2016 West Virginia Health Care Privacy Laws and HIPAA Preemption Analysis

This chart provides an overview of the West Virginia health care privacy related laws and an analysis of the preemption issues arising under the Privacy, Security, Breach Notification, and Enforcement Rules (45 C.F.R Parts 160, 162, and 164) of the Health Insurance Portability and Accountability Act of 1996, as amended by and including the regulations issued by the Department of Health and Human Services by the Health Information Technology for Economic and Clinical Health Act, Subtitle D- Privacy (§§ 13400 – 13424) (HIPAA). To assist healthcare providers and other entities in the complicated task of determining whether West Virginia state statutes are preempted by HIPAA, this legal advisory chart provides an analysis of those state law provisions which appear to implicate HIPAA. In addition, the chart is a general reference guide to many of the health care related laws in West Virginia.

This survey is in a matrix consisting of seven columns. The first column is a general reference to the subject matter of the state law. The second column is the specific West Virginia Code citation or citations, which include embedded links to the complete statutory language from the West Virginia Code located on the West Virginia Legislature's website. The third column discusses the impact of each state law upon the privacy or security of protected health information as defined in HIPAA. In the fourth column is the corresponding HIPAA citation. The fifth column states whether HIPAA has preempted this state law. If the answer is yes, the extent to which state law is preempted is sometimes described in the "Comments" column, along with other general comments regarding the law. The sixth column indicates whether state law is more stringent or more detailed or whether HIPAA is more stringent or more detailed.

Covered entities, as defined under HIPAA, should generally follow the law that is more stringent, but may have to comply with both laws in some cases. Where the remark is "Both" in the sixth column, the comments describe which part of the state law is more stringent or detailed, or which part of HIPAA is more stringent or detailed. Finally, the last column provides any commentary relevant to this analysis of the state law. However, the assessment of whether a state law is preempted or not is only an educational guide and resource, and any final determination on whether such state law is preempted would have to be the result of court action or decision. Those using the assessment are encouraged to seek legal advice concerning how the various laws and regulations may impact their own particular facts and circumstances. The West Virginia Code sections added to or revised in the 2016 update are highlighted in "blue."

This preemption analysis chart is a working document that is subject to review and revision. All individuals and entities that review this document are encouraged to provide feedback to Sallie H. Milam, Chief Privacy Officer for the West Virginia Executive Branch, West Virginia Health Care Authority at: SMilam@hcawv.org.

In addition to the preemption chart below, other useful information and links related to HIPAA and health care privacy and security can be found at the following:

1. West Virginia State Privacy Office: http://www.privacy.wv.gov
2. U.S. Department of Health and Human Services (HHS), Office for Civil Rights, Health Information Privacy: http://www.hhs.gov/ocr/privacy/index.html
3. The Office of the National Coordinator for Health Information Technology: http://www.healthit.gov/providers-professionals/ehr-privacy-security

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SUBJECT	WV CODE	EFFECT ON PROTECTED HEALTH INFORMATION	HIPAA CITES	PREEMPTED	HIPAA OR STATE MORE STRINGENT AND/OR MORE DETAILED	COMMENTS
Emancipation of Children	§ 2-3-1 §49-7-27 Recodified at § § 49-4-115	A child is emancipated at 18. Child may petition court for emancipation at 16.	164.502(g)(3)	No	State law	
Mail In Voting Procedure	§ 3-3-1 § 3-3-2 § 3-3-2b	Establishes mail-in ballot voting procedures for persons who are ill, hospitalized or permanently and totally physically disabled; requires application on a form prescribed by Secretary of State; if ill or hospitalized, requires disclosure of the name and telephone number of attending physician; if disabled requires disclosure and description of nature of disability with physician statement.	164.508(c)	No	HIPAA	Person consents to disclosures by completing application
Public Employee Disability	§5-10-25 §5-10-26	Requires potential and existing disability retirees under the Consolidated Public Retirement Board ("CPRB") to submit to medical examination to determine extent of disability or submit statement signed by retiree's physician certifying continued disability, or both; requires examining physician to submit medical reports to CPRB.	164.512(d)	No	State law	

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Deaf and Hearing Impaired - Investigations	§ 5-14-5	Authorizes the Commission for Deaf and Hard of Hearing to investigate the condition of hearing-impaired citizens in West Virginia, with particular attention to those who are aged, homeless, needy, victims of rubella, and victims of abuse or neglect; requires the Commission to investigate the means for establishing group homes for such hearing-impaired citizens; authorizes the Commission to also determine the advisability and necessity of providing services to the multi-handicapped hearing-impaired.	160.203(c) 164.512(b) , (c)	No	State law	

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Public Employees Insurance Agency Health Plan	§ 5-16-7 § 5-16-8 § 5-16-12a	Generally provides for establishment and mandated benefits of group health plans for public employees, under the auspices of the Public Employees Insurance Agency (PEIA); mandates health insurance coverage of maternity services in specific circumstances; authorizes reimbursement of health care providers for services provided to public employees; also provides for various cost control, utilization review, quality assurance, fraud detection, and other health plan payment functions and related operations by the PEIA.	164.506 164.512(d)	No	HIPAA	HIPAA Notice of Privacy attached to Plan Document filed with Secretary of State
Public Employees Insurance Agency Coverage of Certain Clinical Trials	§ 5-16-7d	Requires PEIA to provide reimbursement for services provided as part of certain non-Phase I clinical trials involving treatment of a life-threatening condition or for the prevention of, early detection of, or treatment studies on cancer.	164.506	No	HIPAA	
PEIA – Uses, Disclosures	§ 5-16-12a	Requires any employers participating with the "PEIA" to provide, upon request, all documentation reasonably required for the PEIA Director to discharge his/her responsibilities regarding fraud,	160.203(d) 164.512(a) 164.512(d)	No	State law	

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		abuse, or other illegal activities affecting the PEIA; authorizes PEIA to issue administrative subpoenas for any investigation or proceeding; limits access to confidential data or systems and applications containing confidential data only to authorized employees or agents.				
Children's Health Insurance Program	§ 5-16B-6	Generally provides for the establishment of the Children's Health Insurance Program ("CHIP"); authorizes reimbursement of health care providers for services to eligible children under CHIP; also provides for cost controls, fiscal stability, and other payment and operational functions.	164.506 164.512(d)	No	HIPAA	
CHIP Coverage of Certain Clinical Trials	§ 5-16B-6a	Requires the Children's Health Insurance Program ("CHIP") to provide reimbursement for services provided as part of certain non-Phase I clinical trials involving treatment for a life-threatening condition or for the prevention of, early detection of, or treatment studies on cancer.	164.506	No	HIPAA	
Cleansing certain equipment prior to transfer or retirement	§ 5A-6-4	Requires that information technology equipment containing confidential or privileged data be properly cleansed before disposal or transfer to other agencies	164.512(a)	No	State law	

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Public Records-Confidentiality	§ 5A-8-13	Requires the State Records Administrator (the Secretary of the Department of Administration) to maintain the confidentiality of public records which are required by law to be treated in a confidential manner.	164.512(a)	No	State law	
Confidentiality of Public Records	§ 5A-8-21 § 5A-8-22	Deems a state employee's home addresses, social security number, credit card number, driver's license number, marital status, and maiden name as confidential and exempt from disclosure, except as authorized by federal or state law or regulation. Similar information in public records of other persons also deemed confidential.	164.512(a)	No	Both	State law as to marital status. HIPAA as to other information.
Pharmaceutical Discount Health Plan	§ 5A-3C-5	LAW WAS REPEALED IN 2009		LAW WAS REPEALED IN 2009		
Open Governmental Proceedings	§ 6-9A-3 § 6-9A-4 § 6-9A-5	Provides that proceedings of public agencies must be conducted in a manner that is open to the general public; contains an exception which permits proceedings to be closed to the public when considering the physical or mental health of any person, unless the person requests an open meeting.	164.512(a)	No	State law	

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Medical Care for County Prisoners	§ 7-8-2	Requires County Sheriff to make arrangements for adequate medical care needed by prisoners; authorizes Sheriff to obtain payment for such care from the County Commission; further authorizes County Commission to seek reimbursement for such costs from the prisoner or the prisoner's third-party payor.	164.506 164.512(k)	No	HIPAA	
Deputy Sheriff Disability	§ 7-14D-16	Requires any Deputy Sheriff seeking disability benefits to submit to a physical or mental examination, or both; requires report of all findings to be submitted to the Consolidated Public Retirement Board.	164.512(d)	No	State law	
Municipal Employee Disability	§ 8-22-8 § 8-22-23a	Requires municipal employees (including policemen and firefighters) seeking disability pension to submit to physical or mental examination; requires reports of all such employees to be considered by the Public Employee Retirement System ("PERS").	164.512(d)	No	State law	
Medicaid Health Plan – Monitoring, Inspections and Case Management	§ 9-2-9	Authorizes development of a managed care system within the Medicaid program to monitor services provided, to manage utilization of services, and to identify individual cases for abuse of the program; authorizes the development of a policy by DHHR for the monitoring and inspection of compliance with the Medicaid program; authorizes the Secretary of	160.203(d) 164.506 164.512(a), (d)	No	HIPAA	

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		DHHR to report quarterly to the Legislature such compliance information, including the number of inspections conducted during the previous quarter, a description of programs and facilities reviewed, the identification of findings, and recommendations for correction.				
Pilot Program for Drug Screening of Applicants for Cash Assistance	§9-3-6 (not yet available in on-line WV Code)	Provides for the confidentiality of all drug screen and drug test results administered to applicants for assistance from the Temporary Assistance for Needy Families program. Such results may only be used for the purpose of determining eligibility and may not be released to any public or private entity or any law enforcement agency. Requires the Secretary to annually report to the Joint Commission on Government and Finance regarding the total number of applicants who were deemed ineligible for benefits, for whom there was a reasonable suspicion, that receive benefits after successful completion of a drug treatment program, and the total cost of the program.	160.512(d)	No	State Law	State law as to limiting the ability to report information to law enforcement as otherwise permitted under 160.512(f).
Medicaid Health Plan	§ 9-4-2	Generally provides for the West Virginia Medicaid Program to pay for health care services received by the needy; calls for the development of rules and standards for the operation of this health plan on the basis of the money available, the number of	164.506 164.512(d)	No	HIPAA	

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		recipients, and the incidences of illness, disease, accidents, and other causes leading to the need for medical care among the needy.				
Medicaid – Disclosures by Payors and Providers	§ 9-5-11b	Requires all third party payors and providers of medical care to release to the Bureau for Medical Services ("BMS") information needed to secure and enforce the latter's assignment of a Medicaid recipient's right to payment for medical services; allows the BMS to seek and obtain information about Medicaid recipient's right to payment from a third party payor, including health insurers, self-insured plans, group health plans under ERISA, managed care organizations, and pharmacy benefit managers; requires BMS to make a claim for payment from a third party payor within three years after the date of provision of the health care item or service.	164.506 164.512(a)	No	State law	
Reporting of Abuse, Neglect, or Death of Elderly, Incompetents, Mentally Retarded	§ 9-6-9 § 9-6-10 § 9-6-11 § 9-6-13 § 9-6-16	Requires mandatory reporting by health care providers and others of abuse, neglect, or death therefrom involving an incapacitated adult or resident of a home or facility for the elderly or mentally retarded;	160.203(c) 164.512 (a), (c), (e), (f), (g), (j)	No	HIPAA	
Confidentiality of Records	§ 9-6-8	Generally provides for the confidentiality of records; permits distribution of records to certain individuals and entities; permits distribution of record summaries to other individuals and entities;		No	HIPAA	

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		protects confidentiality of any person reporting abuse, neglect or exploitation				
Medicaid Fraud Control Unit	§ 9-7-3	Generally authorizes the Medicaid Fraud Control Unit to investigate fraud and abuse, abuse, neglect or financial exploitation of residents in board and care facilities and other compliance issues involving the Medicaid Program; authorizes issuance of subpoenas for witnesses and documents relevant to such investigation. The name or identity of a person whose acts or conduct is investigated or the facts disclosed in such investigation shall not be made public except as may be used in any legal action or enforcement proceeding.	160.203(c) 164.512(d), (e), (f)	No	HIPAA	
Confidentiality of Medicaid Records	§ 9-9-20	Protects all records of beneficiary and beneficiary's family from release except when permissible under state and federal laws and regulations, written consent, pursuant to court order or to a state agency under an interagency agreement.	164.508; 164.512(a), (b) (c), (d), (e), (f), (k)	Yes	Both	HIPAA for authorizations; business associate agreements.
State Police Disability – Examination and Reports	§§15-2-29 – 15-2-31b §§ 15-2A-9 – 15-2A-11b	Requires any State Policeman seeking disability benefits to submit to physical or mental examination, or both; requires report of all findings to be submitted to Consolidated Public Retirement Board. Requires the State Police Superintendent to forward to CPRB information related to the alleged disability, including	164.512(a), (d)	No	State law	

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		complete copies of the individual's medical file, requires the CPRB to prepare annual report to the legislature and the Governor specifying total number of disability applications submitted, total applications granted or denied, and percentage of disability recipients to total number of state police employees.				
State Police DNA Database	§ 15-2B-6 § 15-2B-10 § 15-2B-12	Requires the West Virginia State Police to obtain DNA samples from persons convicted of a felony offense or any offense requiring a person to register as a sex offender under state or federal law (criminal offenses include, but may not be limited to, murder, malicious wounding, stalking, assault, robbery, kidnapping, incest, sexual offenses, larceny, bombings, counterfeiting, and child abuse); requires the State Police to maintain DNA database of such persons; requires the State Police to maintain the confidentiality of this information ; disclosure of DNA records is permitted for law enforcement identification purposes, judicial proceedings, population statistics, identification research, and identification of unidentified human remains, missing persons and relatives of missing persons; also permits release of DNA samples without personal identifying information to any agency or entity	164.512(a),(f), (i)	No	HIPAA	HIPAA does not apply except when a Covered Entity is involved.

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		with which the State Police contracts for administration of the DNA database or databank.				
Central Abuse Registry - Disclosures	§ 15-2C-1; § 15-2C-9	Defines a "qualified entity" as any organization that provides care, treatment, education, training, supervision, or recreation to children, the elderly, or individuals with disabilities, and which also meets certain federal definitions under the National Child Protection Act; authorizes the disclosure of information from the Central Abuse Registry to any "qualified entity" for purposes of screening current and/or prospective employees.	160.203(c) 164.512(a)	No	State law	
Central Abuse Registry - Reporting	§ 15-2C-2	Authorizes the Criminal Identification Bureau (CIB) of the State Police to establish a central abuse registry, containing information relating to criminal convictions for child abuse or neglect, abuse or neglect of an incapacitated adult, abuse or neglect of an adult receiving behavioral health services, and sexual offenders; requires all such convicted persons to be registered, including personally identifying information of the defendant, and facts about the crime committed.	164.203(c) 164.512(a),(e),(f)	No	State Law	
Public Notification for Missing Impaired Persons	§ 15-3B-4 § 15-3B-5 § 15-3B-6	Requires the Department of Military Affairs and Public Safety to establish a Silver Alert program for cognitively impaired missing persons; authorizes any individual with knowledge of a cognitively impaired missing person to submit a report to the West	160.203(c) 164.512(b) 164.512(f) 164.512(j)	No	HIPAA	As to the range of distinguishing physical characteristics

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		Virginia State Police or other appropriate law enforcement agency containing information relevant to the missing person; such information may include a description of the missing person, [and such details of the circumstances surrounding the person going missing as the State Police may deem pertinent and appropriate]; the State Police shall notify the broadcast media of this information for public dissemination purposes; immunity is provided to any person or entity who in good faith and truthfully follows and abides by these legal requirements.				
Sexual Offender/Sexual Predator Registration	§ 15-12-2 §15-12-2A §15-12-5	Requires the West Virginia State Police to maintain registration. of Individuals convicted of sexual offenses, including name, Social Security number, photograph, fingerprints, palm prints, a brief description of the crime for which the registrant was convicted, information related to any internet accounts, information related to any telephone numbers and in the case of sexual predators, documentation of any treatment received for mental abnormality or personality disorder; requires individuals so convicted to provide data to State Police; authorizes psychiatric or other clinical examination of any person convicted of a sexual offense to determine if such person is a	164.512(a),(e),(f)	No	State law	

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		sexually violent predator, and authorizes release of this information to the reviewing court, with a summary to be presented to the convicted offender; upon release of a convicted offender from incarceration, requires a notice to be provided to the State Police which includes personally identifying characteristics of the offender, and in the case of a sexually violent predator, documentation of any treatment received for a mental abnormality or personality disorder; requires State Police to distribute this information to the supervisor of each county and municipal law enforcement agency, county superintendent of schools, local Child Protective Services Office, all community or religious organizations providing services to youth, day care services, the FBI and State Police detachments.				
Child Abuse/Neglect Registration	§ 15-13-2 § 15-13-5	Requires individuals convicted of child abuse and neglect laws to register with the State Police detachment in the county of his or her residence; requires the State Police to maintain personally identifying information about the defendant, including fingerprints, social security numbers, and residences; requires all such information to be sent to the State Police's central registry; requires the State Police to transmit such	160.203(c) 164.512(a), (e), (f)	No	State law	

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		registration information to the DHHR, who shall, within five (5) business days, distribute the information to local school officials, local law enforcement organizations, and local Child Protective Services officers; except for these disclosures, disclosures to the defendant, and disclosures for legitimate law enforcement purposes, information contained within the registry shall be maintained as confidential.				
DHHR Public Health - Inspections, Investigations, Subpoenas	§ 16-1-6 § 16-1-15 § 16-1-17	Authorizes the Secretary of DHHR, the Commissioner for the Bureau for Public Health, and their designees and employees, to inspect, investigate, issue subpoenas, and hold hearings regarding the laws of West Virginia pertaining to public health, the licensure of health care facilities, as well as other matters within their regulatory purview; requires health care facilities to allow access to their facilities under penalty of law.	160.203(c) 164.512(b),(d),(e)	No	HIPAA	
Credentialing for Health Care Practitioners – Confidentiality	§ 16-1A-8	Prohibits disclosure of healthcare practitioner's credentialing information except in credentialing decision appeals or to peer review and quality improvement committees, during challenges of the credentialing entity's conduct, or when authorized by the practitioner; information disclosed during appeals must be allotted the same confidentiality protection as other records used in such proceedings;	164.506	No	State law	

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		PHI impacted under this section may include that of patients and/or of the physician or other health provider.				
Parental Notification of Abortion	§ 16-2F-3 § 16-2F-4 § 16-2F-5	Requires physician to notify parents or legal guardian of an unemancipated minor prior to the performance of abortion procedure, unless unemancipated minor successfully petitions circuit court for waiver of such notification; also requires physician to refer un-emancipated minor for counseling; permits the notification of parents or guardian to be waived if physician certifies in writing that there is an emergency need for an abortion to be performed in order to avoid an immediate threat and grave risk to the life of a pregnant minor.	164.502(g)(3)	No	State law	
Reporting Abortions for Unemancipated Minors	§ 16-2F-6	Requires physician to report all abortions performed upon Unemancipated minors to the Department of Health within 30 days.	160.203(c) 164.512(a),(b)	No	State law	
Women's Right to Know - Abortions	§ 16-2I-6 § 16-2I-7	Requires the informed consent of any female upon whom an abortion is to be performed; specifies a detailed process for obtaining such conformed consent, including mandatory disclosures to the female; requires physicians to report statistical information about compliance with this informed consent requirement, as well as statistical information about abortions performed in cases involving (and not involving) medical emergencies;	160.203(c) 164.512(a),(b)	No	Both	HIPAA more stringent for de-identification and authorizations. Otherwise State law more stringent

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		prohibits the Secretary of DHHR from making available any statistical information that could reasonably lead to the identification of any physician who performed an abortion, or any female who has had an abortion; provides for the anonymity of any female who has had an abortion; provides for the anonymity of any female upon whom an abortion has been performed in any legal proceedings arising under this Act.				
Preventive Care Pilot Program - Inspections, Examinations	§ 16-2J-3 § 16-2J-5 § 16-2J-9	Authorizes the creation of a preventive care pilot program to offer primary care services on a prepaid basis to subscribers; continues the operation of such program; exempts such health plans from the definition of "insurance"; authorizes regulation of such plans by the Health Care Authority and Insurance Commissioner, including licensure, rate approval, and minimum preventive and primary care services; authorizes the Insurance Commissioner to inspect and examine the records of preventive care pilot programs.	160.203(d) 164.506 164.512(a), (d)	No	State law	

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Provider Sponsored Networks for Medicaid Beneficiaries	§ 16-2L-1	Medicaid beneficiary health information may be shared among providers in beneficiary's medical home, which home may be a provider sponsored network.	164.506	No	State law	
Reporting requirements under the Pain-Capable Unborn Child Protection Act	§ 16-2M-5	Physicians who perform or induce an abortion annually must report the following information to the Bureau for Public Health: probable gestational age; whether an ultrasound was used to determine probable gestational age or if probable gestational age was not made, then the basis of determination that a medical emergency or nonmedically viable fetus existed; method of abortion; if the fetus had reached pain capable	160.203(c)	No	State law	Expressly limits the type of PHI that can be reported to the Bureau of Public Health

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		gestational age, the basis of determination that there existed a nonmedically viable fetus or that the patient had a condition which so complicated the medical condition of the patient that it necessitated the abortion; and whether the method of abortion used was one that provided the best opportunity for the fetus to survive. Reports may not contain the name or the address of the patient whose pregnancy was terminated nor may the report contain any information identifying the patient. The reports shall be maintained in strict confidence by the department and may not be available for public inspection.				
Reporting of Infant Eye Inflammation	§ 16-3-8 § 16-3-9 § 16-3-10 § 16-3-11	Requires health care provider to report inflammation of the eyes of newborns to local health officer; requires local health officer to investigate all such cases of eye inflammation in newborns; requires health care providers to instill ophthalmic ointment into the eyes of newborns to prevent inflammation, the failure of which must be reported to the County Prosecuting Attorney.	160.203(c)	No	State law	

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			164.512(a),(b), (f)			
Reporting Pertussis Vaccine Reactions	§ 16-3B-3 § 16-3B-4	Requires health care provider to provide patient access to data regarding pertussis vaccine; requires health care provider to report to local health officer any major adverse reactions to such vaccines; requires subsequent reports to the Department of Health and the United States Centers for Disease Control.	160.203(c) 164.512(a),(b)	No	State law	
AIDS-Related Reporting and Confidentiality	§ 16-3C-2 § 16-3C-3	Provides generally for the confidentiality of the identity of an HIV test subject or the results of an HIV related test in a manner which would permit identification of the test subject; permits disclosure to the test subject; protection of the health care workers, sexual partners, needle partners, funeral home workers, pursuant to a permitted purpose or authorized disclosure; and to others with a "need to know" for public health purposes; also	160.203(c) 164.506 164.508 164.512(a), (b), (c), (g), (h), (i), (j), (k) 160.203(b)	No	Both	Permitted disclosures without authorization are largely in accord with HIPAA permitted uses. HIPAA more stringent for authorizations, de-identification, research

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		permits disclosures for organ and tissue donations, for program monitoring and evaluation, pursuant to a court order, to claims management personnel employed by or associated with an insurer or any other payer of claims where disclosure is used for payment, and health care providers or health facilities in order to provide health services, including disclosure through a health information exchange; mandates certain disclosures involving individuals convicted of prostitution, sexual abuse, sexual assault, incest, or sexual molestation; in many of the aforementioned cases, the confidentiality of the subject of the test must be maintained; provides for HIV testing by implied voluntary consent unless test subject specifically opts-out of testing; also authorizes AIDS-related testing without the consent of the subject for the purpose of research, but requires de-identification in such cases.				
Tuberculosis – Testing, Reporting, and Involuntary Commitment	§16-3D-3 through § 16-3D-9	Requires every physician, public health officer, and chief medical officer of any hospital or clinic to report to local health department the identity of every person having tuberculosis within 24 hours of diagnosis; requires the local health department to forward such reports to the Bureau for Public Health within 24 hours thereafter; requires the	160.203(c) 164.512 (a), (b), (e), (j)	No	State Law	

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		names of such afflicted individuals to remain confidential, except by order of the Bureau for Public Health, the patient, or by court order; requires students and school personnel found or suspected to have tuberculosis to be temporarily removed from school; permits selective testing of students and personnel when there is reason to believe that they may have been exposed to or show signs and symptoms indicative of tuberculosis; authorizes the involuntary commitment of any person with tuberculosis who is determined to be a danger to himself or others as a result of the disease; authorizes test results to be utilized in the context of these involuntary commitment proceedings.				
Investigating and Reporting Sexually Transmitted Diseases	§ 16-4-2 § 16-4-6 § 16-4-9 § 16-4-11	Authorizes local health officer to use every available means to investigate all cases of sexually transmitted diseases, and to designate local police to assist in this endeavor; requires physicians to report each case of a sexually transmitted disease to the local health officer and to the Department of Health; also requires report from physician if patient fails to report for treatment of a sexually transmitted disease to the local health officer; further requires report from a physician about any person having such a disease who is conducting himself or herself in a manner as to expose other persons	160.203(c) 164.512(a),(b)	No	State law	

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		to the infection; requires local health officer to notify employer of any employee suffering from sexually transmitted disease, and to notify the employer to discontinue such employment in those cases that may have impact upon public health (restaurants, barber shops, etc.).				
Treatment of Minors for Venereal Disease	§ 16-4-10	Authorizes any physician to examine, diagnose, or treat any minor with his or her consent for venereal disease without the knowledge or consent of the minor's parent or guardian.	164.502(g)(3)	No	State law	
Reporting Syphilis Testing	§ 16-4A-1 § 16-4A-2 § 16-4A-3 § 16-4A-4	Requires every pregnant woman in West Virginia to submit to a blood sample to be sent to the State Hygienic Laboratory for syphilis testing; blood test is required to be taken by attending physician, or by local health officers; results of the tests shall be maintained by the State Hygienic Laboratory, by the Department of Health, and within the patient's medical chart; all such test reports shall be confidential and not open to public inspection, except that each birth certificate must indicate that a blood test for syphilis has been performed upon the mother (without the result of the test stated).	160.203(c) 164.512(a),(b)	No	State law	

SUBJECT	WV CODE	EFFECT ON PROTECTED HEALTH INFORMATION	HIPAA CITES	PREEMPTED	HIPAA OR STATE MORE STRINGENT AND/OR MORE DETAILED	COMMENTS
Autopsies of Decedents - Medical Science Uses and Disclosures	§ 16-4B-1	Authorizes autopsies to be performed upon a decedent if a physician deems it advisable in the interest of medical science or the future health care needs of the decedent's family; requires consent of the decedent's representatives; consent for the autopsy can be obtained in writing or by telephone.	164.508	Yes	HIPAA	Preempted to the extent that PHI of decedent is authorized by this State law to be used or disclosed based upon a telephone call.
Emergency Medical Service Personnel - Investigations	§ 16-4C-9	Authorizes the Commissioner of the Bureau for Public Health to cause an investigation to be conducted to determine whether there are any grounds for disciplinary action, including suspending or revoking any certificate or license issued to emergency medical service	164.512(a) 164.512(d)	No	State law	
Reporting Maternal Risk Factors	§ 16-4E-5 § 16-4E-6	Creates the Office of Maternal, Child and Family Health within the DHHR to collect data about maternal risk factors and to publish a uniform risk screening tool for pregnant women; requires the Office to develop a statistical matrix to measure the incidence of high-risk and at-risk pregnancies for public health planning purposes; requires health care providers to report high-risk conditions to the Office in the manner provided by legislative rules to be developed; requires that such information be maintained as	160.203(c) 164.512(a) 164.512(b) 164.512(i)	No	Both	As to research

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		confidential, and not released to anyone other than for data analysis by public health officials.				
Reporting of Births and Deaths	§ 16-5-12 Through § 16-5-30	Requires a birth certificate to be filed with the Local Registrar within 7 days of birth; requires the name of the mother and father to be entered upon the birth certificate, and that a record of their social security numbers be kept on file with the Local Registrar; also requires certain birth defects to be reported to the State Registrar; the identity of individuals with birth defects shall be kept confidential; requires the report of miscellaneous health information with respect to newborns; requires reports of adoptions be filed with the State Registrar; requires reports of determination of paternity to be filed with the State Registrar; requires registration of all deaths to be filed with the Local Registrar within 3 days; requires medical certification as to the illness or condition which results in death to be completed within 24 hours; requires report of fetal death within 5 days of delivery; permits certificate of birth for a still birth; protects confidential vital statistics from public disclosure; places general duty upon any person having knowledge of any fact required to be recorded under Chapter 16, Article 5, to furnish such information to the State Registrar.	160.203(c) 164.512(a),(b)	No	State law	
Reporting	§ 16-5A-2a	Requires the Division of Health to	160.203(c)	No	Both	HIPAA more stringent

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Cancers and Tumors		establish a cancer and tumor registry; requires hospitals, physicians, laboratories, clinics, and other similar units to report each cancer or tumor case to the registry; requires the Division of Health to maintain the confidentiality of reported information, and to maintain the confidentiality of personal identities of those reported cases.	164.512(b)			for de-identification.
Hospitals - Inspections	§ 16-5B-5 § 16-5B-10	Authorizes the inspection of hospitals licensed in West Virginia by the Department of Health; requires that information received by the Department pursuant to such inspections to remain confidential and not publicly disclosed except in proceedings involving the issuance or revocation of a hospital license.	164.512(d),(e)	No	State law	
Hospital Visitation	§ 16-5B-15	Requires hospital to permit patient visitation privileges for non-relatives unless otherwise requested by the patient (or the patient's legal designee under a medical power of attorney).	164.510	No	HIPAA	HIPAA allows such visitations by non-relatives: 1) if individual (or representative) agrees; 2) if individual has opportunity to object but does not express objection; 3) the provider reasonably infers from the circumstances that individual does not object

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Infection Reporting	§ 16-5B-17	Requires hospitals to report health care-associated infections to the Health Care Authority in the manner prescribed by the CDC National Healthcare Safety Network; requires the Health Care Authority to create an Infection Control Advisory Panel, who shall provide the results of this infection reporting to the public and to the Bureau for Public Health; requires an annual report to the Legislature summarizing the results of the required reporting, and the work of the Advisory Panel.	160.203(c) 164.512(a), (b)	No	State law	
Nursing Homes - Investigations, Inspections, Subpoenas	§ 16-5C-3 § 16-5C-5 § 16-5C-8 § 16-5C-9 § 16-5C-16	Authorizes the Secretary of DHHR to conduct inspections and investigations of nursing homes to ensure compliance with applicable laws, and to subpoena witnesses and documents for such purposes; authorizes the Secretary to establish minimum standards for the maintenance of medical records; requires the Secretary to make available for public inspection all reports of nursing homes issued by the Secretary; Inspect all reports of nursing homes issued by the Secretary, except that the Secretary shall not disclose any confidential medical, social, personal, or financial records of any resident.	164.512(d),(e)	No	State law	
Nursing Home Visitation	§16-5C-5	Requires the Secretary of DHHR to promulgate rules regarding visitation of patients at a nursing home by immediate family, other relatives, and other specific classes of	164.510	No	HIPAA	HIPAA allows such visitations by relatives and non-relatives: 1) if individual (or representative)

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		persons, subject to the patient's right to deny or withdraw consent at any time; such visitation privileges shall be designed to permit immediate access to the patient who has provided the appropriate consent				agrees; 2) if individual has opportunity to object but does not express objection; 3) the provider reasonably infers from the circumstances that individual does not object
Reports related to nursing home residents' personal funds	§ 16-5C-18	Requires that reports provided to review organizations be confidential unless inaccessibility of information interferes with oversight as mandated by federal regulations	164.512(d)	No	State law	
Nursing Home Palliative Care - Uses, Disclosures	§ 16-5C-20	Requires nursing home to notify resident diagnosed to be suffering from a terminal illness about the option of receiving hospice palliative care; if resident is incapacitated, the nursing home shall also notify any person who has been given authority of guardianship, medical power of attorney, or health care surrogacy over the resident regarding this option.	164.506 164.512(a)	No	State law	
Assisted Living Residences - Investigations, Inspections, Subpoenas	§ 16-5D-3 § 16-5D-5 § 16-5D-8 § 16-5D-9 § 16-5D-16	Authorizes the Secretary of DHHR to conduct investigations and inspections of assisted living residences to ensure compliance with applicable laws, and to subpoena witnesses and documents for such purposes; authorizes the Secretary to establish standards for the maintenance of health records; requires the Secretary to make available for public inspection all	164.512(d),(e)	No	State law	

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		reports of assisted living residences issued by the Secretary, except that the Secretary shall not disclose any confidential medical, social, personal, or financial records of any resident.				
Assisted Living Residence Visitation	§16-5D-5	Requires the Secretary of DHHR to promulgate regulations granting visitation privileges to patients in assisted living residences by immediate family members, other relatives, and other persons who are visiting with the consent of the patient.	164.510	Yes	HIPAA	HIPAA allows such visitations by relatives and non-relatives: 1) if individual (or representative) agrees; 2) if individual has opportunity to object but does not express objection; 3) the provider reasonably infers from the circumstances that individual does not object
Unlicensed Health Care Home Visitation	§16-5E-1a	Requires the Secretary of DHHR to promulgate regulations granting visitation privileges to patients in unlicensed health care homes by immediate family members, other relatives, and other persons who are visiting with the consent of the resident.	164.510	Yes	HIPAA	HIPAA allows such visitations by relatives and non-relatives: 1) if individual (or representative) agrees; 2) if individual has opportunity to object but does not express objection; 3) the provider reasonably infers from the circumstances that individual does not object
Unlicensed	§ 16-5E-5	Authorizes the Secretary of DHHR to	164.512(d), (e)	No	State law	

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Health Care Homes - Investigations, Inspections		investigate and inspect unlicensed health care homes, and to conduct private interviews with all residents of such homes.				
Health Care Financial Disclosure - Reports	§ 16-5F-4	Requires reporting of various financial information by a variety of health care facilities, including hospitals, nursing homes, ambulatory health care facilities, home health agencies, hospice agencies, health maintenance organizations, and community mental health or intellectual disability facilities; requires each covered facility to also file reports, in such form and at such intervals as may be specified by the Health Care Authority, relative to services available and services rendered; also requires the report of all facility rates, amounts paid in excess of $55,000, and all tax returns; prohibits any information filed pursuant to this law to contain any medical or individual information personally identifiable to a patient, whether directly or indirectly; makes all filed reports public record.	160.203(d) 164.512(a),(d)	No	Both	HIPAA more stringent for de-identification. Otherwise, state law more stringent.
Open Hospital Proceedings	§ 16-5G-3 § 16-5G-4 § 16-5G-5	Provides that the proceedings of a governing body of a non-profit or governmental hospital be conducted in a manner that is open to the public; contains an exception which permits proceedings to be closed to the public when considering the physical or mental health of any person, unless the person requests	164.512(a)	No	State law	

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		an open meeting.				
Chronic Pain Facility Licensure	§ 16-5H-1; § 16-5H-4; § 16-5H-6; § 16-5H-9	Chronic pain management clinic is any privately owned facility not otherwise exempted, where 50% or more of patients are prescribed or dispensed opioids or specific controlled substances for pain not resulting from malignant conditions. Office of Health Facility Licensure and Certification shall ensure compliance by reviewing patient records; before initially dispensing or prescribing physician must review Controlled Substances Database and then if treatment is on-going, at least every ninety days; patient record must contain certain data; Secretary of Health and Human Resources authorized to promulgate rules.	164.512(a), (b), (d)	No	State law	
Residential Board and Care Homes - Investigations, Inspections, Subpoenas	§ 16-5H-3 § 16-5H-5 § 16-5H-8 § 16-5H-9 § 16-5H-16	LAW WAS REPEALED IN 2003		LAW WAS REPEALED IN 2003		
Hospices - Inspections	§ 16-5I-3 § 16-5I-5	Authorizes the Secretary of DHHR to perform inspections of all licensed hospices to ensure compliance with applicable laws; authorizes the Secretary to establish standards for the maintenance of clinical records kept by the hospice.	164.512(d),(e)	No	State law	
Clinical Laboratories - Inspections	§ 16-5J-4	Authorizes the Secretary of DHHR to inspect clinical laboratories to ensure compliance with applicable laws.	164.512(d),(e)	No	State law	
Long-Term Care	§ 16-5L-5	Authorizes the State Long-Term	164.508	No	Both	HIPAA more stringent

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Ombudsman - Investigations, Inspections, Subpoenas	§ 16-5L-10 § 16-5L-11 § 16-5L-12 § 16-5L-13 § 16-5L-15	Care Ombudsman to investigate and resolve complaints on behalf of residents of nursing homes, personal care homes, residential board and care homes, and other long-term care facilities; authorizes the establishment of a state-wide uniform reporting system to collect and analyze data relating to the conditions in these facilities; grants the Ombudsman access to facilities and records, including medical records, upon the consent of the resident or his or her personal representative; authorizes access to facility records reasonably necessary for any investigation by the Ombudsman, including access to incident reports, dietary records, policies, and procedures; grants the Ombudsman the authority to subpoena witnesses and records; and generally provides for the confidentiality of resident information relating to any investigation by the Ombudsman, except for disclosure as authorized by the resident, by court order, or to investigate abuse, neglect, or licensure issues.	164.512(a),(c),(d),(e)			for authorization and de-identification. Otherwise, state law more stringent.

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Residential Care Communities - Investigations, Inspections, Subpoenas	§ 16-5N-3 § 16-5N-5 § 16-5N-8 § 16-5N-9 § 16-5N-16	Authorizes the Secretary of DHHR to conduct inspections and investigations of residential care communities to ensure compliance with applicable laws, and to subpoena witnesses and documents for such purposes; authorizes the Secretary to establish minimum standards for the maintenance of medical records; requires the Secretary to make available for public inspection all reports of residential care communities issued by the Secretary, except that the Secretary shall not disclose any confidential medical, social, personal, or financial records of any resident.	164.512(d),(e)	No	State law	
Residential Care Community Visitation	§16-5N-5	Requires the Secretary of DHHR to promulgate regulations granting visitation privileges to patients in residential care communities by immediate family members, other relatives, and other persons who are visiting with the consent of the resident.	164.510	Yes	HIPAA	HIPAA allows such visitations by relatives and non-relatives: 1) if individual (or representative) agrees; 2) if individual has opportunity to object but does not express objection; 3) the provider reasonably infers from the circumstances that

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Alzheimer's Disease Care Units - Investigations	§ 16-5R-5	Requires any nursing home or related facility which offers specialized Alzheimer's disease care to meet certain filing requirements with the DHHR; authorizes the Secretary of DHHR to exercise all powers necessary to enforce rules and standards applicable to Alzheimer's care units, including investigation of such units.	164.512(d)	No	State law	
Reporting Alzheimer's Disease	§ 16-5R-7	Authorizes creation of a central registry identifying individuals with Alzheimer's disease and related disorders; requires hospitals, physicians, facilities, clinics, or other similar units to report instances of these diseases to the central registry; provides that the information contained within the registry shall be confidential, and shall only be released in accordance with the provisions of HIPAA	160.203(c), 164.512(a), (b), (i)	No	HIPAA	
Emergency Medical Service Professional Disability	§ 16-5V-19 § 16-5V-20 § 16-5V-21	Authorizes Consolidated Public Retirement Board to require any emergency medical service professional seeking disability benefits to submit to physical or mental examination, or both; requires report of all findings of such examination to be submitted to the Board; permits the Board to discontinue benefits until retirement complies.	164.512(a), (d)	No	State law	

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Caregiver Advise, Record and Enable Act	§ 16-5X-2 § 16-5X-3 § 16-5X-4	Providing that a hospital patient or patient's legal guardian may designate one lay caregiver following admission. Requiring the hospital to obtain written consent of the patient or patient's legal guardian to release medical information to the designated lay caregiver. Designation of caregiver to be recorded in medical record. Requires the hospital to notify the designated lay caregiver of the patient's discharge. Requires hospital to consult with designated lay caregiver along with the patient regarding caregiver's capabilities and limitations and issue a discharge plan that describes a patient's after-care needs.	164.502(a)(1)(iv)	No	State law	
Medication-Assisted Treatment Program Licensing Act	§16-5Y-3 (online code sections not available) §16-5Y-4	Requires opioid treatment programs to obtain a license from the Secretary of DHHR. Requires OHFLAC to inspect each facility, review all application documents, and to recommend to the Secretary the approval or denial of the requested license. Requires office based medication-assisted treatment programs to register with the Secretary of DHHR. Requires OHFLAC to inspect each facility, review all application documents, and to recommend to the Secretary the approval or denial of the requested registration.	164.506 164.512 (a), (b), and (d)	No	HIPAA	

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	§16-5Y-5	Requires treating physicians to access the Controlled Substances Monitoring Program database to ensure the patient is not seeing medication-assisted treatment medications that are controlled substances from multiple sources and to review the database no less than quarterly at each patient's physical examination. The results obtained from the database must be included in the patient's medical records. Requires treatment programs to report information, data statistics, and other information as directed in the code and in the rules to be promulgated to required agencies and other authorities.				
	§16-5Y-11	Establishes the State Opioid Treatment Authority responsible for approving the development of and monitoring medication-assisted treatment programs, and to serve as a liaison with the appropriate federal agencies.				
	§16-5Y-13	Requires the Secretary to promulgate rules to address, among other things, the data collection and reporting requirements for medication-assisted treatment programs.				

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Anatomical Gifts	§ 16-19-4 § 16-19-5	Authorizes the Chief Medical Examiner or the local public health officer to permit the removal of a body part of a decedent for transplantation or therapy if certain conditions are met including consultation with certain classifications of individuals authorized by law to approve anatomical gifts of decedents; authorizes hospitals to contact regional organ procurement organizations about potential donations; authorizes hospitals to share medical information with organ procurement organizations to determine the suitability of proposed donations.	164.512(h)	No	State law	

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Anatomical Gifts	§ 16-19-9; § 16-19-14; § 16-19-19; §16-19-21; §16-19-22	Authorizes specific classifications of persons to make an anatomical gift of a decedent's body or body part; authorizes hospitals to contact a procurement organization about potential donations and to allow the procurement organization to conduct a reasonable examination to determine medical suitability; authorizes the Division of Motor Vehicles to establish a Donor Registry of those who have expressed the desire to make an anatomical gift; prohibits the disclosure of personally identifiable information from the Donor Registry without the consent of the donor; authorizes the State Medical Examiner to cooperate with procurement organizations and to share medical information in order to determine the suitability of proposed organ donations.	164.512(g), (h), (i)	No	State law	
Reporting Certain Diseases in Newborns	§ 16-22-3	Requires hospitals, birthing centers, parents, and/or physicians to test newborns for up to 27 different diseases, and such other diseases as specified by the Bureau for Public Health; requires any positive test results to be reported to the Bureau for Public Health, who shall, in cooperation with other State agencies, and with attending physicians, provide medical and dietary assistance to afflicted children.	160.203(c) 164.512(a),(b)	No	State law	

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Reporting Hearing Impairments in Newborns	§ 16-22A-1	Requires physician and attendants of live birth to perform a test for hearing loss in the infant, unless the parents refuse such testing; authorizes the Secretary of DHHR to establish reporting requirements related to such testing.	160.203(c) 164.512(a),(b)	No	State law	
Reporting Hemophilia	§ 16-24-5	Requires the Director of DHHR to establish and maintain a roster of persons suffering from hemophilia, and to offer treatment and assistance to such individuals.	160.203(c) 164.512(a),(b)	No	State law	
Reporting Tuberculosis	§ 16-25-3	Requires any health care provider who detects a case of tuberculosis to report within 72 hours to the Department of Health; such report shall include not only information about the person afflicted, but also the name, age, address of the afflicted person's nearest living relative.	160.203(c) 164.512(a),(b)	No	State law	
Reporting Exposure to Agent Orange and Other Causative Agents	§ 16-28-2 § 16-28-3 § 16-28-4	Authorizes health care providers treating any patient who has served in the Armed Forces of the United States to, at the request of the veteran, report exposure to chemical defoliants, herbicides, or other causative agents, including Agent Orange, to the Department of Health; requires the Department to compile an annual report regarding such exposures, and to conduct epidemiological studies on veterans with medical problems associated with such exposures; all eipdemo-logical studies involving veterans must be based upon the consent of	160.203(c) 164.508 164.512(b)	No	Both	HIPAA more stringent for authorizations, de-identification. Otherwise, more stringent state law.

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		the veteran; requires all reports to maintain the confidentiality of each veteran's identity.				
Disclosure of Health Care Records	§ 16-29-1 § 16-29-2	Requires the furnishing of a paper copy of medical records by a health care provider pursuant to the written request of a patient or a patient's authorized agent or representative within a reasonable time; requires the furnishing of an electronic copy, if requested and regularly stored in an electronic format of such record; exception for psychiatric or psychological treatment allowing a provider to not provide a copy during treatment program and only provide a summary of the record following termination of the treatment program; exception for treatment of minors for birth control, prenatal care, drug rehab, or venereal disease insofar as parents or guardians are concerned; exception for any records subpoenaed or otherwise requested through the court process; exception for AIDS-related records; providers may charge a reasonable cost-based fee for labor, supplies, postage, and if records are stored with a third party, actual costs from the third party; fees for labor cannot exceed twenty-five dollars per hour and may be increased in accordance with the formula set forth in the statute; fees may not be charged to indigent persons seeking records for claims under the Social Security Act;	160.203(b) 164.502(a)(1)(i) 164.502(g)(1) 164.508 164.524	Yes	Both	State law more stringent insofar as patient is given civil right of action for enforcement; patient may obtain x-ray film; indigents need not pay fees in certain instances. HIPAA more stringent to the extent that a patient is allowed access to and a copy of PHI, including mental health and psychotherapy notes during and after treatment when state law allows provider to restrict access to psychiatric and psychological records during treatment and only required to provide a summary following treatment. HIPAA more stringent as to the specific required provisions required for a valid authorization under 164.508 and specific

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		authorizes enforcement of patient right to access through court action.				time period requiring providing a copy of the patient's record. HIPAA under 164.524(b)(2) requires a covered entity to act on a request no later than 30 days after receipt of the request as compared to state law that indicates within a reasonable time period. State law may be preempted to the extent patient is allowed right to inspect records as well as copy under HIPAA. State law now requires providers to make records available in electronic format if requested by the patient and the records are regularly stored electronically. HITECH Omnibus Rule revisions to 164.524 now requires to the extent that an individual who requests an

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						electronic copy of PHI that is maintained electronically in one or more designated record sets the covered entity must provide the individual with access to the electronically maintained PHI in the electronic form and format requested by the individual. HIPAA HITECH Omnibus Rule also requires that a covered entity can impose a reasonable, cost based fee, but the fee may only include the cost of labor for copying whether in paper or electronic form, supplies for creating the paper copy or electronic media, postage when mailed and preparing an explanation or summary of the PHI if agreed to by the individual. HIPAA may preempt the $25 labor fee if it is not determined "reasonable."

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Health Care Data Collection	§ 16-29B-6	Authorizes the West Virginia Health Care Authority to coordinate and oversee the health data collection of all state agencies to make the best use of emerging technology and to effect the expedient and appropriate exchange of health care information and data, including patient records and reports; also authorizes Authority to develop an integrated system for the efficient collection, responsible use, and dissemination of such data, and to facilitate and support the development of statewide health information systems that will allow for electronic transmittal of all information and claims processing activities of state agencies; authorizes the Authority to gain access to any health-related database in state government for these purposes, except that such access and use shall be subject to the confidentiality provisions applicable to such database health.	164.512(a)	No	HIPAA	
Legislative Commission on Health and Human Resources Accountability - Investigations and Subpoenas	§ 16-29E-5 § 16-29E-6	Authorizes the Legislative Commission on Health and Human Resources Accountability to investigate the practices, policies, and procedures of health care agencies and all matters related to health and social policy in the State; authorizes the Commission to issue subpoenas for witnesses and documents relevant to such investigations.	164.512(d)	No	State law	

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Uninsured and Under-insured Health Care Plans	§ 16-29F-1	Establishes community health plan for uninsured and underinsured individuals	164.506 164.512(d)	No	HIPAA	
Health Information Network - Uses, Disclosures	§ 16-29G-1 § 16-29G-8	Authorizes the creation of the WV Health Information Network (WVHIN) under the oversight of the Health Care Authority to design, implement, operate, and maintain a fully-interoperable statewide health information network; requires the WVHIN to ensure the privacy of patient health care information; permits health information to be disclosed only in accordance with the patient's authorization or best interest to those having a need to know, in compliance with state confidentiality laws and HIPAA; exempts all information within the Network from disclosure under the Freedom of Information Act.	164.506 164.508 164.510 164.512(a), (b), (c), (d), (e) (f), (g), (h), (i), (j), (k) 160.203(b)	No	Both	
Interagency Health Council - Uses, Disclosures	§ 16-29H-3 § 16-29H-4	LAW WAS REPEALED IN 2015		LAW WAS REPEALED IN 2015		
Appointment of Health Care	§ 16-30-4; § 16-30-6;	Authorizes any competent adult to execute a living will or medical power of attorney for health care decision-making purposes if the patient is later determined to be incapacitated; generally provides for all health care decision-making power to be assumed by the designated representative or	164.506 164.508	No	Both	HIPAA more stringent as to uses and disclosures. State law more stringent to how a representative or surrogate is appointed.

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Decision-Makers	§ 16-30-8	surrogate; provides for a procedure to establish a decision-making surrogate in the absence of a living will or medical power of attorney.	164.510			
Do Not Resuscitate Orders	§ 16-30C-6	Authorizes issuance of a do not resuscitate order for a patient, provided that the patient, or the patient's representative or surrogate, has consented to the order; also authorizes an attending physician to issue such an order if a surrogate decision-maker is not reasonably available or capable of making a decision regarding such an order; in the latter instance, the opinion of a second physician who has personally examined a patient must concur with the opinion of the attending physician.	164.506 164.508	No	Both	HIPAA more stringent to uses and disclosures. State law more stringent to how a do not resuscitate order is issued.
Breast and Cervical Cancer Health Plan	§ 16-33-7 § 16-33-8 § 16-33-9 § 16-33-10 § 16-33-11 § 16-33-12	Establishes health plan of last resort to pay for diagnostic and treatment services for breast and cervical cancer patients.	164.506	No	State law	
Reporting Needlestick Injuries	§ 16-36-2	Requires health care facilities to keep log of injuries incurred as a result of needlesticks and sharps, and to report such information annually to the Department of Health.	160.203(c) 164.512(a),(b)	No	State law	

SUBJECT	WV CODE	EFFECT ON PROTECTED HEALTH INFORMATION	HIPAA CITES	PREEMPTED	HIPAA OR STATE MORE STRINGENT AND/OR MORE DETAILED	COMMENTS
Reporting Health Care Waste or Wrongdoing	§ 16-39-4	Authorizes health care worker to report, verbally or in writing, to a health care facility or an appropriate governmental body violations or professional conduct or any instance of wrongdoing or waste; wrongdoing is defined to include a violation of any law, rule, regulation, or generally recognized professional or clinical standard which potentially endangers one or more patients or workers at the health care facility; such reports by health care workers must be in good faith.	164.512(d)	No		
Requiring Pulse Oximetry Testing for Newborns	§ 16-44-1 § 16-44-2	Requires birthing facilities licensed by Department of Health and Human Resources to perform a pulse oximetry screening on every newborn; overseen by the Bureau for Public Health, which is authorized to adopt rules	160.203(c) 164.512(a),(b)	No	State law	Enforcement is tied to licensing
Access to Opioid Antagonists Act - Data collection and reporting requirements; training	§ 16-46-6	Requires the Office of Emergency Medical Services ("OEMS") to collect data and report to the Legislative Oversight Commission on Health and Human Resources Accountability, Joint Committee on Health and the West Virginia Bureau for Behavioral Health and Health Facilities regarding the number of training programs operated in an OEMS-designated training center; the number of individuals who	160.203(c) 164.512(b)	No	State law	

SUBJECT	WV CODE	EFFECT ON PROTECTED HEALTH INFORMATION	HIPAA CITES	PREEMPTED	HIPAA OR STATE MORE STRINGENT AND/OR MORE DETAILED	COMMENTS
		received training to administer an opioid antagonist; and the number individuals who received an opioid antagonist administered by an initial responder. The West Virginia Board of Pharmacy shall query the West Virginia Controlled Substances Monitoring Program database to compile data related to the dispensing of opioid antagonists and combine that data with the Board of Pharmacy's data related to prescription for and distribution of opioid antagonists. The Board of Pharmacy shall issue a report of this information, excluding any personally identifiable information, to the Legislative Oversight Commission on Health and Human Resources Accountability, Joint Committee on Health and the West Virginia Bureau for Behavioral Health and Health Facilities.				
Drivers Licenses and Identification Cards	§ 17B-2-1(d) § 17B-2-1(f)(2)	License or identification card may contain information designating person as diabetic, organ donor, deaf, hard-of-hearing or any other handicap or disability.	164.512(a)	No	State law	

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Vision Screening Examinations	§ 17B-2-12a	Authorizes the Division of Motor Vehicles to conduct a vision screening examination upon all applicants for renewal of a driver's license; prohibits renewal of a driver's license for any applicant whose eyesight cannot be corrected to conform to minimum vision standards; prohibits the Division of Motor Vehicles from collecting any type of personal biometric identifying information, including but not limited to, a retinal scan.	160.203(c) 164.512(a), (b), (f)	No	State law	
Reporting Driver Impairment	§ 17B-3-13	Authorizes licensed health care providers to report to the Division of Motor Vehicles the name, date of birth, and address of every person who suffers from a physical or mental condition that prevents the person from safely operating a motor vehicle; such reports are for the confidential use of the DMV, and are exempt under the West Virginia Freedom of Information Act; such reports may only be admitted in proceedings to suspend, revoke, or impose limitations upon a driver's license; failure to report shall not constitute negligence, nor may be admissible as evidence of negligence in any civil or criminal action.	164.512(f) 164.512(j)	No	State law	

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Driving Under the Influence of Alcohol - Investigations	§ 17C-5-4 § 17C-5-6	Mandates implied consent for secondary chemical test of blood, breath, or urine for purposes of determining alcoholic content of a driver's blood; requires physician, nurse, or trained medical technician to withdraw blood for this purpose; implies mandated disclosure of contents to law enforcement officials, and specifically mandates disclosure to the subject of the tests.	164.512(a), (f)	No	State law	
Blood Alcohol Tests - Expungement	§17C-5A-3a	Requires the Commissioner of DMV to expunge any and all records of any blood alcohol test results of an individual whose driver's license has been reinstated for the first time; provides that such expunged record shall not be disclosed or made available for inspection, but that such information may be used by the Commissioner of DMV for research purposes so long as such use does not divulge the identity of the individual.	164.512(a), (e), (i)	No	State law	While DMV may expunge such records, a covered entity (i.e. medical provider) must retain any blood alcohol records for six years.
Motor Vehicles - Related Deaths- Investigations	§ 17C-5B-1 § 17C-5B-2	Requires blood test to be taken of any driver or adult pedestrian who dies as a result of a motor vehicle accident; requires physician in attendance, law enforcement officer, or funeral director to report such death to the County Medical Examiner; requires blood test to be performed upon decedent by a physician, nurse, or trained medical technician to determine alcohol content, requires results to be reported to the Chief Medical	160.203(c) 164.512(a), (b), (f)	No	State law	

SUBJECT	WV CODE	EFFECT ON PROTECTED HEALTH INFORMATION	HIPAA CITES	PREEMPTED	HIPAA OR STATE MORE STRINGENT AND/OR MORE DETAILED	COMMENTS
		Examiner and to the West Virginia State Police.				
Student Data Accessibility, Transparency and Accountability Act	§ 18-2-5h	Requires the Department of Education to maintain an inventory and index of its student data system and develop procedures to ensure data inventory complies with state and federal privacy laws; access to data is limited to authorized users; requires the ACT, SAT, or College Board to obtain affirmative written consent to use a student's confidential information; such consent must include a detailed list of confidential information required and its purpose; DOE must develop a detailed security plan and may not transfer confidential student data unless a specific exception applies; school districts may not report to the state a student's medical or health records; authorizes the DOE to adopt rules as necessary to implement the provisions of the Act.	Not directly comparable to HIPAA	No	Both	Act requires compliance with both state confidentiality laws and HIPAA.
Children's Body Mass Index-Reporting	§18-2-7a	Requires schools to record and report body mass index measures of school-aged children to the Governor, the Board of Education, the Healthy Lifestyles Coalition, and the Legislative Oversight Commission on Health and Human Resource Accountability; requires such data to be collected and reported in a manner that protects student confidentiality.	160-203(c) 164.512 (a),(b)	No	State law	
Interscholastic Concussions and	§18-2-25a	Establishes protocols and protections to limit and treat head	164.512 (a),(b)	No	State law	

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Head Injuries		injuries and concussions to youth athletes and students; requires reporting to WVSSAC within thirty days of any suspected concussion or head injury				
Diabetes Care Plans - Uses, Disclosures	§ 18-2K-2 § 18-2K-3	Education to adopt guidelines for the development and implementation of individual diabetes care plans for students in the schools and daycare settings; requires such plans to be developed by school nurses in accordance with national and state standards and guidelines, as well as the student's parent, health care provider, and teacher; requires the establishment of procedures for disclosing information within the plan to teachers and other school personnel in order to offer appropriate assistance and support to the student with diabetes.	164.502(g)(3) 164.506 164.512(a)	No	State law	
School Maintenance and Use of Epinephrine Auto-Injectors	§ 18-5-22c	Allows schools to voluntarily maintain and use epinephrine auto-injectors; requires notice to parents of students who receive injections; requires county boards of education to compile data regarding incidents of injection and report to state superintendent of schools	164.512 (a),(b)	No	State law	
Division of Vocational Rehabilitation - Uses and Disclosures	§ 18-10A-3; § 18-10A-10	Provides that the Division of Vocational Rehabilitation shall make regulations governing the protection and confidentiality of records and information involved in the treatment of disabled individuals; makes it unlawful for any person to use or disclose PHI concerning disabled	164.506 164.508	No	HIPAA	

SUBJECT	WV CODE	EFFECT ON PROTECTED HEALTH INFORMATION	HIPAA CITES	PREEMPTED	HIPAA OR STATE MORE STRINGENT AND/OR MORE DETAILED	COMMENTS
		persons receiving vocational rehabilitation,except for purposes directly connected with the administration of the program and in accordance with regulations to be promulgated.				
Reporting Traumatic Spinal Cord and Head Injuries	§ 18-10A-15	Requires the Center for Excellence in Disabilities to maintain a central registry of persons who sustained severe head injuries other than through disease; requires reporting of such head injuries to the central registry in order to facilitate the provision of appropriate services through referral and collaboration of other State agencies; requires reports of such head injuries to be made by acute care facilities within seven days; reports must include the name and residence of the person involved.	160.203(c) 164.512(a),(b)	No	State law	
Reporting of Deafness and Blindness	§ 18-17-6	Requires County Assessors to register names of all deaf and blind persons under 18 years of age in their respective counties, including the degree and cause of deafness or blindness in each case, and to report such information to the State Superintendent of Schools and the State Superintendent of the West Virginia Schools for the Deaf and the Blind.	160.203(c) 164.512(a),(b)	No	State law	
Teacher-in-residence	§ 18A-3-1(g)	Requires prospective teachers participating in program in lieu of	160.203(c) 164.512(a),(b),	No	Both	HIPAA mores stringent for abuse

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Program		student teaching, to report suspected child abuse	(c),(e),(f)			and neglect reports, and disclosures to judicial proceedings and law enforcement agencies. Otherwise, state law more stringent. *See also, WV Code* § 49-6A-2
School Personnel *In Loco Parentis* for Students - Uses, Disclosures	§ 18A-5-1	Authorizes a teacher or school bus driver to stand in the place of a parent, guardian, or custodian of a student, and to exercise control over such student from the time they are picked up in transit to school, during the time while at school, and until transportation to their respective homes; authorizes the teacher to exclude students known to have or suspected of having any infectious disease; and requires immediate notification of the proper health officer of such exclusion based upon infectious disease.	160.203(c) 164.502(g)(3) 164.512(a), (b), (j)	No	State law	

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Hunting and Fishing Licenses for Life Threatening Condition	§ 20-2-46f	Authorizes the Director of Division of Natural Resources to issue special classification of hunting and fishing license without charge to anyone under 21 years of age who is diagnosed by a licensed physician with a life-threatening condition; requires the licensed physician to certify the applicant's life threatening condition to the Division; entitles the holder of the license to hunt and fish if the licensee is accompanied by a parent, guardian, or other competent adult, and meets other specific requirements.	164.512(a)	No	State law	
Drug Testing for Public Improvement Contractors	§ 21-1D-5 §21-1D-7 § 21-1D-7a § 21-1D-7b	Requires each contractor working upon a public improvement to maintain a drug-free workplace policy; as a part of such policy, requires the contractor to conduct pre-employment drug tests, as well as drug tests during employment, both on a random and incident-specific basis; requires all contractors to make available the results of all drug tests performed upon its employees to the public authority which let the contract; makes all drug testing information specifically related to individual employees confidential to all others; requires the contractor to report annually to the public authority which let the contract on the number of positive and negative drug tests conducted pursuant to its policy.	164.512(a)	No	State law	

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Commissioner of Labor - Investigations, Inspections, Subpoenas	§ 21-3A-8	Authorizes Commissioner of Labor to require employers to maintain records of work-related deaths, injuries, and illnesses; requires employers to make such records available to the Commissioner of Labor for designated purposes under OSHA; mandates access to such records by employees who are exposed to potentially toxic materials or harmful physical agents; also authorizes the Commissioner of Labor to subpoena records and witnesses.	164.512(a)	No	State law	
Office of Miner's, Health, Safety, and Training - Investigations, Inspections, Subpoenas	§ 22A-1-4; § 22A-1-14; § 22A-1A-1	Authorizes the Office of Miner's, Health, Safety, and Training to investigate the causes of coal mining accidents, injuries, and fatalities, and to subpoena documents and witnesses for such purposes; mandates coal mine operators to provide information to the Office for such purposes; authorizes rule-making to permit employers to share discharge information related to substance abuse for certified employees in sensitive positions; authorizes investigation and reporting of findings to Office in response to complaints of certified employee substance abuse or alcohol impairment.	164.512(a)	No	State law	

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Workers' Compensation - Psychological and Psychiatric Records	§ 23-1-13	Authorizes a treating or evaluating psychiatrist, or clinical doctoral level psychologist, to withhold a psychiatric or psychological report from a workers' compensation claimant if such a report is likely to cause serious harm to the claimant, or is likely to cause a claimant to pose a serious threat of harm to a third party.	164.512(j), (k), (l)	No	HIPAA	To the extent that patient may appeal denial of access
Workers' Compensation - Access to Medical Records: Examinations	§ 23-4-7 § 23-4-8 § 23-4-8b § 23-4-8c § 23-4-20	Requires workers' compensation claimant to agree to release all medical information relating to occupational injury or disease, and to any prior injury or disease of the portion of the claimant's body to which a medical impairment is alleged to have an occupational basis; authorizes waiver of the patient-physician privilege of confidentiality; authorizes release of medical reports to the employer, to Workers' Compensation Commission, and to any successor organization to the Commission, any private carrier, or self-insured organization, whichever is applicable; authorizes each of these entities, whichever is applicable, to obtain medical examinations of the claimant, the results of which are to be reported to these entities; authorizes each of these entities, whichever is applicable, to require autopsies in certain cases, the results of which are to be reported to	164.512 (k), (l)	No	State law	

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		these entities.				
Correctional Institutions - Uses and Disclosures	§ 25-1-5 § 25-1-8 § 25-1-11a	Authorizes the Commissioner of Corrections to establish policies regarding the treatment of mentally ill inmates; authorizes the Commissioner to financially assess inmates for health care treatment services provided in a correctional facility; prohibits any inmate from being denied any necessary medical services because of inability to pay; authorizes appointment of a warden to oversee the operation of each correctional institution, including the feeding, clothing, working, and taking care of inmates.	164.506 164.512(k)	No	HIPAA	
Monitoring of Inmate Telephone Calls and Mail	§ 25-1-17 § 25-1-18	Authorizes the Commissioner of Corrections to monitor, intercept, record and disclose telephone calls and to monitor, open, review, copy, and disclose mail to adult inmates at state correctional institutions; limits access of such information to the Commissioner and his/her designee; requires all inmates to be notified of such action; authorizes the contents of such telephone calls or mail to be disclosed to an appropriate law enforcement agency when such disclosure is necessary to prevent the prosecution of a crime, to safeguard the orderly operation of the correctional institution, or	164.512(e) 164.512(f) 164.512(j) 164.512(k)	No	State law	

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		pursuant to an order of a court or an administrative tribunal when disclosure is necessary to safeguard and protect the orderly operation of the correctional institution or to protects persons from physical harm or threat of physical harm; requires copies of all such materials to be retained for at least three years, and then destroyed in accordance with the Division of Corrections records retention policy.				
Examinations of Youthful Offenders	§ 25-4-7	Requires every youthful offender confined to a juvenile correctional facility to undergo a complete physical, educational, and psychological examination, purportedly for use by correctional facility personnel.	164.506 164.512(k), (l)	No	HIPAA	
Private Prisons - Uses and Disclosures	§ 25-5-8 § 25-5-11	Requires any private entities operating correctional facilities to file reports with the Division of Public Safety regarding all extraordinary and unusual occurrences that occur in connection with such facilities, including deaths, serious injuries, batteries, sexual assaults, and occurrences of contagious diseases; occurrences of contagious diseases; requires such facilities to provide health and medical services to inmates, including drug and alcohol counseling.	164.512(a), (k)	No	HIPAA	
Operation of Pinecrest Hospital	§ 26-5-1	Generally authorizes the State to operate Pine Crest Hospital in Beckley with a clinical director having responsibility or decisions involving	164.506	No	HIPAA	

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		clinical and medical treatment of patients; the clinical director must be a duly-qualified licensed physician.				
Notice of Escapees from Tuberculosis Institution	§ 26-5A-5a	Requires superintendent of a state TB institution to issue a notice including the name and description of an escapee from that institution. The superintendent must also issue a warrant to the Sheriff.	164.512(a),(b)	No	State law	
Operation of Denmar State Hospital	§ 26-6-1	LAW WAS REPEALED IN 2008		LAW WAS REPEALED IN 2008		
Operation of Welch Emergency Hospital and Fairmont Emergency Hospital	§ 26-8-1	Generally authorizes the State to operate Welch Emergency Hospital and Fairmont Emergency Hospital with a clinical director having responsibility for decisions involving clinical and medical treatment of patients; the clinical director must be a duly-qualified licensed physician.	164.506	No	HIPAA	
Operation of Hopemont Hospital	§ 26-9-1	Generally authorizes the State to operate Hopemont Hospital with a clinical director having responsibility for decisions involving clinical and medical treatment of patients; the clinical director must be a duly-qualified licensed physician.	164.506	No	HIPAA	

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Mental Health Hospitals - Inspections	§ 27-1A-6	Authorizes the Bureau of Health to inspect, license, and supervise any hospital, center, or institution which provides in-patient care and treatment to the mentally ill, intellectually disabled, or both; also authorizes the Bureau to develop programs for the care, treatment, and rehabilitation of alcoholics and drug abusers.	164.512(d)	No	State law	
Operation of State Hospitals for Mentally Ill/Mentally Retarded	§ 27-2-1; § 27-2-5	Authorizes the establishment of State hospitals for the care and treatment of the mentally ill and mentally retarded; requires the superintendent of each such State hospital to furnish information concerning admissions, discharges, deaths, and other matters to the Department of Health to enable the Department to have current information concerning the extent of mental illness in the State; prohibits the names of patients from being accessible to anyone except by permission of the Department of Health or by court order.	160.203(c) 164.512(a),(b)	No	State law	
Operation of Comprehensive Community Health/Intellectual Disability	§ 27-2A-1	Authorizes the Department of Health and Human Resources to establish and operate comprehensive community mental health/intellectual disability centers throughout the State; requires such centers to maintain accurate medical and other records for all patients receiving services.	164.506	No	HIPAA	
Mental Health	§ 27-3-1;	Provides for confidentiality of all	164.506	No	Both	HIPAA more stringent

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Records - Uses and Disclosures	§ 27-3-2	communications and information obtained in treatment of mental health patient, including the fact that a person has received such treatment; confidentiality restriction does not apply to information which does not identify the patient; exception for involuntary commitment proceedings; exception for disclosure pursuant to a court order which finds the interests in disclosure outweigh the importance of maintaining confidentiality; exception for disclosures to comply with Brady Handgun Violence Prevention Act; exception to protect against clear and substantial danger of imminent injury to patient or another; exception for treatment or internal review purposes; exception for uses and disclosures to carry out treatment, payment, or health care operations without consent for a period of 30 days after admission to a mental health facility if certain other conditions are satisfied; all other disclosures must be pursuant to a signed authorization; a health care provider may not condition mental health treatment upon receipt of such authorization.	164.508 164.512(a), (e), (j), (k) 160.203(b)			for authorizations and de-identification State more stringent for release of mental health records (as defined under State law) under 164.512 "Uses and disclosures for which an authorization or opportunity to agree or object is not required" (including, required by law; public health activities; victims of abuse, neglect or domestic violence; health oversight activities; judicial and administrative proceedings; law enforcement; and decedents) State more stringent for release of mental health records for treatment, payment and health care operations. Note: The definition of "mental health record" under State law is broader than

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						the definition of "psychotherapy notes" under HIPAA.
Involuntary Hospitalization	§ 27-5-2 § 27-5-3 § 27-5-4	Provides for involuntary hospitalization of individual who, because of mental illness or addiction, is likely to cause serious harm to himself or others; provides that application or related documents are not open to inspection unless authorized by the individual and provides for certain disclosures; authorizes court to order examinations of such individuals by physicians, psychologists, clinical social workers, or physician assistants, the results of which shall be provided to the court; provides that medical evidence obtained pursuant to such examinations are not privileged for purposes of any hearing involving involuntary hospitalization; provides for all proceedings to be held in chambers; provides for the reporting and recording of all proceedings involving involuntary hospitalization; authorizes a court to transmit evidence adduced at the hearing to a court in the county of the individual's residence; requires all admissions to mental health facilities to be reported to the Secretary of DHHR.	160.203(c) 164.512(a), (b), (e), (j)	No	State law	

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Mental Health Patient Rights - Uses and Disclosures	§ 27-5-9	The general confidentiality requirements applicable to clinical records maintained by State facilities for treatment of mental illness, intellectual disability, or addiction were deleted from this statute as a result of amendments in 2007.		No		See § 27-3-1
Alternative Procedures for Involuntary Hospitalization – Uses and Disclosures	§ 27-5-11	Generally provides for alternative procedures that may be implemented for use of a treatment compliance order in lieu of involuntary hospitalization for an individual who has been involuntarily committed at least twice in the last 24 months for mental illness, addiction or both, or has been convicted of violent crimes during that time period; authorizes courts to order examinations of such individuals by physicians or psychologists, the results of which shall be provided to the court; authorizes the court to convert the proceeding into an involuntary commitment proceeding, where appropriate.	160.203(c) 164.512(a), (b), (e), (j)	No	State law	
Criminal Defendants - Criminal Responsibility Determinations	§ 27-6A-1 § 27-6A-4 § 27-6A-5 § 27-6A-11	In the context of proceedings to determine criminal responsibility for criminal defendants, authorizes court to order examination of defendant by a psychiatrist and/or psychologist; authorizes release of report of such examination to be made available to the court, prosecuting attorney, and counsel for defendant; authorizes commitment to mental health facility for up to 15 days for observation period; if defendant is determined not	160.203(c) 164.512(a), (b), (e), (f), (j), (k)	No	State law	

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		guilty by reason of mental illness, court shall maintain jurisdiction over defendant for the period of the maximum sentence he or she could have received; requires court to commit defendant/acquitee to mental health facility that is the least restrictive environment to manage defendant/acquitee and that will allow for protection of the public; requires notification of court and prosecuting attorney prior to proposed release or conditional release of defendant/acquitee from a mental health facility; requires all medical expenses incurred in such proceedings to be paid by the State.				
Criminal Defendants - Consent to Treatment by Criminal Defendants	§ 27-6A-10	States that criminal defendant with health care decision-making capacity may refuse medications or other medical management unless court-ordered, or unless a treating clinician determines that medication or other medical management is necessary in emergencies or to prevent danger to individual or others.	160.203(c) 164.512(a), (b), (j), (k)	No	State law	
Involuntary Hospitalization-Release and Discharge of Patients	§ 27-7-1 § 27-7-2 § 27-7-3 § 27-7-4	Requires the chief medical officer of a mental health facility to make a report to the circuit court or mental hygiene commissioner of the county in which involuntary hospitalization was ordered, and to the circuit court or mental hygiene commissioner of the county wherein the patient is a resident, in the following circumstances: (1) upon discharge of an involuntarily hospitalized patient;	160.203(c) 164.512(a),(b), (e),(j)	No	State law	

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		(2) upon release on convalescent status of an involuntarily hospitalized patient; (3) upon release as unimproved of an involuntarily hospitalized patient; and (4) when the re-admission of a formerly involuntarily hospitalized patient is believed to be in the best interest of the patient.				
Mental Health Hospitals - Investigations, Inspections	§ 27-9-1	Authorizes the Secretary of DHHR to investigate and inspect any hospital, center, or institution licensed to provide inpatient or outpatient services to the mentally ill or intellectually disabled.	164.512(a) 164.512(d)	No	State law	
Interstate Compact on Mental Health	§ 27-14-1	Provides for the appointment of an administrator to act as a contact person with respect to issues involving the mentally ill who may require services in another state; requires compact administrator to notify another state when it is determined that a patient receiving mental health services in West Virginia would benefit from receiving such services in that other state; in making such contact, the compact administrator must act in the best interests of the patient and avoid jeopardizing the public safety; also requires any mental health institution to notify all appropriate authorities within and without West Virginia of the escape of a patient who is determined to be dangerous or	160.203(c) 164.506	No	State law	

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		potentially dangerous; such notice should be calculated to facilitate the speedy apprehension of the escaped patient.	164.512(a),(b)			
Interstate Compact on the Mentally Disordered Offender	§ 27-15-1	Establishes interstate compact dealing with individuals who have been adjudicated to be mentally ill, and who are under sentence for the commission of a crime; authorizes the state to enter into contracts with other states for the delivery and retaking of mentally disordered offenders for care, treatment, or rehabilitation of the offender; any	164.506 164.512(e),(k)	No	State law	

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		such transfers are to be based upon a court hearing to determine the public interest, the condition of the offender, the prospects for more satisfactory care, treatment, or rehabilitation elsewhere, and other relevant factors; requires the receiving state to provide regular reports to the sending state relative to such transferred offenders, including the psychiatric and behavioral record of his or her treatment in the receiving state.				
Sterilization of Incompetents	§ 27-16-1	LAW WAS REPEALED IN 2013		LAW WAS REPEALED IN 2013		
Group Residential Facilities for the Disabled - Investigations, Inspections	§ 27-17-3	Requires residential facilities for the developmentally or behaviorally disabled to obtain license from the Director of the Department of Health; authorizes the Director to investigate and inspect any such facilities to determine compliance with applicable laws.	164.512(d)	No	State law	

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Youthful Male Offenders - Examinations	§ 28-1-2	Requires every youthful male offender between the ages of 10 and 18 that is committed to the custody of the Commissioner of Corrections to undergo a complete physical, educational, and psychological examination within 20 days; requires all such examinations to be private, but requires the results of all such examinations to be reported to the Commissioner of Corrections to assure appropriate placement of the offender, and to assure that the offender shall be provided all treatment and rehabilitation indicated by such examinations; prohibits offender with mental illness or significantly mentally disabled to be committed to, or retained by, the Commissioner of Corrections.	164.506 164.512(a),(e),(k),	No	State law	
Youthful Female Offenders - Examinations	§ 28-3-4	LAW WAS REPEALED IN 2013		LAW WAS REPEALED IN 2013		
Inmates with Mental Illness	§ 28-5-31	Authorizes a correctional officer, member of a correctional institution medical staff, relative, or the convicted person to present facts relating to possible mental illness, intellectual disability, or addiction of an inmate to the chief administrative officer of a correctional facility; requires the officer to arrange for a psychiatric or psychological examination of the inmate, the report of which is to be provided to correctional officials; authorizes the officer to file a petition with the court	164.506 164.508 164.512(a),(e), (k)	No	State law	

SUBJECT	WV CODE	EFFECT ON PROTECTED HEALTH INFORMATION	HIPAA CITES	PREEMPTED	HIPAA OR STATE MORE STRINGENT AND/OR MORE DETAILED	COMMENTS
		to seek the transfer of the inmate to another facility in order to obtain necessary treatment.				
State Boxing Commission - Examinations	§ 29-5A-18	Requires the State Boxing Commission to examine each contestant before a match or contest, and to report the results of such examination to the club, corporation, association, or individual under whose management the match or contest is conducted.	164.512(a)	No	State law	
Freedom of Information	§ 29B-1-3 § 29B-1-3a § 29B-1-4	Provides that the records of public bodies must be made available for inspection and copying upon the request of any person; contains an exception which permits a public body to exempt from disclosure information of a personal nature such as that kept in a personal, medical, or similar file if the public disclosure thereof would constitute an unreasonable invasion of privacy, unless the public interest by clear and convincing evidence requires disclosure in the particular instance; the aforementioned exemption from disclosure shall not be construed as precluding an individual from inspecting or copying his or her own personal, medical, or similar file. Includes a presumption of the public's right to access records of public bodies except as subject to an exemption. Beginning January 1, 2016, public bodies must provide information to the Secretary of State	164.512(a)	No	State law	State law allows patient access to psychotherapy notes held by public body.

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		relating to the nature of any request, timeframe necessary to comply, whether the request was granted, and if not, the exemption asserted under FOIA to deny the request, and the amount of reimbursement charged to the requestor, if any.				
Professional Licensing Boards - Investigations, Subpoenas	§ 30-1-5	Authorizes any professional licensing board under Chapter 30 to perform investigations of any matters within its jurisdiction, and to issue subpoenas for witnesses and documents related to such investigations; requires every person licensed by such a board to report known or observed violations of practice by any other person licensed or registered by the same board.	164.512(a),(d)	No	State law	
Board of Medicine – Investigations, Subpoenas	§ 30-3-7	Authorizes the Board of Medicine to undertake investigations related to the licensure of physicians, podiatrists, and physician assistants; authorizes the Board to issue subpoenas for witnesses and documents related to these purposes.	160.203(c) 164.512(b) 164.512(d)	No	State law	
Board of Medicine - Investigations, Uses, Disclosures	§ 30-3-9; § 30-3-14;	Authorizes the Board of Medicine to conduct investigations of physicians, podiatrists, and PAs as to their professional competence; provides that any physician/patient privilege does not apply in any investigation or proceeding by the Board, by a medical peer review committee, or by a hospital governing board with respect to relevant hospital medical	160.203(c), (d) 164.508 164.512(a), (b), (d), (e)	No	Both	HIPAA more stringent for authorizations and de-identification

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		records; authorizes any physician, podiatrist, or PA to enter into voluntary agreement with Board-approved physician health program to obtain assistance for an alcohol, chemical dependency, or major mental illness problem affecting professional ability, and to maintain the confidentiality of such agreement from the Board and general public if compliance therewith is maintained; if not, requires physician health program to report non-compliance within 24 hours to Board; requires the Board to report annually to the Legislature regarding such voluntary and confidential arrangements, but prohibits disclosure of any personally identifiable information; requires all proceedings of the Board after a finding of probable cause to be open to the public, except for medical records of individual patients; authorizes the Board to require a physician to undergo an examination, the results of which shall be reported to the Board; requires hospitals and professional societies to report all formal disciplinary actions, and to make available records of any medical peer review committee requires every entity providing professional liability insurance to report any judgment, dismissal or settlement of any such action to the Board; authorizes any person to				

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		report relevant facts about professional competency of any licensed practitioner to the Board.				
Telemedicine Patient Records	§30-3-13a §30-14-12d (online code not yet available)	Requires that physicians and podiatrists maintain patient records for telemedicine services consistent with the laws and rules governing patient healthcare records, and further provides that the telemedicine records be subject to all laws governing the confidentiality of healthcare information and governing patient access to healthcare records, and that physicians and podiatrists providing services through telemedicine technologies make documentation of the encounter easily available to the patient, and subject to the patient's consent, to any identified care provider of the patient.	164.506	No	Both	State law is more stringent than HIPAA with respect to disclosure for treatment purposes because state law makes disclosure to providers subject to patient's consent. HIPAA is more detailed than state law because HIPAA addresses various other types of disclosures, such as disclosure for payment and healthcare operations.
Confidentiality of Peer Review Records	§ 30-3C-3	Requires that proceedings and records of a peer review organization to remain confidential and privileged and not subject to subpoena or discovery proceedings in any civil action arising out of the matters which are subject to evaluation and review by such organizations; confidentiality does not apply to any documents or records otherwise available from original sources; authorizes professional whose activities are subject to peer review to obtain access to such records pertaining to	164.506 160.203(b)	No	State law	State law prohibits disclosure in related civil actions. Under HIPAA peer review records must be maintained separate from the designated record set of the patient; peer review records cannot be used to make decisions about the treatment of the individual patient.

SUBJECT	WV CODE	EFFECT ON PROTECTED HEALTH INFORMATION	HIPAA CITES	PREEMPTED	HIPAA OR STATE MORE STRINGENT AND/OR MORE DETAILED	COMMENTS
		his or her own acts or omissions.				
Physician Health Program - Uses, Disclosures	§ 30-3D-2	Authorizes the Board of Medicine and Board of Osteopathy to designate one or more physician health programs to treat physicians for alcohol abuse, chemical dependency, and mental/or illness; requires participation in a physician health program to remain confidential, including all patient information acquired, created, and used in such program, and including the fact of physician's participation; such confidentiality extends to discovery or subpoenas in civil cases, as well as to the respective Boards; requires waiver of confidentiality as to the applicable Board if physician non-compliance under the program occurs; requires physician health programs to annually report statistical information to the respective Boards concerning their operations and success, except that no personally identifiable information concerning any participant may be disclosed.	160.203(d) 164.512(a), (d), (e)	No	Both	HIPAA more stringent for de-identification
Physician Assistants Practice Act – Disclosures	§ 30-3E-18	Requires any health care facility to report to the appropriate licensing board any formal disciplinary procedure undertaken involving a physician assistant, and to make related records available.	160.203(c) 164.512(b), (d)	No	State law	
Board of Dental Examiners – Investigations, Inspections	§ 30-4-19	Authorizes the Board to deny, refuse to renew, suspend, restrict, or revoke a license or certification for using or	160.203(c) 164.512(b), (d)	No	State law	

SUBJECT	WV CODE	EFFECT ON PROTECTED HEALTH INFORMATION	HIPAA CITES	PREEMPTED	HIPAA OR STATE MORE STRINGENT AND/OR MORE DETAILED	COMMENTS
		disclosing protected health information in an unauthorized or unlawful manner.				
Board of Dental Examiners - Investigations, Inspections, and Reporting	§ 30-4A-8 § 30-4A-9 § 30-4A-10	Authorizes the Board of Dental Examiners to perform on-site inspections of any dental practitioner who seeks a permit to administer any type of anesthesia to patients; authorizes the Board of Dental Examiners to investigate anesthesia mortalities, any serious complications or any injury; requires on-site inspections to be performed upon initial application, thereafter at least once every five years for all permit holders except those designated as Class II, and annually at the discretion of the Board; requires any in-office evaluation to include observation of one or more cases, and the inspection of facilities, equipment, drugs, and records; requires licensee to report any death or serious complication that occurs as a result of the administration of any type of anesthesia within seventy-two hours, including the patient's name, age, address, and complete medical records.	160.203(c) 164.512(a), (b),(d)	No	State law	
Denture identification	§ 30-4B-3	Requiring that a dental laboratory or a dentist who engages in dental laboratory services and who fabricates any full upper or full lower set of prosthetic dentures affix the name of the patient for whom the dentures are made and the initials of the dentist's state of practice and	164.512(a)	No	State law	

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		license identification number.				
Board of Pharmacy - Investigations, Uses, Disclosures	§ 30-5-1b § 30-5-7a § 30-5-7b	LAW WAS REPEALED IN 2013		LAW WAS REPEALED IN 2013		
Board of Pharmacy – Investigations, Uses, Disclosures	§ 30-5-7	Authorizes the Board to promulgate rules relating to the licensing, regulation, and review of pharmacists, pharmacies, and telepharmacy.	160.203	No	State Law	Rules effective May 17, 2015
Reporting Immunizations by Pharmacists	§ 30-5-7	Authorizes licensed pharmacists or licensed pharmacy intern under the direct supervision of a pharmacist to administer immunizations for Influenza and Pneumonia to any person 18 years of age or older; requires the promulgation of rules mandating reporting requirements to primary care physicians and the Statewide Immunization Information System; authorizes the promulgation of further rules to allow immunizations by licensed pharmacists or pharmacy intern for Hepatitis A, Hepatitis B, Herpes Zoster, and Tetanus.	160.203(c) 164.512(a), (b)	No	State law	
Electronic Prescribing of Drugs	§ 30-5-12c	LAW WAS REPEALED IN 2013		LAW WAS REPEALED IN 2013		
Collaborative Pharmacy Practice – Uses and Disclosures	§ 30-5-18 § 30-5-19	Authorizes qualified pharmacists to participate in a collaborative pharmacy practice with one or more physicians; under such collaborative pharmacy practice, authorizes qualified pharmacists to perform drug therapy management for a patient,	164.506 164.508	No	State law	

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		and to render advice to physician regarding adjustment of a drug regimen; requires informed consent from the patient for qualified pharmacist to work in collaboration with one or more physicians.				
Board of Pharmacy – Grounds for Disciplinary Action	§ 30-5-31	Establishes the illegal use or disclosure of health information as grounds for disciplinary action	164.502	No		
Board of Optometry – Investigations, Subpoenas	§ 30-8-5 § 30-8-18	Authorizes the Board of Optometry to undertake investigations related to licensure of optometrists; authorizes the Board to issue subpoenas for witnesses and documents related to these purposes.	160.203(c) 164.512(b), (d)	No	State law	
Board of Osteopathy - Confidential Physician Health Programs	§ 30-14-11a	Authorizes any osteopathic physician to enter into voluntary agreement with Board-approved physician health program to obtain assistance for an alcohol, chemical dependency, or major mental illness problem affecting professional ability, and to	160.203(d) 164.512(a), (d), (e)	No	Both	HIPAA more stringent for de-identification

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		maintain the confidentiality of such agreement from the Board and general public if compliance therewith is maintained; if not, requires physician health program to report non-compliance within 24 hours to Board; requires Board to report annually to the Legislature regarding such voluntary and confidential arrangements with physician health programs, but prohibits disclosure of any personally-identifiable information in such reports.				
Board of Osteopathy - Investigations, Uses, Disclosures	§ 30-14-12a	Authorizes the Board of Osteopathy to initiate investigations as to professional competence of osteopathic physicians; requires hospital to report any disciplinary action involving an osteopathic physician within 60 days to the Board, and to submit underlying reports of such action; requires any professional society which takes formal disciplinary action against an osteopathic physician to report such action to the Board; requires every entity providing professional liability insurance to report each judgment, dismissal, or settlement of any civil action involving an osteopathic physician in the State; authorizes any person to report to the Board relevant facts about the professional competency of any osteopathic physician; provides subsequent to a determination of probable cause, all	160.203(d) 164.512(a),(b),(d),(e)	No	State law	

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		proceedings of the Board involving disciplinary actions shall be open to the public, except for medical records of individual patients.				
Board of Osteopathy - Disclosures	§ 30-14A-1	LAW REPEALED IN 2014		LAW REPEALED IN 2014		
Board of Chiropractic - Investigations, Uses, Disclosures	§ 30-16-5 § 30-16-8 § 30-16-11 § 30-16-12 § 30-16-16	Authorizes the Board of Chiropractic to conduct investigations of chiropractors as to their professional competency; requires all proceedings of the Board after a finding of probable cause to be open to the public, except for medical records of individual patients; authorizes the Board to require a chiropractor to undergo an examination, the results of which shall be reported to the Board; requires hospitals and professional societies to report all formal disciplinary actions, and to make available records of any medical peer review committee; requires every entity providing professional liability insurance to report any judgment, dismissal, or settlement of such action to the Board; authorizes any person to report relevant facts about the professional competency of any licensed chiropractor to the Board.	160.203(d) 164.512(a),(b),(d),(e)	No	State law	
Board of Physical Therapy - Investigations, Subpoenas	§ 30-20-5	Authorizes the Board of Physical Therapy to undertake investigations related to the licensure of physical therapists; authorizes the Board to issue subpoenas for witnesses and	160.203(c)	No	State law	

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	§ 30-20-19	documents related to these purposes.	164.512(b),(d)			
Athletic Trainers – Investigations	§ 30-20A-3	Authorizes the Board of Physical Therapy to undertake investigations related to the registration of athletic trainers; authorizes the Board to institute legal action for these purposes.	160.203(c) 164.512(b), (d)	No	State law	
Board of Examiners For Psychologists Investigations, Disclosures	§ 30-21-6 § 30-21-11	Authorizes the Board of Examiners for Psychologists to undertake investigations related to the licensure of psychologists; authorizes the Board to issue subpoenas for witnesses and documents related to these purposes.	164.512(b),(d) 160.203(c)	No	State law	
Medical Imaging and Radiation Therapy Technology Board - Investigations, Subpoenas	§ 30-23-25	Authorizes the Medical Imaging and Radiation Therapy Technology Board to undertake investigations related to the licensure of radiology techs, radiation therapists, nuclear medicine techs, MRI techs, and podiatric medical assistants; authorizes the Board to issue subpoenas for witnesses and documents related to these investigations.	160.203(c) 164.512(b), (d)	No	State law	
Nursing Home Administrators Licensing Board	§ 30-25-5 §30-25-14	Authorizes the Board of Nursing Home Administrators to undertake investigations related to licensure of	160.203(c)	No	State law	

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– Investigations, Subpoenas		nursing home administrators; authorizes the Board to issue subpoenas for witnesses and documents related to these purposes.	164.512(b), (d)			
Board of Hearing Aid Dealers - Investigations, Subpoenas	§ 30-26-4 § 30-26-16	Authorizes the Board of Hearing Aid Dealers to undertake investigations related to the licensure of hearing aid dealers; authorizes the Board to issue subpoenas for witnesses and documents related to these purposes.	160.203(c) 164.512(b),(d)	No	State law	
Board of Occupational Therapy - Investigations, Subpoenas	§ 30-28-6 § 30-28-14	Authorizes the Board of Occupational Therapy to undertake investigations related to the licensure of occupational therapists; authorizes the Board to issue subpoenas for witnesses and documents related to these purposes.	160.203(c) 164.512(b),(d)	No	State law	
Board of Social Work Examiners - Uses, Disclosures, Subpoenas	§ 30-30-2 §30-30-24 §30-30-26 §30-30-27	Authorizes the Board of Social Work to issue subpoenas for witnesses and documents relevant to the licensure of social workers; Board members have authority to administer oaths and examine persons under oath; makes confidential any communication between a patient and a social worker; exception conferring, reporting or consulting with professional colleagues who are similarly bound to privilege; exception based upon the written	160.203(b), (c) 164.512(a),(c), (d),(e), (j) 164.508	No	State	State law requires a patient consent to use or disclose PHI for treatment, payment, and health care operations. State law is more stringent in that disclosure is permitted when "judged necessary" to prevent serious and imminent harm, while a "good faith" belief is

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		consent of the patient; exception when the communication reveals the contemplation of a crime or harmful act; exception in certain instances with death or disability of patient; exception when a patient initiates formal charges against a social worker; exception when a minor has been a victim of a crime.				the standard in HIPAA.
Board of Examiners in Counseling – Uses, Disclosures, Subpoenas	§ 30-31-5 § 30-31-12 §30-31-16	Authorizes the Board of Examiners in Counseling to issue subpoenas for witnesses and documents related to the licensing of professional counselors; makes confidential all information communicated to a licensed professional counselor by a patient; exception based upon the written consent of the patient; exception when the communication reveals the contemplation of an act dangerous to the client or others; exception in cases involving charges against the licensed professional counselor.	160.203(b), (c) 165.508 164.512(d), (e), (j)	No	State law	
Board of Speech Pathology and Audiology - Investigations, Subpoenas	§ 30-32-10 § 30-32-18	Authorizes the Board of Speech Pathology and Audiology to undertake investigations related to the licensure of speech pathologists and audiologists; authorizes the Board to issue subpoenas for witnesses and documents related to these purposes.	160.203(c) 164.512(b),(d)	No	State law	
Regional Jail Authority Uses and Disclosures	§ 31-20-5f	Authorizes the Director of the Regional Jail Authority to financially assess an inmate a reasonable charge for health care and treatment services provided by the Authority;	164.506 164.512(k) 164.512(l)	No	HIPAA	

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		prohibits any inmate from being assessed for any specific health service required by law, required to prevent death or severe disability, required to treat a communicable disease, required to treat severe mental illness, required to treat specific chronic conditions identified by the Director, or required as a result of staff-initiated care; prohibits any inmate from being denied any necessary medical services because of inability to pay.				
Insurance Commissioner - Examinations, Subpoenas	§ 33-2-4 § 33-2-9	Authorizes the Insurance Commissioner to take depositions and to subpoena witnesses and documents in matters relating to the licensure of insurers; authorizes the Insurance Commissioner to engage in comprehensive investigations and examinations of all persons transacting the business of insurance; requires every company or person from whom information is sought for these purposes to make available to the Commissioner all books, records, accounts, papers, and any other documents relating to the business and affairs of the company being examined; provides that no liability shall be imposed against any person for delivering information to the Commissioner pursuant to an examination.	160.203(d) 164.512(a)	No	State law	
All-Payer Claims Database	§ 33-4A-2 § 33-4A-3 § 33-4A-4	Provides for the Insurance Commissioner, Secretary of DHHR, and the Chair of the Health Care	160.203 (b) 164.512 (a), (d), (e)	No	State Law	State law is more stringent as it relates

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		Authority to establish an All-Payer Claims Database ("APCD"). Data submitted to the APCD is confidential and privileged, exempt from disclosure under WVFOIA, not open to public inspection, not subject to subpoena, not subject to discovery or admissible in any criminal, private civil or administrative action, and not subject to production pursuant to court order. Data contained in the APCD shall only be disclosed pursuant to law and applicable legislative rules. The APCD shall not disclose data unless it is de-identified, unless contrary.				to discovery and subpoena of APCD data.
Limited Health Benefit Plans	§ 33-15D-3 § 33-15D-4	LAW REPEALED IN 2009		LAW REPEALED IN 2009		
Discount Medical Plans/Prescription Drug Plans - Examinations and Reports	§ 33-15E-2; § 33-15E-7; § 33-15E-12	Authorizes the creation of discount medical plans and discount prescription drug plans; provides for the operation of such plans under the regulatory authority of the Insurance Commissioner; authorizes the Commissioner to conduct an examination of such plans; requires such plans to file an annual report with the Commissioner containing such information as may be required by the Commissioner.	160.203(d) 164.506 164.512(a) , (e)	No	State law	

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Group Accident and Sickness Insurance	§ 33-16-1— § 33-16-17	Authorizes group accident and health insurance; group eligibility requirements; required policy provisions; mandatory coverage including maternity services for all individuals if those services are covered under the policy or plan; insurance commissioner oversight	164.502 164.506	No	Both	Insurance Commissioner rule for all licensees is more stringent; *See* 114 WV CSR Series 57, "Privacy of Consumer Financial and Health Information"
Small Employer Health Plans	§ 33-16D-16	Creation of health plans for small employers under auspices of PEIA.	164.506 164.512(b)	No	HIPAA	
Affordable Health Insurance Plans	§ 33-16F-4 § 33-16F-5	Authorizes the Insurance Commissioner to approve affordable health insurance products with less than full benefits for certain qualified individuals, including those that are not covered by private insurance, by an employer-sponsored group plan, or by a government insurance program; requires the offering of coverage for preventive health services, inpatient hospital stays, prescription drug benefits, as well as an option for catastrophic coverage; provides for the operation of such plans under the regulatory authority of the Insurance Commissioner.	164.506 164.512(d)	No	HIPAA	
Health Benefit Exchange Act	§ 33-16G-1 § 33-16G-3	Creates the West Virginia Benefit Health Exchange ("Exchange") with the Office of the Insurance Commissioner to facilitate the purchase and sale of qualified health plans in the marketplace. Includes a Small Business Health Options Program to assist qualified small employers within the State. The Exchange may enter into		No	HIPAA	The Exchange will likely only be collecting demographic information.

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		information-sharing agreements with federal and state agencies and other state exchanges, provided that such agreements include adequate protections with respect to confidentiality of the information and comply with state and federal laws and regulations.				
Health Care Corporations - Examinations	§ 33-25-10	Authorizes the Commissioner of Insurance to thoroughly examine the financial condition and methods of doing business of all health care corporations licensed in the State; for such purposes, the Commissioner shall have free access to all books, records, papers, correspondence, and other documents of the entity being examined.	160.203(d) 164.512(a)	No	State law	
Health Maintenance Organizations - Uses, Disclosures, Examinations	§ 33-25A-8 § 33-25A-17 § 33-25A-26	Requires each Health Maintenance Organization ("HMO") enrollee to consent to the examination of his or her medical records for purposes of utilization review, quality assurance, and peer review by the HMO; authorizes the Insurance Commissioner to examine the affairs of any HMO and affiliated providers with whom the organization has contracts, agreements, or other arrangements; requires every HMO and affiliated provider to submit its books and records to examination by the Commissioner; requires all PHI obtained by the Commissioner to be held in confidence; exception for uses related to the Commissioner's	160.203(d) 164.506 164.508 164.512(a),(e)	No	Both	HIPAA more stringent as to authorizations and disclosures to State divisions who sponsor group health plans. Otherwise, state law more stringent.

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		examination of the HMO; exception based upon the express written consent of the patient; exception pursuant to a court order or as otherwise required by law; exception involving litigation of a claim between the patient and the HMO; exception involving a division of the State pursuant to the terms of a group contract between a division and an HMO.				
Health Maintenance Organizations - Patient's Bill of Rights	§ 33-25C-3	Generally provides for an enrollee's right to privacy and confidentiality with respect to his or her PHI maintained by the HMO; also accords a right to full disclosure to enrollee of any information relating to his or her medical condition or treatment plan, and the ability to examine and offer corrections to his or her medical records; provides a procedure for external review of health care services that are determined to be experimental on the request of either the HMO or the enrollee; requires the enrollee's medical records to be submitted to the external review organization for such purposes.	164.508 164.512(a)	No	HIPAA	
Prepaid Health Service Organizations - Uses, Disclosures, Examinations	§ 33-25D-11 § 33-25D-18 § 33-25D-28	Requires each Prepaid Health Service Organization ("HSO") enrollee to consent to the examination of his or her medical records for purposes of utilization review, quality assurance, and peer review by the HSO; authorizes the Insurance Commissioner to examine	160.203(d) 164.506 164.508 164.512(a),(e)	No	Both	HIPAA more stringent as to authorization and disclosures to State divisions who sponsor group health plans. Otherwise, state law more

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		the affairs of any HSO and affiliated providers with whom the organization has contracts, agreements, or other arrangements; requires every HSO and affiliated provider to submit its books and records to examination by the Commissioner; requires all PHI obtained by the Commissioner to be held in confidence; exception for uses related to the Commissioner's examination of the HSO; exception based upon the express written consent of the patient; exception pursuant to a court order or as otherwise required by law; exception involving litigation of a claim between the patient and the HSO; exception involving a division of the State pursuant to the terms of a group contract between a division and an HSO; exception for disclosure to the State Medicaid Program.				stringent.
Insurance Fraud Unit	§ 33-41-4 through §33-41-8	Creation of Insurance Fraud Unit within Office of Insurance to investigate criminal acts. Records confidential except they can be shared with other state and federal investigations.	160.203(d) 164.512(a), (f)	No	State	
Third-Party Administrators - Uses, Disclosures, Examinations	§ 33-46-5	Requires a Third-Party Administrator ("TPA") to maintain and make available to insurers complete books and records of all transactions performed on behalf of the insurer; requires TPAs to provide access to the Commissioner of all books and records maintained by the TPA for purposes of examination, audit, and	160.203(d) 164.506 164-512(a)	No	Both	HIPAA more stringent for disclosures by a health plan to a plan sponsor. Otherwise, State law more stringent.

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		inspection; requires the Commissioner to maintain the confidentiality of all information obtained as a result of an examination, audit, and inspection; exception for sharing documents with other state, federal, and international regulatory agencies; provides that no claim of privilege or confidentiality is waived as a result of any disclosure to the Commissioner.				
Confidentiality of Guardianship Records - Uses, Disclosures	§ 44-10-3	Requires that all records of all guardianship proceedings involving minors are confidential and shall not be disclosed to anyone not a party to the proceeding, absent a court order.	160.203(b) 164.512(e)	No	State law	
Children with Autism Trust Board – Confidentiality	§ 44-16-3 § 44-16-5	Authorizes the creation of the Children with Autism Trust Board, whose purpose will be to qualify and oversee trust accounts created on behalf of children with autism; empowers the Board to approve trust accounts for tax deduction purposes; requires autism to be diagnosed by qualified physician after extensive examination and testing; requires the Board to prepare an annual report to various legislative committees; requires all information that would tend to disclose the identity of any beneficiary, account owner, or donor to be exempt from the Freedom of Information Act, and not subject to any disclosure which would identify	164.512(a)	No	HIPAA	

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		the individuals involved or provide personal information.				
Reporting Breaches of Computerized Personal Information	§ 46A-2A-102	Requires any entity that owns or licenses computerized personal information to provide notification of any breach of security to any state resident whose unencrypted and unredacted personal information is reasonably believed to have been accessed by an unauthorized person, and is reasonably believed to result in identity theft or fraud to the resident; requires such notice to be given without delay, and to include a description of the information accessed, and other information designed to assist consumers in mitigating the possibility of identity theft or other fraud.	160.203(b) 164.512(a)	No	State law	
False Parental Reports of Child Abuse or Domestic Violence - Disclosures	§ 48-9-209	Authorizes a court to order the disclosure of a false report made knowingly by a parent of either child abuse or domestic violence, thereby overriding the confidentiality accorded such reports by the Department of Health and Human Resources.	164.512(a), (e)	No	State law	

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Child Custody - Uses and Disclosures of Child's PHI	§ 48-9-601	In the case of parents who do not live together, each such parent has full and equal access to a child's medical records absent a court order to the contrary; if the child is in the actual physical custody of one parent, that parent is required to promptly inform the other parent of any illness of the child which requires medical attention, or of any elective or emergency procedures performed upon the child; nothing in this statute shall alter or amend the law as it otherwise pertains to physicians or health care facilities obtaining parental consent prior to providing medical care or performing medical procedures.	164.502(g)(3)	No	State law	
Bureau for Child Support Enforcement - Subpoenas	§ 48-18-123	Authorizes the Bureau of Child Support Enforcement to issue subpoenas in order to obtain financial and medical insurance information relevant to a parent under the jurisdiction of the Bureau.	164.512(e)	No	State law	
Policy regarding persons obtaining identifying information after adoption	§ 48-23-101; § 48-23-601	Creates a mutual consent voluntary adoption registry, and sets forth the requirements for use of registry, where birth parents and adult adoptees may register their willingness to release identifying information to each other. Requires adoption agencies or the person, entity or organization handling an adoption to compile and provide prospective adoptive parents with a detailed written health history and	160.203(b) 164.512(a)	No	State Law	

SUBJECT	WV CODE	EFFECT ON PROTECTED HEALTH INFORMATION	HIPAA CITES	PREEMPTED	HIPAA OR STATE MORE STRINGENT AND/OR MORE DETAILED	COMMENTS
		genetic social history of the child. The histories must exclude information that would identify birth parents or members of a birth parent's family. Prohibits disclosure of any confidential adoption information except if provided to the registry or by court order.				
Paternity Examinations	§ 48-24-103	Authorizes the Bureau for Child Support Enforcement, or a circuit court, to order medical testing procedures to aid in the determination of paternity; requires an expert qualified as an examiner of genetic markers to analyze, interpret, and report results of such tests to the Bureau.	164.512(e)	No	State law	
Infant and Maternal Mortality Review Team - Uses and Disclosures	§ 48-25A-3	LAW WAS REPEALED IN 2013		LAW WAS REPEALED IN 2013		
Domestic Violence Fatality Review Team - Investigations	§ 48-27A-1	LAW WAS REPEALED IN 2013		LAW WAS REPEALED IN 2013		
Domestic Violence Shelters - Uses and Disclosures	§ 48-26-701	Provides for the confidentiality of records maintained by domestic violence shelters receiving State funds; exception for disclosure upon written consent of the patient; exception for situations involving the abuse or neglect of incapacitated adults, the elderly or children;	160.203(b), (c) 164.506 164.508 164.512(a), (c), (e),(j)	No	State law	State law requires patient consent for any disclosure of shelter records for payment purposes.

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		exception pursuant to a court order finding that the need for disclosure outweighs the importance of confidentiality; exception to protect against a clear and substantial danger of imminent injury to a patient or another; exception for treatment or internal review purposes.				
Reporting of Congenital Deformities	§ 49-2-503	Requires a physician, midwife, or other person attending the birth of a child with congenital deformities to report such to the DHHR within 30 days; requires such reports to be used solely by the DHHR, and not be open for public inspection.	160.203(c) 164.512(a),(b)	No	State law	
Juvenile Detention Procedure	§49-4-705	Provides that a juvenile detention center is not required to accept a juvenile if he or she appears to be in need of medical attention of a degree necessitating treatment by a physician; such juvenile shall not subsequently be admitted to a juvenile detention center until written clearance is received from a licensed physician reflecting that the juvenile has been examined and treated, and that in physician's medical opinion, the juvenile can be safely confined in the juvenile detention center.	164.502(g)(3) 164.512(a); (e); (f); (j); (k)	No	State law	
Juvenile Commitment Proceedings and Records – Uses and Disclosures	§ 49-4-714 § 49-2-907 § 49-5-103	Requires any juvenile being committed to a mental health facility to be accorded the procedural rights involving the involuntary hospitalization of adults under Chapter 27, Article 5; requires any juvenile subject to a dispositional proceeding to undergo examination,	160.203(c) 164.512(a),(b),(e),(j),(k)	Yes	State law	Preempted to the limited extent that a covered entity may be required by this law to disclose PHI in response to a subpoena without complying with the

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		diagnosis, and classification prior to such disposition; requires a report of this examination, diagnosis, and classification to be made to the juvenile court; generally provides for the confidentiality of juvenile records, with exceptions for violent offenses, and mandated disclosures to schools, courts, probation officers, and pursuant to subpoenas issued by federal courts and agencies.				requirements of 45 C.F.R. § 164.512(e)
Multidisciplinary Teams for Abused and Neglected Children - Uses and Disclosures	§49-4-402 §49-4-403	Requires the establishment of Multidisciplinary Teams to coordinate investigations of alleged child abuse and neglect; requires state, county, and local agencies to provide such Multidisciplinary Teams with any information requested in writing by the Team as allowable by law or upon receipt of an order of a circuit court; requires the maintenance of all such information provided in a confidential manner by the Team; also requires the establishment of multidisciplinary treatment planning teams to plan and implement a comprehensive, individualized service plan for children who are victims of abuse or neglect; requires such treatment teams to advise the circuit court as to the types of services that have been determined to be needed to best serve the needs of the child; allows such treatment teams to access any information in the possession of the Department of Health and Human	160.203(c) 164.502(g)(3) 164.512(a), (b),(c)	No	State law	

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		Resources, which information shall not be disclosed except as permitted by this code or court rules.				
Child Fatality Review Team - Investigations	§ 49-5D-5	LAW WAS REPEALED IN 2013		LAW WAS REPEALED IN 2013		
Medical Care of Juveniles in Custody	§49-2-906	Authorizes the Director of the Division of Juvenile Services to consent to medical treatment of any juvenile in the legal or physical custody of the Division; provides that the costs of such services are to be borne by the Division.	164.502(g)(3) 164.506 164.512(a)	No	State law	
Child Abuse and Neglect Proceedings	§ 49-4-601	Authorizes any reputable person who believes that a child is neglected or abused to present a petition setting forth such facts in circuit court; authorizes the court to order an examination of the child by a physician, psychologist, or psychiatrist, and to require the results of the examination to be provided to the court as part of the proceeding.	160.203(c) 164.512(b),(c),(e)	No	State law	
Reporting Child Abuse and Neglect	§ 49-2-803	Requires any medical, dental, or mental health professional, Christian Science practitioner, religious healer, school teacher or other school personnel, social worker, or emergency medical services provider to report the abuse or neglect of a child within 48 hours to the local child protective services agency; such report shall be based upon reasonable cause to suspect that a child is neglected or abused, or upon observation of the child being	160.203(c) 164.512(a),(b),(c),(e),(f)	No	Both	HIPAA mores stringent for abuse and neglect reports, and disclosures to judicial proceedings and law enforcement agencies. Otherwise, state law more stringent.

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		subjected to conditions that are likely to result in abuse or neglect; if serious physical abuse or sexual abuse or assault are involved, a report must also be immediately made to the Division of Public Safety as well as the law enforcement agency having jurisdiction to investigate the complaint; also requires reports to the appropriate medical examiner in the case of suspected death due to child abuse or neglect; in such cases, the medical examiner shall make an investigation and report his findings to the police, the appropriate prosecuting attorney, and to the local child protective services agency; also authorizes photographs of visible trauma or x-ray to be taken of the child and submitted with any reports; any privilege between a professional person and his or her patient shall be abrogated for purposes of such reports; authorizes the local child protective services agency to conduct investigations of alleged neglect or abuse, and to issue subpoenas for witnesses and documents for such purposes; provides generally for the confidentiality of information reported, unless there are pending proceedings involving the alleged abuse or neglect.				
Child Abuse/ Neglect Index –	§ 49-2-813	Requires the DHHR to maintain a statewide child abuse and neglect	160.203(c) 164.512(a), (c), (f)	No	Both	HIPAA – As to de-identification

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De-identification; Disclosures		statistical index of all substantiated allegations of child abuse or neglect cases; prohibits anything within said statistical index from containing information of a specific nature that would identify individual cases or persons; requires the DHHR to provide copies of this statistical data to the State Police.				
Special Guardians to Consent to Treatment for Minors	§ 49-4-301	Authorizes a procedure whereby a special guardian may be appointed to consent to medical treatment for any person under the age of 18 when such minor is likely to suffer death, disability, disfigurement, or suffering due to the failure of the minor's parent, guardian, or custodian to consent to or authorize necessary medical treatment.	164.502(g)(3) 164.508 164.512(e)	No	State law	
Confidentiality of Juvenile Records - Uses, Disclosures	§ 49-5-101	Generally requires that all juvenile records maintained by the Division of Juvenile Services (DJS), the DHHR, a child agency or facility, a court, or a law enforcement agency must be kept confidential and not released to anyone, including any federal or state agency; except for adoption records, juvenile court records, records disclosing the identity of a person making a complaint of child abuse or neglect, and recorded or videotaped interviews (disclosure of which is governed by §62-6B-6), requires such records to be made available to the child and the parent whose rights have not been terminated, as well as the attorney of	164.502(g)(3) 164.508 164.512(a),(c),(e),(f) 160.203(b)	No	Both	State law requires consent to use or disclose PHI for payment and health care operations. HIPAA more stringent for abuse and neglect reports, and disclosures to judicial proceedings and law enforcement agencies. Otherwise, state law more stringent.

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		the child or parent; DJS may provide access to and the confidential use of a treatment plan, court records, or other juvenile records to an agency in another state that (1) performs the same functions as the DJS (2) has a reciprocal agreement with the state, and (3) has legal custody of the juvenile. Also requires release pursuant to written consent of the child or someone authorized to act upon the child's behalf, and pursuant to a court order; information related to child abuse or neglect proceedings is required to be made available to federal, state, or local agencies having a need for such information to carry out responsibilities under the law, to child abuse citizen review panels, to multi-disciplinary investigative and treatment teams, and to the court upon a finding that such records are necessary for determination of an issue pending in such tribunal.				
Emancipation of Children	§ 49-4-115	Provides that a child under the age of 18 (the year of majority in West Virginia) may petition the circuit court for emancipation at the age of 16; if granted, said emancipation provide the child with all the privileges, rights and duties of an adult, including the right of contract. shall	164.502(g)(3)	No	State law	
Interstate Compact	§ 49-8-2	SECTION NOT RECODIFIED IN 2015		SECTION NOT RECODIFIED IN 2015		

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on Juveniles						
Missing Children - Uses and Disclosures	§ 49-6-107	Provides that a law enforcement agency may obtain access to a child's dental records upon a written authorization of the parent, custodian, health care surrogate, or other legal entity authorized to release records of the missing child, or upon a court order; authorizes the law enforcement agency to send the dental records to the West Virginia Missing Children Information Clearinghouse.	164.508 164.512(e)	No	Both	HIPAA more stringent as to authorizations. Otherwise, state law more stringent.
Delegation of Care and Custody of a Child	§49-8-3 (online code not yet available)	Permits a parent or legal guardian of a child to delegate the temporary care and custody of a child with the assistance of a Qualified Nonprofit Organization for a period not to exceed one year. The parent or legal custodian may not delegate the performance or inducement of an abortion on or for the child.	164.502(g)(3) 164.506	No	State law	Limits parent or legal guardian's ability to delegate consent rights.
Minor Children – Caregivers Consent	§ 49-1-204 and § 49-1-206 § 49-2-701	Authorizes a caregiver to consent to health care and treatment on behalf of a minor; health care and treatment defined as developmental scanning, mental health care, ordinary medical and dental care, preventive care, and non-emergency diagnosis and treatment; excludes abortions.	164.502(g)(3) 164.506 164.508	No	Both	HIPAA more stringent as to all uses and disclosures. State law more stringent as to how a caregiver's appointed.
Judge Disability	§ 51-9-8	Authorizes the Governor to make such investigation as he or she shall deem necessary to determine whether to grant a judge the ability to retire based upon being physically or mentally incapacitated to perform the duties of his or her office.	164.512(d)	No	State law	

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Medical Professional Liability Actions - Uses and Disclosures	§ 55-7B-6a § 55-7B-7a	Requires any party to a medical professional liability action to provide access to medical records which are reasonably related to the plaintiff's claim; establishes a rebuttable presumption that information related to the following may not be introduced unless it specifically applies to the injured person or involves substantially similar conduct that occurred within one year of the particular incident involved: (1) state or federal survey, audit review, or other report of a health care provider or health care facility; (2) disciplinary actions against a health care provider's license, registration, or certification; (3) accreditation report of a health care provider or health care facility; and (4) assessment of a civil or criminal penalty.	164-512(a),(e)	No	Both	HIPAA more stringent for authorizations. Otherwise, State law more stringent.
Hospital Records - Subpoenas	§ 57-5-4b § 57-5-4c § 57-5-4d	Authorizes a hospital to respond to a Subpoena for hospital records by supplying such records in a sealed envelope, in lieu of personal appearance of the medical records custodian; provides for the opening of the sealed envelope only at the time of trial, deposition, or other hearing forming the basis of the subpoena; court, officer, body, or tribunal must first ascertain that either the records have been subpoenaed at the insistence of the patient or his counsel, or that the patient has consented to or waived any confidentiality in the records;	164.512(e) 160.203(b)	No	Both	State law appears to allow patient access to psychotherapy notes via subpoena. HIPAA more stringent for responding to subpoenas in judicial and administrative proceedings.

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		applies only in situations where the hospital is not a party or the place at which the cause of action is alleged to have arisen.				
Treatment of Minors for Addiction to Alcohol	§ 60-6-23	Authorizes any licensed physician to treat a minor, at his or her request, for addiction to alcohol without the knowledge or consent of the minor's parent or guardian.	164.502(g)(3)	No	State law	
Controlled Substances - Warrants, Subpoenas, Summonses	§ 60A-5-501 § 60A-5-502 § 60A-5-504	Authorizes law enforcement officials to execute search warrants, arrest warrants, subpoenas, and summonses in matters related to controlled substances; also authorizes professional licensing boards to issue subpoenas for such purposes; authorizes circuit courts to issue administrative inspection warrants related to issues involving controlled substances; authorizes professional licensing boards to exchange information with law enforcement agencies involving controlled substances.	164.512(a),(d),(e),(f)	No	State law	
Treatment of Minors for Addiction to Controlled Substances	§ 60A-5-504	Authorizes any licensed physician or other trained medical person to treat any minor, at his or her request, for addiction to controlled substances without the knowledge or consent of the minor's parent or guardian.	164.502(g)(3)	No	State law	
Controlled Substances - Research	§ 60A-5-508	Authorizes various State agencies to enter into contracts for research related to the use and effects of controlled substances; authorizes such agencies to allow researchers to maintain the confidentiality of individuals who are subjects of the	164.512(i) 160.203(b)	No	State law	Under state law, PHI not subject to disclosure in court proceedings or to law enforcement agencies.

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		research; in such circumstances, individual identification cannot be compelled in any civil, criminal, administrative, legislative, or other proceeding.				
Reporting Prescriptions for Controlled Substances	§ 60A-9-3 § 60A-9-4 § 60A-9-5	Creates Board of Pharmacy central repository (database) wherein information shall be reported within 24 hours for prescriptions for Schedule II, III, and IV controlled substances and opioid antagonists written or filled in this State; requires any medical services provider who dispenses or fills a prescription for a Schedule II, III, or IV controlled substance or opioid antagonist to report to database the provider's name, address, and DEA registration number; the name, address, and birth date of the patient; the name, quantity, and dosage of the controlled substance; the date prescription written and date filled; and the number of refills; if prescription to be picked up by another on behalf of patient, that person must provide a government issued photo identification card; provides that database information shall remain confidential except for inspection and review by the Board of Pharmacy, who shall issue reports to prescribers and dispensers identifying abnormal or unusual patient practices; access is also permitted to authorized members of state and federal law enforcement	160.203(c) 164.512(a),(b),(d),(f)	No	State law	

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		investigating a specific individual,, Chief Medical Examiner, licensing boards, and prescribers of controlled substances; creates Database Review Committee who may query database under parameters to be determined to identify specific, unusual prescribing or dispensing patterns; creates Database Advisory Committee to determine parameters for database access for Review Committee;				
Prescriber Requirement to Access Controlled Substances Database	§ 60A-9-5a	All practitioners with prescriptive or dispensing authority shall obtain and maintain online or other electronic access to the Controlled Substances Monitoring Program database for information regarding the specific patient, prior to first prescribing or dispensing a controlled substance, pain medication for chronic, nonmalignant pain where patient is not suffering from a terminal illness; database information shall be documented in the patient's chart. Licensing boards may not renew a practitioner's license without proof that the practitioner obtained and maintains access to the database.	164.512(a),	No	State law	See also § 16-5H-1
Methampheta-mine Eradication – Registration and Reporting	§ 60A-10-4 § 60A-10-8 § 60A-10-9 § 60A-10-15	Adds certain Schedule V controlled substances (ephedrine, pseudoephedrine, phenyl propanolamine) used in the manufacture of methamphetamine to the list of controlled substances, the sale of which must be reported to a	160.203(c) 164.512(a), (b), (f)	No	State law	

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		central repository maintained by the Board of Pharmacy; requires any pharmacy selling such drugs to report to a central repository maintained by the Board of Pharmacy the name, address, driver's license number, and quantity of such Schedule V substances purchased; requires any type of health professional, emergency medical services provider, or religious healer to report any injury resulting from exposure to methamphetamine within 48 hours to a law enforcement agency; requires authorized vendors of iodine matrix to keep a record as well as receipts of each purchaser of this chemical.				
Reporting Gunshot and Knife Wounds	§ 61-2-27	Requires any medical provider who provides medical treatment to a person for a gunshot wound, a knife wound, or any other wound caused by a sharp or pointed instrument, to report such wound to a law enforcement agency within the county of treatment; such reports are required only under circumstances which would lead a reasonable person to believe that a violation of the criminal laws has occurred.	160.203(c) 164.512(a),(b),(f)	No	State law	
Reporting Burns	§ 61-2-27a	Requires any health care provider who renders treatment to a person suffering from a burn caused by fire or chemicals to report such injury to the State Fire Marshal; such reports are required only where the circumstances give reasonable	160.203(c) 164.512(a),(b),(f)	No	State law	

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		cause to suspect that the injury occurred as a result of the commission or attempted commission of an arson.				
Central State Mental Health Registry - Uses and Disclosures	§ 61-7A-3 § 61-7A-4	Requires State Police, Department of Health and Human Resources, and West Virginia Supreme Court of Appeals to establish Central State Mental Health Registry containing names, addresses, dates of birth, and dates of commitment or adjudication of all persons (except those under fourteen years of age) who have been adjudicated to be mentally defective or who have been committed for treatment of a mental illness; authorizes all information within the Mental Health Registry to be transmitted to the National Instant Criminal Background Check System (NICBCS) and to County Sheriff; requires DHHR and circuit clerks to report all such adjudications and commitments to the Mental Health Registry; prohibits reporting of any information to the Mental Health Registry relating to any diagnosis or treatment provided; makes information within the Mental Health Registry confidential, except for reports to the NICBCS, and for purposes of determining eligibility to purchase and possess firearms.	160.203(c) 164.512(a), (f)	No	State law	Seeks to conform to another federal statute -- Brady Handgun Violence Prevention Act
Disclosure of Photographs of a Corpse or Person Being Provided	§ 61-8-30 (online code not yet available)	Prohibits first responders including law-enforcement officers, firefighters, and emergency medical personnel from photographing, filming,	164.506 164.508 164.512 (e), (f), and (i)	Yes	HIPAA	Preempted to the extent state law allows for disclosure for a “legitimate law

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Medical Care or Assistance		videotaping, recording, or otherwise reproducing the image of a human corpse or a person being provided medical care or assistance except for legitimate law-enforcement, public safety, health care, or insurance purpose, or for legal investigation or legal proceeding, or in accordance with a court order. Prohibits first responders from knowingly disclosing any such photograph, film, videotape, record, or other reproduction without prior written consent of the injured person, the person's next of kin if injured person cannot provide consent, or personal representative of a deceased person, unless disclosure is for one of the purposes identified above.				enforcement purpose, public safety purpose, healthcare purpose, insurance purpose, legal investigation, or legal proceedings," when any of the foregoing are not specifically authorized under HIPAA.
Payment for Forensic Medical Examinations	§ 61-8B-16	Provides that the victim of a sexual offense may obtain a forensic medical examination from a licensed medical facility, the cost of which shall be paid by the Prosecuting Attorneys Institute; prohibits any facility from collecting the cost of a forensic medical examination from the victim, but allows for non-forensic procedures and tests to be billed to the victim; states that victim need not cooperate with law enforcement officials as a condition of payment.	164.506 164.508	No	State law	
Reporting Violent or Unusual Deaths	§ 61-12-8	Requires any physician in attendance to report when any person dies from violence, apparent	160.203(c) 164.512(a),(b),(f),(g)	No	State law	

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		suicide, suddenly when in apparent good health, from some disease which might constitute a threat to public health, or in any suspicious, unusual, or unnatural manner to the local medical examiner or Chief Medical Examiner; requires reports of such deaths to be made immediately, and authorizes the local medical examiner or Chief Medical Examiner to take custody of the body; also requires any medical provider who treated the decedent prior to death to provide, upon request, all records pertaining to the decedent and the treatment rendered to the Chief Medical Examiner; requires a report of the death to be prepared and provided to the prosecuting attorney of the county in which the death occurred.				

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Autopsies of Decedents - Law Enforcement Uses and Disclosures	§ 61-12-10	Requires autopsy of decedent to be performed upon the request of the local prosecuting attorney or by the circuit court having criminal jurisdiction in the county of death; also authorizes the Chief Medical Examiner to perform autopsy when it is deemed advisable and in the public interest; requires the Chief Medical Examiner to release a report of the autopsy, upon request, to the prosecuting attorney; also authorizes the prosecuting attorney or other law enforcement officers to secure copies of records of all deaths investigated by the Chief Medical Examiner; authorizes the Chief Medical Examiner to release records to multi-disciplinary teams established to coordinate investigations of alleged child abuse offenses; requires the Chief Medical Examiner to report cases of sudden infant death syndrome to the Division of Maternal and Child Health; authorizes the Chief Medical Examiner to provide records of his investigation, upon request, to any court of law, or to the parties therein for whom the cause of death is a material issue.	160.203(c) 164.512(a),(b),(e),(f),(g)	Yes	Both	HIPAA preempted to the extent that the Chief Medical Examiner is authorized to release PHI on decedent to a court or to private litigants absent a court order or other compulsory process.

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Fatality and Mortality Review Team	§61-12A-1 Through §61-12A-4	Establishes the Fatality and Mortality Review Team (FMRT) to oversee and coordinate the examination, review, and assessment of certain suspect deaths; sets forth the advisory panels to be created; Authorizes the FMRT and advisory panels to request information and records to carry out its responsibilities including medical, dental, mental health, and substance abuse records; provides that proceedings, records, and opinions of the FMRT and advisory panels are confidential and are not subject to discovery, subpoena, or introduction into evidence in any civil or criminal proceeding and are exempt from disclosure under the Freedom of Information Act; members of the FMRT and advisory panels may not be questioned in any civil or criminal proceeding regarding information presented in or opinions formed as a result of a meeting of the FMRT	160.203(c) 164.512(a), (b), (c), (f), (g)	No	State	
Psychiatric/ Psychological Evaluation of Child Witness	§ 62-6B-3	Authorizes court to appoint a psychiatrist, psychologist, or clinical social worker with at least five (5) years of clinical experience to provide expert opinion as to whether	164.512(a), (e), (f)	No	State law	

SUBJECT	WV CODE	EFFECT ON PROTECTED HEALTH INFORMATION	HIPAA CITES	PREEMPTED	HIPAA OR STATE MORE STRINGENT AND/OR MORE DETAILED	COMMENTS
		a child witness in a criminal proceeding will suffer severe emotional harm, be unable to testify in the physical presence of the defendant, or be subject to undue influence or coercion; requires the opinion to be filed with the court at least thirty (30) days prior to the final hearing; requires the opinion to be provided to the defendant.				
Confidentiality of Recorded Interviews of Children	§62-6B-6 (online code not yet available)	Requires a court order to publish or duplicate recorded interviews of a child and makes all documentation related to such recorded interview confidential. For purposes of this section, recorded interviews include an interview of a child conducted by an employee or representative of a child advocacy center; a psychologist, psychiatrist, physician, nurse, social worker, or other person appointed by a court to interview the child; or a child protective services worker, law-enforcement officer, prosecuting attorney or other representative of his or her office, or other person investigating allegations of criminal behavior or behavior alleged to constitute abuse or neglect of a child. Authorizes access without a court order to a legal guardian, guardian, or custodian of the child if such person is not alleged to have been involved or engaged in conduct that may give rise to a judicial or	160.502(g)(3) 164.506 164.512(e), (f) 160.203(b)	No	State Law	

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		administrative proceeding and would not undermine or frustrate an ongoing provided. Authorizes reasonable access without a court order to psychologists, psychiatrists, physicians, nurses, and social workers who are providing services to the interviewed child.				
Polygraph Examinations of Sexual Offenders - Uses, Disclosures	§ 62-11D-2	Requires all convicted sexually violent predators and certain convicted sexual offenders to submit to periodic polygraph examinations as a condition to his or her probation, parole, or supervised release; allows such polygraph examinations to be used to determine compliance with conditions of supervision, including conditions related to treatment; results of the polygraph examination shall only be provided to the supervising entity and the defendant, and shall not be admissible in evidence or disclosed to any law enforcement agency or other party.	164.512(a), (e), (f)	No	State law	
Parole Board	§ 62-12-13	Requiring that Parole Board have access to a copy of an inmate's physical, mental or psychiatric examination	164.512(a)	No	State law	
Pre-Release Assessment of Sexual Offenders - Uses, Disclosures	§ 62-12-27	Requires Division of Corrections to perform an assessment of certain inmates convicted of sexual offenses prior to discharge from incarceration in order to determine the statistical risk of an additional offense being committed; the Division of	164.512(a), (e), (f)	No	State law	

SUBJECT	WV CODE	EFFECT ON PROTECTED HEALTH INFORMATION	HIPAA CITES	PREEMPTED	HIPAA OR STATE MORE STRINGENT AND/OR MORE DETAILED	COMMENTS
		Corrections shall forward the results of the assessment to the inmate's supervising entity.				
Treatment of Adult Offenders for Substance Abuse	§ 62-15-7 § 62-15-8 § 62-15-10	Authorizes the creation of drug courts, under which adult offenders can be diverted into drug treatment programs; requires any person wishing to participate in such diversion be assessed and diagnosed, the results of which shall be reported to the drug court with treatment recommendations; requires treatment programs to timely report the drug offender's progress or lack of progress in treatment; requires the drug offender to submit to frequent and random drug testing to monitor abstinence; requires the drug court to maintain privacy of all information regarding drug offender in accordance with federal and state confidentiality laws.	164.512(a) 164.512(e) 164.512(f)	No	State law	
Addiction Treatment Pilot Program	§ 62-15A-2 § 62-15A-3	Authorizes the DHHR to conduct a pilot program to provide addiction treatment, including medication-assisted treatment, to persons who are offenders within the criminal justice system. DHHR must prepare a report to include details regarding the results of the program including the number of participants and the number of participants who successfully complete the program.	164.512(b)	No	State law	

Discovery in Civil Cases	Rule of Civil Procedure 26	West Virginia Rule of Civil Procedure 26 permits discovery of all matters, not privileged, that are relevant to the subject matter involved in the pending action, whether they relate to the claim or the defense of the party seeking the discovery; it is not a ground for an objection that the information sought will be inadmissible at trial if the information appears reasonably calculated to lead to the discovery of admissible evidence.	164.512(e)	No	HIPAA	HIPAA more stringent as to uses and disclosures in administrative or judicial proceedings.
Physical and Mental Examinations in Civil Cases	Rule of Civil Procedure 35	West Virginia Rule of Civil Procedure 35 authorizes the court to order a party to submit to a physical or mental examination when the mental or physical condition of the party is in controversy; requires the report of such an examination to be provided to the person examined upon request; provides that by requesting and obtaining a report of the examination so ordered, the party examined waives any privilege it may have regarding the testimony of every other person who has examined or may thereafter examine the party in respect to the same mental or physical condition.	164.512(a),(e)	No	HIPAA	HIPAA more stringent as to uses and disclosures of PHI in administrative and judicial proceedings.
Subpoenas in Civil Cases	Rule of Civil Procedure 45	West Virginia Rule of Civil Procedure 45 generally provides for the issuance of subpoenas for witnesses and documents in civil actions; allows the person subject to the subpoena to seek a court to quash it on the grounds that the information sought is privileged or otherwise protected by law.	164.512(e)	No	HIPAA	HIPAA more stringent as to uses and disclosures of PHI in administrative or judicial proceedings.
Discovery in Criminal Cases	Rule of Criminal Procedure 16	West Virginia Rule of Criminal Procedure 16 provides that both the Defendant and the prosecuting attorney must allow discovery of any	164.512(e)	No	HIPAA	HIPAA more stringent as to uses and disclosures of PHI in administrative or

		results or reports of physical or mental examinations made in connection with a particular case.				judicial proceedings.
Subpoenas in Criminal Cases	Rule of Criminal Procedure 17	West Virginia Rule of Criminal Procedure 17 provides for the issuance of subpoenas for witnesses and documents.	164.512(e)	No	HIPAA	HIPAA more stringent as to uses and disclosures of PHI in administrative or judicial proceedings..