**August 2009**

# Privacy and Security Solutions for Interoperable Health Information Exchange

## Report on State Law Requirements for Patient Permission to Disclose Health Information

Prepared for

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## Disclaimer

This survey was conducted in 2008 and early 2009. The authors have attempted to assure that the information presented is accurate as of January 2009. The information in this report is intended to provide an overview of a specific subset of the state statutes and regulations governing the requirements for certain providers to obtain patient permission to disclose health information for treatment. It should not be used as a substitute for legal or other expert advice.

The authors of this report are responsible for its content. Statements in the report should not be construed as endorsement by the U.S. Department of Health and Human Services.

This report does not contain any individually identifiable information.

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# EXECUTIVE SUMMARY

## Background and Purpose

This report is one of a series produced under RTI International's contract with the Agency for Healthcare Research and Quality (AHRQ). The contract, entitled Privacy and Security Solutions for Interoperable Health Information Exchange, is managed by AHRQ and the Office of the National Coordinator for Health Information Technology (ONC). In the first phase of this project, 33 states and 1 territory (collectively referred to as states or state teams) conducted an assessment of variation in business practices, policies, and laws that might be perceived as barriers to electronic health information exchange, suggested possible solutions to these barriers, and prepared plans to implement these solutions. In doing so, the states focused on a number of different scenarios, including treatment, health information exchange, payment, research, and public health.[1] As a result, the states identified a number of state laws and policies addressing the limitations on disclosure of health information between health care providers and third parties that may impede electronic health information exchange.

The majority of states that participated in Phase I of this project (30/34) reported significant variation in the business practices and policies surrounding the need for and process of obtaining patient permission[2] to use and disclose personal health information for a variety of purposes, including for treatment. Information related to health conditions that are often considered "sensitive," such as HIV/AIDS, alcohol and drug addiction, mental illness, and genetic makeup, are often afforded heightened legal protections. These protections, which often require patient permission to disclose health information, vary from state to state. States identified the need to obtain patient permission to disclose certain information and the variations associated with such permission as potential impediments to the electronic exchange of health information both within states and across state lines.

This report is intended to further the initial work of this project by collating and analyzing state laws that govern the disclosure of identifiable health information for treatment purposes to identify commonalities and differences.

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[1] Dimitropoulos, L. (2007, July). *Privacy and Security Solutions for Interoperable Health Information Exchange, Assessment of Variation and Analysis of Solutions*. Report prepared for the Agency for Healthcare Research and Quality and the Office of the National Coordinator for Health IT.

[2] States use various terms to refer to the concept of obtaining approval from a patient to share health information with an outside party, including "consent," "authorization," and "release." The Privacy Rule issued under the Health Insurance Portability and Accountability Act of 1996 (HIPAA Privacy Rule) uses the term "consent" for individual permission to disclose protected health information for treatment. See 45 C.F.R. § 164.506. We use the term *patient permission* to refer to this concept, unless we are directly quoting a state statute or regulation.

## Methodology

To obtain some consistency across the states for comparison purposes, we focused our review on whether a few specific categories of health care entities may share specific types of health information of adult patients for treatment under state law. The categories that we reviewed were consistent with those assessed in the first phase of this project.

We identified and compiled statutes and regulations that govern the disclosure of the following types of health information:

- clinical health information (general)
- HIV/AIDS (tests and other information)
- mental health
- substance abuse
- genetics (tests and other information)

by the following entities:

- private practice doctors of medicine
- hospitals
- pharmacists
- outpatient substance abuse treatment programs
- inpatient mental health care facilities
- independent clinical laboratories (i.e., not associated with hospitals or public health departments

We used the assessments conducted in Phase I as well as prior publicly available state law surveys as the starting point for identifying relevant state statutes and regulations. We supplemented this information by conducting original research using online legal research tools, including Lexis/Nexis, Westlaw, and relevant websites operated by state governments. In addition to reviewing statutes and regulations, we reviewed case law and state attorney general opinions interpreting these laws as identified in case notes provided by the legal search engines.

We summarized the statutes and regulations we identified on Excel charts, answering a series of standard questions designed to elicit details on whether the statute or regulation requires patient permission to disclose information. We initially classified state law provisions using the following categories:

- Y = Yes, provider may disclose health information for treatment without patient permission.
- S = Sometimes. Provider may sometimes disclose health information for treatment without patient permission.

- N = No, provider may not disclose health information for treatment without patient permission.
- U = It is unclear whether the provider or program must obtain patient permission to disclose health information for treatment without patient permission.

We answered a structured series of questions designed to address the following main issues:

- Whether the provider or program may disclose the pertinent type of information for treatment purposes without patient permission?
- Are there limits to whom information may be disclosed without patient permission?
- Are there limits on the amount or type of information that may be disclosed without permission (e.g., minimum necessary or only summary information)?
- If permission is or may be required, must the permission be in writing?
- Are there specific format or content requirements? If so, what are the requirements?
- Does the law restrict the receiving party from redisclosing the information?
- Does the law permit disclosure without patient permission for emergency treatment?

Information from the Excel data collection templates were imported into a SQL database. (Questions from the Excel template eliciting this information are shown in **Appendix A: Data Collection Outline**.) We generated a series of reports based on provider type and health information category.

After reviewing the information collected in aggregate, we further refined the categories for state disclosure laws, in light of recurring provisions. We added such categories as:

- NT = May disclose when necessary for treatment.
- E = May disclose for emergency treatment.
- SP = May disclose to specified providers (e.g., only to other mental health providers)
- AP = Must attempt to obtain permission first, but may disclose if unable to obtain permission.
- PJ = May disclose subject to professional judgment

We used these broad categories to organize our data. In analyzing the data, we used standard techniques for statutory interpretation including reviewing a state's statutes and regulations together, reading official comments, pertinent case law, and attorney general opinions. We also reviewed materials submitted by states in Phase I of this project, material developed by the Interstate Disclosure and Patient Consent Requirements Collaborative, and state preemption analyses where publicly available. We note, however, that there was a dearth of explanatory material for many statutes and regulations and that we interpreted these based on the plain reading of the law.

## Findings

### *General Clinical Information*

Many states have laws that generally regulate the disclosure of health information or medical records and that are not specific to one type of medical condition (general clinical information). These laws govern specific types of health care entities, and often pertain to hospitals, doctors, or both. Pharmacists are often subject to distinct laws. Because the laws governing hospitals and doctors are fairly similar, their findings are summarized together.[3]

Approximately a dozen states have statutory or regulatory provisions that generally permit hospitals and/or doctors to disclose general clinical information for treatment without patient permission. In a few states (less than five), such disclosures are generally permitted but patients have the right to opt out of disclosures to providers who have previously provided care.[4] One state appears to permit hospitals and doctors to disclose health information for treatment without patient permission, but only to a specified group of other health care providers (see Tables A-1a and A-1b).

In many states, the Health Insurance Portability and Accountability Act of 1996 (HIPAA) Privacy Rule sets the standard for hospitals' and doctors' disclosure of health information for treatment, either expressly or implicitly. A few states expressly incorporate the HIPAA Privacy Rule standard. An additional handful of states have statutes and regulations that permit hospitals and doctors to disclose health information "as authorized by law" or similar standard, which implicitly incorporates HIPAA. We were unable to identify statutes or regulations governing the disclosure of health information for treatment purposes by hospitals in 22 states and by doctors in 28 states. Because of the apparent absence of controlling state law in these states, the HIPAA Privacy Rule provides the standard for disclosure. Either through express provisions or through absence of state law, the HIPAA Privacy Rule appears to be the standard for disclosure for treatment in approximately 30 states for hospitals and 35 states for doctors (see Tables A-1a and A-1b).

When the two categories summarized above are combined (states that expressly permit disclosure for treatment plus states that rely on the HIPAA Privacy Rule either expressly or implicitly), it appears that in over 40 states hospitals and/or doctors may disclose general clinical health information for treatment without patient permission and not subject to express limitations (such as a limited opt out) (see Tables A-1a and A-1b).

Only a handful of states usually require hospitals and/or doctors to obtain patient permission before disclosing general clinical health information to other providers for treatment purposes.

[3] Numbers are approximate because there are slight variances in state laws governing hospitals and doctors.

[4] The opt-out provisions appear to be intended to give patients some control in obtaining second opinions or consultations for treatment.

State laws establishing disclosure standards for pharmacies and pharmacists (hereinafter pharmacists) tend to be less clear-cut than laws governing doctors and hospitals. Pharmacists in at least 34 states appear to be able to generally disclose general clinical health information to health providers without patient permission, either under express statutory or regulatory provisions, by incorporating the HIPAA Privacy Rule, or because an applicable state standard is lacking. A number of other states have statutory or regulatory provisions that expressly permit pharmacists to disclose health information that they maintain subject to professional judgment, although it is unclear how this standard is interpreted. Pharmacists in two states may disclose health information without patient permission only to specific types of health care providers. Laws in six states were unclear primarily due to inconsistent statutory or regulatory provisions [see discussion in Section 3.2.3.

Only two states, New York and Minnesota, generally require pharmacists to obtain patient permission to disclose information for treatment. Both allow disclosures for emergency treatment.

Due to the ambiguity in pharmacy laws, it is somewhat difficult to obtain an overall figure for states which permit all three categories of health care providers discussed (doctors, hospitals and pharmacists) to disclose health information for treatment without patient permission and not subject to other limitations. However, it is clear that in about half the states, hospitals, doctors, and pharmacists may all disclose general clinical information for treatment to a wide range of health care providers without patient permission (see Tables A-1a, A-1b, and A-1c).[5]

### *HIV-Related Information*

The majority of states (41) have statutes or regulations that specifically regulate the disclosure of information related to human immunodeficiency virus (HIV) or to information related to communicable diseases, including HIV (see Table A-2). Most apply to a broad range of entities, such as "any person who obtains such information in the course of providing a health service." As a practical matter, the effective scope of HIV-specific laws in many states is quite broad because the law prohibits recipients of HIV-related information from further disclosing the information except as authorized under the terms of the law. At least 19 states have HIV-specific laws that apply to a fairly wide range of HIV-related information, while 22 states take a narrower approach and afford protection to information related only to HIV tests and test results (see Table A-2).

For the most part, laws regulating the disclosure of HIV-related information apply similarly across the board to hospitals, doctors of medicine, and pharmacists/pharmacies. Twelve

[5] This figure excludes states that impose a professional judgment standard on disclosure, where it is somewhat ambiguous whether the provider may always disclose health information for treatment without patient permission.

states have laws that usually require hospitals and doctors to obtain patient permission before disclosing HIV-related health information to other providers. Slightly fewer states (8) impose a similar standard on pharmacists (perhaps because pharmacists do not administer or analyze HIV tests).[6]

Approximately 12 states have HIV-specific statutes and regulations that permit health care providers to disclose information without patient permission to other providers when knowledge of the information is necessary to provide care or treatment, or similar standard, which some interpret as akin to the minimum necessary standard of the HIPAA Privacy Rule (see Tables A-3a, A-3b, and A-3c).

Approximately 20 states permit hospitals, doctors, and pharmacists to disclose HIV-related information to other health care providers for treatment without the patient's permission, and apparently absent minimum necessary type requirements (see Tables A-3a, A-3b, and A-3c). Only one state's HIV-specific law expressly incorporates the disclosure standard set by the HIPAA Privacy Rule. Another state, Nevada, provides that more stringent state restrictions on sharing HIV information do not apply when the information is electronically transmitted in accordance with HIPAA. Patients, however, have the right to opt out of having their information electronically transmitted.

States that require patient permission to disclose HIV-related information generally require that such permission be in writing. However, some states make clear that patient permission need not be obtained for every instance of disclosure.

### *Genetics-Related Information*

State laws often provide heightened protection for information related to individuals' genetic makeup (genetics-related information). Although most of the state restrictions on sharing genetics-related information are imposed on health insurers, 18 states have genetics-related information laws that are broad enough to encompass disclosure by health care providers.[7] The scope of information covered by these laws varies. Some state laws afford protection solely to genetic testing and testing-related information, while others are somewhat broader and also protect other information tied to genetic makeup such as family health history or information about inherited characteristics (see Table A-4).

For the most part, state genetics-related information laws apply to "any person," or "any entity," categories that include any health care provider in possession of the information.

[6] With respect to hospitals and doctors, four of these states do not have HIV–specific laws, but have general health information laws that require patient permission to disclose health information for treatment and are broad enough to encompass HIV-related information. The same holds true in one state for pharmacists.

[7] Many of these laws were promulgated in response limits on the use of genetic health information by group health insurers contained in the portability provisions of HIPAA. The Genetic Information Non-Discrimination Act of 2008, Public Law no. 110-233, which prohibits discrimination on a wider basis, supersedes less stringent state laws.

Genetics-related information laws in 14 states generally require the permission of the test subject for disclosure of such information even for treatment. Laws in three states expressly permit the disclosure of genetic information without patient permission to another provider for treatment. As noted, most states do not have laws that specifically govern the disclosure of genetics-related information that is maintained by health care providers. In these states, disclosure laws that apply to general clinical health information are often broad enough to encompass genetics-related information. Many of these general clinical information laws permit the disclosure of health information for treatment without the patient's permission. In total, it appears that at least 30 states permit hospitals to disclose genetics-related information to other providers for treatment purposes without patient permission (see Table A-5a). A similar pattern is true for medical doctors and pharmacists (see Tables A-5b and A-5c).

### *Substance Abuse Treatment-Related Information*

Almost every state has a statute or regulation that specifically governs the disclosure of information related to substance abuse treatment generated by substance abuse treatment programs and facilities (as opposed to information related to substance abuse that may be incidentally generated in a general clinical care context). The entities covered by these laws vary from state to state, making a cross-state comparison of substance abuse treatment facilities extremely difficult. However, some themes do emerge.

Most (over 30) state laws governing substance abuse treatment programs incorporate by reference the federal requirements for protecting the confidentiality of alcohol and drug abuse treatment records, 42 U.S.C. 290dd-2, 42 C.F.R. Part 2. For the most part, state laws that govern substance abuse treatment programs and facilities, like the related Federal statute and rules, impose confidentiality requirements on patient identities including information about identified individuals (i.e., the fact that they have sought treatment for substance abuse) as well as treatment records. Laws in a few states expressly expand the federal protections to programs that are not federally funded. In other states, it is less clear whether the state statute or regulation incorporating federal law is intended to apply solely to federally assisted programs or is intended to apply to a broader range of entities.[8] In addition (or in lieu of) incorporating federal law, a few states' substance abuse laws independently require patient permission to disclose information, even for treatment. More often, state laws governing substance abuse treatment records permit the disclosure of information without patient permission for treatment in some circumstances, such as when the patient transfers from one treatment program to another or to obtain advice concerning

[8] One potential rationale for applying the federal confidentiality standards to substance abuse programs regardless of whether they receive federal assistance may be the inconsistent receipt of such assistance. For example, a substance abuse program may receive federal assistance (e.g., funding through a federal grant) one year but not another year. Applying the federal confidentiality standards regardless of whether the program receives federal assistance assures some degree of continuity and clarity in a state's confidentiality requirements from year to year.

a specific medical problem to assist in ongoing treatment. Although the particular circumstances vary, these laws may be seen as attempting to ensure that information may be shared for continuity of care, but only in a limited manner. Some states impose confidentiality requirements that exceed those in 42 C.F.R. Part 2, such as limiting the type of information that may be disclosed even pursuant to patient permission.

Federal law imposes strict limits on disclosures of information by federally-assisted programs. While most states have statutory provisions that specifically address information originating in substance abuse treatment programs and facilities, only a few have laws that specifically regulate alcohol or substance abuse-related information that is incidentally generated in the course of treatment outside of such a program or facility.

### *Information Generated by In-patient Mental Health Facilities*

States protect information related to mental health in a number of ways, including through recognition of mental health care provider-patient privileges, confidentiality requirements imposed on psychotherapists, social workers, and other mental health care providers as well as laws that apply to information generated in the mental health commitment process. Due to resource limitations we were unable to conduct a comprehensive analysis of all of these mental health laws. We, therefore, focused our study on one general category of law, those that govern information maintained by in-patient mental health treatment facilities. We selected this category based on the belief that these facilities, which include hospitals, may be more likely to have electronic medical records.[9]

Almost every state has statutes or regulations that fall within this category. Although the scope of these laws varies greatly among the states, some trends are evident.

First, the vast majority of state laws governing in-patient mental health treatment facilities protect a broad range of information and records generated by such a facility. The protections are not limited to just information related to the patient's mental health condition or treatment.

Second, although these laws are written to protect information originating at mental health facilities, as a practical matter, they have a broader impact. Laws in at least 10 states prohibit the recipients of health information originating from these mental health facilities from further disclosing the information except as authorized under the terms of the law. In these states, the legal protection essentially follows the health information as it flows to different entities.

Third, information related to mental health services often is afforded a higher degree of protection than information generated in other clinical settings. At their most stringent,

[9] Our decision to limit our inquiry in this fashion was made prior to the passage of the American Recovery and Reinvestment Act of 2009, Pub. Law Public Law 111-5, which contains incentives for certain physicians to adopt electronic medical records.

state laws require an in-patient mental health facility to obtain the permission of the patient to disclose health information even for treatment except in emergent circumstances. Only a few states have provisions that fall in this category. Most states, however, permit mental health treatment facilities to disclose information for treatment purposes without patient permission subject to certain conditions including the following:

- upon the patient's transition into, between, or among mental health care providers;
- to specific types or categories of providers:
  - only other mental health care professionals,
  - those who are actively engaged in the patient's diagnosis and care,
  - those who are part of a formal arrangement of organizations providing services; and
- subject to minimum necessary requirements or specified limited categories of information.

A few states, such as Arizona, treat information generated in the context of in-patient mental health treatment the same as other health information.

### *Information Maintained by Clinical Laboratories*

Clinical laboratories are subject to disclosure standards distinct from those that apply to other health care entities and, therefore, are discussed here separately. Laboratory testing in the United States is comprehensively regulated by the federal Clinical Laboratory Improvement Amendments (CLIA). Unlike HIPAA, which generally permits a covered entity to disclose health information to any other provider for treatment without patient permission, CLIA generally restricts the providers with whom a laboratory may share health information to those who are responsible for using the test, generally understood to include the provider who ordered the test,[10] and to persons authorized under state law to order tests or receive test results, or both.

Thus, state law plays an important role in determining whether a clinical laboratory may disclose health information to another health care provider for treatment.

Laws in only two states, the District of Columbia and New Hampshire, expressly require the patient's written permission for the release of test results to persons other than the ordering provider (see Tables A-6a, A-6b, and A-6c, ). Laws in 15 states permit clinical laboratories to disclose test results to providers in addition to the provider who requested the test. Ten restrict disclosure to providers authorized by law to use or employ the results, a matter which is generally determined by state health practitioner licensing laws. In addition, clinical laboratories are subject to laws that restrict the disclosure of specific health information including HIV- and genetics-related information (see Tables A-6c and A-6d). However, the

[10] It is unclear who else, other than the provider who ordered the test, qualifies as an individual responsible for using the test results under CLIA.

general restrictions on clinical laboratories' reporting test results appear to pose the most significant restriction on their ability to disclose health information to other providers for treatment.

### *Overview by Health Care Entity*

To obtain a perspective of how health information may be shared by other specific entities (similar to that of clinical laboratories), we collated laws governing general clinical information, genetics-related information, and HIV-related information by entity across the states for the following categories of providers: hospitals, medical doctors, and pharmacists[11] (Tables A-7(a-c), A-8(a-c), and A-9(a-c), respectively). This view presents but a small snapshot of how information may be shared. Overall, several states permit these entities to disclose general clinical, genetics-related, and HIV-related information without patient permission for treatment. Some do so by expressly incorporating the standards of the HIPAA Privacy Rule. Others do so by having legal provisions that expressly provide that disclosures for treatment of the patient are permitted. Approximately half the states impose additional restrictions on the sharing of HIV-related information. Very few states generally require patient permission in all these instances (Guam, Minnesota, Puerto Rico, Vermont).

It is important to note that this analysis is primarily based on the plain meaning of the statutes and regulations, which are often subject to various interpretations. In addition, even if a state law permits the disclosure of information without patient permission, professional ethics, judgment, or business choice often dictate other business practices.

### *Synopsis*

Many of the state health information laws we reviewed may be organized into macro categories or approaches based on the need to obtain patient permission to disclose information. The most prevalent categories are:

- Based on HIPAA Privacy rule, either expressly or implicitly.
- No patient permission is required for disclosure for treatment of the patient who is the subject of the information.
- Patient permission is required to disclose health information for treatment purposes
  - Only two states appear to generally require patient permission to disclose *all* types of health information.

[11] We did not include substance abuse-related information in this analysis because federal law, 42 U.S.C. 290dd-2 and implementing regulations at 42 C.F.R. Part 2, require the patient's permission by federally-assisted substance abuse programs uniformly across the states. Moreover, information that is created by or originated in federally-assisted programs and disclosed pursuant to patient consent may not be redisclosed without patient permission. We also did not include information generated by mental health facilities, since the definition of these facilities varied greatly from state to state (whereas medical doctors, hospitals and pharmacists are defined in a fairly uniform fashion among the states)...

  - Most states permit disclosure of general health information for treatment without patient permission, either based on HIPAA or through independent statutory or regulatory provisions, but require patient permission to disclose information related to certain types of medical conditions, generally considered sensitive.

- No patient permission is required for disclosure for treatment of the patient under certain conditions. Some of the more common parameters include limitations on
  - the amount or type of information to be disclosed (i.e., a minimum necessary-type standard);
  - disclosure based on the occurrence of certain events (e.g., upon admission, transfer, or discharge of patient);
  - additional time restrictions, such as only during the time the patient is being treated at the in-patient facility;
  - the providers to whom information may be disclosed (either by type of provider or by formal relationship to each other); and
  - subject to professional judgment.

## Implications and Conclusion

Although state statutes and regulations governing the disclosure of health information for treatment vary widely in their details, they evince some broad common patterns or approaches toward disclosing health information to other providers for treatment purposes. These findings may be informative in assessing some of the means of harmonizing state health information privacy laws that have been proposed.

A suggestion for harmonizing or simplifying state laws is one federal standard that would uniformly preempt state law. Some stakeholders have suggested that the HIPAA Privacy Rule should fill this role. Our findings indicate that adopting this approach would effectively eliminate many state laws that impose greater restrictions on the disclosure of health information for treatment purposes. The National Committee on Vital and Health Statistics has proposed that the federal government adopt a national policy to allow individuals to have limited control, uniformly, over the disclosure of certain designated categories of information. Our findings suggest that this approach aligns with some common state approaches, particularly with respect to the disclosure of sensitive health information. We note, however, that this approach would impede the ability of health care providers to disclose health information for treatment in states that permit such disclosure without patient permission.

Absent a federal solution, states will need to determine a means for implementing their laws in an electronic environment. Some suggestions for state-based solutions to variable state law include developing a uniform or model act for health information disclosure, entering into interstate compacts, and developing a standardized rules structure for disclosure that could be used in an automated consent and disclosure management component of a health information exchange system. Given the wide variance in state approaches to disclosure of

health information, it seems that state approval of a uniform act is unlikely. Some of the other state-based proposals seem more viable because they account for some state variability. The broad categories of disclosure approaches we identified may serve as a starting point for developing options for a model act, the general parameters for developing interstate compacts, or the broad principles underlying standardized rule sets for automated rules engines. Regardless of the means adopted, whether it be a model act, interstate compact, or rules engine, implementation will require more objective standardized rules than current statutory or regulatory language, which is subject to varying interpretation. Detailed fixed rule sets that meet or exceed statutory or regulatory requirements for disclosure of health information will be required. Some of the parameters that we have identified may serve as a starting point for establishing such rules.

# 1. BACKGROUND AND PURPOSE

In the first phase of this project, RTI International provided oversight to 33 states and 1 territory (collectively referred to as states or state teams) that conducted an assessment of variation in business practices, policies, and laws that might be perceived as barriers to electronic health information exchange, suggested possible solutions to these barriers, and prepared plans to implement these solutions. The state assessments were not intended to be a comprehensive legal analysis. Rather, the states focused on practices and laws that were implicated by a limited number of different scenarios, including treatment, regional health information exchanges, payment, research, and public health. The resulting Assessment of Variation and Analysis of Solutions report, an earlier product of this project, presented an overview of the major areas states identified as presenting challenges to the privacy and security of electronic health information exchange.

State laws requiring patient permission to disclose health information, particularly with respect to disclosures for treatment, were consistently identified as potential impediments to such exchange. States expressed confusion about how to electronically implement permission requirements within their state. In addition, state teams expressed concern about the variability of permission requirements among the states.

## 1.1 Federal Law Overview

### *1.1.1 HIPAA*[12]

The Privacy Rule, which was promulgated under the Health Insurance Portability and Accountability Act of 1996 (HIPAA Privacy Rule), establishes a floor of national standards protecting individuals' identifiable health information. With the exception of psychotherapy notes, the HIPAA Privacy Rule affords all identifiable health information that is held by HIPAA covered entities the same degree of protection, and generally permits it to be used and disclosed for treatment (as well as payment and health care operations) without the patient's written permission (called consent) [see 45 C.F.R. § 164.506(c)].[13] The HIPAA Privacy Rule does, however, permit covered entities to obtain consent if they choose to do so [45 C.F.R. § 164.506(b)]. Because the HIPAA Privacy Rule makes obtaining consent optional, it does not specify any content or format requirements for this type of permission. Rather, the procedure for obtaining consent to disclose health information for treatment, as

[12] This overview of HIPAA focuses on the rules governing disclosures for treatment because this report addresses state requirements for disclosing information for this purpose.

[13] The HIPAA Privacy Rule uses the term "consent" to refer to written permissions to use or disclose protected health information for treatment, payment, and health care operations, while the term "authorization" is used to refer to written permission to use or share health information for other purposes. An individual's authorization is generally required to use or disclose psychotherapy notes. See 45 C.F.R. § 164.508(a).

well as the content and format for such consents are wholly within the discretion of the covered entity.[14]

The HIPAA Privacy Rule generally preempts provisions of state law that are contrary to its standards. A state law provision is considered contrary and, therefore, is generally preempted if either

- a covered entity would find it impossible to comply with both the state and federal requirements; or
- the provision of state law stands as an obstacle to the objectives of HIPAA [45 C.F.R. §§ 160.202; 160.203].

However, the HIPAA Privacy Rule does not preempt state law provisions about the privacy of individually identifiable health information that, while contrary to the HIPAA Privacy, are more stringent than it. With respect to a use or disclosure of health information, a state law is considered more stringent than the HIPAA Privacy Rule if it restricts a use or disclosure in circumstances under which the Privacy Rule would otherwise allow such disclosure (45 C.F.R. § 160.202). Under this preemption framework, state laws that require the individual's permission to disclose identifiable health information for treatment remain in effect because a covered entity would not find it impossible to comply with both the HIPAA Privacy Rule and the state law and because the state law does not stand as an obstacle to the objectives of HIPAA.

### *1.1.2 Alcohol and Drug Abuse Confidentiality Requirements, 42 C.F.R. Part 2*

In addition to the HIPAA Privacy Rule, other federal confidentiality law and implementing regulations apply to specific types of health information, In specific 42 C.F.R. Part 2 establishes detailed confidentiality requirements for patient records that are maintained in connection with application for or services provided by federally assisted programs that provide alcohol or drug abuse treatment, diagnosis, or referral for treatment (42 U.S.C. §290-dd2; 42 C.F.R. Part 2). These federal confidentiality requirements apply to alcohol and drug abuse treatment programs that receive "federal assistance," a term which is broadly defined and includes, for example, not only programs that receive direct federal funding, but also those that receive tax exempt status from the Internal Revenue Service [see 42 C.F.R. § 2.12(b)]. These regulations generally require the patient's permission for disclosure of information including for treatment (except in emergency circumstances) and prohibit a health care provider or plan that receives such information from redisclosing that information without patient permission. State law may not authorize or compel any disclosure prohibited by these federal regulations [42 C.F.R. §2.20].

[14] Unlike consents, authorizations must meet detailed content requirements to be valid under the HIPAA Privacy Rule. See 45 C.F.R. § 164.508(b)(c).

### *1.1.3 Clinical Laboratory Improvement Amendments (CLIA)*

Laboratory testing in the United States is comprehensively regulated by the federal Clinical Laboratory Improvement Amendments (CLIA). Unlike HIPAA, which generally permits a covered entity to disclose health information to any other provider for treatment without patient permission, CLIA generally restricts the providers with whom a laboratory may share health information. Specifically, with respect to disclosing the results of clinical laboratory tests CLIA provides:

> Test results must be released only to authorized persons and, if applicable, the individual responsible for using the test results and the laboratory that initially requested the test [42 C.F.R. § 493.1291(f)].

The term "authorized person" is defined in CLIA as, "[A]n individual authorized under State law to order tests or receive test results, or both" (42 C.F.R. § 493.2). The term "individual responsible for using the test results" is not defined in the CLIA regulations, and its meaning is uncertain. It is generally understood, however, to include the person who ordered the test. This regulatory scheme establishes the following general framework:

- Clinical laboratories may disclose test results to the health care provider who ordered the test under federal law.
- The extent to which another party may receive test results under federal law as "an individual authorized to use the test" is unclear.
- State law may also specify who is authorized to receive a clinical laboratory test result.[15]

Thus, state law plays an important role in determining whether a clinical laboratory may disclose health information to another health care provider for treatment.

## 1.2 Project Purpose

The purpose of this report is to build on state assessments provided in the first phase of this project and to provide a more detailed overview of state laws that govern the ability of health care providers to disclose health information to other providers for treatment purposes. The report identifies, collates, and summarizes key aspects of state laws governing the disclosure of health information for treatment purposes that apply to a defined group of health care providers.

[15] The HIPAA Privacy Rule also applies to clinical laboratories. The HIPAA Privacy Rule permits, but does not require, covered entities, including health care providers such as clinical laboratories, to disclose to others protected health information for treatment, payment and health care operations without the consent of the patient. *See* 45 C.F.R. § 164.506(c). Because the HIPAA Privacy Rule does not require such disclosures, it does not conflict with more restrictive federal and state laws (i.e. a covered entity can comply with both HIPAA and the more restrictive law). As a consequence, the more restrictive provisions of CLIA and state laws regarding the disclosure of laboratory test results remain in effect.

# 2. METHODOLOGY

## 2.1 Scope

State regulation of health care and health information is often sector-specific (i.e., statutes and regulations are directed to specific categories of health care providers). In addition, most states have statutes and regulations that are directed at specific categories of health information, often related to what is perceived as a sensitive health condition (e.g., HIV status and mental health). The structure and content of these state laws varies from state to state.

To ensure some consistency for comparison purposes, we focused our review on whether a few specific categories of health care entities may share specific categories of health information for treatment. The categories that we reviewed were consistent with those assessed in Phase I of this project.

We identified and compiled statutes, regulations, interpreting case law that govern the disclosure of the following types of health information:

- clinical health information (general)
- HIV/AIDS (tests and other information)
- mental and behavioral health
- substance abuse
- genetics (tests and other information)

by the following entities:

- private practice physicians (MDs)
- hospitals
- pharmacists
- outpatient substance abuse treatment facilities
- inpatient mental health care facilities
- independent clinical laboratories (i.e., not associated with hospitals or public health departments

We limited our review to health information of adult patients, since information related to minors is often subject to distinct statutes and regulations and was not addressed in detail in Phase I of this project.

We did not review disclosure provisions that are Medicaid-specific. Neither did we review the state equivalent of the Privacy Act nor Freedom of Information Act, which may limit the disclosure of information held by governmental bodies.

## 2.2 Research Protocol

We used *The State of Health Privacy*, a survey of state health privacy statutes conducted by Georgetown University in 2003, as well as the assessments of state policy and practice submitted by states in Phase I of this project as the starting point for identifying the relevant statutory provisions that govern the health care entities and specific health conditions that are the subject of this study.

We used online legal research tools, including Lexis/Nexis, Westlaw, and relevant websites operated by state governments to conduct our research. We reviewed the state statutes and regulations we had previously identified. We reviewed statutory and regulatory cross-references as well as the relevant statutory or regulatory table of contents to identify related provisions. We particularly focused on ensuring we located definitions where applicable. We also reviewed materials under "advance legislative service," which contains statutes which have been enacted but are not yet codified. To the extent statutes had been amended, revised, or revoked, we traced the applicable changes.

If no applicable law for a category of provider or health information had been identified in *The State of Health Privacy* or state assessments, we reviewed the state code table of contents to identify the licensing statutes for the relevant categories of health care providers.

If unsuccessful in locating a pertinent provision for all categories using the above methods, we conducted a word search in the state statutes and the regulations using the following terms:

- Medical w/15 record! (using "w/15" and "!" in all of the following)
- Health record
- Patient record
- Hospital record
- Treatment record
- Patient information
- Treatment information
- Health information
- Health care information
- Bill w/3 rights w/5 patient

Where necessary, we also conducted word searches using the following terms:

- HIV
- Human w/2 immune!

- Mental! w/5 health
- Mental! w/5 ill!
- Gene! w/5 test
- Gene! w/5 infor!
- Alcohol! w/15 treat!
- Alcohol! w/15 abuse
- Alcohol! w/15 dep!
- Substance w/15 treat!
- Substance w/ 15 abuse
- Substance w/15 dep!
- Drug w/15 treat!
- Drug w/15 abuse
- Drug w/15 dep!
- Chemical w/15 treat!
- Chemical w/15 abuse
- Chemical w/15 dep!

When we located a relevant statutory or regulatory provision, we undertook the steps detailed above to ensure we reviewed relevant definitions and related provisions.

We reviewed case law and state attorney general opinions interpreting the statute or regulation to the extent these resources were identified in the notes provided by the legal search tools that accompany the relevant statute or regulation. Case law reflects the official interpretation of a statute or regulation by the judiciary. In the absence of litigation on a statutory or regulatory provision, state attorney general opinions may be the only available official authority interpreting the law. Although state attorney general opinions are not binding on the courts, they are persuasive and the courts often give them great weight.[16]

We developed a standardized Excel data collection template to record our results (see Data Collection Outline)[17] We piloted the template by reviewing eight states and then revised the chart to better reflect our research results. We used the final chart to summarize all state findings, including revisiting the original eight states. Preliminary matter in the chart summarizes the provision, identifies the entities covered, and describes the type of information covered.

[16] Morris, T. (Winter 1987). State attorneys general as interpreters of state constitutions. *The Journal of Federalism 133*, 139-140.

[17] The data collection outline also includes some items that were used in an associated project report, *Releasing Clinical Laboratory Test Results: Report on Survey of State Laws.*

## 2.3 Data Analysis

We also analyzed each statutory and regulatory provision to determine whether patient permission was (or was not) required to disclose identifiable health information for treatment as well as the conditions under which information may be disclosed. Language in many state statutes and regulations is ambiguous. Our consultations with the Interstate Disclosure and Patient Consent Requirements Collaborative indicated that states have varied interpretations of legal provisions with similar language. We, therefore, primarily focused our analysis on the plain language of the statute or regulation, using standard rules of statutory construction. Where available, we also relied on relevant case law and attorney general opinions interpreting these provisions. In addition, we considered material submitted by the states in Phase I of this project as well as materials developed by the Interstate Disclosure Collaborative. We note, however, that there was a dearth of such formal interpretative material in most states.

We answered a structured series of questions designed to address the following main issues:

- Whether the provider may disclose the pertinent type of information for treatment purposes without patient permission?
- Are there limits to whom information may be disclosed without patient permission? If so, who are authorized recipients?
- Does the provision require that the recipient have a specific relationship with the patient or permit disclosure only under specific conditions (e.g., only upon transfer of patient)?
- Are there limits on the amount or type of information that may be disclosed without permission (e.g., minimum necessary or only summary information)?
- If permission is or may be required, must the permission be in writing?
- Does the provision include a specific time duration for the permission?
- Are there specific format or content requirements? If so, what are the requirements?
- Does the law restrict the receiving party from redisclosing the information?
- Does the law permit disclosure without patient permission for emergency treatment?

Information from the data collection outline, originally collected via an Excel template, was imported into a SQL relational database, from which initial reports grouping information by provider and health information category were generated.

One person reviewed all data points to standardize responses.

### *2.3.1 Permission Classifications*

After reviewing all data, we reclassified state laws by whether they allow the provider to disclose identifiable health information to other providers for treatment purposes without

patient permission. Our refined classification categories, as well as the justifications for using these categories, are set forth below.

- Y = Yes

  The provider may disclose information without patient permission "for treatment." There are no additional qualifications or conditions. This category allows the disclosure of health information in a manner most similar to the HIPAA Privacy Rule.[18]

- N = No

  Patient permission is required to disclose information for treatment. This category includes laws statutes and regulations that require the patient to affirmatively permit the patient's information to be disclosed for treatment at least once.

- S = Sometimes

  The provider may sometimes disclose information without patient permission for treatment. We divided this category into a number of specific subcategories to provide more detail into the circumstances under which information may be released without treatment.

- S-AP = Sometimes, attempt to obtain permission

  The provider must make an affirmative attempt to obtain the patient's permission to disclose information for treatment. If these attempts are unsuccessful, the provider may nonetheless disclose the information for treatment. We included this as a separate category because the provider holding the information must take specific, affirmative action prior to disclosing health information for treatment. In other words, the information would not automatically be disclosed.

- S-CC = Circle of care

  Provider may disclose information without patient permission with others involved in ongoing care. Provisions included in this category permit disclosure where there is a direct link between the providers, either when the providers are working together at the same time or when one provider assumes care from another such as:

  – upon the patient's transfer to a new provider or facility;
  – for a specified limited time upon admission to a health facility;
  – to providers to whom patient has been referred;
  – to providers who are providing consultation;
  – to providers involved in current episode of care;
  – to providers for follow-up care.

  We included this as a separate category because these provisions limit the scope of providers to whom information may be released without treatment. In addition to

[18] Almost every state law restricts disclosures for treatment of the subject of the health information. In contrast, the HIPAA Privacy Rule has been construed as allowing disclosures of health information for the treatment of *any patient*. Standards for Privacy of Identifiable Health Information: Final Rule, 65 Fed. Reg. 82462, 82497 (December 28, 2000).

specifying a link between the providers, these provisions often limit disclosure to specific providers (e.g., to another mental health facility upon transfer).

- S-E = Sometimes—Emergencies

  Provider may disclose information without patient permission for emergency medical treatment. We included in this category provisions that permit disclosure without patient permission:

  – to provide emergency care or treatment;

  – in an emergency;

  – when required for emergency hospitalization; and

  – when necessary to avoid imminent danger to life or safety of patient.

- S-O = Sometimes—Opt out

  Provider generally may disclose information without patient permission for treatment, but patient has ability to opt out of such disclosures.

- S-PJ = Sometimes—Professional Judgment

  Law expressly provides that provider may disclose information without patient permission subject to professional judgment. This category includes provisions with the following clauses:

  – when, in the provider's professional judgment;

  – when the provider determines;

  – when the provider deems;

  – as prudent professional discretion dictates.

  disclosure is

  – necessary for treatment;

  – necessary to provide appropriate care or treatment;

  – necessary to protect the patient's health and welfare;

  – in the patient's best interest;

  – needed to accomplish objectives of diagnosis and treatment.

  We note that although the statutes and regulations expressly incorporate a professional judgment standard, in many laws, it is not clear whether this judgment must be rendered on a case-by-case basis.

- S-NT = Sometimes—Necessary for Treatment

  Provider may disclose information without patient permission when necessary to provide treatment. This category includes provisions that permit the provider to disclose information without permission in the following circumstances:

  – when necessary to provide care or treatment;

  – if, and to extent necessary, to provide treatment;

  – to extent necessary for consultation;

  – where demonstrable need for treatment exists;

- when necessary in connection with care;
- when receiving provider has legitimate need to know the information for treatment;
- when in best interest of the patient; and
- as relevant for care.

In most cases, it was difficult to determine whether laws that included this language imposed a minimum necessary type requirement on disclosures. Where we were able to find clarifying material that disclosure was generally permitted (without a specific determination as to whether the information was necessary), in tables accompanying this report we classified these laws as "Y" and noted "NT" in the appropriate table columns.

We recognize that this category could potentially be combined with "S-PJ" because determinations as to when information is necessary to provide treatment would appear to require the exercise of professional judgment at some level. We created a separate category "S-NT," however, in order to identify those laws that do not *expressly* delegate the responsibility for determining when disclosure is appropriate to the releasing provider.[19]

- S-SP = Sometimes—Specific Providers

  Provider may disclose information only to specified providers without patient permission (e.g., may only release to mental health care providers or to facilities under same control as the provider).

- U = Unclear

  It is unclear whether a provider may disclose information without patient permission for treatment. This category includes provisions where the scope of the law is unclear (e.g., whether a law applies only to health department records or also to records held by other providers) or the requirements are unclear.[20] This category does not include those provisions that are categorized as "UABL," unclear due to "as authorized by law" provision.

- UABL = Unclear

  It is unclear whether a provider may disclose information without patient permission because the statute or regulation contains an ambiguous provision permitting disclosure "as authorized by law "or similar phrase. This category includes provisions that have the following statutory language:

  - as provided by law;
  - to the extent allowed by law;
  - as otherwise permitted or provided by law;

[19] To the extent a statute or regulation that would otherwise fall in this category has been interpreted by a court or attorney general as requiring the provider holding the information to make a specific determination about the necessity of the disclosure of the information on a case-by-case basis, it has been included in the S-PJ category.

[20] Many of the laws that were categorized as "sometimes" permitting disclosure are ambiguous. However, if they clearly permit disclosure in some circumstances without patient permission, we categorized them as "sometimes" permitting disclosure.

- to any person to whom disclosure is authorized by law without the consent of the patient; and/or
- as permitted by HIPAA (or by 42 C.F.R. part 164).

In addition to containing the statutory language, the provisions are ambiguous because either

- they were promulgated before the HIPAA Privacy Rule and it is unclear whether they were intended to incorporate HIPAA, or[21]
- they contain other provisions that distinctly address disclosures for treatment in a detailed manner contrary to HIPAA, and interpreting the "as authorized by law" phrase as incorporating all disclosures permitted by HIPAA would render the more restrictive clause meaningless.

[21] At least one federal circuit court has indicated that in interpreting phrases such as "to the extent authorized by law," it is appropriate to refer to the legislative body's understanding of the law at the time the law was issued. See, *Equal Employment Opportunity Commission v. Luce*, (9th Cir. 2003). There are, undoubtedly, other means of interpreting the phrase, but the potential of interpreting it in this narrow fashion at least raises questions about the scope of "authorized by law" provisions in the current context.

# 3. FINDINGS

## 3.1 Overview

There are a myriad of state statutes and regulations governing the disclosure of health information. In general, those governing hospitals and medical doctors appear to be the most similar. There are more extensive laws governing the disclosure of information by pharmacists and they tend to be less precise about the circumstances under which information may be disclosed, primarily because many of them allow disclosure without patient permission pursuant to the pharmacist's professional judgment.

Overall, many states permit the disclosure of general clinical health information, HIV-related information, and genetics-related information for treatment by all three of these categories of providers without the patient's permission. However, many other states require patient permission to disclose at least one of these categories of information. Laws that govern HIV-related information, in particular, tend to either require patient permission to disclose HIV-related information or to permit disclosure without patient permission only when "necessary for treatment." It is difficult to discern the extent to which the latter category of HIV-specific laws, which are somewhat ambiguous, impact disclosure for treatment.

Clinical laboratories are subject to federal restrictions on disclosure that do not apply to the other listed entities. Clinical laboratories generally may only disclose laboratory test results to the provider who ordered the test or to a person authorized by state law to receive or authorized under state law to order tests or receive test results, or both. Few state laws expressly permit clinical laboratories to disclose test results to providers other than the one that requested the test.

Many states incorporate the requirements of 42 C.F.R. Part 2 as standards for the disclosure of information generated by substance abuse treatment programs. A few states impose these standards even on non-federally assisted programs.

The mental health laws were the most complex and detailed statutes and regulations that we reviewed. Most allow inpatient mental health treatment facilities to disclose health information for treatment without the patient's permission but only under very limited circumstances. Many impose limitations on disclosures that may be made for treatment such as restricting the amount or type of information that may be disclosed or the set of providers with whom information may be shared. A few states treat mental health information the same as other health information and generally permit its disclosure without patient permission for treatment. A few other states take the opposite approach and, while treating all health information the same, require patient permission to disclose all such information (including general clinical, HIV-related, and genetics-related information) for treatment.

## 3.2 General Clinical Information

### *3.2.1 Hospitals*

In many states, the HIPAA Privacy Rule sets the standard for disclosing health information for treatment either expressly or implicitly. Four states, Alaska, Arizona, Michigan, and Oregon, expressly incorporate the disclosure standards set out in the HIPAA Privacy Rule. An additional four, Georgia, Nebraska, New Hampshire, and New Mexico, permit hospitals to disclose health information as "otherwise allowed by law" or similar provision, phrases which implicitly incorporate HIPAA. Colorado's statutory restrictions on disclosure of health information only apply to entities not subject to HIPAA [Col. Rev. Stat. § 18-4-412 (2008)]. Since most, if not all, hospitals presumably are subject to HIPAA, they would not be subject to this state law. In Nevada, health information that is electronically transmitted in compliance with HIPAA is not subject to more stringent state laws, making HIPAA the de facto standard for this information [Nev. Rev. Stat. § 439.538 (2007)]. An additional 21 states do not appear to have statutory or regulatory provisions that directly govern the disclosure of health information by hospitals for treatment (see Table A-1). Taken together, some 31 states rely on the HIPAA Privacy Rule as their disclosure standard for hospitals for treatment purposes with respect to electronically transmitted information.

An additional 14 states have statutory or regulatory provisions that independently (i.e., without incorporating HIPAA) generally permit hospitals to disclose general clinical information for treatment without patient permission (see Table A-1a). Most state laws simply allow disclosure "for treatment" of the patient [see Me. Rev. Stat. Ann. tit. 22, § 1711-C (6)(A)(2) (2008)]. While laws in two states include qualifiers that release of the information is permitted if it is "needed" or "necessary" to provide services or care of the patient, these provisions appear to be broadly interpreted as allowing disclosure for treatment without any specific determination that the particular information is needed [see Ind. Code 16-39-5 (2008); Va. Code Ann. § 32.1-127.1:03(D)(7) (2008)].[22]

Five other states generally permit disclosure without patient permission for treatment to providers who are currently treating the patient or who will be treating the patient, but limit disclosures to providers who have previously provided treatment. One state, Texas, limits disclosure for treatment:

- to a health care provider who is rendering health care to the patient when the request for the disclosure is made;
- to a prospective health care provider for the purpose of securing the services of that health care provider as part of the patient's continuum of care, as determined by the patient's attending physician (Tex. Health & Safety Code Ann. § 241.153).

[22] In its research, the Interstate Disclosure and Patient Consent Requirements Collaborative found that a similar phrase was attributed almost opposite meanings by two states.

This provision appears to prohibit disclosures to previous providers without patient permission. Four states, Montana, Northern Mariana Islands, Washington, and Wyoming, take a slightly different approach. While permitting disclosure to persons who have previously provided care, laws in these states permit the patient to opt out of such disclosures. As the official comments to Montana's law explain, disclosure to previous providers is intended to allow the provider currently treating the patient to consult with health care providers who have previously treated the patient (e.g., a specialist consulting with the patient's referring general practitioner) [Mont. Code Ann. § 50-16-529 Official Comments (2007).] The opt-out provision appears to be intended to give the patient additional control in these situations.

Only a handful of states (Guam, Puerto Rico, Minnesota, New York, and Vermont) usually require a hospital to obtain patient permission before disclosing health information to other providers (see Table A-1a). Of these jurisdictions, Minnesota and New York expressly permit disclosure of information without patient permission for emergency treatment. The statutes and regulations of the remaining three jurisdictions are silent as to whether disclosure without patient permission would be permitted in emergent circumstances.

### *3.2.2 Doctors of Medicine*

Overall, state regulation of disclosure of health information by medical doctors is fairly similar to regulation of disclosure by hospitals. In many states, the HIPAA Privacy Rule disclosure standard for treatment controls with respect to medical doctors, either expressly or implicitly. Arizona law expressly incorporates the disclosure standards set out in the HIPAA Privacy Rule [see Ariz. Rev. Stat. Ann. § 12-2294 (2008)]. Oregon law authorizes the disclosure of health information "as permitted by federal law," while recognizing the rights and obligations created by the HIPAA Privacy Rule in a related part of the statute, provisions which, taken together, clearly demonstrate an intent to adopt the HIPAA standard [Or. Rev. Stat. § 192.518; § 192.520]. A handful of other states—Georgia, Illinois, New Hampshire, and Tennessee—similarly permit disclosure "as otherwise authorized by law" or pursuant to a similar standard, phrases which appear to implicitly incorporate HIPAA [Ga. Code Ann. § 24-9-40 (2008); 410 Ill. Comp. Stat. § 50/3 (2008); N.H. Rev. Stat. Ann. § 332-I:2 (2008); Tenn. Code. Ann. § 63-2-101 (2008)]. Colorado's and Nevada's approaches of applying state law only to those not subject to (or not transmitting information electronically in compliance with) HIPAA apply to doctors as well as to hospitals. An additional 28 states do not appear to have statutory or regulatory provisions that directly govern the disclosure of health information by medical doctors for treatment (see Table A-1b). Taken together, some 35 states appear to primarily rely on the HIPAA Privacy Rule as their standard for medical doctors disclosing health information for treatment purposes.

Eleven states have statutory or regulatory provisions that independently (i.e., without incorporating HIPAA) generally permit doctors to disclose general clinical information for

treatment to other providers without patient permission (see Table A-1b). Three other states (Montana, Northern Mariana Islands, and Washington), however, permit patients to opt out of disclosures to health care providers who have previously furnished treatment.[23]

One state, Texas, allows disclosure of health information for treatment only to specified providers. The Texas Occupation Code permits a doctor to disclose health information without the patient's permission to protect against imminent physical (or mental) injury and to:

> another physician or other personnel acting under the direction of the physician who participate in the diagnosis, evaluation, or treatment of the patient [Tex. Occ. Code Ann. § 159.004 (2007)].

Only a few states (Puerto Rico, Minnesota, New York, and Vermont) usually require a doctor to obtain patient permission before disclosing health information to any other health providers for treatment (see Table A-1b). Of these jurisdictions, Minnesota and New York expressly permit disclosure of information without patient permission for emergency treatment. The statutes and regulations of the remaining jurisdictions are silent as to whether disclosure without patient permission would be permitted in emergent circumstances.

### *3.2.3 Pharmacies and Pharmacists*

State laws establishing disclosure standards for pharmacies and pharmacists (hereinafter pharmacists) tend to be less clear-cut than laws governing doctors and hospitals. Laws in five states, Arizona, Colorado, Missouri, New Mexico, and Oregon, expressly apply the standards of the HIPAA Privacy Rule to disclosures of health information by pharmacists [Ariz. Rev. Stat. Ann. § 12-2294 (2008); 3 Col. Code Regs. 719-1 1.00.16 (2008); Mo. Code Regs. Ann. tit. 20, § 2220-2.300 (2008); N.M. Code R. 16.19.6.23 (2008); Or. Rev. Stat. § 192.520 (2008)]. Laws in five more states, Massachusetts, Mississippi, Nebraska, Tennessee, and Pennsylvania, permit pharmacists to disclose health information "as permitted by law" or under a similar rule.[24] Nine states do not appear to have relevant statutes or regulations governing pharmacists' disclosure of health information for treatment (see Table A-1c). Altogether, 18 states in these categories rely primarily on the HIPAA Privacy Rule to govern pharmacists' disclosure of health information for treatment purposes.

Sixteen other states have statutes and regulations that, in general terms, permit pharmacists to disclose health information to other health professionals or personnel for

[23] Wyoming has a similar law applicable to hospitals, but the provision does not apply to physicians. See Wyo. Stat. Ann. § 35-2-609 (a) (2008).

[24] See 247 Mass. Code Regs. 9.01(19) (2008);50-018-001 Miss. Code R., Art. VIII (5)(2008) (to any person duly authorized to receive the information); Neb. Rev. Stat. § 38-2868 (2008) (same); Tenn. Code. Ann. § 63-2-101 (2008) (prohibits disclosure except as otherwise provided by law); 49 Pa. Code § 27.19 (2008) (permits disclosure as permitted by federal law).

treatment (see Table A-1c). Laws governing pharmacies in seven other states permit disclosure for treatment when disclosure is, in the pharmacist's professional judgment, "in the best interest of the patient" or "necessary to protect the patient's health and well-being." Indiana requires pharmacists to "hold in strictest confidence" patient information, and permits disclosure "only when it is in the best interest of the patient…" [Ind. Code. Ann. § 25-26-13-15(a) (2008)]. It is unclear, from the face of these legal provisions, whether pharmacists may have a general policy that releasing health information to other providers would be considered to be in the best interest of the patient, or whether the pharmacist must make such a determination on a case-by-case basis.

Two states expressly limit the practitioners to whom a pharmacist may release health information without patient permission. Utah and Connecticut permit disclosure without patient permission only to "another pharmacist or to a prescribing practitioner who is providing professional services to the patient" [Conn. Gen. Stat. § 20-626 (2008); Utah Code Ann. § 58-17b-604 (4)(d) (2008)].

Laws in several other states have more complicated provisions. They first permit disclosure only to certain providers (such as to the prescribing physician and to other pharmacists) for treatment. They then also permit disclosure to "other persons or governmental agencies authorized by law to receive confidential information" [see, e.g., Alaska Stat. § 08.80.315(2) (2008)]. To the extent a state statute or regulation was promulgated or amended subsequent to the HIPAA Privacy Rule, it is reasonable to assume that the regulators were familiar with HIPAA at the time the state law was issued or changed. We identified laws in three states, Massachusetts, Mississippi, and Nebraska, that appeared to fit these criteria. We concluded that these state law provisions that permit disclosure "as authorized by law" incorporate the HIPAA Privacy Rule standard, and counted them among those that permit disclosure to other providers for treatment.

The status of state laws that were promulgated prior to HIPAA without having been subsequently amended is less clear. At least one circuit court has indicated that in interpreting an "authorized by law" provision that it is essential to look at the intent of the drafters at the time they wrote the legislation.[25] Some state laws expressly limit disclosure to certain providers or impose confidentiality unless professional judgment dictates otherwise, but then permit disclosure "as otherwise authorized by law." Given the detailed restrictions in these state law provisions, it is difficult to know whether the regulators would have intended to incorporate HIPAA's standard which permits disclosure for treatment without patient permission to a broad range of providers. Without additional information

[25] *Equal Employment Opportunity Commission v. Luce*, (9th Cir. 2003).

available as to the underlying intent of these provisions, we categorized them as being unclear.[26]

In sum, pharmacists in at least 34 states appear to be able to generally disclose health information to health providers without patient permission.[27] Pharmacists in seven additional states appear to be able to do so subject to professional judgment. And pharmacists in two states may disclose health information without patient permission only to specific types of health care providers. Laws in six states were unclear for a variety of reasons, including those discussed above (see Table A-1c).

Only two states, New York and Minnesota, generally require pharmacists to obtain patient permission to disclose information for treatment. Both allow disclosures for emergency treatment.

## 3.3 HIV-Related Information

### *3.3.1 Scope of Laws*

The majority of states (41)[28] have statutes or regulations that specifically regulate the disclosure of information related to human immunodeficiency virus (HIV) or to information related to communicable diseases, including HIV (see Tables A-3a, A-3b, and A-3c).[29] With a few exceptions, these laws apply to a broad range of entities, such as "any person" or "health care providers or facilities" or "persons" who obtain such information in the course of providing a health service" [see, e.g., Mo. Rev. Stat. 191.656 (2008); Haw. Rev. Stat. Ann. 325-101 (2008); N.Y. Pub. Health Law; Ariz. Rev. Stat. Ann. § 36-664 (2008)]. Definitions are key to understanding the scope of these provisions. The HIV-specific statute in Massachusetts, for example, applies to a broad range of health care facilities and providers, but these terms are defined in such a manner as to exclude pharmacists [see Mass. Ann. Laws ch. 111 § 1; § 70E; § 70F (2008)]. In a few states, it is difficult to

[26] It is interesting to note that these three types of state law provisions, those invoking professional judgment, permitting disclosure only to practitioners and pharmacists, and permitting disclosure as authorized by law, appear repeatedly in slightly different forms in many state pharmacy laws. They appear to have been based on a model law and modified by the various states to fit their particular needs. For example, some contain the professional judgment standard in their definition of "confidential information." Others, using similar language, impose professional judgment as a standard for disclosing information. Some state laws contain provisions permitting disclosure to only specified providers in conjunction with a catchall provision permitting disclosure as authorized by law. Other state laws limit disclosure only to the specified list of providers, with no catchall provision. In short, what appears to have started out as a model law has, in practice, morphed into a series of state laws with quite different disclosure standards.

[27] Figure includes states where we were unable to identify statutes and regulations governing the disclosure of health information by pharmacists.

[28] Figure includes Colorado where HIV information in provider's records is considered "medical information" subject to general privacy law, which does not apply to entities subject to HIPAA [Colo. Rev. Stat. Ann. § 18-4-412; § 25-4-1404(3) (2008)].

[29] See, e.g., Ariz. Rev. Stat. Ann. §36-664 (2008) (which governs communicable disease-related information, in general, as well as HIV-related information specifically).

determine whether the HIV-specific law applies solely to HIV information that has been reported to and is maintained by the public health department or whether it more broadly applies to all health care providers [see Ind. Code. Ann. § 16-41-8-1 (2008); Kan. Stat. Ann § 65-6002 (2007)].

As a practical matter, the effective scope of HIV-specific laws in many states (at least 16) is quite broad due to provisions which prohibit recipients of HIV-related information from further disclosing the information except as authorized under the terms of the law (see Table A-2).[30] In essence, the legal protection follows the information. Several states, including Florida, Connecticut, New Mexico, New York, Ohio, and Wyoming require disclosures of HIV-related information to be accompanied by written notice that the confidentiality of the information released is protected by state law and that further disclosure is prohibited unless authorized by the patient or otherwise permitted by law [see, e.g., Fla. Stat. § 381.004 (2008)].

At least 19 states have HIV-specific laws that apply to a fairly wide range of HIV-related information (see Table A-2). Connecticut, New York, and Pennsylvania, for example, limit the disclosure of all information which identifies or reasonably could identify a person as having HIV or AIDS [Conn. Gen. Stat. § 19a-581 (2008); 35 Pa. Stat. Ann. § 7603 (2008); N.Y. Pub. Health Law § 2870 (2008)]. These statutes appear broad enough to potentially include antiviral medications that are associated with treating HIV or AIDS. Twenty-two states take a narrower approach and afford protection to information related to HIV tests and test results (see Table A-2). Most of these states also protect the identity of a person upon whom an HIV test has been performed [see 77 Ill. Comp. Stat. 305/9 (2008); Oh. Rev. Code § 3701.243 (2008)]. This report refers to both classes of information as "HIV-related information."

### *3.3.2 Disclosure Limitations*

For the most part, laws regulating the disclosure of HIV-related information apply across the board to hospitals, doctors of medicine, and pharmacists/pharmacies. To reduce undue repetition, this section discusses state laws governing hospitals' disclosures of HIV-related information for treatment and notes where laws may differ for the other two categories of providers.

[30] See, e.g., Del. Code Ann. tit. 16, § 1203(a)(2008) (No person to whom test results of an HIV-related test have been disclosed pursuant to subsection (a) of this section [effective release of patient or to provider where necessary for emergency treatment ] shall disclose the test results to another person except as authorized by subsection (a) of this section; Mo. Rev. Stat. §191.656 (2008) (No person to whom the results of an individual's HIV testing has been disclosed pursuant to [a written authorization of the subject or pursuant to the provisions that permit disclosure to health care providers for treatment] shall further disclose such results…. Such information shall not be used or disclosed for any other purpose).

Several states (Delaware, District of Columbia, Maine, Massachusetts, New Mexico, Northern Mariana Islands, Virgin Islands, and Wyoming) have HIV-specific laws that usually require a hospital (and other providers) to obtain patient permission before disclosing HIV-related health information to other providers[31] (see Tables A-3a and A-3b). Four additional states (Guam, Minnesota, Puerto Rico, and Vermont) do not have HIV-specific laws, but do have general health information confidentiality laws that require a hospital to obtain patient permission to disclose health information defined in a manner that is broad enough to encompass HIV-related information. In total, 12 states generally require hospitals to obtain patient permission to disclose HIV-related information for treatment. Minnesota and New York expressly permit disclosure of information without patient permission for emergency treatment. The statutes and regulations of the remaining jurisdictions are silent as to whether disclosure without patient permission would be permitted in emergency circumstances. Since doctors of medicine are encompassed by most of these HIV-specific provisions, a similar number of states require this category of providers to obtain patient permission to disclose HIV-related information for treatment.[32] Slightly fewer states (8) impose a similar standard on pharmacists (perhaps because pharmacists do not administer or analyze HIV tests) (see Table A-3c).

Sixteen states have HIV-specific statutes and regulations that permit hospitals to disclose information without patient permission in limited circumstances, or when certain conditions are met (see Table A-3a). HIV-specific laws in approximately a dozen states permit similar disclosures for doctors and pharmacists (see Tables A-3b and A-3c.) The majority of these state law provisions permit disclosure of HIV-related information to other providers when knowledge of the information is necessary to provide care or treatment, or to protect the health of the person tested, or when the recipient has a legitimate need for the information.[33] At least one interpretation of this kind of provision is that it imposes a minimum necessary type standard on the disclosure of HIV-related information for treatment, a standard which exceeds that in the HIPAA Privacy Rule.[34]

Two states allow patients to opt out of having their health information shared, albeit in different circumstances. One state, Montana, generally allows providers to disclose HIV-related information for treatment, but the patient retains the right to opt out of disclosures to providers who have previously furnished treatment [Mont. Code Ann. § 50-16-1009; §

[31] Disclosure of HIV-related information also requires patient permission, except in emergencies, under Kansas law, but it is unclear whether the law applies only to the public health department reports, or is generally applicable.

[32] The exception is Guam, which has regulations governing the sole hospital in the territory, but no such regulations for doctors of medicine. See 10 Guam Code Ann. § 80114 (2008).

[33] See, e.g., Georgia (to health care providers or health care facilities which as a result of provision of health care services has a legitimate need for information to provide service to that patient); Iowa (where knowledge of the test results is necessary to provide care or treatment); Louisiana (when knowledge of test is necessary to provide appropriate care).

[34] See *Draft HIPAA Preemption Analysis: Illinois Law* (March 2003), available at: http://www.illinois.gov/hipaa/PreempAnalysis.pdf

50-16-529 (2007)]. In contrast, Nevada law provides that more stringent state restrictions on the sharing of HIV-related information do not apply when the information is electronically transmitted in accordance with HIPAA. Patients, however, have the right to opt out of having their information electronically transmitted [Nev. Rev. Stat. § 439.538; 441A.220 (2007)].

Eleven states have HIV-specific statutory or regulatory provisions that generally permit hospitals to disclose such information for treatment without patient permission absent qualifying conditions or standards (see Table A-3a). In another five states, which do not have HIV-specific laws, the general clinical health information law permits hospitals to make such disclosures (see Table A-3a). Laws in an additional six states are silent on disclosure of health information by hospitals, resulting in the HIPAA Privacy Rule being the operative standard.[35] In total, 22 states permit hospitals to disclose HIV-related information to other health care providers for treatment without the patient's permission, apparently absent minimum necessary type requirements (see Table A-3a). Similarly, medical doctors and pharmacists may make such disclosures in approximately 20 states for treatment purposes (see Tables A-3b and A-3c).

### *3.3.3 Permission Requirements*

States that require patient permission to disclose HIV-related information generally require that such permission be in writing.[36] Laws in a few states make clear that a separate written permission is not required for each release of information. Maine, for example, does not require patient permission for each disclosure of HIV test results that are part of a medical record. Rather, the patient makes an election at the time the HIV test result is made part of his or her medical record whether to authorize the release of that portion of the record when the person's record is requested. If the patient elects not to include their HIV-related information in response to a request for their medical record, the information in that part of the medical record may not be disclosed without the patient's specific, separate, authorization [Me. Rev. Stat. Ann. tit. 5, § 19203-D (2008)]. Similarly, in the Northern Mariana Islands, a written permission to disclose HIV-related information permits disclosure of information related to future health information for up to 6 months after the permission was signed [22 N. Mar. I. reg. 10 § 111 (2000)].

## 3.4 Genetics-Related Information

State laws often provide heightened protection for information related to individuals' genetic makeup (genetics-related information). These protections are primarily focused on ensuring that individuals' genetic profiles are not used against them in obtaining and retaining health

[35] Figure includes Colorado, where state confidentiality requirements do not apply to covered entities.
[36] See, e.g., D.C. Code Ann. § 7-131(b)(1)(A) (2008); Del. Code Ann. tit. 16 § 1201(9) (2008) (defining "release"); 3(a)(3)-(4) (2008); Mass. Laws ch. 111, § 70F (2008); N.M. Stat. § 24-2B-6(B),(C) (2008).

insurance. Almost all states have laws that specifically limit the ability of health insurers to use genetics-related information for underwriting.[37] In contrast, a minority of the states (18) have laws specifically addressing genetics-related information that are broad enough to encompass health care providers (see Table A-4). In short, most of the state restrictions on sharing genetics-related information are imposed on health insurers as opposed to health providers.

### *3.4.1 Scope of Laws*

State laws governing genetics-related information can generally be classified as solely pertaining to genetic testing and testing-related information or more broadly applying to genetic information. Laws in 10 states appear to fall within the first category and address the disclosure of genetic testing and information derived from genetic testing (see Table A-4). New Hampshire, for example, limits the disclosure of genetic testing results or the fact that a person has undergone genetic testing [N.H. Rev. Stat. Ann. § 141-H:2(III) (2008)]. Genetics-related information laws in other states are somewhat broader and, in addition to genetic test-related information, also expressly protect other information such as family health history [Tex. Occ. Code 58.001 (2007)] or information about inherited characteristics [N.J. Stat. Ann. 10:5-47(a),(b)(2008)]. Determining the scope of a state's law requires a close analysis of the definition of terms. For example, upon a cursory reading Oregon's law may appear to fall within the states that afford a broader range of protection because its law governs the disclosure of "genetic information." However, the term "genetic information" is defined narrowly as being "information about an individual or the individual's blood relatives obtained from a genetic test" [Or. Rev. Stat. § 192.531 (2008)].

For the most part, state genetics-related information laws apply to "any person," or "any entity," categories that include any health care provider in possession of the information. Alaska law, for example, provides that "a person" may not disclose the results of a DNA analysis unless the person has first obtained the informed and written consent of the person tested [Alaska Sta. 18.013.010 (2008)]. Genetics-related information laws in a few states, such as Massachusetts and Oregon, apply to specific categories of health care providers [Mass. Gen. Laws ch. 111, § 70G (2008); Or. Rev. Stat. §§ 192.519, 192.529 (2008)].

### *3.4.2 Permission Requirements*

In light of this framework, genetics-related information laws apply fairly uniformly to hospitals, doctors of medicine, and pharmacists.[38,39] Genetics-related information laws in 14

[37] Many of these laws were promulgated in response to limits on the use of genetic health information by group health insurers contained in the portability provisions of HIPAA. The Genetic Information Non-Discrimination Act of 2008, Public Law no. 110-233, which prohibits discrimination by health insurers based on genetic information on a wider basis, supersedes less stringent state laws.

[38] Pharmacists who engage in medication counseling may have genetics-related information in their patient records.

states generally require the permission of the test subject for disclosure of genetic test or general genetic information even for treatment (see Tables A-5a, A-5b, and A-5c). Three of these states (Alaska, New Mexico, and New York) make an exception and permit disclosure without patient permission for emergency treatment. Laws in two states, Colorado[40] and Oregon, expressly permit the disclosure of genetic information without patient permission to another provider for treatment [Colo. Rev. Stat. Ann. § 10-3-104.7 (2008); Or. Rev. Stat. § § 192.529; 192.539 (2008)]. Arizona permits disclosure of genetic testing-related information for treatment, but limits such disclosure to providers assuming care from or consulting with the provider who had access to the patient's genetic records [Ariz. Rev. Stat. Ann. § 12-2802 (2008)].

As noted, most states do not have laws that specifically govern the disclosure of genetics-related information that is maintained by health care providers. In these states, disclosure laws that generally apply to general health information, such as "health information," "medical information," or "medical records" (referred to in this report as general clinical information) are often broad enough to encompass genetics-related information. Many of these general clinical information laws permit the disclosure of health information for treatment without the patient's permission (see Tables A-5a, A-5b, and A-5c).[41]

For example, it appears that general clinical information laws in 13 states would allow hospitals to disclose genetics-related information for treatment without the patient's permission (see Table A-5a). An additional 17 states do not appear to have statutory or regulatory provisions specifically addressing the disclosure of either general clinical or genetics-related information by hospitals (see Table A-5a). In these states, the HIPAA Privacy Rule provides the standard for disclosure for treatment. In total, it appears that at least 32 states permit hospitals to disclose genetics-related information to other providers for treatment purposes without patient permission.[42] A similar pattern is true for doctors of medicine and pharmacists (see Tables A-5b and A-5c).

[39] Because clinical laboratories are subject to different disclosure standards under federal law they are discussed separately.

[40] Colorado's statute applies only to nonprofit hospitals. See Colo. Rev. Stat. 10-3-1104.7(2)(a) (2008) (defining "entities").

[41] Note that the entries in Tables A-5a-c that do not have a "G" summarize the state's general clinical health information law that applies to the entity in the absence of a genetics-specific law.

[42] Figure includes states with laws that expressly permit disclosure of genetics-related information for treatment, as well as those in which the general health information confidentiality law is applicable and either permits disclosure of health information for treatment or expressly or implicitly incorporates the HIPAA Privacy Rule.

## 3.5 Substance Abuse Treatment-Related Information

### *3.5.1 Information Originating at Substance Abuse Treatment Programs and Facilities*

Almost every state has a statute or regulation that specifically governs the disclosure of information related to substance abuse treatment. The vast majority of these laws are specifically focused on patient information and records generated by substance abuse treatment programs and facilities (as opposed to information related to substance abuse that may be incidentally generated in the clinical care context).[43] Although these laws are entity-specific (i.e., they govern health information that originated at substance abuse treatment programs or facilities), the entities covered by these laws vary from state to state. Regulation in some states extends to all alcohol and substance abuse treatment facilities operating under or licensed by the state government [Me. Rev. Stat. tit. 4, Me. Rev. Stat. Ann. tit. 5, § 20003 (2) (2008)]. In other states, substance abuse laws are limited to those facilities that are operated by or are under contract with the area or county authority.[44] Other states have laws applying to programs serving individuals addicted to alcohol, but not other substances [Miss. Code Ann. § 41-30-3(h) (2008)]. This variance in the entities covered makes a cross-state comparison of substance abuse treatment facilities extremely difficult, if not impossible. However, some themes do emerge.

For the most part, state laws that govern substance abuse treatment programs and facilities impose confidentiality requirements on the patient's identity (i.e., the fact that they have sought treatment) as well as treatment records. Michigan law, for example, protects the "Records of the identity, diagnosis, prognosis, and treatment of an individual maintained in connection with the performance of a licensed substance abuse treatment and rehabilitation service, a licensed prevention service, an approved service program, or an emergency medical service" [Mich. Comp. Laws § 333.6111 (2008)]. Washington law similarly limits the

[43] See, e.g., Iowa Code Annotated § 125.37(1) (2008) (The registration and other records of [chemical substance abuse] facilities shall remain confidential and are privileged to the patient); Fla. Stat. § 397.501(7)(a)(1)-(2) (2008) (Clients receiving substance abuse services from any service provider are guaranteed protection of the rights specified in this section… The records of service providers which pertain to the identity, diagnosis, and prognosis of and service provision to any individual client are confidential in accordance with this chapter and with applicable federal confidentiality regulations…); Me. Rev. Stat. Ann. tit. 5, § 20047(1) (2008) (Registration and other records of treatment facilities must remain confidential and are privileged to the patient).

[44] See 10A N.C. Admin. Code 26B.0101(a) (2008); N.C. Gen. Stat. § 122C-3 (1) and (14) (2008) (defining the term "area authority" and "facility").

disclosure of "registration and other records of treatment programs" [Wash. Rev. Code § 70.96A.150(1), (3) (2008)].[45]

It is not surprising that most (over 30) state laws governing substance abuse treatment programs incorporate by reference the federal standards for protecting the confidentiality of alcohol and drug abuse treatment records. Laws in a few states apply these standards only to federally funded programs. Kentucky regulations, for example, provide that an alcohol or other drug abuse treatment agency which is federally assisted must "maintain a confidential record of treatment for all clients pursuant to 42 C.F.R. Part 2, confidentiality of alcohol and drug abuse patient records" [908 Ky. Admin. Reg. 1:320 (Section 2) (2007)]. At the other end of the spectrum, Iowa law clearly provides that "[e]ven if a program is not federally funded," it must comply "with the federal confidentiality regulations" [Iowa Admin. Code r. 641-155.21(10)(f) (2008)]. Some states, such as Washington and Ohio, require state-funded substance abuse programs to comply with the federal substance abuse confidentiality requirements [Wash. Rev. Code § 70.96A.150(3) (2008); Ohio Admin. Code 3793:2-1-06(F) (2008)]. In other states, it is less clear whether the state statute or regulation incorporating federal law is intended to apply solely to federally assisted programs or is intended to apply to a broader range of entities. Fluctuating funding sources may be one potential rationale for applying the federal confidentiality standards to substance abuse programs that do not receive federal assistance. For example, a substance abuse program may receive funding through a federal grant one year but be funded through alternative sources another year. Applying the federal confidentiality standards regardless of whether the program receives federal assistance assures some degree of continuity in confidentiality policy from year to year.

In addition (or in lieu of) incorporating federal law, a few states' substance abuse laws independently require patient permission to disclose information even for treatment. Michigan law, for example, provides that an individual may consent to the disclosure of the content of a record of substance abuse treatment and rehabilitation service to "health professionals for the purpose of diagnosis or treatment of the individual" [Mich. Comp. Laws § 333.6112 (1)(a) (2008)].

More often, state laws governing substance abuse treatment records permit the disclosure of information without patient permission for treatment in some circumstances, such as when the patient transfers from one treatment program to another [see, e.g., Del. Code

[45] See also Fla. Stat. § 397.501(7)(a)(1)-(2) (2008) (protecting "[t]he records of service providers which pertain to the identity, diagnosis, and prognosis of and service provision to any individual client"); 20 Ill. Comp. Stat. § 301/30-5(bb) (2008) (applicable to the "[r]ecords of the identity, diagnosis, prognosis or treatment of any patient maintained in connection with the performance of any program or activity relating to alcohol or other drug abuse or dependency education, early intervention, intervention, training, treatment or rehabilitation"); N.Y. Mental Hyg. Law § 22.05 (b) (2008) (governing "[a]ll records of identity, diagnosis, prognosis or treatment in connection with a person's receipt of chemical dependence services"); V.I. Code Ann. Tit. 19 § 724(a)(2008) (imposing confidentiality requirements on "registration and other records of treatment facilities").

Ann. tit. 16 § 2220(6) (2008); Ga. Code Ann. § 37-7-166(a)(2) (2008); 175 Neb. Admin. Code § 18-006.16B5 (2008) (requiring information to be sent to receiving facility when a client is transferred)]. Some permit disclosure of substance abuse treatment information for continuity of care. Hawaii, for example, permits the disclosure of a summary from a previous 5-year period of a person's substance abuse treatment records to another provider when necessary for continued care and treatment of the patient. The disclosing entity must, however, make reasonable efforts to obtain advance consent for the disclosure from the patient [Haw. Rev. Stat. Ann. § 334-5(5) (2008)].[46] Colorado regulations permit nonfederally funded substance abuse facilities to disclose information between qualified professional personnel in the provision of services or appropriate referrals, including, but not limited to, physicians for the purpose of seeking advice and expertise concerning a specific medical problem to assist in ongoing treatment [2 Col. Code Regs. § 502-1 19.360 (B)(1)-(2) (2008)]. Kansas law provides that the patient's permission is not necessary to share evaluation and treatment records by and between or among treatment facilities… regarding a proposed patient, patient, or former patient [Kan. Stat. Ann. § 65-5602 (a) (5), (13) (2007)]. Although the particular circumstances vary, these laws may be seen as attempting to ensure that information may be shared for continuity of care, but only in a limited manner.

Some states impose confidentiality requirements that exceed those in 42 C.F.R. Part 2. In Pennsylvania, for example, it appears that even when the patient has executed a release form, the only client records that may be transferred for treatment purposes are client admission forms, treatment discharge forms, and discharge summary records [4 Pa. Code § 255.5 (2008); § 257.4(d) (2008).]

### *3.5.2 Incidental Health Information Related to Alcohol or Substance Abuse*

While most states have statutory provisions that specifically address information originating in substance abuse treatment programs and facilities, only a few have laws that specifically regulate alcohol or substance abuse-related information that is incidentally generated in the course of treatment outside of such a program or facility. Pennsylvania law, for example, provides that "All patient records and all information contained therein relating to drug or alcohol abuse or drug or alcohol dependence prepared or obtained by a private practitioner, hospital, clinic, drug rehabilitation or drug treatment center shall remain confidential and may be disclosed only with the patient's consent and only…to medical personnel exclusively for purposes of diagnosis and treatment of the patient" [71 Pa. Stat. Ann. § 1690.108(c) (2008)]. This provision appears to protect the portions of any medical record that relate to drug or alcohol dependence or abuse. Most state laws, however, do not specifically address information related to alcohol or substance abuse that is not specifically derived from a

[46] The statute notes that it does not preclude the application of Title 42, Part 2, Code of Federal Regulations.

substance abuse program or facility (such as in an emergency room of a general care hospital).[47] In these cases, such information may be governed by the state's general health information disclosure law (see Tables A-1a-c in general for disclosure requirements).

## 3.6 Mental Health Treatment-Related Information

States protect information related to mental health in a number of ways, including through recognition of mental health care provider-patient privileges, confidentiality requirements imposed on psychotherapists and other mental health care providers, and laws that apply to information generated in the mental health commitment process. Due to resource limitations we were unable to conduct a comprehensive analysis of all of these mental health laws. We, therefore, focused our study on one general category of laws, those that govern information maintained by in-patient mental health treatment facilities. We selected this category based on the belief that these facilities, which include hospitals, may be more likely to have electronic medical records.[48]

Almost every state has statutes or regulations that specifically govern the disclosure of information maintained by facilities that provide in-patient mental health treatment. The scope of entities covered by these provisions varies among the states. Some laws apply only to mental health services funded and/or provided by state, county, or local government while others apply to any mental health establishment, hospital, clinic, institution…or part thereof, that provides for the diagnosis, treatment, care, or rehabilitation of mentally ill persons, whether as outpatients or inpatients [compare Cal. Wel. and Inst. Code § 5328(a) (2007) with 50 Pa. Stat. Ann. § 7103, § 7111 (2008)]. In some states, the mental health-specific provision applies generally to hospitals that provide inpatient mental health care, but laws in other states apply only to the psychiatric unit of such a facility [N.D. Cent. Code § 25-03.1-02(20) (2008); Kan. Stat. 59-2979 (2007)].[49] Some laws apply only when the patient has been involuntarily committed to a mental health facility and other laws apply irrespective of the voluntariness aspect of the patient's treatment. Many states have multiple statutory and regulatory provisions governing in-patient mental health facilities. The mental health laws present the most varied approaches to disclosures of health information for treatment that we encountered and do not lend themselves readily to a consistent comparison across the states.[50] However, some trends are evident.

[47] In this respect, state laws mirror 42 C.F.R. Part 2 which applies solely to federally assisted alcohol and drug use programs.

[48] Our decision to limit our inquiry in this fashion was made prior to the passage of the American Recovery and Reinvestment Act of 2009, Pub. Law Public Law 111-5, which contains incentives for certain physicians to adopt electronic medical records.

[49] The latter approach potentially results in different confidentiality standards applying to different hospital departments.

[50] Such a comparison could potentially be conducted by identifying a specific category of in-patient mental health treatment facility as well as a specific category of patient (e.g., government-funded facility and involuntary treatment patient), an analysis beyond the scope of this project.

First, the vast majority of state laws governing in-patient mental health treatment facilities protect a broad range of information and records generated by such a facility. The protections are not limited to just information related to the patient's mental health condition or treatment. Florida law, for example, protects the clinical record of a mental health facility, which is defined as follows:

> [A]ll parts of the record required to be maintained and includes all medical records, progress notes, charts, and admission and discharge data, and all other information recorded by a facility which pertains to the patient's hospitalization or treatment [Fla. Stat. § 394.455(3) (2008)].[51]

Many of these laws are designed to protect even the fact that the person has sought or obtained (voluntarily or involuntarily) mental health services. For example, laws in New Jersey, as well as several other states protect "certificates, applications, records and reports" identifying individuals presently or formerly receiving mental health services [N. J. Admin. Code § 10:37-6.79(a)(1) (2008)].[52]

Second, although these laws are written to protect information originating at mental health facilities, as a practical matter, they have a broader impact. Laws in several states (at least 10) prohibit the recipients of health information originating from these mental health facilities from further disclosing the information except as authorized under the terms of the law.[53] Several states, including the District of Columbia, Florida, Iowa, Pennsylvania, and Puerto Rico, require mental health facilities to provide written notice advising the person receiving the information that disclosure without the permission of the subject of the information (or as otherwise provided by law) is prohibited [see, e.g., Fla. Stat. § 381.004 (2008)]. Another handful of states expressly permit the recipients of such mental health information to further disclose the information to others, but only to the extent consistent with the purpose for which the information was obtained.[54] Under these redisclosure provisions, the legal protection follows the health information whose source was a mental health facility as it flows to different entities.

Third, information related to mental health services often is afforded a higher degree of protection than information that is generated in other clinical settings. At their most

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[51] See also Ga. Code Ann. § 37-7-1(5) (2008) (similar language); Idaho Code Ann. § 66-348 (2008) (protecting "[a]ll certificates, applications, records, and reports made for the purpose of this act and directly or indirectly identifying a patient or former patient or an individual whose involuntary assessment, detention or commitment [for mental illness] is being sought under this act"); Miss. Code Ann. § 41-21-97 (2008) (governing the release of "hospital records of and information pertaining to patients at [mental health] treatment facilities…" ).

[52] See also Haw. Rev. Stat. § 334-5 and Idaho Code Ann. § 66-348 (involuntary commitment).

[53] See, e.g., D.C. Code Ann. § 7-1203.06 (2008); Iowa Code Ann. 228.2 92008); Md. Code Ann., Health-Gen. § 4-302 92008); 10 A N.C. Admin. Code § 26B.0208 (2008); Or. Rev. Stat. § 179.505 (2008).

[54] See, e.g., Mich. Comp. Laws § 330.1748 (2008); S.D. Codified Laws § 27A-12-32 (2008); Tex. Health & Safety Code § 611.004 (2007).

stringent, state laws require an in-patient mental health facility to obtain the permission of the patient to disclose health information even for treatment except in limited circumstances. Michigan law, for example, expressly requires a mental health facility to obtain the patient's permission to disclose health information even to a "provider of mental health services to the recipient" [Mich. Comp. Laws § 330.1748 (6) (a) (2008)].

Some states permit the exchange of mental health information among a discreet set of providers formally organized to provide coordinated care with the patient's one-time up-front permission. In Washington, DC, for example, patients may sign an initial "joint consent" which authorizes all providers participating in the Department of Mental Health's organized health care arrangement to share the client's mental health information among themselves "when and to the extent necessary to facilitate the delivery of mental health services and support" to the patient. Disclosures to other providers require the patient's separate permission [see D.C. Code § 7-1201.01; § 7-1201.02; § 7-1202.01; § 7-1203.01 (2008)]. Maryland permits the disclosure of a medical record that relates to the provision of mental health services between or among the health care providers that participate in the approved plan of a core service agency (i.e., an organization approved by the Mental Hygiene Administration to manage mental health resources and services in an area or for a target population) for the delivery of mental health services.[55] Such disclosures are permitted only if the patient has received a current list of the participating providers and has signed a written agreement with the core service agency to participate in the client information system developed by the agency [Md. Code Ann., Health-Gen. § 4-307(h) (2008)].[56] These frameworks represent one attempt to preserve some degree of patient control over their mental health information while permitting its disclosure among those who need the information for coordinating treatment.[57]

In a broader context, most state laws permit in-patient mental health facilities to disclose health information for treatment in some other, nonemergency situations without the patient's permission. Although the specific conditions under which mental health treatment facilities may disclose information vary, some reoccur with frequency such as disclosures to professionals directly involved in care or that are necessary upon transfer of the patient.

Many state laws expressly permit the disclosure of mental health information without patient permission to ensure continuing mental health care, such as upon patient admission, referral, or transfer to a mental health facility or to another provider. With respect to

[55] Core service agencies, which must be governmental or not-for-profit in nature, are agents of the county government and can take a number of different forms, including being a unit of the county government, a quasi-public authority, or a private, nonprofit entity. See Maryland Department of Health & Mental Hygiene, Mental Hygiene Administration (2009) *Overview*. Available at: http://www.dhmh.state.md.us/mha/csaoverview.html last accessed July 29, 2009.

[56] See also N.Y. Mental Hyg. Law § 33.13 (f) (effective 2010).

[57] Although these frameworks appear to encompass the potential for inpatient mental health facilities to participate, we do not know whether, as a matter of practice, that is the case.

involuntary patients, some laws *require* an inpatient mental health facility to disclose the patient's records upon their transfer to another inpatient facility. Idaho and Maryland, for example, require the records of involuntary patients to be disclosed without the patient's permission to a receiving inpatient facility upon the patient's transfer [Idaho Code Ann. § 66-334 (2008); Md. Code Ann., Health-Gen. § 4-307(k)(1) (2008). But see footnote 57 below.]

Other states *permit* a mental health facility to release the patient's records to a receiving facility upon the patient's admission or transfer. Under Wyoming statutes, patient records may be provided without the permission of the patient between a mental health center, the state hospital, and other hospitals designated to provide mental health treatment only for the purpose of facilitating referral treatment, admission, readmission, or transfer of the patient [Wyo. Stat. Ann. § 25-10-122(b) (2008); 048-070-001 Wyo. Code. R. § (4)(b)(1)(2008)]. Similarly, Georgia law permits inpatient mental health facilities to disclose a patient's record to another mental health facility (or community mental health program) when the patient is admitted [Ga. Code Ann. § 37-3-166(a)(3) (2008); Ga. Comp. R. & Regs. 290-4-6-.05(2)(a)(3) (2008); and Ga. Comp. R. & Regs. 290-4-9-.05(d) (2008)]. Wisconsin laws also permit an inpatient mental health facility to disclose information to a facility which is to receive an individual who is involuntarily committed… upon transfer of the individual from one treatment facility to another. Disclosure is limited to specific types of records including a record or summary of all somatic treatments, and a discharge summary, which may include a statement of the patient's problem, the treatment goals, the type of treatment which has been provided, and recommendation for future treatment, but it may not include the patient's complete treatment record [Wis. Stat. Ann. § 51.30(4)(b)(1), (8), (9) (2007)].

Some state laws require the disclosing provider to make an affirmative determination that such a disclosure is necessary. Connecticut, for example, permits mental health records to be disclosed to another treatment facility to which the patient is admitted for diagnosis or treatment if the psychiatrist in possession of the communications or records determines that the disclosure or transmission is needed to accomplish the objectives of diagnosis or treatment. The state also requires that the patient be informed that the communications or records will be disclosed or transmitted [Conn. Gen. Stat. § 52-146f(1) (2008)].[58]

Many state laws permit disclosure of health information in a broader range of scenarios for treatment, but limit the permitted disclosures to specific classes or categories of providers. Delaware law, for example, permits disclosures of health information to the extent

[58] See also Md. Code Ann., Health-Gen. § 4-307(c) (2008) and 92 Md. Op. Atty. Gen. Md. 107 (Aug. 6, 2007) (which require the releasing provider to make a determination of what information is necessary to disclose for the current clinical issue whenever information in a medical record developed in connection with the provision of mental health services is disclosed without patient permission).

necessary for professional consultation or services but only to contractors of the Department of Health and Social Services [Del. Code Ann. Tit. 16, § 5161 (13)(f) (2008)]. Disclosures in some jurisdictions are limited to specific professionals. In Guam, for example, information and records related to mental health services may be disclosed without patient permission only to other mental health professionals [10 Guam Code Ann. § 82605 (2007)]. Colorado appears to limit disclosures of mental health information for the provision of services or referrals to licensed physicians or psychologists certified to practice in the state.

Other state laws permit disclosure to "other providers" in a much more general fashion. Missouri, for example, allows information and records compiled, obtained, prepared, or maintained by inpatient mental health facilities and certain other programs to be disclosed to persons responsible for providing health care services to such patients as permitted by HIPAA [Mo. Rev. Stat. § 630.140 (1), (3)(2), (4) (2008)]. Similarly, under Arizona law, a behavioral health care entity may disclose patient records and information to "physicians and providers of health, mental health or social and welfare services involved in caring for, treating or rehabilitating the patient" without patient permission [Ariz. Rev. Stat. Ann. § 36-509(A) (2008)]. These two states permit such disclosures in a fairly broad manner, essentially treating the mental health information in the same manner as other more general clinical information.[59]

Other states, which generally permit disclosures to other providers for treatment, impose some restrictions on the amount or type of information that may be shared. Oklahoma permits a health care provider to disclose mental health information to another provider for treatment purposes, but limits disclosure to the minimum amount of information [Okla. Stat. tit. 43A, § 1-109 (2008)]. Wisconsin permits the disclosure of information generated by a mental health treatment facility to another health care provider who is involved in the individual's care for the current treatment of the patient. However, the state law limits the information that may be released to: the individual's name, address, and date of birth; the name of the individual's provider of mental health service; the date of any of those services provided; the individual's medications, allergies, diagnosis, diagnostic test results, and symptoms; and other relevant demographic information necessary for the current treatment of the individual [Wis. Stat. Ann. § 51.30(4) (2007)]. Maryland similarly permits medical records developed in connection with the provision of mental health services to be disclosed to other providers without the permission of the patient, but only the information in the record relevant to the purpose for which disclosure is sought may be released [Md. Code

[59] Alaska statutorily permits information and records obtained during a mental health screening, investigation, evaluation, examination, or treatment to be treated confidentially to be copied and disclosed "under regulations established by the department" to "a physician or provider of health, mental health, or social and welfare services involved in caring for, treating, or rehabilitating the patient" Alaska Stat. § 47.30.845(1)(2008). However, the regulations promulgated under this provision currently do not appear to permit such disclosure without patient permission. See Alaska Admin. Code 7 § 72.150(b)-(c) (2008).

Ann., Health-Gen. § 4-307(c) (2008)]. The Maryland Attorney General has interpreted this provision as meaning that a patient's entire mental health record may not be obtained by a participant in a health information exchange and then reviewed to see what might be relevant to a current clinical issue. Rather, the requester must explain the purpose for requesting the information and the provider holding the information must review the record and furnish only such information as necessary [92 Md. Op. Atty. Gen. Md. 107 (Aug. 6, 2007)].

It should be noted that although many of these laws are broadly worded and facially appear to generally allow disclosure to outside providers for treatment, they may be interpreted narrowly. Unlike HIPAA, which uses different terms for sharing health information internally (i.e., "use") and externally (i.e., "disclosure"), state laws almost uniformly use the same term (usually "disclosure" or "release") to refer to both circumstances. Accordingly, a state law that facially allows a "disclosure" may be interpreted as only allowing the sharing of information within a facility (what would be called a "use" under HIPAA).

In sum, the laws governing information generated by in-patient mental health facilities are extremely varied. A few states' laws require patient permission to disclose health information in all but emergent circumstances. Most states, however, permit the disclosure of health information for treatment purposes without the patient's permission subject to certain conditions, including:

- Upon the patient's transition into, between, or among mental health care providers
- To specific types or categories of providers
  - Only other mental health care professionals
  - Those who are actively engaged in the patient's diagnosis and care
  - Those who are part of a formal arrangement of organizations providing services
- Subject to minimum necessary requirements or specified limited categories of information.

Few states treat information generated in the context of in-patient mental health treatment the same as other health information.

## 3.7 Information Maintained by Clinical Laboratories

Clinical laboratories are subject to disclosure standards in addition to those that apply to other health care entities and, therefore, are discussed here separately.[60] Laboratory testing in the United States is comprehensively regulated by the federal Clinical Laboratory Improvement Amendments (CLIA). Unlike HIPAA, which generally permits a covered entity

[60] See Pritts, J. et. al (2009) *Privacy and Security Solutions for Interoperable Health Information Exchange, Releasing Clinical Laboratory Test Results: Report on Survey of State Laws* for a fuller discussion of the ability of clinical laboratories to release test results to other providers and directly to patients.

to disclose health information to any other provider for treatment without patient permission, CLIA generally restricts the providers with whom a laboratory may share health information. Specifically, with respect to disclosing the results of clinical laboratory tests, CLIA provides that:

> Test results must be released only to authorized persons and, if applicable, the individual responsible for using the test results and the laboratory that initially requested the test [42 C.F.R. § 493.1291(f)].

The term "authorized person" is defined in CLIA as "[A]n individual authorized under State law to order tests or receive test results, or both" [42 C.F.R. § 493.2]. The term "individual responsible for using the test results" is not defined in the CLIA regulations, and its meaning is uncertain. It is generally understood, however, to include the person who ordered the test. This regulatory scheme establishes the following general framework:

- Clinical laboratories may disclose test results to the health care provider who ordered the test under federal law.
- The extent to which another party may receive test results under federal law as "an individual authorized to use the test" is unclear.

State law may also specify who is authorized to receive a clinical laboratory test result.[61]

Thus, state law plays an important role in determining whether a clinical laboratory may disclose health information to another health care provider for treatment.[62]

Laws in only two states, the District of Columbia and New Hampshire, expressly require the patient's written permission for the release of test results to persons other than the ordering provider [D.C. Code Ann. § 44-211 (2008); N.H. Code Admin. R. Ann. He-P 808.14(i), (j) (2008)].

Clinical laboratory licensing laws in 10 states expressly permit clinical laboratories to disclose test results without patient permission to limited categories of providers (i.e., those authorized by law to use or employ the results).[63] Whether a particular category of provider is authorized to use or employ laboratory test results is generally determined by state

[61] The HIPAA Privacy Rule also applies to clinical laboratories. The HIPAA Privacy Rule permits, but does not require, covered entities, including health care providers such as clinical laboratories, to disclose to others protected health information for treatment, payment, and health care operations without the consent of the patient. *See* 45 C.F.R. § 164.506(c). Because the HIPAA Privacy Rule does not require such disclosures, it does not conflict with more restrictive federal and state laws (i.e., a covered entity can comply with both HIPAA and the more restrictive law). As a consequence, the more restrictive provisions of CLIA and state laws regarding the disclosure of laboratory test results remain in effect.

[62] Clinical laboratories must often report test results to public health authorities who may then engage in a number of activities including treating the individual tested. Disclosures to public health authorities are generally required (see, e.g., 17 Cal. Code Regs. § 2505) and therefore are not addressed in this report.

[63] California, Connecticut, Florida, Nevada, New Jersey, New York, Oregon, Tennessee, Washington, and Wisconsin.

health practitioner licensing laws. Using laboratory test results undoubtedly falls outside of the scope of some providers' permitted practices [see 66 Cal. Atty. Gen. Op. 302 (1983)].

Five of these states where clinical laboratory licensing laws generally permit disclosure to those authorized by law to use test results further limit disclosure of certain types of health information, including HIV- and genetics-related information.[64] Three of these states (Connecticut, New York, and Tennessee) have laws that permit the disclosure of HIV test results only "where necessary" for treating the patient (see Table A-6a). Three of these states (Florida, New Jersey, and New York) have genetic information-related laws that generally prohibit the disclosure of genetic test results without the patient's permission (except to the provider who requested the test). One state, New York, restricts the disclosure of both HIV-related information and genetics-related information.

In addition to these states with clinical licensing laws, four states (Maine, Maryland, Michigan, and Oregon) have general health information confidentiality laws that expressly apply to clinical laboratories which permit them (and other health care providers) to disclose health information to other providers for treatment. In one of these states, Maine, patient permission is generally required to release HIV test results (see Tables A-6b and A-6c).

It appears that the general restrictions on clinical laboratories' reporting test results pose the most significant restriction on their ability to disclose health information to other providers for treatment.

## 3.8 Overview by Health Care Entity

To obtain a similar perspective of how health information may be shared by other specific entities, we collated laws governing general clinical information, genetics-related information, and HIV-related information by entity across the states for the following categories of providers: hospitals, doctors of medicine, and pharmacists[65] (see Tables A-7a-c, A-8a-c, and A-9a-c, respectively). This view presents but a snapshot of how information may be shared. In reviewing these tables, the following general rules should be taken into consideration:

- If there is a state law that specifically governs a particular type of health information, the rules of that law apply to that particular type of information. This is true even if the state has a law that generally protects "health information" (what we have referred to as "general clinical information").

[64] Connecticut, Florida, New Jersey, New York, and Tennessee.

[65] We did not include substance abuse-related information because federal law, 42 C.F.R. Part 2, requires the patient's permission to disclose information originating in a federally funded substance abuse treatment program uniformly across the states. We also did not include information generated by mental health facilities, since the definition of these facilities varied greatly from state to state (whereas medical doctors, hospitals and pharmacists are defined in a fairly uniform fashion among the states).

- Where a state has a law protecting general clinical information, but no law specifically governing a specific health condition (e.g., genetic information or HIV-specific information), the general clinical information law usually governs the disclosure of the specific information.[66]
- Where a state has no statute or regulation governing the disclosure of general clinical information, the HIPAA Privacy Rule applies to such information.
- Where a state has neither a law governing the disclosure of general clinical information nor the specific health information, the HIPAA Privacy Rule applies to both the general information and the specific information.

For example, in reading Table A-7a, one of the tables summarizing laws governing hospitals, there is no notation for the District of Columbia under general clinical information. This means that we were unable to identify a statute or regulation governing the disclosure of general clinical information by a hospital in the District. Since the District of Columbia has no statute or regulation governing the disclosure of general clinical information, HIPAA sets the standard for that type of information and the hospital may disclose such information without patient permission for treatment (see Table A-7a). In contrast, the District of Columbia does have a law that specifically requires patient permission to disclose HIV-related information for treatment (see Table A-7c). This law must be followed by hospitals with respect to HIV-related information.

Many states permit hospitals, medical doctors, and pharmacists to disclose general clinical, genetics-related, and HIV-related information without patient permission for treatment. Some do so by expressly incorporating the standards of the HIPAA Privacy Rule. Others do so by having legal provisions that expressly provide that disclosures for treatment of the patient are permitted. Some combine these approaches, incorporating HIPAA for some entities, and having distinct state requirements for others. Approximately half the states impose additional restrictions on the sharing of HIV-related information. Very few states generally require patient permission to disclose information for treatment for all three types of information (Guam, Minnesota, Puerto Rico, Vermont).

It is important to note that this analysis is primarily based on the plain meaning of the statutes and regulations, which are often subject to various interpretations. In addition, even if a state law permits the disclosure of information without patient permission, professional ethics, judgment, or business choice often dictate other business practices.

[66] We have noted a few instances where it is unclear whether the general clinical health information or the condition-specific law applies.

# 4. SYNOPSIS OF FINDINGS AND CONCLUSION

This study, like others before it, has demonstrated that a vast array of state laws govern the disclosure of health information, even for treatment purposes. Rather than focus on the differences, however, our goal is to attempt to find some commonalities or patterns among the many approaches that exist. We recognize that these findings are limited, based as they are on a limited scope of providers and types of health information we reviewed.

## 4.1 Broad Categorical Approaches Toward Health Information Exchange

Many of the state health information laws we reviewed may be organized into macro categories or approaches based on the need to obtain patient permission to disclose information. The most prevalent categories are discussed in the following sections. A few states use a fairly uniform approach within the state to regulating the disclosure of all the types of health information by all the providers reviewed in this study within the state.[67] Most states use a combination of the categories to regulate the disclosure of health information.

### *4.1.1 HIPAA-Based Standard*

The standard for disclosing health information established in the HIPAA Privacy Rule is incorporated, either expressly or implicitly, in many state laws. Some state laws expressly and clearly incorporate the HIPAA Privacy Rule. Alaska hospital regulations, for example, provide as follows:

> A patient's written consent is required for release of information that is not authorized by release without consent. A facility may not use or disclose protected health information except as required or permitted by 45 C.F.R. part 160, subpart C, and 45 C.F.R. part 164, subpart E, revised as of October 1, 2005, and adopted by reference [Alaska Admin. Code 7 § 12.770(d) (2008)].

Other state laws generally make health information confidential but permit its disclosure "as otherwise authorized by law," a phrase which would appear to incorporate the HIPAA Privacy Rule standard [see, e.g., N.H. Rev. Stat. Ann. § 332-I:2(I)(e) (2008)]. At times, particularly in the pharmacy regulations, this provision is accompanied by a narrower list of circumstances under which information may be released for treatment purposes [see, e.g., Okla. Admin. Code § 535:15-3-14 (a), (e) (2008)]. Such wording raises some question about whether the narrower disclosure provisions control or whether the broader standard

[67] We note that our study was limited to specific categories of health information including general clinical health information, HIV-related information, genetics-related information, substance abuse treatment-related information generated in an outpatient substance abuse facility, and mental health information created in an in-patient facility. There are other types of health information that may be subject to specific laws and regulations not reviewed in this study.

in the HIPAA Privacy Rule would apply. In addition, there may be some doubt as to legislative or regulatory intent where the law containing the phrase "as authorized by law" was promulgated prior to HIPAA, since the regulators would not have been aware of HIPAA's standards at the time of enactment. To operationalize these laws, it is necessary to clarify whether the phrase "as authorized by law" is intended to permit disclosures as authorized by the HIPAA Privacy Rule.

For states that adopt this standard, the provider may disclose health information for treatment to other health care providers without patient permission. It should also be noted that under HHS's interpretation of the HIPAA Privacy Rule, disclosure is permitted for the treatment of any patient, not just the subject of the health information.[68] Under this model, for example, a provider is permitted to disclose the health information of a patient with a rare condition to another provider for treatment of a patient with a similar condition.

In disclosing information for treatment to other providers under this model, there is

- no express restriction on type or category of receiving provider;
- no limitation on information that may be disclosed (i.e., no minimum necessary standard); and
- no restriction on the individual for whose treatment the information may be released (i.e., the information may be released for treatment of persons other than the subject of the information).

This category thus reflects the least restrictive approach to exchanging health information among providers for treatment: it neither requires patient permission nor imposes other limitations.

Nevada has adopted the HIPAA Privacy Rule as its standard across the board for electronic health information exchange. Under Nevada law, patient permission is generally required to disclose information related to communicable disease, genetics, and mental health treatment. However, if this health information is electronically transmitted in accordance with HIPAA, more stringent state privacy law does not apply.[69] Patients, with the exception of recipients of Medicaid or insurance pursuant to the Children's Health Insurance Program, may opt out of having their individually identifiable health information disclosed electronically [Nev. Rev. Stat. § 433A.360; § 441A.220; § 439.538 (2008)].

In most states, the Privacy Rule sets the primary disclosure standard for some, but not all of the types of health information that were reviewed in this study (see Tables A-7a-c, A-8a-c, and A-9a-c).

[68] Standards for Privacy of Individually Identifiable Health Information: Final Rule, 65 Fed. Reg. 82462, 82497 (Dec. 28, 2000).

[69] While Nevada statutory provisions addressing mental health and substance abuse expressly incorporate Section 439.538, the provision addressing genetic information does not. It is, therefore, unclear whether genetic information is subject to the exclusion for electronically transmitted information contained in Nev. Rev. Stat. § 439.538.

### 4.1.2 No Patient Permission Required for Disclosure for Treatment of the Patient Who Is the Subject of the Information

A number of states generally permit providers to disclose health information for treatment *of the patient* to other providers without patient permission. California's Confidentiality of Medical Information Act is a good example of this approach. The Act provides:

> The information may be disclosed to providers of health care, health care service plans, contractors, or other health care professionals or facilities for purposes of diagnosis or treatment of the patient [Cal. Civil Code § 56.10(a), (c)(1), (c)(14) (Deering 2008)].[70]

Laws such as this one set standards very similar to those of the HIPAA Privacy Rule but limit disclosure to treatment of the patient who is the subject of the information.

In a number of states, hospitals, doctors, and pharmacists may disclose general health information, HIV-related information, and genetics-related information for treatment of the patient fairly freely between these express state provisions that permit such disclosure, state laws that incorporate HIPAA, and states that have no pertinent provision governing the disclosure of health information by the particular provider (see Tables A-7a-c, A-8a-c, and A-9a-c).

### 4.1.3 Patient Permission Required to Disclose Health Information for Treatment Purposes

Only two states (Minnesota and New York) appear to generally require patient permission to disclose *all* types of health information.[71]

More common is for the state to permit disclosure of general health information for treatment without patient permission, but to require patient permission to disclose information related to certain types of medical conditions, generally considered sensitive (see Tables A-7a, A-8a, and A-9a). Florida, for example, permits doctors to disclose general clinical information without patient permission but requires the patient's written permission to disclose genetics-related information for treatment.[72] We note that as a practical matter,

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[70] See also, Me. Rev. Stat. Ann. tit. 22, § 1711-C (6)(A)(2) (2008) (permitting a health care practitioner or facility to disclose health care information "without authorization… To another health care practitioner or facility for diagnosis, treatment or care of individuals or to complete the responsibilities of a health care practitioner or facility that provided diagnosis, treatment or care of individuals."); Haw. Rev. Stat. Ann. § 325-101(a)(3), (a)(10) (2008) (which permits disclosure of HIV-related information when it "is made by the patient's health care provider to another health care provider for the purpose of contributed care or treatment of the patient.")

[71] We note that although New York's regulatory language appears to permit the disclosure of HIV-related information for treatment to other providers where necessary for treatment, the general interpretation in the state appears to be that patient permission is required for such disclosures. *See Final Report of the Interstate Disclosure and Patient Consent Requirements Collaborative.*

[72] See also, Delaware, which does not have a general health information law, meaning that most information may be disclosed in accordance with HIPAA, but which statutorily requires providers to obtain patient permission to disclose the results of an HIV test. Del. Code Ann. tit. 16 § 1203(a)(2),(3),(4) (2008).

given the restrictions of 42 C.F.R. Part 2, patient permission must be obtained in every state at least for information related to substance abuse treatment from federally assisted programs.

### *4.1.4 No Patient Permission Required for Disclosure for Treatment of the Patient under Certain Conditions*

Most states allow the disclosure of even sensitive health information for treatment without patient permission under certain conditions or parameters. Some of the more common parameters include limitations on

- the amount or type of information to be disclosed;
- the providers to whom information may be disclosed (either by type of provider or by formal relationship to each other); and
- the timing of the disclosure.[73]

These parameters can be seen as efforts to achieve a balance between protecting the confidentiality of the patient's information and ensuring that necessary information is available to providers involved in treatment at crucial times.

#### *4.1.4.1 When Necessary or Relevant for Treatment*

Numerous state laws permit disclosure of health information for treatment while qualifying that the disclosure must be "necessary" or "required" or "relevant" for treatment or care or "to protect the patient's health and well-being."[74] The language in these provisions is ambiguous and subject to various interpretations. As demonstrated by the Interstate Disclosure and Patient Consent Requirements Collaborative, different states may interpret the same language differently. Further clarification of the intent of these laws is essential to implementing health information exchange.

One interpretation of "necessary for treatment" language is that it generally permits the disclosure all health information for treatment or care to any provider furnishing care to the patient, based on the assumption that any health information may be relevant for any particular treatment (see Section 4.1.2). The Indiana Health Information Exchange appears

[73] See, e.g., Md. Code Ann. Health-Gen. § 4-307 (permitting disclosure of mental health information between and among providers participating in the approved plan of the core service agency coordinating care in the region); Ga. § 37-3-166 (permitting disclosure of mental health information when chief medical officer of the facility where the record is kept deems it essential for continued treatment to physicians or psychologists when and as necessary for the treatment of the patient, and permitting disclosure from a mental health facility, community mental health center or private practitioner to a mental health facility upon admission of the patient).

[74] See e.g., Iowa Code Ann. § 141A.9(2)(c)-(d) (2008) (permitting disclosure of HIV-related information to a health care provider providing care to the subject of the test when knowledge of the test results is necessary to provide care or treatment); Mo. Rev. Stat. § 191.656 (1)(1), (2)(1)(b) (2008) (permitting disclosure without patient permission "[t]o health care personnel working directly with the infected individual who have a reasonable need to know the results for the purpose of providing direct patient health care.")

to operate under this interpretation of state law.[75] We believe it is likely that many providers would adopt this interpretation, at least for general clinical health information. Given the general restrictions placed on the disclosure of sensitive information, it may be less likely that providers read these provisions as broadly in disclosing such information.[76]

Another approach is that the "necessary for treatment" standard is somewhat similar to the minimum necessary requirement in the HIPAA Privacy Rule. The HIPAA Privacy Rule requires covered entities to make reasonable efforts to only use or disclose the minimum amount of information that is necessary for an intended purpose. The HIPAA Privacy Rule does not apply this requirement to treatment disclosures. Nevertheless, state laws that limit disclosure to that which is "necessary for treatment" may be interpreted as applying the HIPAA minimum-necessary standard in the treatment context, requiring providers to determine what information is necessary for the medical condition at issue. Illinois appears to have interpreted its HIV-related standard in this manner.[77] Similarly, Maryland has interpreted its law that permits the disclosure of mental health information only to the extent relevant to the purpose for which it is disclosed as imposing a minimum necessary standard on mental health related information. Under the state Attorney General's opinion, this limiting language prohibits the disclosure of a patient's entire mental health record to a participant in a health information exchange for the recipient to review and determine what might be relevant to a current clinical issue. Rather, the requester must explain the purpose for requesting the information and the provider holding the information must review the record and furnish only such information as necessary [92 Md. Op. Atty. Gen. Md. 107 (Aug. 6, 2007)]. There are, of course, other models for allowing providers to determine when disclosure is appropriate.

Some states have resolved this issue by essentially deeming certain information to be necessary for treatment. Hawaii's mental health law takes this approach and deems disclosure of a person's mental health treatment summary from a previous 5-year period as necessary for continued care and treatment of the patient [Haw. Rev. Stat. Ann. § 334-5(5) (2008)].[78] Ohio takes a similar approach and permits a limited scope of mental health hospitals and other institutions and facilities to exchange medication history, physical health status and history, financial status, summary of course of treatment in the hospital, summary of treatment needs, and a discharge summary without patient permission [Ohio

[75] This approach is also similar to that of the HIPAA Privacy Rule, which expressly exempts disclosures for treatment from the requirement that disclosures be limited to the minimum amount of information necessary to accomplish the intended purpose.

[76] Liability concerns may be at least part of the motivating factor for narrowly construing these provisions with respect to sensitive health information.

[77] See e.g., *Draft HIPAA Preemption Analysis: Illinois Law* (March 2003), available at: http://www.illinois.gov/hipaa/PreempAnalysis.pdf

[78] Hawaii law requires the disclosing provider to attempt to obtain the patient's permission to release this information but permits its disclosure without patient permission if such attempts are not successful.

Rev. Code. Ann. § 5122.31(A)(6)(2008)]. The Continuity of Care Record has also been suggested as a potential solution to this issue.[79]

Under this approach, a distinct set of health information may be routinely disclosed for treatment to other providers, eliminating the ambiguity of what information is considered to be necessary for treatment. While these two states have set this policy through statutory language, other states may be able to take a similar approach by interpreting the existing language of their laws using less formal means such as through regulation, guidance, or policy.

#### *4.1.4.2 Continuing Care—Patient Transitions in the Health Care System*

In many states, the disclosure of health information without patient permission for treatment is authorized upon the occurrence of an objective event—the transition of the patient through the health care system. A number of state laws permit the disclosure of information without patient permission upon the patient moving into, between, or out of providers in the health care system (e.g., admission, transfer, discharge, referral). Laws governing mental health treatment programs often include this type of provision as an exception to their general confidentiality rules. Under Wyoming statutes, for example, patient records may be provided without the permission of the patient between a mental health center and hospitals designated to provide mental health treatment for the purpose of facilitating referral treatment, admission, readmission, or transfer of the patient [Wyo. Stat. Ann. § 25-10-122(b) (2008); 048-070-001 Wyo. Code. R. § (4)(b)(1)(2008)].

Permitting the disclosure of health information upon transfer or referral may be coupled with other limitations. Wisconsin law provides for example, that for purposes of transfers,

> [T]he release of records shall be limited to such treatment records as are required by law, a record or summary of all somatic treatments, and a discharge summary. The discharge summary may include a statement of the patients problem, the treatment goals, the type of treatment which has been provided, and recommendation for future treatment, but it may not include the patients complete treatment record [Wis. Stat. Ann. § 51.30(4)(b)(9) (2008)].[80]

This type of provision sets restrictions on the amount of information disclosed but reduces the minimum necessary standard to objective elements.

A few states establish distinct time limits during which information may be disclosed without patient permission upon transitions in the health care system. For example, West Virginia law permits the disclosure of information related to mental health treatment or evaluation to a mental health facility without patient permission for 30 days from the patient's date of

[79] See Carter, P., et al. (2006, Nov–Dec). Privacy and security in health information exchange. *Journal of AHIMA 77*(10), 64A-C.

[80] See also, Wash. Rev. Code § 71.05.630(2)(i) (2008).

admission [W.Va. Code § 27-3-1 (2008).] After that, patient permission for disclosure is generally required. Although less clear, some state mental health provisions appear to allow a mental health care facility to disclose health information to outside providers only during the time the patient is undergoing treatment at the facility.[81] These types of limitations require time limitations on accessibility of health information.

#### *4.1.4.3 Specified Types or Groups of Providers*

A number of states limit disclosure of health information without patient permission to specified categories of recipient providers. Numerous pharmacy laws contain such provisions. Utah, for example, permits disclosure without patient permission only "To another pharmacist or to a prescribing practitioner who is providing professional services to the patient" [Utah Code Ann. § 58-17b-604 (4)(d) (2008)]. Likewise, clinical laboratory laws often permit disclosure of laboratory test results only to persons authorized to order or use the test [see, e.g., N.J. Admin. Code § 8:44-2.7(i)(3) (2008)]. Similarly, some mental health laws also permit information to be disclosed for treatment only to other mental health providers [see e.g., Kan. Stat. Ann. § 65-5602 (2007)].

#### *4.1.4.4 Professional Judgment*

Many state laws expressly permit disclosure of health information without patient permission when, in the heath care provider's professional judgment, disclosure is "in the best interest of the patient" or "is necessary to protect the patient's health and well-being."[82] Nebraska law, for example, provides that patient information maintained by a pharmacist is confidential and may be disclosed without patient permission to other physicians or pharmacists "when in the professional judgment of the pharmacist such release is necessary to protect the patient's health or well being" [Neb. Rev. Stat. § 38-2868 (2008)].[83] Professional discretion is an important factor of providing health care yet it is an imprecise standard. Some potential interpretations of such a standard may be that

- routinely disclosing all health information to other providers for treatment is in the patient's best interest; or
- not disclosing certain types of information to other providers without the patient's permission for treatment may be in the patient's best interest; or

[81] See, e.g., Iowa Code Ann. § 228.5 (2008) (which provides that "An individual…shall be informed that mental health information relating to the individual may be disclosed to employees or agents of or for the same mental health facility or to other providers of professional services or their employees or agents if and to the extent necessary to facilitate the provision of administrative and professional services to the individual").

[82] The exercise of professional judgment in disclosing health information is also present in professional codes of ethics. See e.g., American Medical Association, *Code of Medical Ethics*, Opinion 7.02 (1994) (providing that the medical record "is a confidential document involving the patient-physician relationship and should not be communicated to a third party without the patient's prior written consent, unless required by law or to protect the welfare of the individual or the community.").

[83] See also, S.C. Code Ann. 44-22-100 (2007) (allowing disclosure of mental health records without patient permission when such disclosure is necessary for furthering the welfare of the patient).

- disclosing information only to specific types or categories of providers is appropriate.

Standards that accompany the professional judgment language often incorporate one or more of these other limitations.

## 4.2 Implications and Conclusion

State statutes and regulations governing the disclosure of health information for treatment vary widely in their details. They do, however, demonstrate some common patterns or approaches towards obtaining patient permission to release health information for treatment. In addition, when state laws permit disclosure without patient permission, recurring restrictions are often imposed to bolster the protections afforded, including limiting the type of information disclosed and the permitted recipients.

These findings may be informative in assessing some of the means of harmonizing state health information privacy laws that have been proposed.

### *4.2.1 Possible Federal Solutions*

One means for harmonizing or simplifying state laws that has been suggested is one federal standard that uniformly preempts state law.[84] Some stakeholders have suggested that the HIPAA Privacy Rule should fill this role.[85] The findings of our review indicate that adopting this approach would effectively eliminate many state laws that impose greater restrictions on the disclosure of health information for treatment purposes.[86] This approach would require the enactment of federal legislation and would be subject to much debate.

Another federal approach to harmonizing state laws has been proposed by the National Committee on Vital and Health Statistics (NCVHS), a federal advisory committee to the Secretary of the United States Department of Health and Human Services. NCVHS has recommended that the federal government adopt a national policy to allow individuals to have limited control, in a uniform manner, over the disclosure of designated categories of health information.[87] Noting that considerable attention would need to be made in selecting the categories of information that might be eligible for patient control, NCVHS identified the following types of health information as potential examples:

- domestic violence

[84] See *Interstate Disclosure and Patient Consent Requirements Collaborative: Final Report*.
[85] See, Grealy, M. (2005, July). Testimony on behalf of the Healthcare Leadership Council Hearing on Health Care information Technology, U.S. House of Representatives Committee on Ways and Means Subcommittee on Health.
[86] We note that one state, Nevada, has essentially subjected its own more stringent state laws on disclosure of HIV-related and mental health related information to preemption by HIPAA. State law generally requires patient permission to disclose these types of information. However, if the information is exchanged electronically in compliance with HIPAA, the information is not subject to more stringent state laws.
[87] National Committee on Vital and Health Statistics (2009). *Recommendations on Privacy and Confidentiality, 2006-2008*. Department of Health and Human Services.

- genetic information
- mental health information
- reproductive health information
- substance abuse information

In addition to recommending patient control over health information, NCVHS also recommended the use of role-based access criteria in the nationwide health information network (NCVHS 11). Our study reviewed state laws in four of these areas, and indicates some support for both of these approaches.

While a majority of states do not specifically require patient permission to disclose genetics-related information, a significant number of states (14) do have this requirement. Eight states have laws that specifically require patient permission to disclose HIV-related information in most instances, including for treatment. An additional 12 states permit disclosure of HIV-related information without patient permission "as necessary for treatment," a phrase which is ambiguous and has been subject to various interpretations. Within our limited review of mental health laws, it appears that very few states always require patient permission to disclose health information generated at an in-patient mental health facility for treatment. The more common framework in addressing the disclosure of in-patient mental health information is for the state to permit the disclosure of such information for treatment without patient permission in some circumstances, often subject to limitations on recipients or type of information disclosed. Most state laws governing substance abuse treatment programs incorporate by reference the federal requirements for protecting the confidentiality of alcohol and drug abuse treatment records, 42 C.F.R. Part 2. State laws specifically governing in-patient mental health information as well as HIV-related information often include "need to know" or "necessary for treatment" standards. Such laws often restrict disclosure without patient permission to those who are directly involved in the care of the patient (see Tables A-3a-c).

Overall, our research indicates that the NCVHS approach with respect to patient control and role-based access aligns with existing laws in many states. However, adopting the NCVHS approach would impede the ability of health care providers to disclose health information for treatment in many states that permit disclosure of some (or all) of these categories of health information for treatment without patient permission. As the Committee has acknowledged, the NCVHS proposal would also be subject to much debate, particularly with respect to liability issues arising from incomplete information being available to providers.

### *4.2.2 Possible State-Based Solutions*

In addition to potential federal solutions, a number of state-based approaches to addressing variance in state laws have been proposed including, among others, adopting uniform or model state health information disclosure acts, entering into interstate compacts, and

developing standardized rule sets.[88] Uniform and model laws are developed by the National Conference of Commissioners for Uniform State Laws. The Conference designates an act as uniform only if there is substantial reason to believe that one uniform approach is advisable and that a large number of states will adopt the uniform proposal as written. Model acts can provide a limited number of options for state approaches and are offered to provide direction where uniformity is unessential or unachievable.[89] Interstate compacts are formal agreements between or among states that attempt to address a common regulatory problem. The likelihood of success of these proposals varies.

The results of our study appear to indicate that it is unlikely that a uniform state law approach is feasible. State law demonstrates a wide variety in approaches, even among the broad categories identified. Some states require patient permission to disclose all health information in almost all circumstances for treatment. Others permit disclosure of all types of health information in almost all circumstances. The majority take a hybrid approach and permit the disclosure of general clinical information without patient permission but may require patient permission or adherence to other limitations for specific types of health information. It seems unlikely that a single standard set in a uniform act would be acceptable to all of these states.[90]

A model act may be a more viable solution than a uniform law since it may include more than one option for disclosing health information for treatment. The broad categories of state requirements for patient permission for disclosing information that we have identified may serve as a starting point for developing potential options that may be included in such a model law. These categories evidence broad policies that many states have already adopted, which may make a model law based upon them acceptable to a wide range of states. These broad policies on their own, however, are merely a general framework for developing a model act. As noted earlier in this project and reiterated by our findings, similarly worded statutes and regulations are often subject to multiple interpretations.[91] To successfully harmonize state laws a model act would need to supplement these broad policy approaches to disclosure with detailed, operationable requirements that leave little room for interpretation.[92] Promulgating and adopting such a detailed model act would take a number of years.[93]

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[88] See *Interstate Disclosure and Patient Consent Requirements Collaborative: Final Report*.
[89] Razook, N. (Fall 2000). Uniform private laws, national conference of commissioners for uniform state laws signaling and federal preemption. *American Business Law Journal, 38*, p. 41.
[90] A uniform act designed to address similar state variation in regulating computer information, the Uniform Computer Information Transactions Act, has only been adopted by two states.
[91] For example, when no patient permission is required when disclosure is “necessary for treatment” does it mean that all health information should be disclosed, or a portion? If only a portion of information would be appropriate, what elements?
[92] See, e.g., the Uniform Commercial Code, which is quite detailed.
[93] See also *Interstate Disclosure and Patient Consent Requirements Collaborative: Final Report,* which sets out further drawbacks to the model law approach.

Interstate compacts, which are formal agreements between states, provide another option for harmonizing state law. States with similar approaches to health information disclosure may be able to agree to terms under which health information may be exchanged for treatment purposes. States may use our research to begin to identify other states with similar approaches to health information exchange. For example, our research indicates that Arizona, Nevada, and Utah appear to have similar approaches to disclosure of health information, at least among the categories of providers and information that we reviewed. We caution that our research should only be used as a starting point. As we have noted, a major limitation of our review is that it is based primarily on statutory and regulatory language. State interpretation of this language could, and undoubtedly in some cases does, vary. In addition, while our research demonstrates some general trends, interstate compacts would need to be based on detailed rules, subject to less interpretation.

In addition to the above policy approaches, a rules database has been proposed as a technical solution to work within the current framework of current laws.[94] Under this proposal, states would document in a simple, structured, and standardized way their official position on when disclosure of health information for treatment may be made without patient permission. The official position would then be made available as an online resource containing certified disclosure and consent rules for all states. In addition, a rules database would be developed that would electronically automate disclosure decisions based on these official positions.

This proposal for a rules database is similar to the consent directives management service being developed by Canada Health Infoway, which translates privacy requirements arising from "legislation, policies, and individuals' specific consent directives, and applies these requirements in an electronic health record environment."[95] One of the first steps Canada undertook in developing its consent directives management service was to survey the privacy laws in its provinces to determine what functions would be required to support these laws in an electronic environment.[96] Our research may serve as the first step in a comparable survey for the United States.

We have identified states' basic patient permission requirements for disclosure as well as some of the additional limitations that states impose when they allow disclosure of health information without patient permission. As proposed, the next step in creating a rules database would be to create a standardized rules structure in which to document the official state positions on these laws in simple, objective terms.[97] Standardized documentation of patient permission approaches would eliminate some variability in interpretation in state

[94] *Interstate Disclosure and Patient Consent Requirements Collaborative: Final Report, p.* 4-40.
[95] Canada Health Infoway (2005). *Electronic Health Record Infostructure (EHRi) Privacy and Security Conceptual Architecture: Version .1.1* at iii, 60-62.
[96] Id. at ii.
[97] *Interstate Disclosure and Patient Consent Requirements Collaborative: Final Report, p.* 4-40.

law. We believe such standardized rules may also prove beneficial to developing interstate compacts and reducing interpretative issues.

Our research suggests that some preliminary questions would need to be answered to create a standardized rules structure:

- Which categories of providers will be participating in health information exchange?
- What type or category of health care information is to be disclosed? Which health information comes within the general category type? For example, what information indicates that a person is HIV positive?
- For each category of provider, may the provider disclose the particular type of patient information for treatment without patient permission?
- If so, must the disclosure be only for treatment of the patient who is the subject of the health information? Or may information be disclosed for treatment of *any* patient?
- Is disclosure limited to those providers who are currently treating the patient? To those who have previously treated the patient? Who are prospective providers?
- Will evidence be required to verify that the provider receiving the information is/has/or will be furnishing care or treatment to the subject of the information?
- Are there limitations on the category or type of health providers who are authorized to receive the health information without patient permission? How will the permitted recipients be identified?
- Are there time limits on how long the information may be disclosed or redisclosed after it has been created?

These are only a few of the myriad questions or issues that would need to be addressed in operationalizing state laws that address disclosure of health information in an electronic environment.

### *4.2.3 Conclusion*

Although state statutes and regulations governing the disclosure of health information for treatment vary widely in their details, they evince some broad common patterns or approaches toward disclosing health information to other providers for treatment purposes. Our findings suggest that some proposed federal approaches to harmonizing state laws are aligned with some of the common approaches states take, particularly with respect to the disclosure of sensitive health information.

Absent a federal solution, states will need to determine a means for implementing their laws in an electronic environment. Regardless of the means adopted, whether it be interstate compact or rules engine or model act, implementation will require more objective standardized rules than current statutory or regulatory language. Detailed fixed rule sets that meet or exceed statutory or regulatory requirements for disclosure of health

information will be required. Some of the parameters that we have identified may serve as a starting point for establishing such rules.

# APPENDIX A:
# DATA COLLECTION OUTLINE AND TABLES

## Data Collection Outline

### I. General Information

- State abbreviation
- State name
- Indicate code for the type of statute or regulation summarized, using one of the following:
  - GHI = general health information privacy law.
    Applies to: General clinical information and relatively broad range of health care practitioners and health facilities.
  - GHP = health care practitioners privacy law.
    Applies to: General clinical information and multiple categories of practitioners (e.g., physicians and dentists)
  - GHF = health care facilities privacy law.
    Applies to: General clinical information and multiple categories of health facilities (e.g., hospitals and clinics)
  - SHP = specific health care provider law.
    Applies to specific types of health care providers: Physicians only; pharmacists only; mental health facilities only
  - SHI = law governing specific type of health care information.
    Applies to specific types of information such as mental health or HIV test results; differs from above category in that law applies broadly (e.g., "no person" may etc.)
- Law citation
- Hyperlink
- Law type
  - S = statute
  - R = regulation
- In what part (i.e., title) of the state code or regulation is the relevant provision codified?

### II. Type of Information and Summary of Law

- Describe type of information covered (e.g., health care information or mental health information). Provide citation to definition, if any.
- Indicate code for type of information that is covered by this statute or regulation.
  - GC = general clinical (applies to health information generally)
  - Gen-T = genetics test
  - Gen-G = genetics information in general, not specific to tests
  - HIV-T = HIV-test related information (taking and results)
  - HIV-G = HIV information in general (not specific to HIV-test)

  - MH-M = mental health medications
  - MH-G = mental health information generally(exclude psychotherapy notes)
  - SA = alcohol/substance abuse

- Summarize statute or regulation. Use actual text of provision but shorten as applicable. Please provide citation, including subsections, if any.
  *Note: If another statute or regulation applies this provision by incorporation please note and provide citation.*

- Describe any information expressly excluded from provision. Provide citation, if any.
  *Note: If another provision specifies information that is excluded from this provision, indicate the information that is to be excluded and provide the applicable citation here as well.*

- Code for excluded information (include only information that may be covered by another summary. For example, if general health privacy law excludes HIV-T, you would put HIV-T here).

- Does the provision appear to incorporate federal law?

- If the provision expressly incorporates a specific federal law, summarize the provision including citation.

- If the provision generically incorporates federal law (e.g., permits disclosure "as authorized by law"), summarize the provision including citation.

- Does the incorporating provision apply only to those who are required to comply with the federal law?

- If the provision requires that an entity comply with another provision of state law, summarize the provision including citation.

**III. Application of Law to Entities in Possession of Information**

- Describe the persons or providers covered by law (i.e., entity holding data to be released). Include description or definition of range of persons or providers covered by law.

- Include any express limitations of providers (e.g., law only applies to state funded entities).

- Indicate code for health care providers covered by law (i.e., entity holding data to be released).

  - AP = all providers listed below
  - MD = medical doctor
  - H = hospital
  - PH = pharmacist
  - MH = inpatient mental health facility
  - SA = outpatient substance abuse treatment facility
  - CL = clinical laboratories
    *Note: When it is unclear if a statute or regulation covers a particular provider add a "U" to end of code (e.g., "MDU").*

- May the provider holding the information disclose the information without the patient's permission to another provider for treatment?
  Y = Yes
  N = No
  S = Sometimes
  U = Unclear
  - If "N," proceed to Row 27.
  - If "Y," proceed to Row 36.
  - If "S" or "U," provide a very brief summary of why (e.g., consent to disclose for treatment generally, but not when to another mental health provider for continuity of care; or generally requires consent but permits disclosure "as otherwise permitted by law").

## IV. Application of Law to Entities Receiving Information

### *A. Standards Governing Disclosure for Treatment without Patient Permission (Note: Do not include in this Section IV.A. laws that solely permit disclosure without patient permission for emergency treatment purposes only).*

- To the extent the statute/regulation permits disclosure of health information without the patient's permission for treatment, summarize to whom such disclosure may be made. For example:
  - To another provider for treatment
  - To another person providing care
  - To HMO or managed care plan for treatment
  - To health plans, in general for treatment
  - Unspecified (e.g., "for treatment" generally)
  - Provide citation
- If applicable, provide the definitions for the providers to whom information may be disclosed for treatment, without the patient's permission. If the type of provider is not indicated, state "Unspecified."
- If applicable, indicate the code for the type of providers to whom information may be disclosed for treatment without the patient's permission.
- If applicable, summarize provision that describes relationship receiving entity must have with subject of information (e.g., involved in care of patient).
- If applicable, describe the type of health plan, (e.g., managed care plan), to which information may be disclosed for treatment, without the patient's permission. Include term used by statute or regulation. Provide definition and citation.
- If applicable, indicate the code for the health plan to which information may be disclosed for treatment purposes without the patient's permission.
  MCP = Managed care-type plan
  HP = Any or all "health plans"
  O = Other
- If no permission is required, are there other restrictions or limits on type or amount of information that may be disclosed (e.g., minimum necessary information for

treatment)?
Y = Yes
N = No
U = Unclear

- If there are restrictions or limits on type or amount of information that may be disclosed, describe restrictions or limits and provide citation.
- General notes/comments on disclosure without patient permission for treatment.

***B. Standards Governing Disclosure for Treatment when Patient Permission is Required***

- If patient permission is or may be required to disclose for treatment, summarize provision including citation.
- If patient permission is or may be required to disclose information for treatment what term does the statute or regulation use for this permission to disclose health information for treatment purposes (e.g., release or informed consent)?
- If patient permission is or may be required to disclose for treatment, must individual permission to disclose be in writing?
- Is there specific limited duration for the permission, such as a time limit or specific event? (Do not include provisions where patient determines effective duration.)
  Y = Yes
  N = No
  U = Unclear
- If there is a limited duration for the permission, such as a time limit or specific event, please describe and provide citation.
- Are there specific format or content requirements for the written permission?
  Y = Yes
  N = No
  U = Unclear
- If there are specific format or content requirements for the written permission, please describe and provide citation.
- If written permission is generally required for disclosure for treatment, does the statute or regulation expressly allow disclosure without individual permission for emergency medical treatment?
  Y = Yes
  N = No
  U = Unclear
- Notes regarding disclosure without patient permission for emergency medical treatment (including definition of emergency and citation, if any).
- General notes/comments on disclosure when patient permission is required for treatment.

### *C. Standards Governing Redisclosure of Information Disclosed for Treatment Purposes*

- Does the law impose restrictions on the recipient's ability to redisclose to others for treatment?
  Y = Yes
  N = No
  U = Unclear

- If yes, summarize statute or regulation. Use actual text of provision but shorten as applicable. Provide citation, including subsections, if any.

- Must the originating provider notify the recipient in writing that there are restrictions on redisclosure?
  Y = Yes
  N = No
  U = Unclear

- If the originating provider must notify the recipient of restrictions on redisclosure, please describe notice requirement and provide citation.
  Y=Yes
  N=No
  U=Unclear

- Notes re redisclosure.

- Miscellaneous notes re statute/reg. governing disclosure to other providers for treatment.

**Note: The remainder of the questions in this chart were posed in relation to other work conducted in this project.**

### V. Standards Governing Disclosure of Information for Quality Purposes

- Does the statute or regulation expressly permit the provider to disclose health information for "quality" purposes?

- What term does the state use for "quality improvement' type activities (e.g., utilization review, quality assurance, and health care operations)?

- Summarize the provision (using the key term) that permits the provider to use or disclose information for quality purposes.

  – If applicable, identify the entity for whom the information is being disclosed for quality purposes (e.g., hospital).

  – Provide citation to provision.
  *Note: Exclude provisions related to such entities as accreditation and licensing organizations and professional boards.*

- Does the statute or regulation related to disclosure of information for quality purposes specify further restrictions on redisclosure of the information?

- If the statute or regulation related to disclosure of information for quality purposes specifies further restrictions on redisclosure of the information, please describe briefly and provide citation?

- General notes on disclosure/redisclosure of information for quality purposes.

**VI. Standards Governing Electronic Exchange of Information**

- Does the statute/regulation expressly address the electronic exchange of health information for treatment or quality purposes?
- If the statute/regulation expressly addresses the electronic exchange of health information for treatment or quality purposes, please describe and provide applicable citation.

**VII. Standards for Clinical Laboratories Release of Test Results. (Complete this section only for those statutes that cover clinical laboratories or clinical laboratory directors [or similar employees]. If the law permits disclosures for "treatment" fill out.)**

- Does the state have an HIV-specific provision that applies to clinical laboratories?
- If so, summarize to whom a clinical laboratory may release an HIV test result. Include provisions where the laboratory may disclose test results directly to patients.

## Table A-1a. Health Care Providers' Ability to Disclose General Clinical Health Information for Treatment without Patient Permission: Hospital[a]

***State law permits the specified provider to disclose identifiable health information for treatment without the patient's permission***

| State | Y | S | N | U |
|---|---|---|---|---|
| Alabama | — | — | — | — |
| Alaska | •[1] | — | — | — |
| Arizona | •[1] | — | — | — |
| Arkansas | — | — | — | — |
| California | • | — | — | — |
| Colorado[2] | — | — | — | — |
| Connecticut | — | — | — | — |
| Delaware | — | — | — | — |
| District of Columbia | — | — | — | — |
| Florida | • | — | — | — |
| Georgia | •[3] | — | — | — |
| Guam | — | — | • | — |
| Hawaii | — | — | — | — |
| Idaho | — | — | — | — |
| Illinois | • | — | — | — |
| Indiana | NT | — | — | — |
| Iowa | — | — | — | — |
| Kansas | — | — | — | — |
| Kentucky | — | — | — | — |
| Louisiana | — | — | — | — |
| Maine | • | — | — | — |

(continued)

## Table A-1a. Health Care Providers' Ability to Disclose General Clinical Health Information for Treatment without Patient Permission: Hospital[a] (continued)

***State law permits the specified provider to disclose identifiable health information for treatment without the patient's permission***

| State | Y | S | N | U |
|---|---|---|---|---|
| Maryland | • | — | — | — |
| Massachusetts | • | — | — | — |
| Michigan | •[1] | — | — | — |
| Minnesota | — | SP, CC, E[4] | — | — |
| Mississippi | • | — | — | — |
| Missouri | — | — | — | — |
| Montana | — | NT, O[5] | — | — |
| Nebraska | •[3] | — | — | — |
| Nevada | — | — | — | — |
| New Hampshire | •[3] | — | — | — |
| New Jersey | — | NT, CC[6] | — | — |
| New Mexico | •[3] | — | — | — |
| New York | — | E | — | — |
| North Carolina | — | — | — | — |
| North Dakota | •[7] | — | — | — |
| N. Mariana Islands | — | NT, O[5] | — | — |
| Ohio[8] | — | — | — | — |
| Oklahoma | — | — | — | — |
| Oregon | •[1] | — | — | — |
| Pennsylvania | — | — | — | — |
| Puerto Rico | — | — | • | — |

(continued)

## Table A-1a. Health Care Providers' Ability to Disclose General Clinical Health Information for Treatment without Patient Permission: Hospital[a] (continued)

***State law permits the specified provider to disclose identifiable health information for treatment without the patient's permission***

| State | Y | S | N | U |
|---|---|---|---|---|
| Rhode Island | • | — | — | — |
| South Carolina | — | — | — | — |
| South Dakota | — | — | — | — |
| Tennessee | • | — | — | — |
| Texas | — | SP[9] | — | — |
| Utah | — | — | — | — |
| Vermont | — | — | •[10] | — |
| Virgin Islands | — | — | — | — |
| Virginia | NT | — | — | — |
| Washington | — | NT, O[5] | — | — |
| West Virginia | — | — | — | — |
| Wisconsin | • | — | — | — |
| Wyoming | — | NT, O[5] | — | — |

Y = Yes, may disclose without patient's permission for treatment, no qualifications.

NT = Yes, may disclose for treatment when necessary for treatment; when recipient has a legitimate need for information to provide services; when knowledge of test results is necessary to provide care or treatment. Breadth of interpretation of provision may vary by state.

N = No, may not disclose without patient's permission.

U = Unclear for other reason not mentioned.

S = Sometimes. Includes following subcategories where provider may disclose without permission:

- CC = For continuing care
- E = For emergency care
- O = Patient may opt out of disclosure
- SP = Only to specified categories of providers
- PJ = In the exercise of professional judgment and in the best interests of the patient

[a] Absence of an entry for a specific entity means that we were unable to find a statute or regulation that directly governed the means in which that entity may disclose identifiable health information for treatment.

## Table A-1b. Health Care Providers' Ability to Disclose General Clinical Health Information for Treatment without Patient Permission: Doctors of Medicine[a]

***State law permits the specified provider to disclose identifiable health information for treatment without the patient's permission***

| State | Y | S | N | U |
|---|---|---|---|---|
| Alabama | • | — | — | — |
| Alaska | — | — | — | — |
| Arizona | •[1] | — | — | — |
| Arkansas | — | — | — | — |
| California | • | — | — | — |
| Colorado[2] | — | — | — | — |
| Connecticut | — | — | — | — |
| Delaware | — | — | — | — |
| District of Columbia | — | — | — | — |
| Florida | • | — | — | — |
| Georgia | •[3] | — | — | — |
| Guam | — | — | — | — |
| Hawaii | — | — | — | — |
| Idaho | — | — | — | — |
| Illinois | •[3] | — | — | — |
| Indiana | NT | — | — | — |
| Iowa | — | — | — | — |
| Kansas | — | — | — | — |
| Kentucky | — | — | — | — |
| Louisiana | — | — | — | — |
| Maine | • | — | — | — |

(continued)

## Table A-1b. Health Care Providers' Ability to Disclose General Clinical Health Information for Treatment without Patient Permission: Doctors of Medicine[a] (continued)

***State law permits the specified provider to disclose identifiable health information for treatment without the patient's permission***

| State | Y | S | N | U |
|---|---|---|---|---|
| Maryland | • | — | — | — |
| Massachusetts | — | — | — | — |
| Michigan | — | — | — | — |
| Minnesota | — | SP, CC, E[4] | — | — |
| Mississippi | — | — | — | — |
| Missouri | — | — | — | — |
| Montana | — | NT, O[5] | — | — |
| Nebraska | — | — | — | — |
| Nevada | — | O[6] | — | — |
| New Hampshire | •[3] | — | — | — |
| New Jersey | — | PJ[11] | — | — |
| New Mexico | — | — | — | — |
| New York | — | E | — | — |
| North Carolina | — | — | — | — |
| North Dakota | — | — | — | — |
| N. Mariana Islands | — | NT, O[5] | — | — |
| Ohio[8] | — | — | — | — |
| Oklahoma | — | — | — | — |
| Oregon | •[1] | — | — | — |
| Pennsylvania | — | — | — | — |
| Puerto Rico | — | — | • | — |

(continued)

## Table A-1b. Health Care Providers' Ability to Disclose General Clinical Health Information for Treatment without Patient Permission: Doctors of Medicine[a] (continued)

***State law permits the specified provider to disclose identifiable health information for treatment without the patient's permission***

| State | Y | S | N | U |
|---|---|---|---|---|
| Rhode Island | • | — | — | — |
| South Carolina | — | — | — | ABL[12] |
| South Dakota | — | — | — | — |
| Tennessee | •[3] | — | — | — |
| Texas | — | SP,[13] E | — | — |
| Utah | — | — | — | — |
| Vermont | — | — | •[10] | — |
| Virgin Islands | • | — | — | — |
| Virginia | NT | — | — | — |
| Washington | — | NT, O[5] | — | — |
| West Virginia | — | — | — | — |
| Wisconsin | • | — | — | — |
| Wyoming | — | — | — | — |

Y = Yes, may disclose without patient's permission for treatment, no qualifications.

NT = Yes, may disclose for treatment when necessary for treatment; when recipient has a legitimate need for information to provide services; when knowledge of test results is necessary to provide care or treatment. Breadth of interpretation of provision may vary by state.

N = No, may not disclose without patient's permission.

U = Unclear for other reason not mentioned.

S = Sometimes. Includes following subcategories where provider may disclose without permission:

- CC = For continuing care
- E = For emergency care
- O = Patient may opt out of disclosure
- SP = Only to specified categories of providers
- PJ = In the exercise of professional judgment and in the best interests of the patient

[a] Absence of an entry for a specific entity means that we were unable to find a statute or regulation that directly governed the means in which that entity may disclose identifiable health information for treatment.

## Table A-1c. Health Care Providers' Ability to Disclose General Clinical Health Information for Treatment without Patient Permission: Pharmacists[a]

***State law permits the specified provider to disclose identifiable health information for treatment without the patient's permission***

| State | Y | S | N | U |
|---|---|---|---|---|
| Alabama | — | PJ | — | — |
| Alaska | — | SP,[14] PJ | — | ABL[12] |
| Arizona | •[1] | — | — | — |
| Arkansas | — | PJ | — | ABL[12] |
| California | • | — | — | — |
| Colorado[2] | •[1], [15] | — | — | — |
| Connecticut | — | SP[14] | — | — |
| Delaware | — | — | — | — |
| District of Columbia | — | — | — | — |
| Florida | • | — | — | — |
| Georgia | • | — | — | — |
| Guam | • | — | — | — |
| Hawaii | — | — | — | — |
| Idaho | • | — | — | — |
| Illinois | •[16] | — | — | — |
| Indiana | — | PJ | — | — |
| Iowa | — | PJ | — | — |
| Kansas | — | — | — | — |
| Kentucky | •[17] | PJ | — | — |
| Louisiana | — | — | — | — |
| Maine | • | — | — | — |

(continued)

## Table A-1c. Health Care Providers' Ability to Disclose General Clinical Health Information for Treatment without Patient Permission: Pharmacists[a] (continued)

***State law permits the specified provider to disclose identifiable health information for treatment without the patient's permission***

| State | Y | S | N | U |
|---|---|---|---|---|
| Maryland | • | — | — | — |
| Massachusetts | •[18] | — | — | — |
| Michigan | — | SP[14] | — | — |
| Minnesota | — | SP, CC, E[4] | — | — |
| Mississippi | •[3] | — | — | — |
| Missouri | •[1] | — | — | — |
| Montana | — | — | — | — |
| Nebraska | •[3] | — | — | — |
| Nevada | — | O[19] | — | — |
| New Hampshire | — | — | — | •[20] |
| New Jersey | — | — | — | — |
| New Mexico | •[1] | — | — | — |
| New York | — | E | — | — |
| North Carolina | • | — | — | — |
| North Dakota | — | — | — | — |
| N. Mariana Islands | — | — | — | •[21] |
| Ohio[8] | • | — | — | — |
| Oklahoma | — | PJ | — | ABL[12] |
| Oregon | •[1] | — | — | — |
| Pennsylvania | •[3] | — | — | — |
| Puerto Rico | — | PJ | — | — |

(continued)

## Table A-1c. Health Care Providers' Ability to Disclose General Clinical Health Information for Treatment without Patient Permission: Pharmacists[a] (continued)

***State law permits the specified provider to disclose identifiable health information for treatment without the patient's permission***

| State | Y | S | N | U |
|---|---|---|---|---|
| Rhode Island | • | — | — | — |
| South Carolina | • | — | — | — |
| South Dakota | — | PJ | — | ABL[12] |
| Tennessee | •[3] | — | — | — |
| Texas | — | PJ | — | — |
| Utah | — | SP | — | — |
| Vermont | — | — | — | •[22] |
| Virgin Islands | — | — | — | — |
| Virginia | NT | — | — | — |
| Washington | — | NT, O[5] | — | — |
| West Virginia | — | PJ | — | — |
| Wisconsin | • | — | — | — |
| Wyoming | • | — | — | — |

Y = Yes, may disclose without patient's permission for treatment, no qualifications.

NT = Yes, may disclose for treatment when necessary for treatment; when recipient has a legitimate need for information to provide services; when knowledge of test results is necessary to provide care or treatment. Breadth of interpretation of provision may vary by state.

N = No, may not disclose without patient's permission.

U = Unclear for other reason not mentioned.

S = Sometimes. Includes following subcategories where provider may disclose without permission:

- CC = For continuing care
- E = For emergency care
- O = Patient may opt out of disclosure
- SP = Only to specified categories of providers
- PJ = In the exercise of professional judgment and in the best interests of the patient

[a] Absence of an entry for a specific entity means that we were unable to find a statute or regulation that directly governed the means in which that entity may disclose identifiable health information for treatment.

[1] As permitted by the HIPAA Privacy Rule or 45 C.F.R. part 164, subpart E; as permitted by federal law with specific reference to HIPAA.

[2] State statute limiting disclosure of medical records and medical information applies only to persons not subject to HIPAA.

[3] As otherwise allowed by law; pursuant to law, statute, or lawful regulation; as permitted by law; in accordance with applicable law; except as otherwise provided by law; to those authorized by law to receive such information. Provisions either promulgated or amended subsequent to HIPAA, and therefore appear to incorporate HIPAA or state stakeholder analysis (HISPC or publicly available preemption analysis) interprets provision as incorporating HIPAA.

[4] Statute, which applies to all providers listed, generally prohibits disclosure without patient permission. Permits disclosure for treatment without patient permission in only very limited circumstances (e.g., transfer of hospital patient unable to give permission).

[5] Generally permits disclosure without patient permission for persons currently providing care as necessary for treatment. However, also permits patient to opt out of disclosure to providers who previously provided care (e.g., patient seeking a second opinion may opt out of current physician consulting with prior physician).

[6] May disclose to another health care facility upon transfer of patient and if "the release of the information is required and permitted by law".

[7] In accordance with accepted medical record principles.

[8] Ohio case law provides that in absence of prior authorization, a provider may disclose in accordance with common law duty or where disclosure outweighs the patient's interest in confidentiality.

[9] Permits disclosure without patient permission to "health care provider who is rendering health care to the patient when the request for disclosure is made or to a prospective health care provider, as part of the patient's continuum of care, as determined by the patient's attending physician."

[10] Provided that physician-patient privilege, found in Evidence Code, applies outside of judicial context.

[11] May disclose "in the exercise of professional judgment and in the best interests of the patient."

[12] Permits disclosure to parties (other than specified practitioners and other pharmacists) without patient permission "as otherwise authorized by law" or similar provision. State law promulgated prior to HIPAA, and therefore, it is unclear whether provision was intended to incorporate broader disclosures permitted by subsequently promulgated law. See *EEOC v. Luce, Forward*, 343 F.3d 742 (9th Cir. 2003).

[13] Permits disclosure without patient permission to another physician (or other personnel acting under the direction of the physician who participate in the diagnosis, evaluation, or treatment of the patient), but does not appear to permit disclosure to other types of providers without patient permission.

[14] Permits disclosure to prescribing practitioner or practitioner authorized to prescribe who is treating patient, and other pharmacists.

[15] Pharmacy regulations specifically permit disclosure for treatment to other providers.

[16] Must disclose prescription information to a physician who is prepared to prescribe or has prescribed a controlled substance.

[17] Statute permits disclosure without patient permission to certified or licensed health care personnel responsible for care of patient. Regulations allow disclosure "as prudent professional discretion dictates."

[18] As otherwise allowed by law; pursuant to law, statute, or lawful regulation; as permitted by law; in accordance with applicable law; except as otherwise provided by law; to those authorized by law to receive such information. Provisions either promulgated or amended subsequent to HIPAA, and therefore appear to incorporate HIPAA or state stakeholder analysis (HISPC or publicly available preemption analysis) interprets provision as incorporating HIPAA.

[19] Pharmacy law allows disclosure for treatment only to limited list of specific providers. However, more restrictive state law does not apply when health information is electronically sent in compliance with HIPAAA. Patient has right to opt out of electronic transmission.

[20] General privacy law permits disclosure "as authorized by law," however, Board of Pharmacy administrative rules for pharmacists provide that a licensed pharmacist may not disclose professional records without patient permission except in emergency situations where the best interest of the patient requires or the law demands.

[21] Unclear whether the general standard applies to pharmacists/pharmacies.

[22] Multiple code provisions addressing pharmacy records. However, statute governing unprofessional conduct expressly permits disclosure without patient permission to other certified or licensed health care personnel who are responsible for caring for the patient. Case law indicates provision in Health Code which prohibits prescription information without patient permission applies to government officials who inspect prescription records.

**Table A-2. Scope of State Statutes and Regulations Governing HIV-Related Information**

| State | Information Related to HIV-Test Taking and Results | Other Information Related to HIV | Recipient Expressly Prohibited from Redisclosing Information[a] |
|---|---|---|---|
| Alabama | • | • | — |
| Alaska | — | — | — |
| Arizona | • | • | • |
| Arkansas | — | — | — |
| California | • | — | • |
| Colorado[1] | • | • | — |
| Connecticut | • | • | • |
| Delaware | • | — | • |
| District of Columbia | • | • | — |
| Florida | • | — | • |
| Georgia | • | • | — |
| Guam | — | — | — |
| Hawaii | • | • | • |
| Idaho | — | — | — |
| Illinois | • | — | — |
| Indiana[2] | • | — | — |
| Iowa | • | — | — |
| Kansas[2] | • | • | — |
| Kentucky | • | — | — |
| Louisiana | • | — | — |
| Maine | • | • | • |
| Maryland | — | — | — |
| Massachusetts | • | — | — |
| Michigan | • | • | — |
| Minnesota | — | — | — |
| Mississippi | — | — | — |
| Missouri | • | • | — |
| Montana | • | — | — |
| Nebraska | — | — | — |

(continued)

**Table A-2. Scope of State Statutes and Regulations Governing HIV-Related Information (continued)**

| State | Information Related to HIV-Test Taking and Results | Other Information Related to HIV | Recipient Expressly Prohibited from Redisclosing Information[a] |
|---|---|---|---|
| Nevada[3] | • | — | — |
| New Hampshire | • | — | — |
| New Jersey | • | • | — |
| New Mexico | • | — | • |
| New York | • | • | • |
| North Carolina | • | • | — |
| North Dakota | • | — | — |
| N. Mariana Islands | • | — | — |
| Ohio | • | — | • |
| Oklahoma | • | • | — |
| Oregon | • | — | • |
| Pennsylvania | • | • | • |
| Puerto Rico | — | — | — |
| Rhode Island | • | — | — |
| South Carolina | — | — | — |
| South Dakota | — | — | — |
| Tennessee | — | — | — |
| Texas | • | — | — |
| Utah | — | — | — |
| Vermont | — | — | — |
| Virgin Islands | • | • | — |
| Virginia | • | — | — |
| Washington | • | • | • |
| West Virginia | • | — | • |
| Wisconsin | • | — | • |
| Wyoming | • | • | — |

[a] Does not include statutes and regulations that, as a general rule, apply to all holders of HIV-related information. Includes only provisions that expressly restrict recipient's redisclosure of information.

[1] State statute specifies that all information regarding HIV and AIDS in medical records held by a facility that provides ongoing care is considered medical information governed by general health information confidentiality law, which applies only to persons not subject to HIPAA.

[2] Not clear whether HIV law pertains only to reports to public health authority or also pertains to information in general clinical record.

[3] Entities that transmit information electronically in compliance with HIPAA Privacy Rule are not subject to more stringent state laws. Patient has right to opt out of having information transmitted electronically.

## Table A-3a. Providers' Ability to Disclose HIV-Related Information for Treatment without Patient Permission under State Law: Hospital

***State law permits specified entity to disclose HIV-related health information to a health care provider for treatment without patient permission.***

| State | Y | S | N | U |
|---|---|---|---|---|
| Alabama | — | SP[1] | — | — |
| Alaska | •[2] | — | — | — |
| Arizona | • | — | — | — |
| Arkansas | — | — | — | — |
| California | • | — | — | — |
| Colorado[3] | — | — | — | — |
| Connecticut | — | NT[4] | — | — |
| Delaware | — | E | — | — |
| District of Columbia | — | — | • | — |
| Florida | — | CC[5] | — | — |
| Georgia | — | NT[6] | — | — |
| Guam | — | — | •[2] | — |
| Hawaii | • | — | — | — |
| Idaho | — | — | — | — |
| Illinois | — | NT | — | — |
| Indiana | — | — | — | •[7] |
| Iowa | — | NT[8] | — | — |
| Kansas | — | E[7, 9] | — | — |
| Kentucky | — | NT, CC[5] | — | — |
| Louisiana | — | NT[8] | — | — |
| Maine | — | — | •[10] | — |
| Maryland | •[2] | — | — | — |
| Massachusetts | — | — | • | — |
| Michigan | — | — | — | •[11] |
| Minnesota | — | •[2, 12] | — | — |
| Mississippi | •[2] | — | — | — |
| Missouri | — | NT[6] | — | — |
| Montana | — | NT, O[13] | — | — |
| Nebraska | •[2] | — | — | — |
| Nevada | — | O[14] | — | — |
| New Hampshire | — | NT[8] | — | — |

(continued)

**Table A-3a. Providers' Ability to Disclose HIV-Related Information for Treatment without Patient Permission under State Law: Hospital (continued)**

***State law permits specified entity to disclose HIV-related health information to a health care provider for treatment without patient permission.***

| State | Y | S | N | U |
|---|---|---|---|---|
| New Jersey | — | NT[15] | — | — |
| New Mexico | — | — | • | — |
| New York | — | NT[8] | — | — |
| North Carolina | • | — | — | — |
| North Dakota | •[16] | — | — | — |
| N. Mariana Islands | — | — | • | — |
| Ohio | — | NT[6] | — | — |
| Oklahoma | • | — | — | — |
| Oregon | • | — | — | — |
| Pennsylvania | — | E, CC[5] | — | — |
| Puerto Rico | — | — | •[2] | — |
| Rhode Island | • | — | — | — |
| South Carolina | — | — | — | — |
| South Dakota | — | — | — | — |
| Tennessee | •[2] | — | — | — |
| Texas | — | NT[17] | — | — |
| Utah | — | — | — | — |
| Vermont | — | — | •[2] | — |
| Virgin Islands | — | — | • | — |
| Virginia | • | — | — | — |
| Washington | •[18] | — | — | — |
| West Virginia | — | NT[19] | — | — |
| Wisconsin | • | — | — | — |
| Wyoming | — | — | • | — |

Y = Yes, may disclose without patient's permission.

N = No, may not disclose without patient's permission.

U = Unclear.

S = Sometimes. Includes following subcategories where provider may disclose without permission:

- CC = For continuing care
- E = For emergency care
- NT = When necessary for treatment; when recipient has a legitimate need for information to provide services; when knowledge of test results is necessary to provide care or treatment
- O = Patient may opt out of disclosure
- SP = Only to specified categories of providers

## Table A-3b. Providers' Ability to Disclose HIV-Related Information for Treatment without Patient Permission under State Law: Doctors of Medicine

***State law permits specified entity to disclose HIV-related health information to a health care provider for treatment without patient permission.***

| State | Y | S | N | U |
|---|---|---|---|---|
| Alabama | — | SP[1] | — | — |
| Alaska | — | — | — | — |
| Arizona | • | — | — | — |
| Arkansas | — | — | — | — |
| California | • | — | — | — |
| Colorado[3] | — | — | — | — |
| Connecticut | — | NT[4] | — | — |
| Delaware | — | E | — | — |
| District of Columbia | — | — | • | — |
| Florida | — | CC[5] | — | — |
| Georgia | — | NT[6] | — | — |
| Guam | — | — | — | — |
| Hawaii | • | — | — | — |
| Idaho | — | — | — | — |
| Illinois | — | NT | — | — |
| Indiana | — | — | — | •[7] |
| Iowa | — | NT[8] | — | — |
| Kansas | — | E[7, 9] | — | — |
| Kentucky | — | NT, CC[5] | — | — |
| Louisiana | — | NT[8] | — | — |
| Maine | — | — | •[10] | — |
| Maryland | •[2] | — | — | — |
| Massachusetts | — | — | • | — |
| Michigan | — | — | — | •[11] |
| Minnesota | — | •[2, 12] | — | — |
| Mississippi | — | — | — | — |
| Missouri | — | NT[6] | — | — |
| Montana | — | NT, O[13] | — | — |
| Nebraska | — | — | — | — |
| Nevada | — | O[14] | — | — |
| New Hampshire | — | — | — | — |

(continued)

## Table A-3b. Providers' Ability to Disclose HIV-Related Information for Treatment without Patient Permission under State Law: Doctors of Medicine (continued)

***State law permits specified entity to disclose HIV-related health information to a health care provider for treatment without patient permission.***

| State | Y | S | N | U |
|---|---|---|---|---|
| New Jersey | — | NT[15] | — | — |
| New Mexico | — | — | • | — |
| New York | — | NT[8] | — | — |
| North Carolina | • | — | — | — |
| North Dakota | •[16] | — | — | — |
| N. Mariana Islands | — | — | • | — |
| Ohio | — | NT[6] | — | — |
| Oklahoma | • | — | — | — |
| Oregon | • | — | — | — |
| Pennsylvania | — | E, CC[5] | — | — |
| Puerto Rico | — | — | •[2] | — |
| Rhode Island | • | — | — | — |
| South Carolina | — | — | — | •,[2] ABL[20] |
| South Dakota | — | — | — | — |
| Tennessee | •[2, 21] | — | — | — |
| Texas | — | NT[17] | — | — |
| Utah | — | — | — | — |
| Vermont | — | — | •[2] | — |
| Virgin Islands | — | — | • | — |
| Virginia | • | — | — | — |
| Washington | •[18] | — | — | — |
| West Virginia | — | NT[19] | — | — |
| Wisconsin | • | — | — | — |
| Wyoming | — | — | • | — |

Y = Yes, may disclose without patient's permission.

N = No, may not disclose without patient's permission.

U = Unclear.

S = Sometimes. Includes following subcategories where provider may disclose without permission:

- CC = For continuing care
- E = For emergency care
- NT = When necessary for treatment; when recipient has a legitimate need for information to provide services; when knowledge of test results is necessary to provide care or treatment
- O = Patient may opt out of disclosure
- SP = Only to specified categories of providers

## Table A-3c. Providers' Ability to Disclose HIV-Related Information for Treatment without Patient Permission under State Law: Pharmacists

***State law permits specified entity to disclose HIV-related health information to a health care provider for treatment without patient permission***

| State | Y | S | N | U |
|---|---|---|---|---|
| Alabama | — | SP[1] | — | — |
| Alaska | — | SP, PJ[22] | — | — |
| Arizona | • | — | — | — |
| Arkansas | — | — | — | — |
| California | • | — | — | — |
| Colorado[3] | — | — | — | — |
| Connecticut | — | NT[4] | — | — |
| Delaware | — | E | — | — |
| District of Columbia | — | — | • | — |
| Florida | — | CC[5] | — | — |
| Georgia | — | NT[6] | — | — |
| Guam | — | — | — | — |
| Hawaii | • | — | — | — |
| Idaho | — | — | — | — |
| Illinois | — | NT | — | — |
| Indiana | — | — | — | •[7] |
| Iowa | — | NT[8] | — | — |
| Kansas | — | E[7, 9] | — | — |
| Kentucky | — | NT, CC[5] | — | — |
| Louisiana | — | NT[8] | — | — |
| Maine | — | — | •[10] | — |
| Maryland | •[2] | — | — | — |
| Massachusetts | •[22] | — | — | — |
| Michigan | — | — | — | •[11] |
| Minnesota | — | •[2, 12] | — | — |
| Mississippi | •[22] | — | — | — |
| Missouri | — | NT[6] | — | — |
| Montana | — | — | — | — |
| Nebraska | •[22] | — | — | — |
| Nevada | — | O[14] | — | — |
| New Hampshire | — | — | — | •[23] |

(continued)

## Table A-3c. Providers' Ability to Disclose HIV-Related Information for Treatment without Patient Permission under State Law: Pharmacists (continued)

***State law permits specified entity to disclose HIV-related health information to a health care provider for treatment without patient permission***

| State | Y | S | N | U |
|---|---|---|---|---|
| New Jersey | — | NT[15] | — | — |
| New Mexico | — | — | • | — |
| New York | — | NT[8] | — | — |
| North Carolina | • | — | — | — |
| North Dakota | •[16] | — | — | — |
| N. Mariana Islands | — | — | • | — |
| Ohio | — | NT[6] | — | — |
| Oklahoma | • | — | — | — |
| Oregon | • | — | — | — |
| Pennsylvania | — | E, CC[5] | — | — |
| Puerto Rico | — | •[22] | — | — |
| Rhode Island | • | — | — | — |
| South Carolina | — | — | — | — |
| South Dakota | — | PJ[22, 20] | — | ABL[22, 20] |
| Tennessee | — | — | — | — |
| Texas | — | NT[17] | — | — |
| Utah | — | SP[22] | — | — |
| Vermont | — | — | — | •[22, 24] |
| Virgin Islands | — | — | • | — |
| Virginia | • | — | — | — |
| Washington | •[18] | — | — | — |
| West Virginia | — | NT[19] | — | — |
| Wisconsin | • | — | — | — |
| Wyoming | — | — | • | — |

Y = Yes, may disclose without patient's permission.

N = No, may not disclose without patient's permission.

U = Unclear.

S = Sometimes. Includes following subcategories where provider may disclose without permission:

- CC = For continuing care
- E = For emergency care
- NT = When necessary for treatment; when recipient has a legitimate need for information to provide services; when knowledge of test results is necessary to provide care or treatment
- O = Patient may opt out of disclosure
- SP = Only to specified categories of providers

[1] May disclose without the patient's permission to other physicians involved in care and to a physician to whom a referral is made. Does not appear to permit disclosure without patient permission to other types of providers.

[2] State does not have an HIV-specific statutory or regulatory provision, but state's general health privacy law applicable to entity is broad enough to apply to HIV-related information.

[3] State statute limiting disclosure of medical records and medical information applies only to persons not subject to HIPAA.

[4] May disclose to a health care provider or health facility when knowledge of HIV-related information is necessary to provide appropriate care or treatment or when HIV-related information is already recorded in a medical chart and a health care provider has access to the chart for providing care.

[5] May disclose to health care providers consulting between themselves or with health care facilities to determine diagnosis and treatment.

[6] May disclose to health care provider or health care facility: which as a result of provision of health care services has a legitimate need for information in order to provide service to that patient; or if they have a need to know the information and are participating in diagnosis, care or treatment of individual on whom test was performed; or when working directly with infected person and they have a reasonable need to know results to provide direct patient care.

[7] Unclear whether provision generally requiring patient permission to release HIV or communicable disease-related information pertains solely to public health reports or to information in provider's clinical records.

[8] May disclose to health care providers and health care facilities when knowledge of test results is necessary to provide appropriate care or treatment; when disclosure is necessary to protect the health of the patient treated.

[9] If a medical emergency exists, information may be disclosed only to the extent necessary to protect the health or life of a named party.

[10] Some type of patient permission is generally required to release the results of HIV test results for treatment of the patient. Patient permission is generally required to disclose HIV test result. When information related to person's HIV infection status has been made part of a medical record, test subject elects in writing whether to authorize the release of that portion of the record when the person's medical record is requested.

[11] Provision permits disclosure of HIV-related information "to diagnose and care for a patient" but also specifies that the test subject's name should be excluded unless making the disclosure is reasonably necessary to prevent a foreseeable risk of transmission of HIV. Not clear whether this provision, which clearly allows disclosure for treatment of other patients, also pertains to disclosures for treatment of the test subject.

[12] General law permits disclosure of information in only very limited circumstances, e.g., transfer of patient to another health care facility.

[13] Generally permits disclosure without patient permission for persons currently providing care. However, also permits patient to opt out of disclosure to providers who previously provided care (e.g., patient seeking a second opinion may opt out of current physician consulting with prior physician).

[14] Communicable disease law incorporates general health information disclosure law, which provides that if a covered entity electronically transmits health information in compliance with the provisions of HIPAA that govern electronic transmission, it is exempt from any state law that contains more stringent privacy requirements. However, provider must allow patient to opt out of electronic transmission.

[15] Permits disclosure to qualified personnel involved in diagnosis and treatment. Has been interpreted by some stakeholders as not permitting release to all types of providers (e.g., not imaging centers).

[16] As permitted under title 45, Code of Federal Regulations, part 164, section 512.

[17] To physician, nurse or other health care personnel who have a legitimate need to know test result in order to provide for the patient's health and welfare.

[18] Confidentiality requirements for HIV test results do not apply to the "customary methods utilized for the exchange of medical information among health care providers in order to provide health care services to the patient, nor within health care facilities where there is a need for access to confidential medical information to fulfill professional duties."

[19] To licensed medical personnel or appropriate health care personnel providing care to the subject of the test, when knowledge of the test results is necessary or useful to provide appropriate care or treatment, in an appropriate manner.

[20] General disclosure law permits limited disclosure to certain specified providers without patient permission and to others "as otherwise authorized by law." State law promulgated prior to HIPAA, and therefore, it is unclear whether provision was intended to incorporate broader disclosures permitted by subsequently promulgated law. See *EEC v. Luce, Forward*, 343 F.3d 742 (9th Cir. 2003).

[21] Information confidential "except as otherwise provided by law." Provision amended subsequent to HIPAA and therefore appears to incorporate HIPAA standard.

[22] General pharmacy law appears broad enough to encompass HIV-related information. It applies to all information maintained by a pharmacist in the patient's records or that is communicated to the patient as part of counseling, or similar standard.

[23] Unclear. General privacy law permits disclosure "as authorized by law"; however, Board of Pharmacy administrative rules provide that a licensed pharmacist may not disclose professional records without patient permission except "in emergency situations where the best interest of the patient requires or the law demands."

[24] Multiple code provisions addressing pharmacy records, some of which appear to require patient permission to disclose health information for treatment. However, regulations governing unprofessional conduct expressly permit disclosure of personally identifiable information without patient permission to other certified or licensed health care personnel who are responsible for caring for the patient.

**Table A-4. Scope of State Statutes and Regulations Governing Genetics-Related Information**

| State | Information Subject to Genetics-Specific Law: Genetic Testing and Information Derived from Genetic Testing | Information Subject to Genetics-Specific Law: Broader Individually Identifiable Information Related to Genetics | Information Subject to Genetics-Specific Law: Unclear |
|---|---|---|---|
| Alabama | — | — | — |
| Alaska | •[1] | — | — |
| Arizona | •[2] | — | — |
| Arkansas | — | — | — |
| California | — | — | — |
| Colorado | •[3] | — | — |
| Connecticut | — | — | — |
| Delaware | — | — | •[4] |
| District of Columbia | — | — | — |
| Florida | — | •[5] | — |
| Georgia | — | — | — |
| Guam | — | — | — |
| Hawaii | — | — | — |
| Idaho | — | — | — |
| Illinois | •[6] | — | — |
| Indiana | — | — | — |
| Iowa | — | — | — |
| Kansas[2] | — | — | — |
| Kentucky | — | — | — |
| Louisiana | — | — | — |
| Maine | — | — | — |
| Maryland | — | — | — |
| Massachusetts | •[7] | — | — |
| Michigan | — | — | — |
| Minnesota | — | •[8] | — |
| Mississippi | — | — | — |
| Missouri | — | •[9] | — |
| Montana | — | — | — |

(continued)

**Table A-4. Scope of State Statutes and Regulations Governing Genetics-Related Information (continued)**

| State | Information Subject to Genetics-Specific Law: Genetic Testing and Information Derived from Genetic Testing | Information Subject to Genetics-Specific Law: Broader Individually Identifiable Information Related to Genetics | Information Subject to Genetics-Specific Law: Unclear |
|---|---|---|---|
| Nebraska | — | — | — |
| Nevada[10] | •[11] | — | — |
| New Hampshire | •[12] | — | — |
| New Jersey | — | •[13] | — |
| New Mexico | — | •[14] | — |
| New York | •[15] | — | — |
| North Carolina | — | — | — |
| North Dakota | — | — | — |
| N. Mariana Islands | — | — | — |
| Ohio | — | — | — |
| Oklahoma | — | — | — |
| Oregon | •[16] | — | — |
| Pennsylvania | — | — | — |
| Puerto Rico | — | — | — |
| Rhode Island | — | — | — |
| South Carolina | — | — | •[17] |
| South Dakota | •[18] | — | — |
| Tennessee | — | — | — |
| Texas | — | •[19] | — |
| Utah | — | — | — |
| Vermont | — | •[20] | — |
| Virgin Islands | — | — | — |
| Virginia | — | — | — |
| Washington | — | — | — |
| West Virginia | — | — | — |
| Wisconsin | — | — | — |
| Wyoming | — | — | — |

[1] Results of a DNA analysis.

[2] Genetic testing and information derived from genetic testing.

[3] Information derived from genetic testing.

[4] Information about inherited genes or chromosomes, and of alteration thereof, whether obtained from an individual or family member, that is scientifically or medically believed to predispose an individual to disease, disorder, or syndrome or believed to be associated with a statistically significant increased risk of development of a disease, disorder, or syndrome.

[5] Results of DNA analysis.

[6] Identity of any person upon whom a genetic test is performed or the results of a genetic test.

[7] "Genetic information," meaning "any written or recorded individually identifiable result of a genetic test . . . or explanation of such a result."

[8] "Genetic information" meaning "information . . .derived from the presence, absence, alteration, or mutation of a gene, or the presence or absence of a specific DNA or RNA marker, which has been obtained from an analysis of the individual's biological information or specimen; or the biological information or specimen of a person to whom the individual is related. Genetic information also means medical or biological information collected from an individual about a particular genetic condition that is or might be used to provide medical care to that individual or that individual's family members."

[9] Genetic testing results and personal information obtained from any individual.

[10] Under Nevada law, entities that transmit information electronically in compliance with HIPAA Privacy Rule are not subject to more stringent state laws. Although law addressing HIV-test results expressly incorporates this standard, state law governing genetic test results does not.

[11] The identity of an individual who received a genetic test and genetic information. Genetic information includes any information that is obtained from a genetic test.

[12] Genetic testing results or the fact that a person has undergone genetic testing.

[13] The identity of an individual upon whom a genetic test has been performed and genetic information, including information about inherited characteristics that may derive from an individual or family member.

[14] Genetic information or the results of genetic analysis. Genetic information includes, among other things, participation in genetic research or use of genetic services.

[15] Findings and results of any genetic test.

[16] Information about an individual or the individual's blood relatives obtained from a genetic test.

[17] Information about genes, gene products, or genetic characteristics derived from an individual or a family member of the individual.

[18] Information related to predictive genetic tests.

[19] Genetic information includes, among other things, family health history obtained from an individual.

[20] Results of genetic testing or the fact that an individual has requested genetic services or undergone genetic testing.

## Table A-5a. Health Care Providers' Ability to Disclose Genetics-Related Information for Treatment without Patient Permission: Hospital

***State law permits the specified provider to disclose genetics-related identifiable health information for treatment without the patient's permission***

| State | Y | S | N | U |
|---|---|---|---|---|
| Alabama | — | — | — | — |
| Alaska | — | G-E | — | — |
| Arizona | — | G-CC[1] | — | — |
| Arkansas | — | — | — | — |
| California | • | — | — | — |
| Colorado[2] | G[3] | — | — | — |
| Connecticut | — | — | — | — |
| Delaware | — | — | — | G-ABL[4] |
| District of Columbia | — | — | — | — |
| Florida | — | — | G | — |
| Georgia | •[5] | — | — | — |
| Guam | — | — | • | — |
| Hawaii | — | — | — | — |
| Idaho | — | — | — | — |
| Illinois | — | — | G[6] | — |
| Indiana | NT | — | — | — |
| Iowa | — | — | — | — |
| Kansas | — | — | — | — |
| Kentucky | — | — | — | — |
| Louisiana | — | — | — | — |
| Maine | • | — | — | — |
| Maryland | • | — | — | — |
| Massachusetts | — | — | G | — |
| Michigan | •[7] | — | — | — |
| Minnesota | — | — | G | — |
| Mississippi | • | — | — | — |
| Missouri | — | — | G | — |
| Montana | — | NT, O[8] | — | — |
| Nebraska | •[5] | — | — | — |
| Nevada | — | — | — | G[9] |
| New Hampshire | — | — | G[10] | — |
| New Jersey | — | — | G | — |

(continued)

## Table A-5a. Health Care Providers' Ability to Disclose Genetics-Related Information for Treatment without Patient Permission: Hospital

***State law permits the specified provider to disclose genetics-related identifiable health information for treatment without the patient's permission***

| State | Y | S | N | U |
|---|---|---|---|---|
| New Mexico | — | G-E | — | — |
| New York | — | G-E | — | — |
| North Carolina | — | — | — | — |
| North Dakota | •[11] | — | — | — |
| N. Mariana Islands | — | NT, O[8] | — | — |
| Ohio | — | — | — | — |
| Oklahoma | — | — | — | — |
| Oregon | G | — | — | — |
| Pennsylvania | — | — | — | — |
| Puerto Rico | — | — | • | — |
| Rhode Island | • | — | — | — |
| South Carolina | — | — | G[12] | — |
| South Dakota | — | — | G[13] | — |
| Tennessee | • | — | — | — |
| Texas | — | — | G | — |
| Utah | — | — | — | — |
| Vermont | — | — | G | — |
| Virgin Islands | — | — | — | — |
| Virginia | NT | — | — | — |
| Washington | — | NT, O[8] | — | — |
| West Virginia | — | — | — | — |
| Wisconsin | • | — | — | — |
| Wyoming | — | NT, O[8] | — | — |

Y = Yes, may disclose without patient's permission for treatment, no qualifications.

N = No, may not disclose without patient's permission.

U = Unclear for other reason not mentioned.

S = Sometimes. Includes following subcategories where provider may disclose without permission:

- CC = For continuing care
- E = For emergency care
- O = Patient may opt out of disclosure
- SP = Only to specified categories of providers
- PJ = In the exercise of professional judgment and in the best interests of the patient
- NT = when necessary for treatment; when recipient has a legitimate need for information to provide services; when knowledge of test results is necessary to provide care or treatment. Breadth of interpretation of provision may vary by state

G = Law specifically governing genetics-related information. Entries that do not have a "G" summarize the general clinical health information law that applies to the specified entity, is broad enough to encompass genetics-related information, and, therefore, appears to apply in the absence of a genetics-specific law.

## Table A-5b. Health Care Providers' Ability to Disclose Genetics-Related Information for Treatment without Patient Permission: Doctors of Medicine

***State law permits the specified provider to disclose genetics-related identifiable health information for treatment without the patient's permission***

| State | Y | S | N | U |
|---|---|---|---|---|
| Alabama | • | — | — | — |
| Alaska | — | G-E | — | — |
| Arizona | — | G-CC[1] | — | — |
| Arkansas | — | — | — | — |
| California | • | — | — | — |
| Colorado[2] | — | — | — | — |
| Connecticut | — | — | — | — |
| Delaware | — | — | — | G-ABL[4] |
| District of Columbia | — | — | — | — |
| Florida | — | — | G | — |
| Georgia | •[5] | — | — | — |
| Guam | — | — | — | — |
| Hawaii | — | — | — | — |
| Idaho | — | — | — | — |
| Illinois | — | — | G[6] | — |
| Indiana | NT | — | — | — |
| Iowa | — | — | — | — |
| Kansas | — | — | — | — |
| Kentucky | — | — | — | — |
| Louisiana | — | — | — | — |
| Maine | • | — | — | — |
| Maryland | • | — | — | — |
| Massachusetts | — | — | G | — |
| Michigan | — | — | — | — |
| Minnesota | — | — | G | — |
| Mississippi | — | — | — | — |
| Missouri | — | — | G | — |
| Montana | — | NT, O[8] | — | — |
| Nebraska | — | — | — | — |
| Nevada | — | — | — | G[9] |
| New Hampshire | — | — | G[10] | — |
| New Jersey | — | — | G | — |

(continued)

**Table A-5b. Health Care Providers' Ability to Disclose Genetics-Related Information for Treatment without Patient Permission: Doctors of Medicine (continued)**

***State law permits the specified provider to disclose genetics-related identifiable health information for treatment without the patient's permission***

| State | Y | S | N | U |
|---|---|---|---|---|
| New Mexico | — | G-E | — | — |
| New York | — | G-E | — | — |
| North Carolina | — | — | — | — |
| North Dakota | — | — | — | — |
| N. Mariana Islands | — | NT, O[8] | — | — |
| Ohio | — | — | — | — |
| Oklahoma | — | — | — | — |
| Oregon | G | — | — | — |
| Pennsylvania | — | — | — | — |
| Puerto Rico | — | — | • | — |
| Rhode Island | • | — | — | — |
| South Carolina | — | — | G[12] | — |
| South Dakota | — | — | G[13] | — |
| Tennessee | •[5] | — | — | — |
| Texas | — | — | G | — |
| Utah | — | — | — | — |
| Vermont | — | — | G | — |
| Virgin Islands | • | — | — | — |
| Virginia | NT | — | — | — |
| Washington | — | NT, O[8] | — | — |
| West Virginia | — | — | — | — |
| Wisconsin | • | — | — | — |
| Wyoming | — | — | — | — |

Y = Yes, may disclose without patient's permission for treatment, no qualifications.

N = No, may not disclose without patient's permission.

U = Unclear for other reason not mentioned.

S = Sometimes. Includes following subcategories where provider may disclose without permission:

- CC = For continuing care
- E = For emergency care
- O = Patient may opt out of disclosure
- SP = Only to specified categories of providers
- PJ = In the exercise of professional judgment and in the best interests of the patient
- NT = when necessary for treatment; when recipient has a legitimate need for information to provide services; when knowledge of test results is necessary to provide care or treatment. Breadth of interpretation of provision may vary by state

G = Law specifically governing genetics-related information. Entries that do not have a "G" summarize the general clinical health information law that applies to the specified entity, is broad enough to encompass genetics-related information, and, therefore, appears to apply in the absence of a genetics-specific law.

## Table A-5c. Health Care Providers' Ability to Disclose Genetics-Related Information for Treatment without Patient Permission: Pharmacists

***State law permits the specified provider to disclose genetics-related identifiable health information for treatment without the patient's permission***

| State | Y | S | N | U |
|---|---|---|---|---|
| Alabama | — | PJ | — | — |
| Alaska | — | G-E | — | — |
| Arizona | — | G-CC[1] | — | — |
| Arkansas | — | PJ | — | ABL[14] |
| California | • | — | — | — |
| Colorado[2] | •[15, 16] | — | — | — |
| Connecticut | — | SP[17] | — | — |
| Delaware | — | — | — | G-ABL[4] |
| District of Columbia | — | — | — | — |
| Florida | — | — | G | — |
| Georgia | • | — | — | — |
| Guam | • | — | — | — |
| Hawaii | — | — | — | — |
| Idaho | • | — | — | — |
| Illinois | — | — | G[6] | — |
| Indiana | — | PJ | — | — |
| Iowa | — | PJ | — | — |
| Kansas | — | — | — | — |
| Kentucky | •[18] | PJ | — | — |
| Louisiana | — | — | — | — |
| Maine | • | — | — | — |
| Maryland | • | — | — | — |
| Massachusetts | •[19] | — | — | — |
| Michigan | — | SP[17] | — | — |
| Minnesota | — | — | G | — |
| Mississippi | •[5] | — | — | — |
| Missouri | — | — | G | — |
| Montana | — | — | — | — |
| Nebraska | •[5] | — | — | — |
| Nevada | — | — | — | G[9] |
| New Hampshire | — | — | G[10] | — |
| New Jersey | — | — | G | — |
| New Mexico | — | G-E | — | — |
| New York | — | G-E | — | — |

(continued)

## Table A-5c. Health Care Providers' Ability to Disclose Genetics-Related Information for Treatment without Patient Permission: Pharmacists (continued)

***State law permits the specified provider to disclose genetics-related identifiable health information for treatment without the patient's permission***

| State | Y | S | N | U |
|---|---|---|---|---|
| North Carolina | • | — | — | — |
| North Dakota | — | — | — | — |
| N. Mariana Islands | — | — | — | •[20] |
| Ohio | • | — | — | — |
| Oklahoma | — | PJ | — | ABL[14] |
| Oregon | G | — | — | — |
| Pennsylvania | •[5] | — | — | — |
| Puerto Rico | — | PJ | — | — |
| Rhode Island | • | — | — | — |
| South Carolina | — | — | G[12] | — |
| South Dakota | — | — | — | ABL[21] |
| Tennessee | •[5] | — | — | — |
| Texas | — | — | G | — |
| Utah | — | SP | — | — |
| Vermont | — | — | G | — |
| Virgin Islands | — | — | — | — |
| Virginia | NT | — | — | — |
| Washington | — | NT, O[8] | — | — |
| West Virginia | — | PJ | — | — |
| Wisconsin | • | — | — | — |
| Wyoming | • | — | — | — |

Y = Yes, may disclose without patient's permission for treatment, no qualifications.

N = No, may not disclose without patient's permission.

U = Unclear for other reason not mentioned.

S = Sometimes. Includes following subcategories where provider may disclose without permission:

- CC = For continuing care
- E = For emergency care
- O = Patient may opt out of disclosure
- SP = Only to specified categories of providers
- PJ = In the exercise of professional judgment and in the best interests of the patient
- NT = when necessary for treatment; when recipient has a legitimate need for information to provide services; when knowledge of test results is necessary to provide care or treatment. Breadth of interpretation of provision may vary by state

G = Law specifically governing genetics-related information. Entries that do not have a "G" summarize the general clinical health information law that applies to the specified entity, is broad enough to encompass genetics-related information, and, therefore, appears to apply in the absence of a genetics-specific law.

[1] Disclosure of genetics-related information limited to health care provider who performs the test or is authorized to obtain test results by person tested and agents or employees; to health care providers assuming care from or consulting with provider who had access to genetic records.

[2] State statute limiting disclosure of medical records and medical information applies only to persons not subject to HIPAA.

[3] Statute governing nonprofit hospitals expressly permits release of genetic information for diagnosis, treatment, or therapy.

[4] Prohibits disclosure of genetics-related information unless it is "otherwise permitted by law." Unclear whether "otherwise permitted by law" provision, which was promulgated prior to the HIPAA Privacy Rule, was intended to incorporate HIPAA's standard which allows disclosure of health information to all providers without patient permission for treatment. See *EEOC v. Luce, Forward*, 343 F.3d 742 (9th Cir. 2003).

[5] General health information law permits disclosures as otherwise allowed by law; pursuant to law, statute or lawful regulation; as permitted by law; in accordance with applicable law; except as otherwise provided by law; to those authorized by law to receive such information. Provisions either promulgated or amended subsequent to HIPAA, and, therefore, appear to incorporate HIPAA or state stakeholder analysis (HISPC or publicly available preemption analysis) interprets provision as incorporating HIPAA.

[6] Prohibits disclosure of genetics-related information except to any person designated in a specific written legally effective release of the test results signed by the test subject. Also permits release to an authorized agent or employee of a health care facility or health care provider if the health facility or provider is itself authorized to obtain test results, the agent or employee provides patient care, and the agent or employee has a need to know the information in order to conduct test or provide care or treatment. Read together, it appears that these provisions permit disclosure to certain employees and agents of health care providers and facilities only where the test subject has authorized the provider or facility to obtain test results.

[7] As permitted by the HIPAA Privacy Rule or 45 C.F.R. part 164, subpart E; as permitted by federal law with specific reference to HIPAA.

[8] General health information law generally permits disclosure without patient permission for persons currently providing care as necessary for treatment. However, also permits patient to opt out of disclosure to providers who previously provided care (e.g., patient seeking a second opinion may opt out of current physician consulting with prior physician).

[9] State law generally prohibits disclosure of the identity of a person who was the subject of a genetic test or of genetic information without first obtaining the informed consent of that person. Nev. Rev. Stat. § 629.171 (2007). However, Nev. Rev. Stat. § 439.538 generally provides that if information is sent electronically in compliance with HIPAA more stringent state restrictions do not apply. While statutory provisions addressing mental health and substance abuse expressly incorporate Section 439.538, statutory provision addressing genetic information does not. It is, therefore, unclear whether genetic information is subject to the exclusion supplied by Nev. Rev. Stat. § 439.538.

[10] Prohibits disclosure without the prior written and informed consent of the individual. Provides that discussion by appropriate professionals within a physician's medical practice or hospital is not a violation.

[11] In accordance with accepted medical record principles.

[12] Permits disclosure without patient permission "as specifically authorized or required by state or federal statute." As there does not appear to be a state or federal statute that specifically authorizes disclosure of genetic information for treatment, patient permission would be required to disclose this genetic information for this purpose.

[13] Individual must sign an informed consent for the performance of the genetic test. The informed consent must include a list of persons who will have access to predictive genetic test as well as a statement that information is otherwise confidential.

[14] General pharmacy law permits disclosure to parties (other than specified practitioners and other pharmacists) without patient permission "as otherwise authorized by law" or similar provision. State law promulgated prior to HIPAA, and therefore, it is unclear whether provision was intended to incorporate broader disclosures permitted by subsequently promulgated law. See *EEOC v. Luce, Forward*, 343 F.3d 742 (9th Cir. 2003).

[15] As permitted by the HIPAA Privacy Rule or 45 C.F.R. part 164, subpart E; as permitted by federal law with specific reference to HIPAA.

[16] General pharmacy regulations specifically permit disclosure for treatment to other providers.

[17] General pharmacy law permits disclosure to prescribing practitioner, or practitioner authorized to prescribe who is treating patient, and other pharmacists.

[18] Statute permits disclosure without patient permission to certified or licensed health care personnel responsible for care of patient. Regulations allow disclosure "as prudent professional discretion dictates."

[19] As otherwise allowed by law; pursuant to law, statute, or lawful regulation; as permitted by law; in accordance with applicable law; except as otherwise provided by law; to those authorized by law to receive such information. Provisions either promulgated or amended subsequent to HIPAA, and therefore appear to incorporate HIPAA or state stakeholder analysis (HISPC or publicly available preemption analysis) interprets provision as incorporating HIPAA.

[20] Unclear whether the general health information disclosure law applies to pharmacists/pharmacies.

[21] Pharmacy law permits disclosure "as otherwise authorized by law." Unclear whether law requiring informed consent to list all recipients would prohibit pharmacist who received genetics-related information from redisclosing.

## Table A-6a. State Laws Governing Disclosure of Clinical Laboratory Test Results: Clinical Laboratory Licensing Law[a]

***Specified type of law permits clinical laboratory to disclose test results without patient permission to other health care providers for treatment[b]***

| State | Y | S | N | U |
|---|---|---|---|---|
| Alabama | — | — | — | — |
| Alaska | — | — | — | — |
| Arizona | — | — | — | — |
| Arkansas | — | — | — | — |
| California | — | •[1] | — | — |
| Colorado[2] | — | — | — | — |
| Connecticut | •[3] | — | — | — |
| Delaware | — | — | — | — |
| District of Columbia | — | — | • | — |
| Florida | •[4] | — | — | — |
| Georgia | — | — | — | — |
| Guam | — | — | — | — |
| Hawaii | — | — | — | — |
| Idaho | — | — | — | — |
| Illinois | — | — | — | — |
| Indiana | — | — | — | — |
| Iowa | — | — | — | — |
| Kansas | — | — | — | — |
| Kentucky | — | — | — | — |
| Louisiana | — | — | — | — |
| Maine | — | — | — | — |
| Maryland | — | — | — | — |
| Massachusetts | — | — | — | — |
| Michigan | — | — | — | — |
| Minnesota | — | — | — | — |
| Mississippi | — | — | — | — |
| Missouri | — | — | — | — |
| Montana | — | — | — | — |
| Nebraska | — | — | — | — |
| Nevada | •[4] | — | — | — |
| New Hampshire | — | — | • | — |
| New Jersey | — | •[1] | — | — |
| New Mexico | — | — | — | — |
| New York | — | •[1] | — | — |
| North Carolina | — | — | — | — |
| North Dakota | — | — | — | — |

(continued)

**Table A-6a. State Laws Governing Disclosure of Clinical Laboratory Test Results: Clinical Laboratory Licensing Law[a] (continued)**

***Specified type of law permits clinical laboratory to disclose test results without patient permission to other health care providers for treatment[b]***

| State | Y | S | N | U |
|---|---|---|---|---|
| N. Mariana Islands | — | — | — | — |
| Ohio | — | — | — | — |
| Oklahoma | — | — | — | — |
| Oregon | — | •[1] | — | — |
| Pennsylvania | — | — | — | — |
| Puerto Rico | — | — | — | — |
| Rhode Island | — | — | — | — |
| South Carolina | — | — | — | — |
| South Dakota | — | — | — | — |
| Tennessee | •[4] | — | — | — |
| Texas | — | — | — | — |
| Utah | — | — | — | — |
| Vermont | — | — | — | — |
| Virgin Islands | — | — | — | — |
| Virginia | — | — | — | — |
| Washington | • | — | — | — |
| West Virginia | — | — | — | — |
| Wisconsin | • | — | — | — |
| Wyoming | — | — | — | — |

Y = Yes, may disclose without patient's permission.

N = No, may not disclose without patient's permission.

U = Unclear.

S = Sometimes. Includes the following subcategories:

- E = For emergency care
- NT = May disclose without patient's permission, when necessary for treatment
- O = Patient may opt out of some disclosures for treatment

[a] Table includes clinical laboratory statutes and regulations that expressly contain the noted provisions. It does not address whether some provisions implicitly allow release of test results to others.

[b] Providers who requested test are presumed to be authorized recipients of results of tests that they have ordered.

**Table A-6b. State Laws Governing Disclosure of Clinical Laboratory Test Results: General Health Information Confidentiality Law[a]**

***Specified type of law permits clinical laboratory to disclose test results without patient permission to other health care providers for treatment[b]***

| State | Y | S | N | U |
|---|---|---|---|---|
| Alabama | — | — | — | — |
| Alaska | — | — | — | — |
| Arizona | — | — | — | — |
| Arkansas | — | — | — | — |
| California | — | — | — | — |
| Colorado[2] | — | — | — | — |
| Connecticut | — | — | — | — |
| Delaware | — | — | — | — |
| District of Columbia | — | — | — | — |
| Florida | — | — | — | — |
| Georgia | — | — | — | — |
| Guam | — | — | — | — |
| Hawaii | — | — | — | — |
| Idaho | — | — | — | — |
| Illinois | — | — | — | — |
| Indiana | — | — | — | — |
| Iowa | — | — | — | — |
| Kansas | — | — | — | — |
| Kentucky | — | — | — | — |
| Louisiana | — | — | — | — |
| Maine | • | — | — | — |
| Maryland | • | — | — | — |
| Massachusetts | — | — | — | — |
| Michigan | • | — | — | — |
| Minnesota | — | — | — | — |
| Mississippi | — | — | — | — |
| Missouri | — | — | — | — |
| Montana | — | O[5] | — | — |
| Nebraska | — | — | — | — |
| Nevada | — | — | — | — |
| New Hampshire | — | — | •[6] | — |
| New Jersey | — | — | — | — |
| New Mexico | — | — | — | — |
| New York | — | — | E | — |
| North Carolina | — | — | — | — |
| North Dakota | — | — | — | — |

(continued)

**Table A-6b. State Laws Governing Disclosure of Clinical Laboratory Test Results: General Health Information Confidentiality Law[a] (continued)**

***Specified type of law permits clinical laboratory to disclose test results without patient permission to other health care providers for treatment[b]***

| State | Y | S | N | U |
|---|---|---|---|---|
| N. Mariana Islands | — | — | — | O[5, 7] |
| Ohio | — | — | — | — |
| Oklahoma | — | — | — | — |
| Oregon | • | — | — | — |
| Pennsylvania | — | — | — | — |
| Puerto Rico | — | — | — | — |
| Rhode Island | — | — | — | — |
| South Carolina | — | — | — | — |
| South Dakota | — | — | — | — |
| Tennessee | — | — | — | — |
| Texas | — | — | — | — |
| Utah | — | — | — | — |
| Vermont | — | — | • | — |
| Virgin Islands | — | — | — | — |
| Virginia | — | — | — | — |
| Washington | — | O[5] | — | — |
| West Virginia | — | — | — | — |
| Wisconsin | — | — | — | — |
| Wyoming | — | — | — | — |

Y = Yes, may disclose without patient's permission.

N = No, may not disclose without patient's permission.

U = Unclear.

S = Sometimes. Includes the following subcategories:

- E = For emergency care
- NT = May disclose without patient's permission, when necessary for treatment
- O = Patient may opt out of some disclosures for treatment

[a] Confidentiality law expressly applies to clinical laboratories or to all persons holding specified information.

[b] Providers who requested test are presumed to be authorized recipients of results of tests that they have ordered.

## Table A-6c. State Laws Governing Disclosure of Clinical Laboratory Test Results: HIV-Related Information Specific Law

***Specified type of law permits clinical laboratory to disclose test results without patient permission to other health care providers for treatment[a]***

| State | Y | S | N | U |
|---|---|---|---|---|
| Alabama | — | •[8] | — | — |
| Alaska | — | — | — | — |
| Arizona | • | — | — | — |
| Arkansas | — | — | — | — |
| California | • | — | — | — |
| Colorado[2] | — | — | — | — |
| Connecticut | — | NT | — | — |
| Delaware | — | E | — | — |
| District of Columbia | — | — | • | — |
| Florida | — | •[9] | — | — |
| Georgia | — | — | — | — |
| Guam | — | NT | — | — |
| Hawaii | • | — | — | — |
| Idaho | — | — | — | — |
| Illinois | • | — | — | — |
| Indiana | — | — | — | • |
| Iowa | — | NT | — | — |
| Kansas | — | — | — | — |
| Kentucky | — | NT[9] | — | — |
| Louisiana | — | NT | — | — |
| Maine | — | — | • | — |
| Maryland | — | — | — | — |
| Massachusetts | — | — | — | — |
| Michigan | — | — | — | •[10] |
| Minnesota | — | — | — | — |
| Mississippi | — | — | — | — |
| Missouri | — | — | — | — |
| Montana | — | — | — | — |
| Nebraska | — | — | — | — |
| Nevada | — | O[11] | — | — |
| New Hampshire | — | — | — | — |
| New Jersey | — | •[10] | — | — |
| New Mexico | — | — | — | — |
| New York | — | NT | — | — |
| North Carolina | — | — | — | — |
| North Dakota | — | — | — | — |

(continued)

## Table A-6c. State Laws Governing Disclosure of Clinical Laboratory Test Results: HIV-Related Information Specific Law (continued)

***Specified type of law permits clinical laboratory to disclose test results without patient permission to other health care providers for treatment[a]***

| State | Y | S | N | U |
|---|---|---|---|---|
| N. Mariana Islands | — | — | — | — |
| Ohio | • | — | — | — |
| Oklahoma | • | — | — | — |
| Oregon | • | — | — | — |
| Pennsylvania | — | E, NT[10] | — | — |
| Puerto Rico | — | — | — | — |
| Rhode Island | • | — | — | — |
| South Carolina | — | — | — | — |
| South Dakota | — | — | — | — |
| Tennessee | — | NT | — | — |
| Texas | — | — | — | — |
| Utah | — | — | — | — |
| Vermont | — | — | — | — |
| Virgin Islands | — | — | • | — |
| Virginia | • | — | — | — |
| Washington | • | — | — | — |
| West Virginia | • | — | — | — |
| Wisconsin | • | — | — | — |
| Wyoming | — | — | • | — |

Y = Yes, may disclose without patient's permission.

N = No, may not disclose without patient's permission.

U = Unclear.

S = Sometimes. Includes the following subcategories:

- E = For emergency care
- NT = May disclose without patient's permission, when necessary for treatment
- O = Patient may opt out of some disclosures for treatment.

[a] Providers who requested test are presumed to be authorized recipients of results of tests that they have ordered.

## Table A-6d. State Laws Governing Disclosure of Clinical Laboratory Test Results: Genetic-Related Information Law

***Specified type of law permits clinical laboratory to disclose test results without patient permission to other health care providers for treatment[a]***

| State | Y | S | N | U |
|---|---|---|---|---|
| Alabama | — | — | — | — |
| Alaska | — | E | — | — |
| Arizona | — | •[12] | — | — |
| Arkansas | — | — | — | — |
| California | — | — | — | — |
| Colorado[2] | — | — | — | — |
| Connecticut | — | — | — | — |
| Delaware | — | — | — | •[13] |
| District of Columbia | — | — | — | — |
| Florida | — | — | • | — |
| Georgia | — | — | — | — |
| Guam | — | — | — | — |
| Hawaii | — | — | — | — |
| Idaho | — | — | — | — |
| Illinois | — | — | •[14] | — |
| Indiana | — | — | — | — |
| Iowa | — | — | — | — |
| Kansas | — | — | — | — |
| Kentucky | — | — | — | — |
| Louisiana | — | — | — | — |
| Maine | — | — | — | — |
| Maryland | — | — | — | — |
| Massachusetts | — | — | • | — |
| Michigan | — | — | — | — |
| Minnesota | — | — | • | — |
| Mississippi | — | — | — | — |
| Missouri | — | — | • | — |
| Montana | — | — | — | — |
| Nebraska | — | — | — | — |
| Nevada | — | — | — | •[15] |
| New Hampshire | — | — | • | — |
| New Jersey | — | — | • | — |
| New Mexico | — | E | — | — |
| New York | — | E | — | — |
| North Carolina | — | — | — | — |
| North Dakota | — | — | — | — |

(continued)

**Table A-6d. State Laws Governing Disclosure of Clinical Laboratory Test Results: Genetic-Related Information Law (continued)**

***Specified type of law permits clinical laboratory to disclose test results without patient permission to other health care providers for treatment[a]***

| State | Y | S | N | U |
|---|---|---|---|---|
| N. Mariana Islands | — | — | — | — |
| Ohio | — | — | — | — |
| Oklahoma | — | — | — | — |
| Oregon | • | — | — | — |
| Pennsylvania | — | — | — | — |
| Puerto Rico | — | — | — | — |
| Rhode Island | — | — | — | — |
| South Carolina | — | — | •[16] | — |
| South Dakota | — | — | •[17] | — |
| Tennessee | — | — | — | — |
| Texas | — | — | • | — |
| Utah | — | — | — | — |
| Vermont | — | — | • | — |
| Virgin Islands | — | — | — | — |
| Virginia | — | — | — | — |
| Washington | — | — | — | — |
| West Virginia | — | — | — | — |
| Wisconsin | — | — | — | — |
| Wyoming | — | — | — | — |

Y = Yes, may disclose without patient's permission.

N = No, may not disclose without patient's permission.

U = Unclear.

S = Sometimes. Includes the following subcategories:

- E = For emergency care
- NT = May disclose without patient's permission, when necessary for treatment
- O = Patient may opt out of some disclosures for treatment

[a] Providers who requested test are presumed to be authorized recipients of results of tests that they have ordered.

[1] To physicians or other licensees authorized by law to use or employ the results.

[2] State statute restricting disclosure of health information only applies to noncovered entities.

[3] To providers treating the patient.

[4] To individual responsible for utilizing or using test results (except patients).

[5] Generally permits disclosure without patient permission for persons currently providing care. However, also permits patient to opt out of disclosure to providers who previously provided care (e.g., patient seeking a second opinion may opt out of current physician consulting with prior physician).

[6] General law requires consent to disclose to anyone not authorized by law to receive the information. Since the clinical laboratory laws specifically provide that only the ordering licensed

practitioner is allowed to receive a copy of the results unless the laboratory has written consent from the client to release the test results to others, the general law incorporates this provision by reference and would also require consent to release to others.

[7] It is unclear whether general clinical health information law applies to clinical laboratories.

[8] Only to other physicians involved in care and to a physician to whom a referral is made. Appears to preclude disclosure to health care providers other than physicians without patient's permission.

[9] Disclosure permitted between health care providers consulting between themselves or with health care facilities to determine diagnosis and treatment of patient. Note that provision has been interpreted by some stakeholders as limiting disclosure only to certain types of providers (i.e., those authorized to determine diagnosis and treat patients) and would exclude diagnostic imaging labs, for example.

[10] Unclear whether statute permits disclosure without patient permission solely for treatment of individuals who may have had contact with patient or also for treatment of patient as well.

[11] State law generally requires patient permission to disclose this type of information to other providers. However, more restrictive rule does not apply when health information is electronically sent in compliance with HIPAAA. Patient has right to opt out of electronic transmission.

[12] Limited to health care provider who performs the test or is authorized to obtain test results by person tested and agents or employees; to health care providers assuming care from or consulting with provider who had access to genetic records.

[13] Prohibits disclosure unless it is "otherwise permitted by law." Unclear whether "otherwise permitted by law" provision, which was promulgated prior to the HIPAA Privacy Rule, was intended to incorporate HIPAA's standard which allows disclosure of health information to all providers without patient permission for treatment. See *EEOC v. Luce, Forward*, 343 F.3d 742 (9th Cir. 2003).

[14] Prohibits disclosure except to any person designated in a specific written legally effective release of the test results signed by the test subject, but permits release to an authorized agent or employee of a health care facility or health care provider if the health facility or provider is itself authorized to obtain test results, the agent or employee provides patient care, and the agent or employee has a need to know the information in order to conduct test or provide care or treatment. Read together, provisions appear to permit disclosure to certain employees and agents of health care providers and facilities only where the test subject has authorized the provider or facility to obtain test results.

[15] Genetic information-specific state law generally prohibits disclosure of the identity of a person who was the subject of a genetic test or of genetic information without first obtaining the informed consent of that person. Nev. Rev. Stat. 629.171 (2007). However, general state health information law generally provides that if information is sent electronically in compliance with HIPAA more stringent state law does not apply. While state statutory provisions addressing mental health, substance abuse and HIV expressly incorporate general health information law, statutory provision addressing genetic information does not. It is, therefore, unclear whether genetic information is subject to the exclusion supplied by the general privacy law.

[16] Permits disclosure without patient permission "as specifically authorized or required by state or federal statute." As there is not a federal statute that specifically authorizes disclosure of genetic information for treatment, patient permission would be required to disclose this genetic information for this purpose.

[17] Individual must sign an informed consent for the performance of the genetic test. The informed consent must include a list of persons who will have access to predictive genetic test as well as a statement that information is otherwise confidential, essentially incorporating permission to disclose with informed consent for test.

## Table A-7a. Hospitals' Ability to Disclose Health Information to Health Care Providers for Treatment without Patient Permission:[a] General Health Information Law

***State law permits hospital to disclose identifiable health information to health care providers for treatment without the patient's permission***

| State | Y | NT | S | N | U |
|---|---|---|---|---|---|
| Alabama | — | — | — | — | — |
| Alaska | •[1] | — | — | — | — |
| Arizona | •[1] | — | — | — | — |
| Arkansas | — | — | — | — | — |
| California | • | — | — | — | — |
| Colorado[2] | — | — | — | — | — |
| Connecticut | — | — | — | — | — |
| Delaware | — | — | — | — | — |
| District of Columbia | — | — | — | — | — |
| Florida | • | — | — | — | — |
| Georgia | •[3] | — | — | — | — |
| Guam | — | — | — | • | — |
| Hawaii | — | — | — | — | — |
| Idaho | — | — | — | — | — |
| Illinois | • | — | — | — | — |
| Indiana | NT | — | — | — | — |
| Iowa | — | — | — | — | — |
| Kansas | — | — | — | — | — |
| Kentucky | — | — | — | — | — |
| Louisiana | — | — | — | — | — |
| Maine | • | — | — | — | — |
| Maryland | • | — | — | — | — |
| Massachusetts | • | — | — | — | — |
| Michigan | •[1] | — | — | — | — |
| Minnesota | — | — | SP CC, E[4] | — | — |
| Mississippi | • | — | — | — | — |
| Missouri | — | — | — | — | — |
| Montana | — | NT | O[5] | — | — |
| Nebraska | •[3] | — | — | — | — |
| Nevada | — | — | O[6] | — | — |
| New Hampshire | •[3] | — | — | — | — |
| New Jersey | — | NT | CC[7] | — | — |

(continued)

**Table A-7a. Hospitals' Ability to Disclose Health Information to Health Care Providers for Treatment without Patient Permission:[a] General Health Information Law (continued)**

***State law permits hospital to disclose identifiable health information to health care providers for treatment without the patient's permission***

| State | Y | NT | S | N | U |
|---|---|---|---|---|---|
| New Mexico | •[3] | — | — | — | — |
| New York | — | — | E | — | — |
| North Carolina | — | — | — | — | — |
| North Dakota | •[8] | — | — | — | — |
| N. Mariana Islands | — | NT | O[5] | — | — |
| Ohio | — | — | — | — | — |
| Oklahoma | — | — | — | — | — |
| Oregon | •[1] | — | — | — | — |
| Pennsylvania | — | — | — | — | — |
| Puerto Rico | — | — | — | • | — |
| Rhode Island | • | — | — | — | — |
| South Carolina | — | — | — | — | — |
| South Dakota | — | — | — | — | — |
| Tennessee | • | — | — | — | — |
| Texas | • | — | — | — | — |
| Utah | — | — | — | — | — |
| Vermont | — | — | — | •[9] | — |
| Virgin Islands | — | — | — | — | — |
| Virginia | NT | — | — | — | — |
| Washington | — | NT | O[5] | — | — |
| West Virginia | — | — | — | — | — |
| Wisconsin | • | — | — | — | — |
| Wyoming | — | NT | O[5] | — | — |

Y = Yes, may disclose without patient's permission for treatment, no qualifications.

NT = Yes, may disclose for treatment when necessary for treatment; when recipient has a legitimate need for information to provide services; when knowledge of test results is necessary to provide care or treatment. Breadth of interpretation of provision may vary by state.

N = No, may not disclose without patient's permission.

U = Unclear for other reason not mentioned.

S = Sometimes. Includes following subcategories where provider may disclose without permission:

- CC = For continuing care.
- E = For emergency care.
- O = Patient may opt out of disclosure.
- SP = Only to specified categories of providers.

[a] Absence of an entry for a specific entity means that we were unable to find a statute or regulation that directly governed the means in which that entity may disclose identifiable health information for treatment.

## Table A-7b. Hospitals' Ability to Disclose Health Information to Health Care Providers for Treatment without Patient Permission:[a] Genetics-Specific Law

***State law permits hospital to disclose identifiable health information to health care providers for treatment without the patient's permission***

| State | Y | NT | S | N | U |
|---|---|---|---|---|---|
| Alabama | — | — | — | — | — |
| Alaska | — | — | E | — | — |
| Arizona | — | — | CC[10] | — | — |
| Arkansas | — | — | — | — | — |
| California | — | — | — | — | — |
| Colorado[2] | ●[11] | — | — | — | — |
| Connecticut | — | — | — | — | — |
| Delaware | — | — | — | — | ABL[12] |
| District of Columbia | — | — | — | — | — |
| Florida | — | — | — | ● | — |
| Georgia | — | — | — | — | — |
| Guam | — | — | — | — | — |
| Hawaii | — | — | — | — | — |
| Idaho | — | — | — | — | — |
| Illinois | — | — | — | ●[13] | — |
| Indiana | — | — | — | — | — |
| Iowa | — | — | — | — | — |
| Kansas | — | — | — | — | — |
| Kentucky | — | — | — | — | — |
| Louisiana | — | — | — | — | — |
| Maine | — | — | — | — | — |
| Maryland | — | — | — | — | — |
| Massachusetts | — | — | — | ● | — |
| Michigan | — | — | — | — | — |
| Minnesota | — | — | — | ● | — |
| Mississippi | — | — | — | — | — |
| Missouri | — | — | — | ● | — |
| Montana | — | — | — | — | — |
| Nebraska | — | — | — | — | — |
| Nevada | — | — | — | — | ●[14] |
| New Hampshire | — | — | — | ●[15] | — |
| New Jersey | — | — | — | ● | — |

(continued)

**Table A-7b. Hospitals' Ability to Disclose Health Information to Health Care Providers for Treatment without Patient Permission:[a] Genetics-Specific Law (continued)**

***State law permits hospital to disclose identifiable health information to health care providers for treatment without the patient's permission***

| State | Y | NT | S | N | U |
|---|---|---|---|---|---|
| New Mexico | — | — | E | — | — |
| New York | — | — | E | — | — |
| North Carolina | — | — | — | — | — |
| North Dakota | — | — | — | — | — |
| N. Mariana Islands | — | — | — | — | — |
| Ohio | — | — | — | — | — |
| Oklahoma | — | — | — | — | — |
| Oregon | • | — | — | — | — |
| Pennsylvania | — | — | — | — | — |
| Puerto Rico | — | — | — | — | — |
| Rhode Island | — | — | — | — | — |
| South Carolina | — | — | — | •[16] | — |
| South Dakota | — | — | — | •[17] | — |
| Tennessee | — | — | — | — | — |
| Texas | — | — | — | • | — |
| Utah | — | — | — | — | — |
| Vermont | — | — | — | • | — |
| Virgin Islands | — | — | — | — | — |
| Virginia | — | — | — | — | — |
| Washington | — | — | — | — | — |
| West Virginia | — | — | — | — | — |
| Wisconsin | — | — | — | — | — |
| Wyoming | — | — | — | — | — |

Y = Yes, may disclose without patient's permission for treatment, no qualifications.

NT = Yes, may disclose for treatment when necessary for treatment; when recipient has a legitimate need for information to provide services; when knowledge of test results is necessary to provide care or treatment. Breadth of interpretation of provision may vary by state.

N = No, may not disclose without patient's permission.

U = Unclear for other reason not mentioned.

S = Sometimes. Includes following subcategories where provider may disclose without permission:

- CC = For continuing care.
- E = For emergency care.
- O = Patient may opt out of disclosure.
- SP = Only to specified categories of providers.

[a] Absence of an entry for a specific entity means that we were unable to find a statute or regulation that directly governed the means in which that entity may disclose identifiable health information for treatment.

## Table A-7c. Hospitals' Ability to Disclose Health Information to Health Care Providers for Treatment without Patient Permission:[a] HIV-Specific Law

***State law permits hospital to disclose identifiable health information to health care providers for treatment without the patient's permission***

| State | Y | NT | S | N | U |
|---|---|---|---|---|---|
| Alabama | — | — | SP[18] | — | — |
| Alaska | — | — | — | — | — |
| Arizona | • | — | — | — | — |
| Arkansas | — | — | — | — | — |
| California | • | — | — | — | — |
| Colorado[2] | — | — | — | — | — |
| Connecticut | — | NT[19] | — | — | — |
| Delaware | — | — | E | — | — |
| District of Columbia | — | — | — | • | — |
| Florida | — | — | CC[20] | — | — |
| Georgia | — | NT[21] | — | — | — |
| Guam | — | — | — | — | — |
| Hawaii | • | — | — | — | — |
| Idaho | — | — | — | — | — |
| Illinois | — | NT | — | — | — |
| Indiana | — | — | — | — | •[22] |
| Iowa | — | NT[23] | — | — | — |
| Kansas | — | — | — | — | E[22, 24] |
| Kentucky | — | NT | CC[20] | — | — |
| Louisiana | — | NT[23] | — | — | — |
| Maine | — | — | — | •[25] | — |
| Maryland | — | — | — | — | — |
| Massachusetts | — | — | — | • | — |
| Michigan | — | — | — | — | •[26] |
| Minnesota | — | — | — | — | — |
| Mississippi | — | — | — | — | — |
| Missouri | — | NT[21] | — | — | — |
| Montana | — | NT | O[27] | — | — |
| Nebraska | — | — | — | — | — |
| Nevada | — | — | O[28] | — | — |
| New Hampshire | — | NT[23] | — | — | — |
| New Jersey | — | — | NT[29] | — | — |

(continued)

## Table A-7c. Hospitals' Ability to Disclose Health Information to Health Care Providers for Treatment without Patient Permission:[a] HIV-Specific Law (continued)

***State law permits hospital to disclose identifiable health information to health care providers for treatment without the patient's permission***

| State | Y | NT | S | N | U |
|---|---|---|---|---|---|
| New Mexico | — | — | — | • | — |
| New York | — | NT[23] | — | — | — |
| North Carolina | • | — | — | — | — |
| North Dakota | •[1] | — | — | — | — |
| N. Mariana Islands | — | — | — | • | — |
| Ohio | — | NT[21] | — | — | — |
| Oklahoma | • | — | — | — | — |
| Oregon | • | — | — | — | — |
| Pennsylvania | — | — | E, CC[30] | — | — |
| Puerto Rico | — | — | — | — | — |
| Rhode Island | • | — | — | — | — |
| South Carolina | — | — | — | — | — |
| South Dakota | — | — | — | — | — |
| Tennessee | — | — | — | — | — |
| Texas | — | NT[31] | — | — | — |
| Utah | — | — | — | — | — |
| Vermont | — | — | — | — | — |
| Virgin Islands | — | — | — | • | — |
| Virginia | • | — | — | — | — |
| Washington | •[32] | — | — | — | — |
| West Virginia | — | NT[21] | — | — | — |
| Wisconsin | • | — | — | — | — |
| Wyoming | — | — | — | • | — |

Y = Yes, may disclose without patient's permission for treatment, no qualifications.

NT = Yes, may disclose for treatment when necessary for treatment; when recipient has a legitimate need for information to provide services; when knowledge of test results is necessary to provide care or treatment. Breadth of interpretation of provision may vary by state.

N = No, may not disclose without patient's permission.

U = Unclear for other reason not mentioned.

S = Sometimes. Includes following subcategories where provider may disclose without permission:

- CC = For continuing care.
- E = For emergency care.
- O = Patient may opt out of disclosure.
- SP = Only to specified categories of providers.

[a] Absence of an entry for a specific entity means that we were unable to find a statute or regulation that directly governed the means in which that entity may disclose identifiable health information for treatment.

[1] May disclose as permitted by: the HIPAA Privacy Rule; or 45 C.F.R. part 164, subpart E; or as permitted by 45 C.F.R. part 164, section 512; or as permitted by federal law with specific reference to HIPAA.

[2] State statute limiting disclosure of medical records and medical information applies only to persons not subject to HIPAA.

[3] May disclose without patient permission as otherwise allowed by law; pursuant to law, statute, or lawful regulation; as permitted by law; in accordance with applicable law; except as otherwise provided by law; to those authorized by law to receive such information. Provisions either promulgated or amended subsequent to HIPAA, and therefore appear to incorporate HIPAA or state stakeholder analysis (HISPC or publicly available preemption analysis) interprets provision as incorporating HIPAA.

[4] Statute generally prohibits disclosure without patient permission. Permits disclosure for treatment without patient permission in only very limited circumstances (e.g., transfer of hospital patient unable to give permission).

[5] Generally permits disclosure without patient permission for persons currently providing care as necessary for treatment. However, also permits patient to opt out of disclosure to providers who previously provided care (e.g., patient seeking a second opinion may opt out of current physician consulting with prior physician).

[6] Entities that transmit information electronically in compliance with HIPAA are not subject to more stringent state laws. Patient has the right to opt out of electronic transmission.

[7] May disclose to another health care facility upon transfer of patient and if "the release of the information is required and permitted by law."

[8] In accordance with accepted medical record principles.

[9] Provided privilege, found in Evidence Code, applies outside of judicial context.

[10] Disclosure limited to health care provider who performs the test or is authorized to obtain test results by person tested and agents or employees; to health care providers assuming care from or consulting with provider who had access to genetic records.

[11] Statute governing nonprofit hospitals expressly permits release of genetic information for diagnosis, treatment, or therapy.

[12] Prohibits disclosure unless it is "otherwise permitted by law." Unclear whether "otherwise permitted by law" provision, which was promulgated prior to the HIPAA Privacy Rule, was intended to incorporate HIPAA's standard which allows disclosure of health information to all providers without patient permission for treatment. See *EEOC v. Luce, Forward*, 343 F.3d 742 (9th Cir. 2003).

[13] Prohibits disclosure of genetics-related information except to any person designated in a specific written legally effective release of the test results signed by the test subject. Also permits release to an authorized agent or employee of a health care facility or health care provider if the health facility or provider is itself authorized to obtain test results, the agent or employee provides patient care, and the agent or employee has a need to know the information in order to conduct test or provide care or treatment. Read together, it appears that these provisions permit disclosure to certain employees and agents of health care providers and facilities only where the test subject has authorized the provider or facility to obtain test results.

[14] State law specifically governing genetic information prohibits disclosure of the identity of a person who was the subject of a genetic test or of genetic information without first obtaining the informed consent of that person. However, state has a more general statute that provides that if information is sent electronically in compliance with HIPAA more stringent state restrictions do not apply. While statutory provisions addressing mental health and substance abuse expressly incorporate this electronic transmission exclusion, the statutory provision addressing genetic information does not. It is therefore unclear whether genetic information is subject to the electronic transmission exclusion.

[15] Prohibits disclosure without the prior written and informed consent of the individual. Discussion by appropriate professionals within a physician's medical practice or hospital are not a violation.

[16] Permits disclosure without patient permission "as specifically authorized or required by state or federal statute." As there does not appear to be a state or federal statute that specifically authorizes disclosure of genetic information for treatment, patient permission would be required to disclose this genetic information for this purpose.

[17] Individual must sign an informed consent for the performance of the genetic test. The informed consent must include a list of persons who will have access to predictive genetic test as well as a statement that information is otherwise confidential.

[18] May disclose without the patient's permission to other physicians involved in care and to a physician to whom a referral is made. Does not appear to permit disclosure without patient permission to other types of providers.

[19] May disclose to a health care provider or health facility when knowledge of HIV-related information is necessary to provide appropriate care or treatment or when HIV-related information is already recorded in a medical chart and a health care provider has access to the chart for providing care.

[20] May disclose to health care providers consulting between themselves or with health care facilities to determine diagnosis and treatment.

[21] May disclose to health care provider or health care facility: which as a result of provision of health care services has a legitimate need for information in order to provide service to that patient; or if they have a need to know the information and are participating in diagnosis, care or treatment of individual on whom test was performed; or when working directly with infected person and they have a reasonable need to know results to provide direct patient care.

[22] Unclear whether provision generally requiring patient permission to release HIV or communicable disease-related information pertains solely to public health reports or to information in provider's clinical records.

[23] May disclose to health care providers and health care facilities when knowledge of test results is necessary to provide appropriate care or treatment; when disclosure is necessary to protect the health of the patient treated.

[24] If a medical emergency exists, information may be disclosed only to the extent necessary to protect the health or life of a named party.

[25] Some type of patient permission is generally required to release the results of HIV test results for treatment of the patient. Patient permission is generally required to disclose HIV test result. When information related to person's HIV infection status has been made part of a medical record, test subject elects in writing whether to authorize the release of that portion of the record when the person's medical record is requested.

[26] Provision permits disclosure of HIV-related information "to diagnose and care for a patient" but also specifies that the test subject's name should be excluded unless making the disclosure is reasonably necessary to prevent a foreseeable risk of transmission of HIV. Not clear whether this provision, which clearly allows disclosure for treatment of other patients, also pertains to disclosures for treatment of the test subject.

[27] HIV-specific law incorporates general health information statute which permits disclosure without patient permission for persons currently providing care. However, also permits patient to opt out of disclosure to providers who previously provided care (e.g., patient seeking a second opinion may opt out of current physician consulting with prior physician).

[28] Communicable disease law incorporates general health information disclosure law, which provides that if a covered entity electronically transmits health information in compliance with the provisions of HIPAA that govern electronic transmission, it is exempt from any state law that contains more stringent privacy requirements. However, provider must allow patient to opt out of electronic transmission.

[29] Permits release to those directly involved in diagnosis and treatment. Has been interpreted by some stakeholders as not permitting release to all types of providers (e.g., not imaging centers).

[30] May disclose without patient permission to individual health care providers involved in patient's care when knowledge of HIV-related condition or positive test result is necessary to provide emergency care and to health care providers consulted to determine diagnosis and treatment.

[31] To physician, nurse, or other health care personnel who have a legitimate need to know test result in order to provide for the patient's health and welfare.

[32] Confidentiality requirements for HIV test results do not apply to the customary methods utilized for the exchange of medical information among health care providers in order to provide health care services to the patient, nor within health care facilities where there is a need for access to confidential medical information to fulfill professional duties.

## Table A-8a. Medical Doctors' Ability to Disclose Health Information for Treatment Without Patient Permission:[a] General Health Information Law

***State law permits doctors of medicine to disclose identifiable health information for treatment without the patient's permission.***

| State | Y | NT | S | N | U |
|---|---|---|---|---|---|
| Alabama | • | — | — | — | — |
| Alaska | — | — | — | — | — |
| Arizona | •[1] | — | — | — | — |
| Arkansas | — | — | — | — | — |
| California | • | — | — | — | — |
| Colorado[2] | — | — | — | — | — |
| Connecticut | — | — | — | — | — |
| Delaware | — | — | — | — | — |
| District of Columbia | — | — | — | — | — |
| Florida | • | — | — | — | — |
| Georgia | •[3] | — | — | — | — |
| Guam | — | — | — | — | — |
| Hawaii | — | — | — | — | — |
| Idaho | — | — | — | — | — |
| Illinois | •[3] | — | — | — | — |
| Indiana | NT | — | — | — | — |
| Iowa | — | — | — | — | — |
| Kansas | — | — | — | — | — |
| Kentucky | — | — | — | — | — |
| Louisiana | — | — | — | — | — |
| Maine | • | — | — | — | — |
| Maryland | • | — | — | — | — |
| Massachusetts | — | — | — | — | — |
| Michigan | — | — | — | — | — |
| Minnesota | — | — | SP, CC, E[4] | — | — |
| Mississippi | — | — | — | — | — |
| Missouri | — | — | — | — | — |
| Montana | — | NT | O[5] | — | — |
| Nebraska | — | — | — | — | — |
| Nevada | — | — | O[6] | — | — |
| New Hampshire | •[3] | — | — | — | — |
| New Jersey | — | — | PJ[7] | — | — |

(continued)

**Table A-8a. Medical Doctors' Ability to Disclose Health Information for Treatment Without Patient Permission:[a] General Health Information Law (continued)**

***State law permits doctors of medicine to disclose identifiable health information for treatment without the patient's permission.***

| State | Y | NT | S | N | U |
|---|---|---|---|---|---|
| New Mexico | — | — | — | — | — |
| New York | — | — | E | — | — |
| North Carolina | — | — | — | — | — |
| North Dakota | — | — | — | — | — |
| N. Mariana Islands | — | NT | O[5] | — | — |
| Ohio | — | — | — | — | — |
| Oklahoma | — | — | — | — | — |
| Oregon | •[1] | — | — | — | — |
| Pennsylvania | — | — | — | — | — |
| Puerto Rico | — | — | — | • | — |
| Rhode Island | • | — | — | — | — |
| South Carolina | — | — | — | — | ABL[8] |
| South Dakota | — | — | — | — | — |
| Tennessee | •[3] | — | — | — | — |
| Texas | — | — | SP,[9] E | — | — |
| Utah | — | — | — | — | — |
| Vermont | — | — | — | •[10] | — |
| Virgin Islands | • | — | — | — | — |
| Virginia | NT | — | — | — | — |
| Washington | — | NT | O[5] | — | — |
| West Virginia | — | — | — | — | — |
| Wisconsin | • | — | — | — | — |
| Wyoming | — | — | — | — | — |

Y = Yes, may disclose without patient's permission for treatment, no qualifications.

NT = Yes, may disclose for treatment when necessary for treatment; when recipient has a legitimate need for information to provide services; when knowledge of test results is necessary to provide care or treatment. Breadth of interpretation of provision may vary by state.

N = No, may not disclose without patient's permission.

U = Unclear for other reason not mentioned.

S = Sometimes. Includes following subcategories where provider may disclose without permission:

- CC = For continuing care.
- E = For emergency care.
- O = Patient may opt out of disclosure.
- SP = Only to specified categories of providers.

[a] Absence of an entry for a specific entity means that we were unable to find a statute or regulation that directly governed the means in which that entity may disclose identifiable health information for treatment.

**Table A-8b. Medical Doctors' Ability to Disclose Health Information for Treatment Without Patient Permission:[a] Genetics-Specific Law**

***State law permits doctors of medicine to disclose identifiable health information for treatment without the patient's permission.***

| State | Y | NT | S | N | U |
|---|---|---|---|---|---|
| Alabama | — | — | — | — | — |
| Alaska | — | — | E | — | — |
| Arizona | — | — | CC[11] | — | — |
| Arkansas | — | — | — | — | — |
| California | — | — | — | — | — |
| Colorado[1] | — | — | — | — | — |
| Connecticut | — | — | — | — | — |
| Delaware | — | — | — | — | ABL[12] |
| District of Columbia | — | — | — | — | — |
| Florida | — | — | — | • | — |
| Georgia | — | — | — | — | — |
| Guam | — | — | — | — | — |
| Hawaii | — | — | — | — | — |
| Idaho | — | — | — | — | — |
| Illinois | — | — | — | •[13] | — |
| Indiana | — | — | — | — | — |
| Iowa | — | — | — | — | — |
| Kansas | — | — | — | — | — |
| Kentucky | — | — | — | — | — |
| Louisiana | — | — | — | — | — |
| Maine | — | — | — | — | — |
| Maryland | — | — | — | — | — |
| Massachusetts | — | — | — | • | — |
| Michigan | — | — | — | — | — |
| Minnesota | — | — | — | • | — |
| Mississippi | — | — | — | — | — |
| Missouri | — | — | — | • | — |
| Montana | — | — | — | — | — |
| Nebraska | — | — | — | — | — |
| Nevada | — | — |  | — | •[14] |
| New Hampshire | — | — | — | •[15] | — |
| New Jersey | — | — | — | • | — |

(continued)

**Table A-8b. Medical Doctors' Ability to Disclose Health Information for Treatment Without Patient Permission:[a] Genetics-Specific Law (continued)**

***State law permits doctors of medicine to disclose identifiable health information for treatment without the patient's permission.***

| State | Y | NT | S | N | U |
|---|---|---|---|---|---|
| New Mexico | — | — | E | — | — |
| New York | — | — | E | — | — |
| North Carolina | — | — | — | — | — |
| North Dakota | — | — | — | — | — |
| N. Mariana Islands | — | — | — | — | — |
| Ohio | — | — | — | — | — |
| Oklahoma | — | — | — | — | — |
| Oregon | • | — | — | — | — |
| Pennsylvania | — | — | — | — | — |
| Puerto Rico | — | — | — | — | — |
| Rhode Island | — | — | — | — | — |
| South Carolina | — | — | — | •[16] | — |
| South Dakota | — | — | — | •[17] | — |
| Tennessee | — | — | — | — | — |
| Texas | — | — | — | • | — |
| Utah | — | — | — | — | — |
| Vermont | — | — | — | • | — |
| Virgin Islands | — | — | — | — | — |
| Virginia | — | — | — | — | — |
| Washington | — | — | — | — | — |
| West Virginia | — | — | — | — | — |
| Wisconsin | — | — | — | — | — |
| Wyoming | — | — | — | — | — |

Y = Yes, may disclose without patient's permission for treatment, no qualifications.

NT = Yes, may disclose for treatment when necessary for treatment; when recipient has a legitimate need for information to provide services; when knowledge of test results is necessary to provide care or treatment. Breadth of interpretation of provision may vary by state.

N = No, may not disclose without patient's permission.

U = Unclear for other reason not mentioned.

S = Sometimes. Includes following subcategories where provider may disclose without permission:

- CC = For continuing care.
- E = For emergency care.
- O = Patient may opt out of disclosure.
- SP = Only to specified categories of providers.

[a] Absence of an entry for a specific entity means that we were unable to find a statute or regulation that directly governed the means in which that entity may disclose identifiable health information for treatment.

## Table A-8c. Medical Doctors' Ability to Disclose Health Information for Treatment Without Patient Permission:[a] HIV-Specific Law

***State law permits doctors of medicine to disclose identifiable health information for treatment without the patient's permission.***

| State | Y | NT | S | N | U |
|---|---|---|---|---|---|
| Alabama | — | — | SP[18] | — | — |
| Alaska | — | — | — | — | — |
| Arizona | • | — | — | — | — |
| Arkansas | — | — | — | — | — |
| California | • | — | — | — | — |
| Colorado[1] | — | — | — | — | — |
| Connecticut | — | NT[19] | — | — | — |
| Delaware | — | — | E | — | — |
| District of Columbia | — | — | — | • | — |
| Florida | — | — | CC[20] | — | — |
| Georgia | — | NT[21] | — | — | — |
| Guam | — | — | — | — | — |
| Hawaii | • | — | — | — | — |
| Idaho | — | — | — | — | — |
| Illinois | — | NT | — | — | — |
| Indiana | — | — | — | — | •[22] |
| Iowa | — | NT[23] | — | — | — |
| Kansas | — | — | — | — | E[22, 24] |
| Kentucky | — | NT | CC[20] | — | — |
| Louisiana | — | NT[23] | — | — | — |
| Maine | — | — | — | •[25] | — |
| Maryland | — | — | — | — | — |
| Massachusetts | — | — | — | • | — |
| Michigan | — | — | — | — | •[26] |
| Minnesota | — | — | — | — | — |
| Mississippi | — | — | — | — | — |
| Missouri | — | NT[21] | — | — | — |
| Montana | — | NT | O[27] | — | — |
| Nebraska | — | — | — | — | — |
| Nevada | — | — | O[28] | — | — |
| New Hampshire | — | — | — | — | — |
| New Jersey | — | — | NT[29] | — | — |

(continued)

**Table A-8c. Medical Doctors' Ability to Disclose Health Information for Treatment Without Patient Permission:[a] HIV-Specific Law (continued)**

***State law permits doctors of medicine to disclose identifiable health information for treatment without the patient's permission.***

| State | Y | NT | S | N | U |
|---|---|---|---|---|---|
| New Mexico | — | — | — | • | — |
| New York | — | NT[23] | — | — | — |
| North Carolina | • | — | — | — | — |
| North Dakota | •[1] | — | — | — | — |
| N. Mariana Islands | — | — | — | • | — |
| Ohio | — | NT[21] | — | — | — |
| Oklahoma | • | — | — | — | — |
| Oregon | • | — | — | — | — |
| Pennsylvania | — | — | E, CC[30] | — | — |
| Puerto Rico | — | — | — | — | — |
| Rhode Island | • | — | — | — | — |
| South Carolina | — | — | — | — | — |
| South Dakota | — | — | — | — | — |
| Tennessee | — | — | — | — | — |
| Texas | — | NT[31] | — | — | — |
| Utah | — | — | — | — | — |
| Vermont | — | — | — | — | — |
| Virgin Islands | — | — | — | • | — |
| Virginia | • | — | — | — | — |
| Washington | •[32] | — | — | — | — |
| West Virginia | — | NT[21] | — | — | — |
| Wisconsin | • | — | — | — | — |
| Wyoming | — | — | — | • | — |

Y = Yes, may disclose without patient's permission for treatment, no qualifications.

NT = Yes, may disclose for treatment when necessary for treatment; when recipient has a legitimate need for information to provide services; when knowledge of test results is necessary to provide care or treatment. Breadth of interpretation of provision may vary by state.

N = No, may not disclose without patient's permission.

U = Unclear for other reason not mentioned.

S = Sometimes. Includes following subcategories where provider may disclose without permission:

- CC = For continuing care.
- E = For emergency care.
- O = Patient may opt out of disclosure.
- SP = Only to specified categories of providers.

[a] Absence of an entry for a specific entity means that we were unable to find a statute or regulation that directly governed the means in which that entity may disclose identifiable health information for treatment.

[1] May disclose as permitted by: the HIPAA Privacy Rule; or 45 C.F.R. part 164, subpart E; or as permitted by 45 C.F.R. part 164, section 512; or as permitted by federal law with specific reference to HIPAA.

[2] State statute limiting disclosure of medical records and medical information applies only to persons not subject to HIPAA.

[3] May disclose as otherwise allowed by law; pursuant to law, statute or lawful regulation; as permitted by law; in accordance with applicable law; except as otherwise provided by law; to those authorized by law to receive such information. Provisions either promulgated or amended subsequent to HIPAA, and therefore appear to incorporate HIPAA or preemption analysis conducted by state interprets provision as incorporating HIPAA.

[4] Statute generally prohibits disclosure without patient permission. Permits disclosure for treatment without patient permission in only very limited circumstances (e.g., transfer of hospital patient unable to give permission).

[5] Generally permits disclosure without patient permission for persons currently providing care. However, also permits patient to opt out of disclosure to providers who previously provided care (e.g., patient seeking a second opinion may opt out of current physician consulting with prior physician).

[6] Entities that transmit information electronically in compliance with HIPAA are not subject to more stringent state laws. Patient has right to opt out of electronic transmission.

[7] May disclose "in the exercise of professional judgment and in the best interests of the patient."

[8] Prohibits disclosure except "as otherwise authorized by law." State law promulgated prior to HIPAA, and therefore, it is unclear whether provision was intended to incorporate broader disclosures permitted by subsequently promulgated law. See *EEOC v. Luce, Forward*, 343 F.3d 742 (9th Cir. 2003).

[9] Permits disclosure without patient permission to another physician (or other personnel acting under the direction of the physician who participate in the diagnosis, evaluation, or treatment of the patient), but does not appear to permit disclosure to other types of providers without patient permission.

[10] Provided privilege, found in Evidence Code, applies outside of judicial context.

[11] Disclosure limited to health care provider who performs the test or is authorized to obtain test results by person tested and agents or employees; to health care providers assuming care from or consulting with provider who had access to genetic records.

[12] Prohibits disclosure unless it is "otherwise permitted by law." Unclear whether "otherwise permitted by law" provision, which was promulgated prior to the HIPAA Privacy Rule, was intended to incorporate HIPAA's standard which allows disclosure of health information to all providers without patient permission for treatment. See *EEOC v. Luce, Forward*, 343 F.3d 742 (9th Cir. 2003).

[13] Prohibits disclosure of genetics-related information except to any person designated in a specific written legally effective release of the test results signed by the test subject. Also permits release to an authorized agent or employee of a health care facility or health care provider if the health facility or provider is itself authorized to obtain test results, the agent or employee provides patient care, and the agent or employee has a need to know the information in order to conduct test or provide care or treatment. Read together, it appears that these provisions permit disclosure to certain employees and agents of health care providers and facilities only where the test subject has authorized the provider or facility to obtain test results.

[14] State law specifically governing genetic information prohibits disclosure of the identity of a person who was the subject of a genetic test or of genetic information without first obtaining the informed consent of that person. However, state has a more general statute that provides that if information is sent electronically in compliance with HIPAA more stringent state restrictions do not apply. While statutory provisions addressing mental health and substance abuse expressly incorporate this electronic transmission exclusion, the statutory provision addressing genetic information does not.

It is therefore unclear whether genetic information is subject to the electronic transmission exclusion.

[15] Prohibits disclosure without the prior written and informed consent of the individual. Discussion by appropriate professionals within a physician's medical practice or hospital are not a violation.

[16] Permits disclosure without patient permission "as specifically authorized or required by state or federal statute." As there does not appear to be a federal statute that specifically authorizes disclosure of genetic information for treatment, patient permission would be required to disclose this genetic information for this purpose.

[17] Individual must sign an informed consent for the performance of the genetic test. The informed consent must include a list of persons who will have access to predictive genetic test as well as a statement that information is otherwise confidential.

[18] May disclose without the patient's permission to other physicians involved in care and to a physician to whom a referral is made. Does not appear to permit disclosure without patient permission to other types of providers.

[19] May disclose to a health care provider or health facility when knowledge of HIV-related information is necessary to provide appropriate care or treatment or when HIV-related information is already recorded in a medical chart and a health care provider has access to the chart for providing care.

[20] May disclose to health care providers consulting between themselves or with health care facilities to determine diagnosis and treatment.

[21] May disclose to health care provider or health care facility: which as a result of provision of health care services has a legitimate need for information in order to provide service to that patient; or if they have a need to know the information and are participating in diagnosis, care or treatment of individual on whom test was performed; or when working directly with infected person and they have a reasonable need to know results to provide direct patient care.

[22] Unclear whether provision generally requiring patient permission to release HIV or communicable disease-related information pertains solely to public health reports or to information in provider's clinical records.

[23] May disclose to health care providers and health care facilities when knowledge of test results is necessary to provide appropriate care or treatment; when disclosure is necessary to protect the health of the patient treated.

[24] If a medical emergency exists, information may be disclosed only to the extent necessary to protect the health or life of a named party.

[25] Some type of patient permission is generally required to release the results of HIV test results for treatment of the patient. Patient permission is generally required to disclose HIV test result. When information related to person's HIV infection status has been made part of a medical record, test subject elects in writing whether to authorize the release of that portion of the record when the person's medical record is requested.

[26] Provision permits disclosure of HIV-related information "to diagnose and care for a patient" but also specifies that the test subject's name should be excluded unless making the disclosure is reasonably necessary to prevent a foreseeable risk of transmission of HIV. Not clear whether this provision, which clearly allows disclosure for treatment of other patients, also pertains to disclosures for treatment of the test subject.

[27] HIV statute incorporates general law. General law usually permits disclosure without patient permission for persons currently providing care. However, it also permits patient to opt out of disclosure to providers who previously provided care (e.g., patient seeking a second opinion may opt out of current physician consulting with prior physician).

[28] Communicable disease law incorporates general health information disclosure law, which provides that if a covered entity electronically transmits health information in compliance with the provisions of HIPAA that govern electronic transmission, it is exempt from any state law that contains more

stringent privacy requirements. However, provider must allow patient to opt out of electronic transmission.

[29] Permits release to those directly involved in diagnosis and treatment. Has been interpreted by some stakeholders as not permitting release to all types of providers (e.g., not imaging centers).

[30] May disclose without patient permission to individual health care providers involved in patient's care when knowledge of HIV-related condition or positive test result is necessary to provide emergency care and to health care providers consulted to determine diagnosis and treatment.

[31] To physician, nurse, or other health care personnel who have a legitimate need to know test result in order to provide for the patient's health and welfare.

[32] Confidentiality requirements for HIV test results do not apply to the customary methods utilized for the exchange of medical information among health care providers in order to provide health care services to the patient, nor within health care facilities where there is a need for access to confidential medical information to fulfill professional duties.

**Table A-9a. Pharmacists' Ability to Disclose Health Information for Treatment Without Patient Permission:[a] General Health Information Law**

***State laws permits pharmacist to disclose identifiable health information for treatment without the patient's permission.***

| State | Y | NT | S | N | U |
|---|---|---|---|---|---|
| Alabama | — | — | PJ | — | — |
| Alaska | — | — | SP,[1] PJ | — | ABL[2] |
| Arizona | •[3] | — | — | — | — |
| Arkansas | — | — | PJ | — | ABL[2] |
| California | • | — | — | — | — |
| Colorado[4] | •[5] | — | — | — | — |
| Connecticut | — | — | SP[1] | — | — |
| Delaware | — | — | — | — | — |
| District of Columbia | — | — | — | — | — |
| Florida | • | — | — | — | — |
| Georgia | • | — | — | — | — |
| Guam | • | — | — | — | — |
| Hawaii | — | — | — | — | — |
| Idaho | • | — | — | — | — |
| Illinois | •[6] | — | — | — | — |
| Indiana | — | — | PJ | — | — |
| Iowa | — | — | PJ | — | — |
| Kansas | — | — | — | — | — |
| Kentucky | •[7] | — | PJ | — | — |
| Louisiana | — | — | — | — | — |
| Maine | • | — | — | — | — |
| Maryland | • | — | — | — | — |
| Massachusetts | •[8] | — | — | — | — |
| Michigan | • | — | SP[1] | — | — |
| Minnesota | — | — | SP, CC, E[9] | — | — |
| Mississippi | •[19] | — | — | — | — |
| Missouri | •[3] | — | — | — | — |
| Montana | — | — | — | — | — |
| Nebraska | •[19] | — | — | — | — |
| Nevada | — | — | O[10] | — | — |
| New Hampshire | — | — | — | — | •[11] |
| New Jersey | — | — | — | — | — |

(continued)

## Table A-9a. Pharmacists' Ability to Disclose Health Information for Treatment Without Patient Permission:[a] General Health Information Law (continued)

***State laws permits pharmacist to disclose identifiable health information for treatment without the patient's permission.***

| State | Y | NT | S | N | U |
|---|---|---|---|---|---|
| New Mexico | •[3] | — | — | — | — |
| New York | — | — | E | — | — |
| North Carolina | • | — | — | — | — |
| North Dakota | — | — | — | — | — |
| N. Mariana Islands | — | — | — | — | •[12] |
| Ohio | • | — | — | — | — |
| Oklahoma | — | — | PJ | — | ABL[2] |
| Oregon | •[3] | — | — | — | — |
| Pennsylvania | •[19] | — | — | — | — |
| Puerto Rico | — | — | PJ | — | — |
| Rhode Island | • | — | — | — | — |
| South Carolina | • | — | — | — | — |
| South Dakota | — | — | PJ | — | ABL[2] |
| Tennessee | •[19] | — | — | — | — |
| Texas | — | — | PJ | — | — |
| Utah | — | — | SP | — | — |
| Vermont | — | — | — | — | •[13] |
| Virgin Islands | — | — | — | — | — |
| Virginia | NT | — | — | — | — |
| Washington | — | — | NT, O[14] | — | — |
| West Virginia | — | — | PJ | — | — |
| Wisconsin | • | — | — | — | — |
| Wyoming | • | — | — | — | — |

Y = Yes, may disclose without patient's permission for treatment, no qualifications.

NT = Yes, may disclose for treatment when necessary for treatment; when recipient has a legitimate need for information to provide services; when knowledge of test results is necessary to provide care or treatment. Breadth of interpretation of provision may vary by state.

N = No, may not disclose without patient's permission.

U = Unclear for other reason not mentioned.

S = Sometimes. Includes following subcategories where provider may disclose without permission:

- CC = For continuing care.
- E = For emergency care.
- O = Patient may opt out of disclosure.
- SP=Only to specified categories of providers.

[a] Absence of an entry for a specific entity means that we were unable to find a statute or regulation that directly governed the means in which that entity may disclose identifiable health information for treatment.

**Table A-9b. Pharmacists' Ability to Disclose Health Information for Treatment Without Patient Permission:[a] Genetics-Specific Law**

***State laws permits pharmacist to disclose identifiable health information for treatment without the patient's permission.***

| State | Y | NT | S | N | U |
|---|---|---|---|---|---|
| Alabama | — | — | — | — | — |
| Alaska | — | — | E | — | — |
| Arizona | — | — | CC[15] | — | — |
| Arkansas | — | — | — | — | — |
| California | — | — | — | — | — |
| Colorado[4] | — | — | — | — | — |
| Connecticut | — | — | — | — | — |
| Delaware | — | — | — | — | ABL[16] |
| District of Columbia | — | — | — | — | — |
| Florida | — | — | — | • | — |
| Georgia | — | — | — | — | — |
| Guam | — | — | — | — | — |
| Hawaii | — | — | — | — | — |
| Idaho | — | — | — | — | — |
| Illinois | — | — | — | •[17] | — |
| Indiana | — | — | — | — | — |
| Iowa | — | — | — | — | — |
| Kansas | — | — | — | — | — |
| Kentucky | — | — | — | — | — |
| Louisiana | — | — | — | — | — |
| Maine | — | — | — | — | — |
| Maryland | — | — | — | — | — |
| Massachusetts | — | — | — | — | — |
| Michigan | — | — | — | — | — |
| Minnesota | — | — | — | • | — |
| Mississippi | — | — | — | — | — |
| Missouri | — | — | — | • | — |
| Montana | — | — | — | — | — |
| Nebraska | — | — | — | — | — |
| Nevada | — | — | — | — | •[18] |
| New Hampshire | — | — | — | •[19] | — |
| New Jersey | — | — | — | • | — |
| New Mexico | — | — | E | — | — |
| New York | — | — | E | — | — |
| North Carolina | — | — | — | — | — |

(continued)

## Table A-9b. Pharmacists' Ability to Disclose Health Information for Treatment Without Patient Permission:[a] Genetics-Specific Law (continued)

***State laws permits pharmacist to disclose identifiable health information for treatment without the patient's permission.***

| State | Y | NT | S | N | U |
|---|---|---|---|---|---|
| North Dakota | — | — | — | — | — |
| N. Mariana Islands | — | — | — | — | — |
| Ohio | — | — | — | — | — |
| Oklahoma | — | — | — | — | — |
| Oregon | • | — | — | — | — |
| Pennsylvania | — | — | — | — | — |
| Puerto Rico | — | — | — | — | — |
| Rhode Island | — | — | — | — | — |
| South Carolina | — | — | — | •[20] | — |
| South Dakota | — | — | — | •[21] | — |
| Tennessee | — | — | — | — | — |
| Texas | — | — | — | • | — |
| Utah | — | — | — | — | — |
| Vermont | — | — | — | • | — |
| Virgin Islands | — | — | — | — | — |
| Virginia | — | — | — | — | — |
| Washington | — | — | — | — | — |
| West Virginia | — | — | — | — | — |
| Wisconsin | — | — | — | — | — |
| Wyoming | — | — | — | — | — |

Y = Yes, may disclose without patient's permission for treatment, no qualifications.

NT = Yes, may disclose for treatment when necessary for treatment; when recipient has a legitimate need for information to provide services; when knowledge of test results is necessary to provide care or treatment. Breadth of interpretation of provision may vary by state.

N = No, may not disclose without patient's permission.

U = Unclear for other reason not mentioned.

S = Sometimes. Includes following subcategories where provider may disclose without permission:

- CC = For continuing care.
- E = For emergency care.
- O = Patient may opt out of disclosure.
- SP=Only to specified categories of providers.

[a] Absence of an entry for a specific entity means that we were unable to find a statute or regulation that directly governed the means in which that entity may disclose identifiable health information for treatment.

## Table A-9c. Pharmacists' Ability to Disclose Health Information for Treatment Without Patient Permission:[a] HIV-Specific Law

***State laws permits pharmacist to disclose identifiable health information for treatment without the patient's permission.***

| State | Y | NT | S | N | U |
|---|---|---|---|---|---|
| Alabama | — | — | SP[22] | — | — |
| Alaska | — | — | — | — | — |
| Arizona | • | — | — | — | — |
| Arkansas | — | — | — | — | — |
| California | • | — | — | — | — |
| Colorado[4] | — | — | — | — | — |
| Connecticut | — | NT[23] | — | — | — |
| Delaware | — | — | E | — | — |
| District of Columbia | — | — | — | • | — |
| Florida | — | — | CC[24] | — | — |
| Georgia | — | NT[25] | — | — | — |
| Guam | — | — | — | — | — |
| Hawaii | • | — | — | — | — |
| Idaho | — | — | — | — | — |
| Illinois | — | NT | — | — | — |
| Indiana | — | — | — | — | •[26] |
| Iowa | — | NT[27] | — | — | — |
| Kansas | — | — | E[28, 26] | — | — |
| Kentucky | — | NT | CC[24] | — | — |
| Louisiana | — | NT[27] | — | — | — |
| Maine | — | — | — | •[29] | — |
| Maryland | — | — | — | — | — |
| Massachusetts | — | — | — | — | — |
| Michigan | — | — | — | — | •[30] |
| Minnesota | — | — | — | — | — |
| Mississippi | — | — | — | — | — |
| Missouri | — | NT[25] | — | — | — |
| Montana | — | — | — | — | — |
| Nebraska | — | — | — | — | — |
| Nevada | — | — | O[31] | — | — |
| New Hampshire | — | — | — | — | — |
| New Jersey | — | — | NT[32] | — | — |
| New Mexico | — | — | — | • | — |
| New York | — | NT[27] | — | — | — |
| North Carolina | • | — | — | — | — |

(continued)

## Table A-9c. Pharmacists' Ability to Disclose Health Information for Treatment Without Patient Permission:[a] HIV-Specific Law (continued)

***State laws permits pharmacist to disclose identifiable health information for treatment without the patient's permission.***

| State | Y | NT | S | N | U |
|---|---|---|---|---|---|
| North Dakota | •[3] | — | — | — | — |
| N. Mariana Islands | — | — | — | • | — |
| Ohio | — | NT[25] | — | — | — |
| Oklahoma | • | — | — | — | — |
| Oregon | • | — | — | — | — |
| Pennsylvania | — | — | E, CC[33] | — | — |
| Puerto Rico | — | — | — | — | — |
| Rhode Island | • | — | — | — | — |
| South Carolina | — | — | — | — | — |
| South Dakota | — | — | — | — | — |
| Tennessee | — | — | — | — | — |
| Texas | — | NT[34] | — | — | — |
| Utah | — | — | — | — | — |
| Vermont | — | — | — | — | — |
| Virgin Islands | — | — | — | • | — |
| Virginia | • | — | — | — | — |
| Washington | •[35] | — | — | — | — |
| West Virginia | — | NT[25] | — | — | — |
| Wisconsin | • | — | — | — | — |
| Wyoming | — | — | — | • | — |

Y = Yes, may disclose without patient's permission for treatment, no qualifications.

NT = Yes, may disclose for treatment when necessary for treatment; when recipient has a legitimate need for information to provide services; when knowledge of test results is necessary to provide care or treatment. Breadth of interpretation of provision may vary by state.

N = No, may not disclose without patient's permission.

U = Unclear for other reason not mentioned.

S = Sometimes. Includes following subcategories where provider may disclose without permission:

CC = For continuing care.

E = For emergency care.

O = Patient may opt out of disclosure.

SP=Only to specified categories of providers.

[a] Absence of an entry for a specific entity means that we were unable to find a statute or regulation that directly governed the means in which that entity may disclose identifiable health information for treatment.

[1] Permits disclosure to prescribing practitioner, or practitioner authorized to prescribe who is treating patient, and other pharmacists.

[2] Permits disclosure to parties (other than specified practitioners and other pharmacists) without patient permission "as otherwise authorized by law" or similar provision. State law promulgated prior to HIPAA, and therefore, it is unclear whether provision was intended to incorporate broader disclosures permitted by subsequently promulgated law. See *EEOC v. Luce, Forward*, 343 F.3d 742 (9th Cir. 2003).

[3] May disclose as permitted by: the HIPAA Privacy Rule; or 45 C.F.R. part 164, subpart E; or as permitted by 45 C.F.R. part 164, section 512; or as permitted by federal law with specific reference to HIPAA.

[4] State statute limiting disclosure of medical records and medical information applies only to persons not subject to HIPAA.

[5] Pharmacy regulations specifically permit disclosure for treatment to other providers.

[6] Must disclose prescription information to a physician who is prepared to prescribe or has prescribed a controlled substance.

[7] Statute permits disclosure without patient permission to certified or licensed health care personnel responsible for care of patient. Regulations allow disclosure "as prudent professional discretion dictates."

[8] May disclose as otherwise allowed by law; pursuant to law, statute, or lawful regulation; as permitted by law; in accordance with applicable law; except as otherwise provided by law; to those authorized by law to receive such information. Provisions either promulgated or amended subsequent to HIPAA, and therefore appear to incorporate HIPAA or state stakeholder analysis (HISPC or publicly available preemption analysis) interprets provision as incorporating HIPAA.

[9] Statute generally prohibits disclosure without patient permission. Permits disclosure for treatment without patient permission in only very limited circumstances (e.g. transfer of hospital patient unable to give permission).

[10] Entities that transmit information electronically in compliance with HIPAA are not subject to more stringent state laws. Patient has right to opt out of electronic transmission.

[11] General privacy law permits disclosure "as authorized by law"; however, Board of Pharmacy administrative rules for pharmacists provide that a licensed pharmacist may not disclose professional records without patient permission except in emergency situations where the best interest of the patient requires or the law demands.

[12] Unclear whether the general standard applies to pharmacists/pharmacies.

[13] Multiple code provisions addressing pharmacy records. However, statute governing unprofessional conduct expressly permits disclosure without patient permission to other certified or licensed health care personnel who are responsible for caring for the patient. Case law indicates provision in Health Code which prohibits prescription information without patient permission applies to government officials who inspect prescription records.

[14] Generally permits disclosure without patient permission for persons currently providing care. However, also permits patient to opt out of disclosure to providers who previously provided care (e.g., patient seeking a second opinion may opt out of current physician consulting with prior physician).

[15] Disclosure limited to health care provider who performs the test or is authorized to obtain test results by person tested and agents or employees; to health care providers assuming care from or consulting with provider who had access to genetic records.

[16] Prohibits disclosure of genetic information unless "otherwise permitted by law." Unclear whether "otherwise permitted by law" provision, which was promulgated prior to the HIPAA Privacy Rule, was intended to incorporate HIPAA's standard which allows disclosure of health information to all providers without patient permission for treatment. See *EEOC v. Luce, Forward*, 343 F.3d 742 (9th Cir. 2003).

[17] Prohibits disclosure of genetics-related information except to any person designated in a specific written legally effective release of the test results signed by the test subject. Also permits release to an authorized agent or employee of a health care facility or health care provider if the health facility or provider is itself authorized to obtain test results, the agent or employee provides patient care, and the agent or employee has a need to know the information in order to conduct test or provide care or treatment. Read together, it appears that these provisions permit disclosure to certain employees and agents of health care providers and facilities only where the test subject has authorized the provider or facility to obtain test results.

[18] State law specifically governing genetic information prohibits disclosure of the identity of a person who was the subject of a genetic test or of genetic information without first obtaining the informed consent of that person. However, state has a more general statute that provides that if information is sent electronically in compliance with HIPAA more stringent state restrictions do not apply. While statutory provisions addressing mental health and substance abuse expressly incorporate this electronic transmission exclusion, the statutory provision addressing genetic information does not. It is therefore unclear whether genetic information is subject to the electronic transmission exclusion.

[19] Prohibits disclosure without the prior written and informed consent of the individual. Discussion by appropriate professionals within a physician's medical practice or hospital are not a violation.

[20] Permits disclosure without patient permission "as specifically authorized or required by state or federal statute." As there does not appear to be a federal statute that specifically authorizes disclosure of genetic information for treatment, patient permission would be required to disclose this genetic information for this purpose.

[21] Individual must sign an informed consent for the performance of the genetic test. The informed consent must include a list of persons who will have access to predictive genetic test as well as a statement that information is otherwise confidential.

[22] May disclose without the patient's permission to other physicians involved in care and to a physician to whom a referral is made. Does not appear to permit disclosure without patient permission to other types of providers.

[23] May disclose to a health care provider or health facility when knowledge of HIV-related information is necessary to provide appropriate care or treatment or when HIV-related information is already recorded in a medical chart and a health care provider has access to the chart for providing care.

[24] May disclose to health care providers consulting between themselves or with health care facilities to determine diagnosis and treatment.

[25] May disclose to health care provider or health care facility: which as a result of provision of health care services has a legitimate need for information in order to provide service to that patient; or if they have a need to know the information and are participating in diagnosis, care or treatment of individual on whom test was performed; or when working directly with infected person and they have a reasonable need to know results to provide direct patient care.

[26] Unclear whether provision generally requiring patient permission to release HIV or communicable disease-related information pertains solely to public health reports or to information in provider's clinical records.

[27] May disclose to health care providers and health care facilities when knowledge of test results is necessary to provide appropriate care or treatment; when disclosure is necessary to protect the health of the patient treated.

[28] If a medical emergency exists, information may be disclosed only to the extent necessary to protect the health or life of a named party.

[29] Some type of patient permission is generally required to release the results of HIV test results for treatment of the patient. Patient permission is generally required to disclose HIV test result. When information related to person's HIV infection status has been made part of a medical record, test subject elects in writing whether to authorize the release of that portion of the record when the person's medical record is requested.

[30] Provision permits disclosure of HIV-related information "to diagnose and care for a patient" but also specifies that the test subject's name should be excluded unless making the disclosure is reasonably necessary to prevent a foreseeable risk of transmission of HIV. Not clear whether this provision, which clearly allows disclosure for treatment of other patients, also pertains to disclosures for treatment of the test subject.

[31] Communicable disease law incorporates general health information disclosure law, which provides that if a covered entity electronically transmits health information in compliance with the provisions of HIPAA that govern electronic transmission, it is exempt from any state law that contains more stringent privacy requirements. However, provider must allow patient to opt out of electronic transmission.

[32] Permits release to those directly involved in diagnosis and treatment. Has been interpreted by some stakeholders as not permitting release to all types of providers (e.g., not imaging centers).

[33] May disclose without patient permission to individual health care providers involved in patient's care when knowledge of HIV-related condition or positive test result is necessary to provide emergency care and to health care providers consulted to determine diagnosis and treatment.

[34] To physician, nurse, or other health care personnel who have a legitimate need to know test result in order to provide for the patient's health and welfare.

[35] Confidentiality requirements for HIV test results do not apply to the customary methods utilized for the exchange of medical information among health care providers in order to provide health care services to the patient, nor within health care facilities where there is a need for access to confidential medical information to fulfill professional duties.