D R A F T

H I P A A

PREEMPTION ANALYSIS

I L L I N O I S L A W

March 5, 2003

STATE OF ILLINOIS

Draft HIPAA Preemption Analysis

The Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), Pub. L. No. 104-191, is a federal statute that provides for the development of uniform national health information data standards and privacy standards. In adopting the Act, Congress determined that the provisions of HIPAA would preempt any contrary state law unless the state law is more stringent than the related provision of HIPAA or unless a specific exception applies. Therefore, in order for various affected entities in Illinois to fully comply with the provisions of HIPAA, these entities must determine how compliance with HIPAA will affect Illinois law.

In order to determine the impact of HIPAA on Illinois law, the following draft preemption analysis was prepared by Deanna S. Mool of Sorling, Northrup, Hanna, Cullen & Cochran, Ltd. The draft analysis assesses the impact of HIPAA and its related regulations on a variety of Illinois laws related to the use or disclosure of health information. It is intended to reflect the HIPAA regulations and Illinois laws in effect as of March 5, 2003.

Readers should be advised that the draft analysis that follows is a preliminary draft, and is subject to further revision. The draft analysis is not a comprehensive overview of all legal precedent that may impact the various uses and disclosures of protected health information. The application and implementation of HIPAA regulations can vary significantly based on the particular facts at issue. Due to the complexity of HIPAA compliance and the variety of factual situations in which HIPAA may be implicated, readers are urged to consult with their attorneys in order to develop comprehensive and fact-specific HIPAA compliance strategies.

This draft preemption analysis is afforded to the public for information and comment purposes only. It is not intended to serve as legal, financial or other professional advice, nor does it create an attorney-client relationship. Neither the State of Illinois nor the authors are responsible for

any errors or omissions, or for the results of reliance on this information. Moreover, because the law is subject to change at any time, readers are urged to review and update the application and implementation of federal and state privacy laws as these laws are amended and as new laws are established.

Comments:

Comments on the draft preemption analysis from individuals and/or entities are encouraged and welcomed. Please send all comments on the draft preemption analysis to HIPAA_comments@gov.state.il.us by May 30, 2003. After all comments have been collected, they will be reviewed and incorporated where appropriate. Please note that while comments will be reviewed and considered, they will not be responded to, nor will questions be answered, due to time and resource considerations.

Name of Statute	Statute Reference		Page # in Analysis
	Chapter	Act	
Illinois Constitution	1	6	1
Statute on Statutes	5	70	3
Illinois Administrative Procedure Act	5	100	4
Open Meetings Act	5	120	8
Freedom of Information Act	5	140	10
State Records Act	5	160	14
Electronic Commerce Security Act	5	175	16
State Employees Group Insurance Act of 1971	5	375	17
Sick Leave Bank Act	5	400	19
State Employment Records Act	5	410	20
Civil Administrative Code of Illinois	20	5	21
Illinois Welfare and Rehabilitation Services Planning Act	20	10	22
Illinois Act on Aging	20	105	23
Alcoholism and Other Drug Abuse and Dependency Act	20	301	25
Civil Administrative Code of (CMS)	20	405	28
Personnel Code	20	415	29
Children and Family Services Act (Clinical Records)	20	505	30
Civil Administrative Code of Illinois (DCFS)	20	510	33
Child Death Review Team Act	20	515	34
Foster Parent Law	20	520	36
Statewide Foster Care Advisory Council Law	20	525	37
Department of Human Services Act (WIC)	20	1305	38
Domestic Violence Shelters Act	20	1310	39
Illinois Youthbuild Act	20	1315	40
Assistive Technology Evaluation and Training Centers Act	20	1320	41
Civil Administrative Code of Illinois (Insurance)	20	1405	42
Civil Administrative Code of Illinois (Labor)	20	1505	43
Mental Health and Developmental Disabilities Administrative Act	20	1705	44
Civil Administrative Code of Illinois (DHS)	20	1710	46
State Guard Act	20	1815	48
Civil Administrative Code of Illinois (DPR)	20	2105	49
Public Health Act - Sect. 2 -Tuberculosis	20	2305	50
Department of Public Health Powers and Duties Law (Sperm and Tissue Banks)	20	2310	51
Disabled Persons Rehabilitation Act	20	2405	52

	Statute Reference		
Name of Statute	Chapter	Act	Page # in Analysis
Bureau for the Blind Act	20	2410	54
Blind Persons Operating Vending Facilities Act	20	2420	55
Domestic Abuse of Disabled Adults Intervention Act	20	2435	56
Circuit Breaker Program (Revenue cite)	20	2505	58
Civil Administrative Code of Illinois (ISP)	20	2605	59
Criminal Identification Act	20	2630	61
Civil Administrative Code of Illinois (IDOT)	20	2705	63
Department of Veterans Affairs Act	20	2805	64
Illinois Emergency Management Agency	20	3305	66
Illinois Health Facilities Authority	20	3705	68
Illinois Criminal Justice Information Act	20	3930	69
Deaf and Hard of Hearing Commission Act	20	3932	71
Experimental Organ Transplantation Procedures Act	20	3935	72
Geriatric Medicine Assistance Act	20	3945	74
Governor's Council on Health and Physical Fitness Act	20	3950	75
Guardianship and Advocacy Act	20	3955	76
Illinois Health Facilities Planning Act	20	3960	78
Laboratory Review Board Act	20	3980	80
Persons with Disabilities on State Agency Boards Act	20	4007	81
Illinois Council on Developmental Disabilities Law	20	4010	82
Sex Offender Management Board Act	20	4026	83
Illinois Violence Prevention Act of 1995	20	4027	84
Illinois Pension Code - (GARS)	40	5	85
Illinois Pension Code - (Police mun. under 500k)	40	5	87
Illinois Pension Code - (Fire mun. under 500K)	40	5	89
Illinois Pension Code - (Police over 500k)	40	5	91
Illinois Pension Code - (Fire over 500k)	40	5	93
Illinois Pension Code - (IMRF)	40	5	95
Illinois Pension Code - (Mun. Emp over 500k)	40	5	97
Illinois Pension Code - (Count over 500k)	40	5	99
Illinois Pension Code - (Forest Preserve)	40	5	101
Illinois Pension Code - (Labor over 500k)	40	5	102
Illinois Pension Code - (Park employ over 500k)	40	5	104
Illinois Pension Code - (San Dist.)	40	5	106
Illinois Pension Code - (SERS)	40	5	108
Illinois Pension Code - (SURS)	40	5	110

	Statute Reference		
Name of Statute	Chapter	Act	Page # in Analysis
Illinois Pension Code - (TRS)	40	5	112
Illinois Pension Code - (Pub School over 500k)	40	5	115
Illinois Pension Code - (Judge)	40	5	117
Illinois Pension Code - (Def Comp)	40	5	119
Interstate Compact on Mental Health Act	45	40	120
Interstate Compact on Mentally disordered Offenders Act	45	45	122
Regional Ambulance Services Law	55	110	124
Cemetery Maintenance District Act	70	105	125
Public Health District Act	70	905	126
Hospital District Law	70	910	128
Illinois Medical District Act	70	915	129
Tuberculosis Sanitarium District Act	70	920	130
Rescue Squad Districts Act	70	2005	132
School Code (Immunization)	105	5	133
Illinois School Students Records Act	105	10	137
College Student Immunization Act	110	20	138
University of Illinois Act	110	305	140
University of Illinois Hospital Act	110	330	141
Institution for Tuberculosis Research Act	110	335	143
University of Illinois Gerontological Committee Act	110	340	144
Specialized Care for Children Act	110	345	145
University of Illinois Institutes for Juvenile Research and Developmental Disabilities Act	110	350	148
Alternative Health Care Delivery Act	210	3	150
Alzheimer's Special Care Disclosure Act	210	4	155
Ambulatory Surgical Treatment Center Act	210	5	156
Assisted Living and Shared Housing Act	210	9	158
Blood Donation Act	210	15	160
Illinois Clinical Laboratory and Blood Bank Act (CLIA)	210	25	161
Abused and Neglected Long Term Care Facility Residents Reporting Act	210	30	163
Community Living Facilities Licensing Act	210	35	165
Life Care Facilities Act	210	40	167
Nursing Home Care Act	210	45	168
Emergency Medical Services (EMS) Systems Act	210	50	177
Home Health Agency Licensing Act	210	55	179
Hospice Program Licensing Act	210	60	180
Supportive Residences Licensing Act	210	65	182

	Statute Reference		
Name of Statute	Chapter	Act	Page # in Analysis
Emergency Medical Treatment Act	210	70	184
Hospital Emergency Service Act	210	80	185
Hospital Licensing Act	210	85	186
Language Assistance Services Act	210	87	190
X-Ray Retention Act	210	90	191
Community-Integrated Living Arrangements Licensure and Certification Act	210	135	192
Illinois Insurance Code	215	5	194
Domestic Stock Companies	215	5	195
Risk-Based Capital	215	5	196
Domestic Mutual Companies	215	5	197
Alien Companies	215	5	198
Reciprocals	215	5	199
Lloyds	215	5	200
Insurance Exchange	215	5	201
Group Workers' Compensation Pools; Pooling; Insolvency Fund	215	5	202
Foreign or Alien Companies	215	5	203
Unauthorized Companies	215	5	204
Advisory Organizations	215	5	205
Risk Retention Companies	215	5	207
Domestic Captive Insurance Companies	215	5	208
Investments of Domestic Companies	215	5	209
Insurance Holding Company Systems	215	5	210
Provisions Applicable to All Companies	215	5	211
Credit Life and Credit Accident and Health Insurance	215	5	215
Merger, Consolidation 9or Plans Exchange	215	5	216
Reinsurance	215	5	217
Protected Cell Companies	215	5	218
Special Purpose Reinsurance Vehicle Law	215	5	219
Domestication of Foreign and Alien Companies	215	5	220
Corrective Orders	215	5	221
Rehabilitation, liquidation, Conservation and Dissolution of Companies	215	5	222
Uniform Provisions for Liquidation	215	5	223
Legal Reserve Life Insurance	215	5	224
Separate Accounts	215	5	226
Registration of Policies and Deposit of Reserves	215	5	227
Assessment Legal Reserve Life Companies	215	5	228

	Statute Reference		
Name of Statute	Chapter	Act	Page # in Analysis
Fraternal Benefit Societies	215	5	230
Mutual Benefit Associations	215	5	231
Burial Societies	215	5	232
Long-Term Care Insurance	215	5	233
Small Employer Group Health Insurance Law	215	5	234
Accident and Health Insurance	215	5	235
Healthcare Reimbursement	215	5	237
Casualty Insurance, Fidelity Bonds and Surety Contracts	215	5	238
Fire and Marine Insurance	215	5	239
Director of Insurance, Hearings and Review	215	5	240
Fees, Charges and Taxes	215	5	242
Unfair Methods of Competition and Unfair and Deceptive Practices	215	5	243
Final Provisions	215	5	244
Workers' Compensation and Employers' Liability Rates	215	5	245
Insurance Producers, Limited Insurance Representative/Registered Firms	215	5	246
Third Party Administrators	215	5	248
Third Party Prescription Programs	215	5	249
Public Insurance Adjusters and Registered Firms	215	5	250
Premium Finance Regulation	215	5	251
Urban Property Insurance	215	5	252
Life and Health Insurance Guaranty Association	215	5	254
Illinois Insurance Guaranty Fund	215	5	255
Mine Subsidence Insurance	215	5	256
Group Legal Expense Insurance	215	5	257
Insurance Information and Privacy Protection	215	5	258
Risk Retention Arrangements for Banking Associations	215	5	264
Insurance Cost Containment	215	5	265
Mortgage Insurance Consolidation	215	5	266
Financial Institutions Insurance Sales Law	215	5	267
Small Employer Health Insurance Rating Act	215	93	268
Illinois Health Insurance Portability and Accountability Act	215	97	269
Reinsurance Intermediary Act	215	100	270
Comprehensive Health Insurance Plan Act	215	105	271
Children's Health Insurance Program Act	215	106	272
Dental Care Patient Protection Act	215	109	273

	Statute Reference		
Name of Statute	Chapter	Act	Page # in Analysis
Dental Service Plan Act	215	110	274
Employees Dental Freedom of Choice Act	215	115	275
Health Care Purchasing Group Act	215	123	276
Health Maintenance Organization Act	215	125	277
Health Maintenance Organization Act-Financial Requirements	215	125	278
Health Maintenance Organization Act-Investments	215	125	279
Health Maintenance Organization Act-Marketing	215	125	280
Health Maintenance Organization Act-Products	215	125	282
Health Maintenance Organization Act-Provisions	215	125	283
Health Maintenance Organization Act-Guaranty Association	215	125	284
Limited Health Service Organization Act-Short Title	215	130	285
Limited Health Service Organization Act-Financial Requirements	215	130	286
Limited Health Service Organization Act-Marketing	215	130	287
Limited Health Service Organization Act-General Provisions	215	130	288
Managed Care Reform and Patient Rights Act	215	134	289
Uniform Prescription Drug Information Card Act	215	138	291
Religious and Charitable Risk Pooling Trust Act	215	150	292
Viatical Settlements Act	215	158	293
Voluntary Health Services Plans Act	215	165	294
Acupuncture Practice Act	225	2	296
Illinois Athletic Trainers Practice Act	225	5	298
Board and Care Home Registration Act	225	7	300
Child Care Act of 1969	225	10	301
Clinical Psychologist Licensing Act	225	15	303
Clinical Social Work and Social Work Practice Act (Privileged Communications and Exceptions)	225	20	306
Illinois Dental Practice Act	225	25	308
Dietetic and Nutrition Services Practice Act	225	30	310
Embalming Fluid Act	225	35	312
Environmental Health Practitioner Licensing Act	225	37	313
Funeral Directors and Embalmers Licensing Code	225	41	314
Illinois Funeral or Burial Funds Act	225	45	315
Health Care Worker Background Check Act	225	46	316
Health Care Worker Self-Referral Act	225	47	318
Hearing Instrument Consumer Protection Act	225	50	319

	Statute Reference		
Name of Statute	Chapter	Act	Page # in Analysis
Home Medical Equipment and Services Provider License Act	225	51	321
Industrial Hygienists Licensure Act	225	52	323
Marriage and Family Therapy Licensing Act	225	55	324
Medical Practice Act of 1987	225	60	326
Osteopathic and Allopathic Healthcare Discrimination Act	225	62	329
Naprapathic Practice Act	225	63	330
Nursing and Advanced Practice Nursing Act	225	65	332
Nursing Home Administrators Licensing and Disciplinary Act	225	70	334
Illinois Occupational Therapy Practice Act	225	75	336
Illinois Optometric Practice Act of 1987	225	80	338
Mail Order Contact Lens Act	225	83	340
Orthotics, Prosthetics and Pedorthics Practice Act	225	84	342
Pharmacy Practice Act of 1987	225	85	344
Illinois Physical Therapy Act	225	90	346
Physician Assistant Practice Act of 1987	225	95	348
Podiatric Medical Practice Act of 1987	225	100	350
Professional Boxing and Wrestling Act	225	105	352
Respiratory Care Practice Act	225	106	354
Professional Counselor and Clinical Professional Counselor Licensing Act	225	107	355
Illinois Speech-Language Pathology and Audiology Practice Act	225	110	358
Veterinary Medicine and Surgery Practice Act of 1994	225	115	360
Wholesale Drug Distribution Licensing Act	225	120	361
Perfusionist Practice Act	225	125	363
Barber, Cosmetology, Esthetics, and Nail Technology Act of 1985	225	410	365
Child Protective Investigative and Child Welfare Specialist Certification Act of 1987	225	420	366
Interpreters for the Deaf Act	225	442	367
Nurse Agency Licensing Act	225	510	368
Illinois Public Aid Code	305	5	369
Food and Housing Assistance Act	305	10	372
State Blind or Deaf School Transportation Act	305	25	373
Family Resource Development Act	305	30	374
Medicaid Revenue Act	305	35	375
Nursing Home Grant Assistance Act	305	40	376
Respite Program Act	320	10	378

	Statute Reference		
Name of Statute	Chapter	Act	Page # in Analysis
Elder Abuse and Neglect Act	320	20	380
Senior Citizens and Disabled Persons Property Tax Relief and Pharmaceutical Assistance Act	320	25	381
Partnership for Long-Term Care Act	320	35	383
All-Inclusive Care for the Elderly Act	320	40	385
Senior Citizens Child Care Support Act	320	45	387
Abused and Neglected Child Reporting Act	325	5	388
Birth Control Services to Minors Act	325	10	390
Child Sexual Abuse Prevention Act	325	15	391
Early Intervention Services System Act	325	20	392
High Risk Youth Career Development Act	325	25	394
Family Support Demonstration Project	325	30	395
Interagency Board for Children who are Deaf or Hard-Of-Hearing and have an Emotional or Behavioral Disorder Act	325	35	396
Intergovernmental Missing Child Recovery Act	325	40	397
Minor Identification and Protection Act	325	45	398
Missing Children Records Act	325	50	399
Missing Children Registration Law	325	55	400
Surgical Institute for Children Act	325	60	401
Military Veterans Assistance Act	330	45	402
Disabled Veterans Housing Act	330	65	403
Records for Veterans Administration Act	330	70	404
Veterans Burial Places Act	330	110	406
Mental Health and Developmental Disabilities Code	405	5	407
Uniform Act for the Extradition of Persons of Unsound Mind	405	10	412
Mental Treatment for Incarcerated Persons Act	405	15	414
Community Mental Health Act	405	20	415
Specialized Living Centers Act	405	25	416
Community Services Act	405	30	417
Community Support Systems Act	405	35	419
Protection and Advocacy for Developmentally Disabled Persons Act	405	40	420
Protection and Advocacy for Mentally Ill Persons Act	405	45	422
Mental Health Patient Travel Act	405	55	424
Mental Health Hispanic Interpreter Act	405	75	425
Dev. Disability and Mental Dis. Service Act	405	80	426
Home Environment Living Program Act	405	85	428

	Statute Reference		
Name of Statute	Chapter	Act	Page # in Analysis
Arterioscelerosis Prevention Act	410	3	429
Automated External Defibrillator Act	410	4	430
Burial of Dead Bodies Act	410	5	432
Choke Saving Methods Act	410	10	433
Coal Mine Medical Emergencies Act	410	15	434
Crematory Regulation Act	410	18	435
DES Act	410	20	436
Lead Poisoning Prevention Act	410	45	437
Poison Control System Act	410	47	439
Medical Patient Rights Act	410	50	440
Telecommunications Devices for the Deaf Act	410	55	442
Toxicological Laboratory Service Act	410	60	443
Illinois Rural/Downstate Health Act	410	65	444
Community Health Center Expansion Act	410	66	445
Safe and Hygienic Bed Act	410	68	446
Sexual Assault Survivors Emergency Medical Treatment Act	410	70	447
Child Vision and Hearing Test Act	410	205	448
Consent by Minors to Medical Procedures Act	410	210	449
Hearing Screening for Newborns Act	410	213	450
Infant Eye Disease Act	410	215	451
Infant Mortality Reduction Act	410	220	452
Prenatal and Newborn Care Act	410	225	453
Problem Pregnancy Health Services and Care Act	410	230	454
Pertussis Vaccine Act	410	235	455
Phenylketonuria Testing Act	410	240	456
Reye's Syndrome Reporting Act	410	245	458
Developmental Disability Prevention Act	410	250	459
WIC Vendor Management Act	410	255	460
AIDS Confidentiality Act	410	305	461
AIDS Registry Act	410	310	465
Communicable Disease Prevention Act	410	315	467
Prenatal Syphilis Act	410	320	469
Illinois Sexually Transmissible Disease Control Act	410	325	470
Polio Vaccine Act	410	330	472
Alzheimer's Disease Assistance Act	410	405	473
Alzheimer's Disease Research Act	410	410	474
Experimental Cancer Treatment Act	410	415	475

	Statute Reference		
Name of Statute	Chapter	Act	Page # in Analysis
Hemophilia Care Act	410	420	476
High Blood Pressure Control Act	410	425	477
Renal Disease Treatment Act	410	430	478
Rheumatic Fever and Heart Disease Medicine Act	410	440	479
Arthritis Quality of Life Initiative Act	410	503	480
Autopsy Act	410	505	481
Cadaver Act	410	510	482
Genetic Information Privacy Act	410	513	483
Head and Spinal Cord Injury Act	410	515	485
Health Care Professional Credentials Data Collection Act	410	517	487
Illinois Health Statistics Act	410	520	488
Illinois Health and Hazardous Substances Registry Act	410	525	490
Marriage, Dissolution, and Invalidity Records Act	410	530	491
Vital Records Act	410	535	492
Sanitary Food Preparation Act	410	650	493
Environmental Protection Act	415	5	494
Personnel Radiation Monitoring Act	420	25	501
Firearm Owners Identification Card Act	430	65	502
Eyeglass Frame and Lens Act	430	110	504
Agricultural Statistics Act	505	15	505
Animal Control Act	510	5	506
Illinois Vehicle Code	625	5	507
Snowmobile Registration and Safety Act	625	40	513
Boat Registration and Safety Act	625	45	515
Health Care Arbitration Act	710	15	517
Illinois Abortion Law of 1975	720	510	518
Partial-Birth Abortion Ban Act	720	513	519
Adoption Compensation Prohibition Act	720	525	520
Cannabis Control Act	720	550	521
Illinois Controlled Substances Act	720	570	523
Drug Paraphernalia Control Act	720	600	525
Guide Dog Access Act	720	630	527
Hypodermic Syringes and Needles Act	720	635	528
Sale of Tobacco to Minors Act	720	675	530
Smokeless Tobacco Limitation Act	720	680	531
Tobacco Accessories and Smoking Herbs Control Act	720	685	532

	Statute Reference		
Name of Statute	Chapter	Act	Page # in Analysis
Use of Intoxicating Compounds Act	720	690	533
Code of Criminal Procedure of 1963	725	5	534
Rights of Crime Victims and Witnesses Act	725	120	537
Drug Asset Forfeiture Procedure Act	725	150	538
Narcotics Profit Forfeiture Act	725	175	539
Pretrial Services Act	725	185	540
Privacy of Child Victims of Criminal Sexual Offenses Act	725	190	542
Sexually Dangerous Persons Act	725	205	543
Sexually Violent Persons Commitment Act	725	207	545
Violent Crime Victims Assistance Act	725	240	547
Unified Code of Corrections	730	5	549
County Jail Act	730	125	553
Illinois Prison Inspection Act	730	135	555
Illinois Substance Abuse Treatment Program	730	145	556
Sex Offender Registration Act	730	150	557
Sex Offender and Child Murderer Community Notification Law	730	152	558
Prisoner Interchange Act	730	155	559
Alternative Sentencing Job Training Act	730	170	560
Secure Residential Youth Care Facility Licensing Act	730	175	561
Code of Civil Procedure	735	5	562
Alienation of Affections Act	740	5	569
Drug Dealer Liability Act	740	57	570
Mental Health and Developmental Disabilities Confidentiality Act	740	110	571
Sexual Exploitation in Psychotherapy, Professional Health Services, and Professional Mental Health Services Act	740	140	578
Wrongful Death Act	740	180	579
Local Governmental and Governmental Employees Tort Immunity Act	745	10	580
Abortion Performance Refusal Act	745	30	581
Alcoholism and Drug Addiction Intervener and Reporter Immunity Law	745	35	582
Blood and Organ Transaction Liability Act	745	40	583
Communicable Disease Report Act	745	45	584
Good Samaritan Act	745	49	585
Long-Term Care Peer Review/Quality Assessment and Assurance Protection Act	745	55	586
Health Care Right of Conscience Act	745	70	588

	Statute Reference		
Name of Statute	Chapter	Act	Page # in Analysis
Illinois Marriage and Dissolution of Marriage Act	750	5	589
Uniform Child Custody Jurisdiction Act	750	35	591
Illinois Parentage Act	750	40	592
Illinois Parentage Act of 1984	750	45	594
Adoption Act	750	50	597
Contest of Adoptions Act	750	55	599
Illinois Domestic Violence Act of 1986	750	60	600
Parental Notice of Abortion Act of 1995	750	70	602
Probate Act of 1975	755	5	603
Illinois Living Will Act	755	35	604
Health Care Surrogate Act	755	40	605
Mental Health Treatment Preference Declaration Act	755	43	607
Illinois Power of Attorney Act	755	45	609
Uniform Anatomical Gift Act	755	50	611
Illinois Corneal Transplant Act	755	55	612
Organ Donation Request Act	755	60	614
Burial Lot Perpetual Trust Act	765	90	615
Cemetery Perpetual Trust Authorization Act	765	95	616
Cemetery Care Act	765	100	617
Conveyance of Burial Places to County Act	765	805	618
Cemetery Company Land Not Used for Burial Act	765	810	619
Cemetery Association Land Not Used for Burial Act	765	815	620
Cemetery Land Ownership and Transfer Act	765	820	621
City Sale or Lease of Land for Cemeteries Act	765	825	622
Cemetery Removal Act	765	830	623
Cemetery Protection Act	765	835	624
Clinical Psychologists Lien Act	770	10	625
Dentists Lien Act	770	20	627
Emergency Medical Services Personnel Lien Act	770	22	629
Home Health Agency Lien Act	770	25	631
Hospital Lien Act	770	35	633
Optometrists Lien Act	770	72	635
Physical Therapist Lien Act	770	75	637
Physicians Lien Act	770	80	639
Illinois Human Rights Act	775	5	641
Medical Corporation Act	805	15	642
Cemetery Association Act	805	320	643
National Cemetery Act	805	325	644

	Statute Reference		
Name of Statute	Chapter	Act	Page # in Analysis
Health Insurance Claim Filing Act	820	45	645
Right to Privacy in the Workplace Act	820	55	646
Union Employee Health and Benefits Protection Act	820	60	647
Burial Rights Act	820	135	648
Employee Medical Contribution Act	820	150	649
Medical Care Savings Account Act of 2000	820	153	650
Medical Examination of Employees Act	820	235	651
Workers' Compensation Act	820	305	652
Workers' Occupational Diseases Act	820	310	654
Law Enforcement Officers, Civil Defense Workers, Civil Air Patrol Members, Paramedics, Firemen, Chaplains, and State Employees Compensation Act	820	315	655
Public Safety Employee Benefits Act	820	320	656

1. Name and Citation of Law

Illinois Constitution, Article 1, §6

2. General Description of the Law

The Illinois Constitution provides that "the people shall have the right to be secure in their persons, houses, papers and possessions against unreasonable searches seizures, invasions of privacy or interceptions of communications by eavesdropping devices or other means. No warrant shall issue without probable cause, supported by affidavit particularly describing the place to be search and the person or things to be seized."

3. Rules Promulgated Under the Law

None. No administrative rules have been promulgated under this law.

4. Key Provisions

None. There are no provisions of this Act addressing the issues raised by the HIPAA preemption analysis.

5. Significant Case Law

Burger v. Lutheran General Hospital, 259 Ill. Dec. 753, 198 Ill. 2d 21, 759 N.E.2d 533 (Ill. 2001)
People v. Adams, 173 Ill. Dec. 600, 149 Ill. 2d 331, 597 N.E.2d 572 (Ill. 1992)
In re Floyd, 211 Ill. Dec. 350, 274 Ill. App. 3d 855, 655 N.E.2d 10 (5th Dist. 1995), appeal denied, 214 Ill. Dec. 321, 164 Ill. 2d 564, 660 N.E.2d 1270
In re Baby Boy Doe, 198 Ill. Dec. 267, 260 Ill. App. 3d 392, 632 N.E.2d 326 (1st Dist. 1994)

6. Preemption Analysis Under HIPAA

The Illinois Constitution explicitly creates a right of privacy in Article 1, §6. However, this is not an absolute right. As seen in *Burger v. Lutheran General Hospital*, 759 N.E.2d 533 (Ill. 2001), for example, the Illinois Supreme Court has held that the provisions of the Hospital Licensing Act allowing a hospital's medical staff to discuss the records of an individual involved in a pending malpractice action with the hospital's legal counsel are not an unreasonable invasion of the privacy rights of the patient. 210 ILCS 85/6.17, 259 Ill. Dec. at 767, 198 Ill. 2d at 44, 759 N.E. 2d at 547.

In other cases addressing the constitutional right to privacy, the Illinois courts have held that only certain circumstances allow the performance of medical activities without consent. See *People v. Adams*, 173 Ill. Dec. 600, 149 Ill. 2d 331, 597 N.E.2d 572 (Ill. 1992) (prostitute can be tested for HIV without consent); *In re Floyd*, 211 Ill. Dec. 350,

274 Ill. App. 3d 855, 655 N.E.2d 10 (5th Dist. 1995), appeal denied, 214 Ill. Dec. 321, 164 Ill. 2d 564, 660 N.E.2d 1270 (can do involuntary blood test to monitor psychotropic medicines of an involuntarily committed person). See also *in re Baby Boy Doe*, 260 Ill. App. 3d 396, 632 N.E.2d 326, 329, 198 Ill. Dec. 267, 270 (Ill. 1994).

The Illinois Constitution provides a right to privacy that includes the right to consent to medical treatment in most instances, subject to limited exceptions. The Privacy Rule sets forth requirements for the use and disclosure of health information, while remaining silent on the issue of consent obtained prior to undertaking treatment. 45 C.F.R. §160.202, 164.206. State law continues to govern the need for consent to medical treatment.

It is possible to comply with this law and HIPAA. Further, this law does not stand as an obstacle to accomplishing the full purpose of HIPAA. Therefore, the law is not "contrary" to the HIPAA regulations. 45 C.F.R. §160.202.

7. Is the Law Preempted?

No.

1. Name and Citation of Law

Statute on Statutes (5 ILCS 70/0.01)

2. General Description of the Law

The Statute on Statutes set forth the legal practices to use in construing Illinois statutes.

3. Rules Promulgated Under the Law

None. No administrative rules have been promulgated under this law.

4. Key Provisions

5 ILCS 70/1.06, Person Under Legal Disability

5. Significant Case Law

Myers v. Illinois Central Railroad Co., 753 N.E. 2d 560 (4th Dist. 2001), citing *Pittsburgh and Lake Erie Railroad Co. v. Railway Labor Executives Association*, 491 U.S. 490, 109 S. Ct. 2584, 105 L. Ed. 2d 415 (1989).

6. Preemption Analysis Under HIPAA

Myers v. Illinois Central Railroad Co. refers to a commonly held proposition that federal and state statutes are read together to give effect to each if the court can preserve their sense and purpose. 753 N.E. 2d at 564. In addressing the general preemption issues raised by HIPAA, State courts likely will follow the principle that both the State statute and federal statute should be given effect, if possible, while preserving the sense and purpose of the statutes. Id.

The Statute on Statutes defines a person under legal disability as a person over the age of 18 with a mental illness or with developmental disabilities and who is unable to manage his or her person or estate due to the mental illness or developmental disability. 5 ILCS 70/1.06. While medical information may be necessary to adjudicate someone a person under a legal disability, a court order can be obtained to order such a release of medical information from a covered entity. 45 C.F.R. §164.512(e).

It is possible to comply with this law and HIPAA. This law does not stand as an obstacle to accomplishing the full purpose of HIPAA. Therefore, the law is not "contrary" to the HIPAA regulations. 45 C.F.R. §160.202.

7. Is the Law Preempted?

No.

1. Name and Citation of Law

Illinois Administrative Procedure Act (5 ILCS 100/1-1 - 100/15-5)

2. General Description of the Law

The Illinois Administrative Procedure Act sets forth the procedures for administrative rule making and hearings.

3. Rules Promulgated Under the Law

1 Ill. Admin. Code 100.100 *et seq*., Rule Making in Illinois (Secretary of State)
2 Ill. Admin. Code 75.10 *et seq*., Public Information, Rule Making and Organization (Joint Committee on Administrative Rules)
2 Ill. Admin. Code 76.10 *et seq*., Access to Information (Joint Committee on Administrative Rules)
2 Ill. Admin. Code 700, Organizational Chart, Description, Rule Making Procedure and Programs (Department of Agriculture)
2 Ill. Admin. Code 725, Public Information, Rule Making and Organization (Department on Aging)
2 Ill. Admin. Code 750, Public Information, Rule Making and Organization (Department of Central Management Services)
2 Ill. Admin. Code 775, Public Information, Rule Making and Organization (Department of Children and Family Services)
2 Ill. Admin. Code 800, Public Information, Rule Making and Organization (Department of Commerce and Community Affairs)
2 Ill. Admin. Code 825, Rule Making and Organization (Department of Natural Resources)
2 Ill. Admin. Code 850, Public Information, Rule Making and Organization (Department of Corrections)
2 Ill. Admin. Code 925, Rule Making and Organization (Department of Human Rights)
2 Ill. Admin. Code 961, Request for Regulatory Action (Department of Insurance)
2 Ill. Admin. Code 1075, Public Information, Rule Making and Organization (Department of Nuclear Safety)
2 Ill. Admin. Code 1100, Public Information, Rule Making and Organization (Department of Public Aid)
2 Ill. Admin. Code 1125, Public Information, Rule Making and Organization Code (Department of Public Health)
2 Ill. Admin. Code 1225, Public Information, Rule Making and Organization (Department of Transportation)
2 Ill. Admin. Code 1250, Public Information, Rule Making and Organization (Department of Veterans' Affairs)
2 Ill. Admin. Code 1325, Public Information, Rule Making and Organization (Department of Professional Regulation)
2 Ill. Admin. Code 1375, Rule Making Procedures and Department Organization (Department of Military Affairs)
2 Ill. Admin. Code 1500, Public Information, Rule Making and Organization (Abandoned

Mined Lands Reclamation Counsel)
2 Ill. Admin. Code 1600, Public Information, Rule Making and Organization (Board of Ethics)
2 Ill. Admin. Code 1650, Rules of the Capitol Development Board
2 Ill. Admin. Code 1675, Public Information, Rule Making and Organization (Civil Service Commission)
2 Ill. Admin. Code 1700, Public Information, Rule Making and Organization (Illinois Commerce Commission)
2 Ill. Admin. Code 1750, Public Information, Rule Making and Organization (Illinois Criminal Justice Information Authority)
2 Ill. Admin. Code 1800, Public Information, Rule Making and Organization (Illinois Emergency Management Agency)
2 Ill. Admin. Code 1825, Public Information, Rule Making and Organization (Environmental Protection Agency)
2 Ill. Admin. Code 1850, Public Information, Rule Making and Organization (Governor's Purchase Care Review Board)
2 Ill. Admin. Code 1875, Public Information, Rule Making and Organization (Guardianship and Advocacy Commission)
2 Ill. Admin. Code 1900, Public Information, Rule Making and Organization (Illinois Health Facilities Authority)
2 Ill. Admin. Code 1925, Public Information, Rule Making and Organization (Department of Public Health/Health Facilities Planning Board)
2 Ill. Admin. Code 1975, Public Information, Rule Making and Organization (Illinois Housing Development Authority)
2 Ill. Admin. Code 2000, Public Information, Rule Making and Organization (Human Rights Commission)
2 Ill. Admin. Code 2025, Public Information, Rule Making and Organization (Industrial Commission)
2 Ill. Admin. Code 2050, Public Information, Rule Making and Organization (Department of State Police Merit Board)
2 Ill. Admin. Code 2075, Public Information, Rule Making and Organization (Illinois Liquor Control Commission)
2 Ill. Admin. Code 2100, Public Information, Rule Making and Organization (Illinois Local Governmental Law Enforcement Officers Training Board)
2 Ill. Admin. Code 2150, Public Information, Rule Making and Organization (Nature Preserves Commission0
2 Ill. Admin. Code 2175, Organization, Public Information, and Types of Proceedings (Pollution Control Board)
2 Ill. Admin. Code 2250, Rule Making (Illinois Racing Board)
2 Ill. Admin. Code 2300, Public Information, Rule Making and Organization (Office of Banks and Real Estate)
2 Ill. Admin. Code 2375, Public Information, Rule Making and Organization (State Employees' Retirement System)
2 Ill. Admin. Code 2500, Public Information, Rule Making and Organization (Illinois State Labor Relations Board/Illinois Local Relations Board)
2 Ill. Admin. Code 2650, Organization, Rule Making and Public Information (Illinois Health Care Cost Containment Counsel - Transferred to Department of Public Health)

2 Ill. Admin. Code 2675, Public Information, Rule Making, Organization and Personnel (Illinois Education Labor Relations Board)
2 Ill. Admin. Code 2700, Organization, Rule Making and Public Access (Office of Public Counsel)
2 Ill. Admin. Code 2950, Information, Rule Making and Organization (Low-Level Radioactive Waste Task Group)
2 Ill. Admin. Code 5000, Public Information, Rule Making and Organization (State Board of Education)
2 Ill. Admin. Code 5025, Public Information, Rule Making and Organization (Board of Governor's of State Colleges and Universities)
2 Ill. Admin. Code 5050, Public Information, Rule Making and Organization (Board of Higher Education)
2 Ill. Admin. Code 5075, Public Information, Rule Making and Organization (Board of Regents)
2 Ill. Admin. Code 5100, Public Information, Rule Making and Organization (Board of Trustees, East St. Louis Community College)
2 Ill. Admin. Code 5125, Public Information, Rule Making and Organization (Board of Trustees of Southern Illinois University)
2 Ill. Admin. Code 5155, Division of Specialized Care for Children - Public Information, Rule Making and Organization (Board of Trustees of the University of Illinois)
2 Ill. Admin. Code 5175, Public Information, Rule Making and Organization (Illinois Community College Board)
2 Ill. Admin. Code 5200, Public Information, Rule Making and Organization (Illinois Educational Facilities Authority)
2 Ill. Admin. Code 5350, Public Information, Rule Making and Organization (State Universities Civil Service System)
2 Ill. Admin. Code 5375, Public Information, Rule Making and Organization (Illinois Student Assistance Commission0
2 Ill. Admin. Code 6000.300, Rule Making (Board of Trustees of Eastern Illinois University)

4. Key Provisions

5 ILCS 100/5-50, Peremptory Rule Making

5. Significant Case Law

Senn Park Nursing Center v. Miller, 83 Ill. Dec. 609, 104 Ill. 2d 169, 470 N.E. 2d 1029 (Ill. 1984)

6. Preemption Analysis Under HIPAA

The general procedures governing the promulgation of administrative rules and the conduct of hearings by State agencies will not be significantly impacted by the implementation of the Privacy Rule.

It is possible to comply with this law and HIPAA. This law does not stand as an obstacle

to accomplishing the full purpose of HIPAA. Therefore, the law is not "contrary" to the HIPAA regulations. 45 C.F.R.§160.202.

7. Is the Law Preempted?

No.

1. Name and Citation of Law

Open Meetings Act (5 ILCS 120/1)

2. General Description of the Law

The Open Meetings Act provides that the actions and deliberations of the State's public commissions, committees, boards and councils, and all other public agencies in Illinois be taken and/or conducted openly.

3. Rules Promulgated Under the Law

None. No administrative rules have been promulgated under this law.

4. Key Provisions

5 ILCS 120/2, Open Meetings

5. Significant Case Law

None. There is no significant case law addressing the issues raised by the HIPAA preemption analysis.

6. Preemption Analysis Under HIPAA

In general, public bodies are required to hold open meetings. 5 ILCS 120/2. Exceptions to the general rule are provided for placement of individual students into special education programs (2(b)(10)), physician peer review and credentialing activities (2(b)(17)), applications received under the Experimental Organ Transplantation Procedures Act (2(b)(19)), and deliberations for decisions of the State Emergency Medical Services Disciplinary Review Board (2(b)(22)). While each of these exceptions to the Open Meetings Act will likely involve the use of health information before the public body, most of the activities are related to health oversight, and therefore a covered entity may release protected health information to the public body making the decision. 45 C.F.R. §164.512(d). The exception for applications under the Experimental Organ Transplantation Procedures Act, 745 ILCS 10, are related to payment activities and protected health information would only be reviewed pursuant to a voluntary application by an individual seeking assistance. See discussion of 745 ILCS 10.

If protected health information is used in meetings which are open to the public, the government body will need to ascertain whether it is acting as a covered entity, and if so, whether the use or disclosure of health information is allowed under the Privacy Rule. 45 C.F.R. §164.

It is possible to comply with this law and HIPAA. This law does not stand as an obstacle to accomplishing the full purpose of HIPAA. Therefore, the law is not "contrary" to the HIPAA regulations. 45 C.F.R. §160.202.

7. Is the Law Preempted?

No.

1. Name and Citation of Law

Freedom of Information Act (5 ILCS 140/1)

2. General Description of the Law

The Freedom of Information Act provides a mechanism for persons to request public records.

3. Rules Promulgated Under the Law

2 Ill. Admin. Code 526.10 *et seq*., Freedom of Information Act (Lt. Governor)
2 Ill. Admin. Code 551.10 *et seq*., Freedom of Information Act (Secretary of State)
2 Ill. Admin. Code 576.110 *et seq*, Compliance with the Freedom of Information Act (Attorney General)
2 Ill. Admin. Code 601.100 *et seq*., Freedom of Information (Auditor General)
2 Ill. Admin. Code 625.12 *et seq*., Access to Information (Comptroller)
2 Ill. Admin. Code 651.101 *et seq*., Access to Information (Treasurer)
2 Ill. Admin. Code 701.10 *et seq*, Freedom of Information Act (Department of Agriculture)
2 Ill. Admin. Code 726.10 *et seq*., Access to Information of the Department on Aging
2 Ill. Admin. Code 751.10 *et seq*, Access to Information (Department of Central Management Services)
2 Ill. Admin. Code 775.10 *et seq*., Public Information, Rule Making and Organization (Department of Children and Family Services)
2 Ill. Admin. Code 801.101 *et seq*, Access to Information of Department of Commerce and Community Affairs
2 Ill. Admin. Code 826.10, 876.101 *et seq*., Implementation of the Illinois Freedom of Information Act (Department of Natural Resources)
2 Ill. Admin. Code 851.10 *et seq*, Freedom of Information (Department of Corrections)
2 Ill. Admin. Code 901.10 *et seq*., Freedom of Information (Department of Financial Institutions)
2 Ill. Admin. Code 926.10 *et seq*., Access to Information (Department of Human Rights)
2 Ill. Admin. Code 951.10 *et seq*, Access to Public Records (Department of Insurance)
2 Ill. Admin. Code 1075.10 *et seq*, Public Information, Rule Making and Organization (Department of Nuclear Safety)
2 Ill. Admin. Code 1100.100 *et seq*., Public Information, Rule Making and Organization (Department of Public Aid)
2 Ill. Admin. Code 1126.10 *et seq*, Freedom of Information Code (Department of Public Health)
2 Ill. Admin. Code 1201.110 *et seq*., Freedom of Information (Department of Revenue)
2 Ill. Admin. Code 12126.10 *et seq*, Request for Public Records (Department of Transportation)
2 Ill. Admin. Code 1270.110 *et seq*., Freedom of Information (Department of Veterans Affairs)
2 Ill. Admin. Code 1301.110 *et seq*, Freedom of Information (Department of Employment Security)

2 Ill. Admin. Code 1326.110 *et seq*., Access to Information (Department of Professional Regulation)
2 Ill. Admin. Code 1376.100 *et seq*., Freedom of Information Procedures (Department of Military Affairs)
2 Ill. Admin. Code 1500.10 *et seq*., Public Information, Rule Making and Organization (The Abandoned Mines Reformation Counsel)
2 Ill. Admin. Code 1551.10 *et seq*, Freedom of Information (State Board of Elections)
2 Ill. Admin. Code 1601.10 *et seq*, Freedom of Information (Board of Ethics)
2 Ill. Admin. Code 1651.110 *et seq*., Access to Information (Capitol Development Board)
2 Ill. Admin. Code 1676.110 *et seq*., Access to Information (Civil Service Commission)
2 Ill. Admin. Code 1701.10 *et seq*., Access to Information (Illinois Commerce Commission)
2 Ill. Admin. Code 1750.100 *et seq*., Public Information, Rule Making and Organization (Illinois Criminal Justice Information Authority)
2 Ill. Admin. Code 1800.10 *et seq*., Public Information, Rule Making and Organization (Illinois Emergency Management Agency)
2 Ill. Admin. Code 1828.101 *et seq*., Access to Public Records of the Illinois Environmental Protection Agency
2 Ill. Admin. Code 1850.10 *et seq*., Public Information, Rule Making and Organization (Governor's Purchased Care Review Board)
2 Ill. Admin. Code 1875.10 *et seq*., Public Information, Rule Making and Organization (Guardianship and Advocacy Commission)
2 Ill. Admin. Code 1901.110 *et seq*., Access to Information (Illinois Health Facilities Authority)
2 Ill. Admin. Code 1925.10 *et seq*., Public Information, Rule Making and Organization (Health Facilities Planning Board)
2 Ill. Admin. Code 1951.110 *et seq*., Access to Information (Illinois State Historical Library)
2 Ill. Admin. Code 1976.10 *et seq*., Access to Public Records of the Illinois Housing Development Authority
2 Ill. Admin. Code 2000 *et seq*., Public Information, Rule Making and Organization (Human Rights Commission)
2 Ill. Admin. Code 2026.100 *et seq*., Freedom of Information Act (Industrial Commission)
2 Ill. Admin. Code 2050.10 *et seq*., Public Information, Rule Making and Organization (Department of State Police Merit Board)
2 Ill. Admin. Code 2075.10 *et seq*., Public Information, Rule Making and Organization (Liquor Control Commission)
2 Ill. Admin. Code 2100.210 *et seq*., Public Information, Rule Making and Organization (Illinois Local Governmental Law Enforcement Officers Training Board)
2 Ill. Admin. Code 2150.10 *et seq*., Public Information, Rule Making and Organization (Nature Preserve Commission)
2 Ill. Admin. Code 2175.100 *et seq*., Organization, Public Information and Types of Proceedings (Pollution Control Board)
2 Ill. Admin. Code 2251.10 *et seq*., Public Information (Illinois Racing Board)
2 Ill. Admin. Code 2301.110 *et seq*., Freedom of Information Act (Office of Banks and Real Estate)

2 Ill. Admin. Code 2375.10 *et seq*., Public Information, Rule Making and Organization (State Employees' Retirement System)
2 Ill. Admin. Code 2501.10 *et seq*., Freedom of Information (Illinois State Labor Relations Board/Illinois Local Labor Relations Board)
2 Ill. Admin. Code 2525.10 *et seq*., Public Information and Organization (Medical Center Commission)
2 Ill. Admin. Code 2650.10 *et seq*., Organization, Rule Making and Public Information (Illinois Health Care Cost Containment Counsel - did this go to Public Health)
2 Ill. Admin. Code 2676.10 *et seq*., Freedom of Information (Illinois Educational Labor Relations Board)
2 Ill. Admin. Code 2701.10 *et seq*., Freedom of Information Act (Office of Public Counsel)
2 Ill. Admin. Code 3001.10 *et seq*., Freedom of Information (Low Level Radioactive Waste Group)
2 Ill. Admin. Code 5001.100 *et seq*., Access to Information of the State Board of Education Under the Freedom of Information Act
2 Ill. Admin. Code 5025.110 *et seq*., Public Information, Rule Making and Organization (Board of Governor's of State Colleges and Universities)
2 Ill. Admin. Code 5051.10 *et seq*., Access to Public Information (Board of Higher Education)
2 Ill. Admin. Code 5076.10 *et seq*., Freedom of Information Act Procedures (Board of Regents)
2 Ill. Admin. Code 5100.10 *et seq*., Public Information, Rule Making and Organization (Board of Trustees East St. Louis Community College)
2 Ill. Admin. Code 5125.10 *et seq*., Public Information, Rule Making and Organization (Board of Trustees of Southern Illinois University)
2 Ill. Admin. Code 5151.10 *et seq*., Access to Public Records of the University of Illinois
2 Ill. Admin. Code 5155.100 *et seq*., Division of Specialized Care for Children - Public Information, Rule Making and Organization
2 Ill. Admin. Code 5176.110 *et seq*., Public Access to Information (Illinois Community College Board)
2 Ill. Admin. Code 5200.10 *et seq*., Public Information, Rule Making and Organization (Illinois Educational Facilities Authority)
2 Ill. Admin. Code 5350.10 *et seq*., Public Information, Rule Making and Organization (State Universities Civil Service System)
2 Ill. Admin. Code 5376.10 *et seq*., Information Requests (Illinois Student Assistance Commission)
2 Ill. Admin. Code 6000.100 *et seq*., Organization and Public Information (Board of Trustees of Eastern Illinois University)

4. <u>Key Provisions</u>

5 ILCS 140/7, Exemptions
2 Ill. Admin. Code 775.60, Confidential Information (Department of Children and Family Services)

5. <u>Significant Case Law</u>

Southern Illinoisan v. Department of Public Health, 254 Ill. Dec. 361, 319 Ill. App. 3d 979, 747 N.E.2d 401 (5th Dist. 2001)

6. Preemption Analysis Under HIPAA

The Illinois Freedom of Information Act exempts from disclosure any record that is prohibited by Federal or State law from disclosure. 5 ILCS 140/7(a). This section is the basis for public bodies to withhold many records under the Freedom of Information Act. The Privacy Rule can be cited by public bodies as grounds for withholding records under this Act. If it is determined that they are performing a covered function and that disclosure of a particular record would be a violation of the Privacy Rule. 45 C.F.R. §164.203.

While the rules governing public bodies may not specifically reference medical records as being withheld under the Freedom of Information Act, public bodies frequently rely on the exception in the Act for a clearly unwarranted invasion of personal privacy in withholding medical record information from the public. 5 ILCS 140/7(b). The Department of Children and Family Services rules specifically state that medical records are confidential information and are not disclosable under a Freedom of Information Act request. 2 Ill. Admin. Code 775.60.

In general, the case law regarding the issue of health information being releaseable under the Freedom of Information Act is not particularly helpful. The reported case on point, *Southern Illinoisan v. Department of Public Health*, 254 Ill. Dec. 361, 319 Ill. App. 3d 979, 747 N.E.2d 401 (5th Dist. 2001) indicates that releasing neuroblastoma cancers by date of diagnosis and zip code does not violate the Freedom of Information Act as it was not a clearly unwarranted invasion of personal privacy. However, this case goes further to indicate that the disclosure could be improper under the State cancer registry laws (410 ILCS 525/12).

It is possible to comply with this law and HIPAA. Further, this law does not stand as an obstacle to accomplishing the full purpose of HIPAA. Therefore, the law is not "contrary" to the HIPAA regulations. 45 C.F.R. §160.202.

7. Is the Law Preempted?

No.

1. Name and Citation of Law

State Records Act (5 ILCS 160/1).

2. General Description of the Law

The State Records Act provides for a State Archives Division of the Office of Secretary of State, creates the State Records Commission, and provides for a continuing records and paperwork management program.

3. Rules Promulgated Under the Law

44 Ill. Admin. Code 4400.10 *et seq*., State Records Commission
89 Ill. Admin. Code 4500.10 *et seq*., Local Records Commission of Cook County
89 Ill. Admin. Code 436.1 *et seq*., Records Management (DCFS)

4. Key Provisions

5 ILCS 160/2, Definitions
5 ILCS 160/3, Reports and Records of Obligation, Receipt and Use of Public Funds as Public Records
5 ILCS 160/3.5, Confidentiality of Foster Placement Records
5 ILCS 160/7, Powers and Duties of Secretary - Public Access to Records
5 ILCS 170/8, Preservation of Records
5 ILCS 160/11, Records Not to be Damaged or Destroyed
5 ILCS 160/13, Improvement of Management Practices and Security of Records
5 ILCS 160/14, Standards for Retention
5 ILCS 160/15(a), System for Protection and Preservation of Records - Establishment
5 ILCS 160/15(b), Records Essential for Emergency Government Operation - Determination
5 ILCS 160/17, Disposal and Reproduction of Records - Regulations
5 ILCS 160/18, Reports and Schedules to be Submitted by Agency Heads
5 ILCS 160/19, Disposition of Reports and Schedules
5 ILCS 160/20, Destruction of Nonrecord Materials
5 ILCS 160/21, Disposal of Records - Consent of Agency Head
5 ILCS 160/22, Disposition of Records of Terminated State Agency

5. Significant Case Law

None. There is no significant case law addressing the issues raised by the HIPAA preemption analysis.

6. Preemption Analysis Under HIPAA

State records are defined to mean all documents, regardless of physical form or characteristics, made, produced, executed or received by any State agency in pursuance of State law or in connection with the transaction of public business. 5 ILCS 160/2.

Reports and records of the receipt or expenditure of public funds are also considered to be public records available for inspection by the public. 5 ILCS 160/3. State records are to be permanently archived when determined to have sufficient historical value. 5 ILCS 160/7.

Use of State records is limited by other rights, limitations or restrictions imposed by law, including the Mental Health and Developmental Disabilities Confidentiality Act. 5 ILCS 160/7(4). Limitations on the accessibility of records generally expire after 75 years, except for records covered by the Mental Health and Developmental Disabilities Confidentiality Act. Id. One specific exception to the availability of public records is that foster placement and foster parent identifying information are not records under the Act. 5 ILCS 160/3.5.

The preservation of records is to be documented with policies and procedures. 5 ILCS 160/8. Records are not to be damaged or destroyed. 5 ILCS 160/11. The security of the records is to be maintained. 5 ILCS 160/13. Records of continuing value may have special standards for retention. 5 ILCS 160/14.

The State Records Commission under the Secretary of State is responsible for promulgating regulations regarding the disposal and reproduction of records. 5 ILCS 160/17. Each agency is to submit required reports and schedules of retention and destruction. 5 ILCS 160/18-19. Agencies are allowed to destroy non-record materials. 5 ILCS 160/20. The disposal of records is to be done with the consent of the agency head. 5 ILCS 160/21. A State agency which ceases to exist without a successor agency being designated shall have its records deposited in the State archives. 5 ILCS 160/22.

Because some State agencies are covered entities and render treatment, as defined in the Privacy Rule, the means of disposal and the public nature of State records are relevant to the preemption analysis. 45 C.F.R. §164.501. However, the requirement in the State Records Act for compliance with other law in the use of State records will allow, as applicable, compliance with both the Privacy Rule and the State Records Act. 5 ILCS 160/7(4).

It is possible to comply with this law and HIPAA. This law does not stand as an obstacle to accomplishing the full purpose of HIPAA. Therefore, the law is not “contrary” to the HIPAA regulations. 45 C.F.R. §160.202.

7. Is the Law Preempted?

No.

1. Name and Citation of Law

Electronic Commerce Security Act (5 ILCS 175/1-101 - 175/99-1)

2. General Description of the Law

The Electronic Commerce Security Act was created to facilitate electronic communications by means of reliable electronic records; to facilitate and promote electronic commerce by eliminating barriers resulting from uncertainties over writing and signature requirements; to promote the development of the legal and business infrastructure to implement secure electronic commerce; to facilitate electronic documents with State and local government agencies and promote efficient delivery of government services by means of reliable electronic records; to minimize the incidents of forged electronic records, intentional and unintentional alteration of records and fraud in electronic commerce; to help to establish uniformity of rules and standards regarding the authentication and integrity of electronic records; and to promote public confidence in the integrity and reliability of electronic records and electronic commerce.

3. Rules Promulgated Under the Law

14 Ill. Admin. Code 100.10 *et seq*., Rules Implementing the Illinois Electronic Commerce Security Act

4. Key Provisions

None. There are no provisions addressing the issues raised by the HIPAA preemption analysis.

5. Significant Case Law

None. There is no significant case law addressing the issues raised by the HIPAA preemption analysis.

6. Preemption Analysis Under HIPAA

The Electronic Commerce Security Act sets forth standards for electronic signatures to be valid in the State of Illinois. 5 ILCS 175/1-105. It is possible to comply with this law and HIPAA. This law does not stand as an obstacle to accomplishing the full purpose of HIPAA. Therefore, the law is not “contrary” to the HIPAA regulations. 45 CFR §160.202.

7. Is the Law Preempted?

No.

1. Name and Citation of Law

State Employees Group Insurance Act of 1971 (5 ILCS 375/1-375/17)

2. General Description of the Law

The State Employees Group Insurance Act of 1971 provides for contributory life and health insurance for officers and employees in the service of the State of Illinois and certain of their dependents.

3. Rules Promulgated Under the Law

80 Ill. Admin. Code 2100 *et seq*., State of Illinois Premium Payment Plan
80 Ill. Admin. Code 2110.10 *et seq*., State of Illinois Dependent Care Assistance Plan
80 Ill. Admin. Code 2120.10 *et seq*., State of Illinois Medical Care Assistance Plan
80 Ill. Admin. Code 2160.110 *et seq*., Local Government Health Plan

4. Key Provisions

5 ILCS 375/6, Program of Health Benefits
5 ILCS 375/6.1, Program of Health Benefits - Coverage - Abortions
5 ILCS 375/10, Payment by State
5 ILCS 375/15, Administration of Act - Rules and Regulations - Records - Information From Applications - Audit - Review Under Administrative Review Law

5. Significant Case Law

None. There is no significant case law addressing the issues raised by the HIPAA preemption analysis.

6. Preemption Analysis Under HIPAA

The State Employees Group Insurance Act establishes a program of health benefits for State employees, retirees and certain other retirees and local government employees who are eligible for the plan. 5 ILCS 375/6. The plan is housed at the Department of Central Management Services. 5 ILCS 375/4, 5. The plan is responsible for paying the cost of basic non-contributory group life insurance. 5 ILCS 375/10. Affected departments of the State and other qualified participants in the plan are required to keep records and furnish them to the Department of Central Management Services in order to administer the plan, including information concerning employees and their payment of premiums. 5 ILCS 375/15.

Because the State Employees Group Insurance Act creates a health plan, the release of protected health information to the health plan is covered as part of the payment functions anticipated by the privacy regulation, and therefore, no consent is necessary under the Privacy Rule for a covered entity to release protected health information to the plan. 45 C.F.R. §164.502, 164.506. The Act does not indicate that State agencies, aside from the

Department of Central Management Services, will be in possession of protected health information, other than the enrollment, disenrollment and premium deduction information necessary to administer the plan. 5 ILCS 375/10. Therefore, the disclosures necessary to enroll and disenroll participants in the plan and to effect payroll deductions are allowed by the Privacy Rule as employment records. 67 Fed. Reg. 53181, 53192 (August 14, 2002), 45 C.F.R. §164.501.

It is possible to comply with this law and HIPAA. This law does not stand as an obstacle to accomplishing the full purpose of HIPAA. Therefore, the law is not "contrary" to the HIPAA regulations. 45 C.F.R. §160.202.

7. Is the Law Preempted?

No.

1. Name and Citation of Law

Sick Leave Bank Act (5 ILCS 400/10 *et seq*.)

2. General Description of the Law

The Sick Leave Bank Act provides for the alleviation of the hardship caused to an employee and the employee's family if a catastrophic illness or injury forces the employee to exhaust all leave time earned by that employee and to lose compensation from the State, by creating a depository into which participating employees may donate accrued sick leave time for allocation to other participating employees.

3. Rules Promulgated Under the Law

80 Ill. Admin. Code 303, Conditions of Employment

4. Key Provisions

5 ILCS 400/5.25, Catastrophic Illness or Injury
5 ILCS 400/10, Administration of Act
80 Ill. Admin. Code 303.112, Sick Leave Bank

5. Significant Case Law

None. There is no significant case law addressing the issues raised by the HIPAA preemption analysis.

6. Preemption Analysis Under HIPAA

The Sick Leave Bank Act offers a voluntary program for participating employees to access additional time off for catastrophic illnesses. 5 ILCS 400/10. Due to the voluntary nature of the program, an authorization may be obtained from the employee desiring to participate in the sick leave bank to release any protected health information in order to determine the employee's need to access the sick leave bank. 45 C.F.R. §164.508.

It is possible to comply with this law and HIPAA. This law does not stand as an obstacle to accomplishing the full purpose of HIPAA. Therefore, the law is not "contrary" to the HIPAA regulations. 45 C.F.R. §160.202.

7. Is the Law Preempted?

No.

1. Name and Citation of Law

State Employment Records Act (5 ILCS 410/1-410/30)

2. General Description of the Law

The State Employment Records Act requires the development within existing State administrative processes of a comprehensive procedure to collect, classify, maintain and publish for State and public use, information that provides the General Assembly and the people of the State with adequate information of the number of minorities, women and physically disabled persons afforded by State government within the State work force.

3. Rules Promulgated Under the Law

None. No rules have been promulgated under this law.

4. Key Provisions

5 ILCS 410/15, Reported Information
5 ILCS 410/25, Penalties

5. Significant Case Law

None. There is no significant case law addressing the issues raised by the HIPAA preemption analysis.

6. Preemption Analysis Under HIPAA

The State Employment Records Act provides a mechanism for the State to determine categories of employees, including physically disabled persons. Reporting to a State agency that one is physically disabled is a voluntary act by the employee. 5 ILCS 410/15. Any person falsifying information under this Act is guilty of a Class A Misdemeanor. 5 ILCS 410/25. It appears that the disclosure of any protected health information made under this statute will be statistical in nature and made on the basis of self-reporting by the employee.

It is possible to comply with this law and HIPAA. Further, this law does not stand as an obstacle to accomplishing the full purpose of HIPAA. Therefore, the law is not "contrary" to the HIPAA regulations. 45 C.F.R. §160.202.

7. Is the Law Preempted?

No.

1. Name and Citation of Law

Civil Administrative Code of Illinois (20 ILCS 5)

2. General Description of the Law

The Civil Administrative Code of Illinois establishes the Departments of State Government, including Agriculture, Central Management Services, Commerce and Community Affairs, Employment Security, Financial Institutions, Human Services, Insurance, Labor, Natural Resources, Office of Mines and Minerals, Nuclear Safety, Public Aid, Public Health, Revenue, State Police, Transportation, Veterans Affairs, Aging, Children and Family Services, and Corrections. The Code establishes regulations and duties and operations of the Departments.

3. Rules Promulgated Under the Law

None. No administrative rules have been promulgated under this law.

4. Key Provisions

None. There are no provisions of this Act addressing the issues raised by the HIPAA preemption analysis.

5. Significant Case Law

None. There is no significant case law addressing the issues raised by the HIPAA preemption analysis.

6. Preemption Analysis Under HIPAA

The Illinois Administrative Code creates agencies of State government and does not involve protected health information or health care providers. Accordingly, the Code is not preempted by the Privacy Rule.

It is possible to comply with this law and HIPAA. Further, this law does not stand as an obstacle to accomplishing the full purpose of HIPAA. Therefore, the law is not "contrary" to the HIPAA regulation. 45 C.F.R. §160.202.

7. Is the Law Preempted?

No.

1. Name and Citation of Law

Illinois Welfare and Rehabilitation Services Planning Act (20 ILCS 10/1)

2. General Description of the Law

The Illinois Welfare and Rehabilitation Services Planning Act requires certain departments to prepare and submit comprehensive plans providing for the best possible use of available resources for the development of the State human resources and the provision of social services by each agency. 20 ILCS 10/3.

3. Rules Promulgated Under the Law

None. No administrative rules have been promulgated under this law.

4. Key Provisions

None. There are no provisions of this Act addressing the issues raised by the HIPAA preemption analysis.

5. Significant Case Law

None. There is no significant case law addressing the issues raised by the HIPAA preemption analysis.

6. Preemption Analysis Under HIPAA

The Illinois Welfare and Rehabilitation Services Planning Act does not involve protected health information. Accordingly, the Act is not preempted by the Privacy Rule.

It is possible to comply with this law and HIPAA. Further, this law does not stand as an obstacle to accomplishing the full purpose of HIPAA. Therefore, the law is not "contrary" to the HIPAA regulation. 45 C.F.R. §160.202.

7. Is the Law Preempted?

No.

1. Name and Citation of Law

Illinois Act on Aging (20 ILCS 105/1)

2. General Description of the Law

The Illinois Act on Aging creates the Department of Aging and provides a comprehensive and coordinated service system for the State's aging population giving high priority to those persons in greatest need. 20 ILCS 105/2. The Act also provides that studies and research is to be conducted into the needs and problems of the aging. Id.

3. Rules Promulgated Under the Law

2 Ill. Admin. Code 726.10 *et seq.*, Access to Department on Aging Information
2 Ill. Admin. Code 725.10 *et seq.*, Public Information, Rulemaking, Organization
89 Ill. Admin. Code 210.10 *et seq.*, Rules Authorized by this Section
89 Ill. Admin. Code 270.10 *et seq.*, Social Services, Elder Rights
89 Ill. Admin. Code 240.100 *et seq.*, Community Care Program

4. Key Provisions

20 ILCS 105/4.01, Additional Powers and Duties of the Department
20 ILCS 105/4.04, Long Term Care Ombudsman Program

5. Significant Case Law

None. There is no significant case law addressing the issues raised by the HIPAA preemption analysis.

6. Preemption Analysis Under HIPAA

The Illinois Act on Aging generally does not involve health care providers or health care information. However, the Act does provide the Department the power to develop a pamphlet which may be used by physicians and Illinois residents 65 years of age and older for the purpose of assisting physicians and pharmacists in monitoring prescriptions provided by various physicians and to aid persons 65 years of age or older in complying with directions for proper use of a pharmaceutical prescription. 20 ILCS 105/4.01(18). The pamphlet is to provide space for recording information, including the patient's name and phone number, the date of the prescription and the drug prescribed, and other information regarding the physician and dispensing pharmacy. Id. This section does not contemplate the release of protected health care information by health care providers other than to the patient. Disclosure of health information to a patient of their own information is required under the Privacy Rule. 45 C.F.R. §164.520.

The Illinois Act on Aging creates the Long Term Ombudsman Program, 20 ILCS 105/4.04. An Ombudsman is allowed to review the clinical and other records of a long

term care resident only with the consent of the resident. Id. As Ombudsman review is not part of the covered functions or health oversight, all such consents should comply with the authorization requirements in the Privacy Rule. 45 C.F.R. §164.508.

It is possible to comply with this law and HIPAA. Further, this law does not stand as an obstacle to accomplishing the full purpose of HIPAA. Therefore, the law is not "contrary" to the HIPAA regulations. 45 C.F.R.§160.202.

7. Is the Law Preempted?

No.

1. Name and Citation of Law

Alcoholism and Other Drug Abuse and Dependency Act (20 ILCS 301/1-1 *et seq*)

2. General Description of the Law

The Alcoholism and Other Drug Abuse and Dependency Act establishes a substance abuse program within the Department of Human Services and invests the Department with the responsibility to reduce the incidents and consequences of the abuse of alcohol and other drugs. 20 ILCS 301/5-5. The Act also establishes the Illinois Advisory Council on alcoholism and other drug dependency. 20 ILCS 301/10-5.

3. Rules Promulgated Under the Law

77 Ill. Admin. Code 2060.101 *et seq.*, Alcoholism and Substance Abuse Treatment and Intervention Licenses

4. Key Provisions

20 ILCS 301/5-10, Functions of the Department
20 ILCS 301/30-5, Patients Rights Established
20 ILCS 301/40-5, Election of Treatment
20 ILCS 301/40-10, Treatment as a Condition of Probation
20 ILCS 301/45-10, Investigations
77 Ill. Admin. Code 2060.315, Quality Improvement
77 Ill. Admin. Code 2060.319, Confidentiality - Patient Information
77 Ill. Admin. Code 2060.321, Confidentiality - HIV Antibody/AIDS Status
77 Ill. Admin. Code 2060.323, Patient Rights
77 Ill. Admin. Code 2060.325, Patient/Client Records
77 Ill. Admin. Code 2060.335, Inspections
77 Ill. Admin. Code 2060.337, Investigations

5. Significant Case Law

None. There is no significant case law addressing the issues raised by the HIPAA preemption analysis.

6. Preemption Analysis Under HIPAA

The Alcoholism and Other Drug Abuse and Dependency Act establishes a licensure program designed to assist the Department of Human Services in fighting substance abuse. 20 ILCS 301/5-10. As a result, to protect the rights of all persons receiving or who have received intervention, treatment or after care services under the Act, the legislature enacted certain provisions to ensure the rights of patients are protected. 20 ILCS 301/25-20-30/5. These provisions include the right of every patient, patient's guardian or parent if the patient is a minor, to inspect and copy all clinical and other records kept by the treatment program or by the patient's physician concerning the care

and maintenance of the patient. 20 ILCS 301/30-5(t). The treatment program or physician may charge a reasonable fee for the duplication of such records. Id.

All patients are to receive a written statement of their rights at the time of intervention service or admission to a treatment service. 77 Ill. Admin. Code 2060.323. Further, all patient information is to be treated in accordance with 42 C.F.R. part 2, the Federal Confidentiality of Alcohol and Drug Abuse Patient Records Regulations. 77 Ill. Admin. Code 2060.319. Providers are also required to follow the AIDS Confidentiality Act. 77 Ill. Admin. Code 2060.321. The facility is required to maintain a written record for each patient or client. 77 Ill. Admin. Code 2060.325.

The Privacy Rule allows for access by the individual to their records. 45 C.F.R. §164.524. In general, the requirements of the Federal Confidentiality of Alcohol and Drug Abuse Patient Records Regulations are more stringent than the Privacy Rule. 45 C.F.R. part 2, 45 C.F.R. part 164. Therefore, a covered entity can generally consider the State regulations, which track the Federal Confidentiality of Alcohol and Drug Abuse Patient Records Regulations, to be more stringent than the Privacy Rule. 65 Fed. Reg. 82482 (December 28, 2000). While a full review of the Federal Confidentiality of Alcohol and Drug Abuse Patient Record Regulations is beyond the State preemption analysis, it may be useful for providers to note the description by the U.S. Department of Health and Human Services of the relationship between the Privacy Rule and federal confidentiality provisions regarding alcoholism or other drug abuse treatment. Id.

Disclosures under the State rules are also allowed for suspected cases of child abuse or neglect. 77 Ill. Admin. Code 2060.319(b)(2). The release of protected health information to investigate suspected cases of abuse is allowed by the Privacy Rule. 45 C.F.R,. §164.512(b, c).

As part of it licensure functions, the Department of Human Services requires facilities to engage in a quality improvement plan. 77 Ill. Admin. Code 2060.315. Quality improvement activities are treated as part of health care operations under the Privacy Rule. 45 C.F.R. §164.501. A consent is not necessary for releases which are part of the health care operations of the facility. 45 C.F.R. §164.502.

The Department of Human Services is allowed to inspect facilities licensed under Part 2060. 20 ILCS 301/45-10, 77 Ill. Admin. Code 2060.335, 2060.337. Disclosures of protected health information made for these licensure activities is part of health oversight and allowed under the federal privacy regulation. 45 C.F.R. §164.512(d).

Disclosures of protected health information are also allowed in criminal proceedings as an election of treatment or a condition of probation. 20 ILCS 301/40-5, 40-10. While patient authorization is possible, as participation in this program is voluntary, a court order may also suffice to release the information to the court for verification of conditions of probation or alternative sentencing. 45 C.F.R. §164.512(e).

7. Is the Law Preempted?

No.

1. Name and Citation of Law

Administrative Code of Illinois (Department of Central Management Services) (20 ILCS 405/405-1 *et seq*.)

2. General Description of the Law

The Civil Administrative Code for the Department of Central Management Services provides the Department with the responsibility for certain State properties, acquisitions and services. 20 ILCS 405/405-200.

3. Rules Promulgated Under the Law

None. No administrative rules have been promulgated under this law.

4. Key Provisions

None. There are no provisions of this Act addressing the issues raised by the HIPAA preemption analysis.

5. Significant Case Law

None. There is no significant case law addressing the issues raised by the HIPAA preemption analysis.

6. Preemption Analysis Under HIPAA

The Illinois Administrative Code establishing the Department of Central Management Services does not involve protected health care information or health care providers. The Act authorizes the Department to administer the State's self-insurance fund, 20 ILCS 405/405-105, however liability insurance, such as auto insurance, is not paying for "the cost of medical care" and therefore is not covered by the privacy rule. 45 C.F.R. §160.103 (definition of "health plan), referencing 42 U.S.C. 300gg-91(a)(2). Accordingly, the Act is not preempted by the Privacy Rule.

It is possible to comply with this law and HIPAA. Further, this law does not stand as an obstacle to accomplishing the full purpose of HIPAA. Therefore, the law is not "contrary" to the HIPAA regulations. 45 C.F.R. §160.202.

7. Is the Law Preempted?

No.

1. Name and Citation of Law

Personnel Code (20 ILCS 415/1 *et seq*.)

2. General Description of the Law

The Personnel Code establishes for the government of the State of Illinois a system of personnel administration under the Governor, based on merit principles and scientific methods. 20 ILCS 415/2. The Code provides that the Department of Central Management Services is to administer the Personnel Code. 20 ILCS 415/3.

3. Rules Promulgated Under the Law

80 Ill. Admin. Code 303.10 *et seq*., Conditions of Employment
80 Ill. Admin. Code 302.5 *et seq*., Pay Plans and Position Classifications
80 Ill. Admin. Code 310.20 *et seq*., Rules Implementing and Authorized by 20 ILCS 415/8, Rules
2 Ill. Admin. Code 1675.10 *et seq*., Public Information, Rule Making and Organization
80 Ill. Admin. Code 1.10 *et seq*., Rules Implementing Section 20 ILCS 415/10, Duties and Powers of Civil Service Commission

4. Key Provisions

None. There are no provisions of this Act addressing the issues raised by the HIPAA preemption analysis.

5. Significant Case Law

None. There is no significant case law addressing the issues raised by the HIPAA preemption analysis.

6. Preemption Analysis Under HIPAA

The Personnel Code does not involve protected health information or health care providers. Accordingly, the Act is not preempted by the Privacy Rule.

It is possible to comply with this law and HIPAA. Further, this law does not stand as an obstacle to accomplishing the full purpose of HIPAA. Therefore, the law is not "contrary" to the HIPAA regulations. 45 C.F.R. §160.202.

7. Is the Law Preempted?

No.

1. Name and Citation of Law

Children and Family Services Act (20 ILCS 505/1)

2. General Description of the Law

The Children and Family Services Act establishes the Department of Children and Family Services, the Department designed to provide social services to children and their families, to operate children's institutions, and to provide certain other rehabilitative and residential services. 20 ILCS 505/1.

3. Rules Promulgated Under the Law

89 Ill. Admin. Code 301.10, *et seq*., Placement and Visitation Services
89 Ill. Admin. Code 302.10 *et seq*., Rules Implementing and Authorized by this Act
89 Ill. Admin. Code 307.1 *et seq*., Indian Child Welfare Services
89 Ill. Admin. Code 308.10 *et seq*., Non-Discrimination Requirements, Service Providers
89 Ill. Admin. Code 310.1 *et seq*., 313.1 *et seq*, 334.1 *et seq*., Community Based Services, Community Services
89 Ill. Admin. Code 315.10 *et seq*., Permanency Planning
89 Ill. Admin. Code 326.1 *et seq*., Planning for Statewide Resource Allocation
89 Ill. Admin. Code 331.10 *et seq*, Unusual Incidents
89 Ill. Admin. Code 336.10 *et seq*., Appeal of Child Abuse and Neglect Findings
89 Ill. Admin. Code 337.10 *et seq*., Rules Implementing
89 Ill. Admin. Code 340.10 *et seq*., Foster Parent Code
89 Ill. Admin. Code 351.1 *et seq*., Federal Benefits and Other Public Funds
89 Ill. Admin. Code 353.1 *et seq*., Fiscal Administration, Children's Accounts
89 Ill. Admin. Code 355.1 *et seq*., Rules Implementing Section 505/25 Grants, Gifts or Legacies
89 Ill. Admin. Code 356.10, *et seq*., Rate Setting
89 Ill. Admin. Code 357.10 *et seq*., Purchase of Services
89 Ill. Admin. Code 360.1 *et seq*., Grants and Aid
89 Ill. Admin. Code 379.1 *et seq*., Licensing, Dual Jurisdiction
89 Ill. Admin. Code 412.10 *et seq*., Direct Child Welfare Services, Employees, Licensure
89 Ill. Admin. Code 428.10 *et seq*., Department Administration
89 Ill. Admin. Code 437.10 *et seq*., Employee Conflict of Interest
2 Ill. Admin. Code 775.10 *et seq*., Public Information, Rule Making and Organization
89 Ill. Admin. Code 3100.1 *et seq*., Governor's Youth Services Initiative

4. Key Provisions

20 ILCS 505/5, Direct Child Welfare Services
20 ILCS 505/22.3, HIV Testing
20 ILCS 505/35.1, Case and Clinical Records and Reports; Disclosure
89 Ill. Admin. Code 431.90, Disclosure of Personal Information Without Consent
89 Ill. Admin. Code 431.100, Disclosure of Information of a Mental Health Nature
89 Ill. Admin. Code 431.110, Disclosure of Information Regarding Acquired

Immunodeficiency Syndrome ("AIDS")

5. Significant Case Law

None. There is no significant case law addressing the issues raised by the HIPAA preemption analysis.

6. Preemption Analysis Under HIPAA

The Children and Family Services Act deals primarily with ensuring the personal welfare of those under the age of 18. 20 ILCS 505/5. Accordingly, many provisions of the Act deal with the Department's investigatory powers and powers to place children in various environments. When the Department places a child in a licensed foster home, group home, child care institution, or in a relative's home, the Department must provide the caretaker any available detailed information concerning the child's educational and health history, including copies of immunization records. 20 ILCS 505/5(u). Parents have the option of inquiring with the Department to see if their child is under the custody or guardianship of the Department. 20 ILCS 505/6(c). Under the Act, the Department must maintain a system to respond to such inquiries. Id. Investigations of child abuse are not a covered function under the Privacy Rule. 45 C.F.R. § 164.501(b), (c).

The case and clinical records of the Department are not open to the general public. 20 ILCS 505/35.1. The information contained in any report by the Department may be disclosed by the Director to juvenile authorities when necessary for the discharge of their official duties who request information concerning the minor and who certify in writing that the information will not be disclosed to any other party except as provided by law or order of court. Id. Records may be disclosed relating or pertaining to juveniles subject to the provisions of the serious habitual offender comprehensive action program when the information is used to assist in the early identification and treatment of habitual juvenile offenders. Id. Information may also be transmitted among persons providing services to a minor for the purpose of coordinating efforts on behalf of the minor. Id. The foregoing disclosures anticipated by the Children and Family Services Act are allowed under the Privacy Rule to investigate abuse or to facilitate treatment of those under the care of the State. 45 C.F.R. §164.502, 164.512(b), (c).

Any child in the custody of the Department who is being placed in adoptive care must be given an HIV test upon the request of the child's prospective adoptive parent. 20 ILCS 505/22.3. The prospective parent requesting the test is "confidentially notified" of the test result. Id. If the test is positive, the Department provides the prospective parent and child with treatment and counseling, as appropriate. Id. The Department also reports any positive HIV test results to the Illinois Department of Public Health. Id. 89 Ill. Admin. Code 430.110. Disclosure of HIV test results to the Department of Public Health is covered by the exception for disclosures relating to public health activities. 45 C.F.R. §164.512(b).

The State administrative rules also provide that disclosure of mental health information is governed by the Mental Health and Developmental Disabilities Confidentiality Act. 89 Ill. Admin. Code 431.100. See analysis of 740 ILCS 110.

It does not appear that the Department of Children and Family Services is acting as a covered entity in administering the child welfare program, as payment for health care services of DCFS wards are provided by Medicaid and health care services are delivered by contractual providers. To the extent that the Department of Children and Family Services acts as a clearinghouse by providing claims processing, the Department will need to comply with the privacy regulations. 45 C.F.R. §160.103.

It is possible to comply with this law and HIPAA. Further, this law does not stand as an obstacle to accomplishing the full purpose of HIPAA. Therefore, the law is not "contrary" to the HIPAA regulations. 45 C.F.R. §160.202.

7. Is the Law Preempted?

No.

1. Name and Citation of Law

Civil Administrative Code of Illinois (Department of Children and Family Services) (20 ILCS 510/510-1)

2. General Description of the Law

The Civil Administrative Code of Illinois concerning the Department of Children and Family Services provides the Department with all of the powers enumerated and necessary to administer the Children and Family Services Act. 20 ILCS 510/510-15.

3. Rules Promulgated Under the Law

None. No administrative rules have been promulgated under this law.

4. Key Provisions

None. There are no provisions of this Act addressing the issues raised by the HIPAA preemption analysis.

5. Significant Case Law

None. There is no significant case law addressing the issues raised by the HIPAA preemption analysis.

6. Preemption Analysis Under HIPAA

This Act sets forth the general powers of the Department of Children and Family Services. It is possible to comply with this law and HIPAA. Further, this law does not stand as an obstacle to accomplishing the full purpose of HIPAA. Therefore, the law is not "contrary" to the HIPAA regulations. 45 C.F.R. §160.202.

7. Is the Law Preempted?

No.

1. Name and Citation of Law

Child Death Review Team Act (20 ILCS 515/1)

2. General Description of the Law

This Act establishes child death review teams consisting of a physician knowledgeable about child abuse and neglect, a representative of the Department of Children and Family Services, a representative from the local State's Attorney's Office, a representative from a local law enforcement agency, a psychologist or a psychiatrist, a representative of a local health department, the person involved in local education, a coroner or forensic pathologist, a representative of a child welfare agency, and a representative of a local hospital. 20 ILCS 515/15. Every child death must be reviewed by the team if the deceased child is either a: ward of the Department of Children and Family Services; subject of an open service case maintained by the Department, subject of a pending child abuse or neglect investigation; a child subject of an abuse or neglect investigation at any time during the 12 months preceding the death; or any other child whose death is reported to the State Central Register as a result of alleged child abuse or neglect. 20 ILCS 515/20.

3. Rules Promulgated Under the Law

None. No administrative rules have been promulgated under this law.

4. Key Provisions

20 ILCS 515/25, Team Access to Information

5. Significant Case Law

None. There is no significant case law addressing the issues raised by the HIPAA preemption analysis.

6. Preemption Analysis Under HIPAA

The Child Death Review Team Act expressly requires the Department to provide a child death review team upon request, all records and information in the possession of the Department of Children and Family Services that are relevant to the team's review of a child death, including records and information concerning previous reports or investigations of suspected child abuse or neglect. 20 ILCS 515/25. In addition, the Act expressly provides that the Team shall have access to all relevant records and information in the possession of a State or local governmental entity. Records and information include all relevant mental and medical health records, records of law enforcement agency investigations, records of coroner or medical examiner investigations and records of social service agencies. 20 ILCS 515/25.

Disclosure of protected health information for determining a cause of death or suspected

case of abuse are allowed under certain circumstances in the Privacy Rule. 45 C.F.R. §164.512(c), (g). In addition, the Privacy Rule does not apply to the release of health information by a government entity that is not functioning as a "covered entity".

In cases where the child is a Department ward, records can be released by the state guardian if the powers of the state guardian extend to a power to act on behalf of the child's estate under state law.

It is possible to comply with this law and HIPAA. Further, this law does not stand as an obstacle to accomplishing the full purpose of HIPAA. Therefore, the law is not "contrary" to the HIPAA regulations. 45 C.F.R. §160.202.

7. Is the Law Preempted?

No.

1. Name and Citation of Law

Foster Parent Law (20 ILCS 520/1-1)

2. General Description of the Law

The Foster Parent Law establishes certain rights and responsibilities for foster parents. 20 ILCS 520/1-15-1-20.

3. Rules Promulgated Under the Law

89 Ill. Admin. Code 340.10, *et seq*., Foster Parent Code

4. Key Provisions

520 ILCS 520/1-20, Foster Parent Responsibilities

5. Significant Case Law

None. There is no significant case law addressing the issues raised by the HIPAA preemption analysis.

6. Preemption Analysis Under HIPAA

The Foster Parent Law provides that foster parents must respect the confidentiality of information concerning foster children and their families and act "appropriately within applicable confidentiality laws and regulations". 20 ILCS 520/1-20(2), 89 Ill. Admin. Code 340.50. The law also provides that foster parents must fulfill their responsibility to serve as mandated reporters of suspected child abuse or neglect. 20 ILCS 520/1-20(12). Although the Act contemplates disclosure of health care information, foster parents are not health care providers as defined by the Privacy Rule and accordingly the Act is not affected.

An individual acting as a personal representative generally may obtain protected health information on a patient. 45 C.F.R. §160.502(g). For unemancipated minors, an individual standing *in loco parentis* generally may receive protected health information in accordance with State law. Id. Therefore, it appears that both the Office of State Guardian and the foster parent may receive from a covered entity protected health information about a child in their care.

It is possible to comply with this law and HIPAA. Further, this law does not stand as an obstacle to accomplishing the full purpose of HIPAA. Therefore, the law is not "contrary" to the HIPAA regulations. 45 C.F.R. §160.202.

7. Is the Law Preempted?

No.

1. Name and Citation of Law

Statewide Foster Care Advisory Council Law (20 ILCS 525/5-1)

2. General Description of the Law

This Act creates a statewide foster care advisory council which is designed to advise the Department of Children and Family Services with respect to all matters involving or affecting the provision of foster care to abused, neglected or dependent children and their families. 20 ILCS 525/5-5.

3. Rules Promulgated Under the Law

None. No administrative rules have been promulgated under this law.

4. Key Provisions

None. There are no provisions of this Act addressing the issues raised by the HIPAA preemption analysis.

5. Significant Case Law

None. There is no significant case law addressing the issues raised by the HIPAA preemption analysis.

6. Preemption Analysis Under HIPAA

The Statewide Foster Care Advisory Counsel Law creates an advisory council. The Act does not address the privacy of health information.

It is possible to comply with this law and HIPAA. Further, this law does not stand as an obstacle to accomplishing the full purpose of HIPAA. Therefore, the law is not "contrary" to the HIPAA regulations. 45 C.F.R. §160.202.

7. Is the Law Preempted?

No.

1. Name and Citation of Law

Department of Human Services Act (20 ILCS 1305/1-1)

2. General Description of the Law

This Act creates the Department of Human Services and centralizes certain human services programs. 20 ILCS 1305/1-5.

3. Rules Promulgated Under the Law

89 Ill. Admin. Code 509.10 *et seq*., Administrative Record Keeping, Department of Human Services

4. Key Provisions

20 ILCS 1305/1-25, Unified Electronic Management and Intake Information and Recording System

5. Significant Case Law

None. There is no significant case law addressing the issues raised by the HIPAA preemption analysis.

6. Preemption Analysis Under HIPAA

The Department of Human Services Act generally does not involve health care or health care providers. The Act does provide for an electronic management system to collect intake information. 20 ILCS 1305/1-25.

It is possible to comply with this law and HIPAA. Further, this law does not stand as an obstacle to accomplishing the full purpose of HIPAA. Therefore, the law is not "contrary" to the HIPAA regulations. 45 C.F.R. §160.202.

7. Is the Law Preempted?

No.

1. Name and Citation of Law

Domestic Violence Shelters Act (20 ILCS 1310/0.01)

2. General Description of the Law

The Domestic Violence Shelters Act provides that the Department of Human Services shall administer domestic violence shelters and service programs or provide for their administration by not for profit corporations with whom the Department has contracts. 20 ILCS 1310/2.

3. Rules Promulgated Under the Law

89 Ill. Admin. Code 130.200, Domestic Violence Programs, Administration

4. Key Provisions

None. There are no provisions of this Act addressing the issues raised by the HIPAA preemption analysis.

5. Significant Case Law

None. There is no significant case law addressing the issues raised by the HIPAA preemption analysis.

6. Preemption Analysis Under HIPAA

The Illinois Domestic Violence Shelters Act does not anticipate the release of protected health information to service providers. Accordingly, the Act is not preempted by the Privacy Rule.

It is possible to comply with this law and HIPAA. Further, this law does not stand as an obstacle to accomplishing the full purpose of HIPAA. Therefore, the law is not "contrary" to the HIPAA regulations. 45 C.F.R. §160.202.

7. Is the Law Preempted?

No.

1. Name and Citation of Law

Illinois Youthbuild Act (20 ILCS 1315/1)

2. General Description of the Law

The Illinois Youthbuild Act establishes programs designed to assist persons who have not finished high school to obtain education job and other training skills. 20 ILCS 1315/5. The Act also provides that youthbuild programs shall include counseling services designed to assist participants to positively participate in society. 20 ILCS 1315/15. Counseling may include outreach, assessments and orientation or individual and peer counseling. Id.

3. Rules Promulgated Under the Law

None. No administrative rules have been promulgated under this law.

4. Key Provisions

20 ILCS 1315/15, Program Requirements

5. Significant Case Law

None. There is no significant case law addressing the issues raised by the HIPAA preemption analysis.

6. Preemption Analysis Under HIPAA

In general, the Illinois Youthbuild Act does not involve protected health information or health care providers. The Youthbuild programs are to provide counseling services to assist participants in positively participating in society. 20 ILCS 1315/15. Referral to appropriate drug rehabilitation, medical, mental health, and other treatments is anticipated by the Act. 20 ILCS 1315/15. As participation in the program is voluntary, should it become necessary for any protected health information to be released to the Youthbuild program, an appropriate authorization can be obtained. 45 C.F.R. §164.506.

It is possible to comply with this law and HIPAA. Further, this law does not stand as an obstacle to accomplishing the full purpose of HIPAA. Therefore, the law is not "contrary" to the HIPAA regulations. 45 C.F.R. §160.202.

7. Is the Law Preempted?

No.

1. Name and Citation of Law

Assistive Technology Evaluation and Training Centers Act (20 ILCS 1320/1)

2. General Description of the Law

The Assistive Technology Evaluation and Training Centers Act provides for the creation of an assistive technology evaluation and training center which shall offer comprehensive services to persons with disabilities regarding assistive technology, including but not limited to individual comprehensive evaluations for technology needs and training. 20 ILCS 1320/10-15.

3. Rules Promulgated Under the Law

None. No administrative rules have been promulgated under this law.

4. Key Provisions

None. There are no provisions of this Act addressing the issues raised by the HIPAA preemption analysis.

5. Significant Case Law

None. There is no significant case law addressing the issues raised by the HIPAA preemption analysis.

6. Preemption Analysis Under HIPAA

The Illinois Assistive Technology Evaluation and Training Centers Act does not involve protected health information or health care providers. Accordingly, the Act is not preempted by the Privacy Rule.

It is possible to comply with this law and HIPAA. Further, this law does not stand as an obstacle to accomplishing the full purpose of HIPAA. Therefore, the law is not "contrary" to the HIPAA regulations. 45 C.F.R. §160.202.

7. Is the Law Preempted?

No.

1. Name and Citation of Law

Civil Administrative Code of Illinois (Department of Insurance) (20 ILCS 1405)

2. General Description of the Law

This Act provides the Department of Insurance with certain powers including consulting with the Department of Public Health, to ensure the feasibility of a child health insurance program and to administer and operate a program to provide assistance and information to senior citizens in relation to insurance matters. 20 ILCS 1405/1405-15.

3. Rules Promulgated Under the Law

None. No administrative rules have been promulgated under this law.

4. Key Provisions

20 ILCS 1405/1405-15, Senior Citizen Assistance and Information Program

5. Significant Case Law

None. There is no significant case law addressing the issues raised by the HIPAA preemption analysis.

6. Preemption Analysis Under HIPAA

The Civil Administrative Code provides powers to the Department of Insurance. One of the powers enumerated includes operation of a consumer assistance program. While disclosures of protected health information will occur, the Department is not a covered entity and the consumer discloses information voluntarily. Accordingly, the Act is not preempted by the Privacy Rule.

It is possible to comply with this law and HIPAA. Further, this law does not stand as an obstacle to accomplishing the full purpose of HIPAA. Therefore, the law is not "contrary" to the HIPAA regulations. 45 C.F.R. §160.202.

7. Is the Law Preempted?

No.

1. Name and Citation of Law

Civil Administrative Code of Illinois (Department of Labor) (20 ILCS 1505/1505-1)

2. General Description of the Law

The Civil Administrative Code relating to the Department of Labor sets forth the powers and duties of the Department, including the power to foster, promote and develop the welfare of wage earners. 20 ILCS 1505/1505-15.

3. Rules Promulgated Under the Law

None. No administrative rules have been promulgated under this law.

4. Key Provisions

None. There are no provisions of this Act addressing the issues raised by the HIPAA preemption analysis.

5. Significant Case Law

None. There is no significant case law addressing the issues raised by the HIPAA preemption analysis.

6. Preemption Analysis Under HIPAA

The Act sets forth the powers and duties of the Illinois Department of Labor and does not involve protected health care information or health care providers. Accordingly, the Act is not preempted by the Privacy Rule.

It is possible to comply with this law and HIPAA. Further, this law does not stand as an obstacle to accomplishing the full purpose of HIPAA. Therefore, the law is not "contrary" to the HIPAA regulations. 45 C.F.R. §160.202.

7. Is the Law Preempted?

No.

1. Name and Citation of Law

Mental Health and Developmental Disabilities Administrative Act (20 ILCS 1705/0.01)

2. General Description of the Law

The Mental Health and Developmental Disabilities Administrative Act is designed to consolidate in one statute the powers and duties of the Department of Human Services relating to mental health and developmental disabilities. 20 ILCS 1705/1.

3. Rules Promulgated Under the Law

2 Ill. Admin. Code 1175.50 *et seq*., Human Services, Rule Making Procedures, Organization
59 Ill. Admin. Code 101.20 *et seq*., Administration
59 Ill. Admin. Code 135.10 *et seq*., Individual Care Grants for Mentally Ill Children

4. Key Provisions

20 ILCS 1705/17, Investigative Powers

5. Significant Case Law

None. There is no significant case law addressing the issues raised by the HIPAA preemption analysis.

6. Preemption Analysis Under HIPAA

The Mental Health and Developmental Disabilities Administrative Act establishes the Department of Human Services as a provider of mental health services. 20 ILCS 1705/4. The Act gives the Department of Human Services general authority to diagnose and treat individuals admitted to the facilities. 20 ILCS 1705/8, 10, 10.1. While these sections generally govern how treatment is conducted, the provisions does not govern the use or disclosure of protected health information. It should be noted that the State-operated mental health facilities are covered entities and will need to comply with the requirements of the Privacy Rule in carrying out their duties. 45 C.F.R. § 160.103.

The Department is also given authority to conduct investigations as necessary to carry out its duties. 20 ILCS 1705/17. Investigatory powers in this situation are healthcare oversight activities. 45 C.F.R. §164.512(d).

It is possible to comply with this law and HIPAA. Further, this law does not stand as an obstacle to accomplishing the full purpose of HIPAA. Therefore, the law is not "contrary" to the HIPAA regulations. 45 C.F.R. §160.202.

7. Is the Law Preempted?

No.

1. Name and Citation of Law

Department of Human Services (Mental Health and Developmental Disabilities) Law (20 ILCS 1710/1710-1)

2. General Description of the Law

Article 1710 of the Administrative Code sets forth powers of the Department of Human Services, as the successor to the Department of Mental Health and Developmental Disabilities.

3. Rules Promulgated Under the Law

None. No administrative rules have been promulgated under this law.

4. Key Provisions

20 ILCS 1710/1710-20, Mental Health and Developmental Disabilities Code
20 ILCS 1710/1710-50, Security Force

5. Significant Case Law

None. There is no significant case law addressing the issues raised by the HIPAA preemption analysis.

6. Preemption Analysis Under HIPAA

The Department of Human Services is authorized to initiate injunction proceedings against a group who may be violating or is about to violate the Mental Health and Developmental Disabilities Code, or any rule under the Code. 20 ILCS 1710/1710-20. (See analysis of the Mental Health and Developmental Disabilities Code at 405 ILCS 5).

The Department of Human Services also has the authority to investigate claims of damages caused by escaped mental health facility residents. 20 ILCS 1710/1710-25, cross referencing 740 ILCS 60/.01. It is unclear under either of these statutes whether the release of protected health information must occur in order for the Department of Human Services to carry out its duties, however, any such disclosures to the Department in order to investigate damages, or to initiate injunctions, should not be covered functions of the Department. Further, should the Department need to access protected health information to prevent a practice in violation of the Mental Health and Developmental Disabilities Code, such disclosure would be a disclosure made voluntarily on the recipient's behalf, or for purposes of health oversight, or in some instances, as a disclosure in furtherance of a law enforcement investigation. 45 C.F.R. §164.512(d), (f). (See, also, the Mental Health and Developmental Disabilities Confidentiality Act at 740 ILCS 110.)

It is possible to comply with this law and HIPAA. Further, this law does not stand as an obstacle to accomplishing the full purpose of HIPAA. Therefore, the law is not

"contrary" to the HIPAA regulations. 45 C.F.R. § 160.202.

7. Is the Law Preempted?

No.

1. Name and Citation of Law

State Guard Act (20 ILCS 1815)

2. General Description of the Law

The State Guard Act provides for the creation of the Illinois State Guard and governs its operation.

3. Rules Promulgated Under the Law

None. No administrative rules have been promulgated under this law.

4. Key Provisions

20 ILCS 1815/17, Tenure of Office - Physical Re-examination

5. Significant Case Law

None. There is no significant case law addressing the issues raised by the HIPAA preemption analysis.

6. Preemption Analysis Under HIPAA

The State Guard Act allows a commander to order an individual under his command to submit to a fitness-for-duty exam no more than once per year. 20 ILCS 1815/17. The Privacy Rule provides that certain uses and disclosures may be made by covered entities for military functions after publication of the purpose in the Federal Register. 45 C.F.R. §164.512(k). In addition, fitness-for-duty examinations can be structured to require execution of an authorization prior to performance of the exam so that the Illinois State Guard may receive appropriate protected health information. 45 C.F.R. §164.508. Any authorizations must meet the requirements of the Privacy Rule. Id.

It is possible to comply with this law and HIPAA. Further, this law does not stand as an obstacle to accomplishing the full purpose of HIPAA. Therefore, the law is not "contrary" to the HIPAA regulations. 45 C.F.R. §160.202.

7. Is the Law Preempted?

No.

1. Name and Citation of Law

Department of Professional Regulation Law (20 ILCS 2105/2105-1)

2. General Description of the Law

The Department of Professional Regulation Law gives general powers and duties to the Department of Professional Regulation in their role as the licensor of numerous professions in the State of Illinois.

3. Rules Promulgated Under the Law

None. No administrative rules have been promulgated under this law.

4. Key Provisions

None. There are no provisions of this Act addressing the issues raised by the HIPAA preemption analysis.

5. Significant Case Law

State ex rel. Department of Professional Regulation v. Manos, 202 Ill. 2d 563, 2002 WL 31722951 (Ill. 2002).

6. Preemption Analysis Under HIPAA

In general, the Department of Professional Regulation Law establishes the authority of the Department to regulate various professions. However, the Illinois Supreme Court has held that the Department of Professional Regulation's ability to review records without consent is limited under the Code of Civil Procedure when using the Department's general subpoena authority. *State ex rel. Department of Professional Regulation v. Manos*, 202 Ill. 2d 563, 2002 WL 31722951 (Ill. 2002) (*construing*, 735 ILCS 5/8-802 and 20 ILCS 2105/2105-105 (formerly 20 ILCS 2105/60d)). In *Manos*, the Court held that the physician-patient privilege, 735 ILCS 5/8-802, applies to dentists and operates to prohibit the Department from issuing a subpoena under §2105-105 for patient records absent consent. Id. This court decision is more stringent that the Privacy Rule, as the Privacy Rule would allow such a disclosure without consent as health oversight. 45 C.F.R. §160.202, 164.512(d).

It is possible to comply with this law and HIPAA. Further, this law does not stand as an obstacle to accomplishing the full purpose of HIPAA. Therefore, the law is not "contrary" to the HIPAA regulations. 45 C.F.R. § 160.202.

7. Is the Law Preempted?

No.

1. Name and Citation of Law

Department of Public Health Act (20 ILCS 2305/1.1)

2. General Description of the Law

The Department of Public Health Act gives the Illinois Department of Public Health the general supervision of the interests of the health and lives of the people of the State. The Department is empowered to quarantine and isolate individuals when necessary.

3. Rules Promulgated Under the Law

77 Ill. Admin. Code 690.1200, Death of a Person Who Had a Known or Suspected Communicable Disease

4. Key Provisions

20 ILCS 2305/2, Powers
20 ILCS 2305/7, Labeling Bodies for Infectious or Communicable Disease

5. Significant Case Law

None. There is no significant case law addressing the issues raised by the HIPAA preemption analysis.

6. Preemption Analysis Under HIPAA

The Illinois Department of Public Health is empowered to quarantine or isolate individuals in order to prevent the probable spread of a dangerously contagious or infectious disease. 20 ILCS 2305/2. Disclosure of protected health information in furtherance of quarantine or isolation activities is allowed as a public health disclosure under the Federal Privacy Regulation. 45 C.F.R. §164.512(b).

Public Health is also empowered to adopt rules for the labeling of bodies suspected to have an infectious or communicable disease. 20 ILCS 2305/7, 77 Ill. Admin. Code 690.1200. The Privacy Rule provides that deceased individuals do not lose their privacy protections. 45 C.F.R. §164.502(f). Again, however, this activity is a release for purposes of public health activities. 45 C.F.R. §164.512(b).

It is possible to comply with this law and HIPAA. Further, this law does not stand as an obstacle to accomplishing the full purpose of HIPAA. Therefore, the law is not "contrary" to the HIPAA regulations. 45 C.F.R. § 160.202.

7. Is the Law Preempted?

No.

1. Name and Citation of Law

Part 10 of the Civil Administrative Code Concerning the Illinois Department of Public Health (20 ILCS 2310/55.56(a)

2. General Description of the Law

This portion of the Civil Administrative Code lays out general responsibilities of the Department of Public Health.

3. Rules Promulgated Under the Law

None. No administrative rules have been promulgated under this law.

4. Key Provisions

None. There are no provisions of this Act addressing the issues raised by the HIPAA preemption analysis.

5. Significant Case Law

None. There is no significant case law addressing the issues raised by the HIPAA preemption analysis.

6. Preemption Analysis Under HIPAA

It is possible to comply with this law and HIPAA. Further, this law does not stand as an obstacle to accomplishing the full purpose of HIPAA. Therefore, the law is not "contrary" to the HIPAA regulations. 45 C.F.R. § 160.202.

7. Is the Law Preempted?

No.

1. Name and Citation of Law

Disabled Persons Rehabilitation Act (20 ILCS 2405).

2. General Description of the Law

The Disabled Persons Rehabilitation Act provides for rehabilitation and other services to persons with one or more disabilities.

3. Rules Promulgated Under the Law

89 Ill. Admin. Code 730, Illinois Center for Rehabilitation and Education/Community Residential Services for the Blind and Visually Impaired
89 Ill. Admin. Code 750, Rule of Residential Educational Facilities Operated by the Illinois Department of Human Services
89 Ill. Admin. Code 751, Definition of Terms
89 Ill. Admin. Code 755, Admissions Procedures
89 Ill. Admin. Code 765, Special Education Programs and Services
89 Ill. Admin. Code 795, Identification, Evaluation, and Placement of Students
89 Ill. Admin. Code 810, Special Education Personnel
89 Ill. Admin. Code 815, Special Transportation
89 Ill. Admin. Code 827, Rules of Conduct, Discipline, Suspension and Discharge Procedures
89 Ill. Admin. Code 828, Impartial Due Process Hearing
89 Ill. Admin. Code 829, Sex Equity
89 Ill. Admin. Code 830, Non-Economic Programs and Policies
89 Ill. Admin. Code 835, Therkelson/Hansen College Loan Fund

4. Key Provisions

20 ILCS 2405/3, Powers and Duties
20 ILCS 2405/10, Residential Schools; Visual and Hearing Handicaps
20 ILCS 2405/11, Illinois Center for Rehabilitation and Education
20 ILCS 2405/17, Child Abuse and Neglect Reports
89 Ill. Admin. Code 730.400, Medical Services
89 Ill. Admin. Code 730.460, Counseling and Personal Adjustment
89 Ill. Admin. Code 750.300, Need for Surrogate Parents
89 Ill. Admin. Code 755.25, The Application Process
89 Ill. Admin. Code 755.30, Admission of Students with Hearing Impairments
89 Ill. Admin. Code 755.40, Admission of Blind, Visually Impaired, or Deaf-Blind Students
89 Ill. Admin. Code 755.50, Admission of Students with Severe Physical and Health Impairments
89 Ill. Admin. Code 830.50, Health Services

5. Significant Case Law

None. There is no significant case law addressing the issues raised by the HIPAA preemption analysis.

6. Preemption Analysis Under HIPAA

The Disabled Persons Rehabilitation Act provides authority for the Department of Human Services to operate the schools for visual and hearing impaired children and the Illinois Center for Rehabilitation and Education. 20 ILCS 2405/3, 10-11. The Administrative Rules set forth the medical services provided by the State facilities. See, 89 Ill. Admin. Code 730.400, 830.50. In general, the schools provide general medical care to the residential students, excluding hospital services. Costs associated with health services are determined through the care plan, or IEP process. 89 Ill. Admin. Code 830.50(b). Private insurance does not fund services provided to students unless parents incur no financial costs, including a deductible, co-pay, or a decrease in available lifetime coverage. 89 Ill. Admin. Code 830.50(c). Parents are expected to apply for Medicaid. 89 Ill. Admin. Code 830.50(d).

As these services are provided by educational facilities, an initial determination must be made as to whether the schools possess "protected health information". 45 C.F.R. §164.501. The definition of "protected health information" specifically excludes educational records covered by the Family Educational Rights and Privacy Act (FERPA). Id. referencing 20 U.S.C. 1232g. Education records are excluded from the definition of protected health information due to the existing protections contained in FERPA. 45 C.F.R. §164.501, 65 Fed. Reg. 82483 (December 28, 2000). In addition, records described at 20 U.S.C. 1232g, (a)(4)(B)(iv) are excluded from the definition of "protected health information". Id. This exclusion applies to individually identifiable health information of students under 18 created by a nurse in a school receiving federal funds, and also applies to records of students over the age of 18 years who are attending college that are maintained by a health professional only to provide treatment to the student and are not available to anyone except the professional or someone designated by the student. 20 U.S.C. 1232g(a)(4)(B)(iv). Because the State-operated schools receive federal funds, the Privacy Rule does not apply to this health information. The State-operated schools under this Act, however, may need a parental authorization to obtain needed records from other covered entities. The Disabled Persons Rehabilitation Act does not contemplate the use or disclosure of "protected health information".

It is possible to comply with this law and HIPAA. Further, this law does not stand as an obstacle to accomplishing the full purpose of HIPAA. Therefore, the law is not "contrary" to the HIPAA regulations. 45 C.F.R. § 160.202.

7. Is the Law Preempted?

No.

1. Name and Citation of Law

Bureau for the Blind Act (20 ILCS 2410).

2. General Description of the Law

The Bureau for the Blind Act establishes the bureau within the division of the Department of Human Services to administer vocational rehabilitation services under the Federal Rehabilitation Act of 1973.

3. Rules Promulgated Under the Law

None. No administrative rules have been promulgated under this law.

4. Key Provisions

20 ILCS 2410/4, Purposes
20 ILCS 2410/6, Administration

5. Significant Case Law

None. There is no significant case law addressing the issues raised by the HIPAA preemption analysis.

6. Preemption Analysis Under HIPAA

The Act provides that the Bureau shall plan, develop, and evaluate a wide range of services, including advocacy and outreach to help those people in Illinois who are blind to achieve their fullest possible potential. 20 ILCS 2410/4. The bureau must prepare an annual report summarizing its activities which will be an identifiable part of the annual department report. 20 ILCS 2410/6. All evaluations of the quality of service providers to blind people shall be made by qualified persons or consultants especially qualified to make such evaluations. Id. This Act does not involve health care providers or otherwise affect confidential health care information.

It is possible to comply with this law and HIPAA. Further, this law does not stand as an obstacle to accomplishing the full purpose of HIPAA. Therefore, the law is not "contrary" to the HIPAA regulations. 45 C.F.R. § 160.202.

7. Is the Law Preempted?

No.

1. Name and Citation of Law

Blind Persons Operating Vending Facilities Act (20 ILCS 2420)

2. General Description of the Law

The Blind Persons Operating Vending Facilities Act is designed to give blind persons opportunities to operate vending facilities in public buildings.

3. Rules Promulgated Under the Law

89 Ill. Admin. Code 650, Vending Facility Program for the Blind

4. Key Provisions

None. There are no provisions of this Act addressing the issues raised by the HIPAA preemption analysis.

5. Significant Case Law

None. There is no significant case law addressing the issues raised by the HIPAA preemption analysis.

6. Preemption Analysis Under HIPAA

It is possible to comply with this law and HIPAA. Further, this law does not stand as an obstacle to accomplishing the full purpose of HIPAA. Therefore, the law is not "contrary" to the HIPAA regulations. 45 C.F.R. § 160.202.

7. Is the Law Preempted?

No.

1. Name and Citation of Law

Domestic Abuse of Disabled Adults Intervention Act (20 ILCS 2435).

2. General Description of the Law

The Domestic Abuse of Disabled Adults Intervention Act was designed to prevent, reduce and eliminate abuse, neglect, and exploitation of adults with disabilities. The Act also is designed to provide for the reporting and assessment of alleged or suspected abuse, neglect and exploitation of adults with disabilities. The final purpose of the Act is to collect information on the incidents of abuse and neglect and exploitation of adults with disabilities and other data to aid in the establishment and coordination and provision of adequate services to adults with disabilities.

3. Rules Promulgated Under the Law

None. No administrative rules have been promulgated under this law.

4. Key Provisions

20 ILCS 2435/25	Reports of Abuse, Neglect or Exploitation of an Adult with Disabilities
20 ILCS 2435/35	Assessment of Reports
20 ILCS 2435/45	Consent
20 ILCS 2435/50	Access of an Adult with Disabilities
10 ILCS 2435/55	Access to Records

5. Significant Case Law

None. There is no significant case law addressing the issues raised by the HIPAA preemption analysis.

6. Preemption Analysis Under HIPAA

The Act provides that any person who has reasonable cause to believe abuse, neglect or exploitation of an adult with disabilities has occurred will report this to the statewide telephone number established under this Act. 20 ILCS 2435/25. The Act also establishes certain immunities from any civil or criminal liability on an account of making the report. Id. The privilege quality of communication between any licensed health care professional or any other person who reports abuse, neglect or exploitation and his or her patient or client shall not apply to situations involving abused, neglected or exploited adults with disabilities. Id. All reports must include, if possible, the name and address of the adult with disabilities, the name and address of the alleged abuser, the nature and extent of the suspected abuse, neglect or exploitation, the possible extent of the injury or condition as a result of the abuse, any evidence of previous abuse, the time, date and location of the incident, the name, address of the reporter and any other information that the reporter believes may be useful in assessing the suspected abuse, neglect or

exploitation. Id.

Upon receiving a report of the alleged abuse, the Act provides consent is to be obtained from the subject of the report so that an assessment may be conducted with respect to the report. 20 ILCS 2435/35. All records concerning reports of abuse, neglect or exploitation of an adult with disabilities and all records generated as a result of the reports shall be confidential and must not be disclosed except as specifically authorized by this Act or other applicable law. 20 ILCS 2435/55. Access to the records, but not access to the identity of the person or persons making a report, may be allowed to the following persons and for the following purposes: (1) adults with disabilities abuse project staff; (2) law enforcement agency investigating alleged or suspected abuse; (3) an adult with disabilities reported to be abused; (4) the court upon its finding that access to the records may be necessary for the determination of an issue before the court; (5) a grand jury upon its determination that access to the records is necessary to the conduct of its official business; (6) for audit or research purposes; (7) the coroner or medical examiner who has reason to believe that abuse or neglect contributed to or resulted in the death of an adult with disabilities; and (8) to the agency designated pursuant to the Protection and Advocacy for Developmentally Disabled Persons Act and the Protection of Advocacy for Mentally Ill Persons Act.

Disclosures of protected health information in conjunction with the report of suspected abuse or neglect are allowed by the Privacy Rule if the standards of the Rule are met. 45 C.F.R. §164.512(d). It should be noted that the Privacy Rule generally requires a covered entity to report disclosures of protected health information for reporting abuse to the subject of the protected health information unless informing the individual would place the individual at further risk of serious harm. 45 C.F.R. §164.512(c)(2).

It is possible to comply with this law in HIPAA. Further, this law does not stand as an obstacle to accomplishing the full purpose of HIPAA. Therefore, the law is not "contrary" to the HIPAA regulations. 45 C.F.R. § 160.202.

7. Is the Law Preempted?

No.

1. Name and Citation of Law

Department of Revenue Law (20 ILCS 2505/2505-1)

2. General Description of the Law

The Department of Revenue Law sets forth the general powers and duties of the Illinois Department of Revenue.

3. Rules Promulgated Under the Law

None. No administrative rules have been promulgated under this law.

4. Key Provisions

None. There are no provisions of this Act addressing the issues raised by the HIPAA preemption analysis.

5. Significant Case Law

None. There is no significant case law addressing the issues raised by the HIPAA preemption analysis.

6. Preemption Analysis Under HIPAA

None of the provisions of this Act relate to health information.

It is possible to comply with this law and HIPAA. Further, this law does not stand as an obstacle to accomplishing the full purpose of HIPAA. Therefore, the law is not "contrary" to the HIPAA regulations. 45 C.F.R. § 160.202.

7. Is the Law Preempted?

No.

1. Name and Citation of Law

Department of State Police Law (20 ILCS 2605/2605-1)

2. General Description of the Law

The Department of State Police Law sets forth the general powers and duties of the Department of State Police.

3. Rules Promulgated Under the Law

20 Ill. Admin. Code 1200, General Hearing Procedures
20 Ill. Admin. Code 1205, Expungement Procedures
20 Ill. Admin. Code 1210, Individual's Right to Review Criminal History Information
20 Ill. Admin. Code 1215, Illinois Uniform Conviction Information Act
20 Ill. Admin. Code 1216, Burial Benefits
20 Ill. Admin. Code 1220, Intergovernmental Drug Enforcement Act
20 Ill. Admin. Code 1240, LEADS
20 Ill. Admin. Code 1260, Intergovernmental Missing Child Recovery Act
20 Ill. Admin. Code 1265, Electronic Transmission of Fingerprints
20 Ill. Admin. Code 1270, Criminal History Background Investigations
20 Ill. Admin. Code 1275, Gang Crime Witness Protection Act
20 Ill. Admin. Code 1280, Sex Offender Registration Act
20 Ill. Admin. Code 1285, Sample Collection for Genetic Marker Indexing
20 Ill. Admin. Code 1286, Breath Alcohol Testing
20 Ill. Admin. Code 1290, Missing Persons Birth Records and School Registration
20 Ill. Admin. Code 1291, Missing Persons Notification
20 Ill. Admin. Code, 1293, Emissions Inspection Training
20 Ill. Admin. Code 1295, Certification and Training of Electronic Criminal Surveillance Officers
20 Ill. Admin. Code 1296, Exempt Conversation Procedures

4. Key Provisions

20 ILCS 2605/2605-200, Investigations of Crime; Enforcement of Laws
20 ILCS 2605/2605-210, Child Abuse or Neglect Investigations
20 ILCS 2605/2605-220, Public Aid Fraud Investigations
20 ILCS 2605/2605-275, Registration of Fictitious Vital Records
20 ILCS 2605/2605-380, Dental Records

5. Significant Case Law

None. There is no significant case law addressing the issues raised by the HIPAA preemption analysis.

6. Preemption Analysis Under HIPAA

The Department of State Police is statutorily authorized to investigate certain crimes. Those crimes include investigations of child abuse or neglect, 20 ILCS 2605/2605-210; public aid fraud, 20 ILCS 2605/2605-220; and falsifying vital records, 20 ILCS 2605/2605-275. Assuming any disclosure of protected health information under these Acts by covered entities can be made for law enforcement purposes in accordance with the Privacy Rule, these statutes are not preempted. 45 C.F.R. §164.512(f).

The Department of State Police is also required to receive and file dental records as part of a national repository for dental records of missing persons and unidentified dead bodies. 20 ILCS 2605/2605-380. (See, analysis of Criminal Identification Act, 20 ILCS 2630.)

It is possible to comply with this law and HIPAA. Further, this law does not stand as an obstacle to accomplishing the full purpose of HIPAA. Therefore, the law is not "contrary" to the HIPAA regulations. 45 C.F.R. § 160.202.

7. Is the Law Preempted?

No.

1. Name and Citation of Law

Criminal Identification Act (20 ILCS 2630)

2. General Description of the Law

The Criminal Identification Act allows the Department of State Police to collect fingerprint and other identifying information of convicted persons. Further, the Act allows the State Police to collect dental records of missing persons.

3. Rules Promulgated Under the Law

20 Ill. Admin. Code 1241, Enforcement Agencies Data System (LEADS)

4. Key Provisions

20 ILCS 2630/9, Dental Examinations and Records

5. Significant Case Law

None. There is no significant case law addressing the issues raised by the HIPAA preemption analysis.

6. Preemption Analysis Under HIPAA

The Criminal Identification Act provides that a county medical examiner or coroner conduct a dental examination of a deceased individual to assist in establishing the identify of the individual. 20 ILCS 2630/9. Coroners and medical examiners are specifically allowed to review protected health information under the Privacy Rule. 45 C.F.R. §164.512(g).

The law also provides that the law enforcement agency investigating a person missing more than 30 days shall make efforts to receive dental records of the missing person from the family or next of kin. 20 ILCS 2630/9(b). If the dentist is a covered entity under the Privacy Rule, the issue becomes whether the individual requesting the information has authority to act as a personal representative in consenting to the release of the information. 45 C.F.R. §164.502(g). The Privacy Rule specifically prohibits the release of dental records to law enforcement officials for purposes of identifying an individual. 45 C.F.R. §164.512(f)(2)(ii). However, as a parent or guardian can act as a personal representative, dental records relating to a child or person subject to a guardianship are releaseable. 45 C.F.R. §164.502. Further, if the missing person is the possible victim of abuse, neglect, or domestic violence, the exemption for such disclosures may be available. 45 C.F.R. §164.512(c). Another reason for the dentist's release of the information may be the exception in the Privacy Rule for disclosures concerning a victim of a crime, as the individual is unable to consent and the law enforcement official needs the information to determine whether a crime has been committed. 45 C.F.R. §164.512(f)(3). Finally, law enforcement may obtain a court order for release of the

information. 45 C.F.R. §164.512(e).

In limited circumstances, this law may be preempted. For example, if the missing person is an adult who is not suspected to be the victim of a crime, there appears to be no direct exception allowing the release of records absent a court order.

7. Is the Law Preempted?

Partially. Portions of the Criminal Identification Act, 20 ILCS 2630/9(b), make it possible for someone who is not the personal representative of an individual to request the release of dental records. If, in addition, the records are of a person who does not appear to be the victim of a crime, there is no Privacy Rule exception to allow the release of records. In this situation, a court order should be sought. 45 C.F.R. §164.512(e).

1. Name and Citation of Law

Civil Administrative Code of Illinois (20 ILCS 2705)

2. General Description of the Law

The Civil Administrative Code gives the Department of Transportation power to carry out the powers, duties and functions of the department in maintaining roadways and bridges, regulating aeronautics in the State, and developing a master transportation plan.

3. Rules Promulgated Under the Law

92 Ill. Admin. Code 540.10 *et seq.*, Construction of Pedestrian Overpass
92 Ill. Admin. Code 510.10 *et seq.*, Policy Governing Protective Fencing
92 Ill. Admin. Code 810.10 *et seq.*, Rail Service Assistance Program

4. Key Provisions

None. There are no provisions addressing the issues raised by the HIPAA preemption analysis.

5. Significant Case Law

None. There is no significant case law addressing the issues raised by the HIPAA preemption analysis.

6. Preemption Analysis Under HIPAA

The Civil Administrative Code does not involve protected health information or health care providers. Therefore, it is possible to comply with this law and HIPAA. Further, this law does not stand as an obstacle to accomplishing the full purpose of HIPAA. Therefore, the law is not "contrary" to the HIPAA regulations. 45 C.F.R. §160.202.

7. Is the Law Preempted?

No.

1. Name and Citation of Law

Department of Veterans Affairs Act (20 ILCS 2805/0.01)

2. General Description of the Law

The Department of Veteran Affairs Act establishes the Department of Veteran Affairs which succeeds the Illinois Veterans Commission.

3. Rules Promulgated Under the Law

85 Ill. Admin. Code 101, Rules Governing Educational Opportunities of Children of Deceased Veterans
95 Ill. Admin. Code 102, Rules Governing Payment for Cardage and Erection of Headstone, Marker or Memorial Marker
95 Ill. Admin. Code 103, The Specially Adapted Housing Grants
95 Ill. Admin. Code 104, Rules Governing Payment of Vietnam Veterans Compensation Act
95 Ill. Admin. Code 105, Rules Governing Payment of the "Vietnam Prisoner of War Compensation"
95 Ill. Admin. Code 106, Duties of the Administrators of the Illinois Veterans Homes
95 Ill. Admin. Code 107, Admission to and Discharge from Illinois Veterans Homes
95 Ill. Admin. Code 108, Payment of Maintenance Charges and Income Management at the Illinois Veterans Homes
95 Ill. Admin. Code 109, Funeral and Burial Procedures for Residents of the Illinois Homes
95 Ill. Admin. Code 111, Rules Governing Payment of World War II Veterans Compensation
95 Ill. Admin. Code 112, Rules Governing Payment of Korean Veterans Compensation
95 Ill. Admin. Code 113, Rules Governing the Board of Appeals
95 Ill. Admin. Code 116, MIA/POW Scholarship
95 Ill. Admin. Code 118, Exemption from Camping and Admission Fees
95 Ill. Admin. Code 120, Survivors' Compensation Act Program
95 Ill. Admin. Code 121, Persian Gulf Conflict Veterans' Compensation

4. Key Provisions

20 ILCS 2805/2.01, Veterans Homes; Admission Requirements
20 ILCS 2805/2.03, Admissions
20 ILCS 2805/3, Administrative Office; Field Offices; Records
95 Ill. Admin. Code 106.10, Duties

5. Significant Case Law

None. There is no significant case law addressing the issues raised by the HIPAA preemption analysis.

6. Preemption Analysis Under HIPAA

The Illinois Department of Veteran Affairs operates nursing homes in the State of Illinois for use by veterans as defined in the Act. 20 ILCS 2805/2.01. The veterans homes are authorized to collect health benefits to which a resident may become entitled to through insurance or public funding. 20 ILCS 2805/2.03. The administrator of each Illinois veterans home is responsible for the operation of the home in accordance with State and federal laws and regulation. 95 Ill. Admin. Code 106.10. Neither the statute nor State administrative code contain provisions for the use or disclosure of health information. Therefore, it will be necessary for the veterans homes, as covered entities, to comply with the Privacy Rule. 45 C.F.R. §164.501.

It is possible to comply with this law and HIPAA. Further, this law does not stand as an obstacle to accomplishing the full purpose of HIPAA. Therefore, the law is not "contrary" to the HIPAA regulations. 45 C.F.R. §160.202

7. Is the Law Preempted?

No.

1. Name and Citation of Law

Illinois Emergency Management Agency Act (20 ILCS 3305/1)

2. General Description of the Law

The Illinois Emergency Management Agency Act was created to establish the Illinois Emergency Management Agency and to establish emergency management programs necessary to address disasters in the state including fires, floods, earthquakes, telecommunication failures, and other natural or technological causes. 20 ILCS 3305/2, 4.

3. Rules Promulgated Under the Law

29 Ill. Admin. Code 110, Training and Education Programs
29 Ill. Admin. Code 301, Political Subdivision Emergency Services and Disaster Agencies
29 Ill. Admin. Code 320, Radiological Protection
29 Ill. Admin. Code 410, Individual and Family Grant Programs
29 Ill. Admin. Code 420, Public Disaster Assistance Program
29 Ill. Admin. Code 430, Emergency and Written Notification of an Incident or Accident Involving a Reportable Hazardous Substance
29 Ill. Admin. Code 610, Development, Annual Review, Coordination of Chemical Safety Contingency Plans
29 Ill. Admin. Code 700, Joint Rules of the Illinois Commerce Commission, the Office of State Fire Marshal, and the Illinois Emergency Management Agency

4. Key Provisions

20 ILCS 3305/4, Definitions
20 ILCS 3305/6, Emergency Management Powers of the Governor
20 ILCS 3305/7, Emergency Powers of the Governor

5. Significant Case Law

None. There is no significant case law addressing the issues raised by the HIPAA preemption analysis.

6. Preemption Analysis Under HIPAA

The Illinois Emergency Management Agency Act creates widespread powers for the Governor in the event of a disaster. 20 ILCS 3305/4. Disaster is defined to mean occurrence or threat of widespread or severe damage, injury or loss of life resulting from natural or other sources. Id. In the event of a disaster, the Governor has the power to secure medicine and other equipment and mobilize emergency services and disaster agencies in advance of the actual disaster. 20 ILCS 3305/6. Gubernatorial proclamation is made to declare a disaster. 20 ILCS 3305/7. Upon such proclamation, the Governor

has emergency powers for 30 days. Id. Pursuant to this authority, the Governor may suspend the provisions of any regulatory statute or administrative rule and utilize all available resources of the State to respond to the disaster. Id. The Governor may order evacuation in any area of the State, control ingress and egress from a disaster area, and control, restrict or regulate food, fuel, clothing and other commodities. Id. The Governor also has the power to possess or acquire personal property, including medicines and medical and surgical supplies and to use real property necessary to accomplish any of the objectives in averting a disaster. Id.

Pursuant to the foregoing broad powers, the State may come into possession of protected health information. The HIPAA privacy regulation specifically permits a covered entity to release health information to a public or private entity authorized by law or by its charter to assist in disaster relief efforts. 45 C.F.R. §164.510(b)(4). Further, releases and disclosures of protected health information are generally allowed under the Privacy Rule when required by law, and to engage in public health activities. 45 C.F.R. §164.512(a), (b).

In addition, in the event of a disaster, many individuals will seek assistance voluntarily, and therefore, will either be receiving treatment as defined in the Privacy Rule, or will execute an authorization for the release of their health information. 45 C.F.R. §164.502, 164.508.

It is possible to comply with this law and HIPAA. Further, this law does not stand as an obstacle to accomplishing the full purpose of HIPAA. Therefore, the law is not "contrary" to the HIPAA regulations. 45 C.F.R. §160.202

7. Is the Law Preempted?

No.

1. Name and Citation of Law

Illinois Health Facilities Authority Act (20 ILCS 3705/1).

2. General Description of the Law

The Illinois Health Facilities Authority Act creates the Health Facilities Authority which consists of a board of seven members and is designed to provide assistance and alternative methods of financing to participating health institutions to aid them in providing needed health facilities that will assure admission and care of high quality to all who need it. 20 ILCS 3705/6. The Authority is also to assist in dealing with the cash requirements of healthcare facilities whether resulting from capital expenditures, operating expenditures, delays in the receipt of payments for services, or otherwise. Id.

3. Rules Promulgated Under the Law.

77 Ill. Admin. Code 1400.10 *et seq*., Sale of Bonds

4. Key Provisions

None. There are no provisions addressing the issues raised by the HIPAA preemption analysis.

5. Significant Case Law

None. There is no significant case law addressing the issues raised by the HIPAA preemption analysis.

6. Preemption Analysis Under HIPAA

It is possible to comply with this law and HIPAA. Further, this law does not stand as an obstacle to accomplishing the full purpose of HIPAA. Therefore, the law is not "contrary" to the HIPAA regulations. 45 C.F.R. §160.202.

7. Is the Law Preempted?

No.

1. Name and Citation of Law

Illinois Criminal Justice Information Act (20 ILCS 3930/1).

2. General Description of the Law

The Criminal Justice Information Act is designed to coordinate the use of information in the criminal justice system and encourage the improvement of criminal justice agency procedures and practices with respect to information. 20 ILCS 3930/2. The term "criminal justice system" is defined as including all activities by public agencies pertaining to the prevention or reduction of crime or enforcement of the criminal law. 20 ILCS 3930/3. The Act creates a Criminal Justice Information Authority designed to develop and operate comprehensive information systems, develop policy, conduct research, and monitor the operation of existing criminal justice information systems. 20 ILCS 3930/4-7.

3. Rules Promulgated Under the Law.

20 Ill. Admin. Code 1500, The Uniform Consideration of Annual and Periodic Audits of the State Central Depositories for Criminal History Records
20 Ill. Admin. Code 1510, The Uniform Consideration of Administrative Appeals
20 Ill. Admin. Code 1520, Operating Procedures for the Administration of Federal Funds
20 Ill. Admin. Code 1550, Procedures for Approving the Form and Manner of Reporting Arrest, Charge, and Disposition Information to the Department of State Police
20 Ill. Admin. Code 1580, Operating Procedures for the Administration of Non-Federal Grant Funds
20 Ill. Admin. Code 1570, Fees for Processing Requests for Conviction Information
20 Ill. Admin. Code 1580, Protection of Human Subjects and Research Conducted by the Authority

4. Key Provisions

20 Ill. Admin. Code 3930/2, Purpose of Act
20 Ill. Admin. Code 3930/3, Definitions
20 Ill. Admin. Code 3930/7, Powers and Duties
20 Ill. Admin. Code 3930/7.1, Sexual Assault Nurse Examiner Pilot Program
20 Ill. Admin. Code 1580.3, Institutional Review Board Procedures
20 Ill. Admin. Code 1580.50, Expedited Review

5. Significant Case Law

None. There is no significant case law addressing the issues raised by the HIPAA preemption analysis.

6. Preemption Analysis Under HIPAA

The Criminal Justice Information Authority is created to coordinate the use of

information in the criminal justice system and to stimulate research and development of new methods and uses of criminal information to improve the justice system and reduce crime while protecting a citizen's right to privacy. 20 Ill. Admin. Code 3930/2. The powers and duties of the Criminal Justice Information Authority include the duty to undertake research studies involving the use of human subjects. 20 ILCS 3930/7. Research involving human subjects requires approval by the institutional review board of the Criminal Justice Information Authority. 20 Ill. Admin. Code 1580.40. An expedited review process is also available for certain research. 20 Ill. Admin. Code 1580.50. Research is not a covered function under the HIPAA privacy regulation, so such activity does not render the Authority a covered entity. However, an authorization must be obtained from individuals prior to seeking their health information. 45 C.F.R. §164.508.

The Criminal Justice Information Authority is also to conduct a sexual assault nurse examiner pilot program. 20 ILCS 3930/7.1. The function of this program is to provide trained sexual assault nurse examiners to collect forensic evidence in the emergency room. Because the collection of forensic evidence is not treatment as defined in the Privacy Rule, an authorization will be necessary from the patient before obtaining protected health information for use in the forensic analysis. 45 C.F.R. §164.508. Covered entities may also disclose protected health information in response to a law enforcement official's request for information about an individual who is suspected to be a victim of a crime, if consistent with the Privacy Rule. 45 C.F.R. §164.512(f)(3).

It is possible to comply with this law and HIPAA. Further, this law does not stand as an obstacle to accomplishing the full purpose of HIPAA. Therefore, the law is not "contrary" to the HIPAA regulations. 45 C.F.R. §160.202.

7. Is the Law Preempted?

No.

1. Name and Citation of Law

Deaf and Hard of Hearing Commission Act (20 ILCS 3932/1).

2. General Description of the Law

The Deaf and Hard of Hearing Commission Act establishes a commission composed of eleven members designed to coordinate and advocate policy on behalf of the interests of persons in Illinois who are deaf or hard of hearing. 20 ILCS 3932/25.

3. Rules Promulgated Under the Law

None. No administrative rules have been promulgated under this law.

4. Key Provisions

None. There are no provisions addressing the issues raised by the HIPAA preemption analysis.

5. Significant Case Law

None. There is no significant case law addressing the issues raised by the HIPAA preemption analysis.

6. Preemption Analysis Under HIPAA

It is possible to comply with this law and HIPAA. Further, this law does not stand as an obstacle to accomplishing the full purpose of HIPAA. Therefore, the law is not "contrary" to the HIPAA regulations. 45 C.F.R. §160.202.

7. Is the Law Preempted?

No.

1. Name and Citation of Law

Experimental Organ Transplantation Procedures Act (20 ILCS 3935)

2. General Description of the Law

The Experimental Organ Transplantation Procedures Act establishes the Illinois Experimental Organ Transplantation Procedures Board which consists of 13 members. (20 ILCS 3935/2). Powers of the Board include determining an individual applicant's clinical eligibility for a given viable experimental procedure, and to recommend to the Director of Public Health approval of the disbursement of appropriate funds therefor. (20 ILCS 3935/3). The Board is also designed to develop and disseminate to Illinois hospitals appropriate protocols for the procurement, processing, distribution, and use of human organs, tissues and other body parts, to provide guidance for persons and hospitals engaged in such activities and to promote the availability of organ transplants in Illinois. Id.

3. Rules Promulgated Under the Law

77 Ill. Admin. Code 2800.101 *et seq.*, Transplantation Program
20 ILCS 3935/4, Determination of an Individual Transplant Candidate's Eligibility.

4. Key Provisions

None. There are no provisions addressing the issues raised by the HIPAA preemption analysis.

5. Significant Case Law

None. There is no significant case law addressing the issues raised by the HIPAA preemption analysis.

6. Preemption Analysis Under HIPAA

Individuals voluntarily apply for services under the Act. Activities under the Act are related to "treatment" and "payment". 45 C.F.R. §164.502. In addition, the release of protected health information to a public health authority engaging in public health activities is allowed under the Privacy Rule. 45 C.F.R. §164.512 (b). It does not appear that protected health information is needed to perform the functions of protocol development and dissemination. 20 ILCS 3935/3.

It is possible to comply with this law and HIPAA. Further, this law does not stand as an obstacle to accomplishing the full purpose of HIPAA. Therefore, the law is not "contrary" to the HIPAA regulations. 45 C.F.R. §160.202.

7. Is the Law Preempted?

No.

1. Name and Citation of Law

Geriatric Medicine Assistance Act (20 ILCS 3945/1)

2. General Description of the Law

The Geriatric Medicine Assistance Act creates the Geriatric Medicine Assistance Commission which is designed to receive and approve application for grants from schools authorized to confer Doctor of Medicine, Doctor of Osteopathy, Doctor of Chiropractic or Registered Professional Nursing Degrees in the State. These grants are designed to help finance the establishment of Geriatric Medicine Programs within such schools.

3. Rules Promulgated Under the Law

None. No administrative rules have been promulgated under this law.

4. Key Provisions

None. There are no provisions addressing the issues raised by the HIPAA preemption analysis.

5. Significant Case Law

None. There is no significant case law addressing the issues raised by the HIPAA preemption analysis.

6. Preemption Analysis Under HIPAA

The Geriatric Medicine Assistance Act does not involve protected health information or health care providers. Accordingly, the Act is not preempted by the privacy rule.

It is possible to comply with this law and HIPAA. Further, this law does not stand as an obstacle to accomplishing the full purpose of HIPAA. Therefore, the law is not "contrary" to the HIPAA regulations. 45 C.F.R. §160.202.

7. Is the Law Preempted?

No.

1. Name and Citation of Law

Governor's Council on Health and Physical Fitness Act (20 ILCS 3950/1)

2. General Description of the Law

This Act creates the Governor's Council on Health and Physical Fitness. 20 ILCS 3950/2. The mission of the Council is to encourage Illinois citizens to participate more actively in health and fitness activities in order to help them live healthier, happier and more productive lives. 20 ILCS 3950/2.1. The Governor's Health and Physical Fitness Advisory Committee is also created. 20 ILCS 3950/4. The duties of the Advisory Committee are not fully set forth.

3. Rules Promulgated Under the Law

None. No administrative rules have been promulgated under this law.

4. Key Provisions

None. There are no provisions addressing the issues raised by the HIPAA preemption analysis.

5. Significant Case Law

None. There is no significant case law addressing the issues raised by the HIPAA preemption analysis.

6. Preemption Analysis Under HIPAA

It is possible to comply with this law and HIPAA. Further, this law does not stand as an obstacle to accomplishing the full purpose of HIPAA. Therefore, the law is not "contrary" to the HIPAA regulations. 45 C.F.R. §160.202.

7. Is the Law Preempted?

No.

1. Name and Citation of Law

Guardianship and Advocacy Act (20 ILCS 3955/1)

2. General Description of the Law

The Guardianship and Advocacy Act establishes the Guardianship and Advocacy Commission, including the establishment as divisions of the Commission, the Legal Advocacy Service, the Human Rights Authority, and the Office of State Guardian. 20 ILCS 3955/3.

3. Rules Promulgated Under the Law

59 Ill. Admin. Code 301.10 *et seq.*, Fee Schedule
59 Ill. Admin. Code 310.10 *et seq.*, Human Rights Authority
59 Ill. Admin. Code 350.100 *et seq*., Legal Advocacy Service
59 Ill. Admin. Code 400.10 *et seq*., Grants

4. Key Provisions

20 ILCS 3955/12 Service Attorney; Access to Records; Consultations.
20 ILCS 3955/18 Written Materials; Inspections and Copying; Objections
20 ILCS 3955/19 Disclosure; Confidential Information; Consent
20 ILCS 3955/21 Closed Meetings and Hearings; Summary of Business
59 Ill. Admin. Code 310.20, Confidentiality

5. Significant Case Law

None. There is no significant case law addressing the issues raised by the HIPAA preemption analysis.

6. Preemption Analysis Under HIPAA

The Guardianship and Advocacy Act in and of itself does not involve heath care providers. However, the Act provides oversight, including providing legal representation to citizens so that they may enforce rights or duties arising out of any mental health or related law. 20 ILCS 3955/10. An attorney who is appointed has access to view and copy all of the mental health records pertaining to his client. 20 ILCS 3955/12. The Act also establishes regional authorities that may conduct investigations on complaints received alleging that the rights of an eligible person have been violated in their region. 20 ILCS 3955/15. The authority to investigate such complaints includes the power to enter and inspect the premises of service providers at issue. 20 ILCS 3955/17. Regional authorities may also inspect and copy any materials relevant to the investigation. 20 ILCS 3955/18. However, a regional authority may not inspect or copy materials containing "personally identifiable data" which cannot be removed without imposing an unreasonable burden on the service provider. Id. The Act provides that the regional authority must give written notice to the person entitled to give consent for the resident

that an investigation is being conducted, the nature and purpose of the investigation, and the need to inspect and copy materials contained in data that identifies the eligible person. Id. 59 Ill. Admin. Code 310.80. If the person notified objects in writing to such inspection and copying, the regional authority may not inspect or copy such materials. 20 ILCS 3955/18. The service provider may not object on behalf of the eligible person. Id. In addition, the Act provides that no regional authority "may disclose to any person any materials which identify an eligible person unless the eligible person or legally authorized person consents to such disclosure, except if and to the extent that disclosure may be necessary for the appointment of a guardian for such eligible person." 20 ILCS 3955/19.

The provisions of the Act relating to the Commission's investigatory powers relate to health oversight activities and are accordingly permitted under 45 C.F.R. 164.512(d) of the Privacy Rule. Further, in situations where the Guardianship and Advocacy Commission is acting on behalf of an individual receiving services, it also appears to be acting as a personal representative for the individual as someone "empowered by State law to act on behalf of the service recipient". 45 C.F.R. §164.502(g). Disclosures to the Guardianship and Advocacy Commission can also be viewed as a disclosure required by law. 45 C.F.R. §164.512(a).

It is possible to comply with this law and HIPAA. Further, this law does not stand as an obstacle to accomplishing the full purpose of HIPAA. Therefore, the law is not "contrary" to the HIPAA regulations. 45 C.F.R. §160.202.

7. Is the Law Preempted?

No.

1. Name and Citation of Law

Illinois Health Facilities Planning Act (20 ILCS 3960/1)

2. General Description of the Law

The Illinois Health Facilities Planning Act is designed to establish a procedure for reversal of the trends of increasing costs of health care resulting from unnecessary construction or modification of health care facilities. 20 ILCS 3960/2. The Act establishes certain procedures designed to ensure health care facilities are constructed by persons with proper qualifications and that such facilities meet identified needs. Id. No person may establish, construct or modify an institution, place, building or room used for the performance of outpatient surgical procedures that is leased, owned or operated by or on behalf of an out-of-state facility without first obtaining a permit from the State Board. 20 ILCS 3960/5.2.

3. Rules Promulgated Under the Law

77 Ill. Admin. Code 1100.10 *et seq.*, Narrative and Planning Policies
77 Ill. Admin. Code 1110, Processing, Classification Policies and Review Criteria
77 Ill. Admin. Code 1120, Health Facilities Planning Financial and Economic Feasibility Review
77 Ill. Admin. Code 1130, Health Facilities Planning Procedural Rules
77 Ill. Admin. Code 1140.10 *et seq.*, Hearing and Comment Procedures
77 Ill. Admin. Code 1160, Processing and Application for Permit and Validity of Permit
77 Ill. Admin. Code 1170, Criteria and Procedure for Recognition of Area Wide Health Planning Organizations for Health Facilities
77 Ill. Admin. Code 1180.10 *et seq.*, Administrative Hearings, Practice and Procedure
77 Ill. Admin. Code 1190, Permit Application Fees
77 Ill. Admin. Code 1210, Standards and Criteria for Review of Applications for Permit for Technologically Innovative Equipment
77 Ill. Admin. Code 1235, Health Care Workers Self-Referral
77 Ill. Admin. Code 1240, Financial and Economic Feasibility Review and Evaluation Plan
77 Ill. Admin. Code 1250, Appropriateness Review
77 Ill. Admin. Code 1260, State Board Policy Statement Regarding Reserved Bed Capacity

4. Key Provisions

None. There are no provisions addressing the issues raised by the HIPAA preemption analysis.

5. Significant Case Law

None. There is no significant case law addressing the issues raised by the HIPAA preemption analysis.

6. Preemption Analysis Under HIPAA

The Certificate of Need permit process does not involve the review of protected health information. It is possible to comply with this law and HIPAA. Further, this law does not stand as an obstacle to accomplishing the full purpose of HIPAA. Therefore, the law is not "contrary" to the HIPAA regulations. 45 C.F.R. §160.202.

7. Is the Law Preempted?

No.

1. Name and Citation of Law

Laboratory Review Board Act (20 ILCS 3980/1)

2. General Description of the Law

The Laboratory Review Board Act creates the Laboratory Review Board which is designed to examine ways to make more efficient use of the State's present laboratory equipment inventory, including sharing of facilities, personnel and equipment. The Board was also established to examine ways to reduce laboratory backlogs and to establish quality assurance requirements, including peer review procedures or other independent evaluation review methods. 20 ILCS 3980/3. Members of the Laboratory Review Board are appointed by the Director of Agriculture, Natural Resources, Human Services, Public Health, State Police, the Environmental Protection Agency, and the Department of Transportation.

3. Rules Promulgated Under the Law

None. No administrative rules have been promulgated under this law.

4. Key Provisions

None. There are no provisions addressing the issues raised by the HIPAA preemption analysis.

5. Significant Case Law

None. There is no significant case law addressing the issues raised by the HIPAA preemption analysis.

6. Preemption Analysis Under HIPAA

It is possible to comply with this law and HIPAA. Further, this law does not stand as an obstacle to accomplishing the full purpose of HIPAA. Therefore, the law is not "contrary" to the HIPAA regulations. 45 C.F.R. §160.202.

7. Is the Law Preempted?

No.

1. Name and Citation of Law

Persons With Disabilities on State Agency Boards Act (20 ILCS 4007/1).

2. General Description of the Law

The Persons With Disabilities on State Agency Boards Act recognizes the need for persons with disabilities who receive some level of support and funding to have their viewpoints and opinions regarding the services referred by the various agencies in state government who promulgate the standards that govern the administration or operation of the services. 20 ILCS 4007/5. The Act accordingly insures opportunities for participation on various agency advisory boards, legislative commissions, and local community based agency governing boards. 20 ILCS 407/15.

3. Rules Promulgated Under the Law

None. No administrative rules have been promulgated under this law.

4. Key Provisions

None. There are no provisions addressing the issues raised by the HIPAA preemption analysis.

5. Significant Case Law

None. There is no significant case law addressing the issues raised by the HIPAA preemption analysis.

6. Preemption Analysis Under HIPAA

The Persons with Disabilities on State Agency Boards Act requires an individual or a member of their family with a disability to serve on the Citizen's Council on Mental Health and Developmental Disabilities, Advisory Councils under the Department of Human Rights Act, the Guardianship and Advocacy Commission, and the Interagency Coordinating Council. 20 ILCS 4007/10. Some of the agencies charged with including citizens with disabilities on their boards are, in fact, covered entities. These agencies will need to ensure that the individuals serving on these boards are voluntarily disclosing the presence of their disability. The Act does not address the privacy of health information.

It is possible to comply with this law and HIPAA. Further, this law does not stand as an obstacle to accomplishing the full purpose of HIPAA. Therefore, the law is not "contrary" to the HIPAA regulations. 45 C.F.R. §160.202.

7. Is the Law Preempted?

No.

1. Name and Citation of Law

The Illinois Council on Developmental Disabilities Act (20 ILCS 4010/2001).

2. General Description of the Law

The Illinois Council on Developmental Disabilities Act establishes the Illinois Council on Developmental Disabilities as an executive agency of State government. 20 ILCS 4010/2003. The purpose of the Council is to serve as an advocate for all persons with developmental disabilities to assure that they participate in the design of and have access to needed community services, individualized supports and other assistance that promote self-determination and independence. 20 ILCS 4010/2006.

3. Rules Promulgated Under the Law

None. No administrative rules have been promulgated under this law.

4. Key Provisions

None. There are no provisions addressing the issues raised by the HIPAA preemption analysis.

5. Significant Case Law

None. There is no significant case law addressing the issues raised by the HIPAA preemption analysis.

6. Preemption Analysis Under HIPAA

The Illinois Council on Developmental Disabilities Act creates an advisory body which is not required to use individually identifiable health information to carry out its duties.

It is possible to comply with this law and HIPAA. Further, this law does not stand as an obstacle to accomplishing the full purpose of HIPAA. Therefore, the law is not "contrary" to the HIPAA regulations. 45 C.F.R. §160.202.

7. Is the Law Preempted?

No.

1. Name and Citation of Law

Sex Offender Management Board Act (20 ILCS 4026/1).

2. General Description of the Law

The Act creates the Sex Offender Management Board that is charged with standardizing procedures for the evaluation and identification of sex offenders in recommending behavior management, monitoring and counseling. 20 ILCS 4026/15.

3. Rules Promulgated Under the Law

None. No administrative rules have been promulgated under this law.

4. Key Provisions

20 ILCS 4026/15, Sex Offender Management Board; Creation; Duties

5. Significant Case Law

None. There is no significant case law addressing the issues raised by the HIPAA preemption analysis.

6. Preemption Analysis Under HIPAA

The Sex Offender Management Board Act is charged with developing a system of programs for counseling of both juvenile and adult sex offenders which can be utilized by offenders who are on probation, committed to the Department of Corrections or Department of Human Services, or placed on mandatory supervised release or parole. 20 ILCS 4026/15. Although the Board is engaged in designing counseling programs, the Board does not obtain individual health information to carry out its duties. Further, the program design activities of the Board are not a covered function within the meaning of the Privacy Rule. 45 C.F.R. §164.501.

It is possible to comply with this law and HIPAA. Further, this law does not stand as an obstacle to accomplishing the full purpose of HIPAA. Therefore, the law is not "contrary" to the HIPAA regulations. 45 C.F.R. §160.202.

7. Is the Law Preempted?

No.

1. Name and Citation of Law

Illinois Violence Prevention Act of 1995 (20 ILCS 4027/1).

2. General Description of the Law

The Illinois Violence Prevention Act of 1995 establishes the Illinois Violence Prevention Authority which is designed to coordinate State wide violence prevention efforts and develop a State wide plan that incorporates public health and public safety approaches to violence prevention in families, communities and schools. 20 ILCS 4027/10-15.

3. Rules Promulgated Under the Law

None. No administrative rules have been promulgated under this law.

4. Key Provisions

None. There are no provisions addressing the issues raised by the HIPAA preemption analysis.

5. Significant Case Law

None. There is no significant case law addressing the issues raised by the HIPAA preemption analysis.

6. Preemption Analysis Under HIPAA

The Illinois Violence Prevention Authority is a planning authority which does not use identifiable health information. It is possible to comply with this law and HIPAA. Further, this law does not stand as an obstacle to accomplishing the full purpose of HIPAA. Therefore, the law is not "contrary" to the HIPAA regulations. 45 C.F.R. §160.202.

7. Is the Law Preempted?

No.

1. Name and Citation of Law

General Assembly Retirement System (40 ILCS 5/2)

2. General Description of the Law

Article 2 of the Illinois Pension Code creates a retirement system to provide annuities and other benefits for members of the General Assembly, certain elected states officials, and their beneficiaries.

3. Rules Promulgated Under the Law

Rules Implementing the General Assembly Requirement System, 80 Ill. Admin. Code 1700.10 *et seq*.

4. Key Provisions

40 ILCS 5/2-119, Retirement Annuity - Conditions for Eligibility
40 ILCS 5/2-136, To Provide for Examination of Disability Annuitants
80 Ill. Admin. Code 1700.30, Filing of Claims

5. Significant Case Law

None. There is no significant case law addressing the issues raised by the HIPAA preemption analysis.

6. Preemption Analysis Under HIPAA

Article 2 provides for a disability retirement annuity for certain participants who become permanently disabled. 40 ILCS 5/2-119. The General Assembly Retirement System's Board has the power to provide for the examination of disability annuitants by one or more licensed physicians designated by the Board, at least once each year during the continuance of disability prior to age sixty. 40 ILCS 5/2-136.

The regulations promulgated under Article 2 require that a participant applying for disability retirement annuity show the nature and extent of the disability, and the names and addresses of attending physicians. 80 Ill. Admin. Code 1700.30. Such application must be accompanied by a report or reports of the attending physicians showing, among other things, the date and place of the first examination, the cause and nature of the disability, information regarding surgical work or laboratory tests, and a prognosis of the disability. Id. An applicant must also be examined by a physician or physicians

designated by the Board, except that no examinations are required after the participant has attained age 60. Id.

Disability income insurance is an "excepted benefit" listed in section 2791(c)(1) of the Public Health Service Act and, therefore, the Fund is not a health plan or covered entity under the HIPAA regulations. Accordingly, the Privacy Rule does not apply. 42 U.S.C. 300gg-91(c)(1), 45 C.F.R. §160.102. The provisions simply require the particular employee to disclose health information as a condition of disability benefit payments.

It is possible to comply with this law and HIPAA. Further, this law does not stand as an obstacle to accomplishing the full purpose of HIPAA. Therefore, the law is not "contrary" to HIPAA. 45 C.F.R. §160.202.

7. Is the Law Preempted?

No.

1. Name and Citation of Law

Police Pension Fund - Municipalities 500,000 and Under (40 ILCS 5/3)

2. General Description of the Law

Article 3 of the Illinois Pension Code provides for the establishment and administration of a police pension fund in each municipality of 5,000 or more but less than 500,000 inhabitants.

3. Rules Promulgated Under the Law

None. No administrative rules have been promulgated under this law.

4. Key Provisions

40 ILCS 5/3-114.1, Disability Pension - Line of Duty
40 ILCS 5/3-114.2, Disability Pension - Not on Duty
40 ILCS 5/3-114.6, Occupational Disease Disability Pension
40 ILCS 5/3-115, Certificate of Disability
40 ILCS 5/3-116, Examination and Emergency Service
40 ILCS 5/3-136, To Subpoena Witnesses

5. Significant Case Law

None. There is no significant case law addressing the issues raised by the HIPAA preemption analysis.

6. Preemption Analysis Under HIPAA

Article 3 provides for duty, ordinary, and occupational disease disability pensions. 40 ILCS 5/3-114.1, 4-114.2, 3-114.6. The Police Pension Fund may take appropriate steps to verify the applicant's disability. §3-114.1. No disability pension may be paid unless the Fund's Board receives certificates of the police officer's disability subscribed and sworn to by the police officer if not under legal disability, or by a representative if the officer is under legal disability, and by the police surgeon (if one) and 3 practicing physicians selected by the Board. 40 ILCS 5/3-115. The Board may require other evidence of disability as well. Id. Medical examination of a police officer retired for disability must be made at least once each year prior to attainment of age 50, as verification of the continuance of disability for service as a police officer. Id. The Board has the power to compel witnesses to attend and testify before it regarding the medical condition of a police officer in relation to a disability benefit claim. 40 ILCS 5/3-136.

Disability income insurance is an "excepted benefit" listed in section 2791(c)(1) of the Public Health Service Act and, therefore, the Fund is not a health plan or a covered entity under the HIPAA regulation. Accordingly, the Privacy Rule does not apply. 42 U.S.C. 300gg-91(c)(1), 45 C.F.R. §160.102. The provisions simply require the particular employee to disclose health information as a condition of disability benefit payments.

It is possible to comply with this law and HIPAA. Further, this law does not stand as an obstacle to accomplishing the full purpose of HIPAA. Therefore, the law is not "contrary" to HIPAA. 45 C.F.R. §160.202.

7. Is the Law Preempted?

No.

1. Name and Citation of Law

Firefighters' Pension Fund - Municipalities 500,000 and Under (40 ILCS 5/4)

2. General Description of the Law

Article 4 of the Illinois Pension Code provides for the establishment and administration of a firefighters' pension fund in each municipality of 5,000 or more but less than 500,000 inhabitants.

3. Rules Promulgated Under the Law

None. No administrative rules have been promulgated under this law.

4. Key Provisions

40 ILCS 5/4-105b, Permanent Disability
40 ILCS 5/4-110, Disability Pension - Line of Duty
40 ILCS 5/4-110.1, Occupational Disease Disability Pension
40 ILCS 5/4-111, Disability Pension - Not on Duty
40 ILCS 5/4-112, Determination of Disability - Restoration to Active Service
40 ILCS 5/4-123.2, To Subpoena Witnesses

5. Significant Case Law

None. There is no significant case law addressing the issues raised by the HIPAA preemption analysis.

6. Preemption Analysis Under HIPAA

Article 4 provides for duty, occupational and ordinary disability benefits if disability is established by the Fund's Board of examinations by 3 physicians selected by the Board and such other evidence as the Board deems necessary. 40 ILCS 5/4-110, 4-110.1, 4-111, 4-112. Medical examination of a firefighter receiving a disability pension shall be made at least once each year prior to attainment of age 50 in order to verify continuance of disability. 40 ILCS 5/4-112. The Board has the power to compel witnesses to attend and testify before it regarding disability claims. 40 ILCS 5/4-123.1.

Disability income insurance is an "excepted benefit" listed in section 2791(c)(1) of the Public Health Service Act and, therefore, the Fund is not a health plan or a covered entity under the HIPAA regulation. Accordingly, the Privacy Rule does not apply. 42 U.S.C. 300gg-91(c)(1), 45 C.F.R. §160.102. The provisions simply require the particular

employee to disclose health information as a condition of disability benefit payments.

It is possible to comply with this law and HIPAA. Further, this law does not stand as an obstacle to accomplishing the full purpose of HIPAA. Therefore, the law is not "contrary" to HIPAA. 45 C.F.R. §160.202.

7. Is the Law Preempted?

No.

1. Name and Citation of Law

Policemen's Annuity and Benefit Fund - Cities over 500,000 (40 ILCS 5/5)

2. General Description of the Law

Article 5 of the Illinois Pension Code provides for the creation and maintenance of a policeman's annuity and benefit fund for policemen, their widows and children, in each city of more than 500,000 inhabitants.

3. Rules Promulgated Under the Law

None. No administrative rules have been promulgated under this law.

4. Key Provisions

40 ILCS 5/5-115, Disability
40 ILCS 5/5-119, Injury
40 ILCS 5/5-154, Duty Disability Benefit; Child's Disability Benefit
40 ILCS 5/5-154.1, Occupational Disease Disability Benefit
40 ILCS 5/5-155, Ordinary Disability Benefit
40 ILCS 5/5-156, Proof of Disability - Physical Examinations
40 ILCS 5/5-157, Administration of Disability Benefits
40 ILCS 5/5-193, To Subpoena Witnesses

5. Significant Case Law

None. There is no significant case law addressing the issues raised by the HIPAA preemption analysis.

6. Preemption Analysis Under HIPAA

Article 5 provides for duty, occupational and ordinary disability benefits if proof of any such disability is furnished to the Fund's Board by at least one licensed and practicing physician appointed by the Board. 40 ILCS 5/5-154, 5-155, 5-156. The Board may request that an applicant get a second opinion or require other evidence of disability. 40 ILCS 5/5-156. A disabled policeman receiving any disability benefit must be examined at least once a year by one or more physicians appointed by the Board. Id. If a policeman refuses to submit to any such examination, the disability benefit will terminate. 40 ILCS 5/5-157. The Board has the power to compel witnesses to attend and testify before it regarding disability claims. 40 ILCS 5/5-193.

Disability income insurance is an "excepted benefit" listed in section 2791(c)(1) of the Public Health Service Act and, therefore, the Fund is not a health plan or a covered entity under the HIPAA regulation. Accordingly, the Privacy Rule does not apply. 42 U.S.C. 300gg-91(c)(1), 45 C.F.R. §160.102. The provisions simply require the particular employee to disclose health information as a condition of disability benefit payments.

It is possible to comply with this law and HIPAA. Further, this law does not stand as an obstacle to accomplishing the full purpose of HIPAA. Therefore, the law is not "contrary" to HIPAA. 45 C.F.R. §160.202.

7. Is the Law Preempted?

No.

1. Name and Citation of Law

Firemen's Annuity and Benefit Fund - Cities Over 500,000 (40 ILCS 5/6)

2. General Description of the Law

Article 6 of the Illinois Pension Code provides for the creation, setting apart, and maintenance of a firemen's annuity and benefit fund for firemen, their widows, children and parents, in each city of more than 500,000 inhabitants.

3. Rules Promulgated Under the Law

None. No administrative rules have been promulgated under this law.

4. Key Provisions

40 ILCS 5/6-112, Disability - Injury - Occupational Disease
40 ILCS 5/6-151, Duty Disability Benefit - Child's Disability Benefit
40 ILCS 5/6-151.1, Occupational Disease Disability Benefit
40 ILCS 5/6-152, Ordinary Disability Benefits
40 ILCS 5/6-153, Proof of Duty, Occupational Disease or Ordinary Disability - Physical Examinations
40 ILCS 5/6-154, Administration of Disability Benefits
40 ILCS 5/6-189, To Subpoena Witnesses

5. Significant Case Law

None. There is no significant case law addressing the issues raised by the HIPAA preemption analysis.

6. Preemption Analysis Under HIPAA

Article 6 provides for duty, occupational and ordinary disability benefits if proof of any such disability is furnished to the Fund's Board by at least one licensed and practicing physician appointed by the Board. 40 ILCS 5/6-151, 6-151.1, 6-152, 6-153. The board may request that an applicant get a second opinion or require other evidence of disability. 40 ILCS 5/6-153. A disabled fireman receiving any disability benefit must be examined at least once a year by one or more physicians appointed by the Board; however, such annual examination may be waived by the Board if the appointed physician certifies in writing to the Board that the disability is of such a nature as to render the fireman permanently disabled and unable ever to return to service. Id. Without such certification, if a fireman refuses to submit to any required examination, the disability benefit will

terminate. 40 ILCS 5/6-154. The Board has the power to compel witnesses to attend and testify before it regarding disability claims. 40 ILCS 5/6-189.

Disability income insurance is an "excepted benefit" listed in section 2791(c)(1) of the Public Health Service Act and, therefore, the Fund is not a health plan or a covered entity under the HIPAA regulation. Accordingly, the Privacy Rule does not apply. 42 U.S.C. 300gg-91(c)(1), 45 C.F.R. §160.102. The provisions simply require the particular employee to disclose health information as a condition of disability benefit payments.

It is possible to comply with this law and HIPAA. Further, this law does not stand as an obstacle to accomplishing the full purpose of HIPAA. Therefore, the law is not "contrary" to HIPAA. 45 C.F.R. §160.202.

7. Is the Law Preempted?

No.

1. Name and Citation of Law

Illinois Municipal Retirement Fund (40 ILCS 5/7)

2. General Description of the Law

Article 7 of the Illinois Pension Code provides for the creation of a retirement and benefit fund for the purpose of payment of annuities and other benefits to certain officers and employees, and their beneficiaries, of certain municipalities.

3. Rules Promulgated Under the Law

None. No administrative rules have been promulgated under this law.

4. Key Provisions

40 ILCS 5/7-146, Temporary Disability Benefits - Eligibility
40 ILCS 5/7-149, Temporary Disability Benefits - Periodic Checks
40 ILCS 5/7-150, Total and Permanent Disability Benefits - Eligibility
40 ILCS 5/7-153, Total and Permanent Disability Benefits - Periodic Checks
40 ILCS 5/7-181, To Subpoena Witnesses
40 ILCS 5/7-183, To Request Information
40 ILCS 5/7-197, To Keep Permanent Records

5. Significant Case Law

None. There is no significant case law addressing the issues raised by the HIPAA preemption analysis.

6. Preemption Analysis Under HIPAA

Article 7 provides for temporary disability benefits if the Illinois Municipal Retirement Fund's Board has received written certifications from at least one licensed and practicing physician stating that the employee is unable to perform the duties of any position which might reasonably be assigned to him by his employing municipality or instrumentality thereof or participating instrumentality due to mental or physical disability caused by bodily injury or disease, other than as a result of self-inflicted injury or addiction to narcotic drugs. 40 ILCS 5/7-146. Article 7 also provides for total and permanent disability benefits if the board has received a written certification by at least one licensed and practicing physician stating that the employee is unable to engage in any gainful activity because of any medically determinable physical or mental impairment which can be expected to result in death or of a long continued and indefinite duration, other than as

a result of self-inflicted injury or addiction or narcotic drugs. 40 ILCS 5/7-150.

Disability benefit is payable provided the employee: (1) has not refused to submit to a reasonable physical examination by a physician appointed by the Board; and (2) the disability is not the result of certain pre-existing mental or physical conditions. 40 ILCS 5/7-146, 7-149, 7-150, 7-153. The Board must conduct periodic checks to determine if any participating employee is disabled (for temporary benefits) or totally and permanently disabled (for total and permanent disability). 40 ILCS 5/7-149, 7-153. Such checks may consist of periodic examinations by a physician or physicians appointed by the Board, requiring the employee to submit evidence of continuing disability or absence of gainful employment and such other investigations as the Board may deem appropriate. 40 ILCS 5/149, 153.

The Board has the power to compel witnesses to attend meetings and to testify regarding disability claims. 40 ILCS 5/7-181. The Board also has the power to request such information from any participating or covered employee or from any participating or covered municipality or instrumentality thereof or participating instrumentality as is necessary for the proper operation of the fund. 40 ILCS 5/7-183. The Board also has the power to keep a permanent record of all its proceedings and such other records as are necessary or desirable for the administration of the Fund. 40 ILCS 5/7-197. For the protection of participating employees and their beneficiaries, the Board, the Executive Director, and its agents and employees are prohibited from disclosing the contents of the employee's files, records, papers or communications relating to individual employees, except for the purposes directly connected with the administration of the fund. Id. In any judicial or administrative proceeding except as such proceeding is directly concerned with the administration of the fund, such files, records, papers and communications shall be deemed privileged communications. Id.

Disability income insurance is an "excepted benefit" listed in section 2791(c)(1) of the Public Health Service Act and, therefore, the Fund is not a health plan or a covered entity under the HIPAA regulation. Accordingly, the Privacy Rule does not apply. 42 U.S.C. 300gg-91(c)(1), 45 C.F.R. §160.102. The provisions simply require the particular employee to disclose health information as a condition of disability benefit payments.

It is possible to comply with this law and HIPAA. Further, this law does not stand as an obstacle to accomplishing the full purpose of HIPAA. Therefore, the law is not "contrary" to HIPAA. 45 C.F.R. §160.202.

7. Is the Law Preempted?

No.

1. Name and Citation of Law

Municipal Employees', Officers' and Officials' Annuity and Benefit Fund - Cities Over 500,000 Inhabitants (40 ILCS 5/8)

2, General Description of the Law

Article 8 of the Illinois Pension Code provides for the creation, setting apart, maintenance, and administration of an annuity and benefit fund for municipal employees, officers and officials in each city of more than 500,000 inhabitants.

3. Rules Promulgated Under the Law

None. No administrative rules have been promulgated under this law.

4. Key Provisions

40 ILCS 5/8-160, Duty Disability Benefit - Child's Disability Benefit
40 ILCS 5/8-161, Ordinary Disability Benefit
40 ILCS 5/8-162, Proof of Disability, Duty and Ordinary
40 ILCS 5/8-163, When Disability Benefit Not Payable
40 ILCS 5/8-207, To Subpoena Witnesses

5. Significant Case Law

None. There is no significant case law addressing the issues raised by the HIPAA preemption analysis.

6. Preemption Analysis Under HIPAA

Article 8 provides for duty and ordinary disability benefits upon proof of such disability furnished to the Municipal Employees', Officers' and Officials' Annuity and Benefit Fund's Board by at least one licensed and practicing physician appointed by the Board. 40 ILCS 5/8-160, 8-161, 8-162. The Board may require other evidence of disability. 40 ILCS 5/8-162. Each disabled employee who receives duty or ordinary disability benefits must be examined at least once a year by one or more licensed and practicing physicians appointed by the Board. Id. The disability benefit will terminate if an employee refuses to submit to such an examination or fails or refuses to consent to and sign an authorization allowing the Board to receive copies of or examine the employee's medical and hospital records. 40 ILCS 5/8-163. The Board has the power to compel witnesses to attend and testify before it regarding disability claims. 40 ILCS 5/8-207.

Disability income insurance is an "excepted benefit" listed in section 2791(c)(1) of the Public Health Service Act and, therefore, the Fund is not a health plan or a covered entity under the HIPAA regulation. Accordingly, the Privacy Rule does not apply. 42 U.S.C. 300gg-91(c)(1), 45 C.F.R. §160.102. The provisions simply require the particular employee to disclose health information as a condition of disability benefit payments.

It is possible to comply with this law and HIPAA. Further, this law does not stand as an obstacle to accomplishing the full purpose of HIPAA. Therefore, the law is not "contrary" to HIPAA. 45 C.F.R. §160.202.

7. Is the Law Preempted?

No.

1. Name and Citation of Law

County Employees' and Officers' Annuity and Benefit Fund - Counties Over 500,000 Inhabitants (40 ILCS 5/9)

2. General Description of the Law

Article 9 of the Illinois Pension Code provides for the creation, setting apart, maintenance, and administration of an annuity and benefit fund for county employees and officers in each county of more than 3,000,000 inhabitants.

3. Rules Promulgated Under the Law

None. No administrative Rules have been promulgated under this law.

4. Key Provisions

40 ILCS 5/9-156, Duty Disability Benefit - Child's Disability Benefit
40 ILCS 5/9-157, Ordinary Disability Benefit
40 ILCS 5/9-158, Proof of Disability, Duty and Ordinary
40 ILCS 5/9-159, When Disability Benefit Not Payable
40 ILCS 5/9-200, To Subpoena Witnesses

5. Significant Case Law

None. There is no significant case law addressing the issues raised by the HIPAA preemption analysis.

6. Preemption Analysis Under HIPAA

Article 9 provides for duty and ordinary benefits upon proof of such disability furnished to the County Employees' and Officers' Annuity and Benefit Fund's Board by at least one licensed and practicing physician appointed by the Board. 40 ILCS 5/9-156, 9-157, 9-158. The Board may require other evidence of disability. 40 ILCS 5/9-158. Each disabled employee who receives duty or ordinary disability benefits must be examined at least once a year by one or more licensed and practicing physicians appointed by the Board. Id. If an employee refuses to submit to such an examination, the disability benefit will terminate. 40 ILCS 5/9-159. The Board has the power to compel witnesses to attend and testify before it regarding disability claims. 40 ILCS 5/9-200.

Disability income insurance is an "excepted benefit" listed in section 2791(c)(1) of the Public Health Service Act and, therefore, the Fund is not a health plan or a covered entity

under the HIPAA regulation. Accordingly, the Privacy Rule does not apply. 42 U.S.C. 300gg-91(c)(1), 45 C.F.R. §160.102. The provisions simply require the particular employee to disclose health information as a condition of disability benefit payments.

It is possible to comply with this law and HIPAA. Further, this law does not stand as an obstacle to accomplishing the full purpose of HIPAA. Therefore, the law is not "contrary" to HIPAA. 45 C.F.R. §160.202.

7. Is the Law Preempted?

No.

1. Name and Citation of Law

Forest Preserve District Employees' Annuity and Benefit Fund (40 ILCS 5/10)

2. General Description of the Law

Article 10 of the Illinois Pension Code provides for the creation, maintenance and administration of an annuity and benefit fund for employees of forest preserve districts, the boundaries of which are coextensive with the boundaries of a county in which such a fund is created, maintained and administered for county employees under Article 9 of the Illinois Pension Code.

3. Rules Promulgated Under the Law

None. No administrative rules have been promulgated under this law.

4. Key Provisions

None. There are no provisions of this Act addressing the issues raised by the HIPAA preemption analysis.

5. Significant Case Law

None. There is no significant case law addressing the issues raised by the HIPAA preemption analysis.

6. Preemption Analysis Under HIPAA

It is possible to comply with this law and HIPAA. This law does not stand as an obstacle to accomplishing the full purpose of HIPAA. Therefore, the law is not "contrary" to the HIPAA regulations. 45 C.F.R. §160.202.

7. Is the Law Preempted?

No.

1. Name and Citation of Law

Laborers' and Retirement Board Employees' Annuity and Benefit Fund - Cities Over 500,000 Inhabitants (40 ILCS 5/11)

2. General Description of the Law

Article 11 of the Illinois Pension Code provides for the creation, setting apart, maintenance and administration of an annuity and benefit fund in each city of more than 500,000 inhabitants for the benefit of the laborers and retirement board employees and their beneficiaries.

3. Rules Promulgated Under the Law

None. No administrative rules have been promulgated under this law.

4. Key Provisions

40 ILCS 5/11-155, Duty Disability Benefit - Child's Disability Benefit
40 ILCS 5/11-156, Ordinary Disability Benefit
40 ILCS 5/11-157, Proof of Disability, Duty and Ordinary
40 ILCS 5/11-158, When Disability Benefit Not Payable
40 ILCS 5/11-196, To Subpoena Witnesses
40 ILCS 5/11-233, Annuities, etc., Exempt

5. Significant Case Law

None. There is no significant case law addressing the issues raised by the HIPAA preemption analysis.

6. Preemption Analysis Under HIPAA

Article 11 provides for duty and ordinary disability benefits if proof of any such disability is furnished by at least one licensed and practicing physician appointed by the Laborers' and Retirement Board Employees' Annuity and Benefit Fund's Board. 40 ILCS 5/11-155, 11-156, and 11-157. The Board may require other evidence of disability as well. 40 ILCS 5/11-157. Each disabled employee must also be examined at least once a year by one or more licensed and practicing physicians appointed by the Board. Id. If the employee refuses to submit to any such examination, or fails or refuses to consent to and sign an authorization allowing the Board to receive copies of or examine the employee's medical and hospital records, the benefit terminates. 40 ILCS 5/11-158.

Furthermore, whenever an annuity or disability benefit is payable to a person certified by a medical doctor to be under legal disability, the Board may pay the annuity or benefit to the person providing or caring for the person under legal disability. 40 ILCS 5/11-223. The Board may also pay any benefit due a legally disabled person to a Medicare approved, State certified nursing home or to a publically owned and operated nursing home, hospital, or mental institution, where the person is confined, if the person has no spouse, blood relative, or other person providing or caring for him or her and has no guardian of his or her estate. Id. However, any person, nursing home, hospital or mental institution accepting payment must notify the Board of the death or any relevant change in the status of the person under legal disability. Id. The Board may compel witnesses to testify before it regarding the employee's medical condition. 40 ILCS 5/11-196.

Disability income insurance is an "excepted benefit" listed in section 2791(c)(1) of the Public Health Service Act and, therefore, the Fund is not a health plan or a covered entity under the HIPAA regulation. Accordingly, the Privacy Rule does not apply. 42 U.S.C. 300gg-91(c)(1), 45 C.F.R. §160.102. The provisions simply require the particular employee to disclose health information as a condition of disability benefit payments.

To the extent that a covered entity such as a nursing home, hospital or mental institution is required to disclose otherwise protected health information in order to receive disability benefit payments for the provision of medical care of a patient under a legal disability, such disclosure is for purposes of payment and, therefore, will also be allowed under the Privacy Rule. 45 C.F.R. §164.506(a)(1).

It is possible to comply with this law and HIPAA. Further, this law does not stand as an obstacle to accomplishing the full purpose of HIPAA. Therefore, the law is not "contrary" to HIPAA. 45 C.F.R. §160.202.

7. Is the Law Preempted?

No.

1. Name and Citation of Law

Park Employees and Retirement Board Employees' Annuity and Benefit Fund - Cities Over 500,000 (40 ILCS 5/12)

2. General Description of the Law

Article 12 of the Illinois Pension Code provides for the creation, maintenance, administration and disbursement of an annuity and benefit fund for the employees of park systems in each city of more than 500,000 population and having a board of park commissioners.

3. Rules Promulgated Under the Law

None. No administrative rules have been promulgated under this law.

4. Key Provisions

40 ILCS 5/12-140, Duty Disability Benefit
40 ILCS 5/12-142, Ordinary Disability Benefit
40 ILCS 5/12-144, Medical Examinations

5. Significant Case Law

Article 12 provides for duty and ordinary disability benefits, but any employee receiving any such benefit must undergo a medical examination periodically and in any event at least once each year by a physician designated by the Park Employees' and Retirement Board Employees' Annuity and Benefit Fund's Board; otherwise, the benefit payments terminate. 40 ILCS/12-140, 12-142, 12-144.

Disability income insurance is an "excepted benefit" listed in section 2791(c)(1) of the Public Health Service Act and, therefore, the Fund is not a health plan or a covered entity under the HIPAA regulation. Accordingly, the Privacy Rule does not apply. 42 U.S.C. 300gg-91(c)(1), 45 C.F.R. §160.102. The provisions simply require the particular employee to disclose health information as a condition of disability benefit payments.

It is possible to comply with this law and HIPAA. Further, this law does not stand as an obstacle to accomplishing the full purpose of HIPAA. Therefore, the law is not "contrary" to HIPAA. 45 C.F.R. §160.202.

7. Is the Law Preempted?

No.

1. Name and Citation of Law

Sanitary District Employees' and Trustees' Annuity and Benefit Fund (40 ILCS 5/13)

2. General Description of the Law

Article 13 of the Illinois Pension Code provides for the creating, setting apart, maintenance and administration of an annuity and benefit fund for employees of each sanitary district organized under the Metropolitan Water Reclamation District Act.

3. Rules Promulgated Under the Law

None. NO administrative rules have been promulgated under this law.

4. Key Provisions

40 ILCS 5/13-309, Duty disability benefit
40 ILCS 5/13-310, Ordinary disability benefit
40 ILCS 5/13-706, Board powers and duties

5. Significant Case Law

None. There is no significant case law addressing the issues raised by the HIPAA preemption analysis.

6. Preemption Analysis Under HIPAA

Article 13 provides for duty disability benefit if a medical report is submitted by at least one licensed and practicing physician and the employee is examined by at least one licensed and practicing physician appointed by the Sanitary District Employees' and Trustees' Annuity and Benefit Fund's Board and found to be in a disabled physical condition. 40 ILCS 5/13-309. The employee must be re-examined at least annually. Id. The benefit terminates if the employee refuses to submit to reasonable examinations by physicians or other health professionals appointed by the Board, or fails or refuses to consent to and sign an authorization allowing the Board to receive copies of or to examine the employee's medical and hospital records. Id.

Article 13 also provides for an ordinary disability benefit if a medical report is submitted by at least one licensed and practicing physician. 40 ILCS 5/13-310. The benefits terminate if the employee refuses to submit to reasonable physical examination within 30 days of application by a physician appointed by the Board; refuses to join a rehabilitation program licensed by the Department of Public Health of the State of Illinois and certified

by the Joint Commission on the Accreditation of Hospital Organizations (JCAHO) (in the case of chronic alcoholism); or fails or refuses to consent to and sign an authorization allowing the Board to receive copies of or to examine the employee's medical and hospital records. Id.

The Board also has the power to subpoena witnesses and compel them to attend and testify before it regarding the employee's medical condition. 40 ILCS 5/13-706.

Disability income insurance is an "excepted benefit" listed in section 2791(c)(1) of the Public Health Service Act and, therefore, the Fund is not a health plan or covered entity under the HIPAA regulation. Accordingly, the Privacy Rule does not apply. 40 U.S.C. 300gg-91(c)(1), 45 C.F.R. §160.102. The provisions simply require the particular employee to voluntarily disclose health information as a condition of applying for disability benefit payments.

It is possible to comply with this law and HIPAA, and this law does not stand as an obstacle to accomplishing the full purpose of HIPAA. Therefore, the law is not "contrary" to HIPAA. 45 C.F.R. §160.202.

7. It the Law Preempted?

No.

1. Name and Citation of Law

State Employee's Retirement System of Illinois (40 ILCS 5/14)

2. General Description of the Law

Article 14 of the Illinois Pension Code provides for the creation of a retirement and benefit system to provide retirement annuities and other benefits for employees of the State of Illinois.

3. Rules Promulgated Under the Law

Rules Governing the Operating and Administration of the State Employees Retirement System of Illinois, 80 Ill. Admin. Code 1540.5 *et seq*.

4. Key Provisions

40 ILCS 5/14-123, Occupational disability benefits
40 ILCS 5/14-123.1, Temporary disability benefit
40 ILCS 5/14-124, Nonoccupational disability benefit
40 ILCS 5/14-135.10, To subpoena witnesses
80 Ill. Admin. Code 1540.80, Disability Claims (**Title?**)

5. Significant Case Law

None. There is no significant case law addressing the issues raised by the HIPAA preemption analysis.

6. Preemption Analysis Under HIPAA

Article 14 provides for occupational and temporary disability benefits upon proper proof from one or more physicians designated by the State Employees' Retirement System's Board certifying that the member is mentally or physically incapacitated. 40 ILCS 5/14-123, 14-123.1. It also provides for a non-occupational disability benefit if the member is found upon medical examination to be mentally or physically incapacitated to perform the duties of the member's position and when the Board has received a written certificate by one or more licensed and practicing physicians designated by the Board, certifying that the member is disabled and unable to properly perform the duties of the member's position at the time of disability. 40 ILCS 5/14-124. The Board has the power to compel witnesses to attend and testify before it regarding disability claims. 40 ILCS 5/14-135.10.

The regulations promulgated under Article 14 require that, before any disability is approved, one statement be received from a licensed physician attesting to the disability. 80 Ill. Admin. Code 1540.80. The disability examiner may require an additional statement from a second licensed physician depending upon the nature of the disabling condition. Id. All physician's reports must contain, among other things, the date and place of the first examination, the cause and nature of the disability, information regarding surgical work or laboratory tests, the date of last examination, prognosis regarding the member's disability, and an estimate of the probable length of disability. Id. All such reports must also be signed by a licensed practicing physician or by medical records personnel of a licensed clinic. Id. Furthermore, each disability benefit recipient is required to provide a current medical examination report each 6 months to substantiate continued disability. Id. In order to substantiate the member's continued eligibility for disability benefits, the Disability Claims Examiner may require that the member submit to independent medical examinations and may request additional medical statements; hospital records; or other pertinent information, all as deemed reasonable and necessary by the Examiner. Id. If the disability benefit recipient does not submit to an independent medical examination or provide the information required, the benefit payments must be suspended. Id.

Disability income insurance is an "excepted benefit" listed in section 2791(c)(1) of the Public Health Service Act and, therefore, the Fund is not a health plan or covered entity under the HIPAA regulation. Accordingly, the Privacy Rule does not apply. 42 U.S.C. 300gg-91(c)(1), 45 C.F.R. §160.102. The provisions simply require the particular employee to voluntarily disclose health information as a condition of applying for disability benefit payments.

It is possible to comply with this law and HIPAA, and this law does not stand as an obstacle to accomplishing the full purpose of HIPAA. Therefore, the law is not "contrary" to HIPAA. 45 C.F.R. §160.202.

7. Is the Law Preempted?

No.

1. Name and Citation of Law

State Universities' Retirement System (40 ILCS 5/15)

2. General Description of the Law

Article 15 of the Illinois Pension Code creates a retirement system to provide retirement annuities and other benefits for employees of the various State universities, community colleges, institutions, and departments.

3. Rules Promulgated Under the Law

Rules Implementing the State Universities Retirement System 80 Ill. Admin. Code 1600.10 *et seq*.

4. Key Provisions

40 ILCS 5/15-150, Disability benefits – Eligibility
40 ILCS 5/15-152, Disability benefits – Duration
40 ILCS 5/15-153.2, Disability retirement annuity
40 ILCS 5/15-168, to Require information
40 ILCS 5/15-168.1, Testimony and the production of records
40 ILCS 5/15-190, Persons under legal disability
80 Ill. Admin. Code 1600.70, Procedures to be followed in Medial Evaluation of Disability Claims

5. Significant Case Law

None. There is no significant case law addressing the issues raised by the HIPAA preemption analysis.

6. Preemption Analysis Under HIPAA

Article 15 provides for disability and disability retirement benefits if the State Universities' Retirement System's Board determines that the employee is unable to reasonably perform the duties of his or her assigned position as a result of a physical or mental disability, based upon a written certificate from one or more licensed and practicing physicians appointed by or acceptable to the Board, stating that the employee is disabled and unable to reasonably perform the duties of his or her assigned position, and any other medical examinations, hospital records, laboratory results, or other information necessary for determining the employment capacity and condition of the employee. 45 ILCS 5/15-150, 15-153.2. The disability benefit terminates if the

participant refuses to submit to a reasonable physical examination by a physician approved by the Board. 40 ILCS 5/15-152. The Board may require such information as is necessary for the proper operation of the System from any participant or beneficiary. 40 ILCS 5/15-168. The secretary of the Board has the power to issue subpoenas to compel the attendance of witnesses and the production of documents and records in conjunction with a disability claim, which subpoena (See discussion of the Code of Civil Procedure, 735 ILCS 5 is subject to the applicable provisions of the Code of Civil Procedure. 40 ILCS 5/15-168.1. The Board may apply to any circuit court in the State for an order requiring compliance with any such subpoena. Id.

The regulations promulgated under Article 15 require the examining physicians to be the attending physician or physicians designated by the employee and a physician designated by the employer. 80 Ill. Admin. Code 1600.70. However, the Board's Medical Director may appoint a special examining physician or physicians if the nature of the disability or other circumstances so justify, such as if the examining physicians are not in agreement as to whether the employee is disabled. Id. The Medical Director must also secure periodic reports from examining physicians concerning the continued disability of the employee. Id.

Disability income insurance is an "excepted benefit" listed in section 2791(c)(1) of the Public Health Service Act and, therefore, the Fund is not a health plan or covered entity under the HIPAA regulation. Accordingly, the Privacy Rule does not apply. 42 U.S.C. 300gg-91(c)(1), 45 C.F.R. §160.102. The provisions simply require the particular employee to voluntarily disclose health information as a condition of applying for disability benefit payments.

It is possible to comply with this law and HIPAA, and this law does not stand as an obstacle to accomplishing the full purpose of HIPAA. Therefore, the law is not "contrary" to HIPAA. 45 C.F.R. §160.202.

7. Is the Law Preempted?

No.

1. Name and Citation of Law

Teachers' Retirement System of the State of Illinois (40 ILCS 5/16)

2. General Description of the Law

Article 16 of the Illinois Pension Code provides for the creating of the Teachers' Retirement System of the State of Illinois for the purpose of providing retirement annuities and other benefits for teachers, annuitants and beneficiaries.

3. Rules Promulgated Under the Law

The Administration and Operating of the Teachers' Retirement System of the State of Illinois, 80 Ill. Admin .Code 1650.10 *et seq*.

4. Key Provisions

40 ILCS 5/16-149, Disability benefit
40 ILCS 5/16-149.1, Occupational disability benefit
40 ILCS 5/16-149.2, Disability retirement annuity
40 ILCS 5/16-169.1, Testimony and the production fo records
80 Ill. Admin. Code 1650.160, Confidentiality of Records
80 Ill. Admin. Code 1650.202, Disability and Occupational Disability Benefits – Definitions
80 Ill. Admin. Code 1650.203, Disability Retirement Annuity – Definitions
80 Ill. Admin. Code 1650.205, Medical Examinations and Investigation of Disability Claims
80 Ill. Admin. Code 1650.206, Physician Certificates
80 Ill. Admin. Code 1650.207, Disability Due to Pregnancy
80 Ill. Admin. Code 1650.211, Disability Recipient Eligible to Receive and Age or Disability Retirement Annuity

5. Significant Case Law

None. There is no significant case law addressing the issues raised by HIPAA preemption analysis.

6. Preemption Analysis Under HIPAA

Article 16 provides for a disability benefit and occupational disability benefit if the Teachers' Retirement System has received a written certificate by at least two licensed and practicing physicians designated by the System, certifying that the member is

disabled and unable to properly perform the duties of his or her position. 40 ILCS 5/16-149, 16-149.1. Article 16 also provides for a disability retirement annuity payable upon receipt of written certificates from at least two licensed physicians designated by the System verifying the continuation of the disability condition once each year during the first five years following retirement on a disability retirement annuity, and once every three year period thereafter, the System may require an annuitant to undergo a medical examination, by a physician or physicians designated by the System. 40 ILCS 5/16-149.2. If the annuitant refuses to submit to such medical examination, the annuity will be suspended until such time as the annuitant consents to the examination, and if refusal continues for one year, the annuity will be revoked. Id. The secretary of the Board has the power to issue subpoenas to compel the attendance of witnesses and the production of documents and records in conjunction with the disability claim, which subpoenas are subject to applicable provisions of the Code of Civil Procedure. 40 ILCS 5/16-169.1. The Board may apply to any circuit court of the State for an order requiring compliance with any such subpoena. Id.

The regulations promulgated under Article 16 prohibit the Board, its Executive Director, and agents and employees of the System from disclosing the contents of a member's, annuitant's, or beneficiary's files, records, papers, or communications, except for certain specific purposes. Ill. Admin. Code 1650.160. The member applying for or receiving any disability benefit or disability retirement annuity must furnish the System medical records or any other information deemed relevant by the System to process the member's or annuitant's disability claim. 80 Ill. Admin. Code 1650.205. A member or annuitant must also provide the System at least annually, written certifications by two state licensed and practicing physicians verifying that the member remains disabled and is unable to perform the duties of his or her position. Id. Certifications must be accompanied by a medical report. However, this requirement may be waived under certain circumstances. Id. Physician certificates must be completed by the certifying physician or his or her staff, and any such certificate completed in any part by a member is insufficient for purposes of any disability benefit or disability retirement annuity. 80 Ill. Admin. Code 1650.206. If a member elects to retire on a disability retirement annuity or if a disability retirement annuitant who becomes eligible for an age retirement annuity wants to retain disability retirement annuity status, the member or annuitant must submit to medical examinations, unless the member's or annuitant's last examinations within the preceding six months substantiate a continuing disability, in which case no new medical examinations are required. 80 Ill. Admin. Code 1650.205. If the member or annuitant fails to submit to medical examinations or to provide required information, any disability benefit or disability retirement annuity will be suspended. Id. If a disability retirement annuitant who becomes eligible for an age retirement annuity wants to retain disability retirement annuity status, the annuitant must also provide the System written certification by two state licensed and practicing physicians verifying that the member remains disabled and is unable to perform the duties of his or her position. 80 Ill. Admin. Code

1650.211. The certifications must also be accompanied by a medical report fully explaining the basis for the physician's conclusion that the member remains disabled. Id. A member who is disabled due to pregnancy is allowed eight weeks of benefits for a Cesarean delivery and six weeks for a normal delivery, except that if complications arise, the period may be extended, upon the submission of appropriate medical documentation, until the member no longer qualifies for disability benefit. 80 Ill. Admin. Code 1650.207.

Disability income insurance is an "excepted benefit" listed in section 2791(c)(1) of the Public Health Service Act and, therefore, the Fund is not a health plan or covered entity under the HIPAA regulation. Accordingly, the Privacy Rule does not apply. 42 U.S.C. 300gg-91(c)(1), 45 C.F.R. §160.102. The provisions simply require the particular employee to voluntarily disclose health information as a condition of applying for disability benefit payments.

It is possible to comply with this law and HIPAA, and this law does not stand as an obstacle to accomplishing the full purpose of HIPAA. Therefore, the law is not "contrary" to HIPAA. 45 C.F.R. §160.202.

7. Is the Law Preempted?

No.

1. Name and Citation of Law

Public School Teachers' Pension and Retirement Fund - Cities Over 500,000 Inhabitants (40 ILCS 5/17)

2. General Description of the Law

Article 17 of the Illinois Pension Code provides for the creation, maintenance and administration of a public school teachers' pension and retirement fund in each city with a population over 500,000.

3. Rules Promulgated Under the Law

None. No administrative rules have been promulgated under this law.

4. Key Provisions

40 ILCS 5/17-117, Disability retirement pension
40 ILCS 5/17-117.1, Duty disability
40 ILCS 5/17-118, Disability pension administration

5. Significant Case Law

None. There is no significant case law addressing the issues raised by the HIPAA preemption analysis.

6. Preemption Analysis under HIPAA

Article 17 provides for a disability pension retirement pension if the applicant for benefits submits to examination by physicians appointed by the Public School Teachers' Pension and Retirement Fund's Board within one year, and two such physicians declare the applicant to be suffering from a disability which wholly and presumably permanently incapacitates him for teaching or for service as an employee of the Board. 40 ILCS 5/17-117. In the event of disagreement by the physicians, a third such physician must declare the applicant wholly and presumably permanently incapacitated. Id. A disability pensioner may be required to submit evidence and submit to periodic examinations by a physician or physicians appointed by the Board in order to establish whether the disability still exists and th person is still incapacitated. 40 ILCS 5/17-118. Article 17 also provides for a duty disability benefit provided that certification is received from two or more physicians designated by the Fund's Board that the teacher is physically incapacitated from teaching service. 40 ILCS 5/17-117.1.

Disability income insurance is an "exempt benefit" listed in section 2791(c)(1) of the Public Health Service Act and, therefore, the Fund is not a health plan or covered entity under the HIPAA regulation. Accordingly, the Privacy Rule does not apply. 42 U.S.C. 300gg-91(c)(1), 45 C.F.R. §160.1002. The provisions simply require that the particular employee to voluntarily disclose health information as a condition of applying for the benefit payments.

It is possible to comply with this law and HIPAA, and this law does not stand as an obstacle to accomplishing the full purpose of HIPAA. Therefore, the law is not "contrary" to HIPAA. 45 C.F.R. §160.202.

7. Is the Law Preempted?

No.

1. Name and Citation of Law

Judges Retirement System of Illinois (40 ILCS 5/18)

2. General Description of the Law

Article 18 of the Illinois Pension Code provides for the creation and maintenance of a Judges Retirement System of Illinois, the purpose of which is to establish an efficient method of permitting retirement, without hardship or prejudice, of judges who are aged or otherwise incapacitated by enabling them to accumulate reserves for themselves and their dependents for old age, disability, death, and termination of employment.

3. Rules Promulgated Under the Law

Rules Implementing the Judges Retirement System of Illinois, 80 Ill. Admin. Code 1750 *et seq*.

4. Key Provisions

40 ILCS 5/18-124, Retirement annuities – Conditions for Eligibility
40 ILCS 5/18-126, Retirement annuity for permanent disability – Determination of disability
40 ILCS 5/18-126.1, Temporary total disability
40 ILCS 5/18-143, To provide examinations
80 Ill. Admin. Code 1750.40, Retirement for Disability

5. Significant Case Law

None. There is no significant case law addressing the issues raised by the HIPAA preemption.

6. Preemption Analysis Under HIPAA

Article 18 and the regulations promulgated thereunder provide for a retirement annuity for permanent disability upon the receipt by the Judges Retirement System's Board of a written certificate by at least two licensed and practicing physicians appointed by the Board stating that the judge is disabled and that the disability is likely to be permanent. 40 ILCS 5/18-124, 18-126; 80 Ill. Admin. Code 1750.40.

Article 18 also provides for a temporary total disability benefit provided the judge is found by medical examination to be mentally or physically incompetent to perform his or her duties, and the Board has received written certifications by at least two licensed and

practicing physicians designated by it, certifying that the judge is totally disabled and unable to perform the duties of his or her office as a consequence thereof. 40 ILCS 5/18-126.1. The Board has the power to provide for the examination of persons receiving disability annuities prior to age 60, by one or more licensed and practicing physicians designated by the Board, at least one each year during the continuance of disability. 40 ILCS 5/18-143; 40 Ill. Admin. Code 1750.40.

Disability income insurance is an "exempt benefit" listed in section 2791(c)(1) of the Public Health Service Act and, therefore, the Fund is not a health plan or covered entity under the HIPAA regulation. Accordingly, the Privacy Rule does not apply. 42 U.S.C. 300gg-91(c)(1), 45 C.F.R. §160.1002. The provisions simply require that the particular employee to voluntarily disclose health information as a condition of applying for the benefit payments.

It is possible to comply with this law and HIPAA, and this law does not stand as an obstacle to accomplishing the full purpose of HIPAA. Therefore, the law is not "contrary" to HIPAA. 45 C.F.R. §160.202.

7. Is the Law Preempted?

No.

1. Name and Citation of Law

Public Employees' Deferred Compensation Act (40 ILCS 5/24)

2. General Description of the Law

Article 24 of the Illinois Pension Code provides that the State of Illinois or any unit of local government or school district may enter into a written contract with any of its employees to defer a part of their gross compensation and may invest such funds in any such manner as prescribed by the deferred compensation program adopted under the Article.

3. Rules Promulgated Under the Law

State Employees Deferred Compensation Plan, 80 Ill. Admin. Code 2700 *et seq*.

4. Key Provisions

80 Ill. Admin. Code 2700.740, Unforseeable Emergency

5. Significant Case Law

None. There is no significant case law addressing the issues raised by the HIPAA preemption analysis.

6. Preemption Analysis Under HIPAA

The rules provide in accordance with the Internal Revenue Code, 26 U.S.C. 457, that an employee may seek a hardship distribution for an unforseeable emergency. In order to determine whether an unforseeable emergency exists, the hardship committee making the decision is allowed to request medical information. Under these circumstances, the employee will be making a voluntary disclosure of protected health information in order to obtain benefits. Therefore, disclosure from a covered entity is likely to occur from a covered entity only with authorization of the employee. 45 C.F.R. §164.508.

It is possible to comply with this law and HIPAA, and this law does not stand as an obstacle to accomplishing the full purpose of HIPAA. Therefore, the law is not "contrary" to HIPAA. 45 C.F.R. §160.202.

7. Is the Law Preempted?

No.

1. Name and Citation of Law

Interstate Compact on Mental Health Act (45 ILCS 40)

2. General Description of the Law

The Interstate Compact on Mental Health Act establishes a compact on mental health for contracting with other States for the proper and expeditious treatment of mentally ill and mentally deficient persons. 45 ILCS 40/1.

3. Rules Promulgated Under the Law

None. No administrative rules have been promulgated under this law.

4. Key Provisions

None. There are no provisions of this Act addressing the issues raised by the HIPAA preemption analysis.

5. Significant Case Law

None. There is no significant case law addressing the issues raised by the HIPAA preemption analysis.

6. Preemption Analysis Under HIPAA

The Act provides whenever a State's compact administrator (in Illinois the Secretary of Human Services, 45 ILCS 40/2) receives a request for the transfer of a service recipient from a Department facility to an institution in another party State, such request shall include a consent for transfer from the following persons or person; (1) the parent or guardian of a recipient of service who has not obtained 12 years of age; (2) the parent or guardian of a recipient of services who has attained 12 years of age, but has not attained 18 years of age and is not capable of giving consent; (3) the parent or guardian of a recipient of service who has attained 12 years of age but who has not attained 18 years of age and is clinically capable of giving consent; and (4) the recipient of service who has attained 18 years of age or the legal guardian if appropriate. 45 ILCS 40/5. Requests by the recipient for services are done only with consent of the individual. As consent is not required for treatment purposes under the HIPAA rules, this provision is not preempted. 45 C.F.R. §164.502, 506.

The act also contemplates the release of the identity of a dangerous or potentially dangerous patient who escapes from an institution. 45 ILCS 40/1, Art. V. The release of

protected health information to law enforcement or other authorities to locate or apprehend a potentially dangerous person is allowed by the Privacy Rule, subject to certain requirements. 45 C.F.R. §164.512(f).
Accordingly, it is possible to comply with this law and HIPAA. Further, this law does not stand as an obstacle to accomplishing the full purpose of HIPAA. Therefore, the law is not "contrary" to the HIPAA regulations. 45 C.F.R. §160.202.

7. Is the Law Preempted?

No.

1. Name and Citation of Law

Interstate Compact on Mentally Disordered Offenders Act (45 ILCS 45)

2. General Description of the Law

The Interstate Compact on Mentally Disordered Offenders Act establishes the form and contents for the Interstate Compact on Mentally Disordered Offenders. 45 ILCS 45/1.

3. Rules Promulgated Under the Law

None. No administrative rules have been promulgated under this law.

4. Key Provisions

None. There are no provisions of this Act addressing the issues raised by the HIPAA preemption analysis.

5. Significant Case Law

None. There is no significant case law addressing the issues raised by the HIPAA preemption analysis.

6. Preemption Analysis Under HIPAA

The Interstate Compact on Mentally Disordered Offenders Act does not directly contemplate the release of health care information. However, the provisions of the compact under §1 provide that each State under the compact is to encourage and provide for such care and treatment in the most appropriate locations, giving due recognition to the need to achieve adequacy of diagnosis, care, treatment, after care, and auxiliary services in facilities. 45 ILCS 45/1. The compact also requires that a State that is a party to the compact shall have access at all reasonable times to any facility in which it has a contractual right to secure care or treatment of patients for the purpose of inspection and visiting such of its patients as may be in the facility or served by it. Id.

The Act contains complex procedures for administrative and judicial review of various matters involving mentally disordered offenders. Any judicial hearings undertaken in any State pursuant to the compact and evidence produced thereof is not admissible in evidence in any subsequent prosecution of the untried indictment, information or complaint concerned in a petition filed pursuant to the compact. Id. One exception to this is if the Defendant himself offers or consents to the introduction of the determination or adjudication at such subsequent proceeding. Id. These provisions place limits on what

a judge can order be used in subsequent proceedings, but any disclosures by covered entities of this type of protected health information will be made pursuant to a court order and, therefore, these provisions are not preempted. 45 C.F.R. § 164.512(e).

Further, although the Act contemplates the provision of health care, any disclosure made as a result thereof is permissible under HIPAA for treatment or payment purposes. 45 C.F.R. §164.502, 506.

It is possible to comply with this law and HIPAA. Further, this law does not stand as an obstacle to accomplishing the full purpose of HIPAA. Therefore, the law is not "contrary" to the HIPAA regulations. 45 C.F.R. §160.202.

7. Is the Law Preempted?

No.

1. Name and Citation of Law

Regional Ambulance Services Law (55 ILCS 110)

2. General Description of the Law

The Regional Ambulance Services Law establishes a Board to conduct an ambulance service needs assessment in rural counties to ensure that the increasingly larger number of elderly persons who reside in such counties are not facing a shortage of ambulance services.

3. Rules Promulgated Under the Law

None. No administrative rules have been promulgated under this law.

4. Key Provisions

None. There are no provisions of this Act addressing the issues raised by the HIPAA preemption analysis.

5. Significant Case Law

None. There is no significant case law addressing the issues raised by the HIPAA preemption analysis.

6. Preemption Analysis Under HIPAA

It is possible to comply with this law and HIPAA. Further, this law does not stand as an obstacle to accomplishing the full purpose of HIPAA. Therefore, the law is not "contrary" to the HIPAA regulations. 45 C.F.R. §160.202.

7. Is the Law Preempted?

No.

1. Name and Citation of Law

Cemetery Maintenance District Act (70 ILCS 105)

2. General Description of the Law

The Cemetery Maintenance District Act provides that any area within the boundaries of a single county may be incorporated as a cemetery maintenance district whereby a ward is designated to have all of the powers and control of all affairs of such district.

3. Rules Promulgated Under the Law

None. No administrative rules have been promulgated under this law.

4. Key Provisions

None. There are no provisions of this Act addressing the issues raised by the HIPAA preemption analysis.

5. Significant Case Law

None. There is no significant case law addressing the issues raised by the HIPAA preemption analysis.

6. Preemption Analysis Under HIPAA

It is possible to comply with this law and HIPAA. Further, this law does not stand as an obstacle to accomplishing the full purpose of HIPAA. Therefore, the law is not "contrary" to the HIPAA regulations. 45 C.F.R. §160.202.

7. Is the Law Preempted?

No.

1. Name and Citation of Law

Public Health District Act (70 ILCS 905)

2. General Description of the Law

The Public Health District Act provides that any town or two or more adjacent towns in a county under township organization may be organized into a public health district provided that the total population to be served by such health district is not less than 75,000. 70 ILCS 905/1. The Act also provides in counties not under township organization, County commissioners shall be the Board of Health for each public health district in the county. 70 ILCS 905/11.

3. Rules Promulgated Under the Law

77 Ill. Admin. Code 600, Certified Local Health Department Code.
77 Ill. Admin. Code 610, Local Health Department Development Grant Rules
77 Ill. Admin. Code 615, Local Health Protection Grant Rules

4. Key Provisions

70 ILCS 905/15, Powers and duties.
70 ILCS 905/17, Powers and duties of public health officers.

5. Significant Case Law

None. There is no significant case law addressing the issues raised by the HIPAA preemption analysis.

6. Preemption Analysis Under HIPAA

The Public Health District Act provides that the Board of Health must appoint a Medical Health Officer as the Executive Officer of the Board of Health who shall possess such qualifications as may be prescribed by the State Department of Public Health, or appoint a Public Health Administrator who shall possess such qualifications as may be prescribed by the Department provided that the Board of Health shall make available medical supervision, which is considered adequate by the Department. 70 ILCS 905/15. The Act also provides the Board shall appoint professional and technical personnel who meet the qualifications established by the Department. Id. The Board may equip and maintain an analytical, biological and research laboratory. Id. This section of the Act, however, contains no provision for the use or disclosures of protected health information.

Section 17 of the Act sets forth the powers and duties of Public Health Officers. Under this Section, the Officers have the power to enforce ordinances, investigate the existence of any contagious or infectious disease within the District, to make all necessary sanitary and health investigations and inspections within the District, establish a dental clinic for the benefit of school children, and to establish and execute programs in the field of mental health. 70 ILCS 905/17. Although this Section includes both public health activities and the provision of health care services, it does not contain any provision specifically related to the confidentiality or release of health care information.

The administrative rules promulgated under the Public Health District Act provide that the Department may conduct an on-site review of the local health department and such documents necessary to determine substantial compliance with the Act. 77 Ill. Admin. Code 600.210(e). Any disclosure pursuant to this Section would be permissible under the Privacy Rule as it is for public health or health oversight activities. 45 C.F.R. §164.512 (b), (d).

It is possible to comply with this law and HIPAA. Further, this law does not stand as an obstacle to accomplishing the full purpose of HIPAA. Therefore, the law is not "contrary" to the HIPAA regulations. 45 C.F.R. §160.202.

7. Is the Law Preempted?

No.

1. Name and Citation of Law

Hospital District Law (70 ILCS 910)

2. General Description of the Law

The Hospital District Law is designed to establish, maintain and operate safe and accessible hospitals within the State of Illinois and provides for the creation of hospital districts having powers necessary or desirable for the establishment and continued maintenance and operation of such hospitals. 70 ILCS 910/2.

3. Rules Promulgated Under the Law

None. No administrative rules have been promulgated under this law.

4. Key Provisions

None. There are no provisions of this Act addressing the issues raised by the HIPAA preemption analysis.

5. Significant Case Law

None. There is no significant case law addressing the issues raised by the HIPAA preemption analysis.

6. Preemption Analysis Under HIPAA

It is possible to comply with this law and HIPAA. Further, this law does not stand as an obstacle to accomplishing the full purpose of HIPAA. Therefore, the law is not "contrary" to the HIPAA regulations. 45 C.F.R. § 160.202.

7. Is the Law Preempted?

No.

1. Name and Citation of Law

Illinois Medical District Act (70 ILCS 915)

2. General Description of the Law

The Illinois Medical District Act creates a medical district in the City of Chicago to attract and retain academic centers of excellence, valuable health care facilities, medical research facilities, emerging high technology enterprises and other facilities and uses as permitted under the Act.

3. Rules Promulgated Under the Law

None. No administrative rules have been promulgated under this law.

4. Key Provisions

70 ILCS 915/1, Creation of District
70 ILCS 915/2, Illinois Medical District Commission.

5. Significant Case Law

None. There is no significant case law addressing the issues raised by the HIPAA preemption analysis.

6. Preemption Analysis Under HIPAA

The Illinois Medical District does not contemplate the transferal or release of health care information. Rather, the Act is designed to promote and establish medical and research facilities within the District.

It is accordingly possible to comply with this law and HIPAA. Further, this law does not stand as an obstacle to accomplishing the full purpose of HIPAA. Therefore, the law is not "contrary" to the HIPAA regulations. 45 C.F.R. §160.202.

7. Is the Law Preempted?

No.

1. Name and Citation of Law

The Tuberculosis Sanitarium District Act (70 ILCS 920)

2. General Description of the Law

The Tuberculosis Sanitarium District Act provides that an area of continuous territory lying wholly within one (1) county but entirely outside the corporate limits of any city or village may be incorporated as a Tuberculosis Sanitarium District. 70 ILCS 920/1.

3. Rules Promulgated Under the Law

None. No administrative rules have been promulgated under this law.

4. Key Provisions

70 ILCS 920/5, Organization of Board - Establishment or Maintenance of Sanitarium - Rental of Sanitarium.
70 ILCS 920/5.1, Powers of Board - Care and Treatment of the Afflicted Severability.

5. Significant Case Law

None. There is no significant case law addressing the issues raised by the HIPAA preemption analysis.

6. Preemption Analysis Under HIPAA

The Tuberculosis Sanitarium District Act establishes a Board for such districts to adapt and equip a sanitarium building or buildings for the accommodation, reception, detention, care and treatment of persons afflicted with tuberculosis and who require care and treatment therefore who may be committed to, placed and/or directed to be received by such a sanitarium or the managing officer thereof for care and treatment. 70 ILCS 920/5.1.

The Act provides that no person shall be compelled to undergo an examination or test for tuberculosis if he or she objects thereto on the grounds that it is contrary to his or her religious convictions, unless there is probable cause to suspect that he or she is infected with tuberculosis in a communicable stage. 70 ILCS 920/17. Persons may only be committed to the sanitarium under a lawful authority or process, in accordance with due process of law. Any disclosures of protected health information in such a proceeding could be made by a covered entity under the public health or possibly judicial exceptions of the privacy rule. 45 C.F.R. §164.512(b), (g).

Although the Tuberculosis Sanitarium Act contemplates the provision of health care by the district, the Act does not contain any provision or section that directly deals with protected health care information or the use or disclosure of such information.

It is possible to comply with this law and HIPAA. Further, this law does not stand as an obstacle to accomplishing the full purpose of HIPAA. Therefore, the law is not "contrary" to the HIPAA regulations. 45 C.F.R. § 160.202.

7. Is the Law Preempted?

No.

1. Name and Citation of Law

Rescue Squad Districts Act (70 ILCS 2005)

2. General Description of the Law

The Rescue Squad District Act provides that any territory having a population of not less than 300 inhabitants and that is not already a part of a rescue squad district or located in a fire protection district that provides rescue services, may be organized as a rescue squad district. If a district is created, the Board of Trustees of the district has the power to take all necessary or proper steps to provide rescue services within the district; to purchase equipment, supplies and materials; recruit rescue squad personnel; and generally to do any and all things necessary or incident to the powers provided under the Act.

3. Rules Promulgated Under the Law

None. No administrative rules have been promulgated under this law.

4. Key Provisions

None. There are no provisions of this Act addressing the issues raised by the HIPAA preemption analysis.

5. Significant Case Law

None. There is no significant case law addressing the issues raised by the HIPAA preemption analysis.

6. Preemption Analysis Under HIPAA

Although the Rescue Squad District Act contemplates the provision of health care by the district, the Act does not contain any provision or section that directly deals with protected health information.

It is possible to comply with this law and HIPAA. Further, this law does not stand as an obstacle to accomplishing the full purpose of HIPAA. Therefore, the law is not "contrary" to the HIPAA regulations. 45 C.F.R. §160.202.

7. Is the Law Preempted?

No.

1. Name and Citation of Law

School Code (105 ILCS 5)

2. General Description of the Law

The School Code establishes the State Board of Education, the structure and creation of schools throughout the State of Illinois, the Teacher's Retirement System, charter schools, scholarships and the School Finance Authority.

3. Rules Promulgated Under the Law

20 Ill. Admin. Code 1270, Criminal Background Investigations
23 Ill. Admin. Code 30, Staff Development Plans and Programs
23 Ill. Admin. Code 51, Dismissal of Tenured Teachers
23 Ill. Admin. Code 52, Dismissal of Tenured Teachers and Civil Service Employees under
Article 34
23 Ill. Admin. Code 120, Pupil Transportation Reimbursement
23 Ill. Admin. Code 125, Student Activity Funds and Convenience Accounts
23 Ill. Admin. Code 130, Determining Special Education Per Capita Tuition Charge
23 Ill. Admin. Code 140, Calculation of Excess Cost under Section 18-3
23 Ill. Admin. Code 145, Temporary Relocation Expenses
23 Ill. Admin. Code 201, Disadvantaged Students Funds
23 Ill. Admin. Code 205, Truants Optional Programs
23 Ill. Admin. Code 215, Alternative Education Diplomas
23 Ill. Admin. Code 220, Scientific Literacy
23 Ill. Admin. Code 225, Alcoholic and Drug Education Initiative
23 Ill. Admin. Code 227, Gifted Education
23 Ill. Admin. Code 228, Transitional Bilingual Education
23 Ill. Admin. Code 230, Summer School for Remedial Education
23 Ill. Admin. Code 235, Preschool Education
23 Ill. Admin. Code 250, Comprehensive Arts Programs
23 Ill. Admin. Code 260, Reading Improvement Program
23 Ill. Admin. Code 360, Mathematics and Scientific Loan Program
23 Ill. Admin. Code 452, Public University Laboratory Schools
23 Ill. Admin. Code 480, Hearing before Certification Board
23 Ill. Admin. Code 401, Nonpublic Special Education Facilities
23 Ill. Admin. Code 350, Secular Textbook Loan
23 Ill. Admin. Code 160, Block Grant for School Improvement
23 Ill. Admin. Code 245, Urban Education Program
23 Ill. Admin. Code 155, Electronic Transfer of Funds

23 Ill. Admin. Code 575, School Technology Program
23 Ill. Admin. Code 180, Health Life Safety Code
23 Ill. Admin. Code 110, Program Accounting Manual
23 Ill. Admin. Code 1, Public Schools Evaluation
23 Ill. Admin. Code 275, Pupil Transportation
23 Ill. Admin. Code 525, Regional Offices of Education
23 Ill. Admin. Code 25, Certification
23 Ill. Admin. Code 50, Evaluation of Certified Schools
23 Ill. Admin. Code 252, Driver Education
23 Ill. Admin. Code 625, Health Examinations and Immunizations
23 Ill. Admin. Code 650, Charter Schools
23 Ill. Admin. Code 375, Student Records
23 Ill. Admin. Code 305, School Food Service
23 Ill. Admin. Code 253, Comprehensive Health Education
41 Ill. Admin. Code 110, Fire Drills in School
77 Ill. Admin. Code 848, Toxic Art Supplies Code
77 Ill. Admin. Code 855, Asbestos Abatement
89 Ill. Admin. Code 900, Governor's Purchased Care Review Board
92 Ill. Admin. Code 556, Transporting Pupils where Safety Hazards
92 Ill. Admin. Code 557, Custodial Transportation of Pupils
95 Ill. Admin. Code 116, MIA/POW Scholarship

4. Key Provisions

105 ILCS 5/2-3.78, Rights of Children with Disabilities to Free Appropriate Public Education
105 ILCS 5/2-3.79, Pilot Programs and Special Education Services for Pre-School Children with Disabilities from Birth to Age 3
105 ILCS 5/2-3.89, Pilot Programs Concerning Services to At-Risk Children and Their Families
105 ILCS 5/10-20-34, Medicaid Eligible Children; Health Care Resources
105 ILCS 5/10-21.11, Infectious Disease Policies and Rules
105 ILCS 5/10-22.6b, Non-Disclosure of Information
105 ILCS 5/14-1.08, Special Educational Facilities and Services
105 ILCS 5/14-1.09, School Psychologist
105 ILCS 5/14-1.09a, School Social Worker
105 ILCS 5/14-1.09.1, School Psychological Services
105 ILCS 5/14-1.09.2, Social Work Services
105 ILCS 5/14-8.02, Identification, Evaluation and Placement of Children
105 ILCS 5/14-12.02, Residential Programs to Correct Alcohol or Controlled Substance Dependancies
105 ILCS 5/26-6, List and Reports in Districts Employing Truant Officers

105 ILCS 5/27-8.1, Health Examinations and Immunizations
105 ILCS 5/34-18.7, Adolescence and Teen Suicide Detection and Intervention
105 ILCS 5/34-18.8, Aids Training

5. Significant Case Law

None. There is no significant case law addressing the issues raised by the HIPAA preemption analysis.

6. Preemption Analysis Under HIPAA

The Illinois School Code establishes several requirements and programs for children with disabilities. For example, Section 2-3.79 establishes a pilot program and special education services for pre-school children with disabilities from birth to age three. 105 ILCS 5/2-3.79. This section, however, does not involve confidential health care information or the use or disclosure of such information.

The Code also provides that a school district may access federally-funded health care resources if the school district provides early, periodic screening and diagnostic testing services, including screening and diagnostic services, health care and treatment, preventive health care or any other measure to correct or improve health impairments of Medicaid eligible children. 105 ILCS 5/10-20.34. The Code also provides the school's ability to develop policies and adopt rules relating to the appropriate manner of managing children with chronic infectious diseases. 105 ILCS 5/10-21.11. Policies must include evaluation of students with a chronic infectious disease on an individual case-by-case basis. Id. These sections do not include confidentiality provisions or provisions relating to the use or disclosure of health care information.

The Code provides for school psychological and social work services under Sections 14-1.09.1 and 14-1.09.2. Although potential health care may be provided through counseling, the sections do not include provisions on the confidentiality of information or the use or disclosure of health care information.

Section 14.802 provides the process by which local school boards determine the eligibility of children to receive special education. 105 ILCS 5/14-8.02. This process involves a case study by professional and may include clinical psychologists. Id. This section does not include confidentiality requirements.

Section 27-8.1 of the Code provides that all children in Illinois shall have a health examination as follows: within one year prior to entering kindergarten or the first grade of any public, private or parochial school; upon entering the fifth and ninth grades of any public, private or parochial school; prior to the entrance into any public, private or parochial nursery school; and, irrespective of grade, immediately prior to or upon

entrance into any public or private or parochial school or nursery school, each child shall present proof of having been examined in accordance with this section. 105 ILCS 5/27-8.1. A tuberculosis skin test is also required. Id. The individuals conducting the health examination must record the fact of having conducted the examination and such additional information as required on the uniform school physical form. Id. The examiner must summarize on the report form any condition that he or she suspects indicates a need for special services. Id. It must also be recorded that the immunizations were administered. Id. Any potential disclosure of information by a covered provider is permitted by the Privacy Rule when an authorization is obtained.

The School Code also provides for teacher and counselor training to identify the warning signs of suicidal behavior in adolescents and teens. 105 ILCS 5/34-18.7. School personnel may be trained to have a basic knowledge of matters relating to AIDS, including the nature of the disease, its causes and effects, the means of detecting it and preventing its transmission, the availability of appropriate sources of counseling and referral and any other information that may be appropriate concerning the age and grade level of such peoples. 105 ILCS 5/34-18.8. These sections, however, do not address the release of health care information or the confidentiality thereof.

See, also, the analysis of the Illinois School Student Records Act, 105 ILCS 10. Pursuant to the above, it is possible to comply with this law in HIPAA. Further, this law does not stand as an obstacle to accomplishing the full purpose of HIPAA. Therefore, the law is not “contrary” to the HIPAA regulations. 45 C.F.R. 160.202.

7. Is the Law Preempted?

No.

1. Name and Citation of Law

Illinois School Student Records Act (105 ILCS 10)

2. General Description of the Law

The Illinois School Student Records Act establishes the uses of student records in public schools within the State.

3. Rules Promulgated Under the Law

23 Ill. Admin. Code 375, Student Records

4. Key Provisions

105 ILCS 10/2, Definitions
23 Ill. Admin. Code 375.10, Definitions

5. Significant Case Law

None. There is no significant case law addressing the issues raised by the HIPAA preemption analysis.

6. Preemption Analysis Under HIPAA

Under the Illinois School Student Records Act, a school student record is any writing or recorded information concerning a student by which the student may be individually identified that is maintained by the school or by an employee of the school district. 105 ILCS 10/2. The Privacy Rule excludes from the definition of "protected health information" those records that are covered by the Family Educational Rights and Privacy Act ("FERPA"). 45 C.F.R. §164.501, referencing 20 U.S.C. 1232g. Any health records maintained by schools who receive federal funding are covered by FERPA and not HIPAA. 65 Fed. Reg. 82483 (December 28, 2000).

It is possible to comply with this law and HIPAA. Further, this law does not stand as an obstacle to accomplishing the full purpose of HIPAA. Therefore, the law is not "contrary" to the HIPAA regulations. 45 C.F.R. §160.202.

7. Is the Law Preempted?

No.

1. Name and Citation of Law

College Student Immunization Act (110 ILCS 20)

2. General Description of the Law

The College Student Immunization Act provides no person shall attend a post-secondary educational institution without presenting proof that he/she has received immunizations against preventable communicable diseases as set forth by Illinois Department of Public Health.

3. Rules Promulgated Under the Law

77 Ill. Admin. Code 694, College Immunization Code

4. Key Provisions

110 ILCS 20/2, Proof of immunization
110 ILCS 20/5, Records; inspection
110 ILCS 20/6, Report

5. Significant Case Law

None. There is no significant case law addressing the issues raised by the HIPAA preemption analysis.

6. Preemption Analysis Under HIPAA

The College Student Immunization Act provides that post-secondary educational institutions must maintain on file the proof of immunization, certification of medical exemption or statement of religious objection for all persons attending the institution. The information must be available for inspection by the Department of Public Health during normal business hours. 110 ILCS 20/5.

Within eight (8) weeks after the commencement of classroom instruction, the post-secondary educational institution must file a report with the Department stating the number of persons attending the institution who have presented either proof of immunization or proof of exemption. 110 ILCS 20/6. The rules and regulations promulgated under the Act provide the "designated record keeping office shall maintain records containing the required elements of the immunization status of each student." 77 Ill. Admin. Code 694.110. Disclosure to Public Health can be made as a function of public health activities under the Privacy Rule. 45 C.F.R. §164.512(b). Disclosure to the

institution is achieved by patient authorization as no other mechanism for obtaining the record exists. 45 C.F.R. §164.508.

It is possible to comply with this law and HIPAA. Further, this law does not stand as an obstacle to accomplishing the full purpose of HIPAA. Therefore, the law is not "contrary" to the HIPAA regulations. 45 C.F.R. §160.202.

7. Is the Law Preempted?

No.

1. Name and Citation of Law

University of Illinois Act (110 ILCS 305)

2. General Description of the Law

The University of Illinois Act establishes the Board of Trustees of the University of Illinois and establishes the structure and governance of the University.

3. Rules Promulgated Under the Law

72 Ill. Admin. Code 2400

4. Key Provisions

110 ILCS 305/20, Medical School Research Experiments; Informed consent.

5. Significant Case Law

None. There is no significant case law addressing the issues raised by the HIPAA preemption analysis.

6. Preemption Analysis Under HIPAA

The University of Illinois Act provides that, if a person is to participate as a subject in a research experiment conducted at the College of Medicine, but does not understand the English language, then the informed consent document for the research experiment must be written in a language that the person does understand. 110 ILCS 305/20.

The Act also provides if a person cannot read or has difficulty reading, the document must be read to the person in that same language. Id. Presuming the consent is in compliance with 45 C.F.R. §164.506, this provision of the Act is consistent with the Privacy Rule and the request for confidential communications. 45 C.F.R. §164.522.

7. Is the Law Preempted?

No.

1. Name and Citation of Law

University of Illinois Hospital Act (110 ILCS 330)

2. General Description of the Law

The University of Illinois Hospital Act establishes that general management, control and operation of the University of Illinois Hospital is in the University of Illinois. 110 ILCS 330/5.

The University of Illinois Hospital Act is not otherwise required to be licensed under State law. The University of Illinois Hospital Act defines a University of Illinois hospital as any hospital, institute, clinic, out-patient department or office, owned or leased, by the University in which the University Health Care Program is conducted. 110 ILCS 330/1. University Health Care Program means a patient diagnostic, treatment or care program, service or activity conducted by the University through its personnel assigned to such programs in the furtherance of University teaching, research and public service functions. Id. The University may establish and collect charges for any hospital services rendered in or connected to the University of Illinois Hospital. 110 ILCS 330/5. The ability to charge fees is defined as payment activities under the privacy rule. 45 C.F.R. §164.501.

3. Rules Promulgated Under the Law

None. No administrative rules have been promulgated under this law.

4. Key Provisions

110 ILCS 330/5, Charges for Services

5. Significant Case Law

None. There is no significant case law addressing the issues raised by the HIPAA preemption analysis.

6. Preemption Analysis Under HIPAA

The Act does not involve the disclosure of health care information. Accordingly, it is possible to comply with this law and HIPAA. Further, this law does not stand as an obstacle to accomplishing the full purpose of HIPAA. Therefore, the law is not "contrary" to the HIPAA regulations. 45 C.F.R. §160.202.

7. Is the Law Preempted?

No.

1. Name and Citation of Law

Institution for Tuberculosis Research Act (110 ILCS 335)

2. General Description of the Law

The Institution for Tuberculosis Research Act establishes the institution for tuberculosis research for the production, distribution and application of the bacillus calmette-guerin and other methods and materials for the prevention of tuberculosis, for conducting research and tuberculosis. The professional operation of their management in control of the Institution is vested in the University of Illinois.

3. Rules Promulgated Under the Law

None. No administrative rules have been promulgated under this law.

4. Key Provisions

None. There are no provisions of this Act addressing the issues raised by the HIPAA preemption analysis.

5. Significant Case Law

None. There is no significant case law addressing the issues raised by the HIPAA preemption analysis.

6. Preemption Analysis Under HIPAA

Institution for Tuberculosis Institute Act does not contemplate the disclosure of health care information. It is accordingly possible to comply with this law and HIPAA. Further, this law does not stand as an obstacle to accomplishing the full purpose of HIPAA. Therefore, the law is not "contrary" to the HIPAA regulations. 45 C.F.R. §160.202.

7. Is the Law Preempted?

No.

1. Name and Citation of Law

University of Illinois Gerontological Committee Act (110 ILCS 340)

2. General Description of the Law

The University of Illinois Gerontological Committee Act provides for the creation of a Gerontological Committee established to study the economic problems of older workers, prepare and issue bulletins and pamphlets of particular interest to older persons, establish a research program in the field of gerontology to be conducted within the University by graduate students under faculty supervision, to study the development of a professional training program in the field of gerontology, and to study the University's research potential and in the field of gerontology and recommend ways in which it can be expanded.

3. Rules Promulgated Under the Law

None. No administrative rules have been promulgated under this law.

4. Key Provisions

None. There are no provisions of this Act addressing the issues raised by the HIPAA preemption analysis.

5. Significant Case Law

None. There is no significant case law addressing the issues raised by the HIPAA preemption analysis.

6. Preemption Analysis Under HIPAA

It is possible to comply with this law and HIPAA. Further, this law does not stand as an obstacle to accomplishing the full purpose of HIPAA. Therefore, the law is not "contrary" to the HIPAA regulations. 45 C.F.R. §160.202.

7. Is the Law Preempted?

No.

1. Name and Citation of Law

Specialized Care for Children Act (110 ILCS 345)

2. General Description of the Law

The Specialized Care for Children Act provides a mechanism for the University of Illinois to qualify for federal aid in administering the Specialized Care for Children Program. 110 ILCS 345/1. An advisory board is also established to make recommendations to the University regarding the operation of services to children with special health care needs, and to consult regarding professional considerations dealing with services to children with special health care needs. 110 ILCS 345/2. Finally, the Act provides that an otherwise qualified handicapped child receiving special education services under Article XIV of the School Code shall not, solely by reason of his or her handicap, be excluded from participation in or be denied the benefits of or be subjected to discrimination under any program or activity provided by the division of specialized care for children.

3. Rules Promulgated Under the Law

89 Ill. Admin. Code 1200.10 *et seq*., Program Content and Guidelines for Division of Specialized Care for Children.

4. Key Provisions

89 Ill. Admin. Code 1200.70, Payment for Services
89 Ill. Admin. Code 1200.120, Records

5. Significant Case Law

None. There is no significant case law addressing the issues raised by the HIPAA preemption analysis.

6. Preemption Analysis Under HIPAA

The Division of Specialized Care for Children of the University of Illinois is the payor of last resort for qualified children. 89 Ill. Admin. Code 1200.70. The regulations promulgated under the Act provide one complete medical record must be maintained on each recipient child. 89 Ill. Admin. Code 1200.120. Patient records must contain entries made by each health care provider in accordance with customary standards. Id. Documentation showing pre-authorization of services purchased by the Department of Specialized Care for Children are to be maintained as part of the record. Id.

These regulations provide that, subject to applicable laws and regulations relating to confidentiality of information, the following information relating to patients and persons requesting services shall be treated as confidential: names and addresses individually or by lists; information contained in reports or medical examinations and treatment; information contained in registers, case records and correspondence and any forms or notations whether or not recorded; information about financial resources; and records of evaluations. Id.

Confidential information may be released only with the consent of a legally responsible adult to agencies, institutions or individuals who are requested to provide health services to the child as part of the program. Id. In addition, any representative of the applicant or recipient child or the child's legally responsible adult will have access to the child's records upon presentation of an authorization signed by the legally responsible adult. Id.

The legally responsible adult is allowed to undertake actions as a "personal representative" under the Privacy Rule. 45 C.F.R. §164.502(g). Under the Act, confidential information may be released to state or federal agencies having as their purpose the health and welfare of the child only if assurances are given that (1) the confidential character of the information will be preserved; (2) the confidential information will be used only for the purpose for which it is made available; (3) the information is materially related to the purpose of the other agency or program; and (4) the standards of confidentiality of the other agency or program to which the confidential information is made available or at least equal to those established by the Department of Specialized Care for Children. Disclosures contemplated under this section may be permissible as either a disclosure for public health purposes, as part of the payment process, or as health oversight. 45 C.F.R. §164.512(b), 164.502, 162.512 (d).

Information may be disclosed without consent in summary, statistical or other form which does not make it possible to identify a particular individual. 89 Ill. Admin. Code 1200.120. This type of disclosure is permissible if it meets the de-identification standards of the Privacy Rule. 45 C.F.R. §164.514(a).

The issue of whether this program is a health plan is beyond the scope of this analysis. 89 Ill. Admin. Code 1200.701. It is possible that some releases of information to and by the program may require compliance with the Privacy Rule. 45 C.F.R. §160.201.

It is possible to comply with this law and HIPAA. Further, this law does not stand as an obstacle to accomplishing the full purpose of HIPAA. The law is accordingly not "contrary" to the HIPAA regulations. 45 C.F.R. §160.202.

7. Is the Law Preempted?

No.

1. Name and Citation of Law

University of Illinois Institutes for Juvenile Research and Developmental Disabilities Act (110 ILCS 350)

2. General Description of the Law

The University of Illinois Institutes for Juvenile Research and Developmental Disabilities Act provides that the Board of Trustees of the University of Illinois shall establish and operate an institute for juvenile research, conduct research and provide education, treatment, and other services regarding delinquency, emotional disturbance, mental illness and social maladjustment of juveniles. 110 ILCS 350/1.

3. Rules Promulgated Under the Law

None. No administrative rules have been promulgated under this law.

4. Key Provisions

110 ILCS 350/2, Institute for the Study of Developmental Disabilities
110 ILCS 350/5, Cooperative Agreements

5. Significant Case Law

None. There is no significant case law addressing the issues raised by the HIPAA preemption analysis.

6. Preemption Analysis Under HIPAA

The University of Illinois Institutes for Juvenile Research and Developmental Disabilities Act contemplates research and treatment but does not contain any provisions relating to whether an Institutional Review Board or Privacy Board is used. 45 C.F.R. §164.508. For example, the Act provides the institute for juvenile research may conduct scientific studies, diagnose and promote the treatment of children who are delinquent, emotionally disturbed, mentally ill or socially maladjusted or who are in danger of becoming so. 110 ILCS 350.1. In pursuit of its goal, the Institute may examine records and social studies of such children in the custody or under the control of the Department of Human Services for reasons relating to mental health or developmental disabilities or of any court, school, public or private, social agency or parent or guardian as deemed necessary. Id.

The Act also provides that the Institute for the Study of Developmental Disabilities may promote and advance knowledge through research in the cause and treatment of

developmental disabilities and that the institute may also develop programs to meet the need for staff skilled in the treatment and care of persons with developmental disabilities. 110 ILCS 350/2. The Act provides that the institute may examine patient records in the custody or under the control of the Department. Id. Although this section contemplates release of confidential health care information, it is silent as to whether an authorization or consent is required. Id. Such releases of information can comply with the Privacy Rule to the extent appropriate.

It is possible to comply with this law and HIPAA. Further, this law does not stand as an obstacle to accomplishing the full purpose of HIPAA. Therefore, the law is not "contrary" to the HIPAA regulations. 45 C.F.R. §160.202.

7. Is the Law Preempted?

No.

1. Name and Citation of Law.

The Alternative Health Care Delivery Act (210 ILCS 3/1)

2. General Description of the Law.

The Alternative Health Care Delivery Act allows the Department of Public Health to develop demonstration projects to license and study alternative health care delivery systems. Models licensed under this Act include sub-acute care hospitals, postsurgical recovery care centers, children's respiratory care centers, and community-based residential rehabilitation centers.

3. Rules Promulgated Under the Law.

Freestanding Post-Surgical Recovery Care Center Demonstration Program Code (77 Ill. Admin. Code 210.1000)

Community-Based Residential Rehabilitation Center Demonstration Program Code (77 Ill. Admin. Code 220.1000)

Children's Respite Care Center Demonstration Program Code (77 Ill. Admin. Code 260.1000)

Subacute Care Hospital Demonstration Program Code (77 Ill. Admin. Code 270.1000)

4. Key Provisions.

210 ILCS 3/15, License Required
210 ILCS 3/45, License Denial, Suspension or Revocation
210 ILCS 3/50, Investigation of Applicant or Licensee; Notice

Freestanding Post-Surgical Recovery Care Center
77 Ill. Admin. Code 210.2100, Patient's Rights
77 Ill. Admin. Code 210.2600, Records and Reports
77 Ill. Admin. Code 210.3000, Quality Assessment and Improvement

Community-Based Residential Rehabilitation Center
77 Ill. Admin. Code 220.1700, Policies and Procedures
77 Ill. Admin. Code 220.1800, Admission Practices
77 Ill. Admin. Code 220,2100, Participant Rights
77 Ill. Admin. Code 220.2200, Participant Care and Treatment Services

77 Ill. Admin. Code 220.2300, Participant Record Requirements
77 Ill. Admin. Code 220.3100, Quality Assessment and Improvement

Children's Respite Care Center
77 Ill. Admin. Code 260.1400, Inspections and Investigations
77 Ill. Admin. Code 260.1700, Policies and Procedures
77 Ill. Admin. Code 260.1800, Admission Practices
77 Ill. Admin. Code 260.1900, Child's Rights
77 Ill. Admin. Code 260.2000, Child Care Services
77 Ill. Admin. Code 260.2500, Quality Assessment and Improvement

Subacute Care Hospital
77 Ill. Admin. Code 270.1400, Inspections and Investigations
77 Ill. Admin. Code 270.1700, Admission Practices
77 Ill. Admin. Code 270.2000, Patient's Rights
77 Ill. Admin. Code 270.2300, Quality Assessment and Improvement

5. Significant Case Law.

None. There is no significant case law addressing the issues raised by the HIPAA preemption analysis.

6. Preemption Analysis under HIPAA.

The Alternative Health Care Delivery Act allows the State Board of Health to approve delivery models to be licensed by the Illinois Department of Public Health. 210 ILCS 3/15, 20, 25. There are several types of demonstration projects allowed by the Alternative Health Care Delivery Act. 210 ILCS 3/30. These demonstration projects include: subacute care hospitals; postsurgical recovery care centers; children's respite care centers; community-based residential rehabilitation centers; and Alzheimer's disease management centers. 210 ILCS 3/30.

The Department of Public Health is required to license each of these types of facilities. 210 ILCS 3/15. Therefore, any collection of protected health information from the licensed facility will be allowed under the health care oversight exception in the Privacy Rule. 45 C.F.R. 164.512(d).

Freestanding Post-Surgical Recovery Care Center

The Post-Surgical Recovery Care Center Demonstration Program Code creates certain rights for patients of a post-surgical recovery care center. 77 Ill. Admin. Code 210.2100. Both the patient, and the patient's representative, are entitled to access and copy the

patient's clinical and other records. Id. The rules further allow patients to receive mail and make telephone calls in a private and uncensored fashion. Id. Based upon the fact that these rights are also given to patient's representatives, it is necessary to check the definition of the patient's representative. In this case, a patient's representative is someone that is authorized by law to act on behalf of the patient. 77 Ill. Admin. Code 210.1000. Therefore, this provision of the law is not preempted as the patient's representative can be treated as a personal representative under the Privacy Rule. 45 C.F.R. §164.502(g).

The post-surgical rules further specify that certain items must be kept in the clinical records, such as: patient identification, admitting information, signed orders, labs and radiology tests, medication and medical treatment. 77 Ill. Admin. Code 210.2600. Facilities should review these requirements in specifying their designated record set. 45 C.F.R. §164.501. The rule further requires that the post-surgical recovery care center keep records safe from water or fire and that the records be safeguarded from unauthorized access. 77 Ill. Admin. code 210.2600. These provisions will require review under the final Security Rule.

Post-surgical recovery care centers are also required to engage in quality assessment and improvement activities. 77 Ill. Admin. Code 210.3000. The use of protected health information to create such quality assessment programs is allowed by the Privacy Rule, without consent, as a function of health care operations. 45 C.F.R. 164.506(a).

Community-Based Residential Rehabilitation Center.

Community-Based Residential Rehabilitation Centers are required to have several policies and procedures by regulation, including disaster preparedness and other natural disasters. 77 Ill. Admin. Code 220.170(d). These provisions will require review under the final Security Rule.

Community-based residential rehabilitation facilities are required to receive physician orders for medications, if necessary, and other immediate medical care needs at the time of the participant's admission. 77 Ill. Admin. Code 220.1800(d). This disclosure is allowed as part of treatment under the Privacy Rule. 45 C.F.R. 164.502(a). Further, the rehabilitation center is required to establish a pre-admission screening process. 77 Ill. Admin. Code 220.1800(c). While disclosure for pre-admission screenings may need to occur prior to the individual becoming a patient of the facility, such a disclosure is allowed under the Privacy Rule as an ongoing treatment disclosure from the referring health care provider. 45 C.F.R. 164.506(c)(2).

The Community-Based Residential Rehabilitation Center is also required to establish a participant's bill of rights. 77 Ill. Admin. Code 220.2100. These rights include the right

to privacy, and the right to review the rehabilitation plan. Id. Both of these rights are consistent with the Privacy Rule. 45 C.F.R. §164.502. Further, a rehabilitation center is required to develop a grievance process for documenting any alleged violation of rights. 77 Ill. Admin. Code 220.2100. This procedure appears consistent with the complaint procedures allowed by the Privacy Rule. 45 C.F.R. §164.530(d).

Residential Rehabilitation Centers are also required to appoint a case manager whose duties include maintaining communication with family members. 77 Ill. Admin. Code 220.2200. As it is not clear the level of disclosure that is anticipated by the rules, health care facilities will need to be mindful that these disclosures must be consistent with those allowed by the Privacy Rule, or that an authorization will be required. 45 C.F.R. 164.508. Residential rehabilitation centers are required to keep patient records as specified in the rules. 77 Ill. Admin. Code 220.2300. The center is required to maintain the confidentiality of participant's medical records. Id. This general statement does not conflict with the Privacy Rule. Finally, the residential rehabilitation center is required to have a quality assessment and improvement project. 77 Ill. Admin. Code 220.3100. The use of medical information in this quality assurance, assessment and improvement program is allowed under the definition of health care operations in the Privacy Rule. 45 C.F.R. 164.502, 506.

Children's Respite Care Center

The Children's Respite Care Center Demonstration Program creates a regulatory framework for the operation of children's respite care centers. The centers are designed to allow a child to stay for up to 14 days in a home-like care setting when their usual caretaker is unavailable. 77 Ill. Admin. Code 260. The Illinois Department of Public Health licenses and inspects children's respite care centers. 210 ILCS 3/15. Department personnel are allowed to access and reproduce records or other documents maintained by the facility. This is allowed by the Privacy Rule as an activity relating to health care oversight. 45 C.F.R. 164.512(b). Children's respite care centers are required to have policies and procedures, including those related to disaster preparedness. 77 Ill. Admin. Code 260.1700. These provisions will require review under the final Security Rule. Upon admission, the children's respite care center is to receive information from a physician on any health care needs of the child. 77 Ill. Admin. Code 260.1800. This disclosure is allowed by the Privacy Rule as one made for treatment. 45 C.F.R. 164.502. Children's respite care centers are required to give certain rights to the children or their personal representative. 77 Ill. Admin. Code 260.1900. These rights include inspecting and copying clinical records, the right to consent to any experimental research or treatment, a right to privacy, and the reporting of any allegations of abuse or neglect. All of these disclosures and uses of medical information appear to be consistent with the Privacy Rule. Child abuse reporting is allowed under 45 C.F.R. §164.512(c). The patient's right to access medical records is required by 45 C.F.R. §164.524. In general,

the rights of parents or those acting on behalf of the child are not changed by the Privacy Rule. 45 C.F.R. 160.202. Further, the rules only allow access to information on the child for those who need the information to ensure appropriate service delivery. 77 Ill. Admin. Code 260.2000. The notion of minimizing access to the information to those who need it to deliver services is consistent with the minimum necessary concept and disclosures for treatment allowed by the Privacy Rule. 45 C.F.R. 164.502.

Finally, children's respite care centers are required to engage in quality assessment and improvement activities. 77 Ill. Admin. Code 260.2500. This disclosure is allowed under the definition of health care operations in the Privacy Rule. 45 C.F.R. 164.502, 506.

Subacute Care Hospitals

Subacute care hospitals are designed to provide medical care for those who have a greater need for care than a skilled nursing facility can provide, but who no longer need stabilization provided in an acute care hospital. The Illinois Department of Public Health licenses and inspects all subacute hospitals in the State. 77 Ill. Admin. Code 270.1400. Disclosures for this activity are allowed under the health oversight provision contained in the Privacy Rule. 45 C.F.R. §164.512(d). Subacute care hospitals are required to do a pre-admission screening to determine that the patient is expected to stay at least 10 days and that the patient can be served by the facility. 77 Ill. Admin. Code 270.1700. In addition, at the time of admission, the facility must conduct a nursing assessment and ensure that appropriate physician orders have been issued for the patient's care needs. Id. These disclosures are allowed as a component of ongoing treatment under the Privacy Rule. 45 C.F.R. §164.506(c)(2).

Subacute care hospitals are required to give patients certain rights, including the right to file a complaint, the right to consent to any experimental research or treatment, to inspect and copy all clinical records, and the reporting of suspected abuse or neglect. These uses and disclosures are all consistent with the Privacy Rule. Research activities require an authorization under the Privacy Rule. 45 C.F.R. §164.508. Patient access to the medical record is required by the Privacy Rule. 45 C.F.R. §164.524. Reports of suspected abuse or neglect are allowed by the Privacy Rule. 45 C.F.R. §164.512(c).

It is possible to comply with both this law and HIPAA. Further, this law does not stand as an obstacle to accomplishing the full purpose of HIPAA. Therefore, the law is not "contrary" to the HIPAA regulations. 45 C.F.R. § 160.202.

7. Is the Law Preempted?

No.

1. Name and Citation of Law.

Alzheimer's Special Care Disclosure Act (210 ILCS 4/1)

2. General Description of the Law.

The Alzheimer's Special Care Disclosure Act requires facilities who offer a special care unit or center for the treatment of Alzheimer's Disease disclose treatment, assessment, care planning, and other care information to the public.

3. Rules Promulgated Under the Law.

None. No administrative rules have been promulgated under this law.

4. Key Provisions.

None. There are no provisions of this Act addressing the issues raised by the HIPAA preemption analysis.

5. Significant Case Law.

None. There is no significant case law addressing the issues raised by the HIPAA preemption analysis.

6. Preemption Analysis under HIPAA.

It is possible to comply with this law and HIPAA. Further, this law does not stand as an obstacle to accomplishing the full purpose of HIPAA. Therefore, the law is not "contrary" to the HIPAA regulations. 45 C.F.R. § 160.202.

7. Is the Law Preempted?

No.

1. Name and Citation of Law.

Ambulatory Surgical Treatment Center Act (210 ILCS 5/1)

2. General Description of the Law.

The Ambulatory Surgical Treatment Center Act provides for the licensure and inspection of ambulatory surgical centers in the State of Illinois.

3. Rules Promulgated Under the Law.

77 Ill. Amin. Code 205.110, Ambulatory Surgical Treatment Center Licensing Requirements

4. Key Provisions.

210 ILCS 5/9, Inspections and Investigations
77 Ill. Admin. Code 205.610, Clinical Records
77 Ill. Admin. Code 205.620, Statistical Data

5. Significant Case Law.

None. There is no significant case law addressing the issues raised by the HIPAA preemption analysis.

6. Preemption Analysis under HIPAA.

The Illinois Department of Public Health is given regulatory authority to license and inspect ambulatory surgical treatment centers. 210 ILCS 5/9. This inspection of medical records is allowed pursuant to the Privacy Rules for health oversight activities. 45 C.F.R. §164.512(d). Further, the ambulatory surgical treatment center is required to keep clinical records as specified by the rules. 77 Ill. Admin. Code 205.610. This record is to include a signed informed consent. 205.610(d). While a signed consent for treatment is not required by the Privacy Rule, such a provision is allowed, and would be considered more stringent than the Federal requirement. 45 C.F.R. §164.506(b), 160.202.

Each ambulatory surgical treatment center is also required to collect and compile certain information about the types of surgical cases and the outcomes achieved by the facility. 77 Ill. Admin. Code 205.620. Internally, such data could be considered to be that of health care operations allowed by the Privacy Rule, and the disclosure to the Department of Public Health is allowed as public health activity, or as health oversight activity. 45 C.F.R. §164.512(b), (d).

It is possible to comply with this law and HIPAA. Further, this law does not stand as an obstacle to accomplishing the full purpose of HIPAA. Therefore, the law is not "contrary" to the HIPAA regulations. 45 C.F.R. § 160.202.

7. Is the Law Preempted?

No.

1. Name and Citation of Law.

Assisted Living and Shared Housing Act (210 ILCS 9/1)

2. General Description of the Law.

The Assisted Living and Shared Housing act creates a regulatory and licensure framework for assisted living and shared housing facilities. These facilities are designed to have a home-like environment for three or more persons who are unrelated, and at least 80% of which are over the age of 55. These facilities are not designed to provide skilled care.

3. Rules Promulgated Under the Law.

77 Ill. Admin. Code 295, Assisted Living and Shared Housing Establishment Code

4. Key Provisions.

210 ILCS 9/90, Contents of Service Delivery Contract
210 ILCS 9/95, Residents Rights
77 Ill. Admin. Code 295.1070, Annual On-Site Review and Complaint Investigation Procedures
77 Ill. Admin. Code 295.2050, Incident and Accident Reporting
77 Ill. Admin. Code 295.2060, Quality Improvement Program
77 Ill. Admin. Code 295.6000, Resident's Rights
77 Ill. Admin. Code 295.7000, Resident Records

5. Significant Case Law.

None. There is no significant case law addressing the issues raised by the HIPAA preemption analysis.

6. Preemption Analysis under HIPAA.

The Illinois Department of Public Health is given regulatory authority to license and inspect assisted living and shared housing establishments. An assisted living or shared housing establishment provides the services outlined in the service delivery contract between the facility and the individual seeking services. 210 ILCS 9/90. Residents of an assisted living or shared housing establishment have general rights to access their files, direct their own care, and to the privacy of their medical records. 210 ILCS 9/95, 77 Ill. Admin. Code 295.6000. Resident records at the establishment are required to contain medication orders, if administered by the establishment. 77 Ill. Admin. Code 295.7000.

All of these rights appear to be consistent with those contained in the Federal Privacy Rule. 45 C.F.R. §164.502, 506.

The Department of Public Health requires annual on-site reviews and is allowed to make complaint investigations. 77 Ill. Admin. Code 295.1070. Assisted living and shared housing establishments are required to report incidents or accidents to the Department of Public Health. These activities are allowed as public health or health care oversight activities under the privacy rule. 45 C.F.R. §164.512(b), (d). Further, assisted living or shared housing establishments are required to engage in quality improvement activities. 77 Ill. Admin. Code 295.2060. Disclosures of protected health information for quality improvement activities are allowed by the Privacy Rule under health care operations. 45 C.F.R. §164.502, 506. Each facility will need to determine whether it is a covered entity under the Privacy Rule.

It is possible to comply with this law and HIPAA. Further, this law does not stand as an obstacle to accomplishing the full purpose of HIPAA. Therefore, the law is not "contrary" to the HIPAA regulations. 45 C.F.R. § 160.202.

7. Is the Law Preempted?

No.

1. Name and Citation of Law.

Blood Donation Act (210 ILCS 15/.01)

2. General Description of the Law.

The Blood Donation Act allows person over the age of 17 years to donate blood on a voluntary basis. No donations are to be collected involuntarily.

3. Rules Promulgated Under the Law.

None. No administrative rules have been promulgated under this law.

4. Key Provisions.

None. There are no provisions of this Act addressing the issues raised by the HIPAA preemption analysis.

5. Significant Case Law.

None. There is no significant case law addressing the issues raised by the HIPAA preemption analysis.

6. Preemption Analysis under HIPAA.

Blood donation involves the voluntary disclosure of health information and is therefore not covered by the privacy rule.

It is possible to comply with this law and HIPAA. Further, this law does not stand as an obstacle to accomplishing the full purpose of HIPAA. Therefore, the law is not "contrary" to the HIPAA regulations. 45 C.F.R. § 160.202.

7. Is the Law Preempted?

No.

1. Name and Citation of Law.

Illinois Clinical Laboratory and Blood Bank Act (210 ILCS 25/1-101)

2. General Description of the Law.

The Illinois Clinical Laboratory and Blood Bank Act allows the licensure and regulation of laboratories and blood banks in the State of Illinois, other than those operated by the United States Government.

3. Rules Promulgated Under the Law.

77 Ill. Admin. Code 450.5 Illinois Clinical Laboratories Code
77 Ill. Admin. Code 460.10 Blood Labeling Code
77 Ill. Admin. Code 490.10 Illinois Blood Bank Code

4. Key Provisions.

210 ILCS 25/4-102, Inspections
210 ILCS 25/7-102, Reports of Test Results
210 ILCS 25/7-115, HIV Testing

5. Significant Case Law.

None. There is no significant case law addressing the issues raised by the HIPAA preemption analysis.

6. Preemption Analysis under HIPAA.

While much of the Clinical Laboratory and Blood Bank Act has been repealed, the Illinois Department of Public Health is responsible for licensure of these facilities, using the Federal clinical laboratory standards. The Illinois Department of Public Health is authorized to inspect laboratories and blood banks. 210 ILCS 25/4-102. This activity of accessing and reviewing protected health information is allowed under health care oversight in the Privacy Rule 45 C.F.R. 164.512(d). Test results of laboratory tests are to be reported to the licensed physician or other authorized person who requested the test. 210 ILCS 25/7-102. This disclosure generally is allowed under the Privacy Rule. 45 C.F.R. §164.506. Finally, blood donors are informed that all voluntary blood donations are tested for the presence of HIV. 210 ILCS 25/7-115. As blood donation is a voluntary activity and this testing is not to treat the individual donor, the donor has an opportunity to refuse the test and thereby not engage in the donation activity. 210 ILCS 25/7-115. Therefore, this activity is not prohibited by the Privacy Rule.

It is possible to comply with this law and HIPAA. Further, this law does not stand as an obstacle to accomplishing the full purpose of HIPAA. Therefore, the law is not "contrary" to the HIPAA regulations. 45 C.F.R. § 160.202.

7. Is the Law Preempted?

No.

1. Name and Citation of Law.

Abused and Neglected Long Term Care Facility Residents Reporting Act (210 ILCS 30/1)

2. General Description of the Law.

The Abused and Neglected Long Term Care Facility Residents Reporting Act requires certain individuals engaged in the care or treatment of nursing home residents and residents of State mental health facilities to report suspected abuse or neglect of the residents.

3. Rules Promulgated Under the Law.

59 Ill. Admin. Code 50.10, Office of Inspector General, Investigations of Alleged Abuse or Neglect in Deaths in State-Operated and Community Agency Facilities.

4. Key Provisions.

None. There are no provisions of this Act addressing the issues raised by the HIPAA preemption analysis.

5. Significant Case Law.

None. There is no significant case law addressing the issues raised by the HIPAA preemption analysis.

6. Preemption Analysis under HIPAA.

The Abused and Neglected Long Term Care Facility Residents Reporting Act requires licensed professionals to report suspected cases of abuse or neglect of residents of long term care facilities, State-operated mental health facilities or community living facilities 210 ILCS 40/4. While many of the professionals required to report under this Act may be covered entities, this type of disclosure is allowed under the Privacy Rule if certain requirements are met. 45 C.F.R. §164.512(c).

It is possible to comply with this law and HIPAA. Further, this law does not stand as an obstacle to accomplishing the full purpose of HIPAA. Therefore, the law is not "contrary" to the HIPAA regulations. 45 C.F.R. § 160.202.

7. Is the Law Preempted?

No.

1. Name and Citation of Law.

Community Living Facilities Licensure Act (210 ILCS 35/1)

2. General Description of the Law.

The Community Living Facilities Licensing act authorizes the Department of Public Health to license community living facilities. Community living facilities are designed for those with mild developmental disabilities to live in a more independent living arrangement.

3. Rules Promulgated Under the Law.

77 Ill. Admin. Code 370.110, Community Living Facilities Code

4. Key Provisions.

210 ILCS 35/8, Inspection
77 Ill. Admin. Code 370.190, Inspections
77 Ill. Admin. Code 370.810, Medical Care Policy
77 Ill. Admin. Code 370.820, Communicable Disease Policies
77 Ill. Admin. Code 370.840, Medication Policies
77 Ill. Admin. Code 370.1210, General (Records)
77 Ill. Admin. Code 370.1230, Confidentiality
77 Ill. Admin. Code 370.3020, Medical and Personal Care Programs
77 Ill. Admin. Code 370.3040, Abuse and Neglect
77 Ill. Admin. Code 370.3100, Confidentiality

5. Significant Case Law.

None. There is no significant case law addressing the issues raised by the HIPAA preemption analysis.

6. Preemption Analysis under HIPAA.

The Community Living Facilities Licensing Act and rules allow the Department of Public Health to license and inspect community living facilities. 210 ILCS 35/8, 77 Ill. Admin. Code 370.110. These activities are allowed by the Privacy Rule as a health oversight. 45 C.F.R. §164.512(d).

Each community living facility must have policies relating to the right of a resident to obtain medical care of their choice, and each resident must have a complete physical

within one month prior to admission or within 72 hours of admission. 77 Ill. Admin. Code 370.810. Further, each facility must have medication policies for providing medication reminders and assistance to residents. 77 Ill. Admin. Code 370.840, 77 Ill. Admin. Code 370.3100. Each community living facility will have to ascertain whether it is a covered entity within the Privacy Rule. 45 C.F.R. 160.103.

Community living facilities are required to report communicable diseases to the State or local health department, as applicable. 77 Ill. Admin. Code 370.820. This type of reporting is allowed under the public health exception in the Privacy Rule. 45 C.F.R. §164.512(b).

In general, each resident is required to have a record at the facility which must contain relevant medical information and a psychological evaluation completed within the last year, or within 15 days of the resident's admission. 77 Ill. Admin. Code 370.1210. Community living facilities are required to comply with the Mental Health and Developmental Disabilities Confidentiality Code with respect to records and other information in their possession. 77 Ill. Admin. Code 370.1230. (See preemption analysis for the Mental Health and Developmental Disabilities Code at 740 ILCS 110.) Residents of a community living facility have the right to consent to experimental research or treatment. 77 Ill. Admin. Code 370.3020. This provision of the rule is consistent with the Privacy Rule as long as a HIPAA-compliant authorization is used. 45 C.F.R. §164.508. Abuse and neglect reports are to be made to the facility program coordinator and the resident's representative. If the resident's representative is unavailable, then the report is made to the Department. This abuse reporting is allowed under the Privacy Rule if certain requirements are met. 45 C.F.R. §164.512(c).

It is possible to comply with this law and HIPAA. Further, this law does not stand as an obstacle to accomplishing the full purpose of HIPAA. Therefore, the law is not "contrary" to the HIPAA regulations. 45 C.F.R. § 160.202.

7. Is the Law Preempted?

No.

1. Name and Citation of Law.

Life Care Facilities Act (210 ILCS 40/1)

2. General Description of the Law.

The Illinois Department of Public Health is allowed to review the contracts and require bonds to be posted from life care facilities. Life care facilities are those that offer a continuum of care to provide assisted living and skilled nursing services to the elderly.

3. Rules Promulgated Under the Law.

77 Ill. Admin. Code 396.10, Life Care Facilities Contract Code

4. Key Provisions.

None. There are no provisions of this Act addressing the issues raised by the HIPAA preemption analysis.

5. Significant Case Law.

None. There is no significant case law addressing the issues raised by the HIPAA preemption analysis.

6. Preemption Analysis under HIPAA.

The Life Care Facilities Act does not govern the use or disclosure of protected health information. It is possible to comply with this law and HIPAA. Further, this law does not stand as an obstacle to accomplishing the full purpose of HIPAA. Therefore, the law is not "contrary" to the HIPAA regulations. 45 C.F.R. § 160.202.

7. Is the Law Preempted?

No.

1. Name and Citation of Law.

Nursing Home Care Act (210 ILCS 45/1-101)

2. General Description of the Law.

The Nursing Home Care Act provides regulatory authority for a variety of types of long term care, including the oversight of certain categories of employees employed by long term care facilities.

3. Rules Promulgated Under the Law.

77 Ill. Admin. Code 300.110, Skilled Nursing and Intermediate Care Facilities Code
77 Ill. Admin. Code 330.110, Sheltered Care Facilities Code
77 Ill. Admin. Code 340.1000, Illinois Veterans' Homes Code
77 Ill. Admin. Code 350.110, Intermediate Care for the Developmentally Disabled Facilities Code
77 Ill. Admin. Code 385.1010, Supportive Residences Licensing Code
77 Ill. Admin. Code 390.110, Long Term Care for Under Age 22 Facilities Code
77 Ill. Admin. Code 395.50, Long Term Care Assistance and AIDS Training Programs Code
77 Ill. Admin. Code 400.100, Central Complaint Registries
77 Ill. Admin. Code 420.1, Implementation of Titles XVIII and XIX of the Social Security Act Related to Skilled Nursing and Intermediate Care Facilities
77 Ill. Admin. Code 430.10, Reference for Rules and Administrative Hearings Under §§ 2-110(b) and 3-410 of the Nursing Home Care Act

4. Key Provisions.

Long Term Care Act
210 ILCS 45/2-104, Medical Treatment; Experimental Researcher Treatment; Records
210 ILCS 45/2-105, Privacy
210 ILCS 45/2-107, Abuse or Neglect; Duty to Report
210 ILCS 45/2-206, Confidentiality of Records
210 ILCS 45/2-210, Policies and Procedures
210 ILCS 45/2-211, Explanation of Rights
210 ILCS 45/3-107, Inspections; Fees
210 ILCS 45/3-212, Inspection
210 ILCS 45/3-801.1, Access to Records of a Person with a Developmental Disability Residing in Facility

Skilled Nursing and Intermediate Care Facilities Code

77 Ill. Admin. Code 300.200, Inspections, Surveys, Evaluations, and Consultations
77 Ill. Admin. Code 300.670, Disaster Preparedness
77 Ill. Admin. Code 300.690, Serious Incidents and Accidents
77 Ill. Admin. Code 300.1020, Communicable Disease Policy
77 Ill. Admin. Code 300.1810, Resident Record Requirements
77 Ill. Admin. Code 300.1820, Content of Medical Record
77 Ill. Admin. Code 300.1840, Retention and Transfer of Resident Records
77 Ill. Admin. Code 300.1850, Other Resident Record Requirements
77 Ill. Admin. Code 300.1860, Staff Responsibilities for Medical Records
77 Ill. Admin. Code 300.3240, Abuse and Neglect
77 Ill. Admin. Code 300.3310, Complaint Procedures
77 Ill. Admin. Code 300.3320, Confidentiality
77 Ill. Admin. Code 300.3600, Record Keeping

Sheltered Care Facilities Code
77 Ill. Admin. Code 330.200, Inspections, Surveys, Evaluations and Compensation
77 Ill. Admin. Code 330.310, Department May Survey Facilities Formerly Licensed
77 Ill. Admin. Code 330.770, Disaster Preparedness
77 Ill. Admin. Code 330.7080, Serious Incidents and Accidents
77 Ill. Admin. Code 330.1130, Communicable Disease Policies
77 Ill. Admin. Code 330.1710, Resident Record Requirements
77 Ill. Admin. Code 330.1720, Content of Medical Records
77 Ill. Admin. Code 330.1740, Retention and Transfer of Resident Records
77 Ill. Admin. Code 330.1750, Other Resident Record Requirements
77 Ill. Admin. Code 330.4240, Abuse and Neglect
77 Ill. Admin. Code 330.4310, Complaint Procedures
77 Ill. Admin. Code 330.4320, Confidentiality

Illinois Veterans' Homes Code
77 Ill. Admin. Code 340.1160, Inspections, Surveys, Evaluation, and Consultations
77 Ill. Admin. Code 340.1330, Serious Incidents and Accidents
77 Ill. Admin. Code 340.1440, Abuse and Neglect
77 Ill. Admin. Code 340.1480, Complaint Procedures
77 Ill. Admin. Code 340.1510, Communicable Disease Policies
77 Ill. Admin. Code 340.1800, Resident Record Requirements
77 Ill. Admin. Code 340.1810, Content of Medical Records
77 Ill. Admin. Code 340.1830, Retention, Transfer, and Inspection of Records
77 Ill. Admin. Code 340.1840, Confidentiality of Resident's Records

Intermediate Care for the Developmentally Disabled Facilities Code
77 Ill. Admin. Code 350.200, Inspections, Surveys, Evaluations and Consultation
77 Ill. Admin. Code 350.700, Serious Incidents and Accidents

77 Ill. Admin. Code 350.1223, Communicable Disease Policies
77 Ill. Admin. Code 350.1610, Resident Record Requirements
77 Ill. Admin. Code 350.1620, Content of Medical Records
77 Ill. Admin. Code 350.1630, Confidentiality of Resident's Records
77 Ill. Admin. Code 350.1650, Retention and Transfer of Resident Records
77 Ill. Admin. Code 350.1660, Other Resident Record Requirements
77 Ill. Admin. Code 350.3240, Abuse and Neglect
77 Ill. Admin. Code 350.3310, Complaint Procedures
77 Ill. Admin. Code 350.3320, Confidentiality

Long Term Care for Under Age 22 Facilities Code
77 Ill. Admin. Code 390.200, Inspections, Surveys, Evaluations and Consultation
77 Ill. Admin. Code 390.700, Serious Incidents and Accidents
77 Ill. Admin. Code 390.1610, Resident Record Requirements
77 Ill. Admin. Code 390.1620, Content of Medical Records
77 Ill. Admin. Code 390.1630, Confidentiality of Resident's Records
77 Ill. Admin. Code 390.1650, Retention and Transfer of Resident Records
77 Ill. Admin. Code 390.1660, Other Resident Record Requirements
77 Ill. Admin. Code 390.3240, Abuse and Neglect
77 Ill. Admin. Code 390.3310, Complaint Procedures
77 Ill. Admin. Code 390.3320, Confidentiality

Central Complaint Registry
77 Ill. Admin. Code 400.110, General Requirements
77 Ill. Admin. Code 400.120, Complaint

5. Significant Case Law.

None. There is no significant case law addressing the issues raised by the HIPAA preemption analysis.

6. Preemption Analysis under HIPAA.

Long Term Care Act

Long term care residents are allowed to inspect and copy their records. 210 ILCS 45/2-104. This requirement is consistent with the Privacy Rule's guarantee of the right to access and copy by an individual. 45 C.F.R. §164.524. Long term care residents are not to be subjected to experimental research or treatment without obtaining a formal written consent. Id. A long term care facility is required to have an institutional review committee appointed by the administrator where experimental research or treatment is conducted. Id. Research may be completed at the long term care facility if conducted in

accordance with the Privacy Rule. 45 C.F.R. §164.508.

Residents of long term care facilities are entitled to privacy in their treatment. 210 ILCS 45/2-105. This privacy provision focuses on the treatment of individuals, rather than the treatment of their medical records. Long term care facilities are required to report suspected cases of abuse. 210 ILCS 45/2-107. This reporting is allowed under the Privacy Rule if certain requirements are satisfied. 45 C.F.R. §164.512(c).

The Long Term Care Act also requires the Department of Public Health to respect the confidentiality of a resident's medical record and not divulge the contents in a matter which identifies the resident. 210 ILCS 45/2-206. Because the Department is engaging in health oversight activities in inspecting long term care facilities and accessing the records, the Privacy Rule does not limit access by the Department to the records, or what may be disclosed to the Department from the record. 45 C.F.R. §164.512(d).

Long term care facilities are required to have policies and procedures to implement the Act available for inspection by any person and printed in not less than 12 point type. 210 ILCS 45/2-210. The Privacy Rule also requires the facility to have policies and procedures, however, the font of these policies and procedures is not specified. 45 C.F.R. §164.530(i). The font requirement in the Act should be considered more stringent than the Federal standard. 45 C.F.R. §160.202.

Each long term care resident is to receive a written explanation of their rights prepared by the State Long Term Care Ombudsman upon admission, or as soon as practicable within the first 48 hours after admission. 210 ILCS 45/2-211. A similar notice of privacy practices is required by the Privacy Regulation. 45 C.F.R. §164.520. The State Ombudsman notice covers more than privacy rights, and therefore, this notice should be provided in addition to the Notice of Privacy Practices that is created by the Privacy Rule.

The Department has the right to inspect the premises of any facility, or any location where it is suspected that a facility is in operation. 210 ILCS 45/3-107. Further, the Department is given additional inspection authority to conduct an annual inspection of all licensed nursing homes. 210 ILCS 45/3-212. This type of inspection is specifically allowed, and the review of protected health information is allowed, as health oversight activity. 45 C.F.R. §164.512(d).

Long term care facilities may also be inspected by the Department of Human Services when a resident with developmental disabilities and the treatment of that resident is at issue. 210 ILCS 45/3-801.1, 77 Ill. Admin. Code 300.3600. This activity would again qualify as health oversight. 45 C.F.R. §164.512(d).

<u>Skilled Nursing and Intermediate Care Facilities Code</u>

The Illinois Department of Public Health has the right to inspect facilities licensed as skilled care and intermediate care facilities. 77 Ill. Admin. Code 300.200. This activity is allowed by the Privacy Rule as health care oversight. 45 C.F.R. §164.512(d). Skilled nursing facilities ("SNF") and intermediate care facilities ("ICF") are also required to have disaster preparedness plans. 77 Ill. Admin. Code 300.670. This provision will need to be reviewed under the final Security Rule.

SNFs and ICFs are required to report serious incidents or accidents which affect the welfare of a resident to the Department of Public Health. 77 Ill. Admin. Code 300.690. This reporting is allowed by the Privacy Rule as a function of health oversight. 45 C.F.R. §164.512(d). SNFs and ICFs are also required to follow the State Communicable Disease Reporting Requirements. 77 Ill. Admin. Code 300.1020. The reporting of communicable diseases is allowed as a public health activity under the Privacy Rule. 45 C.F.R. §164.512(b). The SNF/ICF rules require the reporting of any suspected abuse or neglect. 77 Ill. Admin. Code 300.3240. Disclosures concerning suspected victims of abuse are allowed by the Privacy Rule if certain requirements are met. 45 C.F.R. §164.512(c).

The SNF/ICF rules contain several requirements dealing with the contents and keeping of the patient records. A facility is to maintain a record on each resident. 77 Ill. Admin. Code 300.1810. The list of items to be contained in the medical record are set forth in the State rules. 77 Ill. Admin. Code 300.1820. Records are to be kept for a minimum of 5 years. 77 Ill. Admin. Code 300.1840. The rules set forth additional items which must be kept in the resident record. 77 Ill. Admin. Code 300.1850. The SNF or ICF is also required to have a person designated to be in charge of the medical records. 77 Ill. Admin. Code 300.1860. The requirements contained in the SNF/ICF rules are generally more detailed than the definition of a designated record set under the Privacy Rule. 45 C.F.R. §164.501. The SNF/ICF rules do not appear to conflict with the requirements of the designated records set forth in the Privacy Rule. Id. It should be noted, however, that the Illinois rule only requires keeping records for 5 years after discharge. 77 Ill. Admin. Code 300.1840. The Privacy Rule requires a facility to provide an accounting of disclosures for 6 years and that policies and procedures be maintained for 6 years following their last use. 45 C.F.R. §164.530(j), §164.528. While the Privacy Rule does not require all medical records to be kept for 6 years, this policy may be advisable as the civil monetary penalties available under HIPAA can be instituted for up to a 6-year statute of limitations. See, Pub. L. 104-191.

Nursing home residents are allowed to file a complaint with the facility or Department of Public Health for any alleged violation of the rules. 77 Ill. Admin. Code 300.3310. This provision is not preempted, however, the facility will also need to allow individuals to make complaints to the Secretary of Health and Human Services for violations of the

Privacy Rule. 45 C.F.R. §164.530.

The SNF/ICF rules also require that the medical records be kept confidential. 77 Ill. Admin. Code 300.3320. This requirement is consistent with the Privacy Rule. 45 C.F.R. §164.502. Finally, the rules require that the SNF/ICF records concerning a resident include information from providers such as optometrists, audiometrists, podiatrists. 77 Ill. Admin. Code 300.3600. Again, these requirements should be taken into consideration as the facility creates its designated record set. 45 C.F.R. §164.501.

Sheltered Care Facilities

The Illinois Department of Public Health has access to resident records in its duties in inspecting and surveying facilities that are currently licensed, applying for license, or were formerly licensed as a sheltered care facility. 77 Ill. Admin. Code 330.200, 310. These activities are allowed under the Privacy Rule as functions of health oversight. 45 C.F.R. §164.512(d).

Sheltered care facilities are required to engage in disaster preparedness. 77 Ill. Admin. Code 330.770. This provision will have to be evaluated under the final Security Rule.

Sheltered care facilities are required to report serious incidents and accidents to the Department of Public Health. 77 Ill. Admin. Code 330.780. This reporting is allowed as part of the health oversight activities of the Department. 45 C.F.R. §164.512(d). Sheltered care facilities are also required to report communicable diseases to the State and local health departments. 77 Ill. Admin. Code 330.1130. This reporting is allowed under the public health activities exception to the Privacy Rule. 45 C.F.R. §164.512(b). Sheltered care facilities are required to report allegations of abuse and neglect to the State Health Department. 77 Ill. Admin. Code 330.4240. Such reporting of suspected abuse is allowed by the Privacy Rule if certain requirements are met. 45 C.F.R. §164.512(b), (c).

Sheltered care facilities are required to maintain records on each resident. 77 Ill. Admin. Code 330.1710. The regulations provide the content of the medical records. 77 Ill. Admin. Code 330.1720. Records are required to be maintained for at least 5 years under the rules. 77 Ill. Admin. Code 330.1740. Additional record requirements are contained in the rules, including the reports of accidents or injuries made pertaining to the resident. 77 Ill. Admin. Code 330.1750. These requirements do not conflict with the Privacy Rule. Sheltered care facilities should be careful in designating their records set under the Privacy Rule to ensure that the requirements of State regulation are met. 45 C.F.R. §164.501. The Privacy Rule requires a facility to provide an accounting of disclosures for 6 years and that policies and procedures be maintained for 6 years following their last use. 45 C.F.R. §164.530(j), §164.528. While the Privacy Rule does not require all medical records to be kept for 6 years, this policy may be advisable as the civil monetary

penalties available under HIPAA can be instituted for up to a 6-year statute of limitations. See, Pub. L. 104-191.

A sheltered care facility is required to allow the resident to make a complaint for alleging violations of the Rule. 77 Ill. Admin. Code 330.4310. This provision is not preempted, however, the facility will also need to allow individuals to make complaints to the Secretary of Health and Human Services for violations of the Privacy Rule. 45 C.F.R. §164.530.

Finally, sheltered care facilities are required to maintain the confidentiality of the patient and their records. 77 Ill. Admin. Code 330.4320. The regulation does not specify how the privacy is to be protected, therefore the provisions of the Privacy Rule can be reviewed regarding the confidentiality of health care information. 45 C.F.R. §164.502.

Illinois Veterans' Home Code

Illinois Veterans' Homes, which provide long term care services to veterans, are required to be inspected by the Department of Public Health. 77 Ill. Admin. Code 340.1160. Reports of incidents which occur at the facility are also made to the Department of Public Health. 77 Ill. Admin. Code 340.1330. Allegations of abuse are also reported to the appropriate authorities. 77 Ill. Admin. Code 340.1440. Inspections and incident reporting are part of health care oversight and are allowed under the Privacy Rule. 45 C.F.R. §512(b). Reports of alleged abuse or neglect are also allowed by the Privacy Rule if certain requirements are met. 45 C.F.R. §164.512(c).

Complaints regarding violations of the Long Term Care Act or the rules promulgated thereunder, may be made to the Department of Public Health. 77 Ill. Admin. Code 340.1480. These activities also constitute health oversight. 45 C.F.R. §164.512(d). This provision is not preempted, however, the facility will also need to allow individuals to make complaints to the secretary of Health and Human Services for violations of the Privacy Rule. 45 C.F.R. §164.530.

Facilities are required to report communicable diseases. 77 Ill. Admin. Code 340.1510. Such reporting is allowed by the Privacy Rule as public health activity. 45 C.F.R. §164.512(b).

Veterans' homes are required to keep resident records. 77 Ill. Admin. Code 340.1800. State regulations require that certain items be documented in the resident's record. 77 Ill. Admin. Code 340.1810. Veterans' facilities are required to retain records for at least 5 years following the discharge of a patient. 77 Ill. Admin. Code 340.1830. Information contained in the resident's records is to be considered confidential. 77 Ill. Admin. Code 340.1840. Veterans' homes facilities are required to have written policies governing the

access to, duplication of and dissemination of information from the medical records. In designating the records set, Illinois Veterans' Homes should be cognizant of the requirements in the Administrative Code, however, the requirements do not appear to conflict with the Privacy Rule. 45 C.F.R. §164.501. The Privacy Rule requires a facility to provide an accounting of disclosures for 6 years and that policies and procedures be maintained for 6 years following their last use. 45 C.F.R. §164.530(j), §164.528. While the Privacy Rule does not require all medical records to be kept for 6 years, this policy may be advisable as the civil monetary penalties available under HIPAA can be instituted for up to a 6-year statute of limitations. See, Pub. L. 104-191.

Intermediate Care for the Developmentally Disabled Facilities Code

The Department of Public Health is authorized to conduct inspections of intermediate care facilities. 77 Ill. Admin. Code 350.200. Intermediate care facilities ("ICF") are required to report serious incidents and allegations of abuse to the Department. 77 Ill. Admin. Code 350.700, 300.3240. These inspections and incident reporting are consistent with the health oversight activities in the Privacy Rule. 45 C.F.R. §164.512(d). Disclosures about victims of abuse and neglect are also allowed by the Privacy Regulation if certain requirements are met. 45 C.F.R. §164.512(c). ICFs are also required to report communicable diseases to the Department. 77 Ill. Admin. Code 350.1223. This reporting is allowed by the Privacy Rule as a public health activity. 45 C.F.R. §164.512(b).

Several provisions of the rules govern the content and use of the medical records at ICFs. The content of the record is described in several sections. 77 Ill. Admin. Code 350.1610, 350.1620, 350.1660. In naming the designated record set under the Privacy Rule, facilities should be cognizant of these requirements. 45 C.F.R. §164.501. Resident records are required to be maintained confidentially. 77 Ill. Admin. Code 350.1630, 350.3320. This requirement is consistent with the Privacy Rules. Complaints concerning violations of the Department rules may be filed with the Department. 77 Ill. Admin. Code 350.3310. These complaints are part of health oversight activities allowed by the Privacy Rule. 45 C.F.R. §164.512(d). This provision is not preempted, however, the facility will also need to allow individuals to make complaints to the Secretary of Health and Human Services for violations of the Privacy Rule. 45 C.F.R. §164.530.

Medical records are required to be maintained for a minimum of 5 years following discharge. 77 Ill. Admin. Code 350.1650. The Privacy Rule requires a facility to provide an accounting of disclosures for 6 years and that policies and procedures be maintained for 6 years following their last use. 45 C.F.R. §164.530(j), §164.528. While the Privacy Rule does not require all medical records to be kept for 6 years, this policy may be advisable as the civil monetary penalties available under HIPAA can be instituted for up to a 6-year statute of limitations. See, Pub. L. 104-191.

Long Term Care for Under Age 22 Facilities Code

The Illinois Department of Public Health has the authority to inspect long term care facilities for residents under age 22. 77 Ill. Admin. Code 390.200. The Department of Public Health can also require reporting of serious incidents and accidents. 77 Ill. Admin. Code 390.700. Further, the Department can accept complaints on any violations of the rules. 77 Ill. Admin. Code 390.3310. All of these activities should be considered health oversight and allowed by the Privacy Rule. 45 C.F.R. §164.512(b). The facility will also need to allow individuals to make complaints to the Secretary of Health and Human Services for violations of the Privacy Rule. 45 C.F.R. §164.530.

Like many of the other rules, the Under Age 22 Facilities Code contains requirements for the contents of the medical records. 77 Ill. Admin. Code 390.1610, 390.1620, 390.1660. The records are also to remain confidential. 77 Ill. Admin. Code 390.1630, 390.3320. Facilities are required to retain their records for at least 5 years after discharge of the patient, or 5 years after the patient reaches the age of majority. Id. The requirements concerning the contents of records should be taken into account by facilities when naming the designated record set required by the Privacy Rule. 45 C.F.R. §164.501. Further, the confidentiality requirements are consistent with the Privacy Rule, albeit not as detailed. 45 C.F.R. §164.502. The Privacy Rule requires a facility to provide an accounting of disclosures for 6 years and that policies and procedures be maintained for 6 years following their last use. 45 C.F.R. §164.530(j), §164.528. While the Privacy Rule does not require all medical records to be kept for 6 years, this policy may be advisable as the civil monetary penalties available under HIPAA can be instituted for up to a 6-year statute of limitations. See, Pub. L. 104-191.

Central Complaint Registry

The Illinois Department of Public Health maintains a central complaint registry for complaints against a variety of long term care facilities. Anyone is allowed to call in a complaint to the 800 number. 77 Ill. Admin. Code 400.110, 400.120. Investigations of these types of complaints are allowed under the health oversight activities exception in the Privacy Rule. 45 C.F.R. §164.512(d).

7. Is the Law Preempted?

No. State law requires records to be kept for a minimum of 5 years. As patients are entitled to an accounting of disclosures for a period of 6 years (45 C.F.R. §164.528), facilities should consider maintaining the accounting of disclosures for a period of at least 6 years rather than the state law requirement of 5 years.

1. Name and Citation of Law.

Emergency Medical Services (EMS) Systems Act (210 ILCS 50/1)

2. General Description of the Law.

The Emergency Medical Services Act creates a system for the provision and licensure of pre-hospital care providers, including medical emergency technicians, and the creation of a free-standing emergency center demonstration project.

3. Rules Promulgated Under the Law.

77 Ill. Admin. Code 515.100, Emergency Medical Services and Trauma Center Code
77 Ill. Admin. Code 518.1000, Free-Standing Emergency Center Demonstration Program Code

4. Key Provisions.

210 ILCS 50/3.125, Complaint Investigations
210 ILCS 50/3.195, Data Collection and Evaluation
210 ILCS 50/3.230, Abuse and Neglect Reporting Domestic Violence Referrals
77 Ill. Admin. Code 515.350, Data Collection and Submission
77 Ill. Admin. Code 515.Appendix E, Minimum Prescribed Data Elements

Free Standing Emergency Center Demonstration Program
210 ILCS 50/32.5, Free Standing Emergency Centers; Demonstration Program
77 Ill. Admin. Code 518.1450, Patients' Rights
77 Ill. Admin. Code 518.1800, Quality Assurance and Reporting
77 Ill. Admin. Code 518.2050, Disaster and Mass Casualty Programs

5. Significant Case Law.

None. There is no significant case law addressing the issues raised by the HIPAA preemption analysis.

6. Preemption Analysis under HIPAA.

The Emergency Medical Services Act provides for the creation of EMS services in the State through regional and system providers. 210 ILCS 50/3.15, 3.20. The basic function of the Department of Public Health is to engage in health oversight activities through licensure of certain professionals, such as emergency medical technicians. 210 ILCS 50/3.125. These activities are allowed by the Privacy Rule as those of health

oversight agencies. 45 C.F.R. §164.512(d).

The Department also engages in data collection activities. 210 ILCS 50/3.195. The confidentiality of patient records is required to be maintained in accordance with State and Federal regulations. Id. The Department's collection activities include elements that would be considered protected health information. 77 Ill. Admin. Code 515.350, Appendix E. These data collection activities are designed to improve the provision of pre-hospital care in the State of Illinois, thereby reducing morbidity and mortality, and therefore constitute public health activities allowed by the Privacy Rule. 45 C.F.R. §164.512(b).

Freestanding Emergency Centers

The Department of Public Health is entitled to inspect and license freestanding emergency centers. 210 ILCS 50/32.5. Freestanding emergency centers are to have written policies on patients' rights. 77 Ill. Admin. Code 518.1450. Freestanding emergency centers are also required to operate a quality assurance and reporting program. 77 Ill. Admin. Code 518.1800. These reports are made to the Department of Public Health. Id. The patient rights requirements are such that a freestanding emergency center may comply with both the State rule requirements and the Privacy Rule. 45 C.F.R. §164.530. Quality assurance activities of a freestanding emergency center constitute health care operation activities allowed by the Privacy Rule. 45 C.F.R. §164.506. Reporting to the Department constitutes a public health activity allowed by the Privacy Rule. 45 C.F.R. §164.512(b).

Freestanding emergency centers are also required to have policies to respond to disasters and mass casualties. As this provision does not contain specific requirements, this provision should be reviewed under the final Security Rule.

Therefore, it is possible to comply with both this law and HIPAA. Further, this law does not stand as an obstacle to accomplishing the full purpose of HIPAA. Therefore, the law is not "contrary" to the HIPAA regulations. 45 C.F.R. § 160.202.

7. Is the Law Preempted?

No.

1. Name and Citation of Law.

Home Health Agency Licensing Act (210 ILCS 55/1)

2. General Description of the Law.

The Home Health Agency Licensing Act allows the Department of Public Health to license home health agencies in the State of Illinois, or those that service primarily Illinois residents.

3. Rules Promulgated Under the Law.

77 Ill. Admin. Code 245.10, Illinois Home Health Agency Code

4. Key Provisions.

210 ILCS 55/9.01, Investigations and Inspections
77 Ill. Admin. Code 245.110, Inspections and Investigations

5. Significant Case Law.

None. There is no significant case law addressing the issues raised by the HIPAA preemption analysis.

6. Preemption Analysis under HIPAA.

The Department of Public Health is allowed to inspect home health agencies in order to ascertain their compliance with the licensure law. 210 ILCS 55/9.01, 77 Ill. Admin. Code 245.110. These activities are considered health oversight under the Privacy Rule. A covered entity is allowed to disclose protected health information to an agency carrying out health oversight activities. 45 C.F.R. §164.512(d).

It is possible to comply with this law and HIPAA. Further, this law does not stand as an obstacle to accomplishing the full purpose of HIPAA. Therefore, the law is not "contrary" to the HIPAA regulations. 45 C.F.R. § 160.202.

7. Is the Law Preempted?

No.

1. Name and Citation of Law.

Hospice Program Licensing Act (210 ILCS 60/1)

2. General Description of the Law.

The Hospice Program Licensing Act allows the Department of Public Health to license hospice programs in the State of Illinois.

3. Rules Promulgated Under the Law.

77 Ill. Admin. Code 280.1000, Hospice Programs

4. Key Provisions.

210 ILCS 60/6, Inspections
77 Ill. Admin. Code 280.1040, Inspections and Investigations
77 Ill. Admin. Code 280.2030, Policies and Procedures
77 Ill. Admin. Code 280.2050, Patient Rights
77 Ill. Admin. Code 280.2060, Clinical Records
77 Ill. Admin. Code 280.2090, Quality Assurance
77 Ill. Admin. Code 280.3000, Research or Experimental Programs

5. Significant Case Law.

None. There is no significant case law addressing the issues raised by the HIPAA preemption analysis.

6. Preemption Analysis under HIPAA.

The Department of Public Health is allowed to inspect hospice programs to ensure compliance with the regulatory requirements. 210 ILCS 60/6, 77 Ill. Admin. Code 280.1140. Inspection by a government agency is allowed as an activity of health oversight. 45 C.F.R. §164.512(d).

The program rules require hospice programs to have policies and procedures governing all services provided by the hospice. 77 Ill. Admin. Code 280.2030. While the administrative rule does not address privacy requirements specifically, the provision is not inconsistent with the Privacy Rule requirement for policies and procedures. 45 C.F.R. §164.530.

The rules also create certain patient rights, including the right to sign an informed consent

for the type of care and services provided. 77 Ill. Admin. Code 280.2050. The Privacy Rule does not require a consent for treatment purposes.

The record requirements for clinical records are contained in State rules. 77 Ill. Admin. Code 280.2060. Facilities should keep these specific record requirements in mind when naming the designated record set required by the Privacy Rule. 45 C.F.R. §164.501.

The rules also require quality assurance and utilization review planning to occur at these facilities. 77 Ill. Admin. Code 280.2090. The use of protected health information for this purpose is allowed under the "health care operations" definition. 45 C.F.R. §164.506. Finally, the rules require a hospice to have a written policy concerning participation in research or experimental programs. 77 Ill. Admin. Code 280.3000. The State rule requires informed consent of the patient for other than statistical analysis research. Any such research must be conducted consistent with the Privacy Rule. 45 C.F.R. §164.508.

It is possible to comply with this law and HIPAA. Further, this law does not stand as an obstacle to accomplishing the full purpose of HIPAA. Therefore, the law is not "contrary" to the HIPAA regulations. 45 C.F.R. § 160.202.

7. Is the Law Preempted?

No.

1. Name and Citation of Law.

Supportive Residences Licensing Act (210 ILCS 65/1)

2. General Description of the Law.

The Supportive Residences Licensing Act allows the creation of residences to serve patients who are eligible for hospice care.

3. Rules Promulgated Under the Law.

77 Ill. Admin. Code 385.1010, Supportive Residences Licensing Code

4. Key Provisions.

210 ILCS 65/30, Department Inspection
77 Ill. Admin. Code 385.1040, Inspections, Surveys, Evaluations, and Consultation
77 Ill. Admin. Code 385.1250, Disaster Preparedness
77 Ill. Admin. Code 385.1500, Policies and Procedures
77 Ill. Admin. Code 385.1550, Clients' Rights

5. Significant Case Law.

None. There is no significant case law addressing the issues raised by the HIPAA preemption analysis.

6. Preemption Analysis under HIPAA.

The Illinois Department of Public Health is allowed to inspect supportive residences programs. 210 ILCS 65/30, 77 Ill. Admin. Code 385.1040. Inspection activities are allowed as health oversight by the Privacy Rule. 45 C.F.R. §164.512(d). Therefore, disclosures of protected health information to the Department are allowed. Supportive residences are required to have disaster plans. 77 Ill. Admin. Code 385.1250. These disaster preparedness provisions will need to be reviewed under the final Security Rule.

The rules require a supportive residence to have policies and procedures governing individual's rights. 77 Ill. Admin. Code 385.1500. This provision is drafted such that a facility can comply with both the State regulation and the Privacy Rule. 45 C.F.R. §164.530.

It is possible to comply with this law and HIPAA. Further, this law does not stand as an obstacle to accomplishing the full purpose of HIPAA. Therefore, the law is not

"contrary" to the HIPAA regulations. 45 C.F.R. § 160.202.

7. Is the Law Preempted?
No.

1. Name and Citation of Law.

Emergency Medical Treatment Act (210 ILCS 70/.01)

2. General Description of the Law.

The Emergency Medical Treatment Act forbids a hospital or freestanding emergency center, physician, dentist, or other provider of professional health care to refuse to provide needed emergency treatment because of the person's inability to pay. 210 ILCS 70/1.

3. Rules Promulgated Under the Law.

None. No administrative rules have been promulgated under this law.

4. Key Provisions.

None. There are no provisions of this Act addressing the issues raised by the HIPAA preemption analysis.

5. Significant Case Law.

None. There is no significant case law addressing the issues raised by the HIPAA preemption analysis.

6. Preemption Analysis under HIPAA.

This Act does not govern the use or disclosure of health information.

It is possible to comply with this law and HIPAA. Further, this law does not stand as an obstacle to accomplishing the full purpose of HIPAA. Therefore, the law is not "contrary" to the HIPAA regulations. 45 C.F.R. § 160.202.

7. Is the Law Preempted?

No.

1. Name and Citation of Law.

Hospital Emergency Service Act (210 ILCS 80/.01)

2. General Description of the Law.

The Hospital Emergency Service Act requires all licensed hospitals to provide an emergency department to handle injuries or acute medical conditions. 210 ILCS 80/1.

3. Rules Promulgated Under the Law.

None. No administrative rules have been promulgated under this law. (See, discussion concerning the Hospital Licensing Act, 210 ILCS 85.)

4. Key Provisions.

None. There are no provisions of this Act addressing the issues raised by the HIPAA preemption analysis.

5. Significant Case Law.

None. There is no significant case law addressing the issues raised by the HIPAA preemption analysis.

6. Preemption Analysis under HIPAA.

It is possible to comply with this law and HIPAA. Further, this law does not stand as an obstacle to accomplishing the full purpose of HIPAA. Therefore, the law is not "contrary" to the HIPAA regulations. 45 C.F.R. § 160.202.

7. Is the Law Preempted?

No.

1. Name and Citation of Law.

Hospital Licensing Act (210 ILCS 85/1)

2. General Description of the Law.

The Hospital Licensing Act allows the Illinois Department of Public Health to regulate hospitals in the State of Illinois, other than the University of Illinois Hospital.

3. Rules Promulgated Under the Law.

77 Ill. Admin. Code 250.110, Hospital Licensing Requirements

4. Key Provisions.

210 ILCS 85/6.05, Regulations and Standards; Facilities for Mentally Ill and Retarded; Inspections
210 ILCS 85/6.08, Patients Diagnosed as Having Dangerous Communicable or Infectious Diseases; Emergency Care; Notification; Violations
210 ILCS 85/9.1, Institutions of the Department of Human Services; Inspections; Reports
210 ILCS 85/6.14(b), Confidentiality of Patient Records
210 ILCS 85/6.17, Protection of and Confidential Access to Medical Records and Information
210 ILCS 85/9, Inspections and Investigations
77 Ill. Admin. Code 250.260, Patients' Rights
77 Ill. Admin. Code 250.270, Manuals of Procedure
77 Ill. Admin. Code 250.280, Agreement with Designated Organ Procurement Agencies
77 Ill. Admin. Code 250.740, Disaster and Mass Casualty Programs
77 Ill. Admin. Code 250.990, Unusual Incidents
77 Ill. Admin. Code 250.1510, Medical Records
77 Ill. Admin. Code 250.1520, Reports
77 Ill. Admin. Code 250.2290, Special Medical Record Requirements for Psychiatric Hospitals and Psychiatric Units of General Hospitals or General Hospitals Providing Psychiatric Care
77 Ill. Admin. Code 250.2860, Medical Records (Alcoholism and Intoxication Treatment Services)
77 Ill. Admin. Code 250.Table B, Sound Transmission Limitations in General Hospitals

5. Significant Case Law.

Berger v. Lutheran General Hospital, 259 Ill. Dec. 753, 198 Ill. 2d 21, 759 N.E.2d 533 (Ill. 2001)

6. Preemption Analysis under HIPAA.

The Illinois Department of Public Health is charged with inspecting facilities for the mentally ill and hospitals in the State of Illinois. 210 ILCS 85/6.05, 9, 9.1. The Department of Public Health is also required to maintain the confidentiality of a patient's record in the inspection process. 210 ILCS 85/6.14(b). These activities constitute health oversight activities within the meaning of the Privacy Rule. Therefore, disclosures of protected health information to the Department are allowed. 45 C.F.R. §164.512(d).

Hospitals are also required to report communicable diseases, certain data regarding pregnant women and infants, vital records data and other incidents or occurrences at the hospital that present a threat to the patients. 77 Ill. Admin. Cod 250.1520. Hospitals are required to notify police officers, firefighters, emergency medical technicians, and ambulance personnel who have provided or are about to provide treatment to an individual possessing a communicable or infectious disease. 210 ILCS 85/6.08. In the event that HIV is the communicable or infectious disease, notification is only to occur if the ambulance run sheet indicates that one of the above individuals had blood or bodily fluid contact. Id. In municipalities over 1 million people (Chicago), notification is to be provided to the private provider agency or the infectious disease control officer of the municipal fire department, rather than the individual. Id. Such disclosures are also allowed by the AIDS Confidentiality Act. (See discussion on 410 ILCS 305.) Disclosure under the Hospital Licensing Act of a communicable or infectious disease meets the definition of a public health activity allowed by the Privacy Rule. 45 C.F.R. §164.512(b).

Hospitals are required to develop a medical record for each patient and to comply with certain physical safeguards with respect to the records and to maintain the confidentiality of such records. 210 ILCS 85/6.17(a), 77 Ill. Admin. Code 250.1510. It will be necessary for hospitals to review these provisions in creating a designated record set as required by the Privacy Rule. 45 C.F.R. §164.501. Hospitals are required to maintain their medical records according to hospital policy for not less than 10 years. 210 ILCS 85/6.17(c). The records should be maintained for a longer period of time if the hospital is notified by an attorney that litigation is pending involving the possible use of the medical record as evidence. Id. In the case of litigation, the hospital shall maintain the record until notified in writing by the Plaintiff's attorney with approval that the case in court has been concluded, or for a period of 12 years from the date the record was produced, whichever occurs first in time. 210 ILCS 85/6.17(c). The records requirement created in the Illinois statute is more stringent than the requirements contained in the Privacy Rule.

Hospitals are allowed to disclose information in the medical record for purposes of treatment, payment, peer review, utilization review, quality assurance, risk management, or defensive claims brought against the hospital arising out of the care. 210 ILCS

85/6.17(d). Such disclosures are allowed as functions of treatment, payment and health care operations under the Privacy Rule. 45 C.F.R. §164.506.

Hospitals are also required to report potential abuse situations under the Abused and Neglected Child Reporting Act, and diseases to the Department of Public Health under the Illinois Sexually Transmissible Disease Control Act. 210 ILCS 85/6.17(d). Abuse reports are specifically allowed by the Privacy Rule if certain requirements are met. 45 C.F.R. §164.512(b), (c). Communicable and sexually transmissible disease reporting is allowed as a public health activity under the Privacy Rule. 45 C.F.R. §164.514(b). Hospital counsel is also allowed to communicate to the hospital's medical staff members and agents and employees concerning medical record privacy, retention of medical records, and care or treatment provided. 210 ILCS 85/6.17(e). These disclosures are allowed by the Privacy Rule for purposes of treatment, and hospital operations, however, if the legal counsel is not a member of the hospital's work force, a business associate agreement must be in place prior to such disclosure. 45 C.F.R. §164.504(e). The Illinois State Supreme Court confirmed the validity of access by legal counsel to this information in *Berger v. Lutheran General Hospital*, 259 Ill. Dec. 753, 198 Ill. 2d 21, 759 N.E.2d 533 (Ill. 2001).

Hospitals are also allowed to disclose protected health information for organ and tissue procurement. 210 ILCS 85/6.17(f), 6.17(g), 77 Ill. Admin. Code 250.280. Disclosures for organ procurement activities are allowed by the Privacy Rule. 45 C.F.R. §512(h).

The rules also contain specific requirements for the maintenance of mental health records and alcohol and drug treatment records. 77 Ill. Admin. Code 250.2290, 250.2860. Providers offering mental health services should review the mental health record requirements to ensure that they are properly naming a designated record set in accordance with the Privacy Rule. 45 C.F.R. §164.501. The alcohol and drug treatment record provisions contained in the State rules are consistent with the Privacy Rule, as written policies and procedures are required and the confidentiality of the records survives past the conduct of the program. 45 C.F.R. §164.530.

All hospitals are required to have a policy manual and it is recommended that all hospitals give a patient a notice of their rights. 77 Ill. Admin. Code 250.270, 250.260. To the extent that the statement of patient rights contained in §260 is permissive and not mandatory, the provision is in conflict with the Privacy Rule which requires a notice of privacy practices to be provided to each patient upon admission. 45 C.F.R. §164.520. Policies and procedures with respect to protected health information are also mandatory under the Privacy Rule.

The Hospital Licensing Rules also require a disaster preparedness plan and that certain materials be used to minimize sound transmission. 77 Ill. Admin. Code 250.740, Table

B. These requirements should be reviewed under the final Security Rule.

7. Is the Law Preempted?

Partially. Presenting a patient with a Notice of Privacy Practices is a requirement under the Privacy Rule. State rules provide that a notice containing similar provisions is optional.

1. Name and Citation of Law.

Language Assistance Services Act (210 ILCS 87/1)

2. General Description of the Law.

The Language Assistance Services Act requires hospitals and facilities licensed under the Nursing Home Care Act to provide interpreters to individuals with limited-English-speaking capabilities or non-English-speaking residents and deaf residents. 210 ILCS 87/15

3. Rules Promulgated Under the Law.

None. No administrative rules have been promulgated under this law.

4. Key Provisions.

None. There are no provisions of this Act addressing the issues raised by the HIPAA preemption analysis.

5. Significant Case Law.

None. There is no significant case law addressing the issues raised by the HIPAA preemption analysis.

6. Preemption Analysis under HIPAA.

The Privacy Rule allows an individual to request confidential communications. 45 C.F.R. §164.522(b). A covered entity is required to accommodate reasonable requests to receive confidential communications. It appears that the request for bilingual services falls under the terms of this provision. Id.

It is possible to comply with this law and HIPAA. Further, this law does not stand as an obstacle to accomplishing the full purpose of HIPAA. Therefore, the law is not "contrary" to the HIPAA regulations. 45 C.F.R. § 160.202.

7. Is the Law Preempted?

No.

1. Name and Citation of Law.

X-Ray Retention Act (210 ILCS 90/.01)

2. General Description of the Law.

The X-Ray Retention Act requires hospitals to maintain x-rays and other photographs or forms for a period of at least 5 years.

3. Rules Promulgated Under the Law.

None. No administrative rules have been promulgated under this law.

4. Key Provisions.

210 ILCS 90/1, Retention of X-Ray or Roentgen Films as Records; Litigation

5. Significant Case Law.

None. There is no significant case law addressing the issues raised by the HIPAA preemption analysis.

6. Preemption Analysis under HIPAA.

A covered entity is required under the Privacy Rule to make an accounting of disclosures and maintain certain policies and procedures for a period of at least 6 years. 45 C.F.R. § 164.530. X-rays and other photographic films must be maintained under this Act for a minimum of 5 years. 210 ILCS 90/1. However, because civil monetary penalties for a HIPAA violation can be imposed for a period of up to 6 years, hospitals may want to maintain photographic films for at least 6 years. Pub. L. No. 104-191.

It is possible to comply with this law and HIPAA. Further, this law does not stand as an obstacle to accomplishing the full purpose of HIPAA. Therefore, the law is not "contrary" to the HIPAA regulations. 45 C.F.R. § 160.202.

7. Is the Law Preempted?

No.

1. Name and Citation of Law.

Community-Integrated Living Arrangements Licensure and Certification Act (210 ILCS 135/1)

2. General Description of the Law.

The Community -Integrated Living Arrangements Licensure and Certification Act allows the Department of Human Services to license community-integrated living arrangements or CILAs. The Department of Public Health shares some regulatory responsibility for these facilities.

3. Rules Promulgated Under the Law.

77 Ill. Admin. Code 370.110, Community Living Facilities Code
59 Ill. Admin. Code 115.100, Standards and Licensure Requirements for Community-Integrated Living Arrangements

4. Key Provisions.

59 Ill. Admin. Code 115.250, Individual Rights and Confidentiality
77 Ill. Admin. Code 370.190, Inspections
77 Ill. Admin. Code 370.820, Communicable Disease Policies
77 Ill. Admin. Code 370.1210, General
77 Ill. Admin. Code 370.1220, Other Records
77 Ill. Admin. Code 370.1230, Confidentiality
77 Ill. Admin. Code 370.3040, Abuse and Neglect
77 Ill. Admin. Code 370.3100, Confidentiality

5. Significant Case Law.

None. There is no significant case law addressing the issues raised by the HIPAA preemption analysis.

6. Preemption Analysis under HIPAA.

Dual regulatory authority is given to the Departments of Public Health and Human Services under this Act. CILAs primarily serve developmentally disabled individuals or those with mental health needs. CILAs are required by the Department of Human Services to inform individuals entering a CILA of their rights concerning the confidentiality of their medical records and to be free from abuse. 59 Ill. Admin. Code 115.250. This policy is consistent with the notice of privacy practices that must be

provided to individuals upon admission under the Privacy Rule. 45 C.F.R. §164.520.

The Illinois Department of Public Health also has specific requirements with respect to the content, creation, and retention of medical records. See 77 Ill. Admin. Code 370.1210, 1220, 1230. Facilities should refer to these requirements in developing the designated record set required by the Privacy Rule. 45 C.F.R. §164.501. Community Living Facilities are also required to comply with all of the provisions of the Mental Health and Developmental Disabilities Confidentiality Act. 77 Ill. Admin. Code 370.3100. (See, discussion of the Mental Health and Developmental Disabilities Confidentiality Act at 740 ILCS 110).

The Department of Public Health is allowed to inspect CILA facilities. 77 Ill. Admin. Code 370.190. CILAs are required to report communicable diseases to the appropriate local and State health department. 77 Ill. Admin. Code 370.820. Allegations of abuse are also to be reported to the State Health Department. 77 Ill. Admin. Code 370.3040. Disclosures for communicable diseases are allowed as public health activities under the Privacy Rule. 45 C.F.R. §164.512(b). Disclosures about victims of abuse or neglect are allowed under the Privacy Rule if certain requirements are satisfied. 45 C.F.R. §164.512(c). Inspections of a CILA are allowed as health oversight activities in the Privacy Rule. 45 C.F.R. §164.512(d). Each CILA facility should determine whether it is a covered entity.

It is possible to comply with this law and HIPAA. Further, this law does not stand as an obstacle to accomplishing the full purpose of HIPAA. Therefore, the law is not "contrary" to the HIPAA regulations. 45 C.F.R. § 160.202.

7. Is the Law Preempted?

No.

1. Name and Citation of Law

Illinois Insurance Code, Short Title, Definitions and Classifications (215 ILCS 5/1)

2. General Description of the Law

Article I of the Illinois Insurance Code sets forth the definitions generally applicable throughout the Illinois Insurance Code and the classes of insurance and companies under the Code.

3. Rules Promulgated Under the Law

50 Ill. Admin. Code 101.10	Nation-Wide Marine Definition of the National Association of Insurance Commissioners
50 Ill. Admin. Code 102.10	Plate Glass Service Contracts

4. Key Provisions

None. There are no provisions of this Act addressing the issues raised by the HIPAA preemption analysis.

5. Significant Case Law

None. There is no significant case law addressing the issues raised by the HIPAA preemption analysis.

6. Preemption Analysis Under HIPAA

The law does not address the privacy of health information.

It is possible to comply with this law and HIPAA. Further, this law does not stand as an obstacle to accomplishing the full purpose of HIPAA. Therefore, the law is not "contrary" to the HIPAA regulations. 45 C.F.R. § 160.202.

7. Is the Law Preempted?

No.

1. Name and Citation of Law

Domestic Stock Companies (215 ILCS 5/6)

2. General Description of the Law

Article II of the Illinois Insurance Code regulates the organization, capitalization, and authority to do business of domestic stock companies.

3. Rules Promulgated Under the Law

50 Ill. Admin. Code 201.10	Subordinated Indebtedness
50 Ill. Admin. Code 202.10	Mortgage Guaranty Insurance
50 Ill. Admin. Code 203.10	Proxies, Consents and Authorizations of Domestic Stock Companies
50 Ill. Admin. Code 204.5	Insider Trading of Domestic Stock Insurance Company Equity Securities
50 Ill. Admin. Code 205.10	Municipal Bond Insurance

4. Key Provisions

None. There are no provisions of this Act addressing the issues raised by the HIPAA preemption analysis.

5. Significant Case Law

None. There is no significant case law addressing the issues raised by the HIPAA preemption analysis.

6. Preemption Analysis Under HIPAA

The law does not address the privacy of health information.

It is possible to comply with this law and HIPAA. Further, this law does not stand as an obstacle to accomplishing the full purpose of HIPAA. Therefore, the law is not "contrary" to the HIPAA regulations. 45 C.F.R. § 160.202.

7. Is the Law Preempted?

No.

1. Name and Citation of Law

Risk-Based Capital (215 ILCS 5/35A-1)

2. General Description of the Law

Article IIA of the Illinois Insurance Code provides for certain reporting requirements so the Department of Insurance is able to monitor the solvency of insurers and identify the need for possible corrective action.

3. Rules Promulgated Under the Law

None. No administrative rules have been promulgated under this law.

4. Key Provisions

None. There are no provisions of this Act addressing the issues raised by the HIPAA preemption analysis.

5. Significant Case Law

None. There is no significant case law addressing the issues raised by the HIPAA preemption analysis.

6. Preemption Analysis Under HIPAA

The law does not address the privacy of health information.

It is possible to comply with this law and HIPAA. Further, this law does not stand as an obstacle to accomplishing the full purpose of HIPAA. Therefore, the law is not "contrary" to the HIPAA regulations. 45 C.F. R. § 160.202.

7. Is the Law Preempted?

No.

1. Name and Citation of Law

Domestic Mutual Companies (215 ILCS 5/36)

2. General Description of the Law

Article III of the Illinois Insurance Code regulates the organization, capitalization and authority to do business of domestic mutual companies.

3. Rules Promulgated Under the Law

50 Ill. Admin. Code 301.10 *et seq.*, Accumulation of Guaranty Fund or Guaranty Capital - Reporting and Accounting of Such Indebtedness

4. Key Provisions

None. There are no provisions of this Act addressing the issues raised by the HIPAA preemption analysis.

5. Significant Case Law

None. There is no significant case law addressing the issues raised by the HIPAA preemption analysis.

6. Preemption Analysis Under HIPAA

The law does not address the privacy of health information.

It is possible to comply with this law and HIPAA. Further, this law does not stand as an obstacle to accomplishing the full purpose of HIPAA. Therefore, the law is not "contrary" to the HIPAA regulations. 45 C.F.R. § 160.202.

7. Is the Law Preempted?

No.

1. Name and Citation of Law

Alien Companies (215 ILCS 5/60a)

2. General Description of the Law

Article III½ of the Illinois Insurance Code regulates the domestication of an alien company and the ability of an alien company to transact insurance business in the United States using Illinois as a state of entry.

3. Rules Promulgated Under the Law

None. No administrative rules have been promulgated under this law.

4. Key Provisions

None. There are no provisions of this Act addressing the issues raised by the HIPAA preemption analysis.

5. Significant Case Law

None. There is no significant case law addressing the issues raised by the HIPAA preemption analysis.

6. Preemption Analysis Under HIPAA

The law does not address the privacy of health information.

It is possible to comply with this law and HIPAA. Further, this law does not stand as an obstacle to accomplishing the full purpose of HIPAA. Therefore, the law is not "contrary" to the HIPAA regulations. 45 C.F.R. § 160.202.

7. Is the Law Preempted?

No.

1. Name and Citation of Law

Reciprocals (215 ILCS 5/61)

2. General Description of the Law

Article IV of the Illinois Insurance Code regulates the organization, capitalization, authority to do business, and operation of reciprocals or inter-insurance exchange companies.

3. Rules Promulgated Under the Law

50 Ill. Admin. Code 401.10, Accumulation of Guaranty Fund or Guaranty Capital - Reporting Accounting of Such Indebtedness

4. Key Provisions

None. There are no provisions of this Act addressing the issues raised by the HIPAA preemption analysis.

5. Significant Case Law

None. There is no significant case law addressing the issues raised by the HIPAA preemption analysis.

6. Preemption Analysis Under HIPAA

The law does not address the privacy of health information.

It is possible to comply with this law and HIPAA. Further, this law does not stand as an obstacle to accomplishing the full purpose of HIPAA. Therefore, the law is not "contrary" to the HIPAA regulations. 45 C.F.R. § 160.202.

7. Is the Law Preempted?

No.

1. Name and Citation of Law

Lloyds (215 ILCS 5/86)

2. General Description of the Law

Article V of the Illinois Insurance Code regulates the authority to do business and solvency of all groups, including incorporated and individual unincorporated underwriters, transacting an insurance business in Illinois through an attorney-in-fact under the name Lloyds or under a Lloyd's plan of operation.

3. Rules Promulgated Under the Law

None. No administrative rules have been promulgated under this law.

4. Key Provisions

None. There are no provisions of this Act addressing the issues raised by the HIPAA preemption analysis.

5. Significant Case Law

None. There is no significant case law addressing the issues raised by the HIPAA preemption analysis.

6. Preemption Analysis Under HIPAA

The law does not address the privacy of health information.

It is possible to comply with this law and HIPAA. Further, this law does not stand as an obstacle to accomplishing the full purpose of HIPAA. Therefore, the law is not "contrary" to the HIPAA regulations. 45 C.F.R. § 160.202.

7. Is the Law Preempted?

No.

1. Name and Citation of Law

Insurance Exchange (215 ILCS 5/107.01)

2. General Description of the Law

Article V½ of the Illinois Insurance Code governs the organization, authority to do business, and solvency of an exchange for the reinsurance and insurance of risks.

3. Rules Promulgated Under the Law

50 Ill. Admin. Code 551.10 Illinois Insurance Exchange Annual Statement

4. Key Provisions

None. There are no provisions of this Act addressing the issues raised by the HIPAA preemption analysis.

5. Significant Case Law

None. There is no significant case law addressing the issues raised by the HIPAA preemption analysis.

6. Preemption Analysis Under HIPAA

The law does not address the privacy of health information.

It is possible to comply with this law and HIPAA. Further, this law does not stand as an obstacle to accomplishing the full purpose of HIPAA. Therefore, the law is not "contrary" to the HIPAA regulations. 45 C.F.R. § 160.202.

7. Is the Law Preempted?

No.

1. Name and Citation of Law

Group Workers' Compensation Pools; Pooling; Insolvency Fund (215 ILCS 5/107a.01)

2. General Description of the Law

Article V¾ permits two or more employers with homogenous risk characteristics or that are members of a bona fide professional, commercial, industrial, or trade association, with homogenous risk characteristics to pool their workers' compensation and employer's liability exposures.

3. Rules Promulgated Under the Law

None. No administrative rules have been promulgated under this law.

4. Key Provisions

None. There are no provisions of this Act addressing the issues raised by the HIPAA preemption analysis.

5. Significant Case Law

None. There is no significant case law addressing the issues raised by the HIPAA preemption analysis.

6. Preemption Analysis Under HIPAA

The law does not address the privacy of health information.

It is possible to comply with this law and HIPAA. Further, this law does not stand as an obstacle to accomplishing the full purpose of HIPAA. Therefore, the law is not "contrary" to the HIPAA regulations. 45 C.F.R. § 160.202.

7. Is the Law Preempted?

No.

1. Name and Citation of Law

Foreign or Alien Companies (215 ILCS 5/108)

2. General Description of the Law

Article VI of the Illinois Insurance Code regulates the ability of an alien company organized as a stock company, mutual company, reciprocal, Lloyds or fraternal benefit society to be admitted to transact the kind or kinds of business which a domestic company similarly organized may be authorized to transact.

3. Rules Promulgated Under the Law

None. No administrative rules have been promulgated under this law.

4. Key Provisions

None. There are no provisions of this Act addressing the issues raised by the HIPAA preemption analysis.

5. Significant Case Law

None. There is no significant case law addressing the issues raised by the HIPAA preemption analysis.

6. Preemption Analysis Under HIPAA

The law does not address the privacy of health information.

It is possible to comply with this law and HIPAA. Further, this law does not stand as an obstacle to accomplishing the full purpose of HIPAA. Therefore, the law is not "contrary" to the HIPAA regulations. 45 C.F.R. § 160.202.

7. Is the Law Preempted?

No.

1. Name and Citation of Law

Unauthorized Companies (215 ILCS 5/121)

2. General Description of the Law

Article VII of the Illinois Insurance Code subjects certain insurers to the jurisdiction of the Director of Insurance and Illinois courts in suits by or on behalf of the State for the protection of Illinois residents against acts by insurers not authorized to do an insurance business in Illinois, for the maintenance of fair and honest insurance markets, for protecting authorized insurers which are subject to regulation from unfair competition by unauthorized insurers, and for protecting against the evasion of the insurance regulatory laws.

3. Rules Promulgated Under the Law

None. No administrative rules have been promulgated under this law.

4. Key Provisions

None. There are no provisions of this Act addressing the issues raised by the HIPAA preemption analysis.

5. Significant Case Law

None. There is no significant case law addressing the issues raised by the HIPAA preemption analysis.

6. Preemption Analysis Under HIPAA

The law does not address the privacy of health information.

It is possible to comply with this law and HIPAA. Further, this law does not stand as an obstacle to accomplishing the full purpose of HIPAA. Therefore, the law is not "contrary" to the HIPAA regulations. 45 C.F.R. § 160.202.

7. Is the Law Preempted?

No.

1. Name and Citation of Law

Advisory Organizations (215 ILCS 5/123A-1)

2. General Description of the Law

Article VIIA of the Insurance Code authorizes the existence, operation and regulation of qualified advisory organizations generally available to all admitted companies and permits, under certain conditions, joint underwriting and joint reinsurance.

3. Rules Promulgated Under the Law

50 Ill. Admin. Code 751.10	Preamble and Definitions
50 Ill. Admin. Code 752.10	License, Documents Necessary to Engage in Activities and Examinations
50 Ill. Admin. Code 753.10	Filing Policy and Endorsements Form
50 Ill. Admin. Code 754.10	Rules and Rate Filings

4. Key Provisions

215 ILCS 5/123A-9.	Authorization to Act
215 ILCS 5/123A-12.	Exchange of Information or Statistical Data between Advisory Organizations and Companies

5. Significant Case Law

None. There is no significant case law addressing the issues raised by the HIPAA preemption analysis.

6. Preemption Analysis Under HIPAA

Article VIIA authorizes a health insurance company to furnish to an advisory organization information in its possession relating to any authorized activities of the advisory organization, which include compiling statistics and preparing policies, bond forms and underwriting rules for insurance companies. 215 ILCS 5/123A-2 and A-9. The Director of the Department of Insurance may review such cooperative activities and practices and if, after hearing, upon notice of all the cooperating parties, he finds that any activity or practice is unfair or unreasonable or otherwise inconsistent with the provisions of the Illinois Insurance Code, he may issue a written order requiring the discontinuance of such activity or practice. 215 ILCS 5/123A-12.

Article VIIA authorizes a health plan to disclose protected health information to an

advisory organization for underwriting, premium rating, and other activities relating to the creation, renewal or replacement of a contract of health insurance or health benefits. However, such activities are "health care operations" defined in 45 C.F.R. § 164.501 and, thus, no authorization or consent is required under 45 C.F.R. § 164.506.

It is possible to comply with this law and HIPAA. Further, this law does not stand as an obstacle to accomplishing the full purpose of HIPAA. Therefore, the law is not "contrary" to the HIPAA regulations. 45 C.F.R. § 160.202.

7. Is the Law Preempted?

No.

1. Name and Citation of Law

Risk Retention Companies (215 ILCS 5/123B-1)

2. General Description of the Law

Article VIIB regulates the formation and operation of risk retention groups and purchasing groups in Illinois formed pursuant to the provisions of the Federal Liability Risk Retention Act of 1986.

3. Rules Promulgated Under the Law

None. No administrative rules have been promulgated under this law.

4. Key Provisions

None. There are no provisions of this Act addressing the issues raised by the HIPAA preemption analysis.

5. Significant Case Law

None. There is no significant case law addressing the issues raised by the HIPAA preemption analysis.

6. Preemption Analysis Under HIPAA

The law does not address the privacy of health information.

It is possible to comply with this law and HIPAA. Further, this law does not stand as an obstacle to accomplishing the full purpose of HIPAA. Therefore, the law is not "contrary" to the HIPAA regulations. 45 C.F.R. § 160.202.

7. Is the Law Preempted?

No.

1. Name and Citation of Law

Domestic Captive Insurance Companies (215 ILCS 5/123C-1)

2. General Description of the Law

Article VIIC of the Illinois Insurance Code regulates the formation, capitalization, authority to do business, and operation of domestic captive insurance companies.

3. Rules Promulgated Under the Law

None. No administrative rules have been promulgated under this law.

4. Key Provisions

None. There are no provisions of this Act addressing the issues raised by the HIPAA preemption analysis.

5. Significant Case Law

None. There is no significant case law addressing the issues raised by the HIPAA preemption analysis.

6. Preemption Analysis Under HIPAA

The law does not address the privacy of health information.

It is possible to comply with this law and HIPAA. Further, this law does not stand as an obstacle to accomplishing the full purpose of HIPAA. Therefore, the law is not "contrary" to the HIPAA regulations. 45 C.F.R. § 160.202.

7. Is the Law Preempted?

No.

1. Name and Citation of Law

Investments of Domestic Companies (215 ILCS 5/126.1)

2. General Description of the Law

Article VIII of the Illinois Insurance Code establishes investment standards for domestic insurers and United States branches of alien insurers entered through Illinois in order to protect the interests of insureds by promoting insurer solvency and financial strength.

3. Rules Promulgated Under the Law

50 Ill. Admin. Code 801.10	Valuation of Investments
50 Ill. Admin. Code 802.10	Purchasing and Selling Call and Put Options Contracts
50 Ill. Admin. Code 803.10	Lending of Securities
50 Ill. Admin. Code 804.10	Repurchase and Reverse Repurchase Agreements
50 Ill. Admin. Code 805.10	Financial Futures Contracts
50 Ill. Admin. Code 806.10	Derivative Instruments

4. Key Provisions

None. There are no provisions of this Act addressing the issues raised by the HIPAA preemption analysis.

5. Significant Case Law

None. There is no significant case law addressing the issues raised by the HIPAA preemption analysis.

6. Preemption Analysis Under HIPAA

The law does not address the privacy of health information.

It is possible to comply with this law and HIPAA. Further, this law does not stand as an obstacle to accomplishing the full purpose of HIPAA. Therefore, the law is not "contrary" to the HIPAA regulations. 45 C.F.R. § 160.202.

7. Is the Law Preempted?

No.

1. Name and Citation of Law

Insurance Holding Company Systems (215 ILCS 5/131.1)

2. General Description of the Law

Article VIII½ of the Illinois Insurance Code regulates the merger, consolidation or acquisition of control of certain insurance companies; investments of subsidiaries; standards for transactions with affiliates; registration of companies which are members of an insurance holding company system; and operation of insurance holding company systems.

3. Rules Promulgated Under the Law

50 Ill. Admin. Code 851.10	Acquisition of Control of a Domestic Company
50 Ill. Admin. Code 852.10	Registration of Insurers
50 Ill. Admin. Code 853.10	Pre-Acquisition Notification
50 Ill. Admin. Code 854.10	Prior Notification of Transactions
50 Ill. Admin. Code 855.10	Prior Notification of Dividends on Common Stock and Other Distributions

4. Key Provisions

None. There are no provisions of this Act addressing the issues raised by the HIPAA preemption analysis.

5. Significant Case Law

None. There is no significant case law addressing the issues raised by the HIPAA preemption analysis.

6. Preemption Analysis Under HIPAA

The law does not address the privacy of health information.

It is possible to comply with this law and HIPAA. Further, this law does not stand as an obstacle to accomplishing the full purpose of HIPAA. Therefore, the law is not "contrary" to the HIPAA regulations. 45 C.F.R. § 160.202.

7. Is the Law Preempted?

No.

1. Name and Citation of Law

Provisions Applicable to All Companies (215 ILCS 5/132)

2. General Description of the Law

Article IX of the Illinois Insurance Code regulates the conduct of insurance companies generally, including the issuance, cancellation, and renewal of insurance policies, and claims practices.

3. Rules Promulgated Under the Law

50 Ill. Admin. Code 901.10, Destruction of Records
50 Ill. Admin. Code 903.10, Uniform Accounting Instructions for Fire and Marine and Casualty and Surety Insurers Classifications
50 Ill. Admin. Code 904.10, Internal Security Standard and Fidelity Bonds
50 Ill. Admin. Code 906.10, Illegal Groups and Unfair Rate Discrimination
50 Ill. Admin. Code 907.10, Exempt Sale of Insurance Company Shares
50 Ill. Admin. Code 908.10, Recording of Premiums Collected and Definition of Gross Premiums
50 Ill. Admin. Code 909.10, Advertising and Sales Promotion of Life Insurance and Annuities
50 Ill. Admin. Code 910.10, Correlated Sales of Life Insurance and Mutual Funds
50 Ill. Admin. Code 911.10, Unearned Premium Reserve Computation
50 Ill. Admin. Code 912.10, Commission Accounting for Direct Premium
50 Ill. Admin. Code 913.10, Securities Regulation
50 Ill. Admin. Code 914.10, Life and Accident and Health Policy Forms; Dividends
50 Ill. Admin. Code 915.10, Management Information Reports
50 Ill. Admin. Code 916.10, Required Procedures for Filing and Securing Approval of Life Insurance, Annuity and Accident and Health Insurance, Voluntary Health Service Plans, Vision Service Plans, Dental Service Plans, Pharmaceutical Service Plans, Limited Health Service Organizations and Health Maintenance Organizations Policy Forms
50 Ill. Admin. Code 917.10, Life Insurance and Annuity Replacement Regulation
50 Ill. Admin. Code 919.10, Improper Claims Practice
50 Ill. Admin. Code 921.10, Exclusion Provisions - Automobile
50 Ill. Admin. Code 922.10, Retrospective Compensation Agreements
50 Ill. Admin. Code 923.10, Ceded Reinsurance of Property and Liability Insurers
50 Ill. Admin. Code 924.10, Equipment Exclusion
50 Ill. Admin. Code 925.10, Annual Audited Financial Report
50 Ill. Admin. Code 926.10, Insurance Department Complaints
50 Ill. Admin. Code 927.10, Anticipated Salvage and Subrogation Recoverable
50 Ill. Admin. Code 928.10, Medical Malpractice Data Base

50 Ill. Admin. Code 929.10, Medical Liability Insurance Rules and Rate Filings
50 Ill. Admin. Code 930.10, Life Insurance Solicitation
50 Ill. Admin. Code 931.10, Required Procedure for Consumer Complaint Notification
50 Ill. Admin. Code 932.10, Automobile Anti-theft Mechanisms
50 Ill. Admin. Code 934.10, Usage of Smoker/Nonsmoker Mortality Tables in Determining Minimum Reserve Liabilities and Nonforfeiture Benefits
50 Ill. Admin. Code 935.10, Revision of the Minimum Mortality Standards for Valuation of Annuity and Pure Endowment Contracts
50 Ill. Admin. Code 936.10, Supplemental Reports for Property and Casualty Insurance Companies
50 Ill. Admin. Code 938.10, Accident and Health Risk Ratio Notice
50 Ill. Admin. Code 939.10, Medical Liability Insurance Loss Reports
50 Ill. Admin. Code 940.10, Mid-term Cancellations
50 Ill. Admin. Code 942.10, Tax Allocations
50 Ill. Admin. Code 2017.10, Uniform Medical Claim and Billing Forms
50 Ill. Admin. Code 2303.10, Arson Fraud Detection Reporting System

4. Key Provisions

215 ILCS 5/133. Books, Records, Accounts and Vouchers
215 ILCS 5/143.31. Uniform Medical Claim and Billing Forms
215 ILCS 5/155.23. Fraud Reporting
50 Ill. Admin. Code 901.10 Destruction of Records
50 Ill. Admin. Code 926.40 Complaint Handling Procedure
50 Ill. Admin. Code 2017.10 Uniform medical claims and billing forms

5. Significant Case Law

None. There is no significant case law addressing the issues raised by the HIPAA preemption analysis.

6. Preemption Analysis Under HIPAA

The administrative rules promulgated under Article IX set forth a procedure for the destruction of records with the approval of the Director of the Department of Insurance. 50 Ill. Admin. Code 901.10. The Privacy Rule requires a covered entity to give an individual an accounting of disclosures of protected health information made by the covered entity in the 6 years prior to the date on which the accounting is requested. 45 C.F.R. § 164.528. Therefore, 50 Ill. Admin. Code 901.10 should be implemented by the Director of the Department of Insurance in a manner consistent with the accounting required by the Privacy Rule. 45 C.F.R. §§ 160.202 and 160.203.

Article IX, and the rules promulgated thereunder, requires insurance companies to supply documentation, including relevant medical reports, to the Department of Insurance in response to a complaint which is received against the insurance company. 215 ILCS 5/133; 50 Ill. Admin. Code 926.40. However, the Privacy Rule allows the disclosure of protected health information for "health oversight activities," which include activities necessary for appropriate oversight of the health care system. 45 C.F.R. § 164.512(d)(1). Therefore, it is possible to comply with this law and HIPAA. Further, this law does not stand as an obstacle to accomplishing the full purpose of HIPAA. Therefore, the law is not "contrary" to HIPAA. 45 C.F.R. § 160.202.

Article IX and the rules promulgated thereunder also provide for uniform and simple insurance claim and billing forms. 215 ILCS 5/143.31(a), (b), (f), and (g); 50 Ill. Admin. Code 2017.10. However, HIPAA requires health care providers, health plans, and health care clearinghouses to conduct certain transactions as standard transactions. 45 C.F.R. § 162.923. Claims and billing are covered transactions under HIPAA. 45 C.F.R. § 160.103. To the extent that these claims and billing transactions under 215 ILCS 5/143.31 are classified by the Privacy Rule as health care claims or equivalent encounter information (45 C.F.R. §162.1101); health care payment and remittance advice (45 C.F.R. §162.1401); coordination of benefits (45 C.F.R. §162.1601); or health care claims status (45 C.F.R. §162.1801), such transactions will have to comply with HIPAA standards, rather than those set forth in Article IX of the Insurance Code. 45 C.F.R. §§ 162.923, 162.1102, 162.1401, 162.1602, 162.1802.

Article IX also provides that a health insurer explanation of benefits paid statements or claims summary statements sent to and insured by the health insurer must be in a specific format and written in a manner that promotes understanding by the insured. 215 ILCS 5/143.31(c); 50 Ill. Admin. Code 2017.10. However, HIPAA's transaction standards only apply to covered transactions between covered entities, i.e., health care provider, health plans, and health care clearinghouses. 45 C.F.R. § 162.923, 160.103. HIPAA's transaction standards do not apply to communications between an insurer and insured. Therefore, in sending an explanation of benefits compliant with the Privacy Rule, the insurer will still have to comply with 215 ILCS 5/143.31(c) and 50 Ill. Admin. Code 2017.10.

Article IX also authorizes the Director of the Department of Insurance to promulgate reasonable rules requiring insurers to report factual information, including medical information, in their possession that is pertinent to suspected fraudulent insurance claims, fraudulent insurance applications, or premium fraud after he has made a determination that the information is necessary to detect fraud or arson. 215 ILCS 5/155.23(1). The Privacy Rule allows disclosure of protected health information for "health oversight activities," which includes most the disclosures required by 215 ILCS 5/155.23(1). 45

C.F.R. § 164.512(d). In addition, to the extent that such disclosures are not covered by "health oversight activities," the Department of Insurance would have access to the same information pursuant to other provisions of the Insurance Code.

7. Is the Law Preempted?

Partially. To the extent that the Insurance Code allows the use of non-standard transactions for covered transactions, it is preempted.

1. Name and Citation of Law

Credit Life and Credit Accident and Health Insurance (215 ILCS 5/155.51)

2. General Description of the Law

Article IX½ with the Illinois Insurance Code regulates credit life insurance and credit accident and health insurance sold, or otherwise made effective, in connection with loans or other credit transactions of less than 10 years duration.

3. Rules Promulgated Under the Law

50 Ill. Admin. Code 951.10	Credit Life and Credit Accident and Health Insurance
50 Ill. Admin. Code 952.10	Credit Accident and Health Insurance
50 Ill. Admin. Code 953.10	Premium Refunds

4. Key Provisions

None. There are no provisions of this Act addressing the issues raised by the HIPAA preemption analysis.

5. Significant Case Law

None. There is no significant case law addressing the issues raised by the HIPAA preemption analysis.

6. Preemption Analysis Under HIPAA

The law does not address the privacy of health information.

It is possible to comply with this law and HIPAA. Further, this law does not stand as an obstacle to accomplishing the full purpose of HIPAA. Therefore, the law is not "contrary" to the HIPAA regulations. 45 C.F.R. § 160.202.

7. Is the Law Preempted?

No.

1. Name and Citation of Law

Merger, Consolidation or Plans of Exchange (215 ILCS 5/156)

2. General Description of the Law

Article X regulates the merger, consolidation, or acquisition by exchange of stock of any domestic company, except a Lloyds, with any domestic company or with any foreign or alien company, except a Lloyds.

3. Rules Promulgated Under the Law

None. No administrative rules have been promulgated under this law.

4. Key Provisions

None. There are no provisions of this Act addressing the issues raised by the HIPAA preemption analysis.

5. Significant Case Law

None. There is no significant case law addressing the issues raised by the HIPAA preemption analysis.

6. Preemption Analysis Under HIPAA

The law does not address the privacy of health information.

It is possible to comply with this law and HIPAA. Further, this law does not stand as an obstacle to accomplishing the full purpose of HIPAA. Therefore, the law is not "contrary" to the HIPAA regulations. 45 C.F.R. § 160.202.

7. Is the Law Preempted?

No.

1. Name and Citation of Law

Reinsurance (215 ILCS 5/173)

2. General Description of the Law

Article XI of the Illinois Insurance Code regulates the issuance of reinsurance agreements.

3. Rules Promulgated Under the Law

50 Ill. Admin. Code 1101.5 Reinsurance Ceded Contracts
50 Ill. Admin. Code 1103.10 Life Reinsurance Agreements
50 Ill. Admin. Code 1104.10 Credit for Reinsurance Ceded

4. Key Provisions

None. There are no provisions of this Act addressing the issues raised by the HIPAA preemption analysis.

5. Significant Case Law

None. There is no significant case law addressing the issues raised by the HIPAA preemption analysis.

6. Preemption Analysis Under HIPAA

The law does not address the privacy of health information.

It is possible to comply with this law and HIPAA. Further, this law does not stand as an obstacle to accomplishing the full purpose of HIPAA. Therefore, the law is not "contrary" to the HIPAA regulations. 45 C.F.R. § 160.202.

7. Is the Law Preempted?

No.

1. Name and Citation of Law

Protected Cell Companies (215 ILCS 5/179A-1)

2. General Description of the Law

Article XI½ of the Illinois Insurance Code allows domestic insurance companies to establish protected cell assets and liabilities in order to create more efficiency in conducting insurance securitization, to allow domestic companies easier access to alternative sources of capital, and to promote the benefits of insurance securitization generally.

3. Rules Promulgated Under the Law

None. No administrative rules have been promulgated under this law.

4. Key Provisions

None. There are no provisions of this Act addressing the issues raised by the HIPAA preemption analysis.

5. Significant Case Law

None. There is no significant case law addressing the issues raised by the HIPAA preemption analysis.

6. Preemption Analysis Under HIPAA

The law does not address the privacy of health information.

It is possible to comply with this law and HIPAA. Further, this law does not stand as an obstacle to accomplishing the full purpose of HIPAA. Therefore, the law is not "contrary" to the HIPAA regulations. 45 C.F.R. § 160.202.

7. Is the Law Preempted?

No.

1. Name and Citation of Law

Special Purpose Reinsurance Vehicle Law (215 ILCS 5/179E-1)

2. General Description of the Law

Article XIE of the Illinois Insurance Code provides for the creation of Special Purpose Reinsurance Vehicles exclusively to facilitate the securitization of one or more ceding insurers' risk as a means of accessing alternative sources of capital and achieving the benefits of securitization.

3. Rules Promulgated Under the Law

None. No administrative rules have been promulgated under this law.

4. Key Provisions

None. There are no provisions of this Act addressing the issues raised by the HIPAA preemption analysis.

5. Significant Case Law

None. There is no significant case law addressing the issues raised by the HIPAA preemption analysis.

6. Preemption Analysis Under HIPAA

The law does not address the privacy of health information.

It is possible to comply with this law and HIPAA. Further, this law does not stand as an obstacle to accomplishing the full purpose of HIPAA. Therefore, the law is not "contrary" to the HIPAA regulations. 45 C.F.R. § 160.202.

7. Is the Law Preempted?

No.

1. Name and Citation of Law

Domestication of Foreign and Alien Companies (215 ILCS 5/180)

2. General Description of the Law

Article XII of the Illinois Insurance Code allows any domestic, foreign or alien stock company, mutual company, assessment legal reserve company, reciprocal, or fraternal benefit society, authorized or which may be authorized to do business in this state, to reorganize, reincorporate or domesticate in Illinois.

3. Rules Promulgated Under the Law

None. No administrative rules have been promulgated under this law.

4. Key Provisions

None. There are no provisions of this Act addressing the issues raised by the HIPAA preemption analysis.

5. Significant Case Law

None. There is no significant case law addressing the issues raised by the HIPAA preemption analysis.

6. Preemption Analysis Under HIPAA

The law does not address the privacy of health information.

It is possible to comply with this law and HIPAA. Further, this law does not stand as an obstacle to accomplishing the full purpose of HIPAA. Therefore, the law is not "contrary" to the HIPAA regulations. 45 C.F.R. § 160.202.

7. Is the Law Preempted?

No.

1. Name and Citation of Law

Corrective Orders (215 ILCS 5/186.1)

2. General Description of the Law

Article XII½ provides that the Director of the Department of Insurance may issue certain orders if he or she determines that any domestic insurance company is operating in a manner, that could lead to, or is in, a financial condition, which if continued would make it hazardous to the public and its policyholders.

3. Rules Promulgated Under the Law

50 Ill. Admin. Code 1250.10 Corrective Orders

4. Key Provisions

None. There are no provisions of this Act addressing the issues raised by the HIPAA preemption analysis.

5. Significant Case Law

None. There is no significant case law addressing the issues raised by the HIPAA preemption analysis.

6. Preemption Analysis Under HIPAA

The law does not address the privacy of health information.

It is possible to comply with this law and HIPAA. Further, this law does not stand as an obstacle to accomplishing the full purpose of HIPAA. Therefore, the law is not "contrary" to the HIPAA regulations. 45 C.F.R. § 160.202.

7. Is the Law Preempted?

No.

1. Name and Citation of Law

Rehabilitation, Liquidation, Conservation and Dissolution of Companies (215 ILCS 5/187)

2. General Description of the Law

Article XIII of the Illinois Insurance Code provides for rehabilitation or liquidation proceedings for domestic companies or unauthorized foreign or alien companies under certain circumstances.

3. Rules Promulgated Under the Law

None. No administrative rules have been promulgated under this law.

4. Key Provisions

None. There are no provisions of this Act addressing the issues raised by the HIPAA preemption analysis.

5. Significant Case Law

None. There is no significant case law addressing the issues raised by the HIPAA preemption analysis.

6. Preemption Analysis Under HIPAA

The law does not address the privacy of health information.

It is possible to comply with this law and HIPAA. Further, this law does not stand as an obstacle to accomplishing the full purpose of HIPAA. Therefore, the law is not "contrary" to the HIPAA regulations. 45 C.F.R. § 160.202.

7. Is the Law Preempted?

No.

1. Name and Citation of Law

Uniform Provisions for Liquidation (215 ILCS 5/221.1)

2. General Description of the Law

Article XIII½ of the Illinois Insurance Code governs the procedure for delinquency proceedings against insurers for the purpose of liquidating, rehabilitating, reorganizing or conserving the insurer and provides for the ability to file claims to protect claimants against such insurers.

3. Rules Promulgated Under the Law

None. No administrative rules have been promulgated under this law.

4. Key Provisions

None. There are no provisions of this Act addressing the issues raised by the HIPAA preemption analysis.

5. Significant Case Law

None. There is no significant case law addressing the issues raised by the HIPAA preemption analysis.

6. Preemption Analysis Under HIPAA

The law does not address the privacy of health information.

It is possible to comply with this law and HIPAA. Further, this law does not stand as an obstacle to accomplishing the full purpose of HIPAA. Therefore, the law is not "contrary" to the HIPAA regulations. 45 C.F.R. § 160.202.

7. Is the Law Preempted?

No.

1. Name and Citation of Law

Legal Reserve Life Insurance (215 ILCS 5/222)

2. General Description of the Law

Article XIV regulates the operation of all stock and mutual legal reserve life companies.

3. Rules Promulgated Under the Law

50 Ill. Admin. Code 1401.10, Security Valuation Reserve
50 Ill. Admin. Code 1402.10, War Clauses
50 Ill. Admin. Code 1403.10, Family Group Life Insurance Policy Forms
50 Ill. Admin. Code 1404.10, Valuation of Reserves
50 Ill. Admin. Code 1405.10, Construction and Filing of Life Insurance and Annuity Forms
50 Ill. Admin. Code 1406.10, Individual and Group Life Insurance Policy Illustrations
50 Ill. Admin. Code 1407.10, Accelerated Life Benefit/Terminal Illness/Qualified Conditions
50 Ill. Admin. Code 1408.10, Actuarial Opinion and Memorandum
50 Ill. Admin. Code 1409.10, Valuation of Life Insurance Policies Including the Use of Select Mortality Factors
50 Ill. Admin. Code 1410.10, Modified Guaranteed Annuity (MGA) Contracts

4. Key Provisions

None. There are no provisions of this Act addressing the issues raised by the HIPAA preemption analysis.

5. Significant Case Law

None. There is no significant case law addressing the issues raised by the HIPAA preemption analysis.

6. Preemption Analysis Under HIPAA

The law does not address the privacy of health information.

It is possible to comply with this law and HIPAA. Further, this law does not stand as an obstacle to accomplishing the full purpose of HIPAA. Therefore, the law is not "contrary" to the HIPAA regulations. 45 C.F.R. § 160.202.

7. Is the Law Preempted?

No.

1. Name and Citation of Law

Separate Accounts (215 ILCS 5/245.21)

2. General Description of the Law

Article XIV½ of the Illinois Insurance Code allows domestic companies organized to a do a life annuity or accident health insurance business to establish one or more separate accounts and allocate thereto amounts to provide for life annuity or accident health insurance payable in fixed or variable amounts or both, subject to certain rules.

3. Rules Promulgated Under the Law

50 Ill. Admin. Code 1451.10, Variable Contract Rule

4. Key Provisions

None. There are no provisions of this Act addressing the issues raised by the HIPAA preemption analysis.

5. Significant Case Law

None. There is no significant case law addressing the issues raised by the HIPAA preemption analysis.

6. Preemption Analysis Under HIPAA

The law does not address the privacy of health information.

It is possible to comply with this law and HIPAA. Further, this law does not stand as an obstacle to accomplishing the full purpose of HIPAA. Therefore, the law is not "contrary" to the HIPAA regulations. 45 C.F.R. § 160.202.

7. Is the Law Preempted?

No.

1. Name and Citation of Law

Registration of Policies and Deposit of Reserves (215 ILCS 5/246)

2. General Description of the Law

Article XV of the Illinois Insurance Code regulates certain registered policies and the deposit of reserves related thereto.

3. Rules Promulgated Under the Law

None. No administrative rules have been promulgated under this law.

4. Key Provisions

None. There are no provisions of this Act addressing the issues raised by the HIPAA preemption analysis.

5. Significant Case Law

None. There is no significant case law addressing the issues raised by the HIPAA preemption analysis.

6. Preemption Analysis Under HIPAA

The law does not address the privacy of health information.

It is possible to comply with this law and HIPAA. Further, this law does not stand as an obstacle to accomplishing the full purpose of HIPAA. Therefore, the law is not "contrary" to the HIPAA regulations. 45 C.F.R. § 160.202.

7. Is the Law Preempted?

No.

1. Name and Citation of Law

Assessment Legal Reserve Life Companies (215 ILCS 5/254)

2. General Description of the Law

Article XVI of the Illinois Insurance Code regulates companies transacting or being organized to transact the kind or kinds of businesses described in Class I of Section 4 upon an assessment legal reserve basis; companies organized or operating prior to the effective date of the Code under an act entitled "An Act to incorporate, regulate and control assessment life insurance companies," approved July 14, 1927; and assessment life insurance companies organized or operating prior to the effective date of the Code under an act entitled "An Act to incorporate companies doing the business of life or accident insurance on the assessment plan and to control such companies of this State and of other states doing business in the State, and to repeal a certain Act therein named and providing and fixing the punishment for violation of provisions thereof," approved June 22, 1893.

3. Rules Promulgated Under the Law

50 Ill. Admin. Code 1601.10, Securities Valuation Reserve
50 Ill. Admin. Code 1602.10, War Clauses
50 Ill. Admin. Code 1603.10, Family Group Life Insurance Policy Forms
50 Ill. Admin. Code 1604.10, Valuation of Reserves
50 Ill. Admin. Code 1605.10, Legal Reserve Life Blank

4. Key Provisions

None. There are no provisions of this Act addressing the issues raised by the HIPAA preemption analysis.

5. Significant Case Law

None. There is no significant case law addressing the issues raised by the HIPAA preemption analysis.

6. Preemption Analysis Under HIPAA

The law does not address the privacy of health information.

It is possible to comply with this law and HIPAA. Further, this law does not stand as an obstacle to accomplishing the full purpose of HIPAA. Therefore, the law is not

"contrary" to the HIPAA regulations. 45 C.F.R. § 160.202.

7. Is the Law Preempted?
No.

1. Name and Citation of Law

Fraternal Benefit Societies (215 ILCS 5/282)

2. General Description of the Law

Article XVII of the Illinois Insurance Code regulates the operation of fraternal benefit societies.

3. Rules Promulgated Under the Law

50 Ill. Admin. Code 1701.10, Explanation of Special and Contingency Reserves
50 Ill. Admin. Code 1702.10, Security Valuation Reserve
50 Ill. Admin. Code 1703.10, War Clauses
50 Ill. Admin. Code 1704.10, Segregation of Accident and Health Business
50 Ill. Admin. Code 1705.10, Construction and Filing Forms
50 Ill. Admin. Code 1706.10, Adoption by Fraternal Benefit Societies of CSO 1958 Mortality Table

4. Key Provisions

None. There are no provisions of this Act addressing the issues raised by the HIPAA preemption analysis.

5. Significant Case Law

None. There is no significant case law addressing the issues raised by the HIPAA preemption analysis.

6. Preemption Analysis Under HIPAA

The law does not address the privacy of health information.

It is possible to comply with this law and HIPAA. Further, this law does not stand as an obstacle to accomplishing the full purpose of HIPAA. Therefore, the law is not "contrary" to the HIPAA regulations. 45 C.F.R. § 160.202.

7. Is the Law Preempted?

No.

1. Name and Citation of Law

Mutual Benefit Associations (215 ILCS 5/316)

2. General Description of the Law

Article XVIII of the Illinois Insurance Code governs the operation of mutual benefit associations.

3. Rules Promulgated Under the Law

None. No administrative rules have been promulgated under this law.

4. Key Provisions

None. There are no provisions of this Act addressing the issues raised by the HIPAA preemption analysis.

5. Significant Case Law

None. There is no significant case law citing this law addressing the issues raised by the HIPAA preemption analysis.

6. Preemption Analysis Under HIPAA

The law does not address the privacy of health information.

It is possible to comply with this law and HIPAA. Further, this law does not stand as an obstacle to accomplishing the full purpose of HIPAA. Therefore, the law is not "contrary" to the HIPAA regulations. 45 C.F.R. § 160.202.

7. Is the Law Preempted?

No.

1. Name and Citation of Law

Burial Societies (215 ILCS 5/338)

2. General Description of the Law

Article XIX of the Illinois Insurance Code governs the organization and operation of burial societies.

3. Rules Promulgated Under the Law

None. No administrative rules have been promulgated under this law.

4. Key Provisions

None. There are no provisions of this Act addressing the issues raised by the HIPAA preemption analysis.

5. Significant Case Law

None. There is no significant case law addressing the issues raised by the HIPAA preemption analysis.

6. Preemption Analysis Under HIPAA

The law does not address the privacy of health information.

It is possible to comply with this law and HIPAA. Further, this law does not stand as an obstacle to accomplishing the full purpose of HIPAA. Therefore, the law is not "contrary" to the HIPAA regulations. 45 C.F.R. § 160.202.

7. Is the Law Preempted?

No.

1. Name and Citation of Law

Long-Term Care Insurance (215 ILCS 5/351A)

2. General Description of the Law

Article XIXA of the Illinois Insurance Code governs the issuance of long-term care insurance.

3. Rules Promulgated Under the Law

50 Ill. Admin. Code 2012.10 Traditional Long-Term Care Insurance

4. Key Provisions

None. There are no provisions of this Act addressing the issues raised by the HIPAA preemption analysis.

5. Significant Case Law

None. There is no significant case law addressing the issues raised by the HIPAA preemption analysis.

6. Preemption Analysis Under HIPAA

The law does not address the privacy of health information.

It is possible to comply with this law and HIPAA. Further, this law does not stand as an obstacle to accomplishing the full purpose of HIPAA. Therefore, the law is not "contrary" to the HIPAA regulations. 45 C.F.R. § 160.202.

7. Is the Law Preempted?

No.

1. Name and Citation of Law

Small Employer Group Health Insurance Law (215 ILCS 5/351B-1)

2. General Description of the Law

Article XIXB authorizes a program whereby small employers may obtain affordable group health insurance that will increase access to healthcare, assist in reduction of the amount uncompensated care, and reduce the number of uninsured people.

3. Rules Promulgated Under the Law

50 Ill. Admin. Code 2014.10 Small Employer Group Health Insurance

4. Key Provisions

None. There are no provisions of this Act addressing the issues raised by the HIPAA preemption analysis.

5. Significant Case Law

None. There is no significant case law addressing the issues raised by the HIPAA preemption analysis.

6. Preemption Analysis Under HIPAA

The law does not address the privacy of health information.

It is possible to comply with this law and HIPAA. Further, this law does not stand as an obstacle to accomplishing the full purpose of HIPAA. Therefore, the law is not "contrary" to the HIPAA regulations. 45 C.F.R. § 160.202.

7. Is the Law Preempted?

No.

1. Name and Citation of Law

Accident and Health Insurance (215 ILCS 5/352)

2. General Description of the Law

Article XX regulates accident and health insurance.

3. Rules Promulgated Under the Law

50 Ill. Admin. Code 2001.10	Construction and Filing of Accident and Health Insurance Policy Forms
50 Ill. Admin. Code 2002.10	Advertising of Accident and Sickness Insurance
50 Ill. Admin. Code 2003.10	Definitions of the Terms "Noncancellable," "Noncancellable and Guaranteed Renewable," and "Guaranteed Renewable"
50 Ill. Admin. Code 2004.10	Accident and Health Reserves
50 Ill. Admin. Code 2005.10	Pre-existing Illness
50 Ill. Admin. Code 2006.10	Required Benefits for Mental, Emotional or Nervous Disorders
50 Ill. Admin. Code 2007.10	Minimum Standards of Individual Accident and Health Insurance
50 Ill. Admin. Code 2008.10	Minimum Standards for Individual and Group Medicare Supplement Insurance
50 Ill. Admin. Code 2009.10	Group Coordination of Benefits
50 Ill. Admin. Code 2010.10	Advertisements of Medicare Supplement Insurance
50 Ill. Admin. Code 2012.10	Traditional Long-Term Care Insurance
50 Ill. Admin. Code 2013.10	Group Coverage Discontinuance and Replacement
50 Ill. Admin. Code 2015.10	Infertility Coverage
50 Ill. Admin. Code 2018.10	Long-Term Care Partnership Insurance

4. Key Provisions

215 ILCS 5/356e.	Victims of certain offenses
215 ILCS 5/367.	Group accident and health insurance
215 ILCS 5/370c.	Mental and emotional disorders

5. Significant Case Law

None. There is no significant case law addressing the issues raised by the HIPAA preemption analysis.

6. Preemption Analysis Under HIPAA

Article XX provides that for purposes of enabling recovery of State funds, any accident and health insurance carrier must disclose to the Department of Public Health the names and identities of its insureds entitled to benefits for health care services related to sexual abuse and assault if the Department of Public Health determines that it has paid or is about to pay for any such services for which the carrier is liable. 215 ILCS 5/356e; 215 ILCS 5/367. However, the Privacy Rule allows disclosure of protected health information for "health oversight activities," which includes any activities necessary for appropriate oversight of the health care system or government benefit programs for which health information is relevant to beneficiary eligibility. 45 C.F.R. 164.512(d)(1). Therefore, such disclosure is allowed by the Privacy Rule.

Article XX also provides that, upon request of the reimbursing insurer, a provider of treatment of serious mental illness shall furnish medical records or other necessary data to substantiate that initial or continued treatment is at all times medically necessary. 215 ILCS 5/370c. Further, if there is a dispute regarding the medical necessity of treatment, the claim must be submitted to an external independent reviewer. 215 ILCS 5/370c. Such disclosures are not preempted, as the Privacy Rule allows disclosure of protected health information for purposes of "payment," which includes activities undertaken by a covered health care provider to obtain reimbursement for the provision of health care, as well as activities undertaken by a covered health care plan to review health care services with respect to medical necessity. 45 C.F.R. § 164.501.

Therefore, it is possible to comply with this law and HIPAA. Further, this law does not stand as an obstacle to accomplishing the full purpose of HIPAA. Therefore, the law is not "contrary" to the HIPAA regulations. 45 C.F.R. § 160.202.

7. Is the Law Preempted?

No.

1. Name and Citation of Law

Healthcare Reimbursement (215 ILCS 5/370f)

2. General Description of the Law

Article XX ½ allows an insurer or administrator to enter into agreements with certain providers of its choice relating to health care services which may be rendered to insureds or beneficiaries of the insurer or administrator, and to issue or administer programs, policies, or subscriber contracts that include incentives for the insured or beneficiary to utilize the services of a provider which has entered into an agreement with the insurer or administrator.

3. Rules Promulgated Under the Law

50 Ill. Admin. Code 2051.10 Preferred Provider Program Administrators

4. Key Provisions

None. There are no provisions of this Act addressing the issues raised by the HIPAA preemption analysis.

5. Significant Case Law

None. There is no significant case law addressing the issues raised by the HIPAA preemption analysis.

6. Preemption Analysis Under HIPAA

The law does not address the privacy of health information.

It is possible to comply with this law and HIPAA. Further, this law does not stand as an obstacle to accomplishing the full purpose of HIPAA. Therefore, the law is not "contrary" to the HIPAA regulations. 45 C.F.R. § 160.202.

7. Is the Law Preempted?

No.

1. Name and Citation of Law

Casualty Insurance, Fidelity Bonds and Surety Contracts (215 ILCS 5/378)

2. General Description of the Law

Article XXII regulates casualty insurance, fidelity bonds and surety contracts.

3. Rules Promulgated Under the Law

50 Ill. Admin. Code 2201.5 Loss and Loss Reserves

4. Key Provisions

None. There are no provisions of this Act addressing the issues raised by the HIPAA preemption analysis.

5. Significant Case Law

None. There is no significant case law addressing the issues raised by the HIPAA preemption analysis.

6. Preemption Analysis Under HIPAA

The law does not address the privacy of health information.

It is possible to comply with this law and HIPAA. Further, this law does not stand as an obstacle to accomplishing the full purpose of HIPAA. Therefore, the law is not "contrary" to the HIPAA regulations. 45 C.F.R. § 160.202.

7. Is the Law Preempted?

No.

1. Name and Citation of Law

Fire and Marine Insurance (215 ILCS 5/393)

2. General Description of the Law

Article XXIII of the Illinois Insurance Code regulates group professional liability insurance and marine or inland navigation or transportation insurance and fire insurance.

3. Rules Promulgated Under the Law

50 Ill. Admin. Code 2301.10, Standard Fire Policy
50 Ill. Admin. Code 2302.10, Required Procedures for Group Inland Marine Insurance
50 Ill. Admin. Code 2303.10, Arson Fraud Detection Reporting System

4. Key Provisions

None. There are no provisions of this Act addressing the issues raised by the HIPAA preemption analysis.

5. Significant Case Law

None. There is no significant case law addressing the issues raised by the HIPAA preemption analysis.

6. Preemption Analysis Under HIPAA

The law does not address the privacy of health information.

It is possible to comply with this law and HIPAA. Further, this law does not stand as an obstacle to accomplishing the full purpose of HIPAA. Therefore, the law is not "contrary" to the HIPAA regulations. 45 C.F.R. § 160.202.

7. Is the Law Preempted?

No.

1. Name and Citation of Law

Director of Insurance, Hearings and Review (215 ILCS 5/401)

2. General Description of the Law

Article XXIV of the Illinois Insurance Code gives the Director of the Department of Insurance the power to make reasonable rules and regulations as may be necessary for making effective the insurance laws of the state; to conduct such investigations as may be necessary to determine whether any person has violated any provision of the insurance laws; to conduct such examinations, investigations and hearings in addition to those specifically provided for, as may be necessary for the efficient administration of the insurance laws of the state; and to institute such actions or lawful proceedings as he may deem necessary for the enforcement of the Illinois Insurance Code or of any order or action made or taken by him under the Code.

3. Rules Promulgated Under the Law

50 Ill. Admin. Code 2402.10 Administrative Hearing Procedures

4. Key Provisions

215 ILCS 5/401.5, Investigation of Insurance Law Violations
215 ILCS 5/403, Power to Subpoena and Examine Witnesses
50 Ill. Admin. Code 2402.140, Authority of a Hearing Officer
50 Ill. Admin. Code 2402.170, Discovery
50 Ill. Admin. Code 2402.180, Subpoenas

5. Significant Case Law

None. There is no significant case law addressing the issues raised by the HIPAA preemption analysis.

6. Preemption Analysis Under HIPAA

Article XXIV gives the Director of the Department of Insurance the power to investigate insurance law violations and designates the Department of Insurance as a criminal justice agency under all state and federal laws and regulations for purposes of investigating insurance law violations. 215 ILCS 5/401.5(a). The Director (or hearing officer) has the power to subpoena witnesses and records in connection with any examination, investigation or hearing which could result in the disclosure of protected health information. 215 ILCS 5/403; 50 Ill. Admin. Code 2402.140, 2402.170, and 2402.180.

The law further provides that no insurer is subject to civil liability for furnishing information to the Department of Insurance in connection with an investigation. 215 ILCS 5/401.5. The Privacy Rule allows disclosure of protected health information for "health oversight activities," which includes any activities necessary for appropriate oversight of the health care system. 45 C.F.R. §164.512(d)(1). The Privacy Rule allows disclosure of protected health information to a law enforcement official as required by law, under specified circumstances. 45 C.F.R. §164.512(f). The Privacy Rule generally allows disclosure of protected health information in an administrative proceeding in response to an order of the administrative tribunal. 45 C.F.R. § 164.512(e).

Therefore, it is possible to comply with this law and HIPAA. Further, this law does not stand as an obstacle to accomplishing the full purpose of HIPAA. Therefore, the law is not "contrary" to the HIPAA regulations. 45 C.F.R. § 160.202.

7. Is the Law Preempted?

No.

1. Name and Citation of Law

Fees, Charges and Taxes (215 ILCS 5/408)

2. General Description of the Law

Article XXV of the Illinois Insurance Code provides for the application of certain fees, charges and taxes related to the administration of the Code.

3. Rules Promulgated Under the Law

50 Ill. Admin. Code 2500.10, General Provisions
50 Ill. Admin. Code 2501.10, Fees for Examination
50 Ill. Admin. Code 2502.10, Fees for Various Certificates Under Section 408
50 Ill. Admin. Code 2505.10, Fees and Charges
50 Ill. Admin. Code 2510.10, Annual Privilege Tax
50 Ill. Admin. Code 2515.10, Annual Retaliatory Tax
50 Ill. Admin. Code 2520.10, Annual State Fire Marshall Tax
50 Ill. Admin. Code 2525.10, Overpayments, Refunds, Amendments and Penalties

4. Key Provisions

None. There are no provisions of this Act addressing the issues raised by the HIPAA preemption analysis.

5. Significant Case Law

None. There is no significant case law addressing the issues raised by the HIPAA preemption analysis.

6. Preemption Analysis Under HIPAA

The law does not address the privacy of health information.

It is possible to comply with this law and HIPAA. Further, this law does not stand as an obstacle to accomplishing the full purpose of HIPAA. Therefore, the law is not "contrary" to the HIPAA regulations. 45 C.F.R. § 160.202.

7. Is the Law Preempted?

No.

1. Name and Citation of Law

Unfair Methods of Competition and Unfair and Deceptive Practices (215 ILCS 5/421)

2. General Description of the Law

Article XXVI of the Illinois Insurance Code regulates trade practices in the business of insurance by defining, or providing for the determination of, all such practices in this state which constitute unfair methods of competition or unfair deceptive acts or practices and by prohibiting the such practices.

3. Rules Promulgated Under the Law

50 Ill. Admin. Code 2002.10, Advertising of Accident and Sickness Insurance
50 Ill. Admin. Code 2601.10, Billing Procedures
50 Ill. Admin. Code 2602.10, Limits Use of Benefits to Adjust or Correct Prior Benefits Paid
50 Ill. Admin. Code 2603.10, Unfair Discrimination Based on Sex, Sexual Preference or Marital Status

4. Key Provisions

None. There are no provisions of this Act addressing the issues raised by the HIPAA preemption analysis.

5. Significant Case Law

None. There is no significant case law addressing the issues raised by the HIPAA preemption analysis.

6. Preemption Analysis Under HIPAA

The law does not address the privacy of health information.

It is possible to comply with this law and HIPAA. Further, this law does not stand as an obstacle to accomplishing the full purpose of HIPAA. Therefore, the law is not "contrary" to the HIPAA regulations. 45 C.F.R. § 160.202.

7. Is the Law Preempted?

No.

1. Name and Citation of Law

Final Provisions (215 ILCS 5/441)

2. General Description of the Law

Article XXVIII of the Illinois Insurance Code provides for, among other things, certain general corporate powers for insurance companies, the validation of illegally issued policies, reciprocity in acceptance of policy terms allowed in other states, retaliatory taxes, surplus line insurance, and a surplus line insurance association.

3. Rules Promulgated Under the Law

50 Ill. Admin. Code 2515.10, Annual Retaliatory Tax
50 Ill. Admin. Code 2801.10, Surplus Line Business Requirements

4. Key Provisions

None. There are no provisions of this Act addressing the issues raised by the HIPAA preemption analysis.

5. Significant Case Law

None. There is no significant case law addressing the issues raised by the HIPAA preemption analysis.

6. Preemption Analysis Under HIPAA

The law does not address the privacy of health information.

It is possible to comply with this law and HIPAA. Further, this law does not stand as an obstacle to accomplishing the full purpose of HIPAA. Therefore, the law is not "contrary" to the HIPAA regulations. 45 C.F.R. § 160.202.

7. Is the Law Preempted?

No.

1. Name and Citation of Law

Workers' Compensation and Employers' Liability Rates (215 ILCS 5/454)

2. General Description of the Law

Article XXIX of the Illinois Insurance Code regulates workers' compensation and employers' liability insurance rates to the end that they shall not be excessive, inadequate or unfairly discriminatory, or erroneously applied and authorizes and regulates cooperative action among companies in rate making and other matters.

3. Rules Promulgated Under the Law

50 Ill. Admin. Code 2901.10, Workers' Compensation Self Insurance
50 Ill. Admin. Code 2902.10, Workers' Compensation Rate and Manual Filing
50 Ill. Admin. Code 2903.10, Workers' Compensation Experience Reporting
50 Ill. Admin. Code 2904.10, Assigned Risk Procedures

4. Key Provisions

None. There are no provisions of this Act addressing the issues raised by the HIPAA preemption analysis.

5. Significant Case Law

None. There is no significant case law addressing the issues raised by the HIPAA preemption analysis.

6. Preemption Analysis Under HIPAA

Workers' Compensation activities are specifically excluded from coverage under the Privacy Rule. 45 C.F.R. §164.103, 164.512(l).

It is possible to comply with this law and HIPAA. Further, this law does not stand as an obstacle to accomplishing the full purpose of HIPAA. Therefore, the law is not "contrary" to the HIPAA regulations. 45 C.F.R. § 160.202.

7. Is the Law Preempted?

No.

1. Name and Citation of Law

Insurance Producers, Limited Insurance Representatives and Registered Firms (215 ILCS 5/489)

2. General Description of the Law

Article XXXI of the Illinois Insurance Code regulates insurance producers, limited insurance representatives and registered firms.

3. Rules Promulgated Under the Law

50 Ill. Admin. Code 3109.10, Insurance Producers Doing Business Under an Assumed Name or Firm Name
50 Ill. Admin. Code 3110.10, Licensed Persons in Military Service
50 Ill. Admin. Code 3113.10, Premium Fund Trust Account
50 Ill. Admin. Code 3115.10, Registered Firms
50 Ill. Admin. Code 3117.10, Licensing Requirements for the Solicitation of Variable Contracts
50 Ill. Admin. Code 3118.10, Licensing of Public Adjusters
50 Ill. Admin. Code 3119.10, Pre-Licensing and Continuing Education

4. Key Provisions

None. There are no provisions of this Act addressing the issues raised by the HIPAA preemption analysis.

5. Significant Case Law

None. There is no significant case law addressing the issues raised by the HIPAA preemption analysis.

6. Preemption Analysis Under HIPAA

The law does not address the privacy of health information.

It is possible to comply with this law and HIPAA. Further, this law does not stand as an obstacle to accomplishing the full purpose of HIPAA. Therefore, the law is not "contrary" to the HIPAA regulations. 45 C.F.R. § 160.202.

7. Is the Law Preempted?

No.

1. Name and Citation of Law

Third Party Administrators (215 ILCS 5/511.100)

2. General Description of the Law

Article XXXI¼ of the Illinois Insurance Code provides reasonable public supervision and licensing of persons who provide administrative services in connection with insurance or alternatives to insurance.

3. Rules Promulgated Under the Law

None. No administrative rules have been promulgated under this law.

4. Key Provisions

None. There are no provisions of this Act addressing the issues raised by the HIPAA preemption analysis.

5. Significant Case Law

None. There is no significant case law addressing the issues raised by the HIPAA preemption analysis.

6. Preemption Analysis Under HIPAA

The law does not address the privacy of health information.

It is possible to comply with this law and HIPAA. Further, this law does not stand as an obstacle to accomplishing the full purpose of HIPAA. Therefore, the law is not "contrary" to the HIPAA regulations. 45 C.F.R. § 160.202.

7. Is the Law Preempted?

No.

1. Name and Citation of Law

Third Party Prescription Programs (215 ILCS 5/512)

2. General Description of the Law

Article XXXI½ of the Illinois Insurance Code regulates certain practices engaged in by third party prescription program administrators.

3. Rules Promulgated Under the Law

50 Ill. Admin. Code 3150.10, Third Party Prescription Administrators

4. Key Provisions

None. There are no provisions of this Act addressing the issues raised by the HIPAA preemption analysis.

5. Significant Case Law

None. There is no significant case law addressing the issues raised by the HIPAA preemption analysis.

6. Preemption Analysis Under HIPAA

The law does not address the privacy of health information.

It is possible to comply with this law and HIPAA. Further, this law does not stand as an obstacle to accomplishing the full purpose of HIPAA. Therefore, the law is not "contrary" to the HIPAA regulations. 45 C.F.R. § 160.202.

7. Is the Law Preempted?

No.

1. Name and Citation of Law

Public Insurance Adjusters and Registered Firms (215 ILCS 5/512.51)

2. General Description of the Law

Article XXXI ¾ of the Illinois Insurance Code regulates public insurance adjusters and registered firms.

3. Rules Promulgated Under the Law

50 Ill. Admin. Code 3115.10, Register Firms
50 Ill. Admin. Code 3118.10, Licensing of Public Adjusters

4. Key Provisions

None. There are no provisions of this Act addressing the issues raised by the HIPAA preemption analysis.

5. Significant Case Law

None. There is no significant case law addressing the issues raised by the HIPAA preemption analysis.

6. Preemption Analysis Under HIPAA

The law does not address the privacy of health information.

It is possible to comply with this law and HIPAA. Further, this law does not stand as an obstacle to accomplishing the full purpose of HIPAA. Therefore, the law is not "contrary" to the HIPAA regulations. 45 C.F.R. § 160.202.

7. Is the Law Preempted?

No.

1. Name and Citation of Law

Premium Finance Regulation (215 ILCS 5/513a1)

2. General Description of the Law

Article XXXIIA regulates persons engaged in the business of financing insurance premiums, entering into premium finance agreements, or otherwise acquiring premium finance agreements.

3. Rules Promulgated Under the Law

None. No administrative rules have been promulgated under this law.

4. Key Provisions

None. There are no provisions of this Act addressing the issues raised by the HIPAA preemption analysis.

5. Significant Case Law

None. There is no significant case law addressing the issues raised by the HIPAA preemption analysis.

6. Preemption Analysis Under HIPAA

The law does not address the privacy of health information.

It is possible to comply with this law and HIPAA. Further, this law does not stand as an obstacle to accomplishing the full purpose of HIPAA. Therefore, the law is not "contrary" to the HIPAA regulations. 45 C.F.R. § 160.202.

7. Is the Law Preempted?

No.

1. Name and Citation of Law

Urban Property Insurance (215 ILCS 5/522)

2. General Description of the Law

Article XXXIII of the Illinois Insurance Code is to make basic property insurance increasingly available to the Illinois citizens, and to deter the insurance industry from geographically redlining urban areas of Illinois by requiring the restructuring of the Industry Placement Facility and administering the FAIR plan (Fair Access to Insurance Requirements) to deliver residential property insurance to all Illinois citizens on a reasonable access and marketing basis by offering homeowners insurance, by requiring immediate binding of eligible risks, by making use of premium installment payment plans, and by further establishing reasonable service standards in its plan of operation subject to the approval and review of the Director; and, to establish a central operation facility for the equitable distribution of losses and expenses in the writing of the basic property insurance and homeowners insurance in Illinois.

3. Rules Promulgated Under the Law

50 Ill. Admin. Code 3301.10, Fair Plan Credit Program

4. Key Provisions

None. There are no provisions of this Act addressing the issues raised by the HIPAA preemption analysis.

5. Significant Case Law

None. There is no significant case law addressing the issues raised by the HIPAA preemption analysis.

6. Preemption Analysis Under HIPAA

The law does not address the privacy of health information.

It is possible to comply with this law and HIPAA. Further, this law does not stand as an obstacle to accomplishing the full purpose of HIPAA. Therefore, the law is not "contrary" to the HIPAA regulations. 45 C.F.R. § 160.202.

7. Is the Law Preempted?

No.

1. Name and Citation of Law

Life and Health Insurance Guaranty Association (215 ILCS 5/531.015)

2. General Description of the Law

Article XXXIII1/3 of the Illinois Insurance Code protects certain persons against failure in the performance of contractual obligations under certain life or health insurance policies, annuity contracts and health or medical care service contracts, due to the impairment or insolvency of the insurer issuing such policies or contracts, by creating an association of insurers to enable the guaranty of payment of benefits and of continuation of coverages.

3. Rules Promulgated Under the Law

50 Ill. Admin. Code 3401.10, Summary Document and Disclaimer

4. Key Provisions

None. There are no provisions of this Act addressing the issues raised by the HIPAA preemption analysis.

5. Significant Case Law

None. There is no significant case law addressing the issues raised by the HIPAA preemption analysis.

6. Preemption Analysis Under HIPAA

The law does not address the privacy of health information.

It is possible to comply with this law and HIPAA. Further, this law does not stand as an obstacle to accomplishing the full purpose of HIPAA. Therefore, the law is not "contrary" to the HIPAA regulations. 45 C.F.R. § 160.202.

7. Is the Law Preempted?

No.

1. Name and Citation of Law

Illinois Insurance Guaranty Fund (215 ILCS 5/532)

2. General Description of the Law

Article XXXIV of the Illinois Insurance Code provides a mechanism for the payment of covered claims under certain insurance policies to avoid excessive delay in payment, to avoid financial loss to claimants or policyholders because of the entry of an order of liquidation against an insolvent company, and to provide a fund to assess the cost of such protection among member companies.

3. Rules Promulgated Under the Law

None. No administrative rules have been promulgated under this law.

4. Key Provisions

None. There are no provisions of this Act addressing the issues raised by the HIPAA preemption analysis.

5. Significant Case Law

None. There is no significant case law addressing the issues raised by the HIPAA preemption analysis.

6. Preemption Analysis Under HIPAA

The law does not address the privacy of health information.

It is possible to comply with this law and HIPAA. Further, this law does not stand as an obstacle to accomplishing the full purpose of HIPAA. Therefore, the law is not "contrary" to the HIPAA regulations. 45 C.F.R. § 160.202.

7. Is the Law Preempted?

No.

1. Name and Citation of Law

Mine Subsidence Insurance (215 ILCS 5/801.1)

2. General Description of the Law

Article XXXVIIIA of the Illinois Insurance Code requires insurers to make mine subsidence insurance coverage available for residences, living units and commercial buildings located in Illinois; to establish the Illinois mine subsidence insurance fund; to divide the fund into separate residential and commercial sub-funds; and to make the fund the reinsurer for the mine subsidence insurance made available.

3. Rules Promulgated Under the Law

None. No administrative rules have been promulgated under this law.

4. Key Provisions

None. There are no provisions of this Act addressing the issues raised by the HIPAA preemption analysis.

5. Significant Case Law

None. There is no significant case law addressing the issues raised by the HIPAA preemption analysis.

6. Preemption Analysis Under HIPAA

The law does not address the privacy of health information.

It is possible to comply with this law and HIPAA. Further, this law does not stand as an obstacle to accomplishing the full purpose of HIPAA. Therefore, the law is not "contrary" to the HIPAA regulations. 45 C.F.R. § 160.202.

7. Is the Law Preempted?

No.

1. Name and Citation of Law

Group Legal Expense Insurance (215 ILCS 5/900)

2. General Description of the Law

Article XXXIX of the Illinois Insurance Code authorizes and regulates the issuance of group legal expense insurance.

3. Rules Promulgated Under the Law

None. No administrative rules have been promulgated under this law.

4. Key Provisions

None. There are no provisions of this Act addressing the issues raised by the HIPAA preemption analysis.

5. Significant Case Law

None. There is no significant case law addressing the issues raised by the HIPAA preemption analysis.

6. Preemption Analysis Under HIPAA

The law does not address the privacy of health information.

It is possible to comply with this law and HIPAA. Further, this law does not stand as an obstacle to accomplishing the full purpose of HIPAA. Therefore, the law is not "contrary" to the HIPAA regulations. 45 C.F.R. § 160.202.

7. Is the Law Preempted?

No.

1. Name and Citation of Law

Insurance Information and Privacy Protection (215 ILCS 5/1001)

2. General Description of the Law

Article XL of the Illinois Insurance Code establishes standards for the collection, use and disclosure of information gathered in connection with insurance transactions by insurance institutions, agents, or insurance-support organizations; to maintain a balance between the need for information by those conducting the business of insurance and the public's need for fairness in insurance information practices, including the need to minimize intrusiveness; to establish a regulatory mechanism to enable natural persons to ascertain what information is being or has been collected about them in connection with insurance transactions and to have access to such information for the purpose of verifying or disputing its accuracy; to limit the disclosure of information collected in connection with insurance transactions; and to enable insurance applicants and policyholders to obtain the reasons for any adverse underwriting decision.

3. Rules Promulgated Under the Law

50 Ill. Admin. Code 4001.10 Privacy of Personal Information
50 Ill. Admin. Code 4002.10 Personal Information Privacy Protection

4. Key Provisions

215 ILCS 5/1002.	Scope
215 ILCS 5/1005.	Notice of Insurance Information Practices
215 ILCS 5/1006.	Marketing and Research Surveys
215 ILCS 5/1007.	Content of Disclosure Authorization Forms
215 ILCS 5/1009.	Access to Recorded Personal Information
215 ILCS 5/1010.	Correction, Amendment or Deletion of Recorded Personal Information
215 ILCS 5/1014.	Disclosure Limitations and Conditions
50 Ill. Admin. Code 4002.20	Applicability
50 Ill. Admin. Code 4002.30	Definitions
50 Ill. Admin. Code 4002.35	Treatment of Individuals' Information Under Group Policies
50 Ill. Admin. Code 4002.40	Initial Primary Notice to Consumers
50 Ill. Admin. Code 4002.50	Annual Privacy Notice to Customers
50 Ill. Admin. Code 4002.60	Information to be Included in Privacy Notice
50 Ill. Admin. Code 4002.70	Form of Opt Out Notice to Consumers and Opt Out Methods

50 Ill. Admin. Code 4002.80	Revised Privacy Notices
50 Ill. Admin. Code 4002.90	Delivery of Notices
50 Ill. Admin. Code 4002.140	Exceptions to Notice and Opt Out Requirements for Disclosure of Nonpublic Personal Financial Information for Processing and Servicing Transactions
50 Ill. Admin. Code 4002.150	Other Exceptions to Notice and Opt Out Requirements for Disclosure of Nonpublic Personal Financial Information
50 Ill. Admin. Code 4002.Illustration A	Sample Clauses

5. Significant Case Law

None. There is no significant case law addressing the issues raised by the HIPAA preemption analysis.

6. Preemption Analysis Under HIPAA

Article XL applies to life, health, disability, property and casualty insurance. 215 ILCS 5/1002. The Privacy Rule does not govern life, disability, property or casualty insurance, which are "excepted benefits" listed in Section 2791(c)(1) of the PHS Act, 42 U.S.C. 300gg-91(c)(1). 45 C.F.R. §§ 160.102 and 160.103. Therefore, to the extent that this Article governs life, disability, property or casualty insurance, it is not preempted by HIPAA. Further, the information protected by this law includes personal information beyond that protected by the Privacy Rule.

215 ILCS 5/1005 requires a health plan to provide a notice of information practices to all applicants or policyholders in connection with insurance transactions, which notice must be provided in the case of an application for insurance, no later than (a) at the time of the delivery of the insurance policy or certificate when personal information is collected only from the applicant or from public records, or (b) at the time the collection of information is initiated when the personal information is collected from a source other than the applicant or public records. 215 ILCS 5/1005.

In the case of renewal, a notice shall be provided no later than the policy renewal date except that no notice shall be required in such case if (a) personal information is collected only from the policyholder or public records, or (b) a notice meeting requirements of the law has been given within the previous twenty-four months. Id.

In the case of policy reinstatement or change in insurance benefits, a notice must be given no later than the time a request for a policy reinstatement or change in insurance benefits is received by the health plan except that no notice is required if personal information is

collected only from the policyholder or from public records. The notice required must be in writing and give details on the types of information collected and how the information will be disclosed. Id.

The notice of information practices contemplated by Illinois law is similar to the notice of privacy practices required by the Privacy Rule. 45 C.F.R. §164.520. As a health insurance issuer, the companies providing health insurance coverage will need to provide a notice to the individuals covered by the plan. Id. The requirements of the notice contained in the notice anticipated by State statute supplement the requirements of the content of the notice under the Privacy Rule. 45 C.F.R. §164.520(b). Therefore, it is possible to comply with both the federal and State law. The requirement that the notice be provided at least upon policy renewal, or in the previous twenty-four months is more frequent and therefore, more stringent, than the Privacy Rule requirement that a health plan issue a Notice every three years. 45 C.F.R. §164.520.

215 ILCS 5/1007 requires that a disclosure authorization form be used that is (1) written in plain language, (2) is dated, (3) specifies the types of persons authorized to disclose information about the individual, (4) specifies the nature of information authorized to be disclosed, (5) names the insurance institution or agent identifies by generic reference representatives of the insurance institution to whom the individuals authorizing information would be disclosed, (6) specifies the purposes for which the information is collected, (7) specifies the length of time such authorization shall remain valid which shall be no longer than (a) in the case of authorizations signed for the purpose of collecting information in connection with an application for an insurance policy a policy reinstatement or a request for change in policy benefits thirty months from the date the authorization is signed if the application or request involves health insurance, or (b) in the case of authorizations signed for the purpose of collecting information in connection with a claim for benefits under an insurance policy, the term of coverage of the policy of the claim is for health insurance benefit, and (8) advises the individual or a person authorized to act on behalf of the individual that the individual or individual's authorized representative is entitled to receive a copy of the authorization form. 215 ILCS 5/1007.

Section 1007 provides for an authorization form for disclosures of health information. This authorization form meets the requirements of the authorization anticipated by the Privacy Rule. 45 C.F.R. §164.508.

215 ILCS 5/1009 grants individuals access to reported personal information. The law states that if any individual, after proper identification, submits a written request to insurance institution, agent or insurance-support organization for access to recorded personal information about the individual which is reasonably described by the individual and reasonably locatable and retrievable by the insurance institution, agent or insurance-support organization, the insurance institution, agent or insurance-support organization

shall within thirty business days from the date such request is received: (1) inform the individual of the nature and substance of such recorded personal information in writing, by telephone or by other oral communication, whichever the insurance institution, agent or insurance-support organization prefers; (2) permit the individual to see and copy, in person, such recorded personal information pertaining to him or her or to obtain a copy of such recorded personal information by mail, whichever the individual prefers, unless such recorded personal information is in coded form, in which case an accurate translation in plain language shall be provided in writing; (3) disclose to the individual the identity, if recorded, of those persons to whom the insurance institution, agent or insurance-support organization has disclosed such personal information within two years prior to such requests, and if the identity is not recorded, the names of those insurance institutions, agents, insurance-support organizations or other persons to whom such information is normally disclosed; and (4) provide the individual with a summary of the procedures by which he or she may request correction, amendment or deletion of recorded personal information. 215 ILCS 5/1009.

Any personal information provided shall identify the source of the information if such source is an institutional source. An insurance institution, agent or insurance-support organization may charge a reasonable fee to cover the costs incurred in providing a copy of recorded personal information to individuals. Id.

Section 1009 anticipates access by the individual to records held by the insurance issuer. This provision is also allowed by the Privacy Rule for access and copying. 45 C.F.R. §164.524. The Privacy Rule also allows a reasonable fee to be charged for providing the information. Id. Finally, the Privacy Rule provides for up to 60 days to act in some instances; the State law is more stringent in requiring action within 30 days. Id. Section 1009 also provides an accounting of disclosures as does the Privacy Rule. 45 C.F.R. §164.528. Health plans should note that the Privacy Rule requires the plan be able to provide an individual with an accounting of disclosures for up to six (6) years following the compliance date of the Privacy Rule. Id. State law currently allows for an accounting for two years. 215 ILCS 5/1009.

Illinois law further provides that an individual may make a written request to correct, amend or delete any recorded personal information about the individual held by an insurance institution, agent or insurance-support organization. 215 ILCS 5/1010. The provisions of the Illinois statute are similar to the Privacy Rule requirements that allow an individual to request amendment of their protected health information. 45 C.F.R. §164.526. Both the State and federal law require corrected information to be passed on to others receiving the file. The State law is more stringent in that it allows the individual to designate any person who has received the personal information within the last 2 years to receive notice of the correction. 215 ILCS 5/1010.

The Illinois Insurance Code also provides that information about an individual shall not be disclosed unless written authorization is provided to the individual. 215 ILCS 5/1014. This provision of the Illinois Insurance Code is more stringent than the Privacy Rule, as the Privacy Rule allows disclosures for purposes of treatment, payment and health care operations without a health care authorization. 45 C.F.R. §164.502.

Section 1014 also allows disclosure to a peer review organization to conduct review of services provided. 215 ILCS 5/1014(o). Such disclosure is allowed as part of health care operations under the Privacy Rule. 45 C.F.R. §164.501(see definition of "health care operations").

The Illinois Insurance Code allows individual information to be disclosed in marketing a product or service if the individual has not objected to such disclosures. 215 ILCS 5/1014(K). Disclosures for marketing purposes under the Privacy Rule are allowed only pursuant to an executed authorization. 45 C.F.R. §164.508(a)(3). The State law provides that an individual may opt-out of the marketing, but does not provide that a HIPAA-compliant authorization must be used to allow marketing activities. 215 ILCS 5/1014(K). Therefore, the allowance in State law for disclosure of protected health information without an authorization for marketing purposes is preempted in the Privacy Rule. Id.

Section 1014 provides for disclosures pursuant to subpoena or court order. 215 ILCS 5/1014(G), (H). In order to meet the requirements of the privacy rule, such court orders will have to comply with the provisions for judicial orders contained in the Privacy Rule. 45 C.F.R. §164.512(e).

Section 1014 provides for disclosure to a lien holder, mortgagee, assignee, lessee, or other person shown on the records of an insurance institution or agent as having a legal or beneficial interest in a policy of insurance, provided that disclosure is limited to what is reasonably necessary. 215 ILCS 1014(R). Use or disclosure of protected health information generally is allowed for payment purposes under the Privacy Regulations. 45 C.F.R. §164.502. Payment activities under the Privacy Rule include payment of premiums, reimbursement for the provision of health care, including determinations of eligibility, coverage, collection, reinsurance contracts, appropriateness of care reviews, utilization reviews, and consumer reporting. 45 C.F.R. §164.502. If the disclosure anticipated by the State law to a lien holder or other person having a beneficial interest in the policy, meets the definition of payment in the Privacy Rule, then the disclosure can occur without a signed authorization. 45 C.F.R. §164.502. If the definition of "payment", contained in the Privacy Rule, is not met with respect to this activity, then the provision allowing this use or disclosure under State law is preempted. 45 C.F.R. §160.203.

7. Is the Law Preempted?

Partially. To the extent that this State law allows a disclosure for marketing to occur without a HIPAA-compliant authorization, it is preempted by the Privacy Rule. In addition, the allowance in this State law for disclosures to those having a beneficial interest in a policy of insurance is preempted to the extent it provides for such use or disclosure for other than "payment" activities of the covered entity.

1. Name and Citation of Law

Risk Retention Arrangements for Banking Associations (215 ILCS 5/1105)

2. General Description of the Law

Article XLI of the Illinois Insurance Code regulates trusts sponsored by domestic banking associations and organized to provide certain casualty insurance.

3. Rules Promulgated Under the Law

None. No administrative rules have been promulgated under this law.

4. Key Provisions

None. There are no provisions of this Act addressing the issues raised by the HIPAA preemption analysis.

5. Significant Case Law

None. There is no significant case law addressing the issues raised by the HIPAA preemption analysis.

6. Preemption Analysis Under HIPAA

This law does not address the privacy of health information.

It is possible to comply with this law and HIPAA. Further, this law does not stand as an obstacle to accomplishing the full purpose of HIPAA. Therefore, the law is not "contrary" to the HIPAA regulations. 45 C.F.R. § 160.202.

7. Is the Law Preempted?

No.

1. Name and Citation of Law

Insurance Cost Containment (215 ILCS 5/1200)

2. General Description of the Law

Article XLII of the Illinois Insurance Code promotes the public welfare by studying the relationship of insurance premium and related income as compared to insurance costs and expenses.

3. Rules Promulgated Under the Law

50 Ill. Admin. Code 4201.10, Insurance Cost Containment Annual Fee
50 Ill. Admin. Code 4203.10, Insurance Cost Containment Data and Reporting Requirements

4. Key Provisions

None. There are no provisions of this Act addressing the issues raised by the HIPAA preemption analysis.

5. Significant Case Law

None. There is no significant case law addressing the issues raised by the HIPAA preemption analysis.

6. Preemption Analysis Under HIPAA

This law does not address the privacy of health information.

It is possible to comply with this law and HIPAA. Further, this law does not stand as an obstacle to accomplishing the full purpose of HIPAA. Therefore, the law is not "contrary" to the HIPAA regulations. 45 C.F.R. § 160.202.

7. Is the Law Preempted?

No.

1. Name and Citation of Law

Mortgage Insurance Consolidation (215 ILCS 5/1300)

2. General Description of the Law

Article XLIII of the Illinois Insurance Code protects the interests of Illinois insureds by establishing minimum standards and procedures for the effectuation of mortgage insurance consolidations; establishing disclosure requirements specific to mortgage insurance consolidations and requiring insurers to make such disclosures on a timely basis; clarifying the applicability of the unfair rate discrimination provision of this Code to consolidations involved in loan transfers so as to prevent premium increases for consumers resulting from mandatory premium recalculation; requiring that group mortgage life insurance certificates contain minimum standard provisions including conversion rights; and preventing the arbitrary termination of mortgage insurance coverage in connection with consolidations.

3. Rules Promulgated Under the Law

None. No administrative rules have been promulgated under this law.

4. Key Provisions

None. There are no provisions of this Act addressing the issues raised by the HIPAA preemption analysis.

5. Significant Case Law

None. There is no significant case law addressing the issues raised by the HIPAA preemption analysis.

6. Preemption Analysis Under HIPAA

This law does not address the privacy of health information.

It is possible to comply with this law and HIPAA. Further, this law does not stand as an obstacle to accomplishing the full purpose of HIPAA. Therefore, the law is not "contrary" to the HIPAA regulations. 45 C.F.R. § 160.202.

7. Is the Law Preempted?

No.

1. Name and Citation of Law

Financial Institutions Insurance Sales Law (215 ILCS 5/1400)

2. General Description of the Law

Article XLIV of the Illinois Insurance Code increases the availability of insurance products to Illinois citizens by expanding those businesses authorized to sell insurance products to include financial institutions, and to protect the interest of Illinois citizens by regulating the authority to do so.

3. Rules Promulgated Under the Law

None. No administrative rules have been promulgated under this law.

4. Key Provisions

215 ILCS 5/1415. Confidential Customer Information

5. Significant Case Law

None. There is no significant case law addressing the issues raised by the HIPAA preemption analysis.

6. Preemption Analysis Under HIPAA

Article XLIV addresses confidential health information obtained by a financial institution engaged in the insurance business, including health insurance. 215 ILCS 5/1415 and 5/1402. This law provides that such a financial institution may not release such information without the written consent of the customer, unless such a release is otherwise authorized by state or federal law. 215 ILCS 5/1415. Because this law requires compliance with the Privacy Rule, it is possible to comply with this law and HIPAA. Further, this law does not stand as an obstacle to accomplishing the full purpose of HIPAA. Therefore, the law is not "contrary" to the HIPAA regulations. 45 C.F.R. § 160.202.

7. Is the Law Preempted?

No.

1. Name and Citation of Law

Small Employer Health Insurance Rating Act (215 ILCS 93/1)

2. General Description of the Law

The Small Employer Health Insurance Rating Act is intended to improve the efficiency and fairness of the small group health insurance marketplace.

3. Rules Promulgated Under the Law

50 Ill. Admin. Code 5101.10

4. Key Provisions

None. There are no provisions of this Act addressing the issues raised by the HIPAA preemption analysis.

5. Significant Case Law

None. There is no significant case law addressing the issues raised by the HIPAA preemption analysis.

6. Preemption Analysis Under HIPAA

This law does not address the privacy of health information.

It is possible to comply with this law and HIPAA. Further, this law does not stand as an obstacle to accomplishing the full purpose of HIPAA. Therefore, the law is not "contrary" to the HIPAA regulations. 45 C.F.R. § 160.202.

7. Is the Law Preempted?

No.

1. Name and Citation of Law

Illinois Health Insurance Portability and Accountability Act (215 ILCS 97/1)

2. General Description of the Law

This Illinois HIPAA governs health insurance coverage in Illinois and is intended to increase portability and the number of insureds by limiting preexisting conditions, prohibiting discrimination, and guaranteeing renewability and availability of health insurance under certain circumstances.

3. Rules Promulgated Under the Law

None. No administrative rules have been promulgated under this law.

4. Key Provisions

None. There are no provisions of this Act addressing the issues raised by the HIPAA preemption analysis.

5. Significant Case Law

None. There is no significant case law addressing the issues raised by the HIPAA preemption analysis.

6. Preemption Analysis Under HIPAA

This law does not address the privacy of health information.

It is possible to comply with this law and HIPAA. Further, this law does not stand as an obstacle to accomplishing the full purpose of HIPAA. Therefore, the law is not "contrary" to the HIPAA regulations. 45 C.F.R. § 160.202.

7. Is the Law Preempted?

No.

1. Name and Citation of Law

Reinsurance Intermediary Act (215 ILCS 100/1)

2. General Description of the Law

The Reinsurance Intermediary Act regulates reinsurance intermediary brokers and reinsurance intermediary managers.

3. Rules Promulgated Under the Law

None. No administrative rules have been promulgated under this law.

4. Key Provisions

None. There are no provisions of this Act addresses the issues raised by the HIPAA preemption analysis.

5. Significant Case Law

None. There is no significant case law addressing the issues raised by the HIPAA preemption analysis.

6. Preemption Analysis Under HIPAA

This law does not address the privacy of health information.

It is possible to comply with this law and HIPAA. Further, this law does not stand as an obstacle to accomplishing the full purpose of HIPAA. Therefore, the law is not "contrary" to the HIPAA regulations. 45 C.F.R. § 160.202.

7. Is the Law Preempted?

No.

1. Name and Citation of Law

Comprehensive Health Insurance Plan Act (215 ILCS 105/1)

2. General Description of the Law

The Comprehensive Health Insurance Plan Act establishes the comprehensive health insurance plan as a state program intended to provide an alternate market for health insurance for certain uninsurable Illinois residents and to provide an acceptable alternative mechanism as described in HIPAA for providing portable and accessible individual health insurance coverage for certain federally eligible individuals.

3. Rules Promulgated Under the Law

50 Ill. Admin. Code 5301.10, Notice of Eligibility

4. Key Provisions

215 ILCS 105/14., Confidentiality

5. Significant Case Law

None. There is no significant case law addressing the issues raised by the HIPAA preemption analysis.

6. Preemption Analysis Under HIPAA

This Act requires the board charged with operating the comprehensive health insurance plan to take all steps necessary under state and federal law to protect confidentiality of individual records. 215 ILCS 105/14. In addition, the Act prohibits the disclosure of any protected health information received from a hospital. 215 ILCS 105/14. This prohibition is “more stringent” than the Privacy Rule. 45 C.F.R. § 160.202.

It is possible to comply with this law and HIPAA. Further, this law does not stand as an obstacle to accomplishing the full purpose of HIPAA. Therefore, the law is not “contrary” to the HIPAA regulations. 45 C.F.R. § 160.202.

7. Is the Law Preempted?

No.

1. Name and Citation of Law

Children's Health Insurance Program Act (215 ILCS 106/1)

2. General Description of the Law

The Children's Health Insurance Program Act enables low income children of the state, to the extent funding permits, to access health benefit coverage, especially for preventive healthcare by assisting families purchase health benefits for low income children.

3. Rules Promulgated Under the Law

89 Ill. Admin. Code 125.100, Children's Health Insurance Program

4. Key Provisions

None. There are no provisions of this Act addressing the issues raised by the HIPAA preemption analysis.

5. Significant Case Law

None. There is no significant case law addressing the issues raised by the HIPAA preemption analysis.

6. Preemption Analysis Under HIPAA

It is possible to comply with this law and HIPAA. Further, this law does not stand as an obstacle to accomplishing the full purpose of HIPAA. Therefore, the law is not "contrary" to the HIPAA regulations. 45 C.F.R. § 160.202.

7. Is the Law Preempted?

No.

1. Name and Citation of Law

Dental Care Patient Protection Act (215 ILCS 109/1)

2. General Description of the Law

The Dental Care Patient Protection Act provides fairness and choice to dental patients and dentists under managed care dental benefit plans.

3. Rules Promulgated Under the Law

50 Ill. Admin. Code 5425, Managed Care Dental Plans

4. Key Provisions

215 ILCS 109/5, Purpose; Dental Care Patient Rights

5. Significant Case Law

None. There is no significant case law addressing the issues raised by the HIPAA preemption analysis.

6. Preemption Analysis Under HIPAA

The Dental Care Patient Protection Act states generally that dental patients have a right to privacy and confidentiality of their dental records and the right to waive that right by written authority of the patient or the patient's guardian. 215 ILCS 109/5. The Privacy Rule does not require written authority to release all protected health information, and therefore the State law is more stringent. 45 C.F.R. §160.202.

It is possible to comply with this law and HIPAA. Further, this law does not stand as an obstacle to accomplishing the full purpose of HIPAA. Therefore, the law is not "contrary" to the HIPAA regulations. 45 C.F.R. § 160.202.

7. Is the Law Preempted?

No.

1. Name and Citation of Law

Dental Service Plan Act (215 ILCS 110/1)

2. General Description of the Law

The Dental Service Plan Act provides for the establishment, maintenance and operation of a dental service plan.

3. Rules Promulgated Under the Law

None. No administrative rules have been promulgated under this law.

4. Key Provisions

None. There are no provisions of this Act addressing the issues raised by the HIPAA preemption analysis.

5. Significant Case Law

None. There is no significant case law addressing the issues raised by the HIPAA preemption analysis.

6. Preemption Analysis Under HIPAA

This law does not address the privacy of health information.

It is possible to comply with this law and HIPAA. Further, this law does not stand as an obstacle to accomplishing the full purpose of HIPAA. Therefore, the law is not "contrary" to the HIPAA regulations. 45 C.F.R. § 160.202.

7. Is the Law Preempted?

No.

1. Name and Citation of Law

Employees Dental Freedom of Choice Act (215 ILCS 115/1)

2. General Description of the Law

The Employee's Dental Freedom of Choice Act requires that an employer, group or organization providing dental coverage to eligible members upon the condition that such employees or members obtain dental services from a list of approved providers provide an alternative plan whereby the members may obtain services from dentists not on the list approved by such insurer or dental service corporation.

3. Rules Promulgated Under the Law

None. No administrative rules have been promulgated under this law.

4. Key Provisions

None. There are no provisions of this Act addressing the issues raised by the HIPAA preemption analysis.

5. Significant Case Law

None. There is no significant case law addressing the issues raised by the HIPAA preemption analysis.

6. Preemption Analysis Under HIPAA

This law does not address the privacy of health information.

It is possible to comply with this law and HIPAA. Further, this law does not stand as an obstacle to accomplishing the full purpose of HIPAA. Therefore, the law is not "contrary" to the HIPAA regulations. 45 C.F.R. § 160.202.

7. Is the Law Preempted?

No.

1. Name and Citation of Law

Healthcare Purchasing Group Act (215 ILCS 123/1)

2. General Description of the Law

The Healthcare Purchasing Group Act authorizes the formation, operation and regulation of healthcare purchasing groups, authorizes the sale and regulation of healthcare insurance products for employers that are sold to healthcare purchasing groups, and encourages the development of financially secure and cost effective markets for the basic healthcare needs of employers, employees and their dependents in Illinois.

3. Rules Promulgated Under the Law

None. No administrative rules have been promulgated under this law.

4. Key Provisions

None. There are no provisions of this Act addressing the issues raised by the HIPAA preemption analysis.

5. Significant Case Law

None. There is no significant case law addressing the issues raised by the HIPAA preemption analysis.

6. Preemption Analysis Under HIPAA

This law does not address the privacy of health information.

It is possible to comply with this law and HIPAA. Further, this law does not stand as an obstacle to accomplishing the full purpose of HIPAA. Therefore, the law is not "contrary" to the HIPAA regulations. 45 C.F.R. § 160.202.

7. Is the Law Preempted?

No.

1. Name and Citation of Law

Health Maintenance Organization Act - Short Title and Definitions (215 ILCS 125/1-1)

2. General Description of the Law

Article I of the Health Maintenance Organization Act sets forth the definitions applicable under the Act.

3. Rules Promulgated Under the Law

50 Ill. Admin. Code 5421.10, Health Maintenance Organization
77 Ill. Admin. Code 240.10, Minimum Health Care Standards for Health Maintenance Organizations

4. Key Provisions

77 Ill. Admin. Code 240.90, HMO Provider Site Medical Record Requirements
77 Ill. Admin. Code 240.100, Required Information and Reports

5. Significant Case Law

None. There is no significant case law addressing the issues raised by the HIPAA preemption analysis.

6. Preemption Analysis Under HIPAA

The Department of Insurance and Department of Public Health both have regulatory responsibilities concerning Health Maintenance Organizations. Illinois law requires an HMO to make its enrollee's medical records available to the Department of Public Health. 77 Ill. Admin. Code 240.90(a) and 240.100(d). The Privacy Rule allows disclosure of protected health information for "health oversight activities," which include activities necessary for appropriate oversight of the health care system. 45 C.F.R. § 164.512(d)(1).

It is possible to comply with this law and HIPAA. Further, this law does not stand as an obstacle to accomplishing the full purpose of HIPAA. Therefore, the law is not "contrary" to the HIPAA regulations. 45 C.F.R. § 160.202.

7. Is the Law Preempted?

No.

1. Name and Citation of Law

Health Maintenance Organization Act - Certificate of Authority, General Corporate and Financial Requirements (215 ILCS 125/2-1)

2. General Description of the Law

Article II of the Health Maintenance Organization Act regulates the authority to do business, operation and solvency of health maintenance organizations.

3. Rules Promulgated Under the Law

50 Ill. Admin. Code 5421.10, Health Maintenance Organization
77 Ill. Admin. Code 240.10, Minimum Health Care Standards for Health Maintenance Organizations

4. Key Provisions

None. There are no provisions of this Act addressing the issues raised by the HIPAA preemption analysis.

5. Significant Case Law

None. There is no significant case law addressing the issues raised by the HIPAA preemption analysis.

6. Preemption Analysis Under HIPAA

The Act does not address the privacy of health information.

It is possible to comply with this law and HIPAA. Further, this law does not stand as an obstacle to accomplishing the full purpose of HIPAA. Therefore, the law is not "contrary" to the HIPAA regulations. 45 C.F.R. § 160.202.

7. Is the Law Preempted?

No.

1. Name and Citation of Law

Health Maintenance Organization Act - Investments (215 ILCS 125/3-1)

2. General Description of the Law

Article III of the Health Maintenance Organization Act regulates the investments made by health maintenance organizations.

3. Rules Promulgated Under the Law

50 Ill. Admin. Code 5421.10, Health Maintenance Organization
77 Ill. Admin. Code 240.10, Minimum Health Care Standards for Health Maintenance Organizations

4. Key Provisions

None. There are no provisions of this Act addressing the issues raised by the HIPAA preemption analysis.

5. Significant Case Law

None. There is no significant case law addressing the issues raised by the HIPAA preemption analysis.

6. Preemption Analysis Under HIPAA

The Act does not address the privacy of health information.

It is possible to comply with this law and HIPAA. Further, this law does not stand as an obstacle to accomplishing the full purpose of HIPAA. Therefore, the law is not "contrary" to the HIPAA regulations. 45 C.F.R. § 160.202.

7. Is the Law Preempted?

No.

1. Name and Citation of Law

Health Maintenance Organization Act - Delivery of Service-Required Provisions and Marketing (215 ILCS 125/4-1)

2. General Description of the Law

Article IV of the Health Maintenance Organization Act governs the marketing and delivery of services of health maintenance organizations.

3. Rules Promulgated Under the Law

50 Ill. Admin. Code 5421.10, Health Maintenance Organization
77 Ill. Admin. Code 240.10, Minimum Health Care Standards for Health Maintenance Organizations

4. Key Provisions

215 ILCS 125/4-2. Medical Assistance; Coverage of Child

5. Significant Case Law

None. There is no significant case law addressing the issues raised by the HIPAA preemption analysis.

6. Preemption Analysis Under HIPAA

Article IV provides that, if a child is covered under a health care plan of an HMO in which the child's noncustodial parent is an enrollee, the HMO must disclose necessary information to the child's custodial parent to enable the child to obtain benefits. 215 ILCS 125/4-2(d)(1). At times, this provision will require the HMO to disclose protected health information to the custodial parent. The Privacy Rule generally permits disclosure of protected health information to a personal representative or other person acting *in loco parentis* under State law. 45 C.F.R. § 160.502(g).

In addition, Article IV provides for coverage for health care services related to sexual assault and abuse and, for purposes of enabling recovery of State funds, allows HMOs to disclose the names and identities of its enrollees entitled to such benefits to the Department of Public Health upon reasonable demand if the Department of Public Health determines that it has paid or is about to pay for any such services for which the HMO is liable. 215 ILCS 125/4-4. (It should be noted that this provision is inconsistent with the Sexual Assault Survivors Treatment Act, 410 ILCS 70 in that it is the Department of

Public Aid which would pay for such services). The Privacy Rule allows disclosure of protected health information for "health oversight activities," which includes activities necessary for appropriate oversight of the health care system or government benefit programs for which health information is relevant to beneficiary eligibility. 45 C.F.R. 164.512(d)(1).

It is possible to comply with this law and HIPAA. Further, this law does not stand as an obstacle to accomplishing the full purpose of HIPAA. Therefore, the law is not "contrary" to the HIPAA regulations. 45 C.F.R. § 160.202.

7. Is the Law Preempted?

No.

1. Name and Citation of Law

Health Maintenance Organization Act - Point-of-Service Products (215 ILCS 125/4.5-1)

2. General Description of the Law

Article 4.5 of the Health Maintenance Organization Act governs point-of-service health service contracts.

3. Rules Promulgated Under the Law

50 Ill. Admin. Code 5421.10, Health Maintenance Organization
77 Ill. Admin. Code 240.10, Minimum Health Care Standards for Health Maintenance Organizations

4. Key Provisions

None. There are no provisions of this Act addressing the issues raised by the HIPAA preemption analysis.

5. Significant Case Law

None. There is no significant case law addressing the issues raised by the HIPAA preemption analysis.

6. Preemption Analysis Under HIPAA

The Act does not address the privacy of health information.

It is possible to comply with this law and HIPAA. Further, this law does not stand as an obstacle to accomplishing the full purpose of HIPAA. Therefore, the law is not "contrary" to the HIPAA regulations. 45 C.F.R. § 160.202.

7. Is the Law Preempted?

No.

1. Name and Citation of Law

Health Maintenance Organization Act - General Provisions (215 ILCS 125/5-1-125)

2. General Description of the Law

Article V of the Health Maintenance Organization Act sets forth numerous provisions applicable to health maintenance organizations, including certain provisions applicable to insurance companies and producers and provisions setting forth the Director of the Department of Insurance's power to suspend, revoke or deny a certificate of authority to do business as a health maintenance organization.

3. Rules Promulgated Under the Law

50 Ill. Admin. Code 5421.10, Health Maintenance Organization
77 Ill. Admin. Code 240.10, Minimum Health Care Standards for Health Maintenance Organizations

4. Key Provisions

None. There are no provisions of this Act addressing the issues raised by the HIPAA preemption analysis.

5. Significant Case Law

None. There is no significant case law addressing the issues raised by the HIPAA preemption analysis.

6. Preemption Analysis Under HIPAA

The Act does not address the privacy of health information.

It is possible to comply with this law and HIPAA. Further, this law does not stand as an obstacle to accomplishing the full purpose of HIPAA. Therefore, the law is not "contrary" to the HIPAA regulations. 45 C.F.R. § 160.202.

7. Is the Law Preempted?

No.

1. Name and Citation of Law

Health Maintenance Organization Act - Health Maintenance Organization Guaranty Association (215 ILCS 125/6-1)

2. General Description of the Law

Article VI of the Health Maintenance Organization Act protects enrollees of healthcare plans who reside in Illinois and their beneficiaries, payees and assignees subject to certain limitations against failure in the performance of contractual obligations due the impairment or insolvency of the organization operating such healthcare plans.

3. Rules Promulgated Under the Law

50 Ill. Admin. Code 5421.10, Health Maintenance Organization
77 Ill. Admin. Code 240.10, Minimum Health Care Standards for Health Maintenance Organizations

4. Key Provisions

None. There are no provisions of this Act addressing the issues raised by the HIPAA preemption analysis.

5. Significant Case Law

None. There is no significant case law addressing the issues raised by the HIPAA preemption analysis.

6. Preemption Analysis Under HIPAA

The Act does not address the privacy of health information.

It is possible to comply with this law and HIPAA. Further, this law does not stand as an obstacle to accomplishing the full purpose of HIPAA. Therefore, the law is not "contrary" to the HIPAA regulations. 45 C.F.R. § 160.202.

7. Is the Law Preempted?

No.

1. Name and Citation of Law

Limited Health Service Organization Act - Short Title and Definitions (215 ILCS 130/1001)

2. General Description of the Law

Article I of the Limited Health Service Organization Act provides the definitions applicable to said Act.

3. Rules Promulgated Under the Law

None. No administrative rules have been promulgated under this law.

4. Key Provisions

None. There are no provisions of this Act addressing the issues raised by the HIPAA preemption analysis.

5. Significant Case Law

None. There is no significant case law addressing the issues raised by the HIPAA preemption analysis.

6. Preemption Analysis Under HIPAA

The Act does not address the privacy of health information.

It is possible to comply with this law and HIPAA. Further, this law does not stand as an obstacle to accomplishing the full purpose of HIPAA. Therefore, the law is not "contrary" to the HIPAA regulations. 45 C.F.R. § 160.202.

7. Is the Law Preempted?

No.

1. Name and Citation of Law

Limited Health Service Organization Act - Certificate of Authority; General Corporate and Financial Requirements (215 ILCS 130/2001)

2. General Description of the Law

Article II of the Limited Health Service Organization Act regulates the authority to do business and the authority to do business, operation and solvency of limited health service organizations.

3. Rules Promulgated Under the Law

None. No administrative rules have been promulgated under this law.

4. Key Provisions

None. There are no provisions of this Act addressing the issues raised by the HIPAA preemption analysis.

5. Significant Case Law

None. There is no significant case law addressing the issues raised by the HIPAA preemption analysis.

6. Preemption Analysis Under HIPAA

The Act does not address the privacy of health information.

It is possible to comply with this law and HIPAA. Further, this law does not stand as an obstacle to accomplishing the full purpose of HIPAA. Therefore, the law is not "contrary" to the HIPAA regulations. 45 C.F.R. § 160.202.

7. Is the Law Preempted?

No.

1. Name and Citation of Law

Limited Health Service Organization Act - Delivery of Services; Required Provisions and Marketing (215 ILCS 130/3001)

2. General Description of the Law

Article 3 of the Limited Health Service Organization Act governs the marketing and delivery of services of health maintenance organizations.

3. Rules Promulgated Under the Law

None. No administrative rules have been promulgated under this law.

4. Key Provisions

215 ILCS 130/3003. Department Complaint Handling Procedure

5. Significant Case Law

None. There is no significant case law addressing the issues raised by the HIPAA preemption analysis.

6. Preemption Analysis Under HIPAA

Article 3 requires an LHSO to supply documentation, including relevant medical reports, to the Department of Insurance in response to a complaint which is received against the LHSO. 215 ILCS 130/3003. The Privacy Rule allows the disclosure of protected health information for "health oversight activities," which include activities necessary for appropriate oversight of the health care system. 45 C.F.R. § 164.512(d)(1).

It is possible to comply with this law and HIPAA. Further, this law does not stand as an obstacle to accomplishing the full purpose of HIPAA. Therefore, the law is not "contrary" to the HIPAA regulations. 45 C.F.R. § 160.202.

7. Is the Law Preempted?

No.

1. Name and Citation of Law

Limited Health Service Organization Act - General Provisions (215 ILCS 130/4001)

2. General Description of the Law

Article 4 of the Limited Health Service Organization Act sets forth various provisions applicable to LHSO's, including certain provisions applicable to insurance companies and provisions granting the Director of the Department of Insurance the power to suspend, revoke or deny a certificate of authority to do business as an LHSO.

3. Rules Promulgated Under the Law

None. No administrative rules have been promulgated under this law.

4. Key Provisions

None. There are no provisions of this Act addressing the issues raised by the HIPAA preemption analysis.

5. Significant Case Law

None. There is no significant case law addressing the issues raised by the HIPAA preemption analysis.

6. Preemption Analysis Under HIPAA

It is possible to comply with this law and HIPAA. Further, this law does not stand as an obstacle to accomplishing the full purpose of HIPAA. Therefore, the law is not "contrary" to the HIPAA regulations. 45 C.F.R. § 160.202.

7. Is the Law Preempted?

No.

1. Name and Citation of Law

Managed Care Reform and Patient Right's Act (215 ILCS 134/1)

2. General Description of the Law

The Managed Care Reform and Patient Rights Act establishes certain rights of patients with respect to certain health plans.

3. Rules Promulgated Under the Law

50 Ill. Admin. Code 5420.10, Managed Care Reform and Patients' Rights

4. Key Provisions

215 ILCS 134/45, Health Care Services Appeals, Complaints, and External Independent Reviews
215 ILCS 134/50, Administrative Complaints and Departmental Review
215 ILCS 134/85, Utilization Review Program Registration
50 Ill. Admin. Code 5420.80, Joint Resolution of Complaints - Department of Insurance and Department of Public Health - Notification and Resolution Process

5. Significant Case Law

None. There is no significant case law addressing the issues raised by the HIPAA preemption analysis.

6. Preemption Analysis Under HIPAA

The Managed Care Reform and Patient Rights Act provides certain rights to patients in certain health plans, including the right to care consistent with professional standards; the right to receive information concerning his or her condition and proposed treatment; the right to refuse treatment; the right to privacy and confidentiality of records; the right to a reasonable explanation of his or her bill; a right to timely notice of termination; and the right to purchase health care services with that individual's own funds. The Act and regulations promulgated thereunder provide for an external independent review of coverage determinations by certain health plans and requires the health plan to forward to the independent reviewer all relevant medical records. 215 ILCS 132/45; 50 Ill. Admin. Code 5420.80. Such review is done at the request of the enrollee and is considered part of "payment" under the Privacy Rule. 45 C.F.R. § 164.501. Thus, no authorization is required under 45 C.F.R. § 164.506.

The Act also sets forth utilization review standards, a portion of which concerns the confidentiality of patient-specific information obtained during utilization review. Utilization review is considered part of "payment", and therefore no authorization is required under the Privacy Rule. 45 C.F.R. § 164.506.

The confidentiality provisions in 215 ILCS 134/85(e) do not allow disclosure of patient-specific information to anyone but the patient, the patient's designee, the patient's health care provider, and those authorized by law to receive the information. 215 ILCS 134/85(e). A covered entity can release information to a patient's designee if the designee meets the requirements of a "personal representative" or an authorization is used consistent with the Privacy Rule. 45 C.F.R. §164.502(g), 164.508. The patient's health care provider is allowed to receive health information under the Privacy Rule for treatment, payment, and health care operations. 45 C.F.R. § 164.502, 164.506. This section is not preempted by the Privacy Rule as these disclosures are allowed as cited.

Summary data which does not allow identification of individual patients or providers is not considered confidential. 215 ILCS 134/85(e). Although this provision is not as specific as the HIPAA regulations, the provision does not conflict with the Privacy Rule. 45 C.F.R. §164.514.

The Act requires a health plan to supply documentation, including relevant medical reports, to the Department of Insurance in response to a complaint which is received against the health care plan. 215 ILCS 134/50. This activity is allowable under the Privacy Rule as "health oversight activities," which include activities necessary for appropriate oversight of the health care system. 45 C.F.R. § 164.512(d)(1).

It is possible to comply with this law and HIPAA. Further, this law does not stand as an obstacle to accomplishing the full purpose of HIPAA. Therefore, the law is not "contrary" to the HIPAA regulations. 45 C.F.R. § 160.202.

7. Is the Law Preempted?

No.

1. Name and Citation of Law

Uniform Prescription Drug Information Card Act (215 ILCS 138/1)

2. General Description of the Law

The Uniform Prescription Drug Information Card Act provides for the prescription drug information care standards in order to lessen patients' waiting times, decrease administrative burdens for pharmacies, and improve care to patients by minimizing confusion, eliminating unnecessary paperwork, and streamlining the dispensing of prescription products paid for by third-party payors.

3. Rules Promulgated Under the Law

None. No administrative rules have been promulgated under this law.

4. Key Provisions

None. There are no provisions of this Act addressing the issues raised by the HIPAA preemption analysis.

5. Significant Case Law

None. There is no significant case law addressing the issues raised by the HIPAA preemption analysis.

6. Preemption Analysis Under HIPAA

The Uniform Prescription Drug Information Card Act sets forth the requirements for contents of a prescription card and does not govern the use or disclosure of protected health information.

It is possible to comply with this law and HIPAA. Further, this law does not stand as an obstacle to accomplishing the full purpose of HIPAA. Therefore, the law is not "contrary" to the HIPAA regulations. 45 C.F.R. § 160.202.

7. Is the Law Preempted?

No.

1. Name and Citation of Law

Religious and Charitable Risk Pooling Trust Act (215 ILCS 150/1)

2. General Description of the Law

The Religious and Charitable Risk Pooling Trust Act authorizes 501(c)(3) tax exempt organizations to establish and become beneficiaries of a trust fund for protecting themselves against the risk certain enumerated losses.

3. Rules Promulgated Under the Law

50 Ill. Admin. Code 5601.10 Religious and Charitable Risk Pooling Trust Act

4. Key Provisions

None. There are no provisions of this Act addressing the issues raised by the HIPAA preemption analysis.

5. Significant Case Law

None. There is no significant case law addressing the issues raised by the HIPAA preemption analysis.

6. Preemption Analysis Under HIPAA

The Act does not address the use or disclosure of protected health information.

It is possible to comply with this law and HIPAA. Further, this law does not stand as an obstacle to accomplishing the full purpose of HIPAA. Therefore, the law is not "contrary" to the HIPAA regulations. 45 C.F.R. § 160.202.

7. Is the Law Preempted?

No.

1. Name and Citation of Law

Viatical Settlements Act (215 ILCS 158/1)

2. General Description of the Law

The Viatical Settlements Act regulates the issuance of viatical settlement contracts or policies.

3. Rules Promulgated Under the Law

None. No administrative rules have been promulgated under this law.

4. Key Provisions

None. There are no provisions of this Act addressing the issues raised by the HIPAA preemption analysis.

5. Significant Case Law

None. There is no significant case law addressing the issues raised by the HIPAA preemption analysis.

6. Preemption Analysis Under HIPAA

The Viatical Settlements Act provides for early release of life insurance proceeds in some instances. While the release of protected health information will occur when voluntary application for early settlement is made, the statute does not address the use or disclosure of health information.

It is possible to comply with this law and HIPAA. Further, this law does not stand as an obstacle to accomplishing the full purpose of HIPAA. Therefore, the law is not "contrary" to the HIPAA regulations. 45 C.F.R. § 160.202.

7. Is the Law Preempted?

No.

1. Name and Citation of Law

Voluntary Health Services Plans Act (215 ILCS 165/1)

2. General Description of the Law

The Voluntary Health Services Plans Act provides for the establishment, maintenance and operation of voluntary health services plans.

3. Rules Promulgated Under the Law

50 Ill. Admin. Code 5460.10, Internal Security Standards and Fidelity Bonds

4. Key Provisions

215 ILCS 165/15.8, Sexual Assault or Abuse Victims
215 ILCS 165/15.12, Medical Assistance; ;Coverage of Child

5. Significant Case Law

None. There is no significant case law addressing the issues raised by the HIPAA preemption analysis.

6. Preemption Analysis Under HIPAA

The Voluntary Health Services Plan Act allows non-profit corporations to provide healthcare while limiting corporate liability. 215 ILCS 165/26. No new plans are allowed after 1989 under the Act. 215 ILCS 165/3.1. Many such plans are now chartered under the HMO Act. 215 ILCS 125. This Act provides coverage for health care services related to sexual assault and abuse and, for purposes of enabling recovery of State funds, allows voluntary health services plans to disclose the names and identities of its insureds or subscribers entitled to such benefits to the Department of Public Health upon reasonable demand if the Department of Public Health determines that it has paid or is about to pay for any such services for which the voluntary health services plan is liable. 215 ILCS 165/15.8. The Privacy Rule allows disclosure of protected health information for both “payment” and “health oversight activities”. 45 C.F.R. §164.502, 164.506. Health oversight includes any activities necessary for appropriate oversight of the health care system or government benefit programs for which health information is relevant to beneficiary eligibility. 45 C.F.R. 164.512(d)(1). (It should be noted that the Sexual Assault Survivors Program has moved to the Department of Public Aid.)

This Act also provides that, if a child is covered under a voluntary health services plan in

which the child's noncustodial parent is a beneficiary, the voluntary health services plan must disclose necessary information to the child's custodial parent to enable the child to obtain benefits. 215 ILCS 165/15.12(d). This provision may require the voluntary health services plan to disclose protected health information to the custodial parent. The Privacy Rule generally permits disclosure of protected health information to a personal representative or other person acting *in loco parentis* under State law. 45 C.F.R. § 160.502(g).

Therefore, it is possible to comply with this law and HIPAA. Further, this law does not stand as an obstacle to accomplishing the full purpose of HIPAA. Therefore, the law is not "contrary" to the HIPAA regulations. 45 C.F.R. § 160.202.

7. Is the Law Preempted?

No.

1. Name and Citation of Law

Acupuncture Practice Act (225 ILCS 2/1, *et seq*)

2. General Description of the Law

The Acupuncture Practice Act regulates the practice of acupuncture and establishes licensure requirements for those who practice in the State of Illinois.

3. Rules Promulgated Under the Law

68 Ill. Admin. Code 1140.10 *et seq*., Rules Implementing the Acupuncture Act

4. Key Provisions

225 ILCS 2/110, Grounds for Disciplinary Action
225 ILCS 2/140, Investigation; Notice; Hearing
225 ILCS 2/150, Witnesses; Production of Documents; Contempt
225 ILCS 2/154, Compelling Testimony
225 ILCS 2/155, Subpoena; Oaths

5. Significant Case Law

None. There is no significant case law addressing the issues raised by the HIPAA preemption analysis.

6. Preemption Analysis Under HIPAA

Although acupuncturists provide the type of health care activities defined under the Privacy Rule, the State Acupuncture Practice Act deals primarily with the regulation of the profession. The Act otherwise does not relate to protected health information. Accordingly, the statute is not contrary to the Privacy Rule.

Regarding the regulation of the profession, the Act does allow the Department of Professional Regulation to subpoena documents, including all records, papers and files. 225 ILCS 2/150. Since the Act only contemplates the review of protected health information for health oversight activities, any such disclosure is allowed under the Privacy Rule. 45 C.F.R. 164.512(d).

It is possible to comply with this law and HIPAA. Further, this law does not stand as an obstacle to accomplishing the full purpose of HIPAA. Therefore, the law is not "contrary" to the HIPAA regulations. 45 C.F.R. §160.202.

7. Is the Law Preempted?

No.

1. Name and Citation of Law

Illinois Athletic Trainer's Practice Act (225 ILCS 5/1 *et seq*.)

2. General Description of the Law

The Illinois Athletic Trainer's Practice Act allows the Department of Professional Regulation to regulate those holding themselves out to be athletic trainers in the State of Illinois.

3. Rules Promulgated Under the Law.

68 Ill. Admin. Code 1160.20 *et seq*., Rules implementing the Illinois Athletic Trainer's Practice Act

4. Key Provisions

225 ILCS 5/3, Definitions
225 ILCS 5/17, Violations - Injunction - Cease & Desist
225 ILCS 5/18, Investigations; Notice and Hearing
225 ILCS 5/20, Compelling Testimony

5. Significant Case Law

No case law significantly impacts the preemption analysis.

6. Preemption Analysis Under HIPAA

Licensed athletic trainers, upon the direction of a team or consulting physician, carry out the practice of prevention and emergency care and/or physical reconditioning of injuries incurred by athletes participating in an athletic program. 225 ILCS 5/3(4). Athletic trainers consult athletes on nutrition and hygiene and coordinate with team physicians to provide physical exams and health history updates. Id. The Act also provides athletic trainers maintain a complete and accurate set of records of all athletic injuries and treatments rendered. Id.

The Privacy Rule, §160.103, defines health care in part as providing preventive, therapeutic and rehabilitative care. Athletic trainers provide many of the services described in the Privacy Rule pursuant to §5/3 of the Act. 225 ILCS 5/3. Accordingly, it appears that many athletic trainers will be "covered entities" required to comply with the Privacy Rule. 45 C.F.R. §160.102.

Certain provisions of the Act do relate directly to protected health information. For example, the Act provides medical information may be transmitted between physicians and athletic trainers. 225 ILCS 5/3(4). Such a use or disclosure generally is part of treatment and allowed under the Privacy Rule. 45 C.F.R. §164.502, 164.506.

Furthermore, the Act requires athletic trainers to maintain complete and accurate records of all athletic injuries and treatments rendered. Id. To the extent an individual athletic trainer is considered a covered entity, the record keeping requirements of the Privacy Rule apply. 45 C.F.R. §164.528. The Act does not establish a requirement for how long these records must be maintained. Under the Privacy Rule, it may be advisable for certain records to be maintained for a period of at least 6 years. 45 C.F.R. §164.528, 164.530.

The Illinois Athletic Trainers Act also provides the Department with certain investigatory and subpoena powers to ensure compliance. 225 ILCS 5/17-20. Any protected health care information that might be released under these sections is allowable under the Privacy Rule as the disclosures are in furtherance of health oversight activities. 45 C.F.R. §164.512(d).

It is possible to comply with this law and HIPAA. Further, this law does not stand as an obstacle to accomplishing the full purpose of HIPAA. Therefore, the law is not "contrary" to the HIPAA regulations. 45 C.F.R. §160.202.

7. Is the Law Preempted?

No.

1. Name and Citation of Law

Board and Care Home Registration Act (225 ILCS 7/1 *et seq*.)

2. General Description of the Law

The Board and Care Home Registration Act allows the Illinois Department on Aging to create and enforce registration requirements for publicly and privately operated residences that house fewer than twelve adults who are unrelated to the resident manager.

3. Rules Promulgated Under the Law

89 Ill. Admin. Code 290.100 *et seq*., Rules Implementing the Board and Care Home Registration Act

4. Key Provisions

None. There are no provisions of this Act addressing the issues raised by the HIPAA preemption analysis.

5. Significant Case Law

None. There is no significant case law addressing the issues raised by the HIPAA preemption analysis.

6. Preemption Analysis Under HIPAA

The primary purpose of the Board and Care Home Registration Act is to provide oversight of group homes. The Act does not discuss protected health care information. Assuming these facilities may be covered entities under the Privacy Rule, protected health information given to the Department on Aging would be for oversight purposes. 45 C.F.R. §164.512(d).

It is possible to comply with this law and HIPAA. Further, this law does not stand as an obstacle to accomplishing the full purpose of HIPAA. Therefore, the law is not "contrary" to the HIPAA regulations. 45 C.F.R. §160.202.

7. Is the Law Preempted?

No.

1. Name and Citation of Law

Child Care Act of 1969 (225 ILCS 10/1 *et seq*.)

2. General Description of the Law

The Child Care Act of 1969 establishes requirements for daycare institutions, group homes, foster homes and creates other reporting requirements for child abuse and neglect.

3. Rules Promulgated Under the Law

68 Ill. Admin. Code 385.10 *et seq*., Background checks, licensing, children and family services
89 Ill. Admin. Code 377.1 *et seq*., Facilities and Programs Exempt From Licensure
89 Ill. Admin. Code 401.1 *et seq*., Licensing Standards for Child Welfare Agencies

4. Key Provisions

225 ILCS 10/15, Confidentiality of Records

5. Significant Case Law

None. No case law significantly impacts the preemption analysis.

6. Preemption Analysis Under HIPAA

The Child Care Act of 1969 does not appear to involve providers who are covered entities.

The Act provides that records will be maintained pertaining to the admission, progress, health and discharge of children, including, for daycare centers and daycare homes, indicating each child has been immunized as required by State regulations. 225 ILCS 10/7. This disclosure of immunization records is done pursuant to parental authorization. 45 C.F.R. §164.508. The Act also provides every child care facility must keep and maintain such records as the Department of Children and Family Services may prescribe pertaining to the admission, progress, health and discharge of children under the care of the facility and shall report relative thereto to the Department whenever called for, upon forms prescribed by the Department. 225 ILCS 10/15. All records regarding children and all facts learned about children and their relatives must be kept confidential both by the child care facility and by the Department. Id.

Section 10/15 provides that nothing contained in the Act prevents the sharing or disclosure of information or records relating or pertaining to juveniles subject to the provisions of the Serious Habitual Offender Comprehensive Action program when that information is used to assist in the early identification and treatment of habitual juvenile offenders. 225 ILCS 10/15. If such a release constitutes protected health information, it would appear to be allowed as a treatment disclosure, or perhaps as disclosure allowed under the Privacy Rule as a public health activity or to investigate abuse. 45 C.F.R. §164.502, 164.506, 164.512(b), (c).

It is possible to comply with this law and HIPAA. Further, this law does not stand as an obstacle to accomplishing the full purpose of HIPAA. Therefore, the law is not "contrary" to the HIPAA regulations. 45 C.F.R. §160.202.

7. Is the Law Preempted?

No.

1. Name and Citation of Law

Clinical Psychologist Licensing Act (225 ILCS 15/1 *et seq*.)

2. General Description of the Law

The Clinical Psychologist Licensing Act allows the Department of Professional Regulation to regulate the practice of clinical psychology and establish licensure requirements for those practicing in Illinois.

3. Rules Promulgated Under the Law

68 Ill. Admin. Code 1400.20 *et seq*., Rules Implementing the Clinical Psychologist Licensing Act

4. Key Provisions

225 ILCS 15/5, Confidentiality of Information
225 ILCS 15/15, Disciplinary Actions; Grounds
225 ILCS 5/16, Investigations; Notice; Hearing
225 ILCS 15/17, Subpoenas; Depositions; Oaths
225 ILCS 15/18, Compelling Testimony
225 ILCS 15/19, Record of Proceedings
68 Ill. Admin. Code 1400.80, Unauthorized, unethical, or unprofessional conduct.

5. Significant Case Law

People v. Smith, 48 Ill. Dec. 541 (Ill. App. 2nd Dist. 1981). The Court held that the defendant did not have expectation of confidentiality when he was told prior to psychiatric examination, in essence, that it could be used against him. The case also held that the patient-therapist privilege must be asserted by either the defendant or the therapist, or it is considered waived.

6. Preemption Analysis Under HIPAA

The Clinical Psychologist Licensing Act provides that clinical psychologists may not disclose any information acquired while in a professional capacity except: (1) trials for homicide, (2) proceedings to determine mental competency, (3) in actions against the psychologist for malpractice, (4) with the express consent of the client or his or her personal representative, or (5) relating to the validity of a document, such as a will of a client. 225 ILCS 15/5.

The disclosure relating to trials for homicides under §15(a) is permitted if the Privacy Rule requirements for disclosures for judicial proceedings are met. 45 C.F.R. §164.512(e). Similarly, proceedings regarding mental competence are also permitted by court order. Id. Disclosure necessary to protect against malpractice is covered under §164.508(a)(2) for psychotherapy notes and also arguably § 164.502 in furtherance of health care operations. Disclosures regarding mental competency determinations and hearings to determine the validity of a decedent's will is permitted under 45 C.F.R. § 164.512(e)(1)(i), which allows health information to be disclosed for judicial and administrative proceedings. The above analysis assumes that each such disclosure will be done in accordance with the guidelines of 45 C.F.R. §164.512(e) that sets forth the appropriate subpoena and court order requirements.

The Psychologist Licensing Act allows the Department of Professional Regulation to review protected health information for disciplinary proceedings. 225 ILCS 15/15-19. Any such disclosure is allowed under Section 45 C.F.R. 164.512(d) of the Privacy Rule as a disclosure for health oversight activities.

Section 5(4) allows disclosure in cases of consent by the patient or the patient's personal representative. 225 ILCS 15/5(4). Consent is not necessary under the privacy regulation for treatment, payment or health care operations. 45 C.F.R. §164.502, 164.506. For any other purpose, the consent is valid if it meets the authorization standards of the Privacy Rule. 45 C.F.R. §164.508(a)(2). Because State law requires consent when the Privacy Rule does not, the State law is "more stringent". 45 C.F.R. §160.202.

The regulations promulgated under the Act expand on the disciplinary principles and provide that the Department may take action against those regulated by the Act for "revealing facts, data or information relating to a client or examinee except as allowed under Section 5 of the Act or under the Mental Health and Developmental Disabilities Confidentiality Act." 68 Ill. Admin. Code 1400.80. The release of information with the express consent of the client, as provided for in Section 5 of the Clinical Psychologist Licensing Act is interpreted to mean that the psychologist, prior to the release of the information, is required to obtain written consent and make certain that the client understood the possible uses or distributions of the information. Id. For the consent mandated by State law to be valid, it must comply with the Privacy Rule authorization requirements if the release is for a purpose other than treatment, payment or health care operations. 45 C.F.R. §164.508.

The regulations also provide that case history material may be used for teaching or research purposes or in text books or in other literature, provided that proper precautions are taken to conceal the identity of the clients or examinees involved. 68 Ill. Admin. Code 1400.80. The release is appropriate if it meets the de-identification standards of 45 C.F.R. § 164.514, or the limited data set provisions in 45 C.F.R. §164.514(e)(1). Further,

this type of disclosure is permitted under §164.508 for psychotherapy notes, which allows disclosure in teaching. 45 C.F.R. §164.508.

It is possible to comply with this law and HIPAA. Further, this law does not stand as an obstacle to accomplishing the full purpose of HIPAA. Therefore, the law is not "contrary" to the HIPAA regulations. 45 C.F.R. §160.202.

7. Is the Law Preempted?

No.

1. Name and Citation of Law

Clinical Social Work and Social Work Practice Act (225 ILCS 20/1 *et seq*.)

2. General Description of the Law

The Clinical Social Work and Social Work Practice Act allows the Department of Professional Regulation to set standards and qualifications for the education, training and experience of those who engage in clinical social work practice.

3. Rules Promulgated Under the Law

68 Ill. Admin. Code 1470.10 *et seq*., Rules Implementing the Clinical Social Work and Social Work Practice Act

4. Key Provisions

225 ILCS 20/16, Privileged Communications and Exceptions
225 ILCS 20/19, Grounds for Disciplinary Action
225 ILCS 20/21, Investigations; Notice and Hearing
225 ILCS 20/23, Subpoenas; Depositions; Oaths
225 ILCS 20/24, Compelling Testimony

5. Case Law

None. There is no significant case law addressing the issues raised by the HIPAA preemption analysis.

6. Preemption Analysis Under HIPAA

Clinical social work practice is defined as providing mental health services for the evaluation, treatment and prevention of mental and emotional disorders in individuals, families and groups. 225 ILCS 20/3. Clinical social workers provide health care as defined in the federal privacy regulation. 45 C.F.R. §160.103.

The Act provides that a licensed clinical social worker or licensed social worker shall not disclose any information acquired from persons consulting the social worker in a professional capacity. 225 ILCS 216. Several exceptions are noted, including: (1) sharing information with administrative superiors, colleges or consultants who share professional responsibility; (2) with the written consent of the person; (3) in case of death or disability with the written consent of the personal representative; (4) when a communication reveals the intended commission of a crime or harmful act and such disclosure is judged necessary by the licensed clinical social worker to protect any person

from a clear imminent risk of serious mental or physical harm or injury; (5) when the person waives the privilege by bringing any public charges against the licensee; or (6) when the disclosure is in furtherance of the Elder Abuse and Neglect Act or the Abused and Neglected Child Reporting Act. 325 ILCS 5/1. (See, Elder Abuse and Neglect Act and the Abused and Neglected Child Reporting Act, 320 ILCS 20/1.)

All of the exceptions are permissible when done in compliance with the Privacy Rule. Sharing information with colleagues and superiors who share professional responsibility is "treatment". 45 C.F.R. §164.502. Disclosures upon the written consent of the person providing the information are permitted when done in compliance with the authorization requirements of the Privacy Rule. 45 C.F.R.§164.508.

In situations involving death, disclosure is allowed pursuant to authorization by the personal representative. 45 C.F.R. §164.502(f), (g)(1). Disclosures to prevent the commission of a crime and regarding victims of abuse, neglect and domestic violence are permitted by the Privacy Rule if specified requirements are met. 45 C.F.R. §164.512(b)(c). Disclosures for law enforcement purposes are allowed in some circumstances. 45 C.F.R. §164.512(f).

The Act also gives investigatory powers to the Department. The regulations provide that the Department may take action against an individual for "revealing facts, data or information relating to a client or examinee." 68 Ill. Admin. Code 1400.80. The potential disclosure of any protected health information to the Department in the exercise of these investigatory powers is permitted under Section 45 C.F.R. 164.512(d) since these disclosures relate to health oversight activities.

The regulations provide that release of information pursuant to consent of the client is interpreted to mean that the psychologist, prior to the release of the information, obtained written consent and made certain that the client understood the possible uses or distributions of the information. 68 Ill. Admin. Code 1400.80, 225 ILCS 20/6. Presuming the consent is really an authorization in compliance with §164.508, this provision is consistent with the Privacy Rule. 45 C.F.R. §164.508.

7. <u>Is the Law Preempted</u>?

No.

1. Name and Citation of Law

Illinois Dental Practice Act (225 ILCS 25/1 *et seq*.)

2. General Description of the Law

The Illinois Dental Practice Act allows the Department of Professional Regulation to license and discipline dentists and dental hygienists in the State of Illinois.

3. Rules Promulgated Under the Law

68 Ill. Admin. Code 1220.100 *et seq*., Rules Implementing the Illinois Dental Practice Act.

4. Key Provision

225 ILCS 25/5, Powers and Duties of the Department
225 ILCS 25/34, Confidential Information/Disclosure
225 ILCS 25/48, Manufacture of Dentures, Bridges or Replacement for Dentists; Prescriptions; Orders; Penalties
68 Ill. Admin. Code 1220.400, Reportable Diseases and Conditions

5. Significant Case Law

State ex rel. Department of Professional Regulation v. Manos, 2002 WL 31722951 (Ill. 2002).

6. Preemption Analysis Under HIPAA

The Department of Professional Regulation is empowered to license dentists and dental hygienists under the Illinois Dental Practice Act. 225 ILCS 25/5. In so doing, the Department of Professional Regulation may review patient charts, however, in hearings and other disciplinary matters, this patient health information is strictly confidential. 225 ILCS 25/34. This type of disclosure to the Department of Professional Regulation is allowed as health oversight. 45 C.F.R. §164.510(d). The Illinois Supreme Court recently held that the Department's ability to review records without consent is limited under the Code of Civil Procedure when using the Department's general subpoena authority. *State ex rel. Department of Professional Regulation v. Manos*, 2002 WL 31722951 (Ill. 2002) (construing, 735 ILCS 5/8-802 and 20 ILCS 2105/2105-105 (formerly 20 ILCS 2105/60d)). In *Manos*, the Court held that the physician-patient privilege, 735 ILCS 5/8-802, applies to dentists, as surgeons, and operates to prohibit the Department from issuing a subpoena under its general authority conferred by the Civil Administrative Code for patient records absent consent. Id.

The Dental Practice Act specifically requires a dentist who uses an outside dental laboratory to retain the prescription given to the outside laboratory for a minimum of 3 years. 225 ILCS 25/48. The dental laboratory, or its subcontractors, are also required to maintain the original prescription for 3 years. Id. The accounting of disclosures in the Privacy Rule requires a covered entity to track disclosures for a period of 6 years. 45 C.F.R. §164.528. The Department of Health and Human Services can impose a civil monetary penalty for a period of up to 6 years after a violation. Pub. L. 104-191. Therefore, it may be advisable for health care providers to keep their records for at least 6 years.

It is possible to comply with this law and HIPAA. Further, this law does not stand as an obstacle to accomplishing the full purpose of HIPAA. Therefore, the law is not "contrary" to the HIPAA regulations. 45 C.F.R. §160.202.

7. Is the Law Preempted?

No.

1. Name and Citation of Law

Dietetic and Nutrition Services Practice Act (225 ILCS 30/1 *et seq*.)

2. General Description of the Law

The Dietetic and Nutrition Services Practice Act allows the Illinois Department of Professional Regulation to establish requirements and qualifications for those who are engaged in the practice of providing dietetic and nutrition services. Those licensed under the Act, including licensed dieticians and licensed nutrition counselors, are not engaged in medical diagnosis of the health status of individuals, nor are they involved in medical nutrition care.

3. Rules Promulgated Under the Law

67 Ill. Admin. Code 1245.10 *et seq*., Rules Implementing the Dietetic and Nutrition Services Practices Act

4. Key Provisions

225 ILCS 30/10, Definitions
68 Ill. Admin. Code 1245.10, Definitions

5. Significant Case Law.

None. There is no significant case law addressing the issues raised by the HIPAA preemption analysis.

6. Preemption Analysis Under HIPAA

The Dietetic and Nutrition Services Practice Act provides for the licensure of dieticians and nutrition counselors. 225 ILCS 30/10. A licensed dietician is empowered to provide medical nutrition care, which includes recommending nutrient needs to those with tube feedings, reviewing food and prescription drug interactions, and developing and managing food service operations for the provision of medically prescribed diets. Id. In contrast, nutrition counselors are not allowed to engage in medical nutrition care. Id. While some dieticians are not employed by health care facilities, many dieticians and nutrition counselors will be part of the workforce of a covered entity. In a review of this Act and rules, however, there are no provisions which govern the use or disclosure of protected health information by licensed individuals.

It is possible to comply with this law and HIPAA. Further, this law does not stand as an obstacle to accomplishing the full purpose of HIPAA. Therefore, the law is not "contrary" to the HIPAA regulations. 45 C.F.R. §160.202.

7. Is the Law Preempted?

No.

1. Name and Citation of Law

Embalming Fluid Act (225 ILCS 35/1 *et seq*)

2. General Description of the Law

The Embalming Fluid Act regulates the use of embalming fluid containing arsenic or strychnine and creates labeling and other requirements on the use of such fluid.

3. Rules Promulgated Under the Law

None. No administrative rules have been promulgated under this law.

4. Key Provisions

None. There are no provisions of this Act addressing the issues raised by the HIPAA preemption analysis.

5. Significant Case Law

None. There is no significant case law addressing the issues raised by the HIPAA preemption analysis.

6. Preemption Analysis Under HIPAA

The Embalming Fluid Act does not specifically address the use or disclosure of protected health information.

It is possible to comply with this law and HIPAA. Further, this law does not stand as an obstacle to accomplishing the full purpose of HIPAA. Therefore, the law is not "contrary" to the HIPAA regulations. 45 C.F.R. §160.202.

7. Is the Law Preempted?

No.

1. Name and Citation of Law

Environmental Health Practitioner Licensing Act (225 ILCS 37/1 *et seq*.)

2. General Description of the Law

The Environmental Health Practitioner Licensing Act was established to safeguard the public from adverse environmental factors and to license environmental health professionals who are trained to organize, implement and manage environmental health programs. Licensed practitioners are also trained to carry out education and enforcement activities for the promotion and protection of the public health and environment.

3. Rules Promulgated Under the Law

68 Ill. Admin. Code 1247.10 *et seq*., Rules Implementing the Environmental Health Practitioner Licensing Act

4. Key Provisions

None. There are no provisions of this Act addressing the issues raised by the HIPAA preemption analysis.

5. Significant Case Law.

None. There is no significant case law addressing the issues raised by the HIPAA preemption analysis.

6. Preemption Analysis Under HIPAA

The Environmental Health Practitioner Licensing Act does not involve the provision of health care, or the use or disclosure of protected health care information.

It is possible to comply with this law and HIPAA. Further, this law does not stand as an obstacle to accomplishing the full purpose of HIPAA. Therefore, the law is not "contrary" to the HIPAA regulations. 45 C.F.R. §160.202.

7. Is the Law Preempted?

No.

1. Name and Citation of Law

Funeral Directors and Embalmers Licensing Code (225 ILCS 41/1-1 *et seq.*)

2. General Description of the Law

The Funeral Directors and Embalmers Licensing Code regulates the practice of funeral directing and embalming. 225 ILCS 1-10.

3. Rules Promulgated Under the Law

68 Ill. Admin. Code 1250.110 *et seq*., Rules Implementing the Funeral Directors and Embalmers Licensing Code

4. Key Provisions

None. There are no provisions of this Act addressing the issues raised by the HIPAA preemption analysis.

5. Significant Case Law

None. There is no significant case law addressing the issues raised by the HIPAA preemption analysis.

6. Preemption Analysis Under HIPAA

The Funeral Directors and Embalmers Licensing Code provides a licensure framework for persons who are qualified to practice funeral directing and prepare human bodies for burial. 225 ILCS 41/1-5. Funeral directors and embalmers will not meet the definition of a covered entity under the HIPAA regulations. 45 C.F.R. §160.103. It should be noted, however, that disclosure of protected health information to funeral directors and embalmers are specifically allowed to be made by a covered entity under the Privacy Rule. 45 C.F.R. §164.512(g). Covered entities are still required to comply with the privacy regulation generally, in spite of the death of an individual. 45 C.F.R. §164.502(f).

It is possible to comply with this law and HIPAA. Further, this law does not stand as an obstacle to accomplishing the full purpose of HIPAA. Therefore, the law is not "contrary" to the HIPAA regulations. 45 C.F.R. §160.202.

7. Is the Law Preempted?

No.

1. Name and Citation of Law

Illinois Funeral or Burial Funds Act (225 ILCS 45/1 *et seq*.)

2. General Description of the Law

The Illinois Funeral or Burial Funds Act establishes fiduciary requirements on those who accept money for the purpose of furnishing or performing funeral services or furnishing the delivery of any personal property, merchandise or services of any nature in connection with the final disposition of a dead human body including outer burial containers, caskets and combination casket/vault units. 225 ILCS 45/1. The Comptroller has regulatory powers under this Act.

3. Rules Promulgated Under the Law

38 Ill. Admin. Code 310.10 *et seq*., Rules Implementing the Illinois Funeral or Burial Funds Act

4. Key Provisions

None. There are no provisions of this Act addressing the issues raised by the HIPAA preemption analysis.

5. Significant Case Law

None. There is no significant case law addressing the issues raised by the HIPAA preemption analysis.

6. Preemption Analysis Under HIPAA

The Illinois Funeral or Burial Funds Act regulates the purchase of pre-need contracts for burials. 225 ILCS 45/1. Disclosures by covered entities of protected health information to funeral directors and embalmers are specifically allowed by the Privacy Rule. 45 C.F.R. 164.512(g). Covered entities are still required to comply with the privacy regulation generally, in spite of the death of an individual. 45 C.F.R. §164.502(f).

It is possible to comply with this law and HIPAA. Further, this law does not stand as an obstacle to accomplishing the full purpose of HIPAA. Therefore, the law is not "contrary" to the HIPAA regulations. 45 C.F.R. §160.202.

7. Is the Law Preempted?

No.

1. Name and Citation of Law

Health Care Worker Background Check Act (225 ILCS 46/1 *et seq*.)

2. General Description of the Law

The Health Care Worker Background Check Act establishes guidelines and requirements for criminal background checks to be completed on individuals employed or retained by health care employers.

3. Rules Promulgated Under the Law

A variety of regulations require licensed facilities to conduct a background check on employees, however, no rules are specific to this Act.

4. Key Provisions

None. There are no provisions of this Act addressing the issues raised by the HIPAA preemption analysis.

5. Significant Case Law

None. There is no significant case law addressing the issues raised by the HIPAA preemption analysis.

6. Preemption Analysis Under HIPAA

The Health Care Worker Background Check Act governs individuals employed as home health care aides, nurse aides, personal care assistants, private duty nurse aides, day training personnel, or an individual working in any similar health related occupation where he or she provides direct care. 225 ILCS 46/10. The Act provides that health care employers shall retain on file for a period of 5 years records of criminal records requests for all employees. 225 ILCS 46/50. The file shall be subject to inspection by the agency responsible for inspecting, licensing or certifying the health care employer. Id. The Act does not involve the use or disclosure of protected health information or health care providers.

It is possible to comply with this law and HIPAA. Further, this law does not stand as an obstacle to accomplishing the full purpose of HIPAA. Therefore, the law is not "contrary" to the HIPAA regulations. 45 C.F.R. §160.202.

7. Is the Law Preempted?

No.

1. Name and Citation of Law

Health Care Worker Self-Referral Act (225 ILCS 47/1 *et seq*.)

2. General Description of the Law

The Health Care Worker Self-Referral Act regulates referral practices within the health care market. Its primary focus is to prohibit patient referrals to entities providing health services in which the referring health care worker has an investment interest and to protect citizens from unnecessary and costly health care expenditures. 225 ILCS 47/5.

3. Rules Promulgated Under the Law

77 Ill. Admin. Code 1235.10 *et seq*., Health Care Worker Self-Referral

4. Key Provisions

None. There are no provisions of this Act addressing the issues raised by the HIPAA preemption analysis.

5. Significant Case Law

None. There is no significant case law addressing the issues raised by the HIPAA preemption analysis.

6. Preemption Analysis Under HIPAA

Although the Health Care Worker Self-Referral Act involves health care providers, it does not involve the use or disclosure protected health information. Individually identifiable health information is not necessary for advisory opinions under the Act. 77 Ill. Admin. Code 1235.310.

It is possible to comply with this law and HIPAA. Further, this law does not stand as an obstacle to accomplishing the full purpose of HIPAA. Therefore, the law is not "contrary" to the HIPAA regulations. 45 C.F.R. §160.202.

7. Is the Law Preempted?

No.

1. Name and Citation of Law

Hearing Instrument Consumer Protection Act (225 ILCS 50/1 *et seq*.)

2. General Description of the Law

The Hearing Instrument Consumer Protection Act allows the Department of Public Health to establish standards of competency and licensing requirements for those who dispense hearing instruments. The Act requires certain disclosures be made by hearing instrument dispensers as well as receipts and federal brochures.

3. Rules Promulgated Under the Law

77 Ill. Admin. Code 682.100 *et seq*., Rules Implementing the Hearing Instrument Consumer Protection Act

4. Key Provisions

225 ILCS 50/4, Disclosures; Waivers; Complaints; Insurance
77 Ill. Admin. Code 682.140, Consumer Records

5. Significant Case Law

None. There is no significant case law addressing the issues raised by the HIPAA preemption analysis.

6. Preemption Analysis Under HIPAA

The Hearing Instrument Consumer Protection Act provides for the licensure of dispensers of hearing instruments or hearing aids. 225 ILCS 50/3. A hearing instrument dispenser is not to sell a hearing instrument unless the prospective user presents a written statement, signed by a licensed physician, that the patient needs a hearing instrument. 225 ILCS 50/4. The individual may waive this provision in writing. Id. It appears that these activities constitute those of providing health care under the Privacy Rule. 45 C.F.R. §160.102.

Hearing instrument dispensers are required to keep copies of the evaluations, medical waivers, contracts or receipts for a period of at least 36 months. 77 Ill. Admin. Code 682.140. The Privacy Rule requires an accounting of disclosures of health information for a maximum period of 6 years. It may be advisable for health care providers to keep records for at least 6 years as HIPAA provides that the Department of Health and Human Services may impose a civil monetary penalty for a period up to 6 years. Pub. L. No. 104-191. 45 C.F.R. §164.530.

7. Is the Law Preempted?

No.

1. Name and Citation of Law

Home Medical Equipment and Services Provider License Act (225 ILCS 51/1 *et seq*.)

2. General Description of the Law

The Home Medical Equipment and Services Provider License Act allows the Department of Professional Regulation to regulate persons who directly or indirectly provides technologically sophisticated home medical equipment.

3. Rules Promulgated Under the Law

68 Ill. Admin. Code 1253.10 *et seq*., Rules Implementing the Home Medical Equipment and Services Provider Act

4. Key Provisions

225 ILCS 51/95, Investigations; Notice and Hearing
225 ILCS 51/105, Compelling Testimony

5. Significant Case Law

None. There is no significant case law addressing the issues raised by the HIPAA preemption analysis

6. Preemption Analysis Under HIPAA

Home Medical Equipment refers to technologically sophisticated medical devices, apparatuses, machines or other similar articles bearing a label that states "CAUTION: FEDERAL LAW REQUIRES DISPENSING BY OR ON THE ORDER OF A PHYSICIAN", which are usable in a home care setting, including such items as oxygen delivery systems, ventilators, respirators, wheelchair seating systems and sequential compression devices. 225 ILCS 51/10.

The Home Medical Equipment and Services Provider License Act does not reference protected health information. To the extent Sections 51/90 and 51/95 contemplate that protected health information may be discovered through an investigation of the Department into a licensed medical equipment provider, any such disclosure would be permitted as it relates to health oversight activities under § 164.512(d) of the Privacy Rule.

It is possible to comply with this law and HIPAA. Further, this law does not stand as an obstacle to accomplishing the full purpose of HIPAA. Therefore, the law is not "contrary" to the HIPAA regulations. 45 C.F.R. §160.202.

7. Is the Law Preempted?

No.

1. Name and Citation of Law

Industrial Hygienist Licensure Act (225 ILCS 52/1 *et seq*.)

2. General Description of the Law

The Industrial Hygienist Licensure Act provides for the licensure of industrial hygienists by the Illinois Environmental Protection Agency. This profession provides services in which the sciences are applied with the aid of quantitative measurement techniques in the control of physical, chemical and biological factors that cause illness, injury, impaired health or inefficiency among employees and the public. 225 ILCS 52/10.

3. Rules Promulgated Under the Law

35 Ill. Admin. Code 184.106 *et seq*., Licensing of Industrial Hygienists

4. Key Provisions

None. There are no provisions of this Act addressing the issues raised by the HIPAA preemption analysis.

5. Significant Case Law

None. There is no significant case law addressing the issues raised by the HIPAA preemption analysis.

6. Preemption Analysis Under HIPAA

The Act establishes licensure requirements for industrial hygienists and establishes the industrial hygiene examining board that oversees the adoption of policies, procedures and rules necessary to carry out the provisions of the Act. 225 ILCS 52/35. The Act does not reference protected health information.

It is possible to comply with this law and HIPAA. Further, this law does not stand as an obstacle to accomplishing the full purpose of HIPAA. Therefore, the law is not "contrary" to the HIPAA regulations. 45 C.F.R. §160.202.

7. Is the Law Preempted?

No.

1. Name and Citation of Law

Marriage and Family Therapy Licensing Act (225 ILCS 55/1 *et seq*.)

2. General Description of the Law

The Marriage and Family Therapy Licensing Act establishes qualifications and licensure standards for marriage and family therapists.

3. Rules Promulgated Under the Law

68 Ill. Admin. Code 1283.10 *et seq.*, Rules Implementing the Marriage and Family Therapy Licensing Act

4. Key Provisions

225 ILCS 55/20, Powers and Duties of the Department
225 ILCS 55/70, Privileged Communications and Exceptions
225 ILCS 55/85, Refusal, Revocation or Suspension
225 ILCS 55/95, Investigation; Notice and Hearing
225 ILCS 55/105, Subpoenas; Attendance and Witnesses
68 Ill. Admin. Code 1283.100.

5. Significant Case Law

None. There is no significant case law addressing the issues raised by the HIPAA preemption analysis.

6. Preemption Analysis Under HIPAA

Under the Marriage and Family Therapy Licensing Act, therapy means the evaluation and treatment of mental and emotional problems within the context of human relationships. 225 ILCS 55/10. Marriage and family therapy also involves the use of psychotherapeutic methods to ameliorate inter-personal and intra-personal conflict and to modify perceptions, beliefs and behavior in areas of human life that include, but are not limited to, pre-marriage, marriage, sexuality, family, divorce adjustment and parenting. Id.

The Privacy Rule defines health care as providing both therapeutic and counseling service, and includes mental conditions. 45 C.F.R. 160.103.

The Act allows disclosure to: (1) consult with a colleague who shares privileged responsibilities; (2) with written consent of the person; (3) written consent of a

decedent's personal representative; (4) when the communication involved the intended commission of a crime; and (5) when the person waives the privilege by bringing charges against the therapist. 225 ILCS 55/70.

All of the disclosures contemplated under §70 of the Therapy Licensing Act are permissible when done in compliance with the Privacy Rule. Information can be shared with a colleague as a part of health care operations or treatment. 45 C.F.R. §164.502. A therapist may reveal information relating to the commission of a crime under 45 C.F.R. §164.512(f) for certain law enforcement purposes and when specified requirements are met. Disclosure with the consent of a decedent's personal representative is permissible under 45 C.F.R. §164.502(g)(1). Finally, disclosure may be made when a person waives privilege by bringing charges against a therapist under the exception for disclosure for health care operations. 45 C.F.R. §164.502.

Section 85 of the Marriage and Family Therapy Licensing Act also provides that those seeking licensure under the Act may be compelled to submit to a mental or physical examination, and the provider of such examination will relay the results to the Department of Professional Regulation. 225 ILCS 55/85. This section, as well as § 95 involving investigations by the Department, are not contrary to the Privacy Rule as the disclosures involve health oversight activities. 45 C.F.R.§ 164.512(d).

The regulations promulgated under the Marriage and Family Therapy Licensing Act provide that therapists must inform their clients of the limitations of confidentiality including limitations mandated by law and the prevention of clear and immediate danger to one or more persons. 68 Ill. Admin. Code 1283.100. The regulations also provide therapists must ensure that all records and written data are stored using security measures that prevent access to records by unauthorized persons and that therapists must also ensure that the content and disposition of all records are in compliance with all relevant state laws and rules. 68 Ill. Admin. Code 1283.100. This provision should be reviewed under the final Security Rule.

It is possible to comply with this law and HIPAA. Further, this law does not stand as an obstacle to accomplishing the full purpose of HIPAA. Therefore, the law is not "contrary" to the HIPAA regulations. 45 C.F.R. §160.202.

7. Is the Law Preempted?

No.

1. Name and Citation of Law

Medical Practice Act of 1987 (225 ILCS 60/1 *et seq*.)

2. General Description of the Law

The Medical Practice Act of 1987 allows the Illinois Department of Professional Regulation to establish licensure requirements for persons who practice medicine or any of its branches or treat ailments without the use of drugs and without operative surgery.

3. Rules Promulgated Under the Law

32 Ill. Admin. Code 360.10 *et seq.,* Radiation Protection (Department of Nuclear Safety)
68 Ill. Admin. Code 1285.20 *et seq.,* Rules Implementing the Medical Practice Act of 1987

4. Key Provisions

225 ILCS 60/22, Disciplinary Action
225 ILCS 60/23, Reports Relating to Professional Conduct and Capacity
225 ILCS 60/36, Violations Investigations
225 ILCS 60/37, Disciplinary Actions
225 ILCS 60/38, Subpoenas; Oaths, Rights of Inspection
225 ILCS 60/45, Confidential Information

5. Significant Case Law

State ex rel. Department of Professional Regulation v. Manos, 202 Ill.2d 563, 2002 WL 31722951 (Ill. 2002)
Naguit v. Selcke, 184 Ill.App.3d 80, 539 N.E.2d 1353, 132 Ill.Dec. 547 (Ill. 1989)

6. Preemption Analysis Under HIPAA

The Medical Practice Act of 1987 establishes licensure requirements for those engaged in medical practice. The Act also establishes certain disciplinary actions and procedures, in order for the Department of Professional Regulation to review the licenses and conduct of those practicing medicine. 225 ILCS 60/22-38. For example, the Act provides disciplinary action may be taken when a willful omission to a file or record is made, or when a licensee willfully impedes the filing or recording or induces another person to omit to file or record medical reports as required by law. 225 ILCS 60/22.

Under the Act, the Medical Disciplinary Board must require reports be filed with it when a person licensed under the Act has committed an act that directly threatens patient care

or if a person licensed under the Act is mentally or physically disabled in such a manner as to endanger patients under that person's care. 225 ILCS 60/23. The Board must also be provided with a report explaining the impairment, including whether it is by reason of age, drug or alcohol abuse or physical or mental impairment, and whether the individual is in a program of rehabilitation. Id. Such reports are to be strictly confidential and may be reviewed and considered only by the members of the disciplinary board. Id. The reports must contain "the name or other means of identification of any patient or patients whose treatment is a subject of the report, provided, however, no medical records may be revealed without the consent of the patient or patients." 225 ILCS 60/23(b)(3).

The Medical Practice Act gives the Disciplinary Board the power to subpoena patient records in completing investigations of medical providers. 225 ILCS 60/38. Any such review of individual patient records must "be conducted by the disciplinary Board in strict confidentiality, provided that such patient records shall be admissible in a disciplinary hearing, before the disciplinary board, when necessary to substantiate the grounds for discipline alleged against the physician licensed under the Act." Id. The Illinois Supreme Court recently held that the Department's ability to review records without consent is limited under the Code of Civil Procedure when using the Department's general subpoena authority. *State ex rel. Department of Professional Regulation v. Manos*, 2002 WL 31722951 (Ill. 2002) (construing, 735 ILCS 5/8-802 and 20 ILCS 2105/2105-105 (formerly 20 ILCS 2105/60d). In *Manos*, the Court held that the physician-patient privilege, 735 ILCS 5/8-802, applies to dentists and operates to prohibit the Department from issuing a subpoena under its general authority conferred by the Civil Administrative Code for patient records absent consent. Id. Previously, however, the Supreme Court upheld the ability of the Department of Professional Regulation to subpoena records during investigations of physician disciplinary issues under the Medical Practice Act. *Naguit v. Selcke*, 184 Ill.App.3d 80, 539 N.E.2d 1353, 132 Ill.Dec. 547 (Ill. 1989). Courts have yet to construe whether the *Manos* decision impacts regulatory statutes, such as the Medical Practice Act, wherein the Department has specific authority to subpoena medical records.

In all hearings conducted under the Act, information received relating to any information acquired by a physician in attending any patient in a professional character "shall be deemed strictly confidential and shall only be made available either as part of the record of such hearing or otherwise; (a) when such record is required, in its entirety, for purposes of judicial review pursuant to this Act; or (b) upon the express, written consent of the patient, or in the case of their death or disability, of their personal representative." 225 ILCS 60/45.

All of the disclosures contemplated under the Act are in furtherance of health oversight activities under the Privacy Rule. In fact, §23(b)(3) of the Act, which prohibits the release of medical records without consent, is more stringent than the Privacy Rule for situations involving health oversight. 45 C.F.R. 160.202, 164.512(d).

It is possible to comply with this law and HIPAA. Further, this law does not stand as an obstacle to accomplishing the full purpose of HIPAA. Therefore, the law is not "contrary" to the HIPAA regulations. 45 C.F.R. §160.202.

7. Is the Law Preempted?

No.

1. Name and Citation of Law

Osteopathic and Allopathic Health Care Discrimination Act (225 ILCS 62/1 *et seq*.)

2. General Description of the Law

The Osteopathic and Allopathic Health Care Discrimination Act provides holders of MD degrees and DO degrees are to be given equal professional status and privileges as physicians licensed to practice medicine in all branches. Furthermore, Allopathic and Osteopathic health facilities are to be given equal status and privileges as licensed hospitals.

3. Rules Promulgated Under the Law

None. No administrative rules have been promulgated under this law.

4. Key Provisions

None. There are no provisions of this Act addressing the issues raised by the HIPAA preemption analysis.

5. Significant Case Law

None. There is no significant case law addressing the issues raised by the HIPAA preemption analysis.

6. Preemption Analysis Under HIPAA

The Osteopathic and Allopathic Health Care Discrimination Act is a non-discrimination act and does not relate to health information.

It is possible to comply with this law and HIPAA. Further, this law does not stand as an obstacle to accomplishing the full purpose of HIPAA. Therefore, the law is not "contrary" to the HIPAA regulations. 45 C.F.R. §160.202.

7. Is the Law Preempted?

No.

1. Name and Citation of Law

Naprapathic Practice Act (225 ILCS 63/1 *et seq*.)

2. General Description of the Law

The Naprapathic Practice Act allows the Department of Professional Regulation to regulate the practice of naprapathy.

3. Rules Promulgated Under the Law

68 Ill. Admin. Code 1295.05 *et seq.,* Rules Implementing the Naprapathic Practice Act

4. Key Provisions

225 ILCS 63/33, Records of Examination and Treatments
225 ILCS 63/110, Grounds for Disciplinary Action; Refusal, Revocation, Suspension
225 ILCS 63/125, Investigations; Notice; Hearing
225 ILCS 63/135, Witnesses; Production of Documents; Contempt
225 ILCS 63/140, Subpoenas, Oaths

5. Significant Case Law

None. There is no significant case law addressing the issues raised by the HIPAA preemption analysis.

6. Preemption Analysis Under HIPAA

The Naprapathic Practice Act regulates health care providers engaged in the practice and treatment of contracures, muscle spasms, inflamation and scar tissue formation.

The Act establishes licensure requirements and provides for administrative review of those engaged in the practice. 225 ILCS 63/110. Under the Act, every licensed naprapath must keep a record of naprapathic examinations and treatments made that must include the names of persons examined and treated. 225 ILCS 63/33. The records are to be preserved by the naprapath for a period of 3 years from the date on which the professional service was rendered. Id. A copy of the records must be provided, upon written request, to the person examined and treated, or his or her designee. Id. Under the Privacy Rule, covered entities must provide an accounting of disclosures for six (6) years. 45 C.F.R. §164.528. Further, civil monetary penalties may be imposed up to six (6) years following a violation. Pub. L. No. 104-191. Therefore, it may be advisable for health care providers to retain records for the 6 year time period.

The Act also provides a practitioner's license may be revoked or suspended if the provider fails to provide a patient with a copy of his or her record upon the written request of the patient. 225 ILCS 63/33. The Privacy Rule creates certain procedures that require health care providers to allow their patients access to records. 45 C.F.R. §164.524. Section 33 of the Naprapathic Act is consistent with the Privacy Rule, as the Act allows a practitioner to be sanctioned for refusal to release patient records. Id.

The Naprapathic Act also provides the Department of Professional Regulation with subpoena power and accordingly contemplates the review of patient records. 225 ILCS 63/135, 140. These sections are not contrary to the Privacy Rule, as 45 C.F.R. §164.512(d) allows disclosure for health oversight activities.

It is possible to comply with this law and HIPAA. Further, this law does not stand as an obstacle to accomplishing the full purpose of HIPAA. Therefore, the law is not "contrary" to the HIPAA regulations. 45 C.F.R. §160.202.

7. Is the Law Preempted?

No.

1. Name and Citation of Law

Nursing and Advance Practice Nursing Act (225 ILCS 65/1 *et seq*.)

2. General Description of the Law

The Nursing and Advance Practice Nursing Act allows the Department of Professional Regulation to regulate registered professional nurses ("RN"), licensed practical nurses ("LPN") and advanced practice nurses.

3. Rules Promulgated Under the Law

68 Ill. Admin. Code 1300.10 *et seq*., Rules Implementing the Nursing and Advanced Practice Nursing Act - Registered Professional Nurse and Licensed Practical Nurse

68 Ill. Admin. Code 1305.10 *et seq*., Rules Implementing the Nursing and Advanced Practice Nursing Act - Advanced Practice Nurse.

4. Key Provisions

225 ILCS 65/25, Grounds for Disciplinary Action
225 ILCS 65/32, Investigations; Notice; Hearing
225 ILCS 65/35, Subpoena Power; Oaths

5. Significant Case Law

None. There is no significant case law addressing the issues raised by the HIPAA preemption analysis.

6. Preemption Analysis Under HIPAA

The Nursing and Advance Practice Nursing Act creates a regulatory framework for the Department of Professional Regulation to license registered professional nurses, licensed practical nurses, and advanced practice nurses. The Department of Professional Regulation has the power to conduct investigations and subpoena records to investigate potential disciplinary action against nurses and licensed practical nurses. 225 ILCS 65/32, 225 ILCS 65/35. Both of these activities constitute health oversight under the Privacy Rule. 45 C.F.R. §164.512(d).

It is possible to comply with this law and HIPAA. Further, this law does not stand as an obstacle to accomplishing the full purpose of HIPAA. Therefore, the law is not "contrary" to the HIPAA regulations. 45 C.F.R. §160.202.

7. Is the Law Preempted?

No.

1. Name and Citation of Law

Nursing Home Administrators Licensing and Disciplinary Act (225 ILCS 70/1 *et seq*.)

2. General Description of the Law

The Nursing Home Administrators Licensing and Disciplinary Act allows the Department of Professional Regulation to establish licensing requirements for nursing home administrators who are those persons directly responsible for planning, organizing, directing and supervising the operation of a nursing home, or who in fact perform such functions. 225 ILCS 70/4.

3. Rules Promulgated Under the Law

68 Ill. Admin. Code 1310.20 *et seq*., Rules Implementing the Nursing Home Administrators Licensing and Disciplinary Act

4. Key Provisions

225 ILCS 70/5.1, Powers and Duties; Rules
225 ILCS 70/17, Grounds for Disciplinary Action
225 ILCS 70/19, Investigations; Hearing Notification
225 ILCS 70/22, Subpoena Power
225 ILCS 70/29, Confidentiality of Information

5. Significant Case Law

None. There is no significant case law addressing the issues raised by the HIPAA preemption analysis.

6. Preemption Analysis Under HIPAA

The Nursing Home Administrators Licensing and Disciplinary Act provides general licensure requirements and oversight of nursing home administrators. The Department of Professional Regulation may compel individuals licensed under the Act to undergo a mental or physical examination, the result of such to be reviewed by the Department. 225 ILCS 70/17. The Department should obtain authorization from the individual being examined. 45 C.F.R. §164.508.

Under other investigatory powers, the Department is provided with subpoena power for records and provides that all information indicating the identity of any resident shall be removed and deleted. 225 ILCS 70/22. Information constituting the "identity" of an individual is not defined. Id. The records are also restricted to members of the Board

and appropriate staff of the Department and are to only be used for the purpose of determining the existence of one or more grounds of discipline under Section 17 of the Act. 225 ILCS 70/22. A review of the records is to be conducted in "strict confidentiality, provided that such resident records shall be admissible in a disciplinary hearing, before the Department, when necessary, to substantiate the grounds for discipline alleged against the administrator licensed under this Act..." Id.

Any records created regarding the hearings of nursing home administrators in their professional capacity are deemed strictly confidential and made available only under certain limited conditions. 225 ILCS 70/29.

All of the provisions of this Act that relate to or contemplate the disclosure of potentially protected health care information are disclosures allowed for health oversight activities. 45 C.F.R. §164.512(d).

It is possible to comply with this law and HIPAA. Further, this law does not stand as an obstacle to accomplishing the full purpose of HIPAA. Therefore, the law is not "contrary" to the HIPAA regulations. 45 C.F.R. §160.202.

7. Is the Law Preempted?

No.

1. Name and Citation of Law

Illinois Occupational Therapy Practice Act (225 ILCS 75/1 *et seq*.)

2. General Description of the Law

The Illinois Occupational Therapy Practice Act allows the Department of Professional Regulation to license those engaged in the practice of occupational therapy. Occupational therapy means the evaluation of functional performance ability of persons impaired by physical illness or injury, emotional disorder, developmental disability, or the aging process, and the analysis, selection and application of occupations or goal directive activities for the treatment or prevention of these disabilities to achieve optimum functioning. 225 ILCS 75/2.

3. Rules Promulgated Under the Law

68 Ill. Admin. Code 1315.100 *et seq*., Rules Implementing the Illinois Occupational Therapy Practice Act

4. Key Provisions

225 ILCS 75/19, Refusal, Revocation and Suspension of Licenses
225 ILCS 75/19.2, Investigations Notice
225 ILCS 75/19.4, Subpoenas; Oaths
68 Ill. Admin. Code 1315.165, Professional Conduct Standards

5. Significant Case Law

None. No case law significantly impacts the preemption analysis.

6. Preemption Analysis Under HIPAA

The Illinois Occupational Therapy Practice Act does not focus on the confidentiality or release of protected health care information. The primary purpose of the Act is to provide the Department with investigatory powers, such as the ability to subpoena any person in the State and to take testimony either orally or by deposition. 225 ILCS 75/19.2-19.4. To the extent protected health care information is released pursuant to an investigation, such disclosure is allowed as a disclosure necessary for health oversight activities. 45 C.F.R. §164.512(d). The rules and regulations provide that all licensed occupational therapists must protect the confidential nature of information gained from educational practice and research activities. 68 Ill. Admin. Code 1315.165. Nothing in this provision conflicts with the Privacy Rule.

It is possible to comply with this law and HIPAA. Further, this law does not stand as an obstacle to accomplishing the full purpose of HIPAA. Therefore, the law is not "contrary" to the HIPAA regulations. 45 C.F.R. §160.202.

7. Is the Law Preempted?

No.

1. Name and Citation of Law

Illinois Optometric Practice Act of 1987 (225 ILCS 80/1 *et seq*.)

2. General Description of the Law

The Illinois Optometric Practice Act of 1987 allows the Department of Professional Regulation to license the practice of optometry, which is defined as the employment of any and all means for the examination, diagnosis and treatment of the human visual system, the human eye and its appendages without the use of surgery. 225 ILCS 80/3.

3. Rules Promulgated Under the Law

68 Ill. Admin. Code 1320.20 *et seq*., Rules Implementing the Optometric Practice Act of 1987

4. Key Provisions

225 ILCS 80/10, Powers and Duties of Department; Rules; Reports
225 ILCS 80/11, Optometric Licensing and Disciplinary Board
225 ILCS 80/24, Grounds for Disciplinary Action
225 ILCS 80/26.2, Investigations; Notice
225 ILCS 80/26.5, Subpoena; Oaths

5. Significant Case Law

None. There is no significant case law addressing the issues raised by the HIPAA preemption analysis.

6. Preemption Analysis Under HIPAA

The Illinois Optometric Practice Act of 1987 gives general powers and duties to the Department of Professional Regulation to ensure those engaged in the practice of optometry are in compliance with the rules and regulations of the Department. 225 ILCS 80/10. The Act provides that the Board may require an individual licensed under the Act to submit to a mental or physical examination. The Department should obtain an authorization from the individual being examined. 45 C.F.R. §164.508. These examinations are reviewable by the Board. Id. The Act also provides the Department with the power to subpoena any person in the State and to take testimony either orally or by deposition. 225 ILCS 80/265. The Department's investigatory powers outlined are allowed as disclosures for health oversight activities under the Privacy Rule. 45 C.F.R. §164.512(d).

No other provision in the Act directly relates to confidentiality of health care information or protected health care information.

It is possible to comply with this law and HIPAA. Further, this law does not stand as an obstacle to accomplishing the full purpose of HIPAA. Therefore, the law is not "contrary" to the HIPAA regulations. 45 C.F.R. §160.202.

7. Is the Law Preempted?

No.

1. Name and Citation of Law

Mail Order Contact Lens Act (225 ILCS 83)

2. General Description of the Law

The Mail Order Contact Lens Act provides that a mail order ophthalmic provider may dispense contact lenses in this State or to a patient in this State only in accordance with a contact lens prescription. 225 ILCS 83/10.

3. Rules Promulgated Under the Law

68 Ill. Admin. Code 1215, Rules Implementing the Mail Order Contact Lens Act

4. Key Provisions

225 ILCS 83/20, Nonresident Mail Order Ophthalmic Provider Registration
68 Ill. Admin. Code 1215.50, Records

5. Significant Case Law

None. There is no significant case law addressing the issues raised by the HIPAA preemption analysis.

6. Preemption Analysis Under HIPAA

The Mail Order Contact Lens Act allows the Department of Professional Regulation to require an annual registration for all out-of-state mail order ophthalmic providers, including those providing services via the Internet, that dispense contact lenses to Illinois residents. 225 ILCS 83/20. Registration is granted by the Department upon the disclosure and certification by a mail order ophthalmic provider to a variety of requirements including that it maintains its records of contact lenses dispensed to residents of the state so that the records are readily retrievable; that it cooperates with the providing of information to the Departments; and that it provides a toll free number service for questions and complaints. 220 ILCS 83/20. Any disclosure of information provided above is permissible under the Privacy Rule pursuant to 45 C.F.R. § 164.512(d) as a disclosure permitted for health oversight activities.

The rules require records to be maintained for a minimum of 3 years. 68 Ill. Admin. Code 1215.50. If a mail order contact lens provider is a covered entity, it will have to maintain documentation sufficient to provide an accounting of disclosures up to 6 years. 45 C.F.R. §164.528. Further, the Department of Health and Human Services may impose

civil monetary penalties for up to 6 years following a violation. Pub. L. No. 104-191. It may be advisable for health care providers to retain records for 6 years.

It is possible to comply with this law and HIPAA. Further, this law does not stand as an obstacle to accomplishing the full purpose of HIPAA. Therefore, the law is not "contrary" to the HIPAA regulations. 45 C.F.R.§ 160.202.

7. Is the Law Preempted?

No.

1. Name and Citation of Law

Orthotics, Prosthetics and Pedorthics Practice Act (225 ILCS 84).

2. General Description of the Law

The Orthotics, Prosthetics and Pedorthics Practice Act allows the Department of Professional Regulation to license orthotics, perdorthists, and prosthetists.

3. Rules Promulgated Under the Law

None. To date, administrative rules have not been finalized under this law.

4. Key Provisions

225 ILCS 84/90, Grounds for Discipline
225 ILCS 84/110, Compelling Testimony
225 ILCS 84/115, Board Findings and Recommendations

5. Significant Case Law

None. There is no significant case law addressing the issues raised by the HIPAA preemption analysis.

6. Preemption Analysis Under HIPAA

The Orthotics, Prosthetics and Pedorthics Practice Act allows that the Department of Professional Regulation to license, review a license, censure and reprimand a licensee for certain acts. 225 ILCS 84/90. Under this section, the Department may order physical and mental examinations. Id.
Under Section 110, the Department also has the authority to compel testimony and require the attendance of witnesses and production of documents. 225 ILCS 84/110. Section 115 provides for a written report of any hearing held under the Act to be presented to the Director of the findings and recommendations of any disciplinary proceeding. 225 ILCS 84/115.

Any disclosure of protected health information discovered pursuant to the above sections is permissible under the Privacy Rule pursuant to 45 C.F.R. § 164.512(d), which provides for disclosures related to health oversight activities.

The administrative rules provide that a professional engages in dishonorable, unethical, or unprofessional conduct if the professional reveals personally identifiable facts, data, or information about a patient or client without the prior consent of the patient, except as

authorized or required by law. 68 Ill. Admin. Code 1325.65(a)(3). Further, the rules require each professional to maintain a record for each patient that accurately reflects the evaluation and treatment of the patient. 68 Ill. Admin. Code 1325.65(a)(11). The Privacy Rule allows the use and disclosure of protected health information for purposes of treatment, payment and health care operations without an authorization. 45 C.F.R. §164.502, 164.506. Therefore, the state law is more stringent in that consent is required for releases which may be related to treatment, payment or health care operations. 45 C.F.R. §160.202.

It is possible to comply with this law in HIPAA. Further, this law does not stand as an obstacle to accomplishing the full purpose of HIPAA. Therefore, the law is not "contrary" to the HIPAA regulations. 45 C.F.R. § 160.202.

7. Is the Law Preempted?

No.

1. Name and Citation of Law

Pharmacy Practice Act of 1987 (225 ILCS 85/1 *et seq*.)

2. General Description of the Law

The Pharmacy Practice Act of 1987 allows the Department of Professional Regulation to regulate and license the practice of pharmacy in the State of Illinois.

3. Rules Promulgated Under the Law

68 Ill. Admin. Code 1330.05 *et seq*., Rules Implementing the Pharmacy Practice Act of 1987

4. Key Provisions

225 ILCS 85/3, Definitions
225 ILCS 85/18, Record Retention
225 ILCS 85/19, Prescription Files; Transfer; Conditions Upon Filing Prescriptions
225 ILCS 85/20, Common Electronic File
225 ILCS 85/30, Discipline; Grounds
225 ILCS 85/35.2, Investigations; Notice of Disciplinary Hearing
225 ILCS 85/35.4, Order Requiring Attendance of Witnesses and Production of Evidence
225 ILCS 85/35.5, Subpoena Power; Administration of Oaths

5. Significant Case Law

Suarez v. Pieraid, 278 Ill. App. 3d, 767 (Ill. App. 3rd Dist. 1996)

6. Preemption Analysis Under HIPAA

The Pharmacy Act of 1987 regulates both pharmacists and pharmacies. The Act provides there must be kept in every drug store or pharmacy a suitable book, file or electronic recordkeeping system in which must be preserved for a period of not less than 5 years the original of every written prescription and the original transcript or copy of every verbal prescription filed in such pharmacy. 225 ILCS 85/18. The Privacy Rule requires a covered entity to provide an accounting of disclosures of the medical record for 6 years. 45 C.F.R. §164.528. Further, the statute of limitations for civil monetary penalties under the Privacy Rule is 6 years. Pub. L. No. 104-101. For this reason, covered entities may be well-advised to maintain these records for 6 years.

The Act allows prescriptions to be transferred from one pharmacy to another, including by way of electronic data processing equipment. 225 ILCS 85/19. Before such a transfer

occurs, the dispensing pharmacist must record in writing the prescription order, the name of the pharmacy of which the prescription was on file, the prescription number, the name of the drug and the original amount dispensed, the date of original dispensing and the number of remaining authorized refills. Id. A pharmacist who receives a request for prescription information must record the name of the requesting pharmacy and pharmacist and the date of the request and cancel the prescription on file at the pharmacy. Id. Two or more pharmacists may establish a common electronic file to maintain required dispensing information. 225 ILCS 85/20. The disclosures between pharmacies are allowed under the Privacy Rule as part of treatment. 45 C.F.R. §164.502, 164.506(c). The State law provisions, however, would not defeat the need to use standard transactions, if required. 42 U.S.C. §1320d-2.

The Department also has certain investigatory powers to ensure those licensed under the Act are in compliance with the regulations and Departmental standards. The Department's power includes the power to subpoena and bring before it any person in the State and to take testimony. 225 ILCS 85/24.5. To the extent that protected health information is disclosed as part of an investigation, this disclosure is allowed as health oversight under the Privacy Rule. 45 C.F.R. §164.512(d).

The rules and regulations provide that patient identifiable information obtained by the pharmacist or the pharmacist's designee for the purpose of patient record maintenance, prospective drug review, drug utilization review, and patient counseling shall be considered confidential information. 68 Ill. Admin. Code § 1330.65. This section also provides a reasonable effort should be made to provide counseling based on such confidential information in a discreet, supportive, informative and non-threatening manner. Id. This provision should be reviewed under the final Security Rule.

7. Is the Law Preempted?

No.

1. Name and Citation of Law

Illinois Physical Therapy Act (225 ILCS 90/1 *et seq*.)

2. General Description of the Law

The Illinois Physical Therapy Act allows the Illinois Department of Professional Regulation to license those engaged in the practice of physical therapy.

3. Rules Promulgated Under the Law

68 Ill. Admin. Code 1340.20 *et seq*., Rules Implementing the Illinois Physical Therapy Act

4. Key Provisions

225 ILCS 90/17, Disciplinary Action
225 ILCS 90/19, Investigations; Notice and Hearing
225 ILCS 90/21, Compelling Testimony
68 Ill. Admin. Code 1340.65, Unprofessional Conduct

5. Significant Case Law

No case law significantly impacts the preemption analysis.

6. Preemption Analysis Under HIPAA

The Illinois Physical Therapy Act regulates physical therapists and provides the Department with general investigatory powers to ensure that physical therapists are in compliance with the Act. 225 ILCS 90/1. One such power of the Department includes the power to petition the circuit court to enter an order requiring testimony and the production of documents, papers, files, books and records in connection with any hearing or investigation. 225 ILCS 90/21. Disclosure of protected health information for licensure activities is allowed as health oversight under the Privacy Rule. 45 C.F.R. §164.512(d).

The regulations promulgated under the Act define unprofessional conduct as "revealing of personally identifiable facts, data or information about a patient or a client obtained in a professional capacity without the prior consent of the patient or client except as authorized or required by law." 68 Ill. Admin. Code 1340.65. The Privacy Rule does not require consent for purposes of treatment, payment or health care operations. 45 C.F.R. §164.502, 164.506.

It is possible to comply with this law and HIPAA. Further, this law does not stand as an obstacle to accomplishing the full purpose of HIPAA. Therefore, the law is not "contrary" to the HIPAA regulations. 45 C.F.R. §160.202.

7. Is the Law Preempted?

No.

1. Name and Citation of Law

Physician Assistant Practice Act of 1987 (225 ILCS 95/1 *et seq*.)

2. General Description of the Law

The Physician Assistant Practice Act of 1987 allows the Department of Professional Regulation to license physician assistants. 225 ILCS 95/1.

3. Rules Promulgated Under the Law

68 Ill. Admin. Code 1350.20 *et seq*., Rules Implementing the Physician Assistant Practice Act of 1987

4. Key Provisions

225 ILCS 95/21, Grounds for Disciplinary Action
225 ILCS 95/22.2, Investigations; Notice; Hearing
225 ILCS 95/22.5, Subpoena Power; Oaths

5. Significant Case Law

None. There is no significant case law addressing the issues raised by the HIPAA preemption analysis.

6. Preemption Analysis Under HIPAA

The Physician Assistant Practice Act of 1987 encourages and promotes effective utilization of the skills of physicians by enabling them to delegate certain tasks to physician assistants. 225 ILCS 95/1. The Act does not directly address the confidentiality of records or protected health care information.

The Act provides that the Department may require physician assistants to undergo mental or physical examinations to ensure competence. 225 ILCS 95/21. The results of the examinations are reviewable by the Department and the physician assistant has no claim to confidentiality of the records. Id.

The Act also provides the Department with investigatory powers, including the power to subpoena records under 225 ILCS 95/22.5. Since the Act only contemplates the review of protected health care information for health oversight activities, any such disclosure is allowed under 45 C.F.R. §164.512(d) of the Privacy Rule.

It is possible to comply with this law and HIPAA. Further, this law does not stand as an obstacle to accomplishing the full purpose of HIPAA. Therefore, the law is not "contrary" to the HIPAA regulations. 45 C.F.R. §160.202.

7. Is the Law Preempted?

No.

1. Name and Citation of Law

Podiatric Medical Practice Act of 1987 (225 ILCS 100/1 *et seq*.)

2. General Description of the Law

The Podiatric Medical Practice Act of 1987 allows the Department of Professional Regulation to license those engaged in the practice of podiatric medicine.

3. Rules Promulgated Under the Law

68 Ill. Admin. Code 1360.20 *et seq*., Rules Implementing the Podiatric Medical Practice Act of 1987

4. Key Provisions

225 ILCS 100/24, Refusal to Issue or Suspension or Revocation of License; Grounds
225 ILCS 100/25, Violations - Injunction - Cease and Desist Order
225 ILCS 100/26, Reports Relating to Professional Conduct and Capacity
225 ILCS 100/27, Investigations; Notice and Hearing
225 ILCS 100/29, Compelling Testimony
225 ILCS 100/30, Witness; Subpoenas

5. Significant Case Law

None. There is no significant case law addressing the issues raised by the HIPAA preemption analysis.

6. Preemption Analysis Under HIPAA

The Podiatric Medical Practice Act of 1987 regulates the practice of podiatric medicine. The Act contains no provision directly relating to protected health information nor does it create confidentiality requirements. The Act provides, however, that those licensed under the Act may be required to submit to a mental or physical examination for competency reasons. 225 ILCS 100/24. The results of any examination are reviewable by the Department and the person being examined has no claim of privilege. Id. Reports established regarding professional conduct and capacity are to be kept for the confidential use of the Board, the Board's attorneys, investigative staff and the Department. 225 ILCS100/26(b).

The Board has other investigatory powers including the power to subpoena any person in the State and the power to compel production of documents. 225 ILCS 100/27-30. To the extent that protected health information is disclosed under the Department's

investigatory powers, this is allowed under the Privacy Rule for health oversight activities. 45 C.F.R. §164.512(d).

It is possible to comply with this law and HIPAA. Further, this law does not stand as an obstacle to accomplishing the full purpose of HIPAA. Therefore, the law is not "contrary" to the HIPAA regulations. 45 C.F.R. §160.202.

The Act otherwise does not provide or establish guidelines for the disclosure of protected health information.

7. Is the Law Preempted?

No.

1. Name and Citation of Law

Professional Boxing Act (225 ILCS 105/1 *et seq*.)

2. General Description of the Law

The Professional Boxing and Wrestling Act allows the Illinois Department of Professional Regulation to license those participating in boxing contests including promoters, contestants, seconds, referees, judges, managers, trainers and timekeepers. 225 ILCS 105/10.

(Note: The Professional Boxing Act was amended by Pub. Act 92-499 to remove all references to wrestling.)

3. Rules Promulgated Under the Law

68 Ill. Admin. Code 1370.5 *et seq*., Rules Implementing the Professional Boxing and Wrestling Act

4. Key Provisions

225 ILCS 105/12, Examination of Boxing Contestants; Certificate of Condition; Physician's Fee; Length of Contest; Referees; Judges
68 Ill. Admin. Code 1370.20, Application for a License as a Boxing Contestant; Second, Timekeeper, Referee, Judge, Matchmaker or Manager

5. Significant Case Law

None. There is no significant case law addressing the issues raised by the HIPAA preemption analysis.

6. Preemption Analysis Under HIPAA

The Act establishes requirements for those engaged in boxing contests. To ensure the safety of contestants, the Act requires that a physician shall examine contestants before entering the ring and immediately after each contest. 225 ILCS 105/12. The physician must certify to the condition of the contestant in writing over his signature on blank forms provided by the Department. Id. The regulations promulgated under the Act provide that physicians must report in writing to the Department all injuries received by a contestant.

The State rules require that first time boxers must apply for a license to box in the state, which includes a complete physical exam. 68 Ill. Admin. Code 1370.20. While these

disclosures require a boxer to release protected health information, the boxer presumeably will consent to the release of the information in applying for a license. Id.

It is possible to comply with this law and HIPAA. Further, this law does not stand as an obstacle to accomplishing the full purpose of HIPAA. Therefore, the law is not "contrary" to the HIPAA regulations. 45 C.F.R. §160.202.

7. Is the Law Preempted?

No.

1 Name and Citation of Law

Respiratory Care Practice Act (225 ILCS 106/1 *et seq*.)

2. General Description of the Law

The Respiratory Care Practice Act allows the Illinois Department of Professional Regulation to license those engaged in the practice of respiratory care.

3. Rules Promulgated Under the Law

68 Ill. Admin. Code 1456.10 *et seq*., Rules Implementing the Respiratory Care Practice Act

4. Key Provisions

225 ILCS 106/95, Grounds for Discipline
225 ILCS 106/105, Investigations; Notice; Hearing
225 ILCS 106/115, Subpoenas; Depositions; Oaths
225 ILCS 106/120, Compelling Testimony

5. Significant Case Law

None. There is no significant case law addressing the issues raised by the HIPAA preemption analysis.

6. Preemption Analysis Under HIPAA

The Respiratory Care Practice Act regulates respiratory care practitioners and provides the Department of Professional Regulation with investigatory powers to ensure compliance with the Act. 225 ILCS 106/30. The Act provides the Department with the power to subpoena persons and documents in furtherance of investigations of the Department. 225 ILCS 106/115-120. Disclosure of protected health information is allowed as health oversight disclosures under the Privacy Rule. 45 C.F.R. § 164.512(d).

It is possible to comply with this law and HIPAA. Further, this law does not stand as an obstacle to accomplishing the full purpose of HIPAA. Therefore, the law is not "contrary" to the HIPAA regulations. 45 C.F.R. §160.202.

7. Is the Law Preempted?

No.

1. Name and Citation of Law

Professional Counselor and Clinical Professional Counselor Licensing Act (225 ILCS 107/1 *et seq*.)

2. General Description of the Law

The Professional Counselor and Clinical Professional Counselor Licensing Act allows the Illinois Department of Professional Regulation to license professional counselors.

3. Rules Promulgated Under the Law

68 Ill. Admin. Code 1375.20 *et seq*., Rules Implementing the Professional Counselor and Clinical Professional Counselor Licensing Act

4. Key Provisions

225 ILCS 107/75, Privileged Communications and Exceptions
225 ILCS 107/80, Grounds for Discipline
225 ILCS 107/85, Violations; Injunction; Cease and Desist Order
225 ILCS 107/90, Investigations; Notice and Hearing
225 ILCS 107/100, Subpoenas; Depositions; Oaths
225 ILCS 107/105, Compelling Testimony

5. Significant Case Law

None. There is no significant case law addressing the issues raised by the HIPAA preemption analysis.

6. Preemption Analysis Under HIPAA

The Professional Counselor and Clinical Professional Counselor Licensing Act establishes regulations and licensure requirements for those engaged in the practice of counseling in Illinois. 225 ILCS 107/10. Counselors who transmit a standard transaction electronically are covered entities under the Privacy Rule which defines health care as including “therapeutic” and counseling services. 45 C.F.R. §160.103.

Section 75 of the Professional Counselor Licensing Act provides that no professional counselor shall disclose any information acquired from persons consulting the counselor in a professional capacity. 225 ILCS 107/75. Confidential information may be disclosed under the following circumstances: (1) in the course of conferring and reporting to administrative superiors, colleagues or consultants who share professional responsibility; (2) with the written consent of the person who provided the information; (3) in the case of

death or disability, with the written consent of a personal representative; (4) when a communication reveals the intended commission of a crime or a harmful act and such disclosure is judged necessary to protect any person from a clear imminent risk of serious mental or physical harm or injury; or (5) when the person waives the privilege by bringing any public charges against the licensee. Id.

The disclosure requirements in §75 are generally permissible if done in compliance with the Privacy Rule. Disclosures to individuals sharing professional responsibility are made for treatment purposes and are specifically allowed by the Privacy Rule. 45 C.F.R. §164.502, 164.506, 164.508(a)(2). Disclosures after the death or disability of an individual are allowed under the Privacy Rule by treating the personal representative as the individual whose health information is at issue. 45 C.F.R. §164.503(g). The validity of a personal representative's standing is reviewed under existing state law. Id. Disclosures necessary to defend against malpractice actions are generally allowed either as a disclosure for health care operations, or in the case of psychotherapy notes, to defend the action. 45 C.F.R. §164.502, 164.508(a)(2). The regulations promulgated under the Act regarding unprofessional conduct, mirrors the confidentiality language in the Act. 225 ILCS 107/85, 68 Ill. Admin. Code 1375.225. Disclosures necessary to prevent the commission of a crime are permitted under certain circumstances. 45 C.F.R. §164.512(j).

The questionable disclosure in §75 relates to disclosures allowed with the written consent of the person who provided the information. If a person other than the patient, or the patient's personal representative, provided information to the professional counselor, this information could still be protected health information. 45 C.F.R. §164.103. Therefore, consent by the person who provided the information, if the person providing the information was a third party, is not sufficient to comply with the requirements of the Privacy Rule and to this extent, is preempted.

The Act provides that when the person being counseled is a minor and it appears that the minor was a victim or subject of a crime, the licensed professional counselor may be required to testify in any judicial proceeding in which the commission of that crime is a subject of any inquiry when the court determines the interest of a minor in having the information held privileged are outweighed by the requirements of justice. 225 ILCS 107/75. This type of disclosure is permitted under the Privacy Rule as a disclosure to law enforcement or pursuant to court order if certain requirements are met. 45 C.F.R. §164.512(e), (f).

Counselors may also voluntarily testify in court hearings concerning matters of adoption, child abuse, child neglect or other matters pertaining to children, except as provided under the Abused and Neglected Child Reporting Act. 225 ILCS 107/75(d). This type of disclosure is permissible when done in compliance with 45 C.F.R. §164.512(e) relating to disclosures for judicial and administrative hearings. To the extent that the disclosure is not done pursuant to a judicial order, or an authorization of the patient or personal

representative, in the absence of case law further defining this exception, the "voluntary" disclosure does not appear to be allowable under the Privacy Rule. This provision is preempted to the extent that counselors are not relying upon a specific use or disclosure allowed by the Privacy Rule. 45 C.F.R. §160.203.

The other relevant provisions of the Act relate to the Department of Professional Regulation's ability to investigate those licensed under the Act to ensure compliance and competence. The investigatory powers include the power to subpoena people and documents. 225 ILCS 107/100. These disclosures are permitted by the Privacy Rule in furtherance of health oversight activities. 45 C.F.R. §164.512(d).

7. Is the Law Preempted?

Partially. The provision of the Illinois law allowing information to be disclosed by a covered entity pursuant to the written consent of the person providing the information is preempted if the person providing the information is not the person whose protected health information is at issue, or does not otherwise have authority to act as a personal representative of the individual whose protected health information is at issue. 225 ILCS 107/75(a)(2). Further, the provisions allowing counselors to voluntarily testify in court remain valid only to the extent that compliance with Privacy Rule requirements regarding court orders is achieved. 225 ILCS 107/75(d).

1. Name and Citation of Law

Illinois Speech-Language, Pathology and Audiology Practice Act (225 ILCS 110/1 *et seq*.)

2. General Description of the Law

The Illinois Speech-Language, Pathology and Audiology Practice Act allows the Illinois Department of Professional Regulation to regulate and license speech language pathologists and audiologists.

3. Rules Promulgated Under the Law

68 Ill. Admin. Code 1465.20 *et seq*., Rules Implementing the Illinois Speech-Language Pathology and Audiology Practice Act.

4. Key Provisions

225 ILCS 110/16, Refusal, Revocation or Suspension of Licenses
225 ILCS 110/17, Investigation; Notice of Hearing
225 ILCS 110/26, Confidential Information-Disclosure
68 Ill. Admin. Code 1465.95, Professional Conduct Standards

5. Significant Case Law

None. There is no significant case law addressing the issues raised by the HIPAA preemption analysis.

6. Preemption Analysis Under HIPAA

The Illinois Speech-Language Pathology and Audiology Practice Act establishes licensure requirements for those engaged in the practice of pathology and audiology and gives the Department of Professional Regulation certain investigatory powers to ensure compliance with the Act. 225 ILCS 110. The Act provides that any information received pursuant to the Department's power to investigate those licensed under the Act shall be deemed strictly confidential. 225 ILCS 110/26. In all hearings conducted under the Act, information received, pursuant to law, relating to any information acquired by a speech-language pathologist or audiologist in service to any individual in a professional capacity, and necessary to professionally serve such individual shall be deemed strictly confidential and shall only be made available in limited circumstances. 225 ILCS 110/26. These disclosures are permitted under the Privacy Rule, 45 C.F.R. 164.512(d), which provides for disclosure for health oversight activities.

The rules and regulations also provide a general requirement that those licensed under the Act must take appropriate steps to protect the privacy of clients and avoid unnecessary disclosures of confidential information. 68 Ill. Admin. Code § 1465.95.
It is possible to comply with this law and HIPAA. Further, this law does not stand as an obstacle to accomplishing the full purpose of HIPAA. Therefore, the law is not "contrary" to the HIPAA regulations. 45 C.F.R. §160.202.

7. Is the Law Preempted?

No.

1. Name and Citation of Law

Veterinary Medicine and Surgery Practice Act of 1994 (225 ILCS 115/1 *et seq*)

2. General Description of the Law

The Veterinary Medicine and Surgery Practice Act of 1994 allows the Illinois Department of Professional Regulation to license those engaged in the practice of veterinary medicine.

3. Rules Promulgated Under the Law

68 Ill. Admin. Code 1500.5 *et seq*., Rules Implementing the Veterinary Medicine and Surgery Practice Act of 1994

4. Key Provisions

None. There are no provisions of this Act addressing the issues raised by the HIPAA preemption analysis.

5. Significant Case Law

None. There is no significant case law addressing the issues raised by the HIPAA preemption analysis.

6. Preemption Analysis Under HIPAA

The Veterinary Medicine and Surgery Practice Act of 1994 regulates those providing care to animals, which is not regulated by the Privacy Rule.

It is possible to comply with this law and HIPAA. Further, this law does not stand as an obstacle to accomplishing the full purpose of HIPAA. Therefore, the law is not "contrary" to the HIPAA regulations. 45 C.F.R. §160.202.

7. Is the Law Preempted?

No.

1. Name and Citation of Law

Wholesale Drug Distribution Licensing Act (225 ILCS 120/1 *et seq*.)

2. General Description of the Law

The Wholesale Drug Distribution Licensing Act provides that no person or entity may engage in the wholesale distribution of human prescription drugs in any State unless the person or entity is licensed by that State in accordance with federally prescribed standards, terms and conditions as set forth by the FDA. 225 ILCS 120/10. The Act allows the Illinois Department of Professional Regulation to license wholesale distributors and pharmacy distributors, wherever located, who engage in wholesale distribution.

3. Rules Promulgated Under the Law

68 Ill. Admin. Code 1510.10 *et seq*., Rules Implementing the Wholesale Drug Distribution Licensing Act

4. Key Provisions

225 ILCS 120/50, Inspection Powers; Access to Records
225 ILCS 120/55, Discipline; Grounds
225 ILCS 120/85, Investigation; Notice of Disciplinary Hearing
225 ILCS 120/100, Subpoena Power; Administration of Oaths

5. Significant Case Law

None. There is no significant case law addressing the issues raised by the HIPAA preemption analysis.

6. Preemption Analysis Under HIPAA

The Wholesale Drug Distribution Licensing act establishes licensure requirements for drug distributors and establishes certain investigatory powers upon the Department of Professional Regulation. 225 ILCS 120/10. The Department may authorize pharmacy investigators to investigate and have access to the premises of wholesale drug distributors and delivery vehicles. 225 ILCS 120/50. These distributors may keep records regarding purchase and sales transactions at a central location apart from their principal office and the records may be kept in any form permissible under federal law applicable to prescription drug record keeping. Id. The Act does not contemplate the release of protected health information, nor does any provision of the Act establish or address confidentiality requirements.

It is possible to comply with this law and HIPAA. Further, this law does not stand as an obstacle to accomplishing the full purpose of HIPAA. Therefore, the law is not "contrary" to the HIPAA regulations. 45 C.F.R. §160.202.

7. Is the Law Preempted?

No.

1. Name and Citation of Law

Perfusionist Practice Act (225 ILCS 125/1 *et seq*.)

2. General Description of the Law

The Perfusionist Practice Act allows the Department of Professional Regulation to regulate the practice of perfusion and creates licensure requirements for perfusionists. The practice of perfusion means the functions necessary for the support, treatment, measurement or supplementation of the cardiovascular systems or other organs or a combination of those functions and to ensure the safe management of physiologic functions by monitoring and analyzing the perimeters of the systems under an order and under the supervision of a physician. 225 ILCS 125/10. A perfusionist is a person licensed to operate the extra equipment during any medical situation where it is necessary to support or replace a person's cardiopulmonary circulatory or respiratory function. Id.

3. Rules Promulgated Under the Law

None. No administrative rules have been promulgated under this law.

4. Key Provisions

225 ILCS 125/105, Grounds for Disciplinary Action
225 ILCS 125/120, Investigation; Notice; Hearing
225 ILCS 125/140, Subpoenas; Oaths

5. Significant Case Law

None. There is no significant case law addressing the issues raised by the HIPAA preemption analysis.

6. Preemption Analysis Under HIPAA

The Perfusionist Practice Act establishes licensure requirements for those engaged in the practice of perfusion and establishes certain investigatory powers to ensure compliance with the Act. Any protected health care information that would be disclosed to the Department of Professional Regulation under the investigatory powers, 225 ILCS 125/120-40, constitutes health oversight and is accordingly permitted by 46 C.F.R. 162.512(d) of the Privacy Rule.

It is possible to comply with this law and HIPAA. Further, this law does not stand as an obstacle to accomplishing the full purpose of HIPAA. Therefore, the law is not "contrary" to the HIPAA regulations. 45 C.F.R. §160.202.

7. Is the Law Preempted?

No.

1. Name and Citation of Law

Barber, Cosmetology, Aesthetics and Nail Technology Act of 1985 (225 ILCS 410/1 *et seq*.)

2. General Description of the Law

The Barber, Cosmetology, Aesthetics and Nail Technology Act of 1985 allows the Illinois Department of Professional Regulation to license those engaged in the practice of cosmetology, aesthetics, nail technology and barbers.

3. Rules Promulgated Under the Law

68 Ill. Admin. Code 1175.100 *et seq*., Rules Implementing the Barber, Cosmetology, Aesthetics and Nail Technology Act of 1985

4. Key Provisions

225 ILCS 410/3-1, Cosmetology Defined
68 Ill. Admin. Code 1175.115, Sanitary Standards

5. Significant Case Law

None. There is no significant case law addressing the issues raised by the HIPAA preemption analysis.

6. Preemption Analysis Under HIPAA

The Barber, Cosmetology, Aesthetics and Nail Technology Act of 1985 provides that cosmetologists and institutions are not to engage in the practice of medicine. 225 ILCS 410/3-1, 225 ILCS 410/3(a)(2). The professionals licensed under the Barber, Cosmetology, Aesthetics and Nail Technology Act are not health care providers as defined by the Privacy Rule. 45 C.F.R. §160.103.

It is possible to comply with this law and HIPAA. Further, this law does not stand as an obstacle to accomplishing the full purpose of HIPAA. Therefore, the law is not "contrary" to the HIPAA regulations. 45 C.F.R. §160.202.

7. Is the Law Preempted?

No.

1. Name and Citation of Law

Child Protective Investigative and Child Welfare Specialist Certification Act of 1987 (225 ILCS 420/1 *et seq*.)

2. General Description of the Law

The Child Protective Investigative and Child Welfare Specialist Certification Act of 1987 allows the Department of Children and Family Services to establish guidelines and certification requirements for child welfare specialists and investigators.

3. Rules Promulgated Under the Law

None. No administrative rules have been promulgated under this law.

4. Key Provisions

225 ILCS 420/9, Disciplinary Action

5. Significant Case Law

None. There is no significant case law addressing the issues raised by the HIPAA preemption analysis.

6. Preemption Analysis Under HIPAA

While a child protective investigator or child welfare specialist may have protected health information obtained in the course of their investigation, the child protective investigator or child welfare specialist is not a covered entity within the meaning of the HIPAA privacy rule. 45 C.F.R. §160.103. Further, the disclosure of protected health information to such an individual is required by law as a disclosure of a potential situation involving abuse or neglect. 45 C.F.R. §164.512(b), (c). Such disclosures are allowed by the Privacy Rule if specified requirements are met. Id.

7. Is the Law Preempted?

No.

1. Name and Citation of Law

Interpreters for the Deaf Act (225 ILCS 442/1 *et seq*.)

2. General Description of the Law

The Interpreters for the Deaf Act creates registration requirements with the Deaf and Hard of Hearing Commission for those who represent themselves to be interpreters for the deaf.

3. Rules Promulgated Under the Law

None. No administrative rules have been promulgated under this law.

4. Key Provisions

None. There are no provisions of this Act addressing the issues raised by the HIPAA preemption analysis.

5. Significant Case Law

None. There is no significant case law addressing the issues raised by the HIPAA preemption analysis.

6. Preemption Analysis Under HIPAA

The Interpreters for the Deaf Act does not involve protected health care information or health care providers. While an interpreter for the deaf could be an employee of a covered entity, and therefore subject to the requirements of the Privacy Rule, this Act merely requires registration of individuals who qualify as certified interpreters. 225 ILCS 442/5.

It is possible to comply with this law and HIPAA. Further, this law does not stand as an obstacle to accomplishing the full purpose of HIPAA. Therefore, the law is not "contrary" to the HIPAA regulations. 45 C.F.R. §160.202.

7. Is the Law Preempted?

No.

1. Name and Citation of Law

Nurse Agency Licensing Act (225 ILCS 510/1 *et seq*.)

2. General Description of the Law

The Nurse Agency Licensing Act establishes a certification and licensure program in the Illinois Department of Labor for individuals, firms, corporations, partnerships, or other legal entities that employs, assigns or refers nurses or certified nurse aides to health care facilities for a fee.

3. Rules Promulgated Under the Law

68 Ill. Admin. Code 690.10 *et seq*., Rules Implementing the Nurse Agency Licensing Act

4. Key Provisions

None. There are no provisions of this Act addressing the issues raised by the HIPAA preemption analysis.

5. Significant Case Law

None. There is no significant case law addressing the issues raised by the HIPAA preemption analysis.

6. Preemption Analysis Under HIPAA

The Nurse Agency Licensing Act does not involve protected health information.

It is possible to comply with this law and HIPAA. Further, this law does not stand as an obstacle to accomplishing the full purpose of HIPAA. Therefore, the law is not "contrary" to the HIPAA regulations. 45 C.F.R. §160.202.

7. Is the Law Preempted?

No.

1. Name and Citation of Law.

Illinois Public Aid Code (305 ILCS 5)

2. General Description of the Law.

The Public Aid Code creates a program to implement the Medicare and Medicaid programs in Illinois. The program provides financial aid and social welfare services for persons in need by reason of unemployment, illness, or other cause depriving them of the means to receive adequate care. 305 ILCS 5/1-1.

3. Rules Promulgated Under the Law.

89 Ill. Admin. Code 10, General Administrative Provisions
89 Ill. Admin. Code 14, Practice and Administrative Hearings
89 Ill. Admin. Code 20, Support Responsibility of Relatives
89 Ill. Admin. Code 50, Child Care
89 Ill. Admin. Code 101, General Administrative Provisions
89 Ill. Admin. Code 102, Rights and Responsibilities
89 Ill. Admin. Code 103, Support Responsibility of Relatives
89 Ill. Admin. Code 104, Practice and Administrative Hearings
89 Ill. Admin. Code 110, Application Process
89 Ill. Admin. Code 112, Temporary Assistance for Needy Families
89 Ill. Admin. Code 113, Aid to the Aged, Blind or Disabled
89 Ill. Admin. Code 114, General Assistance
89 Ill. Admin. Code 115, Refugee/Repatriate Program
89 Ill. Admin. Code 116, Crisis Assistance
89 Ill. Admin. Code 117, Related Program Provisions
89 Ill. Admin. Code 118, Special Eligibility Groups
89 Ill. Admin. Code 120, Medical Assistance Programs
89 Ill. Admin. Code 125, Children's Health Insurance Program
89 Ill. Admin. Code 130, Administration of Social Service Programs
89 Ill. Admin. Code 140, Medical Payment
89 Ill. Admin. Code 142, Mediplan Plus
89 Ill. Admin. Code 143, Managed Care Community Networks
89 Ill. Admin. Code 144, Developmental Disabilities Services
89 Ill. Admin. Code 146, Specialized Health Care Delivery Systems
89 Ill. Admin. Code 147, Reimbursement for Nursing Costs for Geriatric Facilities
89 Ill. Admin. Code 148, Hospital Services
89 Ill. Admin. Code 149, Diagnosis Relating Grouping (DRG) Prospective Payment System (PPS)
89 Ill. Admin. Code 152, Hospital Reimbursement Changes

89 Ill. Admin. Code 153, Long Term Care Reimbursement Changes

4. Key Provisions.

305 ILCS 5/11-9, Protection of Records - Exceptions
89 Ill. Admin. Code 102.30, Confidentiality of Case Information

5. Significant Case Law.

None. There is no significant case law addressing the issues raised by the HIPAA preemption analysis.

6. Preemption Analysis under HIPAA.

To receive benefits under the Public Aid code, one must apply on behalf of his or herself and/or family. See 305 ILCS 5/11-15. Thus, any uses or disclosures of protected health information made in connection with the application process generally are allowed as payment activities under HIPAA. 45 C.F.R. §164.502, 164.506. In addition, individuals can sign a authorization when applying for services. 45 C.F.R. § 164.508.

Use or disclosure of protected health information by the government in the course of administering public aid programs is within the purview of HIPAA because the public aid program is a "health plan" and therefore a covered entity. 45 C.F.R. §160.103. Section 11-9 of the Public Aid Code and the regulations promulgated there under govern the "protection of records," and "confidentiality of case information." 305 ILCS 5/11-9; 89 Ill. Admin. Code 102.30. The general rule, which is subject to several qualifications, is that the Department of Public Aid and all levels of local government that participate in the administration of public aid "are prohibited . . . from disclosing the contents of any records, files, papers, and communications, except for purposes directly connected with the administration of public aid under this Code." 305 ILCS 5/11-9. This provision appears to be consistent with HIPAA. Many of the activities undertaken by Public Aid relate to payment. The Privacy Rule allows disclosures for payment without an authorization. 45 C.F.R. §164.502. Further, §164.512(d) of the Privacy Rule permits uses and disclosures to a "health oversight agency or oversight activities authorized by law, including . . . activities necessary for appropriate oversight of . . . the health care system . . . [or] government benefit program for which health information is relevant to beneficiary eligibility." Also, §164.512(b) of the Privacy Rule allows a covered entity to disclose protected health information to a "public health authority that is authorized by law to collect or receive such information for the purpose of preventing or controlling disease, injury, or disability." Provided that the scope of §512(d) and §512(b) encompasses all uses or disclosures "for purposes directly connected with the administration of public aid under [the] Code," (305 ILCS 5/11-9), the general rule regarding confidentiality is not preempted. If anything, it is more stringent because it

prohibits all other uses.

The qualifications under the general rule present several issues. The fourth paragraph of §11-9 provides that "the contents of case files pertaining to recipients . . . shall be made available without subpoena or formal notice to the officers of any court, to all law enforcement agencies, and to such other persons or agencies as from time to time may be authorized by any court." 305 ILCS 5/11-9. This is less restrictive than the parallel HIPAA provisions set forth in §§164.512(e) and (f) of the Privacy Rule, which permit disclosures in response to a court order, or to a subpoena or other lawful process accompanied by specific assurances set forth in greater detail in the statute. 45 C.F.R. §164.512(e), (f).

The fourth paragraph of §11-9 allows disclosure of recipient's files to the "Illinois State Scholarship Commission pursuant to an investigation or audit by the Illinois State Scholarship Commission of a delinquent student loan or monetary award." To the extent that the Commission is an enforcement official under the Privacy Rule, it may be able to receive information via the law enforcement exception. 45 C.F.R. §164.512(f).

§11-9 also anticipates disclosures to the Department of Children and Family Services when necessary for DCFS to perform its duties under the Abused and Neglected Child Reporting Act. Disclosures of protected health information are allowed to investigate suspected cases of abuse under the Privacy Rule if certain requirements are met. 45 C.F.R. §164.512(c).

§11-9 generally provides that "the provisions of this section...as they apply to applicants and recipients of public aid...shall be operative only to the extent that they do not conflict with any Federal law or regulation governing Federal grants to this State for such programs." Since HIPAA can be viewed as a federal law governing federal grants to Illinois for operation of the Public Aid program, any provisions of §11-9 which conflict with the Privacy Rule can be made compliant by following the provisions of the Privacy Rule.

7. <u>Is the Law Preempted</u>?

No.

1. Name and Citation of Law.

Food and Housing Assistance Act (305 ILCS 10).

2. General Description of the Law.

The Food and Housing Assistance Act creates a fund in the State Treasury to accept donations for the purposes of food and shelter assistance. Expenditures are authorized by the Illinois Public Aid Code.

3. Rules Promulgated Under the Law

None. No administrative rules have been promulgated under this law.

4. Key Provisions

None. There are no provisions addressing the issues raised by the HIPAA preemption analysis.

5. Significant Case Law

None. There is no significant case law addressing the issues raised by the HIPAA preemption analysis.

6. Preemption Analysis Under HIPAA

The Food and Housing Assistance Act does not address health information.

It is possible to comply with this law and HIPAA. This law does not stand as an obstacle to accomplishing the full purpose of HIPAA. Therefore, the law is not "contrary" to the HIPAA regulations. 45 C.F.R. 160.202.

7. Is the Law Preempted?

No.

1. Name and Citation of Law.

State Blind or Deaf School Transportation Act (305 ILCS 25).

2. General Description of the Law.

The State Blind or Deaf School Transportation Act provides for state funded or free (upon court order) transportation and clothing for children sent to a state school for the education of the blind or the deaf when the child's parent or guardian is unable to furnish clothing and transportation without assistance.

3. Rules Promulgated Under the Law

None. No administrative rules have been promulgated under this law.

4. Key Provisions

None. There are no provisions addressing the issues raised by the HIPAA preemption analysis.

5. Significant Case Law

None. There is no significant case law addressing the issues raised by the HIPAA preemption analysis.

6. Preemption Analysis Under HIPAA

The Act involves transportation and clothing needs of deaf or blind children but does not address the privacy of health information.

It is possible to comply with this law and HIPAA. This law does not stand as an obstacle to accomplishing the full purpose of HIPAA. Therefore, the law is not "contrary" to the HIPAA regulations. 45 C.F.R. 160.202.

7. Is the Law Preempted?

No.

1. Name and Citation of Law.

Family Resource Development Act (305 ILCS 30).

2. General Description of the Law.

The Family Resource Development Act empowers the Department of Human Services, the Illinois Community College Board, and the Department of Commerce and Community Affairs to develop a demonstration program a Family Resource Development Center for the benefit and use of 20 low-income families.

3. Rules Promulgated Under the Law

None. No administrative rules have been promulgated under this law.

4. Key Provisions

None. There are no provisions addressing the issues raised by the HIPAA preemption analysis.

5. Significant Case Law

None. There is no significant case law addressing the issues raised by the HIPAA preemption analysis.

6. Preemption Analysis Under HIPAA

The Family Resource Development Act assists families with educational, vocational, and training needs. 305 ILCS 30/5. The Act does not affect the privacy of health information.

It is possible to comply with this law and HIPAA. This law does not stand as an obstacle to accomplishing the full purpose of HIPAA. Therefore, the law is not "contrary" to the HIPAA regulations. 45 C.F.R. 160.202.

7. Is the Law Preempted?

No.

1. Name and Citation of Law.

Medicaid Revenue Act (305 ILCS 35)

2. General Description of the Law.

The Medicaid Revenue Act creates an Illinois Health Care Reform Task Force charged with responsibility for generating recommendations for restructuring the Illinois Medicaid program.

3. Rules Promulgated Under the Law

89 Ill. Admin. Code 104.216, Formal Conference on Recovery of Money

4. Key Provisions

None. There are no provisions addressing the issues raised by the HIPAA preemption analysis.

5. Significant Case Law

None. There is no significant case law addressing the issues raised by the HIPAA preemption analysis.

6. Preemption Analysis Under HIPAA

The law does not address the privacy of health information.

It is possible to comply with this law and HIPAA. This law does not stand as an obstacle to accomplishing the full purpose of HIPAA. Therefore, the law is not "contrary" to the HIPAA regulations. 45 C.F.R. 160.202.

7. Is the Law Preempted?

No.

1. Name and Citation of Law.

Nursing Home Grant Assistance Act (305 ILCS 40).

2. General Description of the Law.

The Nursing Home Grant Assistance Act creates a grant assistance program to provide financial support for eligible individuals who reside in nursing homes.

3. Rules Promulgated Under the Law.

86 Ill. Admin. Code 535, Rules Implementing the Nursing Home Grant Assistance Act

4. Key Provisions

None. There are no provisions addressing the issues raised by the HIPAA preemption analysis.

5. Significant Case Law

None. There is no significant case law addressing the issues raised by the HIPAA preemption analysis.

6. Preemption Analysis Under HIPAA

The Nursing Home Grant Assistance Program operated only during the State fiscal year in 1993, but has not been formally repealed. 305 ILCS 40/10.

To receive grants under the Nursing Home Grant Assistance Program, a qualified resident in a licensed Illinois nursing home had to submit an application to the nursing home which then acted "as distribution agent" under the Act. 86 Ill. Admin. Code 535.110. To be compliant with the Privacy Rule, applicants would have provided, and nursing homes obtained, all necessary authorizations as part of the application process.

Absent an extension of the Nursing Home Grant Assistance Program, the preemption analysis is not relevant to this statute.

It is possible to comply with this law and HIPAA. This law does not stand as an obstacle to accomplishing the full purpose of HIPAA. Therefore, the law is not "contrary" to the HIPAA regulations. 45 C.F.R. 160.202.

7. Is the Law Preempted?

No.

1. Name and Citation of Law.

Respite Program Act (320 ILCS 10).

2. General Description of the Law.

The Respite Program Act empowers the director of the Department on Aging to establish respite projects for the purposes of providing care and assistance to persons in need and detour the institutionalization of frail or disabled or functionally disabled or cognitively impaired adults. 320 ILCS 10/3. "Respite Care" refers to the intermittent and temporary substitute care of frail, abused, or disabled older adults on behalf of the primary care giver to relieve stress of constant care. Id.

3. Rules Promulgated Under the Law.

None. No administrative rules have been promulgated under this law.

4. Key Provisions.

89 Ill. Admin. Code 220.100, Confidentiality and Disclosure of Information
89 Ill. Admin. Code 270.120, Access to Resident Records

5. Significant Case Law.

None. There is no significant case law addressing the issues raised by the HIPAA preemption analysis.

6. Preemption Analysis under HIPAA.

The statute empowers the Department to oversee the creation of a network of "sponsors," and "providers" to provide respite care. 320 ILCS 10/2. Irrespective of the covered entity status of the Department on Aging, the Department's own regulations governing confidentiality and disclosure of information prohibit disclosure of any individually identifiable information concerning a recipient of care or a service provider without "informed consent" or court order. 89 Ill. Admin. Code 220.100. This provision is more stringent than the Privacy Rule, which allows for disclosure of protected health information for purposes of treatment, payment or health care operations without an authorization. 45 C.F.R. §160.202.

Although there are no regulations that cite the Act as the direct authority for promulgation, there are regulations with some relevance to the respite care program that concern privacy of health information. These regulations permit the Department of Aging to access records of board and care homes for purposes of health inspection and quality

of life review. 89 Ill. Admin. Code 290.210 Respite care may be delivered in board and care homes. 320 ILCS 10/3. The access by the Department of Aging to board and care homes delivering respite care is consistent with the Privacy Rule, which allows disclosures of health information for oversight of government benefit programs. 45 C.F.R. §164.512(d).

It is possible to comply with this law and HIPAA. This law does not stand as an obstacle to accomplishing the full purpose of HIPAA. Therefore, the law is not "contrary" to the HIPAA regulations. 45 C.F.R. 160.202.

7. Is the Law Preempted?

No.

1. Name and Citation of Law

Elder Abuse and Neglect Act (320 ILCS 20/1)

2. General Description of the Law

The Elder Abuse and Neglect Act allows the Department of Aging to investigate incidents of alleged abuse and neglect to the elderly.

3. Rules Promulgated Under the Law

None. No administrative rules have been promulgated under this law.

4. Key Provisions

320 ILCS 20/8, Access to Records
320 ILCS 20/9, Authority to Consent to Services

5. Significant Case Law

None. There is no significant case law addressing the issues raised by the HIPAA preemption analysis.

6. Preemption Analysis Under HIPAA

The Elder Abuse and Neglect Act requires certain reports of potential elder abuse to be reported to the Illinois Department on Aging. 320 ILCS 20/3. Records concerning reports of elder abuse and neglect and financial exploitation are confidential and not to be disclosed except as required by law. 320 ILCS 20/8. The Privacy Rule allows for such reporting of suspected cases of abuse or neglect by covered entities if certain requirements are met. 45 C.F.R. §164.512(c).

It is possible to comply with this law and HIPAA. Further, this law does not stand as an obstacle to accomplishing the full purpose of HIPAA. Therefore, the law is not "contrary" to the HIPAA regulations. 45 C.F.R. § 160.202.

7. Is the Law Preempted?

No.

1. Name and Citation of Law.

Senior Citizens and Disabled Persons Property Tax Relief and Pharmaceutical Assistance Act (320 ILCS 25).

2. General Description of the Law.

The Senior Citizens and Disabled Persons Property Tax Relief and Pharmaceutical Assistance Act creates a program in the Department of Revenue to provide incentives to senior citizens and disabled persons to acquire and retain private housing, and relieve qualified seniors and disabled from the burdens of extraordinary property tax by crediting amounts up to $700 spent on certain pharmaceuticals.

3. Rules Promulgated Under the Law.

86 Ill. Admin. Code 530, Rules Implementing the Senior Citizens and Disabled Persons Property Tax Relief and Pharmaceutical Assistance Act

4. Key Provisions.

86 Ill. Admin. Code 530.117, Claim Filing Procedures
86 Ill. Admin. Code 530.155, Inspection and Disclosure of Records
320 ILCS 25/4, Amount of Grant
320 ILCS 25/4.1, Information to the Department
320 ILCS 25/8a, Confidentiality

5. Significant Case Law.

None. There is no significant case law addressing the issues raised by the HIPAA preemption analysis.

6. Preemption Analysis under HIPAA.

In carrying out the activities under the Senior Citizens and Disabled Persons Property Tax Relief and Pharmaceutical Assistance Act, the Department of Revenue is reimbursing individuals for the cost of pharmaceuticals. 320 ILCS 25/4. Participation in the program is voluntary and application to participate must be made to the Department. 320 ILCS 25/5, 86 Ill. Admin. Code 530.117.

In carrying out its duties, the Department of Revenue is entitled to inspect records of participating pharmacies. 320 ILCS 25/4.1, 86 Ill. Admin. Code 530.155. Under the Privacy Rule, consent is not necessary for disclosure of information by covered entities for purposes of payment or health oversight. 45 C.F.R. §164.502, 164.512(a). Due to the

voluntary nature of participation in the program, and the fact that disclosures of protected health information by a covered entity to the Department of Revenue relate to payment, these provisions are consistent with the Privacy Rule. Individuals who are not willing to execute any required authorizations will presumably be denied benefits.

It is possible to comply with this law and HIPAA. This law does not stand as an obstacle to accomplishing the full purpose of HIPAA. Therefore, the law is not "contrary" to the HIPAA regulations. 45 C.F.R. 160.202.

7. Is the Law Preempted?

No.

1. Name and Citation of Law.

Partnership for Long-Term Care Act (320 ILCS 35).

2. General Description of the Law.

The Partnership for Long-Term Care Act sets up a program among the Department on Aging, Department of Public Aid and Department of Insurance to help pay for the cost of long-term care for individuals with extended chronic illnesses, and encourages individuals to purchase private long-term care insurance policies. 320 ILCS 35/5. Individuals who exhaust all benefits provided under private long-term care insurance may be eligible under the statute for Medicaid and other state funded services. Id.

3. Rules Promulgated Under the Law.

50 Ill. Admin. Code 2018, Long-Term Care Partnership Insurance
89 Ill. Admin. Code 688, Illinois Long-Term Care Partnership Program
89 Ill. Admin. Code 260, Long-Term Care Insurance Partnership Program

4. Key Provisions.

None. There are no provisions of this Act addressing the issues raised by the HIPAA preemption analysis.

5. Significant Case Law.

None. There is no significant case law addressing the issues raised by the HIPAA preemption analysis.

6. Preemption Analysis under HIPAA.

The Privacy Rule states that a health plan includes the issuer of a long-term care policy, excluding a nursing home fixed indemnity policy. 45 C.F.R. §160.103. The Illinois statute allows individuals to purchase certified long-term care insurance policies to cover an amount equal to the resources they wish to protect, or to protect an individual's total assets. 320 ILCS 35/20. The program run by the State simply certifies plans as being eligible for the program.
Disclosures required from insurance plans or health providers to the Department on Aging, Department of Public Aid or Department of Insurance made pursuant to the Act will be part of a health oversight activity, and therefore the disclosure of protected health information to the agencies is permitted under the Privacy Rule. 45 C.F.R. §164.512(b).

Further, participation in the program is voluntary. Individuals who are not willing to

execute appropriate authorizations presumably will be denied benefits.
It is possible to comply with this law and HIPAA. Further, this law does not stand as an obstacle to accomplishing the full purpose of HIPAA. Therefore, the law is not "contrary" to the HIPAA regulations. 45 C.F.R. §160.202.

7. Is the Law Preempted?

No.

1. Name and Citation of Law.

All-Inclusive Health Care for the Elderly Act (320 ILCS 40).

2. General Description of the Law.

The All-Inclusive Health Care for the Elderly Act creates a Medicare/Medicaid funded "PACE" program in Illinois, as authorized by the Federal OMNIBUS Reconciliation Act of 1986. The program is administered in an outpatient environment in homes and in institutionalized settings. 320 ILCS 40/5. Persons eligible to participate in the program are "frail, elderly" individuals who qualify financially and "for whom all licensed physicians certifies that such a program provides an appropriate alternative to institutionalized care." Id. §40/10. The goal of the program is to keep the elderly out of institutional settings.

3. Rules Promulgated Under the Law.

None. No administrative rules have been promulgated under this law.

4. Key Provisions.

None. There are no provisions of this Act addressing the issues raised by the HIPAA preemption analysis.

5. Significant Case Law.

None. There is no significant case law addressing the issues raised by the HIPAA preemption analysis.

6. Preemption Analysis under HIPAA.

The Act does not specifically mandate or prohibit disclosures of health information. Any exchange of this information that might occur among service providers and state agencies in the ordinary course of administering the program would be consistent with the Privacy Rule provisions allowing disclosure pursuant to "health oversight activities." 45 C.F.R. §164.512(d).

It is possible to comply with this law and HIPAA. Further, this law does not stand as an obstacle to accomplishing the full purpose of HIPAA. Therefore, the law is not "contrary" to the HIPAA regulations. 45 C.F.R. §160.202.

7. Is the Law Preempted?

No.

1. Name and Citation of Law.

Senior Citizens Child Care Support Act (320 ILCS 45).

2. General Description of the Law.

The Senior Citizens Child Care Support Act creates a program in the Department of Aging to provide senior citizens with access to child care training and child care volunteer or employment opportunities. 320 ILCS 45/15.

3. Rules Promulgated Under the Law.

None. No administrative rules have been promulgated under this law.

4. Key Provisions.

320 ILCS 45/15, Licensing Standards for Day Care Agencies
89 Ill. Admin. Code 405.19, Records and Reports

5. Significant Case Law.

None. There is no significant case law addressing the issues raised by the HIPAA preemption analysis.

6. Preemption Analysis under HIPAA.

The Senior Citizens Child Care Support Act is designed to provide seniors with child care employment or volunteer opportunities. Senior employees or volunteers are subject to the health and background checks required by Department of Children and Family Services of all employees in daycare facilities. 89 Ill. Admin. Code 405.19. Seniors can execute an authorization to allow release of their protected health information to the daycare facility. 45 C.F.R. § 164.508.

It is possible to comply with this law and HIPAA. Further, this law does not stand as an obstacle to accomplishing the full purpose of HIPAA. Therefore, the law is not "contrary" to the HIPAA regulations. 45 C.F.R. §160.202.

7. Is the Law Preempted?

No.

1. Name and Citation of Law.

Abused and Neglected Child Reporting Act (325 ILCS 5).

2. General Description of the Law.

The Abused and Neglected Child Reporting Act requires a broad range of medical personnel and other public employees to report to the Department of Children and Family Services suspected child abuse or neglect. The Act empowers DCFS to investigate reports of abuse or neglect, secure temporary protective custody of the child and take various other measures to protect an abused child and rehabilitate parents of abused children. 325 ILCS 5/2, 4, 4.2, 5.

3. Rules Promulgated Under the Law.

89 Ill. Admin. Code 300, Reports of Child Abuse and Neglect
89 Ill. Admin. Code 336, Appeal of Child Abuse and Neglect and Investigation Findings

4. Key Provisions.

325 ILCS 5/4, Persons Required to Report; Privileged Communication; Transmitting False Report
325 ILCS 5/4.1, Reasonable Cause to Report
325 ILCS 5/5, Temporary Protective Custody
325 ILCS 5/11, Records
325 ILCS 5/11.1, Access to Records
325 ILCS 5/11.1a, Disclosure of Information
325 ILCS 5/11.2, Disclosure to Mandated Reporting Source
325 ILCS 5/11.2e, Disclosure to Extended Family Member
325 ILCS 5/11.3, Confidentiality

5. Significant Case Law.

None. There is no significant case law addressing the issues raised by the HIPAA preemption analysis.

6. Preemption Analysis under HIPAA.

The Act's various reporting requirements compel covered entities to disclose to DCFS protected health information (see e.g., 325 ILCS 5/4), but the Privacy Rule permits the reporting of child abuse and death if certain requirements are met. 45 C.F.R. §160.203(c), 164.512(b), (c), 164.512(e). DCFS is not performing a covered function in receiving these reports. 45 C.F.R. § 164.501. Thus, DCFS' use and disclosure of this

information is not governed by the Privacy Rule. 45 C.F.R. § 164(b).

Section 5 of the Act concerns temporary protective custody and the power of temporary custodians to act on behalf of the child. The Act allows temporary custodians, who may also be treating physicians, to consent to emergency treatment and to receive HIV test results without consent of the child or guardian. 325 ILCS 5/5. This provision is allowable as a disclosure for treatment when the custodian is a physician, or as a disclosure to a personal representative when the temporary custodian has the power to make health care decisions under state law. 45 C.F.R. §164.502, 164.502(g).

It is possible to comply with this law and HIPAA. Further, this law does not stand as an obstacle to accomplishing the full purpose of HIPAA. Therefore, the law is not "contrary" to the HIPAA regulations. 45 C.F.R. §160.202.

7. Is the Law Preempted?

No.

1. Name and Citation of Law.

Birth Control Services to Minors Act (325 ILCS 10).

2. General Description of the Law.

The Birth Control Services to Minors Act enables licensed physicians to distribute birth control services to certain minors. 325 ILCS 10/1.

3. Rules Promulgated Under the Law.

None. No administrative rules have been promulgated under this law.

4. Key Provisions.

None. There are no provisions of this Act addressing the issues raised by the HIPAA preemption analysis.

5. Significant Case Law.

None. There is no significant case law addressing the issues raised by the HIPAA preemption analysis.

6. Preemption Analysis under HIPAA.

To render the services contemplated by the Act, providers may need to use protected health information, but that use is part of treatment and therefore allowed by the Privacy Rule. 45 C.F.R. §164.502, 164.506.

It is possible to comply with this law and HIPAA. Further, this law does not stand as an obstacle to accomplishing the full purpose of HIPAA. Therefore, the law is not "contrary" to the HIPAA regulations. 45 C.F.R. §160.202.

7. Is the Law Preempted?

No.

1. Name and Citation of Law.

Child Sexual Abuse Prevention Act (325 ILCS 15).

2. General Description of the Law.

The Child Sexual Abuse Prevention Act develops a program, administered through Department of Children and Family Services, for the purpose of providing counseling, treatment, and rehabilitation to sexually abused children and their families; promoting detection and prevention of child sex abuse; informing the public of the problem, the need for public involvement, and the resources available; and developing training resources. 325 ILCS 15/3.

3. Rules Promulgated Under the Law.

None. No administrative rules have been promulgated under this law.

4. Key Provisions.

325 ILCS 15/5, Confidentiality of Records

5. Significant Case Law.

None. There is no significant case law addressing the issues raised by the HIPAA preemption analysis.

6. Preemption Analysis under HIPAA.

The Act falls under the exception in the Privacy Rule for reporting by covered entities of abuse and neglect if certain requirements are met. 45 C.F.R. §164.512(b), see e.g., 325 ILCS 15/5. DCFS is not performing a covered function in this program. 45 C.F.R. §164.501. Thus, DCFS' use and disclosure of information is not governed by the Privacy Rule. 45 C.F.R. §164.504(b).

It is possible to comply with this law and HIPAA. Further, this law does not stand as an obstacle to accomplishing the full purpose of HIPAA. Therefore, the law is not "contrary" to the HIPAA regulations. 45 C.F.R. §160.202.

7. Is the Law Preempted?

No.

1. Name and Citation of Law.

Early Intervention Services System Act (325 ILCS 20).

2. General Description of the Law.

The purpose of the Early Intervention Services System Act is to promote the overall development of toddlers and infants (defined as children 3 years old or younger) with disabilities, suspected disabilities, or conditions likely to lead to disability. 325 ILCS 20/2. The program provides for funding to develop a state wide system of "early intervention services" relating to health, social service, and education for qualified toddlers and infants. 325 ILCS 20/7. Services offered include comprehensive evaluation of suspected disabled children, creation of public awareness programs, and development of resources to help identify children in need. Id. §20/2, 3, 7.

3. Rules Promulgated Under the Law.

89 Ill. Admin. Code 500, Early Intervention Program

4. Key Provisions.

325 ILCS 20/12, Procedural Safeguards
325 ILCS 20/13.15, Billing of Insurance Carrier
89 Ill. Admin. Code 500.135, Minimum Procedural Safeguards
89 Ill. Admin. Code 500.150, Confidentiality/Privacy
89 Ill. Admin. Code 500.155, Right to Consent

5. Significant Case Law.

None. There is no significant case law addressing the issues raised by the HIPAA preemption analysis.

6. Preemption Analysis under HIPAA.

The Act establishes standards to ensure "the right to confidentiality of personally identifiable information." 325 ILCS 20/12(b). Department of Human Services regulations promulgated under this statute set forth minimal procedural safeguards with regard to confidentiality as follows:

Right to written consent regarding exchange of information.

> (1) Each regional intake entity, local service provider and participating agency shall obtain consent in writing from parents before they collect,

maintain, or use records as defined in Section 500.150 regarding eligible children.

(2) Each agency shall use the records only for the purpose for which they are collected or maintained.

(3) Each agency shall maintain the records in a confidential, secure manner, allowing access only as required to serve the eligible child as consented to by the parents, and accessed as described in Section 500.150.

(4) The exchange of records and any personally identifiable information collected, used, or maintained under this Part is precluded without written notice of and written consent to the exchange of information among agencies consistent with federal and State law, or as otherwise allowed by that law.

(5) Each agency shall have procedures in writing to ensure compliance with this Section.

89 Ill. Admin. Code 500.155(d). The confidentiality provisions are more stringent than the Privacy Rule, as the Privacy Rule does not require written authorization for purposes of treatment, payment or health care operations. 45 C.F.R. §164.502. Not all records maintained by early intervention service providers will be "protected health information" as described in the Rule. 45 C.F.R. §164.501. For example, some of the records maintained in the Early Intervention Program are governed under the Family Educational Rights and Privacy Act of 1974 ("FERPA"). 89 Ill. Admin. Code 500.150. Specified, FERPA records are specifically excluded from the definition of "protected health information", as FERPA records are protected by another federal rule. 45 C.F.R. §164.501.

It is possible to comply with this law and HIPAA. Further, this law does not stand as an obstacle to accomplishing the full purpose of HIPAA. Therefore, the law is not "contrary" to the HIPAA regulations. 45 C.F.R. §160.202.

7. Is the Law Preempted?

No.

1. Name and Citation of Law.

High Risk Use Career Development Act (325 ILCS 25).

2. General Description of the Law.

The High Risk Use Career Development Act provides for the development of community-based programs to increase employability and career development among high risk youth. 325 ILCS 25/1.

3. Rules Promulgated Under the Law.

None. No administrative rules have been promulgated under this law.

4. Key Provisions.

None. There are no provisions of this Act addressing the issues raised by the HIPAA preemption analysis.

5. Significant Case Law.

None. There is no significant case law addressing the issues raised by the HIPAA preemption analysis.

6. Preemption Analysis under HIPAA.

The Act does not govern the use or disclosure of protected health information. It is possible to comply with this law and HIPAA. Further, this law does not stand as an obstacle to accomplishing the full purpose of HIPAA. Therefore, the law is not "contrary" to the HIPAA regulations. 45 C.F.R. §160.202.

7. Is the Law Preempted?

No.

1. Name and Citation of Law.

Family Support Demonstration Project (325 ILCS 30).

2. General Description of the Law.

The Family Support Demonstration Project provides for a demonstration program to establish experimental community-based family support centers to test and demonstrate the effectiveness of such a concept. These centers are regulated by the Department of Children and Family Services.

3. Rules Promulgated Under the Law.

None. No administrative rules have been promulgated under this law.

4. Key Provisions.

None. There are no provisions of this Act addressing the issues raised by the HIPAA preemption analysis.

5. Significant Case Law.

None. There is no significant case law addressing the issues raised by the HIPAA preemption analysis.

6. Preemption Analysis under HIPAA.

One of the core services to be offered by the family support center is health care services and counseling to avoid unwanted pregnancies. 325 ILCS 30/4. Any records which the Department of Children and Family Services may need in reviewing permits of the centers should be available as health care oversight activities under the privacy regulation. 45 C.F.R. §164.512(d). Further, the disclosures to DCFS may be part of payment activities depending upon the actual funding of the program. 45 C.F.R. §164.502, 164.506.

It is possible to comply with this law and HIPAA. Further, this law does not stand as an obstacle to accomplishing the full purpose of HIPAA. Therefore, the law is not "contrary" to the HIPAA regulations. 45 C.F.R. §160.202.

7. Is the Law Preempted?

No.

1. Name and Citation of Law.

Interagency Board for Children Who are Deaf or Hard of Hearing and Have an Emotional or Behavioral Disorder Act (325 ILCS 35).

2. General Description of the Law.

The Interagency Board for Children Who are Deaf or Hard of Hearing and Have an Emotional or Behavioral Disorder Act creates an interagency board to advise the Board of Education, the Governor, and the General Assembly on policy relating to child who are hard of hearing and have an emotional or behavioral disorder. 325 ILCS 35/2.

3. Rules Promulgated Under the Law.

None. No administrative rules have been promulgated under this law.

4. Key Provisions.

None. There are no provisions of this Act addressing the issues raised by the HIPAA preemption analysis.

5. Significant Case Law.

None. There is no significant case law addressing the issues raised by the HIPAA preemption analysis.

6. Preemption Analysis under HIPAA.

No use or release of health information is anticipated by the Act.

It is possible to comply with this law and HIPAA. Further, this law does not stand as an obstacle to accomplishing the full purpose of HIPAA. Therefore, the law is not "contrary" to the HIPAA regulations. 45 C.F.R. §160.202.

7. Is the Law Preempted?

No.

1. Name and Citation of Law.

Intergovernmental Missing Child Recovery Act (325 ILCS 40).

2. General Description of the Law.

The Intergovernmental Missing Child Recovery Act establishes a program to promote an immediate and effective community response to missing children to prevent run-a-way, abduction, and exploitation of children and to diminish the missing children problem. 325 ILCS 40/3, 4.

3. Rules Promulgated Under the Law.

20 Ill. Admin. Code 1260, Intergovernmental Missing Child Recovery Act
20 Ill. Admin. Code 1291, Missing Person Notification

4. Key Provisions.

None. There are no provisions of this Act addressing the issues raised by the HIPAA preemption analysis.

5. Significant Case Law.

None. There is no significant case law addressing the issues raised by the HIPAA preemption analysis.

6. Preemption Analysis under HIPAA.

Disclosures of health information by a covered entity to law enforcement are allowable under these circumstances in order to locate a potential crime victim. 45 C.F.R. §164.512(f). Disclosures under the law enforcement exception are limited and therefore, it may be necessary to allow the parents or guardian of the child to execute an authorization if full release of protected health information is needed. 45 C.F.R. §164.508.

It is possible to comply with this law and HIPAA. Further, this law does not stand as an obstacle to accomplishing the full purpose of HIPAA. Therefore, the law is not "contrary" to the HIPAA regulations. 45 C.F.R. §160.202.

7. Is the Law Preempted?

No.

1. Name and Citation of Law.

Minor Identification and Protection Act (325 ILCS 45).

2. General Description of the Law.

The Minor Identification and Protection Act enables the parent or legal guardian of a minor to obtain an identification card from local law enforcement who has the minor's fingerprint impressions. 325 ILCS 45/3.

3. Rules Promulgated Under the Law.

None. No administrative rules have been promulgated under this law.

4. Key Provisions.

None. There are no provisions of this Act addressing the issues raised by the HIPAA preemption analysis.

5. Significant Case Law.

None. There is no significant case law addressing the issues raised by the HIPAA preemption analysis.

6. Preemption Analysis under HIPAA.

The Act allows local law enforcement to take children's fingerprints at the parent's request and issue a card to the parents. 325 ILCS 45/3. No protected health information is used or disclosed under this statute.

It is possible to comply with this law and HIPAA. Further, this law does not stand as an obstacle to accomplishing the full purpose of HIPAA. Therefore, the law is not "contrary" to the HIPAA regulations. 45 C.F.R. §160.202.

7. Is the Law Preempted?

No.

1. Name and Citation of Law.

Missing Children Records Act (325 ILCS 50).

2. General Description of the Law.

The Missing Children Records Act facilitates the locating and return of missing persons by establishing a system under which State Police notifies the Registrar of Vital Records and appropriate school of the identity of a missing person, and by establishing procedures for the Registrar and the school to follow when individuals request birth records or school registration records for a missing person.

3. Rules Promulgated Under the Law.

20 Ill. Admin. Code 1290, Missing Person Birth Records and School Registration
20 Ill. Admin. Code 1291, Missing Person Notification

4. Key Provisions.

None. There are no provisions of this Act addressing the issues raised by the HIPAA preemption analysis.

5. Significant Case Law.

None. There is no significant case law addressing the issues raised by the HIPAA preemption analysis.

6. Preemption Analysis under HIPAA.

The Act does not involve the privacy of protected health information.

It is possible to comply with this law and HIPAA. Further, this law does not stand as an obstacle to accomplishing the full purpose of HIPAA. Therefore, the law is not "contrary" to the HIPAA regulations. 45 C.F.R. §160.202.

7. Is the Law Preempted?

No.

1. Name and Citation of Law.

Missing Children Registration Law (325 ILCS 55).

2. General Description of the Law.

The Missing Children Registration Law requires the State to flag birth certificates and birth records of missing children. In addition, schools are to flag school records of missing children and require a birth certificate when registering a new student. Specific procedures are outlined for treatment of a request for records that have been flagged.

3. Rules Promulgated Under the Law.

20 Ill. Admin. Code 1290, Missing Person Birth Records and School Registration
20 Ill. Admin. Code 1291, Missing Person Notification

4. Key Provisions.

None. There are no provisions of this Act addressing the issues raised by the HIPAA preemption analysis.

5. Significant Case Law.

None. There is no significant case law addressing the issues raised by the HIPAA preemption analysis.

6. Preemption Analysis under HIPAA.

The Act requires local law enforcement to be contacted when birth records of missing children are requested. The Act does not specifically address the privacy of protected health information.

It is possible to comply with this law and HIPAA. Further, this law does not stand as an obstacle to accomplishing the full purpose of HIPAA. Therefore, the law is not "contrary" to the HIPAA regulations. 45 C.F.R. §160.202.

7. Is the Law Preempted?

No.

1. Name and Citation of Law.

Surgical Institute for Children Act (325 ILCS 60).

2. General Description of the Law.

The Surgical Institute for Children Act creates a surgical institute to treat children who are deformed or who otherwise require surgical treatment, and whose parents or guardians are financially unable to pay for the treatment needed. 325 ILCS 60/3.

3. Rules Promulgated Under the Law.

None. No administrative rules have been promulgated under this law.

4. Key Provisions.

325 ILCS 60/5, Eligibility

5. Significant Case Law.

None. There is no significant case law addressing the issues raised by the HIPAA preemption analysis.

6. Preemption Analysis under HIPAA.

Based on the petition of a guardian of a qualifying child, a circuit court may order the institute to admit a child and to the extent feasible, treat the child. 325 ILCS 60/5. Disclosure to the court of health information by a covered entity pursuant to a court order is allowed when the court order is issued in compliance with the Privacy Rule. 45 C.F.R. §164.512(e). Further, an applicant for service will presumably be denied services if the individual fails to disclose required information.

It is possible to comply with this law and HIPAA. Further, this law does not stand as an obstacle to accomplishing the full purpose of HIPAA. Therefore, the law is not "contrary" to the HIPAA regulations. 45 C.F.R. §160.202.

7. Is the Law Preempted?

No.

1. Name and Citation of Law.

Military Veterans Assistance Act (330 ILCS 45).

2. General Description of the Law.

The Military Veterans Assistance Act provides for financial and other assistance to military veterans and their families. 330 ILCS 45/2.

3. Rules Promulgated Under the Law.

None. No administrative rules have been promulgated under this law.

4. Key Provisions.

330 ILCS 45/6, Sending to Alms House or Orphan Asylum; Residential Care; Sending to Veterans' Home or Mental Health Facility

5. Significant Case Law.

None. There is no significant case law addressing the issues raised by the HIPAA preemption analysis.

6. Preemption Analysis under HIPAA.

Section 6 of the Act, 330 ILCS 45/6, establishes certain duties binding overseers of veterans assistance as to placement of veterans who are homeless. To determine proper placement under this provision, the authorized overseer must determine the threshold matter of whether the veteran in question is "mentally ill." Id. Although this statute requires use and disclosure of protected health information – i.e., proof of mental illness – participation in the program is voluntary on the part of the veteran. If a veteran or the personal representative of the veteran chooses not to authorize the use and disclosure of the necessary health records, the veteran simply forgoes eligibility for benefits.

It is possible to comply with this law and HIPAA. Further, this law does not stand as an obstacle to accomplishing the full purpose of HIPAA. Therefore, the law is not "contrary" to the HIPAA regulations. 45 C.F.R. §160.202.

7. Is the Law Preempted?

No.

1. Name and Citation of Law.

Disabled Veterans Housing Act (330 ILCS 65).

2. General Description of the Law.

Under the Disabled Veterans Housing Act, veterans who were Illinois residents when they entered the service, who have service related disabilities, and who qualify for veterans assistance under federal law (38 U.S.C. 2101), are entitled to receive a single lump sum payment of up to $12,000.00 towards the cost of housing. 330 ILCS 65/1, 65/2.

3. Rules Promulgated Under the Law.

95 Ill. Admin. Code 103.5 *et seq*., Specially Adapted Housing Grant

4. Key Provisions.

330 ILCS 65/3, Application for Assistance; Rules; Guidelines

5. Significant Case Law.

None. There is no significant case law addressing the issues raised by the HIPAA preemption analysis.

6. Preemption Analysis under HIPAA.

Responsibility to determine whether an applicant for assistance has a service-related disability does not fall on the Illinois Department of Veterans' Affairs. IDVA only determines (1) whether the applicant was a "resident" of Illinois at the time of service; and (2) the amount of assistance to which the applicant is entitled. 330 ILCS 65/3. Thus, the statute does not affect the privacy of health information.

It is possible to comply with this law and HIPAA. Further, this law does not stand as an obstacle to accomplishing the full purpose of HIPAA. Therefore, the law is not "contrary" to the HIPAA regulations. 45 C.F.R. §160.202.

7. Is the Law Preempted?

No.

1. Name and Citation of Law.

Records for Veterans Administration Act (330 ILCS 70)

2. General Description of the Law.

The Records for Veterans Administration Act requires a custodian of "public records" in Illinois to provide, free of charge, certified copies of any public records requested in writing by an applicant for veterans benefits, accredited veterans organizations, the Department of Veterans' Affairs, or the Veterans Administration, if the records requested are required by the United States Veterans Administration to determine eligibility for veterans benefits.

3. Rules Promulgated Under the Law.

None. No administrative rules have been promulgated under this law.

4. Key Provisions.

330 ILCS 70/1, Copies of Records for United States Veterans Administration

5. Significant Case Law.

None. There is no significant case law addressing the issues raised by the HIPAA preemption analysis.

6. Preemption Analysis under HIPAA.

Although some public records contain health information, it does not appear that the custodian of such a public record would be performing a covered function under the Privacy Rule. 45 C.F.R. §164.501. For example, the State Registrar of Vital Records maintains birth and death certificates, but it would not be a covered function under HIPAA. 45 C.F.R. §164.504. In addition, to the extent the records for Veterans Administration Act were to require a covered entity to provide protected health information to the United States Veterans Administration, the veteran will have authorized the release by his or her written request for records.

It is possible to comply with this law and HIPAA. Further, this law does not stand as an obstacle to accomplishing the full purpose of HIPAA. Therefore, the law is not "contrary" to the HIPAA regulations. 45 C.F.R. §160.202.

7. Is the Law Preempted?

No.

1. Name and Citation of Law.

Veterans Burial Places Act (330 ILCS 110).

2. General Description of the Law.

The Veterans Burial Places Act requires the Illinois Department of Veterans' Affairs to maintain complete records of all burials and memorial markers in Illinois for veterans, and to supervise transportation of headstones or memorial markers to grave sites. 330 ILCS 110/1. The statute also requires an owner of a cemetery to keep permanent records of every veteran buried or acknowledged by memorial marker. 330 ILCS 110/2.

3. Rules Promulgated Under the Law.

95 Ill. Admin. Code 102, Rules Governing Payment for Cartage and Erection of Head Stone, Marker or Memorial Marker

4. Key Provisions.

None. There are no provisions of this Act addressing the issues raised by the HIPAA preemption analysis.

5. Significant Case Law.

None. There is no significant case law addressing the issues raised by the HIPAA preemption analysis.

6. Preemption Analysis under HIPAA.

Although deceased individuals do not lose their privacy rights, the Act does not address protected health information or covered functions. 45 C.F.R. §164.501.

It is possible to comply with this law and HIPAA. Further, this law does not stand as an obstacle to accomplishing the full purpose of HIPAA. Therefore, the law is not "contrary" to the HIPAA regulations. 45 C.F.R. §160.202.

7. Is the Law Preempted?

No.

1. Name and Citation of Law

Mental Health and Developmental Disabilities Code (405 ILCS 5/1-100 *et seq*)

2. General Description of the Law

The Mental Health and Developmental Disabilities Code sets up the State system for voluntary and involuntary treatment of mental illness, and the care of the developmentally disabled within the State of Illinois.

3. Rules Promulgated Under the Law

59 Ill. Admin. Code 50.10 *et seq*., Office of Inspector General Investigations of Alleged Abuse or Neglect and Deaths in State-Operated and Community Agency Facilities.
59 Ill. Admin. Code 51.10 *et seq*., Office of Inspector General Adults with Disabilities Abuse Project
59 Ill. Admin. Code 101.20 *et seq*., Administration
59 Ill. Admin. Code 102.10 *et seq*., Department Facilities and Grounds
59 Ill. Admin. Code 103.10 *et seq*., Grants
59 Ill. Admin. Code 106.15 *et seq*., Definitions
59 Ill. Admin. Code 108.10 *et seq*., Education and Training
59 Ill. Admin. Code 110.10 *et seq*., Recipient's Property
59 Ill. Admin. Code 111.10 *et seq*., Recipient Rights
59 Ill. Admin. Code 112.5 *et seq*., Treatment and Habilitation Services
59 Ill. Admin. Code 115.100 *et seq*., Standards and Licensure Requirements for Community-Integrated Living Arrangements
59 Ill. Admin. Code 116.20 *et seq*., Administration of Medication in Community Settings
59 Ill. Admin. Code 119.100 *et seq*., Minimum Standards for Certification of Developmental Training Programs
59 Ill. Admin. Code 120.10 *et seq*., Medicaid Home and Community-Based Services Waiver Program for Individuals with Developmental Disabilities
59 Ill. Admin. Code 125.10 *et seq*., Recipient Discharge/Linkage/After Care
59 Ill. Admin. Code 132.10 *et seq*., Medicaid Community Mental Health Services Program
59 Ill. Admin. Code 135.5 *et seq*., Individual Care Grants for Mentally Ill Children
59 Ill. Admin. Code 258.270 *et seq*., Participating Mental Health Center Requirements
59 Ill. Admin. Code 299.100 *et seq*., Sexually Violent Persons

4. Key Provisions

405 ILCS 5/2-101, Legal Disability; Determinations
405 ILCS 5/2-102, Care and Services; Psychotropic Medications; Religion
405 ILCS 5/2-103, Mail/Telephone/Visits

405 ILCS 5/2-107, Refusal of Services; Informing of Risks
405 ILCS 5/2-107.1, Administration of Authorized Involuntary Treatment Upon Application to a Court
405 ILCS 5/2-110.5, Electro-Convulsive Therapy for Minors
405 ILCS 5/2-110, Unusual, Hazardous or Experimental Services or Psycho-Surgery
405 ILCS 5/2-200, Notice of Rights
405 ILCS 5/3-204, Foreign Languages; Sign Language
405 ILCS 5/3-205, Statement of Rights; Foreign Languages; Sign Language
405 ILCS 5/3-400, Voluntary Admissions
405 ILCS 5/3-700, Involuntary Admission Upon Court Order
405 ILCS 5/3-816, Final Orders; Copy to Patients; Appeals
405 ILCS 5/4-205, Statements and Explanations; Comprehensible Language; Foreign Language; Sign Language
405 ILCS 5/4-303, Application; Contents; Statement of Rights
405 ILCS 5/4-500, Determination
405 ILCS 5/5-100, Death; Notice; Inquest; Fees
59 Ill. Admin. Code 51.10, Purpose of Project
59 Ill. Admin. Code 51.90, Confidentiality
59 Ill. Admin. Code 106.45, Determination; Ability to Pay Service Charges
59 Ill. Admin. Code 111.20, Services to Individuals Who are Deaf, Hard of Hearing, Deaf-Blind, or Deafened Hearing Impaired and/or Who Use Manual/Visual Communication
59 Ill. Admin. Code 111.25, Services to Individuals in Department Facilities who are Non-English or Limited English Speaking
59 Ill. Admin. Code 112.30, Recipient Physical and Dental Examinations and Informed Consent for Services
59 Ill. Admin. Code 116.100, Quality Assurance
59 Ill. Admin. Code 125.20, Recipient Rights
59 Ill. Admin. Code 132.20, Clients' Rights and Confidentiality

5. Significant Case Law

None. There is no significant case law addressing the issues raised by the HIPAA preemption analysis.

6. Preemption Analysis Under HIPAA

Chapter 2 of the Mental Health and Developmental Disabilities Code creates rights of recipients of mental health services. 405 ILCS 5/2-100 through 2-202. Included in these rights are to have a court proceeding to determine whether an individual is legally disabled. 405 ILCS 5/2-101. Recipients of mental health or developmental disabilities services are to be informed of the potential side effects of any psychotropic medication to be administered, including the risks and benefits of the administration of the medication.

405 ILCS 5/2-102. Recipients of services who reside in a mental health or developmental disability facility are entitled to private and uncensored communication by mail, telephone, or visitation. 405 ILCS 5/2-103. Involuntary administration of psychotropic medication may be done on an emergency basis for up to 72 hours under the Code. 405 ILCS 5/2-107. In order to continue administration of involuntary treatment, an application must be made to the court. 405 ILCS 5/2-107.1. Minors may not be treated with electro-convulsive therapy unless the court so orders. 405 ILCS 5/2-110.5. Written and informed consent is required to subject a recipient to any "unusual, hazardous, or experimental services or psycho-surgery". 405 ILCS 5/2-110. Each recipient of services who is 12 years of age or older is required to receive a notice of rights under the Mental Health and Developmental Disabilities Code. 405 ILCS 5/2-200.

Disclosures of protected health information in order to effect an involuntary commitment or involuntary administration of psychotropic medications will be made pursuant to a court-ordered evaluation. As long as the procedures of 45 C.F.R. §164.512(e) are followed, a covered entity will be allowed to reveal protected health information to the court consistent with the Privacy Rule. 45 C.F.R. §164.512(e).

The provisions of the Mental Health and Developmental Disabilities Code which specifically require consent prior to treatment, such as those for experimental treatment or electro-convulsive treatment on minors, are more stringent than the requirements of the Privacy Rule. 45 C.F.R. §160.202. The notice of the benefits and risks of the administration of psychotropic medications required by Illinois law is more stringent than the Privacy Rule, as the Privacy Rule does not require a notice explaining the risks and benefits of any particular treatment. 45 C.F.R. §160.202. Further, the notice anticipated by the Privacy Rule is not required to contain specific information on the patient's ability to consent or reject treatment. 45 C.F.R. §164.520.

Admission to a mental health facility may be voluntary. 405 ILCS 5/3-400. Individuals may also be involuntarily admitted to a mental health facility upon court order. 405 ILCS 5/3-700. Any person subject to an order entered by the court under the Mental Health and Developmental Disabilities Code is entitled to a copy of the order, including the findings of fact and conclusions of law. 405 ILCS 5/3-816. Again, disclosures of protected health information done in order to achieve involuntary admission of an individual are allowed under the Privacy Regulations pursuant to court order if certain requirements are met. 45 C.F.R. §164.512(e).

Recipients of mental health services who speak a foreign language or sign language are entitled to receive statements of their rights in the foreign language or sign language that is understandable by the individual. 405 ILCS 5/3-204, 405 ILCS 5/3-205, 59 Ill. Admin. Code 111.20, 59 Ill. Admin. Code 111.25. Under the Privacy Rule, an individual has the right to request confidential communications. 45 C.F.R. §164.522. These rights to confidential communications are to be accommodated, if reasonable. 45 C.F.R.

§164.522(b)(1)(i). Therefore, the State law requiring translation is at least as stringent, if not more so, than the federal standard wherein a facility must accept the request to engage in alternate forms of communications. 45 C.F.R. §164.522.

Developmentally disabled service recipients also have similar rights to communication in a language which is comprehensible. 405 ILCS 5/4-205. Medicaid community mental health service clients are also entitled to receive services in a language understandable by the client. 59 Ill. Admin. Code 132.26. Again, those provisions are more stringent than the request to receive confidential communications contained in the Privacy Rule. 405 ILCS §164.522.

Admissions to facilities for the developmentally disabled are made upon application. 405 ILCS 5/4-303. In some circumstances, an individual can be admitted by judicial order if the individual is mentally retarded and is "reasonably expected to inflict serious physical harm upon himself or another in the near future." 405 ILCS 5/4-500. The disclosures necessary for a court to issue an order requiring admission to a facility for the developmentally disabled are allowed by the Privacy Rule pursuant to court order, if certain requirements are met. 45 C.F.R. §164.512(b).

The death of a resident of a recipient of services at a mental health or developmental disabilities facility or the death of a recipient of services who has not been discharged from the facility but whose death occurs elsewhere are forwarded to the Department of Public Health for monitoring patterns of abuse and neglect. 405 ILCS 5/5-100. Further, if the death is sudden or mysterious, a corner's inquest shall also be held. Id. Allegations of abuse and neglect at mental health facilities are to be reported to the Office of Inspector General and are to remain confidential. 59 Ill. Admin. Code 51.10, 51.90. Disclosures of protected health information in order to investigate allegations of abuse and neglect are allowed by the Privacy Rule if certain requirements are met. 45 C.F.R. §164.512(c). Disclosures to effectuate a coroner's inquest are also allowed by the Privacy Rule. 45 C.F.R. §164.512(g).

In rendering services to clients, the Department of Human Services is allowed to investigate the financial status of the service recipient. 59 Ill. Admin. Code 106.45. The Department of Human Services is also allowed to accept Medicaid payments. Id. Disclosures of protected health information to effectuate payment are allowed without an authorization pursuant to the Privacy Rule. 45 C.F.R. §164.502, 164.506.

All recipients admitted to a State facility are to receive a physical and dental exam within the first 3 days of admission, unless the individual authorized to give consent withholds the consent except in cases where a medical or dental emergency exists. 59 Ill. Admin. Code 112.30. If, during the course of the initial medical exam, a communicable disease is discovered, the Department of Human Services is required to report the communicable disease to the Illinois Department of Public Health. Id. The requirement that informed

consent be given is more stringent than the Privacy Rule. (45 C.F.R. §164.502, 164.506). The disclosure to the Department of Public Health relating to the presence of communicable diseases is in furtherance of public health activities, and therefore, allowed by the Privacy Rule. 45 C.F.R. §164.512(b).

Facilities that administer medications in a community setting are required to undertake a quality assurance review of the medication orders and administration records. 59 Ill. Admin. Code 116.100. Such a disclosure for quality assurance purposes is allowed under the Privacy Rule as part of health care operations. 45 C.F.R. §164.501, 164.502. The State administrative rule also confirms the right of a recipient to refuse services, including medication unless necessary to prevent serious harm to self or others, to consent to electro-convulsive therapy and to generally consent to medical and dental treatment unless an emergency exists. 59 Ill. Admin. Code 125.20. Again, as individual consent or authorization is not required to use or release protected health information for treatment purposes under the Privacy Rule, the State administrative rule requirement is more stringent than the Privacy Rule. 45 C.F.R. §164.502, 164.506.

In addition to those previously discussed, the administrative rules also provide that clients who are part of the Medicaid community mental health services program are entitled to the rights afforded under the Mental Health and Developmental Disabilities Code and the Mental Health and Developmental Disabilities Confidentiality Act. 59 Ill. Admin. Code 132.20 (See Mental Health and Developmental Disabilities Confidentiality Act discussion at 740 ILCS 110).

It is possible to comply with this law and HIPAA. Further, this law does not stand as an obstacle to accomplishing the full purpose of HIPAA. Therefore, the law is not "contrary" to the HIPAA regulations. 45 C.F.R. §160.202.

7. Is the Law Preempted?

No.

1. Name and Citation of Law.

Uniform Act for the Extradition of People of Unsound Mind (405 ILCS 10)

2. General Description of the Law.

The Uniform Act for the Extradition of People of Unsound Mind provides that the State, upon demand by the executive authority of another state, shall apprehend, secure, and deliver any fugitive person of unsound mind that has fled to Illinois from that state. 405 ILCS 10/2, 3, 4. The Act also empowers the executive authority of this State to demand the return of any fugitives from Illinois in like manner. 405 ILCS 10/4.

3. Rules Promulgated Under the Law.

None. No administrative rules have been promulgated under this law.

4. Key Provisions.

None. There are no provisions of this Act addressing the issues raised by the HIPAA preemption analysis.

5. Significant Case Law.

None. There is no significant case law addressing the issues raised by the HIPAA preemption analysis.

6. Preemption Analysis under HIPAA.

The Act authorizes the executive authority of this State to demand the return of any fugitive from Illinois, provided that the executive authority can offer certified documentation proving the fugitive to be of "unsound mind." 405 ILCS 10/3, 4. Such documentation may include, among other things, commitment papers to an asylum or hospital for the mentally ill. Id. Commitment papers would be orders of a court, and therefore, any health information contained in them would have been disclosed pursuant to a court order consistent with the requirements of the Privacy Rule. 45 C.F.R. §164.512(e). In addition, under the Privacy Rule, limited information may also be available from a health care provider to law enforcement for purposes of identification and location. 45 C.F.R. §164.512(f)(2).

It is possible to comply with this law and HIPAA. Further, this law does not stand as an obstacle to accomplishing the full purpose of HIPAA. Therefore, the law is not "contrary" to the HIPAA regulations. 45 C.F.R. §160.202.

7. Is the Law Preempted?

No.

1. Name and Citation of Law.

Mental Treatment for Incarcerated Persons Act (405 ILCS 15)

2. General Description of the Law.

The Mental Treatment for Incarcerated Persons Act establishes a procedure whereby an individual can petition in the circuit court on behalf of a person sentenced and committed to a penal or correctional institution for the committed person to be adjudicated "subject to involuntary admission," as defined in the Mental Health Code (405 ILCS 5/1-119), and thereby re-committed to the Department of Human Services for appropriate treatment. 405 ILCS 15/1.

3. Rules Promulgated Under the Law.

None. No administrative rules have been promulgated under this law.

4. Key Provisions.

None. There are no provisions of this Act addressing the issues raised by the HIPAA preemption analysis.

5. Significant Case Law.

None. There is no significant case law addressing the issues raised by the HIPAA preemption analysis.

6. Preemption Analysis under HIPAA.

A petitioner under the Act must attach to the petition "a certificate from a qualified examiner . . . stating in reasonable detail the basis for the conclusion . . . that the person . . . is subject to involuntary admission." 405 ILCS 15/1. As long as the covered entity makes any disclosures pursuant to court order consistent with the Privacy Rule, such a disclosure of protected health information is allowed. 45 C.F.R. §164.512(e).

It is possible to comply with this law and HIPAA. Further, this law does not stand as an obstacle to accomplishing the full purpose of HIPAA. Therefore, the law is not "contrary" to the HIPAA regulations. 45 C.F.R. §160.202.

7. Is the Law Preempted?

No.

1. Name and Citation of Law.

Community Mental Health Act (405 ILCS 20)

2. General Description of the Law.

The Community Mental Health Act empowers local governments to develop and operate community mental health facilities to provide services for individuals with developmental disabilities and substance abusers, and to levy tax and accept donations as a means to fund the facilities. 405 ILCS 20/2, 3, 3a.

3. Rules Promulgated Under the Law.

59 Ill. Admin. Code 103.70, Special Organization Structures

4. Key Provisions.

None. There are no provisions of this Act addressing the issues raised by the HIPAA preemption analysis.

5. Significant Case Law.

None. There is no significant case law addressing the issues raised by the HIPAA preemption analysis.

6. Preemption Analysis under HIPAA.

The Act does not address the privacy of health information.

It is possible to comply with this law and HIPAA. Further, this law does not stand as an obstacle to accomplishing the full purpose of HIPAA. Therefore, the law is not "contrary" to the HIPAA regulations. 45 C.F.R. §160.202.

7. Is the Law Preempted?

No.

1. Name and Citation of Law.

Specialized Living Centers Act (405 ILCS 25)

2. General Description of the Law.

The Specialized Living Centers Act provides for the development of specialized living centers throughout the State for persons with developmental disabilities.

3. Rules Promulgated Under the Law.

None. No administrative rules have been promulgated under this law.

4. Key Provisions.

None. There are no provisions of this Act addressing the issues raised by the HIPAA preemption analysis.

5. Significant Case Law.

None. There is no significant case law addressing the issues raised by the HIPAA preemption analysis.

6. Preemption Analysis under HIPAA.

The Act does not address the privacy of protected health information.

It is possible to comply with this law and HIPAA. Further, this law does not stand as an obstacle to accomplishing the full purpose of HIPAA. Therefore, the law is not "contrary" to the HIPAA regulations. 45 C.F.R. §160.202.

7. Is the Law Preempted?

No.

1. Name and Citation of Law.

Community Services Act (405 ILCS 30)

2. General Description of the Law.

The Community Services Act facilitates the establishment of a comprehensive coordinated system of private and public community services for suffers of mental illness, developmental disability, and drug and alcohol dependency. 405 ILCS 30/1, 3.

3. Rules Promulgated Under the Law.

59 Ill. Admin. Code 103.10, Grants
59 Ill. Admin. Code 120, Medicaid Home and Community-Based Services Waiver Program for Individuals with Developmental Disabilities
59 Ill. Admin. Code 132, Medicaid Community Health Services Program

4. Key Provisions.

59 Ill. Admin. Code 120.100, Overview
59 Ill. Admin. Code 120.120, Individual's Responsibilities
59 Ill. Admin. Code 132.30, Application and Certification Process
59 Ill. Admin. Code 132.100, Clinical Records

5. Significant Case Law.

None. There is no significant case law addressing the issues raised by the HIPAA preemption analysis.

6. Preemption Analysis under HIPAA.

The Department of Human Services' regulations set forth the procedures for allocating funding to eligible community agencies and programs. 59 Ill. Admin. Code 103.10. The regulations mandate various monitoring and audit procedures which appear to require disclosure of protected health information by the agencies applying for grants. See, e.g., 59 Ill. Admin. Code 103.80, 103.120, 103.150. These provisions are not contrary to HIPAA because they involve disclosures for health oversight and payment activities, which are specifically permitted under the Privacy Rule. 45 C.F.R. §164.502, 164.512(d).

The rules provide uniform procedures for community services providers and disabled individuals enrolled in the program. Section 120.100(c) sets "confidentiality of case information" standards for both DHS and service providers that limit use only for

purposes directly related to the administration of the Medicaid Home and Community-Based Services Waiver Program. Providers are obligated to inform all entities to whom information is furnished that this material is confidential and subject to the provisions of the Mental Health and Developmental Disabilities Confidentiality Act. The individual or guardian consent is required to share information. 59 Ill. Admin. Code 120.10. Section 120.120 provides that every applicant for service shall provide the consent to release information as provided for in Section 120.100(c). 59 Ill. Admin. Code 120.120(a). In addition, Sections 120.100(c) and 120.120(a) insure that all participants in the program must consent, as a preliminary matter, to use and disclosure of health information as necessary to administer the program. These regulations also preclude DHS and service providers from engaging in any other use of the information. These procedures are more stringent that the Privacy Rule, as consent or authorization is not required under the Privacy Rule for purposes of treatment, payment or health care operations. 45 C.F.R. §164.502.

59 Ill. Admin. Code 132.20, which governs the Community Mental Health Services Program, adopts by reference the confidentiality provisions from the Mental Health and Developmental Disabilities Confidentiality Act (740 ILCS 110). See analysis of 740 ILCS 110.

It is possible to comply with this law and HIPAA. Further, this law does not stand as an obstacle to accomplishing the full purpose of HIPAA. Therefore, the law is not "contrary" to the HIPAA regulations. 45 C.F.R. § 160.202.

7. Is the Law Preempted?

No.

1. Name and Citation of Law.

Community Support Systems Act (405 ILCS 35)

2. General Description of the Law.

The Community Support Systems Act coordinates support systems for the community services available to the chronically mentally ill, including assistance with planning, securing, funding, client assessment, service system evaluation, and technical assistance. 405 ILCS 35/1.

3. Rules Promulgated Under the Law.

None. No administrative rules have been promulgated under this law.

4. Key Provisions.

None. There are no provisions of this Act addressing the issues raised by the HIPAA preemption analysis.

5. Significant Case Law.

None. There is no significant case law addressing the issues raised by the HIPAA preemption analysis.

6. Preemption Analysis under HIPAA.

Participants voluntarily apply for inclusion in this program. The Act does not specifically address the use or disclosure of health information.

It is possible to comply with this law and HIPAA. Further, this law does not stand as an obstacle to accomplishing the full purpose of HIPAA. Therefore, the law is not "contrary" to the HIPAA regulations. 45 C.F.R. §160.202.

7. Is the Law Preempted?

No.

1. Name and Citation of Law.

Protection and Advocacy for Developmentally Disabled Persons Act (405 ILCS 40)

2. General Description of the Law

Pursuant to federal statute (42 U.S.C. 6001), the Protection and Advocacy for Developmentally Disabled Persons Act empowers the Governor to designate a private entity as the agency to administer a program that provides legal advocacy and assistance on behalf of persons with developmental disabilities. 405 ILCS 40/1.

3. Rules Promulgated Under the Law

None. No administrative rules have been promulgated under this law.

4. Key Provisions

405 ILCS 40/1, Agency to Administer State Plan

5. Significant Case Law

None. There is no significant case law addressing the issues raised by the HIPAA preemption analysis.

6. Preemption Analysis under HIPAA

The State law allows the Governor to designate a private, not-for-profit corporation as the agency to administer the State plan to protect and advocate for persons with developmental disabilities. 405 ILCS 40/1. Under the State statute, this agency is entitled to access, inspect and copy records of a person with developmental disabilities residing in a developmental disability facility. Id. This access is subject to the limitations of the Mental Health and Developmental Disabilities Confidentiality Act (740 ILCS 110) and the Nursing Home Care Act (210 ILCS 45). The agency is empowered under the statute to investigate complaints of persons who do not have a legal guardian, or for whom the State is the legal guardian. Id.

The Privacy Rule defines a health oversight agency as a "entity acting under a grant of authority from or contract with a public agency, that is authorized by law to oversee the health care system." 45 C.F.R. §164.501. Therefore, the agency designated under this Act is acting as an oversight agency. Disclosure of protected health information to a health oversight agency is allowed under the Privacy Rule for oversight activities authorized by law. 45 C.F.R. §164.512(d).

It is possible to comply with this law and HIPAA. Further, this law does not stand as an obstacle to accomplishing the full purpose of HIPAA. Therefore, the law is not "contrary" to the HIPAA regulations. 45 C.F.R. §160.202.

7. Is the Law Preempted?

No.

1. Name and Citation of Law

Protection and Advocacy for Mentally Ill Persons Act (405 ILCS 45)

2. General Description of the Law

Pursuant to federal statute, 42 U.S.C. 10801, the Protection and Advocacy for Mentally Ill Persons Act empowers the Governor to designate a private entity as the agency to administer a program that provides legal advocacy and assistance on behalf of mentally ill persons. 405 ILCS 45/1.

3. Rules Promulgated Under the Law

None. No administrative rules have been promulgated under this law.

4. Key Provisions

405 ILCS 45/3, Powers and Duties

5. Significant Case Law

None. There is no significant case law addressing the issues raised by the HIPAA preemption analysis.

6. Preemption Analysis under HIPAA

Pursuant to State statute, the Governor has designated an agency to administer the protection and advocacy system for mentally ill persons. 405 ILCS 45/1. The primary function of the agency under this statute is to investigate instance of abuse and neglect of mentally ill persons and to protect the rights of mentally ill persons who are receiving care and treatment in this State. 405 ILCS 45/3. The agency appears to be acting as a health oversight agency as defined in the Privacy Rule, as it is acting under a grant of authority with a public agency and is authorized by law to oversee the health care system to enforce civil rights laws for which health information is relevant. 45 C.F.R. §164.501. Disclosures to a health oversight agency in furtherance of their duties are allowed under the Privacy Rule for determining program compliance and enforcing civil rights laws where health information is necessary for determining compliance. 45 C.F.R. §164.512(d).

It is possible to comply with this law and HIPAA. Further, this law does not stand as an obstacle to accomplishing the full purpose of HIPAA. Therefore, the law is not "contrary" to the HIPAA regulations. 45 C.F.R. §160.202.

7. Is the Law Preempted?

No.

1. Name and Citation of Law

Mental Health Patient Travel Act (405 ILCS 55)

2. General Description of the Law

The Mental Health Patient Travel Act establishes a trust fund to pay travel expenses incurred transferring patients to and from Illinois mental health and developmental disabilities facilities. 405 ILCS 55/1.

3. Rules Promulgated Under the Law

None. No administrative rules have been promulgated under this law.

4. Key Provisions

None. There are no provisions of this Act addressing the issues raised by the HIPAA preemption analysis.

5. Significant Case Law

None. There is no significant case law addressing the issues raised by the HIPAA preemption analysis.

6. Preemption Analysis under HIPAA

The Act merely addresses the funding of travel expenses for mental health patients and does not affect the privacy of health information.

It is possible to comply with this law and HIPAA. Further, this law does not stand as an obstacle to accomplishing the full purpose of HIPAA. Therefore, the law is not "contrary" to the HIPAA regulations. 45 C.F.R. §160.202.

7. Is the Law Preempted?

No.

1. Name and Citation of Law

Mental Health Hispanic Interpreter Act (405 ILCS 75)

2. General Description of the Law

The Mental Health Hispanic Interpreter Act requires state-operated mental health and developmental disability facilities that provide 1% or more of their annual inpatient/outpatient care to Hispanic recipients who lack proficiency in English, to provide a qualified interpreter. 405 ILCS 75/1.

3. Rules Promulgated Under the Law

None. No administrative rules have been promulgated under this law.

4. Key Provisions

None. There are no provisions of this Act addressing the issues raised by the HIPAA preemption analysis.

5. Significant Case Law

None. There is no significant case law addressing the issues raised by the HIPAA preemption analysis.

6. Preemption Analysis under HIPAA

The Act requires the interpreter for a given facility to be available whenever "a recipient is admitted to a state-operated facility or seeks or receives care or treatment at such facility." 405 ILCS 75/1. The use of a qualified interpreter for persons of Hispanic descent in facilities where at least 1% of the total annual admissions are individuals of Hispanic descent is consistent with the Privacy Rule requirement that an individual be allowed to request confidential communications. 45 C.F.R. §164.522(b). Reasonable requests to accommodate a confidential communication request must be granted under the Privacy Rule. Id.

It is possible to comply with this law and HIPAA. Further, this law does not stand as an obstacle to accomplishing the full purpose of HIPAA. Therefore, the law is not "contrary" to the HIPAA regulations. 45 C.F.R. §160.202.

7. Is the Law Preempted?

No.

1. Name and Citation of Law

Developmental Disability and Mental Disability Services Act (405 ILCS 80)

2. General Description of the Law

Article 1 of the Developmental Disability and Mental Disability Services Act calls for the development of a comprehensive developmental disabilities service plan for the state. 405 ILCS 80/1. Article 2 empowers the Department of Human Services (DHS) to develop and fund home-based and community-based services for mentally disabled adults in order to promote independence and self-sufficiency and provide alternatives to institutionalization. 405 ILCS 80/2. Article 3 calls for DHS to strengthen and support families who provide care within the family home for children whose level of disability or mental illness makes out of home placement a risk. 405 ILCS 85/3. Article 4 provides for local screening and assessment units. 405 ILCS 80/4. Article 5 provides for home-based and community-based services. 405 ILCS 80/5. Article 10 creates a task force for persons with disabilities. 405 ILCS 80/10.

3. Rules Promulgated Under the Law.

None. No administrative rules have been promulgated under this law.

4. Key Provisions.

None. There are no provisions of this Act addressing the issues raised by the HIPAA preemption analysis.

5. Significant Case Law.

None. There is no significant case law addressing the issues raised by the HIPAA preemption analysis.

6. Preemption Analysis under HIPAA.

The Act sets up a framework for individuals desiring services to apply for the services. Caregivers may be covered entities, but the Act does not contain provisions relevant to the preemption analysis. Any disclosure of protected health information made by the applicant to the Department in applying for services is voluntary.

Authorization for release information for purposes of treatment, payment and health care operations is not necessary under the Privacy Rule. 45 C.F.R. §164.502, 164.506.

It is possible to comply with this law and HIPAA. Further, this law does not stand as an

obstacle to accomplishing the full purpose of HIPAA. Therefore, the law is not "contrary" to the HIPAA regulations. 45 C.F.R. §160.202.

7. Is the Law Preempted?

No.

1. Name and Citation of Law

Home Environmental Living Program Act (405 ILCS 85)

2. General Description of the Law

The Home Environmental Living Program Act creates a program under which qualified recipients of public assistance are licensed as a foster home or designated a child welfare agency in order to enable them to care for a severely disabled child or adult. 405 ILCS 85/2, 5, 6.

3. Rules Promulgated Under the Law

None. No administrative rules have been promulgated under this law.

4. Key Provisions

None. There are no provisions of this Act addressing the issues raised by the HIPAA preemption analysis.

5. Significant Case Law

None. There is no significant case law addressing the issues raised by the HIPAA preemption analysis.

6. Preemption Analysis under HIPAA

Participation in the program, whether as a care giver or disabled in need, is strictly voluntary at all stages. 405 ILCS 85/6, 7. Thus, participants or their personal representative can consent to the use or disclosure of health information. 45 C.F.R. §164.502(g).

It is possible to comply with this law and HIPAA. Further, this law does not stand as an obstacle to accomplishing the full purpose of HIPAA. Therefore, the law is not "contrary" to the HIPAA regulations. 45 C.F.R. §160.202.

7. Is the Law Preempted?

No.

1. Name and Citation of Law

Arteriosclerosis Prevention Act (410 ILCS 3/1)

2. General Description of the Law

The Arteriosclerosis Prevention Act provides that the Department of Public Health shall establish a program for the prevention of Arteriosclerosis and to reduce disability and death from the disease. An advisory committee to the Director of Public Health is also created by the Act.

3. Rules Promulgated Under the Law

None. No administrative rules have been promulgated under this law.

4. Key Provisions

410 ILCS 5/15, Duties

5. Significant Case Law

None. There is no significant case law addressing the issues raised by the HIPAA preemption analysis.

6. Preemption Analysis Under HIPAA

The Department of Public Health, with the advice of the Arteriosclerosis Advisory Committee, is to do several things promoting awareness and assisting practitioners in treating heart disease. The Department is also charged with developing "systems for early detection for persons with heart disease or conditions that might lead to heart disease and full referral to those persons' physicians and other appropriate resources for care." The Act does not authorize the Illinois Department of Public Health to collect individually identifiable health information.

It is possible to comply with this law and HIPAA. Further, this law does not stand as an obstacle to accomplishing the full purpose of HIPAA. Therefore, the law is not "contrary" to the HIPAA regulations. 45 C.F.R. §160.202.

7. Is the Law Preempted?

No.

1. Name and Citation of Law

Automated External Defibrillator Act (410 ILCS 4/1)

2. General Description of the Law

The Automated External Defibrillator Act provides the Illinois Department of Public Health with authority to set standards for the use of Automated External Defibrillator ("AED"), encourage their use, and collect information about the use of AED's.

3. Rules Promulgated Under the Law

77 Ill. Admin. Code 525 - Automated External Defibrillator Code

4. Key Provisions

410 ILCS 4/25, Illinois Department of Public Health; Responsibilities
77 Ill. Admin. Code 525.500, Incident Report
77 Ill. Admin. Code 525.700, Quality Assurance

5. Significant Case Law

None. There is no significant case law addressing the issues raised by the HIPAA preemption analysis.

6. Preemption Analysis Under HIPAA.

The Automated External Defibrillator ("AED") Act provides that the Illinois Department of Public Health shall approve training curriculums for users of AED machines and that AEDs be registered with the emergency medical services system resource hospital where the AED is located. Further, the Department is allowed to maintain incident reports on AED use. 410 ILCS 4/25. In the rules promulgated pursuant to this Act, the Department does not collect the patient's name or other identifying information. See, 77 Ill. Admin. Code 525.500. It appears that AED machines may record conversations occurring while the machine is in use. These tapes are deemed confidential by the Department of Public Health Rules. 77 Ill. Admin. Code 525.700.

While this statute authorizes the Illinois Department of Public Health to collect health information, it does not appear that this health information constitutes individually identifiable health information under the HIPAA Privacy Regulation, nor is the Department performing a covered function. 45 C.F.R. 164.501. Disclosure by a covered entity of any individually identifiable information to the Department under this Act would be permitted as health care oversight and as a public health activity. 45 C.F.R. §

512(b), (d).

It is possible to comply with this law and HIPAA. Further, this law does not stand as an obstacle to accomplishing the full purpose of HIPAA. Thus, the law is not contrary to the HIPAA regulations. 45 C.F.R. §160.202

7. Is the Law Preempted?

No.

1. Name and Citation of Law

Burial of Dead Bodies Act (410 ILCS 5/1)

2. General Description of the Law

The Burial of Dead Bodies Act creates requirements for entering bodies within the earth in the State of Illinois.

3. Rules Promulgated Under the Law

None. No administrative rules have been promulgated under this law.

4. Key Provisions

None. There are no provisions of this Act addressing the issues raised by the HIPAA preemption analysis.

5. Significant Case Law

None. There is no significant case law addressing the issues raised by the HIPAA preemption analysis.

6. Preemption Analysis Under HIPAA

Death does not terminate the privacy rights of an individual. 45 C.F.R. §164.502(i). The Act, however, does not address the privacy of health information.

It is possible to comply with this law and HIPAA. Further, this law does not stand as an obstacle to accomplishing the full purpose of HIPAA. Therefore, the law is not contrary to the HIPAA regulations. 45 C.F.R. §160.202.

7. Is the Law Preempted?

No.

1. Name and Citation of Law

Choke-Saving Methods Act (410 ILCS 10/1)

2. General Description of the Law

The Choke-Saving Methods Act requires the Illinois Department of Public Health to design and distribute factors concerning methods which can be safety and effectively used to remove food lodged in a person's throat. The law requires food service establishments to display the posters.

3. Rules Promulgated Under the Law

None. No administrative rules have been promulgated under this law.

4. Key Provisions

None. There are no provisions of this Act addressing the issues raised by the HIPAA preemption analysis.

5. Significant Case Law

None. There is no significant case law addressing the issues raised by the HIPAA preemption analysis.

6. Preemption Analysis Under HIPAA

No use or release of health information is anticipated by the Choke-Saving Methods Act.

It is possible to comply with this law and HIPAA. Further, this law does not stand as an obstacle to accomplishing the full purpose of HIPAA. Therefore, the law is not "contrary" to the HIPAA regulations. 45 C.F.R. §160.202.

7. Is the Law Preempted?

No.

1. Name and Citation of Law

Coal Mining Medical Emergencies Act (410 ILCS 15/1)

2. General Description of the Law

The Coal Mining Medical Emergencies Act allows the Department of Public Health to specify training requirements for emergency medical technicians on the premises of coal mines. The Department of Natural Resources is given regulatory authority to prescribe the proximity in which an EMT may be located. Physicians who advise such EMTs are not to be held liable for any negligence in advising the EMT how to act.

3. Rules Promulgated Under the Law

None. No administrative rules have been promulgated under this law, however, coal mining emergency medical technicians are required to follow the standards for EMTs set forth in the Emergency Medical Services and Trauma Center Code, 77 Ill. Admin. Code 515.100.

4. Key Provisions

None. There are no provisions of this Act addressing the issues raised by the HIPAA preemption analysis.

5. Significant Case Law

None. There is no significant case law addressing the issues raised by the HIPAA preemption analysis.

6. Preemption Analysis Under HIPAA

The Act allows the Department of Public Health to license coal mine emergency medical technicians, however, no use or disclosure of health information is raised by the Act. 410 ILCS 15.

It is possible to comply with this law and HIPAA. Further, this law does not stand as an obstacle to accomplishing the full purpose of HIPAA. Therefore, the law is not "contrary" to the HIPAA regulations. 45 C.F.R. § 160.202.

7. Is the Law Preempted?

No.

1. Name and Citation of Law

Crematory Regulation Act (410 ILCS 18/1)

2. General Description of the Law

The Crematory Regulation Act allows the Comptroller to register crematories. The Act sets forth the terms under which a crematory may be operated.

3. Rules Promulgated Under the Law

None. No administrative rules have been promulgated under this law.

4. Key Provisions

None. There are no provisions of this Act addressing the issues raised by the HIPAA preemption analysis.

5. Significant Case Law

None. There is no significant case law addressing the issues raised by the HIPAA preemption analysis.

6. Preemption Analysis Under HIPAA

The HIPAA Privacy Rule requires a covered entity to protect the individually identifiable health information of a deceased individual. 45 C.F.R. §164.502(f). However, there is nothing that makes a crematory a covered entity in the Privacy Rule, nor is there anything in the Act addressing the privacy of health information.

It is possible to comply with this law and HIPAA. Further, this law does not stand as an obstacle to accomplishing the full purpose of HIPAA. Therefore, the law is not "contrary" to the HIPAA regulations. 45 C.F.R. § 160.202.

7. Is the Law Preempted?

No.

1. Name and Citation of Law

DES Act (410 ILCS 20/1)

2. General Description of the Law

The DES Act allows the Department of Public Health to serve a clearinghouse to distribute information concerning the use and possible side effects of diethylstilbestrol. The Department may also contract with providers to perform regional screening programs.

3. Rules Promulgated Under the Law

None. No administrative rules have been promulgated under this law.

4. Key Provisions

410 ILCS 20/4Regional Screening Programs; Contracts

5. Significant Case Law

None. There is no significant case law addressing the issues raised by the HIPAA preemption analysis.

6. Preemption Analysis Under HIPAA

410 ILCS 20/4 allows the Department of Public Health to enter into contracts with providers to screen for DES exposed persons. The contracted provider is to charge each person receiving the services a fee as determined by the Department, however, no rules are promulgated pursuant to this statute.

It is possible to comply with this law and HIPAA. Further, this law does not stand as an obstacle to accomplishing the full purpose of HIPAA. Therefore, the law is not "contrary" to the HIPAA regulations. 45 C.F.R. § 160.202.

7. Is the Law Preempted?

No.

1. Name and Citation of Law

Lead Poisoning Prevention Act (410 ILCS 45/1)

2. General Description of the Law

The Lead Poisoning Prevention Act provides for the abatement of lead contaminated residences. Further, the Act provides for screening of children for elevated blood levels and the inspection of buildings occupied by a person with an elevated blood level.

3. Rules Promulgated Under the Law

77 Ill. Admin. Code 845.10, Lead Poisoning Prevention Code

4. Key Provisions

410 ILCS 45/6.2, Physicians to Screen Children
410 ILCS 45/7, Reports of Lead Poisoning Required
410 ILCS 45/7.1, Child Care Facilities Must Require Lead Blood Level Screening for Admission
410 ILCS 45/7.2, Laboratory Fee for Blood Lead Screening; Lead Poisoning Fund
77 Ill. Admin. Code 845.20, Reporting

5. Significant Case Law

None. There is no significant case law addressing the issues raised by the HIPAA preemption analysis.

6. Preemption Analysis Under HIPAA

The Lead Poisoning Prevention Act requires every physician, nurse, hospital administrator or public health officer who has verified information of the existence of a person with an elevated blood lead level to report to the Department of Public Health within 48 hours of receipt of the verified result. 410 ILCS 45/7. Clinical laboratory directors are also required to report positive lead levels within 48 hours of receipt of the results. Id. Reported information, by statute, includes the child's name, address, date of birth, name of physician ordering analysis, and specimen type. Id. Negative test results are also submitted to the Department in an identifying fashion. 77 Ill. Admin. Code 845.20(a). Reports made to the Department are to be confidential, except that a patient may obtain his or her own data. 77 Ill. Admin. Code 845.20(b). Physicians are to screen all children residing in an area defined as high risk. 410 ILCS 45/6.2. Further, child care facilities should not accept a child for admission until a risk assessment for lead poisoning has been completed. 410 ILCS 45/7.1.

The Department of Public Health laboratory is authorized to charge for analysis of blood lead tests and any necessary follow-up. 410 ILCS 45/7.2. Funds collected are placed into a special fund in the State Treasury known as the Lead Poisoning Screening, Prevention, and Abatement Fund. Id.

The Lead Poisoning Prevention Act requires laboratories and physicians, many of whom are covered entities, to report individually identifiable health information to the Department of Public Health. 410 ILCS 45/7. Further, the Department of Public Health is compensated by Medicaid, through an electronic billing process, for performing laboratory tests, analyzing the blood lead level of Medicaid-qualified children.

This statute presents issues on two different levels. First, the Department of Public Health is clearly acting as a public health authority in receiving reports of elevated blood lead levels pursuant to statutory authority. 410 ILCS 45/7. Under the Privacy Rule, such disclosures for public health purposes are permitted. 45 C.F.R. § 164.512(b). Second, the Department bills electronically for services rendered by the laboratory. This appears to render the Department a covered entity for purposes of the blood lead laboratory tests. The Department should comply with the pertinent provisions of the Privacy Rule when engaging in a covered function. 45 C.F.R. 501.

7. Is the Law Preempted?

No.

1. Name and Citation of Law

The Poison Control System Act (410 ILCS 47/1)

2. General Description of the Law

The Poison Control System Act provides for the creation of regional poison control centers and a 24 hour a day toll-free hotline.

3. Rules Promulgated Under the Law

77 Ill. Admin. Code 215.100 Regional Poison Control Center Code

4. Key Provisions

77 Ill. Admin. Code 215.600 Quarterly Data Submission

5. Significant Case Law

None. There is no significant case law addressing the issues raised by the HIPAA preemption analysis.

6. Preemption Analysis Under HIPAA

The Department of Public Health may designate up to three regional poison control centers in the State of Illinois. 77 Ill. Admin. Code 215.200. Quarterly reports are received by the Department detailing total encounters, the age group of the poison contact subject, and the substances encountered. 77 Ill. Admin. Code 215.600. This data is not individually identifiable health information under the Privacy Rule. Further, reporting of the data to a public health authority is permitted under the Privacy Rule. 45 C.F.R. §164.512(b)(1)(i).

It is possible to comply with this law and HIPAA. Further, this law does not stand as an obstacle to accomplishing the full purpose of HIPAA. Therefore, the law is not "contrary" to the HIPAA regulations. 45 C.F.R. § 160.202.

7. Is the Law Preempted?

No.

1. Name and Citation of Law

Medical Patients Rights Act (410 ILCS 50/.01)

2. General Description of the Law

The Medical Patients Rights Act establishes certain rights of an individual patient to review billings.

3. Rules Promulgated Under the Law

None. No administrative rules have been promulgated under this law.

4. Key Provisions

410 ILCS 50/3, Rights Established
410 ILCS 50/3.1, Subjects of Research Programs or Experimental Procedures
410 ILCS 50/3.2, Patient Visitation
410 ILCS 50/5, Statement of Hospital Patient's Rights

5. Significant Case Law

None. There is no significant case law addressing the issues raised by the HIPAA preemption analysis.

6. Preemption Analysis Under HIPAA

The Medical Patient Rights Act provides that a patient should be informed of the name of physician responsible for coordinating the patient's care, the right to refuse treatment, and to privacy and confidentiality of records except as otherwise provided by the law. 410 ILCS 50/3.

The Medical Patients Rights Act also creates a right of a patient to examine and receive a reasonable explanation of their bill. 410 ILCS 50/3. This provision is consistent with the access to records provision of the Privacy Rule. 45 C.F.R. §164.524.

The Act creates the additional right of an individual to receive notice of termination of a health policy, and to be informed if HIV testing is required prior to obtaining an insurance policy. 410 ILCS 50/3(c).

The Act grants each patient a right to privacy and confidentiality in his or her health care. 410 ILCS 50/3(d). A list of appropriate uses is contained in the statute, however, disclosures "authorized or required" by law are allowed. Id.

410 ILCS 45/3.1 requires a patient to receive an explanation of a research program or experimental procedure, and to give informed consent to the treatment or procedure. 410 ILCS 50/3.1. An exception is provided to this informed consent requirement for research in accordance with 45 C.F.R. Part 46, and 21 C.F.R., Part 50. 410 ILCS 50/3.1(c). Informed consent is also waived for treatments or procedures which may help a patient in a life-threatening emergency who is unable to consent at the time of the emergency. Id. Under the Privacy Rule, research is done pursuant to an authorization unless an IRB or privacy board has approved the protocol. 45 C.F.R. §164.508. Emergency treatment research is IRB approved. Id.

The Act further provides that all health care facilities in the State must allow visitation of a patient who is 18 years of age or older. 410 ILCS 50/3.2. This section specifically allows the health care facility to regulate the hours of visitation, number of visitors per patient, and the movement of visitors within the facility. Covered health care providers should comply with the facility directory provisions in the Privacy Rule. 45 C.F.R. 164.510(a).

The Act provides that a patient admitted to a hospital shall get a written statement of all the rights enumerated in the Medical Patient Rights Act, or a similar statement of patient rights from the Joint Commission on Accreditation of Health Care Organizations. 410 ILCS 50/5. This provision is consistent with the provision of the notice of privacy practices required by the Privacy Rule. 45 C.F.R. 164.520.

It is possible to comply with this law and HIPAA. Further, this law does not stand as an obstacle to accomplishing the full purpose of HIPAA. Therefore, the law is not "contrary" to the HIPAA regulations. 45 C.F.R. § 160.202.

7. Is the Law Preempted?

No.

1. Name and Citation of Law

Telecommunication Devices for the Deaf Act (410 ILCS 55/.01)

2. General Description of the Law

The Telecommunication Devices for the Deaf Act requires telecommunication devices for the deaf to be installed at major public transportation sites and sheriff's offices of each county of more than 10,000 inhabitants.

3. Rules Promulgated Under the Law

None. No administrative rules have been promulgated under this law, however, new public facilities which are constructed are required to have telecommunication devices for the deaf installed. 71 Ill. Admin. Code 400.320.

4. Key Provisions

None. There are no provisions of this Act addressing the issues raised by the HIPAA preemption analysis.

5. Significant Case Law

None. There is no significant case law addressing the issues raised by the HIPAA preemption analysis.

6. Preemption Analysis Under HIPAA

The Telecommunication Devices for the Deaf Act does address the privacy of health information or the provision of health care services.

It is possible to comply with this law and HIPAA. Further, this law does not stand as an obstacle to accomplishing the full purpose of HIPAA. Therefore, the law is not "contrary" to the HIPAA regulations. 45 C.F.R. § 160.202.

7. Is the Law Preempted?

No.

1. Name and Citation of Law

Toxicological Laboratory Service Act (410 ILCS 60/.01)

2. General Description of the Law

The Toxicological Laboratory Service Act allows the Department of Public Health to create a toxicological laboratory for testing specimens submitted by coroners, physicians and law enforcement officers in their efforts to determine causes of death, accident or illness.

3. Rules Promulgated Under the Law

None. No administrative rules have been promulgated under this law.

4. Key Provisions

None. There are no provisions of this Act addressing the issues raised by the HIPAA preemption analysis.

5. Significant Case Law

None. There is no significant case law addressing the issues raised by the HIPAA preemption analysis.

6. Preemption Analysis Under HIPAA

The Act does not address the extent of protected health information that may be released to the Department of Public Health in performing its functions as a toxicological laboratory service. Investigating deaths, accidents, or causes of illness falls within permitted disclosures by covered entities under the Privacy Rule for treatment, or as disclosures to a public health authority for the purpose of reducing morbidity and mortality. 45 C.F.R. § 164.501, .512(b). Law enforcement officers are not covered entities.

It is possible to comply with this law and HIPAA. Further, this law does not stand as an obstacle to accomplishing the full purpose of HIPAA. Therefore, the law is not "contrary" to the HIPAA regulations. 45 C.F.R. § 160.202.

7. Is the Law Preempted?

No.

1. Name and Citation of Law

Illinois Rural/Downstate Health Act (410 ILCS 65/1)

2. General Description of the Law

The Illinois Rural/Downstate Health Act allows the Department of Public Health to establish a Center for Rural Health to coordinate programs relating to access in rural and designated shortage areas of the State.

3. Rules Promulgated Under the Law

77 Ill. Admin. Code part 596, Illinois Rural Health Code

4. Key Provisions

None. There are no provisions of this Act addressing the issues raised by the HIPAA preemption analysis.

5. Significant Case Law

None. There is no significant case law addressing the issues raised by the HIPAA preemption analysis.

6. Preemption Analysis Under HIPAA

The funding and activities of the Illinois Rural/Downstate Health Act are designed to support the infrastructure of health care in rural areas by providing scholarships and other grants to health care providers. Neither the Act nor the rules promulgated thereunder address the privacy of health information.

It is possible to comply with this law and HIPAA. Further, this law does not stand as an obstacle to accomplishing the full purpose of HIPAA. Therefore, the law is not "contrary" to the HIPAA regulations. 45 C.F.R. § 160.202.

7. Is the Law Preempted?

No.

1. Name and Citation of Law

Community Health Center Expansion Act (410 ILCS 66/1)

2. General Description of the Law

The Community Health Center Expansion Act allows the Department of Public Health to provide infrastructure grants to community health centers providing basic health services. 410 ILCS 66/5.

3. Rules Promulgated Under the Law

Illinois Rural Health Code, 77 Ill. Admin. Code 596.300-340.

4. Key Provisions

None. There are no provisions of this Act addressing the issues raised by the HIPAA preemption analysis.

5. Significant Case Law

None. There is no significant case law addressing the issues raised by the HIPAA preemption analysis.

6. Preemption Analysis Under HIPAA

Neither the Act nor the rules promulgated thereunder address the privacy of health information. 410 ILCS 66/1. Also, it does not appear that the Department is paying directly for health care services.

It is possible to comply with this law and HIPAA. Further, this law does not stand as an obstacle to accomplishing the full purpose of HIPAA. Therefore, the law is not "contrary" to the HIPAA regulations. 45 C.F.R. § 160.202.

7. Is the Law Preempted?

No.

1. Name and Citation of Law

Safe and Hygienic Bed Act (410 ILCS 68/1)

2. General Description of the Law

The Safe and Hygienic Bed Act allows the Department of Public Health to regulate the labeling of bedding materials.

3. Rules Promulgated Under the Law

None. Rules are not yet promulgated under this Act.

4. Key Provisions

None. There are no provisions of this Act addressing the issues raised by the HIPAA preemption analysis.

5. Significant Case Law

None. There is no significant case law addressing the issues raised by the HIPAA preemption analysis.

6. Preemption Analysis Under HIPAA

It is possible to comply with this law and HIPAA. Further, this law does not stand as an obstacle to accomplishing the full purpose of HIPAA. Therefore, the law is not "contrary" to the HIPAA regulations. 45 C.F.R. § 160.202.

7. Is the Law Preempted?

No.

1. Name and Citation of Law

Sexual Assault Survivors Emergency Treatment Act (410 ILCS 70/1)

2. General Description of the Law

The Sexual Assault Survivors Emergency Treatment Act provides that every licensed hospital in the State shall provide emergency treatment, emergency contraception (pursuant to the Department of Public Health protocol), and sexual assault evidence collection via S.P.E.C.K. kits provided by the Illinois State Police. Charges incurred by a hospital or ambulance provider which are not reimbursed by insurance or public aid, shall be paid for by the Illinois Department of Public Aid.

3. Rules Promulgated Under the Law

None. No administrative rules have been promulgated under this law.

4. Key Provisions

410 ILCS 70/6.4, Sexual Assault Evidence Collection Program

5. Significant Case Law

None. There is no significant case law addressing the issues raised by the HIPAA preemption analysis.

6. Preemption Analysis Under HIPAA

The evidence collection program created under this statute only allows medical information to be released to the Illinois State Police pursuant to a written consent executed by the victim. 410 ILCS 70/6.4. This provision is consistent with the Privacy Rule requirements that disclosures for law enforcement purposes be made with agreement by the individual victim of a crime. 45 C.F.R. §164.512(f)(3)(i). In fact, the State law appears more stringent, as the Privacy Rule does not require the agreement to be in writing, whereas the Act requires written consent. 410 ILCS 70/6.4.

It is possible to comply with this law and HIPAA. Further, this law does not stand as an obstacle to accomplishing the full purpose of HIPAA. Therefore, the law is not "contrary" to the HIPAA regulations. 45 C.F.R. § 160.202.

7. Is the Law Preempted?

No.

1. Name and Citation of Law

Child Vision and Hearing Test Act (410 ILCS 205)

2. General Description of the Law

The Child Vision and Hearing Test Act allows the Department of Public Health to train administrators of child and hearing tests. The Act also creates a Children's Hearing Services Advisory Committee and a Children's Advisory Committee.

3. Rules Promulgated Under the Law

77 Ill. Admin. Code 675.10 Hearing Screening Code
77 Ill. Admin. Code 685.10 Vision Screening Code

4. Key Provisions

None. There are no provisions of this Act addressing the issues raised by the HIPAA preemption analysis.

5. Significant Case Law

None. There is no significant case law addressing the issues raised by the HIPAA preemption analysis.

6. Preemption Analysis Under HIPAA

It is possible to comply with this law and HIPAA. Further, this law does not stand as an obstacle to accomplishing the full purpose of HIPAA. Therefore, the law is not "contrary" to the HIPAA regulations. 45 C.F.R. § 160.202.

7. Is the Law Preempted?

No.

1. Name and Citation of Law

Consent by Minors to Medical Procedures Act (410 ILCS 210/.01)

2. General Description of the Law

The Consent by Minors to Medical Procedures Act allows a minor to consent to the performance of a medical or surgical procedure if the minor is married, pregnant or otherwise emancipated. 410 ILCS 210/1. Further, a parent, including a parent who is a minor, has the capacity to consent for medical or surgical procedures.

3. Rules Promulgated Under the Law

None. No administrative rules have been promulgated under this law.

4. Key Provisions

410 ILCS 210/1, Consent by a Minor
410 ILCS 210/2, Medical or Surgery Procedure; Consent by Parent
410 ILCS 210/3, Situations Where Consent Need Not be Obtained
410 ILCS 210/4, Sexually Transmitted Disease; Alcohol Abuse
410 ILCS 210/5, Counseling; Informing Parent or Guardian

5. Significant Case Law

In Re E.G., 139 Ill. Dec. 810, 133 Ill. 2d 98, 549 N.E.2d 322 (Ill. 1989).

6. Preemption Analysis Under HIPAA

The Privacy Rule specifically provides that provisions concerning a minor's ability to consent to medical treatment, or the release of records, or the parent's rights concerning the minor are generally governed by State law provisions regarding personal representatives, those acting *in loco parentis*, and the right to consent of emancipated minors. 45 C.F.R. 164.502(g).

It is possible to comply with this law and HIPAA. Further, this law does not stand as an obstacle to accomplishing the full purpose of HIPAA. Therefore, the law is not "contrary" to the HIPAA regulations. 45 C.F.R. § 160.202.

7. Is the Law Preempted?

No.

1. Name and Citation of Law

Hearing Screening for Newborns Act (410 ILCS 213/1)

2. General Description of the Law

The Hearing Screening for Newborns Act requires all hospitals who deliver infants to conduct a hearing screening on all of the newborn infants prior to discharge. 410 ILCS 213/5.

3. Rules Promulgated Under the Law

Universal Newborn Hearing Screening Program Code, 89 Ill. Admin. Code 504.10

4. Key Provisions

410 ILCS 213/15, Department of Public Health to Maintain Registry of Cases
89 Ill. Admin. Code 504.40, Reporting and Tracking

5. Significant Case Law

None. There is no significant case law addressing the issues raised by the HIPAA preemption analysis.

6. Preemption Analysis Under HIPAA

The Department of Public Health maintains a registry of all aggregate statistical data on the number of newborn hearing screenings. 89 Ill. Admin. Code 504.40. In addition, the Department receives infant specific information within 7 days for infants who do not pass the re-screening test, or those who missed the hospital screening or re-screening. Both information on the infant and the mother are released to the Department. 89 Ill. Admin. Code 504.40. This disclosure is to a public health agency for public health purposes consistent with the Privacy Rule. 45 C.F.R. § 164.512(b).

It is possible to comply with this law and HIPAA. Further, this law does not stand as an obstacle to accomplishing the full purpose of HIPAA. Therefore, the law is not "contrary" to the HIPAA regulations. 45 C.F.R. § 160.202.

7. Is the Law Preempted?

No.

1. Name and Citation of Law

Infant Eye Disease Act (410 ILCS 215/.01)

2. General Description of the Law

The Infant Eye Disease Act is designed to track ophthalmia neonatorum in newborn infants.

3. Rules Promulgated Under the Law

None. No administrative rules have been promulgated under this law.

4. Key Provisions

410 ILCS 215/5, Duties of Department of Public Health
410 ILCS 215/3, Maternity Homes, etc. - - Duties of Physicians and Midwives

5. Significant Case Law

None. There is no significant case law addressing the issues raised by the HIPAA preemption analysis.

6. Preemption Analysis Under HIPAA

The Department of Public Health is to provide report forms to physicians and midwives authorized by law to attend the birth of any child. 410 ILCS 215/5. The Infant Eye Disease Act provides that the Department shall "prepare appropriate report blanks and furnish them to all local health officers for distribution to physicians and midwives free of charge." 410 ILCS 215/5(5). The Act further requires that each newborn child, no later than one hour after birth, receive silver nitrate in each eye. 410 ILCS 215/3. The Department receives reports of Opthalmolia Neonatorum under the Communicable Disease Reporting Code, which constitutes public health reporting allowed by the Privacy Rule. 45 C.F.R. 164.512(b).

It is possible to comply with this law and HIPAA. Further, this law does not stand as an obstacle to accomplishing the full purpose of HIPAA. Therefore, the law is not "contrary" to the HIPAA regulations. 45 C.F.R. § 160.202.

7. Is the Law Preempted?

No.

1. Name and Citation of Law

Infant Mortality Reduction Act (410 ILCS 220/1)

2. General Description of the Law

The Infant Mortality Reduction Act allows the Department of Human Services to provide grants to targeted areas of the State in order to reduce the infant mortality rate. 410 ILCS 220/2.

3. Rules Promulgated Under the Law

77 Ill. Admin. Code 630.10, Maternal and Child Health Services Code (Infant Mortality Reduction Act cited as statutory authority for the Code)

77 Ill. Admin. Code, part 2200.5, School Based/Linked Health Centers Code (cited as authority for enactment)

4. Key Provisions

410 ILCS 220/8, Infant Mortality Review

5. Significant Case Law

None. There is no significant case law addressing the issues raised by the HIPAA preemption analysis.

6. Preemption Analysis Under HIPAA

The Infant Mortality Reduction Act provides for the systemic review of infant deaths by the Department of Human Services. 410 ILCS 220/8. Data collected under this Act must be collected pursuant to Section 5 of the Illinois Health Statistics Act. Id, referencing 410 ILCS 520/5. As these studies are specifically designed to reduce the morbidity and mortality of infants in the State of Illinois, this reporting can continue pursuant to the public health exception under the Privacy Rule. 45 C.F.R.§ 164.512(b).

It is possible to comply with this law and HIPAA. Further, this law does not stand as an obstacle to accomplishing the full purpose of HIPAA. Therefore, the law is not "contrary" to the HIPAA regulations. 45 C.F.R. § 160.202.

7. Is the Law Preempted?

No.

1. Name and Citation of Law

Prenatal and Newborn Care Act (410 ILCS 225/1)

2. General Description of the Law

The Prenatal and Newborn Care Act creates a mechanism for the Department of Human Services to pay for Early and Periodic Screening, Diagnosis, and Treatment (EPSDT) to provide prenatal and newborn care to qualified infants. 410 ILCS 225/3.

3. Rules Promulgated Under the Law

It appears the Maternal and Child Health Care Code is promulgated pursuant to the Act. 77 Ill. Admin. Code 630.15.

4. Key Provisions

410 ILCS 225/5, Program Administration
410 ILCS 225/5, Application Eligibility Requirements
410 ILCS 225/6, Covered Services

5. Significant Case Law

None. There is no significant case law addressing the issues raised by the HIPAA preemption analysis.

6. Preemption Analysis Under HIPAA

The Prenatal and Newborn Care Act creates a program that covers a variety of services designed to achieve a healthy pregnancy. 410 ILCS 225/6. Those eligible must meet an income test, but may not be Medicaid recipients. 410 ILCS 225/5.

The law does not contain specific provisions relating to the privacy of health information.

It is possible to comply with this law and HIPAA. Further, this law does not stand as an obstacle to accomplishing the full purpose of HIPAA. Therefore, the law is not "contrary" to the HIPAA regulations. 45 C.F.R. § 160.202.

7. Is the Law Preempted?

No.

1. Name and Citation of Law

Problem Pregnancy Health Services and Care Act (410 ILCS 230/1-100)

2. General Description of the Law

The Problem Pregnancy Health Services and Care Act authorizes the Department of Human Services to provide grants to community organizations who assist in linking those who are pregnant or have already had their babies to services where proper care can be obtained. 410 ILCS 230/4-101

3. Rules Promulgated Under the Law

77 Ill. Admin. Code 2200.10	School Based/Linked Health Centers Code
77 Ill. Admin. Code 630.10	Maternal and Child Health Care Services Code

4. Key Provisions

None. There are no provisions of this Act addressing the issues raised by the HIPAA preemption analysis.

5. Significant Case Law

None. There is no significant case law addressing the issues raised by the HIPAA preemption analysis.

6. Preemption Analysis Under HIPAA

The Problem Pregnancy Health Services Care Act is primarily a grant program so that community agencies may link those needing services with the service providers. 410 ILCS 230/4-101. Neither the Act nor rules promulgated thereunder address whether identifying health information is collected by the Department of Human Services. The Act does not address the privacy of health information.

It is possible to comply with this law and HIPAA. Further, this law does not stand as an obstacle to accomplishing the full purpose of HIPAA. Therefore, the law is not "contrary" to the HIPAA regulations. 45 C.F.R. § 160.202.

7. Is the Law Preempted?

No.

1. Name and Citation of Law

Pertussis Vaccine Act (410 ILCS 235/1)

2. General Description of the Law

The Pertussis Vaccine Act requires the Department of Public Health to prepare a public pamphlet which discusses the benefits and possible adverse reactions to immunizations for pertussis. The pamphlet is also to contain a list of required immunizations for admission to public or private school in this State. 410 ILCS 235/3.

3. Rules Promulgated Under the Law

None. No administrative rules have been promulgated under this law.

4. Key Provisions

None. There are no provisions of this Act addressing the issues raised by the HIPAA preemption analysis.

5. Significant Case Law

None. There is no significant case law addressing the issues raised by the HIPAA preemption analysis.

6. Preemption Analysis Under HIPAA

In the event that a practitioner believes a child has had a major adverse reaction to the pertussis vaccine, the health care provider is to report the manufacturer and lot number to the Department of Public Health. 410 ILCS 235/8. This function is a public health reporting function allowed by the Privacy Rule. 45 C.F.R. 164.512(b).

It is possible to comply with this law and HIPAA. Further, this law does not stand as an obstacle to accomplishing the full purpose of HIPAA. Therefore, the law is not "contrary" to the HIPAA regulations. 45 C.F.R. § 160.202.

7. Is the Law Preempted?

No.

1. Name and Citation of Law

Phenylketonuria Testing Act (410 ILCS 240/.01)

2. General Description of the Law

The Phenylketonuria ("PKU") Testing Act mandates that the Illinois Department of Public Health test all newborn infants for certain genetic disorders. 410 ILCS 240/1.

3. Rules Promulgated Under the Law

Newborn Metabolic Screening and Treatment Code, 77 Ill. Admin. Code 651.10

4. Key Provisions

410 ILCS 240/2, Power and Duties of Department; Tests; Fees; Metabolic Screening and Treatment Fund; Penalty

5. Significant Case Law

None. There is no significant case law addressing the issues raised by the HIPAA preemption analysis.

6. Preemption Analysis Under HIPAA

The Department processes these newborn screening tests in the public health laboratory, and may charge a fee for the testing services. 410 ILCS 240/2. Follow up treatment for infants testing positive is provided when practicable. 410 ILCS 240/2.

The Department of Public Health also supplies necessary formula for infants with PKU, when medically indicated and not available through other State agencies, such as Public Aid. 410 ILCS 240/2.

The provision by covered entities of health information so that IDPH can conduct mandatory screening on all newborns in Illinois is a public health activity. Thus, the Department's collection and testing of samples is permitted by the Privacy Rule as a public health activity. 45 C.F.R. § 164.512(b). While the formula distribution program provides and pays for health care, IDPH does not bill electronically for provision of formula. 45 C.F.R. §160.103.

It is possible to comply with this law and HIPAA. Further, this law does not stand as an obstacle to accomplishing the full purpose of HIPAA. Therefore, the law is not "contrary" to the HIPAA regulations. 45 C.F.R. § 160.202.

7. Is the Law Preempted?

No.

1. Name and Citation of Law

Reye's Syndrome Recording Act (410 ILCS 245/1)

2. General Description of the Law

3. Rules Promulgated Under the Law

77 Ill. Admin. Code 663.10.5 Rules Governing the Reporting of Reye's Syndrome

4. Key Provisions

410 ILCS 245/4, Reports; Contents; Filing; Availability for Research and Public Inspection
410 ILCS 245/5, Maintenance of Reports
77 Ill. Admin. Code 663.70, Confidentiality
77 Ill. Admin. Code 663.80, Available Information
77 Ill. Admin. Code 663.90, Conditions for Obtaining Information Concerning Patient Identification
77 Ill. Admin. Code 663.100, Results of Research Project

5. Significant Case Law

None. There is no significant case law addressing the issues raised by the HIPAA preemption analysis.

6. Preemption Analysis Under HIPAA

Reporting Reye's Syndrome to the Illinois Department of Public Health is a public health function which is authorized by law, and therefore, an allowed disclosure under the Privacy Rule. 45 C.F.R. §164.512(b). The Department of Public Health is not acting as a covered entity collecting this information.

It is possible to comply with this law and HIPAA. Further, this law does not stand as an obstacle to accomplishing the full purpose of HIPAA. Therefore, the law is not "contrary" to the HIPAA regulations. 45 C.F.R. § 160.202.

7. Is the Law Preempted?

No.

1. Name and Citation of Law

Developmental Disability Prevention Act (410 ILCS 250/.01)

2. General Description of the Law

The Developmental Disability Prevention Act creates a recognition framework for regional perinatal centers. High risk pregnancies are referred to the appropriate level of perinatal care in the geographic area.

3. Rules Promulgated Under the Law

Regionalized Perinatal Health Care Code, 77 Ill. Admin. Code 640.10

4. Key Provisions

77 Ill. Admin. Code 640.90, Perinatal Reporting System
77 Ill. Admin. Code 640.100, High-Risk Follow-Up Program

5. Significant Case Law

None. There is no significant case law addressing the issues raised by the HIPAA preemption analysis.

6. Preemption Analysis Under HIPAA

The Developmental Disability Prevention Act creates a perinatal reporting system in the Illinois Department of Public Health to follow high-risk pregnancies. 77 Ill. Admin. Code 640.90. Local health departments are charged with providing follow up services to residents of their counties. 77 Ill. Admin. Code 640.100. The Department of Public Health's activities pursuant to this statute and rules are health oversight activities and public health activities allowed by the Privacy Rule. 45 C.F.R. §164.512(b), (d).

It is possible to comply with this law and HIPAA. Further, this law does not stand as an obstacle to accomplishing the full purpose of HIPAA. Therefore, the law is not "contrary" to the HIPAA regulations. 45 C.F.R. § 160.202.

7. Is the Law Preempted?

No.

1. Name and Citation of Law

WIC Vendor Management Act (410 ILCS 255/1)

2. General Description of the Law

The WIC Vendor Management Act creates a program for the Department of Human Services to approve vendors to administer nutrition services under the Women, Infants and Children Nutrition Program under the Federal Special Supplemental Food Program for Women, Infants and Children. 42 U.S.C.A. §1786.

3. Rules Promulgated Under the Law

77 Ill. Admin. Code 672.100 WIC Vendor Management Code

4. Key Provisions

None. There are no provisions of this Act addressing the issues raised by the HIPAA preemption analysis.

5. Significant Case Law

None. There is no significant case law addressing the issues raised by the HIPAA preemption analysis.

6. Preemption Analysis Under HIPAA

The primary purpose of WIC is to provide nutrition services to pregnant women and children. HHS has specifically indicated that the WIC program is not a health plan as defined by the HIPAA rules as its primary purpose is not the provision of health care. 65 Fed. Reg. 82479.

It is possible to comply with this law and HIPAA. Further, this law does not stand as an obstacle to accomplishing the full purpose of HIPAA. Therefore, the law is not "contrary" to the HIPAA regulations. 45 C.F.R. § 160.202.

7. Is the Law Preempted?

No.

1. Name and Citation of Law

AIDS Confidentiality Act (410 ILCS 305/1)

2. General Description of the Law

The AIDS Confidentiality Act governs the circumstances surrounding the administration of HIV testing, and the parties to which the test results may be disclosed.

3. Rules Promulgated Under the Law

HIV/AIDS Confidentiality and Testing Code, 77 Ill. Admin. Code 697.10

4. Key Provisions

410 ILCS 305/8, Consent to Test; Information and Counseling; Exceptions
410 ILCS 305/9, Disclosure of Identity of Person Tested
410 ILCS 305/10, Disclosure by Person to Whom Results Have Been Disclosed
410 ILCS 305/11, Consent to Test; Persons Required by Law to be Tested
410 ILCS 305/15, Disclosure in Accordance with Departmental Reporting Requirements
410 ILCS 305/15.1, Exempt Entities
77 Ill. Admin. Code 697.120, Written Informed Consent
77 Ill. Admin. Code 697.130, Anonymous Testing
77 Ill. Admin. Code 697.140, Disclosure of the Identity of a Person Tested or Rest Results
77 Ill. Admin. Code 697.160, HIV Testing for Insurance Purposes
77 Ill. Admin. Code 697.180, HIV Testing for Blood and Human Tissue Donations
77 Ill. Admin. Code 697.200, HIV/AIDS Registry System
77 Ill. Admin. Code 697.210, Reporting Requirements
77 Ill. Admin. Code 697.220, Release of HIV/AIDS Registry Information
77 Ill. Admin. Code 697.400, Notification of School Principles
77 Ill. Admin. Code 697.410, Guidelines for the Management of Chronic Infectious Diseases in School Children
77 Ill. Admin. Code 697.420, Testing, Treatment or Counseling of Minors

5. Significant Case Law

Bitner v. Pekin Memorial Hospital, 251 Ill. Dec. 897, 317 Ill. App. 3d 935, 741 N.E.2d 1075 (3rd Dist. 2000)
Doe v. City of Chicago, 883 F. Supp. 1126 (N.D. Ill. 1994)
Anderson v. Romero, 72 F.3d 518 (7th Cir. 1995), 512(k)(5)

6. Preemption Analysis Under HIPAA

The AIDS Confidentiality Act provides that individuals may not be tested for HIV without giving informed consent, unless one of the statutorily enumerated exceptions is met. 410 ILCS 305/4, 7. The use and disclosure of those HIV test results is governed both by State law and the Privacy Rule. HIV test results may not be released without consent of the individual tested unless one of the specific State law exceptions is met. 77 Ill. Admin. Code 697.140.

The administrative rules allow HIV test results to be disclosed to the subject of the test and any person designated in a legally effective release. 77 Ill. Admin. Code 697.140(a)(1), (2). The authorization used must specifically mention that HIV test results are to be released. Id. The Privacy Rule does not differentiate between classes of protected health information, therefore the State law is more stringent in that the Privacy Rule would allow release of the test results for treatment, payment, and health care operations without consent or authorization of the individual. 45 C.F.R. §164.502, 164.506.

HIV test results may only be disclosed for treatment purposes to a health care facility or provider, or their authorized agent who is the referring, treating, or consulting provider if the individual has a need to know such information. 410 ILCS 305/9, 77 Ill. Admin. Code 697.140(a)(3). The "need to know" provision of State law is more stringent than the Privacy Rule, which does not apply a minimum necessary standard for disclosures made for treatment purposes. 45 C.F.R. §164.502(b). Disclosures of HIV tests are also allowed to effect contact tracing and other public health activities. 77 Ill. Admin. Code 697.140(a)(4). Such disclosures are allowed under the Privacy Rule as Public Health activities undertaken by a public health authority. 45 C.F.R. §164.512(b).

Health facilities and health care providers who are involved in procuring, processing, distributing, or using deceased human body parts or products used in artificial insemination are allowed to discover HIV test results. The Privacy Rule allows disclosure of protected health information for both organ procurement and other types of treatment, such as artificial insemination. 45 C.F.R. §164.502, 164.512(h). The State law also allows health facility staff committees to review HIV test results for the purpose of conducting program monitoring. 77 Ill. Admin. Code 697.140(a)(6). Disclosures of this nature are allowed under the Privacy Rule as the use of health information for health care operations. 45 C.F.R. §164.502, 164.506. In order to prevent the spread of disease, HIV test results are disclosed by public health authorities to school principals in certain situations. 77 Ill. Admin. Code 697.140(a)(7), 697.400. In addition, under Section 9 of the Act, a health care provider or employee, firefighter, EMT or law enforcement officer who may have come into contact with bodily fluids can be informed by a covered entity of an HIV test result. 77 Ill. Admin. Code 697.140(a)(8), (9). Disclosures by public health authorities to school principals should be part of a covered function (this assumes local health departments will segregate communicable disease regarding functions from

any HIV testing or service provision functions). Disclosures by covered entities to those specified as having came into contact with bodily fluids is permitted under the public health exception to the Privacy Rule if certain requirements are met. 45 C.F.R. § 164.512(b)(i)(iv). An individual who is a temporary caretaker of a child under DCFS protective custody may receive HIV test results under State law. 77 Ill. Admin. Code 697.140(a)(10). These individuals should qualify as a personal representatives of children. 45 C.F.R. §164.502(b), 164.512(b).

Illinois law allows researchers to receive HIV test results when the identity of the individual cannot be ascertained. 77 Ill. Admin. Code 697.140(b). The Privacy Rule allows such a disclosure only if the research is performed pursuant to an IRB waiver of informed consent, or the deidentification or limited data set standards are met. 45 C.F.R. §164.508, 164.514.

Illinois also provides that HIV test results and an informed consent to release those records must be maintained in a confidential manner which prohibits unauthorized persons from receiving the test results or authorization form. 77 Ill. Admin. Code 697.140(c). These requirements are more stringent than the Privacy Rule, as the Privacy Rule does not require any category of health information to be segregated within the medical record.

Illinois law also allows a minor's parent or legal guardian to receive the test results if in the professional judgment of the health care provider, notification is in the best interest of the child, but the provider has been unable to persuade the minor to notify the parent or guardian. Parental or guardian notification is allowed if the disclosure is to a personal representative under the Privacy Rule. 45 C.F.R. §164.502(g).

Illinois law prohibits the further disclosure of results of a test which have been disclosed under the AIDS Confidentiality Act. 410 ILCS 305/10. The Privacy Rule does not prohibit further disclosure of test results absent some additional duty of the recipient as a covered entity. 45 C.F.R. §164.502. State law, therefore, is more stringent in prohibiting redisclosure of the test results by any individual, irrespective of their status as a covered entity under the Privacy Rule. 410 ILCS 305/10.

Illinois law holds that inmates may not have the same rights with respect to their HIV status as individuals who are not incarcerated. See *Anderson v. Romero*, 72 F.3d 518 (7th Cir. 1995). In *Anderson v. Romero*, the Court held that disclosure of the inmate's HIV status to other inmates and prison staff was not a violation of the inmate's constitutional rights. In contrast, the protected health information of an inmate can only be disclosed when necessary for the safety of the inmate or staff of the correctional facility. 45 C.F.R. §164.512(k)(5). Correctional institutions must follow the stricter standards contained in the Privacy Rule. Id.

It is possible to comply with this law and HIPAA. Further, this law does not stand as an obstacle to accomplishing the full purpose of HIPAA. Therefore, the law is not "contrary" to the HIPAA regulations. 45 C.F.R. §160.202.

7. Is the Law Preempted?

No.

1. Name and Citation of Law

AIDS Registry Act (410 ILCS 310/1)

2. General Description of the Law

The AIDS Registry Act allows the Department of Public Health to maintain an AIDS registry. Individuals in the registry are to be identified by a code rather than by a name. The Department has legal authority to require hospitals, laboratories, and other facilities who diagnose AIDS to report to the Department.

3. Rules Promulgated Under the Law

HIV/AIDS Counseling and Testing Code, 77 Ill. Admin. Code 697.200

4. Key Provisions

410 ILCS 310/4, AIDS Registry
77 Ill. Admin. Code 697.200, HIV/AIDS Registry System
77 Ill. Admin. Code 697.210, Reporting Requirements
77 Ill. Admin. Code 697.220, Release of HIV/AIDS Registry Information

5. Significant Case Law

None. There is no significant case law addressing the issues raised by the HIPAA preemption analysis.

6. Preemption Analysis Under HIPAA

The reporting of AIDS under the AIDS Registry Act is a public health function allowed by the Privacy Rule. 45 C.F.R. § 164.512(b). The Director of the Department of Public Health has the ability to establish standards for protecting information in the registry. 410 ILCS 310/4(c).

It should be noted that the Department of Public Health Registry contains both HIV infection cases and diagnosed cases of AIDS. The authority for requesting HIV data is under the Communicable Disease Prevention Act, 410 ILCS 315/.01, which is discussed in another section of this analysis.

Local public health authorities file reports with the Illinois Department of Public Health concerning HIV infection and AIDS cases. 77 Ill. Admin. Code 697.210. Releases of this data are not allowed unless the information does not identify the reporting entity, physician or patient in any way, or as otherwise authorized by law. 77 Ill. Admin. Code

697.220(a). Because this statute deals with public health reporting, the Department of Public Health is not acting as a covered entity in maintaining this registry and is not mandated by the HIPAA provisions concerning release of information.

It is possible to comply with this law and HIPAA. Further, this law does not stand as an obstacle to accomplishing the full purpose of HIPAA. Therefore, the law is not "contrary" to the HIPAA regulations. 45 C.F.R. § 160.202.

7. Is the Law Preempted?

No.

1. Name and Citation of Law

Communicable Disease Prevention Act (410 ILCS 315/.01)

2. General Description of the Law

The Communicable Disease Prevention Act allows the Department to specify immunizations which must be received prior to school or day care entry. Further, Section 2a of the Act provides mandatory reporting by the Illinois Department of Public Health or a local health department to the school principal of school-aged children diagnosed as having AIDS. Finally, the Act allows the Department to receive and expend Ryan White AIDS Funds.

3. Rules Promulgated Under the Law

77 Ill. Admin. Code 695.10, Immunization Code

4. Key Provisions

None. There are no provisions of this Act addressing the issues raised by the HIPAA preemption analysis.

5. Significant Case Law

None. There is no significant case law addressing the issues raised by the HIPAA preemption analysis.

6. Preemption Analysis Under HIPAA

The Communicable Disease Prevention Act allows the Department of Public Health to prescribe an immunization schedule for all school-age children and those attending day care. 410 ILCS 315/2. The Act does not provide for the disclosure of protected health information in setting forth the immunization schedule and is therefore, not affected by the preemption analysis.

The provisions relating to grant funds available under the Ryan White Act do not raise issues relevant to the preemption analysis, as Ryan White funding is excluded from the definition of a “health plan” under the Privacy Rule. 410 ILCS 315/2(b)-(d), 45 C.F.R. §160.103.

It is possible to comply with this law and HIPAA. Further, this law does not stand as an obstacle to accomplishing the full purpose of HIPAA. Therefore, the law is not “contrary” to the HIPAA regulations. 45 C.F.R. § 160.202.

7. Is the Law Preempted?

No.

1. Name and Citation of Law

Prenatal Syphilis Act (410 ILCS 320/.01)

2. General Description of the Law

The Prenatal Syphilis Act provides that physicians in the State of Illinois, or others attending a pregnant woman in Illinois in a professional capacity shall take a syphilis test during the first examination and a second test during the third trimester of pregnancy. 410 ILCS 320/1. Birth certificates shall state whether the test was performed. 410 ILCS 320/2.

3. Rules Promulgated Under the Law

None. No administrative rules have been promulgated under this law.

4. Key Provisions

None. There are no provisions of this Act addressing the issues raised by the HIPAA preemption analysis.

5. Significant Case Law

None. There is no significant case law addressing the issues raised by the HIPAA preemption analysis.

6. Preemption Analysis Under HIPAA

The Prenatal Syphilis Act requires a physician or other professional to order a syphilis test. 410 ILCS 320/1. The Act does not address privacy regarding the results of the test, and does not mandate reporting of the test results.

It is possible to comply with this law and HIPAA. Further, this law does not stand as an obstacle to accomplishing the full purpose of HIPAA. Therefore, the law is not "contrary" to the HIPAA regulations. 45 C.F.R. § 160.202.

7. Is the Law Preempted?

No.

1. Name and Citation of Law

Illinois Sexually Transmissible Disease Control Act (410 ILCS 325/1)

2. General Description of the Law

The Illinois Sexually Transmissible Disease Control Act requires physicians and laboratories to report sexually transmissible disease positive test results to the Department. Follow up with persons who may reasonably believed to be infected is done by the local health department.

3. Rules Promulgated Under the Law

77 Ill. Admin. Code 693.10, Control of Sexually Transmissible Diseases Code

4. Key Provisions

410 ILCS 325/4, Reporting Required
410 ILCS 325/6, Physical Examination and Treatment
410 ILCS 325/7, Quarantine and Isolation
410 ILCS 325/8, Confidentiality
410 ILCS 325/9, Prisoners
77 Ill. Admin. Code 693.20, Reportable STDs and Laboratory Results
77 Ill. Admin. Code 693.100, Confidentiality

5. Significant Case Law

None. There is no significant case law addressing the issues raised by the HIPAA preemption analysis.

6. Preemption Analysis Under HIPAA

The Illinois Sexually Transmissible Disease Control Act is a classic public health activity allowed under the Privacy Rule. 45 C.F.R. §164.512(b).

The Sexually Transmissible Disease Control Act has strict confidentiality provisions which do not allow Department employees to be called to testify in court proceedings. 410 ILCS 325/8, 77 Ill. Admin. Code 693.100. Such confidentiality provisions are more stringent than the Privacy Rule. 45 C.F.R. §160.202.

It is possible to comply with this law and HIPAA. Further, this law does not stand as an obstacle to accomplishing the full purpose of HIPAA. Therefore, the law is not "contrary" to the HIPAA regulations. 45 C.F.R. § 160.202.

7. Is the Law Preempted?

No.

1. Name and Citation of Law

Polio Vaccine Act (410 ILCS 330/01)

2. General Description of the Law

The Polio Vaccine Act allows the Department of Public Health to acquire and distribute vaccines for the prevention of poliomyelitis.

3. Rules Promulgated Under the Law

None. No administrative rules have been promulgated under this law.

4. Key Provisions

None. There are no provisions of this Act addressing the issues raised by the HIPAA preemption analysis.

5. Significant Case Law

None. There is no significant case law addressing the issues raised by the HIPAA preemption analysis.

6. Preemption Analysis Under HIPAA

The provision of immunizations is specifically excluded from the definition of a health plan under the Privacy Rule. 45 C.F.R. 160.103.

It is possible to comply with this law and HIPAA. Further, this law does not stand as an obstacle to accomplishing the full purpose of HIPAA. Therefore, the law is not "contrary" to the HIPAA regulations. 45 C.F.R. § 160.202.

7. Is the Law Preempted?

No.

1. Name and Citation of Law

The Alzheimer's Disease Assistance Act (410 ILCS 405)

2. General Description of the Law

The Alzheimer's Disease Assistance Act allows the Department of Public Health to establish regional disease assistance centers where Alzheimer's patients may seek treatment. The Department may establish treatment standards for Alzheimer's patients at these centers.

3. Rules Promulgated Under the Law

77 Ill. Admin. Code 710.10, Illinois Alzheimer's Disease and Related Disorders Assistance Code

4. Key Provisions

None. There are no provisions of this Act addressing the issues raised by the HIPAA preemption analysis.

5. Significant Case Law

None. There is no significant case law addressing the issues raised by the HIPAA preemption analysis.

6. Preemption Analysis Under HIPAA

The designation of regional Alzheimer's disease assistance centers is similar to a licensure program and constitutes health oversight under the HIPAA privacy regulations. 45 C.F.R. 164.512(d). The standard treatment protocol created by the Department is not a health plan of treatment but a resource for providers. 410 ILCS 405/4, 45 C.F.R. 164.501 (definition "health plan"). The Department is to advocate a provider focus on best practices. Id. The statute does not address the privacy of health information.

It is possible to comply with this law and HIPAA. Further, this law does not stand as an obstacle to accomplishing the full purpose of HIPAA. Therefore, the law is not "contrary" to the HIPAA regulations. 45 C.F.R. § 160.202.

7. Is the Law Preempted?

No.

1. Name and Citation of Law

Alzheimer's Disease Research Act (410 ILCS 410/1)

2. General Description of the Law

The Alzheimer's Disease Research Act creates an Illinois income tax write off for voluntary contributions to the Alzheimer's Disease Research Fund.

3. Rules Promulgated Under the Law

Illinois Alzheimer's Disease and Related Disorders Assistance Code, 77 Ill. Admin. Code 710.10

4. Key Provisions

None. There are no provisions of this Act addressing the issues raised by the HIPAA preemption analysis.

5. Significant Case Law

None. There is no significant case law addressing the issues raised by the HIPAA preemption analysis.

6. Preemption Analysis Under HIPAA

The Alzheimer's Disease Research Act creates an income tax form check off to allow individuals to contribute to the Alzheimer's Disease Research Fund. 410 ILCS 410/2. Grants are awarded pursuant to the system outlined in the Department of Public Health Rules. 77 Ill. Admin. Code 710.10. These activities do not create specific reporting requirements, and therefore, no HIPAA preemption implications exist.

It is possible to comply with this law and HIPAA. Further, this law does not stand as an obstacle to accomplishing the full purpose of HIPAA. Therefore, the law is not "contrary" to the HIPAA regulations. 45 C.F.R. § 160.202.

7. Is the Law Preempted?

No.

1. Name and Citation of Law

Experimental Cancer Treatment Act (410 ILCS 415/1)

2. General Description of the Law

The Experimental Cancer Treatment Act requires the Illinois Department of Public Health to disseminate cancer treatment related material. The Act also limits provision of cancer treatment to those who are licensed to practice medicine, dentistry, or podiatric medicine.

3. Rules Promulgated Under the Law

None. No administrative rules have been promulgated under this law.

4. Key Provisions

None. There are no provisions of this Act addressing the issues raised by the HIPAA preemption analysis.

5. Significant Case Law

None. There is no significant case law addressing the issues raised by the HIPAA preemption analysis.

6. Preemption Analysis Under HIPAA

The Experimental Cancer Treatment Act allows the Department to disseminate cancer treatment information to the public. 410 ILCS 415/3. The statute does not address the privacy of health information.

It is possible to comply with this law and HIPAA. Further, this law does not stand as an obstacle to accomplishing the full purpose of HIPAA. Therefore, the law is not "contrary" to the HIPAA regulations. 45 C.F.R. § 160.202.

7. Is the Law Preempted?

No.

1. Name and Citation of Law

The Hemophilia Care Act (410 ILCS 420)

2. General Description of the Law

The Hemophilia Care Act allows the Department of Public Aid to establish criteria for assisting hemophiliacs with the cost of blood transfusions, blood derivatives, and for other medical expenses incurred as a result of being a hemophiliac.

3. Rules Promulgated Under the Law

None. No administrative rules have been promulgated under this law.

4. Key Provisions

None. There are no provisions of this Act addressing the issues raised by the HIPAA preemption analysis.

5. Significant Case Law

None. There is no significant case law addressing the issues raised by the HIPAA preemption analysis.

6. Preemption Analysis Under HIPAA

The Hemophilia Care Act creates a system for payment of services for hemophilia services. 410 ILCS 420/3. The Hemophilia Care Act does not contain any provisions specifically addressing the privacy of health information.

It is possible to comply with this law and HIPAA. Further, this law does not stand as an obstacle to accomplishing the full purpose of HIPAA. Therefore, the law is not "contrary" to the HIPAA regulations. 45 C.F.R. § 160.202.

7. Is the Law Preempted?

No.

1. Name and Citation of Law

High Blood Pressure Control Act (410 ILCS 425/1)

2. General Description of the Law

The High Blood Pressure Control Act provides for the Department of Public Health to create regional registries of patients with high blood pressure.

3. Rules Promulgated Under the Law

None. No administrative rules have been promulgated under this law.

4. Key Provisions

410 ILCS 425/5	Entry of Patient Into Registry; Information; Withdrawal
410 ILCS 425/6	Confidentiality of Information

5. Significant Case Law

None. There is no significant case law addressing the issues raised by the HIPAA preemption analysis.

6. Preemption Analysis Under HIPAA

The High Blood Pressure Control Act creates a voluntary high blood pressure registry to track treatment and its effectiveness. 410 ILCS 425/5. All information furnished to the Department for the Registry is confidential and can only be used for furtherance of the treatment of high blood pressure. 410 ILCS 425/6. A rather unique feature of this registry is that it is populated pursuant to patient consent, rather than statutory mandated reporting. 410 ILCS 425/5. The Privacy Rule does not distinguish among public health information collected pursuant to a consent or by mandated reporting, as long as the collection is authorized by law. 45 C.F.R. §164.512(b).

It is possible to comply with this law and HIPAA. Further, this law does not stand as an obstacle to accomplishing the full purpose of HIPAA. Therefore, the law is not "contrary" to the HIPAA regulations. 45 C.F.R. § 160.202.

7. Is the Law Preempted?

No.

1. Name and Citation of Law

Renal Disease Treatment Act (410 ILCS 430/.01)

2. General Description of the Law

The Renal Disease Treatment Act requires the Department of Public Aid to establish a program for the care and treatment of persons suffering renal disease. The Department of Public Health assists with the advisory duties under this program.

3. Rules Promulgated Under the Law

None. No administrative rules have been promulgated under this law.

4. Key Provisions

None. There are no provisions of this Act addressing the issues raised by the HIPAA preemption analysis.

5. Significant Case Law

None. There is no significant case law addressing the issues raised by the HIPAA preemption analysis.

6. Preemption Analysis Under HIPAA

The Department of Public Aid pays for services to individuals who are suffering from chronic renal disease. As long as the Department of Public Aid generally complies with pertinent HIPAA requirements in carrying out the Renal Disease Program, this law does not appear to be impacted by the preemption analysis.

It is possible to comply with this law and HIPAA. Further, this law does not stand as an obstacle to accomplishing the full purpose of HIPAA. Therefore, the law is not "contrary" to the HIPAA regulations. 45 C.F.R. § 160.202.

7. Is the Law Preempted?

No.

1. Name and Citation of Law

Rheumatic Fever and Heart Disease Medicine Act (410 ILCS 440/.09)

2. General Description of the Law

The Rheumatic Fever and Heart Disease Medicine Act gives the Department of Public Health the right to acquire and distribute prophylactic medicine for the prevention of rheumatic fever and rheumatic heart disease. The Department of Public Health is allowed to create rules under the Act to carry out the provisions.

3. Rules Promulgated Under the Law

None. No administrative rules have been promulgated under this law.

4. Key Provisions

None. There are no provisions of this Act addressing the issues raised by the HIPAA preemption analysis.

5. Significant Case Law

None. There is no significant case law addressing the issues raised by the HIPAA preemption analysis.

6. Preemption Analysis Under HIPAA

It appears that the Rheumatic Fever and Heart Disease Medicine Act is no longer used by the Department of Public Health. Irrespective of the current use of the Act, any such activities would meet the definition of a public health activity under the Privacy Rule. 45 C.F.R. §164.512(b).

It is possible to comply with this law and HIPAA. Further, this law does not stand as an obstacle to accomplishing the full purpose of HIPAA. Therefore, the law is not "contrary" to the HIPAA regulations. 45 C.F.R. § 160.202.

7. Is the Law Preempted?

No.

1. Name and Citation of Law

Arthritis Quality of Life Initiative Act (410 ILCS 503/1)

2. General Description of the Law

The Arthritis Quality of Life Initiative Act enables the Department of Public Health to establish initiatives and accept and distribute grant money for programs to promote public awareness of arthritis, prevention options, and the value of early diagnosis and treatment.

3. Rules Promulgated Under the Law

None. No administrative rules have been promulgated under this law.

4. Key Provisions

None. There are no provisions of this Act addressing the issues raised by the HIPAA preemption analysis.

5. Significant Case Law

None. There is no significant case law addressing the issues raised by the HIPAA preemption analysis.

6. Preemption Analysis Under HIPAA

The Department's activities under this statute do not involve protected health information. It is possible to comply with this law and HIPAA. Further, this law does not stand as an obstacle to accomplishing the full purpose of HIPAA. Therefore, the law is not "contrary" to the HIPAA regulations. 45 C.F.R. § 160.202.

7. Is the Law Preempted?

No.

1. Name and Citation of Law

The Autopsy Act (410 ILCS 505/.01)

2. General Description of the Law

The Autopsy Act allows any physician to perform an autopsy upon written authorization from the decedent, a surviving relative, a health care power of attorney or next of kin.

3. Rules Promulgated Under the Law

None. No administrative rules have been promulgated under this law.

4. Key Provisions

None. There are no provisions of this Act addressing the issues raised by the HIPAA preemption analysis.

5. Significant Case Law

None. There is no significant case law addressing the issues raised by the HIPAA preemption analysis.

6. Preemption Analysis Under HIPAA

The Autopsy Act allows for a written authorization from a decedent, surviving relative, health care power of attorney, or other person with such a right to provide written authorization for an autopsy to be performed. 410 ILCS 505/2. In the event that suspicious circumstances surround the death of a child, the physician performing the autopsy shall be certified by the Department of Public Health's Advisory Board on Necropsy Services. Id. The third party consent provided in this Act is valid as the Privacy Rule defers to state law in determining who is allowed to act as a personal representative. 45 C.F.R. 164.502(g).

It is possible to comply with this law and HIPAA. Further, this law does not stand as an obstacle to accomplishing the full purpose of HIPAA. Therefore, the law is not "contrary" to the HIPAA regulations. 45 C.F.R. § 160.202.

7. Is the Law Preempted?

No.

1. Name and Citation of Law

Cadaver Act (410 ILCS 510/01)

2. General Description of the Law

The Cadaver Act allows anyone in custody of a body that is to be buried at public expense to deliver the body to a medical college or school, or other institution of higher science education for research purposes.

3. Rules Promulgated Under the Law

None. No administrative rules have been promulgated under this law.

4. Key Provisions

None. There are no provisions of this Act addressing the issues raised by the HIPAA preemption analysis.

5. Significant Case Law

None. There is no significant case law addressing the issues raised by the HIPAA preemption analysis.

6. Preemption Analysis Under HIPAA

The Cadaver Act provides a statutory basis for bodies that would need to be disposed of at public expense to be used for research purposes. 410 ILCS 510/1. Such a disposition is to be noted on the death certificate in accordance with the Illinois Vital Records Code. 77 Ill. Admin. Code 500.10. The rights of the nearest relatives of the deceased to possession of the body for proper burial supersede this statute. *Palenzke v. Bruning*, 98 Ill. App. 644 (1902). The Privacy Rule addresses the handling of protected health information of deceased individuals. This Act does not address the privacy of health information.

It is possible to comply with this law and HIPAA. Further, this law does not stand as an obstacle to accomplishing the full purpose of HIPAA. Therefore, the law is not "contrary" to the HIPAA regulations. 45 C.F.R. § 160.202.

7. Is the Law Preempted?

No.

1. Name and Citation of Law

Genetic Information Privacy Act (410 ILCS 513/1)

2. General Description of the Law

The Genetic Information Privacy Act specifies the circumstances under which genetic information may be released to employers, for insurance purposes, and in court proceedings.

3. Rules Promulgated Under the Law

None. No administrative rules have been promulgated under this law.

4. Key Provisions

410 ILCS 513/15, Confidentiality of Genetic Information
410 ILCS 513/20, Use of Genetic Testing Information for Insurance Purposes
410 ILCS 513/22, Tests to Determine Inherited Characteristics in Paternity Proceedings
410 ILCS 513/25, Use of Genetic Testing Information by Employers
410 ILCS 513/30, Disclosure of Person Tested and Test Results
410 ILCS 513/35, Disclosure by a Person to Whom Results Have Been Disclosed

5. Significant Case Law

None. There is no significant case law addressing the issues raised by the HIPAA preemption analysis.

6. Preemption Analysis Under HIPAA

The Genetic Information Privacy Act mandates that genetic testing and information derived from genetic testing is confidential and privileged and can only be released by specific authorization of the individual. 410 ILCS 513/15. The Privacy Rule does not indicate that genetic information is to be treated differently than other health information and does not require authorization for release of health care information for treatment, payment, or health care operations. 45 C.F.R. §164.506. Therefore, this provision of State law is more stringent than the HIPAA privacy rules. 45 C.F.R. §160.202.

Disclosure for criminal investigatory purposes and prosecution is allowed under the statute. 410 ILCS 513/15. Such testing and release of information is allowable under the Privacy Rule if proper procedures for a court order are followed. 45 C.F.R. 164.512(e). Further, this same section of the Privacy Rule allows the disclosure for paternity proceedings to occur as outlined in 410 ILCS 513/22, if consistent with the Privacy Rule.

Id.

The Illinois law forbids the use of genetic testing information in connection with applying for and issuing a policy of accident and health insurance. 410 ILCS 513/20. This prohibition applies irrespective of the source of the genetic information, unless the individual voluntarily submits the results and the results are favorable to the individual. Id. This restriction on the use of genetic information for underwriting activities is more stringent than the Privacy Rule, which does not require a consent for the use or disclosure of health information for "health operations" purposes. 45 C.F.R. 160.202.

Section 30 of the Genetic Information Privacy Act governs the disclosure of the patient's identity and their test results. 410 ILCS 513/30. Genetic test results can be disclosed to the subject of the test or their legally authorized representative. Id. The State-mandated use of an authorization is consistent with the Privacy Rule, which also allows disclosure to those specified in an authorization. 45 C.F.R. §164.508. Consent is required for most disclosures under Illinois law. 410 ILCS 513/30(3), (5). Again, this provision appears to be more stringent than the Privacy Rule as no consent or authorization is required under the Privacy Rule for the use or disclosures of health information for purposes of treatment, payment, or health care operations. 45 C.F.R. 160.201, 202.

The Genetic Information Privacy Act also deals with the genetic information of a minor under 18 years of age, and allows a health care provider who ordered the test to notify the minor's parent or legal guardian, if disclosure is in the best interest of the minor and the minor has refused to consent. This disclosure is allowable under the Privacy Rule as provisions of State law regarding the personal representatives of minors not disturbed by the Privacy Rule. 45 C.F.R. 164.502(g).

Finally, the Act prohibits further disclosure of genetic test results. 410 ILCS 513/35. The prohibition on further disclosure appears to be more stringent than the Privacy Rule. 45 C.F.R. §160.201.

It is possible to comply with this law and HIPAA. Further, this law does not stand as an obstacle to accomplishing the full purpose of HIPAA. Therefore, the law is not "contrary" to the HIPAA regulations. 45 C.F.R. § 160.202.

7. Is the Law Preempted?

No.

1. Name and Citation of Law

Head and Spinal Cord Injury Act (410 ILCS 515/.01)

2. General Description of the Law

The Head and Spinal Cord Injury Act creates a registry in the Department of Public Health on all head and spinal cord injuries occurring in the State, including the effects of these injuries on the sensory, motor and visceral systems. 410 ILCS 515/1.

3. Rules Promulgated Under the Law

Head and Spinal Cord Injury Code, 77 Ill. Admin. Code 550.10

4. Key Provisions

410 ILCS 515/3, Confidentiality
77 Ill. Admin. Code 550.130, Confidentiality

5. Significant Case Law

None. There is no significant case law addressing the issues raised by the HIPAA preemption analysis.

6. Preemption Analysis Under HIPAA

Although identifying information is collected by the registry located at the Department, identifying information is not released unless the release is by consent of the patient. 410 ILCS 515/2, 3, 77 Ill. Admin. Code 550.120, 130.

The Head and Spinal Cord Injury Act creates a registry. Reporting of health information by covered entities to the registry constitutes public health activity by a grant of authority of State law allowed by the Privacy Rule. 45 C.F.R. §164.512(b).

The Advisory Council on Spinal Cord and Head Injuries created in the Department of Human Services does not have access to identifiable information pursuant to statute. 410 ILCS 515/3, 6. This requirement appears to be more stringent than the Privacy Rule. 45 C.F.R. §164.512(b).

It is possible to comply with this law and HIPAA. Further, this law does not stand as an obstacle to accomplishing the full purpose of HIPAA. Therefore, the law is not "contrary" to the HIPAA regulations. 45 C.F.R. § 160.202.

7. Is the Law Preempted?

No.

1. Name and Citation of Law

Health Care Professional Credentials Data Collection Act (410 ILCS 517/1)

2. General Description of the Law

The Health Care Professional Credentials Data Collection Act allows the Department of Public Health to create a uniform health care and hospital credentials form for use by health care facilities and health plans in the State of Illinois for credentialed health care professionals.

3. Rules Promulgated Under the Law

77 Ill. Admin. Code 965.110, Health Care Professional Credentials Data Collection Code

4. Key Provisions

None. There are no provisions of this Act addressing the issues raised by the HIPAA preemption analysis.

5. Significant Case Law

None. There is no significant case law addressing the issues raised by the HIPAA preemption analysis.

6. Preemption Analysis Under HIPAA

The Health Care Professional Credentials Data Collection Act and accompanying rules do not anticipate the collection or use of protected health information in carrying out their purposes. Protected health information can be used and disclosed for credentialing functions as part of health care operations under the Privacy Rule. 45 C.F.R. §164.502.

It is possible to comply with this law and HIPAA. Further, this law does not stand as an obstacle to accomplishing the full purpose of HIPAA. Therefore, the law is not "contrary" to the HIPAA regulations. 45 C.F.R. § 160.202.

7. Is the Law Preempted?

No.

1. Name and Citation of Law

Illinois Health Statistics Act (410 ILCS 520)

2. General Description of the Law

The Illinois Health Statistics Act allows the Department of Public Health to collect and maintain health data for a variety of purposes including the identification of health hazards, the extent, nature and impact of illness and disability in the population, available health resources, the utilization of health care, health care costs and financing, and other health related matters. 410 ILCS 520/4(a)(1).

3. Rules Promulgated Under the Law

77 Ill. Admin. Code 1005, Collection, Disclosure, and Confidentiality of Health Statistics

4. Key Provisions

410 ILCS 520/4, Powers and Duties of Department; Collection of Health Data

5. Significant Case Law

None. There is no significant case law addressing the issues raised by the HIPAA preemption analysis.

6. Preemption Analysis Under HIPAA

The Illinois Health Statistics Act and rules promulgated thereunder present two issues to be addressed in the preemption analysis. Initially, disclosure to the Illinois Department of Public Health must be analyzed. In addition, it must be ascertained whether the Department can continue to make the disclosures allowed by the statute.

Collection of health data under the Illinois Health Statistics Act is a public health activity permitted by the Privacy Rule. 45 C.F.R. §164.512(b). The data is collected to study illness and disability in the population, health resources, and other public health matters. 410 ILCS 520/4. Further, collection by the Department is done on a voluntary basis unless a specific legal mandate exists to compel collection. 410 ILCS 520/4(c).

The Data Protection and Review Board and the Director of Public Health make the ultimate decision as to whether disclosure of data collected under the Illinois Health Statistics Act is proper. 410 ILCS 520/5, 77 Ill. Admin. Code 1005.40. Because the Department of Public Health is not acting as a covered entity in collecting this data, the disclosure of the data is not addressed by the Privacy Rule.

It is possible to comply with this law and HIPAA. Further, this law does not stand as an obstacle to accomplishing the full purpose of HIPAA. Therefore, the law is not "contrary" to the HIPAA regulations. 45 C.F.R. § 160.202.

7. Is the Law Preempted?

No.

1. Name and Citation of Law

Illinois Health and Hazardous Substances Registry Act (410 ILCS 525/1)

2. General Description of the Law

The Illinois Health and Hazardous Substances Registry Act allows the Department of Public Health to collect information on adverse pregnancy outcomes, cancer incidences, occupational diseases, exposure to hazardous nuclear materials, company profiles, and hazardous substance incidents. 410 ILCS 525/6.

3. Rules Promulgated Under the Law

77 Ill. Admin. Code 840.5, Illinois Health and Hazardous Substances Registry Code

4. Key Provisions

None. There are no provisions of this Act addressing the issues raised by the HIPAA preemption analysis.

5. Significant Case Law

None. There is no significant case law addressing the issues raised by the HIPAA preemption analysis.

6. Preemption Analysis Under HIPAA

The Illinois Hazardous Substances Registry creates a public health reporting system for disease monitoring to reduce morbidity and mortality in the State of Illinois. 410 ILCS 525/2. Such disclosures for public health purposes are allowed by the Privacy Rule. 45 C.F.R. §164.512(b). The Department is not a covered entity in conducting these registry functions.

It is possible to comply with this law and HIPAA. Further, this law does not stand as an obstacle to accomplishing the full purpose of HIPAA. Therefore, the law is not "contrary" to the HIPAA regulations. 45 C.F.R. § 160.202.

7. Is the Law Preempted?

No.

1. Name and Citation of Law

Marriage, Dissolution, and Invalidity Records Act (410 ILCS 530/.01)

2. General Description of the Law

The Marriage, Dissolution and Invalidity Records Act allows the Department of Public Health to maintain the official registry of marriage, dissolutions of marriage, and declarations of invalidity of marriages for the State. 410 ILCS 530/1.

3. Rules Promulgated Under the Law

None. No administrative rules have been promulgated under this law.

4. Key Provisions

None. There are no provisions of this Act addressing the issues raised by the HIPAA preemption analysis.

5. Significant Case Law

None. There is no significant case law addressing the issues raised by the HIPAA preemption analysis.

6. Preemption Analysis Under HIPAA

The Marriage, Dissolution and Invalidity of Records Act does not address the receipt of protected health information.

It is possible to comply with this law and HIPAA. Further, this law does not stand as an obstacle to accomplishing the full purpose of HIPAA. Therefore, the law is not "contrary" to the HIPAA regulations. 45 C.F.R. § 160.202.

7. Is the Law Preempted?

No.

1. Name and Citation of Law

Vital Records Act (410 ILCS 535/1)

2. General Description of the Law

The Vital Records Act prescribes a system of registering births, adoptions and deaths in the State of Illinois through both the Deputy State Registrar at the Department of Public Health and local registrars at the county clerk's offices of various counties in the State of Illinois.

3. Rules Promulgated Under the Law

77 Ill. Admin. Code 500.10, Illinois Vital Records Code

4. Key Provisions

None. There are no provisions of this Act addressing the issues raised by the HIPAA preemption analysis.

5. Significant Case Law

Jane Doe II v. Lumpkin, No. 89-1224, (C.D.Ill. Feb. 21, 1991)

6. Preemption Analysis Under HIPAA

The Vital Records Act provides for a system of collection of birth, death and adoption records in the State of Illinois. 410 ILCS 535/5. This activity is specifically permitted by the public health activities section of the Privacy Rule and is not a covered function. 45 C.F.R. §164.512(b). It should be noted that pursuant to a consent decree issued in *Doe v. Lumpkin*, No. 89-1224, (C.D.Ill. Feb. 21, 1991), the bottom half of a birth certificate is not releaseable to a spouse or other individual without the written consent of the mother. *Doe*, slip. op. at 19, 27.

It is possible to comply with this law and HIPAA. Further, this law does not stand as an obstacle to accomplishing the full purpose of HIPAA. Therefore, the law is not "contrary" to the HIPAA regulations. 45 C.F.R. § 160.202.

7. Is the Law Preempted?

No.

1. Name and Citation of Law

Sanitary Food Preparation Act (410 ILCS 650/.01)

2. General Description of the Law

The Sanitary Food Preparation Act requires that food establishments have certain lavatory and plumbing requirements.

3. Rules Promulgated Under the Law

Food Service Sanitation Code, 77 Ill. Admin. Code 750.5

4. Key Provisions

410 ILCS 650/10, Communicable or Sexually Transmitted Disease

5. Significant Case Law

None. There is no significant case law addressing the issues raised by the HIPAA preemption analysis.

6. Preemption Analysis Under HIPAA

The Sanitary Food Preparation Act prohibits any person affected with any communicable or sexually transmitted disease to work in a building, room, basement, enclosure, premises, or vehicle, occupied or used for the preparation, manufacture, packing, storage, sale, distribution, or transportation of food. 410 ILCS 650/10. The Act does not provide for any particular method of disclosure to an employer of the employee's status. Rules promulgated under the Act allow the Illinois Department of Public Health and/or local public health department having jurisdiction over the food service establishment the power to gather individually, identifiable health information and take other related action pursuant to Public Health surveillance and follow up techniques. 77 Ill. Admin. Code 750.500. Such activities are allowed by the public health exception to the Privacy Rule. 45 C.F.R. 164.512(b).

It is possible to comply with this law and HIPAA. Further, this law does not stand as an obstacle to accomplishing the full purpose of HIPAA. Therefore, the law is not "contrary" to the HIPAA regulations. 45 C.F.R. § 160.202.

7. Is the Law Preempted?

No.

1. Name and Citation of Law

Environmental Protection Act (415 ILCS 5)

2. General Description of the Law

The Illinois Environmental Protection Act establishes a unified statewide program for environmental protection to assist with air, water and other resource pollution, public water supply, solid waste disposal, noise and other environmental problems.

3. Rules Promulgated Under the Law

35 Ill. Admin. Code 101, General Provisions
35 Ill. Admin. Code 102, Regulatory and Informational Hearings and Proceedings
35 Ill. Admin. Code 103, Enforcement
35 Ill. Admin. Code 104, Regulatory Relief Mechanisms
35 Ill. Admin. Code 105, Appeals of Final Decisions of State Agencies
35 Ill. Admin. Code 106, Proceedings Pursuant to Specific Rules or Statutory Provisions
35 Ill. Admin. Code 107, Petition to Review Pollution Control Facility Siting Decisions
35 Ill. Admin. Code 108, Administrative Citations
35 Ill. Admin. Code 125, Tax Certifications
35 Ill. Admin. Code 130, Identification and Protection of Trade Secrets and Other Non-Disclosure Information
35 Ill. Admin. Code 164, Procedures for Informational and Quasi-legislative Public Hearings
35 Ill. Admin. Code 166, Procedures for Permit and Closure Plan Hearings
35 Ill. Admin. Code 168, Procedures for Contested Case Hearings
35 Ill. Admin. Code 170, Procedures for Coordinated Permit Review
35 Ill. Admin. Code 174, Delegation of Construction and Operating Permit Authority for Sanitary and Combined Sewers and Water Main Extensions
35 Ill. Admin. Code 180, Procedures and Criteria for Reviewing Applications for Provisional Variances
35 Ill. Admin. Code 185, Environmental Laboratory Certification Fee Rules
35 Ill. Admin. Code 186, Accreditation of Environmental Laboratories
35 Ill. Admin. Code 187, Regulatory Innovation Projects
35 Ill. Admin. Code 201, Permits and General Provisions
35 Ill. Admin. Code 202, Alternative Control Strategies
35 Ill. Admin. Code 203, Major Stationary Sources Construction and Modification
35 Ill. Admin. Code 205, Emissions Reduction Market System
35 Ill. Admin. Code 207, Vehicle Scrappage Activities
35 Ill. Admin. Code 211, Definitions and General Provisions
35 Ill. Admin. Code 214, Sulfur Limitations
35 Ill. Admin. Code 215, Organic Material Emission Standards and Limitations

35 Ill. Admin. Code 216, Carbon Monoxide Emissions
35 Ill. Admin. Code 217, Nitrogen Oxides Emissions
35 Ill. Admin. Code 218, Organic Material Emission Standards and Limitations for the Chicago Area
35 Ill. Admin. Code 219, Organic Material Emission Standards and Limitations for the Metro East Area
35 Ill. Admin. Code 220, Non-methane Organic Compounds
35 Ill. Admin. Code 228, Asbestos
35 Ill. Admin. Code 229, Hospital/Medical Infectious Waste Incinerators
35 Ill. Admin. Code 232, Toxic Air Contaminants
35 Ill. Admin. Code 237, Open Burning
35 Ill. Admin. Code 240, Mobile Sources
35 Ill. Admin. Code 241, Clean Fuel Fleet Program
35 Ill. Admin. Code 243, Air Quality Standards
35 Ill. Admin. Code 244, Episodes
35 Ill. Admin. Code 245, Odors
35 Ill. Admin. Code 251, Procedures for Collection of Air Pollution Site Fees
35 Ill. Admin. Code 252, Public Participation in the Air Pollution Control Permit Program
35 Ill. Admin. Code 254, Annual Emissions Report
35 Ill. Admin. Code 255, General Conformity: Criteria and Procedures
35 Ill. Admin. Code 264, Interpretation of Pollution Control Board Rules and Related Definitions Concerning Grain Handling and Grain Drying Operations
35 Ill. Admin. Code 266, Interpretation of the Definition of Process Weight Rate
35 Ill. Admin. Code 270, Clean Air Act Permit Program Procedures
35 Ill. Admin. Code 271, Information on Coal Contracts and Sampling Required in Permit Applications for Coal-fired Fuel Combustion Emission Sources
35 Ill. Admin. Code 278, Procedures for Measuring Transfer Efficiency for surface Coating Operations in Wood Furniture Coating Facilities
35 Ill. Admin. Code 280, Visible Emissions from Coke Oven Batteries: Procedures for Determining Compliance
35 Ill. Admin. Code 283, General Procedures for Emissions Tests Averaging
35 Ill. Admin. Code 291, Rules for the Performance of Air Quality Impact Analyses to Be Used in Support of Permit Applications
35 Ill. Admin. Code 301, Introduction
35 Ill. Admin. Code 302, Water Quality Standards
35 Ill. Admin. Code 303, Water Use Designations and Site Specific Water Quality Standards
35 Ill. Admin. Code 304, Effluent Standards
35 Ill. Admin. Code 305, Monitoring and Reporting
35 Ill. Admin. Code 306, Performance Criteria
35 Ill. Admin. Code 307, Sewer Discharge Criteria
35 Ill. Admin. Code 308, Disposal of Wastes from Watercraft

35 Ill. Admin. Code 309, Permits
35 Ill. Admin. Code 310, Pretreatment Programs
35 Ill. Admin. Code 312, Treatment Plant Operator Certification
35 Ill. Admin. Code 320, Permit Fees for Installing or Extending Sewers
35 Ill. Admin. Code 351, Procedures and Requirements for Conflict Resolution in Revising Water Quality Management Plans
35 Ill. Admin. Code 352, Procedures for Determining Water Quality Based Permit Limitations for National Pollutant Discharge Elimination System Discharges to the Lake Michigan Basin
35 Ill. Admin. Code 355, Determination of Ammonia Nitrogen Water Quality Based Effluent Limits for Discharges to General Use Waters
35 Ill. Admin. Code 362, Procedures for Administration of the Construction Management Assistant Program for Grants under the Clean Water Act
35 Ill. Admin. Code 365, Procedures for Issuing Loans from the Water Pollution control Revolving Fund
35 Ill. Admin. Code 366, Procedures and Requirements for Determining Loan Priorities for Municipal Wastewater Treatment Works
35 Ill. Admin. Code 370, Illinois Recommended Standards for Sewage Works
35 Ill. Admin. Code 371, Requirements for Plans of Operation and Operation and Maintenance Manuals
35 Ill. Admin. Code 372, Illinois Design Standards for Slow Rate Land Application of Treated Wastewater
35 Ill. Admin. Code 373, Third Stage Treatment Lagoon Exemptions
35 Ill. Admin. Code 374, Design Criteria of Pressure Sewer Systems
35 Ill. Admin. Code 375, Combined Sewer Overflow Exception Criteria and First Flush
35 Ill. Admin. Code 378, Effluent Disinfection Exemptions
35 Ill. Admin. Code 380, Procedure for the Certification of Operators of Wastewater Treatment Works
35 Ill. Admin. Code 391, Design Criteria for Sludge Application on Land
35 Ill. Admin. Code 392, Guidelines for Notification of Restricted Status or Critical Review Pursuant to 35 Ill. Adm. Code 306.105
35 Ill. Admin. Code 393, Guidelines for Determination of Construct Only Status Pursuant to 35 Ill. Adm. Code 309.202
35 Ill. Admin. Code 395, Procedures and Criteria for Certification of Applications for Federal Permits or Licenses for Discharges into Waters of the State
35 Ill. Admin. Code 401, General Provisions
35 Ill. Admin. Code 402, Definitions
35 Ill. Admin. Code 403, NPDES Permits
35 Ill. Admin. Code 404, State Permits
35 Ill. Admin. Code 405, State and NPDES Permits
35 Ill. Admin. Code 406, Mine Waste Effluent and Water Quality Standards
35 Ill. Admin. Code 407, Compliance and Effective Dates
35 Ill. Admin. Code 501, General Provisions

35 Ill. Admin. Code 502, Permits
35 Ill. Admin. Code 503, Other Agricultural and Silvicultural Activities
35 Ill. Admin. Code 504, Implementation Program
35 Ill. Admin. Code 560, Design Criteria for Field Application of Livestock Waste
35 Ill. Admin. Code 570, Design and Maintenance Criteria Regarding Runoff Field Applications Systems
35 Ill. Admin. Code 580, Procedures for Reporting Releases of Livestock Waste
35 Ill. Admin. Code 601, Introduction
35 Ill. Admin. Code 602, Permits
35 Ill. Admin. Code 603, Ownership and Responsible Personnel
35 Ill. Admin. Code 611, Primary Drinking Water Standards
35 Ill. Admin. Code 615, Existing Activities in a Setback Zone or Regulated Recharge Area
35 Ill. Admin. Code 616, New Activities in a Setback Zone or Regulated Recharge Area
35 Ill. Admin. Code 617, Regulated Recharge Areas
35 Ill. Admin. Code 651, Introduction and Definitions
35 Ill. Admin. Code 652, Permits
35 Ill. Admin. Code 653, Design, Operation and Maintenance Criteria
35 Ill. Admin. Code 654, Raw and Finished Water Quality and Quantity
35 Ill. Admin. Code 660, Procedures for Issuing Grants for the Financing and Construction of Public Water Supply Facilities
35 Ill. Admin. Code 661, General Conditions of Grants for the Financing and Construction of Public Water Supply Facilities
35 Ill. Admin. Code 670, Minimal Hazard Certification
35 Ill. Admin. Code 671, Maximum Setback Zone for Community Water Supply Wells
35 Ill. Admin. Code 690, Permit Fees for Installing or Extending Water Main
35 Ill. Admin. Code 691, Testing Fees for Analytical Services
35 Ill. Admin. Code 702, RCRA and UIC Permit Programs
35 Ill. Admin. Code 703, RCRA Permit Program
35 Ill. Admin. Code 704, UIC (Underground Injection Control) Permit Program
35 Ill. Admin. Code 705, Procedures for Permit Issuance
35 Ill. Admin. Code 709, Wastestream Authorizations
35 Ill. Admin. Code 720, Hazardous Waste Management System: General
35 Ill. Admin. Code 721, Identification and Listing of Hazardous Waste
35 Ill. Admin. Code 722, Standards Applicable to Generators of Hazardous Waste
35 Ill. Admin. Code 723, Standards Applicable to Transporters of Hazardous Waste
35 Ill. Admin. Code 724, Standards for Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities
35 Ill. Admin. Code 725, Interim Status Standards for Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities
35 Ill. Admin. Code 726, Standards for the Management of Specific Hazardous Waste and Specific Types of Hazardous Waste Management Facilities
35 Ill. Admin. Code 729, Prohibited Hazardous Wastes in Land Disposal Units

35 Ill. Admin. Code 730, Underground Injection Control Operating Requirements
35 Ill. Admin. Code 731, Underground Storage Tanks
35 Ill. Admin. Code 732, Petroleum Underground Storage Tanks
35 Ill. Admin. Code 733, Standards for Universal Waste Management
35 Ill. Admin. Code 738, Hazardous Waste Injection Restrictions
35 Ill. Admin. Code 739, Standards for the Management of Used Oil
35 Ill. Admin. Code 740, Site Remediation Program
35 Ill. Admin. Code 741, Proportionate Share Liability
35 Ill. Admin. Code 742, Tiered Approach to Corrective Action Objectives
35 Ill. Admin. Code 745, Prior conduct Certification
35 Ill. Admin. Code 750, Illinois Hazardous Substances Pollution Contingency Plan
35 Ill. Admin. Code 807, Solid Waste
35 Ill. Admin. Code 808, Special Waste Classifications
35 Ill. Admin. Code 809, Nonhazardous Special Waste Hauling and the Uniform Program
35 Ill. Admin. Code 810, Solid Waste Disposal: General Provisions
35 Ill. Admin. Code 811, Standards for New Solid Waste Landfills
35 Ill. Admin. Code 812, Information to BE Submitted in a Permit Application
35 Ill. Admin. Code 813, Procedural Requirements for Permitted Landfills
35 Ill. Admin. Code 814, Standards for Existing Landfills and Units
35 Ill. Admin. Code 815, Procedural Requirements for All Landfills Exempt from Permits
35 Ill. Admin. Code 816, Alternative Standards for coal Combustion Power Generating Facilities Waste Landfills
35 Ill. Admin. Code 817, Requirements for New Steel and Foundry Industry Wastes Landfills
35 Ill. Admin. Code 830, Standards for Compost Facilities
35 Ill. Admin. Code 831, Information to BE Submitted in a Compost Facility Permit Application
35 Ill. Admin. Code 832, Procedural Requirements for Permitting Compost Facilities
35 Ill. Admin. Code 848, Management of Used and Waste Tires
35 Ill. Admin. Code 855, Operation of the Hazardous Waste Fee System
35 Ill. Admin. Code 856, Procedures for Collection of Permit and Inspection Fees
35 Ill. Admin. Code 857, Procedures for Payment of Special Waste Hauling Permit Application Fees
35 Ill. Admin. Code 858, Procedures for Operation of the Non-hazardous Solid Waste Fee System
35 Ill. Admin. Code 861, Used and Waste Tires Removal Priority List
35 Ill. Admin. Code 870, Procedures for Issuing Municipal Waste Planning and nonhazardous Solid Waste or Municipal Waste Enforcement Grants
35 Ill. Admin. Code 871, General Conditions of State of Illinois Municipal waste Planning and nonhazardous Solid Waste or Municipal Waste Enforcement Grants
35 Ill. Admin. Code 875, Procedures for White Goods Collection Grants

35 Ill. Admin. Code 885, Brownfields Redevelopment Grant Program
35 Ill. Admin. Code 900, General Provisions
35 Ill. Admin. Code 901, Sound Emission Standards and Limitations for Property Line-noise-sources
35 Ill. Admin. Code 901, Sound Emission Standards and Limitations for Motor Vehicles
35 Ill. Admin. Code 903, Rules and Regulations for the Control of Noise from Motor Racing Facilities
35 Ill. Admin. Code 905, Sound Emission Standards and Limitations for Snowmobiles
35 Ill. Admin. Code 951, Measurement Procedures for the Enforcement of 35 Ill. Adm. Code 900 & 901
35 Ill. Admin. Code 952, Measurement Procedures for the Enforcement of 35 Ill. Adm. Code 902
35 Ill. Admin. Code 1420, General Provisions
35 Ill. Admin. Code 1421, Activity Standards
35 Ill. Admin. Code 1422, Design and Operation of Facilities
35 Ill. Admin. Code 1450, Procedures for Operation of the Potentially Infectious Medical Waste Transporter Fee System

4. Key Provisions

415 ILCS 5/4, Environmental protection agency; establishment; duties.
415 ILCS 5/7, Public inspection of files, records and data; exceptions; fees.
415 ILCS 5/7.1, Articles representing trade secrets; confidential; regulations.
415 ILCS 5/22.32, Hospital waste assessment.

5. Significant Case Law

None. There is no significant case law addressing the issues raised by the HIPAA preemption analysis.

6. Preemption Analysis Under HIPAA

Although the Act does contemplate the completion of certain environmental studies, the Act does not address the privacy of health information. 415 ILCS 5/4. The Illinois EPA is charged with regulating hospital and medical waste incinerators. 35 Ill. Admin. Code 229. In addition, IEPA regulates the transport of medical waste. 35 Ill. Admin. Code 1420-1450. If these inspection and permit activities may require the disclosure of protected health information, such activity is allowed by the Privacy Rule as health oversight. 45 C.F.R. §164.512(d).

It is possible to comply with this law and HIPAA. Further, this law does not stand as an obstacle to accomplishing the full purpose of HIPAA. Therefore, the law is not "contrary" to the HIPAA regulations. 45 C.F.R. §160.202.

7. Is the Law Preempted?

No.

1. Name and Citation of Law

Personnel Radiation Monitoring Act (420 ILCS 25)

2. General Description of the Law

The Personnel Radiation Monitoring Act provides that any employer of a person subject to radiation monitoring requirements shall provide for each such person a type of Personnel Radiation Monitoring service acceptable to the Department of Nuclear Safety.

3. Rules Promulgated Under the Law

None. No administrative rules have been promulgated under this law.

4. Key Provisions

420 ILCS 25/2, Record of radiation exposure of employee.

5. Significant Case Law

None. There is no significant case law addressing the issues raised by the HIPAA preemption analysis.

6. Preemption Analysis Under HIPAA

The Personnel Radiation Monitoring Act provides that any employer covered by the Act must maintain a record of the radiation exposure of each employee as reported by the monitoring service on forms prescribed by the Department and must forward such forms to the Department according to a schedule prescribed by the Department. 420 ILCS 25/2. The record of such employee must include the name and social security number of the employee. Id. Any disclosure of health care information under this section is a disclosure required by law permissible under 45 C.F.R. §164.512(a) or a disclosure for public health or health oversight activities under 45 C.F.R. §164.512(b), (d).

It is possible to comply with this law and HIPAA. Further, this law does not stand as an obstacle to accomplishing the full purpose of HIPAA. Therefore, the law is not "contrary" to the HIPAA regulations. 45 C.F.R. §160.202.

7. Is the Law Preempted?

No.

1. Name and Citation of Law

Firearm Owner's Identification Card Act (430 ILCS 65)

2. General Description of the Law

The Firearm Owner's Identification Card Act is designed to promote and protect the health, safety, and welfare of the public by establishing a system of identifying persons who are not qualified to acquire or possess firearms and firearm ammunition in the State of Illinois. 430 ILCS 65/1.

3. Rules Promulgated Under the Law

20 Ill. Admin. Code 1230, Firearm Owner's Identification Card Act
20 Ill. Admin. Code 1235, Firearm Transfer Inquiry

4. Key Provisions

430 ILCS 65/4, Application for Firearm Owner's Identification Card.
430 ILCS 65/3.1, Dial-up system.
430 ILCS 65/8, Denial of application or revocation or seizure of card.

5. Significant Case Law

None. There is no significant case law addressing the issues raised by the HIPAA preemption analysis.

6. Preemption Analysis Under HIPAA

License firearm dealers consult the Department of State Police under the Firearm Owner's Identification Card Act to receive approval to sell a firearm. 430 ILCS 65/3.1 The Department of State Police checks both criminal history record information files and the files of the Department of Human Services relating to mental health patient hospitalization information. Id. Admission to a mental health facility in the past five years disqualifies a person from obtaining or requires revocation of a currently-valid Firearm Owner's Identification Card. 430 ILCS 65/3.1. This disclosure of protected health information is allowed as a disclosure required by law. 45 C.F.R. §164.512(a).

Further, the Department of State Police is not a covered entity subject to the Privacy Rule. 45 C.F.R. §164.103.Application for a FOID card is a voluntary activity and the individual can authorize the release of health information. 45 C.F.R. §164.508.

It is possible to comply with this law and HIPAA. Further, this law does not stand as an

obstacle to accomplishing the full purpose of HIPAA. Therefore, the law is not "contrary" to the HIPAA regulations. 45 C.F.R. § 160.202.

7. Is the Law Preempted?

No.

1. Name and Citation of Law

Eyeglass Frame and Lens Act (430 ILCS 110)

2. General Description of the Law

The Eyeglass Frame and Lens Act allows the Department of Public Health to regulate the materials contained in eyeglass frames and lenses. Carriers engaged in commerce and persons receiving lenses in frames and commerce or holding such products so received shall upon the request of an officer or employee duly designated by the Director permit such officer or employee.

3. Rules Promulgated Under the Law

77 Ill. Admin. Code 684, Rules Implementing the Illinois Eyeglasses and Sunglasses Frames and Lenses Act.

4. Key Provisions

None. There are no provisions of this Act addressing the issues raised by the HIPAA preemption analysis.

5. Significant Case Law

None. There is no significant case law addressing the issues raised by the HIPAA preemption analysis.

6. Preemption Analysis Under HIPAA

The Department of Public Health may access and copy all records showing movement in commerce of lenses or frames. 430 ILCS 110/6. This activity, if it involves the disclosure of protected health information, is allowed under the Privacy Rule as health oversight. 45 C.F.R. §164.512(d).

It is possible to comply with this law and HIPAA. Further, this law does not stand as an obstacle to accomplishing the full purpose of HIPAA. Therefore, the law is not "contrary" to the HIPAA regulations. 45 C.F.R. §160.202.

7. Is the Law Preempted?

No.

1. Name and Citation of Law

Agricultural Statistics Act (505 ILCS 15)

2. General Description of the Law

The Agricultural Statistics Act provides the Department of Agriculture shall collect, compile, systematized, tabulate and publish statistical information relating to agriculture. 505 ILCS 15/1.

3. Rules Promulgated Under the Law

None. No administrative rules have been promulgated under this law.

4. Key Provisions

None. There are no provisions of this Act addressing the issues raised by the HIPAA preemption analysis.

5. Significant Case Law

None. There is no significant case law addressing the issues raised by the HIPAA preemption analysis.

6. Preemption Analysis Under HIPAA

Although disease in animals and humans can be related, this Act does not provide for the release of protected health information.

It is possible to comply with this law and HIPAA. Further, this law does not stand as an obstacle to accomplishing the full purpose of HIPAA. Therefore, the law is not "contrary" to the HIPAA regulations. 45 C.F.R. §160.202.

7. Is the Law Preempted?

No.

1. Name and Citation of Law

Animal Control Act (510 ILCS 5)

2. General Description of the Law

The Animal Control Act is established to help control and prevent the spread of rabies in the State of Illinois. 510 ILCS 5/5. The Act also establishes the liability of a dog owner or keeper for damages caused by said dog.

3. Rules Promulgated Under the Law

8 Ill. Admin. Code 30, Animal Control Act

4. Key Provisions

None. There are no provisions of this Act addressing the issues raised by the HIPAA preemption analysis.

5. Significant Case Law

None. There is no significant case law addressing the issues raised by the HIPAA preemption analysis.

6. Preemption Analysis Under HIPAA

Rabies cases are reported to the Department of Agriculture but the victim's protected health information is not disclosed.

It is possible to comply with this law and HIPAA. Further, this law does not stand as an obstacle to accomplishing the full purpose of HIPAA. Therefore, the law is not "contrary" to the HIPAA regulations. 45 C.F.R. §160.202.

7. Is the Law Preempted?

No.

1. Name and Citation of Law

Illinois Vehicle Code (625 ILCS 5)

2. General Description of the Law

The Illinois Vehicle Code sets forth an expansive statutory scheme that regulates vehicles, drivers, commercial traffic and the rules for the road.

3. Rules Promulgated Under the Law

86 Ill. Admin. Code 151, Part 151: Vehicle Use Tax
92 Ill. Admin. Code 12, Part 12: Relocation Assistance Services and Payments Program for 620 ILCS 5/28, 29 Airport Projects
92 Ill. Admin. Code 386, Part 386: Procedures and Enforcement
92 Ill. Admin. Code 390, Part 390: Motor Carrier Safety Regulations: General
92 Ill. Admin. Code 391, Part 391: Qualification of Drivers
92 Ill. Admin. Code 392, Part 392: Driving of Commercial Motor Vehicles
92 Ill. Admin. Code 393, Part 393: Parts and Accessories Necessary for Safe Operation
92 Ill. Admin. Code 395, Part 395: Hours of Service of Drivers
92 Ill. Admin. Code 396, Part 396: Inspection, Repair and Maintenance
92 Ill. Admin. Code 397, Part 397: Driving and Parking
92 Ill. Admin. Code 426, Part 426: Bicycle Reflex Reflector Requirements
92 Ill. Admin. Code 428, Part 428: Unsafe Operating Conditions of Passenger Car Tires
92 Ill. Admin. Code 440, Part 440: Minimum Safety Standards for Construction of Type I School Buses
92 Ill. Admin. Code 441, Part 441: Inspection Procedures for Type I School Buses
92 Ill. Admin. Code 442, Part 442: Minimum Safety Standards for Construction of Type II School Buses
92 Ill. Admin. Code 443, Part 443: Inspection Procedures for Type II School Buses
92 Ill. Admin. Code 444, Part 444: Minimum Safety Standards for Construction of School Buses Used in Special Education Transportation
92 Ill. Admin. Code 445, Part 445: Inspection Procedures for Special Education School Buses
92 Ill. Admin. Code 446, Part 446: Rates to Be Charged by Official Testing Stations for School Buses
92 Ill. Admin. Code 447, Part 447: School Bus Brake Inspections
92 Ill. Admin. Code 448, Part 448: Official Testing Stations
92 Ill. Admin. Code 449, Part 449: Alternate Fuel Systems for School Buses
92 Ill. Admin. Code 450, Part 450: Commercial Vehicle Safety Section Hearings
92 Ill. Admin. Code 451, Part 451: Administrative Requirements for Official Testing Stations

92 Ill. Admin. Code 453, Part 453: Specifications for Seat Safety Belts
92 Ill. Admin. Code 454, Part 454: Rates to Be Charged by Official Testing Stations for Vehicles Other than School Buses
92 Ill. Admin. Code 456, Part 456: Nonscheduled Bus Inspections
92 Ill. Admin. Code 458, Part 458: School Bus Driver's Pretrip Inspection Requirements
92 Ill. Admin. Code 554, Part 554: Oversize and Overweight Permit Movements on State Highways
92 Ill. Admin. Code 558, Part 558: Securement of Steel Coils and Other Objects on Flatbed Vehicles
92 Ill. Admin. Code 564, Part 564: Slow moving Vehicle Identification Emblem
92 Ill. Admin. Code 1000, Part 1000: General Rules, Definitions
92 Ill. Admin. Code 1001, Part 1001: Procedures and Standards
92 Ill. Admin. Code 1002, Part 1002: Sale of Information
92 Ill. Admin. Code 1003, Part 1003: Collection of Fees
92 Ill. Admin. Code 1010, Part 1010: Certificates of Title, Registration of Vehicles
92 Ill. Admin. Code 1019, Part 1019: Remittance Agents
92 Ill. Admin. Code 1020, Part 1020: Dealers, Wreckers, Transporters and Rebuilders
92 Ill. Admin. Code 1030, Part 1030: Issuance of Licenses
92 Ill. Admin. Code 1035, Part 1035: School Bus Driver Permit
92 Ill. Admin. Code 1040, Part 1040: Cancellation, Revocation or Suspension of Licenses or Permits
92 Ill. Admin. Code 1050, Part 1050: License Provisions Violations
92 Ill. Admin. Code 1060, Part 1060: Commercial Driver Training Schools
92 Ill. Admin. Code 1070, Part 1070: Illinois Safety Responsibility Law
92 Ill. Admin. Code 1080, Part 1080: Motor Vehicles Used in Transporting Passengers
92 Ill. Admin. Code 1090, Part 1090: For Rent Vehicles For-hire
92 Ill. Admin. Code 1100, Part 1100: Rules of the Road - Handicapped Parking
92 Ill. Admin. Code 1201, Part 1201: General Filing Requirements
92 Ill. Admin. Code 1202, Part 1202: Applications
92 Ill. Admin. Code 1203, Part 1203: Employee Boards
92 Ill. Admin. Code 1205, Part 1205: Fees
92 Ill. Admin. Code 1206, Part 1206: Investigation and Suspension of Rates
92 Ill. Admin. Code 1207, Part 1207: Agents for Service of Process
92 Ill. Admin. Code 1225, Part 1225: Publication, Posting and Filing of Tariffs, Contracts, Schedules and Related Documents
92 Ill. Admin. Code 1226, Part 1226: Claims
92 Ill. Admin. Code 1230, Part 1230: Competitive bids for Transportation Provided to Units of Government
92 Ill. Admin. Code 1235, Part 1235: Practice Before the Independent Review Board
92 Ill. Admin. Code 1236, Part 1236: Reinstatement of Revoked Operating Authority
92 Ill. Admin. Code 1270, Part 1270: Transfers of Licenses
92 Ill. Admin. Code 1301, Part 1301: Licenses and Registrations
92 Ill. Admin. Code 1302, Part 1302: Cab Cards and Identifiers

92 Ill. Admin. Code 1303, Part 1303: Annual Reports
92 Ill. Admin. Code 1304, Part 1304: Motor Carrier of Property Fitness Standards
92 Ill. Admin. Code 1306, Part 1306: Interpretations of Statutory Language
92 Ill. Admin. Code 1307, Part 1307: Carrier Identification
92 Ill. Admin. Code 1308, Part 1308: Unlawful Operations
92 Ill. Admin. Code 1309, Part 1309: Conversion of Contract to Common Authority
92 Ill. Admin. Code 1360, Part 1360: Equipment Leases
92 Ill. Admin. Code 1376, Part 1376: Accounting and Financial Record Requirements
92 Ill. Admin. Code 1385, Part 1385: Establishment of Rates Based on Value (Released Value Rates)
92 Ill. Admin. Code 1400, Part 1400: Tariff Bureaus
92 Ill. Admin. Code 1415, Part 1415: Freight Bills, Bills of Lading, or Other Forms
92 Ill. Admin. Code 1425, Part 1425: Financial Responsibility of Carriers
92 Ill. Admin. Code 1435, Part 1435: Sanctions Including Suspension or Revocation of Operating Authorities And/or the Assessment of Civil Penalties
92 Ill. Admin. Code 1440, Part 1440: Guidelines for the Assessment of Penalties (General Order 55 (MC))
92 Ill. Admin. Code 1455, Part 1455: Transportation of Household Goods in Intrastate Commerce
92 Ill. Admin. Code 1456, Part 1456: Resolution of Household Goods Disputes
92 Ill. Admin. Code 1457, Part 1457: Household Goods Carriers
92 Ill. Admin. Code 1470, Part 1470: Non-relocation Towing
92 Ill. Admin. Code 1500, Part 1500: Minimum Clearances Applicable to Tracks, Structures, Fixtures and Other Appurtenances of Railroads
92 Ill. Admin. Code 1501, Part 1501: Registration of Rail Carriers
92 Ill. Admin. Code 1505, Part 1505: Sidings and Spur Tracks
92 Ill. Admin. Code 1515, Part 1515: Report of Railroad Accidents/incidents
92 Ill. Admin. Code 1520, Part 1520: Removal or Discontinuance of Station or Agency
92 Ill. Admin. Code 1535, Part 1535: Crossings of Rail Carriers and Highways
92 Ill. Admin. Code 1536, Part 1536: Grade Crossing Closure and Opening
92 Ill. Admin. Code 1545, Part 1545: The Provision, Construction and Maintenance of Sanitation and Shelter Facilities for Rail Carrier Employees
92 Ill. Admin. Code 1550, Part 1550: Motor Vehicles Used by Common Carriers by Rail to Transport Employees to and from Their Places of Employment or During the Course of Their Employment
92 Ill. Admin. Code 1565, Part 1565: Staggers Act
92 Ill. Admin. Code 1570, Part 1570: Rail Carrier Rates
92 Ill. Admin. Code 1575, Part 1575: Filing Rail Carrier Rates
92 Ill. Admin. Code 1580, Part 1580: Investigation and Suspension of Rail Carrier Rates
92 Ill. Admin. Code 1585, Part 1585: Market Dominance by Rail Carriers
92 Ill. Admin. Code 1590, Part 1590: Complaints Against Rail Carrier Rates
92 Ill. Admin. Code 1595, Part 1595: Rail Carrier Contract Rates
92 Ill. Admin. Code 1600, Part 1600: Exemption of Rail Carrier Transportation

92 Ill. Admin. Code 1605, Part 1605: Hazardous Materials
92 Ill. Admin. Code 1710, Part 1710: Relocation Towing
92 Ill. Admin. Code 1815, Part 1815: Common Carrier by Pipeline Tariffs
92 Ill. Admin. Code 2000, Part 2000: Broker's Licenses
92 Ill. Admin. Code 2005, Part 2005: Relationships Between Brokers and Carriers or Shippers
92 Ill. Admin. Code 2100, Part 2100: Motor Carriers of Passengers
20 Ill. Admin. Code 1250, Operation of Motor Vehicles
50 Ill. Admin. Code 8010, Mandatory Vehicle Liability Insurance
86 Ill. Admin. Code 151, Vehicle Use Tax
35 Ill. Admin. Code 276, Inspections of Motor Vehicle Emissions

4. Key Provisions

625 ILCS 5/6-106.1a, Cancellation of school bus driver permit; trace of alcohol
625 ILCS 5/6-516, Implied consent requirements for commercial motor vehicle drivers
625 ILCS 5/6-903, Standard for Determining Medical Limitations; Records
625 ILCS 5/6-905, Medical Evaluations of Individuals Under Review; Scope of Driving Privileges; Report to the Secretary
625 ILCS 5/6-907, Cooperation Required of Person Under Review
625 ILCS 5/6-908, Confidential Information
625 ILCS 5/6-911, Information Submitted by Medical Practitioners; Police Officers; State's Attorney; or Members of the Judiciary
625 ILCS 5/6-116.5, Driver's duty to report medical condition
625 ILCS 5/6-117, Records to be kept by the Secretary of State
625 ILCS 5/11-501.1, Suspension of drivers license; statutory summary alcohol, other drug or drugs, or intoxicating compound or compounds related suspension; implied consent
625 ILCS 5/11-501.2 Chemical and other tests
625 ILCS 5/11-501.4-1 Reporting of test results of blood or urine conducted in the regular course of providing emergency medical treatment
625 ILCS 5/11-1428, Operation of golf carts on streets, roads and highways

5. Significant Case Law

None. There is no significant case law addressing the issues raised by the HIPAA preemption analysis.

6. Preemption Analysis Under HIPAA

The Illinois Vehicle Code requires that every driver must report to the Secretary of State any medical condition that is likely to cause loss of consciousness or any loss of ability to safely operate a motor vehicle within ten (10) days of the driver becoming aware of the

condition. 625 ILCS 5/6-116.5. This section also provides all information furnished to the Secretary of State under the provisions under the disclosure requirement shall be deemed confidential and for the privileged use of the Secretary of State. Id. Any disclosure of information under this section is made upon the driver's authority and therefore, not preempted.

The Secretary of State's office has the ability to order a driver to submit to a medical examination. 625 ILCS 5/6-907. Information furnished to the Secretary of State is confidential. 625 ILCS 5/6-908. These disclosures will be accomplished pursuant to an authorization by the individual, as the Secretary of State may revoke a driver's license for refusal to cooperate. 45 C.F.R. §164.508.

The Vehicle Code further provides that qualified medical practitioners may submit information relative to chronic alcoholism or drug abuse if the condition interferes with a person's ability to operate a motor vehicle. 625 ILCS 5/6-911. Under the Privacy Rule, covered entities may make this permissive disclosure either in connection with a public health activity or to avert a serious threat to health safety. 45 C.F.R. §164.512(b)(j).

The Vehicle Code provides that any person driving a vehicle upon the public highways of the State is deemed to have given consent to a chemical test or blood test. 625 ILCS 5/11-501.1. Similarly, school bus drivers, commercial drivers, and those operating golf carts on a public road consent to performance of chemical and blood tests. 625 ILCS 5/6-106.1a, 6-516, 5/11-1428. If an individual refuses to submit to a test, an immediate suspension of the individual's driver's license occurs. 625 ILCS 5/11-501.1. Individuals who are dead, unconscious or otherwise incapable of refusing the test are deemed to have not withdrawn the consent provided by law. Id. Illinois trauma centers are required to have a policy stating that a blood alcohol concentration level will be done on any individual brought to the trauma center who is believed to be the driver of a car involved in an accident pursuant to licensure standards of the Illinois Department of Public Health. 70 Ill. Admin. Code 515.2030(k)(4). Further, the trauma registry collects blood alcohol levels on all patients as part of its public health reporting functions. 77 Ill. Admin. Code 515.200. Reporting to the Illinois Department of Public Health is clearly a public health activity within the meaning of the Privacy Rule. 45 C.F.R. §164.512(b).

A separate issue is whether a covered entity can release test results concerning the presence of intoxicating compounds to law enforcement officials. The Vehicle Code provides that "[n]otwithstanding any other provision, the results of blood or urine. . . [testing for intoxicating compounds] conducted upon persons receiving medical treatment in a hospital emergency room for injuries resulting from a motor vehicle accident shall be disclosed to the Department of State Police or local law enforcement . . . upon request." 625 ILCS 5/11-501.4-1 (emphasis added). The Privacy Rule does allow such a disclosure. 45 C.F.R. §164.512(f)(2)(ii). The Privacy Rule allows covered entities to make disclosures to law enforcement that are otherwise required by law. 45 C.F.R.

§164.512(a). Further, this disclosure is likely to be made in the course of providing emergency treatment on the premises of the covered health care provider and it may be that such a disclosure "appears necessary to alert law enforcement to. . . the commission and nature of a crime." 45 C.F.R. §164.512(f)(6)(i). It is probable that unconscious individuals or those otherwise incapable of refusing the test are also receiving emergency treatment.

For individuals who are not seeking emergency treatment, chemical tests are administered at the direction of the law enforcement official. 625 ILCS 5/11-501.2. Drivers who refuse the test face a summary suspension of their driver's license. 625 ILCS 5/11-501.1. Under these circumstances, an authorization for release of the results can be obtained. 45 C.F.R. §164.508.

Law enforcement officials who go to an adjoining state to obtain tests from individuals taken there for medical treatment do not necessarily request results, but are provided the actual samples for analysis at a lab certified by the Department of State Police for that purpose. 625 ILCS 5/11-501.2(a)(2). As cells or other tissues are not protected from disclosure to law enforcement, the release of these test samples is allowed. 65 Fed. Reg. 82462, 82533 (December 28, 2000).

It is accordingly possible to comply with this law and HIPAA. Further, this law does not stand as an obstacle to accomplishing the full purpose of HIPAA. Therefore, the law is not "contrary" to the HIPAA regulations. 45 C.F.R. §160.202.

7. Is the Law Preempted?

No.

1. Name and Citation of Law

Snowmobile Registration and Safety Act (625 ILCS 40)

2. General Description of the Law

The Snowmobile Registration and Safety Act establishes regulations and guidelines for the operations of snowmobiles and the licensing of such equipment.

3. Rules Promulgated Under the Law

17 Ill. Admin. Code 3010, Illinois Snowmobile Grant Program
17 Ill. Admin. Code 3020, Snowmobile Trail Establishment Fund Grant Program

4. Key Provisions

625 ILCS 40/5-7.4, Admissibility of blood alcohol test
625 ILCS 40/6-1. Collisions, accidents and casualties, reports.

5. Significant Case Law

None. There is no significant case law addressing the issues raised by the HIPAA preemption analysis.

6. Preemption Analysis Under HIPAA

The Snowmobile Registration and Safety Act provides that qualified medical practitioners may submit information relative to chronic alcoholism or drug abuse if the condition interferes with a person's ability to operate a snowmobile. 625 ILCS 40/5-7.1. Under the Privacy Rule, covered entities may make this permissive disclosure either in connection with a public health activity or to avert a serious threat to health or safety. 45 C.F.R. §164.512(b), (j).

The Act provides criminal penalties for operating a snowmobile while under the influence of alcohol or other drugs. 625 ILCS 40/5-7. The Act provides that any person operating a snowmobile is deemed to have given consent to a chemical test or blood test. 625 ILCS 5/11-501.1. If an individual refuses to submit to a test, the individual receives an immediate suspension of their privilege to operate a snowmobile. 625 ILCS 40/5-7.1. Individuals who are dead, unconscious or otherwise incapable of refusing the test are deemed to have not withdrawn the consent provided by law. Id. A separate issue is whether a covered entity can release test results concerning the presence of intoxicating compounds to law enforcement under the Privacy Rule.

The Privacy Rule allows covered entities to make disclosures to law enforcement that are otherwise required by law. 45 C.F.R. §164.512(a), (f). Further, this disclosure is likely to occur in the course of providing emergency treatment on the premises of the covered health care provider and it may be that such a disclosure "appears necessary to alert law enforcement to. . . the commission and nature of a crime." 45 C.F.R. §164.512(f)(6)(i). It is probable that unconscious individuals or those otherwise incapable of refusing the test are also receiving emergency treatment.

For individuals who are not seeking emergency treatment, chemical tests are administered in the same manner as tests conducted under the Illinois Vehicle Code. 625 ILCS 40/5-7.2, *referencing* 625 ILCS 5/11-501.2. Snowmobile operators who refuse the test face a summary suspension of their snowmobile operating privileges. 625 ILCS 40/5-7.1. Under these circumstances, an authorization for release of the test results can be obtained. 45 C.F.R. §164.508.

Section 5-7.4(b) provides the confidentiality provisions of law pertaining to medical records and medical treatment are not applicable with regard to blood alcohol tests performed under the provisions of the Act in prosecutions as specified in Subsection (a) of this Section. Any release of protected health care information pursuant to these sections are not contrary to HIPAA as they are disclosures required by law, or in response to a court order. 45 C.F.R. §164.512(a), (e).

It is possible to comply with this law and HIPAA. Further, this law does not stand as an obstacle to accomplishing the full purpose of HIPAA. Therefore, the law is not "contrary" to the HIPAA regulations. 45 C.F.R. § 160.202.

7. Is the Law Preempted?

No.

1. Name and Citation of Law

Boat Registration and Safety Act (625 ILCS 45)

2. General Description of the Law

The Boat Registration and Safety Act establishes registration requirements for motorboats and establishes guidelines for the operation or motorboats and boat rental services.

3. Rules Promulgated Under the Law

17 Ill. Admn. Code 2080, Operation of Watercraft Carrying Passengers for Hire on Illinois Waters
17 Ill. Admn. Code 2010, Boat and Snowmobile Registration and Safety
17 Ill. Admn. Code 2070, Capacity Plates Standards on Various Watercraft
17 Ill. Admn. Code 2030, Designation of Restricted Waters in the State of Illinois

4. Key Provisions

None. There are no provisions of this Act addressing the issues raised by the HIPAA preemption analysis.

5. Significant Case Law

None. There is no significant case law addressing the issues raised by the HIPAA preemption analysis.

6. Preemption Analysis Under HIPAA

The Boat Registration and Safety Act provides that qualified medical practitioners may submit information relative to chronic alcoholism or drug abuse if the condition interferes with a person's ability to operate a boat. 625 ILCS 5/6-911. Covered entities may make this permissive disclosure either in connection with a public health activity or to avert a serious threat to health or safety. 45 C.F.R. §164.512(b), (j).

The Act provides that any person driving a boat is deemed to have given consent to a chemical test or blood test. 625 ILCS 45/5-16. If an individual refuses to submit to a test, an immediate suspension of the individual's boating license occurs. Id. Individuals who are dead, unconscious or otherwise incapable of refusing are deemed to have not withdrawn the consent provided by law. Id. A separate issue is whether a covered entity can disclose test results concerning the presence of intoxicating compounds to law enforcement officials under the Privacy Rule.

The Privacy Rule allows covered entities to make disclosures to law enforcement that are otherwise required by law. 45 C.F.R. §164.512(a), (f). Further, this disclosure is likely to occur in the course of providing emergency treatment on the premises of the covered health care provider and it may be that such a disclosure "appears necessary to alert law enforcement to. . . the commission and nature of a crime." 45 C.F.R. §164.512(f)(6)(i). It is probable that unconscious individuals or those otherwise incapable of refusing the test are also receiving emergency treatment.

For individuals who are not seeking emergency treatment, chemical tests are administered in the same manner as tests conducted under the Illinois Vehicle Code. 625 ILCS 45/5-16, *referencing* 625 ILCS 5/11-501.1, 501.2. Watercraft operators who refuse the test face a summary suspension of their watercraft operating privileges. 625 ILCS 45/5-16. Under these circumstances, an authorization for release of the test results can be obtained. 45 C.F.R. §164.508.

It is possible to comply with this law and HIPAA. Further, this law does not stand as an obstacle to accomplishing the full purpose of HIPAA. Therefore, the law is not "contrary" to the HIPAA regulations. 45 C.F.R. §160.202.

7. Is the Law Preempted?

No.

1. Name and Citation of Law

Health Care Arbitration Act (710 ILCS 15/1)

2. General Description of the Law

The Health Care Arbitration Act allows for the creation of health care arbitration agreements which may be voluntarily agreed to by a person alleged to have been injured by a health care provider. Provision of services may not be conditioned upon executing an arbitration agreement.

3. Rules Promulgated Under the Law

None. No administrative rules have been promulgated under this law.

4. Key Provisions

None. There are no provisions of this Act addressing the issues raised by the HIPAA preemption analysis.

5. Significant Case Law

None. There is no significant case law addressing the issues raised by the HIPAA preemption analysis.

6. Preemption Analysis Under HIPAA

The Health Care Arbitration Act is a voluntary system used to avoid litigation of malpractice claims undertaken by both the provider and patient on a voluntary basis. Therefore, any release of records needed to engage in the arbitration can be done with patient authorization. 710 ILCS 15/2(d). A patient authorization for releasing protected health information is anticipated by the Privacy Rule. 45 C.F.R. §164.508.

It is possible to comply with this law and HIPAA. Further, this law does not stand as an obstacle to accomplishing the full purpose of HIPAA. Therefore, the law is not "contrary" to the HIPAA regulations. 45 C.F.R. § 160.202.

7. Is the Law Preempted?

No.

1. Name and Citation of Law

Illinois Abortion Law of 1975 (720 ILCS 510/1)

2. General Description of the Law

The Illinois Abortion Law of 1975 regulates the performance of abortions in the State of Illinois.

3. Rules Promulgated Under the Law

77 Ill. Admin. Code 505.10, Pregnancy Termination Report Code

4. Key Provisions

77 Ill. Admin. Code 505.50, Availability of Information

5. Significant Case Law

Herbst v. O'Malley, 1993 WL 59142 (N.D. Ill. 1993)

6. Preemption Analysis Under HIPAA

Virtually all of the Illinois Abortion Law of 1975 has been held unconstitutional by various federal court cases. See *Charles v. Daley*, 749 F.2d 452 (7th Cir. 1984), *Herbst v. O'Malley*, 1993 WL 59142 (N.D. Ill. 1993). Pregnancy termination reports are still collected by IDPH pursuant to a consent decree in *Herbst v. O'Malley*. This type of reporting is allowed as public health reporting under the Privacy Regulation. 45 C.F.R. §164.512(b). Reports are confidential and data released is aggregated. 77 Ill. Admin. Code 505.50.

It is possible to comply with this law and HIPAA. Further, this law does not stand as an obstacle to accomplishing the full purpose of HIPAA. Therefore, the law is not "contrary" to the HIPAA regulations. 45 C.F.R. § 160.202.

7. Is the Law Preempted?

No.

1. Name and Citation of Law

Partial-Birth Abortion Ban Act (720 ILCS 513/1)

2. General Description of the Law

The Partial-Birth Abortion Ban Act bans the practice stated in the title.

3. Rules Promulgated Under the Law

None. No administrative rules have been promulgated under this law.

4. Key Provisions

None. There are no provisions of this Act addressing the issues raised by the HIPAA preemption analysis.

5. Significant Case Law

Hope Clinic v. Ryan, 995 F. Supp. 847 (N.D. Ill. 1998), affirmed in part and vacated and remanded with instructions in part, 249 F.3d 603 (December 7, 2001).

6. Preemption Analysis Under HIPAA

This law has been struck down as unconstitutional, therefore the preemption analysis is not applicable. *Hope Clinic v. Ryan*, 995 F. Supp. 847.

7. Is the Law Preempted?

No.

1. Name and Citation of Law

Adoption Compensation Prohibition Act (720 ILCS 525)

2. General Description of the Law

The Adoption Compensation Prohibition Act provides that no person or agency, association, corporation, institution, society or other organization, except a Child Welfare Agency, shall request, receive or accept any compensation or thing of value, directly or indirectly, for the placing out of a child. 70 ILCS 525/1.

3. Rules Promulgated Under the Law

None. No administrative rules have been promulgated under this law.

4. Key Provisions

720 ILCS 525/4, Certain payments of salaries and medical expenses not prevented.
720 ILCS 525/4.1, Payment of certain expenses.

5. Significant Case Law

None. There is no significant case law addressing the issues raised by the HIPAA preemption analysis.

6. Preemption Analysis Under HIPAA

The Adoption Compensation Prohibition Act provides that payment of reasonable and actual medical fees or hospital charges for services rendered in connection with the birth of an adopted child, if the payment is made to the physician or hospital who or which rendered the services or to the natural mother of the child. 720 ILCS 525/4.

The Act does not address the privacy of health information.

It is possible to comply with this law and HIPAA. Further, this law does not stand as an obstacle to accomplishing the full purpose of HIPAA. Therefore, the law is not "contrary" to the HIPAA regulations. 45 C.F.R. §160.202.

7. Is the Law Preempted?

No.

1. Name and Citation of Law

Cannabis Control Act (720 ILCS 550)

2. General Description of the Law

The Cannabis Control Act establishes fines and penalties for the possession, manufacture, delivery and trafficking of cannabis.

3. Rules Promulgated Under the Law

77 Ill. Admin. Code 2085, Research

4. Key Provisions

720 ILCS 550/11, Research with Cannabis - Possession, etc. of Cannabis - Privacy of Research Subjects.

5. Significant Case Law

None. There is no significant case law addressing the issues raised by the HIPAA preemption analysis.

6. Preemption Analysis Under HIPAA

The Cannabis Control Act provides that, upon request by a physician licensed to practice medicine for the use of cannabis in research necessary for the treatment of glaucoma, the side effects of chemotherapy or radiation therapy in cancer patients, or such other procedure certified to be medically necessary, the Department of Human Services may authorize the possession, production and manufacture of such substances. 720 ILCS 550/11. This authority provided by the State statute does not address the privacy of health information.

The Department of Human Services may require persons authorized to engage in this research to protect the privacy of individuals who are the subjects of such research by withholding from all persons not connected with the conduct of the research, the names and other identifying characteristics of such individuals. 720 ILCS 550/11(c). Such authority is not contrary to the Privacy Rule.

The regulations promulgated under the Act provide that hospitals and their on-site pharmacies, which have been registered and approved by the National Cancer Institute and the Drug Enforcement Agency to use delta-9-THC in the treatment of cancer chemotherapy patients, may be authorized by the Department to use delta-9-THC for

such purposes in Illinois. 77 Ill. Admin. Code 2085.15. Informed consent is required by the patient before the use of such drugs. 77 Ill. Admin. Code 2085.30. Section 2085.50 requires confidentiality of cancer chemotherapy patients receiving delta-9-THC and Section 2085.50 requires record keeping and reports. These activities are "research" under the definitions of the Privacy Rule and accordingly must be conducted as such. 45 C.F.R. §164.508.

It is possible to comply with this law and HIPAA. Further, this law does not stand as an obstacle to accomplishing the full purpose of HIPAA. Therefore, the law is not "contrary" to the HIPAA regulations. 45 C.F.R. §160.202.

7. Is the Law Preempted?

No.

1. Name and Citation of Law

Illinois Controlled Substances Act (720 ILCS 570)

2. General Description of the Law

The Illinois Controlled Substances Act establishes a system of control of the distribution and use of controlled substances designed to limit access thereto to those persons who have demonstrated appropriate sense of responsibility and have a lawful and legitimate reason to possess them. 720 ILCS 5/100.

3. Rules Promulgated Under the Law

77 Ill. Admin. Code 2075, Research
77 Ill. Admin. Code 3100, Illinois Controlled Substances Act
77 Ill. Admin. Code 2070, Schedule of Controlled Substances
77 Ill. Admin. Code 2080, Triplicate Prescription Control Program

4. Key Provisions

720 ILCS 570/302, Annual Registration - Exemptions - Inspection of Premises
720 ILCS 570/306, Maintenance of records and inventories

5. Significant Case Law

None. There is no significant case law addressing the issues raised by the HIPAA preemption analysis.

6. Preemption Analysis Under HIPAA

The Illinois Controlled Substances Act provides authority for the Department of Professional Regulation to issue licenses for those who manufacture, distribute, or dispense controlled substances. 720 ILCS 570/306. Both the Department of Professional Regulation and the Department of State Police have authority to inspect the "controlled premises" where a registrant or applicant for registration are located. 720 ILCS 570/302. Such inspections could include accessing protected health information. In carrying out its duties, the Department of Professional Regulation is acting as a health oversight agency within the definitions provided in the Privacy Rule. 45 C.F.R. §164.512(d). It is not clear, however, that protected health information disclosures are allowed to the Illinois State Police, absent compliance with the exceptions for judicial and administrative proceedings, and law enforcement purposes. 45 C.F.R. §164.512(e), (f). Under this standard, if the Illinois State Police do not have a proper court order, subpoena

or summons, then they will have to meet one of the exceptions for identification, crime victims, decedents, a crime on the premises, or a criminal emergency. Id.
In the event that the Illinois State Police need to conduct an investigation separate from the Department of Professional Regulation, and none of the stated exemptions apply, this situation is one that is specifically mentioned as a candidate for requesting an exception from the Federal Department of Health and Human Services. 45 C.F.R. §160.203(a)(2). The Secretary is authorized to grant exceptions for laws that have as their principle purpose the regulation of controlled substances. Id.

7. Is the Law Preempted?

Partially. The Illinois State Police are not a health oversight agency and therefore, the exception for disclosures by covered entities to a health oversight agency is not applicable. 45 C.F.R. §164.512(d). If the Illinois State Police cannot meet the exceptions contained for law enforcement, or judicial and administrative proceedings, then an exception from the Secretary of Health and Human Services should be sought as this law is used to regulate controlled substances in the State of Illinois. 45 C.F.R. §160.203, 164.512(e), (f).

1. Name and Citation of Law

Drug Paraphernalia Control Act (720 ILCS 600)

2. General Description of the Law

The Drug Paraphernalia Control Act defines and establishes penalties for the sale, deliver and possession of drug paraphernalia.

3. Rules Promulgated Under the Law

None. No administrative rules have been promulgated under this law.

4. Key Provisions

None. There are no provisions of this Act addressing the issues raised by the HIPAA preemption analysis.

5. Significant Case Law

None. There is no significant case law addressing the issues raised by the HIPAA preemption analysis.

6. Preemption Analysis Under HIPAA

The Drug Paraphernalia Control Act presents the issue of whether a covered entity may disclose information to law enforcement to assist in enforcement of the Act. As with the Illinois Controlled Substances Act, 720 ILCS 550, the issue is determined by assessing whether the request for protected health information meets the criteria outlined in the exceptions for disclosure to law enforcement and judicial and administrative proceedings. 45 C.F.R. §164.512(e), (f). To the extent a law enforcement official is not requesting information under one of the exceptions outlined in the Privacy Rule, a covered entity may not disclose the information. It should be noted that the Drug Paraphernalia Control Act also allows units of local government to impose the same or greater restrictions on drug paraphernalia. 720 ILCS 600/7. The Privacy Rule does not indicate that local ordinances are preempted, as the definition of State law includes a "constitution, statute, regulation, rule, common law, or other State action having the force and affect of law." 45 C.F.R. §160.202. However, since the authority of all units of local government is solely that granted by the State, it is likely that local ordinances will be preempted.

It is possible to comply with this law and HIPAA. Further, this law does not stand as an obstacle to accomplishing the full purpose of HIPAA. Therefore, the law is not "contrary" to the HIPAA regulations. 45 C.F.R. § 160.202.

7. Is the Law Preempted?

No.

1. Name and Citation of Law

Guide Dog Access Act (720 ILCS 630)

2. General Description of the Law

The Guide Dog Access Act permits a blind, hearing impaired or physically handicapped person to be accompanied by a guide dog.

3. Rules Promulgated Under the Law

None. No administrative rules have been promulgated under this law.

4. Key Provisions

None. There are no provisions of this Act addressing the issues raised by the HIPAA preemption analysis.

5. Significant Case Law

None. There is no significant case law addressing the issues raised by the HIPAA preemption analysis.

6. Preemption Analysis Under HIPAA

The Guide Dog Access Act does not address the privacy of health information.

It is possible to comply with this law and HIPAA. Further, this law does not stand as an obstacle to accomplishing the full purpose of HIPAA. Therefore, the law is not "contrary" to the HIPAA regulations. 45 C.F.R. § 160.202.

7. Is the Law Preempted?

No.

1. Name and Citation of Law

Hypodermic Syringes and Needles Act (720 ILCS 635)

2. General Description of the Law

The Hypodermic Syringes and Needles Act provides that persons unrelated to the medical field may not have in their possession a hypodermic syringe, hypodermic needle or any instrument adapted for use of controlled substances or cannabis by subcutaneous injection.

3. Rules Promulgated Under the Law

None. No administrative rules have been promulgated under this law.

4. Key Provisions

720 ILCS 635/3, Records - Inspection

5. Significant Case Law

None. There is no significant case law addressing the issues raised by the HIPAA preemption analysis.

6. Preemption Analysis Under HIPAA

The Hypodermic Syringes and Needles Act provides that a record must be kept by the persons selling such syringe, needle or instrument which shall give the date of the sale, the name and address of the purchaser and a description of the instrument. 720 ILCS 635/3. The record must at all times be open to inspection by the Department of State Police and police authorities and police officers of cities, villages and towns. Id. This provision means a covered entity could be required to disclose health information to a law enforcement official. However, this disclosure is required by law and therefore must meet and conform with the disclosures allowed for law enforcement or judicial and administrative proceedings. 45 C.F.R. §164.512(a), (e), (f). If that standard cannot be met, the State could seek a waiver from the Secretary as the purpose of this statute is to regulate controlled substances. 45 C.F.R. §160.203.

It is possible to comply with this law in HIPAA. Further, this law does not stand as an obstacle to accomplishing the full purpose of HIPAA. Therefore, the law is not "contrary" to the HIPAA regulations. 45 C.F.R. § 160.202.

7. Is the Law Preempted?

No.

1. Name and Citation of Law

Sale of Tobacco to Minors Act (720 ILCS 675)

2. General Description of the Law

The Sale of Tobacco to Minors Act specifies locations and circumstances under which a seller of tobacco can have a vending machine that sells tobacco. The Act also establishes age requirements for the use of tobacco products.

3. Rules Promulgated Under the Law

None. No administrative rules have been promulgated under this law.

4. Key Provisions

None. There are no provisions of this Act addressing the issues raised by the HIPAA preemption analysis.

5. Significant Case Law

None. There is no significant case law addressing the issues raised by the HIPAA preemption analysis.

6. Preemption Analysis Under HIPAA

This law does not address the privacy of health information.

It is possible to comply with this law and HIPAA. Further, this law does not stand as an obstacle to accomplishing the full purpose of HIPAA. Therefore, the law is not "contrary" to the HIPAA regulations. 45 C.F.R. § 160.202.

7. Is the Law Preempted?

No.

1. Name and Citation of Law

Smokeless Tobacco Limitation Act (720 ILCS 680)

2. General Description of the Law

The Smokeless Tobacco Limitation Act establishes age and selling restrictions on smokeless tobacco products, defined as finely cut, ground, powdered or leaf tobacco that is intended to be placed in the oral activity.

3. Rules Promulgated Under the Law

None. No administrative rules have been promulgated under this law.

4. Key Provisions

None. There are no provisions of this Act addressing the issues raised by the HIPAA preemption analysis.

5. Significant Case Law

None. There is no significant case law addressing the issues raised by the HIPAA preemption analysis.

6. Preemption Analysis Under HIPAA

This law does not address the privacy of health information.

It is possible to comply with this law and HIPAA. Further, this law does not stand as an obstacle to accomplishing the full purpose of HIPAA. Therefore, the law is not "contrary" to the HIPAA regulations. 45 C.F.R. § 160.202.

7. Is the Law Preempted?

No.

1. Name and Citation of Law

Tobacco Accessories and Smoking Herbs Control Act (720 ILCS 685)

2. General Description of the Law

The Tobacco Accessories and Smoking Herbs Control Act prohibits the sale of tobacco and snuff accessories and smoking herbs to minors and establishes penalties for violations.

3. Rules Promulgated Under the Law

None. No administrative rules have been promulgated under this law.

4. Key Provisions

None. There are no provisions of this Act addressing the issues raised by the HIPAA preemption analysis.

5. Significant Case Law

None. There is no significant case law addressing the issues raised by the HIPAA preemption analysis.

6. Preemption Analysis Under HIPAA

This law does not address the privacy of health information.

It is possible to comply with this law and HIPAA. Further, this law does not stand as an obstacle to accomplishing the full purpose of HIPAA. Therefore, the law is not "contrary" to the HIPAA regulations. 45 C.F.R. § 160.202.

7. Is the Law Preempted?

No.

1. Name and Citation of Law

Use of Intoxicating Compounds Act (720 ILCS 690)

2. General Description of the Law

The Use of Intoxicating Compounds Act prohibits the ingestion, breathing, inhaling and drinking of certain intoxicating compounds.

3. Rules Promulgated Under the Law

None. No administrative rules have been promulgated under this law.

4. Key Provisions

None. There are no provisions of this Act addressing the issues raised by the HIPAA preemption analysis.

5. Significant Case Law

None. There is no significant case law addressing the issues raised by the HIPAA preemption analysis.

6. Preemption Analysis Under HIPAA

This law does not address the privacy of health information.

It is possible to comply with this law and HIPAA. Further, this law does not stand as an obstacle to accomplishing the full purpose of HIPAA. Therefore, the law is not "contrary" to the HIPAA regulations. 45 C.F.R. § 160.202.

7. Is the Law Preempted?

No.

1. Name and Citation of Law

Code of Criminal Procedure - Article 104: Fitness for Trial, to Plead or to be Sentenced. (725 ILCS 5/104)

2. General Description of the Law

The Fitness for Trial, to Plead or to be Sentenced provisions provide that a defendant is presumed to be fit to stand trial or to plead and be sentenced. However, it establishes guidelines and standards, and sets up a procedure for a defendant who raises an issue of fitness for trial.

3. Rules Promulgated Under the Law

None. No administrative rules have been promulgated under this law.

4. Key Provisions

725 ILCS 5/104-11, Raising Issue - Burden - Fitness Motions
725 ILCS 5/104-13, Fitness Examination
725 ILCS 5/104-14, Use of Statements made during Examination or Treatment
725 ILCS 5/104-15, Report
725 ILCS 5/104-16, Fitness Hearing
725 ILCS 5/104-17, Commitment for Treatment; Treatment Plan
725 ILCS 5/104-18, Progress Reports
725 ILCS 5/104-19, Records
725 ILCS 5/104-20, 90-Day Hearings - Continuing Treatment
725 ILCS 5/104-21, Medication
725 ILCS 5/104-25, Discharge Hearing

5. Significant Case Law

None. There is no significant case law addressing the issues raised by the HIPAA preemption analysis.

6. Preemption Analysis Under HIPAA

Section 104 of the Code of Criminal Procedure, otherwise known as Fitness for Trial, to Plead or to Be Sentenced, establishes certain guidelines and procedures for those claiming to be unfit to stand trial. 725 ILCS 5/104-11. Accordingly, certain examination requirements are held to be appropriate to determine the fitness to stand trial. 725 ILCS 5/104-11. An expert is appointed to make a report in writing to the court which is to include a diagnosis and an explanation as to how the findings were reached and the facts

upon which the findings are based, including a description of the defendant's mental or physical disability, if any; its severity; and an opinion as to whether and to what extent it impairs the defendant's ability to understand the nature and purpose of the proceedings against him or to assist in his defense or both. 725 ILCS 5/104-15. The report must also indicate what information, if any, contained therein may be harmful to the mental condition of the defendant if made known to him. Id. Any protected health information disclosed under this Section is permitted as the Privacy Rule allows for disclosure by court order. 45 C.F.R. § 164.512(e).

The examination of the defendant is to be by one or more licensed physicians, clinical psychologists or psychiatrists chosen by the court. 725 ILCS 5/104-13. If the issue of fitness involves a physical condition, the court shall appoint one or more physicians or other experts as it may deem appropriate to examine the defendant. Id. Any statements made by the defendant and information gathered in the course of any examination or treatment is not admissible against the defendant unless he raises the defense of insanity or the defense of drugged or intoxicated condition, in which case they shall be admissible only on the issue of whether he was insane, drugged or intoxicated. 725 ILCS 5/104-14. Again, any protected health information disclosed under this Section is permissible as the Privacy Rule allows for disclosure by court order. 45 C.F.R. § 164.512(e).

Under Section 104-17, the court may order the defendant to be placed for treatment in the custody of the Department of Human Services or an other appropriate public or private mental health facility or treatment program which has agreed to provide treatment to the defendant. 725 ILCS 5/104-17. If the defendant's disability is physical, he may be placed under the supervision of the Department of Human Services, who shall place and maintain the defendant in a suitable treatment facility or program. 725 ILCS 5/104-17. Within 30 days after entry of an order to undergo treatment, the person supervising the defendant's treatment must file a report with the court. Id. If the report indicates that there is a substantial possibility that the defendant will attain fitness within a year, the treatment supervisor shall also file a treatment plan which shall include the diagnosis of the defendant's disability and a description of the treatment goals. Id.

All of the proceedings described in this Act to determine the fitness of a Defendant to stand trial are supervised by the court. 725 ILCS 5/104-11. Therefore, all of the disclosures made under this statute are made pursuant to court order. Thus, if the court is able to comply with the requirements of the Privacy Rule for judicial disclosures, this Act is not preempted by the Privacy Rule. 45 C.F.R. §164.512(e).

It is possible to comply with this law and HIPAA. Further, this law does not stand as an obstacle to accomplishing the full purpose of HIPAA. Therefore, the law is not "contrary" to the HIPAA regulations. 45 C.F.R. §160.202.

7. Is the Law Preempted?

No.

1. Name and Citation of Law

Rights of Crime Victims and Witness Act (725 ILCS 120)

2. General Description of the Law

The Rights of Crime Victims and Witnesses Act is designed to implement, preserve and protect the rights guaranteed to crime victims by the Illinois Constitution, including to ensure that crime victims are treated with fairness and respect for their dignity and privacy throughout the criminal justice system.

3. Rules Promulgated Under the Law

None. No administrative rules have been promulgated under this law.

4. Key Provisions

725 ILCS 120/4, Rights of Crime Victims

5. Significant Case Law

None. There is no significant case law addressing the issues raised by the HIPAA preemption analysis.

6. Preemption Analysis Under HIPAA

The Rights of Crime Victims and Witnesses Act establishes certain guidelines for the treatment of victims and witnesses throughout the judicial system. Section 120/4 provides that crime victims have the right to be "treated with fairness and respect for their dignity and privacy throughout the criminal justice process." 725 ILCS 120/4. The Act, however, does not involve giving or receiving health care or the disclosure of protected health information.

It is possible to comply with this law and HIPAA. Further, this law does not stand as an obstacle to accomplishing the full purpose of HIPAA. Therefore, the law is not "contrary" to the HIPAA regulations. 45 C.F.R. § 160.202.

7. Is the Law Preempted?

No.

1. Name and Citation of Law

Drug Assert Forfeiture Procedure Act (725 ILCS 150)

2. General Description of the Law

The Drug Asset Forfeiture Procedure Act establishes the procedure whereby certain assets can be seized that are used in the manufacture, sale, transportation, and distribution of illegal substances.

3. Rules Promulgated Under the Law

20 Ill. Admin. Code 1225, Rules Implementing

4. Key Provisions

None. There are no provisions of this Act addressing the issues raised by the HIPAA preemption analysis.

5. Significant Case Law

None. There is no significant case law addressing the issues raised by the HIPAA preemption analysis.

6. Preemption Analysis Under HIPAA

The Drug Asset Forfeiture Act does not involve the privacy of health information. It is possible to comply with this law and HIPAA. Further, this law does not stand as an obstacle to accomplishing the full purpose of HIPAA. Therefore, the law is not "contrary" to the HIPAA regulations. 45 C.F.R. § 160.202.

7. Is the Law Preempted?

No.

1. Name and Citation of Law

Narcotics Profit and Forfeiture Act (725 ILCS 175)

2. General Description of the Law

The Narcotics Profit and Forfeiture Act establishes penalties for those engaged in narcotics racketeering. The Act defines narcotic racketeering as a pattern of narcotics activity.

3. Rules Promulgated Under the Law

None. No administrative rules have been promulgated under this law.

4. Key Provisions

None. There are no provisions of this Act addressing the issues raised by the HIPAA preemption analysis.

5. Significant Case Law

None. There is no significant case law addressing the issues raised by the HIPAA preemption analysis.

6. Preemption Analysis Under HIPAA

The Narcotics Profit and Forfeiture Act does not involve the privacy of health information. It is possible to comply with this law and HIPAA. Further, this law does not stand as an obstacle to accomplishing the full purpose of HIPAA. Therefore, the law is not "contrary" to the HIPAA regulations. 45 C.F.R. § 160.202.

7. Is the Law Preempted?

No.

1. Name and Citation of Law

Pretrial Services Act (725 ILCS 185)

2. General Description of the Law

The Pretrial Services Act is designed to provide the court with accurate background data regarding the pretrial release of persons charged with felonies and effective supervision of compliance with terms and conditions composed on release. 725 ILCS 185/1.

3. Rules Promulgated Under the Law

None. No administrative rules have been promulgated under this law.

4. Key Provisions

725 ILCS 185/7, Duties
725 ILCS 185/30, Records and Statistics - Reports
725 ILCS 185/31, Confidential information

5. Significant Case Law

None. There is no significant case law addressing the issues raised by the HIPAA preemption analysis.

6. Preemption Analysis Under HIPAA

Pretrial Services agencies shall be responsible for interviewing and assembling verified information and data concerning the community ties, employment, residency, criminal record and social background of arrested persons who are to be or have been presented in court for first appearance on felony charges to assist the court in determining the appropriate terms and conditions of pretrial release. 725 ILCS 185/7.

The Act also provides that information and records maintained by the Pretrial Services agency which had not been disclosed in open court during a court proceeding must not be released by the Pretrial Services agency to any individual or organization other than any employee of a Probation and Court Services Department that the express permission of the interviewed or supervised person at or near the time the information is to be released. 7265 ILCS 185/31.

This Act does not involve health care providers or the transmittal of protected health care information. Any disclosure of health care information under the Act, however, generally would be permissible under the Privacy Rule pursuant to 45 C.F.R. §164.512(e)

as a disclosure necessary for a judicial or administrative proceeding. It is possible to comply with this law and HIPAA. Further, this law does not stand as an obstacle to accomplishing the full purpose of HIPAA. Therefore, the law is not "contrary" to the HIPAA regulations. 45 C.F.R. § 160.202.

7. Is the Law Preempted?

No.

1. Name and Citation of Law

Privacy of Child Victims of Criminal Sexual Offences Act (725 ILCS 190)

2. General Description of the Law

The privacy of child victims of Criminal Sexual Offences Act establishes confidentiality guidelines to prevent disclosure of the identity of any child who is a victim of a criminal sexual offense or alleged criminal sexual offense.

3. Rules Promulgated Under the Law

None. No administrative rules have been promulgated under this law.

4. Key Provisions

725 ILCS 190/3, Confidentiality of Law Enforcement in Court Records

5. Significant Case Law

None. There is no significant case law addressing the issues raised by the HIPAA preemption analysis.

6. Preemption Analysis Under HIPAA

The Privacy of Child Victims of Criminal Sexual Offences Act limits the inspection and copying of law enforcement records relating to any investigation or proceeding pertaining to the identity of a child victim of a criminal sexual offense. 725 ILCS 190/3. This Act does not contemplate the release of protected health care information by a covered entity.

It is possible to comply both with this law and HIPAA. Further, the law does not stand as an obstacle to accomplishing the full purpose of HIPAA. Therefore, the law is not contrary to the HIPAA regulations. 45 C.F.R. § 160.202.

7. Is the Law Preempted?

No.

1. Name and Citation of Law

Sexually Dangerous Persons Act (725 ILCS 205)

2. General Description of the Law

The Sexually Dangerous Person Act provides the Attorney General or State's Attorney the right to seek guardianship or commitment to the Department of Corrections when it appears that such person is a sexually dangerous person.

3. Rules Promulgated Under the Law

None. No administrative rules have been promulgated under this law.

4. Key Provisions

725 ILCS 205/1.01, Sexually Dangerous Person Definition
725 ILCS 205/4, Examination by Psychiatrist
725 ILCS 205/8, Director of Corrections as Guardian
725 ILCS 205/9, Application Showing Recovery - Hearing - Discharge

5. Significant Case Law

None. There is no significant case law addressing the issues raised by the HIPAA preemption analysis.

6. Preemption Analysis Under HIPAA

The Sexually Dangerous Person Act defines a sexually dangerous person as a person suffering from a mental disorder for more than one year, coupled with criminal propensities to the commission of sex offenses and who has demonstrated propensities towards acts of sexual assault or acts of sexual molestation of children. 725 ILCS 205/1.01. Under the Act, after a petition is filed by the State's Attorney's Office, the Court is to appoint two qualified psychiatrists to make a personal examination of the alleged sexually dangerous person to ascertain whether such person is sexually dangerous. 725 ILCS 205/4. The psychiatrists must then file with the court a report in writing of the result of their examination, a copy of which is to be delivered to the respondent. Id. The disclosure as contemplated under this section is permissible under the Privacy Rule that permits disclosure by court order. 45 C.F.R. §164.512(e).

The Act also provides that the Department of Corrections shall serve as guardian and provide care and treatment for the person designed to effect recovery. 725 ILCS 205/8. The Director may place the person in any facility in the Department of Corrections, or

portion thereof, set aside for the care and treatment of sexually dangerous persons. Id. The Department may also have another Department or agency examine the person and provide treatment. Id. While this portion of the Act contemplates providing the types of service defined as health care services under the Privacy Rule, any disclosure for treatment purposes is allowed by the Privacy Rule. 45 C.F.R. §164.502, 164.506. Under a court-ordered guardianship, the Department would act as the personal representative of the individual. 45 C.F.R. §164.502(g).

Upon recovery, the person may petition the committing court in writing setting forth the facts showing that the person has recovered. 725 ILCS 205/9. A report must be prepared at the warden's request by a psychiatrist, sociologist, psychologist, and warden of, or assigned to, the institution where the person is confined. Id. Any health information disclosed by this report is permissible pursuant to court order. 45 C.F.R. §164.512(e). Further, the inmate may authorize the disclosure to further the prosecution of the petition. 45 C.F.R. §164.508.

It is possible to comply both with this law and HIPAA. Further, the law does not stand as an obstacle to accomplishing the full purpose of HIPAA. Therefore, the law is not contrary to the HIPAA regulations. 45 C.F.R. § 160.202.

7. Is the Law Preempted?

No.

1. Name and Citation of Law

Sexually Violent Persons Commitment Act (725 ILCS 207)

2. General Description of the Law

The Sexually Violent Persons Commitment Act establishes a mechanism for the Attorney General and/or State's Attorney's Office to file a petition regarding sexually violent persons upon release from their confinement. If the Court determines the person to be a sexually violent person, the court can commit the person to the custody of the Department of Human Services for control, care and treatment until such time as the person is no longer a sexually violent person.

3. Rules Promulgated Under the Law

None. No administrative rules have been promulgated under this law.

4. Key Provisions

725 ILCS 207/10, Notice to the Attorney General and State's Attorney
725 ILCS 207/25, Rights of Person Subject to Petition
725 ILCS 207/40, Commitment
725 ILCS 207/45, Deoxyribonucleoacid Analysis Requirements
725 ILCS 207/55, Periodic Examination Report

5. Significant Case Law

None. There is no significant case law addressing the issues raised by the HIPAA preemption analysis.

6. Preemption Analysis Under HIPAA

The Sexually Violent Persons Commitment Act provides a mechanism for the Attorney General's and/or State's Attorney's Office to petition a court for further confinement of a person adjudged to be a sexually dangerous person. 750 ILCS 207/10. This involves several mental and physical examinations of the person. Id. Furthermore, §207/10 provides that the agency with jurisdiction and control over the person prior to release of confinement must provide the Attorney General and the State's Attorney with a comprehensive evaluation of the person's mental condition, the basis upon which a determination has been made that the person is subject to commitment and, if applicable, documentation of any treatment and the person's adjustment to any institutional placement. Id.

The Act also provides that if a trial court lacks sufficient information to make a determination as to whether a person is a sexually dangerous person, a supplementary mental examination may be done. 725 ILCS 207/40(b)(2). If a person is given conditional release under the Act, he or she must waive confidentiality allowing the court and Department access to or assessment of treatment results or both. 725 ILCS 207/35(a)(5)(G). If a person is found to be a sexually violent person under the Act, the court must require the person to provide a DNA specimen. 725 ILCS 207/45. Furthermore, the person who has been committed under the Act must have his or her mental health examined by the Department within six months after the initial commitment and then at least once every twelve months from the completion of the last evaluation for the purpose of determining whether the person has made sufficient progress to be conditionally released or discharged. 725 ILCS 207/55. The examiner must prepare a written report of the examination no later than 30 days after the date of the examination. Id. The examiner must place a copy of the report in the person's health care records and must provide a copy of the report to the court that committed the person. Id.

Disclosures under this Act are accomplished pursuant to court order. As long as the court order meets the requirements of the Privacy Rule, such disclosures are allowed. 45 C.F.R. §164.512(e). As a prerequisite of conditional release, individuals should execute a HIPAA-compliant authorizations. 45 C.F.R. §164.508.

It is possible to comply with this law and HIPAA. Further, this law does not stand as an obstacle to accomplishing the full purpose of HIPAA. Therefore, the law is not "contrary" to the HIPAA regulations. 45 C.F.R. §160.202.

7. Is the Law Preempted?

No.

1. Name and Citation of Law

Violent Crime Victims Assistance Act (725 ILCS 240)

2. General Description of the Law

The Violent Crime Victims Assistance Act is designed to improve attitudes of victims and witnesses towards the criminal justice system and to provide for faster, more complete victim recovery from the effects of crime.

3. Rules Promulgated Under the Law

89 Ill. Admin. Code 1100, Programmatic and Fiscal Requirements

4. Key Provisions

725 ILCS 240/8, Centers - Services Provided

5. Significant Case Law

None. There is no significant case law addressing the issues raised by the HIPAA preemption analysis.

6. Preemption Analysis Under HIPAA

The Violent Crime Victims Assistance Act creates service centers to provide services to crime victims, including the provision of special counseling facilities and rehabilitation services and rehabilitation services for child victims of sexual offenses.

The rules and regulations promulgated under the Act, in furtherance of the statute, contain several sections that involve providing health care and maintaining confidential records. 89 Ill. Admin. Code 1100. For example, administrative regulations require State entities to obtain authorization in order to exchange case record information deemed to be confidential by the agency releasing the information. 89 Ill. Admin. Code 1100.40(a)(2). If an agency is awarded funding under this Act, the agency must maintain all fiscal records for 5 years after the end of each budget period. 89 Ill. Admin. Code 1100.200. The agency is also to make available all financial records, client contact records and case records in connection with funded programs. 89 Ill. Admin. Code 1100.250. In making case records available, the agency must ensure the confidentiality of each client pursuant to the grantee's confidentiality standards. Id.

If the agencies are covered entities, they must comply with the Privacy Rule.

It is possible to comply with this law and HIPAA. Further, this law does not stand as an obstacle to accomplishing the full purpose of HIPAA. Therefore, the law is not "contrary" to the HIPAA regulations. 45 C.F.R. § 160.202.

7. Is the Law Preempted?

No.

1. Name and Citation of Law

Unified Code of Corrections (730 ILCS 5 *et seq*.)

2. General Description of the Law

The Unified Code of Corrections is designed to proscribe sanctions proportionate to the seriousness of the offences of crimes and permit the recognition of difference in rehabilitation possibilities among individual offenders. 730 ILCS 5/1-1-2. The Act is also designed to forbid and prevent the commission of offences, prevent arbitrary or oppressive treatment of persons, adjudicated offenders or delinquents and restore offenders to useful citizenship. Id.

3. Rules Promulgated Under the Law

20 Ill. Admin. Code 106, Research
20 Ill. Admin. Code 112, Internal Investigations
20 Ill. Admin. Code 117, Correctional Industries
20 Ill. Admin. Code 120, Rules of Conduct
20 Ill. Admin. Code 205, Funds of Committed Persons
20 Ill. Admin. Code 210, Commissaries
20 Ill. Admin. Code 410, Legal Programs for Committed Persons
20 Ill. Admin. Code 430, Library Services and Legal Materials
20 Ill. Admin. Code 435, Volunteer Services
20 Ill. Admin. Code 445, Committed Persons' Business Ventures
20 Ill. Admin. Code 450, Committed Persons' Organizations
20 Ill. Admin. Code 455, Work Release Program
20 Ill. Admin. Code 503, Classification and Transfers
20 Ill. Admin. Code 530, Authorized Absences
20 Ill. Admin. Code 535, Personal Property
20 Ill. Admin. Code 540, Out-of-State Employment
20 Ill. Admin. Code 701, County Jail Standards
20 Ill. Admin. Code 702, County Jail Detention Standards
20 Ill. Admin. Code 1610, Prisoner Review Board
20 Ill. Admin. Code 103, Public Relations
20 Ill. Admin. Code 107, Records of Committed Persons
20 Ill. Admin. Code 405, School District #428
20 Ill. Admin. Code 415, Health Care
20 Ill. Admin. Code 420, Assignment of Committed Persons
20 Ill. Admin. Code 460, Impact Incarceration Program
20 Ill. Admin. Code 504, Discipline and Grievances
20 Ill. Admin. Code 505, Closed Maximum Security Facility
20 Ill. Admin. Code 525, Rights and Privileges

20 Ill. Admin. Code 425, Chaplaincy Services and Religious Practices
20 Ill. Admin. Code 502, Safety, Maintenance and Sanitation

20 Ill. Admin. Code 110, Reimbursement for Expenses
20 Ill. Admin. Code 1285, Sample Collection for Genetic Marker Indexing

4. Key Provisions

730 ILCS 5/3-2-2, Powers and Duties of the Department
730 ILCS 5/3-3-7, Conditions of Parole or Mandatory Supervised Release.
730 ILCS 5/3-3-11.5, Sex Offender Restrictions
730 ILCS 5/3-5-1, Master Record File
730 ILCS 5/3-5-2, Institutional Record
730 ILCS 5/3-6-2, Institutions and Facility Administration
730 ILCS 5/3-7-2, Facilities
730 ILCS 5/3-7-6, Rules Governing Mental Health Services
730 ILCS 5/3-8-2, Social Evaluation
730 ILCS 5/3-8-5, Transfer to Department of Human Services
730 ILCS 5/3-8-6, Return and Release from Department of Human Services
730 ILCS 5/3-9-7, Sexual Abuse Counseling Programs
730 ILCS 5/3-10-2, Examination of Persons Committed to the Juvenile Division
730 ILCS 5/3-10-5, Transfers to the Department of Human Services
730 ILCS 5/3-10-6, Return and Release from Department of Human Services
730 ILCS 5/3-14-1, Release from the Institution
730 ILCS 5/3-14-4, Halfway Houses
730 ILCS 5/3-14-5, Mental Health Treatment; Stalking and Aggravated Stalking
730 ILCS 5/3-15-3, Standards and Procedures for Mental Health and Developmental Disability Services
730 ILCS 5/5-1-8, Defendant in Need of Mental Health Treatment
730 ILCS 5/5-2-4, Proceedings after Acquittal by Reason of Insanity
730 ILCS 5/5-2-5, Expert Witness; Defendant's Fitness, Insanity or Mental Illness
730 ILCS 5/5-2-6, Sentencing and Treatment of Defendant Found Guilty but Mentally Ill
730 ILCS 5/5-3-2, Pre-Sentence Report
730 ILCS 5/5-3-3, Pre-sentence Commitment for Study
730 ILCS 5/5-3-4, Disclosure of Reports
730 ILCS 5/5-4-3, Persons Convicted of, or Found Delinquent for, Qualifying Offences or
Institutionalized as Sexually Dangerous; Blood Specimens; Genetic Marker Indexing
730 ILCS 5/5-6-30, Conditions of Probation and of Conditional Discharge
730 ILCS 5/5-6-3.1, Incidents and Conditions of Supervision
730 ILCS 5/5-7-1, Sentence of Periodic Imprisonment
730 ILCS 5/5-8-1.1, Impact Incarceration
730 ILCS 5/5-8-1.2, County Impact Incarceration

730 ILCS 5/5-8a-4, Program Description

5. Significant Case Law

None. There is no significant case law addressing the issues raised by the HIPAA preemption analysis.

6. Preemption Analysis Under HIPAA

Committed Persons

The Unified Code of Corrections provides that it is the duty of the Department of Corrections to provide care, treatment and rehabilitation to committed persons. 730 ILCS 5/3-2-2. A committed person who is diagnosed as suffering from a mental illness or developmental disability shall have access to a qualified mental health or developmental disability professional of the Department, and that mental health records be disclosed only for purposes authorized by Department rule or by law. 730 ILCS 5/3-7-7. In providing this care, the Department of Corrections is acting both as a health care provider and a health plan within the meaning of the Privacy Rule and is therefore a covered entity. 45 C.F.R. §164.103. Inmates of corrections facilities do not have the same rights as other individuals under the Privacy Rule. 45 C.F.R. §164.520. For example, an inmate does not have a right to a notice of privacy practices. Id. An inmate's protected health information may be released and used by correctional institutions to maintain safety within the correctional institution. 45 C.F.R. §164.512(k)(5). Other than these special limitations, the Department is required to comply with the Privacy Rule. Id.

The Chief Administrative Officer of a correctional institution may consent to medical or surgical treatment of a committed person if the committed person is incapable of giving consent. 730 ILCS 5/3-6-2. In this situation, the Chief Administrative Officer is acting as a personal representative of the committed person pursuant to State law. 45 C.F.R. §164.502(g).

Correctional facilities provide pre-sentence reports in felony cases that may contain physical and mental history and condition information. 730 ILCS 5/5-3-2. A court may also order mental and physical examinations for pre-sentence reports. Id. These pre-sentence report disclosures are permissible pursuant to court order. 45 C.F.R. §164.512(e).

Parole and Supervised Released

A committed person who is granted parole or conditional release is required to release health information to the supervising officer as a condition of release in many instances. 730 ILCS 5/3-14-3. In these instances, the Department of Corrections should obtain a

HIPAA compliant authorization to assure that other covered entities will disclose the needed information. 45 C.F.R. §164.508. In the alternative, a court order could be sought for release of this information. 45 C.F.R. §164.512(e).

Pursuant to the above, it is possible to comply with this law and HIPAA. Further, this law does not stand as an obstacle to accomplishing the full purpose of HIPAA. Therefore, the law is not "contrary" to the HIPAA regulations. 45 C.F.R. §160.202.

7. Is the Law Preempted?

No.

1. Name and Citation of Law

County Jail Act (730 ILCS 125)

2. General Description of the Law

The County Jail Act establishes guidelines upon which county jails are to be kept and maintained, including the receipt and confinement of prisoners.

3. Rules Promulgated Under the Law

None. No administrative rules have been promulgated under this law.

4. Key Provisions

730 ILCS 125/17, Bedding, Clothing, Fuel and Medical Aid; Reimbursement for Medical or Hospital Expenses
730 ILCS 125/17.5, Pregnant Female Prisoners

5. Significant Case Law

None.

6. Preemption Analysis Under HIPAA

The County Jail Act provides that when medical or hospital services are required by any person held in custody by the county, a private hospital or any public agency which provides such services shall be entitled to obtain reimbursement from the county or from the arrestee's medical cost fund to the extent that monies in the fund are available for the cost of such services. 730 ILCS 125/17. To the extent that such person is reasonably able to pay for such care, including reimbursement from any insurance program or other medical benefit programs, he or she must reimburse the county or arresting authority. Id. In this way, the county may be acting as a health plan in paying for the care of inmates. 45 C.F.R. §164.103.

The Act contemplates payment and reimbursement for prisoner medical care, it does not otherwise contain any provision relating to the privacy of health information.

It is possible to comply with this law and HIPAA. Further, this law does not stand as an obstacle to accomplishing the full purpose of HIPAA. Therefore, the law is not "contrary" to the HIPAA regulations. 45 C.F.R. § 160.202.

7. Is the Law Preempted?

No.

1. Name and Citation of Law

Illinois Prison Inspection Act (730 ILCS 135)

2. General Description of the Law

The Illinois Prison Inspection Act establishes guidelines for the periodic inspection of state operated prison facilities with regard to sanitary conditions and medical facilities by the Department of Public Health.

3. Rules Promulgated Under the Law

None. No administrative rules have been promulgated under this law.

4. Key Provisions

None. There are no provisions of this Act addressing the issues raised by the HIPAA preemption analysis.

5. Significant Case Law

None. There is no significant case law addressing the issues raised by the HIPAA preemption analysis.

6. Preemption Analysis Under HIPAA

The Department of Public Health is charged with inspecting Department of Corrections facilities to verify the sanitary conditions of the medical facilities. 730 ILCS 135/2. Disclosures of health information which occur during the inspection of any prison facilities are allowed under the health oversight exception in the Privacy Rule. 45 C.F.R. §164.512(b).

It is possible to comply with this law and HIPAA. Further, this law does not stand as an obstacle to accomplishing the full purpose of HIPAA. Therefore, the law is not "contrary" to the HIPAA regulations. 45 C.F.R. § 160.202.

7. Is the Law Preempted?

No.

1. Name and Citation of Law

Illinois Substance Abuse Treatment Program (730 ILCS 145)

2. General Description of the Law

The Illinois Substance Abuse Treatment Program establishes a one year pilot program with the Illinois Department of Corrections in an effort to assist inmates in their rehabilitation from illicit drug and alcohol abuse.

3. Rules Promulgated Under the Law

None. No administrative rules have been promulgated under this law.

4. Key Provisions

None. There are no provisions of this Act addressing the issues raised by the HIPAA preemption analysis.

5. Significant Case Law

None. There is no significant case law addressing the issues raised by the HIPAA preemption analysis.

6. Preemption Analysis Under HIPAA

The Illinois Substance Abuse Treatment Program allows the Department of Corrections to render health care, however, the Act does not specifically address the use or disclosure of health information.

It is possible to comply with this law and HIPAA. Further, this law does not stand as an obstacle to accomplishing the full purpose of HIPAA. Therefore, the law is not "contrary" to the HIPAA regulations. 45 C.F.R. § 160.202.

7. Is the Law Preempted?

No.

1. Name and Citation of Law

Sex Offender Registration Act (730 ILCS 150)

2. General Description of the Law

The Sex Offender Registration Act provides that a sex offender or sexual offender must register in person and provide accurate information to the Department of State Police.

3. Rules Promulgated Under the Law

None. No administrative rules have been promulgated under this law.

4. Key Provisions

None. There are no provisions of this Act addressing the issues raised by the HIPAA preemption analysis.

5. Significant Case Law

None.

6. Preemption Analysis Under HIPAA

The Sex Offender Registration Act creates a database of sexually dangerous persons. 730 ILCS 150/3. The burden is upon the offender to register in person. Id. The Act does not contemplate the release of protected health information, nor does it involve a health care provider.

It is possible to comply with this law and HIPAA. Further, this law does not stand as an obstacle to accomplishing the full purpose of HIPAA. Therefore, the law is not "contrary" to the HIPAA regulations. 45 C.F.R. § 160.202.

7. Is the Law Preempted?

No.

1. Name and Citation of Law

Sex Offender and Child Murderer Community Notification Law (730 ILCS 152)

2. General Description of the Law

The Sex Offender and Child Murderer Community Notification Law establishes guidelines for the notification of sex offenders to communities and some specific institutions, i.e., day care institutions.

3. Rules Promulgated Under the Law

20 Ill. Admin. Code 1282, Rules Implementing the Sex Offender and Child Murderer Community Notification Law

4. Key Provisions

None. There are no provisions of this Act addressing the issues raised by the HIPAA preemption analysis.

5. Significant Case Law

None. There is no significant case law addressing the issues raised by the HIPAA preemption analysis.

6. Preemption Analysis Under HIPAA

The regulations promulgated under the law establish certain confidentiality requirements regarding offenders. 20 Ill. Admin. Code 1282.30(f). However, the information is not protected health information nor do the regulations contemplate the release thereof.

It is possible to comply with this law and HIPAA. Further, this law does not stand as an obstacle to accomplishing the full purpose of HIPAA. Therefore, the law is not "contrary" to the HIPAA regulations. 45 C.F.R. § 160.202.

7. Is the Law Preempted?

No.

1. Name and Citation of Law

Prisoner Interchange Act (730 ILCS 155)

2. General Description of the Law

The Prisoner Interchange Act establishes guidelines for the transfer of prisoners within penal institutions.

3. Rules Promulgated Under the Law

None. No administrative rules have been promulgated under this law.

4. Key Provisions

None. There are no provisions of this Act addressing the issues raised by the HIPAA preemption analysis.

5. Significant Case Law

None. There is no significant case law addressing the issues raised by the HIPAA preemption analysis.

6. Preemption Analysis Under HIPAA

The Prisoner Interchange Act provides for transfer of prisoners among correctional institutions. Presumably, health care records will accompany the transfer of the prisoner, however, the Act does not address the privacy of health information.

It is possible to comply with this law and HIPAA. Further, this law does not stand as an obstacle to accomplishing the full purpose of HIPAA. Therefore, the law is not "contrary" to the HIPAA regulations. 45 C.F.R. § 160.202.

7. Is the Law Preempted?

No.

1. Name and Citation of Law

Alternative Sentencing Job Training Act (730 ILCS 170)

2. General Description of the Law

The Alternative Sentencing Job Training Act provides that the Illinois Department of Corrections and local entities may develop job training programs to rehabilitate prisoners.

3. Rules Promulgated Under the Law

None. No administrative rules have been promulgated under this law.

4. Key Provisions

None. There are no provisions of this Act addressing the issues raised by the HIPAA preemption analysis.

5. Significant Case Law

None. There is no significant case law addressing the issues raised by the HIPAA preemption analysis.

6. Preemption Analysis Under HIPAA

The Alternative Sentencing Job Training Act does not address the privacy of health information.
It is possible to comply with this law and HIPAA. Further, this law does not stand as an obstacle to accomplishing the full purpose of HIPAA. Therefore, the law is not "contrary" to the HIPAA regulations. 45 C.F.R. § 160.202.

7. Is the Law Preempted?

No.

1. Name and Citation of Law

Secure Residential Youth Care Facility Licensing Act (730 ILCS 175)

2. General Description of the Law

The Secure Residential Youth Care Facility Licensing Act provides the Illinois Department of Corrections with the power to license secure residential youth care facilities for the protection of health, welfare and safety of residents.

3. Rules Promulgated Under the Law

None.

4. Key Provisions

730 ILCS 175/45-35, Child Abuse and Neglect Reports
730 ILCS 175/45-115, Record Keeping; Confidentiality

5. Significant Case Law

None. There is no significant case law addressing the issues raised by the HIPAA preemption analysis.

6. Preemption Analysis Under HIPAA

A secure residential youth care facility may be a covered entity under the Privacy Rule if the facility transmits one of the standard transactions electronically. 45 C.F.R. §164.103.

The Act provides that every youth care facility must keep and maintain records pertaining to the admission, progress, health and discharge of youth under the care of the facilities and must report the same to the Department when requested. 630 ILCS 175/45-115. In the event that the Department of Corrections needs to obtain health information from a youth care facility, such a disclosure is allowed under the Privacy Rule for purposes of payment or health oversight. 45 C.F.R. §164.502, 164.512(d).

It is possible to comply with this law and HIPAA. Further, this law does not stand as an obstacle to accomplishing the full purpose of HIPAA. Therefore, the law is not "contrary" to the HIPAA regulations. 45 C.F.R. § 160.202.

7. Is the Law Preempted?

No.

1. Name and Citation of Law

Code of Civil Procedure (735 ILCS 5)

2. General Description of the Law

The Code of Civil Procedure sets forth the procedures for civil practice and administrative review before the courts in the State of Illinois. 735 ILCS/1-101. While the general purpose of the Code of Civil Procedure does not address health care, certain provisions of the Code of Civil Procedure impact the release of health information by covered entities.

3. Rules Promulgated Under the Law

The Illinois Supreme Court Rules
Rules of the Circuit Court of Cook County
Rules of Practice of the Circuit Court, 1st Judicial Circuit
Rules of Practice of the Circuit Court, 2nd Judicial Circuit
Rules of Practice of the Circuit Court, 3rd Judicial Circuit
Rules of Practice of the Circuit Court, 4th Judicial Circuit
Rules of Practice of the Circuit Court, 5th Judicial Circuit
Rules of Practice of the Circuit Court, 6th Judicial Circuit
Rules of Practice of the Circuit Court, 7th Judicial Circuit
Rules of Practice of the Circuit Court, 8th Judicial Circuit
Rules of Practice of the Circuit Court, 9th Judicial Circuit
Rules of Practice of the Circuit Court, 10th Judicial Circuit
Rules of Practice of the Circuit Court, 11th Judicial Circuit
Rules of Practice of the Circuit Court, 12th Judicial Circuit
Rules of Practice of the Circuit Court, 13th Judicial Circuit
Rules of Practice of the Circuit Court, 14th Judicial Circuit
Rules of Practice of the Circuit Court, 15th Judicial Circuit
Rules of Practice of the Circuit Court, 16th Judicial Circuit
Rules of Practice of the Circuit Court, 17th Judicial Circuit
Rules of Practice of the Circuit Court, 18th Judicial Circuit
Rules of Practice of the Circuit Court, 19th Judicial Circuit
Rules of Practice of the Circuit Court, 20th Judicial Circuit
Rules of Practice of the Circuit Court, 21st Judicial Circuit

4. Key Provisions

735 ILCS 5/2-622, Healing Art Malpractice
735 ILCS 5/2-1003, Discovery and Depositions
735 ILCS 5/2-1701-1719, Healing Art Malpractice

735 ILCS 5/8-401, Account Books and Records
735 ILCS 5/8-802, Physician and Patient (Privileged Communications)
735 ILCS 5/8-802.1, Confidentiality of Statements Made to Rape Crisis Personnel
735 ILCS 5/8-802.2, Confidentiality of Statements Made to Personnel Counseling Victims of Violent Crime

Part 17, Healing Art Malpractice
735 ILCS 5/8-1702, Economic/Non-Economic Loss
735 ILCS 5/8-1703, Past/Future Damages
735 ILCS 5/8-1704, Medical Malpractice Action
735 ILCS 5/8-1705, Election for Periodic Payment
735 ILCS 5/8-1706, Special Finance Required
735 ILCS 5/8-1707, Calculation of Future Damages
735 ILCS 5/8-1708, Basis for Determining Judgment to be Entered
735 ILCS 5/8-1709, Payment of Periodic Installment Obligations
735 ILCS 5/8-1710, Form of Security
735 ILCS 5/8-1711, Posting and Maintaining Security
735 ILCS 5/8-1712, Equivalent Lump Sum Value
735 ILCS 5/8-1713, Effective Death
735 ILCS 5/8-1714, Liability Insurance Policy Limits
735 ILCS 5/8-1715, Assignment of Periodic Installments
735 ILCS 5/8-1716, Exemptions of Benefits
735 ILCS 5/8-1717, Settlement Agreements and Consent Judgments
735 ILCS 5/8-1718, Satisfaction of Judgments
735 ILCS 5/8-1719, Duties of Director of Insurance

Part 20, Inspection of Hospital Records
735 ILCS 5/8-2001, Examination of Records
735 ILCS 5/8-2002, Application
735 ILCS 5/8-2003, Physician's Records
735 ILCS 5/8-2004, Records of Clinical Psychologists and Clinical Social Workers

Part 21, Medical Studies
735 ILCS 5/8-2101, Information Obtained
735 ILCS 5/8-2102, Admissibility as Evidence
735 ILCS 5/8-2103, Furnishing Information
735 ILCS 5/8-2104, Interviews
735 ILCS 5/8-2105, Improper Disclosure

5. Significant Case Law

State ex. rel. Department of Professional Regulation v. Manos, 2002 WL 31722951 (Ill. 2002)

Best v. Taylor Machine Works, 179 Ill. 2d 367, 689 N.E.2d 1057, 228 Ill. Dec. 636 (Ill. 1997)
Kunkel v. Walton, 179 Ill. 2d 519, 689 N.E.2d 1047, 228 Ill. Dec. 626 (Ill. 1998)

6. Preemption Analysis Under HIPAA

A. Document Production & Privilege

The Code of Civil Procedure contains many provisions which relate to the disclosure of information and production of documents in discovery, including without limitation 735 ILCS 5/2-1003. The State discovery requirements are generally limited by the Privacy Rule in that covered entities cannot produce protected health information pursuant to a request or subpoena that does not provide the assurances required by § 164.512(e)(1)(ii) of the Privacy Regulation. 45 C.F.R. §164.512(e). Note that 735 ILCS 5/2-1003 requires a plaintiff in a personal injury case to provide another party, upon request, with signed authorizations for release of medical records. If these authorizations are HIPAA-compliant, the Privacy Rule permits such release of records by a health provider.

Section 8-802, Health Care Practitioner and Patient Privilege, prohibits a health care practitioner from disclosing information acquired in rendering services except for certain enumerated exceptions. 735 ILCS 5/8-802. The first exception allows disclosures in trials for homicide when the disclosure relates directly to the fact or immediate circumstances of the homicide. 735 ILCS 5/8-802(1). In trials for murder, disclosures of protected health information by a covered entity are only allowed to the extent that they are done pursuant to court order or a subpoena issued in compliance with the Privacy Rule. 45 C.F.R. §164.512(e). Another exception to the physician-patient privilege is for malpractice actions against a physician. Under the Privacy Rule, defense of a malpractice action is allowed without consent as part of health care operations. 45 C.F.R. §164.502, 164.506.

The Code of Civil Procedure provides that the privilege is waived upon consent of the patient or someone authorized to act on his or her behalf. 735 ILCS 5/8-802(3). In this case, the statute is setting forth those who may consent on behalf of the patient. Id. The Privacy Rule looks to State law to determine who may act as a personal representative, therefore, the individuals listed in this section may validly consent to the release of records. 45 C.F.R. §164.502(g).

In an action where the patient's physical or mental condition is an issue, State law provides that protected health information may be disclosed without consent. 735 ILCS 5/8-802(4). Under these circumstances, disclosure by a covered entity is proper only upon compliance with the Privacy Rule's requirements for disclosures in judicial and administrative proceedings. 45 C.F.R. §164.512(e).

Section 8-802 also provides that protected health information may be released without consent when the issue in the litigation is the validity of a will. Again, any such disclosure can only occur upon authorization of an individual recognized as a personal representative, or in compliance with the Privacy Rule's requirements for disclosures in judicial and administrative proceedings. 45 C.F.R. §164.502(g), 164.512(e).

Waiver of the physician-patient privilege is also presumed in a criminal action involving a charge of first degree murder by abortion, attempted abortion or abortion. 735 ILCS 5/8-802(6). Again, disclosures of protected health information under these circumstances must be made in compliance with the Privacy Rule's requirements for disclosures and judicial and administrative proceedings. 45 C.F.R. §164.512(e).

Disclosure is also allowed by the Code of Civil Procedure for actions arising from the filing of reports under the Abused and Neglected Child Reporting Act (see discussion of 325 ILCS 5). 735 ILCS 5/8-802(7). Covered entities are allowed to report potential child abuse under the Privacy Rule to the appropriate State authority if certain requirements are met. 45 C.F.R. §164.512(b), (c). In a court proceeding, disclosures should meet the requirements for judicial and administrative proceedings. 45 C.F.R. §164.512(e).

Section 8-802 also permits disclosure of records to any agency, institution or facility which has custody of the patient pursuant to a commitment order. 735 ILCS 5/5-802(8). In this instance, disclosures are permitted under the Privacy Rule as part of treatment. 45 C.F.R. §164.502, 164.506. Further, a court order could be issued allowing the disclosure if necessary. 45 C.F.R. §164.512(e).

Physicians are also entitled under State law to disclose protected health information in prosecutions for driving or boating under the influence of alcohol when blood alcohol tests are admissible. 735 ILCS 5/8-802(9), (10). These disclosures can occur pursuant to court order in compliance with the Privacy Rule's requirements for disclosure in judicial and administrative proceedings. 45 C.F.R. §164.512(e).

A recently issued Illinois Supreme Court opinion provides that the Department of Professional Regulation may not subpoena patient records and that merely deleting patient names and identifying information violates the physician-patient privilege. State ex rel. Department of Professional Regulation v. Manos, 2002 WL 31722951 (Ill. 2002). Therefore, a disclosure which would be allowed by the Privacy Rule as one involving health oversight, is prohibited by the State of Illinois. 45 C.F.R. §164.512(d). The Manos case further held that a dentist was a physician within the meaning of the Code of Civil Procedure.

The Confidentiality of Statements made to Rape Crisis Personnel provision prohibits rape crisis counselors from disclosing the content of any communication between counselor

and victim "in the course of providing information, counseling, and advocacy." 735 ILCS 5/8-802.1. The statute makes two exceptions for (1) victim waiver, and (2) disclosures without which "clear, imminent risk of serious physical injury or death of the victim or another person" is likely. Id. The privilege provides more stringent protection than the Privacy Rule in that it requires written consent for all disclosures except those made to prevent serious injury or death. The Privacy Rule also allows disclosure to prevent serious injury or death. 45 C.F.R. §164.512(j).

The Confidentiality of Statements Made to Personnel Counseling Victims of Violent Crime provision makes all communications between counselor and victim relating to the crime or its circumstances privileged. 735 ILCS 5/8-802.2. Information privileged under the statute may be disclosed only with the victim's written consent, or in a judicial proceeding pursuant to court order. The statute provides more stringent protection than HIPAA. Like the rape crisis personnel privilege, the Privacy Rule allows disclosure in a judicial proceeding by court order (45 C.F.R. 164.512(e), but does not require written consent in all other instances.

B. Admissibility of Documents

735 ILCS 5/8-401 governs the admissibility of documents in civil actions. The admissibility provisions of the Code of Civil Procedure are not specifically related to privacy but are allowed disclosures pursuant to court order. 45 C.F.R. §164.512(e).

C. Medical & Healing Art Malpractice Claims

Several provisions of the Code of Civil Procedure relate to medical malpractice lawsuits and healing art malpractice. These provisions include 735 ILCS 2-622 governing the pleading of healing art malpractice cases, and 735 ILCS 5/2-1701-1719, governing the damages available in medical malpractice cases. Section 5/2-622(a)(3) provides a sanction for failure to allow examination and copying of medical records within sixty days of the receipt of the request. 735 ILCS 5/2-622. Under the Privacy Rule, a covered entity must act on a request for access no later than thirty days after receipt of the request. 45 C.F.R. §164.524(b)(2). A covered entity may still provide access within 30 days under the privacy rule and simultaneously avoid the State law sanction. Therefore, the State law is not preempted. 45 C.F.R. §160.202.

D. Access to Records

The provisions of 735 ILCS 5/8-2001-2006 were substantially changed by Public Act 92-228, (effective September 1, 2001). While the main focus of this amendment was to set reasonable copying fees for accessing medical and attorney records in the State of Illinois, these provisions allow sixty days to obtain a copy of medical records, while the HIPAA Privacy Rule requires a thirty day time frame to access and copy individual

protected health information. 45 C.F.R. §164.524(b). Covered entities should abide by the stricter access requirement contained in the Privacy Rule.

The provisions of 8-2001 allow a hospital to charge up to a $20 handling fee for retrieving medical records. 735 ILCS 5/8-2001. Under the Privacy Rule, a handling fee provided by State law is not allowed. 45 C.F.R. §164.524(c)(4). However, it appears that hospitals can charge a reasonable fee for the cost of labor to copy (not retrieve) the record. 65 Fed. Reg. 82462, 82557.

Section 8-2002 limits the right of access for inmates and persons receiving mental health services or alcohol and substance abuse services which are under the jurisdiction of the Department of Human Services. 735 ILCS 5/8-202(a). This section further provides that provisions of the Mental Health and Developmental Disabilities Confidentiality Act, 740 ILCS 110/1, and the Alcoholism and Other Drug Abuse Dependency Act, 20 ILCS 301/30-5, control. The Privacy Rule allows denial of access to inmates only when access pursuant to an inmate's request for records would jeopardize "the health, safety, security, custody, or rehabilitation of the individual or other inmates, or the safety of any officer, employee, or other person at the correctional institution." 45 C.F.R. §164.524(a)(2)(ii). Therefore, denial of access to inmates under 8-2002 must be in accordance with the Privacy Regulations.

E. Medical Studies

Part 21 of the Code of Civil Procedure prohibits access to, and disclosure of, certain medical studies. 735 ILCS 5/8-2101-2105. Most of the documents which are deemed to be confidential by this provision are, in fact, not part of the designated record set that an individual would have access to in the normal course of business. 45 C.F.R. §164.524(a). Examples of documents covered by this provision are quality assurance and peer review documents. 7335 ILCS 5/8-2101. Use and disclosure for health activities such as quality assurance and peer review are allowed under the "health care operations" provisions of the Privacy Rule without consent. 45 C.F.R. §164.502, 164.508.

Covered entities may disclose health information to the Department of Public Health under this provision pursuant to the Privacy Rule's exceptions for public health activities that are designed to reduce the morbidity and mortality of the population and/or health oversight. 45 C.F.R. §164.512(b), (d).

Under some circumstances, the activities described in the Medical Studies Act may also constitute "research" as defined in the Privacy Rule. 45 C.F.R. §164.501. In order to comply with the Privacy Rule, access to records involving research can only be denied if the individual has agreed to a denial of access to the records when consenting to participate in the research. 45 C.F.R. §164.524(a)(2)(iii).

F. Supreme Court Rule

Supreme Court Rule 100.5 allows administrative hearing officers in child support hearings to request blood tests for paternity purposes. Sup. Ct. Rule 100.5(a). The subsequent disclosure of these test results is mandated by state statute in these proceedings (750 ILCS 40/1) as a disclosure required by law and therefore is not preempted. 45 C.F.R. §164.512(a).

It is possible to comply with this law and HIPAA. Further, this law does not stand as an obstacle to accomplishing the full purpose of HIPAA. Therefore, the law is not "contrary" to the HIPAA regulations. 45 C.F.R. §160.202

7. Is the Law Preempted?

Partially. A handling fee may not be charged to individuals who request access to their own record. 735 ILCS 5/8-2001, 45 C.F.R. §164.524(c)(4).

Covered entities must be careful in releasing information under several provisions of the Code of Civil Procedure to ensure that appropriate compliance with the Privacy Rule is achieved. For example, provisions of the Code of Civil Procedure relating to health care practitioner and patient privilege can only be complied with to the extent that disclosures are made in accordance with the Privacy Rule.

1. Name and Citation of Law

Alienation of Affections Act (740 ILCS 5)

2. General Description of the Law

The Alienation of Affections Act limits tort liability to actual for damages resulting from alienation of affections.

3. Rules Promulgated Under the Law

None. No administrative rules have been promulgated under this law.

4. Key Provisions

None. There are no provisions of this Act addressing the issues raised by the HIPAA preemption analysis.

5. Significant Case Law

None. There is no significant case law addressing the issues raised by the HIPAA preemption analysis.

6. Preemption Analysis Under HIPAA

While health information may be admitted in these types of cases, the Act does not address the privacy of health information. It is possible to comply with this law and HIPAA. Further, this law does not stand as an obstacle to accomplishing the full purpose of HIPAA. Therefore, the law is not "contrary" to the HIPAA regulations. 45 C.F.R. § 160.202.

7. Is the Law Preempted?

No.

1. Name and Citation of Law

Drug Dealer Liability Act (740 ILCS 57)

2. General Description of the Law

The Drug Dealer Liability Act imposes civil liabilities against participants in the illegal drug market for damages caused by an individual's use.

3. Rules Promulgated Under the Law

None. No administrative rules have been promulgated under this law.

4. Key Provisions

None. There are no provisions of this Act addressing the issues raised by the HIPAA preemption analysis.

5. Significant Case Law

None. There is no significant case law addressing the issues raised by the HIPAA preemption analysis.

6. Preemption Analysis Under HIPAA

The Act does not address the privacy of health information. Any release of health information in proceedings under the Act will be the result of voluntary disclosure, an authorization, or a court order in compliance with the Privacy Rule. 45 C.F.R. 164.512(e).

It is possible to comply with this law and HIPAA. Further, this law does not stand as an obstacle to accomplishing the full purpose of HIPAA. Therefore, the law is not "contrary" to the HIPAA regulations. 45 C.F.R. § 160.202.

7. Is the Law Preempted?

No.

1. Name and Citation of Law.

Mental Health and Developmental Disabilities Confidentiality Act (740 ILCS 110/1 *et seq*.)

2. General Description of the Law.

The Mental Health and Developmental Disabilities Confidentiality Act provides the scheme for disclosure and access to mental health records and records of developmental disability services in the State of Illinois.

3. Rules Promulgated Under the Law

None. No rules have been promulgated under this law.

4. Key Provisions

740 ILCS 110/2, Definitions
740 ILCS 110/3, Records and Communications; Personal Notes of Therapists; Psychological Test Material
740 ILCS 110/4, Persons Entitled to Inspect and Copy Recipient's Record
740 ILCS 110/5, Disclosure; Consent
740 ILCS 110/6, Information Used in Application for Benefits; Disclosure Without Consent
740 ILCS 110/7, Review of Therapist or Agency; Use of Recipient's Record
740 ILCS 110/7.1, Interagency Disclosures
740 ILCS 110/8, Regional Human Rights Authority; Consent to Inspect or Copy Recipient's Records During Investigations
740 ILCS 110/8.1, Access to Records of Developmentally Disabled Residing in Facilities
740 ILCS 110/9, Therapist's Disclosure Without Consent
740 ILCS 110/9.1, Disclosure Without Consent
740 ILCS 110/9.2, Interagency Disclosure of Recipient Information
740 ILCS 110/9.3, Disclosure Without Consent Under the Sexually Violent Persons Commitment Act
740 ILCS 110/10, Disclosure in Civil, Criminal and Other Proceedings
740 ILCS 110/11, Disclosure of Records and Communications
740 ILCS 110/12, Information to be Furnished to United States Secret Service and Department of State Police
740 ILCS 110/12.1, Report of Violation or Incident; Investigation
740 ILCS 110/12.2, Recipients on Unauthorized Absence; Disclosure of Identifying Information
740 ILCS 110/13, Disclosure Without Consent
740 ILCS 110/14, Agreement to Waive Act; Void

5. Significant Case Law

Ehredt v. Forest Hospital, Inc., 97 Ill. Dec. 96, 142 Ill. App. 3d. 1009, 492 N.E.2d 532 (1st Dist. 1986).

6. Preemption Analysis Under HIPAA

The Mental Health and Developmental Disabilities Confidentiality Act ("MHDDCA") provides that all records of mental health or developmental disabilities service and communications are confidential and are not to be disclosed except as provided by the Act. 740 ILCS 110/3. A therapist may keep personal notes under the MHDDCA to the extent the therapist deems necessary. 740 ILCS 110/3. Under the MHDDCA, personal notes are "(i) information disclosed to the therapist in confidence by other persons on condition that such information would never be disclosed to the recipient or other persons; (ii) information disclosed to the therapist by the recipient which would be injurious to the recipient's relationships to other persons; and (iii) the therapist's speculations, impressions, hunches and reminders." 740 ILCS 110/2. Under Illinois law, a mental health record does not include the therapist's personal notes, if the notes were kept in the therapist's sole possession for personal use and are not disclosed to any other person except the therapist's supervisor, consulting therapist or attorney. Id. If the personal notes are disclosed, they are then considered part of the recipient's record. Id. In contrast, the Privacy Rule defines psychotherapy notes as notes by a mental health professional documenting or analyzing the contents of conversation during a private counseling session, or a group, joint or family counseling session and that are separated from the rest of the individual's medical record. 45 C.F.R. §164.501. The definition of "psychotherapy notes" under the Privacy Rule and "personal notes" under the State statute are related in that both generally recognize the concept that these types of documents are created by a therapist for their personal use and are segregated from the remainder of the file. Release of psychotherapy notes under the Privacy Rule always requires an executed authorization, unless the use is for treatment, payment, health care operations, defense in a legal action, or required for oversight or other disclosures required by law. 45 C.F.R. §164.508(a)(2).

Section 4 of the MHDDCA sets forth the general rules for inspecting and copying mental health or developmental disability records. 740 ILCS 110/4. State law generally allows access to the recipient's record by a recipient (12 years of age or older), a parent (recipient under 12 years of age), and a parent subject to an opportunity for a recipient (between the ages of 12 and 18) or the therapist to object. 740 ILCS 110/4(a)(1)-(3). Further, access is allowed by the guardian of a recipient over the age of 18 and by a guardian ad litem who represents a minor 12 years of age or older under certain circumstances. 740 ILCS 110/4(a)(4)-(5). The Privacy Rule allows access by the

recipient and does not preempt or alter provisions which affect the right of minors to inspect or access their medical records. 45 C.F.R. §164.524(a), 160.202.

The MHDDCA also entitles a person accessing his or her record to submit a written statement concerning any disputed or new information which shall be entered into the record. 740 ILCS 110/4(c). Any submitted statement is also released with the record when disclosed. Id. When a request to modify the record is refused, a person has a right to seek a court order compelling modification. Id. The Privacy Rule also provides a right to request amendment of the record. 45 C.F.R. §164.526. The State law, however, grants greater rights to the individual, as a cause of action is created to seek court redress of the matter. Therefore, the State law is more stringent in this respect. 45 C.F.R. §160.202.

Section 4(a)(6) allows the person holding a power of attorney for health care or property for a recipient to access the record. The Privacy Rule provides that a personal representative may access health information as the individual. 45 C.F.R. §164.502(g)(1). A covered entity is required to treat a person as a personal representative if under applicable law the person has authority to act on behalf of an individual who is an adult or an emancipated minor in making decisions related to health care. 45 C.F.R. §164.502(g)(2). In reviewing the State law regarding powers of attorney for property, it does not appear that a person holding a power of attorney for property has authority under State law to make health care decisions. Therefore, this issue must turn upon whether the purpose of giving the person holding a power of attorney for property access to the mental health record is for payment, in which case the covered entity could disclose information to the person holding the power of attorney for property to ensure that payment occurs. 45 C.F.R. §164.502(a)(1)(ii), 164.506(c).

Section 5 requires written consent of an individual listed in Section 4 of the Act prior to disclosure of a mental health record. 740 ILCS 110/5. A consent to release mental health records must be in writing and state to whom the disclosure is to be made, the purpose of the disclosure, the nature of the information to be disclosed, the right to inspect and copy the information being disclosed, the consequences of a refusal to consent, and the date on which the consent expires. Id. The individual also has the right to revoke the consent at any time. The consent form must be witnessed and a copy placed in the recipient's record. Id. Blanket consents are prohibited and only information relevant to the purpose for which disclosure is sought may be disclosed. 740 ILCS 110/5(c). Re-disclosure of the information is prohibited and death of the recipient does not waive the privilege. 740 ILCS 110/5(d), (e). Section 5 also contains an exception for underwriting uses of a recipient's record. 740 ILCS 110/5(f).

In contrast, the Privacy Rule does not require a consent to be used for all disclosures of an individual's record. 45 C.F.R. §164.502. In fact, uses or disclosures for treatment, payment or health care operations purposes may be made without an authorization. 45

C.F.R. §164.506. Therefore, Section 5 of the MHDDCA is more stringent than the Privacy Rule. 45 C.F.R. §160.202.

The MHDDCA provides that a recipient's record may be disclosed without consent, to enable the recipient to apply for or receive benefits, when it is not possible to obtain consent because the person entitled to give consent is not capable of consenting or is not available to do so. The MHDDCA also limits the information that may be disclosed without consent to the identity of the recipient and therapist and a description of the nature, purpose, quantity and date of the services provided. 740 ILCS 110/6. Section 6 is consistent with the Privacy Rule, as disclosure for payment purposes does not require an authorization under the Privacy Rule. 45 C.F.R. §164.502. In addition, the MHDDCA also recognizes the concept of minimum necessary in stating which information is disclosable without consent. 45 C.F.R. §164.502(b).

The MHDDCA recognizes an exception for use of the recipient's record for purposes of licensure, statistical compilation, research, evaluation or other similar purposes, if personally identifiable data is removed before use. 740 ILCS 110/7. Such a disclosure is allowed by the Privacy Rule if the information meets the de-identification standards of the Privacy Rule or the disclosure constitutes a limited data set under the Privacy Rule. 45 C.F.R. §164.514(a)-(e). Section 7 also provides that a recipient's record may be used for accreditation, funding and reimbursement or audit reviews. 740 ILCS 110/7(b). Such reviews are allowed without consent under the Privacy Rule as part of health care operations. 45 C.F.R. §164.502, 164.501.

Section 7.1 allows interagency disclosures among the Departments of Human Services, Public Aid, Public Health, Children and Family Services, and the State Board of Education. 740 ILCS 110/7.1. Information disclosed under this section is limited to the recipient's name, address, social security number or other individually identifying number and a general description of the services rendered. Id. The purpose of this disclosure is to coordinate efforts in providing interagency services. Depending on the circumstances, disclosures among these agencies will be allowed by various provisions of the Privacy Rule, including the prevention of abuse and neglect, engaging in public health activities, and for treatment and payment purposes. 45 C.F.R. §164.512(c), 164.512(b), 164.502.

The MHDDCA also allows disclosures necessary for the Guardianship and Advocacy Commission Regional Human Rights Authority to investigate reports of suspected abuse and neglect. Such disclosures are allowed under the Privacy Rule if certain requirements are met. 45 C.F.R. §164.512(c).

Residents of a MHDDCA facility may have their records inspected by the agency designated by the Governor to protect and advocate for the rights of persons with developmental disabilities. 740 ILCS 110/8.1. The process for the involvement of this

agency requires the receipt of a complaint from the recipient or on behalf of the recipient and applies only to recipients who either do not have a guardian or have a State guardian. 740 ILCS 110/8.1. In most cases, notice is provided to the resident or his or her State guardian prior to the release of any records. Id. Such a disclosure is allowed either via an authorization executed with the filing of the complaint, or as an investigation of a suspected case of abuse or neglect if certain requirements are met. 45 C.F.R. §164.508, 164.512(c).

Under the MHDDCA, a therapist may disclose records under certain circumstances to a supervising therapist, a consulting therapist, members of the staff team, those conducting peer review, the Institute for Juvenile Research, an attorney representing the therapist, the inspector general of DCFS under certain circumstances, or to a department, agency, institution or facility which has custody of the recipient. 740 ILCS 110/9. The recipient is to be informed that the disclosure may be made. Id. The majority of these disclosures qualify as treatment, payment or health care operations, for which the Privacy Rule does not require a consent or authorization. 45 C.F.R. §164.502, 164.506. The disclosure to the Inspector General of DCFS is relevant to a suspected case of abuse or neglect and such disclosure is allowed by the Privacy Rule if certain requirements are met. 45 C.F.R. §164.512(c).

The MHDDCA allows disclosure to the Institute for Juvenile Research and the Institute for the Study of Developmental Disabilities for purposes of research, education and treatment. If the activities of the Institute for Juvenile Research and the Institute for the Study of Developmental Disabilities can be considered those for quality assurance activities or improvement of care, the disclosures can be made as part of health care operations under the Privacy Rule. 45 C.F.R. §164.506. If the research being conducted by the Institute for Juvenile Research and the Institute for the Study of Developmental Disabilities is for generalized knowledge and not for improvement in the delivery of services, then either an authorization would be required under the Federal Privacy Regulation prior to the release of this information or the standards regarding uses and disclosures for research purposes in the Privacy Rule would need to be met. 45 C.F.R. §164.508, 164.512(i).

Section 9.2 allows disclosures for continuity of care by the Department of Human Services, community agencies funded by the Department of Human Services, and jails operated by any county of the State. 740 ILCS 110/9.2. Releases by these agencies are for purposes of admission, treatment, planning, or discharge. Under the Privacy Rule, each of these disclosures is allowed without a consent as the activities of admission, planning, discharge and treatment are all within the definition of “treatment” under the Privacy Rule. 45 C.F.R. §164.502, 164.501.

Disclosure of records may also be made to the Attorney General, a participating States Attorney, the Department of Human Services, the Court and any other party to whom a

Court directs under the Sexually Violent Persons Commitment Act. 740 ILCS 110/9.3. Because this disclosure is part of commitment proceedings, it should be possible for a court order to be issued in compliance with the Privacy Rule for release of this information. 45 C.F.R. §164.512(e). Further, the purpose of the commitment generally is to place the individual in treatment and disclosures for purposes of treatment do not require a consent under the privacy regulation. 45 C.F.R. §164.502.

Court ordered disclosures are discussed in Section 10 of the MHDDCA. 740 ILCS 110/10. Court orders will need to be issued in compliance with the Privacy Regulation. 45 C.F.R. §164.512(e). The provisions of Section 10 in most cases appear to be consistent with, or more stringent than, the Privacy Rule.

The MHDDCA provides that treatment records may be disclosed in accordance with the provisions of the Abused and Neglected Child Reporting Act, when necessary to initiate commitment proceedings in light of an imminent risk of serious physical or mental injury or disease or death being inflicted upon the recipient or on another, when necessary for emergency medical care, to collect third party payments, to determine an internment site of a deceased recipient, in involuntary commitment proceedings, to the Census Bureau for purposes of taking the census, when necessary to warn or protect an individual against a threat, in accordance with the Sex Offender Registration Act, and in accordance with the Rights of Crime Victims and Witnesses Act. 740 ILCS 110/11. Disclosures under the Abused and Neglected Child Reporting Act are allowed under the exception for investigation of suspected cases of abuse or neglect contained in the Privacy Rule, when certain requirements are met. 45 C.F.R. §164.512(c). Disclosures to avoid an immediate threat to an individual may be made to law enforcement under the Privacy Rule when certain requirements are met. 45 C.F.R. §164.512(f). Disclosures for payment purposes are allowed without consent under the Privacy Regulation. 45 C.F.R. §164.502. In proceedings for involuntary commitment, a court order can be obtained in compliance with the Privacy Rule to allow disclosure of a recipient's record. 45 C.F.R. §164.512(e). Disclosures under the Sex Offender Registration Act and the Rights of Crime Victims and Witnesses Act are disclosures that are required by law and do not relate to a covered function under the Privacy Rule. 45 C.F.R. §164.512(a), 164.501.

The MHDDCA requires disclosure of a recipient's information as necessary to protect the life of an individual under protection of the United States Secret Service. 740 ILCS 110/12. Such a disclosure is specifically provided for in the Privacy Rule. 45 C.F.R. §164.512(k). Under the Firearm Owners Identification Card Act, the Department of Human Services and all private hospitals are required to report admissions to the Department of State Police. 740 ILCS 110/12. In addition to being required by law, these disclosures are also allowed under the Privacy Rules when certain requirements are met, in order to avert a serious threat to health or safety. 45 C.F.R. §164.512(a), 164.512(j).

If a facility director has reason to believe that a crime or other serious incident has occurred at a mental health facility, this may be reported to the appropriate law enforcement agency. 740 ILCS 110/12.1. When an individual under judicial or involuntary commitment leaves the facility in an unauthorized fashion, Illinois law allows reporting to the appropriate law enforcement agency. 740 ILCS 110/12.2. Such disclosures are allowed to avert a serious threat to health or safety when certain requirements of the Privacy Rule are met. 45 C.F.R. §164.512(j).

The MHDDCA requires that all disclosures of a record made without consent or use of the record under Sections 7 and 8 of the Act, shall be noted in the recipient's record. 740 ILCS 110/13. Further, the MHDDCA provides that no provision of the Act may be waived by agreement. 740 ILCS 110/14. The Privacy Rule requires an accounting of disclosures for purposes other than treatment, payment, and health care operations and research to be made. 45 C.F.R. §164.528. The State law provision is more stringent than the federal accounting of disclosures as additional information is required to be kept. 45 C.F.R. §160.202. While the State law may not be waived by agreement, under the Privacy Rule, an authorization will always allow records to be released. 45 C.F.R. §164.508. Therefore, it appears that Section 14 of the MHDDCA is at least as stringent as the Privacy Rule. 45 C.F.R. §160.202.

The limitations in Section 10(b) allow any party or interested person to request an in-camera review of the record or communications to be disclosed. 740 ILCS 110/10(b). Further, Section 10(b) allows the court to hold an in-camera review on its own motion. A therapist is allowed to assert a privilege on behalf of a mental health services recipient, contrary to the expressed wishes of the recipient, thus allowing the court to hold an in-camera hearing to establish the disclosure is not in the best interest of the recipient. A court is empowered by Section 10(b) to enter orders which will protect the confidentiality, privacy, and safety of the recipient or of other persons. 740 ILCS 110/10(b).

It is possible to comply with this law and HIPAA. This law does not stand as an obstacle to accomplishing the full purpose of HIPAA. Therefore, the law is not "contrary" to the HIPAA regulations. 45 C.F.R. §160.202.

7. <u>Is the Law Preempted</u>?

No.

1. Name and Citation of Law

Sexual Exploitation in Psychotherapy, Professional Health Services, and Professional Mental Health Services Act (740 ILCS 140 *et seq*.)

2. General Description of the Law

The Sexual Exploitation in Psychotherapy, Professional Health Services, and Professional Mental Health Services Act creates a cause of action against a psychotherapist, unlicenced health professional or unlicenced mental health professional for sexual exploitation of a patient. 740 ILCS 140/2.

3. Rules Promulgated Under the Law

None. No administrative rules have been promulgated under this law.

4. Key Provisions

None. There are no provisions of this Act addressing the issues raised by the HIPAA preemption analysis.

5. Significant Case Law

None. There is no significant case law addressing the issues raised by the HIPAA preemption analysis.

6. Preemption Analysis Under HIPAA

A patient filing suit under this law would release protected health information by authorization, or the information would be released pursuant to court order. 45 C.F.R. §164.508, 164.512(e).

It is possible to comply with this law and HIPAA. Further, this law does not stand as an obstacle to accomplishing the full purpose of HIPAA. Therefore, the law is not "contrary" to the HIPAA regulations. 45 C.F.R. §160.202.

7. Is the Law Preempted?

No.

1. Name and Citation of Law

Wrongful Death Act (740 ILCS 180/0.01)

2. General Description of the Law

The Wrongful Death Act creates a cause of action for the death of a person caused by wrongful act, neglect or default.

3. Rules Promulgated Under the Law

None. No administrative rules have been promulgated under this law.

4. Key Provisions

None. There are no provisions of this Act addressing the issues raised by the HIPAA preemption analysis.

5. Significant Case Law

None. There is no significant case law addressing the issues raised by the HIPAA preemption analysis.

6. Preemption Analysis Under HIPAA

Health information released in a cause of action under this statute will be the result of an authorization or court order. 45 C.F.R. §164.508, 164.512(e). It should be noted that individuals do not lose privacy rights under HIPAA upon death. 45 C.F.R. §164.502(f).

It is possible to comply with this law and HIPAA. Further, this law does not stand as an obstacle to accomplishing the full purpose of HIPAA. Therefore, the law is not "contrary" to the HIPAA regulations. 45 C.F.R. § 160.202.

7. Is the Law Preempted?

No.

1. Name and Citation of Law

Local Governmental Employees Tort Immunity Act, Article VI Medical, Hospital and Public Health Activities (745 ILCS 10/6-101)

2. General Description of the Law

Article VI of the Local Governmental Employees Tort Immunity Act sets forth certain civil immunities related to the provision of medical and hospital care and public health activities by governmental entities and governmental employees.

3. Rules Promulgated Under the Law

None. No administrative rules have been promulgated under this law.

4. Key Provisions

None. There are no provisions of this Act addressing the issues raised by the HIPAA preemption analysis.

5. Significant Case Law

None. There is no significant case law addressing the issues raised by the HIPAA preemption analysis.

6. Preemption Analysis Under HIPAA

The Act provides for indemnification for public employees in malpractice actions. Health information disclosed in a cause of action in which this Act were raised would be pursuant to authorization or court order. 45 C.F.R. §164.508, 164.512(e).

It is possible to comply with this law and HIPAA. Further, this law does not stand as an obstacle to accomplishing the full purpose of HIPAA. Therefore, the law is not "contrary" to the HIPAA regulations. 45 C.F.R. § 160.202.

7. Is the Law Preempted?

No.

1. Name and Citation of Law

Abortion Performance Refusal Act (745 ILCS 30/0.01)

2. General Description of the Law

The Abortion Performance Refusal Act sets forth certain civil immunities for healthcare providers who refuse to recommend, perform or assist in the performance of an abortion.

3. Rules Promulgated Under the Law

None. No administrative rules have been promulgated under this law.

4. Key Provisions

None. There are no provisions of this Act addressing the issues raised by the HIPAA preemption analysis.

5. Significant Case Law

None. There is no significant case law addressing the issues raised by the HIPAA preemption analysis.

6. Preemption Analysis Under HIPAA

The Act allows practitioners to refuse to perform abortions without civil liability. If a suit were brought against a practitioner for refusing to perform an abortion, any health information disclosed in the litigation would be pursuant to an authorization or court order. 45 C.F.R. §164.508, 164.512(e).

It is possible to comply with this law and HIPAA. Further, this law does not stand as an obstacle to accomplishing the full purpose of HIPAA. Therefore, the law is not "contrary" to the HIPAA regulations. 45 C.F.R. § 160.202.

7. Is the Law Preempted?

No.

1. Name and Citation of Law

Alcoholism and Drug Addiction Intervenor and Reporter Immunity Law (745 ILCS 35/1)

2. General Description of the Law

The Alcoholism and Drug Addiction Intervenor and Reporter Immunity Law sets forth certain civil immunities to persons who participate in alcoholism and drug addiction interventions.

3. Rules Promulgated Under the Law

None. No administrative rules have been promulgated under this law.

4. Key Provisions

745 ILCS 35/4, Immunity

5. Significant Case Law

None. There is no significant case law addressing the issues raised by the HIPAA preemption analysis.

6. Preemption Analysis Under HIPAA

This law provides for immunity from any liability, civil or criminal or otherwise, to any "fact reporter" who reports in good faith to a "trained intervenor" any conduct that reasonably appears to indicate that an individual suffers from alcoholism or drug addiction, unless the fact-reporter is subject to a privilege recognized by the law of this State. 745 ILCS 35/4(d). All such reports are confidential and privileged and not subject to discovery or disclosure in any proceeding. 745 ILCS 35/4(e). If a suit were brought against a practitioner in connection with intervention activities, any health information disclosed in the litigation would be pursuant to an authorization or court order. 45 C.F.R. §164.508, 164.512(e).

It is possible to comply with this law and HIPAA. This law does not stand as an obstacle to accomplishing the full purpose of HIPAA. Therefore, the law is not "contrary" to the HIPAA regulations. 45 C.F.R. §160.202.

7. Is the Law Preempted?

No.

1. Name and Citation of Law

Blood and Organ Transaction Liability Act (745 ILCS 40/0.01)

2. General Description of the Law

The Blood and Organ Transaction Liability Act limits the legal liability arising out of certain scientific procedures.

3. Rules Promulgated Under the Law

None. No administrative rules have been promulgated under this law.

4. Key Provisions

None. There are no provisions of this Act addressing the issues raised by the HIPAA preemption analysis.

5. Significant Case Law

None. There is no significant case law addressing the issues raised by the HIPAA preemption analysis.

6. Preemption Analysis Under HIPAA

The Blood and Organ Transaction Liability Act prohibits lawsuits filed alleging tort liability for blood transfusions, and blood products, and other human organs. 745 ILCS 40/2. If a lawsuit were filed in connection with a blood or organ transaction, any health information disclosed would be pursuant to an authorization or court order. 45 C.F.R. §164.508, 164.512(e).

It is possible to comply with this law and HIPAA. Further, this law does not stand as an obstacle to accomplishing the full purpose of HIPAA. Therefore, the law is not "contrary" to the HIPAA regulations. 45 C.F.R. § 160.202.

7. Is the Law Preempted?

No.

1. Name and Citation of Law

Communicable Disease Report Act (745 ILCS 45/0.01)

2. General Description of the Law

The Communicable Disease Report Act provides for limited immunity from suit for slander or libel for those who are required by law to report cases of injury, medical condition or procedure, communicable disease, venereal disease, or sexually transmitted disease to any governmental agency or officer. The Act specifies that the identity of the person making the report and the identity of the individual identified in the report shall be kept confidential, and shall not be disclosed publicly or in any action of any kind in any court or before any tribunal, board or agency, with narrowexceptions.

3. Rules Promulgated Under the Law

None. No administrative rules have been promulgated under this law.

4. Key Provisions

745 ILCS 45/1. Confidential Information – Immunity from Suit

5. Significant Case Law

None. There is no significant case law addressing the issues raised by the HIPAA preemption analysis.

6. Preemption Analysis Under HIPAA

The Act applies to reports required by law. Id. The Privacy Rule allows the disclosure by covered entities of protected health information where, as here, it is for "public health activities." 45 C.F.R. § 164.512(b).

It is possible to comply with this law and HIPAA. Further, this law does not stand as an obstacle to accomplishing the full purpose of HIPAA. Therefore, the law is not "contrary" to the HIPAA regulations. 45 C.F.R. § 160.202.

7. Is the Law Preempted?

No.

1. Name and Citation of Law

Good Samaritan Act (745 ILCS 49/1)

2. General Description of the Law

The Good Samaritan Act establishes numerous protections for citizens who volunteer their time and talents to help others.

3. Rules Promulgated Under the Law

None. No administrative rules have been promulgated under this law.

4. Key Provisions

None. There are no provisions of this Act addressing the issues raised by the HIPAA preemption analysis.

5. Significant Case Law

None. There is no significant case law addressing the issues raised by the HIPAA preemption analysis.

6. Preemption Analysis Under HIPAA

The Good Samaritan Act provides liability for persons who provide a variety of types of emergency medical treatment. 735 ILCS 49/5-55, 65, 75. Any health information disclosed under an attempted cause of action under this Act, would be disclosed pursuant to an authorization, or a court order. 45 C.F.R. §164.508, .164.512(e).

It is possible to comply with this law and HIPAA. Further, this law does not stand as an obstacle to accomplishing the full purpose of HIPAA. Therefore, the law is not "contrary" to the HIPAA regulations. 45 C.F.R. § 160.202.

7. Is the Law Preempted?

No.

1. Name and Citation of Law

Long-Term Care Peer Review and Quality Assessment and Assurance Protection Act (745 ILCS 55/1-55/4)

2. General Description of the Law

The Long-Term Care Peer Review and Quality Assessment and Assurance Protection Act sets forth certain civil immunities for persons serving upon a peer review or quality assessment and assurance committee or any person who furnishes records, information or assistance to a peer review or quality assessment and assurance committee.

3. Rules Promulgated Under the Law

None. No administrative rules have been promulgated under this law.

4. Key Provisions

745 ILCS 55/3, Immunity
745 ILCS 55/4, Confidentiality

5. Significant Case Law

None. There is no significant case law addressing the issues raised by the HIPAA preemption analysis.

6. Preemption Analysis Under HIPAA

This Act provides that persons serving on a peer review or quality assessment and assurance committee or any person who furnishes records information or assistance to any such committee whose purpose is to evaluate the qualifications of long-term care providers or internal quality control, and to evaluate patient care rendered by long-term care providers, generally shall not be liable for civil damages. 745 ILCS 55/3. The Act further provides all proceedings and communications of any such committee is privileged and confidential and not subject to discovery or disclosure. 745 ILCS 55/4. The Privacy Rule allows disclosure by covered entities of protected health information for "health care operations," which includes peer review and quality assessment/assurance activities. 45 C.F.R. § 164.501.

Both peer review and quality assessment activities involve the use of protected health information. 45 C.F.R. §164.501. The Act limits disclosure of proceedings of the committee, however, such records are not typically part of the designated records set under the Privacy Rule and, therefore, the covered entity is not required to provide them

to an individual patient. 45 C.F.R. § 164.501, 164.524.

It is possible to comply with this law and HIPAA. Further, this law does not stand as an obstacle to accomplishing the full purpose of HIPAA. Therefore, the law is not "contrary" to the HIPAA regulations. 45 C.F.R. § 160.202.

7. Is the Law Preempted?

No.

1. Name and Citation of Law

Right of Conscience Act (745 ILCS 70/1)

2. General Description of the Law

The Right of Conscience Act prohibits discrimination, disqualification, coercion, disability or imposition of liability upon those persons who refuse to obtain, receive, accept, or deliver medical services or medical care that is contrary to their conscience or conscientious convictions.

3. Rules Promulgated Under the Law

None. No administrative rules have been promulgated under this law.

4. Key Provisions

None. There are no provisions of this Act addressing the issues raised by the HIPAA preemption analysis.

5. Significant Case Law

None. There is no significant case law addressing the issues raised by the HIPAA preemption analysis.

6. Preemption Analysis Under HIPAA

The Right of Conscience Act allows health care practitioners to refuse to perform certain procedures without fear of retribution. 745 ILCS 70/2. It should be noted that the Privacy Rule prohibits conditioning the delivery of service on a patient's refusal to execute an authorization. 45 C.F.R. §164.508(b)(4).

It is possible to comply with this law and HIPAA. Further, this law does not stand as an obstacle to accomplishing the full purpose of HIPAA. Therefore, the law is not "contrary" to the HIPAA regulations. 45 C.F.R. § 160.202.

7. Is the Law Preempted?

No.

1. Name and Citation of Law

Illinois Marriage and Dissolution of Marriage Act (750 ILCS 5)

2. General Description of the Law

The Illinois Marriage and Dissolution of Marriage Act provides procedures for the registration of marriage, and guidelines for the settlement of disputes that have arisen between parties to a marriage.

3. Rules Promulgated Under the Law

89 Ill. Admin. Code 330, Child Custody Investigations and Supervision Related to Custodian or Visitation Judgments

4. Key Provisions

750 ILCS 5/205, Exceptions
750 ILCS 5/206, Records
750 ILCS 5/506, Representation of Child
750 ILCS 5/602, Best Interest of Child
750 ILCS 5/604.5, Evaluation of Child's Best Interests
750 ILCS 5/605, Investigations and Reports

5. Significant Case Law

None. There is no significant case law addressing the issues raised by the HIPAA preemption analysis.

6. Preemption Analysis Under HIPAA

The statutory provisions under the Illinois Marriage and Dissolution of Marriage Act that may involve release or disclosure of protected health information revolve around mental and/or physical examinations of either a mother, father or a child. For example, the Act provides that the mental and physical health of all individuals involved shall be considered a relevant factor in determining the best interests of the child. 750 ILCS 5/602. If an evaluation occurs, the evaluator must set forth his findings and the results of all tests administered in conclusions and recommendations in writing to the attorneys of record. 750 ILCS 5/604.5. The child may also be appointed a representative or attorney whose duty shall be to advocate what the representative finds to be in the best interests of the child. 750 ILCS 5/506. All of these provisions appear to be investigative in nature, however, and do not place or attempt to provide any type of therapy to the parties. Protected health care information released to the court or attorneys would be permissible

under the Privacy Rule if made in compliance with provisions regarding disclosure for judicial proceedings or if made pursuant to a HIPAA compliant authorization. 45 C.F.R. §164.508, 164.512(e).

The Marriage and Dissolution Act also provides for certain testing regarding paternity and the filing of health certificates prior to marriage, if not waived. 750 ILCS 5/205-206. The testing is voluntary on the part of the individual and the recipient of the information is not a covered entity. 45 C.F.R. §160.102.

It is possible to comply with this law and HIPAA. Further, this law does not stand as an obstacle to accomplishing the full purpose of HIPAA. Therefore, the law is not "contrary" to the HIPAA regulations. 45 C.F.R. § 160.202.

7. Is the Law Preempted?

No.

1. Name and Citation of Law

Uniform Child Custody Jurisdiction Act (750 ILCS 35)

2. General Description of the Law

The Uniform Child Custody Jurisdiction Act establishes procedures to avoid jurisdictional conflicts with other states in matters of child custody.

3. Rules Promulgated Under the Law

None. No administrative rules have been promulgated under this law.

4. Key Provisions

None. There are no provisions of this Act addressing the issues raised by the HIPAA preemption analysis.

5. Significant Case Law

None. There is no significant case law addressing the issues raised by the HIPAA preemption analysis.

6. Preemption Analysis Under HIPAA

While mental and physical health information may be relevant to determine child custody, the Uniform Child Custody Jurisdiction Act does not address the privacy of health information.

It is possible to comply with this law and HIPAA. Further, this law does not stand as an obstacle to accomplishing the full purpose of HIPAA. Therefore, the law is not "contrary" to the HIPAA regulations. 45 C.F.R. § 160.202.

7. Is the Law Preempted?

No.

1. Name and Citation of Law

Illinois Parentage Act (750 ILCS 40)

2. General Description of the Law

The Illinois Parentage Act provides that any child or children born as the result of artificial insemination shall be considered at law in all respects the same as a naturally conceived legitimate child of the husband and wife so requesting and consenting to the use of such technique.

3. Rules Promulgated Under the Law

None. There are no provisions of this Act addressing the issues raised by the HIPAA preemption analysis.

4. Key Provisions

750 ILCS 40/3, Husband of Wife Artificially Inseminated; Treatment as Natural Father

5. Significant Case Law

None. There is no significant case law addressing the issues raised by the HIPAA preemption analysis.

6. Preemption Analysis Under HIPAA

The Illinois Parentage Act provides that if, under the supervision of a licensed physician and with the consent of her husband, a wife is inseminated artificially with the semen donated by a man not her husband, the husband shall still be treated in law as if he were the natural father of the child thereby conceived. 750 ILCS 40/3. The husband's consent must be in writing, executed and acknowledged by both the husband and wife. Id. The physician who is to perform the technique shall certify their signatures and the date of insemination, and file the husband's consent in the medical record where it shall be kept confidential and held by the patient's physician. Id. All papers and records pertaining to the insemination, whether part of the permanent medical record held by the physician, are subject to inspection only upon an order of the court for good cause shown. Id.

The Illinois Parentage Act contains provisions that relate to the privacy of health information. The statute provides that the information may only be disclosed upon a court order for good cause shown. 750 ILCS 40/3. Under these circumstances, the State law is more stringent than the Privacy Rule.

It is possible to comply with this law and HIPAA. Further, this law does not stand as an obstacle to accomplishing the full purpose of HIPAA. Therefore, the law is not "contrary" to the HIPAA regulations. 45 C.F.R. § 160.202.

7. Is the Law Preempted?

No.

1. Name and Citation of Law

Illinois Parentage Act of 1984 (750 ILCS 45)

2. General Description of the Law

The Illinois Parentage Act of 1984 recognizes the right of every child to the physical, mental, emotional and monetary support of his or her parents, defines a parent and child relationship and establishes the support system for such relationships.

3. Rules Promulgated Under the Law

None. No administrative rules have been promulgated under this law.

4. Key Provisions

750 ILCS 45/5, Presumption of the Paternity
750 ILCS 45/6, Establishment of Parent and Child Relationship by Consent of the Parties
750 ILCS 45/7, Determination of Father and Child Relationship; Who may bring Action; Parties
750 ILCS 45/11, Test to Determine Inherited Characteristics
750 ILCS 45/13, Civil Action
750 ILCS 45/14.1, Information to State Case Registry

5. Significant Case Law

None. There is no significant case law addressing the issues raised by the HIPAA preemption analysis.

6. Preemption Analysis Under HIPAA

The Illinois Parentage Act of 1984 provides a parent/child relationship may be established in the event of surrogacy. 750 ILCS 45/6. Under this section, all certifications must be in writing and witnessed by two competent adults who are not the surrogate mother, surrogate mother's husband, if any, biological mother or biological father. 750 ILCS 45/6(f). Certifications are required to be on forms prescribed by the Illinois Department of Public Health and must be executed prior to the birth of the child and shall be placed in the medical records of the surrogate mother prior to the birth of the child. Id. Copies of all certifications shall be delivered to the Illinois Department of Public Health prior to the birth of the child. Id. This section also requires that a physician licensed to practice medicine certify that the child being carried by the surrogate mother is the biological child of the biological mother and biological father, and that neither the surrogate mother nor the surrogate mother's husband, if any, is a

biological parent of the child being carried by the surrogate mother. Id. The disclosure required under this section is a disclosure required by law and is, therefore, permissible pursuant to the Privacy Rule. 45 C.F.R. § 164.512(a). Further, the records are being provided for the purpose of creating vital records. This activity is a public health function. 45 C.F.R. §164.512(b). In addition, all parties are voluntarily disclosing this information to the physician, so the physician could also choose to obtain an authorization. 45 C.F.R. §164.508.

Section 7 of the Act provides for certain causes of action regarding determination of the father/child relationship, including a cause of action to declare the nonexistence of the parent and child relationship brought subsequent to an adjudication of paternity in any judgment by the man adjudicated to be the father pursuant to the presumptions in Section 5 if, as a result of a DNA test, it is discovered that the man adjudicated to be the father is not the natural father of the child. 750 ILCS 45/7. If an action is brought under this section before the birth of the child, all proceedings shall be stayed until after the birth, except for service of process, the taking of depositions to perpetuate testimony and the ordering of blood tests under appropriate circumstances. 750 ILCS 45/7. Any disclosure of protected health information under this section would be permitted under the Privacy Rule if the requirements for disclosures in judicial and administrative proceedings are met. 45 C.F.R. §164.512(e).

Section 11 of the Act provides that as soon as practicable, the court or administrative hearing officer in an expedited child support system may, and upon request of a party shall, order or direct the mother, child and alleged father to submit to a DNA test to determine inherited characteristics. 750 ILCS 45/11. The tests are to be conducted by an expert qualified as an examiner of blood or tissue types and appointed by the court. Id. The expert shall prepare a written report of the test results, and may be called by the court as a witness to testify to his or her findings. Id. Any disclosure of protected health information under this section would be permitted under the Privacy Rule if the requirements for disclosures in judicial and administrative proceedings are met. 45 C.F.R. §164.512(e).

Section 13 provides that certified copies of the bills for costs incurred for pregnancy and child birth shall be admitted into evidence at judicial or administrative proceedings without foundation testimony or other proof of authenticity or accuracy in civil actions. 750 ILCS 45/13. Similar to the other sections referenced in the Act, this type of disclosure is permissible under the Privacy Rule if the requirements for disclosures in judicial and administrative proceedings are met. 45 C.F.R. § 164.512(e).

Section 14.1 provides that when an order for support is entered or modified under the Act, the Clerk of the Circuit Court shall within five business days provide to the State Case Registry established under Section 10-27 of the Illinois Public Aid Code the court docket number and county in which the order is entered or modified and the specified

information disclosed by the parties to the court, including the names of the parents the dates of birth, the parties' social security numbers, addresses, telephone numbers, driver's licence numbers and employment information. 750 ILCS 45/14.1. The disclosures contemplated under Section 14.1 do not appear to be a disclosure by a health care provider nor is the information related to health care.

It is possible to comply with this law and HIPAA. Further, this law does not stand as an obstacle to accomplishing the full purpose of HIPAA. Therefore, the law is not "contrary" to the HIPAA regulations. 45 C.F.R. § 160.202.

7. Is the Law Preempted?

No.

1. Name and Citation of Law

Adoption Act (750 ILCS 50)

2. General Description of the Law

The Adoption Act establishes guidelines for who may adopt a child and the procedure whereby a child may be adopted.

3. Rules Promulgated Under the Law

None. No administrative rules have been promulgated under this law.

4. Key Provisions

750 ILCS 50/6, Investigations; Report
750 ILCS 50/18, Records; Confidentiality

5. Significant Case Law

None. There is no significant case law addressing the issues raised by the HIPAA preemption analysis.

6. Preemption Analysis Under HIPAA

The Adoption Act provides that the court shall require an investigation into a variety of factors concerning the petitioners, including their health. 750 ILCS 50/6. The findings are then to be submitted to the court in a written report. Id. If any protected health care information is ascertained through this process it would be disclosed pursuant to an authorization or court order. 45 C.F.R. § 164.508, 164.512(e).

The Act also creates the Illinois Adoption Registry and Medical Information Exchange, which allows mutually consenting adult members of birth families, adoptive parents and legal guardians of adopted and surrendered children and adult adopted or surrendered persons to voluntarily exchange vital medical information throughout the life of the adopted or surrendered person. 750 ILCS 50/18.04. Because this is both voluntary and requires consent, presuming it is done in accordance with the guidelines of 45 C.F.R. §164.508 relating to authorization requirements, the information exchange can be conducted consistent with the Privacy Rule.

It is possible to comply with this law and HIPAA. Further, this law does not stand as an obstacle to accomplishing the full purpose of HIPAA. Therefore, the law is not "contrary" to the HIPAA regulations. 45 C.F.R. § 160.202.

7. Is the Law Preempted?

No.

1. Name and Citation of Law

Contest of Adoptions Act (750 ILCS 55/1 *et seq.*)

2. General Description of the Law

The Contest of Adoptions Act establishes the time frame upon which the validity of an adoption can be mounted for failure to give proper notice to the reputed father.

3. Rules Promulgated Under the Law

None. No administrative rules have been promulgated under this law.

4. Key Provisions

None. There are no provisions of this Act addressing the issues raised by the HIPAA preemption analysis.

5. Significant Case Law

None. There is no significant case law addressing the issues raised by the HIPAA preemption analysis.

6. Preemption Analysis Under HIPAA

Any health records released under this law would be released pursuant to authorization or court order. 45 C.F.R. §164.508, 164.512(e).

It is possible to comply with this law and HIPAA. Further, this law does not stand as an obstacle to accomplishing the full purpose of HIPAA. Therefore, the law is not "contrary" to the HIPAA regulations. 45 C.F.R. § 160.202.

7. Is the Law Preempted?

No.

1. Name and Citation of Law

Illinois Domestic Violence Act of 1986 (750 ILCS 60)

2. General Description of the Law

The Illinois Domestic Violence Act of 1986 supports the efforts of victims of domestic violence to avoid further abuse by promptly entering and diligently enforcing court orders, and expanding the civil and criminal remedies for victims of domestic violence.

3. Rules Promulgated Under the Law

None. No administrative rules have been promulgated under this law.

4. Key Provisions

750 ILCS 60/227, Privileged Communications Between Domestic Violence Counselors and Victims
750 ILCS 60/401, Health Care Providers
750 ILCS 60/227.1, Other Privileged Information

5. Significant Case Law

None. There is no significant case law addressing the issues raised by the HIPAA preemption analysis.

6. Preemption Analysis Under HIPAA

The Illinois Domestic Violence Act provides that communications between domestic violence counselors and victims are to be maintained as privileged. No domestic violence advocate or counselor shall disclose any confidential communication or be examined as a witness in any civil or criminal case or proceeding or in any legislative or administrative proceeding without the written consent of the domestic violence victim except in cases of compliance with the Abused and Neglected Child Reporting Act or in cases where failure to disclose is likely to result in an imminent risk of serious bodily harm or death of the victim or another person. 750 ILCS 60/227. Knowing disclosure of any confidential information is a violation of the Act and constitutes a Class A Misdemeanor. Id. A guardian of a person adjudged incompetent by a court may waive the privilege established by this section, except where the guardian himself has been charged with a violent crime against a domestic violence victim at which point the court must appoint an attorney for the estate of the domestic violence victim. Id.

The disclosures under the Illinois Domestic Violence Act generally are permitted under

HIPAA. The written consent or authorization of the person ordinarily is required. 45 C.F.R. §164.508. The disclosures to prevent the commission of a crime and to report abuse are allowed under the Privacy Rule as a disclosure to law enforcement or to report abuse, if certain requirements are met. 45 C.F.R. §164.512(b), (f). In addition, the Privacy Rule permits certain uses and disclosures by a covered entity to avert a serious threat to health or safety. § 164.512(j).

The Act also provides that any person licensed to provide health care must offer a person suspected to be a victim of abuse information regarding services available. 750 ILCS 60/401. This provision, however, does not contemplate the disclosure of protected health care information.

It is possible to comply with this law and HIPAA. Further, this law does not stand as an obstacle to accomplishing the full purpose of HIPAA. Therefore, the law is not "contrary" to the HIPAA regulations. 45 C.F.R. § 160.202.

7. Is the Law Preempted?

No.

1. Name and Citation of Law

Parental Notice of Abortion Act of 1995 (750 ILCS 70/1)

2. General Description of the Law

The Parental Notice of Abortion Act of 1995 requires an unemancipated pregnant minor to notify a parent prior to obtaining an abortion.

3. Rules Promulgated Under the Law

None. No administrative rules have been promulgated under this law.

4. Key Provisions

None. There are no provisions of this Act addressing the issues raised by the HIPAA preemption analysis.

5. Significant Case Law

Zbarez v. Ryan, 84 C 771 (N.D. Ill. 1996), barred this Act from implementation by permanent injunction in an unpublished opinion.

6. Preemption Analysis Under HIPAA

Because implementation of this law is barred in *Zbarez*, this law is not implicated in the preemption analysis.

7. Is the Law Preempted?

No. The law is not implemented due to a permanent injunction.

1. Name and Citation of Law

Probate Act of 1975 (755 ILCS 5)

2. General Description of the Law

The Probate Act of 1975 establishes and creates guidelines for probate and the administration of wills, spouse and child awards, estate administration, independent administration and claims against estates.

3. Rules Promulgated Under the Law

None. No administrative rules have been promulgated under this law.

4. Key Provisions

755 ILCS 5/11a-3, Adjudication of Disabilities; Power to Appoint Guardian
755 ILCS 5//11a-9, Report

5. Significant Case Law

None. There is no significant case law addressing the issues raised by the HIPAA preemption analysis.

6. Preemption Analysis Under HIPAA

The Probate Act establishes certain requirements for serving and being appointed as a guardian of both a person and an estate. Health care decisions may be made by a guardian of the person empowered by the court to make health care decisions. 755 ILCS 5/11a-17. Under these circumstances, the guardian is acting as a personal representative under the Privacy Rule. 45 C.F.R. §164.502(g).

It is possible to comply with this law in HIPAA. Further, the law does not stand as an obstacle to accomplishing the full purpose of HIPAA. Therefore, the law is not "contrary" to the HIPAA regulations. 45 C.F.R. §160.202.

7. Is the Law Preempted?

No.

1. Name and Citation of Law

Illinois Living Will Act (755 ILCS 35/1)

2. General Description of the Law

The Illinois Living Will Act allows an individual to make a declaration as to whether death delaying procedures should be undertaken.

3. Rules Promulgated Under the Law

None. No administrative rules have been promulgated under this law.

4. Key Provisions

None. There are no provisions of this Act addressing the issues raised by the HIPAA preemption analysis.

5. Significant Case Law

None. There is no significant case law addressing the issues raised by the HIPAA preemption analysis.

6. Preemption Analysis Under HIPAA

A Living Will is a voluntary act undertaken by the recipient of health care services. 755 ILCS 35/3. No surrogate decision maker is involved in the execution of a living will. Therefore, no privacy issues are present.

It is possible to comply with this law and HIPAA. Further, this law does not stand as an obstacle to accomplishing the full purpose of HIPAA. Therefore, the law is not "contrary" to the HIPAA regulations. 45 C.F.R. § 160.202.

7. Is the Law Preempted?

No.

1. Name and Citation of Law

Health Care Surrogate Act (755 ILCS 40/1)

2. General Description of the Law

The Health Care Surrogate Act allows health care providers, under certain circumstances, to turn to a surrogate decision maker when an individual is incapable of making decisions and has not named a health care power of attorney.

3. Rules Promulgated Under the Law

None. No administrative rules have been promulgated under this law.

4. Key Provisions

755 ILCS 40/20, Private Decision Making Process
755 ILCS 40/25, Surrogate Decision Making
755 ILCS 40/60, Health Care Surrogates; Specific Mental Health Services

5. Significant Case Law

None. There is no significant case law addressing the issues raised by the HIPAA preemption analysis.

6. Preemption Analysis Under HIPAA

The Illinois Health Care Surrogate Act allows a surrogate decision maker to make health care decisions on behalf of certain individuals who is incapable of making his or her own decisions. 755 ILCS 40/15. This decision can include whether to forego life-sustaining treatment. 755 ILCS 40/20. A surrogate decision maker is not empowered to consent to involuntary mental health treatment, electro-convulsive therapy, or admission to a mental health facility. 755 ILCS 40/60. The Privacy Rule generally defers to the applicable State law on who is a "personal representative" with authority to act on behalf of an incapacitated person, the law is not preempted. 45 C.F.R. §164.502(g). Covered entities can treat a properly designated surrogate decision maker as a personal representative consistent with the Privacy Rule.

It is possible to comply with this law and HIPAA. Further, this law does not stand as an obstacle to accomplishing the full purpose of HIPAA. Therefore, the law is not "contrary" to the HIPAA regulations. 45 C.F.R. § 160.202.

7. Is the Law Preempted?

No.

1. Name and Citation of Law

Mental Health Treatment Preference Declaration Act (755 ILCS 43/1)

2. General Description of the Law

The Mental Health Treatment Preference Declaration Act allows an individual to state in advance whether the individual wishes to receive psychotropic medication, electroconvulsive treatment, or admission to a mental health facility.

3. Rules Promulgated Under the Law

None. No administrative rules have been promulgated under this law.

4. Key Provisions

755 ILCS 43/5, Definitions
755 ILCS 43/30, Authority of Attorney-in-Fact

5. Significant Case Law

None. There is no significant case law addressing the issues raised by the HIPAA preemption analysis.

6. Preemption Analysis Under HIPAA

An individual executing a mental health treatment preference declaration creates an attorney-in-fact who has the power to make mental health treatment decisions for the individual. 755 ILCS 43/5, 43/15. The declaration is operative when delivered to the principal's attending physician, and the physician can act in accordance with it when the individual making the declaration is incapable. 755 ILCS 43/25. The Privacy Rule allows the personal representative of an individual to make health care decisions that would otherwise be left to the individual. 45 C.F.R. §164.502(g). The Privacy Rule looks to State law as to whether or not the personal representative is a person with the authority to make health care decisions under State law. Id. In this case, the Mental Health Treatment Preference Declaration Act allows the attorney-in-fact to make decisions relating only to mental health treatment. 755 ILCS 43/25.

It is possible to comply with this law and HIPAA. Further, this law does not stand as an obstacle to accomplishing the full purpose of HIPAA. Therefore, the law is not "contrary" to the HIPAA regulations. 45 C.F.R. § 160.202.

7. Is the Law Preempted?

No.

1. Name and Citation of Law

Illinois Power of Attorney Act (755 ILCS 45/1-1)

2. General Description of the Law

The Illinois Power of Attorney Act creates a method for individuals to appoint agents under a durable power of attorney for property and a durable power of attorney for health care.

3. Rules Promulgated Under the Law

None. No administrative rules have been promulgated under this law.

4. Key Provisions

755 ILCS 45/3-1, Purpose
755 ILCS 45/3-3, Statutory Short Form Power of Attorney for Property
755 ILCS 45/4-1, Purpose
755 ILCS 45/4-3, General Principles

5. Significant Case Law

None. There is no significant case law addressing the issues raised by the HIPAA preemption analysis.

6. Preemption Analysis Under HIPAA

The Durable Power of Attorney Law creates a durable power of attorney for property and a durable power of attorney for health care and sets forth the statutory short forms for creating these types of agencies. 755 ILCS 45/2-1. The power of attorney for health care enables an individual to delegate health care decision making authority to an agent, subject to the direction in the power of attorney and the exercise of due care. 755 ILCS 45/4-1. This power includes the ability to make decisions regarding the withholding of life-sustaining treatment an anatomical gift following death. 755 ILCS 45/4-3. An agent under a power of attorney for health care is a “personal representative” under the Privacy Rule as the agent has the authority to make health care decisions under Illinois law. 45 C.F.R. §164.502(g).

A durable power of attorney for property designates an agent empowered by the principal to handle property and financial affairs. 755 ILCS 45/3-1. These powers include executing real estate transactions, financial institution transactions, obtaining social security and employment benefits, and a variety of other financial decisions. 755 ILCS

45/3-3. Nowhere in the statute is a durable power of attorney for property given the power to make health care decisions. Therefore, unless another more specific statute gives the power of attorney for property the authority to make health care decisions, the power of attorney for property may not engage in making health care decisions. 45 C.F.R. §164.502(g). (See, also, the Mental Health and Developmental Disabilities Act, 740 ILCS 110).

It is possible to comply with this law and HIPAA. Further, this law does not stand as an obstacle to accomplishing the full purpose of HIPAA. Therefore, the law is not "contrary" to the HIPAA regulations. 45 C.F.R. § 160.202.

7. Is the Law Preempted?

No.

1. Name and Citation of Law

Uniform Anatomical Gift Act (755 ILCS 50/1)

2. General Description of the Law

The Uniform Anatomical Gift Act specifies who may make an anatomical gift in the State of Illinois and who may be a donee.

3. Rules Promulgated Under the Law

None. No administrative rules have been promulgated under this law.

4. Key Provisions

755 ILCS 50/8, Rights and Duties at Death

5. Significant Case Law

None. There is no significant case law addressing the issues raised by the HIPAA preemption analysis.

6. Preemption Analysis Under HIPAA

The Uniform Anatomical Gift Act empowers an individual, or relative, such as a surviving spouse, to make an anatomical gift following the death of an individual. 755 ILCS 50/3. Under the Privacy Rule, an individual does not lose the right to privacy of his or her health information because of death. Following death, the rights are exercised by a personal representative with rights under State law. 45 C.F.R. §164.502(i). As the Privacy Rule defers to State law on this matter, individuals designated to act on behalf of the decedent under this Act should be considered personal representatives. In addition, disclosures of health information are allowed under the Privacy Rule for purposes of making an anatomical gift. 45 C.F.R. §164.512(h).

It is possible to comply with this law and HIPAA. Further, this law does not stand as an obstacle to accomplishing the full purpose of HIPAA. Therefore, the law is not "contrary" to the HIPAA regulations. 45 C.F.R. § 160.202.

7. Is the Law Preempted?

No.

1. Name and Citation of Law

Illinois Corneal Transplant Act (755 ILCS 55/1)

2. General Description of the Law

The Corneal Transplant Act allows the corneal tissue of a decedent to be removed without specific consent by the decedent or his representative under certain conditions outlined in the Act.

3. Rules Promulgated Under the Law

None. No administrative rules have been promulgated under this law.

4. Key Provisions

755 ILCS 55/1, Corneal Tissue Transplant - Conditions
755 ILCS 55/2, Objections

5. Significant Case Law

None. There is no significant case law addressing the issues raised by the HIPAA preemption analysis.

6. Preemption Analysis Under HIPAA

The Corneal Transplant Act allows a coroner or county medical examiner who orders an autopsy to provide corneal tissue of the decedent if a reasonable effort has been made to contact an authorized individual to seek consent, no objection has been indicated by the decedent before or after death to the procedure, and the person designated to remove the tissue is qualified to do so. 755 ILCS 55/1. Objections to the removal may be made by the power of attorney for health care, spouse, adult sons or daughters, parents, adult brothers or sisters, grandchild, guardian of the decedent's estate, a surrogate decision maker under the Health Care Surrogate Act, or any person authorized or under obligation to dispose of the body. 755 ILCS 55/2.

Disclosure of protected health information is allowed under the Privacy Rule to coroners and medical examiners by covered entities. 45 C.F.R. §164.512(g). Covered entities are also allowed to use or disclose protected health information for the purpose of facilitating donation and transplantation. 45 C.F.R. §164.512(h).

The Privacy Rule does not impact the enforceability of this law. The primary focus of this law is the consent to treat, which is not regulated by the Privacy Rule. 45 C.F.R.

§164.502, 164.506.

To the extent disclosures of protected health information are part of this process, they should be made by a personal representative under the Privacy Rule and, in addition, such disclosures are allowed under the Privacy Rule for purposes of making an anatomical gift. 45 C.F.R. § 164.502(i), 164.512(h).

It is possible to comply with this law and HIPAA. Further, this law does not stand as an obstacle to accomplishing the full purpose of HIPAA. Therefore, the law is not "contrary" to the HIPAA regulations. 45 C.F.R. § 160.202.

7. Is the Law Preempted?

No.

1. Name and Citation of Law

Organ Donation Request Act (755 ILCS 60/1)

2. General Description of the Law

The Organ Donation Request Act requires each hospital of more than 100 beds to identify suitable candidates for organ or tissue donation and to make a request for a consent to effect a gift under the Uniform Anatomical Gift Act.

3. Rules Promulgated Under the Law

None. No administrative rules have been promulgated under this law.

4. Key Provisions

755 ILCS 60/2, Notification; Consent; Definitions

5. Significant Case Law

None. There is no significant case law addressing the issues raised by the HIPAA preemption analysis.

6. Preemption Analysis Under HIPAA

The Organ Donation Request Act merely requires a hospital of more than 100 beds to request anatomical gifts from the decedent's power of attorney for health care, spouse, adult sons or daughters, parents, adult brothers or sisters, adult grandchild, guardian of the estate, a surrogate decision maker, or person otherwise authorized to dispose of the body. 755 ILCS 60/2. Releases of protected health information for purposes of obtaining an organ donation are allowed by the Privacy Rule. 45 C.F.R. §164.512(h).

It is possible to comply with this law and HIPAA. Further, this law does not stand as an obstacle to accomplishing the full purpose of HIPAA. Therefore, the law is not "contrary" to the HIPAA regulations. 45 C.F.R. § 160.202.

7. Is the Law Preempted?

No.

1. Name and Citation of Law

Burial Lot Perpetual Trust Act (760 ILCS 90/.01)

2. General Description of the Law

The Burial Lot Perpetual Trust Act sets forth the terms under which burial lots may be conveyed or bequeathed to a company or association incorporated for cemetery purposes. The law further provides that cemetery companies or associations may receive perpetual monies or property to be held in trust for maintaining cemetery grounds.

3. Rules Promulgated Under the Law

None. No administrative rules have been promulgated under this law.

4. Key Provisions

None. There are no provisions of this Act addressing the issues raised by the HIPAA preemption analysis.

5. Significant Case Law

None. There is no significant case law addressing the issues raised by the HIPAA preemption analysis.

6. Preemption Analysis Under HIPAA

It should be noted that the Privacy Rule requires a covered entity to protect the individually identifiable health information of a deceased individual. The Act does not address release of health information. There is nothing that makes a cemetery a covered entity under the Privacy Rule. 45 C.F.R. §164.502(f).

It is possible to comply with this law and HIPAA. Further, this law does not stand as an obstacle to accomplishing the full purpose of HIPAA. Therefore, the law is not "contrary" to the HIPAA regulations. 45 C.F.R. § 160.202.

7. Is the Law Preempted?

No.

1. Name and Citation of Law

Cemetery Perpetual Trust Authorization Act (760 ILCS 95/0.01-95/2)

2. General Description of the Law

The Cemetery Perpetual Trust Authorization Act authorizes any incorporated cemetery association incorporated not for pecuniary profit, to receive and hold money, funds and property in perpetual trust in accordance with the terms of the Act.

3. Rules Promulgated Under the Law

None. No administrative rules have been promulgated under this law.

4. Key Provisions

None. There are no provisions of this Act addressing the issues raised by the HIPAA preemption analysis.

5. Significant Case Law

None. There is no significant case law addressing the issues raised by the HIPAA preemption analysis.

6. Preemption Analysis Under HIPAA

It should be noted that the Privacy Rule requires a covered entity to protect the individually identifiable health information of a deceased individual. The Act does not address the release of health information. There is nothing that makes a cemetery a covered entity under the Privacy Rule. 45 C.F.R. §164.502(f).

It is possible to comply with this law and HIPAA. This law does not stand as an obstacle to accomplishing the full purpose of HIPAA. Therefore, the law is not "contrary" to the HIPAA regulations. 45 C.F.R. § 160.202.

7. Is the Law Preempted?

No.

1. Name and Citation of Law

Cemetery Care Act (760 ILCS 100/1-100/24)

2. General Description of the Law

The Cemetery Care Act regulates the care funds of cemeteries and of lots, grave, crypts, niches, private mausoleums, memorials, markers or monuments in cemeteries.

3. Rules Promulgated Under the Law

Rules Implementing the Cemetery Care Act, 38 Ill. Admin. Code 600.10
Rules of Practice and Administrative Hearings before the Comptroller, 74 Ill. Admin. Code 310.10

4. Key Provisions

None. There are no provisions addressing the issues raised by the HIPAA preemption analysis.

5. Significant Case Law

None. There is no significant case law addressing the issues raised by the HIPAA preemption analysis.

6. Preemption Analysis Under HIPAA

It should be noted that the Privacy Rule requires a covered entity to protect the individually identifiable health information of a deceased individual. The Act does not address the release of health information. There is nothing that makes a cemetery a covered entity under the Privacy Rule. 45 C.F.R. §164.502(f).

It is possible to comply with this law and HIPAA. This law does not stand as an obstacle to accomplishing the full purpose of HIPAA. Therefore, the law is not "contrary" to the HIPAA regulations. 45 C.F.R. § 160.202.

7. Is the Law Preempted?

No.

1. Name and Citation of Law

Conveyance of Burial Places to County Act (765 ILCS 805/.01)

2. General Description of the Law

The Conveyance of Burial Places to County Act allows parcels of less than five acres to be conveyed to the County for use as burial grounds.

3. Rules Promulgated Under the Law

None. No administrative rules have been promulgated under this law.

4. Key Provisions

None. There are no provisions of this Act addressing the issues raised by the HIPAA preemption analysis.

5. Significant Case Law

None. There is no significant case law addressing the issues raised by the HIPAA preemption analysis.

6. Preemption Analysis Under HIPAA

It should be noted that the Privacy Rule requires a covered entity to protect the individually identifiable health information of a deceased individual. The Act does not address the release of health information. There is nothing that makes a cemetery a covered entity under the Privacy Rule. 45 C.F.R. §164.502(f).

It is possible to comply with this law and HIPAA. This law does not stand as an obstacle to accomplishing the full purpose of HIPAA. Therefore, the law is not "contrary" to the HIPAA regulations. 45 C.F.R. § 160.202.

7. Is the Law Preempted?

No.

1. Name and Citation of Law

Cemetery Company Land Not Used for Burial Act (765 ILCS 810/.01)

2. General Description of the Law

The Cemetery Company Land Not Used for Burial Act allows cemetery companies who cannot use land purchased for burial purposes to sell such land for other than burial purposes.

3. Rules Promulgated Under the Law

None. No administrative rules have been promulgated under this law.

4. Key Provisions

None. There are no provisions of this Act addressing the issues raised by the HIPAA preemption analysis.

5. Significant Case Law

None. There is no significant case law addressing the issues raised by the HIPAA preemption analysis.

6. Preemption Analysis Under HIPAA

It should be noted that the Privacy Rule requires a covered entity to protect the individually identifiable health information of a deceased individual. The Act does not address the release of health information. There is nothing that makes a cemetery a covered entity under the Privacy Rule. 45 C.F.R. §164.502(f).

It is possible to comply with this law and HIPAA. This law does not stand as an obstacle to accomplishing the full purpose of HIPAA. Therefore, the law is not "contrary" to the HIPAA regulations. 45 C.F.R. § 160.202.

7. Is the Law Preempted?

No.

1. Name and Citation of Law

Cemetery Association Land Not Used for Burial Act (765 ILCS 815/.01)

2. General Description of the Law

The Cemetery Association Land Not Used for Burial Act is similar to the Cemetery Company Land Not Used for Burial Act (765 ILCS 810) in that it allows a cemetery association who has land that is not suitable or required for burial purposes to sell such land. Notice and meeting requirements are contained in the law prior to sale.

3. Rules Promulgated Under the Law

None. No administrative rules have been promulgated under this law.

4. Key Provisions

None. There are no provisions of this Act addressing the issues raised by the HIPAA preemption analysis.

5. Significant Case Law

None. There is no significant case law addressing the issues raised by the HIPAA preemption analysis.

6. Preemption Analysis Under HIPAA

It should be noted that the Privacy Rule requires a covered entity to protect the individually identifiable health information of a deceased individual. The Act does not address the release of health information. There is nothing that makes a cemetery a covered entity under the Privacy Rule. 45 C.F.R. §164.502(f).

It is possible to comply with this law and HIPAA. This law does not stand as an obstacle to accomplishing the full purpose of HIPAA. Therefore, the law is not "contrary" to the HIPAA regulations. 45 C.F.R. § 160.202.

7. Is the Law Preempted?

No.

1. Name and Citation of Law

Cemetery Land Ownership and Transfer Act (765 ILCS 820/0.01)

2. General Description of the Law

The Cemetery Land Ownership and Transfer Act limits the ability of cemetery associations to hold land beyond that which is needed for burial places. This Act governs counties of less than 100,000 inhabitants.

3. Rules Promulgated Under the Law

None. No administrative rules have been promulgated under this law.

4. Key Provisions

None. There are no provisions of this Act addressing the issues raised by the HIPAA preemption analysis.

5. Significant Case Law

None. There is no significant case law addressing the issues raised by the HIPAA preemption analysis.

6. Preemption Analysis Under HIPAA

It should be noted that the Privacy Rule requires a covered entity to protect the individually identifiable health information of a deceased individual. The Act does not address the release of health information. There is nothing that makes a cemetery a covered entity under the Privacy Rule. 45 C.F.R. §164.502(f).

It is possible to comply with this law and HIPAA. This law does not stand as an obstacle to accomplishing the full purpose of HIPAA. Therefore, the law is not "contrary" to the HIPAA regulations. 45 C.F.R. § 160.202.

7. Is the Law Preempted?

No.

1. Name and Citation of Law

City Sale or Lease of Land for Cemeteries Act (765 ILCS 825)

2. General Description of the Law

The City Sale or Lease of Land for Cemeteries Act allows cities in which the Mayor and Alderman have power to acquire land for burial or cemetery purposes to do so.

3. Rules Promulgated Under the Law

None. No administrative rules have been promulgated under this law.

4. Key Provisions

None. There are no provisions of this Act addressing the issues raised by the HIPAA preemption analysis.

5. Significant Case Law

None. There is no significant case law addressing the issues raised by the HIPAA preemption analysis.

6. Preemption Analysis Under HIPAA

It should be noted that the Privacy Rule requires a covered entity to protect the individually identifiable health information of a deceased individual. The Act does not address the release of health information. There is nothing that makes a cemetery a covered entity under the Privacy Rule. 45 C.F.R § 164.502(f).

It is possible to comply with this law and HIPAA. This law does not stand as an obstacle to accomplishing the full purpose of HIPAA. Therefore, the law is not "contrary" to the HIPAA regulations. 45 C.F.R. § 160.202.

7. Is the Law Preempted?

No.

1. Name and Citation of Law

Cemetery Removal Act (765 ILCS 830/0.01)

2. General Description of the Law

The Cemetery Removal Act allows a cemetery within the limits of any town to be relocated if good cause, such as the health and general welfare of the public is at issue. If a cemetery association seeks removal, it may be required to bear the expense of the removal. 765 ILCS 830/1.

3. Rules Promulgated Under the Law

None. No administrative rules have been promulgated under this law.

4. Key Provisions

None. There are no provisions of this Act addressing the issues raised by the HIPAA preemption analysis.

5. Significant Case Law

None. There is no significant case law addressing the issues raised by the HIPAA preemption analysis.

6. Preemption Analysis Under HIPAA

It should be noted that the Privacy Rule requires a covered entity to protect the individually identifiable health information of a deceased individual. The Act does not address the release of health information. There is nothing that makes a cemetery a covered entity under the Privacy Rule. 45 C.F.R. §164.502(f).

It is possible to comply with this law and HIPAA. This law does not stand as an obstacle to accomplishing the full purpose of HIPAA. Therefore, the law is not "contrary" to the HIPAA regulations. 45 C.F.R. § 160.202.

7. Is the Law Preempted?

No.

1. Name and Citation of Law

Cemetery Protection Act (765 ILCS 835)

2. General Description of the Law

The Cemetery Protection Act creates certain crimes for illegal burial and defacing of cemetery property. Generally, the Act governs upkeep of cemeteries.

3. Rules Promulgated Under the Law

None. No administrative rules have been promulgated under this law.

4. Key Provisions

None. There are no provisions of this Act addressing the issues raised by the HIPAA preemption analysis.

5. Significant Case Law

None. There is no significant case law addressing the issues raised by the HIPAA preemption analysis.

6. Preemption Analysis Under HIPAA

It should be noted that the Privacy Rule requires a covered entity to protect the individually identifiable health information of a deceased individual. The Act does not address the relase of health information. There is nothing that makes a cemetery a covered entity under the Privacy Rule. 45 C.F.R. §164.502(f).

It is possible to comply with this law and HIPAA. This law does not stand as an obstacle to accomplishing the full purpose of HIPAA. Therefore, the law is not “contrary” to the HIPAA regulations. 45 C.F.R. § 160.202.

7. Is the Law Preempted?

No.

1. Name and Citation of Law

Clinical Psychologists Lien Act (770 ILCS 10/0.01-10/6)

2. General Description of the Law

The Clinical Psychologists Lien Act allows a licensed clinical psychologist practicing in Illinois who rendered services related to the psychological aspects of physical illness to have a lien upon claims and causes of action for the amount of his reasonable charges up to the date of payment of such damages.

3. Rules Promulgated Under the Law

None. No administrative rules have been promulgated under this law.

4. Key Provisions

770 ILCS 10/1, Amount; Written Notice; Service
770 ILCS 10/4, Examination of Records
770 ILCS 10/5, Compliance With Act

5. Significant Case Law

None. There is no significant case law addressing the issues raised by the HIPAA preemption analysis.

6. Preemption Analysis Under HIPAA

The Act allows a physician to place a lien upon claims and causes of action for reasonable charges up to 1/3 of the sum due the injured person. 770 ILCS 10/1. Any party against whom a claim has been asserted is allowed to examine the records of the licensed clinical psychologist in reference to the examination and treatment of the injured person. 770 ILCS 10/4. Further, a psychologist requesting a lien is to file a written statement of the nature and extent of the injuries sustained by and treatment given to the injured person, if so requested in writing by any party. Id. The notice requirements of Section 1 and the disclosure requirements in Section 4 are subject to the provisions of the Mental Health and Developmental Disabilities Confidentiality Act, 740 ILCS 110/1, and allow for an interested party to oppose the disclosure or the extent of the disclosure made. 770 ILCS 10/5.

The comments to the Privacy Rule indicate that collecting payment for medical services is considered part of "payment" under the definitions. 45 C.F.R. 164.501. Therefore, no patient consent or authorization for release of the health information discussed above

appears to be required by the Privacy Rule. 45 C.F.R. §164.502. Release of psychotherapy notes would need to be made in accordance with the MHDDCA and the Privacy Rule. 45 C.F.R. §164.508(a)(2). If necessary, the health information can be released pursuant to court order. 45 C.F.R. §164.512(e).

It is possible to comply with the Clinical Psychologists Lien Act and HIPAA. Further, the law does not stand as an obstacle to accomplishing the full purpose of HIPAA. Therefore, the law is not contrary to the HIPAA regulations. 45 C.F.R. §160.202.

7. Is the Law Preempted?

No.

1. Name and Citation of Law

Dentists Lien Act (770 ILCS 20/0.01)

2. General Description of the Law

The Dentists Lien Act sets forth a process for a treating dentist to place a lien upon the proceeds from any verdict, judgment, or order in favor of a injured person on which the dentist has rendered treatment.

3. Rules Promulgated Under the Law

None. No administrative rules have been promulgated under this law.

4. Key Provisions

770 ILCS 20/1, Creation of Lien; Amount; Notice; Payment in Good Faith
770 ILCS 20/3, Records of Dentist; Examination by Party to Action
770 ILCS 20/4, Records of Dentist; Examination by Party Against Whom Claim is Asserted for Damages
770 ILCS 20/5, Failure to Furnish Statement; Effect

5. Significant Case Law

None. There is no significant case law addressing the issues raised by the HIPAA preemption analysis.

6. Preemption Analysis Under HIPAA

The Dentist's Lien Act allows a dentist to place a lien upon the claims and causes of action, other than claims under the Workman's Compensation Act or Worker's Occupational Diseases Act, up to 1/3 the sum of the sum due the injured person. 770 ILCS 20/1. The Act allows any party upon written request to examine the dental records of the injured person. Further, any dentist claiming a lien under the Act must give a written statement of the nature and extent of the injuries within ten days of a party making such a request. 770 ILCS 20/4. The Act further allows the party against whom a claim is being asserted to examine the records of the dentist and request a written statement of the treatment. Id.

The Privacy Rule definition of "payment" includes collection activities. 45 C.F.R. 164.501. The Privacy Rule does not require a consent or authorization for payment-related activities. 45 C.F.R. 164.502(a)(1)(ii). If necessary, the health information can be released pursuant to court order. 45 C.F.R. §164.512(e).

It is possible to comply with this law and HIPAA. Further, the law does not stand as an obstacle to accomplishing the full purpose of HIPAA. Therefore, the law is not contrary to the HIPAA regulations. 45 C.F.R. §160.202.

7. Is the Law Preempted?

No.

1. Name and Citation of Law

Emergency Medical Services Personnel Lien Act (770 ILCS 22/1)

2. General Description of the Law

The Emergency Medical Services Personnel Lien Act allows every person certified or authorized under the Emergency Medical Services Systems Act who provides emergency medical services to have a lien upon all claims and causes of action for the amount of his or her reasonable charges up to the date of payment of such damages.

3. Rules Promulgated Under the Law

None. No administrative rules have been promulgated under this law.

4. Key Provisions

770 ILCS 22/5, Elements of the Lien
770 ILCS 22/20, Examination Records
770 ILCS 22/25, Failure to File Written Statement

5. Significant Case Law

None. There is no significant case law addressing the issues raised by the HIPAA preemption analysis.

6. Preemption Analysis Under HIPAA

The Emergency Medical Services Personnel Lien Act allows an EMS worker to place a lien upon the claims and causes of action, up to 1/3 the sum of the sum due the injured person. 770 ILCS 22/5. The Act allows any party upon written request to examine the dental records of the injured person. Further, any provider claiming a lien under the Act must give a written statement of the nature and extent of the injuries within ten days of a party making such a request. 770 ILCS 22/20. The Act further allows the party against whom a claim is being asserted to examine the records of the provider and request a written statement of the treatment. Id.

The Privacy Rule definition of "payment" includes collection activities. 45 C.F.R. 164.501. The Privacy Rule does not require a consent or authorization for payment-related activities. 45 C.F.R. 164.502(a)(1)(ii). If necessary, the health information can be released pursuant to court order. 45 C.F.R. §164.512(e).

It is possible to comply with this law and HIPAA. Further, the law does not stand as an

obstacle to accomplishing the full purpose of HIPAA. Therefore, the law is not contrary to the HIPAA regulations. 45 C.F.R. §160.202.

7. Is the Law Preempted?

No.

1. Name and Citation of Law

Home Health Agency Lien Act (770 ILCS 25/1-25/6)

2. General Description of the Law

The Home Health Agency Lien Act allows every home health agency licensed under the Home Health Agency Licensing Act to have a lien upon all such claims and causes of action of an injured person for the amount of its reasonable charges up to the date of payment of such damages.

3. Rules Promulgated Under the Law

None. No administrative rules have been promulgated under this law.

4. Key Provisions

770 ILCS 25/2, Lien; Amount; Notice; Service
770 ILCS 25/4, Records of Agency; Written Statement
770 ILCS 25/5, Failure to Give or File Written Statement

5. Significant Case Law

None. There is no significant case law addressing the issues raised by the HIPAA preemption analysis.

6. Preemption Analysis Under HIPAA

The Home Health Agency Lien Act allows a home health provider to place a lien upon the claims and causes of action, up to 1/3 the sum of the sum due the injured person. 770 ILCS 25/2. The Act allows any party upon written request to examine the providers records of the injured person. Further, any provider claiming a lien under the Act must give a written statement of the nature and extent of the injuries within ten days of a party making such a request. 770 ILCS 25/4. The Act further allows the party against whom a claim is being asserted to examine the records of the provider and request a written statement of the treatment. Id.

The Privacy Rule definition of "payment" includes collection activities. 45 C.F.R. 164.501. The Privacy Rule does not require a consent or authorization for payment-related activities. 45 C.F.R. 164.502(a)(1)(ii). If necessary, the health information can be released pursuant to court order. 45 C.F.R. §164.512(e).

It is possible to comply with this law and HIPAA. Further, the law does not stand as an

obstacle to accomplishing the full purpose of HIPAA. Therefore, the law is not contrary to the HIPAA regulations. 45 C.F.R. §160.202.

7. Is the Law Preempted?

No.

1. Name and Citation of Law

Hospital Lien Act (770 ILCS 35/0.01)

2. General Description of the Law

The Hospital Lien Act allows every hospital rendering service in the treatment, care and maintenance, of an injured person to have a lien upon all claims and causes of action of the injured person for the amount of its reasonable charges up to the date of payment of damages.

3. Rules Promulgated Under the Law

None. No administrative rules have been promulgated under this law.

4. Key Provisions

770 ILCS 35/1, Lien Created; Notice Required
770 ILCS 35/3, Hospital Records; Examination; Furnishing Statement of Injuries
770 ILCS 35/4, Lien Void on Failure of Hospital to Furnish Statement

5. Significant Case Law

6. Preemption Analysis Under HIPAA

The Hospital Lien Act allows a hospital to place a lien upon the claims and causes of action, up to 1/3 the sum of the sum due the injured person. 770 ILCS 35/1. The Act allows any party upon written request to examine the providers records of the injured person. Further, any hospital claiming a lien under the Act must give a written statement of the nature and extent of the injuries within ten days of a party making such a request. 770 ILCS 35/3. The Act further allows the party against whom a claim is being asserted to examine the records of the provider and request a written statement of the treatment. Id.

The Privacy Rule definition of "payment" includes collection activities. 45 C.F.R. 164.501. The Privacy Rule does not require a consent or authorization for payment-related activities. 45 C.F.R. 164.502(a)(1)(ii). If necessary, the health information can be released pursuant to court order. 45 C.F.R. §164.512(e).

It is possible to comply with this law and HIPAA. Further, the law does not stand as an obstacle to accomplishing the full purpose of HIPAA. Therefore, the law is not contrary to the HIPAA regulations. 45 C.F.R. §160.202.

7. Is the Law Preempted?

No.

1. Name and Citation of Law

Optometrist Lien Act (770 ILCS 72/1)

2. General Description of the Law

The Optometrist Lien Act allows every person who holds a valid license under the Illinois Optometric Practice Act of 1987 to have a lien upon all claims and causes of action for the amount of his or her reasonable charges up to the date of the payment of damages.

3. Rules Promulgated Under the Law

None. No administrative rules have been promulgated under this law.

4. Key Provisions

770 ILCS 72/5, Elements of the Lien
770 ILCS 72/20, Examination of Records
770 ILCS 72/25, Failure to File Written Statement

5. Significant Case Law

None. There is no significant case law addressing the issues raised by the HIPAA preemption analysis.

6. Preemption Analysis Under HIPAA

The Optometrist Lien Act allows a licensed optometrist to place a lien upon the claims and causes of action, up to 1/3 the sum of the sum due the injured person. 770 ILCS 72/5. The Act allows any party upon written request to examine the providers records of the injured person. Further, any optometrist claiming a lien under the Act must give a written statement of the nature and extent of the injuries within ten days of a party making such a request. 110 ILCS 72/20. The Act further allows the party against whom a claim is being asserted to examine the records of the optometrist and request a written statement of the treatment. Id.

The Privacy Rule definition of "payment" includes collection activities. 45 C.F.R. 164.501. The Privacy Rule does not require a consent or authorization for payment-related activities. 45 C.F.R. 164.502(a)(1)(ii). If necessary, the health information can be released pursuant to court order. 45 C.F.R. §164.512(e).

It is possible to comply with this law and HIPAA. Further, the law does not stand as an

obstacle to accomplishing the full purpose of HIPAA. Therefore, the law is not contrary to the HIPAA regulations. 45 C.F.R. §160.202.

7. Is the Law Preempted?

No.

1. Name and Citation of Law

Physical Therapist Lien Act (770 ILCS 75/1)

2. General Description of the Law

The Physical Therapist Lien Act allows every licensed physical therapist practicing in Illinois who provides services by way of treatment to injured persons, to have a lien upon all claims and causes of action for the amount of his reasonable charges up to the date of payment of such damages.

3. Rules Promulgated Under the Law

None. No administrative rules have been promulgated under this law.

4. Key Provisions

770 ILCS 75/2, Liens Imposed on Claims and Causes of Action; Notice
770 ILCS 75/5, Examination of Records; Statement of Treatment
770 ILCS 75/6, Refusal to Give or File Statement

5. Significant Case Law

None. There is no significant case law addressing the issues raised by the HIPAA preemption analysis.

6. Preemption Analysis Under HIPAA

The Physical Therapist Lien Act allows a physical therapy provider to place a lien upon the claims and causes of action, up to 1/3 the sum of the sum due the injured person. 770 ILCS 75/2. The Act allows any party upon written request to examine the providers records of the injured person. Further, any physical therapist claiming a lien under the Act must give a written statement of the nature and extent of the injuries within ten days of a party making such a request. 770 ILCS 75/5. The Act further allows the party against whom a claim is being asserted to examine the records of the provider and request a written statement of the treatment. Id.

The Privacy Rule definition of "payment" includes collection activities. 45 C.F.R. 164.501. The Privacy Rule does not require a consent or authorization for payment-related activities. 45 C.F.R. 164.502(a)(1)(ii). If necessary, the health information can be released pursuant to court order. 45 C.F.R. §164.512(e).

It is possible to comply with this law and HIPAA. Further, the law does not stand as an

obstacle to accomplishing the full purpose of HIPAA. Therefore, the law is not contrary to the HIPAA regulations. 45 C.F.R. §160.202.

7. Is the Law Preempted?

No.

1. Name and Citation of Law

Physicians Lien Act (770 ILCS 80)

2. General Description of the Law

The Physicians Lien Act allows every licensed physician practicing in Illinois who renders services by way of treatment to injured persons, to have a lien upon all claims and causes of action for the amount of his reasonable charges up to the date of payment of such damages.

3. Rules Promulgated Under the Law

None. No administrative rules have been promulgated under this law.

4. Key Provisions

770 ILCS 80/1, Creation of Lien; Amount; Notice; Payment in Good Faith
770 ILCS 80/3, Records of Physicians; Examination by Party to Action
770 ILCS 80/4, Records of Physicians; Examination by Party Against Whom a Claim Shall be Asserted
770 ILCS 80/5, Failure to Furnish Medical Report; Effect

5. Significant Case Law

None. There is no significant case law addressing the issues raised by the HIPAA preemption analysis.

6. Preemption Analysis Under HIPAA

The Physicians Lien Act allows a licensed physician to place a lien upon the claims and causes of action, other than claims under the Workman's Compensation Act or Worker's Occupational Diseases Act, up to 1/3 the sum of the sum due the injured person. 770 ILCS 80/1. The Act allows any party upon written request to examine the physician's records of the injured person. Further, any physician claiming a lien under the Act must give a written statement of the nature and extent of the injuries within ten days of a party making such a request. 770 ILCS 80/3. The Act further allows the party against whom a claim is being asserted to examine the records of the physician and request a written statement of the treatment. 770 ILCS 80/4.

The Privacy Rule definition of "payment" includes collection activities. 45 C.F.R. 164.501. The Privacy Rule does not require a consent or authorization for payment-related activities. 45 C.F.R. 164.502(a)(1)(ii). If necessary, the health information can be

released pursuant to court order. 45 C.F.R. §164.512(e).

It is possible to comply with this law and HIPAA. Further, the law does not stand as an obstacle to accomplishing the full purpose of HIPAA. Therefore, the law is not contrary to the HIPAA regulations. 45 C.F.R. §160.202.

7. Is the Law Preempted?

No.

1. Name and Citation of Law

Illinois Human Rights Act (775 ILCS 5/1-103)

2. General Description of the Law

The Illinois Human Rights Act creates an adjudicatory process for claims of discrimination based upon age, religion, sex, or handicap housed in the Department of Human Rights.

3. Rules Promulgated Under the Law

50 Ill. Admin. Code 2520.10, *et seq.*, Procedures of the Department of Human Rights

4. Key Provisions

775 ILCS 5/2-10, Definitions
775 ILCS 5/3-102.1, Handicap
775 ILCS 5/7A-102, Procedures

5. Significant Case Law

None. There is no significant case law addressing the issues raised by the HIPAA preemption analysis.

6. Preemption Analysis Under HIPAA

The Human Rights Act is applicable to employers who employ 15 or more employees during 20 or more calendar weeks within the calendar year. 775 ILCS 5/2-101. Complaints are made to the Human Rights Commission by the individual employee. 775 ILCS 5/5/7A-102. Disclosure of a handicap in this process is a voluntary activity by the employee. It appears that the Department of Human Rights receives medical information relating to the investigation from the employee or employer. Id.

It is possible to comply with this law and HIPAA. This law does not stand as an obstacle to accomplishing the full purpose of HIPAA. Therefore, the law is not "contrary" to the HIPAA regulations. 45 C.F.R. § 160.202.

7. Is the Law Preempted?

No.

1. Name and Citation of Law

Medical Corporation Act (805 ILCS 15/1 *et seq*.)

2. General Description of the Law

The Medical Corporation Act allows one or more persons licensed under the Medical Practice Act to form a corporation to treat human ailments. 805 ILCS 15/2.

3. Rules Promulgated Under the Law

None. No administrative rules have been promulgated under this law.

4. Key Provisions

None. There are no provisions addressing the issues raised by the HIPAA preemption analysis.

5. Significant Case Law

None. There is no significant case law addressing the issues raised by the HIPAA preemption analysis.

6. Preemption Analysis Under HIPAA

The Medical Corporation Act governs the legal structure of physicians practicing medicine and does not implicate the preemption analysis.

It is possible to comply with this law and HIPAA. This law does not stand as an obstacle to accomplishing the full purpose of HIPAA. Therefore, the law is not "contrary" to the HIPAA regulations. 45 C.F.R. § 160.202.

7. Is the Law Preempted?

No.

1. Name and Citation of Law

Cemetery Association Act (805 ILCS 320/.01 *et seq*.)

2. General Description of the Law

The Cemetery Association Act allows six or more persons to organize a cemetery association for creation of a cemetery and sale of burial lots therein.

3. Rules Promulgated Under the Law

None. No administrative rules have been promulgated under this law.

4. Key Provisions

None. There are no provisions addressing the issues raised by the HIPAA preemption analysis.

5. Significant Case Law

None. There is no significant case law addressing the issues raised by the HIPAA preemption analysis.

6. Preemption Analysis Under HIPAA

The Privacy Rule provides that decedents do not lose the privacy in their protected health information, however that right is to be exercised by the personal representative of the individual, such as an executor or independent administrator. 45 C.F.R. §164.502(g). Disclosures of protected health information about decedents are allowed to funeral directors in order to carry out their duties, including burial. 45 C.F.R. §164.512(g). The Act does not address the release of health information.

It is possible to comply with this law and HIPAA. This law does not stand as an obstacle to accomplishing the full purpose of HIPAA. Therefore, the law is not "contrary" to the HIPAA regulations. 45 C.F.R. § 160.202.

7. Is the Law Preempted?

No.

1. Name and Citation of Law

National Cemetery Act (805 ILCS 325)

2. General Description of the Law

The National Cemetery Act allows a cemetery association to access grants from federal funds to construct a memorial gateway or entrance to the property.

3. Rules Promulgated Under the Law

None. No administrative rules have been promulgated under this law.

4. Key Provisions

None. There are no provisions addressing the issues raised by the HIPAA preemption analysis.

5. Significant Case Law

None. There is no significant case law addressing the issues raised by the HIPAA preemption analysis.

6. Preemption Analysis Under HIPAA

It should be noted that the Privacy Rule requires a covered entity to protect the individually identifiable health information of a deceased individual. The Act does not address the release of health information. There is nothing that makes a cemetery a covered entity under the Privacy Rule. 45 C.F.R. §164.502(f).

It is possible to comply with this law and HIPAA. This law does not stand as an obstacle to accomplishing the full purpose of HIPAA. Therefore, the law is not "contrary" to the HIPAA regulations. 45 C.F.R. § 160.202.

7. Is the Law Preempted?

No.

1. Name and Citation of Law

Health Insurance Claim Filing Act (820 ILCS 45/0.01-45/2)

2. General Description of the Law

The Health Insurance Claim Filing Act provides that no employer who makes group health insurance coverage available to employees shall discharge an employee where the basis for such discharge is retaliation for using the insurance policy.

3. Rules Promulgated Under the Law

None. No administrative rules have been promulgated under this law.

4. Key Provisions

None. There are no provisions addressing the issues raised by the HIPAA preemption analysis.

5. Significant Case Law

None. There is no significant case law addressing the issues raised by the HIPAA preemption analysis.

6. Preemption Analysis Under HIPAA

While the Health Insurance Claim Filing Act does not address the privacy of health information, employers who sponsor health plans are required to comply with certain Privacy Rule provisions. 45 C.F.R. §160.103.

It is possible to comply with this law and HIPAA. This law does not stand as an obstacle to accomplishing the full purpose of HIPAA. Therefore, the law is not “contrary” to the HIPAA regulations. 45 C.F.R. § 160.202.

7. Is the Law Preempted?

No.

1. Name and Citation of Law

Right to Privacy in the Workplace Act (820 ILCS 55/1)

2. General Description of the Law

The Right to Privacy in the Workplace Act regulates information that employers may use about employees.

3. Rules Promulgated Under the Law

None. No administrative rules have been promulgated under this law.

4. Key Provisions

None. There are no provisions addressing the issues raised by the HIPAA preemption analysis.

5. Significant Case Law

None. There is no significant case law addressing the issues raised by the HIPAA preemption analysis.

6. Preemption Analysis Under HIPAA

The Act prohibits an employer from refusing to hire or discharging any individual because the individual uses lawful products off the premises of the employer during non-working hours. 820 ILCS 55/5.

The Act prohibits employers from inquiring whether the prospective employee has ever filed a claim for benefits under the Workers' Compensation Act or Workers' Occupational Diseases Act or received benefits under these Acts. 820 ILCS 55/10.

It should be noted that workers' compensation disclosures or workers' occupational disease disclosures are not covered by the Privacy Rule. 45 C.F.R. §164.512(l).

It is possible to comply with this law and HIPAA. This law does not stand as an obstacle to accomplishing the full purpose of HIPAA. Therefore, the law is not "contrary" to the HIPAA regulations. 45 C.F.R. § 160.202.

7. Is the Law Preempted?

No.

1. Name and Citation of Law

Union Employee Health and Benefits Protection Act (820 ILCS 60/1)

2. General Description of the Law

The Union Employee Health and Benefits Protection Act makes it unlawful for an employer to willfully and in bad faith fail to transfer employee-entitled funds to the designated employee trust fund that is lawfully entitled to receive the employee-entitled funds.

3. Rules Promulgated Under the Law

None. No administrative rules have been promulgated under this law.

4. Key Provisions

None. There are no provisions addressing the issues raised by the HIPAA preemption analysis.

5. Significant Case Law

None. There is no significant case law addressing the issues raised by the HIPAA preemption analysis.

6. Preemption Analysis Under HIPAA

The Act does not address the privacy of health information, however, a union employed health plan can be a covered entity under the Privacy Rule. 45 C.F.R. §164.103.

It is possible to comply with this law and HIPAA, and this law does not stand as an obstacle to accomplishing the full purpose of HIPAA. Therefore, the law is not "contrary" to HIPAA. § 160.202.

7. Is the Law Preempted?

No.

1. Name and Citation of Law

Burial Rights Act (820 ILCS 135/0.01-135/3.1)

2. General Description of the Law

The Burial Rights Act establishes certain burial rights and prohibits certain conduct in relation thereto.

3. Rules Promulgated Under the Law

No administrative rules have been promulgated under this law.

4. Key Provisions

None. There are no provisions addressing the issues raised by the HIPAA preemption analysis.

5. Significant Case Law

None. There is no significant case law addressing the issues raised by the HIPAA preemption analysis.

6. Preemption Analysis Under HIPAA

It should be noted that the Privacy Rule requires a covered entity to protect the individually identifiable health information of a deceased individual. The Act does not address the release of health information. There is nothing that makes a cemetery a covered entity under the Privacy Rule. 45 C.F.R. §164.502(f).

It is possible to comply with this law and HIPAA. Further, this law does not stand as an obstacle to accomplishing the full purpose of HIPAA. Therefore, the law is not "contrary" to HIPAA. § 160.202.

7. Is the Law Preempted?

No.

1. Name and Citation of Law

Employee Medical Contribution Act (820 ILCS 150/1-150/3)

2. General Description of the Law

The Employee Medical Contribution Act allows an employee to pay cash for participation in medical service plans that the employee's wages are insufficient to cover the premiums.

3. Rules Promulgated Under the Law

No administrative rules have been promulgated under this law.

4. Key Provisions

None. There are no provisions addressing the issues raised by the HIPAA preemption analysis.

5. Significant Case Law

None. There is no significant case law addressing the issues raised by the HIPAA preemption analysis.

6. Preemption Analysis Under HIPAA

The Employee Medical Contribution Act does not address the privacy of health information. However, the employer may be operating a health plan within the meaning of the Privacy Rule. 45 C.F.R. §164.103.

It is possible to comply with this law and HIPAA. Further, this law does not stand as an obstacle to accomplishing the full purpose of HIPAA. Therefore, the law is not "contrary" to HIPAA. § 160.202.

7. Is the Law Preempted?

No.

1. Name and Citation of Law

Medical Care Savings Account Act of 2000 (820 ILCS 153)

2. General Description of the Law

The Medical Care Savings Account Act of 2000 allows an employer to offer a medical care savings account program to its employees.

3. Rules Promulgated Under the Law

86 Ill. Admin. Code 100.2580, Medical Care Savings Accounts

4. Key Provisions

820 ILCS 153/15, Use of Account Monies

5. Significant Case Law

None. There is no significant case law addressing the issues raised by the HIPAA preemption analysis.

6. Preemption Analysis Under HIPAA

The Medical Care Savings Account Act of 2000 allows an employer to create a medical savings account to reimburse employees for out of pocket expenses not covered by insurance, workers' compensation, or other insurance policies. 820 ILCS 153/15. An employee must submit documentation for medical expenses for which reimbursement is desired. Id. Participation in a medical care savings account plan is voluntary and the employee engages in a voluntary disclosure of information to the administrator of the plan. Id. It appears, that a Medical Savings Account Plan sponsored by an employer is an ERISA plan constituting a health plan under the Privacy Rule, and therefore the Medical Savings Account Plan will have to comply with the Privacy Rule. 45 C.F.R. §160.103.

It is possible to comply with this law and HIPAA. This law does not stand as an obstacle to accomplishing the full purpose of HIPAA. Therefore, the law is not "contrary" to the HIPAA regulations. 45 C.F.R. § 160.202.

7. Is the Law Preempted?

No.

1. Name and Citation of Law

Medical Examination of Employees Act (820 ILCS 235/0.01-235/4)

2. General Description of the Law

The Medical Examination of Employees Act forbids employers from requiring employees or applicants for employment to pay the cost of medical examinations required as a condition of their employment.

3. Rules Promulgated Under the Law

None. No administrative rules have been promulgated under this law.

4. Key Provisions

None. There are no provisions addressing the issues raised by the HIPAA preemption analysis.

5. Significant Case Law

None. There is no significant case law addressing the issues raised by the HIPAA preemption analysis.

6. Preemption Analysis Under HIPAA

The Privacy Rule does not prohibit employers from requiring employees to undertake a medical exam as a condition of employment, however, a covered entity will not be able to disclose health information to an employer without a HIPAA compliant authorization. 45 C.F.R. §164.508.

It is possible to comply with this law and HIPAA. Further, this law does not stand as an obstacle to accomplishing the full purpose of HIPAA. Therefore, the law is not "contrary" to HIPAA. § 160.202.

7. Is the Law Preempted?

No.

1. Name and Citation of Law

Workers' Compensation Act (820 ILCS 305/1-305/30)

2. General Description of the Law

The Workers' Compensation Act provides for the compensation of employees injured at work.

3. Rules Promulgated Under the Law

50 Ill. Admin. Code 7010, Accident Reporting
50 Ill. Admin. Code 7020, Pre-Arbitration
50 Ill. Admin. Code 7030, Arbitration
50 Ill. Admin. Code 7040, Review
50 Ill. Admin. Code 7050, Oral Arguments
50 Ill. Admin. Code 7060, Judicial Review
50 Ill. Admin. Code 7070, Settlement, Contracts and Lump Sum Petitions
50 Ill. Admin. Code 7080, Attorney's Fees
50 Ill. Admin. Code 7090, Discipline of Attorneys; Agents
50 Ill. Admin. Code 7100, Insurance Regulations
50 Ill. Admin. Code 7110.10, *et seq.*, Miscellaneous
50 Ill. Admin. Code 7120, Anti-Corruption Rule
50 Ill. Admin. Code 7130, Hearing Loss Guidelines

4. Key Provisions

None. There are no provisions addressing the issues raised by the HIPAA preemption analysis.

5. Significant Case Law

None. There is no significant case law addressing the issues raised by the HIPAA preemption analysis.

6. Preemption Analysis Under HIPAA

Workers' compensation activities are specifically excluded from coverage of the Privacy Rule. 45 C.F.R. §160.102, §164.512(l). Workers' compensation reimbursements are specifically listed as an excepted benefit which is not part of a health plan. Id., referencing 42 U.S.C. 300gg-91(c)(1).

It is possible to comply with this law and HIPAA. This law does not stand as an obstacle

to accomplishing the full purpose of HIPAA. Therefore, the law is not "contrary" to the HIPAA regulations. 45 C.F.R. § 160.202.

7. Is the Law Preempted?

No.

1. Name and Citation of Law

Workers' Occupational Diseases Act (820 ILCS 310/1-310/27)

2. General Description of the Law

The Workers' Occupational Diseases Act provides for the compensation of employees for occupational diseases.

3. Rules Promulgated Under the Law

50 Ill. Admin. Code 7010, Accident Reporting
50 Ill. Admin. Code 7100.10, *et seq.*

4. Key Provisions

None. There are no provisions addressing the issues raised by the HIPAA preemption analysis.

5. Significant Case Law

None. There is no significant case law addressing the issues raised by the HIPAA preemption analysis.

6. Preemption Analysis Under HIPAA

Similar to the Workers' Compensation Act, the Workers' Occupational Disease Act allows the Illinois Industrial Commission to make awards to employees who are injured through occupational diseases arising out of employment. 820 ILCS 310/1. Because reimbursement under Acts such as the Workers' Occupational Disease Act are an excepted benefit which is not deemed health care under federal law, disclosures of protected health information by a covered entity under this Act are not covered by the Privacy Rule. 45 C.F.R. §164.512(l), §160.102, referencing 42 U.S.C. 300gg-91(c)(1).

It is possible to comply with this law and HIPAA. This law does not stand as an obstacle to accomplishing the full purpose of HIPAA. Therefore, the law is not "contrary" to the HIPAA regulations. 45 C.F.R. § 160.202.

7. Is the Law Preempted?

No.

1. Name and Citation of Law

Law Enforcement Officers, Civil Defense Workers, Civil Air Patrol Members, Paramedics, Firemen, Chaplains and State Employees' Compensation Act (820 ILCS 315/1 *et seq*.)

2. General Description of the Law

The Law Enforcement Officers, Civil Defense Workers, Civil Air Patrol Members, Paramedics, Firemen, Chaplains and State Employees' Compensation Act provides for the payment of compensation on behalf of certain law enforcement officers, civil defense workers, civil air patrol members, paramedics and firemen killed in the line of duty.

3. Rules Promulgated Under the Law

None. No administrative rules have been promulgated under this law.

4. Key Provisions

None. There are no provisions addressing the issues raised by the HIPAA preemption analysis.

5. Significant Case Law

None. There is no significant case law addressing the issues raised by the HIPAA preemption analysis.

6. Preemption Analysis Under HIPAA

The Law Enforcement Officers, Civil Defense Workers, Civil Air Patrol Members, Paramedics, Firemen, Chaplains and State Employees' Compensation Act provides a death benefit to families of those killed in the line of duty. The Act does not describe a "health plan" as defined in the Privacy Rule. 45 C.F.R. §160.103. The Act is similar to a workers' compensation law under which disclosure of health information is allowed by the Privacy Rule. 45 C.F.R. §164.512(l).

It is possible to comply with this law and HIPAA. This law does not stand as an obstacle to accomplishing the full purpose of HIPAA. Therefore, the law is not "contrary" to the HIPAA regulations. 45 C.F.R. § 160.202.

7. Is the Law Preempted?

No.

1. Name and Citation of Law

Public Safety Employee Benefits Act (820 ILCS 320)

2. General Description of the Law

The Public Safety Employee Benefits Act requires that certain benefits be provided to law enforcement, correctional or correctional probational officer, or firefighters.

3. Rules Promulgated Under the Law

No administrative rules have been promulgated under this law.

4. Key Provisions

None. There are no provisions addressing the issues raised by the HIPAA preemption analysis.

5. Significant Case Law

None. There is no significant case law addressing the issues raised by the HIPAA preemption analysis.

6. Preemption Analysis Under HIPAA

Employers who employ full-time law enforcement, correctional, probation officers or firefighters are required to pay full health coverage benefits and educational expenses for an employee, spouse of an employee, or children of the employee in the event that the employee is killed in the line of duty or suffers catastrophic injury. This Act does not describe a "health plan" as described in the Privacy Rule, and is similar to a workers' compensation benefit for certain categories of employees. 45 C.F.R. §164.512(l).

It is possible to comply with this law and HIPAA, and this law does not stand as an obstacle to accomplishing the full purpose of HIPAA. Therefore, the law is not "contrary" to HIPAA. 45 C.F.R. §160.202.

7. Is the Law Preempted?

No.