'd).	Affirms privacy of information (including IIHI) obtained by the state in the course of a child abuse investigation.	Related/Not Contrary	No covered entity		No	
Delcourt v. Silverman 919 S.W.2d 777 (Tex. App. - Houston [14th Dist.] 1996, writ denied), cert. denied, 520 U.S. 1213 (1997).	Holds that a guardian ad litem and psychologist appointed by a court to interview and evaluate parties and children in a custody action both have immunity from suit by the parties.	Not Related			No	
Doe v. Rains County I.S.D. 76 F.3d 666 (5th Cir. 1996).	Addresses public school official's immunity from claims for failure to report suspected sexual abuse of a student by a coach.	Not Related			No	
Doe v. Rains County I.S.D. 66 F.3d 1402 (5th Cir. 1995).	Addresses public school official's immunity from claims for failure to report suspected sexual abuse of a student by a coach.	Not Related			No	
Monroe v. State 2002 WL 15547 (Tex. App. - Amarillo 2002, no pet.) (not designated for publication).	Addresses conviction of victim's mother for failure to report the sexual abuse of her daughter by her husband; IIHI not at issue.	Not Related			No	

Cases & Common Law Principles

Case Name	Relevance	Related/ Contrary	Explanation	Preemption Exception	Is State Law Preempted?	Recommendation
Patmore v. State 831 S.W.2d 97 (Tex. App. - Eastland 1992, pet. denied).	Holds that the confidentiality of information obtained in the course of a child abuse investigation (including IIHI) can be waived.	Related/Not Contrary	No covered entity		No	
State ex rel. Hill v. Court of Appeals for the Fifth Dist. 67 S.W.3d 177 (Tex. Crim. App. 2001).	The underlying issue that court declined to address relates to whether a hospital must disclose child abuse information obtained under the Medical Committee Privilege in § 161.032 of the Texas Health & Safety Code.	(1) As to the holding: Not Related; (2) As to the underlying issue: Related/Not Contrary.	If issue had been decided, a holding in either direction would not have been contrary to HIPAA, because disclosure of PHI by a covered entity for the purpose of reporting child abuse is permitted by 45 C.F.R. § 164.512(b)(1)(ii).		No	
Texas Dept. of Human Servs. v. Benson 893 S.W.2d 236 (Tex. App. - Austin 1995, reh. overruled).	Affirms a declaratory judgment that the state must keep the identity of a child abuse reporter confidential.	Not Related			No	

Cases & Common Law Principles

Case Name	Relevance	Related/ Contrary	Explanation	Preemption Exception	Is State Law Preempted?	Recommendation
<p>Moore v. Charles B. Pierce Film Enters., Inc. 589 S.W.2d 489 (Tex. Civ. App. - Texarkana 1979);</p> <p>Cox Texas Newspapers v. Wooten 59 S.W.3d 717 (Tex. App. - Austin 2001, pet. denied)</p>	<p>Common Law Principle: The right of privacy is purely personal and terminates upon the death of the person whose privacy is invaded.</p>	Related/ Contrary	<p>Under this common law principle, disclosures of IIHI about a deceased person are not considered an invasion of the deceased person's privacy. However, deceased persons are entitled to the privacy protections of HIPAA. 45 C.F.R. § 164.502(f). In the very limited circumstances where no state statute provides for the confidentiality of the information, this rule of Texas common law stands as an obstacle to the full purposes and objectives of HIPAA.</p>	None	Yes	Please note the substantial difference between Texas common law and HIPAA on this point.

Texas Civil Practice & Remedies Code

Section	Related/Contrary	Explanation	Preemption Exception	Is State Law Preempted?	Recommendation
Title 4: Liability in Tort					
Chapter 74: Medical Liability					
§ 74.051 Notice	Related as to (d) & (e)/Not Contrary	As to (d): HIPAA permits appropriately limited disclosure of PHI that is required by law. 45 C.F.R. § 164.512(a)(1). As to (e): HIPAA permits disclosure to a family member or representative. 45 C.F.R. § 164.502.		No	
§ 74.052 Authorization Form for Release of PHI	Related as to (a)/Not Contrary	(1) HIPAA permits appropriately limited disclosure of PHI that is required by law. 45 C.F.R. § 164.512(a)(1). (2) HIPAA permits disclosure of PHI pursuant to a valid authorization. 45 C.F.R. § 164.502(a)(1)(iv).		No	
§ 74.152 Unlicensed Medical Personnel	Not Related	Codifies Good Samaritan defense allowing unlicensed persons to render emergency aid without civil liability (unless willfully or wantonly negligent).		No	
Title 4: Liability in Tort					
Chapter 81: Sexual Exploitation by Mental Health Services Provider					
§ 81.003 Liability of Employer	Related/Not Contrary	HIPAA permits appropriately limited disclosure of PHI that is required by law. 45 C.F.R. § 164.512(a)(1).		No	
§ 81.006 Duty to Report	Related/Not Contrary	HIPAA permits appropriately limited disclosure of PHI that is required by law. 45 C.F.R. § 164.512(a)(1).		No	
Title 6: Miscellaneous Provisions					
Chapter 144: Destruction of Certain Records					
§ 144.008 Disclosure of Information Subject to Order; Penalty	Related/Not Contrary	HIPAA permits appropriately limited disclosure of PHI that is required by law. 45 C.F.R. § 164.512(a)(1).		No	

Texas Civil Practice & Remedies Code

Section	Related/Contrary	Explanation	Preemption Exception	Is State Law Preempted?	Recommendation
Title 7: Alternate Methods of Dispute Resolution					
Chapter 154: Alternative Dispute Resolution Procedures					
§ 154.053 Standards and Duties of Impartial Third Parties	Not Related	Imposes general confidentiality requirements on persons appointed by a court to facilitate ADR procedures.		No	
§ 154.073 Confidentiality of Certain Records and Communications	Not Related	Imposes general confidentiality requirements on ADR participants.		No	
Title 7: Alternate Methods of Dispute Resolution					
Chapter 171: General Arbitration					
§ 171.051 Subpoenas	Not Related	Deals generally with the authority of an arbitrator to issue subpoenas to compel the attendance of witnesses, production of documents, etc.		No	

Texas Civil Statutes

Section/ Article	Related/ Contrary	Explanation	Preemption Exception	Is State Law Preempted?	Recommendation
<u>Repealed</u> Art. 135b-6, 4D(b) Structural Pest Control Act; Records of injuries and damages from misapplication; dissemination of information	Related/ Not Contrary	HIPAA permits certain disclosures for the purpose of health care oversight. 45 C.F.R. § 164.512(d)(1). (Currently in Occupations Code).		No	
<u>Repealed</u> Art. 135b-6 8C Subpoenas	Related/ Not Contrary	HIPAA permits appropriately limited disclosure of PHI that is required by law. 45 C.F.R. § 164.512(a)(1). (Currently in Occupations Code).		No	
<u>Repealed</u> Art. 4590i, 4.01(d) Notice	Related	(See Civil Practice & Remedies Code, Chapter 74).		No	
<u>Repealed</u> Art. 4590i, 6.01, et seq., Subchapter F Informed Consent	Not Related	This statute relates to risks and hazards of specific medical procedures that require informed consent. It does not relate to PHI. (See Civil Practice & Remedies Code, Chapter 74).		No	
Art. 6243e Texas Local Fire Fighters Retirement Act;14(b) Disability Retirement	Not Related	The disclosure of health information is by the member, not a covered entity.		No	
Art. 6243e Texas Local Fire Fighters Retirement Act; 32(a) Confidentiality of information about members, retirees, annuitants, or beneficiaries	Related/ Not Contrary	Sec. 32 (a)(1)(A) and (B) are not contrary because 45 C.F.R. § 164.502(a)(1) authorizes release to the individual. Sec. 32(a)(1)(C) permits disclosure to a spouse or former spouse and could be contrary to HIPAA unless such disclosure is pursuant to and in compliance with 45 C.F.R. § 164.502(a)(1)(iv). See Report "Recurring Issues-Written Authorizations"		No	

Texas Code of Criminal Procedure

Article	Related/ Contrary	Explanation	Preemption Exception	Is State Law Preempted?	Recommendation
Part 1: Code of Criminal Procedure of 1965 Chapter 1: General Provisions					
1.05 Rights of Accused	Not Related	Briefly states constitutional rights of the accused.		No	
1.24 Public Trial	Not Related	States that all trials and proceedings must be public.		No	
Part 1: Code of Criminal Procedure of 1965 Chapter 2: General Duties of Officers					
2.27 Investigation of Certain Reports Alleging Child Abuse	Related/ Not Contrary	(1) No covered entity. (2) HIPAA permits appropriately limited disclosure of PHI that is required by law. 45 C.F.R. § 164.512(a)(1).		No	
Part 1: Code of Criminal Procedure of 1965 Chapter 16: The Commitment or Discharge of the Accused					
16.22 Examination and Transfer of Defendant Suspected of Having Mental Illness or Mental Retardation	Related/ Not Contrary	(1) No covered entity. (2) HIPAA permits appropriately limited disclosure of PHI that is required by law. 45 C.F.R. § 164.512(a)(1).		No	
Part 1: Code of Criminal Procedure of 1965 Chapter 18: Search Warrants					
18.2 Interception and Use of Wire, Oral or Electronic Communications	Not Related	Generally prohibits such interception, with an exception for goverment officials.		No	
18.22 Testing for Communicable Diseases Following Certain Arrests	Related/ Not Contrary	HIPAA permits appropriately limited disclosure of PHI that is required by law. 45 C.F.R. § 164.512(a)(1).		No	
Part 1: Code of Criminal Procedure of 1965 Chapter 21: Indictment and Information					
21.31 AIDS Testing	Related/ Not Contrary	HIPAA permits appropriately limited disclosure of PHI that is required by law. 45 C.F.R. § 164.512(a)(1).		No	

Texas Code of Criminal Procedure

Article	Related/ Contrary	Explanation	Preemption Exception	Is State Law Preempted?	Recommendation
Part 1: Code of Criminal Procedure of 1965					
Chapter 46A: AIDS and HIV Testing in County and Municipal Jails					
46A.01 Testing; Segregation; Disclosure	Related/ Not Contrary	Only addresses information collection, not disclosure, and the information must be handled in accordance with HIPAA; as to segregation under (c), this is an acceptable use of PHI under 45 C.F.R. § 164.512(k)(5).		No	
Part 1: Code of Criminal Procedure of 1965					
Chapter 49: Inquests Upon Dead Bodies					
49.18 Death in Custody	Related/ Not Contrary	(1) HIPAA permits appropriately limited disclosure of PHI that is required by law. 45 C.F.R. § 164.512(a)(1). (2) In Open Records Decision No. 681 (2004), the OAG determined that HIPAA will not render records confidential when the records would otherwise be public under the Texas Public Information Act.		No	
49.24 Notification and Report of Death of Resident of Institution	Related/ Not Contrary	(1) HIPAA permits appropriately limited disclosure of PHI that is required by law. 45 C.F.R. § 164.512(a)(1). (2) In Open Records Decision No. 681 (2004), the OAG determined that HIPAA will not render records confidential when the records would otherwise be public under the Texas Public Information Act.		No	
49.25 Medical Examiners	Related/ Not Contrary	(1) No covered entity. (2) HIPAA permits appropriately limited disclosure of PHI that is required by law. 45 C.F.R. § 164.512(a)(1).		No	
Part 1: Code of Criminal Procedure of 1965					
Chapter 56: Rights of Crime Victims					

Texas Code of Criminal Procedure

Article	Related/ Contrary	Explanation	Preemption Exception	Is State Law Preempted?	Recommendation
56.045 Presence of Advocate or Representative During Forensic Medical Examination	Related/ Not Contrary	(1) No covered entity. (2) HIPAA permits disclosure to a family member or representative. 45 C.F.R. § 164.502. (3) Presence of advocate is only at the request of the victim.		No	
56.385 Review of Health Care Services	Related/ Not Contrary	No covered entity		No	
56.39 Mental or Physical Examination; Autopsy	Related/ Not Contrary	(1) No covered entity. (2) HIPAA permits appropriately limited disclosure of PHI that is required by law. 45 C.F.R. § 164.512(a)(1).		No	
Part 1: Code of Criminal Procedure of 1965					
Chapter 57: Confidentiality of Identifying Information of Sex Offense Victims					
57.02 Confidentiality of Files and Records	Not Related	Provides for use of pseudonym in place of victim's name in all public files and records.		No	
Part 1: Code of Criminal Procedure of 1965					
Chapter 59: Forfeiture of Contraband					
59.01 Definitions	Not Related	Discusses offenses committed under Medicaid but does not affect PHI.		No	
Part 1: Code of Criminal Procedure of 1965					
Chapter 63: Missing Children and Missing Persons					
63.015 Availability of Information Through Other Agencies	Related/ Not Contrary	HIPAA permits appropriately limited disclosure of PHI that is required by law. 45 C.F.R. § 164.512(a)(1).		No	
63.017 Confidentiality of Certain Records	Related/ Not Contrary	State law does not permit disclosure that HIPAA prohibits.		No	

Texas Education Code

Section	Related/ Contrary	Explanation	Preemption Exception	Is State Law Preempted?	Recommendation
All	Not Related	The definition of PHI in HIPAA specifically excludes IIHI in educational records covered by the Family Educational Rights and Privacy Act (FERPA); "Education records" under FERPA is very broad and includes all records maintained by an education agency - including medical records. (FERPA and the Education Code are applicable to public and charter schools only).		No	

Texas Family Code

Section	Related/ Contrary	Explanation	Preemption Exception	Is State Law Preempted?	Recommendation
Title 1: The Marriage Relationship Chapter 5: Homestead Rights					
§ 5.002 Sale of Separate Homestead After Spouse Declared Judicially Incapacitated	Not Related	Deals with the ability of one spouse to sell property in the event that the other spouse is incapacitated.		No	
Title 1: The Marriage Relationship Chapter 6: Suit for Dissolution of Marriage					
§ 6.007 Confinement in Mental Hospital	Not Related	Addresses the ability of a court to grant divorce in the event of incapacitation of the other spouse.		No	
§ 6.108 Mental Incapacity	Not Related	Addresses authority of court to grant annulments, which may depend on mental incapacity.		No	
§ 6.410 Report to Accompany Petition	Not Related	Requires that a person filing for divorce or annulment provide a Bureau of Statistics form for reporting such activity, which does not contain IIHI .		No	
§ 6.410 Confidentiality of Pleadings (*Code contains two sections of 6.410)	Not Related	Requires all documents filed in connection with a divorce petition in counties of a certain size to be confidential and not subject to Public Information Act for a period of time.		No	
§ 6.505 Counseling	Not Related	Empowers the judge to order a counselor's report on whether there is a reasonable expectation of reconciliation.		No	
§ 6.705 Testimony by Marriage Counselor	Not Related	Prohibits using the marriage counselor appointed under § 6.505 as a witness or using the counselor's report in any suit involving the parties or their children.		No	
Title 2: Child in Relation to the Family Chapter 32: Consent to Treatment of Child by Non-Parent or Child					

Texas Family Code

Section	Related/ Contrary	Explanation	Preemption Exception	Is State Law Preempted?	Recommendation
§ 32.001 Consent by Non-Parent	Related/ Not Contrary	HIPAA defers to state law regarding authority to act on behalf of a minor. 45 C.F.R. § 164.502(g)(3).		No	
§ 32.002 Consent Form	Not Related	Lists the information that must be included in a consent form for treatment of a child.		No	
§ 32.003 Consent to Treatment by Child	Related/ Not Contrary	A child's health information may be disclosed to a parent, guardian, or other person acting <i>in loco parentis</i> to the extent permitted or required by state law. 45 C.F.R. § 164.502(g)(3)(ii)(A).		No	
§ 32.004 Consent to Counseling	Related/ Not Contrary	A child's PHI may be disclosed to a parent, guardian, or other person acting <i>in loco parentis</i> to the extent permitted or required by state law. 45 C.F.R. § 164.502(g)(3)(ii)(A).		No	
§ 32.005 Examination Without Consent of Abuse or Neglect of Child	Not Related	Addresses the ability of a provider to perform an examination without consent where there are reasonable grounds to believe that a child has been abused or neglected (with certain exceptions).		No	
§ 32.101 Who May Consent to Immunization of Child	Related/ Not Contrary	(1) HIPAA defers to state law regarding authority to act on behalf of a minor. 45 C.F.R. § 164.502(g)(3). (2) No covered entity.		No	
Title 2: Child in Relation to the Family					
Chapter 33: Notice of Abortion					
§ 33.002 Parental Notice	Related/ Not Contrary	A child's PHI may be disclosed to a parent, guardian, or other person acting <i>in loco parentis</i> to the extent permitted or required by state law. 45 C.F.R. § 164.502(g)(3)(ii)(A).		No	

Texas Family Code

Section	Related/ Contrary	Explanation	Preemption Exception	Is State Law Preempted?	Recommendation
§ 33.003 Judicial Approval	Related/ Not Contrary	No covered entity		No	
§ 33.004 Appeal	Related/ Not Contrary	No covered entity		No	
§ 33.005 Affidavit of Physician	Not Related	Allows a physician to execute and include in a minor's medical record an affidavit stating that the minor has made an application/appeal, the deadline for the court to act has passed, and the physician has been notified that the court has not denied the application or appeal; the physician may perform the abortion in reliance on affidavit.		No	
§ 33.008 Physician's Duty to Report Abuse of a Minor; Investigation and Assistance	Related/ Not Contrary	(1) HIPAA permits appropriately limited disclosure of PHI that is required by law. 45 C.F.R. § 164.512(a)(1). (2) HIPAA permits disclosure to a governmental authority authorized to receive reports of child abuse or neglect. 45 C.F.R. § 164.512(b)(1)(ii).		No	
§ 33.009 Other Reports of Sexual Abuse of a Minor	Related/ Not Contrary	(1) NO covered entity. (2) HIPAA permits disclosure to a governmental authority authorized to receive reports of child abuse or neglect. 45 C.F.R. § 164.512(b)(1)(ii).		No	
§ 33.010 Confidentiality	Related/ Not Contrary	No covered entity		No	
Title 3: Juvenile Justice Code Chapter 51: General Provisions					
§ 51.03 Delinquent Conduct; Conduct Indicating a Need for Supervision	Not Related	Merely defines "delinquent conduct" and "conduct indicating a need for supervision."		No	

Texas Family Code

Section	Related/ Contrary	Explanation	Preemption Exception	Is State Law Preempted?	Recommendation
Title 3: Juvenile Justice Code					
Chapter 54: Judicial Proceedings					
§ 54.051 Transfer of Determinate Sentence Probation to Appropriate District Court	Not Related	Pertains to the jurisdiction over a child placed on probation for a period of time that will extend past the 18th birthday.		No	
Title 3: Juvenile Justice Code					
Chapter 55: Proceedings Concerning Children With Mental Illness or Mental Retardation					
§ 55.01 Meaning of Having a Mental Illness	Not Related	Refers to the definition of mental illness in § 571.003 of the Health and Safety Code for use in the chapter.		No	
§ 55.02 Mental Health and Mental Retardation Jurisdiction	Not Related	Deals with the proper jurisdiction to order mental health/mental retardation services.		No	
§ 55.03 Standards of Care	Not Related	Pertains to the standard of care required when a child has been committed for inpatient mental health services.		No	
§ 55.11 Mental Illness Determination; Examination	Related/ Not Contrary	HIPAA permits a covered entity to disclose PHI in the course of a judicial or administrative proceeding in response to a court order. 45 C.F.R. § 164.512(e)(1)(i).		No	
§ 55.12 Initiation of Commitment Proceedings	Related/ Not Contrary	(1) No covered entity. (2) HIPAA permits a covered entity to disclose PHI in the course of a judicial or administrative proceeding in response to a court order. 45 C.F.R. § 164.512(e)(1)(i).		No	

Texas Family Code

Section	Related/ Contrary	Explanation	Preemption Exception	Is State Law Preempted?	Recommendation
§ 55.13 Commitment Proceedings in Juvenile Court	Related/ Not Contrary	(1) No covered entity. (2) HIPAA permits a covered entity to disclose PHI in the course of a judicial or administrative proceeding in response to a court order. 45 C.F.R. § 164.512(e)(1)(i).		No	
§ 55.14 Referral for Commitment Proceedings	Related/ Not Contrary	(1) No covered entity. (2) HIPAA permits a covered entity to disclose PHI in the course of a judicial or administrative proceeding in response to a court order. 45 C.F.R. § 164.512(e)(1)(i).		No	
§ 55.15 Standards of Care; Expiration of Court Order for Mental Health Services	Not Related	Deals with the standards of care when a child has been committed for inpatient mental health services and when such order expires.		No	
§ 55.16 Order for Mental Health Proceedings; Stay of Proceedings	Related/ Not Contrary	(1) No covered entity. (2) HIPAA permits a covered entity to disclose PHI in the course of a judicial or administrative proceeding in response to a court order. 45 C.F.R. § 164.512(e)(1)(i).		No	
§ 55.17 Mental Health Services Not Ordered; Dissolution of Stay	Related/ Not Contrary	(1) No covered entity. (2) HIPAA permits a covered entity to disclose PHI in the course of a judicial or administrative proceeding in response to a court order. 45 C.F.R. § 164.512(e)(1)(i).		No	
§ 55.18 Discharge from Mental Health Facility Before Reaching 18 Years of Age	Not Related	Provides that if a person is discharged from a facility before the age of 18, the juvenile court may dismiss with prejudice or continue with proceedings as if the order had not occurred.		No	

Texas Family Code

Section	Related/ Contrary	Explanation	Preemption Exception	Is State Law Preempted?	Recommendation
§ 55.19 Transfer to Criminal Court on 18th Birthday	Related/ Not Contrary	(1) No covered entity. (2) HIPAA permits a covered entity to disclose PHI in the course of a judicial or administrative proceeding in response to a court order. 45 C.F.R. § 164.512(e)(1)(i).		No	
§ 55.31 Unfitness to Proceed Determination; Examination	Related/ Not Contrary	(1) No covered entity. (2) HIPAA permits a covered entity to disclose PHI in the course of a judicial or administrative proceeding in response to a court order. 45 C.F.R. § 164.512(e)(1)(i).		No	
§ 55.32 Hearing on Issue of Fitness to Proceed	Related/ Not Contrary	(1) No covered entity. (2) HIPAA permits a covered entity to disclose PHI in the course of a judicial or administrative proceeding in response to a court order. 45 C.F.R. § 164.512(e)(1)(i).		No	
§ 55.33 Proceedings Following Finding of Unfitness to Proceed	Related/ Not Contrary	(1) No covered entity. (2) HIPAA permits a covered entity to disclose PHI in the course of a judicial or administrative proceeding in response to a court order. 45 C.F.R. § 164.512(e)(1)(i).		No	
§ 55.34 Transportation To and From Facility	Not Related	Deals only with the transfer of a child from one facility to another.		No	

Texas Family Code

Section	Related/ Contrary	Explanation	Preemption Exception	Is State Law Preempted?	Recommendation
§ 55.35 Information Required to be Sent to Facility; Report to Court	Related/ Not Contrary	(1) No covered entity. (2) HIPAA permits a covered entity to disclose PHI in the course of a judicial or administrative proceeding in response to a court order. 45 C.F.R. § 164.512(e)(1)(i).		No	
§ 55.36 Report That Child is Fit to Proceed; Hearing on Objection	Related/ Not Contrary	(1) No covered entity. (2) HIPAA permits a covered entity to disclose PHI in the course of a judicial or administrative proceeding in response to a court order. 45 C.F.R. § 164.512(e)(1)(i).		No	
§ 55.37 Report That Child is Unfit to Proceed as a Result of Mental Illness; Initiation of Commitment Proceedings	Related/ Not Contrary	(1) No covered entity. (2) HIPAA permits a covered entity to disclose PHI in the course of a judicial or administrative proceeding in response to a court order. 45 C.F.R. § 164.512(e)(1)(i).		No	
§ 55.38 Commitment Proceedings in Juvenile Court for Mental Illness	Related/ Not Contrary	(1) No covered entity. (2) HIPAA permits a covered entity to disclose PHI in the course of a judicial or administrative proceeding in response to a court order. 45 C.F.R. § 164.512(e)(1)(i).		No	
§ 55.39 Referral for Commitment Proceedings for Mental Illness	Related/ Not Contrary	(1) No covered entity. (2) HIPAA permits a covered entity to disclose PHI in the course of a judicial or administrative proceeding in response to a court order. 45 C.F.R. § 164.512(e)(1)(i).		No	

Texas Family Code

Section	Related/ Contrary	Explanation	Preemption Exception	Is State Law Preempted?	Recommendation
§ 55.40 Report That Child is Unfit to Proceed as a Result of Mental Retardation	Related/ Not Contrary	(1) No covered entity. (2) HIPAA permits a covered entity to disclose PHI in the course of a judicial or administrative proceeding in response to a court order. 45 C.F.R. § 164.512(e)(1)(i).		No	
§ 55.41 Commitment Proceedings in Juvenile Court for Mental Retardation	Related/ Not Contrary	(1) No covered entity. (2) HIPAA permits a covered entity to disclose PHI in the course of a judicial or administrative proceeding in response to a court order. 45 C.F.R. § 164.512(e)(1)(i).		No	
§ 55.42 Referral for Commitment Proceedings for Mental Retardation	Related/ Not Contrary	(1) No covered entity. (2) HIPAA permits a covered entity to disclose PHI in the course of a judicial or administrative proceeding in response to a court order. 45 C.F.R. § 164.512(e)(1)(i).		No	
§ 55.43 Restoration Hearing	Related/ Not Contrary	(1) No covered entity. (2) HIPAA permits a covered entity to disclose PHI in the course of a judicial or administrative proceeding in response to a court order. 45 C.F.R. § 164.512(e)(1)(i).		No	
§ 55.44 Transfer to Criminal Court on 18th Birthday of Child	Related/ Not Contrary	(1) No covered entity. (2) HIPAA permits a covered entity to disclose PHI in the course of a judicial or administrative proceeding in response to a court order. 45 C.F.R. § 164.512(e)(1)(i).		No	

Texas Family Code

Section	Related/ Contrary	Explanation	Preemption Exception	Is State Law Preempted?	Recommendation
§ 55.45 Standards of Care; Notice of Release or Furlough	Related/ Not Contrary	(1) No covered entity. (2) HIPAA permits a covered entity to disclose PHI in the course of a judicial or administrative proceeding in response to a court order. 45 C.F.R. § 164.512(e)(1)(i).		No	
§ 55.51 Lack of Responsibility for Conduct Determination; Examination	Related/ Not Contrary	HIPAA permits a covered entity to disclose PHI in the course of a judicial or administrative proceeding in response to a court order. 45 C.F.R. § 164.512(e)(1)(i).		No	
§ 55.52 Proceedings Following Finding of Lack of Responsibility for Conduct	Related/ Not Contrary	(1) No covered entity. (2) HIPAA permits a covered entity to disclose PHI in the course of a judicial or administrative proceeding in response to a court order. 45 C.F.R. § 164.512(e)(1)(i).		No	
§ 55.53 Transportation To and From Facility	Not Related	States that the court must order the child to be transported to a designated facility after a placement order.		No	
§ 55.54 Information Required to be Sent to Facility; Report to Court	Related/ Not Contrary	HIPAA permits a covered entity to disclose PHI in the course of a judicial or administrative proceeding in response to a court order. 45 C.F.R. § 164.512(e)(1)(i).		No	
§ 55.55 Report That Child is Not Mentally Ill or Mentally Retarded; Hearing on Objection	Related/ Not Contrary	HIPAA permits a covered entity to disclose PHI in the course of a judicial or administrative proceeding in response to a court order. 45 C.F.R. § 164.512(e)(1)(i).		No	

Texas Family Code

Section	Related/ Contrary	Explanation	Preemption Exception	Is State Law Preempted?	Recommendation
§ 55.56 Report That Child Has Mental Illness; Initiation of Commitment Proceedings	Related/ Not Contrary	HIPAA permits a covered entity to disclose PHI in the course of a judicial or administrative proceeding in response to a court order. 45 C.F.R. § 164.512(e)(1)(i).		No	
§ 55.57 Commitment Proceedings in Juvenile Court for Mental Illness	Related/ Not Contrary	HIPAA permits a covered entity to disclose PHI in the course of a judicial or administrative proceeding in response to a court order. 45 C.F.R. § 164.512(e)(1)(i).		No	
§ 55.58 Referral for Commitment Proceedings for Mental Illness	Related/ Not Contrary	No covered entity		No	
§ 55.59 Report That Child Has Mental Retardation; Initiation of Commitment Proceedings	Related/ Not Contrary	HIPAA permits a covered entity to disclose PHI in the course of a judicial or administrative proceeding in response to a court order. 45 C.F.R. § 164.512(e)(1)(i).		No	
§ 55.60 Commitment Proceedings in Juvenile Court for Mental Retardation	Related/ Not Contrary	HIPAA permits a covered entity to disclose PHI in the course of a judicial or administrative proceeding in response to a court order. 45 C.F.R. § 164.512(e)(1)(i).		No	
§ 55.61 Referral for Commitment Proceedings for Mental Retardation	Related/ Not Contrary	No covered entity		No	

Title 3: Juvenile Justice Code
Chapter 58: Records; Juvenile Justice Information System (JJIS)

Texas Family Code

Section	Related/ Contrary	Explanation	Preemption Exception	Is State Law Preempted?	Recommendation
§ 58.005 Confidentiality of Records	Related/ Not Contrary	<u>All disclosures are permitted by HIPAA:</u> (1) 45 C.F.R. § 164.512(k) & § 164.506(a) for professional staff/consultants of the agency; (2) 45 C.F.R. § 164.512(a)(1), (e) & § 158.512(a)(1) for judges, probation officers, juvenile court, etc; (3) 45 C.F.R. § 164.523 for attorneys for the child; (4) 45 C.F.R. § 164.512(a)(1) for a government agency as required/authorized by law; (5) 45 C.F.R. § 164.506 for persons/entities to whom the child is referred for services; and (6) 45 C.F.R. § 164.512(k)(5) for TDCJ and TJPC for the purposes of maintaining statistical records or diagnosis.		No	
§ 58.0051 Interagency Sharing of Records	Not Related	Defines juvenile records as "summary criminal history information."		No	
§ 58.006 Destruction of Certain Records	Not Related	States the conditions under which a court may order the destruction of information relating to the conduct for which a child was taken into custody.		No	
§ 58.007 Physical Records or Files	Not Related	Sets out requirements for the inspection, maintenance, and storage of records concerning a child in the juvenile justice system.		No	

Texas Family Code

Section	Related/ Contrary	Explanation	Preemption Exception	Is State Law Preempted?	Recommendation
§ 58.0071 Destruction of Certain Physical Records and Files	Related/Contrary	<p>HIPAA does not set a blanket document retention requirement for all PHI. However, 45 C.F.R. ' 160.522 provides a six year statute of limitations for non-compliance actions against covered entities.</p> <p>Also, 45 C.F.R. ' 164.528(d) gives an individual the right to an accounting of PHI disclosures made by a covered entity during the previous six years.</p> <p>This statute stands as an obstacle to the accomplishment and execution of the full purposes of HIPAA in that it allows a covered entity to destroy PHI that could be relevant to an OCR investigation prior to the end of the six year statute of limitations for an OCR investigation.</p>	None	Yes	Amend subsection (f) as follows: This section does not affect the destruction of physical records and files authorized by the Texas State Library Records Retention schedule or protected health information maintained by a covered entity, as that term is defined by the Health Insurance Portability and Accountability Act of 1996 (HIPAA).
§ 58.101 Definitions	Not Related	Sets out definitions for the Juvenile Justice Information System, none of which pertain to IIHI.		No	
§ 58.102 Juvenile Justice Information System	Not Related	Details the responsibility of Dept. of Public Safety (DPS) in maintaining the Juvenile Justice Information System (JJIS).		No	
§ 58.103 Purpose of System	Not Related	States the purpose of the JJIS.		No	
§ 58.104 Types of Information Collected	Related/ Not Contrary	This is a definitional section and does not address any disclosure by a covered entity.		No	

Texas Family Code

Section	Related/ Contrary	Explanation	Preemption Exception	Is State Law Preempted?	Recommendation
Title 3: Juvenile Justice Code					
Chapter 61: Rights and Responsibilities of Parents and Other Eligible Persons					
§ 61.102 Right to be Informed of Proceeding	Related/ Not Contrary	No covered entity		No	
Title 4: Protective Orders and Family Violence					
Chapter 82: Applying for Protective Order					
§ 82.010 Confidentiality of Application	Related/ Contrary	A covered entity would find it impossible to comply with this law and HIPAA.	State law provisions which are more stringent than the HIPAA Privacy Rule are not preempted. 45 C.F.R. § 160.203(b).	No: (1) An exception applies; and (2) This law currently implies that it is only applicable to the Harris County court system, which is not a covered entity.	A covered entity could believe itself to be bound by this law as it is currently written in some circumstances. Please consider amending this law to clarify that it is only applicable to personnel in the court system.
Title 4: Protective Orders and Family Violence					
Chapter 85: Issuance of Protective Order					
§ 85.021 Requirements of Order Applying to Any Party	Not Related	Lists the actions that a court may take in a protective order.		No	
§ 85.024 Enforcement of Counseling Requirement	Related/ Not Contrary	HIPAA permits appropriately limited disclosure of PHI that is required by law. 45 C.F.R. § 164.512(a)(1).		No	
Title 5: The Parent-Child Relationship and the Suit Affecting the Parent-Child Relationship					
Chapter 102: Filing Suit					
§ 102.0086 Confidentiality of Pleadings	Not Related	Provides for the confidentiality of pleadings and other documents when filed in a county of a certain size.		No	

Texas Family Code

Section	Related/ Contrary	Explanation	Preemption Exception	Is State Law Preempted?	Recommendation
Title 5: The Parent-Child Relationship and the Suit Affecting the Parent-Child Relationship					
Chapter 107: Special Appointments and Social Studies					
§ 107.002 Powers and Duties of Guardian ad Litem for Child	Related/ Not Contrary	HIPAA permits a covered entity to disclose PHI in the course of a judicial or administrative proceeding in response to a court order. 45 C.F.R. § 164.512(e)(1)(i).		No	
§ 107.003 Powers and Duties of Attorney ad Litem for Child and Amicus Attorney	Related/ Not Contrary	HIPAA permits a covered entity to disclose PHI in the course of a judicial or administrative proceeding in response to a court order. 45 C.F.R. § 164.512(e)(1)(i).		No	
§ 107.006 Access to Child and Information Relating to Child	Related/Not Contrary as to (a) & (b); Related/Contrary as to (c)	<u>As to (a) & (b):</u> HIPAA permits appropriately limited disclosure of PHI that is required by law. 45 C.F.R. § 164.512(a)(1). Also, HIPAA permits a covered entity to disclose PHI in the course of a judicial or administrative proceeding in response to a court order. 45 C.F.R. § 164.512(e)(1)(i). <u>As to (c):</u> With regard to a court order to disclose the mental health record of a child at least twelve years old, HIPAA permits disclosure to the extent expressly authorized by court order, while (c) of this law only permits disclosure in accordance with "other law."	None	Yes	Amend subsection (c) to clarify what "other law" would render the mental health record of a child at least 12 years of age privileged or confidential. Without knowing which "other law" is contemplated by subsection (c), it is extremely difficult to determine with certainty whether or not this provision of state law is preempted by HIPAA.
§ 107.0511 Pre-adoptive Home Screening	Related/ Not Contrary	HIPAA permits appropriately limited disclosure of PHI that is required by law. 45 C.F.R. § 164.512(a)(1).		No	
§ 107.052 Post-placement Adoptive Report	Related/ Not Contrary	HIPAA permits appropriately limited disclosure of PHI that is required by law. 45 C.F.R. § 164.512(a)(1).		No	

Texas Family Code

Section	Related/ Contrary	Explanation	Preemption Exception	Is State Law Preempted?	Recommendation
§ 107.053 Prospective Adoptive Parents to Receive Copy	Related/ Not Contrary	HIPAA permits appropriately limited disclosure of PHI that is required by law. 45 C.F.R. § 164.512(a)(1).		No	
§ 107.054 Report Filed With Court	Related/ Not Contrary	HIPAA permits appropriately limited disclosure of PHI that is required by law. 45 C.F.R. § 164.512(a)(1).		No	
§ 107.055 Introduction of Report at Trial	Related/ Not Contrary	HIPAA permits appropriately limited disclosure of PHI that is required by law. 45 C.F.R. § 164.512(a)(1).		No	
Title 5: The Parent-Child Relationship and the Suit Affecting the Parent-Child Relationship Chapter 108: Central Record File; Vital Statistics					
§ 108.001 Transmittal of Records of Suit by Clerk	Not Related	Pertains to the transmittal and confidentiality of records of rendered orders in certain suits; no contemplation of health information.		No	
§ 108.008 Filing Information After Determination of Paternity	Not Related	Information being disclosed (judicial determination of paternity) is not health information.		No	
§ 108.110 Release of Information by Bureau of Vital Statistics	Related/ Not Contrary	No covered entity		No	
Title 5: The Parent-Child Relationship and the Suit Affecting the Parent-Child Relationship Chapter 152: Uniform Child Custody Jurisdiction and Enforcement Act					
§ 152.209 Information to be Submitted to Court	Not Related	IIHI is not included in the information required for the initial pleadings of child custody proceedings.		No	
Title 5: The Parent-Child Relationship and the Suit Affecting the Parent-Child Relationship Chapter 153: Conservatorship, Possession, and Access					
§ 153.001 Public Policy	Not Related	States a public policy rule that child support and custody rights are independent of each other.		No	

Texas Family Code

Section	Related/ Contrary	Explanation	Preemption Exception	Is State Law Preempted?	Recommendation
§ 153.002 Best Interest of Child	Not Related	States a public policy rule that the best interest of the child is the primary consideration in conservatorship and access decisions.		No	
§ 153.003 No Discrimination Based on Sex or Marital Status	Not Related	States a public policy rule that custody decisions should be made without regard to gender (parent or child) or marital status.		No	
§ 153.005 Appointment of Sole or Joint Managing Conservator	Not Related	Allows for appointment of conservator by court.		No	
§ 153.006 Appointment of Possessory Conservator	Not Related	Allows for appointment of conservator by court.		No	
§ 153.007 Agreement Concerning Conservatorship	Not Related	Allows parties to enter into written agreement concerning conservatorship, which will be entered as an order by a court if found to be in the child's best interests.		No	
§ 153.008 Child's Preference of Person to Designate Residence	Not Related	Allows a child over 12 years old to choose a person who will designate the child's primary residence.		No	
§ 153.009 Interview of Child in Chambers	Not Related	Allows a court to interview a child in chambers as to the child's wishes for conservatorship.		No	
§ 153.010 Order for Family Counseling	Not Related	Allows a court to order family counseling where there is a history of conflict on conservatorship or access issues.		No	
§ 153.011 Security Bond	Not Related	Allows a court to order a party to execute a security bond in some circumstances.		No	

Texas Family Code

Section	Related/ Contrary	Explanation	Preemption Exception	Is State Law Preempted?	Recommendation
§ 153.012 Right to Privacy; Deletion of Personal Information in Records	Not Related	Allows a court to order the custodian of records to delete references to the residence of either party before release.		No	
§ 153.014 Visitation Centers and Visitation Exchange Facilities	Not Related	Allows a county to establish a visitation center to facilitate terms of a court order.		No	
§ 153.071 Court to Specify Rights and Duties of Parent Appointed a Conservator	Not Related	Requires a court to specify the rights and duties of each parent if both appointed conservators.		No	
§ 153.072 Written Finding Required to Limit Parental Rights and Duties	Not Related	Allows a court to limit the rights and duties of a parent appointed as a conservator if the court makes a written finding that such a limitation is in the best interests of the child.		No	
§ 153.073 Rights of Parent at All Times	Related/ Not Contrary	Other specific state laws, such as the Medical Practice Act confidentiality provisions, govern a use/disclosure of health information. This law confers authority, but other specific laws actually govern disclosure.	None	No	
§ 153.075 Duties of Parent Not Appointed Conservator	Not Related	Allows a court to order a non-conservator parent to perform other parental duties, including paying child support.		No	

Texas Family Code

Section	Related/ Contrary	Explanation	Preemption Exception	Is State Law Preempted?	Recommendation
§ 153.371 Rights and Duties of Nonparent Appointed as Sole Managing Conservator	Related/ Not Contrary	This statute merely provides a non-parent conservator with the rights that a parent would have over a minor child. Other specific state laws, such as the Medical Practice Act confidentiality provisions, govern a use/disclosure of health information. These Family Code sections confer authority, but other specific laws actually govern the disclosure.		No	
§ 153.3721 Access to Certain Records by Nonparent Joint Managing Conservator	Related/ Not Contrary	This statute merely provides a non-parent conservator with the rights that a parent would have over a minor child. Other specific state laws, such as the Medical Practice Act confidentiality provisions, govern a use/disclosure of health information. These Family Code sections confer authority, but other specific laws actually govern the disclosure.		No	
§ 153.373 Voluntary Surrender of Possession Rebutts Parental Presumption	Not Related	Pertains to the voluntary relinquishment of possession by a parent.		No	
§ 153.374 Designation of Managing Conservator in Affidavit of Relinquishment	Not Related	Addresses the right of a parent to designate a managing conservator.		No	

Texas Family Code

Section	Related/ Contrary	Explanation	Preemption Exception	Is State Law Preempted?	Recommendation
§ 153.375 Annual Report by Nonparent Managing Conservator	Related/ Not Contrary	(1) No covered entity. 2) HIPAA permits a covered entity to disclose PHI in the course of a judicial or administrative proceeding in response to a court order. 45 C.F.R. § 164.512(e)(1)(i).		No	
§ 153.376 Rights and Duties of Nonparent Possessory Conservator	Related/ Not Contrary	This statute merely provides a non-parent conservator with the rights that a parent would have over a minor child. Other specific state laws, such as the Medical Practice Act confidentiality provisions, govern a use/disclosure of health information. These Family Code sections confer authority, but other specific laws actually govern the disclosure.		No	
§ 153.377 Access to the Child's Records	Related/ Not Contrary	This statute merely provides a non-parent conservator with the rights that a parent would have over a minor child. Other specific state laws, such as the Medical Practice Act confidentiality provisions, govern a use/disclosure of health information. These Family Code sections confer authority, but other specific laws actually govern the disclosure.		No	
§ 153.431 Grandparental Appointment as Managing Conservator	Not Related	Deals only with the right of grandparents to be appointed as managing conservators.		No	
§ 153.432 Suit for Access	Not Related	Deals with the rights of grandparents to have access to their grandchildren.		No	

Texas Family Code

Section	Related/ Contrary	Explanation	Preemption Exception	Is State Law Preempted?	Recommendation
§ 153.433 Possession of and Access to Grandchild	Not Related	Deals with the rights of grandparents to have access to their grandchildren.		No	
§ 153.434 Limitation on Right to Request Access	Not Related	Deals with the rights of grandparents to have access to their grandchildren.		No	
Title 5: The Parent-Child Relationship and the Suit Affecting the Parent-Child Relationship Chapter 160: Uniform Parentage Act					
§ 160.105 Protection of Participants	Not Related	States that a proceeding under the Act is subject to all other laws of the state.		No	
§ 160.412 Furnishing of Information; Confidentiality	Related/ Not Contrary	No covered entity (Disclosing entity Bureau of Vital Statistics (BVS) is a non-covered component of hybrid entity Tex. Dept. of Health).		No	
§ 160.413 Offense; Unauthorized Release of Information	Related/ Not Contrary	State law does not permit a disclosure that HIPAA prohibits.		No	
§ 160.421 Search of Appropriate Registry	Not Related	Creates a procedural requirement that a petitioner for adoption/termination of parental rights must obtain a certificate of search results from the Registry of Paternity.		No	
§ 160.422 Certificate of Search of Registry	Related/ Not Contrary	HIPAA permits appropriately limited disclosure of PHI that is required by law. 45 C.F.R. § 164.512(a)(1).		No	
§ 160.511 Offense; Unauthorized Release of Specimen	Related/ Not Contrary	State law does not permit a disclosure that HIPAA prohibits.		No	
§ 160.633 Hearings; Inspection of Records	Related/ Not Contrary	No covered entity		No	

Texas Family Code

Section	Related/ Contrary	Explanation	Preemption Exception	Is State Law Preempted?	Recommendation
§ 160.757 Inspection of Records	Related/Possibly Contrary	This law provides that proceedings, records, and identities of parties to gestational agreements are subject to inspection under the same standards that apply to adoption, but at least two state laws dealing with access to and inspection of adoption records are contrary to HIPAA (Fam. Code. §§ 162.414 and 162.422).	None	Possibly Yes	Amend § 160.757 to include clear standards of inspection and confidentiality that pertain specifically to gestational agreements, without dependence on rules that are more relevant to adoption. Such standards may then be examined for HIPAA compliance.
§ 160.763 Health Care Facility Reporting Requirements	Not Related	Provides for rule-making by Tex. Dept. of Health requiring the reporting of statistical information, not IIHI.		No	
Title 5: The Parent-Child Relationship and the Suit Affecting the Parent-Child Relationship					
Chapter 162: Adoption					
§ 162.003 Pre-Adoptive Home Screening and Post-Placement Report	Not Related	Requires a report to be created, but does not address the disclosure or confidentiality of that report.		No	
§ 162.005 Preparation of Health, Social, Educational, and Genetic History Report	Related/ Not Contrary	HIPAA permits appropriately limited disclosure of PHI that is required by law. 45 C.F.R. § 164.512(a)(1).		No	
§ 162.006 Right to Examine Records	Related/ Not Contrary	HIPAA permits appropriately limited disclosure of PHI that is required by law. 45 C.F.R. § 164.512(a)(1).		No	
§ 162.0065 Editing Adoption Records in Department Placement	Related/ Not Contrary	No covered entity		No	

Texas Family Code

Section	Related/ Contrary	Explanation	Preemption Exception	Is State Law Preempted?	Recommendation
§ 162.007 Contents of Health, Social, Educational, and Genetic History Report	Related/ Not Contrary	This provision deals only with the contents of the report, not disclosure or confidentiality.		No	
§ 162.008 Filing of Health, Social, Educational, and Genetic History Report	Related/ Not Contrary	HIPAA permits appropriately limited disclosure of PHI that is required by law. 45 C.F.R. § 164.512(a)(1).		No	
§ 162.018 Access to Information	Related/Not Contrary	HIPAA permits appropriately limited disclosure of PHI that is required by law. 45 C.F.R. § 164.512(a)(1). However, the "right" to receive records is not as strong as a state law mandate that an entity "must" release records upon request.		No	Please consider amending § 162.018 to read: "The department, licensed child-placing agency, person, or entity placing the child for adoption must provide to the adoptive parents, upon request, copies of the records and other information relating to the history of the child maintained by the department, licensed child-placing agency, person, or entity placing the child for adoption."
§ 162.021 Sealing File	Related/ Not Contrary	(1) No covered entity. (2) HIPAA permits appropriately limited disclosure of PHI that is required by law. 45 C.F.R. § 164.512(a)(1).		No	
§ 162.022 Confidentiality Maintained By Clerk	Related/ Not Contrary	(1) No covered entity. (2) HIPAA permits appropriately limited disclosure of PHI that is required by law. 45 C.F.R. § 164.512(a)(1).		No	
§ 162.404 Requirement to Send Information to Central Registry	Related/ Not Contrary	HIPAA permits appropriately limited disclosure of PHI that is required by law. 45 C.F.R. § 164.512(a)(1).		No	

Texas Family Code

Section	Related/ Contrary	Explanation	Preemption Exception	Is State Law Preempted?	Recommendation
§ 162.408 Proof of Identity	Not Related	Requires proof of identity from an applicant for information from an adoption registry. Even if related, it is not inconsistent with HIPAA because the stated purpose of the statute is to protect the privacy rights of the parties to an adoption, as opposed to protecting PHI.		No	
§ 162.409 Application	Not Related	Lists the required information that must be provided by a person applying to register to a registry. Even if related: (1) The disclosing entity is not a covered entity; and (2) The statute does not address either the confidentiality or disclosure of the application.		No	
§ 162.414 Matching Procedures	Related/ Contrary	State law would permit disclosure of PHI (confirmation/denial of a biological relationship between two people) that is prohibited by HIPAA. A covered entity would find it impossible to comply with both this state law and HIPAA.	None	Yes	Amend the last sentence of § 162.414(d) to read: "The agency, court, hospital, physician, or person with knowledge may confirm or deny the match without breaching any duty of confidentiality to the adoptee, adoptive parents, birth parents, or biological siblings, <i>which arises from state law. This provision does not relieve a Covered Entity, as that term is defined by the Health Insurance Portability and Accountability Act of 1996 (HIPAA), from any obligations it has pursuant to HIPAA.</i> "
§ 162.416 Disclosure of Identifying Information	Related/ Not Contrary	(1) No covered entity. (2) HIPAA permits appropriately limited disclosure of PHI that is required by law. 45 C.F.R. § 164.512(a)(1).		No	

Texas Family Code

Section	Related/ Contrary	Explanation	Preemption Exception	Is State Law Preempted?	Recommendation
§ 162.419 Registry Records Confidential	Related/ Not Contrary	No covered entity	Even if it were a covered entity, disclosure would be permitted by the exception in 45 C.F.R. § 160.203(b), as the state law provision is more stringent than the HIPAA standard, requirement, or implementation specification.	No	
§ 162.420 Rulemaking	Related/ Not Contrary	Disclosing entities (Board of Health and Bureau of Vital Statistics) are not covered entities.		No	
§ 162.421 Prohibited Acts; Criminal Penalties	Related/ Not Contrary	State law does not permit disclosure that HIPAA prohibits.		No	
§ 162.422 Immunity From Liability	Contrary as to subsection (c)	While HIPAA provides for penalties for disclosing protected health information if not specifically authorized by HIPAA, subsection (c) provides immunity for information disclosed to adoption registries and therefore stands as an obstacle to the accomplishment and execution of the full purposes of HIPAA.	None	Yes	Amend the last sentence of § 162.422(d) to read: "This provision does not provide immunity from liability for performing an act prohibited by § 162.421 or for committing a violation of the Health Insurance Portability and Accountability Act of 1996 (HIPAA)."
Title 5: The Parent-Child Relationship and the Suit Affecting the Parent-Child Relationship					
Chapter 203: Domestic Relations Offices					
§ 203.007 Access to Records; Offense	Related/ Not Contrary	No covered entity		No	
Title 5: The Parent-Child Relationship and the Suit Affecting the Parent-Child Relationship					
Chapter 231: Title IV-D Services					

Texas Family Code

Section	Related/ Contrary	Explanation	Preemption Exception	Is State Law Preempted?	Recommendation
§ 231.108 Confidentiality of Records and Privileged Communication	Related/ Not Contrary	No covered entity		No	
§ 231.308 Public Identification of Certain Obligors	Not Related	Allows the Office of Attorney General to publicly identify persons who are delinquent in payment of child support obligations (not IIHI).		No	
Title 5: The Parent-Child Relationship and the Suit Affecting the Parent-Child Relationship Chapter 233: Child Support Review Process to Establish or Enforce Support Obligations					
§ 233.019 Filing of Agreed Review Order	Related/ Not Contrary	No covered entity		No	
§ 233.020 Contents of Petition for Confirmation of Non-agreed Order	Related/ Not Contrary	No covered entity		No	
§ 233.028 Special Child Support Review Procedures Relating to Establishment of Parentage	Related/ Not Contrary	No covered entity		No	
Title 5: The Parent-Child Relationship and the Suit Affecting the Parent-Child Relationship Chapter 235: Sharing Information in State Case Registry					
§ 235.001 Request for Information	Not Related	Pertains to records of child support orders.		No	
Title 5: The Parent-Child Relationship and the Suit Affecting the Parent-Child Relationship Chapter 261: Investigation of Report of Child Abuse or Neglect					

Texas Family Code

Section	Related/ Contrary	Explanation	Preemption Exception	Is State Law Preempted?	Recommendation
§ 261.101 Persons Required to Report; Time to Report	Related/ Not Contrary	(1) HIPAA permits appropriately limited disclosure of PHI that is required by law. 45 C.F.R. § 164.512(a)(1). (2) HIPAA permits disclosure to a governmental authority authorized to receive reports of child abuse or neglect. 45 C.F.R. § 164.512(b)(1)(ii).		No	
§ 261.103 Report Made to Appropriate Agency	Related/Not Contrary as to (a); Related/Possibly Contrary as to (b)	<u>As to (a):</u> (1) HIPAA permits appropriately limited disclosure of PHI that is required by law. 45 C.F.R. § 164.512(a)(1). (2) HIPAA permits disclosure to a governmental authority authorized to receive reports of child abuse or neglect. 45 C.F.R. § 164.512(b)(1)(ii). <u>As to (b):</u> The report to Texas Youth Commission is permissive and not required by law, and the Texas Youth Commission is not a public health authority	<u>As to (b):</u> This provision pertains to reporting child abuse and is specifically excepted from preemption by 45 C.F.R. § 160.203(c).	No	
§ 261.104 Contents of Report	Related/ Not Contrary	HIPAA permits disclosure to a governmental authority authorized to receive reports of child abuse or neglect. 45 C.F.R. § 164.512(b)(1)(ii).		No	
§ 261.105 Referral of Report by Department or Law Enforcement	Related/ Not Contrary	No covered entity		No	
§ 261.1055 Notification of District Attorneys	Related/ Not Contrary	No covered entity		No	

Texas Family Code

Section	Related/ Contrary	Explanation	Preemption Exception	Is State Law Preempted?	Recommendation
§ 261.106 Immunities	Not Related	Pertains to the immunity provided to individuals who make reports of potential child abuse or neglect in good faith		No	
§ 261.109 Failure to Report; Penalty	Not Related	States the penalty for failing to report child abuse or neglect.		No	
§ 261.110 Employee Retaliation Prohibited	Not Related	Outlines the non-retaliation standards and policies.		No	
§ 261.201 Confidentiality and Disclosure of Information	Related/ Not Contrary	No covered entity		No	
§ 261.202 Privileged Communication	Not Related	Deals with the exclusion of evidence based on privilege.		No	
§ 261.301 Investigation of Report	Related/ Not Contrary	No covered entity		No	
§ 261.302 Conduct of Investigation	Related/ Not Contrary	HIPAA permits disclosure to a governmental authority authorized to receive reports of child abuse or neglect. 45 C.F.R. § 164.512(b)(1)(ii).		No	
§ 261.303 Interference With Investigation; Court Order	Related/ Not Contrary	HIPAA permits a covered entity to disclose PHI in the course of a judicial or administrative proceeding in response to a court order. 45 C.F.R. § 164.512(e)(1)(i).		No	
§ 261.304 Investigation of Anonymous Report	Related/ Not Contrary	HIPAA permits disclosure to a governmental authority authorized to receive reports of child abuse or neglect. 45 C.F.R. § 164.512(b)(1)(ii).		No	

Texas Family Code

Section	Related/ Contrary	Explanation	Preemption Exception	Is State Law Preempted?	Recommendation
§ 261.305 Access to Mental Health Records	Related/Not Contrary	HIPAA permits a covered entity to disclose PHI in the course of a judicial or administrative proceeding in response to a court order. 45 C.F.R. § 164.512(e)(1)(i).		No	
§ 261.307 Information Relating to Investigation Procedures	Related/ Not Contrary	No covered entity		No	
§ 261.309 Review of Department Investigations	Not Related	Pertains to the process by which one may complain or request administrative review of the manner in which an investigation was conducted or refute the findings.		No	
§ 261.311 Notice of Report	Related/ Not Contrary	No covered entity		No	
§ 261.312 Review Teams; Offense	Not Related	Addresses the system of checks and balances for reviewing the work of Child Protective Services (CPS).		No	
§ 261.3125 Investigations Coordinator	Related/ Not Contrary	HIPAA permits disclosure to a governmental authority authorized to receive reports of child abuse or neglect. 45 C.F.R. § 164.512(b)(1)(ii).		No	
§ 261.314 Testing	Related/ Not Contrary	HIPAA permits appropriately limited disclosure of PHI that is required by law. 45 C.F.R. § 164.512(a)(1).		No	
§ 261.315 Removal of Certain Investigation Information From Records	Not Related	Permits an individual who is cleared of committing child abuse or neglect to have information regarding their alleged role removed from the records.		No	

Texas Family Code

Section	Related/ Contrary	Explanation	Preemption Exception	Is State Law Preempted?	Recommendation
§ 261.316 Exemption From Fees for Medical Records	Not Related	Provides that DFPS is exempt from usual fees charged for medical records when conducting an investigation.		No	
§ 261.401 Agency Investigation	Not Related	Requires that state agencies operating facilities for children adopt certain rules for investigation procedures.		No	
§ 261.402 Investigative Reports	Related/ Not Contrary	HIPAA permits disclosure to a governmental authority authorized to receive reports of child abuse or neglect. 45 C.F.R. § 164.512(b)(1)(ii).		No	
§ 261.403 Complaints	Not Related	Requires DFPS to draft procedures for registering complaints concerning investigations of suspected child abuse or neglect.		No	
§ 261.404 Investigations in Facilities Under Department of Mental Health and Mental Retardation	Not Related	Requires that certain agencies adopt rules for investigation procedures.		No	
§ 261.405 Investigation in Juvenile Justice Programs and Facilities	Related/ Not Contrary	HIPAA permits disclosure to a governmental authority authorized to receive reports of child abuse or neglect. 45 C.F.R. § 164.512(b)(1)(ii).		No	
§ 261.406 Investigations in Schools	Related/ Not Contrary	As per 45 C.F.R. ' 164.501, education records are specifically exempt from HIPAA and are instead covered under the Family Educational Rights and Privacy Act (FERPA) (20 U.S.C. § 1232g).		No	

Texas Family Code

Section	Related/ Contrary	Explanation	Preemption Exception	Is State Law Preempted?	Recommendation
§ 261.407 Minimum Standards	Not Related	Establishes minimum procedural standards for the investigation of suspected child abuse and neglect.		No	
§ 261.408 Information Collection	Not Related	Requires DFPS to set uniform procedures for the collection of information about the deaths of children in facilities.		No	
§ 261.409 Investigation in Facilities Under Texas Youth Commission Jurisdiction	Not Related	Requires TYC to adopt procedural standards for the investigation of suspected child abuse or neglect in its facilities.		No	
Title 5: The Parent-Child Relationship and the Suit Affecting the Parent-Child Relationship Chapter 262: Procedures in Suit by Governmental Entity to Protect Health and Safety of Child					
§ 262.101 Filing Petition Before Taking Possession of Child	Related/ Not Contrary	HIPAA permits disclosure to a governmental authority authorized to receive reports of child abuse or neglect. 45 C.F.R. § 164.512(b)(1)(ii).		No	
§ 262.104 Taking Possession of a Child in Emergency Without a Court Order	Related/ Not Contrary	HIPAA permits disclosure to a governmental authority authorized to receive reports of child abuse or neglect. 45 C.F.R. § 164.512(b)(1)(ii).		No	
§ 262.109 Notice to Parent, Conservator, or Guardian	Not Related	Sets out the required content for the notice to a parent or guardian when Child Protective Services (CPS) takes possession of a child.		No	
§ 262.113 Filing Suit Without Taking Possession of Child	Not Related	Outlines what must be alleged in an affidavit to support a suit filed by a governmental entity requesting to take possession of a child.		No	

Texas Family Code

Section	Related/ Contrary	Explanation	Preemption Exception	Is State Law Preempted?	Recommendation
§ 262.201 Full Adversary Hearing; Findings of the Court	Not Related	Describes the process for a court to hold an adversary hearing and issue findings when a child has been removed from a parent or guardian.		No	
§ 262.302 Accepting Possession of Certain Abandoned Children	Not Related	Requires a designated emergency infant care provider to take possession of a child under certain circumstances and perform any act necessary to protect the health and safety of the child.		No	
Title 5: The Parent-Child Relationship and the Suit Affecting the Parent-Child Relationship Chapter 264: Child Welfare Services					
§ 264.201 Services by Department	Not Related	Outlines the services provided to an abused or neglected child and the child's family.		No	
§ 264.207 Department Planning and Accountability	Not Related	Requires the DFPS to adopt policies and take actions to meet its goals.		No	

Texas Family Code

Section	Related/ Contrary	Explanation	Preemption Exception	Is State Law Preempted?	Recommendation
<p>§ 264.408 Use of Information and Records; Confidentiality and Ownership</p>	Related/Contrary	This law provides that documents and information used or developed in providing child welfare services (including documents in the possession of covered entities who provide services via contracts) are confidential and not subject to the Public Information Act, but allows for blanket disclosure to DFPS, law enforcement agencies, prosecuting attorneys, medical professionals, etc, which is prohibited by HIPAA.	None	Yes	<p>(1) Amend § 264.408(a) to read: "The files, reports, records, communications, and working papers used or developed in providing services under this <i>subchapter</i> are confidential and not subject to public release under Chapter 552, Government Code, and may only be disclosed <i>by a center and</i> for purposes consistent with this subchapter. <i>Disclosure may be made by a center to:...</i>" <u>OR</u> (2) Amend § 264.408(a) to read: "The files, reports, records, communications, and working papers used or developed in providing services under this subchapter are confidential and not subject to public release under Chapter 552, Government Code, <i>but shall be disclosed to the following persons or entities upon the written request of the department or pursuant to a court order:...</i>"</p>
<p>§ 264.504 Meetings of [Child Fatality Review] Committee</p>	Related/ Not Contrary	This law does not specifically pertain to disclosures of IIHI by a covered entity; if the committee requested that a covered entity such as a health care provider attend a meeting, no disclosure would be compelled (such disclosures would fall under an applicable exception if made).	Even if it were contrary to HIPAA, there is an applicable exception for reporting child abuse and death.	No	
<p>§ 264.506 Purposes and Duties of a Review Team</p>	Not Related	Sets forth the purposes of the team and what will be done to achieve those purposes.		No	

Texas Family Code

Section	Related/ Contrary	Explanation	Preemption Exception	Is State Law Preempted?	Recommendation
§ 264.508 Review Procedure	Not Related	Directs team members to review the member's records and agency records pertaining to each listed child upon receipt of a list of child fatalities.		No	
§ 264.509 Access to Information	Related/ Not Contrary	HIPAA permits appropriately limited disclosure of PHI that is required by law. 45 C.F.R. § 164.512(a)(1).	Even if it were contrary to HIPAA, there is an applicable exception for reporting child abuse and death.	No	
§ 264.511 Use of Information and Records; Confidentiality	Related/ Not Contrary	No covered entity		No	
§ 264.513 Report of Death of Child	Related/ Not Contrary	(1) HIPAA permits appropriately limited disclosure of PHI that is required by law. 45 C.F.R. § 164.512(a)(1). (2) HIPAA permits disclosure for certain public health activities. 45 C.F.R. § 164.512(b).		No	
§ 264.514 Procedure in the Event of Reportable Death	Related/ Not Contrary	(1) HIPAA permits appropriately limited disclosure of PHI that is required by law. 45 C.F.R. § 164.512(a)(1). (2) HIPAA permits disclosure for certain public health activities. 45 C.F.R. § 164.512(b). (3) HIPAA permits disclosure for certain law enforcement purposes. 45 C.F.R. § 164.512(f). (4) HIPAA permits certain disclosures about decedents to coroners and medical examiners. 45 C.F.R. § 164.512(g)(1).		No	

Texas Family Code

Section	Related/ Contrary	Explanation	Preemption Exception	Is State Law Preempted?	Recommendation
§ 264.515 Investigation	Related/ Not Contrary	(1) HIPAA permits appropriately limited disclosure of PHI that is required by law. 45 C.F.R. § 164.512(a)(1). (2) HIPAA permits disclosure for certain public health activities. 45 C.F.R. § 164.512(b). (3) HIPAA permits disclosure for certain law enforcement purposes. 45 C.F.R. § 164.512(f). (4) HIPAA permits certain disclosures about decedents to coroners and medical examiners. 45 C.F.R. § 164.512(g)(1).		No	
§ 264.610 Confidentiality	Not Related	Prohibits the Attorney General from disclosing information gained through reports, case data, or inspections that would identify a volunteer advocate or a person receiving services from the advocate.		No	
§ 264.613 Use of Information and Records; Confidentiality	Related/ Not Contrary	No covered entity	Even if a covered entity was affected, there is an applicable exception as it pertains to public health intervention.	No	

Texas Government Code

Section	Related/ Contrary	Explanation	Preemption Exception	Is State Law Preempted?	Recommendation
Title 2: Judicial Branch					
Chapter 33: State Commission on Judicial Conduct					
§ 33.023 Physical or Mental Incapacity of Judge	Related/ Not Contrary	HIPAA permits appropriately limited disclosure of PHI that is required by law. 45 C.F.R. § 164.512(a)(1).		No	
§ 33.032 Confidentiality of Papers, Records, and Proceedings	Related/ Not Contrary	No covered entity		No	
Title 2: Judicial Branch					
Chapter 62: Petit Juries					
§ 62.109 Exemption for Physical or Mental Impairment or Inability to Comprehend English	Related/ Not Contrary	No covered entity		No	
Title 2: Judicial Branch					
Chapter 76: Community Supervisions and Corrections Departments					
§ 76.017(f) Treatment Alternative to Incarceration Program	Related/ Not Contrary	HIPAA permits certain disclosures to a correctional institution or law enforcement official having lawful custody of an inmate or other individual. 45 C.F.R. § 164.512(k)(5).		No	
Title 3: Legislative Branch					
Chapter 321: State Auditor					
§ 321.013(e) Powers and Duties of State Auditor	Related/ Not Contrary	HIPAA permits appropriately limited disclosure of PHI that is required by law. 45 C.F.R. § 164.512(a)(1).		No	

Texas Government Code

Section	Related/ Contrary	Explanation	Preemption Exception	Is State Law Preempted?	Recommendation
Title 4: Executive Branch					
Chapter 403: Comptroller of Public Accounts					
§ 403.011 General Powers	Related/ Not Contrary	Allows comptroller to audit claims for payment, which includes Medicaid and CHIP claims that contain PHI. HIPAA permits appropriately limited disclosure of PHI that is required by law. 45 C.F.R. § 164.512(a)(1).		No	
§ 403.028(c) Health Care Fraud Study	Related/ Not Contrary	HIPAA permits certain disclosures for the purpose of health care oversight. 45 C.F.R. § 164.512(d)(1).		No	
Title 4: Executive Branch					
Chapter 414: Crime Stoppers Advisory Council					
§ 414.008 Privileged Information	Not Related	Does not affect the privacy of PHI.		No	
Title 4: Executive Branch					
Chapter 418: Emergency Management					
§ 418.175 Certain Information Confidential	Related/ Not Contrary	To the extent the provision applies to a covered entity and the information made confidential by this provision is PHI, the confidentiality under this law does not prevent a covered entity from disclosing a designated record set to which an individual has a right of access under 45 C.F.R § 164.524. See 45 C.F.R. § 164.501 (defining designated records set).		No	
Title 4: Executive Branch					
Chapter 420: Sexual Assault Prevention and Crisis Services					
§ 420.010 Confidentiality	Related/ Not Contrary	The attorney general is not a covered entity. As a business associate of a covered entity, the attorney general is bound by the business associate agreement. See 45 C.F.R. § 160.103 (defining business associate).		No	

Texas Government Code

Section	Related/ Contrary	Explanation	Preemption Exception	Is State Law Preempted?	Recommendation
§ 420.031(e) Evidence Collection Protocol; Kits	Related/ Not Contrary	HIPAA permits certain disclosures of PHI pursuant to the individual's permission. 45 C.F.R. § 164.510.		No	
Title 4: Executive Branch Chapter 441: Libraries and Archives					
§ 441.053	Not Related	Repealed		No	
Title 4: Executive Branch Chapter 493: Texas Department of Criminal Justice: Organization					
§ 493.017 Reports on Sex Offender Treatment	Related/ Not Contrary	To the extent a sex offender correction program is a covered entity and the reported information is PHI, HIPAA permits appropriately limited disclosure of PHI that is required by law. 45 C.F.R. § 164.512(a)(1).		No	
Title 4: Executive Branch Chapter 501: Inmate Welfare					
§ 501.008 Inmate Grievance System	Related/ Not Contrary	Although subsection (c) makes confidential a "report prepared by the Texas Department of Criminal Justice (TDCJ) in response to an inmate grievance," and such reports could conceivably contain "health information." As TDCJ is not a covered entity, the law does not affect the release of PHI by a covered entity.		No	
§ 501.054(g) AIDS and HIV Education; Testing	Related/ Not Contrary	No covered entity		No	
§ 501.055 Report of Inmate Death	Related/ Not Contrary	No covered entity		No	
§ 501.057 Civil Committment Before Parole	Related/ Not Contrary	HIPAA permits appropriately limited disclosure of PHI that is required by law. 45 C.F.R. § 164.512(a)(1).		No	

Texas Government Code

Section	Related/ Contrary	Explanation	Preemption Exception	Is State Law Preempted?	Recommendation
§ 501.061(e) Orchiectomy for Certain Sex Offenders	Related/ Not Contrary	No covered entity		No	
Title 4: Executive Branch Chapter 508: Parole and Mandatory Supervision					
§ 508.146(c),(e) Medically Recommended Intensive Supervision	Related/Not Contrary	(1) No covered entity. (2) HIPAA permits appropriately limited disclosure of PHI that is required by law. 45 C.F.R. § 164.512(a)(1).		No	
Title 4: Executive Branch Chapter 531: Health and Human Services Commission					
§ 531.013 Electronic Availability of Technical Assistance	Related/ Not Contrary	The provision only affects "assistance" between health and human services agencies rather than the disclosure of confidential health information. Assistance may not include any confidential information regarding a client of a human services provider.		No	
§ 531.0214 Medicaid Data Collection System	Related/ Not Contrary	HIPAA permits certain disclosures by covered entities that are government programs providing public benefits. 45 C.F.R. § 164.512(k)(6).		No	
§ 531.0217(g) Reimbursement for Certain Medical Consultations	Related/ Not Contrary	HIPAA permits the use and disclosure of IHI in the course of certain treatment, payment, and health care operations. 45 C.F.R. § 164.506.		No	
§ 531.0312 Texas Information and Referral Network	Not Related	Only requires information about the services provided by health and human services agencies and not information about any individual's PHI.		No	

Texas Government Code

Section	Related/ Contrary	Explanation	Preemption Exception	Is State Law Preempted?	Recommendation
§ 531.0315 Implementing National Electronic Data Interchange Standards for Health Care Information	Related/ Not Contrary	The provision requires Health and Human Services agencies that are health care providers or claim payers to comply with HIPAA or get an extension with regard to national data interchange standards by seeking a waiver from the Secretary.		No	
§ 531.042(a), (b) Information and Assistance Regarding Care and Support Options; Reports	Not Related	Does not involve the disclosure or use of PHI.		No	
§ 531.047 Substitute Care Provider Outcome Standards	Related/ Not Contrary	The "client information" at issue does not include PHI.		No	
§ 531.051(g) Voucher Program for Payment of Certain Services for Persons with Disabilities	Related/ Not Contrary	(1) HIPAA permits disclosure to a family member or personal representative. 45 C.F.R. § 164.502. (2) HIPAA permits disclosure to individuals involved in a person's care. 45 C.F.R. § 164.510(b)(1).		No	
§ 531.055 Memorandum of Understanding on Services for Persons Needing Multiagency Services	Related/ Not Contrary	The statute is merely a directive to have a memorandum of understanding. Also, subsection (12) requires that any release of information be in compliance with other law.		No	

Texas Government Code

Section	Related/ Contrary	Explanation	Preemption Exception	Is State Law Preempted?	Recommendation
§ 531.063(c) Vaccines for Children Program Provider Enrollment and Reimbursement	Related/ Not Contrary	The Texas Department of Health has not designated this function as a covered function. See 45 C.F.R. § 160.103(2)(ii)(B)(1) for definition of "health plan."		No	
§ 531.067(g) Public Assistance Health Benefit Review and Design Committee	Related/ Not Contrary	The Public Assistance Health Benefit Review and Design Committee is not obtaining PHI under this statute.		No	
§ 531.102(d),(a) Office of Inspector General	Related/ Not Contrary	To the extent the Health and Human Services Commission Office of Inspector General obtains PHI from a covered entity, HIPAA permits certain disclosures for the purpose of health care oversight. 45 C.F.R. § 164.512(d)(1).		No	
§ 531.154 Notification Required	Related/ Not Contrary	<u>To the extent the institution is a covered entity and the notification constitutes PHI:</u> (1) HIPAA permits certain disclosures for the purpose of health care oversight. 45 C.F.R. § 164.512(d)(1). (2) HIPAA permits the use and disclosure of IIHI in the course of certain treatment, payment, and health care operations. 45 C.F.R. § 164.506.		No	
§ 531.155 Offer of Services	Not Related	Does not involve the disclosure or use of PHI.		No	

Texas Government Code

Section	Related/ Contrary	Explanation	Preemption Exception	Is State Law Preempted?	Recommendation
§ 531.156 Designation of Advocate	Related/ Not Contrary	HIPAA permits appropriately limited disclosure of PHI that is required by law. 45 C.F.R. § 164.512(a)(1).		No	
§ 531.161 Access to Records	Related/ Not Contrary	HIPAA permits appropriately limited disclosure of PHI that is required by law. 45 C.F.R. § 164.512(a)(1).		No	
Title 4: Executive Branch					
Chapter 533: Implementation of Medicaid Managed Care Program					
§ 533.012 Information for Fraud Control	Not Related	Although this provision requires managed care organizations to submit information regarding subcontractors to the Health and Human Services Commission (HHSC), and provides that such information is confidential, the information does not appear to be "health information" as that term is defined by 45 C.F.R. § 160.103.		No	
Title 5: Open Government; Ethics					
Chapter 552: Public Information					
§ 552.022 Categories of Public Information; Examples	Related/ Not Contrary	To the extent that the information constitutes PHI disclosed by a covered entity, HIPAA permits appropriately limited disclosure of PHI that is required by law. 45 C.F.R. § 164.512(a)(1). See <i>also</i> Open Records Decision No. 681 (2004).		No	
§ 552.023 Special Right of Access to Confidential Information	Related/ Not Contrary	HIPAA permits appropriately limited disclosure of PHI that is required by law. 45 C.F.R. § 164.512(a)(1). See <i>also</i> Open Records Decision No. 681 (2004). This decision has been challenged in court. See Notes Relevant to Particular Codes (# 3) concerning the Government Code.		No	
§ 552.101 Exception: Confidential Information	Related/ Not Contrary	HIPAA permits appropriately limited disclosure of PHI that is required by law. 45 C.F.R. § 164.512(a)(1). See <i>also</i> Open Records Decision No. 681 (2004). This decision has been challenged in court. See Notes Relevant to Particular Codes (# 3) concerning the Government Code.		No	

Texas Government Code

Section	Related/ Contrary	Explanation	Preemption Exception	Is State Law Preempted?	Recommendation
§ 552.102 Exception: Personnel Information	Related/ Not Contrary	(1) PHI does not include IIHI in employment records held by a covered entity in its role as an employer. 45 C.F.R. § 160.103. (2) HIPAA permits appropriately limited disclosure of PHI that is required by law. 45 C.F.R. § 164.512(a)(1).		No	
§ 552.103 Exception:Litigatio n or Settlement Negotiations Involving the State or a Political Subdivision	Related/ Not Contrary	To the extent that the information related to litigation includes PHI maintained by a covered entity, HIPAA permits appropriately limited disclosure of PHI that is required by law. 45 C.F.R. § 164.512(a)(1). See <i>also</i> Open Records Decision No. 681 (2004).		No	
§ 552.115 Exception: Birth and Death Records	Related/ Not Contrary	HIPAA permits appropriately limited disclosure of PHI that is required by law. 45 C.F.R. § 164.512(a)(1). <i>See also</i> Open Records Decision No. 681 (2004). This decision has been challenged in court. See Notes Relevant to Particular Codes (# 3) concerning the Government Code.		No	
§ 552.14 Military Discharge Records	Related/ Not Contrary	(1) The definition of PHI does not include IIHI in employment records held by a covered entity in its role as an employer. 45 C.F.R. § 160.103. (2) To the extent that military discharge records include PHI maintained by a covered entity, HIPAA permits appropriately limited disclosure of PHI that is required by law. 45 C.F.R. § 164.512(a)(1). See <i>also</i> Open Records Decision No. 681 (2004).		No	

Texas Government Code

Section	Related/ Contrary	Explanation	Preemption Exception	Is State Law Preempted?	Recommendation
§ 552.352 Distribution or Misuse of Confidential Information	Related/ Not Contrary	Discusses the consequences of wrongfully releasing information under the Public Information Act; to the extent that the information is PHI, HIPAA permits appropriately limited disclosure of PHI that is required by law. 45 C.F.R. § 164.512(a)(1). See <i>also</i> Open Records Decision No. 681 (2004).		No	
Title 5: Open Government; Ethics Chapter 555: State Agency Records Relating to License Holders or Other Regulated Persons					
§ 555.051 Information Sharing Among Certain Agencies	Related/ Not Contrary	To the extent that the shared confidential information about corporate fraud may include PHI, none of the agencies listed are covered entities and therefore are not subject to the Privacy Rule of HIPAA.		No	
Title 5: Open Government; Ethics Chapter 559: State Government Privacy Policies					
§ 559.001 Definition	Not Related	Definitional section		No	
§ 559.002 Right to be Informed About Information Collected	Related/ Not Contrary	Sets policy for state governmental bodies that an individual has right to be informed about the information a state governmental body collects about the individual, but does not affirmatively require release of information to an individual. Even if the provision were read to require the release of an individual's requested PHI to the individual, HIPAA permits appropriately limited disclosure of PHI that is required by law. 45 C.F.R. § 164.512(a)(1). See <i>also</i> Open Records Decision No. 681 (2004).		No	

Texas Government Code

Section	Related/ Contrary	Explanation	Preemption Exception	Is State Law Preempted?	Recommendation
§ 559.003 Right to Notice About Certain Information Laws and Practices	Not Related	Requires state governmental bodies to inform individuals about what information the individual is entitled to receive and other information, but does not affect the privacy of such information.		No	
§ 559.004 Right to Correction of Incorrect Information	Not Related	Requires each state government to establish certain procedures for individuals to correct information, but does not affect the privacy or release of such information.		No	
§ 559.005 Applicability of and Construction With Public Information Law	Not Related	Makes state governmental bodies subject to charges under the Public Information Act for the release of information collected about an individual, but does not affect the privacy of IHII.		No	
Title 7: Intergovernmental Relations					
Chapter 774: Exchange of Information Between Regulatory Agencies					
§ 774.002 Duty to Exchange Information	Related/ Not Contrary	HIPAA permits certain disclosures for the purpose of health care oversight. 45 C.F.R. § 164.512(d)(1).		No	
Title 8: Public Retirement Systems					
Chapter 803: Proportionate Retirement Program					
§ 803.402 Records	Related/ Not Contrary	The shared information is for administering the proportionate retirement program and therefore is not PHI.		No	
Title 8: Public Retirement Systems					
Chapter 815: Administration					

Texas Government Code

Section	Related/ Contrary	Explanation	Preemption Exception	Is State Law Preempted?	Recommendation
§ 815.503 Records	Related/ Not Contrary	<p>The provision makes confidential ERS records of members, annuitants, retirees, etc. and provides that ERS “may” release the records to various individuals. The records covered by this provision according to ERS include records of participants in the Texas Employees Group Benefits Program, some of which can include PHI.</p> <p>To the extent the released information is PHI, under the OCR definition of “contrary,” the state law is not contrary since ERS can comply with both the Privacy Rule and the state law if it does not release the information.</p> <p>To the extent the information released under subsection (b) is PHI, the releases are consistent with the Privacy Rule: 45 C.F.R. § 164.502(a)(1) permits disclosure to the individual; 45 C.F.R. § 164.502(e)(1) permits disclosure to business associate; 45 C.F.R. § 164.508 permits authorized disclosure; 45 C.F.R. § 164.506(c) permits disclosure for payment; and 45 C.F.R. § 164.512(a) permits disclosures required by subpoena.</p>		No	
Title 8: Public Retirement Systems Chapter 825: Administration					

Texas Government Code

Section	Related/ Contrary	Explanation	Preemption Exception	Is State Law Preempted?	Recommendation
§ 825.507 Record Confidentiality	Related/ Not Contrary	<p>The provision provides that TRS "may" release information to various individuals. To the extent the released information is PHI, under the OCR definition of "contrary," the state law is not contrary since TRS can comply with both the Privacy Rule and the state law if it does not release the information.</p> <p>Since TRS can choose to release the information, we considered whether, to the extent the information is PHI, the Privacy Rule permits the disclosures. :</p> <p>(1) <u>As to (a)</u>: HIPAA permits appropriately limited disclosure of PHI that is required by law. 45 C.F.R. § 164.512(a)(1). See also Open Records Decision No. 681 (2004).</p> <p>(2) <u>As to (b)(1)</u>: HIPAA permits certain disclosures of PHI to the individual. 45 C.F.R. § 164.502(a).</p> <p>(3) <u>As to (b)(2)</u>: HIPAA permits certain disclosures to an executor, administrator, or other person with authority to act on behalf of a deceased person or their estate. 45 C.F.R. § 164.502(g)(4).</p> <p>(4) <u>As to (b)(3)</u>: it seems to be retirement amounts at issue, not PHI.</p> <p>(5) <u>As to (b)(4)</u>: HIPAA permits a covered entity to make certain disclosures to business associates. 45 C.F.R. § 164.502(e)(1).</p> <p>(6) <u>As to (b)(5)</u>: HIPAA permits certain uses and disclosures for payment purposes. 45 C.F.R. § 164.506(c)(1).</p> <p>(7) <u>As to (b)(6)</u>: HIPAA provides for disclosure that is pursuant to a valid authorization. 45 C.F.R. § 164.508.</p> <p>(8) <u>As to (b)(7)</u>: HIPAA permits disclosure for certain law enforcement purposes. 45 C.F.R. § 164.512(f).</p> <p>(9) <u>As to (b)(8)</u>: HIPAA permits appropriately limited disclosure of PHI that is required by law. 45 C.F.R. § 164.512(a)(1); HIPAA permits a covered entity to disclose PHI in response to court orders, warrants, subpoenas, or summons. 45 C.F.R. § 164.512(f)(1)(i)(A).</p>		No	

**Title 8: Public Retirement Systems
Chapter 834: Benefits**

Texas Government Code

Section	Related/ Contrary	Explanation	Preemption Exception	Is State Law Preempted?	Recommendation
§ 834.202 Information About Physical Incapacity	Related/ Not Contrary	(1) The disclosure of health information is by the patient, who is not a covered entity. (2) Provision does not expressly require a physician to disclose health information to the Supreme Court.		No	
Title 8: Public Retirement Systems Chapter 839: Benefits					
§ 839.202 Disability Reports	Related/ Not Contrary	No covered entity		No	
Title 8: Public Retirement Systems Chapter 840: Administration					
§ 840.402 Retirement System Records	Related/ Not Contrary	No disclosure of PHI		No	
Title 8: Public Retirement Systems Chapter 845: Administration					
§ 845.115 Confidentiality of Information About Members, Retirees, Annuitants, or Beneficiaries	Related/ Not Contrary	No disclosure of PHI		No	
Title 8: Public Retirement Systems Chapter 855: Administration					
§ 855.115 Confidentiality of Information About Members, Retirees, Annuitants, or Beneficiaries	Related/Not Contrary	No disclosure of PHI		No	
Title 10: General Government Chapter 2054: Information Resources					

Texas Health & Safety Code

Section/ Chapter	Related/ Contrary	Explanation	Preemption Exception	Is State Law Preempted?	Recommendation
Title 1: General Provisions					
Chapter 1 General Provisions	Not Related	The Texas Board of Health is not a covered entity (CE). The Texas Department of Health as a whole is a hybrid entity.			
		However, the Board does not engage in any direct services or standard transactions that would cause it to be a covered entity. All instances involving questions about a function within the Department have been noted.		No	
Title 2: Health					
Chapter 11: Organization of Texas Department of Health					
§ 11.0045 Comprehensive Strategic and Operational Plan	Not Related	Although subsection (c)(5) requires the Tex. Board of Health to biannually develop a plan that includes a determination of whether it is necessary to collect each type of information that the Texas Dept. of Health collects, no standard transactions are implicated thereby. In addition, the Board is not a covered entity.			No
		Subsection (d) requires the Tex. Dept. of Health (TDH) to keep complaint files (which could conflict with HIPAA return/destruction requirements).			
§ 11.018 Public Interest Information and Complaints	Not Related	<u>This is not contrary to HIPAA because:</u> (1) TDH is not a covered entity. (2) HIPAA permits certain disclosures for the purpose of health care oversight. 45 C.F.R. § 164.512(d)(1).			No
Title 2: Health					
Chapter 12: Powers and Duties of Texas Department of Health					
§ 12.002 Board Investigations	Related/ Not Contrary	<u>Not contrary because:</u> (1) Texas Board of Health is not a covered entity. (2) HIPAA permits disclosure for certain public health activities. 45 C.F.R. § 164.512(b).			No

Texas Health & Safety Code

Section/ Chapter	Related/ Contrary	Explanation	Preemption Exception	Is State Law Preempted?	Recommendation
§ 12.0123 External Audits of Certain Medicaid Contractors Based on Risk	Related/ Not Contrary	<p>The disclosures to the Tex. Board of Health under this section are not contrary:</p> <p>(1) HIPAA permits appropriately limited disclosure of PHI that is required by law. 45 C.F.R. § 164.512(a)(1).</p> <p>(2) HIPAA permits the use and disclosure of IIHI in the course of certain treatment, payment, and health care operations. 45 C.F.R. § 164.506.</p>		No	
§ 12.0123 External Audits of Certain Medicaid Contractors *(Code contains two section of the same number.)	Related/ Not Contrary	<p>The disclosures to the Tex. Board of Health under this section are not contrary:</p> <p>(1) HIPAA permits appropriately limited disclosure of PHI that is required by law. 45 C.F.R. § 164.512(a)(1).</p> <p>(2) HIPAA permits the use and disclosure of IIHI in the course of certain treatment, payment, and health care operations. 45 C.F.R. § 164.506.</p>		No	
§ 12.0124 Electronic Transactions; State Medicaid Program	Related/ Not Contrary	<p>Establishes pro-electronic-transaction policy; requires Texas Dept. of Health to implement policies that encourage the use of electronic transactions.</p> <p>HIPAA regulates electronic transactions, but does not contain provisions that would conflict with a state's encouragement of such transactions.</p>		No	
§ 12.0125 Drug Rebates	Not Related			No	
§ 12.0145 Information About Enforcement Actions	Related/ Not Contrary	<p>Subsection (b) is related to the privacy of IIHI. It provides that the Tex. Dept. of Health (TDH) "shall publish and provide the [enforcement action] information in a way that does not serve to identify a complainant."</p> <p><u>Not Contrary to HIPAA because:</u></p> <p>(1) TDH is not a covered entity and none of the TDH's covered components are involved.</p> <p>(2) HIPAA permits certain disclosures for the purpose of health care oversight. 45 C.F.R. § 164.512(d)(1).</p>		No	

Texas Health & Safety Code

Section/ Chapter	Related/ Contrary	Explanation	Preemption Exception	Is State Law Preempted?	Recommendation
§ 12.018 Unannounced Inspections	Related/ Not Contrary	<p><u>Any disclosures that covered entities must make to Tex. Dept. of Health will be consistent with HIPAA.</u></p> <p>(1) HIPAA permits certain disclosures for the purpose of health care oversight. 45 C.F.R. § 164.512(d)(1). (2) HIPAA permits certain disclosures pursuant to "public health investigations." 45 C.F.R. § 164.512(b)(1)(i)</p>		No	
§ 12.032 Fees for Public Health Services	Not Related	Financial eligibility determination would not involve use or disclosure of IIHI.		No	
§ 12.033 Distribution and Administration of Certain Vaccines and Sera	Not Related			No	
§ 12.092 Medical Advisory Board; Board Members	Related/ Not Contrary	Requires Medical Assistance Board (MAB) to provide assistance to DPS for certain determinations that may/will necessitate transfer of PHI.		No	
§ 12.093 Administration; Rules	Related/ Not Contrary	<p>Subsection (b)(2) authorizes the Medical Assistance Board (MAB) to "collect and maintain the individual medical records necessary for use" by the MAB and its panels.</p> <p><u>Not contrary to HIPAA because:</u> (1) MAB is not a covered entity. (2) HIPAA permits certain disclosures for the purpose of health care oversight. 45 C.F.R. § 164.512(d)(1). <i>See also</i> 25 TAC § 1.152.</p>		No	

Texas Health & Safety Code

Section/ Chapter	Related/ Contrary	Explanation	Preemption Exception	Is State Law Preempted?	Recommendation
§ 12.095 Board Panels; Powers and Duties	Related/ Not Contrary	<p>The section authorizes the Texas Department of Public Safety (DPS) to require medical exams and/or medical records review. There will be no conflict with HIPAA, however, because the examination will be the result of an individual seeking a driver's license. The individual will give consent to the testing in seeking the license.</p> <p><u>Additionally:</u> (1) HIPAA permits disclosure for certain public health activities. 45 C.F.R. § 164.512(b). (2) HIPAA permits disclosure for certain law enforcement purposes. 45 C.F.R. § 164.512(f). (3) HIPAA permits a covered entity to disclose PHI in the course of a judicial or administrative proceeding in response to a court order. 45 C.F.R. § 164.512(e)(1)(i).</p>		No	
§ 12.096 Physician Report	Related/ Not Contrary	<p>Disclosures made to the Texas Department of Public Safety (DPS) under this subsection are not contrary to HIPAA, as HIPAA permits disclosure for certain public health activities. 45 C.F.R. § 164.512(b).</p>		No	
§ 12.097 Confidentiality Requirements	Related/ Not Contrary	<p>Disclosures made to the Texas Department of Public Safety (DPS) under this subsection are not contrary to HIPAA, as HIPAA permits disclosure for certain public health activities. 45 C.F.R. § 164.512(b).</p>		No	
Title 2: Health					
Chapter 13: Health Department Hospitals and Respiratory Facilities					
§ 13.002 Admission of Other Patients	Related/ Not Contrary	<p>Tex. Board of Health is not a covered entity.</p>		No	
§ 13.005 Care and Treatment of Certain Patients	Related/ Not Contrary			No	

Texas Health & Safety Code

Section/ Chapter	Related/ Contrary	Explanation	Preemption Exception	Is State Law Preempted?	Recommendation
§ 13.034 Board Duties	Related/ Not Contrary	Tex. Board of Health is not a covered entity.		No	
Title 2: Health Chapter 31: Primary Health Care					
§ 31.007 Application for Services					
§ 31.008 Eligibility for Service	Related/ Not Contrary	<p>Although the eligibility determination may involve use/disclosure of IIHI, HIPAA does not control because the program at issue is not a covered entity. The program is merely a funding source; it provides grants to covered providers; the only providers of direct services, the clinics, are severed from the program. In addition, the program is not a group or individual health plan, nor is it one of the 17 governmental programs defined-in to "health plan" in 45 C.F.R. § 160.103.</p> <p>However, some in the group think that the Program actually functions as an insurer and that the program's definition could be clarified.</p>		No	
§ 31.015 Records and Review	Related/ Not Contrary	<p><u>All of the disclosures are consistent with HIPAA:</u></p> <p>(1) HIPAA permits the use and disclosure of IIHI in the course of certain treatment, payment, and health care operations. 45 C.F.R. § 164.506. See also 45 C.F.R. § 164.502.</p> <p>(2) HIPAA permits covered entities to disclose PHI for "appropriate oversight of . . . Government benefit programs for which health information is relevant to beneficiary eligibility." 45 C.F.R. § 164.512(d)(1)(ii)</p>		No	

Texas Health & Safety Code

Section/ Chapter	Related/ Contrary	Explanation	Preemption Exception	Is State Law Preempted?	Recommendation
Title 2: Health					
Chapter 32: Maternal and Infant Health Improvement					
§ 32.003 Maternal and Infant Health Improvement Services Program	Not Related	Seems only to grant authority to establish the program.		No	
§ 32.017 Records and Review	Related/ Not Contrary	Program is not a covered entity.		No	
§ 32.042 Duties of Board; Review	Related/ Not Contrary	<p><u>Disclosures under this section are not contrary to HIPAA:</u></p> <p>(1) The program itself is not a covered entity. It does not fall within the definitions of group or individual health plans, nor does it provide any direct services (or perform clearinghouse functions).</p> <p>(2) Any disclosures to the board, particularly those in subsection (b)(6) (providing for collection of data including patient outcomes) would be allowed, as HIPAA permits the use and disclosure of IIHI in the course of certain treatment, payment, and health care operations. 45 C.F.R. § 164.506.</p>		No	
§ 32.043 Duties of Department	Not Related			No	
Title 2: Health					
Chapter 33: Phenylketonuria, Other Heritable Diseases, and Hypothyroidism					
§ 33.002 Detection and Treatment Program Established	Not Related	Seems merely to establish the program.		No	

Texas Health & Safety Code

Section/ Chapter	Related/ Contrary	Explanation	Preemption Exception	Is State Law Preempted?	Recommendation
§ 33.003 Cooperation of Health Care Providers and Governmental Entities	Not Related	Does not involve use or disclosure of IIHI nor present any inconsistency to HIPAA.		No	
§ 33.012 Exemption	Not Related	Relates to treatment, not information.		No	
§ 33.014 Diagnosis; Follow-up	Related/ Not Contrary	(1) The required test is treatment, and HIPAA permits the use and disclosure of IIHI in the course of certain treatment, payment, and health care operations. 45 C.F.R. § 164.506. (2) Submission of the results to the state authorized lab is consistent, as HIPAA permits disclosure for certain public health activities. 45 C.F.R. § 164.512(b). (3) HIPAA permits appropriately limited disclosure of PHI that is required by law. 45 C.F.R. § 164.512(a)(1).		No	
§ 33.015 Reports; Record Keeping	Related/ Not Contrary	All activities are allowed; HIPAA permits disclosure for certain public health activities. 45 C.F.R. § 164.512(b).		No	
§ 33.031 Coordination With Children With Special Health Care Needs Services	Related/ Not Contrary	All activities are allowed; HIPAA permits disclosure for certain public health activities. 45 C.F.R. § 164.512(b).		No	
§ 33.032 Program Services	Related/ Not Contrary	All activities are allowed; HIPAA permits disclosure for certain public health activities. 45 C.F.R. § 164.512(b).		No	
§ 33.033 Consent	Not Related	Consent is to treatment, not to use or disclosure.		No	

Texas Health & Safety Code

Section/ Chapter	Related/ Contrary	Explanation	Preemption Exception	Is State Law Preempted?	Recommendation
Title 2: Health					
Chapter 35: Children With Special Health Care Needs					
§ 35.003 Services Program for Children With Special Health Care Needs	Related/ Not Contrary	<p>Related because subsection (c) requires maintenance of a waiting list with certain specified info that is PHI.</p> <p><u>Not Contrary to HIPAA because:</u> (1) The services program at issue is not a covered entity, and TDH does not consider it to be a group or individual health plan because it falls outside the 45 C.F.R. § 160.103 definition of health plan. (2) Even if it were a covered entity, HIPAA permits the use and disclosure of IIHI in the course of certain treatment, payment, and health care operations. 45 C.F.R. § 164.506.</p>		No	
§ 35.0034 Cost-Sharing Payments	Related/ Not Contrary	<p><u>Medicaid disclosure to Dept. of Human Services is not contrary because:</u> (1) HIPAA permits appropriately limited disclosure of PHI that is required by law. 45 C.F.R. § 164.512(a)(1). (2) HIPAA permits certain disclosures by covered entities that are government programs providing public benefits. 45 C.F.R. § 164.512(k)(6).</p>		No	
§ 35.005 Eligibility for Services	Not Related	See 25 TAC §§ 38.03, 38.12, and 38.13 for corresponding rules. See <i>also</i> JM-1169.		No	
§ 35.006 Denial, Modification, Suspension, or Termination of Services	Related/ Not Contrary	PHI is not in the hands of a covered entity.		No	

Texas Health & Safety Code

Section/ Chapter	Related/ Contrary	Explanation	Preemption Exception	Is State Law Preempted?	Recommendation
§ 35.0061 Referral for Behavioral or Emotional Conditions	Related/ Not Contrary	PHI is not in the hands of a covered entity.		No	
Title 2: Health					
Chapter 36: Special Senses and Communication Disorders					
§ 36.004 Screening Program for Special Senses and Communication Disorders	Related/ Not Contrary	<p>Subsection (e) authorizes department coordination of screening programs among entities, which will probably involve a good deal of information sharing. See also Sec. 5 of Acts 1999, 76th R.S., Ch. 856.</p> <p><u>The program is consistent with HIPAA because:</u> (1) HIPAA permits appropriately limited disclosure of PHI that is required by law. 45 C.F.R. § 164.512(a)(1). (2) HIPAA permits disclosure for certain public health activities. 45 C.F.R. § 164.512(b). (3) HIPAA permits the use and disclosure of IIHI in the course of certain treatment, payment, and health care operations. 45 C.F.R. § 164.506.</p>		No	
§ 36.006 Records; Reports	Related/ Not Contrary	<p><u>The program is consistent with HIPAA because:</u> (1) HIPAA permits appropriately limited disclosure of PHI that is required by law. 45 C.F.R. § 164.512(a)(1). (2) HIPAA permits disclosure for certain public health activities. 45 C.F.R. § 164.512(b).</p>		No	

Texas Health & Safety Code

Section/ Chapter	Related/ Contrary	Explanation	Preemption Exception	Is State Law Preempted?	Recommendation
§ 36.007 Provision of Remedial Services	Related/ Not Contrary	The program is consistent with HIPAA because: (1) HIPAA permits appropriately limited disclosure of PHI that is required by law. 45 C.F.R. § 164.512(a)(1). (2) HIPAA permits disclosure for certain public health activities. 45 C.F.R. § 164.512(b).		No	
§ 36.012 Research; Report to Legislature	Related/ Not Contrary	HIPAA permits disclosure for certain public health activities. 45 C.F.R. § 164.512(b).		No	
Title 2: Health					
Chapter 37: Abnormal Spine Cuvature in Children					
§ 37.001 Screening Program for Abnormal Spinal Curvature	Related/ Not Contrary	<u>Not Contrary to HIPAA because:</u> (1) HIPAA permits disclosure for certain public health activities. 45 C.F.R. § 164.512(b). (2) Rules providing for confidentiality of information are consistent with HIPAA protections.		No	
§ 37.003 Reports	Related/ Not Contrary	<u>Disclosures to the Tex. Dept. of Health under this section are not contrary to HIPAA:</u> (1) HIPAA permits appropriately limited disclosure of PHI that is required by law. 45 C.F.R. § 164.512(a)(1). (2) HIPAA permits disclosure for certain public health activities. 45 C.F.R. § 164.512(b).		No	
Title 2: Health					
Chapter 38: Pediculosis of Minors					
§ 38.001 Program Established	Not Related			No	
Title 2: Health					
Chapter 39: Children's Outreach Heart Program					

Texas Health & Safety Code

Section/ Chapter	Related/ Contrary	Explanation	Preemption Exception	Is State Law Preempted?	Recommendation
§ 39.002 Children's Outreach Heart Program	Related/ Not Contrary	HIPAA permits disclosure for certain public health activities. 45 C.F.R. § 164.512(b). See 25 TAC § 61.78(b) for corresponding rules.		No	
Title 2: Health Chapter 40: Epilepsy					
§ 40.002 Epilepsy Program	Related/ Not Contrary	HIPAA permits disclosure for certain public health activities. 45 C.F.R. § 164.512(b). See 25 TAC § 37.221 for corresponding rules.		No	
Title 2: Health Chapter 41: Hemophilia					
§ 41.002 Hemophilia Assistance Program	Related/ Not Contrary	HIPAA permits disclosure for certain public health activities. 45 C.F.R. § 164.512(b). See 25 TAC § 32.124(b) for corresponding rules.		No	
Title 2: Health Chapter 42: Kidney Health Care					
§ 42.004 Services	Related/ Not Contrary	Not contrary because the Kidney Health Care Program is not a covered entity, nor is it a group or individual plan under HIPAA. Unlike insurance, this plan pays providers directly for care and is not designed to spread risk across a pool. See 25 TAC § 61.14 for corresponding rules.		No	
§ 42.0045 Distribution of Drugs and Devices	Related/ Not Contrary	Not contrary because the Kidney Health Care Program is not a covered entity, nor is it a group or individual plan under HIPAA. Unlike insurance, this plan pays providers directly for care and is not designed to spread risk across a pool. See 25 TAC § 61.14 for corresponding rules.		No	
§ 42.005 Facilities	Not Related			No	
§ 42.007 Eligibility for Services	Related/ Not Contrary	Does not address the use or disclosure of PHI. See 25 § TAC 61.02, 61.10, and 61.11 for corresponding rules.		No	

Texas Health & Safety Code

Section/ Chapter	Related/ Contrary	Explanation	Preemption Exception	Is State Law Preempted?	Recommendation
§ 42.013 Cooperation	Not Related	Allows the kidney health care division to cooperate with private or public agencies to facilitate the availability of adequate care for all citizens with chronic kidney disease.		No	
§ 42.014 Scientific Investigations	Related/ Not Contrary	Allows the kidney health care division to develop and administer scientific investigations into the cause, prevention, and cure of kidney disease, including procedures for mass diagnostic testing.		No	
Title 2: Health					
Chapter 43: Oral Health Care Improvement					
§ 43.004 Oral Health Improvement Services Program	Related/ Not Contrary	All disclosures are consistent with HIPAA, as HIPAA permits disclosure for certain public health activities. 45 C.F.R. § 164.512(b).		No	
§ 43.005 Administration	Related/ Not Contrary	All disclosures are consistent with HIPAA, as HIPAA permits disclosure for certain public health activities. 45 C.F.R. § 164.512(b). See 25 TAC § 49.13 for corresponding rule (establishing confidentiality of received information).		No	
§ 43.007 Individual Referral and Application for Services	Related/ Not Contrary	All disclosures are consistent with HIPAA, as HIPAA permits disclosure for certain public health activities. 45 C.F.R. § 164.512(b). See 25 TAC § 49.04 for corresponding rule (requiring referrals be made by a third party who is aware of person's economic condition).		No	
§ 43.008 Eligibility for Services	Related/ Not Contrary	All disclosures are consistent with HIPAA, as HIPAA permits disclosure for certain public health activities. 45 C.F.R. § 164.512(b).		No	
§ 43.009 Denial, Modification, Suspension, or Termination of Services	Related/ Not Contrary	All disclosures are consistent with HIPAA, as HIPAA permits disclosure for certain public health activities. 45 C.F.R. § 164.512(b).		No	

Texas Health & Safety Code

Section/ Chapter	Related/ Contrary	Explanation	Preemption Exception	Is State Law Preempted?	Recommendation
Title 2: Health					
Chapter 44: Sexual Assault Prevention and Crisis Services					
§ 44.071 Confidential Communication	Related/ Not Contrary	<u>Not Contrary to HIPAA because:</u> (1) Advocates for survivors of sexual assault are not covered entities. (2) Hospital and examining physicians are required (§ 56.045) to offer the presence of an advocate during an examination; a covered entity would obtain authorization from the survivor		No	
§ 44.072 Exceptions	Related/ Not Contrary	<u>Not Contrary to HIPAA because:</u> (1) Advocates for survivors of sexual assault are not covered entities. (2) Hospital and examining physicians are required (§ 56.045) to offer the presence of an advocate during an examination; a covered entity would obtain authorization from the survivor		No	
§ 44.073 Consent	Related/ Not Contrary	<u>Not Contrary to HIPAA because:</u> (1) Advocates for survivors of sexual assault are not covered entities. (2) Hospital and examining physicians are required (§ 56.045) to offer the presence of an advocate during an examination; a covered entity would obtain authorization from the survivor		No	
§ 44.074 Criminal Subpoena	Related/ Not Contrary	HIPAA permits a covered entity to disclose PHI in response to court orders, warrants, subpoenas, or summonses. 45 C.F.R. § 164.512(f)(1)(i)(A).		No	
Chapter 45 Distribution of Child Passenger Safety Seats	Not Related			No	
Title 2: Health					
Chapter 46: Tertiary Medical Care					
§ 46.004 Collection of Information	Related/ Not Contrary	Does not address the use or disclosure of PHI; PHI is not contained within the form. See 25 TAC § 159.1 for corresponding rule.		No	
Title 2: Health					
Chapter 47: Hearing Loss in Newborns					

Texas Health & Safety Code

Section/ Chapter	Related/ Contrary	Explanation	Preemption Exception	Is State Law Preempted?	Recommendation
§ 47.003 Newborn Hearing Screening, Tracking, and Intervention Program	Related/ Not Contrary	Subsection (c) authorizes the Tex. Dept. of Health to maintain data on each newborn who receives services under a program. The program is consistent with HIPAA because HIPAA permits disclosure for certain public health activities. 45 C.F.R. § 164.512(b). See 25 TAC § 37.503(d) for corresponding rule.		No	
§ 47.005 Information Concerning Screening Results and Follow-up Care	Related/ Not Contrary	This section requires screening reports to be reported to parents, attending physician/health care provider, and the Tex. Dept. of Health. This section is consistent with HIPAA because HIPAA permits disclosure for certain public health activities. 45 C.F.R. § 164.512(b). See 25 TAC § 37.507 for corresponding rule.		No	
§ 47.007 Information Management, Reporting, and Tracking System	Related/ Not Contrary	Subsection (c) requires that parental consent be obtained before any IIHI about a newborn is released through the system. <u>The section is consistent with HIPAA because:</u> (1) HIPAA permits disclosure for certain public health activities. 45 C.F.R. § 164.512(b). (2) HIPAA permits the disclosure of a minor's PHI to a parent or guardian if such individuals have the authority to act of behalf of the minor under applicable law. 45 C.F.R. § 164.502(g). See 25 TAC §§ 37.509 and 37.510 for corresponding rules.		No	
§ 47.008 Confidentiality and General Access to Data	Related/ Not Contrary	HIPAA permits disclosure for certain public health activities. 45 C.F.R. § 164.512(b). See 25 TAC § 37.511 for corresponding rule.		No	

Title 2: Health

Chapter 48: Training and Regulation of Promotoras and Community Health Workers

Texas Health & Safety Code

Section/ Chapter	Related/ Contrary	Explanation	Preemption Exception	Is State Law Preempted?	Recommendation
§ 48.001 Definition	Related/ Not Contrary	<p><u>Not Contrary to HIPAA because:</u></p> <p>(1) Promotoras are not covered entities, as they are not authorized to provide care.</p> <p>(2) HIPAA permits the use and disclosure of IIHI in the course of certain health care operations. 45 C.F.R. § 164.506.</p>		No	
Chapter 49 Anatomical Gift Educational Program	Not Related			No	
Title 2: Health					
Chapter 61: Indigent Health Care and Treatment Act					
§ 61.001 Short Title	Not Related			No	
§ 61.002 Definitions	Not Related			No	
§ 61.003 Residence	Not Related			No	
§ 61.004 Residence or Eligibility Dispute	Related/ Not Contrary	<p>Eligibility determination/appeal will involve at a minimum the use/disclosure of IIHI.</p> <p>Not contrary to HIPAA because HIPAA permits the use and disclosure of IIHI in the course of certain treatment, payment, and health care operations. 45 C.F.R. § 164.506. Note that such disclosures would be subject to minimum necessary restrictions -- unless disclosure is required by law.</p>		No	
§ 61.0045 Information Necessary to Determine Eligibility	Related/ Not Contrary	<p>Under this section, a provider may require the patient to authorize the release of any information (including medical) in order for the provider to submit a claim.</p> <p>These disclosures are not contrary to HIPAA, as HIPAA permits the use and disclosure of IIHI in the course of certain treatment, payment, and health care operations. 45 C.F.R. § 164.506.</p>		No	

Texas Health & Safety Code

Section/ Chapter	Related/ Contrary	Explanation	Preemption Exception	Is State Law Preempted?	Recommendation
§ 61.005 Contribution Toward Cost of Assistance	Not Related			No	
§ 61.006 Standards and Procedures	Not Related	Subsections (a) & (d) merely require the Tex. Dept. of Health to establish eligibility standards and application, documentation, and verification procedures for eligibility determinations.		No	
§ 61.007 Information Provided by Applicant	Related/ Not Contrary	The information at issue is provided by the applicant.		No	
§ 61.008 Eligibility Rules	Not Related	Seems to relate only to a person's financial information, not IIHI.		No	
§ 61.009 Reporting Requirements	Related/ Not Contrary	Subsection (b) provides that the reports required by the department must include "relevant characteristics of eligible residents." (Not clear what these characteristics are or to whom the report is released.) Any disclosures under the subsection are not contrary to HIPAA, as HIPAA permits the use and disclosure of IIHI in the course of certain treatment, payment, and health care operations. 45 C.F.R. § 164.506. See 25 TAC §§ 14.1(c)(11) and 14.302 for corresponding rules.		No	
§ 61.010 Dedicated Tax Revenues	Not Related			No	
§ 61.011 Services by State Hospital or Clinic	Not Related			No	
§ 61.021 Application of Subchapter	Not Related			No	

Texas Health & Safety Code

Section/ Chapter	Related/ Contrary	Explanation	Preemption Exception	Is State Law Preempted?	Recommendation
§ 61.022 County Obligation	Related/ Not Contrary				
§ 61.0221 Authority Relating to Other Assistance Programs	Not Related			No	
§ 61.023 General Eligibility Provisions	Related/ Not Contrary	Provision concerns financial eligibility and should not involve PHI. Moreover, the applicant and not the covered entity is making the disclosure.		No	
§ 61.024 County Application Procedure	Related/ Not Contrary			No	
§ 61.025 County Agreement With Municipality	Related/ Not Contrary	Seems merely to authorize allocation of responsibilities between two covered entities. Also, does not necessarily involve PHI.		No	
§ 61.026 Review of Eligibility	Related/ Not Contrary			No	
§ 61.027 Change in Eligibility Status	Not Related			No	
§ 61.028 Basic Health Care Services	Not Related			No	
§ 61.0285 Optional Health Care Services	Not Related			No	
§ 61.029 Provision of Health Care Services	Not Related	Seems only to authorize cooperation between counties and other covered entities/political subdivisions.		No	

Texas Health & Safety Code

Section/ Chapter	Related/ Contrary	Explanation	Preemption Exception	Is State Law Preempted?	Recommendation
§ 61.030 Mandated Provider	Not Related	Seems only to authorize cooperation between counties and other covered entities/political subdivisions.		No	
§ 61.031 Notification of Provision of Nonemergency Services	Related/ Not Contrary			No	
§ 61.032 Notification of Provision of Emergency Services	Related/ Not Contrary			No	
§ 61.033 Payment for Services	Related/ Not Contrary			No	
§ 61.034 Payment Standards for Health Care Services	Not Related			No	
§ 61.035 Limitation of County Liability	Not Related			No	
§ 61.036 Determination of Eligibility for Purposes of State Assistance	Not Related			No	
§ 61.037 County Eligibility for State Assistance	Not Related			No	

Texas Health & Safety Code

Section/ Chapter	Related/ Contrary	Explanation	Preemption Exception	Is State Law Preempted?	Recommendation
§ 61.038 Distribution of Assistance Funds	Not Related			No	
§ 61.039 Failure to Provide State Assistance	Not Related			No	
§ 61.0395 Limited to Appropriated Funds	Not Related			No	
§ 61.040 Tax Information	Not Related			No	
§ 61.041 County Reporting	Related/ Not Contrary			No	
§ 61.042 Employment Services Program	Not Related			No	
§ 61.043 Prevention and Detection of Fraud	Not Related	Nothing in the section requires use or disclosure of IIHI, or anything else that might be contrary to HIPAA.		No	
§ 61.044 Subrogation	Not Related			No	
§ 61.051 Application of Subchapter	Not Related			No	
§ 61.052 General Eligibility Provisions	Not Related			No	
§ 61.053 Application Procedure	Related/ Not Contrary			No	

Texas Health & Safety Code

Section/ Chapter	Related/ Contrary	Explanation	Preemption Exception	Is State Law Preempted?	Recommendation
§ 61.054 Basic Health Care Services Provided by a Public Hospital	Not Related			No	
§ 61.055 Basic Health Care Services Provided by Hospital Districts	Not Related			No	
§ 61.056 Provision of Health Care Services	Not Related	Seems only to authorize cooperation between counties and other covered entities/political subdivisions.		No	
§ 61.057 Mandated Provider	Not Related			No	
§ 61.058 Notification of Provision of Nonemergency Services	Related/ Not Contrary			No	
§ 61.059 Notification of Provision of Emergency Services	Related/ Not Contrary			No	
§ 61.060 Payment for Services	Related/ Not Contrary			No	
§ 61.061 Payment Rates and Limits	Not Related			No	

Texas Health & Safety Code

Section/ Chapter	Related/ Contrary	Explanation	Preemption Exception	Is State Law Preempted?	Recommendation
§ 61.062 Responsibility of Governmental Entity	Not Related			No	
§ 61.063 Procedure to Change Eligibility Standards or Services Provided	Not Related			No	
§ 61.064 Transfer of a Public Hospital	Not Related			No	
§ 61.065 County Responsibility for Hospital Sold on or After January 1, 1988	Not Related			No	
§ 61.066 Prevention and Detection of Fraud	Not Related	Nothing in the section requires use or disclosure of IIHI, or anything else that might be contrary to HIPAA.		No	
Title 2: Health					
Chapter 62: Child Health Plan for Certain Law Income Children					
§ 62.001 Objective of the State Child Health Plan	Not Related			No	
§ 62.002 Definitions	Not Related			No	
§ 62.003 Not an Entitlement; Termination of Program	Not Related			No	

Texas Health & Safety Code

Section/ Chapter	Related/ Contrary	Explanation	Preemption Exception	Is State Law Preempted?	Recommendation
§ 62.004 Federal Law and Regulations	Not Related			No	
§ 62.051 Duties of Commission	Not Related			No	
§ 62.052 Duties of Texas Department of Health	Not Related	See 1 TAC Chapter 370 for corresponding rules.		No	
§ 62.053 Duties of Texas Department of Human Services	Related/ Not Contrary			No	
§ 62.054 Duties of Texas Department of Insurance	Related/ Not Contrary	CHIP is a covered entity that is disclosing health information under this section. However, there is no conflict because TDI has the authority to regulate health insurers providing care and can assess/regulate the quality of care. 45 C.F.R. § 164.512(d).		No	
§ 62.055 Contracts for Implementation of Child Health Plan	Related/ Not Contrary			No	
§ 62.058 Fraud Prevention	Not Related			No	
§ 62.0582 Third-Party Billing Vendors	Related/ Not Contrary			No	
§ 62.101 Eligibility	Not Related			No	
§ 62.1015 Eligibility of Certain Children; Disallowance of Matching Funds	Not Related			No	

Texas Health & Safety Code

Section/ Chapter	Related/ Contrary	Explanation	Preemption Exception	Is State Law Preempted?	Recommendation
§ 62.102 Continuous Coverage	Not Related			No	
§ 62.104 Eligibility Screening and Enrollment	Related/ Not Contrary			No	
§ 62.105 Coverage for Qualified Aliens	Not Related			No	
§ 62.151 Child Health Plan Coverage	Related/ Not Contrary	<p><u>Not Contrary to HIPAA because:</u></p> <p>(1) HIPAA permits the use and disclosure of IIHI in the course of certain treatment, payment, and health care operations. 45 C.F.R. § 164.506.</p> <p>(2) This is the basic equivalent of a utilization review, and HIPAA permits certain disclosures for the purpose of health care oversight. 45 C.F.R. § 164.512(d)(1).</p>		No	
§ 62.152 Application of Insurance Law	Related/ Not Contrary			No	
§ 62.153 Cost Sharing	Not Related			No	
§ 62.154 Crowd Out	Not Related			No	
§ 62.155 Health Plan Providers	Not Related			No	
§ 62.156 Health Care Providers	Not Related			No	

Texas Health & Safety Code

Section/ Chapter	Related/ Contrary	Explanation	Preemption Exception	Is State Law Preempted?	Recommendation
§ 62.157 Telemedicine Medical Services and Telehealth Services for Children With Special Health Care Needs	Not Related			No	
§ 62.157 Telemedicine Medical Services	Not Related			No	
§ 62.159 Disease Management Services	Related/ Not Contrary	This section refers to what is, in essence, a coordination of benefits. Not contrary because HIPAA permits the use and disclosure of IHI in the course of certain treatment, payment, and health care operations. 45 C.F.R. § 164.506.		No	
Title 2: Health					
Chapter 63: Health Benefits Plan for Certain Children					
§ 63.001 Definition	Not Related			No	
§ 63.002 Not an Entitlement	Not Related			No	
§ 63.003 Health Benefits Plan Coverage for Certain Children	Not Related			No	
§ 63.004 Benefits Coverage Required	Not Related			No	
§ 63.005 Health Benefits Plan Provider	Not Related			No	
§ 63.006 Cost-Sharing Payments	Not Related			No	

Texas Health & Safety Code

Section/ Chapter	Related/ Contrary	Explanation	Preemption Exception	Is State Law Preempted?	Recommendation
§ 63.007 Disallowance of Matching Funds From Federal Government	Not Related			No	
Title 2: Health					
Chapter 64: Miscellaneous Provisions					
§ 64.001 Teaching Hospital Account	Not Related			No	
Title 2: Health					
Chapter 81: Communicable Diseases					
§ 81.001 Short Title	Not Related			No	
§ 81.002 Responsibility of State and Public	Not Related			No	
§ 81.003 Definitions	Related/ Not Contrary			No	
§ 81.004 Administration of Chapter	Not Related			No	
§ 81.005 Contracts	Not Related			No	
§ 81.006 Funds	Not Related			No	
§ 81.007 Limitation on Liability	Not Related			No	
§ 81.008 Communicable Disease in Animals; Exchange of Information	Not Related			No	

Texas Health & Safety Code

Section/ Chapter	Related/ Contrary	Explanation	Preemption Exception	Is State Law Preempted?	Recommendation
§ 81.009 Exemption from Medical Treatment	Not Related			No	
§ 81.010 Interagency Coordinating Council for HIV and Hepatitis	Not Related			No	
§ 81.021 Board's Duty	Related/ Not Contrary			No	
§ 81.022 Health Education	Not Related			No	
§ 81.023 Immunization	Not Related			No	
§ 81.024 Reports by Board	Related/ Not Contrary			No	
§ 81.041 Reportable Diseases	Related/ Not Contrary			No	
§ 81.042 Persons Required to Report	Not Related	See 25 TAC § 97.02 for corresponding rules.		No	
§ 81.043 Records and Reports of Health Authority	Related/ Not Contrary	See 25 TAC § 97.06 for corresponding rules.		No	
§ 81.044 Reporting Procedures	Related/ Not Contrary			No	
§ 81.045 Reports of Death	Related/ Not Contrary			No	

Texas Health & Safety Code

Section/ Chapter	Related/ Contrary	Explanation	Preemption Exception	Is State Law Preempted?	Recommendation
§ 81.046 Confidentiality	Related/ Not Contrary	<p>Not Contrary to HIPAA because:</p> <p>(1) Section does not appear to apply to any covered entity.</p> <p>(2) To the extent a covered entity is involved, HIPAA permits disclosure for certain public health activities. 45 C.F.R. § 164.512(b).</p> <p>(3) As to (b): HIPAA permits disclosure for certain law enforcement purposes. 45 C.F.R. § 164.512(f).</p> <p>See also 25 TAC §§ 97.08 and 97.10 for corresponding rules.</p>		No	
§ 81.047 Epidemiological Reports	Related/ Not Contrary			No	
§ 81.048 Notification of Emergency Personnel, Peace Officers, and Fire Fighters	Related/ Not Contrary	<p>Not contrary to HIPAA because HIPAA permits disclosure for certain public health activities. 45 C.F.R. § 164.512(b). (Subject to the minimum necessary standards in 45 C.F.R. § 164.502(b)(1).) See 25 TAC § 97.11 for corresponding rule.</p>		No	
§ 81.049 Failure to Report; Criminal Penalty	Related/ Not Contrary	<p>HIPAA permits appropriately limited disclosure of PHI that is required by law. 45 C.F.R. § 164.512(a)(1).</p>		No	
§ 81.050 Mandatory Testing of Persons Suspected of Exposing Certain Other Persons to Reportable Diseases, Including HIV Infection	Related/ Not Contrary	<p>See 25 TAC § 97.13 for corresponding rules.</p>		No	
§ 81.051 Partner Notification Programs; HIV Infection	Related/ Not Contrary			No	

Texas Health & Safety Code

Section/ Chapter	Related/ Contrary	Explanation	Preemption Exception	Is State Law Preempted?	Recommendation
§ 81.052 Reports and Analyses Concerning AIDS and HIV Infection	Related/ Not Contrary			No	
§ 81.061 Investigation	Related/ Not Contrary			No	
§ 81.062 Witnesses; Documents	Not Related			No	
§ 81.063 Samples	Not Related			No	
§ 81.064 Inspection	Related/ Not Contrary			No	
§ 81.065 Right of Entry	Related/ Not Contrary			No	
§ 81.066 Concealing Communicable Disease or Exposure to Communicable Disease; Criminal Penalty	Not Related			No	
§ 81.067 Concealing, Removing, or Disposing of an Infected or Contaminated Animal, Object, Vehicle, Watercraft, or Aircraft; Criminal Penalty	Not Related			No	

Texas Health & Safety Code

Section/ Chapter	Related/ Contrary	Explanation	Preemption Exception	Is State Law Preempted?	Recommendation
§ 81.068 Refusing Entry or Inspection; Criminal Penalty	Not Related			No	
§ 81.081 Board's Duty	Related/ Not Contrary	See 25 TAC Chapter 97, Subchapter B for corresponding rules, particularly § 97.72.		No	
§ 81.082 Administration of Control Measures	Not Related			No	
§ 81.083 Application of Control Measures to Individual	Not Related			No	
§ 81.084 Application of Control Measures to Property	Related/ Not Contrary	Any disclosure would be authorized by HIPAA, as HIPAA permits disclosure for certain public health activities. 45 C.F.R. § 164.512(b).		No	
§ 81.085 Area Quarantine; Criminal Penalty	Related/ Not Contrary			No	
§ 81.086 Application of Control Measures to Private and Common Carriers and Private Conveyances	Not Related			No	
§ 81.087 Violation of Control Measure Orders; Criminal Penalty	Not Related			No	

Texas Health & Safety Code

Section/ Chapter	Related/ Contrary	Explanation	Preemption Exception	Is State Law Preempted?	Recommendation
§ 81.088 Removal, Alteration, or Destruction of Quarantine Devices; Criminal Penalty	Not Related			No	
§ 81.089 Transportation; Criminal Penalty	Not Related			No	
§ 81.090 Serologic Testing During Pregnancy	Related/ Not Contrary	See 25 TAC § 97.135 (required reporting of positive results) for corresponding rules.		No	
§ 81.091 Ophthalmia Neonatorum Prevention; Criminal Penalty	Not Related			No	
§ 81.092 Contracts for Services	Not Related			No	
§ 81.093 Persons Prosecuted for Certain Crimes	Not Related			No	
§ 81.094 Testing by Hospitals of Persons Indicted for Certain Crimes	Not Related	See 25 TAC § 97.138 (Guidelines for Testing Certain Indicted Persons for Certain Diseases) for corresponding rules.		No	
§ 81.095 Testing for Accidental Exposure	Related/ Not Contrary	See Subsections (d) and (e) particularly for relation to IIHI.		No	

Texas Health & Safety Code

Section/ Chapter	Related/ Contrary	Explanation	Preemption Exception	Is State Law Preempted?	Recommendation
§ 81.101 Definitions	Not Related			No	
§ 81.102 Tests; Criminal Penalty	Related/ Not Contrary			No	

Texas Health & Safety Code

Section/ Chapter	Related/ Contrary	Explanation	Preemption Exception	Is State Law Preempted?	Recommendation
§ 81.103 Confidentiality; Criminal Penalty	Related/ Not Contrary	<p><u>As to (a)</u>: It is stricter because it applies confidentiality requirements to non-covered entities and therefore is not contrary.</p> <p><u>As to (b)</u>: Not Contrary because:</p> <p>(1) It would be required by law because it incorporates the rest of chapter 81 & disclosures to the dep't therein are (HIPAA permits appropriately limited disclosure of PHI that is required by law. 45 C.F.R. § 164.512(a)(1)) and/or within the permitted disclosures for public health;</p> <p>(2) Public health (HIPAA permits disclosure for certain public health activities. 45 C.F.R. § 164.512(b) and HIPAA permits appropriately limited disclosure of PHI that is required by law. 45 C.F.R. § 164.512(a)(1);</p> <p>(3) same as above;</p> <p>(4) HIPAA permits the use and disclosure of IHI in the course of certain treatment, payment, and health care operations. 45 C.F.R. § 164.506;</p> <p>(5) same;</p> <p>(6) HIPAA permits the use and disclosure of IHI in the course of certain treatment, payment, and health care operations. 45 C.F.R. § 164.506 and/or individual access;</p> <p>(7) HIPAA permits disclosure for certain public health activities. 45 C.F.R. § 164.512(b);</p> <p>(8) HIPAA permits appropriately limited disclosure of PHI that is required by law. 45 C.F.R. § 164.512(a)(1); and</p> <p>(9) RBL.</p> <p><u>As to (c)</u>, it does not involve a covered entity.</p> <p><u>As to (d) and (e)</u>: Subsections (f)-(h) are not contrary but in reaching that conclusion the task force assumed that the blood banks were acting as blood banks and are therefore not covered entities.</p> <p><u>As to (i)</u>: It fits within the exception for treatment, payment, and health care operations (TPO).</p> <p><u>As to (j)</u>, it is NC--both penalties could be assessed.</p>		No	

Texas Health & Safety Code

Section/ Chapter	Related/ Contrary	Explanation	Preemption Exception	Is State Law Preempted?	Recommendation
§ 81.104 Injunction; Civil Liability	Not Related			No	
§ 81.105 Informed Consent	Not Related			No	
§ 81.106 General Consent	Not Related			No	
§ 81.107 Consent to Test for Certain Accidental Exposures	Not Related			No	
§ 81.108 Testing by Insurers	Not Related			No	
§ 81.109 Counseling Required for Positive Test Results	Not Related			No	
§ 81.151 Application for Court Order	Not Related			No	
§ 81.152 Form of Application	Not Related			No	
§ 81.153 Appointment of Attorney	Not Related			No	
§ 81.154 Setting on Application	Not Related			No	
§ 81.155 Notice	Not Related			No	

Texas Health & Safety Code

Section/ Chapter	Related/ Contrary	Explanation	Preemption Exception	Is State Law Preempted?	Recommendation
§ 81.156 Disclosure of Information	Not Related			No	
§ 81.157 District Court Jurisdiction	Not Related			No	
§ 81.158 Affidavit of Medical Evaluation	Not Related			No	
§ 81.159 Designation of Facility	Not Related			No	
§ 81.160 Liberty Pending Hearing	Not Related			No	
§ 81.161 Motion for Order of Protective Custody	Not Related			No	
§ 81.162 Issuance of Order	Not Related			No	
§ 81.163 Apprehension Under Order	Not Related			No	
§ 81.164 Appointment of Attorney	Not Related			No	
§ 81.165 Probable Cause Hearing	Not Related			No	
§ 81.166 Order for Continued Detention	Not Related			No	

Texas Health & Safety Code

Section/ Chapter	Related/ Contrary	Explanation	Preemption Exception	Is State Law Preempted?	Recommendation
§ 81.167 Detention in Protective Custody	Not Related			No	
§ 81.168 Release From Detention	Not Related			No	
§ 81.169 General Provisions Relating to Hearing	Related/ Not Contrary			No	
§ 81.170 Right to Jury	Not Related			No	
§ 81.171 Release After Hearing	Not Related			No	
§ 81.172 Order for Temporary Management	Not Related			No	
§ 81.173 Order for Extended Management	Not Related			No	
§ 81.174 Order of Care or Commitment	Not Related			No	
§ 81.175 Court-Ordered Outpatient Services	Not Related			No	
§ 81.176 Designation of Facility	Not Related			No	

Texas Health & Safety Code

Section/ Chapter	Related/ Contrary	Explanation	Preemption Exception	Is State Law Preempted?	Recommendation
§ 81.177 Commitment to Private Facility	Not Related			No	
§ 81.178 Commitment to Federal Facility	Not Related			No	
§ 81.179 Transportation of Person	Not Related			No	
§ 81.180 Writ of Commitment	Not Related			No	
§ 81.181 Acknowledgemen t of Delivery	Not Related			No	
§ 81.182 Modification of Order for Inpatient Treatment	Related/ Not Contrary	Very similar to § 81.169 (above).		No	
§ 81.183 Motion for Modification of Order for Outpatient Treatment	Related/ Not Contrary			No	
§ 81.184 Order for Temporary Detention	Related/ Not Contrary			No	
§ 81.185 Apprehension and Release Under Order for Temporary Detention	Not Related			No	

Texas Health & Safety Code

Section/ Chapter	Related/ Contrary	Explanation	Preemption Exception	Is State Law Preempted?	Recommendation
§ 81.186 Order of Modification of Order for Outpatient Services	Not Related			No	
§ 81.187 Renewal of Order for Extended Management	Not Related			No	
§ 81.188 Motion for Rehearing	Not Related			No	
§ 81.189 Request for Reexamination	Not Related			No	
§ 81.190 Hearing on Request for Reexamination	Not Related			No	
§ 81.191 Appeal	Not Related			No	
§ 81.192 Continuing Care Plan Before Discharge	Not Related			No	
§ 81.193 Pass From Inpatient Care	Not Related			No	
§ 81.194 Return to Facility	Not Related			No	
§ 81.195 Discharge on Expiration of Court Order	Not Related			No	

Texas Health & Safety Code

Section/ Chapter	Related/ Contrary	Explanation	Preemption Exception	Is State Law Preempted?	Recommendation
§ 81.196 Discharge Before Expiration of Court Order	Not Related			No	
§ 81.197 Certificate of Discharge	Not Related			No	
§ 81.198 Authorization for Admission	Not Related			No	
§ 81.199 Transfer to Federal Facility	Not Related			No	
§ 81.200 Transfer of Records	Not Related			No	
§ 81.201 Writ of Habeas Corpus	Not Related			No	
§ 81.202 Effect on Guardianship	Not Related			No	
§ 81.203 Confidentiality of Records	Related/ Not Contrary	See 25 TAC § 96.402 for corresponding rules.		No	
§ 81.204 Rights Subject to Limitation by Head of Facility	Not Related			No	
§ 81.205 Notification of Rights	Not Related			No	
§ 81.206 General Rights Relating to Treatment	Not Related			No	

Texas Health & Safety Code

Section/ Chapter	Related/ Contrary	Explanation	Preemption Exception	Is State Law Preempted?	Recommendation
§ 81.207 Adequacy of Treatment	Not Related			No	
§ 81.208 Periodic Examination	Not Related			No	
§ 81.209 Use of Physical Restraint	Not Related			No	
§ 81.210 Costs	Not Related			No	
§ 81.211 Filing and Status of Foreign Court Orders	Not Related			No	
§ 81.301 Definitions	Not Related			No	
§ 81.302 Applicability of Subchapter	Not Related			No	
§ 81.303 Exposure Control Plan	Not Related			No	
§ 81.304 Minimum Standards	Not Related			No	
§ 81.305 Needleless Systems	Not Related			No	
§ 81.306 Sharps Injury Log	Related/ Not Contrary			No	
§ 81.307 Device Registration	Not Related			No	
§ 81.351 Definition	Not Related			No	

Texas Health & Safety Code

Section/ Chapter	Related/ Contrary	Explanation	Preemption Exception	Is State Law Preempted?	Recommendation
§ 81.352 Warning Sign Required; Rules	Not Related			No	
§ 81.353 Administrative Penalty	Not Related			No	
Title 2: Health Chapter 82: Cancer Registry					
§ 82.001 Short Title	Not Related			No	
§ 82.002 Definitions	Not Related			No	
§ 82.003 Applicability of Chapter	Not Related			No	
§ 82.004 Registry Required	Not Related			No	
§ 82.005 Content of Registry	Not Related			No	
§ 82.006 Board Powers	Related/ Not Contrary			No	
§ 82.007 Reports	Related/ Not Contrary	No covered entity involved.		No	
§ 82.008 Data From Medical Records	Related/ Not Contrary	<u>Not Contrary to HIPAA because:</u> (1) The Cancer Registry is not a covered entity. (2) To the extent a covered entity is involved, HIPAA permits disclosure for certain public health activities. 45 C.F.R. § 164.512(b). <i>See also 25 TAC §§ 91.3 and 91.4 for corresponding rules.</i>		No	

Texas Health & Safety Code

Section/ Chapter	Related/ Contrary	Explanation	Preemption Exception	Is State Law Preempted?	Recommendation
§ 82.009 Confidentiality	Related/ Not Contrary	<p><u>Not Contrary to HIPAA because:</u> (1) The Cancer Registry is not a covered entity. (2) It is worth noting that there is no particular standard for determining what qualifies as "epidemiological information" or "statistical purposes." See also 25 TAC §§ 91.3 and 91.4 for corresponding rules.</p>		No	
§ 82.010 Immunity From Liability	Related/ Not Contrary	Does not address whether an individual could be sanctioned under HIPAA.		No	
§ 82.011 Examination and Supervision Not Required	Not Related			No	
Title 2: Health					
Chapter 83: Exposure to Agent Orange					
§ 83.001 Definitions	Not Related			No	
§ 83.002 Reports to Department	Related/ Not Contrary	<p><u>No authorization is required and is it consistent with HIPAA because:</u> (1) HIPAA permits disclosure for certain public health activities. 45 C.F.R. § 164.512(b). (2) HIPAA permits appropriately limited disclosure of PHI that is required by law. 45 C.F.R. § 164.512(a)(1).</p>		No	
§ 83.003 Information to Department	Related/ Not Contrary			No	
§ 83.004 Reports by Department	Related/ Not Contrary	The department is not a covered entity, and the department would lack the authority to obtain records without a vet's authorization.		No	
§ 83.005 Confidentiality	Related/ Not Contrary	This is a confidentiality provision that does not conflict with HIPAA. See 25 TAC § 339.4 for corresponding rule.		No	
§ 83.006 Immunity From Liability	Related/ Not Contrary	Entities are required to comply with both this chapter and the provisions of HIPAA - no impact on HIPAA.		No	
§ 83.007 Class Action Suit	Not Related			No	

Texas Health & Safety Code

Section/ Chapter	Related/ Contrary	Explanation	Preemption Exception	Is State Law Preempted?	Recommendation
§ 83.008 Assistance Program	Not Related			No	
§ 83.009 Certain Cases Excluded	Not Related			No	
§ 83.010 Termination of Programs and Duties	Not Related			No	
Title 2: Health					
Chapter 84: Reporting of Occupational Conditions					
§ 84.001 Short Title	Not Related			No	
§ 84.002 Definitions	Not Related			No	
§ 84.003 Reportable Conditions; Rules	Related/ Not Contrary	Covered entities may disclose the information at issue to the local health authority (LHA), as HIPAA permits disclosure for certain public health activities. 45 C.F.R. § 164.512(b). Unless otherwise noted, that subsection provides authority for the disclosures contemplated by all the listed sections in this chapter. See 25 TAC § 99.1 for corresponding rule.		No	
§ 84.004 Reporting Requirements	Related/ Not Contrary	See 25 TAC § 99.1 for corresponding rule.		No	
§ 84.005 Powers and Duties of Department	Related/ Not Contrary	See Subsection (d) for inspection and investigation authority. See 25 TAC § 99.1(e) for corresponding rule.		No	
§ 84.006 Confidentiality	Related/ Not Contrary	See 25 TAC § 99.1(f) for corresponding rule.		No	
§ 84.007 Investigations	Related/ Not Contrary	HIPAA permits disclosure for certain public health activities. 45 C.F.R. § 164.512(b). See 25 TAC § 99.1(g) for corresponding rule.		No	

Texas Health & Safety Code

Section/ Chapter	Related/ Contrary	Explanation	Preemption Exception	Is State Law Preempted?	Recommendation
Title 2: Health					
Chapter 85: Acquired Immune Deficiency Syndrome and Human Immuno-Deficiency Virus Infection					
§ 85.012 Model Workplace Guidelines	Not Related			No	
§ 85.013 Funding Information	Not Related			No	
§ 85.014 Technical Assistance to Community Organizations	Not Related			No	
§ 85.015 Contract for Services; Duration	Not Related			No	
§ 85.016 Rules	Not Related	Contains rule-making authorization.		No	
§ 85.017 (Renumbered as V.T.C.A., Health and Safety Code § 81.010 by Acts 2001, 77th Leg., ch. 195, § 1 eff. Sept. 1, 2001).	Not Related	Almost none of the sections related to the state grant program appear to involve the use/disclosure of IIHI.		No	
§ 85.031 State Grant Program to Community Organizations	Related/ Not Contrary			No	
§ 85.032 Rules; Program Structure	Not Related			No	

Texas Health & Safety Code

Section/ Chapter	Related/ Contrary	Explanation	Preemption Exception	Is State Law Preempted?	Recommendation
§ 85.033 Coordination of Services	Not Related			No	
§ 85.034 Application Procedures and Eligibility Guidelines	Not Related			No	
§ 85.035 Applicant Information	Not Related			No	
§ 85.036 Awarding of Grants	Not Related			No	
§ 85.037 Restrictions on Grants	Not Related			No	
§ 85.038 Restrictions on Funds	Not Related			No	
§ 85.039 Information Provided by Funded Program	Not Related			No	
§ 85.040 Evaluation of Funded Programs	Not Related			No	
§ 85.041 Records and Reports	Not Related			No	
§ 85.042 Financial Records	Not Related			No	
§ 85.043 Due Process	Not Related			No	

Texas Health & Safety Code

Section/ Chapter	Related/ Contrary	Explanation	Preemption Exception	Is State Law Preempted?	Recommendation
§ 85.044 Advisory Committee	Not Related			No	
§ 85.061 HIV Medication Program	Not Related			No	
§ 85.062 Eligibility	Related/ Not Contrary			No	
§ 85.063 Procedures and Eligibility Guidelines	Related/ Not Contrary	See 25 TAC §§ 98.111, 98.24. and 98.83 for corresponding rules.		No	
§ 85.064 Funding	Not Related			No	
§ 85.065 Sliding Fee Scale to Purchase Medication	Not Related			No	
§ 85.066 Advisory Committee	Not Related			No	
§ 85.082 Department Voluntary Testing Programs	Related/ Not Contrary	If anything, state law is stricter by applying the prohibitions on disclosure to a broader class of persons and permitting disclosure for a more limited range of purposes.		No	
§ 85.083 Registration of Testing Program	Not Related			No	
§ 85.084 For-Profit Testing Program	Not Related			No	
§ 85.085 Physician Supervision of Medical Care	Not Related			No	

Texas Health & Safety Code

Section/ Chapter	Related/ Contrary	Explanation	Preemption Exception	Is State Law Preempted?	Recommendation
§ 85.086 Reports	Related/ Not Contrary			No	
§ 85.087 Training of Counselors	Not Related			No	
§ 85.088 State-funded Health Clinics	Related/ Not Contrary			No	
§ 85.089 Disciplinary Action	Not Related			No	
§ 85.111 Education of State Employees	Not Related			No	
§ 85.112 Workplace Guidelines	Not Related			No	
§ 85.113 Workplace Guidelines for State Contractors	Not Related	See 25 TAC §§ 405.284 for corresponding rule.		No	
§ 85.114 Education of Certain Clients, Inmates, Patients, and Residents	Not Related			No	
§ 85.115 Confidentiality Guidelines	Related/ Not Contrary			No	

Texas Health & Safety Code

Section/ Chapter	Related/ Contrary	Explanation	Preemption Exception	Is State Law Preempted?	Recommendation
§ 85.116 Testing and Counseling for State Employees Exposed to HIV Infection on the Job	Not Related			No	
§ 85.131 Research on Nursing Care	Related/ Not Contrary	<p>To the extent a person is conducting research on human subjects, he or she would have to go through the department's Internal Review Board (IRB), which is regulated under HIPAA (and would therefore be HIPAA-compliant) and another federal section, the privacy board section. The dept has reviewed federal and state law and the Common Rule and found them all to be consistent with respect to research disclosures. Specifically, any research that goes through an IRB that involves a patient's information requires an "informed consent" authorization from the patient and the family. If there is no authorization, the principal investigator must vouch that there is little chance info will be disclosed. Results cannot be released in an identifiable form. Also, there is a good chance that the entity disclosing the info for the research is a non-CE.</p> <p>Finally, any disclosures made would also be authorized, as HIPAA permits disclosure for certain public health activities. 45 C.F.R. § 164.512(b).</p>		No	
§ 85.132 Demonstration Projects in Nursing Facilities	Related/ Not Contrary	See above.		No	
§ 85.141 Model Policies Concerning Persons in Custody	Not Related	See 25 TAC § 97.144 for corresponding rule/guidelines (not part of the agency's rules).		No	

Texas Health & Safety Code

Section/ Chapter	Related/ Contrary	Explanation	Preemption Exception	Is State Law Preempted?	Recommendation
§ 85.142 Adoption of Policy	Related/ Not Contrary			No	
§ 85.143 Content of Policy	Related/ Not Contrary			No	
§ 85.201 Legislative Findings	Not Related			No	
§ 85.202 Definitions	Not Related			No	
§ 85.203 Infection Control Standards	Not Related			No	
§ 85.204 Modification of Practice	Related/ Not Contrary	Subsection (b)(3) provides that all proceedings and communications to the expert review panel, which includes the healthcare worker's personal physician, are confidential and release of information relating to a health care worker's HIV status shall comply with Chapter 81. See DM-136 (1992) at 6-7 (invalidating Department's rules in part because they conflicted with the confidentiality requirements in (b)(3)).		No	
§ 85.205 Disciplinary Procedures	Not Related			No	
§ 85.206 Retention of License; Permitted Acts	Not Related			No	
§ 85.251 Definitions	Not Related			No	
§ 85.252 Prohibitions Relating to Home Collection Kit	Not Related			No	

Texas Health & Safety Code

Section/ Chapter	Related/ Contrary	Explanation	Preemption Exception	Is State Law Preempted?	Recommendation
§ 85.253 Prohibitions Relating to Home Testing	Not Related			No	
§ 85.254 Package of Services	Not Related			No	
§ 85.255 Qualified Facility	Not Related			No	
§ 85.256 Oral Reporting	Not Related			No	
§ 85.257 Counseling; Counseling Protocols	Not Related			No	
§ 85.258 Labeling	Not Related			No	
§ 85.259 Enforcement	Not Related			No	
§ 85.260 Confidentiality	Related/ Not Contrary	Limitations on disclosure are broader (and the section therefore stricter) than in HIPAA inasmuch as they apply to any person. Thus, it seems that any person who makes a disclosure concerning a test result would be violating the section. Also, this section doesn't have an exception for treatment, payments, and health care operations, like HIPAA (45 C.F.R. § 164.506).		No	
§ 85.261 Certain Technology Prohibited	Related/ Not Contrary			No	
§ 85.262 Reports	Related/ Not Contrary			No	
Title 2: Health Chapter 86: Breast Cancer					
§ 86.001 Purpose	Not Related			No	

Texas Health & Safety Code

Section/ Chapter	Related/ Contrary	Explanation	Preemption Exception	Is State Law Preempted?	Recommendation
§ 86.002 Standardized Written Summary	Not Related			No	
§ 86.003 Advisory Council	Not Related			No	
§ 86.004 Distribution of Summary	Not Related			No	
§ 86.005 Funding	Not Related			No	
§ 86.011 Breast Cancer Screening	Not Related			No	
§ 86.012 Advisory Committee	Not Related			No	
Title 2: Health Chapter 87: Birth Defects					
§ 87.001 Definitions	Not Related			No	
§ 87.002 Confidentiality	Related/ Not Contrary	HIPAA authorizes the disclosure (HIPAA permits disclosure for certain public health activities. 45 C.F.R. § 164.512(b)), and all info would come from central registry which is not a covered entity. In addition, the department is bound by the Common Rule.		No	
§ 87.003 Contracts	Not Related			No	
§ 87.004 Limitation of Liability	Related/ Not Contrary			No	
§ 87.005 Cooperation of Governmental Entities	Not Related			No	

Texas Health & Safety Code

Section/ Chapter	Related/ Contrary	Explanation	Preemption Exception	Is State Law Preempted?	Recommendation
§ 87.021 Surveillance Program; Registry Established	Not Related			No	
§ 87.022 Data Collection	Not Related	See 25 TAC §§ 37.305 and 37.306 for corresponding rule.		No	
§ 87.023 Referral for Services	Related/ Not Contrary			No	
§ 87.041 Investigations	Related/ Not Contrary	Covered entities must permit investigations, and HIPAA permits disclosure of PHI to a health oversight agency for oversight activities authorized by law, including certain oversight of government benefit plans. 45 C.F.R. § 164.512(d)(2).		No	
§ 87.042 Departmental Investigatory Powers	Not Related			No	
§ 87.061 Registry; Confidentiality	Related/ Not Contrary	The department is not a covered entity and the only people to whom info could be disclosed would be employees or people who have gone through the Internal Review Board (IRB) process--which in turn would be consistent with HIPAA protocols.		No	
§ 87.062 Access to Information	Related/ Not Contrary	Registry is not a covered entity. See 25 TAC § 37.306 for corresponding rule.		No	
§ 87.063 Research; Review and Approval	Related/ Not Contrary	See 25 TAC §37.306 for corresponding rule.		No	
§ 87.064 Report of Central Registry Activities and Findings	Related/ Not Contrary			No	

Texas Health & Safety Code

Section/ Chapter	Related/ Contrary	Explanation	Preemption Exception	Is State Law Preempted?	Recommendation
§ 87.065 Coordination With Mexico	Not Related			No	
§ 87.063 Research; Review and Approval	Related/ Not Contrary	See 25 TAC §§ 37.302, 37.303, and 37.305 for corresponding rules.		No	
Title 2: Health					
Chapter 88: Reports of Childhood Lead Poisoning					
§ 88.002 Confidentiality	Related/ Not Contrary	<u>Not Contrary to HIPAA because:</u> (1) HIPAA permits disclosure for certain public health activities. 45 C.F.R. § 164.512(b). (2) HIPAA permits appropriately limited disclosure of PHI that is required by law. 45 C.F.R. § 164.512(a)(1). See 25 TAC §§ 37.333 for corresponding rule.		No	
§ 88.003 Reportable Health Condition	Related/ Not Contrary	HIPAA permits disclosure for certain public health activities. 45 C.F.R. § 164.512(b). See 25 TAC § 37.334(g) for corresponding rule.		No	
§ 88.004 Persons Required to Report	Related/ Not Contrary	<u>Not Contrary to HIPAA because:</u> (1) HIPAA permits disclosure for certain public health activities. 45 C.F.R. § 164.512(b). (2) HIPAA permits appropriately limited disclosure of PHI that is required by law. 45 C.F.R. § 164.512(a)(1). See 25 TAC §§ 37.335 for corresponding rule.		No	
§ 88.005 Reporting Procedures	Related/ Not Contrary	<u>Not Contrary to HIPAA because:</u> (1) HIPAA permits disclosure for certain public health activities. 45 C.F.R. § 164.512(b). (2) HIPAA permits appropriately limited disclosure of PHI that is required by law. 45 C.F.R. § 164.512(a)(1). See 25 TAC §§ 37.336 for corresponding rule.		No	
§ 88.006 Reports of Hospitalization; Death	Related/ Not Contrary	<u>Not Contrary to HIPAA because:</u> (1) HIPAA permits disclosure for certain public health activities. 45 C.F.R. § 164.512(b). (2) HIPAA permits appropriately limited disclosure of PHI that is required by law. 45 C.F.R. § 164.512(a)(1).		No	

Texas Health & Safety Code

Section/ Chapter	Related/ Contrary	Explanation	Preemption Exception	Is State Law Preempted?	Recommendation
Title 2: Health					
Chapter 89: Screening and Treatment for Tuberculosis in Jails and Other Correctional Facilities					
§ 89.001 Definitions	Not Related			No	
§ 89.002 Scope of Chapter	Not Related			No	
§ 89.011 Screening of Jail Employees and Volunteers	Related/ Not Contrary	The governing body of a jail or community corrections facility would not be a covered entity. Also, unless otherwise noted, any disclosure required of a covered entity to a correctional institution or jail falls within the authorized disclosures for specialized correctional institution purposes in 45 C.F.R. § 164.512(k).		No	
§ 89.012 Follow-up Evaluations and Treatment	Related/ Not Contrary			No	
§ 89.013 Certificate Required	Related/ Not Contrary			No	
§ 89.014 Cost of Tests, Follow-Up, and Treatment	Not Related			No	
§ 89.051 Inmate Screening Required	Related/ Not Contrary			No	
§ 89.052 Rescreening; Diagnostic Evaluations	Not Related			No	
§ 89.053 Follow-up Evaluations	Related/ Not Contrary			No	
§ 89.054 Inmate Transfer and Release	Related/ Not Contrary			No	

Texas Health & Safety Code

Section/ Chapter	Related/ Contrary	Explanation	Preemption Exception	Is State Law Preempted?	Recommendation
§ 89.071 Reporting	Related/ Not Contrary	HIPAA permits appropriately limited disclosure of PHI that is required by law. 45 C.F.R. § 164.512(a)(1). See also 25 TAC § 97.178 (Reporting) for corresponding rule.		No	
§ 89.072 Rulemaking	Not Related			No	
§ 89.073 Adoption of Local Standards	Not Related			No	
§ 89.101 Definitions	Not Related			No	
§ 89.102 Report of Release	Not Related			No	
Chapter 90 Osteoporosis	Not Related			No	
Chapter 91 Prostate Cancer Education Program	Not Related			No	
Title 2: Health					
Chapter 92: Injury Prevention and Control					
§ 92.006 Duties of Department	Related/ Not Contrary			No	
§ 92.001 Definitions	Not Related			No	
§ 92.002 Reportable Injury; Rules	Related/ Not Contrary	HIPAA permits appropriately limited disclosure of PHI that is required by law. 45 C.F.R. § 164.512(a)(1). Requires reporting of certain injuries as defined by dep't by rule; Implemented in § 103.12 (List of Reportable Injuries and Conditions).		No	
§ 92.003 Reporting Requirements	Related/ Not Contrary	HIPAA permits appropriately limited disclosure of PHI that is required by law. 45 C.F.R. § 164.512(a)(1). See also 25 TAC §§ 103.14-17 for corresponding rule, and § 103.18-19 of this code.		No	

Texas Health & Safety Code

Section/ Chapter	Related/ Contrary	Explanation	Preemption Exception	Is State Law Preempted?	Recommendation
§ 92.004 Powers and Duties of Department	Related/ Not Contrary	See § 103.20 (General Control Measures for Reportable Injuries) and § 103.21 (Powers and Duties of the Department).		No	
§ 92.005 Access to Information	Related/ Not Contrary			No	
§ 92.006 Confidentiality	Related/ Not Contrary	As a policy matter, Tex. Dept. of Health requires "consent" from all persons named in the report. See <i>also</i> § 103.22 (Confidential Nature of Case Reporting).		No	
§ 92.007 Investigations	Related/ Not Contrary	See 25 TAC § 103.23 (Investigations) for corresponding rules.		No	
§ 92.008 Technical Advisory Committee on Injury Reporting	Not Related			No	
§ 92.009 Coordination With Texas Workers' Compensation Commission	Related/ Not Contrary			No	
§ 92.010 Coordination With Texas Rehabilitation Commission	Related/ Not Contrary			No	
§ 92.011 Coordination With Texas Traumatic Brain Injury Advisory Council	Related/ Not Contrary			No	

Texas Health & Safety Code

Section/ Chapter	Related/ Contrary	Explanation	Preemption Exception	Is State Law Preempted?	Recommendation
§ 92.051 Definitions	Not Related	Council is an advisory one within the department, but it does not appear from the statute that any of the Council's functions would involve use/disclosure of PHI. Any effect on the privacy of IHI would therefore be attenuated, if at all.		No	
§ 92.052 Advisory Council; Associated Agency	Not Related			No	
§ 92.053 Membership	Not Related			No	
§ 92.054 Officers	Not Related			No	
§ 92.055 Restrictions on Members	Not Related			No	
§ 92.056 Terms; Vacancy	Not Related			No	
§ 92.057 Compensation; Expenses	Not Related			No	
§ 92.058 Meetings	Not Related			No	
§ 92.059 Duties of the Council	Not Related			No	
§ 92.060 Duties of the Department	Related/ Not Contrary	Under the Transition Plan, the Advisory Council will be moved to DADS, so the way disclosures will be made in the future is not entirely clear. See also Tex. Health & Safety Code § 92.052. At Tex. Dept. of Health, however, no IHI could be given to the Council without the Council going through the Internal Review Board (IRB) process. If this procedure is continued, there will be no conflict.		No	
§ 92.061 Additional Council Duties	Not Related			No	

Texas Health & Safety Code

Section/ Chapter	Related/ Contrary	Explanation	Preemption Exception	Is State Law Preempted?	Recommendation
§ 92.062 Gifts and Grants	Not Related			No	
§ 92.063 Advisory Committee Statute Inapplicable	Not Related			No	
Title 2: Health					
Chapter 93: Prevention of Cardiovascular Disease and Stroke					
§ 93.001 Definitions	Not Related			No	
§ 93.002 Appointment of Council; Terms of Members	Not Related			No	
§ 93.003 Compensation; Reimbursement	Not Related			No	
§ 93.004 Duties of Department; Funds	Not Related			No	
§ 93.005 Consultants; Advisory Committee	Not Related			No	
§ 93.006 Report to Board and Legislature	Not Related			No	
§ 93.051 Cardiovascular Disease and Stroke Prevention Plan; Duties of Council	Not Related			No	

Texas Health & Safety Code

Section/ Chapter	Related/ Contrary	Explanation	Preemption Exception	Is State Law Preempted?	Recommendation
§ 93.052 Database of Clinical Resources	Not Related			No	
§ 93.053 Cardiovascular Disease and Stroke Database	Related/ Not Contrary	Subsection (a) authorizes council to "obtain information from federal and state agencies and from private and public organizations." That this information will likely contain PHI is bolstered by the following section, requiring confidentiality of the info obtained. However, any covered entities involved would be authorized to make the required disclosures, as HIPAA permits disclosure for certain public health activities. 45 C.F.R. § 164.512(b).		No	
§ 93.054 Information Received From Another State Agency; Confidentiality	Related/ Not Contrary			No	
Title 2: Health					
Chapter 94: State Plan for Hepatitis C; Education and Prevention Program					
§ 94.001 State Plan for Hepatitis C	Not Related			No	
§ 94.002 Hepatitis C Education and Prevention Program	Not Related			No	
§ 94.003 Department Voluntary Testing Programs	Related/ Not Contrary	If anything, state law is stricter by applying the prohibitions on disclosure to a broader class of persons and permitting disclosure for a more limited range of purposes. See 94.003(d).		No	
§ 94.004 Training of Counselors	Not Related			No	

Texas Health & Safety Code

Section/ Chapter	Related/ Contrary	Explanation	Preemption Exception	Is State Law Preempted?	Recommendation
Title 2: Health					
Chapter 95: Children's Asthma Disease Management Pilot Study					
§ 95.001 Children's Asthma Disease Management Pilot Study	Related/ Not Contrary	HIPAA permits disclosure for certain public health activities. 45 C.F.R. § 164.512(b).		No	
§ 95.002 Report	Not Related	Data is aggregated.		No	
§ 95.003 Expiration Date	Not Related			No	
Title 2: Health					
Chapter 101: Texas Council on Alzheimer's Disease and Related Disorders					
§ 101.008 Duties of Department	Related/ Not Contrary	Does not involve use or disclosure of PHI.		No	
§ 101.010 Report	Related/ Not Contrary			No	
Chapter 102 Texas Cancer Council	Related/ Not Contrary	See 25 TAC §§ 703.14 and 703.11 for corresponding rules.		No	
Title 2: Health					
Chapter 103: Texas Diabetes Council					
§ 103.014 Powers and Duties	Related/ Not Contrary			No	
Title 2: Health					
Chapter 104: Statewide Health Coordinating Council and State Health Plan					
§ 104.022 Proposed State Health Plan	Related/ Not Contrary			No	
§ 104.041 State Health Planning and Development Agency	Not Related	§ 104.012 requires the statewide council to adopt rules. They are found in Chapter 571 of Title 25 of the TAC and appear not to contain any provisions related to the privacy of IIHI.		No	

Texas Health & Safety Code

Section/ Chapter	Related/ Contrary	Explanation	Preemption Exception	Is State Law Preempted?	Recommendation
§ 104.042 Data Collection	Related/ Not Contrary	104.042 (e) is modified by HB 3126 but still keeps PHI confidential. See 25 TAC sections 13.11-13.20. Appears not to require collection of PHI. See 25 TAC 13.14. But see 25 TAC 13.19, providing that specific patient information received pursuant to Chapters 311 or 104 are confidential; HR 3126		No	
§ 104.0421 Statewide Data Collection and Coordination	Related/ Not Contrary			No	
§ 104.043 Failure to Submit Data; Civil Penalty	Not Related			No	
Chapter 105 Health Professions Resource Center	Not Related	Rules promulgated pursuant to § 105.007 are to be found in 25 TAC §§ 39.91-39.94. The clearinghouse appears to involve only provider information and not PHI.		No	
Title 2: Health					
Chapter 107: Health Disparities Task Force					
§ 107.003 Duties	Related/ Not Contrary			No	
Title 2: Health					
Chapter 108: Texas Health Information Council					

Texas Health & Safety Code

Section/ Chapter	Related/ Contrary	Explanation	Preemption Exception	Is State Law Preempted?	Recommendation
§ 108.001 Creation of Council	Not Related	Council functions were all transferred to Tex. Dept. of Health (TDH) after all funding was removed during 78th Legislature. Rulemaking authority, when agency is abolished, will go to the Commission. TDH's Internal Review Board (IRB) will take over Scientific Review Panel and eventually all RIBS will be consolidated into a Privacy Board, to be consistent with HIPAA. Under Transition Plan, DSHS will be created. When that occurs, HCIC will be abolished and functions transferred to TDH--w/ rulemaking authority going to HHSC. Transition Plan not yet final. Internally, TDH has opined that info obtained under 108 can only be used for 108 purposes, consistent with GA-0083. Abolished by section 1.16 and all functions transferred to TDH by section 1.19 of HB 2292. See esp. GA-0083 (2003) -- for all sections in chapter.		No	
§ 108.002 Definitions	Not Related			No	
§ 108.0025 Rural Provider	Not Related			No	
§ 108.003 Council Composition; Expenses	Not Related			No	
§ 108.004 Meetings	Related/ Not Contrary			No	
§ 108.0045 Open Records	Related/ Not Contrary			No	
§ 108.005 Terms	Not Related			No	
§ 108.006 Powers and Duties of Council	Related/ Not Contrary			No	
§ 108.0062 Drug Purchasing Cooperatives	Related/ Not Contrary			No	

Texas Health & Safety Code

Section/ Chapter	Related/ Contrary	Explanation	Preemption Exception	Is State Law Preempted?	Recommendation
§ 108.0065 Powers and Duties of Council Relating to Medicaid Managed Care	Not Related			No	
§ 108.007 Review Powers	Related/ Not Contrary			No	
§ 108.008 Duties of Department	Related/ Not Contrary			No	
§ 108.0081 Memorandum of Understanding	Not Related			No	
§ 108.0085 Duties of Attorney General	Not Related			No	
§ 108.009 Data Submission and Collection	Related/ Not Contrary	Our understanding is that Chapter 108 will be updated during the 79th Legislature to reflect changes made under the H.B. 2292 Transition Plan and that if HCIC is retained, the new law will require submission of the data referenced in 108.009. See JC-0508; 25 TAC §§ 1301.19, 1301.12.		No	
§ 108.010 Collection and Dissemination of Provider Quality Data	Related/ Not Contrary			No	
§ 108.011 Dissemination of Public Use Data and Council Publications	Related/ Not Contrary	See JC-0511 (2002).		No	
§ 108.012 Computer Access to Data	Related/ Not Contrary			No	

Texas Health & Safety Code

Section/ Chapter	Related/ Contrary	Explanation	Preemption Exception	Is State Law Preempted?	Recommendation
§ 108.013 Confidentiality and General Access to Data	Related/ Not Contrary			No	
§ 108.0135 Scientific Review Panel	Related/ Not Contrary	No covered entity involved. Any requests will be part of Center for Health Statistics, which will have Privacy Board or Internal Review Board (IRB) requirements & procedures in place.		No	
§ 108.014 Civil Penalty	Related/ Not Contrary			No	
§ 108.0141 Criminal Penalty	Related/ Not Contrary			No	
§ 108.015 Conflict of Interest	Not Related			No	
Chapter 111 Interagency Council on Pharmaceuticals Bulk Purchasing	Not Related			No	
Chapter 110 Rural Foundation	Not Related			No	

Title 2: Health
Chapter 121: Local Public Health Reorganization Act

Texas Health & Safety Code

Section/ Chapter	Related/ Contrary	Explanation	Preemption Exception	Is State Law Preempted?	Recommendation
§ 121.103 General Duties	Related/ Not Contrary	Requires department, in consultation w/ consortium & local health units, local health dep'ts & public health districts to, inter alia, do research on improving health status outcomes & methods of monitoring those outcomes and study the technology infrastructure available to improve communication, access. Grant application, on its face, does not seem to involve use/disclosure of PHI. See 25 TAC § 83.7. <u>However, any uses or disclosures required of CE's pursuant to this section would come within exceptions authorized in HIPAA:</u> (1) HIPAA permits disclosure for certain public health activities. 45 C.F.R. § 164.512(b). (2) HIPAA permits disclosure for certain law enforcement purposes. 45 C.F.R. § 164.512(f).		No	
Chapter 122 Powers and Duties of Counties and Municipalities Relating to Public Health	Related/ Not Contrary			No	
Title 2: Health					
Chapter 141: Youth Camps					
§ 141.007 Inspections	Related/ Not Contrary	Gives department the authority to enter & investigate; authorizes department to prescribe record-keeping requirements "including a requirement that the youth camp keep records relating to matters involving the health and safety of campers." Since a youth camp itself is not a covered entity, records in the hands of a youth camp are not governed by HIPAA.		No	
Title 2: Health					
Chapter 142: Home and Community Support Services					

Texas Health & Safety Code

Section/ Chapter	Related/ Contrary	Explanation	Preemption Exception	Is State Law Preempted?	Recommendation
§ 142.009 Surveys; Consumer Complaints	Related/ Not Contrary	<p>Dept. of Human Services has identified itself as a covered entity but has not identified any health care components. Therefore, DHS is a wholly covered entity and not a hybrid. §§ 142.009(d)(1) and (2) authorize DHS to release the "reports, records, and working papers used or developed in an investigation made under [the] section" to a state or federal agency or to law enforcement personnel.</p> <p>On its face, the authorized disclosure does not incorporate HIPAA's limitations on such disclosure. As a covered entity, DHS could be required to follow such limitations. However, it appears that DHS could release them in a non-HIPAA deidentified manner consistently with its functions as a health oversight agency.</p> <p>As a matter of clarification, there is no distinction within the statute for "agency" as used to refer to a licensee and "agency" as used to refer to a governmental entity.</p> <p>The complaint is made by the consumer--and therefore may be IIHI but is not PHI b/c consumer makes complaint and brings to the attention of the covered entity. Note that in (b), there is a reference to deidentification.</p>		No	
§ 142.0092 Consumer Complaint Data	Related/ Not Contrary	<p>Given DHS's designation as a covered entity, this information may be HIPAA de-identified and may therefore not meet the "useful format" requirement. On the other hand, it appears that such information would be released pursuant to DHS's health oversight functions and may not have to follow HIPAA's more stringent de-identification procedures.</p>		No	
§ 142.0093 Resolution Prohibited	Not Related			No	

Texas Health & Safety Code

Section/ Chapter	Related/ Contrary	Explanation	Preemption Exception	Is State Law Preempted?	Recommendation
§ 142.0094 Use of Regulatory Survey Reports and Other Documents	Related/ Not Contrary			No	
§ 142.012 Powers and Duties	Related/ Not Contrary			No	
§ 142.013 Injunction	Related/ Not Contrary			No	
§ 142.014 Civil Penalties	Related/ Not Contrary			No	
§ 142.017 Administrative Penalty	Related/ Not Contrary			No	
§ 142.018 Reports of Abuse, Exploitation, or Neglect	Related/ Not Contrary	HIPAA permits certain disclosures about victims of abuse, neglect, or domestic violence to a government authority authorized to receive such reports. 45 C.F.R. § 164.512(c)(1). <i>See also</i> 45 C.F.R. § 164.502(j)(1) (Standards for disclosures by whistleblowers).		No	
Chapter 143 Industrial Homework	Not Related			No	
Chapter 144 Renderers	Not Related			No	
Title 2: Health					
Chapter 145: Tanning Facilities					
§ 145.008 Operational Requirements	Not Related			No	
§ 145.011 Rules; Inspection	Not Related			No	
Title 2: Health					
Chapter 146: Tattoo and Certain Body Piercing Studios					

Texas Health & Safety Code

Section/ Chapter	Related/ Contrary	Explanation	Preemption Exception	Is State Law Preempted?	Recommendation
§ 146.014 Report of Infection	Not Related			No	
§ 146.016 Inspections	Not Related			No	
Chapter 147 Migrant Labor Housing Facilities	Not Related			No	
Title 2: Health					
Chapter 161: Public Health Provisions					
§ 161.001 Liability of Person Who Orders or Administers Innovation	Not Related			No	
§ 161.002 Inadmissibility of Immunization Survey Information	Related/ Not Contrary			No	
§ 161.003 Immunization Reminder Notices Relates	Related/ Not Contrary			No	
§ 161.004 Statewide Immunization of Children	Not Related			No	
§ 161.005 Immunizations Required	Related/ Not Contrary	HIPAA permits appropriately limited disclosure of PHI that is required by law. 45 C.F.R. § 164.512(a)(1).		No	

Texas Health & Safety Code

Section/ Chapter	Related/ Contrary	Explanation	Preemption Exception	Is State Law Preempted?	Recommendation
§ 161.007 Immunization Registry; Reports to Department	Related/ Not Contrary	It includes data elements reported to the department. See 25 TAC § 100.2 Inclusion of Information and Confidentiality, § 100.5 Reportable Information, § 100.6 Information Included in the Immunization Registry Prior to September 1, 1997, § 100.7 Data Quality Assurance, § 100.11 Confidentiality; HB 1921.		No	
§ 161.008 Immunization Record	Related/ Not Contrary	This notifies a guardian that information is being shared with the department.		No	
§ 161.021 Authorization to Provide Information; Use of Information; Liability	Related/ Not Contrary	Allows covered entities to disclose information for studies but places no other limitation on the disclosures. However, any entities covered by HIPAA could comply with both by releasing information for studies, but only if the disclosure otherwise complies with the HIPAA standards applicable to use/disclosure for research purposes, in 45 C.F.R. § 164.512(i).		No	
§ 161.0211 Epidemiologic or Toxicologic Investigations	Related/ Not Contrary	IIHI is confidential and may be used by the department for certain purposes only. <u>Not Contrary to HIPAA because:</u> (1) HIPAA permits appropriately limited disclosure of PHI that is required by law. 45 C.F.R. § 164.512(a)(1). (2) HIPAA permits disclosure for certain public health activities. 45 C.F.R. § 164.512(b).		No	
§ 161.0212 Right of Entry	Related/ Not Contrary	HIPAA permits disclosure for certain public health activities. 45 C.F.R. § 164.512(b).		No	
§ 161.0213 Confidentiality	Related/ Not Contrary			No	
§ 161.022 Use and Publication Restrictions; Confidentiality	Related/ Not Contrary	The department may obtain immunization data, verify consent, and cannot retain any IIHI without consent. The department shall adopt rules for this section; would have to go through Privacy Board if disclosures are for research.		No	

Texas Health & Safety Code

Section/ Chapter	Related/ Contrary	Explanation	Preemption Exception	Is State Law Preempted?	Recommendation
§ 161.023 No Liability for Reports to Medical Committee	Related/ Not Contrary			No	
§ 161.024 Application to Health Maintenance Organization	Related/ Not Contrary			No	
§ 161.0315 Authority of Governing Body to Form Committee to Evaluate Medical and Health Care Services	Related/ Not Contrary	This section directs that information remain confidential. Import of §§ 161.031-.033 has only to do with the integrity of the peer review privilege so that entities may conduct peer review without the underlying documents being subject to discovery.		No	
§ 161.032 Records and Proceedings Confidential	Related/ Not Contrary	Patient information is used, but HIPAA permits the use and disclosure of IIHI in the course of certain treatment, payment, and health care operations. 45 C.F.R. § 164.506.		No	
§ 161.033 Immunity for Committee Members	Related/ Not Contrary	HIPAA permits a covered entity to disclose PHI in the course of a judicial or administrative proceeding in response to a court order. 45 C.F.R. § 164.512(e)(1)(i).		No	
§ 161.041 Mandatory Reporting of Gunshot Wounds	Related/ Not Contrary	HIPAA permits appropriately limited disclosure of PHI that is required by law. 45 C.F.R. § 164.512(a)(1).		No	

Texas Health & Safety Code

Section/ Chapter	Related/ Contrary	Explanation	Preemption Exception	Is State Law Preempted?	Recommendation
§ 161.042 Mandatory Reporting of Controlled Substance Overdoses	Related/ Not Contrary	HIPAA permits appropriately limited disclosure of PHI that is required by law. 45 C.F.R. § 164.512(a)(1).		No	
§ 161.044 Controlled Substance Overdose Information Repository	Related/ Not Contrary			No	
§ 161.061 Laboratory Information Required	Not Related			No	
§ 161.101 Tests for Exposure to Lead	Related/ Not Contrary	Request for test and test itself are in compliance with HIPAA, as HIPAA permits the use and disclosure of IHI in the course of certain treatment, payment, and health care operations. 45 C.F.R. § 164.506.		No	
§ 161.132 Reports of Abuse and Neglect or Illegal, Unprofessional, or Unethical Conduct	Related/ Not Contrary	<u>Not Contrary to HIPAA because:</u> (1) HIPAA permits certain disclosures about victims of abuse, neglect, or domestic violence. (2) HIPAA permits appropriately limited disclosure of PHI that is required by law. 45 C.F.R. § 164.512(a)(1).		No	
§ 161.134 Retaliation Against Employees Prohibited	Not Related			No	

Texas Health & Safety Code

Section/ Chapter	Related/ Contrary	Explanation	Preemption Exception	Is State Law Preempted?	Recommendation
§ 161.135 Retaliation Against Non-Employees Prohibited	Not Related			No	
§ 161.137 Penalties	Related/ Not Contrary			No	
§ 161.202 Fees	Related/ Not Contrary	Any fee that could otherwise have been charged in accordance with HIPAA may not be charged under state law, if the records are being provided pursuant to certain requests for benefits. A covered entity could comply with both by simply declining to assess the fee.		No	
§ 161.203 Distribution of Records	Related/ Not Contrary	Pursuant to 45 C.F.R. § 164.524 (b), HIPAA provides for a 30-day limit for production of patient records. Texas law provides 15 days for physicians and 10 days for governmental entities. Texas law is stricter, if anything, and entities could comply with both sets of laws by adhering to the shorter deadline.		No	
§ 161.204 Application of Other Laws	Related/ Not Contrary			No	
§ 161.354 Public Information	Not Related			No	
Title 2: Health					
Chapter 162: Blood Banks and Donation of Blood					
§ 162.001 Definitions	Not Related			No	
§ 162.002 Required Testing of Blood	Not Related			No	

Texas Health & Safety Code

Section/ Chapter	Related/ Contrary	Explanation	Preemption Exception	Is State Law Preempted?	Recommendation
§ 162.003 Confidentiality of Blood Bank Records	Related/ Not Contrary				Blood banks as blood banks should not be covered entities, but it is not clear on the face of the law that covered entities wear two hats. § 162 doesn't currently track HIPAA--although it could. Practically speaking the standard of care would likely be HIPAA.
§ 162.004 Disclosure Required by Law	Related/ Not Contrary			No	
§ 162.005 Disclosure to Certain Physicians or Person Tested	Related/ Not Contrary	<u>Not Contrary to HIPAA because:</u> (1) As to disclosures to physicians in (1) and (2), HIPAA permits the use and disclosure of IIHI in the course of certain treatment, payment, and health care operations. 45 C.F.R. § 164.506. (2) As to disclosures to the individual, HIPAA provides a right of access to the PHI of the individual. 45 C.F.R. § 164.524.		No	
§ 162.006 Disclosure to Other Blood Banks	Related/ Not Contrary	Disqualification; simply means that if someone comes in with a reportable disease, then the name of the donor goes out with the warning "disqualified." See FDA regs; HSC Ch. 81; Tex. Admin. Code re: Reports to Public Health Authorities.		No	
§ 162.007 Report to Recipient or Transfuser	Related/ Not Contrary	HIPAA permits appropriately limited disclosure of PHI that is required by law. 45 C.F.R. § 164.512(a)(1).		No	The persons to whom the disclosure should be made is worded disjunctively.

Texas Health & Safety Code

Section/ Chapter	Related/ Contrary	Explanation	Preemption Exception	Is State Law Preempted?	Recommendation
§ 162.008 Procedures for Notifying Blood Recipients	Related/ Not Contrary	See FDA regs re: Operation Look Back (American Association of Blood Banks).		No	
§ 162.009 Provision of Blood Samples for Testing	Not Related			No	
§ 162.010 General Powers and Duties of Court	Related/ Not Contrary	Sets out how plaintiffs can or cannot directly get to the donor's identity. Authorizes court of competent jurisdiction to require a use/disclosure by law. See <i>also</i> 907 S.W.2d 445.		No	
§ 162.011 Discovery Powers of Court	Related/ Not Contrary			No	
§ 162.012 Limitation on Liability	Not Related			No	
§ 162.013 Civil Penalty	Not Related			No	
§ 162.014 Criminal Penalty	Not Related			No	
§ 162.015 Donation of Blood by Persons Younger Than 18 Years of Age	Not Related			No	
Title 2: Health					
Chapter 164: Treatment Facilities Marketing and Admission Practices					
§ 164.010 Prohibited Acts	Related/ Not Contrary			No	
Title 2: Health					
Chapter 166: Advance Directives					
§ 166.001 Short Title	Not Related	See <i>Miller v. H.C.A.</i> , 47 TSCJ 12.		No	

Texas Health & Safety Code

Section/ Chapter	Related/ Contrary	Explanation	Preemption Exception	Is State Law Preempted?	Recommendation
§ 166.002 Definitions	Not Related			No	
§ 166.003 Witnesses	Not Related			No	
§ 166.004 Statement Relating to Advance Directive	Not Related			No	
§ 166.005 Enforceability of Advance Directives Executed in Another	Not Related			No	
§ 166.006 Effect of Advance Directive on Insurance Policy and Premiums	Not Related			No	
§ 166.007 Execution of Advance Directive May Not be Required	Not Related			No	
§ 166.008 Conflict Between Advance Directives	Not Related			No	
§ 166.009 Certain Life-Sustaining Treatment Not Required	Not Related			No	
§ 166.031 Definitions	Not Related			No	

Texas Health & Safety Code

Section/ Chapter	Related/ Contrary	Explanation	Preemption Exception	Is State Law Preempted?	Recommendation
§ 166.032 Written Directive by Competent Adult; Notice to Physician	Not Related			No	
§ 166.033 Form of Written Directive	Not Related			No	
§ 166.034 Issuance of Nonwritten Directive by Competent Adult	Not Related			No	
§ 166.035 Execution of Directive on Behalf of Patient Younger Than 18 Years of Age	Not Related			No	
§ 166.036 Notarized Document Not Required; Requirement of Specific Form Prohibited	Not Related			No	
§ 166.037 Patient Desire Supersedes Directive	Not Related			No	
§ 166.038 Procedure When Declarant is Incompetent or Incapable of Communication	Not Related			No	

Texas Health & Safety Code

Section/ Chapter	Related/ Contrary	Explanation	Preemption Exception	Is State Law Preempted?	Recommendation
§ 166.039 Procedure When Person Has Not Executed or Issued a Directive and Is Incompetent or Incapable of Communication	Not Related			No	
§ 166.040 Patient Certification and Prerequisites for Complying	Not Related			No	
§ 166.041 Duration of Directive	Not Related			No	
§ 166.042 Revocation of Directive	Not Related			No	
§ 166.043 Reexecution of Directive	Not Related			No	
§ 166.044 Limitation of Liability for Withholding or Withdrawing	Not Related			No	
§ 166.045 Liability for Failure to Effectuate Directive	Not Related			No	

Texas Health & Safety Code

Section/ Chapter	Related/ Contrary	Explanation	Preemption Exception	Is State Law Preempted?	Recommendation
§ 166.046 Procedure if Not Effectuating a Directive	Related/ Not Contrary			No	
§ 166.047 Honoring Directive Does Not Constitute Offense of Aiding	Not Related			No	
§ 166.048 Criminal Penalty; Prosecution	Not Related			No	
§ 166.049 Pregnant Patients	Not Related			No	
§ 166.050 Mercy Killing Not Condoned	Not Related			No	
§ 166.051 Legal Right or Responsibility Not Affected	Not Related			No	
§ 166.053 Registry to Assist Transfers	Not Related			No	
§ 166.081 Definitions	Not Related	Does not involve use or disclosure of IIHI.		No	
§ 166.082 Out-Of-Hospital DNR Order; Directive to Physicians	Related/ Not Contrary			No	

Texas Health & Safety Code

Section/ Chapter	Related/ Contrary	Explanation	Preemption Exception	Is State Law Preempted?	Recommendation
§ 166.083 Form of Out-Of-Hospital DNR Order	Related/ Not Contrary			No	
§ 166.084 Issuance of Out-Of-Hospital DNR Order by Nonwritten Communication	Related/ Not Contrary			No	
§ 166.085 Execution of Out-Of-Hospital DNR Order on Behalf of a Minor	Related/ Not Contrary			No	
§ 166.086 Desire of Person Supersedes Out-Of-Hospital DNR Order	Not Related			No	
§ 166.087 Procedure When Declarant is Incompetent or Incapable of Communication	Related/ Not Contrary			No	
§ 166.088 Procedure When Person Has Not Executed or Issued Out-of-Hospital DNR Order...	Related/ Not Contrary			No	

Texas Health & Safety Code

Section/ Chapter	Related/ Contrary	Explanation	Preemption Exception	Is State Law Preempted?	Recommendation
§ 166.089 Compliance With Out-Of-Hospital DNR Order	Related/ Not Contrary			No	
§ 166.090 DNR Identification Device	Related/ Not Contrary			No	
§ 166.091 Duration of Out-Of-Hospital DNR Order	Related/ Not Contrary			No	
§ 166.092 Revocation of Out-Of-Hospital DNR Order	Related/ Not Contrary			No	
§ 166.093 Reexecution of Out-Of-Hospital DNR Order	Related/ Not Contrary			No	
§ 166.094 Limitation on Liability for Withholding Cardiopulmonary	Related/ Not Contrary			No	
§ 166.095 Limitation on Liability for Failure to Effectuate Out-of-Hospital DNR Order	Related/ Not Contrary			No	

Texas Health & Safety Code

Section/ Chapter	Related/ Contrary	Explanation	Preemption Exception	Is State Law Preempted?	Recommendation
§ 166.096 Honoring Out-Of-Hospital DNR Order Does Not Constitute Offense of Aiding Suicide	Related/ Not Contrary			No	
§ 166.097 Criminal Penalty; Prosecution	Related/ Not Contrary			No	
§ 166.098 Pregnant Persons	Related/ Not Contrary			No	
§ 166.099 Mercy Killing Not Condoned	Related/ Not Contrary			No	
§ 166.100 Legal Right or Responsibility Not Affected	Related/ Not Contrary			No	
§ 166.101 Duties of Department and Board	Related/ Not Contrary	See 25 TAC § 157.25 for corresponding rules.		No	
§ 166.102 Physician's DNR Order May be Honored	Related/ Not Contrary			No	
§ 166.151 Definitions	Related/ Not Contrary			No	
§ 166.152 Scope and Duration of Authority	Related/ Not Contrary			No	

Texas Health & Safety Code

Section/ Chapter	Related/ Contrary	Explanation	Preemption Exception	Is State Law Preempted?	Recommendation
§ 166.153 Persons Who May Not Exercise Authority of Agent	Related/ Not Contrary			No	
§ 166.154 Execution and Witnesses	Related/ Not Contrary			No	
§ 166.155 Revocation	Related/ Not Contrary			No	
§ 166.156 Appointment of Guardian	Related/ Not Contrary			No	
§ 166.157 Disclosure of Medical Information	Related/ Not Contrary			No	
§ 166.158 Duty of Health or Residential Care Provider	Related/ Not Contrary			No	
§ 166.159 Discrimination Relating to Execution of Medical Power of Attorney	Related/ Not Contrary			No	
§ 166.160 Limitation on Liability	Related/ Not Contrary			No	
§ 166.161 Liability for Health Care Costs	Related/ Not Contrary			No	

Texas Health & Safety Code

Section/ Chapter	Related/ Contrary	Explanation	Preemption Exception	Is State Law Preempted?	Recommendation
§ 166.162 Disclosure Statement	Related/ Not Contrary			No	
§ 166.163 Form of Disclosure Statement	Related/ Not Contrary	See § 241.152, below.		No	
§ 166.164 Form of Medical Power of Attorney	Related/ Not Contrary	See § 241.153, below.		No	
§ 166.165 Civil Action	Related/ Not Contrary			No	
§ 166.166 Other Rights or Responsibilities Not Affected	Related/ Not Contrary			No	
Chapter 167 Female Genital Mutilation	Not Related			No	
Chapter 170 Prohibited Acts Regarding Abortion	Related/ Not Contrary	See TAC, Ch. 139 and HSC, Ch. 171.		No	

Title 2: Health
Chapter 181: Medical Records Privacy

Texas Health & Safety Code

Section/ Chapter	Related/ Contrary	Explanation	Preemption Exception	Is State Law Preempted?	Recommendation
§ 181.001 Definitions	Related/ Not Contrary	There is a discrepancy between HIPAA's list of exceptions from the definition of "marketing" and the comparable list in state law. Specifically, state law excepts a communication "by a covered entity to an individual that encourages a change to a prescription drug included in the covered entity's drug formulary or preferred drug list." We assume for a covered entity that such a disclosure would comply with HIPAA, as HIPAA permits the use and disclosure of IIHI in the course of certain treatment, payment, and health care operations. 45 C.F.R. § 164.506.		No	
§ 181.002 Applicability	Related/ Not Contrary	Moreover, such a disclosure seems to meet the definition of "more stringent" inasmuch as it gives the individual greater access to his or her own health information. Language has been brought in line with Federal HIPAA language. Tex. S.B. 330, 78th Leg., R.S. (2003).		No	
§ 181.003 Sovereign Immunity	Not Related			No	
§ 181.005 Duties of Commissioner	Related/ Not Contrary	The Commissioner may adopt rules; Commissioner shall review 8/14/02 amendments to HIPAA and may choose to adopt the changes; if changes are adopted, they must be reported to the House and Senate.		No	
§ 181.051 Partial Exemption	Related/ Not Contrary	This statute excepts certain institutions from all but Subchapter D of Chapter 181, which means they are also excepted from the enforcement provisions of Subchapter E.		No	
§ 181.052 Processing Payment Transactions by Financial Institutions	Related/ Not Contrary			No	
§ 181.053 Nonprofit Agencies	Related/ Not Contrary	The exemptions in this section and related sections (181.054, 181.055, 181.056, 181.057, and 181.058) appear to be vestiges from an earlier version of 181.		No	

Texas Health & Safety Code

Section/ Chapter	Related/ Contrary	Explanation	Preemption Exception	Is State Law Preempted?	Recommendation
§ 181.054 Workers' Compensation	Related/ Not Contrary			No	
§ 181.055 Employee Benefit Plan	Related/ Not Contrary			No	
§ 181.056 American Red Cross	Related/ Not Contrary			No	
§ 181.057 Information Relating to Offenders With Mental Impairments	Related/ Not Contrary			No	
§ 181.058 Educational Records	Related/ Not Contrary			No	
§ 181.151 Reidentified Information	Related/ Not Contrary			No	
§ 181.152 Marketing Uses of Information	Related/ Not Contrary	<p><u>As to (a):</u> (1) & (2) track HIPAA; (3), implies that the covered entity is in some sort of treatment or payment situation already and HIPAA permits the use and disclosure of IIHI in the course of certain treatment, payment, and health care operations. 45 C.F.R. § 164.506; (4) is more favorable to the individual.</p> <p><u>As to (b):</u> It is more stringent.</p> <p><u>As to (c) and (d):</u> They are not contrary.</p> <p>*Also, there may be requirements for covered entities at 45 C.F.R. § 164.508(a)(3)(ii), in addition to those in subsection (a) of section 181.152 of the Health & Safety Code.</p>		No	
§ 181.201 Injunctive Relief; Civil Penalty	Related/ Not Contrary			No	

Texas Health & Safety Code

Section/ Chapter	Related/ Contrary	Explanation	Preemption Exception	Is State Law Preempted?	Recommendation
§ 181.202 Disciplinary Action	Related/ Not Contrary			No	
§ 181.203 Exclusion From State Programs	Related/ Not Contrary			No	
§ 181.205 Mitigation	Related/ Not Contrary			No	
§ 181.251 State Law Preemption Analysis	Related/ Not Contrary			No	
§ 181.252 Task Force	Not Related	Pertains to the parameters of the Task Force.		No	
§ 181.253 Report to the Legislature	Related/ Not Contrary			No	
§ 181.254 Expiration	Not Related	Task Force provision expires 9/01/05.		No	
Title 3: Vital Statistics					
Chapter 191: Administration of Vital Statistics Records					
§ 191.001 Definitions	Related/ Not Contrary	<p><u>None of the provisions of this or other vital statistics chapters is contrary:</u></p> <p>(1) The Department (Tex. Dept. of Health) is not a covered entity.</p> <p>(2) Any uses or disclosures required of covered entities who provide information to the Department would be allowed, as HIPAA permits disclosure for certain public health activities. 45 C.F.R. § 164.512(b).</p> <p>*Although there are some individual comments interspersed throughout the vital stats reporting chapters, any and all provisions can be reconciled under the reasoning herein.</p>		No	
§ 191.002 Powers and Duties of Department	Related/ Not Contrary	Vital statistics may include IIHI--but it isn't PHI in the hands of the Department.		No	

Texas Health & Safety Code

Section/ Chapter	Related/ Contrary	Explanation	Preemption Exception	Is State Law Preempted?	Recommendation
§ 191.003 Powers and Duties of Board	Related/ Not Contrary	Relates to powers and duties of Tex. Board of Health.		No	
§ 191.004 State Registrar	Related/ Not Contrary			No	
§ 191.0045 Fees	Related/ Not Contrary			No	
§ 191.0046 Fee Exemptions	Related/ Not Contrary			No	
§ 191.005 Vital Statistics Fund	Related/ Not Contrary			No	
§ 191.006 Records of Persons in Hospitals and Institutions	Related/ Not Contrary	<u>Not Contrary to HIPAA because:</u> (1) HIPAA permits appropriately limited disclosure of PHI that is required by law. 45 C.F.R. § 164.512(a)(1). (2) HIPAA permits disclosure for certain public health activities. 45 C.F.R. § 164.512(b).		No	
§ 191.007 Regulation by Certain Municipalities	Related/ Not Contrary			No	
§ 191.021 Registration Districts	Related/ Not Contrary			No	
§ 191.022 Local Registrars	Related/ Not Contrary			No	
§ 191.023 Consolidation of County and Municipal Maintenance of Birth and Death Records	Related/ Not Contrary			No	
§ 191.024 Reports of Information	Related/ Not Contrary			No	

Texas Health & Safety Code

Section/ Chapter	Related/ Contrary	Explanation	Preemption Exception	Is State Law Preempted?	Recommendation
§ 191.025 Record Books and Certificates	Related/ Not Contrary			No	
§ 191.026 Local Records	Related/ Not Contrary			No	
§ 191.027 Review of Certificate by Local Registrar	Related/ Not Contrary			No	
§ 191.028 Amendment of Certificate	Related/ Not Contrary			No	
§ 191.029 Certificates or Report Sent to State Registrar	Related/ Not Contrary			No	
§ 191.030 Records Filed With County	Related/ Not Contrary			No	
§ 191.031 Review of Certificates by State Registrar	Related/ Not Contrary			No	
§ 191.032 State Records	Related/ Not Contrary	See 25 TAC § 181.23 for corresponding rules.		No	
§ 191.033 Addenda	Related/ Not Contrary			No	
§ 191.034 Notation of Death on Birth Certificate	Related/ Not Contrary			No	
§ 191.036 Spanish Surname Information	Related/ Not Contrary			No	

Texas Health & Safety Code

Section/ Chapter	Related/ Contrary	Explanation	Preemption Exception	Is State Law Preempted?	Recommendation
§ 191.051 Certified Copies	Related/ Not Contrary	See 25 TAC § 181.21 & 181.28 for corresponding rules.		No	
§ 191.052 Certified Copy as Evidence	Related/ Not Contrary			No	
§ 191.056 Copies Collected by National Agency	Related/ Not Contrary	HIPAA permits appropriately limited disclosure of PHI that is required by law. 45 C.F.R. § 164.512(a)(1).		No	
§ 191.057 Records With Addenda	Related/ Not Contrary	Addresses disclosure process.		No	
Title 3: Vital Statistics Chapter 192: Birth Records					
§ 192.001 Registration Required	Related/ Not Contrary	HIPAA permits appropriately limited disclosure of PHI that is required by law. 45 C.F.R. § 164.512(a)(1).		No	
§ 192.002 Form of Birth Certificate	Related/ Not Contrary	Addresses use of de-identified information.		No	
§ 192.0021 Heirloom Birth Certificate	Related/ Not Contrary			No	
§ 192.003 Birth Certificate Filed or Birth Reported	Related/ Not Contrary			No	
§ 192.0031 Information of Birth to School-Age Mother	Related/ Not Contrary			No	
§ 192.004 Information Obtained by Local Registrar	Related/ Not Contrary			No	

Texas Health & Safety Code

Section/ Chapter	Related/ Contrary	Explanation	Preemption Exception	Is State Law Preempted?	Recommendation
§ 192.005 Record of Paternity	Related/ Not Contrary	See 25 TAC § 181.09 for corresponding rules.		No	
§ 192.0051 Report of Determination of Paternity	Related/ Not Contrary			No	
§ 192.006 Supplementary Birth Certificates	Related/ Not Contrary			No	
§ 192.007 Supplementary Certificates for Child Who Dies Before Adoption	Related/ Not Contrary			No	
§ 192.008 Birth Records of Adopted Person	Related/ Not Contrary			No	
§ 192.009 Certificate of Adoption, Annulment of Adoption, or Revocation of Adoption	Related/ Not Contrary			No	
§ 192.010 Change of Name	Related/ Not Contrary			No	
§ 192.011 Amending Birth Certificate	Related/ Not Contrary			No	
§ 192.012 Record of Acknowledgment of Paternity	Related/ Not Contrary			No	

Texas Health & Safety Code

Section/ Chapter	Related/ Contrary	Explanation	Preemption Exception	Is State Law Preempted?	Recommendation
§ 192.021 Delay Less Than One Year	Related/ Not Contrary			No	
§ 192.022 Delay of One Year or More: Application Filed With State	Related/ Not Contrary			No	
§ 192.023 Delay of More Than One But Less Than Four Years	Related/ Not Contrary			No	
§ 192.024 Delay of Four Years or More	Related/ Not Contrary			No	
§ 192.025 Supporting Documents	Related/ Not Contrary			No	
§ 192.026 Rejection or Return of Application	Related/ Not Contrary			No	
§ 192.027 Registration by Judicial Order	Related/ Not Contrary			No	
Title 3: Vital Statistics					
Chapter 193: Death Records					
§ 193.001 Form of Certificate	Related/ Not Contrary	See Health & Safety Code § 191.001 for explanation.		No	
§ 193.002 Person Required to File	Related/ Not Contrary			No	

Texas Health & Safety Code

Section/ Chapter	Related/ Contrary	Explanation	Preemption Exception	Is State Law Preempted?	Recommendation
§ 193.003 Time and Place for Filing Death Certificate	Related/ Not Contrary			No	
§ 193.004 Personal and Medical Information	Related/ Not Contrary			No	
§ 193.005 Personal Information	Related/ Not Contrary			No	
§ 193.006 Information Relating to Veterans	Related/ Not Contrary			No	
§ 193.007 Delayed Registration of Death	Related/ Not Contrary			No	
§ 193.008 Burial-Transit Permit	Related/ Not Contrary			No	
§ 193.009 Burial Records	Related/ Not Contrary			No	
Title 3: Vital Statistics					
Chapter 194: Marriage and Divorce Records					
§ 194.0011 Marriage License Application		No covered entity involved; parties fill out the application. <i>See also</i> explanation at Health & Safety Code § 191.001.		No	
Title 3: Vital Statistics					
Chapter 195: Enforcement of Vital Statistics Reporting					
§ 195.005 Disclosure of Confidential Information	Related/ Not Contrary			No	
Title 4: Health Statistics					

Texas Health & Safety Code

Section/ Chapter	Related/ Contrary	Explanation	Preemption Exception	Is State Law Preempted?	Recommendation
Chapter 221 Health Facilities Development Act	Not Related			No	
Title 4: Health Statistics					
Chapter 222: Health Care Facility Survey, Construction, Inspection, and Regulation					
§ 222.026 Complaint Investigations and Enforcement Authority	Not Related	See Texas Department of Health Rules related to Investigations.		No	
Chapter 223 Hospital Project Financing Act	Not Related			No	
Chapter 225 Health Planning and Capital Expenditure Review	Not Related			No	
Title 4: Health Statistics					
Chapter 241: Hospitals					
§ 241.051 Inspections	Related/ Not Contrary	<u>Not Contrary to HIPAA because:</u> (1) HIPAA permits appropriately limited disclosure of PHI that is required by law. 45 C.F.R. § 164.512(a)(1). (2) HIPAA permits certain disclosures for the purpose of health care oversight. 45 C.F.R. § 164.512(d)(1). (3) A covered entity can comply with both this state law and HIPAA.		No	
§ 241.151 Definitions	Related/ Not Contrary	Directory information," in order to comply w/ HIPAA, will just be location and general condition.		No	

Texas Health & Safety Code

Section/ Chapter	Related/ Contrary	Explanation	Preemption Exception	Is State Law Preempted?	Recommendation
<p>§ 241.152 Written Authorization for Disclosure of Health Care Information</p>	<p>Related/ Not Contrary</p>	<p>HIPAA is partially more stringent in that it requires a purpose and does not require a patient to ensure that hospital records dept has revocation. The imposition of the obligation to ensure receipt of the revocation is in tension with HIPAA but does not seem to rise to the level of contrary to the accomplishment of the full objectives and purposes of HIPAA.</p> <p>Texas law is more stringent in its prohibition of compound authorizations: Texas law imposes a blanket prohibition, whereas HIPAA allows compound authorizations in certain, limited circumstances. See 45 C.F.R. § 164.508(b)(3). See <i>also</i> 100 S.W.3d 582.</p>		<p>No</p>	

Texas Health & Safety Code

Section/ Chapter	Related/ Contrary	Explanation	Preemption Exception	Is State Law Preempted?	Recommendation
§ 241.153(1)-(3) Disclosure Without Written Authorization	Related/ Not Contrary	<p><u>The disclosures permitted in this section are not contrary to HIPAA because:</u></p> <p>(1) A covered entity could follow both HIPAA and state law in disclosing directory info; however, "directory info" in HIPAA is more narrowly defined and there may be additional requirements in HIPAA related to notice and opportunity to agree/object. See 45 C.F.R. § 164.510(a).</p> <p>(2) HIPAA permits the use and disclosure of IIHI in the course of certain treatment, payment, and health care operations. 45 C.F.R. § 164.506; HIPAA may have additional restrictions such as "minimum necessary." State law is narrower in one sense because the receiving provider must be rendering health care to the patient when the disclosure is made. It is also broader in the sense that the disclosing provider need not be in a treatment relationship with the patient.</p> <p>(3) Falls specifically within "payment" exception. See 45 C.F.R. § 164.506(c)(3). Disclosure under Texas law may be narrower because limited to patient's diagnosis and outcome of admission. Under HIPAA, it would be minimum necessary which could be a broader class of information.</p> <p>permitted by the subsection are far narrower than HIPAA HCO disclosures, & d/n contemplate, e.g. a business associate relationship, all of which may be an impediment to compliance.</p>		No	<p>We presume that the Legislature has intended to enact a scheme in the Facilities Licensing provisions that differs from HIPAA. We simply note some of the differences: the list of permitted disclosures in state law is an exclusive list; the disclosures themselves are narrower than those permitted in HIPAA; there is no Texas counterpart to concepts in HIPAA like business associate, treatment/payment/health care operations, or Organized Health Care Arrangement (OHCA). That the schemes are so widely divergent could lead to compliance difficulties for the covered entities but the statute is not contrary.</p>

Texas Health & Safety Code

Section/ Chapter	Related/ Contrary	Explanation	Preemption Exception	Is State Law Preempted?	Recommendation
§ 241.153(4) - (8)	Related/ Not Contrary	<p>(4) Consistent with 45 C.F.R. § 164.510. However, for purposes of interpretation, it is difficult to tell whether "member of the clergy specifically designated by the patient" refers to one particular clergy member designated by the patient or a member of the clergy of a particular denomination, i.e. "Reverend Smith" or "a Lutheran pastor." So long as the patient identifies a particular person pursuant to this exception, the disclosures seem to meet 45 C.F.R. § 164.510(b)(1), which permits a covered entity to disclose to, i.a., "any other person identified by the individual, the [PHI] directly relevant to such person's involvement with the individual's care or payment related to the individual's health care." This conclusion is based also on the assumption that the covered entity would also comply with other requirements in 45 C.F.R. § 164.510.</p> <p>(5) Consistent with 45 C.F.R. § 164.512(h).</p> <p>(6) HIPAA permits the use and disclosure of IIHI in the course of certain treatment, payment, and health care operations. 45 C.F.R. § 164.506.</p> <p>(7) The subsection incorporates the Code provisions for surrogate decision making; the disclosures therefore appear to fall within 45 C.F.R. § 164.502(g).</p> <p>(8) All falls within "health care operations" (HIPAA permits the use and disclosure of IIHI in the course of certain treatment, payment, and health care operations. 45 C.F.R. § 164.506.)--but the disclosures permitted by the subsection are far narrower than HIPAA operation disclosures and do not contemplate, e.g., a business associate relationship, all of which may be an impediment to compliance.</p>		No	

Texas Health & Safety Code

Section/ Chapter	Related/ Contrary	Explanation	Preemption Exception	Is State Law Preempted?	Recommendation
§ 241.153(9) - (15)	ated/ Not Contra	<p>(9) Not Contrary; merely incorporates other law. However, in this context, the Legislature may wish to specify extent to which law enforcement can obtain medical records because this is not as yet clearly spelled out and could lead to conflicts.</p> <p>(10) Texas law is far stricter by allowing such disclosures only to the extent they are hospital-to-hospital and for deals that are ultimately consummated; this would seem to preclude nearly any merger and related negotiations inasmuch as they involve IIHI. However, the section itself is not directly contrary.</p> <p>(11) Not Contrary; incorporates other law</p> <p>(12) HIPAA permits the use and disclosure of IIHI in the course of certain treatment, payment, and health care operations. 45 C.F.R. § 164.506.</p> <p>(13) HIPAA permits the use and disclosure of IIHI in the course of certain treatment, payment, and health care operations. 45 C.F.R. § 164.506.</p> <p>(14) Consistent with 45 C.F.R. § 164.512(i)(1)(i)(A). Should be noted, however, that while HIPAA contemplates the existence of a Privacy Review Board, Texas law does not.</p> <p>(15) Falls within 45 C.F.R. § 164.512(k)(5); Texas law more stringent.</p>		No	

Texas Health & Safety Code

Section/ Chapter	Related/ Contrary	Explanation	Preemption Exception	Is State Law Preempted?	Recommendation
§ 241.153 (16)-(20)	Related/ Not Contrary	<p>(16) Narrower than HIPAA's payment exception in that the class of persons to whom disclosure may be made is more limited, although also broader in the sense that there is no minimum necessary requirements under Texas law. A covered entity could comply with both, however, so it is not contrary.</p> <p>(17) HIPAA permits appropriately limited disclosure of PHI that is required by law. 45 C.F.R. § 164.512(a)(1).</p> <p>(18) Merely incorporates provisions of other law.</p> <p>(19) HIPAA permits a covered entity to disclose PHI in response to court orders, warrants, subpoenas, or summonses. 45 C.F.R. § 164.512(f)(1)(i)(A).</p> <p>(20) Not contrary, but HIPAA contains additional requirements/process for disclosures incident to judicial or administrative proceedings.</p>		No	

Texas Health & Safety Code

Section/ Chapter	Related/ Contrary	Explanation	Preemption Exception	Is State Law Preempted?	Recommendation
§ 241.154 Request	Related/ Contrary as to (b) and (d) in tandem under second prong	<p><u>As to (a)</u>: Entities are given only a 15-day time period to provide access, whereas they are given a 30-day period in HIPAA. Entities could comply with both by adhering to the shorter deadline.</p> <p><u>As to (b)</u>: This authorizes an entity to withhold access from records for nonpayment of a fee, which would interfere with an individual's required right of access, as outlined in 45 C.F.R. § 164.524. While subsection (d) makes it clear that an entity may not deny an individual access to his or her own records for nonpayment of a fee, it is not clear whether subsection (d)(2) would apply to, e.g., an attorney or other legally authorized representative (LAR). In addition, subsection (b) authorizes an entity to charge a retrieval or processing fee. HIPAA, on the other hand, permits charges only for (1) copying, including labor costs incident thereto; (2) postage, if applicable; and (3) the cost of preparing an explanation or summary of an individual's PHI. Because subsection (b) appears to authorize charges for more than copying & labor incident to copying, it is contrary. Although a CE could forego assessing any prohibited charges, when taken as a whole, subsection (b) and (d) arguably stand as an obstacle to the purposes of HIPAA and are therefore contrary.</p>		Yes	Specify that access to PHI for inspection purposes may not be denied to an individual or LAR for nonpayment of a fee; delete any authorization for charging a fee other than the cost of copying and labor incident to such copying.
§ 241.155 Safeguards for Security of Health Care Information	Not Related			No	
§ 241.156 Patient Remedies	Related/ Not Contrary	However, differs from HIPAA inasmuch as it seems to create a private cause of action for noncompliance.		No	
§ 241.202 Annual Report	Not Related	Reporting is only of number of occurrences, not of IIHI.		No	

Texas Health & Safety Code

Section/ Chapter	Related/ Contrary	Explanation	Preemption Exception	Is State Law Preempted?	Recommendation
§ 241.204 Confidentiality, Absolute Privilege	Related/ Not Contrary	Maintains absolute privilege of any information used for the report; (e) maintains access to patient records by a patient or his/her representative.		No	
§ 241.205 Annual Department Summary	Related/ Not Contrary	Maintains confidentiality of IIII.		No	
Title 4: Health Statistics					
Chapter 242: Convalescent and Nursing Homes and Related Institutions					
§ 242.001 Scope, Purpose, and Implementation	Related/ Not Contrary			No	
§ 242.002 Definitions	Related/ Not Contrary			No	
§ 242.0021 Controlling Person	Related/ Not Contrary			No	
§ 242.003 Exemptions	Related/ Not Contrary			No	
§ 242.004 Simultaneous Care for Pregnant Women and Other Women	Related/ Not Contrary			No	
§ 242.005 Performance Reports	Related/ Not Contrary			No	
§ 242.006 Directory of Licensed Institutions	Related/ Not Contrary			No	
§ 242.007 Consultation and Cooperation	Related/ Not Contrary			No	

Texas Health & Safety Code

Section/ Chapter	Related/ Contrary	Explanation	Preemption Exception	Is State Law Preempted?	Recommendation
§ 242.008 Employment of Personnel	Related/ Not Contrary			No	
§ 242.009 Federal Funds	Related/ Not Contrary			No	
§ 242.010 Change of Administrators	Related/ Not Contrary			No	
§ 242.011 Language Requirements Prohibited	Related/ Not Contrary			No	
§ 242.013 Paperwork Reduction Rules	Related/ Not Contrary			No	
§ 242.014 Prohibition of Remuneration	Related/ Not Contrary			No	
§ 242.015 Licensed Administrator	Related/ Not Contrary			No	
§ 242.016 Temporary Change of Ownership License	Related/ Not Contrary			No	
§ 242.017 Admissibility of Certain Evidence in Civil Actions	Related/ Not Contrary			No	
§ 242.031 License Required	Related/ Not Contrary			No	

Texas Health & Safety Code

Section/ Chapter	Related/ Contrary	Explanation	Preemption Exception	Is State Law Preempted?	Recommendation
§ 242.032 License or Renewal Application	Related/ Not Contrary			No	
§ 242.033 Issuance and Renewal of License	Related/ Not Contrary			No	
§ 242.0335 Expedited Issuance of Change of Ownership License to Certain Current License Holders	Related/ Not Contrary			No	
§ 242.0336 Temporary Change of Ownership License	Related/ Not Contrary			No	
§ 242.034 License Fees	Related/ Not Contrary			No	
§ 242.035 Licensing Categories	Related/ Not Contrary			No	
§ 242.036 Grading	Related/ Not Contrary			No	
§ 242.037 Rules; Minimum Standards	Related/ Not Contrary			No	
§ 242.0371 Notice of Certain Employment Policies	Related/ Not Contrary			No	

Texas Health & Safety Code

Section/ Chapter	Related/ Contrary	Explanation	Preemption Exception	Is State Law Preempted?	Recommendation
§ 242.038 Reasonable Time to Comply	Related/ Not Contrary			No	
§ 242.0385 Early Compliance Review	Related/ Not Contrary			No	
§ 242.039 Fire Safety Requirements	Related/ Not Contrary			No	
§ 242.040 Certification of Institutions That Care for Persons With Alzheimers Disease and Related Disorders	Related/ Not Contrary			No	
§ 242.041 False Communication Concerning Certification; Criminal Penalty	Related/ Not Contrary			No	
§ 242.042 Posting	Related/ Not Contrary	Proscribes compliance mechanism.		No	
§ 242.043 Inspections	Related/ Not Contrary	Completed inspection reports are subject to the Public Information Act. DHS (now DADS) interprets applicable law to require release of federal inspection reports with only certain information removed. It has also interpreted state law to require the release of state inspection reports with only certain specified information removed, such as names. See 40 TAC § 19.2010(a) & 40 TAC § 19.2002 et seq., esp. § 19.2006, which sets forth the required contents of reports, many items of which are not HIPAA-deidentified. See also <i>Capital Senior Management</i> , 132 S.W.3d 71.		No	

Texas Health & Safety Code

Section/ Chapter	Related/ Contrary	Explanation	Preemption Exception	Is State Law Preempted?	Recommendation
§ 242.044 Unannounced Inspections	Related/ Not Contrary	<u>Our only concern centered around the presence of citizen advocates; not contrary to HIPAA because:</u> (1) For the two required annual inspections, their presence is required by law, and HIPAA permits appropriately limited disclosure of PHI that is required by law. 45 C.F.R. § 164.512(a)(1). (2) In those inspections and any subsequent inspections, advocates also appear to fall within the definition of "health oversight agency" in 45 C.F.R. § 164.501, and HIPAA permits certain disclosures for the purpose of health care oversight. 45 C.F.R. § 164.512(d)(1)		No	
§ 242.0445 Reporting of Violations	Related/ Not Contrary	HIPAA permits certain disclosures for the purpose of health care oversight. 45 C.F.R. § 164.512(d)(1). <i>But see</i> Health & Safety Code § 242.043, making required contents of the report public.		No	
§ 242.045 Disclosure of Unannounced Inspections; Criminal Penalty	Not Related			No	
§ 242.046 Open Hearing	Not Related			No	
§ 242.047 Accreditation Review Instead of Inspection	Not Related			No	
§ 242.048 Licensing Surveys	Not Related			No	
§ 242.049 Quality Improvement	Related/ Not Contrary	HIPAA permits disclosure of PHI to a health oversight agency for oversight activities authorized by law, including certain oversight of government benefit plans. 45 C.F.R. § 164.512(d)(2). This allows covered entities to disclosure the information and DHS to collect such information.		No	

Texas Health & Safety Code

Section/ Chapter	Related/ Contrary	Explanation	Preemption Exception	Is State Law Preempted?	Recommendation
§ 242.051 Notification of Award of Exemplary Damages	Not Related			No	
§ 242.052 Drug Testing of Employees	Related/ Not Contrary			No	
§ 242.061 Denial, Suspension, or Revocation of License	Not Related			No	
§ 242.0615 Exclusion	Not Related			No	
§ 242.062 Emergency Suspension or Closing Order	Not Related			No	
§ 242.063 Injunction	Not Related			No	
§ 242.064 License Requirement; Criminal Penalty	Not Related			No	
§ 242.065 Civil Penalty	Not Related			No	
§ 242.066 Administrative Penalty	Related/ Not Contrary	Requires facility to permit government access to books and records.		No	
§ 242.0663 Violation of Law Relating to Advance Directives	Related/ Not Contrary			No	

Texas Health & Safety Code

Section/ Chapter	Related/ Contrary	Explanation	Preemption Exception	Is State Law Preempted?	Recommendation
§ 242.0665 Right to Correct	Related/ Not Contrary			No	
§ 242.067 Report Recommending Administrative Penalty	Related/ Not Contrary	Under DHS's covered entity designation, this section gives DHS authority it cannot exercise. Specifically, the report DHS is authorized to issue is not necessarily HIPAA-deidentified. If the report is scrubbed of all identifiers, it may lose utility to the public.		No	
§ 242.068 Hearings on Administrative Penalties	Related/ Not Contrary			No	
§ 242.069 Notice and Payment of Administrative Penalty; Interest; Refund	Related/ Not Contrary			No	
§ 242.070 Application of Other Law	Related/ Not Contrary			No	
§ 242.071 Amelioration of Violation	Related/ Not Contrary			No	
§ 242.072 Other Remedies	Related/ Not Contrary			No	
§ 242.073 Legal Action by the Attorney General	Related/ Not Contrary			No	
§ 242.074 Notification of Change in Financial Condition	Related/ Not Contrary			No	

Texas Health & Safety Code

Section/ Chapter	Related/ Contrary	Explanation	Preemption Exception	Is State Law Preempted?	Recommendation
§ 242.091 Findings and Purpose	Related/ Not Contrary			No	
§ 242.092 Definition	Related/ Not Contrary			No	
§ 242.093 Appointment by Agreement	Related/ Not Contrary			No	
§ 242.094 Involuntary Appointment	Not Related			No	
§ 242.0945 Qualifications of Trustees	Not Related			No	
§ 242.0946 Nepotism Prohibition	Not Related			No	
§ 242.095 Fee; Release of Funds	Not Related			No	
§ 242.096 Nursing and Convalescent Home Trust Fund and Emergency	Not Related			No	
§ 242.0965 Assisted Living Facility Trust Fund and Emergency	Not Related			No	
§ 242.097 Additional License Fee - Nursing and Convalescent Homes	Not Related			No	

Texas Health & Safety Code

Section/ Chapter	Related/ Contrary	Explanation	Preemption Exception	Is State Law Preempted?	Recommendation
§ 242.0975 Additional License Fee - Assisted Living Facilities	Not Related			No	
§ 242.098 Reimbursement	Not Related			No	
§ 242.099 Applicability of Other Law	Not Related			No	
		Allows notification of next of kin regarding the closing of nursing facilities.			
§ 242.100 Notification of Closing	Related/ Not Contrary	<u>Not Contrary to HIPAA because:</u> (1) HIPAA permits appropriately limited disclosure of PHI that is required by law. 45 C.F.R. § 164.512(a)(1). (2) Also within scope of 45 C.F.R. § 164.510 (Uses and disclosures requiring an opportunity for the individual to agree or to object).		No	
§ 242.101 Criminal Penalty	Related/ Not Contrary			No	
§ 242.102 Ineligibility for License	Related/ Not Contrary			No	
§ 242.121 Definition	Related/ Not Contrary			No	
§ 242.122 Reporting of Abuse and Neglect	Related/ Not Contrary	<u>NOT CONTRARY TO HIPAA because:</u> (1) HIPAA permits appropriately limited disclosure of PHI that is required by law. 45 C.F.R. § 164.512(a)(1). (2) HIPAA permits certain disclosures about victims of abuse, neglect, or domestic violence to a government authority authorized to receive such reports. 45 C.F.R. § 164.512(c)(1)		No	

Texas Health & Safety Code

Section/ Chapter	Related/ Contrary	Explanation	Preemption Exception	Is State Law Preempted?	Recommendation
§ 242.123 Contents of Report	Related/ Not Contrary	<p><u>NOT CONTRARY TO HIPAA because:</u> (1) HIPAA permits appropriately limited disclosure of PHI that is required by law. 45 C.F.R. § 164.512(a)(1). (2) HIPAA permits certain disclosures about victims of abuse, neglect, or domestic violence to a government authority authorized to receive such reports. 45 C.F.R. § 164.512(c)(1)</p>		No	
§ 242.124 Anonymous Reports of Abuse or Neglect	Related/ Not Contrary	<p><u>NOT CONTRARY TO HIPAA because:</u> (1) HIPAA permits appropriately limited disclosure of PHI that is required by law. 45 C.F.R. § 164.512(a)(1). (2) HIPAA permits certain disclosures about victims of abuse, neglect, or domestic violence to a government authority authorized to receive such reports. 45 C.F.R. § 164.512(c)(1)</p>		No	
§ 242.125 Processing of Reports	Related/ Not Contrary	<p><u>NOT CONTRARY TO HIPAA because:</u> (1) HIPAA permits appropriately limited disclosure of PHI that is required by law. 45 C.F.R. § 164.512(a)(1). (2) HIPAA permits certain disclosures about victims of abuse, neglect, or domestic violence to a government authority authorized to receive such reports. 45 C.F.R. § 164.512(c)(1)</p>		No	
§ 242.123 Contents of Report	Related/ Not Contrary	<p>To the extent a covered entity reports abuse, HIPAA permits certain disclosures about victims of abuse, neglect, or domestic violence to a government authority authorized to receive such reports. 45 C.F.R. § 164.512(c)(1).</p> <p><u>As to (d):</u> This requires DHS to adopt rules, including rules to assure that a facility notifies a resident's next of kin of a closing.</p>		No	
§ 242.126 Investigation and Report of Department or Designated Agency	Related/ Not Contrary	<p><u>This disclosure is not contrary to HIPAA because:</u> (1) HIPAA permits appropriately limited disclosure of PHI that is required by law. 45 C.F.R. § 164.512(a)(1). (2) Also within scope of 45 C.F.R. § 164.510 (Uses and disclosures requiring an opportunity for the individual to agree or to object).</p> <p><u>As to (g):</u> This requires the Department to make and publish reports that are not HIPAA-deidentified. As such, the disclosure in a non-HIPAA-deidentified format is required by law, and HIPAA permits appropriately limited disclosure of PHI that is required by law. 45 C.F.R. § 164.512(a)(1).</p>		No	

Texas Health & Safety Code

Section/ Chapter	Related/ Contrary	Explanation	Preemption Exception	Is State Law Preempted?	Recommendation
§ 242.127 Confidentiality	Related/ Not Contrary			No	
§ 242.128 Immunity	Related/ Not Contrary			No	
§ 242.129 Privileged Communications	Related/ Not Contrary	Request presumably does not include names of residents.		No	
§ 242.130 Central Registry	Related/ Not Contrary	HIPAA permits appropriately limited disclosure of PHI that is required by law. 45 C.F.R. § 164.512(a)(1). See 40 TAC § 19.2010(d) for corresponding rules.		No	
§ 242.131 Failure to Report; Criminal Penalty	Related/ Not Contrary			No	
§ 242.132 Bad Faith, Malicious, or Reckless Reporting; Criminal Penalty	Not Related			No	
§ 242.133 Retaliation Against Employees Prohibited	Not Related			No	
§ 242.1335 Retaliation Against Volunteers, Residents, or Family Members or Guardians of Residents	Not Related			No	
§ 242.134 Reports Relating to Resident Deaths	Related/ Not Contrary	Requires reporting vital statistics.		No	

Texas Health & Safety Code

Section/ Chapter	Related/ Contrary	Explanation	Preemption Exception	Is State Law Preempted?	Recommendation
§ 242.135 Duties of Law Enforcement; Joint Investigation	Related/ Not Contrary	This requires a joint investigation which will cause IIHI to be shared. This is not contrary as HIPAA permits appropriately limited disclosure of PHI that is required by law. 45 C.F.R. § 164.512(a)(1).		No	
§ 242.151 Physician Services	Not Related			No	
§ 242.152 Physician Services for Residents Younger Than 18 Years of Age	Not Related			No	
§ 242.153 Director of Nursing Services	Not Related			No	
§ 242.154 Nursing Services	Not Related			No	
§ 242.155 Pediatric Nursing Services	Not Related			No	
§ 242.156 Required Medical Examination	Not Related			No	
§ 242.157 Dental Examination	Not Related			No	
§ 242.158 Identification of Certain Nursing Home Residents	Related/ Not Contrary	<u>Not Contrary to HIPAA because:</u> (1) HIPAA permits certain disclosures for the purpose of health care oversight. 45 C.F.R. § 164.512(d)(1). (2) HIPAA permits the use and disclosure of IIHI in the course of certain treatment, payment, and health care operations. 45 C.F.R. § 164.506.		No	
§ 242.181 Definitions	Not Related			No	

Texas Health & Safety Code

Section/ Chapter	Related/ Contrary	Explanation	Preemption Exception	Is State Law Preempted?	Recommendation
§ 242.182 Respite Care	Not Related			No	
§ 242.183 Plan of Care	Related/ Not Contrary			No	
§ 242.184 Notification	Not Related			No	
§ 242.185 Inspections	Related/ Not Contrary	Permits agency access to IIHI.		No	
§ 242.186 Suspension	Not Related			No	
§ 242.201 Scope of Subchapter	Not Related			No	
§ 242.202 Disclosure Required	Not Related	No IIHI at issue.		No	
§ 242.203 Violation	Not Related			No	
§ 242.204 Rules	Not Related			No	
§ 242.221 Automated System for Medicaid Patient Care and Reimbursement	Not Related			No	
§ 242.222 Data Used by System	Not Related			No	
§ 242.223 Frequency of Data Submission	Not Related			No	

Texas Health & Safety Code

Section/ Chapter	Related/ Contrary	Explanation	Preemption Exception	Is State Law Preempted?	Recommendation
§ 242.224 Electronic Claims for Reimbursement	Not Related			No	
§ 242.225 Date of Reimbursement	Not Related			No	
§ 242.226 Rules	Not Related			No	
§ 242.251 Scope of Subchapter	Not Related			No	
§ 242.252 Election of Arbitration	Not Related			No	
§ 242.253 Arbitration Procedures	Not Related			No	
§ 242.254 Arbitrator; Qualifications	Not Related			No	
§ 242.255 Arbitrator; Selection	Not Related			No	
§ 242.256 Duties of Arbitrator	Related/ Not Contrary	Requires relevant information to be provided the arbitrator.		No	
§ 242.257 Scheduling of Arbitration	Not Related			No	
§ 242.258 Exchange and Filing of Information	Related/ Not Contrary			No	

Texas Health & Safety Code

Section/ Chapter	Related/ Contrary	Explanation	Preemption Exception	Is State Law Preempted?	Recommendation
§ 242.259 Attendance Required	Related/ Not Contrary			No	
§ 242.260 Testimony; Record	Related/ Not Contrary			No	
§ 242.261 Evidence	Related/ Not Contrary			No	
§ 242.262 Closing Statements; Briefs	Related/ Not Contrary			No	
§ 242.263 Ex Parte Contacts Prohibited	Not Related			No	
§ 242.264 Order	Related/ Not Contrary	Neither the arbitrator nor the judge is a covered entity.		No	
§ 242.265 Effect of Order	Not Related			No	
§ 242.266 Clerical Error	Not Related			No	
§ 242.267 Court Vacating Order	Not Related			No	
§ 242.268 No Arbitration in Case of Emergency Order or Closing	Not Related			No	
§ 242.269 Enforcement of Certain Arbitration Orders	Not Related			No	

Texas Health & Safety Code

Section/ Chapter	Related/ Contrary	Explanation	Preemption Exception	Is State Law Preempted?	Recommendation
§ 242.301 Definitions	Not Related			No	
§ 242.302 Powers and Duties of Department	Not Related			No	
§ 242.303 Nursing Facility Administrators Advisory Committee	Not Related			No	
§ 242.304 Fees; Funds	Not Related			No	
§ 242.305 Practicing Without a License	Not Related			No	
§ 242.306 License Application; Qualifications	Not Related			No	
§ 242.307 Examination	Not Related			No	
§ 242.308 Licenses; Temporary License; Inactive Status	Not Related			No	
§ 242.309 Provisional License	Not Related			No	
§ 242.310 License Renewal	Not Related			No	

Texas Health & Safety Code

Section/ Chapter	Related/ Contrary	Explanation	Preemption Exception	Is State Law Preempted?	Recommendation
§ 242.311 Mandatory Continuing Education	Not Related			No	
§ 242.312 Complaint Receipt, Investigation, and Disposition	Related/ Not Contrary			No	
§ 242.313 Sanctions	Not Related			No	
§ 242.314 Written Reprimand and Continuing Education as Sanctions	Not Related			No	
§ 242.315 Administrative Penalty as Sanction	Not Related			No	
§ 242.316 Notice and Hearing	Not Related			No	
§ 242.317 Informal Proceedings	Not Related			No	
§ 242.318 Monitoring of License Holder	Not Related			No	
§ 242.319 Civil Penalty	Not Related			No	
§ 242.320 Assistance of Attorney General	Not Related			No	

Texas Health & Safety Code

Section/ Chapter	Related/ Contrary	Explanation	Preemption Exception	Is State Law Preempted?	Recommendation
§ 242.321 Offense	Not Related			No	
§ 242.322 Protection for Refusal to Engage in Certain Conduct	Not Related			No	
Subchapter I, Second Version	Not Related	These sections were not listed individually because the second version of Subchapter I, in 242.301-.327 was to go in effect only if HHS determined that the first version did not comply with federal regulations. HHS determined that the first version complied with federal regulations		No	
§ 242.401 Quality of Life	Not Related			No	
§ 242.402 Quality of Care	Not Related			No	
§ 242.403 Standards for Quality of Life and Quality of Care	Related/ Not Contrary			No	
§ 242.404 Policies, Procedures, and Practices for Quality of Care	Not Related			No	
§ 242.405 Best Practices/ Quality of Life Competitive Grant Program	Not Related			No	
§ 242.501 Resident's Rights	Related/ Not Contrary	Patients' rights include confidentiality of information. See 40 § TAC Ch. 19, Subchapter E for corresponding rules.		No	

Texas Health & Safety Code

Section/ Chapter	Related/ Contrary	Explanation	Preemption Exception	Is State Law Preempted?	Recommendation
§ 242.502 Rights Cumulative	Related/ Not Contrary			No	
§ 242.503 Duties of Institution	Related/ Not Contrary			No	
§ 242.504 Information About Resident's Rights and Violations	Related/ Not Contrary			No	
§ 242.505 Prescription of Psychoactive Medication	Related/ Not Contrary			No	
§ 242.551 Complaint Requesting Inspection	Related/ Not Contrary			No	
§ 242.552 Disclosure of Substance of Complaint	Related/ Not Contrary			No	
§ 242.553 Confidentiality	Related/ Not Contrary			No	
§ 242.554 Preliminary Review of Complaint; Inspection	Related/ Not Contrary			No	
§ 242.601 Medication Administration	Related/ Not Contrary			No	
§ 242.602 Pharmacist Services	Related/ Not Contrary			No	

Texas Health & Safety Code

Section/ Chapter	Related/ Contrary	Explanation	Preemption Exception	Is State Law Preempted?	Recommendation
§ 242.603 Storage and Disposal of Medications	Related/ Not Contrary			No	
§ 242.604 Reports of Medication Errors and Adverse Reactions	Related/ Not Contrary			No	
§ 242.605 Medication Reference Sources	Not Related			No	
§ 242.606 Permits to Administer Medication	Not Related			No	
§ 242.607 Exemptions for Nursing Students and Medication Aide	Not Related			No	
§ 242.608 Rules for Administration of Medication	Not Related			No	
§ 242.609 Training Programs to Administer Medication	Not Related			No	

Texas Health & Safety Code

Section/ Chapter	Related/ Contrary	Explanation	Preemption Exception	Is State Law Preempted?	Recommendation
§ 242.610 Issuance and Renewal of Permit to Administer Medication	Not Related			No	
§ 242.6101 Results of Examination for Issuance of Permit	Not Related			No	
§ 242.611 Fees for Issuance and Renewal of Permit to Administer	Not Related			No	
§ 242.612 Violation of Permits to Administer Medication	Not Related			No	
§ 242.613 Emergency Suspension of Permits to Administer Medication	Not Related			No	
§ 242.614 Administration of Medication; Criminal Penalty	Not Related			No	
§ 242.651 Definition	Not Related			No	

Texas Health & Safety Code

Section/ Chapter	Related/ Contrary	Explanation	Preemption Exception	Is State Law Preempted?	Recommendation
§ 242.652 Composition of Committee; Presiding Officer	Not Related			No	
§ 242.653 Committee Powers and Duties	Not Related			No	
§ 242.654 Report	Not Related			No	
§ 242.655 Rights of Employees; Retaliation Prohibited	Not Related			No	
§ 242.841 Definitions	Not Related			No	
§ 242.842 Criminal and Civil Liability	Not Related			No	
§ 242.843 Covert Use of Electronic Monitoring Device; Liability	Not Related			No	
§ 242.844 Required Form on Admission	Related/ Not Contrary			No	
§ 242.845 Authorized Electronic Monitoring: Who May Request	Not Related			No	

Texas Health & Safety Code

Section/ Chapter	Related/ Contrary	Explanation	Preemption Exception	Is State Law Preempted?	Recommendation
§ 242.846 Authorized Electronic Monitoring: Form of Request; Consent of Other Residents in Room	Not Related			No	
§ 242.847 Authorized Electronic Monitoring: General Provisions	Not Related			No	
§ 242.848 Reporting Abuse and Neglect	Related/ Not Contrary			No	
§ 242.849 Use of Tape or Recording by Agency or Court	Not Related			No	
§ 242.850 Notice at Entrance to Institution	Not Related			No	
§ 242.851 Enforcement	Not Related			No	
§ 242.852 Criminal Offense	Not Related			No	
Title 4: Health Statistics					
Chapter 243: Ambulatory Surgical Centers					
§ 243.006 Inspections	Related/ Not Contrary			No	
§ 243.054 Confidentiality	Related/ Not Contrary	Facility information may be shared with the department through an investigation; confidentiality provision.		No	

Texas Health & Safety Code

Section/ Chapter	Related/ Contrary	Explanation	Preemption Exception	Is State Law Preempted?	Recommendation
Title 4: Health Statistics Chapter 244: Birthing Centers					
§ 244.006 Inspections	Related/ Not Contrary	Not Contrary to HIPAA because: (1) HIPAA permits certain disclosures for the purpose of health care oversight. 45 C.F.R. § 164.512(d)(1). (2) HIPAA permits appropriately limited disclosure of PHI that is required by law. 45 C.F.R. § 164.512(a)(1).		No	
Title 4: Health Statistics Chapter 245: Abortion Facilities					
§ 245.005 License Application and Issuance	Not Related			No	
§ 245.006 Inspections	Related/ Not Contrary			No	
§ 245.011 Reporting Requirements; Criminal Penalty	Related/ Not Contrary	HIPAA permits appropriately limited disclosure of PHI that is required by law. 45 C.F.R. § 164.512(a)(1).		No	
Title 4: Health Statistics Chapter 246: Continuing Care Facilities					
§ 246.001 Short Title	Not Related			No	
§ 246.002 Definitions	Not Related			No	
§ 246.003 Board Powers and Duties	Not Related			No	
§ 246.004 Rights of Residents	Related/ Not Contrary	§ 246.006 provides specifically that the Commissioner is not authorized to look into the quality of care. See 28 TAC 35.501 - 35.503 for corresponding rules.		No	
§ 246.005 Licensing for Certain Tax Purposes	Not Related			No	

Texas Health & Safety Code

Section/ Chapter	Related/ Contrary	Explanation	Preemption Exception	Is State Law Preempted?	Recommendation
§ 246.006 Quality of Care	Not Related			No	
§ 246.007 Reduction of Fees	Not Related			No	
§ 246.021 Certificate of Authority Required	Not Related			No	
§ 246.022 Application for and Issuance of Certificate of Authority	Not Related			No	
§ 246.023 Mandatory Issuance of Certificate of Authority to Certain Facilities	Not Related			No	
§ 246.024 Transfer of Certificate of Authority	Not Related			No	
§ 246.025 Suspension or Revocation of Certificate of Authority	Not Related			No	
§ 246.026 Management by Others	Not Related			No	
§ 246.027 Certificate of Authority Fees	Not Related			No	

Texas Health & Safety Code

Section/ Chapter	Related/ Contrary	Explanation	Preemption Exception	Is State Law Preempted?	Recommendation
§ 246.041 Precontractual Recording Requirements	Not Related			No	
§ 246.042 Delivery of Disclosure Statement	Not Related			No	
§ 246.043 Cover Page of Disclosure Statement	Not Related			No	
§ 246.044 Contents of Disclosure Statement: Provider	Not Related			No	
§ 246.045 Contents of Disclosure Statement: Third Party	Not Related			No	
§ 246.046 Contents of Disclosure Statement: Affiliation With Nonprofit Organization	Not Related			No	
§ 246.047 Contents of Disclosure Statement: Physical Property	Not Related			No	

Texas Health & Safety Code

Section/ Chapter	Related/ Contrary	Explanation	Preemption Exception	Is State Law Preempted?	Recommendation
§ 246.048 Contents of Disclosure Statement: Contracts and Fees	Not Related			No	
§ 246.049 Contents of Disclosure Statement: Change of Circumstances	Not Related			No	
§ 246.050 Contents of Disclosure Statement: Financial Information	Not Related			No	
§ 246.051 Contents of Disclosure Statement: Annual Income	Not Related			No	
§ 246.052 Contents of Disclosure Statement: Anticipated Source	Not Related			No	
§ 246.053 Standard Contract Form	Not Related			No	

Texas Health & Safety Code

Section/ Chapter	Related/ Contrary	Explanation	Preemption Exception	Is State Law Preempted?	Recommendation
§ 246.054 Annual Disclosure Statement Revision	Not Related			No	
§ 246.055 Advertisement in Conflict With Disclosures	Not Related			No	
§ 246.056 Rescission of Contract; Required Language	Not Related			No	
§ 246.057 Cancellation of Contract: Death or Incapacity Before Occupancy	Not Related			No	
§ 246.058 Disclosure Statement Fees	Not Related			No	
§ 246.071 Entrance Fee Escrow Account; Escrow Agent	Not Related			No	
§ 246.072 Return of Deposits; Release or Return of Entrance Fee	Not Related			No	
§ 246.073 Release to the Provider	Not Related			No	

Texas Health & Safety Code

Section/ Chapter	Related/ Contrary	Explanation	Preemption Exception	Is State Law Preempted?	Recommendation
§ 246.074 Return of Entrance Fee	Not Related			No	
§ 246.075 Escrow of Application Fee Not Required	Not Related			No	
§ 246.076 Interest Accrued on Entrance Fee Funds	Not Related			No	
§ 246.077 Reserve Fund Escrow	Not Related			No	
§ 246.078 Release of Reserve Fund Escrow	Not Related			No	
§ 246.079 Transition	Not Related			No	
§ 246.080 Applicability	Not Related			No	
§ 246.091 Supervision by Commissioner	Not Related			No	
§ 246.092 Application for Court Order for Rehabilitation or Liquidation	Not Related			No	
§ 246.093 Order to Rehabilitate	Not Related			No	
§ 246.094 Order to Liquidate	Not Related			No	

Texas Health & Safety Code

Section/ Chapter	Related/ Contrary	Explanation	Preemption Exception	Is State Law Preempted?	Recommendation
§ 246.095 Bond	Not Related			No	
§ 246.096 Termination of Rehabilitation	Not Related			No	
§ 246.097 Payment of Trustee	Not Related			No	
§ 246.111 Lien	Not Related			No	
§ 246.112 Investigations	Not Related			No	
§ 246.113 Production of Evidence	Not Related			No	
§ 246.114 Actuarial Review	Not Related			No	
§ 246.115 Cease and Desist Orders; Injunctions	Not Related			No	
§ 246.116 Criminal Penalty	Not Related			No	
§ 246.117 Civil Liability	Not Related			No	
Title 4: Health Statistics					
Chapter 247: Assisted Living Facilities					
§ 247.001 Short Title	Related/ Not Contrary	HIPAA permits certain disclosures for the purpose of health care oversight. 45 C.F.R. § 164.512(d)(1).		No	
§ 247.0011 Scope, Purpose, and Implementation	Related/ Not Contrary	HIPAA permits certain disclosures for the purpose of health care oversight. 45 C.F.R. § 164.512(d)(1).		No	
§ 247.002 Definitions	Related/ Not Contrary	HIPAA permits certain disclosures for the purpose of health care oversight. 45 C.F.R. § 164.512(d)(1).		No	

Texas Health & Safety Code

Section/ Chapter	Related/ Contrary	Explanation	Preemption Exception	Is State Law Preempted?	Recommendation
§ 247.0025 Immediate Threat of Harm	Related/ Not Contrary	HIPAA permits certain disclosures for the purpose of health care oversight. 45 C.F.R. § 164.512(d)(1).		No	
§ 247.003 Application of Other Law	Related/ Not Contrary	HIPAA permits certain disclosures for the purpose of health care oversight. 45 C.F.R. § 164.512(d)(1).		No	
§ 247.004 Exemptions	Related/ Not Contrary	HIPAA permits certain disclosures for the purpose of health care oversight. 45 C.F.R. § 164.512(d)(1).		No	
§ 247.005 Controlling Person	Related/ Not Contrary	HIPAA permits certain disclosures for the purpose of health care oversight. 45 C.F.R. § 164.512(d)(1).		No	
§ 247.006 Advisory Committee	Related/ Not Contrary	HIPAA permits certain disclosures for the purpose of health care oversight. 45 C.F.R. § 164.512(d)(1).		No	
§ 247.021 License Required	Related/ Not Contrary	HIPAA permits certain disclosures for the purpose of health care oversight. 45 C.F.R. § 164.512(d)(1).		No	
§ 247.022 License Application	Related/ Not Contrary	HIPAA permits certain disclosures for the purpose of health care oversight. 45 C.F.R. § 164.512(d)(1).		No	
§ 247.023 Issuance and Renewal of License	Related/ Not Contrary	HIPAA permits certain disclosures for the purpose of health care oversight. 45 C.F.R. § 164.512(d)(1).		No	
§ 247.0231 Compliance Record in Other States	Related/ Not Contrary	HIPAA permits certain disclosures for the purpose of health care oversight. 45 C.F.R. § 164.512(d)(1).		No	
§ 247.024 Fees; Disposition of Revenue	Related/ Not Contrary	HIPAA permits certain disclosures for the purpose of health care oversight. 45 C.F.R. § 164.512(d)(1).		No	
§ 247.025 Adoption of Rules	Related/ Not Contrary	HIPAA permits certain disclosures for the purpose of health care oversight. 45 C.F.R. § 164.512(d)(1).		No	
§ 247.026 Standards	Related/ Not Contrary	HIPAA permits certain disclosures for the purpose of health care oversight. 45 C.F.R. § 164.512(d)(1).		No	

Texas Health & Safety Code

Section/ Chapter	Related/ Contrary	Explanation	Preemption Exception	Is State Law Preempted?	Recommendation
§ 247.0261 Early Compliance Review	Related/ Not Contrary	HIPAA permits certain disclosures for the purpose of health care oversight. 45 C.F.R. § 164.512(d)(1).			
§ 247.027 Inspections	Related/ Not Contrary	HIPAA permits certain disclosures for the purpose of health care oversight. 45 C.F.R. § 164.512(d)(1).			
§ 247.0271 Inspection Exit Conference	Related/ Not Contrary	HIPAA permits certain disclosures for the purpose of health care oversight. 45 C.F.R. § 164.512(d)(1).		No	
§ 247.0272 Inspector Training; Required Examination	Related/ Not Contrary	HIPAA permits certain disclosures for the purpose of health care oversight. 45 C.F.R. § 164.512(d)(1).		No	
§ 247.028 Assistance by Department	Related/ Not Contrary	HIPAA permits certain disclosures for the purpose of health care oversight. 45 C.F.R. § 164.512(d)(1).			
§ 247.029 Facilities for Persons With Alzheimer's Disease	Related/ Not Contrary	HIPAA permits certain disclosures for the purpose of health care oversight. 45 C.F.R. § 164.512(d)(1).			
§ 247.030 Facilities for Supervision of Medication and General Welfare	Related/ Not Contrary	HIPAA permits certain disclosures for the purpose of health care oversight. 45 C.F.R. § 164.512(d)(1).		No	
§ 247.031 Municipal Enforcement	Related/ Not Contrary	HIPAA permits certain disclosures for the purpose of health care oversight. 45 C.F.R. § 164.512(d)(1).		No	
§ 247.041 Denial, Suspension, or Revocation of License	Related/ Not Contrary	HIPAA permits certain disclosures for the purpose of health care oversight. 45 C.F.R. § 164.512(d)(1).		No	

Texas Health & Safety Code

Section/ Chapter	Related/ Contrary	Explanation	Preemption Exception	Is State Law Preempted?	Recommendation
§ 247.042 Emergency Suspension or Closing Order	Related/ Not Contrary	HIPAA permits certain disclosures for the purpose of health care oversight. 45 C.F.R. § 164.512(d)(1).		No	
§ 247.043 Investigation of Abuse, Exploitation, or Neglect	Related/ Not Contrary	HIPAA permits certain disclosures for the purpose of health care oversight. 45 C.F.R. § 164.512(d)(1).		No	
§ 247.044 Injunction	Related/ Not Contrary	HIPAA permits certain disclosures for the purpose of health care oversight. 45 C.F.R. § 164.512(d)(1).		No	
§ 247.045 Civil Penalties	Related/ Not Contrary	HIPAA permits certain disclosures for the purpose of health care oversight. 45 C.F.R. § 164.512(d)(1).		No	
§ 247.0451 Administrative Penalty	Related/ Not Contrary	HIPAA permits certain disclosures for the purpose of health care oversight. 45 C.F.R. § 164.512(d)(1).		No	
§ 247.0452 Right to Correct	Related/ Not Contrary	HIPAA permits certain disclosures for the purpose of health care oversight. 45 C.F.R. § 164.512(d)(1).		No	
§ 247.0453 Report Recommending Administrative Penalty	Related/ Not Contrary	HIPAA permits certain disclosures for the purpose of health care oversight. 45 C.F.R. § 164.512(d)(1).		No	
§ 247.0454 Hearing on Administrative Penalty	Related/ Not Contrary	HIPAA permits certain disclosures for the purpose of health care oversight. 45 C.F.R. § 164.512(d)(1).		No	
§ 247.0455 Notice and Payment of Administrative Penalty; Interest; Refund	Related/ Not Contrary	HIPAA permits certain disclosures for the purpose of health care oversight. 45 C.F.R. § 164.512(d)(1).		No	
§ 247.0456 Application of Other Law	Related/ Not Contrary	HIPAA permits certain disclosures for the purpose of health care oversight. 45 C.F.R. § 164.512(d)(1).		No	

Texas Health & Safety Code

Section/ Chapter	Related/ Contrary	Explanation	Preemption Exception	Is State Law Preempted?	Recommendation
§ 247.0457 Amelioration of Violation	Related/ Not Contrary	HIPAA permits certain disclosures for the purpose of health care oversight. 45 C.F.R. § 164.512(d)(1).		No	
§ 247.0459 Violation of Law Relating to Advance Directives	Related/ Not Contrary	HIPAA permits certain disclosures for the purpose of health care oversight. 45 C.F.R. § 164.512(d)(1).		No	
§ 247.046 Cooperation Among Agencies	Related/ Not Contrary	HIPAA permits certain disclosures for the purpose of health care oversight. 45 C.F.R. § 164.512(d)(1).		No	
§ 247.047 Transition	Related/ Not Contrary	HIPAA permits certain disclosures for the purpose of health care oversight. 45 C.F.R. § 164.512(d)(1).		No	
§ 247.048 Regional Training for Agencies and Local Governments	Related/ Not Contrary	HIPAA permits certain disclosures for the purpose of health care oversight. 45 C.F.R. § 164.512(d)(1).		No	
§ 247.049 Use of Regulatory Reports and Documents	Related/ Not Contrary	HIPAA permits certain disclosures for the purpose of health care oversight. 45 C.F.R. § 164.512(d)(1).		No	
§ 247.050 Monitoring of Unlicensed Facilities; Reporting	Related/ Not Contrary	HIPAA permits certain disclosures for the purpose of health care oversight. 45 C.F.R. § 164.512(d)(1).		No	
§ 247.051 Informal Dispute Resolution	Related/ Not Contrary	HIPAA permits certain disclosures for the purpose of health care oversight. 45 C.F.R. § 164.512(d)(1).		No	
§ 247.061 Coordination Between Agencies	Related/ Not Contrary	HIPAA permits certain disclosures for the purpose of health care oversight. 45 C.F.R. § 164.512(d)(1).		No	

Texas Health & Safety Code

Section/ Chapter	Related/ Contrary	Explanation	Preemption Exception	Is State Law Preempted?	Recommendation
§ 247.062 Directory of Assisted Living Facilities; Consumers' Guide	Related/ Not Contrary	HIPAA permits certain disclosures for the purpose of health care oversight. 45 C.F.R. § 164.512(d)(1).		No	
§ 247.063 Referrals	Related/ Not Contrary	HIPAA permits certain disclosures for the purpose of health care oversight. 45 C.F.R. § 164.512(d)(1).		No	
§ 247.0631 Access	Related/ Not Contrary	HIPAA permits certain disclosures for the purpose of health care oversight. 45 C.F.R. § 164.512(d)(1).		No	
§ 247.064 Residents' Bill of Rights	Related/ Not Contrary	HIPAA permits certain disclosures for the purpose of health care oversight. 45 C.F.R. § 164.512(d)(1).		No	
§ 247.065 Providers' Bill of Rights	Related/ Not Contrary *Possible Conflicts*	<p>This section requires each assisted living facility (ALF) to post a provider bill of rights that provides, inter alia, that a provider of personal care services has the right to "access to patient information concerning a client referred to the facility, which must remain confidential as provided by law" and to "be made aware of a resident's problems, including self-abuse, violent behavior, alcoholism, or drug abuse.</p> <p>To the extent an ALF is a covered entity, these required disclosures seem broader than those in HIPAA in that employees are given unqualified access to patient information and inasmuch as "made aware" could be read broadly.</p> <p>However, if an ALF is a covered entity, the minimum necessary rule would apply and the disclosures should thereby comport with HIPAA.</p>		Possibly Yes	
§ 247.066 Appropriate Placement Determination	Related/ Not Contrary	HIPAA permits certain disclosures for the purpose of health care oversight. 45 C.F.R. § 164.512(d)(1).		No	
§ 247.067 Health Care Professionals	Related/ Not Contrary	HIPAA permits certain disclosures for the purpose of health care oversight. 45 C.F.R. § 164.512(d)(1).		No	

Texas Health & Safety Code

Section/ Chapter	Related/ Contrary	Explanation	Preemption Exception	Is State Law Preempted?	Recommendation
§ 247.068 Retaliation Prohibited	Related/ Not Contrary	HIPAA permits certain disclosures for the purpose of health care oversight. 45 C.F.R. § 164.512(d)(1).		No	
Title 4: Health Statistics					
Chapter 248: Special Care Facilities					
§ 248.028 Inspection; Investigations	Related/ Not Contrary			No	
Title 4: Health Statistics					
Chapter 249: Maternity Homes					
§ 249.001 Definitions	Not Related			No	
§ 249.002 License Required	Not Related			No	
§ 249.003 License Application and Issuance	Not Related			No	
§ 249.004 Inspections	Related/ Not Contrary			No	
§ 249.005 Fees	Not Related			No	
§ 249.006 Maternity Home Licensing Fund	Not Related			No	
§ 249.007 Adoption of Rules	Not Related			No	
§ 249.008 Minimum Standards	Not Related			No	
§ 249.009 Denial, Suspension, or Revocation of License	Not Related			No	

Texas Health & Safety Code

Section/ Chapter	Related/ Contrary	Explanation	Preemption Exception	Is State Law Preempted?	Recommendation
§ 249.010 Injunction	Not Related			No	
§ 249.011 Criminal Penalty	Not Related			No	
§ 249.012 Civil Penalty	Not Related			No	
Title 4: Health Statistics					
Chapter 250: Nurse Aide Registry and Criminal History Checks of Employees and Applicants for Employment in Certain Facilities Serving the Elderly or Persons With Disabilities					
§ 250.001 Definitions	Related/ Not Contrary			No	
§ 250.002 Information Obtained by Facility, Regulatory Agency, or Private Agency	Not Related			No	
§ 250.003 Verification of Employability; Discharge	Not Related			No	
§ 250.004 Criminal History Record of Employees	Not Related			No	
§ 250.005 Notice and Opportunity to be Heard Concerning Accuracy	Not Related			No	
§ 250.006 Convictions Barring Employment	Not Related			No	

Texas Health & Safety Code

Section/ Chapter	Related/ Contrary	Explanation	Preemption Exception	Is State Law Preempted?	Recommendation
§ 250.007 Records Privileged	Not Related			No	
§ 250.008 Criminal Penalty	Not Related			No	
§ 250.009 Civil Liability	Not Related			No	
Title 4: Health Statistics					
Chapter 251: End Stage Renal Disease Facilities					
§ 251.014 Minimum Standards	Related/ Not Contrary			No	
§ 251.015 Medical Review Board	Related/ Not Contrary			No	
§ 251.051 Inspection	Related/ Not Contrary			No	
Title 4: Health Statistics					
Chapter 252: Intermediate Care Facilities for the Mentally Retarded					
§ 252.001 Purpose	Not Related			No	
§ 252.002 Definitions	Not Related			No	
§ 252.003 Exemptions	Not Related			No	
§ 252.004 Allocated Federal Money	Not Related			No	
§ 252.005 Language Requirements Prohibited	Not Related			No	
§ 252.006 Rights of Residents	Related/ Not Contrary	See 40 TAC, Chapter 90 for corresponding rules.		No	

Texas Health & Safety Code

Section/ Chapter	Related/ Contrary	Explanation	Preemption Exception	Is State Law Preempted?	Recommendation
§ 252.007 Paperwork Reduction Rules	Not Related			No	
§ 252.008 Rules Generally	Not Related			No	
§ 252.009 Consultation and Coordination	Not Related			No	
§ 252.010 Change of Administrators; Fee	Not Related			No	
§ 252.011 Prohibition of Remuneration	Not Related			No	
§ 252.031 License Required	Not Related			No	
§ 252.032 License Application	Not Related			No	
§ 252.033 Issuance and Renewal of License	Not Related			No	
§ 252.034 License Fees	Not Related			No	
§ 252.035 Denial, Suspension, or Revocation of License	Not Related			No	
§ 252.036 Minimum Standards	Not Related			No	

Texas Health & Safety Code

Section/ Chapter	Related/ Contrary	Explanation	Preemption Exception	Is State Law Preempted?	Recommendation
§ 252.037 Reasonable Time to Comply	Not Related			No	
§ 252.0375 Early Compliance Review	Not Related			No	
§ 252.038 Fire Safety Requirements	Not Related			No	
§ 252.039 Posting	Not Related			No	
		HIPAA permits certain disclosures for the purpose of health care oversight. 45 C.F.R. § 164.512(d)(1).			
§ 252.040 Inspections	Related/ Not Contrary	However, it is worth noting that the "forms and reports" that are required to be made available under subsection (h) are not defined. If the forms and reports are de-identified in accordance with HIPAA, they may lose their usefulness to the public.		No	
§ 252.041 Unannounced Inspections	Related/ Not Contrary	See comments to § 242.044.		No	
§ 252.042 Disclosure of Unannounced Inspections; Criminal Penalty	Not Related			No	
§ 252.043 Licensing Surveys	Not Related			No	
§ 252.044 Reporting Violations	Not Related			No	

Texas Health & Safety Code

Section/ Chapter	Related/ Contrary	Explanation	Preemption Exception	Is State Law Preempted?	Recommendation
§ 252.045 Admissibility of Certain Documents or Testimony	Not Related			No	
§ 252.061 Emergency Suspension or Closing Order	Not Related			No	
§ 252.062 Injunction	Not Related			No	
§ 252.063 License Requirements; Criminal Penalty	Not Related			No	
§ 252.064 Civil Penalty	Not Related			No	
§ 252.065 Administrative Penalty	Not Related			No	
§ 252.0651 Application of Other Law	Not Related			No	
§ 252.066 Notice; Request for Hearing	Not Related			No	
§ 252.067 Hearing; Order	Not Related			No	
§ 252.068 Notice and Payment of Administrative Penalty; Judicial Review; Refund	Not Related			No	

Texas Health & Safety Code

Section/ Chapter	Related/ Contrary	Explanation	Preemption Exception	Is State Law Preempted?	Recommendation
§ 252.069 Penalty Deposited to State Treasury	Not Related			No	
§ 252.070 Expenses and Costs for Collection of Civil or Administrative Penalty	Not Related			No	
§ 252.071 Amelioration of Violation	Not Related			No	
§ 252.091 Findings and Purpose	Not Related			No	
§ 252.092 Appointment by Agreement	Not Related			No	
§ 252.093 Involuntary Appointment	Not Related			No	
§ 252.094 Fee; Release of Money	Not Related			No	
§ 252.095 Emergency Assistance Fee	Not Related			No	
§ 252.096 Reimbursement	Not Related			No	
§ 252.097 Notification of Closure	Not Related			No	

Texas Health & Safety Code

Section/ Chapter	Related/ Contrary	Explanation	Preemption Exception	Is State Law Preempted?	Recommendation
§ 252.098 Criminal Penalty for Failure to Notify	Not Related			No	
§ 252.099 Cooperation in Facility Closure	Not Related			No	
§ 252.121 Definition	Not Related			No	
§ 252.122 Reporting of Abuse and Neglect	Related/ Not Contrary			No	
§ 252.123 Contents of Report	Related/ Not Contrary			No	
§ 252.124 Anonymous Reports of Abuse or Neglect	Related/ Not Contrary			No	
§ 252.125 Investigation and Report of Receiving Agency	Related/ Not Contrary			No	
§ 252.126 Confidentiality	Related/ Not Contrary			No	
§ 252.127 Immunity	Not Related			No	
§ 252.128 Privileged Communications	Related/ Not Contrary			No	
§ 252.129 Central Registry	Related/ Not Contrary			No	

Texas Health & Safety Code

Section/ Chapter	Related/ Contrary	Explanation	Preemption Exception	Is State Law Preempted?	Recommendation
§ 252.130 Failure to Report; Criminal Penalty	Not Related			No	
§ 252.131 Bad Faith, Malicious, or Reckless Reporting; Criminal Penalty	Not Related			No	
§ 252.132 Suit for Retaliation	Not Related			No	
§ 252.133 Suit for Retaliation Against Volunteer, Resident, or Family Member or Guardian of Resident	Not Related			No	
§ 252.134 Reports Relating to Resident Deaths; Statistical Information	Related/ Not Contrary			No	
§ 252.151 Administration of Medication	Not Related			No	
§ 252.152 Required Medical Examination	Not Related			No	
§ 252.181 Definitions	Not Related			No	

Texas Health & Safety Code

Section/ Chapter	Related/ Contrary	Explanation	Preemption Exception	Is State Law Preempted?	Recommendation
§ 252.182 Respite Care	Not Related			No	
§ 252.183 Plan of Care	Not Related			No	
§ 252.184 Notification	Not Related			No	
§ 252.185 Inspections	Related/ Not Contrary			No	
§ 252.186 Suspension	Not Related			No	
§ 252.201 Definition	Not Related			No	
§ 252.202 Computing Quality Assurance Fee	Not Related			No	
§ 252.203 Patient Days	Not Related			No	
§ 252.204 Reporting and Collection	Not Related			No	
§ 252.205 Rules; Administrative Penalty	Not Related			No	
§ 252.206 Quality Assurance Fund	Not Related			No	
§ 252.207 Reimbursement of Facilities	Not Related			No	
§ 252.208 Invalidity; Federal Funds	Not Related			No	

Texas Health & Safety Code

Section/ Chapter	Related/ Contrary	Explanation	Preemption Exception	Is State Law Preempted?	Recommendation
§ 252.209 Legislative Review; Expiration	Not Related			No	
Title 4: Health Statistics					
Chapter 253: Employee Misconduct Registry					
§ 253.001 Definitions	Not Related	This is related to employees and has nothing to do with patients and protection of their information.		No	
§ 253.002 Investigation by Department	Not Related	This is related to employees and has nothing to do with patients and protection of their information.		No	
§ 253.003 Determination; Notice	Not Related	This is related to employees and has nothing to do with patients and protection of their information.		No	
§ 253.004 Hearing; Order	Not Related	This is related to employees and has nothing to do with patients and protection of their information.		No	
§ 253.005 Notice; Judicial Review	Not Related	This is related to employees and has nothing to do with patients and protection of their information.		No	
§ 253.006 Informal Proceeding	Not Related	This is related to employees and has nothing to do with patients and protection of their information.		No	
§ 253.007 Employee Misconduct Registry	Related/ Not Contrary			No	
§ 253.0075 Recording Reportable Conduct Reported by Department of [Family and Protective Services]	Not Related	This is related to employees and has nothing to do with patients and protection of their information.		No	

Texas Health & Safety Code

Section/ Chapter	Related/ Contrary	Explanation	Preemption Exception	Is State Law Preempted?	Recommendation
§ 253.008 Verification of Employability	Not Related	This is related to employees and has nothing to do with patients and protection of their information.		No	
§ 253.009 Notification	Not Related	This is related to employees and has nothing to do with patients and protection of their information.		No	
§ 253.010 Removal From Registry	Not Related	This is related to employees and has nothing to do with patients and protection of their information.		No	
Chapter 255 Quality Assurance Early Warning System for Long Term Care Facilities; Rapid Response Teams	Related/ Not Contrary	See 40 TAC § 19.910 for corresponding rule.		No	
Title 4: Health Statistics					
Chapter 262: Municipal Hospital Authorities					
§ 262.030 Medical Records	Related/ Not Contrary *Possible Conflicts*	<p>Possible conflict inasmuch as section states that records preservation, etc. is subject to Local Government Code § 201.001, et. seq, which provides that records confidential under the Public Information Act become public after 75 years.</p> <p>There is no comparable expiration of the confidentiality in HIPAA. Moreover, "records" is not defined so it is not readily ascertainable to which information the commissioners have access. If the records are more than financial, they may/will contain IIHI. See <i>also</i> GA-0138.</p>		Possibly Yes	If the Legislature intended individual commissioners to have access to IIHI, then no changes would be required. If not, Commissioner access rights could be tethered to specific purposes.
Title 4: Health Statistics					
Chapter 263: County Hospitals and Other Health Facilities					

Texas Health & Safety Code

Section/ Chapter	Related/ Contrary	Explanation	Preemption Exception	Is State Law Preempted?	Recommendation
§ 263.101 Inspections	Related/ Not Contrary	The applicability of HIPAA's exceptions is not entirely clear with respect to commissioner inspections. If the disclosures are made pursuant to Commissioners' authority to engage in health care operations, the minimum necessary rule would apply and a narrower set of information would be released. If, however, the disclosure falls within RBL, then minimum necessary does not apply.		No	
Title 4: Health Statistics Chapter 265: Joint Municipal and County Hospitals					
§ 265.026 Tuberculosis Control	Not Related	This has to do with setting up a program to pay and track tuberculosis for the area; does not address reporting.		No	
Title 4: Health Statistics Chapter 281: Hospital Districts in Counties of At Least 190,000					
§ 281.053 District Inspections	Related/ Not Contrary	See foregoing sections.		No	
§ 281.073 Disposition of District Records	Related/ Not Contrary *Possible Conflicts*	See comments to § 262.030.		Possibly Yes	
Title 4: Health Statistics Chapter 283: Optional Hospital District Law of 1957					
§ 283.049 District Inspections	Not Related			No	
Title 4: Health Statistics Chapter 285: Special Provisions Relating to Hospital Districts					
§ 285.901 Disposal of Surplus Property	Related/ Not Contrary	Although neither the Local Government Code nor rules promulgated thereto require scrubbing of computer equipment prior to disposal, any governmental entity that is also a HIPAA covered entity would be required to comply with the Security Rule.		No	
Title 4: Health Statistics Chapter 311: Powers and Duties of Hospitals					

Texas Health & Safety Code

Section/ Chapter	Related/ Contrary	Explanation	Preemption Exception	Is State Law Preempted?	Recommendation
§ 311.002 Itemized Statement of Billed Services	Related/ Not Contrary	Requires an itemized statement of billed services on request. It is not contrary because HIPAA allows disclosure of claim data for the purpose of payment.		No	
§ 311.0025 Audits of Billing	Related/ Not Contrary	<u>Not Contrary to HIPAA because:</u> (1) HIPAA permits certain disclosures for the purpose of health care oversight. 45 C.F.R. § 164.512(d)(1). (2) HIPAA permits appropriately limited disclosure of PHI that is required by law. 45 C.F.R. § 164.512(a)(1). This section requires the reporting of PHI from mental health and chemical dependency facilities.		No	
§ 311.0335 Mental Health and Chemical Dependency Data	Related/ Not Contrary	<u>Not Contrary to HIPAA because:</u> (1) HIPAA permits appropriately limited disclosure of PHI that is required by law. 45 C.F.R. § 164.512(a)(1). Since psychotherapy notes are not included, there is no conflict. (2) HIPAA permits disclosure for certain public health activities. 45 C.F.R. § 164.512(b).		No	
§ 311.037 Confidential Data; Criminal Penalty	Related/ Not Contrary			No	
Title 4: Health Statistics					
Chapter 313: Consent to Medical Treatment Act					
§ 313.004 Consent for Medical Treatment	Not Related			No	
§ 313.005 Prerequisites for Consent	Not Related			No	
Title 5: Sanitation and Environmental Quality					
Chapter 402: Low-Level Radioactive Waste Disposal Authority					

Texas Health & Safety Code

Section/ Chapter	Related/ Contrary	Explanation	Preemption Exception	Is State Law Preempted?	Recommendation
§ 402.058 Health Surveillance Survey	Not Related	Establishes the duty to develop a health surveillance program for disposal site.		No	
Title 6: Food, Drugs, Alcohol, and Hazardous Substances Chapter 431: Texas Food, Drug, and Cosmetic Act					
§ 431.042 Inspection	Related/ Not Contrary			No	
§ 431.043 Access to Records	Related/ Not Contrary			No	
§ 431.116 Average Manufacturer Price	Related/ Not Contrary	<i>See also</i> GA-83.		No	
Title 6: Food, Drugs, Alcohol, and Hazardous Substances Chapter 436: Aquatic Life					
§ 436.108 Powers and Duties of Texas Oyster Council	Not Related	Only relates to monitoring of food-borne illnesses related to molluscan shellfish; specifically states "non-medical" information can be used.		No	
Title 6: Food, Drugs, Alcohol, and Hazardous Substances Chapter 438: Public Health Measures Relating to Food					
§ 438.033 Physical Examination; Doctor's Certificate	Not Related	This allows food service employees to be tested for various diseases by the request of the employer or Tex. Dept. of Health.		No	
Title 6: Food, Drugs, Alcohol, and Hazardous Substances Chapter 439: Manufacture and Distribution of Certain Drugs					
§ 439.005 Records; Disciplinary Action	Related/ Not Contrary			No	

Texas Health & Safety Code

Section/ Chapter	Related/ Contrary	Explanation	Preemption Exception	Is State Law Preempted?	Recommendation
§ 439.015 Records; Disciplinary Action	Related/ Not Contrary			No	
Title 6: Food, Drugs, Alcohol, and Hazardous Substances					
Chapter 461: Texas Commission on Alcohol and Drug Abuse					
§ 461.001 Policy	Not Related	This establishes the Texas Commission on Alcohol and Drug Abuse and does not relate to patient care.		No	
§ 461.002 Definitions	Not Related	This establishes the Texas Commission on Alcohol and Drug Abuse and does not relate to patient care.		No	
§ 461.003 Composition of Commission	Not Related			No	
§ 461.004 Application of Sunset Act	Not Related			No	
§ 461.005 Restrictions on Commission Appointment, Membership, and Employment	Not Related			No	
§ 461.0051 Commission Member Training	Not Related			No	
§ 461.006 Terms	Not Related			No	
§ 461.007 Officers	Not Related			No	
§ 461.008 Removal of Commission Members	Not Related			No	

Texas Health & Safety Code

Section/ Chapter	Related/ Contrary	Explanation	Preemption Exception	Is State Law Preempted?	Recommendation
§ 461.009 Per Diem; Reimbursement for Expenses	Not Related			No	
§ 461.010 Meetings; Travel	Not Related			No	
§ 461.011 Personnel	Not Related			No	
§ 461.0115 Powers and Duties of Commissioner of Health and Human Services	Not Related			No	
§ 461.012 Powers and Duties	Not Related			No	
§ 461.0121 Emergency Treatment Resources	Not Related			No	
§ 461.0122 Referral Services for Persons From Criminal Justice	Not Related			No	
§ 461.0123 Reporting of Children Involved in Substance Abuse or From a Family Involved in Substance Abuse	ated/ Not Contrary			No	

Texas Health & Safety Code

Section/ Chapter	Related/ Contrary	Explanation	Preemption Exception	Is State Law Preempted?	Recommendation
§ 461.0124 Statewide Service Delivery Plan	Not Related			No	
§ 461.0125 Client Service Contract Standards	Not Related			No	
§ 461.0126 Contract Monitoring	Not Related			No	
§ 461.0127 Technical Assistance Program	Not Related			No	
§ 461.0128 State Agency Services Standards	Not Related			No	
§ 461.0129 Local Behavioral Health Authorities	Not Related			No	
§ 461.013 Education and Research Programs Concerning Controlled Substances	Not Related			No	
§ 461.0131 Outreach Programs for Intravenous Drug Users	Not Related			No	

Texas Health & Safety Code

Section/ Chapter	Related/ Contrary	Explanation	Preemption Exception	Is State Law Preempted?	Recommendation
§ 461.0132 Minimum Program Requirements	Not Related			No	
§ 461.0133 Relapse Rate Reporting	Related/ Not Contrary	Does not involve use or disclosure of PHI.		No	
§ 461.014 Finances	Not Related			No	
§ 461.0141 Services Funding	Not Related			No	
§ 461.0142 Funding Policy Manual	Not Related			No	
§ 461.0143 Unit Rate Reimbursement	Not Related			No	
§ 461.015 Public Interest Information and Complaints	Not Related			No	
§ 461.016 Cooperation with Commission	Not Related			No	
§ 461.017 Advisory Committee on Reducing Drug Demand	Not Related			No	
§ 461.018 Compulsive Gambling Program	Not Related			No	

**Title 6: Food, Drugs, Alcohol, and Hazardous Substances
Chapter 462: Treatment of Chemically Dependent Persons**

Texas Health & Safety Code

Section/ Chapter	Related/ Contrary	Explanation	Preemption Exception	Is State Law Preempted?	Recommendation
§ 462.001 Definitions	Not Related			No	
§ 462.002 Filing Requirements	Not Related			No	
§ 462.0025 Court Hours	Not Related			No	
§ 462.003 Inspection of Court Records	Related/ Not Contrary	Commitment proceedings are a public record of a private nature. Any uses/disclosures called for by the section do not seem contrary to HIPAA. The judge who would enter the order to release the records (or the clerk maintaining them) is not a covered entity.		No	
§ 462.004 Representation of State	Not Related			No	
§ 462.005 Costs	Not Related			No	
§ 462.006 Writ of Habeas Corpus	Not Related			No	
§ 462.007 Limitation of Liability	Related/ Not Contrary	<u>Not Contrary to HIPAA because:</u> (1) Although this section references a use/disclosure by a physician, it does not actually call for one. (2) HIPAA permits a covered entity to disclose PHI in the course of a judicial or administrative proceeding in response to a court order. 45 C.F.R. § 164.512(e)(1)(i).		No	
§ 462.008 Criminal Penalty; Enforcement	Not Related			No	
§ 462.009 Consent to Treatment	Not Related			No	
§ 462.021 Voluntary Admission of Adult	Not Related			No	

Texas Health & Safety Code

Section/ Chapter	Related/ Contrary	Explanation	Preemption Exception	Is State Law Preempted?	Recommendation
§ 462.022 Voluntary Admission of Minor	Not Related			No	
§ 462.023 Discharge or Release	Not Related			No	
§ 462.0235 Discharge or Release of Minor 16 or 17 Years of Age	Not Related			No	
§ 462.024 Application for Court-Ordered Treatment During Voluntary Inpatient Care	Related/ Not Contrary	This section deals with the application only.		No	
§ 462.025 Intake, Assessment, and Admission	Not Related			No	
§ 462.041 Apprehension by Peace Officer Without Warrant	Not Related	No covered entity involved in use or disclosure of PHI.		No	
§ 462.042 Judge's or Magistrate's Order for Emergency Detention	Related/ Not Contrary	No covered entity involved.		No	
§ 462.043 Issuance of Warrant	Not Related			No	

Texas Health & Safety Code

Section/ Chapter	Related/ Contrary	Explanation	Preemption Exception	Is State Law Preempted?	Recommendation
§ 462.044 Preliminary Examination	Not Related			No	
§ 462.045 Detention Period	Related/ Not Contrary			No	
§ 462.046 Information to be Provided on Admission	Related/ Not Contrary	The covered entity provides the information to the patient.		No	
§ 462.047 Release From Emergency Detention	Not Related			No	
§ 462.048 Rights of Person Apprehended or Detained	Not Related			No	
§ 462.061 Court-Ordered Treatment; Jurisdiction	Not Related			No	
§ 462.062 Application for Court-Ordered Treatment	Related/ Not Contrary	<p><u>Not Contrary to HIPAA because:</u></p> <p>(1) In this context, disclosures by CE in order to file motion are not contrary, as HIPAA permits certain disclosures that are necessary to avert a serious threat to health and safety.</p> <p>(2) HIPAA permits a covered entity to disclose PHI in the course of a judicial or administrative proceeding in response to a court order. 45 C.F.R. § 164.512(e)(1)(i).</p>		No	
§ 462.063 Prehearing Procedure	Not Related			No	

Texas Health & Safety Code

Section/ Chapter	Related/ Contrary	Explanation	Preemption Exception	Is State Law Preempted?	Recommendation
§ 462.064 Certificate of Medical Examination for Chemical Dependency	Related/ Not Contrary			No	
§ 462.065 Order of Protective Custody	Related/ Not Contrary			No	
§ 462.066 Probable Cause Hearing and Detention	Related/ Not Contrary	The notification of probable cause includes IIHI; if it is released, a non-covered entity makes the disclosure.		No	
§ 462.067 Hearing on Application for Court-Ordered Treatment	Related/ Not Contrary	No covered entity; does not directly call for a use or disclosure of any information.			
§ 462.068 Release After Hearing	Not Related			No	
§ 462.069 Court Order and Place of Treatment	Related/ Not Contrary	No covered entity involved.		No	
§ 462.070 Motion for Modification of Order for Outpatient Treatment	Related/ Not Contrary			No	
§ 462.071 Order for Temporary Detention	Related/ Not Contrary	A covered entity's sworn application is required by law. The other uses/disclosures are not by covered entities.		No	

Texas Health & Safety Code

Section/ Chapter	Related/ Contrary	Explanation	Preemption Exception	Is State Law Preempted?	Recommendation
§ 462.072 Modification of Order for Outpatient Services	Related/ Not Contrary			No	
§ 462.073 Modification of Order for Inpatient Treatment	Related/ Not Contrary			No	
§ 462.0731 Outpatient Care in Certain Counties	Related/ Not Contrary	HIPAA permits appropriately limited disclosure of PHI that is required by law. 45 C.F.R. § 164.512(a)(1).		No	
§ 462.074 Hospitalization Outside Treatment Facility	Related/ Not Contrary	HIPAA permits the use and disclosure of IHI in the course of certain treatment, payment, and health care operations. 45 C.F.R. § 164.506.		No	
§ 462.075 Renewal of Order for Court-Ordered Treatment	Related/ Not Contrary			No	
§ 462.076 Appeal	Related/ Not Contrary	No covered entity involved.		No	
§ 462.077 Pass or Furlough From Inpatient Care	Not Related			No	
§ 462.078 Return to Facility Under Facility Administrator's Certificate or Court Order	Not Related			No	

Texas Health & Safety Code

Section/ Chapter	Related/ Contrary	Explanation	Preemption Exception	Is State Law Preempted?	Recommendation
§ 462.079 Revocation of Furlough	Related/ Not Contrary	PHI, if disclosed at all, would be disclosed to a hearing officer and is therefore presumably in the course of a proceeding, and HIPAA permits a covered entity to disclose PHI in the course of a judicial or administrative proceeding in response to a court order. 45 C.F.R. § 164.512(e)(1)(i).		No	
§ 462.080 Release From Court-Ordered Treatment	Related/ Not Contrary			No	
§ 462.081 Commitment by Courts in Criminal Proceedings; Alternative Sentencing	Related/ Not Contrary			No	
Title 6: Food, Drugs, Alcohol, and Hazardous Substances					
Chapter 464: Facilities Treating Alcoholics and Drug-Dependent Persons					
§ 464.001 Definitions	Not Related	This establishes the administrative rules for developing a chemical dependency facility in Texas.		No	
§ 464.002 License Required	Not Related			No	
§ 464.003 Exemptions	Not Related			No	
§ 464.004 License Application and Issuance	Not Related			No	
§ 464.005 License Renewal	Not Related			No	
§ 464.006 Inspections	Related/ Not Contrary	This allows access to records for inspections; not contrary as HIPAA permits certain disclosures for the purpose of health care oversight. 45 C.F.R. § 164.512(d)(1). See 25 TAC chapter 414, subchapter A for corresponding rules.		No	

Texas Health & Safety Code

Section/ Chapter	Related/ Contrary	Explanation	Preemption Exception	Is State Law Preempted?	Recommendation
§ 464.007 Application and Inspection Fees	Not Related			No	
§ 464.008 Alcohol and Drug Abuse Treatment Licensure Fund	Not Related			No	
§ 464.009 Rules and Standards	Not Related	This establishes rules and standards for chemical dependency facilities. This allows reporting of PHI and access to PHI for suspected abuse or neglect; consistent with 164.512(b) and (c).		No	
§ 464.010 Reports of Abuse or Neglect	Related/ Not Contrary	<u>Not Contrary to HIPAA because:</u> (1) HIPAA permits certain disclosures about victims of abuse, neglect, or domestic violence to a government authority authorized to receive such reports. 45 C.F.R. § 164.512(c)(1). (2) HIPAA permits disclosure for certain public health activities. 45 C.F.R. § 164.512(b).		No	
§ 464.011 Disclosure of Commission Records	Related/ Not Contrary	Disclosure is not by a covered entity-- but if the Commission was a covered entity, it is not clear that requirements for 164.512(b) or -(f) would be met.		No	
§ 464.012 HIV Infection Education, Testing, and Counseling	Not Related			No	
§ 464.013 Commission Interaction with Texas Department of Health	Not Related	Discusses powers of Tex. Dept. of Health and this section.		No	

Texas Health & Safety Code

Section/ Chapter	Related/ Contrary	Explanation	Preemption Exception	Is State Law Preempted?	Recommendation
§ 464.014 Denial, Revocation, Suspension, or Nonrenewal of License	Not Related			No	
§ 464.0145 Disciplinary Action Hearing	Not Related			No	
§ 464.015 Injunction	Not Related			No	
§ 464.016 Criminal Penalty	Not Related			No	
§ 464.017 Civil Penalty	Not Related	This provides a penalty for violations.		No	
§ 464.018 Notice of Suit	Not Related	Addresses notice of suit by Attorney General to department.		No	
§ 464.019 Administrative Penalty	Not Related			No	
§ 464.0195 Recovery of Costs	Not Related			No	
§ 464.020 Additional Requirements for Alternative Education	Not Related			No	
§ 464.031 Definitions	Not Related			No	
§ 464.032 County Contracts with Alcoholism Programs or Centers	Not Related			No	

Texas Health & Safety Code

Section/ Chapter	Related/ Contrary	Explanation	Preemption Exception	Is State Law Preempted?	Recommendation
§ 464.033 Application for Contract	Not Related			No	
§ 464.034 Review of Contract Applications; List	Not Related			No	
§ 464.035 Payment of Contract Amounts	Not Related			No	
§ 464.051 Definitions	Not Related			No	
§ 464.052 Exemption for Faith-Based Chemical Dependency Treatment	Not Related			No	
§ 464.053 Exempt Program Registration	Not Related			No	
§ 464.054 Medical Services Prohibited	Not Related			No	
§ 464.055 Representations in Program Advertising or Literature	Not Related			No	
§ 464.056 Declaration on Admission	Not Related			No	

Texas Health & Safety Code

Section/ Chapter	Related/ Contrary	Explanation	Preemption Exception	Is State Law Preempted?	Recommendation
§ 464.057 Revocation of Exemption	Not Related			No	
§ 464.058 General Directive to State Agencies	Not Related			No	
§ 464.059 Religion Not Endorsed	Not Related			No	
§ 464.060 Direct Public Funding Prohibited	Not Related			No	
§ 464.061 Effect on Health and Safety Duties or Powers	Not Related			No	
Title 6: Food, Drugs, Alcohol, and Hazardous Substances					
Chapter 466: Regulation of Narcotic Drug Treatment Programs					
§ 466.025 Inspection	Related/ Not Contrary	This allows for inspections by the Tex. Dept. of Health, which could review IIHI. This is consistent with HIPAA, as HIPAA permits certain disclosures for the purpose of health care oversight. 45 C.F.R. § 164.512(d)(1). See 25 TAC § 404.154; 25 TAC chapter 414, Subchapter A; 40 TAC § 148.301 for corresponding rules.		No	
§ 466.026 Multiple Enrollment Prevention	Related/ Not Contrary	Recommendations may be (by rule) for a plan to prevent the simultaneous multiple enrollment of persons in narcotic treatment programs; merely requires entities to work together to prevent multiple enrollment.		No	
Title 6: Food, Drugs, Alcohol, and Hazardous Substances					
Chapter 467: Peer Assistance Programs					
§ 467.005 Reports	Related/ Not Contrary	Does not involve use or disclosure of PHI by a covered entity.		No	

Texas Health & Safety Code

Section/ Chapter	Related/ Contrary	Explanation	Preemption Exception	Is State Law Preempted?	Recommendation
§ 467.006 Assistance to Impaired Professionals	Related/ Not Contrary	This deals with impaired physicians, no use/disclosure of PHI by a covered entity. See 40 TAC § 151.5 for corresponding rules.		No	
§ 467.007 Confidentiality	Related/ Not Contrary			No	
§ 467.0075 Consent to Disclosure	Not Related			No	
Title 6: Food, Drugs, Alcohol, and Hazardous Substances Chapter 481: Texas Controlled Substances Act					
§ 481.068 Confidentiality	Related/ Not Contrary	See 37 TAC § 13.33 for corresponding rules.		No	
§ 481.074 Prescriptions	Related/ Not Contrary	See 37 TAC § 13.2, 13.4 for corresponding rules.		No	
§ 481.075 Official Prescription Program	Related/ Not Contrary	See 37 TAC § 13.84 for corresponding rules.		No	
§ 481.076 Official Prescription Information	Related/ Not Contrary	Exceptions to access to information submitted to DPS ; generally disclosure of info is prohibited; allows for electronic transmission of data; (i) info submitted to DPS is confidential.		No	
§ 481.0761 Rules; Authority to Contract	Related/ Not Contrary	Does not appear to call for a use or disclosure of PHI. (a) The director sets rules for the database format and transmission of data; (f) The director may authorize a contract between the department and another agency of this state or a private vendor to ensure the effective operation of the prescription program.		No	
§ 481.127 Offense; Unauthorized Disclosure of Information	Related/ Not Contrary	(a) An offense for disclosure or access to information on prescriptions (481.075).		No	
§ 481.181 Inspections	Related/ Not Contrary	Controlled premises are not covered entities.		No	

Texas Health & Safety Code

Section/ Chapter	Related/ Contrary	Explanation	Preemption Exception	Is State Law Preempted?	Recommendation
Title 6: Food, Drugs, Alcohol, and Hazardous Substances Chapter 481: Texas Controlled Substances Act					
§ 483.025 Inspections; Inventories	Related/ Not Contrary	A provider must make records available for inspection by regulators.		No	
Title 6: Food, Drugs, Alcohol, and Hazardous Substances Chapter 502: Hazard Communication Act					
§ 502.011 Complaints and Investigations	Not Related	See 25 TAC § 295.108 for corresponding rules.		No	
§ 502.012 Reporting Fatalities and Injuries	Related/ Not Contrary	An employer must report injuries and fatalities to the Tex. Dept. of Health, but an employer is not a covered entity. See 25 TAC § 295.9 for corresponding rules.		No	
Title 7: Mental Health and Mental Retardation Chapter 533: Powers and Duties					
§ 533.006 Reporting of Allegations Against Physicians	Related/ Not Contrary	<p><u>Not Contrary to HIPAA because:</u></p> <p>(1) HIPAA permits certain disclosures for the purpose of health care oversight. 45 C.F.R. § 164.512(d)(1).</p> <p>(2) HIPAA permits certain disclosures for the purpose of health care oversight. 45 C.F.R. § 164.512(d)(1).</p> <p>This allows the exchange of patient and client records between service providers without patient/client consent. We have assumed, for purposes of this conclusion, that the "subcontractees" referenced in subsection (a) are otherwise authorized to receive the information and that they sign business associate agreements, if necessary.</p>		No	
§ 533.009 Exchange of Patient and Client Records	Related/ Not Contrary	<p>Not contrary to HIPAA because HIPAA permits the use and disclosure of IHI in the course of certain treatment, payment, and health care operations. 45 C.F.R. § 164.506. See 25 TAC § 414 subchapter A for corresponding rules.</p>		No	

Texas Health & Safety Code

Section/ Chapter	Related/ Contrary	Explanation	Preemption Exception	Is State Law Preempted?	Recommendation
§ 533.010 Information Relating to Patient's Condition	Related/ Not Contrary	Subsection (a) allows release of "any information" for use in "study to reduce mental disorders and mental disabilities." A HIPAA-covered entity could not release information for use in a study in a manner inconsistent with HIPAA; therefore, the entity can comply with both laws.		No	
§ 533.035 Local Mental Health and Mental Retardation Authorities	Related/ Not Contrary	Subsection (g) compels the privatization of all ICF-MRs by 8/31/06 and the continuation of services at the same level of service provided before the transfer. Such a privatization and transfer would involve the transfer of PHI. However, acquisition/sale/merger of entity included within definition of "health care operations" in 45 C.F.R. § 164.601(6), and HIPAA permits the use and disclosure of IIHI in the course of certain treatment, payment, and health care operations. 45 C.F.R. § 164.506.		No	
§ 533.049 Privatization of State School	Not Related	This section would have been related, had privatization taken place (see above). However, DHS determined that none of the conversions were feasible and the section is therefore not related.		No	
§ 533.050 Privatization of State Mental Hospital	Not Related	This section would have been related, had privatization taken place (see above). However, DHS determined that none of the conversions were feasible and the section is therefore not related.		No	
Title 7: Mental Health and Mental Retardation Chapter 534: Community Services					
§ 534.035 Review, Audit, and Appeal Procedures	Related/ Not Contrary	Statute does not, on its face, call for any uses or disclosures. See 40 TAC § 1.310 for corresponding rules.		No	
Title 7: Mental Health and Mental Retardation Chapter 571: General Provisions					
§ 571.006 Department Powers	Not Related			No	

Texas Health & Safety Code

Section/ Chapter	Related/ Contrary	Explanation	Preemption Exception	Is State Law Preempted?	Recommendation
§ 571.0066 Prescription Medication Information	Related/ Not Contrary	A mental health facility must provide to the patient information relating to prescription medications ordered by the patient's treating physician; information given to patient's family must be provided upon request to the extent allowed by law.		No	
§ 571.015 Inspection of Court Records	Related/ Not Contrary	Access only upon order of judge. See JM-260.		No	
§ 571.019 Limitation of Liability	Related/ Not Contrary			No	
Title 7: Mental Health and Mental Retardation Chapter 573: Emergency Detention					
§ 573.022 Emergency Admission and Detention	Related/ Not Contrary	HIPAA permits the use and disclosure of IIHI in the course of certain treatment, payment, and health care operations. 45 C.F.R. § 164.506.		No	
Title 7: Mental Health and Mental Retardation Chapter 574: Court-Ordered Mental Health Services					
§ 574.001 Application for Court-Ordered Mental Health Services	Related/ Not Contrary	For disclosures contemplated by Chapter 574, see comments to Chapter 462.		No	
§ 574.002 Form of Application	Related/ Not Contrary			No	
§ 574.004 Duties of Attorney	Related/ Not Contrary			No	
§ 574.009 Requirement of Medical Examination	Related/ Not Contrary			No	

Texas Health & Safety Code

Section/ Chapter	Related/ Contrary	Explanation	Preemption Exception	Is State Law Preempted?	Recommendation
§ 574.014 Compilation of Mental Health Commitment Records	Related/ Not Contrary			No	
§ 574.021 Motion for Order of Protective Custody	Related/ Not Contrary			No	
§ 574.025 Probable Cause Hearing	Related/ Not Contrary			No	
§ 574.026 Order for Continued Detention	Related/ Not Contrary			No	
§ 574.031 General Provisions Relating to Hearing	Related/ Not Contrary			No	
§ 574.034 Order for Temporary Mental Health Services	Related/ Not Contrary			No	
§ 574.066 Renewal of Order for Extended Mental Health Services	Related/ Not Contrary			No	
§ 574.069 Hearing on Request for Reexamination	Related/ Not Contrary			No	

Texas Health & Safety Code

Section/ Chapter	Related/ Contrary	Explanation	Preemption Exception	Is State Law Preempted?	Recommendation
§ 574.081 Continuing Care Plan Before Furlough or Discharge	Related/ Not Contrary			No	
§ 574.104 Physician's Application for Order to Authorize Psychoactive Medication; Date of Hearing	Related/ Not Contrary			No	
Title 7: Mental Health and Mental Retardation					
Chapter 575: Admission and Transfer Procedures for Inpatient Services					
§ 575.017 Transfer of Records	Related/ Not Contrary	HIPAA permits the use and disclosure of IHI in the course of certain treatment, payment, and health care operations. 45 C.F.R. § 164.506.		No	
Title 7: Mental Health and Mental Retardation					
Chapter 575: Admission and Transfer Procedures for Inpatient Services					

Texas Health & Safety Code

Section/ Chapter	Related/ Contrary	Explanation	Preemption Exception	Is State Law Preempted?	Recommendation
§ 576.005 Confidentiality of Records	Related/ Not Contrary	Records... that directly or indirectly identify a present, former, or proposed patient are confidential unless disclosure is permitted by other state law. Title 25, Part 2, Chapter 404, Subchapter E, Rule 404.154: (21) The right to confidentiality of records and the right to be informed of the conditions under which information can be disclosed without the individual's consent.			
		At department facilities and community centers, client-identifying information shall be disclosed in accordance with Chapter 403, Subchapter K of this title (relating to Client-Identifying Information).			No
		At psychiatric hospitals, client-identifying information shall be disclosed in accordance with the provisions of the Texas Health and Safety Code, §§ 576.005 and 611.001-611.005, and 42 Code of Federal Regulations, Part 2. Consistent with 45 C.F.R. §§ 164.502, 506, 512; (22) requires psychiatrist to give notice of intent to disclose info; (23) guarantees patient access to records. See 25 TAC § 404.154 & Chapter 414, subchapter A for corresponding rules.			
Title 7: Mental Health and Mental Retardation					
Chapter 577: Private Mental Hospitals and Other Mental Health Facilities					
§ 577.0101 Notification of Transfer or Referral	Related/ Not Contrary	<u>As to (b)(2)</u> : It provides to the receiving facility information relating to the patient's diagnosis and condition.			
		<u>As to (c)</u> : The rules must provide for the transfer of appropriate records; HIPAA permits the use and disclosure of IHI in the course of certain treatment, payment, and health care operations. 45 C.F.R. § 164.506.			No
		<u>As to (c)</u> : It is slightly problematic because seems to authorize copies of patients' records, if any, to be shipped to the receiving facility. It can be harmonized with HIPAA, though, because a compliant entity simply would not have any such copies. They would destroy or return.			

Texas Health & Safety Code

Section/ Chapter	Related/ Contrary	Explanation	Preemption Exception	Is State Law Preempted?	Recommendation
§ 577.012 Destruction of Records	Related/ Not Contrary	See above.		No	
§ 577.013 Investigations	Related/ Not Contrary	See comments for § 241.051. See also 25 TAC § 404.154; 25 TAC § 134.41 for corresponding rules.		No	
§ 577.015 Subpoenas	Related/ Not Contrary	Subsection (a) provides that the testimony of witnesses and the production of related documents or records may be compelled.		No	
§ 577.054 Confidentiality; Absolute Privilege	Related/ Not Contrary	Subsection (a): Except as provided by §§ 577.055 and 577.056, all information and materials... are confidential and may not be admitted as evidence or otherwise disclosed in any civil, criminal, or administrative proceeding. (b) The confidentiality protections apply without regard to whether the info or materials are obtained from or compiled by a mental hospital or an entity that has an ownership or management interest in a hospital. (d) absolute privilege		No	
Title 7: Mental Health and Mental Retardation Chapter 578: Electroconvulsive and Other Therapies					
§ 578.007 Reports	Related/ Not Contrary			No	
§ 578.008 Use of Information; Report	Related/ Not Contrary			No	
Title 7: Mental Health and Mental Retardation Chapter 591: General Provisions					
§ 591.011 Departmental Responsibilities	Related/ Not Contrary	Subsection (e): The department shall have the right of access to all residents and records of residents who are placed with residential service providers. HIPAA permits appropriately limited disclosure of PHI that is required by law. 45 C.F.R. § 164.512(a)(1).		No	

Texas Health & Safety Code

Section/ Chapter	Related/ Contrary	Explanation	Preemption Exception	Is State Law Preempted?	Recommendation
§ 591.022 Civil Penalty	Related/ Not Contrary	Subsection (c): Penalty for releasing confidential information. State law provides a civil penalty, HIPAA addresses criminal penalty or civil penalty for non-compliance of the rules. The laws do not contradict. HIPAA and this section are not exclusive remedies.		No	
Title 7: Mental Health and Mental Retardation					
Chapter 593: Admission and Commitment to Mental Retardation Services					
§ 593.013 Requirement of Interdisciplinary Team Recommendation	Related/ Not Contrary	Subsection (a): To be committed to a residential facility, an interdisciplinary team must review the person's social and medical history. <u>Not Contrary to HIPAA because:</u> (1) HIPAA permits appropriately limited disclosure of PHI that is required by law. 45 C.F.R. § 164.512(a)(1). (2) HIPAA permits the use and disclosure of IHI in the course of certain treatment, payment, and health care operations. 45 C.F.R. § 164.506.		No	
§ 593.050 Conduct of Hearing	Related/ Not Contrary	Subsection (a): The hearing must be open to the public... Subsection (d)...The results of the determination of mental retardation and the current interdisciplinary team report and recommendations shall be presented in evidence.		No	
Title 7: Mental Health and Mental Retardation					
Chapter 594: Transfer and Discharge					
§ 594.013 Notice of Transfer or Discharge; Approval	Related/ Not Contrary	Provides for automatic notification of parent or guardian. Consistent with HIPAA provisions regarding disclosure to a personal representative.		No	
§ 594.035 Hearing Date	Related/ Not Contrary			No	
§ 594.040 Open Hearing	Related/ Not Contrary	In general, the transfer hearing must be open to the public.		No	
§ 594.041 Medical Evidence	Related/ Not Contrary	Subsection (a) provides that at least two physicians must testify at the transfer hearing.		No	

Texas Health & Safety Code

Section/ Chapter	Related/ Contrary	Explanation	Preemption Exception	Is State Law Preempted?	Recommendation
Title 7: Mental Health and Mental Retardation					
Chapter 595: Records					
§ 595.001 Confidentiality of Records	Related/ Contrary to the extent of § 595.004.	Records are confidential except as authorized under §§ 595.003 and 595.004. If § 595.004 is contrary, then that part of § 595.001 would also be contrary. See 40 TAC § 8.624, 40 TAC, chapter 4, Subchapter A for corresponding rules.		No	
§ 595.002 Rules	Not Related	Pertains to rule making authority.		No	
§ 595.003 Consent to Disclosure	Related/ Not Contrary	Provides that confidential records may be disclosed under certain circumstances; exceptions are addressed in § 595.005.		No	
§ 595.004 Right to Personal Record	Related/ Contrary Under Second Prong	<p>The HIPAA scheme and the Mental Health and Mental Retardation (MHMR) scheme for individual access are widely divergent. The right of access is one of the most thorough and detailed portions of HIPAA. Indeed, individual access is one of only two required disclosures in the entire Privacy Rule. Any denial thereof must be well documented and justified. That the right of access has been afforded such importance in the HIPAA regs makes the discrepancies between it and state law more significant.</p> <p>In this instance, the discrepancies are as follows: (1) State law permits a provider to deny access without any documentation; HIPAA does not permit individual access to psychotherapy notes but this law would appear to do so inasmuch as MHMR records contain psychotherapy notes. (2) Subsection (b) gives parents and guardians a nearly unfettered right of access, even if those parties are abusive or suspected of abuse.</p> <p>Given the import afforded individual access to HIPAA, and given the difficulty of reconciling the two schemes, this section is arguably contrary to the Privacy Rule under the second prong of the definition of "contrary."</p>		Yes	A possible solution may be to incorporate the provisions of other law in determining whether access will be provided or not.

Texas Health & Safety Code

Section/ Chapter	Related/ Contrary	Explanation	Preemption Exception	Is State Law Preempted?	Recommendation
§ 595.005 Exceptions	Related/ Not Contrary	Subsection (a) is consistent with 45 C.F.R. § 164.512 (b)(c)(d)(l or i)(j); Subsection (b) is consistent with 45 C.F.R. § 154.052(d); Subsection (c) does not concern PHI; Subsection (d) is consistent with 164.512(e)(f).		No	
§ 595.0055 Disclosure of Name and Birth and Death Dates for Certain Purposes	Related/ Not Contrary	<u>Not Contrary to HIPAA because:</u> (1) HIPAA permits certain disclosures to an executor, administrator, or other person with authority to act on behalf of a deceased person or their estate. 45 C.F.R. § 164.502(g)(4). (2) Does not involve use or disclosure of PHI.		No	
§ 595.006 Use of Record in Criminal Proceedings	Related/ Not Contrary	Provides that confidential records may not be used for a criminal charge or investigation of a client; consistent with 45 C.F.R. § 164.512(d).		No	
§ 595.007 Confidentiality of Past Services	Related/ Not Contrary	This section prohibits disclosure.		No	
§ 595.008 Exchange of Records	Related/ Not Contrary	Allows exchange of records only for delivery or payment of services; HIPAA permits the use and disclosure of IIHI in the course of certain treatment, payment, and health care operations. 45 C.F.R. § 164.506. State law is either more stringent or the same as HIPAA (depending on whether "operations" is subsumed by "service delivery").		No	
§ 595.009 Receipt of Information by Persons Other Than Client or Patient	Related/ Not Contrary			No	
§ 595.010 Disclosure of Physical or Mental Condition	Related/ Not Contrary	This allows disclosure to a friend, parent, guardian, relative; consistent with 45 C.F.R. § 164.510, though that section may impose additional requirements.		No	

Texas Health & Safety Code

Section/ Chapter	Related/ Contrary	Explanation	Preemption Exception	Is State Law Preempted?	Recommendation
Title 7: Mental Health and Mental Retardation					
Chapter 597: Capacity of Clients to Consent to Treatment					
§ 597.001 Definitions	Not Related			No	
§ 597.002 Rules	Not Related	Pertains to rule making authority.		No	
§ 597.003 Exceptions	Not Related			No	
§ 597.021 ICF-MR Assessment of Client's Capacity to Consent to Treatment	Related/ Not Contrary	See 25 TAC § 406.310 (now 40 TAC 6.310); 25 TAC chapter 405, Subchapter J (now 40 TAC Chapter 8, subchapter J) for corresponding rules.		No	
§ 597.041 Surrogate Decision-Makers	Related/ Not Contrary	This provides that medical and dental decisions may be made by a family member or any person who consents on behalf of a client and who acts in good faith, reasonably, and without malice; such a person is not criminally or civilly liable for that action. HIPAA follows state law for who can be a personal representative of an incompetent adult or child; consistent with 45 C.F.R. § 164.502(g). See 40 TAC Chapter 8, subchapter J for corresponding rules.		No	
§ 597.042 Surrogate Consent Committee Established; Departmental Support	Related/ Not Contrary	Provides that decisions are made by a committee for those clients without a guardian or surrogate. HIPAA follows state law for who can be a personal representative of an incompetent adult or child; consistent with 45 C.F.R. § 164.502(g). See 40 TAC Chapter 8, subchapter J for corresponding rules.		No	
§ 597.043 Committee Membership	Related/ Not Contrary	HIPAA follows state law for who can be a personal representative of an incompetent adult or child; consistent with 45 C.F.R. § 164.502(g).		No	

Texas Health & Safety Code

Section/ Chapter	Related/ Contrary	Explanation	Preemption Exception	Is State Law Preempted?	Recommendation
		This relates to process to determine consent and PHI must be used in process. HIPAA follows state law for who can be a personal representative of an incompetent adult or child; consistent with 45 C.F.R. § 164.502(g).			
§ 597.044 Application for Treatment Decision	Related/ Not Contrary	This particular situation is not specifically addressed in HIPAA regulations--but initial determination would be that: (1) HIPAA permits the use and disclosure of IIHI in the course of certain treatment, payment, and health care operations. 45 C.F.R. § 164.506. (2) The disclosure is entirely internal.		No	
§ 597.045 Notice of Review of Application for Treatment Decision	Related/ Not Contrary	See 40 TAC Chapter 8, subchapter J for corresponding rules. HIPAA permits appropriately limited disclosure of PHI that is required by law. 45 C.F.R. § 164.512(a)(1).		No	
§ 597.046 Prereview of Application	Related/ Not Contrary	See 40 TAC Chapter 8, subchapter J for corresponding rules. PHI is used in application process; consistent with 45 C.F.R. § 164.510(b)(3) and directly relevant to the individual's involvement.		No	
§ 597.047 Confidential Information	Related/ Not Contrary	See 40 TAC Chapter 8, subchapter J for corresponding rules. Requires health care professionals to provide PHI to the committee. Not contrary to HIPAA because HIPAA permits the use and disclosure of IIHI in the course of certain treatment, payment, and health care operations. 45 C.F.R. § 164.506.		No	
§ 597.048 Review of Application	Related/ Not Contrary	See 40 TAC Chapter 8, subchapter J for corresponding rules. PHI will be released during review of application; consistent with 45 C.F.R. § 164.510(b)(3) and directly relevant to individual's involvement.		No	
		See 40 TAC Chapter 8, subchapter J for corresponding rules.			

Texas Health & Safety Code

Section/ Chapter	Related/ Contrary	Explanation	Preemption Exception	Is State Law Preempted?	Recommendation
§ 597.049 Determination of Best Interest	Related/ Not Contrary	PHI is shared in determination process; consistent with 45 C.F.R. § 164.502(g). See 40 TAC Chapter 8, subchapter J for corresponding rules		No	
§ 597.050 Notice of Determination	Related/ Not Contrary	HIPAA permits appropriately limited disclosure of PHI that is required by law. 45 C.F.R. § 164.512(a)(1). See 40 TAC Chapter 8, subchapter J for corresponding rules		No	
§ 597.051 Effect of Committee's Determination	Related/ Not Contrary	See 40 TAC Chapter 8, subchapter J for corresponding rules.		No	
§ 597.052 Scope of Consent	Related/ Not Contrary	See 40 TAC Chapter 8, subchapter J for corresponding rules.		No	
§ 597.053 Appeals	Related/ Not Contrary	See 40 TAC Chapter 8, subchapter J for corresponding rules.		No	
§ 597.054 Procedures	Related/ Not Contrary	Dictates the need to develop procedures, which would not contain PHI. See 40 TAC Chapter 8, subchapter J for corresponding rules.		No	
Title 7: Mental Health and Mental Retardation					
Chapter 611: Mental Health Records					
§ 611.001 Definitions	Related/ Not Contrary	Some of the definitions are also addressed by HIPAA. See 25 TAC Chapter 404, subchapter E for corresponding rules.		No	
§ 611.002 Confidentiality of Information and Prohibition Against Disclosure	Related/ Contrary	Provides that records and communications are confidential; addresses disclosure of PHI related to mental health records. See Health & Safety Code §§ 611.004 and 611.0045. See 25 TAC Chapter 404, subchapter E for corresponding rules.		Yes	This law is contrary to the extent that § 611.0045 is contrary.

Texas Health & Safety Code

Section/ Chapter	Related/ Contrary	Explanation	Preemption Exception	Is State Law Preempted?	Recommendation
<p>§ 611.003 Persons Who May Claim Privilege of Confidentiality</p>	<p>Related/ Not Contrary</p>	<p>Addresses who may claim privilege of confidentiality; consistent with 45 C.F.R. § 164.502, but more restrictive. Could specify that facilities have right to assert privilege.</p> <p>See 25 TAC chapter 404, subchapter E for corresponding rules.</p> <p><u>NOT CONTRARY TO HIPAA because:</u></p> <p>(1) Merely incorporates other law;</p> <p>(2) 45 C.F.R. § 164.512(j)(1) would authorize the disclosures, but the class of people to whom disclosures can be made under that provision of HIPAA is broader in the sense that it must be someone reasonably able to prevent the problem--but not necessarily law enforcement or medical personnel. There are also apparent differences between this provision of state law and § 241.153 of the Health & Safety Code;</p>		<p>No</p>	
<p>§ 611.004 (a)(1)-(4) Authorized Disclosure of Confidential Information Other than in Judicial or Administrative Proceeding</p>	<p>Related/ Not Contrary</p>	<p>(3) HIPAA permits the use and disclosure of IHI in the course of certain treatment, payment, and health care operations. 45 C.F.R. § 164.506. These and disclosures for research would have to comply with HIPAA before a covered entity could make them, and any non-covered entities would be bound by the Common Rule;</p> <p>(4) Consistent with HIPAA authorization & personal representative provisions. However, there is another apparent difference between this section and Health & Safety § 241.153. Specifically, the class of personal representatives permitted under § 611.004 is far narrower. Also, state law places no limitations on disclosures where parent or guardian may be abusing patient.</p>		<p>No</p>	
		<p>See 25 TAC chapter 404, subchapter E for corresponding rules</p>			

Texas Health & Safety Code

Section/ Chapter	Related/ Contrary	Explanation	Preemption Exception	Is State Law Preempted?	Recommendation
§ 611.004 (a)(5)-end	Related/ Not Contrary	<p><u>Not Contrary to HIPAA because:</u> (5) Consistent with HIPAA personal representative provisions; (6) Could incorporate HIPAA's broader payment exception but there is nothing contrary; (7) Nothing contrary but "treatment" could be clarified to avoid preemption issues in the future; (8) Subsection (c) prohibits release of IIHI and is incorporated into this provision; (9) Permitted by 45 C.F.R. § 164.512(k)(5); (10) HIPAA permits the use and disclosure of IIHI in the course of certain treatment, payment, and health care operations. 45 C.F.R. § 164.506; see § 241.153 for same language in the hospital setting. This exception is far narrower than the HIPAA provision, however; (11) Not Contrary but has been moved from 4590i of VTCS; (b) consistent with HIPAA operational requirements (c) no conflict (d) prohibitions on redisclosure are not contrary but it may be worth noting that while such prohibitions are found in the MPA, they are not found in the hospital licensing statutes.</p>		No	

Texas Health & Safety Code

Section/ Chapter	Related/ Contrary	Explanation	Preemption Exception	Is State Law Preempted?	Recommendation
§ 611.0045(a)-(b) Right to Mental Health Record	Related/ Contrary	<p>HIPAA allows no access to psychotherapy notes. See 45 C.F.R. § 164.524(a)(1). To the extent this state statute permits access to psychotherapy notes, it is saved by 45 C.F.R. § 160.203(b) as it is more stringent--allows greater access than HIPAA.</p>		Yes	Provisions governing denial of access for inspection purposes should be made consistent with HIPAA.
		<p>However, § 611.0045(b) is contrary to HIPAA, possibly under the first definition but clearly under the second definition of "contrary." HIPAA prescribes a high threshold and a great number of administrative restrictions on the denial of access to a record. Specifically, under HIPAA, a professional would be required to find that the provision of access is "reasonably likely to endanger the life or physical safety of the individual or another person." Texas requires only that the professional determine that access may be "harmful," a much lower threshold for denying access.</p> <p>See 25 TAC chapter 404, subchapter E for corresponding rules.</p> <p>Also worth noting that under subsections (c) & (d), covered entities would have to follow both HIPAA and Texas law. In this regard, Texas has an additional requirement that the documentation of the denial track which portion of the record to which access was denied. See 45 C.F.R. § 164.524.</p>		No	
		<p>Subsection (e) is not contrary. Subsection (f) is also not contrary but there is no "out" for provision of access where a patient may be abused by a guardian. Another difference, (albeit not a difference that rises to the level of "contrary") is the fact that HIPAA permits a provider to deny access to records that identify a person if such access is reasonably likely to cause substantial harm to the other person. Texas law imposes a non-discretionary requirement that the provider remove most information related to another person. See Health & Safety Code § 611.0045(g). Subsections (h)-(k) are not contrary.</p>			

Texas Health & Safety Code

Section/ Chapter	Related/ Contrary	Explanation	Preemption Exception	Is State Law Preempted?	Recommendation
§ 611.005 Legal Remedies for Improper Disclosure or Failure to Disclose	Related/ Not Contrary	<p>Allows an individual to petition a court and addresses access to PHI in mental health records. All relate to HIPAA privacy; can be in addition to HIPAA remedies.</p> <p>HIPAA and Texas law here have different schemes, but they are not contrary.</p>		No	
§ 611.006 Authorized Disclosure of Confidential Information in Judicial or Administrative Proceeding	Related/ Not Contrary	<p>Texas law contains a list of the types of proceedings in which mental health records may be disclosed. HIPAA does not limit the disclosures by the type of proceeding; rather, HIPAA allows disclosures in all manner of proceedings, provided the disclosures comply with the requirements of 45 C.F.R. § 164.512(e).</p> <p>HIPAA and Texas law can, therefore, be harmonized in this regard. See 25 TAC chapter 404, subchapter E for corresponding rules.</p>		No	
§ 611.007 Revocation of Consent	Related/ Not Contrary	<p>Covered entities can comply with Texas law and HIPAA; a valid revocation in that instance will contained the required elements of both laws.</p> <p>See 25 TAC chapter 404, subchapter E for corresponding rules.</p>		No	

Texas Health & Safety Code

Section/ Chapter	Related/ Contrary	Explanation	Preemption Exception	Is State Law Preempted?	Recommendation
§ 611.008 Request by Patient	Related/ Contrary	<p>There is a difference in time periods for producing records: 15 vs. 30 days. Also, HIPAA does not allow access to psychotherapy notes. State law is more stringent, however--allows more and faster access than HIPAA.</p> <p>Nonetheless, the fee provisions are problematic. Subsection (b) authorizes a retrieval fee and permits a covered entity to deny access to a person's records unless the fee is paid or there is a medical emergency.</p> <p>Because this interferes with one of the central purposes of the Privacy Rule (provision of access), the fee provisions are contrary under the second prong of the definition.</p> <p>The effect of this provision is muddled by § 611.0045, which we assume to modify this section, but the language of which seems to imply a non-discretionary duty to provide access. See text of report for discussion of fee provisions. See also 25 TAC chapter 404, subchapter E for corresponding rules.</p>		Yes	Prohibit charging of a fee for retrieval and the withholding of access for non-payment of such fees.
Title 7: Mental Health and Mental Retardation					
Chapter 612: Interstate Compact on Mental Health					
§ 612.001 Article III (c), IV (d)	Related/ Not Contrary	Receiving state shall be furnished all available medical and other records concerning the patient. HIPAA permits the use and disclosure of IIHI in the course of certain treatment, payment, and health care operations. 45 C.F.R. § 164.506.		No	
Article X (b)	Related/ Not Contrary			No	
§ 612.004 General Powers and Duties of Administrator	Related/ Not Contrary			No	
Title 7: Mental Health and Mental Retardation					
Chapter 613: Kidney Donation by Ward With Mental Retardation					
§ 613.001 Definition	Related/ Not Contrary			No	

Texas Health & Safety Code

Section/ Chapter	Related/ Contrary	Explanation	Preemption Exception	Is State Law Preempted?	Recommendation
§ 613.002 Court Order Authorizing Kidney Donation	Related/ Not Contrary			No	
§ 613.003 Petition for Court Order	Related/ Not Contrary			No	
§ 613.004 Court Hearing	Related/ Not Contrary			No	
§ 613.005 Interview and Evaluation Order by Court	Related/ Not Contrary			No	
Title 7: Mental Health and Mental Retardation					
Chapter 614: Texas Council on Offenders With Mental Impairments					
§ 614.017 Exchange of Information	Related/ Not Contrary	Relates to PHI disclosures: SB 519 required the acceptance and disclosure of IIHI when related to the administration of criminal justice. ("May" was changed to "shall"). Subsection (a) consistent with 45 C.F.R. § 164.512. See 25 TAC Chapter 404, Subchapter E [cannot find rules relating specifically to offenders w/ MI]; maybe 37 TAC § 273.8, 25 TAC § 411.62.		No	
Title 7: Mental Health and Mental Retardation					
Chapter 615: Miscellaneous Provisions					
§ 615.001 County Responsibility	Related/ Not Contrary			No	
§ 615.002 Access to Mental Health Records by Protection and Advocacy System	Related/ Not Contrary	Access must be required by federal law in the first instance and disclosure would therefore be required by law. HIPAA permits appropriately limited disclosure of PHI that is required by law. 45 C.F.R. § 164.512(a)(1).		No	

Texas Health & Safety Code

Section/ Chapter	Related/ Contrary	Explanation	Preemption Exception	Is State Law Preempted?	Recommendation
Title 8: Death and Disposition of the Body					
Chapter 671: Determination of Death and Autopsy Reports					
§ 671.012 Filing Autopsy Report	Related/ Not Contrary	Autopsy reports definitely contain PHI and reporting of such would require disclosure. Consistent with 45 C.F.R. § 164.512 (a) (b) and (f).		No	
§ 671.013 Release of Reports; Fee	Related/ Not Contrary	HIPAA permits appropriately limited disclosure of PHI that is required by law. 45 C.F.R. § 164.512(a)(1).		No	
Title 8: Death and Disposition of the Body					
Chapter 672: Adult Fatality Review and Investigation					
		Pertains to the release of PHI related to adult deaths.			
§ 672.006 Access to Information	Related/ Not Contrary	<u>Not Contrary to HIPAA because:</u> (1) HIPAA permits appropriately limited disclosure of PHI that is required by law. 45 C.F.R. § 164.512(a)(1). (2) HIPAA permits disclosure for certain public health activities. 45 C.F.R. § 164.512(b).		No	
§ 672.009 Use of Information and Records; Confidentiality	Related/ Not Contrary			No	
§ 672.012 Report of Unexpected Fatality	Related/ Not Contrary	<u>Not Contrary to HIPAA because:</u> (1) HIPAA permits appropriately limited disclosure of PHI that is required by law. 45 C.F.R. § 164.512(a)(1). (2) HIPAA permits disclosure for certain public health activities. 45 C.F.R. § 164.512(b). (3) HIPAA permits certain disclosures about decedents to coroners and medical examiners. 45 C.F.R. § 164.512(g)(1).		No	
§ 672.013 Procedure in the Event of Reportable Death	Related/ Not Contrary			No	
Title 8: Death and Disposition of the Body					
Chapter 673: Sudden Infant Death Syndrome					

Texas Health & Safety Code

Section/ Chapter	Related/ Contrary	Explanation	Preemption Exception	Is State Law Preempted?	Recommendation
§ 673.002 Autopsy	Related/ Not Contrary	<p>Not Contrary to HIPAA because:</p> <p>(1) HIPAA permits appropriately limited disclosure of PHI that is required by law. 45 C.F.R. § 164.512(a)(1).</p> <p>(2) HIPAA permits disclosure for certain public health activities. 45 C.F.R. § 164.512(b).</p> <p>(3) HIPAA permits certain disclosures about decedents to coroners and medical examiners. 45 C.F.R. § 164.512(g)(1).</p>		No	
Title 8: Death and Disposition of the Body					
Chapter 691: Anatomical Board of the State of Texas					
§ 691.001 Definitions	Not Related			No	
§ 691.002 Composition of Board	Not Related			No	
§ 691.004 Lobbyist Restrictions	Not Related			No	
§ 691.005 Removal of Board Member	Not Related			No	
§ 691.006 Reimbursement	Not Related			No	
§ 691.007 Minutes; Records	Not Related			No	
§ 691.008 Fees; Reports; Audits	Not Related			No	
§ 691.009 Information to Members and Employees	Not Related			No	

Texas Health & Safety Code

Section/ Chapter	Related/ Contrary	Explanation	Preemption Exception	Is State Law Preempted?	Recommendation
§ 691.010 Public Information and Participation; Complaints	Related/ Not Contrary	This section deals with information already in the possession of the Board; does not call for a use or disclosure by a covered entity.		No	
§ 691.021 Definition	Not Related			No	
§ 691.022 General Duties	Not Related			No	
§ 691.023 Duty to Deliver Certain Bodies to Board	Related/ Not Contrary	Does not involve use or disclosure of PHI by a covered entity.		No	
§ 691.024 Persons Who May Claim Body for Burial	Not Related			No	
§ 691.025 Procedure After Death	Not Related			No	
§ 691.026 Body of Traveler	Not Related			No	
§ 691.027 Autopsy	Not Related			No	
§ 691.028 Donation of Body by Written Instrument	Not Related			No	
§ 691.029 Authority to Accept Bodies From Outside the State	Not Related			No	

Texas Health & Safety Code

Section/ Chapter	Related/ Contrary	Explanation	Preemption Exception	Is State Law Preempted?	Recommendation
§ 691.030 Board's Authority to Distribute Bodies	Not Related			No	
§ 691.031 Transportation of Bodies; Records	Not Related			No	
§ 691.032 Costs of Distribution	Not Related			No	
§ 691.033 Use of Bodies	Not Related			No	
§ 691.034 Regulation of Persons and Institutions Using Bodies	Related/ Not Contrary	This section merely authorizes inspection by Board; it does not require any regulated entity that might be a covered entity to turn over records, etc. Any disclosures would not be contrary, as HIPAA permits disclosure for certain public health activities. 45 C.F.R. § 164.512(b).		No	
§ 691.035 Criminal Penalty	Not Related			No	
Title 8: Death and Disposition of the Body					
Chapter 692: Texas Anatomical Gift Act					
§ 692.013 Protocol	Related/ Not Contrary	Requires hospitals to establish protocol that includes inquiries about potential donors; may necessitate asking persons other than legally authorized representatives about this information. <u>Not Contrary to HIPAA because:</u> (1) Disclosure is among the Conditions of Participation, and HIPAA permits appropriately limited disclosure of PHI that is required by law. 45 C.F.R. § 164.512(a)(1). (2) HIPAA provides an organ donation exception.		No	

Texas Health & Safety Code

Section/ Chapter	Related/ Contrary	Explanation	Preemption Exception	Is State Law Preempted?	Recommendation
§ 692.014 Procedures	Related/ Not Contrary	Requires hospitals to establish protocol that includes inquiries about potential donors; may necessitate asking persons other than legally authorized representatives about this information. <u>Not Contrary to HIPAA because:</u> (1) Disclosure is among the Conditions of Participation, and HIPAA permits appropriately limited disclosure of PHI that is required by law. 45 C.F.R. § 164.512(a)(1). (2) HIPAA provides an organ donation exception.		No	
Title 8: Death and Disposition of the Body					
Chapter 693: Removal of Body Parts, Body Tissue, and Corneal Tissue					
§ 693.002 Removal of Body Part or Tissue...	Related/ Not Contrary	Standing alone, does not seem to call for a use or disclosure by a covered entity. Any disclosures requested by the Medical Examiner are not contrary, as HIPAA permits certain disclosures about decedents to coroners and medical examiners. 45 C.F.R. § 164.512(g)(1). Standing alone, does not seem to call for a use or disclosure by a covered entity.		No	
§ 693.012 Removal of Corneal Tissue...	Related/ Not Contrary	Any disclosures requested by the Medical Examiner are not contrary, as HIPAA permits certain disclosures about decedents to coroners and medical examiners. 45 C.F.R. § 164.512(g)(1).		No	
Title 8: Death and Disposition of the Body					
Chapter 716: Crematories					
§ 716.154 Pacemakers	Related/ Not Contrary	Subsection (a) provides that a crematory cannot knowingly cremate a body with a pacemaker or other potentially hazardous implant. This is not contrary to HIPAA because a crematorium is not a covered entity.		No	
Title 9: Safety					
Chapter 771: State Administration of Emergency Communications					

Texas Health & Safety Code

Section/ Chapter	Related/ Contrary	Explanation	Preemption Exception	Is State Law Preempted?	Recommendation
§ 771.061 Confidentiality of Information	Related/ Not Contrary			No	
Title 9: Safety					
Chapter 773: Emergency Medical Services					
§ 773.0612 Access to Records	Related/ Not Contrary	<p><u>Not Contrary to HIPAA because:</u> (1) HIPAA permits appropriately limited disclosure of PHI that is required by law. 45 C.F.R. § 164.512(a)(1). (2) HIPAA permits disclosure for certain public health activities. 45 C.F.R. § 164.512(b).</p> <p>See 25 TAC § 157.4 for corresponding rules.</p>		No	
§ 773.0613 Information Report to Department	Related/ Not Contrary	<p>EMS providers must file an annual report with the Tex. Dept. of Health (TDH) on the number and types of runs the provider makes. TDH shall post the info on the website.</p> <p>Subsection (g) is not contrary. There does not appear to be a corresponding provision in HIPAA.</p>		No	
§ 773.091 Confidential Information	Related/ Not Contrary	<p>The information at issue in the statute looks like directory information but the elements are different; cannot be certain from text of statute to whom disclosure is made or what its purpose is. A covered entity would still have to follow HIPAA.</p> <p>See 25 TAC § 157.11 (l)(6) for corresponding rule.</p>		No	
§ 773.092 Exceptions	Related/ Not Contrary			No	
§ 773.093 Consent	Related/ Not Contrary	<p>This provides for consent for release. It does not include end date, but can be reconciled by adding end date; consistent with authorization content except no end date. Solution: Add end date to consent. Such an addition is not precluded by the requirements of this section.</p>		No	
§ 773.095 Records and Proceedings Confidential	Related/ Not Contrary			No	

Texas Health & Safety Code

Section/ Chapter	Related/ Contrary	Explanation	Preemption Exception	Is State Law Preempted?	Recommendation
§ 773.112 Duties of Board; Rules	Related/ Not Contrary	See especially subsection (c). See also 25 TAC Chapter 157; 25 TAC §§ 103.10-.24 for corresponding rules.		No	
§ 773.113 Duties of Bureau	Related/ Not Contrary	See especially subsection (a)(3). See also 25 TAC Chapter 157; 25 TAC §§ 103.10-.24 for corresponding rules.		No	
Title 11: Civil Commitment of Sexually Violent Predators					
Chapter 841: Civil Commitment of Sexually Violent Predators					
§ 841.142 Release or Exchange of Information	Related/ Not Contrary			No	

Texas Human Resources Code

Section	Related/ Contrary	Explanation	Preemption Exception	Is State Law Preempted?	Recommendation
Title 2: Dept. of Human Services and Dept. of Protective and Regulatory Services					
Chapter 12: Penal Provisions					
§ 12.003 Disclosure of Information	Related/ Not Contrary	It is not impossible for the Department of Human Services to comply with this provision and the HIPAA Privacy Rule, and the provision is not an obstacle to the accomplishment of the purposes of HIPAA. See Tex. Att'y Gen. Op. No. ORL 2003-5900 (2003).		No	
Title 2: Dept. of Human Services and Dept. of Protective and Regulatory Services					
Chapter 21: Administrative Provisions for Dept. of Human Services					
§ 21.012 Confidentiality of Information	Related/ Not Contrary	It is not impossible for the Department of Human Services to comply with this provision and the HIPAA Privacy Rule, and the provision is not an obstacle to the accomplishment of the purposes of HIPAA. See Tex. Att'y Gen. Op. No. ORL 2003-5900 (2003).		No	
§ 21.013 Oaths and Acknowledgements	Not Related	No purpose to affect privacy of information.		No	
§ 21.015 Public Information; Complaints	Not Related	No purpose to affect privacy of information.		No	
Title 2: Dept. of Human Services and Dept. of Protective and Regulatory Services					
Chapter 22: General Functions of Dept. of Human Services					
§ 22.015 Reporting of Physician Misconduct or Malpractice	Related/ Not Contrary	It is not clear that the information reported includes PHI. To the extent the reported information includes PHI, HIPAA permits appropriately limited disclosure of PHI that is required by law. 45 C.F.R. § 164.512(a)(1).		No	
§ 22.02 Audit Procedure	Related/Not Contrary	HIPAA permits certain disclosures for the purpose of health care oversight. 45 C.F.R. § 164.512(d)(1).		No	
§ 22.029(e) Project for Fraud Detection and Prevention Through Data Matching	Related/Not Contrary	(1) The Health and Human Services Commission and participating agencies are required to comply "with all existing state and federal privacy guidelines." (2) HIPAA permits certain disclosures for the purpose of health care oversight. 45 C.F.R. § 164.512(d)(1).		No	

Texas Human Resources Code

Section	Related/ Contrary	Explanation	Preemption Exception	Is State Law Preempted?	Recommendation
§ 22.035 Children's Policy Council	Not Related	Describes functions of Council; does not affect the privacy of any information.		No	
§ 22.037 Pilot Program for Community-Based Alternatives for Persons With Disabilities	Not Related	Describes components of the program; does not directly affect privacy of any information.		No	
§ 22.039 Training and Continuing Education Related to Certain Long Term Care Facilities	Not Related	Requires training for surveyors and providers; does not directly affect privacy of any information.		No	
Title 2: Dept. of Human Services and Dept. of Protective and Regulatory Services Chapter 31: Financial Assistance and Service Programs					
§ 31.031 Application for Assistance	Not Related	Requires applicants for services to submit immunization information. The information is not obtained from a covered entity and the statute does not affect the privacy of the information obtained.		No	
§ 31.032 Investigation and Determination of Eligibility	Not Related	Allows DHS to investigate and determine eligibility for assistance; does not affect the privacy of health information.		No	
§ 31.033 Reinvestigation and Redetermination of Eligibility	Not Related	Allows DHS to reinvestigate and redetermine eligibility for assistance; does not affect the privacy of health information.		No	
Title 2: Dept. of Human Services and Dept. of Protective and Regulatory Services Chapter 32: Medical Assistance Program					

Texas Human Resources Code

Section	Related/ Contrary	Explanation	Preemption Exception	Is State Law Preempted?	Recommendation
§ 32.021 Administration of the Program	Related/ Not Contrary	Subsections (i) and (k) are related. Under (i), DHS may introduce a record into evidence. Under (k), an investigator may testify regarding Medicaid program if admissible under the Texas Rules of Evidence. To the extent the information is PHI, the department can comply with HIPAA by only testifying pursuant to a court order, as HIPAA permits a covered entity to disclose PHI in the course of a judicial or administrative proceeding in response to a court order. 45 C.F.R. § 164.512(e)(1)(i).		No	
§ 32.023 Cooperation With Other State Agencies	Not Related	Provides for agreement among state agencies; does not affect privacy of health information.		No	
§ 32.024 Authority and Scope of Program; Eligibility	Related/Not Contrary	HIPAA permits the use and disclosure of IIHI in the course of certain treatment, payment, and health care operations. 45 C.F.R. § 164.506.		No	
§ 32.0246 Pilot Program for Treatment of Alzheimers Patients	Not Related	Does not affect privacy of health information.		No	
§ 32.0247 Medical Assistance for Certain Persons Making Transition from Foster Care to Independent Living	Not Related	Does not affect privacy of health information.		No	
§ 32.025 Application for Medical Assistance	Not Related	Does not affect privacy of health information.		No	
§ 32.026 Certification of Eligibility	Related/ Not Contrary	Requires DHS to promulgate rules for eligibility for medical assistance. To the extent these rules require a covered entity to submit PHI, HIPAA permits certain disclosures for the purpose of health care oversight. 45 C.F.R. § 164.512(d)(1).		No	

Texas Human Resources Code

Section	Related/ Contrary	Explanation	Preemption Exception	Is State Law Preempted?	Recommendation
		Although the transition between programs may include the transfer of PHI, this statute does not directly affect the privacy of PHI, but requires DHS to develop procedures for the transfer of all necessary information.			
§ 32.0262 Eligibility Transition	Related/ Not Contrary	<u>To the extent these rules require the disclosure of PHI:</u> (1) HIPAA permits certain disclosures for the purpose of health care oversight. 45 C.F.R. § 164.512(d)(1). (2) HIPAA permits the use and disclosure of IIHI in the course of certain treatment, payment, and health care operations. 45 C.F.R. § 164.506.		No	
§ 32.0263 Health Care Orientation	Not Related	Does not affect privacy of health information.		No	
§ 32.028(k) Fees, Charges, and Rates	Related/ Not Contrary	The law includes a HIPAA compliance provision.		No	
§ 32.0291 Prepayment Reviews and Postpayment Holds	Related as to (a)	To the extent the prepayment review requires DPRS to obtain PHI, HIPAA permits the use and disclosure of IIHI in the course of certain treatment, payment, and health care operations. 45 C.F.R. § 164.506.		No	
§ 32.032 Prevention and Detection of Fraud and Abuse	Not Related	No intent to affect privacy of PHI.		No	
§ 32.033 Subrogation	Not Related	Does not affect the privacy of PHI.		No	
§ 32.038 Collection of Insurance Payments	Related/ Not Contrary	<u>To the extent payments include PHI to which the Department is entitled under the Insurance Code:</u> (1) HIPAA permits appropriately limited disclosure of PHI that is required by law. 45 C.F.R. § 164.512(a)(1). (2) HIPAA permits the use and disclosure of IIHI in the course of certain treatment, payment, and health care operations. 45 C.F.R. § 164.506.		No	

Texas Human Resources Code

Section	Related/ Contrary	Explanation	Preemption Exception	Is State Law Preempted?	Recommendation
§ 32.039 Damages and Penalties	Not Related	Does not affect the privacy of PHI.		No	
§ 32.0391 Criminal Offense	Not Related	Does not affect the privacy of PHI.		No	
§ 32.042 Information Required From Health Insurers	Related/ Not Contrary	(1) Subsection (e) incorporates federal law by stating that the Department of Human Service's agreement with an insurer may not be inconsistent with any law relating to the confidentiality or privacy of personal information or medical records in regard to procedures for requesting and providing information. (2) HIPAA permits the use and disclosure of IHI for certain payment purposes. 45 C.F.R. § 164.506.		No	
§ 32.0421 Administrative Penalty for Failure to Provide Information	Not Related	Does not affect the privacy of PHI.		No	
§ 32.0422 Health Insurance Premium Payment Reimbursement Program for Medical Assistance Recipients	Related/ Not Contrary	Subsection (l), which requires DHS to provide information to the Department of Health for enrollment of eligible individuals in a group health plan, is related. To the extent the information provided is PHI, HIPAA permits appropriately limited disclosure of PHI that is required by law. 45 C.F.R. § 164.512(a)(1).		No	
§ 32.05 Dual Medicaid and Medicare Coverage	Not Related	Does not affect the privacy of PHI.		No	
§ 32.051 Misdirected Billing	Related/ Not Contrary	The law states "to the extent authorized by federal law," the Department of Human Services shall develop a procedure for matching data to determine responsibility for payment of claims. HIPAA permits the use and disclosure of IHI for certain payment purposes. 45 C.F.R. § 164.506.		No	

Texas Human Resources Code

Section	Related/ Contrary	Explanation	Preemption Exception	Is State Law Preempted?	Recommendation
§ 32.052 Waiver Programs for Children With Disabilities or Special Health Care Needs	Related/ Not Contrary	Subsection (c)(1) is related. <u>To the extent that assessing the needs of the child may require a covered entity to submit PHI:</u> (1) HIPAA permits appropriately limited disclosure of PHI that is required by law. 45 C.F.R. § 164.512(a)(1). (2) HIPAA permits certain disclosures for the purpose of health care oversight. 45 C.F.R. § 164.512(d)(1).		No	
§ 32.053 Hometelemedicine Pilot Program *(Code contains two sections of 32.053)	Related/ Not Contrary	Subsection (f)(4) is related. <u>To the extent monitoring and evaluation of the program requires the disclosure of PHI to HHSC:</u> (1) HIPAA permits appropriately limited disclosure of PHI that is required by law. 45 C.F.R. § 164.512(a)(1). (2) HIPAA permits certain disclosures for the purpose of health care oversight. 45 C.F.R. § 164.512(d)(1).		No	
§ 32.054 Dental Services	Related/ Not Contrary	Subsections (5)(A) and (B) are related. <u>To the extent the audit and investigation of a dentist requires the disclosure of PHI to HHSC:</u> (1) HIPAA permits appropriately limited disclosure of PHI that is required by law. 45 C.F.R. § 164.512(a)(1). (2) HIPAA permits certain disclosures for the purpose of health care oversight. 45 C.F.R. § 164.512(d)(1).		No	
§ 32.055 Catastrophic Case Management	Not Related	Subsection (c) is related. To the extent the assessment of the recipient's needs requires a covered entity to submit PHI to the department, HIPAA permits appropriately limited disclosure of PHI that is required by law. 45 C.F.R. § 164.512(a)(1).		No	

Texas Human Resources Code

Section	Related/ Contrary	Explanation	Preemption Exception	Is State Law Preempted?	Recommendation
§ 32.060 Third Party Billing Vendors (as added by Acts of May 28, 2003, 78th Leg., R.S., ch. 257, § 7, 2003 Tex. Gen. Laws 1163, 1166.) *(Code contains three sections of 32.060)	Related/ Not Contrary	HIPAA permits the use and disclosure of IIHI in the course of certain treatment, payment, and health care operations. 45 C.F.R. § 164.506.		No	
§ 32.063(b)(3)&(c) Third Party Billing Vendors	Related/ Not Contrary	HIPAA permits the use and disclosure of IIHI in the course of certain treatment, payment, and health care operations. 45 C.F.R. § 164.506.		No	
Title 2: Dept. of Human Services and Dept. of Protective and Regulatory Services					
Chapter 35: Support Services for Persons With Disabilities					
§ 35.003 Eligibility	Related/ Not Contrary	(1) HIPAA permits appropriately limited disclosure of PHI that is required by law. 45 C.F.R. § 164.512(a)(1). (2) HIPAA permits the use and disclosure of IIHI in the course of certain treatment, payment, and health care operations. 45 C.F.R. § 164.506.		No	
§ 35.004 Provision of Assistance and Support Services	Not Related	Requires provision of assistance to compensate for certain services, but does not affect the privacy of PHI.		No	
§ 35.005 Payment of Assistance	Not Related	Sets payment limits and manner of distribution of payment; does not affect the privacy of health information.		No	
§ 35.010 Review of Clients' Needs	Related/ Not Contrary	<u>To the extent the review of each client's needs requires DHS to obtain PHI from a covered entity:</u> (1) HIPAA permits appropriately limited disclosure of PHI that is required by law. 45 C.F.R. § 164.512(a)(1). (2) HIPAA permits certain disclosures for the purpose of health care oversight. 45 C.F.R. § 164.512(d)(1).		No	

Texas Human Resources Code

Section	Related/ Contrary	Explanation	Preemption Exception	Is State Law Preempted?	Recommendation
Title 2: Dept. of Human Services and Dept. of Protective and Regulatory Services Chapter 36: Medicaid Fraud Prevention					
§ 36.003(a) Documentary Material in Possession of State Agency	Related/ Not Contrary	(1) HIPAA permits appropriately limited disclosure of PHI that is required by law. 45 C.F.R. § 164.512(a)(1). (2) HIPAA permits disclosure of PHI to a health oversight agency for oversight activities authorized by law, including certain oversight of government benefit plans. 45 C.F.R. § 164.512(d)(2).		No	
§ 36.054(b) & (e) Civil Investigative Demand	Related/ Not Contrary	(1) <u>As to (a), (d), and (g)</u> : HIPAA permits disclosure of PHI to a health oversight agency for oversight activities authorized by law, including certain oversight of government benefit plans. 45 C.F.R. § 164.512(d)(2). (2) <u>As to (e)</u> : Statute contains a consent provision; Attorney General is not a covered entity, but may be subject to a business associate agreement with regard to the release of information obtained from an agency. 45 C.F.R. § 164.504(e)(1).		No	
§ 36.102(a) & (b) Initiation of Action	Related/ Not Contrary	(1) If "person" is not a covered entity, the HIPAA Privacy Rule does not apply. (2) If "person" is a covered entity, HIPAA permits certain disclosures to the Attorney General for the purpose of health care oversight. 45 C.F.R. § 164.512(d)(1). (3) HIPAA permits appropriately limited disclosure of PHI that is required by law. 45 C.F.R. § 164.512(a)(1).		No	
Title 2: Dept. of Human Services and Dept. of Protective and Regulatory Services Chapter 40: Department of Protective and Regulatory Services					
§ 40.005(b), (c) & (d) Confidentiality of Information	Related/ Not Contrary	No covered entity		No	

Texas Human Resources Code

Section	Related/ Contrary	Explanation	Preemption Exception	Is State Law Preempted?	Recommendation
§ 40.0524(b)& (c)(suppl) Multidisciplinary Teams	Related/ Not Contrary	<p><u>To the extent that members of the multidisciplinary team are covered entities and information exchanged is PHI:</u></p> <p>(1) HIPAA permits disclosure to a governmental authority authorized to receive reports of child abuse or neglect. 45 C.F.R. § 164.512(b)(1)(ii).</p> <p>(2) HIPAA permits the use and disclosure of IIHI in the course of certain treatment, payment, and health care operations. 45 C.F.R. § 164.506.</p>		No	
Title 2: Dept. of Human Services and Dept. of Protective and Regulatory Services Chapter 42: Regulation of Certain Facilities, Homes, and Agencies that Provide Child Care Services					
§ 42.045(b) & (c) Records	Related/ Not Contrary	<p>To the extent a child placing agency has designated itself as a covered entity, and to the extent the information furnished under this statute to DPRS and to the Bureau of Vital Statistics is PHI, HIPAA permits appropriately limited disclosure of PHI that is required by law. 45 C.F.R. § 164.512(a)(1).</p>		No	
Title 2: Dept. of Human Services and Dept. of Protective and Regulatory Services Chapter 48: Investigations and Protective Services for Elderly and Disabled Persons					
§ 48.038(a) & (b)	Related/ Not Contrary	Repealed		No	
§ 48.051 Report	Related/ Not Contrary	<p>HIPAA permits certain disclosures about victims of abuse, neglect, or domestic violence to a government authority authorized to receive such reports. 45 C.F.R. § 164.512(c)(1).</p>		No	

Texas Human Resources Code

Section	Related/ Contrary	Explanation	Preemption Exception	Is State Law Preempted?	Recommendation
§ 48.101 Confidentiality and Disclosure of Information; Agency Exchange of Information	Related/ Not Contrary	DPRS has not identified itself as a covered entity.			
		To the extent the information is PHI maintained by the Department of Human Service, subsection (b) requires disclosure of confidential information only as provided by applicable federal law. It is not impossible for the Department of Human Services to comply with this provision and the Privacy Rule, and the provision is not an obstacle to the accomplishment of HIPAA.		No	
§ 48.102(a) & (b) Reports of Investigations in Schools	Related/ Not Contrary	No covered entity; associated rules are not contrary.		No	
§ 48.103 Notification of Licensing or Contracting Agency	Related/ Not Contrary	No covered entity; DPRS is sharing information with DHS and other agencies. The information remains confidential when exchanged.		No	
§ 48.151 Action on Report	Related/ Not Contrary	Subsection (a) is related.			
		<u>To the extent the investigation requires a covered entity to disclose PHI:</u> (1) HIPAA permits appropriately limited disclosure of PHI that is required by law. 45 C.F.R. § 164.512(a)(1). (2) HIPAA permits certain disclosures about victims of abuse, neglect, or domestic violence to a government authority authorized to receive such reports. 45 C.F.R. § 164.512(c)(1).		No	

Texas Human Resources Code

Section	Related/ Contrary	Explanation	Preemption Exception	Is State Law Preempted?	Recommendation
§ 48.152 Investigation	Related/ Not Contrary	To the extent the investigation includes obtaining PHI from a covered entity: (1) HIPAA permits appropriately limited disclosure of PHI that is required by law. 45 C.F.R. § 164.512(a)(1). (2) HIPAA permits certain disclosures about victims of abuse, neglect, or domestic violence to a government authority authorized to receive such reports. 45 C.F.R. § 164.512(c)(1).		No	
§ 48.153 Access to Information	Not Related	Concerns procedures for gaining access to the residence; does not affect privacy of PHI.		No	
§ 48.154(a) & (f) Access to Records or Documents	Related/ Not Contrary	HIPAA permits certain disclosures about victims of abuse, neglect, or domestic violence to a government authority authorized to receive such reports. 45 C.F.R. § 164.512(c)(1).		No	
§ 48.155 Interference With Investigation or Services Prohibited	Not Related	Does not affect privacy of PHI.		No	
§ 48.156 Agency Reports	Related/ Not Contrary	(1) No covered entity. (2) If another protective service agency is a covered entity, 45 C.F.R. § 164.512(a) permits it to disclose information to DPRS or a court since this statute requires it.		No	
§ 48.157 Report to Law Enforcement Agency	Related/ Not Contrary	To the extent that the investigating agency is a covered entity, (e.g. DHS or MHMR), HIPAA permits certain disclosures about victims of abuse, neglect, or domestic violence to a government authority authorized to receive such reports. 45 C.F.R. § 164.512(c)(1).		No	
§ 48.202 Service Determination by Department or Agency	Not Related	Requires DPRS determination as to the services to be provided; does not affect the privacy of PHI.		No	

Texas Human Resources Code

Section	Related/ Contrary	Explanation	Preemption Exception	Is State Law Preempted?	Recommendation
§ 48.203 Voluntary Protective Services	Not Related	Does not affect privacy of PHI.		No	
§ 48.204 Agency Powers	Not Related	Concerns consent for protective service; does not affect privacy of PHI.		No	
§ 48.205 Provision of Services	Not Related	Does not affect privacy of PHI.		No	
§ 48.206 Cost of Services	Not Related	Requires person to reimburse, if able; does not affect privacy of PHI.		No	
§ 48.207 Objection to Medical Treatment	Not Related	Does not affect privacy of PHI.		No	
§ 48.208(b) Emergency Order for Protective Services	Related/ Not Contrary	No covered entity		No	
§ 48.209 Guardianships	Not Related	Does not affect privacy of PHI.		No	
§ 48.211 Report to Guardianship Court	Related/ Not Contrary	No covered entity		No	
§ 48.252 Investigation of Reports in MHMR Facilities and in Community Centers	Related/ Not Contrary	To the extent the report includes PHI from a covered entity, HIPAA permits certain disclosures about victims of abuse, neglect, or domestic violence to a government authority authorized to receive such reports. 45 C.F.R. § 164.512(c)(1).		No	
§ 48.253 Action on Report	Not Related	To the extent the investigation of the report requires the department to obtain PHI from a covered entity, HIPAA permits certain disclosures about victims of abuse, neglect, or domestic violence to a government authority authorized to receive such reports. 45 C.F.R. § 164.512(c)(1).		No	

Texas Human Resources Code

Section	Related/ Contrary	Explanation	Preemption Exception	Is State Law Preempted?	Recommendation
§ 48.254 Forwarding of Completed Investigation Report	Related/ Not Contrary	No covered entity		No	
§ 48.301(a) & (c) Investigation of Reports in Other State Facilities	Related/ Not Contrary	This provision does not require a covered entity to disclose PHI.		No	
§ 48.304 Statistics	Not Related	Concerns statistics rather than an individual's PHI.		No	
§ 48.353(c)(3) Action on Report	Related/ Not Contrary	HIPAA permits certain disclosures about victims of abuse, neglect, or domestic violence to a government authority authorized to receive such reports. 45 C.F.R. § 164.512(c)(1).		No	
§ 48.354(a) Forwarding of Completed Investigation Report	Related/ Not Contrary	No covered entity		No	
§ 48.403 Finding	Not Related	A finding of reportable conduct for the misconduct registry does not appear to be "health information" as that term is defined by 45 C.F.R. § 160.103.		No	
Title 2: Dept. of Human Services and Dept. of Protective and Regulatory Services Chapter 51: Family Violence Centers					
§ 51.007(suppl) Confidentiality	Related/ Not Contrary	Prohibits DHS from releasing certain information about family violence centers and individuals. To the extent the information that identifies a person receiving services includes PHI, the confidentiality of this law does not prevent an individual's provider from disclosing a designated record set to which the individual has a right of access under 45 C.F.R. § 164.524. See 45 C.F.R. § 164.501 (defining designated record set).		No	
Title 3: Facilities and Services for Children Chapter 61: Texas Youth Council					

Texas Human Resources Code

Section	Related/ Contrary	Explanation	Preemption Exception	Is State Law Preempted?	Recommendation
§ 61.065(b) Notification and Duty to Furnish Information	Related/ Not Contrary	No covered entity		No	
Title 3: Facilities and Services for Children					
Chapter 73: Interagency Council on Early Childhood Intervention Services					
§ 73.0051(i) & (k) Powers and Duties of Council	Related/ Not Contrary	The Council on Early Childhood Intervention Services is not a covered entity. To the extent this law requires the Council to obtain PHI from a covered entity, HIPAA permits disclosure for certain public health activities, including the prevention and control of disability. 45 C.F.R. § 164.512(b).		No	
Title 4: Services for the Deaf					
Chapter 81: Texas Commission for the Deaf and Hard of Hearing					
§ 81.014 Informing the Public; Complaints	Related/ Not Contrary	(1) This law does not authorize the Commission to obtain information from a covered entity. (2) For rules that require a covered entity to submit PHI to the Commission, HIPAA permits certain disclosures for the purpose of health care oversight. 45 C.F.R. § 164.512(d)(1).		No	
Title 4: Services for the Deaf					
Chapter 82: Confidentiality of Interpreted, Transliterated, or Relayed Conversations					
§ 82.002 Confidentiality of Conversations	Related/ Not Contrary	No covered entity		No	
§ 82.003 Criminal Penalty	Related/ Not Contrary	No covered entity		No	
Title 5: Services for the Blind and Visually Handicapped					
Chapter 91: Texas Commission for the Blind					

Texas Human Resources Code

Section	Related/ Contrary	Explanation	Preemption Exception	Is State Law Preempted?	Recommendation
§ 91.018(c) Relations With Public	Related/ Not Contrary	(1) This law does not authorize the Commission to obtain information from a covered entity. (2) For rules that require a covered entity to submit PHI to the Commission, HIPAA permits certain disclosures for the purpose of health care oversight. 45 C.F.R. § 164.512(d)(1).		No	
§ 91.028 Services for Children With Visual Impairments	Related/ Not Contrary	(1) This law does not authorize the Commission to obtain information from a covered entity. (2) For rules that require a covered entity to submit PHI to the Commission, HIPAA permits certain disclosures for the purpose of health care oversight. 45 C.F.R. § 164.512(d)(1).		No	
§ 91.059 Misuse of Information	Related/ Not Contrary	Prohibits disclosure of information concerning application for or recipient of vocational rehabilitation services for the blind, which could include PHI. However, the Commission is not a covered entity.		No	
Title 6: Services for the Elderly					
Chapter 101: Texas Department on Aging					
§ 101.0255(d) Services Standards and Agreements	Related/ Not Contrary	HIPAA permits the use and disclosure of IHI in the course of certain treatment, payment, and health care operations. 45 C.F.R. § 164.506.		No	
§ 101.057 Investigations	Related/ Not Contrary	The statute expressly gives the ombudsman access to individuals, rather than PHI, which does not affect the disclosure of PHI.		No	
§ 101.058 Access to Records and Confidentiality	Related/ Not Contrary	This statute, as well as 40 TAC § 83.11(e), requires the state ombudsman to have access to patient care records of elderly residents of long-term care facilities. (1) HIPAA permits certain disclosures for the purpose of health care oversight, including access to patient records for health care oversight. 45 C.F.R. § 164.512(d)(1). (2) The ombudsman has not designated itself a covered entity.		No	

Texas Human Resources Code

Section	Related/ Contrary	Explanation	Preemption Exception	Is State Law Preempted?	Recommendation
§ 101.059 Reporting System	Related/ Not Contrary	HIPAA permits appropriately limited disclosure of PHI that is required by law. 45 C.F.R. § 164.512(a)(1).		No	
Title 6: Services for the Elderly Chapter 102: Rights of the Elderly					
§ 102.003 Rights of the Elderly	Related/ Not Contrary as to (j)	(1) HIPAA permits certain disclosures of PHI to the individual. 45 C.F.R. § 164.502(a). (2) HIPAA permits the use and disclosure of IHI in the course of certain treatment, payment, and health care operations. 45 C.F.R. § 164.506. (3) A covered entity can comply with this section and HIPAA.		No	
§ 102.004 List of Rights	Not Related	Requires provider to give an elderly individual a list of rights; does not affect the privacy of PHI.		No	
Title 6: Services for the Elderly Chapter 105: Residential Facilities for the Elderly					
§ 105.003 Disclosure Required in Contract	Related/ Not Contrary	Does not affect the privacy of PHI.		No	
Title 7: Rehabilitation of Individuals With Disabilities Chapter 111: Texas Rehabilitation Commission					
§ 111.018(b) Administrative Regulations and Policies	Related/ Not Contrary	No covered entity		No	
§ 111.026(c)(d)&(e) Public Interest Information; Complaints	Related/ Not Contrary	No covered entity		No	
§ 111.057 Unlawful Use of Lists of Names	Related/ Not Contrary	Statute authorizes receipt of client information from other state agencies unless precluded by federal law or regulation; no covered entity.		No	
Title 7: Rehabilitation of Individuals With Disabilities Chapter 112: Developmental Disabilities					

Texas Human Resources Code

Section	Related/ Contrary	Explanation	Preemption Exception	Is State Law Preempted?	Recommendation
§ 112.021 Protection and Advocacy of Individual Rights	Related/ Not Contrary	To the extent the records are PHI obtained from a covered entity, HIPAA permits appropriately limited disclosure of PHI that is required by law. 45 C.F.R. § 164.512(a)(1).		No	
§ 112.0201 Complaints	Related/ Not Contrary	(1) This law does not authorize the Commission to obtain information from a covered entity. (2) For rules that require a covered entity to submit PHI to the Commission, HIPAA permits certain disclosures for the purpose of health care oversight. 45 C.F.R. § 164.512(d)(1).		No	
Title 7: Rehabilitation of Individuals With Disabilities Chapter 115: Governor's Committee on People With Disabilities					
§ 115.011 Complaints	Related/ Not Contrary	(1) The complaint information does not appear to be PHI obtained from a covered entity. (2) For rules that require a covered entity to submit PHI to the Commission, HIPAA permits certain disclosures for the purpose of health care oversight. 45 C.F.R. § 164.512(d)(1).		No	
Title 7: Rehabilitation of Individuals With Disabilities Chapter 117: Department of Assistive and Rehabilitative Services					
§ 117.072 Information Regarding Complaints	Related/ Not Contrary	The complaint information received by the Department of Assistive and Rehabilitative Services does not appear to be PHI obtained from a covered entity.		No	
Title 7: Rehabilitation of Individuals With Disabilities Chapter 122: Texas Council on Purchasing From People With Disabilities					
§ 122.009(a) & (b) Records	Related/ Not Contrary	No covered entity		No	
§ 122.020(b),(c),(d) Consumer Information; Complaints	Related/ Not Contrary	No covered entity		No	

Texas Human Resources Code

Section	Related/ Contrary	Explanation	Preemption Exception	Is State Law Preempted?	Recommendation
§ 122.0215 Access to Information and Records; Inspection	Related/ Not Contrary	The information to which access is authorized does not appear to be PHI from a covered entity.		No	
Title 11: Aging, Community-Based, and Long Term Care Services Chapter 161: Department of Aging and Disability Services					
§ 161.072 Information Regarding Complaints	Related/ Not Contrary	To the extent the Department of Aging and Disability Services may contain a component that is a covered entity, the statute does not affect the privacy of PHI given that the complaint information would seem to be voluntarily submitted to the department by the complainant and does not appear to consist of PHI from a covered entity.		No	

Texas Insurance Code

Section/Article	Related/ Contrary	Explanation	Preemption Exception	Is State Law Preempted?	Recommendation
Title 1: The Insurance Code of 1951					
Chapter 1: The Board, Its Powers and Duties					
		<p><u>As to subsections (2)(d), (d-1), & (e):</u> (1) HIPAA permits appropriately limited disclosure of PHI that is required by law. 45 C.F.R. § 164.512(a)(1). (2) HIPAA permits disclosure for certain law enforcement purposes. 45 C.F.R. § 164.512(f).</p>			
Art. 1.10D Insurance Fraud Unit	Related/ Not Contrary	<p><u>As to subsection (3):</u> HIPAA permits disclosure for certain law enforcement purposes. 45 C.F.R. § 164.512(f).</p> <p><u>As to subsection (4):</u> HIPAA permits appropriately limited disclosure of PHI that is required by law. 45 C.F.R. § 164.512(a)(1).</p> <p><u>As to subsections (5), (6) & (7):</u> These do not address disclosure of PHI.</p>		No	
Art. 1.15A Independent Audit of Financial Statements	Not Related	Relates to financial statements.		No	
Art. 1.35A Office of Public Insurance Counsel	Related/ Not Contrary	Not contrary because the statute authorizes OPIC to obtain the information by law.		No	
Title 1: The Insurance Code of 1951					
Chapter 5: Rating and Policy Forms					

Texas Insurance Code

Section/Article	Related/ Contrary	Explanation	Preemption Exception	Is State Law Preempted?	Recommendation
Art. 5.58 Rate Administration for Workers' Compensation Insurance Policies; Claims Reports	Related/ Not Contrary	(1) The HIPAA definition of "health plans" in 45 C.F.R. § 164.103 does not include workers' compensation insurers. (2) Even if a workers' compensation insurer were a covered entity, 45 C.F.R. § 164.512(l) provides that a covered entity may disclose protected health information to the extent necessary to comply with workers' compensation programs.		No	
Art. 5.76-3 Texas Mutual Insurance Company	Not Related	(1) The HIPAA definition of "health plans" in 45 C.F.R. § 164.103 does not include workers' compensation insurers. (2) Even if a workers' compensation insurer were a covered entity, 45 C.F.R. § 164.512(l) provides that a covered entity may disclose protected health information to the extent necessary to comply with workers' compensation programs.		No	
Art. 5.76-4 Company as Insurer of Last Resort	Not Related	(1) The HIPAA definition of "health plans" in 45 C.F.R. § 164.103 does not include workers' compensation insurers. (2) Even if a workers' compensation insurer were a covered entity, 45 C.F.R. § 164.512(l) provides that a covered entity may disclose protected health information to the extent necessary to comply with workers' compensation programs.		No	

Title 1: The Insurance Code of 1951
Chapter 21: General Provisions

Texas Insurance Code

Section/Article	Related/ Contrary	Explanation	Preemption Exception	Is State Law Preempted?	Recommendation
Art. 21.07-5 Public Insurance Adjusters	Related/ Not Contrary	A licensee is not a covered entity.		No	
Art. 21.21 Unfair Competition and Unfair Practices	Related/ Not Contrary	<p>TDI is a health oversight agency and the use or disclosure of this information to a health oversight agency is not contrary to HIPAA.</p> <p>(1) HIPAA permits certain disclosures for the purpose of health care oversight. 45 C.F.R. § 164.512(d)(1).</p> <p>(2) HIPAA permits appropriately limited disclosure of PHI that is required by law. 45 C.F.R. § 164.512(a)(1).</p> <p>(3) HIPAA permits disclosure for certain law enforcement purposes. 45 C.F.R. § 164.512(f).</p>		No	

Texas Insurance Code

Section/Article	Related/ Contrary	Explanation	Preemption Exception	Is State Law Preempted?	Recommendation
Art. 21.28 Liquidation, Rehabilitation, Reorganization or Conservation of Insurers	Related/ Not Contrary	<p>The Commissioner of Insurance (or his designee) acts as receiver of an insurer placed in receivership under Art. 21.28.</p> <p>TDI is considered a health oversight agency. HIPAA permits certain disclosures for the purpose of health care oversight. 45 C.F.R. § 164.512(d)(1).</p> <p>Moreover, any disclosure to the receiver would be required by law, and HIPAA permits appropriately limited disclosure of PHI that is required by law. 45 C.F.R. § 164.512(a)(1).</p> <p>Such disclosure would also be pursuant to judicial or administrative order, and HIPAA permits a covered entity to disclose PHI in the course of a judicial or administrative proceeding in response to a court order. 45 C.F.R. § 164.512(e)(1)(i).</p>		No	

Texas Insurance Code

Section/Article	Related/ Contrary	Explanation	Preemption Exception	Is State Law Preempted?	Recommendation
		The Supervisor or Conservator of an insurer placed in supervision or conservation under Art. 21.28A is an agent of the Commissioner of Insurance.			
Art. 21.28-A Insurer Delinquencies and Prevention of Insurer Delinquencies; Supervision of Insurers and Proceedings, Conservatorships, Liquidations - Additional and Alternate Provisions	Related/ Not Contrary	TDI is considered a health oversight agency. HIPAA permits certain disclosures for the purpose of health care oversight. 45 C.F.R. § 164.512(d)(1). Moreover, any disclosure to the Supervisor or Conservator would be required by law, and HIPAA permits appropriately limited disclosure of PHI that is required by law. 45 C.F.R. § 164.512(a)(1). Such disclosure would also be pursuant to judicial or administrative order, and HIPAA permits a covered entity to disclose PHI in the course of a judicial or administrative proceeding in response to a court order. 45 C.F.R. § 164.512(e)(1)(i).		No	
Art. 21.49-3b Joint Underwriting Associations	Not Related			No	
Art. 21.49-19 Health Benefit Claim Cost Information Required to be Provided to Employer	Not Related	Statute specifically requires de-identified information.		No	

Texas Insurance Code

Section/Article	Related/ Contrary	Explanation	Preemption Exception	Is State Law Preempted?	Recommendation
Art. 21.58A Health Care Utilization Review Agents	Related/ Not Contrary	<p>Subsections 1-4, 6 & 7 are not disclosure statutes.</p> <p><u>As to Subsection 5:</u> (1) HIPAA permits certain disclosures of PHI to the individual. 45 C.F.R. § 164.502(a) (2) HIPAA permits the use and disclosure of IIHI in the course of certain treatment, payment, and health care operations. 45 C.F.R. § 164.506.</p> <p><u>As to Subsection 6A:</u> (1) HIPAA permits appropriately limited disclosure of PHI that is required by law. 45 C.F.R. § 164.512(a)(1). (2) HIPAA permits the use and disclosure of IIHI in the course of certain treatment, payment, and health care operations. 45 C.F.R. § 164.506.</p>		No	
Article 21.58A Sec. 8(b) Confidentiality	Related/ Not Contrary	<p>Sec. 8(b) requires that the authorization must (1) be dated and (2) contain the signature of the individual who is the subject of the personal or confidential information requested and the signature must have been obtained one year or less prior to the date of the disclosure.</p> <p>45 C.F.R. § 164.502 (a)(1)(iv) permits use and disclosure pursuant to a valid authorization. 45 C.F.R. § 164.508 requires an authorization to contain very specific enumerated elements.</p> <p>Sec. 8(b) authorizations must comply with the requirements of 45 C.F.R. § 164.508. See text of Report on "Written Authorizations."</p>		No	May want to clarify this by amending the clause that reads "or as otherwise required by law" to read "provided that authorization complies with federal privacy law and other applicable law."

Texas Insurance Code

Section/Article	Related/ Contrary	Explanation	Preemption Exception	Is State Law Preempted?	Recommendation
		Sec. 8(c) authorizes a utilization review agent (URA) to provide confidential information to a third party under contract or affiliated with the URA for assisting with UR.			
Article 21.58A Sec. 8(c)	Related/ Not Contrary	45 C.F.R. § 164.504(e) requires that the URA and the third party execute a business associate agreement. It appears to be possible to comply with both HIPAA and this state law if the URA also complies with the Business Associate Agreement requirements of HIPAA when releasing the information to a third party that is not a covered entity.		No	
		Sec. 8(e) permits a URA to charge a reasonable fee to be set by rule of the Commissioner for providing copies of personal information to individuals.			
Article 21.58A Sec. 8(e)	Related/ Not Contrary	The Commissioner's rules should not be more onerous than the requirements of 45 C.F.R. § 164.524(c)(4), which sets out what may be included in the fee. See text of Report on "Cost for Copies."		No	
		Sec. 8(f) allows a URA to provide information to an independent review organization (IRO).			
Article 21.58A Sec. 8(f)	Related/ Not Contrary	HIPAA permits the use and disclosure of PHI in the course of certain treatment, payment, and health care operations. 45 C.F.R. § 164.506.		No	

Texas Insurance Code

Section/Article	Related/ Contrary	Explanation	Preemption Exception	Is State Law Preempted?	Recommendation
Article 21.58A Sec. 8(g)	Related/ Not Contrary	Sec. 8(g) requires URA to destroy information when URA determines it is no longer needed. See text of Report "Recurring Issues-Records Retention."		No	
Article 21.58A Secs. 8(i) and 9	Related/ Not Contrary	<p><u>Uses and disclosures required by Secs. 8(i) and 9 are all authorized by HIPAA:</u></p> <p>(1) HIPAA permits certain disclosures for the purpose of health care oversight. 45 C.F.R. § 164.512(d)(1).</p> <p>(2) HIPAA permits appropriately limited disclosure of PHI that is required by law. 45 C.F.R. § 164.512(a)(1).</p> <p>(3) HIPAA permits disclosure for certain law enforcement purposes. 45 C.F.R. § 164.512(f).</p>		No	

Texas Insurance Code

Section/Article	Related/ Contrary	Explanation	Preemption Exception	Is State Law Preempted?	Recommendation
Art. 21.73 Use of Genetic Testing Information by Insurers	Related/ Not Contrary	<p><u>As to Subsection 4(d)(2):</u> HIPAA permits disclosure for certain law enforcement purposes. 45 C.F.R. § 164.512(f).</p> <p><u>As to Subsections 4(c)(4) and (5):</u> They are broader than HIPAA; (1) 45 C.F.R. § 164.512(f)(4) allows disclosure about a decedent to a law enforcement official for the purpose of alerting law enforcement of the death of the individual if criminal conduct is suspected. (2) 45 C.F.R. § 164.512(g), which allows disclosure to coroners, medical examiners, and funeral directors. See "Recurring Issues - Decedents" in text of Report.</p> <p><u>As to Subsection 4(d)(1):</u> It permits disclosure for actuarial report or research studies if a tested individual may not be identified in any actuarial or research report and any materials that identify a tested individual are returned or destroyed as soon as reasonably practicable. See text of Report "Recurring Issues-Records Retention").</p>		No	
Chapter 28B Privacy of Health Information	Related/ Not Contrary	"Covered entities" are not subject to Chapter 28B. See Art. 28B.05.		No	
Title 2: Texas Department of Insurance Chapter 36: Department Rules and Procedures					
§ 36.159 Privileged and Confidential Records & Information; Protective Orders	Related/ Not Contrary	Once introduced into evidence, it is no longer personal health information (PHI).		No	
Title 2: Texas Department of Insurance Chapter 38: Data Collection and Reports					

Texas Insurance Code

Section/Article	Related/ Contrary	Explanation	Preemption Exception	Is State Law Preempted?	Recommendation
§ 38.001 Inquiries	Related/ Not Contrary	HIPAA permits appropriately limited disclosure of PHI that is required by law. 45 C.F.R. § 164.512(a)(1).		No	
§ 38.106 Information Confidential	Related/ Not Contrary	This is not a disclosure statute. It provides that reports made to the commissioner under other provisions of the subchapter may not be disclosed to the public if the commissioner determines that such information would reveal or might reveal the identity of an individual. The section also provides that the information is not subject to public disclosure to the extent it is protected under Chapter 552, Gov't Code.		No	
§ 38.162 Information Confidential	Related/ Not Contrary	Provides that the information included in a closed claim report is confidential and may not be made available by TDI to the public.		No	
Title 6: Organization of Insurers and Related Entities					
Chapter 843: Health Maintenance Organizations					
§ 843.102 Health Maintenance Organization Quality Assurance	Related/ Not Contrary	<p>TDI is a health oversight agency and the use or disclosure of this information to a health oversight agency is not contrary to HIPAA.</p> <p>(1) HIPAA permits certain disclosures for the purpose of health care oversight. 45 C.F.R. § 164.512(d)(1).</p> <p>(2) HIPAA permits appropriately limited disclosure of PHI that is required by law. 45 C.F.R. § 164.512(a)(1).</p> <p>(3) HIPAA permits disclosure for certain law enforcement purposes. 45 C.F.R. § 164.512(f).</p>		No	

Texas Insurance Code

Section/Article	Related/ Contrary	Explanation	Preemption Exception	Is State Law Preempted?	Recommendation
§ 843.156 Examinations	Related/ Not Contrary	<p>TDI is a health oversight agency and the use or disclosure of this information to a health oversight agency is not contrary to HIPAA. It is possible for a covered entity to comply with both.</p> <p>(1) HIPAA permits certain disclosures for the purpose of health care oversight. 45 C.F.R. § 164.512(d)(1).</p> <p>(2) HIPAA permits appropriately limited disclosure of PHI that is required by law. 45 C.F.R. § 164.512(a)(1).</p> <p>(3) HIPAA permits disclosure for certain law enforcement purposes. 45 C.F.R. § 164.512(f).</p>		No	

**Title 8: Health Insurance and Other Health Coverage
Chapter 1551: Texas Employees Group Benefits Act**

Texas Insurance Code

Section/Article	Related/ Contrary	Explanation	Preemption Exception	Is State Law Preempted?	Recommendation
§ 1551.063 Confidentiality of Certain Records	Related/ Not Contrary	<p>It is not impossible for a covered entity to comply with both HIPAA and Subsections (a), (b), (c)(1) & (3), and (e) of this statute.</p> <p>Subsection (c)(2) authorizes the board of trustees to release the records to another governmental entity. HIPAA permits a covered entity to disclose PHI in the course of a judicial or administrative proceeding in response to a court order. 45 C.F.R. § 164.512(e)(1)(i). If such disclosure is not made pursuant to 45 C.F.R. § 164.512(e)(1)(i) or another authorized use or disclosure provision of HIPAA, the governmental authority must comply with HIPAA's restrictions on use or disclosure.</p> <p>Subsection (c)(4) authorizes release to a party in response to a subpoena issued under applicable law. HIPAA permits a covered entity to disclose PHI in response to subpoenas. 45 C.F.R. § 164.512(f)(1)(i)(A).</p>		No	
Title 8: Health Insurance and Other Health Coverage					
Chapter 1575: Texas Public School Employees Group Benefits Program					
§ 1575.255 Proof of Compliance	Not Related			No	
§ 1575.360 Confidentiality	Related/ Not Contrary	<p>Not contrary because HIPAA recognizes the confidentiality of credentialing committee records in definition of "health care operations."</p> <p>HIPAA permits the use and disclosure of IIHI in the course of certain treatment, payment, and health care operations. 45 C.F.R. § 164.506.</p>		No	

Texas Labor Code

Section	Related/ Contrary	Explanation	Preemption Exception	Is State Law Preempted?	Recommendation
Title 1: General Provisions					
Chapter 1 General Provisions	Not Related			No	
Title 2: Protection of Laborers					
Chapter 21: Employment Discrimination					
§ 21.204 Investigation by Commission	Related/ Not Contrary	<p>This provision requires the Texas Workforce Commission on Human Rights to investigate employment discrimination complaints.</p> <p>To the extent that this involves gathering records regarding a complaint of disability discrimination or discrimination based on genetic information, this law relates to privacy of IIHI.</p> <p>This law is not contrary to HIPAA because the Texas Workforce Commission on Human Rights is not a covered entity, and because it involves employment records, which are excepted from the definition of PHI pursuant to 45 C.F.R. § 160.103.</p> <p>This provision prohibits the Texas Workforce Commission on Human Rights from disclosing to the public information it gathers in investigating employment discrimination complaints.</p>		No	
§ 21.304 Confidentiality of Records	Related/ Not Contrary	<p>To the extent that this deals with disability discrimination or discrimination based on genetic information, this law relates to privacy of IIHI.</p> <p>This law is not contrary to HIPAA because the Texas Workforce Commission on Human Rights is not a covered entity, and because it involves employment records, which are excepted from the definition of PHI pursuant to 45 C.F.R. § 160.103.</p>		No	

Texas Labor Code

Section	Related/ Contrary	Explanation	Preemption Exception	Is State Law Preempted?	Recommendation
§ 21.305 Access to Commission Records	Related/ Not Contrary	This provision allows a party to an employment discrimination complaint to have access to the complaint records held by the Texas Workforce Commission on Human Rights.			
		To the extent that this deals with disability discrimination or discrimination based on genetic information, this law relates to privacy of IIHI.		No	
§ 21.306 Subpoena of Record or Report	Related/ Not Contrary	This law is not contrary to HIPAA because the Texas Workforce Commission on Human Rights is not a covered entity, and because it involves employment records, which are excepted from the definition of PHI pursuant to 45 C.F.R. § 160.103.			
		This provision relates to confidentiality of records of employment discrimination complaints and allows the Texas Workforce Commission on Human Rights to issue a subpoena for the complaint records if the person fails to allow access to them, or obtain an order from a district court if the person does not comply with the subpoena.		No	
		To the extent that this deals with disability discrimination or discrimination based on genetic information, it relates to privacy of IIHI.			
		This law is not contrary to HIPAA because the Texas Workforce Commission on Human Rights is not a covered entity.			

Texas Labor Code

Section	Related/ Contrary	Explanation	Preemption Exception	Is State Law Preempted?	Recommendation
<p>§ 21.403 Confidentiality of Genetic Information</p>	<p>Related/ Not Contrary</p>	<p>This law relates to employment discrimination based on genetic information, which is defined generally as the presence or absence of genetic characteristics which are medically and scientifically believed to predispose an individual to a disease, disorder, or syndrome.</p> <p>This provision states: "Except as provided by § 21.4031, genetic information is confidential and privileged regardless of the source of the information" and "a person who holds genetic information about an individual may not disclose or be compelled to disclose, by subpoena or otherwise, that information unless the disclosure is specifically authorized as provided by § 21.4032 [allowing disclosure if written authorization]."</p> <p>This law is not contrary to HIPAA because a covered entity could comply with this law and with the requirements under HIPAA. In a sense, this law is more stringent than HIPAA because HIPAA permits disclosure of PHI in response to a subpoena if the requesting party provides satisfactory assurances, such as an attempt to obtain a qualified protective order, pursuant to 45 C.F.R. § 164.512(e)(1)(ii), dealing with uses and disclosures related to judicial or administrative proceedings.</p>		<p>No</p>	

Texas Labor Code

Section	Related/ Contrary	Explanation	Preemption Exception	Is State Law Preempted?	Recommendation
§ 21.4031 Exceptions to Confidentiality	Related/ Not Contrary	<p>This law provides exceptions to the confidentiality of genetic information, sets out instances where an authorization is not required for disclosure of the genetic information, and makes exceptions to confidentiality.</p> <p>This law is not contrary to HIPAA because a covered entity could comply with this law and with the requirements under HIPAA. Covered entities should note HIPAA requirements for use and disclosure for:- law enforcement purposes under 45 C.F.R. § 164.512(f);- judicial and administrative proceedings under 45 C.F.R. § 164.512(e)(1)(i); -of a deceased person's PHI only to coroners and medical examiners under 45 C.F.R. § 164.512(g);- for research purposes under 45 C.F.R. § 164.512(i);- vital statistics reporting for public health under 45 C.F.R. § 164.512(b)(1)(i).</p>		No	
§ 21.4032 Authorized Disclosure	Related/ Not Contrary	<p>This law allows written authorization for disclosure of genetic information to the individual or their legal representative. The authorization must contain: "(1) a description of the information to be disclosed; (2) the name of the person to whom the disclosure is made; and (3) the purpose for the disclosure."</p> <p>This law is not contrary to HIPAA because a covered entity could comply with this law and with the requirements under HIPAA. Covered entities should note HIPAA requirements for a written authorization under 45 C.F.R. § 164.508(c).</p>		No	

Texas Labor Code

Section	Related/ Contrary	Explanation	Preemption Exception	Is State Law Preempted?	Recommendation
<p>§ 21.404 Disclosure of Test Results to Individual Tested</p>	Related/ Not Contrary	<p>This law requires disclosure of genetic test results to the individual who submitted to the genetic test or to a physician designated by the individual.</p> <p>This law is not contrary to HIPAA because a covered entity could comply with this law and with the requirements under HIPAA.</p> <p>Covered entities should note HIPAA requirements for denial of access to PHI listed at 45 C.F.R. § 164.524(a)(2) and (a)(3). For instance, access may be denied if a licenced health care professional determines provision of access is reasonably likely to endanger or cause harm to the individual or another person under 45 C.F.R. § 164.524(a)(3)(i), (ii), and (iii).</p>		No	
<p>§ 21.405 Destruction of Sample Material; Exceptions</p>	Related/ Not Contrary	<p>This law requires material obtained from an individual for a genetic test to be destroyed except in certain circumstances. Sample "material" may be "information" under HIPAA, at 45 C.F.R. § 160.103, with respect to which there is a reasonable basis to believe the information can be used to identify the individual.</p> <p>This law is not contrary to HIPAA because a covered entity could comply with this law and with the requirements under HIPAA. Covered entities should note HIPAA contains additional requirements for a written authorization under 45 C.F.R. § 164.508, or for research under 45 C.F.R. § 164.512(i), use and disclosure for judicial proceedings at 45 C.F.R. § 164.512(e), and for public health activities at 45 C.F.R. § 164.512(b).</p>		No	

Title 2: Protection of Laborers

Texas Labor Code

Section	Related/ Contrary	Explanation	Preemption Exception	Is State Law Preempted?	Recommendation
Chapter 22 Employment Discrimination for Participating in Emergency Evacuation	Not Related			No	
Chapter 51 Employment of Children	Not Related			No	
Chapter 52 Miscellaneous Restrictions	Not Related			No	
Chapter 62 Minimum Wage	Not Related			No	
Chapter 63 Action on Assignment of Wages	Not Related			No	
Chapter 64 Redemption of Employer's Evidences of Indebtedness for Wages	Not Related			No	
Chapter 81 Work and Family Policies	Not Related			No	
Chapter 82 Discharge of Liability under Certain Employee Benefit Plans	Not Related			No	
Chapter 91 Staff Leasing Services	Not Related			No	
Chapter 92 Temporary Common Worker Employers	Not Related			No	

Texas Labor Code

Section	Related/ Contrary	Explanation	Preemption Exception	Is State Law Preempted?	Recommendation
Chapter 93 Temporary Employment Services	Not Related			No	
Title 3: Employer-Employee Relations					
Chapter 101 Labor Organizations	Not Related			No	
Chapter 102 Labor Arbitration	Not Related			No	
Chapter 103 Disclosure by Employer of Information Regarding Certain Employees or Former Employees	Not Related			No	
Title 4: Employment Services and Unemployment					
Chapter 201 Unemployment Compensation Act--General Provisions	Not Related			No	
Chapter 202 Texas Employment Commission	Not Related			No	
Chapter 203 Financing and Funds	Not Related			No	
Chapter 204 Contributions	Not Related			No	
Chapter 205 Reimbursements	Not Related			No	
Chapter 206 Unemployment Insurance Coverage	Not Related			No	
Chapter 207 Benefits	Not Related			No	
Chapter 208 Benefit Claims	Not Related			No	

Texas Labor Code

Section	Related/ Contrary	Explanation	Preemption Exception	Is State Law Preempted?	Recommendation
Chapter 209 Extended Benefits	Not Related			No	
Chapter 210 Back Pay Awards; Lost or Misplaced Warrants	Not Related			No	
Chapter 211 Reciprocal Arrangements	Not Related			No	
Chapter 212 Dispute Resolution	Not Related			No	
Chapter 213 Enforcement of Texas Unemployment Compensation Act	Not Related			No	
Chapter 214 Offenses, Penalties, and Sanctions	Not Related			No	
Chapter 215 Shared Work Unemployment Compensation Program	Not Related			No	
Chapter 301 Texas Workforce Commission	Not Related			No	
Chapter 302 Division of Workforce Development	Not Related			No	
Chapter 303 Skills Development Fund	Not Related			No	
Chapter 304 Counseling for Displaced Homemakers or Workers	Not Related			No	

Texas Labor Code

Section	Related/ Contrary	Explanation	Preemption Exception	Is State Law Preempted?	Recommendation
Chapter 305 Texas Career Opportunity Grant Program	Not Related			No	
Chapter 306 Project Rio (Reintegration of Offenders)	Not Related			No	
Chapter 307 Employment Service	Not Related			No	
Chapter 308 Texans Work Program	Not Related			No	
Chapter 309 Self-Sufficiency Fund	Not Related			No	
Chapter 310 Child-Care Resource and Referral Network	Not Related			No	
Chapter 311 Voluntary Workforce Training for Certain Students	Not Related			No	
Title 5: Workers' Compensation					
Chapter 401 General Provisions	Not Related			No	
Title 5: Workers' Compensation					
Chapter 402: Texas Workers' Compensation Commission					
§ 402.083 Confidentiality of Injury Information	Related/ Not Contrary	This law makes employee injury claim information/files confidential, except where an employee has been finally adjudicated of wrongfully receiving payment under this Title. This law is not contrary to HIPAA because it falls within the HIPAA allowable use and disclosure for compliance with workers' compensation laws pursuant to 45 C.F.R. § 164.512(l).		No	

Texas Labor Code

Section	Related/ Contrary	Explanation	Preemption Exception	Is State Law Preempted?	Recommendation
§ 402.084 Record Check; Release of Information	Related/ Not Contrary	<p>This law provides for release of the employee claim information that is confidential under § 401.083.</p> <p>This law is not contrary to HIPAA because it falls within the HIPAA allowable use and disclosure for compliance with workers' compensation laws pursuant to 45 C.F.R. § 164.512(l).</p> <p>This law makes exceptions to confidentiality of employee claim information.</p>		No	
§ 402.085 Exceptions to Confidentiality	Related/ Not Contrary	<p>This law is not contrary to HIPAA because it falls within the HIPAA allowable use and disclosure for compliance with workers' compensation laws, 45 C.F.R. § 164.512(l).</p> <p>This law makes employee claim information confidential when released to any person, except when used in court for the purposes of an appeal, and does not prohibit an employer from releasing information about a former employee to another employer with whom the employee has applied for employment, if that information was lawfully acquired by the employer releasing the information.</p>		No	
§ 402.086 Transfer of Confidentiality	Related/ Not Contrary	<p>This law is not contrary to HIPAA because it falls within the HIPAA allowable use and disclosure for compliance with workers' compensation laws, 45 C.F.R. § 164.512(l).</p> <p>This law allows a prospective employer to obtain the claim file on an applicant employee if the employee gives written authorization for the release of their claims file.</p>		No	
§ 402.087 Information Available to Prospective Employers	Related/ Not Contrary	<p>This law is not contrary to HIPAA because it falls within the HIPAA allowable use and disclosure for compliance with workers' compensation laws, 45 C.F.R. § 164.512(l).</p>		No	

Texas Labor Code

Section	Related/ Contrary	Explanation	Preemption Exception	Is State Law Preempted?	Recommendation
§ 402.088 Report of Prior Injury	Related/ Not Contrary	This law allows the commission to release claim records to prospective employers. This law is not contrary to HIPAA because it falls within the HIPAA allowable use and disclosure for compliance with workers' compensation laws pursuant to 45 C.F.R. § 164.512(l). This law requires the commission to release de-identified claim information.		No	
§ 402.090 Statistical Information	Related/ Not Contrary	This law is not contrary to HIPAA because it falls within the HIPAA allowable use and disclosure for compliance with workers' compensation laws pursuant to 45 C.F.R. § 164.512(l). This law makes unauthorized release of employee claims files an offense.		No	
§ 402.091 Failure to Maintain Confidentiality; Offense; Penalty	Related/ Not Contrary	This law is not contrary to HIPAA because it falls within the HIPAA allowable use and disclosure for compliance with workers compensation laws pursuant to 45 C.F.R. § 164.512(l). This law makes the commission's investigation files confidential.		No	
§ 402.092 Investigation Files Confidential	Related/ Not Contrary	This law is not contrary to HIPAA because it falls within the HIPAA allowable use and disclosure for compliance with workers compensation laws pursuant to 45 C.F.R. § 164.512(l).		No	
Chapter 403 Commission Financing	Not Related			No	
Chapter 404	Repealed			N/A	
Chapter 405 Workers' Compensation Research	Not Related			No	

Texas Labor Code

Section	Related/ Contrary	Explanation	Preemption Exception	Is State Law Preempted?	Recommendation
Chapter 406 Workers' Compensation Insurance Coverage	Not Related			No	
Chapter 407 Self-Insurance Regulation	Not Related			No	
Chapter 407A Group Self-insurance Coverage	Not Related			No	
Title 5: Workers' Compensation					
Chapter 408: Worker's Compensation Benefits					
§ 408.125 Workers' Compensation Benefits	Related/ Not Contrary	This law allows a designated doctor to review an employee's confidential information in order to evaluate the employee's impairment rating. This law is not contrary to HIPAA because it falls within the HIPAA allowable use and disclosure for compliance with workers' compensation laws pursuant to 45 C.F.R. § 164.512(l).		No	
Chapter 409 Compensation Procedures	Not Related			No	
Chapter 410 Adjudication of Disputes	Not Related			No	
Title 5: Workers' Compensation					
Chapter 411: Workers' Health and Safety					
§ 411.034 Confidentiality Requirement; Offense; Penalty	Related/ Not Contrary	This law makes the identity of an employee in an injury report with the commission confidential. This law is not contrary to HIPAA because it falls within the HIPAA allowable use and disclosure for compliance with workers' compensation laws pursuant to 45 C.F.R. § 164.512(l).		No	

Texas Labor Code

Section	Related/ Contrary	Explanation	Preemption Exception	Is State Law Preempted?	Recommendation
Chapter 412 State Office of Risk Management	Not Related			No	
Title 5: Workers' Compensation					
Chapter 413: Medical Review					
§ 413.008 Information from Insurance Carriers; Administrative Violation	Related/ Not Contrary	This law requires the Workers Compensation Commission to keep confidential any information it receives from insurance carriers. This law is not contrary to HIPAA because it falls within the HIPAA allowable use and disclosure for compliance with workers' compensation laws pursuant to 45 C.F.R. § 164.512(l).		No	
§ 413.0511 Medical Advisor	Related/ Not Contrary	This law requires the commission to select a medical advisor who will review confidential information from the medical quality review panel. This law is not contrary to HIPAA because it falls within the HIPAA allowable use and disclosure for compliance with workers' compensation laws pursuant to 45 C.F.R. § 164.512(l).		No	
§ 413.0512 Medical Quality Review Panel	Related/ Not Contrary	This law establishes a medical quality review panel, which reviews confidential information. This law is not contrary to HIPAA because it falls within the HIPAA allowable use and disclosure for compliance with workers' compensation laws pursuant to 45 C.F.R. § 164.512(l).		No	
§ 413.0513 Confidentiality Requirements	Related/ Not Contrary	This law makes confidential all information reviewed by or on behalf of the commission. This law is not contrary to HIPAA because it falls within the HIPAA allowable use and disclosure for compliance with workers' compensation laws pursuant to 45 C.F.R. § 164.512(l).		No	

Texas Labor Code

Section	Related/ Contrary	Explanation	Preemption Exception	Is State Law Preempted?	Recommendation
§ 413.0514 Information Sharing with Occupational Licensing Boards	Related/ Not Contrary	This law creates information sharing between the commission and the Texas State Board of Medical Examiners, and states the information remains confidential. This law is not contrary to HIPAA because it falls within the HIPAA allowable use and disclosure for compliance with workers' compensation laws pursuant to 45 C.F.R. § 164.512(l). This law requires the commission to make rules for compelling the production of documents.		No	
§ 413.052 Production of Documents	Related/ Not Contrary	This law is not contrary to HIPAA because it falls within the HIPAA allowable use and disclosure for compliance with workers' compensation laws pursuant to 45 C.F.R. § 164.512(l).		No	
Chapter 414 Division of Compliance and Practices	Not Related			No	
Chapter 415 Administrative Violations	Not Related			No	
Chapter 416 Actions Against Insurance Carrier for Breach of Duty	Not Related			No	
Chapter 417 Third-party Liability	Not Related			No	
Chapter 418 Criminal Penalties	Not Related			No	
Chapter 451 Discrimination Prohibited	Not Related			No	

Texas Labor Code

Section	Related/ Contrary	Explanation	Preemption Exception	Is State Law Preempted?	Recommendation
Chapter 501 Workers' Compensation Insurance Coverage for State Employees, Including Employees under the Direction or Control of the Board of Regents of Texas Tech University	Not Related			No	
Chapter 502 Workers' Compensation Insurance Coverage for Employees of the Texas A&M University System	Not Related			No	
Chapter 503 Workers' Compensation Insurance Coverage for Employees of the University of Texas System	Not Related			No	
Chapter 504 Workers' Compensation Insurance Coverage for Employees of Political Subdivisions	Not Related			No	
Chapter 505 Workers' Compensation Insurance Coverage for Employees of Texas Department of Transportation	Not Related			No	

Texas Labor Code

Section	Related/ Contrary	Explanation	Preemption Exception	Is State Law Preempted?	Recommendation
Chapter 506 Miscellaneous Provisions Applicable to Government Employees	Not Related			No	

Texas Labor Code

Chapter/ Section	Related/ Contrary	Explanation	Preemption Exception	Is State Law Preempted?	Recommendation
TITLE 1. GENERAL PROVISIONS					
Ch. 1 General Provisions	Not Related			No	
TITLE 2. PROTECTION OF LABORERS					
§ 21.204 Employment Discrimination; Investigation by Commission	Related/Not Contrary	<p>This provision requires the Texas Workforce Commission on Human Rights to investigate employment discrimination complaints. To the extent that this involves gathering records regarding a complaint of disability discrimination or discrimination based on genetic information, this law relates to privacy of IIHI.</p> <p>This law is not contrary to HIPAA because the Texas Workforce Commission on Human Rights is not a covered entity, and because it involves employment records, which are excepted from the definition of PHI pursuant to 45 C.F.R. § 160.103.</p> <p>This provision prohibits the Texas Workforce Commission on Human Rights from disclosing to the public information it gathers in investigating employment discrimination complaints.</p>		No	
§21.304 Employment Discrimination; Confidentiality of Records	Related/Not Contrary	<p>To the extent that this deals with disability discrimination or discrimination based on genetic information, this law relates to privacy of IIHI.</p> <p>This law is not contrary to HIPAA because the Texas Workforce Commission on Human Rights is not a covered entity, and because it involves employment records, which are excepted from the definition of PHI pursuant to 45 C.F.R. § 160.103.</p>		No	

Texas Labor Code

Chapter/ Section	Related/ Contrary	Explanation	Preemption Exception	Is State Law Preempted?	Recommendation
§ 21.305 Employment Discrimination; Access to Commission Records	Related/Not Contrary	This provision allows a party to an employment discrimination complaint to have access to the complaint records held by the Texas Workforce Commission on Human Rights.			
		To the extent that this deals with disability discrimination or discrimination based on genetic information, this law relates to privacy of IIHI. This law is not contrary to HIPAA because the Texas Workforce Commission on Human Rights is not a covered entity, and because it involves employment records, which are excepted from the definition of PHI pursuant to 45 C.F.R. § 160.103.		No	
§ 21.306 Employment Discrimination; Subpoena of Record or Report	Related/Not Contrary	This provision relates to confidentiality of records of employment discrimination complaints and allows the Texas Workforce Commission on Human Rights to issue a subpoena for the complaint records if the person fails to allow access to them, or obtain an order from a district court if the person does not comply with the subpoena.			
		To the extent that this deals with disability discrimination or discrimination based on genetic information, it relates to privacy of IIHI. This law is not contrary to HIPAA because the Texas Workforce Commission on Human Rights is not a covered entity.		No	

Texas Labor Code

Chapter/ Section	Related/ Contrary	Explanation	Preemption Exception	Is State Law Preempted?	Recommendation
<p>§ 21.403 Employment Discrimination; Confidentiality of Genetic Information</p>	<p>Related/Not Contrary</p>	<p>This law relates to employment discrimination based on genetic information, which is defined generally as the presence or absence of genetic characteristics which are medically and scientifically believed to predispose an individual to a disease, disorder, or syndrome. This provision states: "Except as provided by Section 21.4031, genetic information is confidential and privileged regardless of the source of the information" and "a person who holds genetic information about an individual may not disclose or be compelled to disclose, by subpoena or otherwise, that information unless the disclosure is specifically authorized as provided by Section 21.4032 [allowing disclosure if written authorization]."</p> <p>This law is not contrary to HIPAA because a covered entity could comply with this law and with the requirements under HIPAA. In a sense, this law is more stringent than HIPAA because HIPAA permits disclosure of PHI in response to a subpoena if the requesting party provides satisfactory assurances, such as an attempt to obtain a qualified protective order, pursuant to 45 C.F.R. § 164.512(e)(1)(ii), dealing with uses and disclosures related to judicial or administrative proceedings.</p>		<p>No</p>	

Texas Labor Code

Chapter/ Section	Related/ Contrary	Explanation	Preemption Exception	Is State Law Preempted?	Recommendation
<p>§ 21.4031 Employment Discrimination; Exceptions to Confidentiality</p>	Related/Not Contrary	<p>This law provides exceptions to the confidentiality of genetic information, and sets out instances where an authorization is not required for disclosure of the genetic information:and makes exceptions to confidentiality.</p> <p>This law is not contrary to HIPAA because a covered entity could comply with this law and with the requirements under HIPAA. Covered entities should note HIPAA requirements for use and disclosure for: law enforcement purposes under 45 C.F.R. § 164.512(f); judicial and administrative proceedings under 45 C.F.R. § 164.512(e)(1)(i); of a deceased person's PHI only to coroners and medical examiners under 45 C.F.R. § 164.512(g); for research purposes under 45 C.F.R. § 164.512(i); vital statistics reporting for public health under 45 C.F.R. § 164.512(b)(1)(i).</p>		No	
<p>§ 21.4032 Employment Discrimination; Authorized Disclosure</p>	Related/Not Contrary	<p>This law allows written authorization for disclosure of genetic information to the individual or their legal representative. The authorization must contain: "(1) a description of the information to be disclosed; (2) the name of the person to whom the disclosure is made; and (3) the purpose for the disclosure."</p> <p>This law is not contrary to HIPAA because a covered entity could comply with this law and with the requirements under HIPAA. Covered entities should note HIPAA requirements for a written authorization under 45 C.F.R. § 164.508(c).</p>		No	

Texas Labor Code

Chapter/ Section	Related/ Contrary	Explanation	Preemption Exception	Is State Law Preempted?	Recommendation
§ 21.404 Employment Discrimination; Disclosure of Test Results to Individual Tested	Related/Not Contrary	This law requires disclosure of genetic test results to the individual who submitted to the genetic test or to a physician designated by the individual.			
		This law is not contrary to HIPAA because a covered entity could comply with this law and with the requirements under HIPAA.		No	
§ 21.405 Employment Discrimination; Destruction of Sample Material; Exceptions	Related/Not Contrary	Covered entities should note HIPAA requirements for denial of access to PHI listed at 45 C.F.R. ' 164.524(a)(2) and (a)(3). For instance, access may be denied if a licenced health care professional determines provision of access is reasonably likely to endanger or cause harm to the individual or another person under 45 C.F.R. § 164.524(a)(3)(i), (ii), and (iii).			
		This law requires material obtained from an individual for a genetic test to be destroyed except in certain circumstances. Sample "material" may be "information" under HIPAA, at 45 C.F.R. § 160.103, with respect to which there is a reasonable basis to believe the information can be used to identify the individual.		No	

Texas Labor Code

Chapter/ Section	Related/ Contrary	Explanation	Preemption Exception	Is State Law Preempted?	Recommendation
Chapter 22 Employment Discrimination for Participating in Emergency Evacuation	Not Related			No	
Chapter 51 Employment of Children	Not Related			No	
Chapter 52 Miscellaneous Restrictions	Not Related			No	
Chapter 62 Minimum Wage	Not Related			No	
Chapter 63 Action on Assignment of Wages	Not Related			No	
Chapter 64 Redemption of Employer's Evidences of Indebtedness for Wages	Not Related			No	
Chapter 81 Work and Family Policies	Not Related			No	
Chapter 82 Discharge of Liability under Certain Employee Benefit Plans	Not Related			No	
Chapter 91 Staff Leasing Services	Not Related			No	
Chapter 92 Temporary Common Worker Employers	Not Related			No	
Chapter 93 Temporary Employment Services	Not Related			No	
TITLE 3. EMPLOYER-EMPLOYEE RELATIONS					
Chapter 101 Labor Organizations	Not Related			No	

Texas Labor Code

Chapter/ Section	Related/ Contrary	Explanation	Preemption Exception	Is State Law Preempted?	Recommendation
Chapter 102 Labor Arbitration	Not Related			No	
Chapter 103 Disclosure by Employer of Information Regarding Certain Employees or Former Employees	Not Related			No	
TITLE 4. EMPLOYMENT SERVICES AND UNEMPLOYMENT					
Chapter 201 Unemployment Compensation Act--General Provisions	Not Related			No	
Chapter 202 Texas Employment Commission	Not Related			No	
Chapter 203 Financing and Funds	Not Related			No	
Chapter 204 Contributions	Not Related			No	
Chapter 205 Reimbursements	Not Related			No	
Chapter 206 Unemployment Insurance Coverage	Not Related			No	
Chapter 207 Benefits	Not Related			No	
Chapter 208 Benefit Claims	Not Related			No	
Chapter 209 Extended Benefits	Not Related			No	
Chapter 210 Back Pay Awards; Lost or Misplaced Warrants	Not Related			No	
Chapter 211 Reciprocal Arrangements	Not Related			No	

Texas Labor Code

Chapter/ Section	Related/ Contrary	Explanation	Preemption Exception	Is State Law Preempted?	Recommendation
Chapter 212 Dispute Resolution	Not Related			No	
Chapter 213 Enforcement of Texas Unemployment Compensation Act	Not Related			No	
Chapter 214 Offenses, Penalties, and Sanctions	Not Related			No	
Chapter 215 Shared Work Unemployment Compensation Program	Not Related			No	
Chapter 301 Texas Workforce Commission	Not Related			No	
Chapter 302 Division of Workforce Development	Not Related			No	
Chapter 303 Skills Development Fund	Not Related			No	
Chapter 304 Counseling for Displaced Homemakers or Workers	Not Related			No	
Chapter 305 Texas Career Opportunity Grant Program	Not Related			No	
Chapter 306 Project Rio (Reintegration of Offenders)	Not Related			No	
Chapter 307 Employment Service	Not Related			No	
Chapter 308 Texans Work Program	Not Related			No	
Chapter 309 Self-sufficiency Fund	Not Related			No	

Texas Labor Code

Chapter/ Section	Related/ Contrary	Explanation	Preemption Exception	Is State Law Preempted?	Recommendation
Chapter 310 Child-care Resource and Referral Network	Not Related			No	
Chapter 311 Voluntary Workforce Training for Certain Students	Not Related			No	
TITLE 5. WORKERS' COMPENSATION					
Chapter 401 General Provisions	Not Related			No	
§ 402.083 Texas Workers' Compensation Commission; Confidentiality of Injury Information	Related/Not Contrary	This law makes employee injury claim information/files confidential, except where an employee has been finally adjudicated of wrongfully receiving payment under this Title. This law is not contrary to HIPAA because it falls within the HIPAA allowable use and disclosure for compliance with workers' compensation laws pursuant to 45 C.F.R. § 164.512(l).		No	
§ 402.084 Texas Workers' Compensation Commission; Record Check; Release of Information	Related/Not Contrary	This law provides for release of the employee claim information that is confidential under § 401.083. This law is not contrary to HIPAA because it falls within the HIPAA allowable use and disclosure for compliance with workers' compensation laws pursuant to 45 C.F.R. § 164.512(l).		No	
§ 402.085 Texas Workers' Compensation Commission; Exceptions to Confidentiality	Related/Not Contrary	This law makes exceptions to confidentiality of employee claim information. This law is not contrary to HIPAA because it falls within the HIPAA allowable use and disclosure for compliance with workers' compensation laws, 45 C.F.R. § 164.512(l).		No	

Texas Labor Code

Chapter/ Section	Related/ Contrary	Explanation	Preemption Exception	Is State Law Preempted?	Recommendation
§ 402.086 Texas Workers' Compensation Commission; Transfer of Confidentiality	Related/Not Contrary	<p>This law makes employee claim information confidential when released to any person, except when used in court for the purposes of an appeal, and does not prohibit an employer from releasing information about a former employee to another employer with whom the employee has applied for employment, if that information was lawfully acquired by the employer releasing the information.</p> <p>This law is not contrary to HIPAA because it falls within the HIPAA allowable use and disclosure for compliance with workers' compensation laws, § 164.512(l).</p>		No	
§ 402.087 Texas Workers' Compensation Commission; Information Available to Prospective Employers	Related/Not Contrary	<p>This law allows a prospective employer to obtain the claim file on an applicant employee if the employee gives written authorization for the release of their claims file.</p> <p>This law is not contrary to HIPAA because it falls within the HIPAA allowable use and disclosure for compliance with workers' compensation laws pursuant to 45 C.F.R. § 164.512(l).</p>		No	
§ 402.088 Texas Workers' Compensation Commission; Report of Prior Injury	Related/Not Contrary	<p>This law allows the commission to release claim records to prospective employers.</p> <p>This law is not contrary to HIPAA because it falls within the HIPAA allowable use and disclosure for compliance with workers' compensation laws pursuant to 45 C.F.R. § 164.512(l).</p>		No	

Texas Labor Code

Chapter/ Section	Related/ Contrary	Explanation	Preemption Exception	Is State Law Preempted?	Recommendation
§ 402.090 Texas Workers' Compensation Commission; Statistical Information	Related/Not Contrary	This law requires the commission to release de-identified claim information. This law is not contrary to HIPAA because it falls within the HIPAA allowable use and disclosure for compliance with workers' compensation laws pursuant to 45 C.F.R. § 164.512(l).		No	
§ 402.091 Texas Workers' Compensation Commission; Failure to Maintain Confidentiality; Offense; Penalty	Related/Not Contrary	This law makes unauthorized release of employee claims files an offense. This law is not contrary to HIPAA because it falls within the HIPAA allowable use and disclosure for compliance with workers compensation laws pursuant to 45 C.F.R. § 164.512(l).		No	
§ 402.092 Texas Workers' Compensation Commission; Investigation Files Confidential	Related/Not Contrary	This law makes the commission's investigation files confidential. This law is not contrary to HIPAA because it falls within the HIPAA allowable use and disclosure for compliance with workers compensation laws pursuant to 45 C.F.R. § 164.512(l).		No	
Chapter 403 Commission Financing	Not Related			No	
Chapter 404	Repealed			N/A	

Texas Labor Code

Chapter/ Section	Related/ Contrary	Explanation	Preemption Exception	Is State Law Preempted?	Recommendation
Chapter 405 Workers' Compensation Research	Not Related			No	
Chapter 406 Workers' Compensation Insurance Coverage	Not Related			No	
Chapter 407 Self-insurance Regulation	Not Related			No	
Chapter 407a Group Self-insurance Coverage	Not Related			No	
§ 408.125 Workers' Compensation Benefits	Related/Not Contrary	This law allows a designated doctor to review an employee's confidential information in order to evaluate the employee's impairment rating. This law is not contrary to HIPAA because it falls within the HIPAA allowable use and disclosure for compliance with workers' compensation laws pursuant to 45 C.F.R. § 164.512(l).		No	
Chapter 409 Compensation Procedures	Not Related			No	
Chapter 410 Adjudication of Disputes	Not Related			No	
§ 411.034 Workers' Health and Safety; Confidentiality Requirement; Offense; Penalty	Related/Not Contrary	This law makes the identity of an employee in an injury report with the commission confidential. This law is not contrary to HIPAA because it falls within the HIPAA allowable use and disclosure for compliance with workers' compensation laws pursuant to 45 C.F.R. § 164.512(l).		No	
Chapter 412 State Office of Risk Management	Not Related			No	

Texas Labor Code

Chapter/ Section	Related/ Contrary	Explanation	Preemption Exception	Is State Law Preempted?	Recommendation
§ 413.008 Medical Review; Information from Insurance Carriers; Administrative Violation	Related/Not Contrary	This law requires the Workers Compensation Commission to keep confidential any information it receives from insurance carriers. This law is not contrary to HIPAA because it falls within the HIPAA allowable use and disclosure for compliance with workers' compensation laws pursuant to 45 C.F.R. § 164.512(l). This law requires the commission to select a medical advisor who will review confidential information from the medical quality review panel.		No	
§ 413.0511 Medical Review; Medical Advisor	Related/Not Contrary	This law is not contrary to HIPAA because it falls within the HIPAA allowable use and disclosure for compliance with workers' compensation laws pursuant to 45 C.F.R. § 164.512(l). This law establishes a medical quality review panel, which reviews confidential information.		No	
§ 413.0512 Medical Review; Medical Quality Review Panel	Related/Not Contrary	This law is not contrary to HIPAA because it falls within the HIPAA allowable use and disclosure for compliance with workers' compensation laws pursuant to 45 C.F.R. § 164.512(l). This law makes confidential all information reviewed by or on behalf of the commission.		No	
§ 413.0513 Medical Review; Confidentiality Requirements	Related/Not Contrary	This law is not contrary to HIPAA because it falls within the HIPAA allowable use and disclosure for compliance with workers' compensation laws pursuant to 45 C.F.R. § 164.512(l).		No	

Texas Labor Code

Chapter/ Section	Related/ Contrary	Explanation	Preemption Exception	Is State Law Preempted?	Recommendation
§ 413.0514 Medical Review; Information Sharing with Occupational Licensing Boards	Related/Not Contrary	This law creates information sharing between the commission and the Texas State Board of Medical Examiners, and states the information remains confidential. This law is not contrary to HIPAA because it falls within the HIPAA allowable use and disclosure for compliance with workers' compensation laws pursuant to 45 C.F.R. § 164.512(l).		No	
§ 413.052 Medical Review; Production of Documents	Related/Not Contrary	This law requires the commission to make rules for compelling the production of documents. This law is not contrary to HIPAA because it falls within the HIPAA allowable use and disclosure for compliance with workers' compensation laws pursuant to 45 C.F.R. § 164.512(l).		No	
Chapter 414 Division of Compliance and Practices	Not Related			No	
Chapter 415 Administrative Violations	Not Related			No	
Chapter 416 Actions Against Insurance Carrier for Breach of Duty	Not Related			No	
Chapter 417 Third-party Liability	Not Related			No	
Chapter 418 Criminal Penalties	Not Related			No	
Chapter 451 Discrimination Prohibited	Not Related			No	

Texas Labor Code

Chapter/ Section	Related/ Contrary	Explanation	Preemption Exception	Is State Law Preempted?	Recommendation
Chapter 501 Workers' Compensation Insurance Coverage for State Employees, Including Employees under the Direction or Control of the Board of Regents of Texas Tech University	Not Related			No	
Chapter 502 Workers' Compensation Insurance Coverage for Employees of the Texas A&m University System	Not Related			No	
Chapter 503 Workers' Compensation Insurance Coverage for Employees of the University of Texas System	Not Related			No	
Chapter 504 Workers' Compensation Insurance Coverage for Employees of Political Subdivisions	Not Related			No	
Chapter 505 Workers' Compensation Insurance Coverage for Employees of Texas Department of Transportation	Not Related			No	
Chapter 506 Miscellaneous Provisions Applicable to Government Employees	Not Related			No	

Texas Occupations Code

Section	Related/ Contrary	Explanation	Preemption Exception	Is State Law Preempted?	Recommendation
Title 1: General Provisions					
Chapter 1 General Provisions	Not Related			No	
Title 2: General Provisions Relating to Licensing and Regulation					
Chapter 51 Texas Department of Licensing and Regulation	Not Related				
Chapter 52 Transfer of License	Not Related			No	
Chapter 53 Consequences of Criminal Conviction	Not Related			No	
Chapter 54 Examination on Religious Holy Day	Not Related			No	
Chapter 55 Renewal of License While on Military Duty	Not Related			No	
Chapter 56 Action Against Recipients of Student Financial Assistance	Not Related			No	
Chapter 57 Requirements for Licensing Agencies	Not Related			No	

Texas Occupations Code

Section	Related/ Contrary	Explanation	Preemption Exception	Is State Law Preempted?	Recommendation
Title 2: General Provisions Relating to Licensing and Regulation					
Chapter 58: Information Relating to Licensing					
§ 58.001 Confidentiality of Social Security Number	Not Related	This law does not relate to privacy of IIHI.		No	
Title 2: General Provisions Relating to Licensing and Regulation					
Chapter 58: Use of Genetic Information (*Code contains two Chapters numbered 58)					
§ 58.051 Certain Uses of Genetic Information Prohibited	Related/ Not Contrary	<p>This law prohibits certain uses of genetic information. It prohibits denial of an occupational license on the basis of the applicant's refusal to submit to or disclose the results of a genetic test.</p> <p>This law is not contrary to HIPAA because it protects a person's right to refuse to disclose the genetic information, and does not prevent the full application or purpose of HIPAA's provisions.</p>		No	
§ 58.052 Destruction of Sample Material; Exceptions	Not Related	<p>This law may be considered more stringent than HIPAA's privacy rule because this law provides greater privacy protection for the person who is the subject of the IIHI. 45 C.F.R. § 160.203.</p> <p>This law requires a sample of genetic material to be destroyed promptly after its purpose is served, except in some instances.</p> <p>This law does not relate to privacy of IIHI.</p>		No	
§ 58.101 Disclosure of Test Results to Individual Tested	Related/ Not Contrary	<p>This law requires that genetic test results be disclosed to the individual who submitted to the genetic test or a physician designated by the individual if the individual requests the results in writing.</p> <p>This law is not contrary to HIPAA because the disclosure is "required by law" an allowable use and disclosure under HIPAA § 164.512(a), even though it does not contain the safeguards and requirements imposed by HIPAA for the release of information to the individual who is the subject of the IIHI found in § 164.524</p>		No	

Texas Occupations Code

Section	Related/ Contrary	Explanation	Preemption Exception	Is State Law Preempted?	Recommendation
§ 58.102 Confidentiality of Genetic Information	Related/ Not Contrary	This law makes genetic information confidential and privileged, except as provided by § 58.103.			
		This law is not contrary because a covered entity could comply with this law and with the requirements under HIPAA. Covered entities should note that HIPAA contains additional requirements, see below.		No	
		This law makes exceptions to confidentiality of genetic information, and allows genetic information to be disclosed in certain circumstances.			
§ 58.103 Exceptions to Confidentiality	Related/ Not Contrary	This law is not contrary to HIPAA because a covered entity could comply with this law and with the requirements under HIPAA.			
		Covered entities should note HIPAA contains additional requirements for: Use and disclosures for law enforcement purposes under 45 C.F.R. § 164.512(f); Use and disclosures for judicial proceedings under 45 C.F.R. § 164.512(e); Use and disclosure about decedents under 45 C.F.R. § 164.512(g); Use and disclosure for research, 45 C.F.R. § 164.512(i); De-identification, 45 C.F.R. § 164.514; Public health/collection of vital statistics, 45 C.F.R. § 164.512(b)(1)(i).		No	
§ 58.104 Authorized Disclosure	Related/ Not Contrary	This law sets out the requirements for a written authorization for release of confidential genetic information. This law is not contrary to HIPAA because a covered entity could comply with this law and with the requirements under HIPAA.			
		Covered entities should also note HIPAA contains additional requirements for a written authorization under 45 C.F.R. § 164.508.		No	

Title 3: Health Professions
Chapter 101: Health Professions Council

Texas Occupations Code

Section	Related/ Contrary	Explanation	Preemption Exception	Is State Law Preempted?	Recommendation
§ 101.053 Confidentiality	Related/ Not Contrary	This law makes confidential health information contained in a complaint filed with the Health Professions Council. This law relates to the privacy of IIHI.		No	
§ 101.151 Annual Report	Not Related	This law is not contrary to HIPAA because the Health Professions Council is not a covered entity. This section requires the Health Professions Council to compile an annual report of enforcement activities and to provide the report to the governor, lieutenant governor, and speaker. This law does not relate to the privacy of IIHI.		No	
Title 3: Health Professions					
Chapter 102: Solicitation of Patients					
§ 102.007 Applicability	Not Related	§ 102.001 makes it an offense to solicit patients in exchange for money. This section excepts certain health care information services from the requirements of the subchapter. This law does not relate to privacy of IIHI.		No	
Chapter 103 Right to Object to Participation in Abortion Procedure	Not Related			No	
Chapter 104 Healing Art Practitioners	Not Related			No	
Chapter 105 Unprofessional Conduct by Health Care Provider	Not Related			No	

Texas Occupations Code

Section	Related/ Contrary	Explanation	Preemption Exception	Is State Law Preempted?	Recommendation
Chapter 106 General Regulatory Authority Regarding Health Care Practitioners' Use of Internet	Not Related			No	
Title 3: Health Professions					
Chapter 107: Telemedicine and Telehealth					
§ 107.001 Definitions	Not Related	This law does not relate to privacy of IIHI.		No	
§ 107.002 Informed Consent	Not Related	This law requires a treating physician or health professional who provides or facilitates the use of telemedicine medical services or telehealth services to obtain the patient's informed consent before telemedicine medical services or telehealth services are provided.		No	
§ 107.003 Confidentiality	Related/ Not Contrary	This law requires a physician who provides or facilitates the use of telemedicine medical services or telehealth services to keep medical information confidential in accordance with Chapter 159 or other applicable law.		No	
§ 107.004 Rules	Not Related	This law is not contrary to HIPAA. This law allows the BME to adopt rules regarding the practice of telemedicine. This law does not relate to privacy of IIHI.		No	
Title 3: Health Professions					
Chapter 107: Intractable Pain Treatment (*Code contains two Chapters numbered 107)					
§ 107.002 Definitions	Not Related	This law does not relate to privacy of IIHI.		No	
Chapter 108 License Suspension or Revocation Required for Certain Drug Felony Convictions	Not Related			No	

Texas Occupations Code

Section	Related/ Contrary	Explanation	Preemption Exception	Is State Law Preempted?	Recommendation
Chapter 109 Release of Sex Offender Treatment Information	Not Related			No	
Chapter 110 Council on Sex Offender Treatment	Not Related			No	
Title 3: Health Professions					
Chapter 151: General Provisions					
§ 151.002 Definitions	Not Related	This section defines terms used in Title 3 (Health Professions), Subtitle B (Physicians). This law does not relate to privacy of IIHI.		No	
§ 151.056 Application to Telemedicine	Not Related	Renders person or entity who is located in another jurisdiction, but through the use of any medium (telemedicine) performs an act that is part of a patient care service initiated in Texas, subject to regulation by the State Board of Medical Examiners.		No	
Chapter 152 State Board of Medical Examiners	Not Related	This law does not relate to privacy of IIHI.		No	
Title 3: Health Professions					
Chapter 153: Powers and Duties					
§ 153.003 Rules Regarding Maintenance of Patient Records	Not Related	Requires Texas State Board of Medical Examiners ("BME") to adopt rules for maintenance of patient records. This law does not relate to privacy of IIHI.		No	
§ 153.004 Rules Regarding Telemedicine Medical Services	Not Related	Permits the BME to adopt rules to ensure Medicaid and Medicare patients receive appropriate telemedicine medical services and to prevent abuse pursuant to that provision of care.		No	
		This law does not relate to privacy of IIHI			

Texas Occupations Code

Section	Related/ Contrary	Explanation	Preemption Exception	Is State Law Preempted?	Recommendation
§ 153.007 Authority to Issue Subpoena or Administer Oath	Related/ Not Contrary	This law allows the BME to subpoena records and documents. This law is not contrary to HIPAA because HIPAA permits appropriately limited disclosure of PHI that is required by law. 45 C.F.R. § 164.512(a)(1). Requires BME to maintain a record of its proceedings, and deems such records "public information."		No	
§ 153.008 Board Records	Related/ Not Contrary	This law is not contrary to HIPAA because the BME is not a covered entity. Also, the disclosure of public information pursuant to the Public Information Act is not contrary, because HIPAA permits appropriately limited disclosure of PHI that is required by law. 45 C.F.R. § 164.512(a)(1).		No	
Title 3: Health Professions					
Chapter 154: Public Interest Information and Complaint Procedures					
§ 154.003 Information for Physicians	Not Related	Requires BME to report twice a year information of significant interest to Texas physicians, including disciplinary orders made against physicians licensed in Texas. This law does not relate to privacy of IIHI.		No	
§ 154.004 Disclosure of Disciplinary Orders	Not Related	Requires BME to disclose to public disciplinary orders, date of order, and the current status of the order. This law does not relate to privacy of IIHI.		No	
§ 154.006 Physician Profiles	Related/ Not Contrary	Requires the BME to create physician profiles and make them available for the public; physician profiles must include specific information and details including complaints filed against the physicians and "may not include any patient identifying information." Not contrary because BME is not a covered entity under HIPAA.		No	

Texas Occupations Code

Section	Related/ Contrary	Explanation	Preemption Exception	Is State Law Preempted?	Recommendation
§ 154.052 Records of Complaints	Not Related	Requires BME to maintain a record of each complaint filed w/ info about witnesses, findings made, the dismissal of a complaint if any, schedule for disposition of the complaint and other relevant info. This law does not relate to privacy of IIHI		No	
§ 154.054 Complaint Information to Health Care Entity	Related/ Not Contrary	This law requires the BME to provide information to health care entities regarding complaints filed. Not contrary because BME is not a covered entity under HIPAA.		No	
§ 154.055 Release of Complaint Information to Legislative Committee	Related/ Not Contrary	Requires BME to release complaint information to a legislative committee to aid in a legitimate legislative inquiry, in which BME may not identify the complainant or patient. This law relates to the privacy of IIHI because it protects patient identity that may be contained in a complaint. Not contrary because BME is not a covered entity under HIPAA.		No	
§ 154.056 General Rules Regarding Complaint Investigation; Disposition	Related/ Not Contrary	Explains BME's handling of complaints, requires BME to send a letter to the complainant and the physician explaining their actions, allows BME to decide whether the complaint requires hiring a private investigator, and requires BME to create an expert physician panel to review complaints. Relates to privacy of IIHI because complaint information may be released to physicians, complainants, and investigators. Not contrary because BME is not a covered entity under HIPAA.		No	

Texas Occupations Code

Section	Related/ Contrary	Explanation	Preemption Exception	Is State Law Preempted?	Recommendation
§ 154.057 Conduct of Investigation; Use of Investigators as Peace Officers		Authorizes BME to use private investigators in investigating complaints.			
	Related/ Not Contrary	Relates to privacy of IIHI because complaint information is released to investigators.		No	
		Not contrary because BME is not a covered entity under HIPAA.			
Title 3: Health Professions					
Chapter 155: License to Practice Medicine					
§ 155.007 Application Process	Not Related	Describes application process for medical license. Does not relate to privacy of IIHI.		No	
Chapter 156 Registration of Physicians	Not Related			No	
Chapter 157 Authority of Physician to Delegate Certain Medical Acts	Not Related			No	
Chapter 158 Authority of Physician to Provide Certain Drugs and Supplies	Not Related			No	
Title 3: Health Professions					
Chapter 159: Physician-Patient Communication					
§ 159.001 Definitions	Related/ Not Contrary	This law is not contrary to HIPAA, except when taken together with the following provisions.		No	

Texas Occupations Code

Section	Related/ Contrary	Explanation	Preemption Exception	Is State Law Preempted?	Recommendation
§ 159.002 Confidential Communications	Related/ Not Contrary	<p>This law makes physician-patient communications and any "record of the identity, diagnosis, evaluation, or treatment of a patient by a physician that is created or maintained by a physician" confidential and privileged, except as provided by this chapter of the Occ. Code. Subsection (d) allows disclosure of records that are at least 100 years old that are requested for historical research purposes.</p> <p>This law is not contrary to HIPAA because a covered entity could comply with this law and with the requirements under HIPAA.</p>		No	
§ 159.003 Exceptions to Confidentiality in Court or Administrative Proceedings	Related/ Not Contrary	<p>Covered entities should also note the HIPAA requirements for privacy of IIHI for deceased individuals pursuant to 45 C.F.R. § 164.502(f).</p> <p>This law creates exceptions to general confidentiality rule for certain court or administrative proceedings.</p> <p>This law is not contrary to HIPAA because a covered entity could comply with this law and with the requirements under HIPAA.</p>		No	
§ 159.004 Exceptions to Confidentiality in Other Situations	Related/ Not Contrary	<p>Covered entities should also note HIPAA contains additional requirements for use or disclosure in a judicial or administrative proceeding, under 45 C.F.R. § 164.512(e)(1).</p> <p>This law creates exceptions to confidentiality in other situations.</p> <p>This law is not contrary to HIPAA because a covered entity could comply with this law and with the requirements under HIPAA.</p> <p>Covered entities should also note HIPAA contains additional requirements relevant to many of these provisions, including but not limited to: Health oversight under 45 C.F.R. § 164.512(d),e(2); De-identification under 45 C.F.R. § 164.514(d); and Health care operations under 45 C.F.R. § 164.506(c).</p>		No	

Texas Occupations Code

Section	Related/ Contrary	Explanation	Preemption Exception	Is State Law Preempted?	Recommendation
§ 159.005 Consent for Release of Confidential Information	Related/ Not Contrary	This law sets out requirements for patient consent for the release of confidential information.			
		This law is not contrary to HIPAA because a covered entity could comply with this law and with the requirements under HIPAA. Covered entities should also note HIPAA contains additional requirements for an authorization under 45 C.F.R. § 164.508.		No	
§ 159.006 Information Furnished by Physician	Related/ Not Contrary	This law requires a physician to provide patient records to the patient unless the physician determines that access to the information would be harmful to the physical, mental, or emotional health of the patient, if the physician has obtained a written consent for release of information as provided by Section 159.005. This law also requires release of patient records to a subsequent or consulting physician when requested in writing.			
		This law is not contrary to HIPAA because a covered entity could comply with this law and with the requirements under HIPAA. Covered entities should also note HIPAA contains additional requirements for form of access at 45 C.F.R. § 164.524(c)(2).		No	
§ 159.0061 Appointment of Custodian of Physicians Records	Related/ Not Contrary	Requires BME to adopt rules allowing the board to appoint a custodian of a physician's billing or medical records.			
		This law is not contrary to HIPAA because a covered entity could comply with this law and with the requirements under HIPAA.		No	

Texas Occupations Code

Section	Related/ Contrary	Explanation	Preemption Exception	Is State Law Preempted?	Recommendation
§ 159.007 Medium by Which Information Is Provided	Related/ Not Contrary	Allows a person authorized under the chapter to disclose copies of a record to another person to do so "on paper or using any other appropriate medium...." This law is not contrary to HIPAA because a covered entity could comply with this law and with the requirements under HIPAA.		No	
§ 159.008 Physician Fees for Information	Related/ Not Contrary	Permits a physician to charge a reasonable fee for copying billing or medical records, unless such fee is prohibited. This law is not contrary to HIPAA because a covered entity could comply with this law and with the requirements under HIPAA.		No	
§ 159.009 Injunction; Cause of Action for Unauthorized Release of Confidential Information	Related/ Not Contrary	This law provides a private cause of action and injunctive relief in state district court for any individual who is harmed by the unauthorized release of the individual's confidential information. This law is not contrary to HIPAA because it is more stringent. It creates a private right of action in district court that does not exist under HIPAA and provides greater protection. HIPAA only creates the right to file a complaint with the Secretary under 45 C.F.R. § 160.306(a).			
Title 3: Health Professions					
Chapter 160: Report and Confidentiality Requirements					
§ 160.001 Application of Federal Law	Not Related	Applies the Health Care Quality Improvement Act of 1986 (42 U.S.C. § 11101 et seq) to professional review actions and medical peer reviews. This law does not relate to privacy of IIHI.		No	
§ 160.002 Report of Medical Peer Review	Related/ Not Contrary	Requires a medical peer review committee to report to the BME certain findings made by the committee. This law is not contrary to HIPAA because HIPAA permits appropriately limited disclosure of PHI that is required by law. 45 C.F.R. § 164.512(a)(1).		No	

Texas Occupations Code

Section	Related/ Contrary	Explanation	Preemption Exception	Is State Law Preempted?	Recommendation
§ 160.003 Report by Certain Practitioners	Related/ Not Contrary	Requires certain persons to report to the BME information relating to a Texas physician's actions if, in the person's opinion, the "physician poses a continuing threat to the public welfare through the practice of medicine." This law is not contrary to HIPAA because HIPAA permits appropriately limited disclosure of PHI that is required by law. 45 C.F.R. § 164.512(a)(1).		No	
§ 160.004 Report Regarding Certain Impaired Physicians	Related/ Not Contrary	This law permits societies and associations to report impairment of a physician to the BME or the health care entity in which the physician has clinical privileges. Subsection (2) requires reporting when determination made that, "through the practice of medicine, the physician poses a continuing threat to the public welfare." This law is not contrary to HIPAA because societies and associations are not covered entities under HIPAA; and HIPAA permits appropriately limited disclosure of PHI that is required by law, 45 C.F.R. § 164.512(a)(1).		No	
§ 160.005 Report Confidential; Communication Not Privileged	Related/ Not Contrary	This law makes confidential a report made pursuant to § 160.004. This law is not contrary to HIPAA because the BME is not a covered entity.		No	
§ 160.006 Board Confidentiality	Related/ Not Contrary	This law creates exceptions to confidentiality of reports made pursuant to § 160.004. This law is not contrary to HIPAA because the BME is not a covered entity.		No	

Texas Occupations Code

Section	Related/ Contrary	Explanation	Preemption Exception	Is State Law Preempted?	Recommendation
§ 160.007 Confidentiality Relating to Medical Peer Review Committee	Related/ Not Contrary	<p>This law makes confidential all proceedings, records, and communications by or to a medical peer review committee. This law also creates exceptions to confidentiality for disclosure to various entities.</p> <p>This law is not contrary to HIPAA because a covered entity can comply with this law and with the requirements under HIPAA. Peer review activities under this law are consistent with the HIPAA allowable use and disclosure for health oversight activities under 45 C.F.R § 164.512(d), and use and disclosure for health care operations at 45 C.F.R. § 164.506.</p>		No	
§ 160.008 Use of Certain Confidential Information	Related/ Not Contrary	<p>Confidentiality under this law does not prevent a covered entity from disclosing a Designated Record Set to which an individual has a right of access under HIPAA at 45 C.F.R. § 164.524. See 45 C.F.R. § 164.501 (defining "Designated Record Set"); see also 65 Fed. Reg. 82,554 for comments.</p> <p>This law permits use of otherwise confidential information as evidence in a civil proceeding by any defendant in any civil action filed as a result of participation in peer review.</p> <p>This law is not contrary to HIPAA because a covered entity could comply with this law and with the requirements under HIPAA.</p> <p>Covered entities should note the HIPAA requirements for use and disclosure in a judicial or administrative proceeding under 45 C.F.R. § 164.512(e), or pursuant to a valid authorization under 45 C.F.R. § 164.508.</p>		No	

Texas Occupations Code

Section	Related/ Contrary	Explanation	Preemption Exception	Is State Law Preempted?	Recommendation
§ 160.009 Compliance with Subpoena	Related/ Not Contrary	This law requires a health care entity to comply with a subpoena by the board. This law is not contrary to HIPAA because HIPAA permits appropriately limited disclosure of PHI that is required by law. 45 C.F.R. § 164.512(a)(1).		No	
§ 160.010 Immunity from Civil Liability	Not Related	Makes certain people/entities immune from civil liability. This law does not relate to privacy of IIHI.		No	
§ 160.011 Not State Action	Not Related	Reports made by certain people/entities (medical peer review, medical students, physicians) are not "state actions." This law does not relate to privacy of IIHI.		No	
§ 160.012 Discipline or Discrimination Prohibited	Not Related	Prohibits a person from suspending, terminating, disciplining or otherwise discriminating against a person who makes a report (see above) to the BME. This law does not relate to privacy of IIHI.		No	
§ 160.013 Expungement of Report Made in Bad Faith	Not Related	Requires a complaint against a physician or applicant made in bad faith be expunged from physician's or applicant's record. This law does not relate to privacy of IIHI.		No	
§ 160.014 Action by Health Care Entity Not Precluded	Not Related	Allows a health care entity to suspend, restrict or revoke privileges or membership of a physician, even when complaint has been filed with board, or is under investigation or has been disposed of. This law does not relate to privacy of IIHI.		No	

Texas Occupations Code

Section	Related/ Contrary	Explanation	Preemption Exception	Is State Law Preempted?	Recommendation
§ 160.015 Immunity of Hospital District or Hospital Authority	Not Related	Relates to a hospital district's or authority's immunity. This law does not relate to privacy of IIHI.		No	
§ 160.051 Definitions	Not Related	Purely a definitional section. This law does not relate to privacy of IIHI.		No	
§ 160.052 Report from Insurer or Physician	Related/ Not Contrary	<p>This law requires physician insurers to submit to the Board complaints and "notice of claim letters" relating to the insured's conduct in providing or failing to provide appropriate services.</p> <p>This law relates to privacy of IIHI to the extent that claims and complaints contain IIHI of patients.</p> <p>This law is not contrary to HIPAA because HIPAA permits appropriately limited disclosure of PHI that is required by law. 45 C.F.R. § 164.512(a)(1).</p> <p>This law sets out the types of information that must be submitted to the Board under § 160.052, see above.</p>		No	
§ 160.053 Contents of Report; Additional Information	Related/ Not Contrary	<p>This law relates to privacy of IIHI to the extent that claims and complaints contain IIHI of patients.</p> <p>This law is not contrary to HIPAA because HIPAA permits appropriately limited disclosure of PHI that is required by law. 45 C.F.R. § 164.512(a)(1).</p> <p>This law prohibits use of § 160.052 information as evidence in a civil action against a physician based on providing or failing to provide medical care.</p>		No	
§ 160.054 Report Not Evidence	Related/ Not Contrary	<p>This law relates to privacy of IIHI to the extent that claims and complaints contain IIHI of patients.</p> <p>This law is not contrary because a covered entity could comply with this law and with the requirements under HIPAA.</p>		No	

Texas Occupations Code

Section	Related/ Contrary	Explanation	Preemption Exception	Is State Law Preempted?	Recommendation
§ 160.055 Sanctions for Failure to Report	Not Related	Authorizes sanctions to be imposed on an insurer who fails to file a § 160.052 report. This law does not relate to privacy of IIHI.		No	
§ 160.056 Civil Liability	Not Related	Waives any liability against insurers for actions taken pursuant to Chapter 160, subchapter B. This law does not relate to privacy of IIHI.		No	
§ 160.101 Report by Court to Department of Public Safety	Not Related	Requires a court clerk to report the conviction or deferred adjudication placement of a physician or applicant to the Department of Public Safety. This law does not relate to privacy of IIHI.		No	
§ 160.102 Report by Court to Board	Related/ Not Contrary	Requires a court clerk to report to the BME a finding that a physician is mentally ill or incompetent. This law is not contrary to HIPAA because the court clerk is not a covered entity; and HIPAA permits appropriately limited disclosure of PHI that is required by law, 45 C.F.R. § 164.512(a)(1).		No	
Title 3: Health Professions					
Chapter 162: Regulation of Practice of Medicine					
§ 162.106 Inspections	Related/ Not Contrary	This law allows the BME to conduct inspections of an anesthesiologist's office and documents that relate to provision of anesthesia in an outpatient setting. This law is not contrary to HIPAA because HIPAA permits certain disclosures for the purpose of health oversight. 45 C.F.R. § 164.512(d).		No	
§ 162.154 Furnishing of Data to Health Care Entity	Not Related	Requires BME to make available to a health care entity credential data it collects on a physician. This law does not relate to privacy of IIHI.		No	
§ 162.159 Confidentiality	Not Related	This law makes confidential the BME's records of physician credentials. This law does not relate to privacy of IIHI.		No	

Texas Occupations Code

Section	Related/ Contrary	Explanation	Preemption Exception	Is State Law Preempted?	Recommendation
§ 162.160 Use of Independent Contractor	Not Related	This law allows the BME to use independent contractors to collect, verify, etc., physician credentials and information. This law does not relate to privacy of IIHI.		No	
Chapter 163 District Review Committees	Not Related			No	
Title 3: Health Professions Chapter 164: Disciplinary Actions and Procedures					
§ 164.007 Administrative Hearings; Confidentiality Issues	Related/ Not Contrary	This law makes confidential the records generated for the administrative hearings of the BME. This law is not contrary to HIPAA because the BME is not a covered entity.		No	
Title 3: Health Professions Chapter 165: Penalties					
§ 165.158 Unauthorized Release of Confidential Information	Related/ Not Contrary	This law makes unauthorized disclosure of confidential information under § 160.006 an offense. This law is not contrary to HIPAA because a covered entity could comply with this law and with the requirements under HIPAA.		No	
Title 3: Health Professions Chapter 201: Chiropractors					
§ 201.204 Records of Complaints	Related/ Not Contrary	This law requires the Texas Board of Chiropractic Examiners (TBCE) to maintain an information file about each complaint it receives and requires the board to notify the parties of the status of the complaint. This law is not contrary to HIPAA because TBCE is not a covered entity under HIPAA.		No	

Texas Occupations Code

Section	Related/ Contrary	Explanation	Preemption Exception	Is State Law Preempted?	Recommendation
§ 201.255 Request for Information	Related/ Not Contrary	<p>This law allows the Texas Board of Chiropractic Examiners to request from a chiropractic peer review committee information pertaining to actions taken by the peer review committee.</p> <p>This law is not contrary to HIPAA because TBCE is not a covered entity under HIPAA.</p>		No	
§ 201.401 Definition of Patient	Not Related	<p>This law defines the term "patient" as used in this subchapter relating to patient confidentiality.</p> <p>This law does not relate to privacy of IIHI.</p>		No	
§ 201.402 Patient Confidentiality	Related/ Not Contrary	<p>This law makes communications between chiropractor and patient confidential.</p> <p>This law is not contrary to HIPAA because a covered entity could comply with this law and with the requirements under HIPAA.</p> <p>This law excepts chiropractor/patient communications from the confidentiality provisions of § 201.402 for certain types of court proceedings and allows certain uses or disclosures.</p>		No	
§ 201.403 Exceptions to Confidentiality for Administrative Procedure	Related/ Not Contrary	<p>This law is not contrary to HIPAA because a covered entity could comply with this law and with the requirements under HIPAA.</p> <p>As to subsections (b) and (c), the Board is not a covered entity. Covered entities should note HIPAA contains additional requirements for use or disclosure in a judicial or administrative proceeding, in compliance with a court order or in response to a discovery request with satisfactory assurances, etc., under 45 C.F.R. § 164.512(e), or pursuant to a valid authorization under 45 C.F.R. § 164.508.</p>		No	

Texas Occupations Code

Section	Related/ Contrary	Explanation	Preemption Exception	Is State Law Preempted?	Recommendation
§ 201.404 Exceptions to Confidentiality for Other Circumstances	Related/ Not Contrary	This law creates further exceptions to the confidentiality provisions of § 201.402.			
		This law is not contrary to HIPAA because a covered entity could comply with this law and with the requirements under HIPAA. Covered entities should note HIPAA contains additional requirements including, but not limited to: use/disclosure to avert a serious threat to health or safety, under 45 C.F.R. § 164.512(j)(1)(i) and (ii); use or disclosure for treatment or payment, 45 C.F.R. § 164.502(a)(1)(ii) and § 164.506; and de-identification under 45 C.F.R. § 164.514.		No	
§ 201.405 Consent for Release	Related/ Not Contrary	This law defines "chiropractic records," lists requirements for effective consent to disclose, allows the person to withdraw consent, and authorizes person who receives the confidential chiropractic information to disclose it only to the extent that the disclosure is consistent with purposes for which consent was obtained.			
		This law is not contrary to HIPAA because a covered entity could comply with this law and with the requirements under HIPAA. Covered entities should note HIPAA contains additional requirements for authorizations under 45 C.F.R. § 164.508.		No	
Title 3: Health Professions Chapter 202: Podiatrists					
§ 202.203 Complaint Records	Related/ Not Contrary	This law requires the Texas State Board of Podiatric Medical Examiners to maintain records of each complaint filed, and requires the Board to notify the parties to a complaint of its status. This law relates to privacy of IIHI to the extent that complaints will contain IIHI related to patients.			
		This law is not contrary to HIPAA because the Board is not a covered entity under HIPAA.		No	

Texas Occupations Code

Section	Related/ Contrary	Explanation	Preemption Exception	Is State Law Preempted?	Recommendation
§ 202.401 Definitions	Related/ Not Contrary	This law defines "patient" and "podiatric record." This law is not contrary to HIPAA because it defines terms and does not impede HIPAA on its own.		No	
§ 202.402 Scope of Privilege	Related/ Not Contrary	This law makes communications between podiatrist/patient and patient records confidential and privileged. It also prohibits a person who receives confidential communications or podiatric records from disclosing the information except as authorized. This law is not contrary to HIPAA because a covered entity could comply with this law and with the requirements under HIPAA. Covered entities should note HIPAA contains additional requirements for authorizations under 45 C.F.R. § 164.508.		No	
§ 202.403 Claim of Privilege	Related/ Not Contrary	Allows patient or podiatrist acting on patient's behalf to assert the confidentiality privilege. This law is not contrary to HIPAA because it does not impede the accomplishment of any purpose under HIPAA.		No	

Texas Occupations Code

Section	Related/ Contrary	Explanation	Preemption Exception	Is State Law Preempted?	Recommendation
§ 202.404 Exceptions to Privilege and Confidentiality in Certain Proceedings	Related/ Not Contrary	<p>This law allows use and disclosure of otherwise confidential information as evidence in a judicial or administrative proceeding if certain conditions are met, for disciplinary investigation or proceedings, or criminal investigation or proceedings against the podiatrist or where the patient is a victim, witness, or defendant.</p> <p>This law is not contrary to HIPAA because a covered entity could comply with this law and with the requirements under HIPAA. Covered entities should note HIPAA contains additional requirements for use or disclosure in a judicial or administrative proceeding if responding to a court order or discovery request with satisfactory assurances, etc., under 45 C.F.R. § 164.512(e), or pursuant to a valid authorization under 45 C.F.R. § 164.508.</p> <p>Subsection (d) is not contrary because the Board is not a covered entity.</p> <p>This law allows use and disclosure of otherwise confidential information in podiatric patient records.</p> <p>This law is not contrary to HIPAA because a covered entity could comply with this law and with the requirements under HIPAA.</p>		No	
§ 202.405 Other Exceptions to Privilege and Confidentiality Requirements	Related/ Not Contrary	<p>Covered entities should note HIPAA contains additional requirements including, but not limited to: use/disclosure to avert a serious threat to health or safety, under 45 C.F.R. § 164.512(j)(1)(i) and (ii); health care operations under 45 C.F.R. § 164.506(c)(4) & (5); research requirements under 45 C.F.R. § 164.512(i); de-identification under 45 C.F.R. § 164.514; and use or disclosure for treatment and payment, 45 C.F.R. § 164.502(a)(1)(ii) and § 164.506. (Also note subsection (a)(6) may be more stringent than HIPAA regarding disclosures to another provider for treatment purposes).</p>		No	

Texas Occupations Code

Section	Related/ Contrary	Explanation	Preemption Exception	Is State Law Preempted?	Recommendation
§ 202.406 Consent for Release of Confidential Information	Related/ Not Contrary	This law provides requirements for patient consent for release of podiatric records.		No	
§ 202.407 Disclosure of Released Information	Related/ Not Contrary	This law states: "A person who receives information made confidential by this subchapter may disclose the information to another person only to the extent consistent with the authorized purposes for which consent to release the information was obtained."		No	
		Also note this law may be more stringent than HIPAA as to re-disclosures.			

Texas Occupations Code

Section	Related/ Contrary	Explanation	Preemption Exception	Is State Law Preempted?	Recommendation
§ 202.452 Disclosure of Communications Made to Peer Review Committee	Related/ Not Contrary	<p>This law allows communications made to a podiatric peer review committee and the records and proceedings of a peer review committee to be disclosed to: (1) Another podiatric peer review committee; (2) An appropriate state or federal agency; (3) National accreditation body; or (4) Board or the state board of registration or licensing of podiatrists in another state.</p> <p>This law is not contrary to HIPAA because a covered entity can comply with this law and with the requirements under HIPAA.</p> <p>Peer review activities under this law are consistent with the HIPAA allowable use and disclosure for health oversight activities under 45 C.F.R. § 164.512(d), and use and disclosure for health care operations at 45 C.F.R. § 164.506.</p> <p>Confidentiality under this law does not prevent a covered entity from disclosing a Designated Record Set to which an individual has a right of access under HIPAA at 45 C.F.R. § 164.524. See 45 C.F.R. § 164.501 (defining "Designated Record Set"); see <i>also</i> 65 Fed. Reg. 82,554 for relevant comments.</p>		No	
§ 202.453 Information Provided to Affected Podiatrist	Not Related	<p>This law requires notice to a podiatrist who is the subject of peer review action. This law does not relate to privacy of IIHI.</p>			

Texas Occupations Code

Section	Related/ Contrary	Explanation	Preemption Exception	Is State Law Preempted?	Recommendation
§ 202.454 Confidentiality Requirements	Related/ Not Contrary	<p>This law makes confidential all peer review committee records, except if a court decides otherwise in an anticompetitive action or an action brought under federal civil rights laws.</p>			
		<p>This law is not contrary to HIPAA because a covered entity can comply with this law and with the requirements under HIPAA.</p>			
		<p>Peer review activities under this law are consistent with the HIPAA allowable use and disclosure for health oversight activities under 45 C.F.R. § 164.512(d), and use and disclosure for health care operations at 45 C.F.R. § 164.506.</p>		No	
		<p>Confidentiality under this law does not prevent a covered entity from disclosing a Designated Record Set to which an individual has a right of access under HIPAA at 45 C.F.R. § 164.524. See 45 C.F.R. § 164.501 (defining "Designated Record Set"); see <i>also</i> 65 Fed. Reg. 82,554 for relevant comments.</p>			
§ 202.455 Privilege of Confidentiality; Waiver	Related/ Not Contrary	<p>This law makes confidential all proceedings, records, and communications by or to a medical peer review committee. This law also creates exceptions to confidentiality for disclosure to various entities.</p>			
		<p>This law is not contrary to HIPAA because a covered entity can comply with this law and with the requirements under HIPAA.</p>			
		<p>Peer review activities under this law are consistent with the HIPAA allowable use and disclosure for health oversight activities under 45 C.F.R. § 164.512(d), and use and disclosure for health care operations at § 164.506.</p>		No	
		<p>Confidentiality under this law does not prevent a covered entity from disclosing a Designated Record Set to which an individual has a right of access under HIPAA at 45 C.F.R. § 164.524. See 45 C.F.R. § 164.501 (defining "Designated Record Set"); see <i>also</i> 65 Fed. Reg. 82,554 for relevant comments.</p>			

Texas Occupations Code

Section	Related/ Contrary	Explanation	Preemption Exception	Is State Law Preempted?	Recommendation
§ 202.507 Subpoena Authority	Related/ Not Contrary	This law allows the board to subpoena records for investigation purposes. This law is not contrary to HIPAA because HIPAA permits appropriately limited disclosure of PHI that is required by law, 45 C.F.R. § 164.512(a)(1); and certain disclosures for the purpose of health oversight, 45 C.F.R. § 164.512(d)(1).		No	
§ 202.509 Disclosure of Investigative Information	Related/ Not Contrary	This law makes confidential information gathered by the board for investigation purposes. This law is not contrary to HIPAA because the Board is not a covered entity.		No	
Title 3: Health Professions Chapter 203: Midwives					
§ 203.155 Complaint Procedure and Investigation	Related/ Not Contrary	This law requires the Midwifery Board to make rules for complaint procedures. This law is not contrary to HIPAA because the Midwifery Board is not a covered entity.		No	
§ 203.202 Complaints	Related/ Not Contrary	This law requires the Midwifery Board to keep files regarding complaints. This law is not contrary to HIPAA because the Midwifery Board is not a covered entity.		No	
§ 203.357 Additional Information Required	Not Related	Specifies that Midwifery Board can request additional information for licensing of midwives. This law does not relate to privacy of IIHI.		No	
Title 3: Health Professions Chapter 204: Physician Assistants					

Texas Occupations Code

Section	Related/ Contrary	Explanation	Preemption Exception	Is State Law Preempted?	Recommendation
<p>§ 204.208 Duty to Report; Medical Peer Review</p>	<p>Related/ Not Contrary</p>	<p>This law requires a medical peer review committee to provide information to the Texas State Board of Physician Assistants Examiners (Physician Assistant Board) regarding acts of providers that pose a threat to public welfare. This law also incorporates the confidentiality provisions for peer review from Chapter 160.</p> <p>This law is not contrary to HIPAA because a covered entity can comply with this law and with the requirements under HIPAA. Peer review activities under this law are allowable because HIPAA permits certain disclosures for the purpose of health oversight. 45 C.F.R. § 164.512(d). HIPAA permits the use and disclosure of IHI in the course of certain treatment, payment, and health care operations. 45 C.F.R. § 164.506.</p> <p>Confidentiality under this law does not prevent a covered entity from disclosing a Designated Record Set to which an individual has a right of access under HIPAA at 45 C.F.R. § 164.524. See 45 C.F.R. § 164.501 (defining "Designated Record Set"); see also 65 Fed. Reg. 82,554 for relevant comments.</p>		<p>No</p>	
<p>§ 204.251 Complaint Information and Status</p>	<p>Related/ Not Contrary</p>	<p>This law requires the physician assistant board to maintain complaint information files.</p> <p>This law is not contrary to HIPAA because the board is not a covered entity.</p>		<p>No</p>	

Texas Occupations Code

Section	Related/ Contrary	Explanation	Preemption Exception	Is State Law Preempted?	Recommendation
§ 204.252 License Holder Access to Complaint Information	Related/ Not Contrary	This law requires the physician assistant board to provide access to the complaint information it intends to offer into evidence. This law is not contrary to HIPAA because the board is not a covered entity.		No	
§ 204.253 Health Care Entity Request for Information	Related/ Not Contrary	This law requires the physician assistant board to provide health care entities with information regarding complaints against licensees on request. This law is not contrary to HIPAA because the board is not a covered entity.		No	
§ 204.254 Confidentiality of Investigative Information	Related/ Not Contrary	This law makes complaint investigation information about a licensee confidential. This law is not contrary to HIPAA because the board is not a covered entity.		No	
§ 204.255 Permitted Disclosure of Investigative Information	Related/ Not Contrary	This law allows the board to disclose certain investigation information. This law is not contrary to HIPAA because the board is not a covered entity.		No	
§ 204.308 Subpoena	Related/ Not Contrary	This law gives subpoena power to the medical board for investigating physician assistants. This law relates to privacy of IIHI to the extent that the subpoena seeks records containing IIHI. This law is not contrary to HIPAA because HIPAA permits appropriately limited disclosure of PHI that is required by law, 45 C.F.R. § 164.512(a)(1); and for the purpose of health oversight, 45 C.F.R. § 164.512(d)(1).		No	

Texas Occupations Code

Section	Related/ Contrary	Explanation	Preemption Exception	Is State Law Preempted?	Recommendation
§ 204.309 Protection of Patient Identity	Related/ Not Contrary	<p>This law requires the physician assistant board to protect the identity of any patient whose records are reviewed or used in a public proceeding, unless the patient testifies or submits a written release.</p> <p>This law is not contrary to HIPAA because the physician assistant board is not a covered entity.</p>		No	
Title 3: Health Professions Chapter 205: Acupuncture					
§ 205.152 Complaints	Related/ Not Contrary	<p>This law requires the acupuncture board to keep information files on complaints received.</p> <p>This law is not contrary to HIPAA because the board is not a covered entity.</p>		No	
§ 205.2045 Appearance of Applicant Before Acupuncture Board	Not Related	This law does not relate to privacy of IIHI.		No	
§ 205.304 Professional Review Action	Related/ Not Contrary	<p>This law incorporates the laws regarding medical peer review committee activities from Chapter 160.</p> <p>This law is not contrary to HIPAA because a covered entity can comply with this law and with the requirements under HIPAA. Peer review activities under this law are allowable because HIPAA permits certain disclosures for the purpose of health oversight. 45 C.F.R. § 164.512(d)(1). HIPAA permits the use and disclosure of IIHI in the course of certain treatment, payment, and health care operations. 45 C.F.R. § 164.506.</p> <p>Confidentiality under this law does not prevent a covered entity from disclosing a Designated Record Set to which an individual has a right of access under HIPAA at 45 C.F.R. § 164.524. See 45 C.F.R. § 164.501 (defining "Designated Record Set"); see also 65 Fed. Reg. 82,554 for relevant comments.</p>		No	

Texas Occupations Code

Section	Related/ Contrary	Explanation	Preemption Exception	Is State Law Preempted?	Recommendation
§ 205.351 Grounds for License Denial or Disciplinary Action	Not Related	This law does not relate to privacy of IIHI. This law gives the board subpoena power.		No	
§ 205.359 Subpoena	Related/ Not Contrary	This law is not contrary to HIPAA because HIPAA permits appropriately limited disclosure of PHI that is required by law, 45 C.F.R. § 164.512(a)(1); and for the purpose of health oversight, 45 C.F.R. § 164.512(d)(1).		No	
Title 3: Health Professions Chapter 206: Surgical Assistants					
§ 206.153 Complaints	Not Related	This law does not relate to privacy of IIHI. This law requires the BME to keep an information file on all complaints filed with the Board.		No	
§ 206.154 Records of Complaints	Related/ Not Contrary	This law relates to privacy of IIHI to the extent that complaints contain IIHI. This law is not contrary to HIPAA because BME is not a covered entity.		No	
§ 206.155 License Holder Access to Complaint Information	Related/ Not Contrary	This law requires BME to give access to the full complaint file to the license holder who is the subject of the complaint. BME is not required to release the identity of a non-testifying complainant. This law is not contrary to HIPAA because BME is not a covered entity.		No	

Texas Occupations Code

Section	Related/ Contrary	Explanation	Preemption Exception	Is State Law Preempted?	Recommendation
§ 206.156 Health Care Entity Request for Information	Related/ Not Contrary	This law requires the BME to provide complaint information to any health care entity that requests it. This law is not contrary to HIPAA because BME is not a covered entity.		No	
§ 206.157 Confidentiality of Investigative Information	Related/ Not Contrary	This law makes complaints, adverse reports, investigation files, and other reports in the possession of the BME privileged and confidential, not subject to discovery, subpoena, or other means of legal compulsion for release to any person other than the medical board. This law is not contrary because BME is not a covered entity under HIPAA.		No	
§ 206.158 Permitted Disclosure of Investigative Information	Related/ Not Contrary	This law creates exceptions to confidential investigative/disciplinary information in the possession of the BME for various entities for peer review, law enforcement, etc. This law is not contrary to HIPAA because BME is not a covered entity.		No	

Texas Occupations Code

Section	Related/ Contrary	Explanation	Preemption Exception	Is State Law Preempted?	Recommendation
<p>§ 206.159 Immunity and Reporting Requirements</p>	<p>Related/ Not Contrary</p>	<p>This law requires medical peer review committees, surgical assistants, and others to report to the advisory committee of the BME regarding the acts of a surgical assistant that pose a threat to public welfare. This law is not contrary to HIPAA because a covered entity could comply with this law and with the requirements under HIPAA. Subsection (a) of this law makes the report "required by law," and HIPAA permits appropriately limited disclosure of PHI that is required by law, pursuant to 45 C.F.R. § 164.512(a). Subsection (c) of this law incorporates the laws regarding medical peer review committee activities from Chapter 160. Peer review activities under this law are consistent with the HIPAA allowable use and disclosure for health oversight activities under 45 CFR § 164.512(d), and use and disclosure for health care operations at 45 CFR § 164.506. Confidentiality under this law does not prevent a covered entity from disclosing a Designated Record Set to which an individual has a right of access under HIPAA at 45 CFR § 164.524. See definition of "Designated Record Set" at 45 CFR § 164.501. See also comments at 65 Fed. Reg. 82,554.</p>		<p>No</p>	
<p>§ 206.308 Subpoena</p>	<p>Related/ Not Contrary</p>	<p>This law gives subpoena power to the Board of Medical Examiners for investigating surgical assistants. This law relates to privacy of IIHI to the extent that the subpoena seeks records containing IIHI. This law is not contrary to HIPAA because it makes compliance with the subpoena "required by law," HIPAA permitted use and disclosure pursuant to 45 C.F.R. § 164.512(a), and because it is consistent with the HIPAA allowable use and disclosure for health oversight activities under § 164.512(d).</p>		<p>No</p>	

Texas Occupations Code

Section	Related/ Contrary	Explanation	Preemption Exception	Is State Law Preempted?	Recommendation
§ 206.309 Protection of Patient Identity	Related/ Not Contrary	This law requires the Medical Board to protect the identity of any patient whose records are reviewed or used in a public proceeding, unless the patient testifies or submits a written release. This law is not contrary to HIPAA because the Board is not a covered entity.		No	
Chapter 251 General Provisions Relating to Practice of Dentistry	Not Related			No	
Chapter 252 State Board of Dental Examiners	Not Related			No	
Chapter 253 Executive Director and Personnel	Not Related			No	
Title 3: Health Professions					
Chapter 254: Board Powers and Duties					
§ 254.006 Board Records and Confidentiality of Records	Related/ Not Contrary	This law makes investigation files of the Board of Dental Examiners confidential. This law affects in a clear, substantial way the confidentiality of patient information that may be contained in investigation files. Not contrary because the Board of Dentistry is not a covered entity under HIPAA.		No	
§ 254.007 Records Regarding Persons Authorized to Practice	Not Related	Licensing information to be maintained by the Board of Dental Examiners. Not related to privacy of IIHI.		No	

Texas Occupations Code

Section	Related/ Contrary	Explanation	Preemption Exception	Is State Law Preempted?	Recommendation
Title 3: Health Professions					
Chapter 255: Public Interest Information and Complaint Procedures					
§ 255.004 Records of Complaints	Related/ Not Contrary	This law requires the board to maintain complaint files. This law is not contrary to HIPAA because the board is not a covered entity.		No	
§ 255.005 Notification of Investigation Status	Related/ Not Contrary	This law requires the board to inform complainants of the status of complaints. This law is not contrary to HIPAA because the board is not a covered entity.		No	
§ 255.006 General Rules Regarding Complaint Investigation and Disposition	Related/ Not Contrary	This law requires the board to review complaints and make rules regarding investigation of complaints. This law is not contrary to HIPAA because the board is not a covered entity.		No	
Chapter 256 Licensing of Dentists and Dental Hygienists	Not Related			No	
Chapter 257 License Renewal	Not Related			No	
Title 3: Health Professions					
Chapter 258: Practice by Dentist					
§ 258.051 Dentist Records	Related/ Not Contrary	This law makes dental records the property of the dentist, and prohibits sale of records. This law is not contrary to HIPAA because a covered entity could comply with this law and with the requirements under HIPAA.		No	

Texas Occupations Code

Section	Related/ Contrary	Explanation	Preemption Exception	Is State Law Preempted?	Recommendation
§ 258.052 Case Histories and Physical Evaluations	Related/ Not Contrary	This law allows a dentist to use patient records to admit to a hospital. This law is not contrary to HIPAA because it is an allowable use and disclosure for treatment under 45 C.F.R. § 164.506.		No	
§ 258.101 Definitions	Not Related	Definitions section for Subchapter C relating to Privileged Dental Patient Information. This law does not relate to privacy of IIHI. This law makes dental patient information "privileged".		No	
§ 258.102 Scope of Privilege	Related/ Not Contrary	This law is not contrary to HIPAA because a covered entity could comply with this law and with the requirements under HIPAA. Covered entities should note this law may be more stringent than HIPAA.		No	
§ 258.103 Holder of Privilege	Related/ Not Contrary	This law gives privilege for dental records to the patient, their representative, or their dentist. This law is not contrary to HIPAA because a covered entity could comply with this law and with the requirements under HIPAA.		No	
§ 258.104 Consent to Disclosure of Privileged Information	Related/ Not Contrary	This law provides for consent for release of dental records. This law is not contrary to HIPAA because a covered entity could comply with this law and with the requirements under HIPAA. Covered entities should note HIPAA contains additional requirements for a valid authorization under 45 C.F.R. § 164.508.		No	

Texas Occupations Code

Section	Related/ Contrary	Explanation	Preemption Exception	Is State Law Preempted?	Recommendation
§ 258.105 Exception to Privilege for Certain Proceedings	Related/ Not Contrary	This law creates exceptions to dental privilege for malpractice suits by patient, collection cases, and disciplinary or criminal proceedings; also allows for discovery of dental records in criminal proceedings.			
		This law is not contrary to HIPAA because a covered entity could comply with this law and with the requirements under HIPAA. This law uses the term "privilege" instead of "confidentiality" but arguably encompasses all aspects of confidentiality.		No	
		Covered entities should also note HIPAA contains additional requirements for:-legal discovery/process under 45 C.F.R. § 164.512(e); -health oversight, § 164.512(d);-de-identification under § 164.514;-use/disclosure for law enforcement purposes under § 164.512(f). Also note subsections (b) & (c) deal with the board's duties: not contrary because the board is not a covered entity.			
§ 258.106 Exception to Privilege for Certain Disclosures by Dentist	Related/ Not Contrary	This law creates further exceptions to privilege for disclosures by dentists.			
		This law is not contrary to HIPAA because a covered entity could comply with this law and with the requirements under HIPAA. Covered entities should note HIPAA contains additional requirements for:-use and disclosure to avert a serious threat to health or safety, under 45 C.F.R. § 164.512(j)(1)(i) and (ii);-health oversight activities, § 164.512(d);-use and disclosure for research under § 164.512(i);-use and disclosure for treatment and payment, § 164.502(a)(1), and § 164.506(c);-de-identification under HIPAA, § 164.514(a)& (b).		No	

Texas Occupations Code

Section	Related/ Contrary	Explanation	Preemption Exception	Is State Law Preempted?	Recommendation
§ 258.107 Exception to Privilege for Certain Legislative Inquiries	Related/ Not Contrary	This law allows a state hospital or school to disclose dental records when requested by legislature. This law is not contrary to HIPAA because a covered entity could comply with this law and with the requirements under HIPAA. Covered entities should note HIPAA contains additional requirements for:-health oversight activities, 45 C.F.R. § 164.512(d);-public health activities under § 164.512(b).		No	
§ 258.108 Limit on Disclosure	Related/ Not Contrary	This law states "a person who receives privileged information may disclose the information to another person only to the extent consistent with the purpose for which the information was obtained." This law is not contrary to HIPAA because a covered entity could comply with this law and with the requirements under HIPAA.		No	
§ 258.109 Request for Dental Record: Timing; Exception	Related/ Not Contrary	This law sets out requirements for disclosure of dental records. This law is not contrary to HIPAA because a covered entity could comply with this law and with the requirements under HIPAA. Covered entities should note HIPAA contains additional requirements under 45 C.F.R. § 164.524 for refusal to disclose. Also note subsection (b) regarding court findings may be more stringent than HIPAA.		No	
Chapter 260 Operation of Certain Dental Practices	Not Related			No	
Title 3: Health Professions					
Chapter 261: Confidentiality and Immunity of Dental Peer Review Committee					
§ 261.001 Definitions	Not Related	Definitions. This law does not relate to privacy of IIHI.		No	

Texas Occupations Code

Section	Related/ Contrary	Explanation	Preemption Exception	Is State Law Preempted?	Recommendation
§ 261.051 Confidentiality of Proceedings	Related/ Not Contrary	This law makes dental peer review committee's proceedings and records confidential.			
		This law is not contrary to HIPAA because a covered entity could comply with this law and with the requirements under HIPAA. Peer review activities under this law are consistent with the HIPAA allowable use and disclosure for health oversight activities under 45 C.F.R. § 164.512(d), and use and disclosure for health care operations at § 164.506.		No	
§ 261.052 Disclosure of Information	Related/ Not Contrary	Confidentiality under this law does not prevent a covered entity from disclosing a Designated Record Set to which an individual has a right of access under HIPAA at 45 C.F.R. § 164.524. See definition of "Designated Record Set" at § 164.501. See <i>also</i> comments at 65 Fed. Reg. 82554.			
		This law states a dental peer review committee may disclose confidential information to (1) another dental peer review committee; (2) an appropriate state or federal agency; (3) a national accreditation body; or (4) the registration or licensing entity in any state.			
§ 261.052 Disclosure of Information	Related/ Not Contrary	This law is not contrary to HIPAA because a covered entity could comply with this law and with the requirements under HIPAA. Peer review activities under this law are consistent with the HIPAA allowable use and disclosure for health oversight activities under 45 C.F.R. § 164.512(d), and use and disclosure for health care operations at § 164.506.		No	
		Confidentiality under this law does not prevent a covered entity from disclosing a Designated Record Set to which an individual has a right of access under HIPAA at § 164.524. See definition of "Designated Record Set" at § 164.501. See <i>also</i> comments at 65 Fed. Reg. 82554.			

Texas Occupations Code

Section	Related/ Contrary	Explanation	Preemption Exception	Is State Law Preempted?	Recommendation
§ 261.053 Disclosure to Affected Dentist	Related/ Not Contrary	<p>This law states that disclosure to the affected dentist of confidential peer review committee information pertinent to the matter under review does not waive confidentiality.</p>			
		<p>This law is not contrary to HIPAA because a covered entity could comply with this law and with the requirements under HIPAA. Peer review activities under this law are consistent with the HIPAA allowable use and disclosure for health oversight activities under 45 C.F.R. § 164.512(d), and use and disclosure for health care operations at § 164.506.</p> <p>Confidentiality under this law does not prevent a covered entity from disclosing a Designated Record Set to which an individual has a right of access under HIPAA at § 164.524. See definition of "Designated Record Set" at § 164.501. See <i>also</i> comments at 65 Fed. Reg. 82554.</p> <p>This law relates to evidentiary inadmissibility and privilege in administrative or civil action of confidential information in the possession of a dental peer review committee member.</p>		No	
§ 261.054 Committees Evidentiary Privilege	Related/ Not Contrary	<p>This law is not contrary to HIPAA because a covered entity could comply with this law and with the requirements under HIPAA. Peer review activities under this law are consistent with the HIPAA allowable use and disclosure for health oversight activities under 45 C.F.R. § 164.512(d), and use and disclosure for health care operations at § 164.506.</p>			
		<p>Confidentiality under this law does not prevent a covered entity from disclosing a Designated Record Set to which an individual has a right of access under HIPAA at § 164.524. See definition of "Designated Record Set" at § 164.501. See <i>also</i> comments at 65 Fed. Reg. 82554.</p>		No	

Texas Occupations Code

Section	Related/ Contrary	Explanation	Preemption Exception	Is State Law Preempted?	Recommendation
§ 261.055 Compliance with Board Subpoenas	Related/ Not Contrary	This law requires compliance with a subpoena issued by the board. Not contrary to HIPAA because this law makes compliance with the subpoena "required by law," and HIPAA permits appropriately limited disclosure of PHI that is required by law, 45 C.F.R. § 164.512(a). See also health oversight activity exception, 45 C.F.R. § 164.512(d).		No	
Chapter 262 Regulation of Dental Hygienists	Not Related			No	
Title 3: Health Professions					
Chapter 263: License Denial and Disciplinary Procedures					
§ 263.008 Subpoena	Related/ Not Contrary	This law states the board may request and subpoena books, accounts, records, documents, and other evidence relevant to the investigation of an alleged dentistry violation. This law is not contrary to HIPAA because it makes compliance with the subpoena "required by law," and HIPAA permits appropriately limited disclosure of PHI that is required by law, 45 C.F.R. § 164.512(a). See also health oversight activity exception, 45 C.F.R. § 164.512(d).		No	
Chapter 264 Penalties and Enforcement Provisions	Not Related			No	
Chapter 265 Regulation of Dental Assistants	Not Related			No	
Title 3: Health Professions					
Chapter 266: Regulation of Dental Laboratories					

Texas Occupations Code

Section	Related/ Contrary	Explanation	Preemption Exception	Is State Law Preempted?	Recommendation
§ 266.201 Prescription Required	Related/ Not Contrary	This law is not contrary to HIPAA because it makes compliance with the subpoena "required by law," and HIPAA permits appropriately limited disclosure of PHI that is required by law, 45 C.F.R. § 164.512(a). See also health oversight activity exception, 45 C.F.R. § 164.512(d).		No	
§ 266.202 Reliance on Prescription	Related/ Not Contrary	This law is not contrary to HIPAA because it makes compliance with the subpoena "required by law," and HIPAA permits appropriately limited disclosure of PHI that is required by law, 45 C.F.R. § 164.512(a). See also health oversight activity exception. 45 C.F.R. § 164.512(d).		No	
Chapter 267 Licensing of Faculty Members of Dental or Dental Hygiene Schools	Not Related			No	
Title 3: Health Professions					
Chapter 301: Nurses					
§ 301.161 Enforcement	Related/ Not Contrary	This law is not contrary to HIPAA because the Board of Nurse Examiners ("BNE") is not a covered entity.		No	
§ 301.1606 Pilot Programs on Nurse Reporting Systems	Related/ Not Contrary	This law makes compliance with the subpoena "required by law," and HIPAA permits appropriately limited disclosure of PHI that is required by law, 45 C.F.R. § 164.512(a). See also health oversight activity exception, 45 C.F.R. § 164.512(d).		No	
§ 301.203 Records of Complaints	Related/ Not Contrary	This law is not contrary to HIPAA because a covered entity could comply with this law and with the requirements under HIPAA.		No	
		This law requires the BNE to keep records of complaints and notify parties of the status of investigations.		No	
		This law is not contrary to HIPAA because the BNE is not a covered entity.			

Texas Occupations Code

Section	Related/ Contrary	Explanation	Preemption Exception	Is State Law Preempted?	Recommendation
§ 301.204 General Rules Regarding Complaint Investigation and Disposition	Related/ Not Contrary	<p>This law requires the BNE to make rules and follow certain guidelines for complaint investigations. This law is not contrary to HIPAA because the BNE is not a covered entity.</p> <p>This law sets out grounds for reporting a nurse to the board.</p>		No	
§ 301.401 Grounds for Reporting Nurse	Related/ Not Contrary	<p>This law is not contrary to HIPAA because a covered entity could comply with this law and with the requirements under HIPAA.</p> <p>Covered entities should note HIPAA contains additional requirements for use and disclosure for health oversight activities under 45 C.F.R. § 164.512(d), and use and disclosure for health care operations at § 164.506.</p> <p>This law requires reporting of nurses or nursing students for chemical dependency or "any situation" that puts patients at risk.</p>		No	
§ 301.402 Duty of Nurse to Report	Related/ Not Contrary	<p>This law is not contrary to HIPAA because a covered entity could comply with this law and with the requirements under HIPAA. Subsection (b) of this law makes the report "required by law" and HIPAA permits appropriately limited disclosure of PHI that is required by law, 45 C.F.R. § 164.512(a).</p> <p>Covered entities should note HIPAA contains additional requirements for use and disclosure for health oversight activities under 45 C.F.R. § 164.512(d), and use and disclosure for health care operations at § 164.506.</p>		No	

Texas Occupations Code

Section	Related/ Contrary	Explanation	Preemption Exception	Is State Law Preempted?	Recommendation
§ 301.403 Duty of Peer Review Committee to Report	Related/ Not Contrary	<p>This law requires a nursing peer review committee to report to BNE regarding a nurse for any of the conditions in § 301.401 (see above).</p> <p>This law is not contrary to HIPAA because a covered entity could comply with this law and with the requirements under HIPAA. The report is "required by law" and HIPAA permits appropriately limited disclosure of PHI that is required by law, 45 C.F.R. § 164.512(a). Covered entities should note HIPAA contains additional requirements for use and disclosure for health oversight activities under 45 C.F.R. § 164.512(d), and use and disclosure for health care operations at § 164.506.</p> <p>This law requires a nursing educational program to report to BNE regarding any nurse student they believe is impaired by chemical dependency.</p>		No	
§ 301.404 Duty of Nursing Educational Program to Report	Related/ Not Contrary	<p>This law is not contrary to HIPAA because a covered entity could comply with this law and with the requirements under HIPAA. The report is "required by law" and HIPAA permits appropriately limited disclosure of PHI that is required by law, 45 C.F.R. § 164.512(a). Covered entities should note HIPAA contains additional requirements for use and disclosure for health oversight activities under 45 C.F.R. § 164.512(d), and use and disclosure for health care operations at § 164.506.</p>		No	

Texas Occupations Code

Section	Related/ Contrary	Explanation	Preemption Exception	Is State Law Preempted?	Recommendation
§ 301.405 Duty of Person Employing Nurse to Report	Related/ Not Contrary	This law requires employers to report to the BNE regarding actions taken against a nurse for the grounds listed under § 301.401 (see above).			
		This law is not contrary to HIPAA because a covered entity could comply with this law and with the requirements under HIPAA. The report is "required by law" and HIPAA permits appropriately limited disclosure of PHI that is required by law, 45 C.F.R. § 164.512(a).		No	
§ 301.406 Duty of Certain Professional Associations and Organizations to Report	Related/ Not Contrary	Covered entities should note HIPAA contains additional requirements for use and disclosure for health oversight activities under 45 C.F.R. § 164.512(d), and use and disclosure for health care operations at § 164.506.			
		This law requires a professional association of nurses or certification organization to report to the BNE regarding nurses who are disciplined.		No	
§ 301.407 Duty of State Agency to Report	Related/ Not Contrary	This law is not contrary to HIPAA because it does not apply to a covered entity.			
		This law requires state agencies that license nurses and regulate health care providers and facilities to report to BNE regarding any nurse for any of the conditions in § 301.401 (see above).			
§ 301.407 Duty of State Agency to Report	Related/ Not Contrary	This law is not contrary to HIPAA because an agency or part of an agency that is a covered entity could comply with this law and with the requirements under HIPAA.		No	
		The report is "required by law" and HIPAA permits appropriately limited disclosure of PHI that is required by law, 45 C.F.R. § 164.512(a). Covered entities should note HIPAA contains additional requirements for use and disclosure for health oversight activities under § 164.512(d).			

Texas Occupations Code

Section	Related/ Contrary	Explanation	Preemption Exception	Is State Law Preempted?	Recommendation
§ 301.408 Duty of Liability Insurer to Report	Related/ Not Contrary	Subsection (b) of this law requires nurses who do not carry liability insurance or are insured by a non-admitted carrier to report to the BNE regarding certain claims filed against them related to nursing care.			
		This law is not contrary to HIPAA because a covered entity could comply with this law and with the requirements under HIPAA. The report is "required by law" and HIPAA permits appropriately limited disclosure of PHI that is required by law, 45 C.F.R. § 164.512(a). Covered entities should note HIPAA contains additional requirements for use and disclosure for health oversight activities under 45 C.F.R. § 164.512(d), and use and disclosure for health care operations at § 164.506.		No	
§ 301.409 Duty of Prosecuting Attorney to Report	Related/ Not Contrary	This law requires the state's attorney to report to BNE regarding a conviction of a nurse, a finding of fraud or abuse by a nurse, or an adjudication that a nurse is mentally ill or mentally incompetent.			
		This law is not contrary to HIPAA because a covered entity, or an attorney acting under a duty to their covered-entity client, could comply with this law and with the requirements under HIPAA. The report is "required by law" and HIPAA permits appropriately limited disclosure of PHI that is required by law, 45 C.F.R. § 164.512(a). Covered entities should note HIPAA contains additional requirements for use and disclosure for health oversight activities under 45 C.F.R. § 164.512(d), and use and disclosure for health care operations at § 164.506.		No	

Texas Occupations Code

Section	Related/ Contrary	Explanation	Preemption Exception	Is State Law Preempted?	Recommendation
§ 301.410 Report Regarding Impairment by Chemical Dependency or Mental Illness	Related/ Not Contrary	<p>This law allows a nurse to report to a peer assistance program instead of reporting to BNE or nursing peer review committee regarding a fellow nurse suspected of chemical dependency or mental illness.</p> <p>This law is not contrary to HIPAA because a covered entity could comply with this law and with the requirements under HIPAA. Covered entities should note HIPAA contains additional requirements for use and disclosure for health oversight activities under 45 C.F.R. § 164.512(d), and use and disclosure for health care operations at § 164.506.</p>		No	
§ 301.411 Effect of Failure to Report	Not Related	This law is not related to privacy of IIHI.		No	
§ 301.414 Notice and Review of Report	Related/ Not Contrary	<p>This law requires the board to notify a nurse about whom a report/complaint under this chapter is filed and allow them or their representative to review the report, unless it would jeopardize an investigation.</p> <p>This law is not contrary to HIPAA because the Board is not a covered entity.</p>		No	

Texas Occupations Code

Section	Related/ Contrary	Explanation	Preemption Exception	Is State Law Preempted?	Recommendation
<p>§ 301.417 Confidentiality Requirements; Disclosure of Information</p>	<p>Related/ Not Contrary</p>	<p>This law makes any report under this subchapter confidential, except the BNE may disclose information to another state's licensing authority, a peer assistance program, a person engaged in bona fide research or another educational purpose if all information identifying any specific individual is first deleted. Also, the BNE must provide information/status to the employer of the nurse complained of. Such information may be disclosed in a civil action against the reporting person.</p> <p>This law is not contrary to HIPAA because a covered entity could comply with this law and with the requirements under HIPAA. The BNE is not a covered entity.</p> <p>To the extent that this law includes other groups that may be covered entities, HIPAA contains additional requirements for use and disclosure for health oversight activities under 45 C.F.R. § 164.512(d), and use and disclosure for health care operations at § 164.506.</p> <p>Confidentiality under this law does not prevent a covered entity from disclosing a Designated Record Set to which an individual has a right of access under HIPAA at 45 C.F.R. § 164.524. See definition of "Designated Record Set" at § 164.501. See <i>also</i> comments at 65 Fed. Reg. 82554.</p>		<p>No</p>	
<p>§ 301.418 Disclosure of Charges or Disciplinary Action</p>	<p>Not Related</p>	<p>This law is not related to privacy of IIHI.</p>		<p>No</p>	
<p>§ 301.419 General Provisions Regarding Duty to Report; Minor Incidents</p>	<p>Not Related</p>	<p>This law is not related to privacy of IIHI.</p>		<p>No</p>	

Texas Occupations Code

Section	Related/ Contrary	Explanation	Preemption Exception	Is State Law Preempted?	Recommendation
<p>§ 301.452 Grounds for Disciplinary Action</p>	Related/ Not Contrary	<p>This law addresses grounds for denial of a nursing license or disciplinary action including: (11) adjudication of mental incompetency and (12) lack of fitness to practice because of a mental or physical health condition that could result in injury to a patient or the public.</p> <p>This law is not contrary to HIPAA because the BNE is not a covered entity.</p> <p>This law states any person may initiate a proceeding against a nurse with the BNE by submitting a complaint. The BNE conducts an investigation to determine whether patients are harmed by the nurse's practice or whether an act in § 301.452 was committed.</p>		No	
<p>§ 301.457 Complaint and Investigation</p>	Related/ Not Contrary	<p>This law relates to privacy of IHI to the extent that the complaint may contain information in § 301.452 (11) or (12), above. This law is not contrary to HIPAA because a covered entity could comply with this law and with the requirements under HIPAA. The BNE is not a covered entity.</p> <p>To the extent that this law includes other groups that may be covered entities, HIPAA contains additional requirements for use and disclosure for health oversight activities under 45 C.F.R. § 164.512(d), and use and disclosure for health care operations at § 164.506.</p>		No	
<p>§ 301.460 Access to Information</p>	Related/ Not Contrary	<p>This law gives access to information for a nurse who is the subject of a disciplinary action by the BNE.</p> <p>This law is not contrary to HIPAA because the BNE is not a covered entity.</p>		No	

Texas Occupations Code

Section	Related/ Contrary	Explanation	Preemption Exception	Is State Law Preempted?	Recommendation
§ 301.465 Subpoenas; Request for Information	Related/ Not Contrary	This law gives the BNE subpoena power, and requires the BNE to protect patient identity. This law is not contrary to HIPAA because response to the BNE subpoena is "required by law," and HIPAA permits appropriately limited disclosure of PHI that is required by law, 45 C.F.R. § 164.512(a). Also, the BNE is not a covered entity under HIPAA.		No	
§ 301.466 Confidentiality	Related/ Not Contrary	This law makes nurse complaints confidential, and creates exceptions to that confidentiality. This law is not contrary to HIPAA because BNE is not a covered entity.		No	
§ 301.606 Inspections	Not Related	This law is not related to privacy of IIHI.		No	
Chapter 302	Repealed	N/A		No	
Title 3: Health Professions					
Chapter 303: Nursing Peer Review					
§ 303.004 Peer Review by Two Entities	Not Related	This law is not related to privacy of IIHI.		No	
		This law makes communications with and proceedings of nursing peer review committees confidential.			
		This law is not contrary to HIPAA because a covered entity could comply with this law and with the requirements under HIPAA.			
§ 303.006 Confidentiality of Peer Review Proceedings	Related/ Not Contrary	Covered entities should note HIPAA contains additional requirements for use and disclosure for health oversight activities under 45 C.F.R. § 164.512(d), and use and disclosure for health care operations at § 164.506. Confidentiality under this law does not prevent a covered entity from disclosing a Designated Record Set to which an individual has a right of access under HIPAA at 45 C.F.R. § 164.524. See definition of "Designated Record Set" at § 164.501. See also comments at 65 Fed. Reg. 82554.		No	

Texas Occupations Code

Section	Related/ Contrary	Explanation	Preemption Exception	Is State Law Preempted?	Recommendation
§ 303.007 Disclosure of Information	Related/ Not Contrary	This law creates exceptions to confidentiality of communications with and proceedings of nursing peer review committees.			
		This law is not contrary to HIPAA because a covered entity could comply with this law and with the requirements under HIPAA. Subsection (a) makes disclosure "required by law," and HIPAA permits appropriately limited disclosure of PHI that is required by law, 45 C.F.R. § 164.512(a).			
		For the provisions of this law that are not "required by law," covered entities should note HIPAA contains additional requirements for use and disclosure for health oversight activities under 45 C.F.R. § 164.512(d), and use and disclosure for health care operations at § 164.506.		No	
		Confidentiality under this law does not prevent a covered entity from disclosing a Designated Record Set to which an individual has a right of access under HIPAA at 45 C.F.R. § 164.524. See definition of "Designated Record Set" at § 164.501. See <i>a/so</i> comments at 65 Fed. Reg. 82554.			
Title 3: Health Professions					
Chapter 304: Nurse Licensure Compact					
§ 304.001 Nurse Licensure Compact	Not Related	This law does not relate to privacy of IIHI.		No	
§ 304.005 Enforcement	Not Related	This law does not relate to privacy of IIHI.		No	
§ 304.006 Information Maintained under Compact	Not Related	This law does not relate to privacy of IIHI.		No	
Title 3: Health Professions					
Chapter 351: Optometrists and Therapeutic Optometrists					
§ 351.053 Membership and Employee Restrictions	Not Related	This law does not relate to privacy of IIHI.		No	

Texas Occupations Code

Section	Related/ Contrary	Explanation	Preemption Exception	Is State Law Preempted?	Recommendation
§ 351.204 Records of Complaints	Related/ Not Contrary	This law requires the Texas Optometry Board to keep an information file on all complaints filed with the Board. This law relates to privacy of IIHI to the extent that complaints contain IIHI. This law is not contrary to HIPAA because the Board is not a covered entity.		No	
§ 351.2045 Confidentiality of Investigation Files	Related/ Not Contrary	This law makes confidential the investigation files of the Board. This law also requires or allows the Board to share its investigation files with other entities. This law is not contrary to HIPAA because the Board is not a covered entity.		No	
§ 351.205 General Rules Regarding Complaint Investigation and Disposition	Not Related	This law requires the Board to notify the parties to the complaint of the projected time requirements and any change in the schedule for pursuing the complaint. This law does not relate to privacy of IIHI.		No	
§ 351.262 Information Presented to Patient	Not Related	This law is not related to privacy of IIHI.		No	
Chapter 352 Opticians	Not Related			No	
Title 3: Health Professions					
Chapter 353: Contact Lens Prescription Act					
§ 353.156 Patient Access to Prescription; Timing	Related/ Not Contrary	This law requires an optometrist to give a patient a contact lens prescription on request. This law is not contrary to HIPAA because a covered entity could comply with this law and with the requirements under HIPAA.		No	

Texas Occupations Code

Section	Related/ Contrary	Explanation	Preemption Exception	Is State Law Preempted?	Recommendation
§ 353.157 Limitations on or Refusal to Give Prescription	Related/ Not Contrary	<p>This law allows a doctor to refuse to give a patient a contact lens prescription if the patient has not paid for the examination.</p> <p>This law is not contrary to HIPAA because a covered entity could comply with this law and with the requirements under HIPAA. A "prescription" is not necessarily part of the Designated Record Set; access to the Designated Record Set required under HIPAA does not mean the optometrist has to give the patient a valid, fillable prescription.</p> <p>See individual right of access under HIPAA at 45 C.F.R. § 164.524; definition of "Designated Record Set" at § 164.501. See <i>also</i> comments at 65 Fed. Reg. 82,554.</p>		No	
Title 3: Health Professions					
Chapter 401: Speech Language Pathologists and Audiologists					
§ 401.202 Rulemaking Authority	Not Related	This law does not relate to privacy of IIHI.		No	
§ 401.203 Board Duties Regarding Complaints	Related/ Not Contrary	<p>This law requires the State Board of Examiners for Speech-Language Pathology and Audiology (within the Texas Department of Health) to adopt rules regarding handling of complaints.</p> <p>This law is not contrary to HIPAA because the board is not a covered entity.</p>		No	
§ 401.252 Records of Complaints	Related/ Not Contrary	<p>This law requires the State Board of Examiners for Speech-Language Pathology and Audiology (within the Texas Department of Health) to maintain an information file for all complaints filed and to notify the parties to the complaint of the status of the complaint unless the notice would jeopardize an undercover investigation.</p> <p>This law is not contrary to HIPAA because the Board is not a covered entity.</p>		No	

Texas Occupations Code

Section	Related/ Contrary	Explanation	Preemption Exception	Is State Law Preempted?	Recommendation
§ 401.253 General Rules Regarding Complaint Investigation and Disposition	Not Related	This law requires the Board to create rules for complaint investigations. This law does not relate to privacy of IHI. This law allows the Board to subpoena records for a complaint investigation. It also makes all complaint investigation materials confidential and makes exceptions to that confidentiality.		No	
§ 401.2535 Complaint Investigation; Subpoena	Related/ Not Contrary	This law is not contrary to HIPAA because this law makes compliance with the subpoena "required by law," and HIPAA permits appropriately limited disclosure of PHI that is required by law, 45 C.F.R. § 164.512(a), and see health oversight activity exception under 45 C.F.R. § 164.512(d). As to subsection (h) of this law regarding confidentiality, the board is not a covered entity.		No	
Title 3: Health Professions					
Chapter 402: Hearing Instrument Fitters and Dispensers					
§ 402.153 Records of Complaints	Related/ Not Contrary	This law requires the State Committee of Examiners in the Fitting and Dispensing of Hearing Instruments ("Committee") to keep complaints on file and to notify the parties to the complaint of the status of the complaint unless the notice would jeopardize an undercover investigation. This law relates to privacy of IHI to the extent that complaints contain IHI about the patient's physical or mental condition. This law is not contrary to HIPAA because the Committee is not a covered entity.		No	

Texas Occupations Code

Section	Related/ Contrary	Explanation	Preemption Exception	Is State Law Preempted?	Recommendation
§ 402.154 Complaint Investigation; Subpoena	Related/ Not Contrary	This law allows the Committee to request the TDH Commissioner to issue subpoenas for complaint investigation purposes. It also makes all complaint investigation materials confidential and makes exceptions to that confidentiality. This law is not contrary to HIPAA because this law makes compliance with the subpoena "required by law," and HIPAA permits appropriately limited disclosure of PHI that is required by law, 45 C.F.R. § 164.512(a), and it is a health oversight activity under 45 C.F.R. § 164.512(d). As to subsection (h) of this law regarding confidentiality, the committee is not a covered entity.		No	
§ 402.501 Grounds for License Denial and Disciplinary Action	Related/ Not Contrary	This law sets out grounds for denial of license and disciplinary action. Grounds include (10) addiction and (14) physical illness causing impairment. This law is not contrary to HIPAA because the committee is not a covered entity.		No	
Title 3: Health Professions					
Chapter 451: Athletic Trainers					
§ 451.101 General Powers and Duties	Not Related	The law sets out general powers and duties of the Advisory Board of Athletic Trainers. This law does not relate to privacy of IIHI. This law requires the Advisory Board to keep complaints on file and to notify the parties to the complaint of the status of the complaint unless the notice would jeopardize an undercover investigation. This law relates to privacy of IIHI to the extent that complaints contain IIHI about an individual's physical condition.		No	
§ 451.109 Complaints	Related/ Not Contrary	This law is not contrary to HIPAA because the Advisory Board is not a covered entity.		No	

Texas Occupations Code

Section	Related/ Contrary	Explanation	Preemption Exception	Is State Law Preempted?	Recommendation
§ 451.110 Subpoenas	Related/ Not Contrary	<p>This law allows the Advisory Board to request the TDH Commissioner to issue subpoenas for complaint investigation purposes. This law also makes information and materials subpoenaed or compiled by the committee in connection with a complaint and investigation confidential with some exceptions.</p> <p>This law is not contrary to HIPAA because it makes compliance with the subpoena "required by law," and HIPAA permits appropriately limited disclosure of PHI that is required by law, 45 C.F.R. § 164.512(a), and it is a health oversight activity under 45 C.F.R. § 164.512(d). As to confidentiality, the Advisory Board is not a covered entity.</p>		No	
Chapter 452 Executive Council of Physical Therapy and Occupational Therapy Examiners	Not Related			No	
Title 3: Health Professions Chapter 453: Physical Therapists					
§ 453.153 Record of Complaints	Related/ Not Contrary	<p>This law requires the Texas Board of Physical Therapist Examiners to keep complaints on file. This law relates to privacy of IIHI to the extent that complaints contain IIHI.</p> <p>This law is not contrary to HIPAA because the Board is not a covered entity.</p>		No	
§ 453.154 General Rules Involving Complaint Investigation and Disposition	Related/ Not Contrary	<p>This law requires the Board to make rules regarding complaint investigations procedures for notification to the complainant and others affected.</p> <p>This law is not contrary to HIPAA because the Board is not a covered entity, and the disclosure under subsection (e) of this law is "required by law," and HIPAA permits appropriately limited disclosure of PHI that is required by law, 45 C.F.R. § 164.512(a).</p>		No	

Texas Occupations Code

Section	Related/ Contrary	Explanation	Preemption Exception	Is State Law Preempted?	Recommendation
Title 3: Health Professions					
Chapter 454: Occupational Therapists					
§ 454.152 Record of Complaints	Related/ Not Contrary	This law requires the Texas Board of Occupational Therapy Examiners to keep complaints on file. This law relates to privacy of IIHI to the extent that complaints contain IIHI. This law is not contrary to HIPAA because the Board is not a covered entity, and this law makes its actions "required by law," and HIPAA permits appropriately limited disclosure of PHI that is required by law, 45 C.F.R. § 164.512(a).		No	
§ 454.153 General Rules Involving Complaint Investigation and Disposition	Related/ Not Contrary	This law requires the Board to make rules regarding complaint investigations procedures for notification to the complainant and others affected. This law is not contrary to HIPAA because the Board is not a covered entity, and the disclosure under subsection (e) of this law is "required by law," and HIPAA permits appropriately limited disclosure of PHI that is required by law, 45 C.F.R. § 164.512(a).		No	
Chapter 455 Massage Therapy	Not Related			No	
Title 3: Health Professions					
Chapter 501: Psychologists					
§ 501.203 Records of Complaints	Related/ Not Contrary	This law requires the Texas State Board of Examiners of Psychologists to keep complaints on file and provide notice of the status of complaint investigations. This law is not contrary to HIPAA because the Board is not a covered entity.		No	

Texas Occupations Code

Section	Related/ Contrary	Explanation	Preemption Exception	Is State Law Preempted?	Recommendation
§ 501.204 General Rules Regarding Complaint Investigation and Disposition	Related/ Not Contrary	<p>This law requires the Board to make rules for handling complaints, requires the Board to dispose of complaints in a timely manner, and to provide notice to the parties to a complaint regarding its status.</p> <p>This law relates to privacy of IIHI to the extent that complaints contain IIHI regarding a person's mental condition. This law is not contrary to HIPAA because the Board is not a covered entity.</p> <p>This law makes complaint information confidential, and makes exceptions. This law also requires the Board to provide the license holder with access to all information that the board intends to offer into evidence at a hearing. This law also requires the Board to de-identify all patient records used in a hearing.</p>		No	
§ 501.205 Confidentiality of Complaint Information	Related/ Not Contrary	<p>This law is not contrary to HIPAA because the Board is not a covered entity.</p> <p>This law gives the Board power to subpoena records for conducting complaint investigations.</p>		No	
§ 501.207 Subpoenas	Related/ Not Contrary	<p>This law is not contrary to HIPAA because the board is not a covered entity. Compliance with a subpoena under this law would be "required by law," and HIPAA permits appropriately limited disclosure of PHI that is required by law, 45 C.F.R. § 164.512(a), and it is a health oversight activity under § 164.512(d).</p>		No	

Title 3: Health Professions
Chapter 502: Marriage and Family Therapists

Texas Occupations Code

Section	Related/ Contrary	Explanation	Preemption Exception	Is State Law Preempted?	Recommendation
§ 502.203 Records of Complaints	Related/ Not Contrary	This law requires the Texas State Board of Examiners of Marriage and Family Therapists to maintain complaint investigation files and to notify parties to complaints of the status.		No	
		This law relates to privacy of IIHI to the extent that complaints contain IIHI regarding a person's mental condition. This law is not contrary to HIPAA because the Board is not a covered entity.			
§ 502.204 General Rules Regarding Complaint Investigation and Disposition	Related/ Not Contrary	This law requires the Board to make rules for handling complaints, requires the Board to dispose of complaints in a timely manner, and to provide notice to the parties to a complaint regarding its status.		No	
		This law relates to privacy of IIHI to the extent that complaints contain IIHI regarding a person's mental condition. This law is not contrary to HIPAA because the Board is not a covered entity.			
		This law gives the Board power to subpoena records for conducting complaint investigations. This law also makes complaint information confidential, and makes exceptions to confidentiality.			
§ 502.2045 Subpoenas	Related/ Not Contrary	This law is not contrary to HIPAA because a covered entity's compliance with a subpoena under this law is "required by law," and HIPAA permits appropriately limited disclosure of PHI that is required by law, 45 C.F.R. § 164.512(a), and it would be health oversight activities under § 164.512(d). The confidentiality provision of this law is not contrary to HIPAA because the Board is not a covered entity.		No	

**Title 3: Health Professions
Chapter 503: Licensed Professional Counselors**

Texas Occupations Code

Section	Related/ Contrary	Explanation	Preemption Exception	Is State Law Preempted?	Recommendation
§ 503.253 Records of Complaints	Related/ Not Contrary	This law requires the Texas State Board of Examiners of Professional Counselors to maintain complaint investigation files and to notify parties to complaints of the status. This law relates to privacy of IIHI to the extent that complaints contain IIHI regarding a person's mental condition. This law is not contrary to HIPAA because the Board is not a covered entity.		No	
§ 503.254 General Rules Regarding Complaint Investigation and Disposition	Related/ Not Contrary	This law requires the Board to make rules for the handling of complaints, for notifying parties to a complaint investigation of its status, and for hiring private investigators. This law is not contrary to HIPAA because the Board is not a covered entity. This law allows the Board to request the TDH Commissioner to issue a subpoena for complaint investigation. This law makes all complaint investigation information and materials confidential, and makes exceptions to confidentiality.		No	
§ 503.2545 Subpoenas	Related/ Not Contrary	This law is not contrary to HIPAA because a covered entity's compliance with a subpoena under this law is "required by law," and HIPAA permits appropriately limited disclosure of PHI that is required by law, 45 C.F.R. § 164.512(a), and it would be health oversight activities under § 164.512(d). The portion of this law creating confidentiality and exceptions to confidentiality is not contrary to HIPAA because the Board is not a covered entity.		No	
Title 3: Health Professions					
Chapter 504: Chemical Dependency Counselors					
§ 504.103 Records of Complaints	Related/ Not Contrary	This law requires the Texas Commission on Alcohol and Drug Abuse to maintain complaint investigation files and to provide notice to parties regarding status. This law relates to privacy of IIHI to the extent that complaints contain IIHI regarding a person's physical or mental condition. This law is not contrary to HIPAA because the Commission is not a covered entity.		No	

Texas Occupations Code

Section	Related/ Contrary	Explanation	Preemption Exception	Is State Law Preempted?	Recommendation
Title 3: Health Professions Chapter 505: Social Workers					
§ 505.253 Records of Complaints	Related/ Not Contrary	This law requires the Texas State Board of Social Worker Examiners to maintain complaint information files and provide notice to parties to complaints regarding status.		No	
§ 505.254 General Rules Regarding Complaint Investigation and Disposition	Related/ Not Contrary	This law require the Board to make rules for complaint investigations, hiring private investigators, and providing notice of status. This law is not contrary to HIPAA because the Board is not a covered entity.		No	
§ 505.2545 Subpoenas	Related/ Not Contrary	This law allows the Board to issue subpoenas for complaint investigation information. This law also makes all complaint information compiled by the Board confidential, and makes exceptions to confidentiality. This law is not contrary to HIPAA because a covered entity's compliance with a subpoena under this law is "required by law," and HIPAA permits appropriately limited disclosure of PHI that is required by law, 45 C.F.R. § 164.512(a), and it would be health oversight activities under § 164.512(d). The portion of this law creating confidentiality and exceptions to confidentiality is not contrary to HIPAA because the Board is not a covered entity.		No	
Chapter 551 General Provisions	Not Related			No	
Chapter 552 Texas State Board of Pharmacy	Not Related			No	

Texas Occupations Code

Section	Related/ Contrary	Explanation	Preemption Exception	Is State Law Preempted?	Recommendation
Chapter 553 Executive Director and Other Board Personnel	Not Related			No	
Title 3: Health Professions					
Chapter 554: Board Powers and Duties; Rule Making Authority					
§ 554.002 Regulation of Practice of Pharmacy	Not Related	This law does not relate to privacy of IIHI.		No	
Title 3: Health Professions					
Chapter 555: Public Interest Information and Complaint Procedures					
§ 555.005 Records of Complaints	Related/ Not Contrary	This law requires the Texas State Board of Pharmacy to maintain complaints on file. This law relates to privacy of IIHI to the extent that complaints contain IIHI. This law is not contrary to HIPAA because the Board is not a covered entity.		No	
§ 555.006 Notification Concerning Complaint	Related/ Not Contrary	This law requires the Board to notify complaint parties regarding status. This law relates to privacy of IIHI to the extent that complaints contain IIHI. This law is not contrary to HIPAA because the Board is not a covered entity.		No	
§ 555.007 General Rules Regarding Complaint Investigation and Disposition	Related/ Not Contrary	This law requires the Board to make policies and procedures for handling complaints. This law relates to privacy of IIHI to the extent that complaints contain IIHI. This law is not contrary to HIPAA because the Board is not a covered entity.		No	
§ 555.010 Confidentiality	Related/ Not Contrary	This law makes complaint information confidential. This law relates to privacy of IIHI to the extent that complaints contain IIHI. This law is not contrary to HIPAA because the Board is not a covered entity.		No	

Texas Occupations Code

Section	Related/ Contrary	Explanation	Preemption Exception	Is State Law Preempted?	Recommendation
Title 3: Health Professions					
Chapter 556: Administrative Inspections and Warrants					
§ 556.051 Authorization to Enter and Inspect	Related/ Not Contrary	<p>This law authorizes the Texas State Board of Pharmacy to enter and inspect pharmacy records. This law is not contrary to HIPAA because the Board is not a covered entity, and a covered entity could comply with this law and with the requirements under HIPAA.</p> <p>Covered entities should note HIPAA's requirements for use or disclosure for health oversight activities under 45 C.F.R. § 164.512(d).</p> <p>This law set out the extent to which pharmacy records may be inspected.</p>		No	
§ 556.053 Extent of Inspection	Related/ Not Contrary	<p>This law is not contrary to HIPAA because the Board is not a covered entity, and a covered entity could comply with this law and with the requirements under HIPAA. Covered entities should note HIPAA's requirements for use or disclosure for health oversight activities under 45 C.F.R. § 164.512(d).</p> <p>This law sets out instances when a warrant is not required for inspection of pharmacy records.</p>		No	
§ 556.101 Warrant Not Required	Related/ Not Contrary	<p>This law is not contrary to HIPAA because the Board is not a covered entity, and a covered entity could comply with this law and with the requirements under HIPAA. Covered entities should note HIPAA's requirements for use or disclosure for health oversight activities under 45 C.F.R. § 164.512(d).</p>		No	
Chapter 557 Pharmacist - Interns	Not Related			No	
Chapter 558 License to Practice Pharmacy	Not Related			No	

Texas Occupations Code

Section	Related/ Contrary	Explanation	Preemption Exception	Is State Law Preempted?	Recommendation
Chapter 559 Renewal of License to Practice Pharmacy	Not Related			No	
Chapter 560 Licensing of Pharmacies	Not Related			No	
Chapter 561 Renewal of Pharmacy License	Not Related			No	
Title 3: Health Professions					
Chapter 562: Practice by License Holder					
§ 562.052 Release of Confidential Records	Related/ Not Contrary	<p>This law allows a pharmacist to release confidential records to certain persons and entities.</p> <p>This law is not contrary to HIPAA because a covered entity could comply with this law and with the requirements under HIPAA.</p> <p>Covered entities should note HIPAA's requirements for use or disclosure for health oversight activities under 45 C.F.R. § 164.512(d); Individual's right of access, § 164.524; use or disclosure for treatment or payment, § 164.502(a)(1), and § 164.506(c); use or disclosure for law enforcement activities, § 164.512(f)(5); written authorizations under § 164.508.</p>		No	

Texas Occupations Code

Section	Related/ Contrary	Explanation	Preemption Exception	Is State Law Preempted?	Recommendation
§ 562.055 Report to Texas Department of Health	Related/ Not Contrary	<p>This law requires a pharmacist to report to TDH regarding unusual prescription trends, epidemics, etc.</p> <p>This law is not contrary to HIPAA because a covered entity could comply with this law and with the requirements under HIPAA. Covered entities should note HIPAA's requirements for use and disclosures for public health under 45 C.F.R. § 164.512(b).</p>		No	
§ 562.102 Confidential Record	Related/ Not Contrary	<p>This law also makes the report "required by law," and HIPAA permits appropriately limited disclosure of PHI that is required by law, 45 C.F.R. § 164.512(a).</p> <p>This law requires compliance with § 562.052 when a pharmacy releases confidential records.</p> <p>This law is not contrary to HIPAA because a covered entity could comply with this law and with the requirements under HIPAA. See above.</p>		No	
§ 562.105 Maintenance of Records	Related/ Not Contrary	<p>This law requires a pharmacy to maintain a permanent record of: (1) any civil litigation initiated against the pharmacy; or (2) a complaint that arises out of a prescription that was lost during delivery.</p> <p>This law is not contrary to HIPAA because a covered entity could comply with this law and with the requirements under HIPAA.</p>		No	
Chapter 563 Prescription Requirements; Delegation of Administration and Provision of Dangerous Drugs	Not Related			No	
Title 3: Health Professions					
Chapter 564: Program to Aid Impaired Pharmacists and Pharmacy Students; Pharmacy Peer Review					

Texas Occupations Code

Section	Related/ Contrary	Explanation	Preemption Exception	Is State Law Preempted?	Recommendation
§ 564.001 Reports	Related/ Not Contrary	This law allows reporting to the Texas State Board of Pharmacy regarding a pharmacist or pharmacy student who is impaired by chemical abuse or mental or physical illness, and allows the Board to report the information it receives to a professional society regarding the pharmacist or pharmacy student.			
		This law is not contrary to HIPAA because the Board and others mentioned in subsections (b) and (c) of this law are not covered entities, and a covered entity could comply with this law and with the requirements under HIPAA.		No	
§ 564.002 Confidentiality	Related/ Not Contrary	Covered entities should note HIPAA's requirements for use and disclosure for health oversight activities under 45 C.F.R. § 164.512(d), and use and disclosure for health care operations at § 164.506.			
		This law makes information received by the Board in § 564.001 confidential.		No	
§ 564.003 Disclosure of Certain Information	Related/ Not Contrary	This law is not contrary because the Board is not a covered entity.			
		This law allows the Board to disclose information that is confidential under § 564.002 in certain circumstances.		No	
§ 564.005 Record of Report	Related/ Not Contrary	This law is not contrary to HIPAA because the Board is not a covered entity.			
		This law requires the Board to expunge the records of a pharmacist or student about whom a complaint is found to be without merit.		No	
§ 564.006 Examination of Report	Related/ Not Contrary	This law is not contrary to HIPAA because the Board is not a covered entity.			
		This law requires the Board to allow a pharmacist or pharmacy student to examine their complaint file and submit a personal statement.		No	
		This law is not contrary to HIPAA because the Board is not a covered entity.			

Texas Occupations Code

Section	Related/ Contrary	Explanation	Preemption Exception	Is State Law Preempted?	Recommendation
§ 564.102 Pharmacy Peer Review Committee	Related/ Not Contrary	<p>This law sets up pharmacy peer review committees and provides that they may review quality-related documentation.</p> <p>This law is not contrary to HIPAA because a covered entity could comply with this law and with the requirements under HIPAA. Covered entities should note HIPAA's requirements for use and disclosure for health care operations at 45 C.F.R. § 164.506.</p> <p>This law makes peer review records confidential and allows for certain disclosures by the committees. This law is not contrary to HIPAA because a covered entity can comply with this law and with the requirements under HIPAA.</p>		No	
§ 564.103 Confidentiality	Related/ Not Contrary	<p>Peer review activities under this law are consistent with the HIPAA allowable use and disclosure for health care operations at 45 C.F.R. § 164.506.</p> <p>Confidentiality under this law does not prevent a covered entity from disclosing a Designated Record Set to which an individual has a right of access under HIPAA at 45 C.F.R. § 164.524. See definition of "Designated Record Set" at § 164.501. See <i>a/so</i> comments at 65 Fed. Reg. 82554.</p>		No	
§ 564.104 Use of Information in Civil and Criminal Actions	Related/ Not Contrary	<p>This law and § 564.106 allow use of otherwise confidential information as evidence in a civil proceeding by any organization named as a defendant in any civil action filed as a result of participation in peer review.</p> <p>This law is not contrary to HIPAA because a covered entity can comply with this law and with the requirements under HIPAA. Covered entities should note HIPAA requirements for use or disclosure in a judicial or administrative proceeding under 45 C.F.R. § 164.512(e).</p>		No	

Texas Occupations Code

Section	Related/ Contrary	Explanation	Preemption Exception	Is State Law Preempted?	Recommendation
§ 564.105 Compliance with Subpoena	Related/ Not Contrary	This law requires anyone to comply with a subpoena issued by the Board. This law is not contrary to HIPAA because it makes compliance with the subpoena "required by law," and HIPAA permits appropriately limited disclosure of PHI that is required by law, 45 C.F.R. § 164.512(a). This law and § 564.104 allow use of otherwise confidential information as evidence in a civil proceeding by any organization named as a defendant in any civil action filed as a result of participation in peer review.		No	
§ 564.106 Immunity	Related/ Not Contrary	This law is not contrary to HIPAA because a covered entity can comply with this law and with the requirements under HIPAA. Covered entities should note HIPAA requirements for use or disclosure in a judicial or administrative proceeding under 45 C.F.R. § 164.512(e) and health care operations under § 164.506.		No	
Title 3: Health Professions					
Chapter 565: Disciplinary Actions and Procedures; Reinstatement of License					
§ 565.055 Investigation; Confidentiality of Investigation	Related/ Not Contrary	This law makes information regarding the Pharmacy Board's investigations on disciplinary actions confidential, and makes exceptions to confidentiality. This law is not contrary to HIPAA because the Board is not a covered entity.		No	
Chapter 566 Penalties and Enforcement Provisions	Not Related			No	
Chapter 567 Labeling Requirements for Certain Prescription Drugs or Drug Products	Not Related			No	

Texas Occupations Code

Section	Related/ Contrary	Explanation	Preemption Exception	Is State Law Preempted?	Recommendation
Chapter 568 Pharmacy Technicians	Not Related			No	
Title 3: Health Professions					
Chapter 569: Reporting Requirements for Professional Liability Insurers					
§ 569.001 Duty to Report	Related/ Not Contrary	<p>Subsection (c) of this law requires pharmacists who do not carry liability insurance or are insured by a non-admitted carrier to report to the Board regarding certain claims filed against them related to pharmaceutical care or services.</p> <p>This law is not contrary to HIPAA because a covered entity could comply with this law and with the requirements under HIPAA. The report is "required by law," and HIPAA permits appropriately limited disclosure of PHI that is required by law, 45 C.F.R. § 164.512(a). Covered entities should note HIPAA contains additional requirements for use and disclosure for health oversight activities under § 164.512(d), and use and disclosure for health care operations at § 164.506.</p> <p>This law sets out the types of information that must be submitted to the Board under § 569.001.</p> <p>This law relates to privacy of IIHI to the extent that claims and complaints contain IIHI of pharmacy patients.</p>		No	
§ 569.002 Information to be Reported	Related/ Not Contrary	<p>This law is not contrary to HIPAA because a covered entity could comply with this law and with the requirements under HIPAA. The report is "required by law," and HIPAA permits appropriately limited disclosure of PHI that is required by law, 45 C.F.R. § 164.512(a). Covered entities should note HIPAA contains additional requirements for use and disclosure for health oversight activities under § 164.512(d), and use and disclosure for health care operations at § 164.506.</p>		No	
§ 569.003 Immunity from Liability	Related/ Not Contrary	<p>This law gives immunity from liability to the insurers that are required to report to the Board under this Subchapter.</p> <p>This law is not contrary to HIPAA because a covered entity could comply with this law and with the requirements under HIPAA.</p>		No	

Texas Occupations Code

Section	Related/ Contrary	Explanation	Preemption Exception	Is State Law Preempted?	Recommendation
§ 569.004 Restriction on Use of Information Reported	Related/ Not Contrary	This law makes the information reported to the Board confidential. This law is not contrary to HIPAA because the Board is not a covered entity.		No	
Chapter 601 Medical Radiologic Technologists	Not Related			No	
Title 3: Health Professions Chapter 602: Medical Physicists					
§ 602.152 Consumer Interest Information; Complaints	Related/ Not Contrary	This law requires the Texas Board of Licensure for Professional Medical Physicists (in the Texas Department of Health) to maintain complaint/investigation files on all complaints received. This law relates to privacy of IIHI to the extent that complaints contain IIHI relating to patients receiving medical radiation treatment. This law is not contrary to HIPAA because the Board is not a covered entity. This law allows the Board, upon approval by the commissioner, to subpoena records for complaint investigation. It also makes all complaint investigation materials confidential and makes exceptions to confidentiality.		No	
§ 602.1525 Subpoenas	Related/ Not Contrary	This law is not contrary to HIPAA because the Board is not a covered entity, and a covered entity can comply with this law and with the requirements under HIPAA. Covered entities should note HIPAA requirements for use or disclosure for public health activities under 45 C.F.R. § 164.512(b), health oversight activities under § 164.512(d), law enforcement purposes under § 164.512(f), and research under § 164.512(i).		No	
Title 3: Health Professions Chapter 603: Perfusionists					

Texas Occupations Code

Section	Related/ Contrary	Explanation	Preemption Exception	Is State Law Preempted?	Recommendation
§ 603.203 Records of Complaints	Related/ Not Contrary	This law requires the Texas State Board of Examiners of Perfusionists to keep complaints on file and to notify the parties of the status of complaint investigations.		No	
		This law relates to privacy of IIHI to the extent complaints contain IIHI. This law is not contrary to HIPAA because the Board is not a covered entity.			
§ 603.204 General Rules Regarding Complaint Investigation and Disposition	Related/ Not Contrary	This law requires the Board to make rules regarding handling of complaints and notifying parties.		No	
		This law is not contrary to HIPAA because the Board is not a covered entity.			
§ 603.2041 Subpoenas	Related/ Not Contrary	This law allows the Board, upon approval by the commissioner, to subpoena records for complaint investigation. It also makes all complaint investigation materials confidential and makes exceptions to confidentiality.			
		This law is not contrary to HIPAA because a covered entity can comply with this law and with the requirements under HIPAA. Covered entities should note HIPAA requirements for use or disclosure for health oversight activities, 45 C.F.R. § 164.512(d). Also, compliance with the subpoena would be "required by law," and HIPAA permits appropriately limited disclosure of PHI that is required by law, 45 C.F.R. § 164.512(a). As to confidentiality, the Board is not a covered entity under HIPAA.		No	
Title 3: Health Professions					
Chapter 605: Orthotics and Prosthetists					
§ 605.151 General Powers of Board	Related/ Not Contrary	This law allows the Texas Board of Orthotics and Prosthetics, which is part of TDH, to conduct complaint investigations. This law relates to privacy of IIHI to the extent that complaints contain IIHI.			No
		This law is not contrary to HIPAA because the Board is not a covered entity.			

Texas Occupations Code

Section	Related/ Contrary	Explanation	Preemption Exception	Is State Law Preempted?	Recommendation
§ 605.202 Complaints	Related/ Not Contrary	This law requires the Texas Board of Orthotics and Prosthetics, which is part of TDH, to keep a file on all complaints and to notify parties of the status of investigations.		No	
		This law relates to privacy of IIHI to the extent that complaints contain IIHI. This law is not contrary to HIPAA because the Board is not a covered entity.			
		This law allows the Board, upon approval by the commissioner, to subpoena records for complaint investigation. It also makes all complaint investigation materials confidential and makes exceptions to confidentiality.			
§ 605.2021 Subpoenas	Related/ Not Contrary	This law is not contrary to HIPAA because the board is not a covered entity, and a covered entity could comply with this law and with the requirements under HIPAA.		No	
		Covered entities should note HIPAA requirements for use and disclosure for public health activities under 45 C.F.R. § 164.512(b), health oversight activities under § 164.512(d), law enforcement purposes under § 164.512(f), and research under § 164.512(i). Also, compliance with the subpoena would be "required by law," and HIPAA permits appropriately limited disclosure of PHI that is required by law, 45 C.F.R. § 164.512(a).			
Chapter 651 Cemetery and Crematory Services, Funeral Directing, and Embalming	Not Related			No	
Title 3: Health Professions Chapter 701: Dieticians					

Texas Occupations Code

Section	Related/ Contrary	Explanation	Preemption Exception	Is State Law Preempted?	Recommendation
§ 701.203 Records of Complaints	Related/ Not Contrary	This law requires the Texas State Board of Examiners of Dietitians to keep complaints on file and notify parties of status of investigations. This law is not contrary to HIPAA because the Board is not a covered entity.			No
§ 701.204 General Rules Regarding Complaint Investigation and Disposition	Related/ Not Contrary	This law requires the Board to make rules regarding handling of complaints and notifying parties. This law is not contrary to HIPAA because the Board is not a covered entity. This law allows the Board, upon approval by the commissioner, to subpoena records for complaint investigation. It also makes all complaint investigation materials confidential and makes exceptions to confidentiality.		No	
§ 701.2041 Subpoenas	Related/ Not Contrary	This law is not contrary to HIPAA because the board is not a covered entity, and a covered entity could comply with this law and with the requirements under HIPAA. Covered entities should note HIPAA requirements for use and disclosure for public health activities under 45 C.F.R. § 164.512(b), health oversight activities under § 164.512(d), law enforcement purposes under § 164.512(f), and research under § 164.512(i). Also, compliance with the subpoena would be "required by law," and HIPAA permits appropriately limited disclosure of PHI that is required by law, 45 C.F.R. § 164.512(a).		No	
Chapter 702 Health Spas	Not Related			No	
Title 4: Professions Related to Animal Health					
Chapter 801 Veterinarians	Not Related			No	
Title 5: Regulation of Financial and Legal Services					
Chapter 901 Accountants	Not Related			No	

Texas Occupations Code

Section	Related/ Contrary	Explanation	Preemption Exception	Is State Law Preempted?	Recommendation
Chapter 951 Prepaid Legal Services	Not Related			No	
Chapter 952 Lawyer Referral Services	Not Related			No	
Chapter 953 Petroleum and Mineral Land Services	Not Related			No	
Chapter 953 Regulation of For-profit Legal Service Contract Companies	Not Related			No	
Title 6: Regulation of Engineering, Architectural, Land Surveying, and Related Practices					
Chapter 1001 Engineers	Not Related			No	
Chapter 1002 Geoscientists	Not Related			No	
Chapter 1051 Texas Board of Architectural Examiners; General Provisions Affecting Architects, Landscape Architects, and Interior Designers; Provisions Affecting Only Architects	Not Related			No	

Texas Occupations Code

Section	Related/ Contrary	Explanation	Preemption Exception	Is State Law Preempted?	Recommendation
Chapter 1052 Landscape Architects	Not Related			No	
Chapter 1053 Interior Designers	Not Related			No	
Chapter 1071 Land Surveyors	Not Related			No	
Title 7: Practices and Professions Related to Real Property and Housing					
Chapter 1101 Real Estate Brokers and Salespersons	Not Related			No	
Chapter 1102 Real Estate Inspectors	Not Related			No	
Chapter 1103 Real Estate Appraisers	Not Related			No	
Chapter 1151 Property Tax Professionals	Not Related			No	
Chapter 1152 Property Tax Consultants	Not Related			No	
Chapter 1201 Manufactured Housing	Not Related			No	
Chapter 1202 Industrialized Housing and Buildings	Not Related			No	
Title 8: Regulation of Environmental and Industrial Trades					
Chapter 1301 Plumbers	Not Related			No	

Texas Occupations Code

Section	Related/ Contrary	Explanation	Preemption Exception	Is State Law Preempted?	Recommendation
Chapter 1302 Air Conditioning and Refrigeration Contractors	Not Related			No	
Chapter 1303 Residential Service Companies	Not Related			No	
Chapter 1304 Service Contract Providers	Not Related			No	
Chapter 1305 Electricians	Not Related			No	
Title 9: Regulation of Barbers, Cosmetologists, and Related Occupations					
Chapter 1601 Barbers	Not Related			No	
Chapter 1602 Cosmetologists	Not Related			No	
Title 10: Occupations Related to law Enforcement and Security					
Chapter 1701 Law Enforcement Officers	Not Related			No	
Chapter 1702 Private Security	Not Related			No	
Chapter 1703 Polygraph Examiners	Not Related			No	
Chapter 1704 Regulation of Bail Bond Sureties	Not Related			No	
Title 11: Regulation of Sales and Solicitation					
Chapter 1801 Commission Merchants	Not Related			No	

Texas Occupations Code

Section	Related/ Contrary	Explanation	Preemption Exception	Is State Law Preempted?	Recommendation
Chapter 1802 Auctioneers	Not Related			No	
Chapter 1803 Solicitation for Public Safety Organizations	Not Related			No	
Chapter 1804 Solicitation for Veterans Organizations	Not Related			No	
Chapter 1805 Sale of Secondhand Business Machines	Not Related			No	
Title 12: Practices and Trades Related to Water, Health, and Safety					
Chapter 1901 Water Well Drillers	Not Related			No	
Chapter 1902 Water Well Pump Installers	Not Related			No	
Chapter 1903 Irrigators	Not Related			No	
Chapter 1951 Structural Pest Control	Not Related			No	
Chapter 1952 Code Enforcement Officers	Not Related			No	
Chapter 1953 Sanitarians	Not Related			No	
Chapter 1954 Asbestos Health Protection	Not Related			No	

Texas Occupations Code

Section	Related/ Contrary	Explanation	Preemption Exception	Is State Law Preempted?	Recommendation
Chapter 1955 Lead-based Paint Abatement	Not Related			No	
Chapter 1956 Sales to Metal Dealers and Metal Recycling Entities	Not Related			No	
Chapter 1957 Industrial Hygienists	Not Related			No	
Chapter 1958 Mold Assessors and Remediators	Not Related			No	
Title 13: Sports, Amusements, and Entertainment					
Chapter 2001 Bingo	Not Related			No	
Chapter 2002 Charitable Raffles	Not Related			No	
Chapter 2003 Inspection and Regulation of Gambling Vessels	Not Related			No	
Chapter 2051 Athlete Agents	Not Related			No	
Chapter 2052 Combative Sports	Not Related			No	
Chapter 2101 Consignment of Art Works	Not Related			No	

Texas Occupations Code

Section	Related/ Contrary	Explanation	Preemption Exception	Is State Law Preempted?	Recommendation
Chapter 2102 Collection of Royalties on Nondramatic Musical Works	Not Related			No	
Chapter 2103 Licensing and Performing Fees for Certain Recordings	Not Related			No	
Chapter 2104 Regulation of Outdoor Music Festivals	Not Related			No	
Chapter 2105 Regulation of Talent Agencies	Not Related			No	
Chapter 2151 Regulation of Amusement Rides	Not Related			No	
Chapter 2152 Regulation of Circuses, Carnivals, and Zoos	Not Related			No	
Chapter 2153 Coin-operated Machines	Not Related			No	
Chapter 2154 Regulation of Fireworks and Fireworks Displays	Not Related			No	

Texas Occupations Code

Section	Related/ Contrary	Explanation	Preemption Exception	Is State Law Preempted?	Recommendation
Chapter 2155 Hotels and Boardinghouses	Not Related			No	
Chapter 2156 Theaters	Not Related			No	
Chapter 2157 Regulation of Motion Picture Theaters	Not Related			No	
Title 14: Regulation of Motor Vehicles and Transportation					
Chapter 2301 Sale or Lease of Motor Vehicles	Not Related			No	
Chapter 2302 Salvage Vehicle Dealers	Not Related			No	
Chapter 2303 Vehicle Storage Facilities	Not Related			No	
Chapter 2304 Nonmechanical Repairs to Motor Vehicles	Not Related			No	
Chapter 2305 Records of Certain Vehicle Repairs, Sales, and Purchases	Not Related			No	
Chapter 2306 Insurer Interests in Repair Facilities	Not Related			No	

Texas Occupations Code

Section	Related/ Contrary	Explanation	Preemption Exception	Is State Law Preempted?	Recommendation
Chapter 2306 Vehicle Protection Product Warrantors	Not Related			No	
Chapter 2351 Stevedores	Not Related			No	
Chapter 2352 Boat Manufacturers, Distributors, and Dealers	Not Related			No	
Chapter 2401 Transportation Service Providers	Not Related			No	
Title 15: Occupations Related to Employment					
Chapter 2501 Personnel Services	Not Related			No	
Chapter 2502 Career Counseling Services	Not Related			No	

Texas Penal Code

Section	Related/Contrary	Explanation	Preemption Exception	Is State Law Preempted?	Recommendation
Title 7: Offense Against Property Chapter 31: Theft					
§ 31.03 Theft	Not Related	Details the elements of the offense		No	
Title 7: Offense Against Property Chapter 32: Fraud					
§ 32.45 Misapplication of Fiduciary Property or Property of Financial Institution	Not Related	Defines terms relevant to the elements of the offense.		No	
§ 32.46 Securing Execution of Document by Description	Not Related	Details the elements of the offense.		No	
Title 8: Offenses Against Public Administration Chapter 38: Obstructing Governmental Operation					
§ 38.18 Use of Accident Report Information and Other Information for Pecuniary Gain	Related/ Not Contrary	Disclosure by a covered entity is not contemplated; this sets out a criminal offense for obtaining and using such information for pecuniary gain by direct solicitation of the victim.		No	

Texas Rules of Appellate Procedure

Rule	Related/Contrary	Explanation	Preemption Exception	Is State Law Preempted?	Recommendation
Rule 14 Recording and Broadcasting Court Proceedings	Not Related	Allows appellate court to permit broadcasting, televising, recording or photographing of courtroom proceedings upon request; does not affect the privacy of PHI.		No	

Texas Rules of Disciplinary Procedure

Rule	Related/Contrary	Explanation	Preemption Exception	Is State Law Preempted?	Recommendation
Rule 12.04 Disability Suspension; Board of Disciplinary Appeals Responsibilities	Related/Contrary	The Board of Disciplinary Appeals is not a covered entity. The records remain confidential except as to the respondent.		No	

Texas Rules of Evidence

Rule	Related/Contrary	Explanation	Preemption Exception	Is State Law Preempted?	Recommendation
Article IV: Relevancy and Its Limits					
402 Relevant Evidence Generally Admissible; Irrelevant Evidence Inadmissible	Not Related	<p>(1) To the extent the relevant information includes PHI, the rule does not require a covered entity to disclose information, but only limits the evidence that can be admitted to what is relevant.</p> <p>(2) Furthermore, the rule contains the proviso, "except as otherwise provided by . . . statute . . . or by other rules prescribed pursuant to statutory authority." Thus, if not permitted under HIPAA, the information is not admissible even if relevant.</p> <p>(3) HIPAA permits a covered entity to disclose PHI in the course of a judicial or administrative proceeding in response to a court order. 45 C.F.R. § 164.512(e)(1)(i).</p>		No	
412 Evidence of Previous Sexual Conduct in Criminal Cases	Related/Not Contrary	The information at issue is not PHI.		No	
Article V: Privileges					
509 Physician-Patient Privilege	Related/Not Contrary	<p>This rule does not require a physician (a covered entity) to disclose PHI. Nor does it prescribe the circumstances under which a physician may or must disclose PHI.</p> <p>With regard to both civil and criminal proceedings, HIPAA permits a covered entity to disclose PHI in the course of a judicial or administrative proceeding in response to a court order. 45 C.F.R. § 164.512(e)(1)(i).</p>		No	

Texas Rules of Evidence

Rule	Related/Contrary	Explanation	Preemption Exception	Is State Law Preempted?	Recommendation
510 Confidentiality of Mental Health Information in Civil Cases	Related/Not Contrary	The Rule does not require a "professional" (a covered entity) to disclose PHI. Nor does it prescribe the circumstances under which a "professional" may or must disclose PHI.		No	
511 Waiver of Privilege by Voluntary Disclosure	Related/Not Contrary	The patient holds the privilege. Even if waived, HIPAA still applies to the covered entity.		No	
Article VI: Witnesses					
612 Writing Used to Refresh Memory	Related/Not Contrary	If a covered entity is testifying, the covered entity can comply with both the Rule and HIPAA, as HIPAA permits a covered entity to disclose PHI in the course of a judicial or administrative proceeding in response to a court order. 45 C.F.R. § 164.512(e)(1)(i).		No	
Article VII: Opinions and Expert Testimony					
705 Disclosure of Facts or Data Underlying Expert Opinion	Related/Not Contrary	HIPAA permits a covered entity to disclose PHI in the course of a judicial or administrative proceeding in response to a court order. 45 C.F.R. § 164.512(e)(1)(i).		No	
Article VIII: Hearsay					
803 Hearsay Exceptions; Availability of Declarant Immaterial	Related/Not Contrary	Court is not ordering disclosure of information, but says what is admissible; requires have a court order to disclose information.		No	

Texas Transportation Code

Section	Related/Contrary	Explanation	Preemption Exception	Is State Law Preempted?	Recommendation
Title 6: Roadways					
Chapter 366: Regional Tollway Authorities					
§ 366.033 General Powers	Related/Not Contrary	No covered entity		No	
Title 7: Vehicles and Traffic					
Chapter 521: Driver's Licenses and Certificates					
§ 521.102 Disability or Health Condition Certificate	Related/Not Contrary	No covered entity (information released to the individual).		No	
§ 521.125 Medical and Emergency Information on License	Related/Not Contrary	The provision requires DPS to include certain health information on a driver's license. The disclosure, which is voluntary, is by the individual rather than a covered entity and the department is not a covered entity.		No	
§ 521.126 Electronically Readable Information	Related/Not Contrary	Electronically readable information on a driver's license is not PHI subject to the HIPAA Privacy Rule.		No	
§ 521.142 Application for Original License	Related/Not Contrary	No covered entity		No	
Title 7: Vehicles and Traffic					
Chapter 550: Accidents and Accident Reports					
§ 550.065 Release of Certain Information Relating to Accidents	Not Related	A peace officer's accident report is completed by a peace officer (not a covered entity) and is not PHI.		No	
Title 7: Vehicles and Traffic					
Chapter 681: Privileged Parking					
§ 681.003 Parking Placard Application	Related/Not Contrary	To the extent the information is PHI, the medical information is submitted by the applicant, not a covered entity.		No	