

## Appendix 6 - Confidentiality Protections in Illinois

There are extensive laws that apply to Illinois providers, payors, and others, establishing rights and obligations with respect to maintaining patient privacy, and confidentiality and security of patient health information. These laws drive health information exchange practices in Illinois and should be taken into account in discussing necessary information technology parameters and requirements for national electronic health information exchange.

The State of Illinois has obtained a thorough review and analysis of Illinois laws related to the use and disclosure of health information. This document, titled the State of Illinois Draft Preemption Analysis, was compiled in 2003 and contains an exhaustive list of state laws, some of which impact upon the analysis of the scenarios contained in the Illinois Interim Assessment of Variations Report. The document may be accessed on the State of Illinois Website at <http://www.illinois.gov/hipaa/>.

The Legal Working Group compiled the following partial list of the state and federal laws addressing confidentiality, privacy, and security of health information that most impact stakeholders in Illinois.

### (Confidentiality Laws)

*AIDS Confidentiality Act, 410 ILCS 305/1 et seq.*

*Alcoholism and other Drug Abuse and Dependency Act, 20 ILCS 301/1 et seq.*

*Child Care Act of 1969, 225 ILCS 10/1 et seq.* (applicable to childcare facilities).

*Community Living Facilities Code, 77 Ill. Adm. Code 370.1230* (Confidentiality - adopting the Mental Health and Developmental Disabilities Confidentiality Act confidentiality provisions).

*Confidentiality of Alcohol and Drug Abuse Records, 42 CFR Part 2.*

*Genetic Information Privacy Act, 410 ILCS 513/1 et seq.*

*Dental Care Patient Protection Act, 215 ILCS 109/1 et seq.* (a patient has the right to privacy and confidentiality).

*Early Intervention Services System Act, 325 ILCS 20/1 et seq.*

*Early Intervention Services System Act Regulations:*

*Rules Implementing the Early Intervention Services System Act*, 89 Ill. Adm. Code 500.155 (written consent regarding use and exchange of information).

*HIPAA Administrative Simplification Regulations*, 45 CFR Parts 160, 162), and 164.

*Hospital Licensing Act*, 210 ILCS 85/6.17 (protection of and confidential access to medical records and information).

*Hospital Licensing Regulations*, , 77 Ill. Adm. Code 250.1510 (provisions for maintenance, storage, responsibility, content, authentication, verification, confidentiality and security safeguards, indexing and preservation of medical records, and special record requirements for psychiatric service). Note that this law recommends that the unique confidentiality requirements of a psychiatric record, and requires that the unique confidentiality requirements of the alcoholism patient's records, be recognized and safeguarded in any unitized system.

*Illinois Constitution*, Article I, Section 6 (right to privacy)

*Illinois Public Aid Code*, 305 ILCS 5/1-1 *et seq.* (confidentiality and protection of records)

*Insurance Code, Article XL, Insurance Information and Privacy Protection*, 215 ILCS 5/1001 *et seq.* (standards for collection, use and disclosure of information gathered by insurers in connection with life, health, disability, property and casualty insurance transactions), including Article XL (Insurance Information and Privacy Protection), 215 ILCS 5/1001 *et seq.* (standards for the collection, use and disclosure of information gathered in connection with insurance transactions, including medical record information, and restrictions on disclosures without patient authorization and required form of authorization).

*Managed Care Reform and Illinois Patient's Rights Act*, 215 ILCS 134/1 *et seq.* (Right to privacy and confidentiality in health care.)

*Medical Patient Rights Act*, 410 ILCS 50/0.01 *et seq.* (Patient's right to privacy and confidentiality of records, including restrictions on disclosures by physicians, health care providers, health services corporations and insurance companies.)

*Medicare Conditions of Participation for Hospitals*, 42 CFR 482.13 (Patient's right to personal privacy and confidentiality of clinical records).

*Nursing Home Care Act*, 210 ILCS 45/1-1-1 *et seq.* (privacy and confidentiality of records)

*Nursing Home/Long Term Care Regulations:*



*Skilled Nursing and Intermediate Care Facilities Code*, 77 Ill. Adm. Code 300.1810 (Resident Record Requirements), 300.1820 (Content of Medical Records), 300.1840, 300.3320 (Confidentiality).

*Sheltered Care Facilities Code*, 77 Ill. Adm. Code 330.1710 (Resident Record Requirements), 330.4320 (Confidentiality).

*Illinois Veterans' Homes Code*, 77 Ill. Adm. Code 340.1800 (Resident Record Requirements), 340.1840 (Confidentiality of Resident's Records).

*Intermediate Care for the Developmentally Disabled Facilities Code*, 77 Ill. Adm. Code 350.1610 (Resident Record Requirements), 350.1630 (Confidentiality of Resident's Records).

*Long Term Care for Under Age 22 Facilities Code*, 77 Ill. Adm. Code 390.1610 (Resident Record Requirements), 390.1630 (Confidentiality of Resident's Records), 390.3320 (Confidentiality).

*Managed Care Reform and Patient Rights Act*, 215 ILCS 134/1 *et seq.* (right to privacy and confidentiality of records).

*Medical Patients Rights Act*, 410 ILCS 50/.01 *et seq.* (right to privacy and confidentiality of records).

*Medicare Conditions of Participation for Hospitals*, 42 CFR 482.13 (Patients' Rights).

*Mental Health and Developmental Disabilities Confidentiality Act*, 740 ILCS 110/1 *et seq.*

*Physician and Patient Privilege*, 735 ILCS 5/8-101. (We note that the courts have recently recognized the strong medical privacy law protections of this state law privilege. See, for example, the recent district and appellate decisions quashing an otherwise valid subpoena for sensitive non-party medical records in *Nat'l Abortion Fed'n v. Ashcroft*, 2004 U.S. Dist. LEXIS 1701 (N.D. Ill. Feb. 5, 2004) *aff'd Northwestern Memorial Hospital v. Ashcroft*, 362 F.2d 923 (7<sup>th</sup> Cir. 2004).

*Rules Implementing the Community Services Act*, 59 Ill. Adm. Code 132.20 (adopting Mental Health and Developmental Disabilities Confidentiality Act confidentiality provisions).

*Rules Implementing the Respite Program Act*, 89 Ill. Adm. Code 220.100

*Standards and Licensure Requirements for Community Integrated Living Arrangements*, 59 Ill. Adm. Code 115.250 (Individual rights and confidentiality - adopting Mental Health and Developmental Disabilities Confidentiality Act confidentiality provisions).

*Workers' Compensation Act*, 820 ILCS 305/1 *et seq.*

### **(State Licensure Laws)**

In addition to the above laws, the State's licensure laws that govern the various categories of health care providers in Illinois generally provide that unprofessional or unethical conduct (such as breaching patient privacy or confidentiality) may be grounds for disciplinary action, and the following specifically reference the provider's duty to maintain the confidentiality of patient information:

*Clinical Psychologist Licensing Act, 225 ILCS 15/1 et seq.*

*Clinical Social Work and Social Work Practice Act, 225 ILCS 20/1 et seq.*

*Illinois Physical Therapy Act, 225 ILCS 90/1 et seq.*

*Marriage and Family Therapy Licensing Act, 225 ILCS 55/1 et seq.*

*Professional Counselor and Clinical Professional Counselor Licensing Act, 225 ILCS 107/1 et seq.*

*Rules Implementing the Illinois Occupational Therapy Practice Act, 68 Ill. Adm. Code 1315.165.*

*Rules Implementing the Illinois Speech-Language, Pathology and Audiology Practice Act, 68 Ill. Adm. Code 1465.95.*

*Rules Implementing the Orthotics, Prosthetics and Pedorthics Practice Act, 68 Ill. Adm. Code 1325.65(a)(3).*

*Rules Implementing the Pharmacy Practice Act of 1987, 68 Ill. Adm. Code 1330.65.*

### **(Reporting Obligations and Confidentiality of Reports and Information)**

The laws addressing the mandatory and permissive reporting obligations of health care providers and others in Illinois contain confidentiality protections and limitations on the release of patient information, such as is provided in the following:

*Abused and Neglected Child Reporting Act, 325 ILCS 5 et seq.*

*Child Sexual Abuse Prevention Act, 325 ILCS 15 et seq.*

*Communicable Disease Report Act, 745 ILCS 45/0.01 et seq.*

*Control of Sexually Transmissible Diseases Code, 77 Ill. Adm. Code 693.100.*

*Domestic Abuse of Disabled Adults Intervention Act, 20 ILCS 2435 et seq.*

*Elder Abuse and Neglect Act, 320 ILCS 20/1 et seq.*

*High Blood Pressure Control Act, 410 ILCS 425/1 et seq.*

*HIV/AIDS Confidentiality and Testing Code, 77 Ill. Adm. Code 684.220.*

*HIV/AIDS Registry Act, 410 ILCS 310/1 et seq.*

*Illinois Adverse Health Care Events Reporting Law of 2005, 410 ILCS 522/10-1 et seq.*

*Illinois Sexually Transmissible Disease Control Act, 410 ILCS 325/1 et seq.*

*Lead Poisoning Prevention Code, 77 Ill. Adm. Code 845.20.*

*Reye's Syndrome Reporting Act, 410 ILCS 245/1 et seq.*

#### **(Special Protections for Research Uses and Disclosures)**

Department of Health and Human Services, Public Welfare, "Common Rule" Regulations, 45 CFR Part 46 (regulations for research involving human subjects conducted, supported or otherwise subject to regulation by federal agencies).

Food and Drug Administration, Department of Health and Human Services "Protection of Human Subjects" Regulations, 21 CFR Part 50 (regulations applicable to all clinical investigations regulated by the FDA and clinical investigations supporting applications for research or marketing permits for products regulated by the FDA).

Food and Drug Administration, Department of Health and Human Services "Institutional Review Boards" Regulations, 21 CFR Part 56 (IRB standards for review of clinical investigations subject to FDA jurisdiction).

HIPAA Privacy Rule, 45 CFR 164.512(i) (Standard: Uses and disclosures for research purposes, establishing conditions for permitted uses and disclosures per IRB/Privacy Board waiver of authorization (including waiver criteria and Common Rule IRB review procedures) and for preparatory reviews and on decedent's information).

HIPAA Privacy Rule, 45 CFR 164.508 (Uses and disclosures for which an authorization is required).

HIPAA Privacy Rule, 45 CFR 164.502(d) (Standard: Uses and disclosures of de-identified protected health information).

HIPAA Privacy Rule, 45 CFR 164.514(e)(1) (Standard: Limited data set).