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Owner: *David Behinfar: HCS Exec Dir Privacy*
Policy Area: *HIPAA - Privacy*
Policy Tag Groups:
Applicability: *UNC Health Care System (all owned and managed entities)*

Preemption of State Law

APPLICABILITY:

This policy applies to the following entities (collectively referred to as "UNC Health" in this policy):

✓ UNC Health Care System / UNC Medical Center*	✓ Johnston Health
✓ UNC Physicians Network	✓ Lenoir Memorial Hospital
✓ UNC Physicians Network Group Practices / UNC Physicians Group Practices II	✓ Margaret R. Pardee Memorial Hospital
✓ Rex Healthcare / Rex Hospital	✓ Nash Healthcare System/Nash Hospitals
✓ Chatham Hospital	✓ Wayne Memorial Hospital
✓ Caldwell Memorial Hospital	
✓ UNC Rockingham Health Care / UNC Rockingham Hospital	

***UNC Medical Center includes all UNC Hospitals' facilities and the clinical patient care programs of the School of Medicine of UNC-Chapel Hill (including UNC Faculty Physicians).**

I. Description

It is the policy of UNC Health to comply with those State Laws pertaining to privacy that are not preempted by HIPAA, and to otherwise comply with the HIPAA Privacy Regulations.

Included within the scope of this policy are the patient care programs of the UNC School of Medicine (UNC SOM). As a result, this policy shall apply to all UNC SOM personnel, including but not limited to faculty, staff, students, trainees, interns and volunteers who may be full-time, part-time, paid or unpaid who create, store, transmit, access or use any patient information in support of clinical purposes for UNC Health or any other healthcare entity.

II. Policy

- A. **Preemption in General.** If a standard under HIPAA is contrary to a provision of State Law, it preempts the provision of State Law unless:

1. The Secretary of the US Department of Health and Human Services determines that the provision of State Law is necessary for the following reasons:
 - a. To prevent fraud and abuse related to the provision of or payment for health care;
 - b. To ensure lawful state regulation of insurance and health plans;
 - c. For state reporting on health care delivery or costs;
 - d. For purposes of serving a compelling need related to public health, safety, or welfare.
Additionally, the Secretary must determine that the intrusion into privacy is warranted when balanced against the need to be served; or
2. The State Law is More Stringent than the Privacy Regulations;
3. The State Law provides for the reporting of disease or injury, child abuse, birth, or death, or for the conduct of public health surveillance, investigation, or intervention; OR
4. The State Law requires a health plan to report or provide access to information for the purpose of management audits, financial audits, program monitoring and evaluation, or the licensure or certification of facilities or individuals.

B. **Interpretation.** UNC Health will obtain assistance from legal counsel if a question exists regarding whether or not a specific State Law is preempted.

III. Definitions

More Stringent – means in the context of a comparison of a provision of state law and a standard, requirement, or implementation specification adopted under the Privacy Regulations, a state law that meets one or more of the following criteria:

1. With respect to a use or disclosure, the law prohibits or restricts a use or disclosure in circumstances under which such use or disclosure otherwise would be permitted under the Privacy Regulations, except if the disclosure is:
 - a. Required by the Secretary of Health and Human Services in connection with determining whether UNC Health Facility is in compliance with the Privacy Regulations; or
 - b. To the individual who is the subject of the individually identifiable health information.
2. With respect to the rights of an individual who is the subject of the individually identifiable health information, regarding access to or amendment of individually identifiable health information, permits greater rights of access or amendment, as applicable; provided that, nothing in the Privacy Regulations may be construed to preempt any state law to the extent that it authorizes or prohibits disclosure of PHI about a minor to a parent, guardian, or person acting in loco parentis of such minor.
3. With respect to information to be provided to an individual who is the subject of the individually identifiable health information about a use, a disclosure, rights, and remedies, provides the greater amount of information.
4. With respect to the form, substance, or the need for express legal permission from an individual, who is the subject of the individually identifiable health information, for use or disclosure of individually identifiable health information, provides requirements that narrow the scope or duration, increase the privacy protections afforded (such as by expanding the criteria for), or reduce the coercive effect of the circumstances surrounding the express legal permission, as applicable.
5. With respect to recordkeeping or requirements relating to accounting of disclosures, provides for the

retention or reporting of more detailed information or for a longer duration.

6. With respect to any other matter, provides greater privacy protection for the individual who is the subject of the individually identifiable health information.

State Law – means a constitution, statute, regulation, rule, common law, or other state action having the force and effect of law.

IV. References

45 C.F.R. §§ 160.201 – 160.205

V. Related Policies/Forms

None

Attachments

No Attachments

Approval Signatures

Step Description	Approver	Date
	Jerylyn Williams: Chief Audit & Compliance Ofcr	06/2020
SYSTEM Site Administrator	Emilie Hendee: HCS Attorney Sr	06/2020
	David Behinfar: HCS Exec Dir Privacy	06/2020

Applicability

Caldwell Memorial Hospital, Chatham Hospital, Johnston Health, Nash UNC Health Care, Pardee Hospital, UNC Health Care System, UNC Lenoir Health Care, UNC Medical Center, UNC Physicians Network, UNC Rex Healthcare, UNC Rockingham Health Care, Wayne Memorial Hospital