

WEST VIRGINIA PREEMPTION ANALYSIS CHART

SUBJECT	WV CODE	EFFECT ON PROTECTED HEALTH INFORMATION	HIPAA CITES	PREEMPTED	HIPAA OR STATE MORE STRINGENT	COMMENTS
Emancipation of Children	§ 2-3-1; § 49-7-27	A child is emancipated at 18. Child may petition court for emancipation at 16.	164.502(g)(3)	No	State law	
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(a)	No	State law	
Reporting Deafness to Commission for the Deaf	§ 5-14-5	Requires health care providers to report the name, age, and residence of persons who are deaf or hard-of-hearing to the Commission for the Deaf and Hearing-Impaired; requires the Commission to maintain complete register of persons who are deaf or hard-of-hearing; requires Commission to maintain the confidentiality of identifying information in the register, except that the Commission may make such identifying information available upon request to other government agencies in order to facilitate services to hearing-impaired clients.	164.512(b)	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 of a group health plan for public employees under the auspices of Public Employees Insurance Agency ("PEIA"); 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(a)	No	HIPAA	
Public Employees Insurance Agency Coverage of Certain Clinical Trials	§ 5-16-7d	Requires the Public Employees Insurance Agency ("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	
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(a)	No	HIPAA	

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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	
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	164.514(a)	No	Both	State law as to marital status. HIPAA as to other information.
Pharmaceutical Discount Health Plan	§ 5A-3C-5	Plans to provide discounted pharmaceuticals to low income, uninsured individuals	164.506 164.512(b)	No	HIPAA	

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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(g)	No	State law	
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),(l)	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	

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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	§ 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 recipients, and the incidences of illness, disease, accidents, and other causes leading to the need for medical care among the needy.	164.506 164.512(d)	No	HIPAA	

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Reporting of Abuse, Neglect, or Death of Elderly, Incompetents, Mentally Retarded	§ 9-6-8; § 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; generally provides for the confidentiality of records maintained by such homes or facilities for the elderly or mentally retarded; requires all mandatory reports of abuse or neglect to be made to Adult Protective Services (“APS”), as well as to the DHHR, law enforcement officials, and medical examiner, if appropriate; authorizes DHHR to issue administrative subpoena in order to obtain information regarding the location of any abuse or neglect matter.	164.512	No	HIPAA	
Medicaid Fraud Control Unit	§ 9-7-3	Generally authorizes the Medicaid Fraud Control Unit to investigate fraud, abuse, and other compliance issues in the Medicaid Program; authorizes issuance of subpoenas for witnesses and documents relevant to such investigation.	164.512(d)	No	HIPAA	

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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.	164.506; 164.512(e)	No	State law	Protects PHI of patient's family. Any interagency agreement used for disclosure must be a HIPAA compliant business associate agreement.
State Police Disability	§ 15-2-31; § 15-2A-1 1	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 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	164.512(a)	No	State law	

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State Police DNA Database	§ 15-2B-6; § 15-2B-10; § 15-2B-1 2	Requires the West Virginia State Police to obtain DNA samples from persons convicted of various criminal offenses, including murder, malicious wounding, stalking, assault, robbery, kidnaping, 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 generally; exceptions to confidentiality include disclosures for law enforcement identification purposes, judicial proceedings, population statistics, and identification research; also permits release of DNA samples without personal identifying information to any agency or entity with which the State Police contracts for administration or research related to the database.	164.512(a),(f)	No	HIPAA	

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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, 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 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;	164.512(a),(e),(f),(j)	No	State law	

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		requires State Police to distribute this information to local school boards, local law enforcement officers, local Child Protective Services Office, and local community or religious organizations providing services to youth.				
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 of 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.	164.512(a),(d), (e)	No	HIPAA	
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 unemancipated minor for counseling; permits the notification of parents or guardian to be waived if physician certifies in	164.502(g)(3)	No	State law	

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		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.				
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.	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; 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 upon whom an abortion has been performed in any legal proceedings arising under	164.512(a),(b)	No	Both	HIPAA more stringent for de-identification and authorizations. Otherwise State law more stringent

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Reporting of Infant Eye Inflammation	§ 16-3-8 § 16-3-9; § 16-3-10; § 16-3-11	this Act. 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.	164.512(a),(b)	No	State law	
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.	164.512(a),(b) 164.524	No	State law	

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AIDS-Related Reporting and Confidentiality	§ 16-3C-2; § 16-3C-3	Provides generally for the confidentiality of AIDS-related testing; authorizes certain exceptions to this confidentiality requirement involving treatment of the subject; protection of the health care workers, sexual partners, needle partners, funeral home workers, and others with a "need to know" for public health purposes; also authorizes disclosures pursuant to patient authorization, for organ and tissue donations, for program monitoring and evaluation, and pursuant to a court order; mandates certain disclosures involving individuals convicted of prostitution, sexual abuse, sexual assault, incest, or sexual molestation; in many of the aforementioned cases, the de-identification of the subject of the test must be maintained; also authorizes AIDS-related testing without the consent of the subject for the purpose of research, but requires de-identification in such cases.	164.506 164.508 164.510 164.514(a)	No	Both	State law mandates language prohibiting re-disclosure be included with certain disclosures; prohibits disclosures for payment purposes absent a patient release; prohibits disclosures to relatives or friends involved in care absent a patient release HIPAA more stringent for authorizations, de-identification, research; otherwise, state law more stringent.

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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 names of such afflicted individuals to remain confidential, except by order of the Bureau for Public Health, the patient, or by court order; requires certain students and school personnel to be tested for 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	164.512 (b)	No	State Law	
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	164.512(a),(b)	No	State law	

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		<p>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 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.).</p>				
Treatment of Minors for Venereal Disease	§ 16-4-10	<p>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.</p>	164.502(g)(3)	No	State law	
Reporting Syphilis Testing	§ 16-4A-1; § 16-4A-2; § 16-4A-3; § 16-4A-4	<p>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</p>	164.512(a),(b)	No	State law	

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		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).				
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.	164.508 164.512(g)	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 of Public Health to cause an investigation to be conducted to determine whether there are any grounds to suspend or revoke any certificate or license issued to emergency medical service personnel.	164.512(d)	No	State law	

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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; 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.	164.512(a),(b)	No	State law	
Reporting Cancers and Tumors	§ 16-5A-2a	Requires the Division of Health to establish a cancer and tumor registry;	164.512(b)	No	Both	HIPAA more stringent for de-identification. Otherwise, State law

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		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				more stringent.
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 publically 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(b)(2)	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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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, 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	

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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 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	164.510(b)(2)	No	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
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 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.	164.512(d),(e)	No	State law	

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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(b)(2)	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(b)(2)	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 Homes - Investigations, Inspections	§ 16-5E-5	Authorizes the Secretary of DHHR to investigate and inspect unlicensed health care homes, and to conduct private interviews with all residents of such homes.		No	State law	
Health Care Financial Disclosure	§ 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	164.512(a),(e) 164.514(a)	No	Both	HIPAA more stringent for de-identification. Otherwise, state law more stringent.

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		<p>organizations, and community mental health or mental retardation 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.</p>				
Open Hospital Proceedings	§ 16-5G-3; § 16-5G-4; § 16-5G-5	<p>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 an open meeting.</p>	164.512(a)	No	State law	

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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	

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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 Ombudsman - Investigations, Inspections, Subpoenas	§ 16-5L-5; § 16-5L-10; § 16-5L-11; § 16-5L-12; § 16-5L-13; § 16-5L-15	Authorizes the State Long-Term 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	164.508 164.512(a),(c),(d),(e) 164.514(a)	No	Both	HIPAA more stringent for authorization and de-identification. Otherwise, state law more stringent.

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		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.				
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	

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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 (b)(2)	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
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	164.512(d),(e)	No	State law	

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		necessary to enforce rules and standards applicable to Alzheimer's care units, including investigation of such units.				
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	
Reporting Certain Diseases in Newborns	§ 16-22-3	Requires hospitals and birthing centers to test newborns for phenylketonuria, galactosemia, hypothyroidism, and certain other diseases specified by the Public Health Commissioner; requires any positive test results to be reported to the Bureau of Public Health.	164.512(a),(b)	No	State law	
Reporting Hearing Impairments in	§ 16-22A-2	Requires physician and attendants of live birth to perform a test for hearing	164.512(a),(b)	No	State law	

SUBJECT	WV CODE	EFFECT ON PROTECTED HEALTH INFORMATION	HIPAA CITES	PREEMPTED	HIPAA OR STATE MORE STRINGENT	COMMENTS
Newborns		loss in the infant, unless the parents refuse such testing; authorizes the Secretary of DHHR to establish reporting requirements related to such testing.				
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.	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.	164.512(a),(b)	No	State law	

SUBJECT	WV CODE	EFFECT ON PROTECTED HEALTH INFORMATION	HIPAA CITES	PREEMPTED	HIPAA OR STATE MORE STRINGENT	COMMENTS
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 epidemiological studies involving veterans must be based upon the consent of the veteran; requires all reports to maintain the confidentiality of each veteran's identity.	164.508 164.512(b) 164.514(a)	No	Both	HIPAA more stringent for authorizations, de-identification. Otherwise, more stringent state law.
Disclosure of Health Care Records	§ 16-29-1; § 16-29-2	Requires the furnishing of a 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 a copy of such record; exception for psychiatric or psychological treatment; exception for treatment of minors for birth control, prenatal care, drug rehab, or venereal disease insofar as parents or	164.502(g)(j) 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 as to authorizations. State law preempted to the extent patient is allowed right to inspect records as well a copy; to the extent that patient must be provided access to psychiatric and psychological records

SUBJECT	WV CODE	EFFECT ON PROTECTED HEALTH INFORMATION	HIPAA CITES	PREEMPTED	HIPAA OR STATE MORE STRINGENT	COMMENTS
		guardians are concerned; exception for any records subpoenaed or otherwise requested through the court process; exception for AIDS-related records; authorizes provider to charge for all reasonable expenses incurred in complying, provided that the cost may not exceed 75 cents per page for copying and a search fee may not exceed \$10.00; fees may not be charged to indigent persons seeking records for claims under the Social Security Act; authorizes enforcement of patient right to access through court action.				during treatment (except psychotherapy notes); to the extent that fees that can be charged to patients for records are limited to the reasonable cost of copying supplies and labor.
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 health	164.512(a),(b)	No	HIPAA	

SUBJECT	WV CODE	EFFECT ON PROTECTED HEALTH INFORMATION	HIPAA CITES	PREEMPTED	HIPAA OR STATE MORE STRINGENT	COMMENTS
		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.				
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	
Uninsured and Underinsured Health Care Plans	§ 16-29F-1	Establishes community health plan for uninsured and underinsured individuals	164.506 164.512(b)	No	HIPAA	
Appointment of Health Care Decision-Makers	§ 16-30-4; § 16-30-6; § 16-30-8	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 surrogate; provides for a procedure to	164.506 164.508 164.510	No	Both	HIPAA more stringent as to uses and disclosures. State law more stringent to how a representative or surrogate is appointed.

SUBJECT	WV CODE	EFFECT ON PROTECTED HEALTH INFORMATION	HIPAA CITES	PREEMPTED	HIPAA OR STATE MORE STRINGENT	COMMENTS
		establish a decision-making surrogate in the absence of a living will or medical power of attorney.				
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.	164.512(a),(b)	No	State law	
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	164.512(d)	No		

SUBJECT	WV CODE	EFFECT ON PROTECTED HEALTH INFORMATION	HIPAA CITES	PREEMPTED	HIPAA OR STATE MORE STRINGENT	COMMENTS
		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.				
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),(b), (f)	No	State law	

SUBJECT	WV CODE	EFFECT ON PROTECTED HEALTH INFORMATION	HIPAA CITES	PREEMPTED	HIPAA OR STATE MORE STRINGENT	COMMENTS
Blood Alcohol Tests - Expungement	§17-C-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	164.508 164-530 (j)(2)	No	State	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 Examiner and to the West Virginia State Police.	164.512(a)	No	State law	

<p>Children's Body Mass Index- Reporting</p>	<p>§18-2-7a</p>	<p>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</p>	<p>164.512 (a),(b)</p>	<p>No</p>	<p>State</p>	
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SUBJECT	WV CODE	EFFECT ON PROTECTED HEALTH INFORMATION	HIPAA CITES	PREEMPTED	HIPAA OR STATE MORE STRINGENT	COMMENTS
Division of Vocational Rehabilitation - Uses and Disclosures	§ 18-10A-3; § 18-10A-10	Provide 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 persons receiving vocational rehabilitation, except for purposes directly connected with the administration of the program and in accordance with regulations to be promulgated.	164.506 164.508	No	HIPAA	
Reporting Traumatic Spinal Cord and Head Injuries	§ 18-10A-15	Requires the establishment of a central registry by the Division of Vocational Rehabilitation of persons who sustain spinal cord or severe head injuries other than disease; requires reporting of such traumatic spinal cord or head injuries to the central registry, including whether or not permanent disability results therefrom; reports are to be made by acute care facilities within seven days, any must include the name and residence of the person involved.	164.512(a),(b)	No	State law	

SUBJECT	WV CODE	EFFECT ON PROTECTED HEALTH INFORMATION	HIPAA CITES	PREEMPTED	HIPAA OR STATE MORE STRINGENT	COMMENTS
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.	164.512(a),(b)	No	State law	
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	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;	164.512(a)	No	State law	

SUBJECT	WV CODE	EFFECT ON PROTECTED HEALTH INFORMATION	HIPAA CITES	PREEMPTED	HIPAA OR STATE MORE STRINGENT	COMMENTS
		mandates coal mine operators to provide information to the Office for such purposes.				
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) 164.524	No	HIPAA	To the extent that patient may appeal denial of access

SUBJECT	WV CODE	EFFECT ON PROTECTED HEALTH INFORMATION	HIPAA CITES	PREEMPTED	HIPAA OR STATE MORE STRINGENT	COMMENTS
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 these entities.	164.512(l) 164.506	No	State law	

SUBJECT	WV CODE	EFFECT ON PROTECTED HEALTH INFORMATION	HIPAA CITES	PREEMPTED	HIPAA OR STATE MORE STRINGENT	COMMENTS
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.	164.512(a),(k)	No	HIPAA	
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)	No	HIPAA	

SUBJECT	WV CODE	EFFECT ON PROTECTED HEALTH INFORMATION	HIPAA CITES	PREEMPTED	HIPAA OR STATE MORE STRINGENT	COMMENTS
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; requires such facilities to provide health and medical services to inmates, including drug and alcohol counseling.	164.512(a), (k)	No	HI PAA	
Operation of Pinecrest Hospital	§ 26-5-1	Generally authorizes the State to operate Pine Crest Hospital in Beckley 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	
Reporting Tuberculosis and Related Involuntary Commitments	§ 26-5A-1; § 26-5A-4; § 26-5A-5; § 26-5A-5a	Requires the superintendent of each State tuberculosis institution to report the admission of any patient to the Department of Health within 10 days, provided that the name of a person so admitted shall not be made public or otherwise accessible to anyone except by order of the Department of Health, the patient, or court order; requires every physician and public	164.512(a),(b)	No	State law	

SUBJECT	WV CODE	EFFECT ON PROTECTED HEALTH INFORMATION	HIPAA CITES	PREEMPTED	HIPAA OR STATE MORE STRINGENT	COMMENTS
		health officer to report the name, age, sex, race, and address of every person having tuberculosis under his observation or care within 24 hours after diagnosis to the local health department; all reports to the local health department must be forwarded to the Department of Health within 24 hours; authorizes the Department of Health to petition circuit court for detention and commitment of a person suffering from tuberculosis if that person is determined to be a threat to public health.				
Operation of Denmar State Hospital	§ 26-6-1	Generally authorizes the State to operate Denmar State 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 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	164.506	No	HIPAA	

SUBJECT	WV CODE	EFFECT ON PROTECTED HEALTH INFORMATION	HIPAA CITES	PREEMPTED	HIPAA OR STATE MORE STRINGENT	COMMENTS
		clinical director having responsibility for decisions involving clinical and medical treatment of patients; the clinical director must be a duly-qualified licensed physician.				
Mental Health Hospitals - Inspections	§ 27-1A-6	Authorizes the Department of Health to inspect, license, and supervise any hospital, center, or institution which provides in-patient care and treatment to the mentally ill, mentally retarded, or both; also authorizes the Department 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.	164.512(a),(b) 164.506	No	State law	
Operation of Comprehensive Community	§ 27-2A-1	Authorizes the Department of Health to establish and operate comprehensive community mental	164.506	No	HIPAA	

SUBJECT	WV CODE	EFFECT ON PROTECTED HEALTH INFORMATION	HIPAA CITES	PREEMPTED	HIPAA OR STATE MORE STRINGENT	COMMENTS
Health/Mental Retardation Centers		health/mental retardation centers throughout the State; requires such centers to maintain accurate medical and other records for all patients receiving services.				
Mental Health Records - Uses and Disclosures	§ 27-3-1; § 27-3-2	Provides for the confidentiality of all communications and information obtained in the course of mental health treatment of a patient, including the fact that a person is or has received mental health 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 interest and disclosure outweigh the importance of maintaining confidentiality; exception to protect against a clear and substantial danger of imminent injury to patient or another; exception for treatment or internal review purposes; all other disclosures must be pursuant to an authorization signed by the patient; a health care provider may not condition mental health treatment upon receipt of such authorization unless the authorization is solely for treatment or payment purposes.	164.506 164.508 164.512(e) 164.514(a)	No	Both	State law more stringent in prohibiting disclosures for payment purposes absent a patient authorization; prohibiting disclosures to relatives or friends involved in care absent a patient authorization. HIPAA more stringent for authorization; de-identification.

SUBJECT	WV CODE	EFFECT ON PROTECTED HEALTH INFORMATION	HIPAA CITES	PREEMPTED	HIPAA OR STATE MORE STRINGENT	COMMENTS
Involuntary Hospitalization - Uses and Disclosures	§ 27-5-2; § 27-5-3; § 27-5-4	Generally provides for a process to obtain involuntary hospitalization of an individual who, because of his or her mental illness, is likely to cause serious harm to himself or others; authorizes court to order examinations of such individuals by physicians or psychologists, the results of which shall be provided to the court overseeing the involuntary commitment process; provides that medical evidence obtained pursuant to such examinations are not privileged information for purposes of any hearings involving involuntary hospitalization; provides for all proceedings to be held in chambers; provides for the reporting and recording of all proceedings involving involuntary hospitalization; requires all admissions to mental health facilities pursuant to these procedures to be reported to the Secretary of DHHR.	164.512(a),(b),(c),(j)	Yes	State law	Preempted to the extent mental health facilities must notify family or guardian of involuntary commitment admission. Patient must be given opportunity to object to such notification.

SUBJECT	WV CODE	EFFECT ON PROTECTED HEALTH INFORMATION	HIPAA CITES	PREEMPTED	HIPAA OR STATE MORE STRINGENT	COMMENTS
Mental Health Patient Rights - Uses and Disclosures	§ 27-5-9	Establishes general confidentiality requirements applicable to clinical records maintained by the Department of Health or its facilities for treatment involving mental illness, mental retardation, or addiction; prohibits release of such information by the Department except upon court order, to the attorney of the patient, or with the written consent of the patient or the patient's representative; requires every patient, upon admission to a facility, to be given a copy of the rights afforded under this statute.	164.506 164.508 164.512(e)	Yes	Both	State law more stringent in prohibiting disclosures for treatment and payment purposes absent patient's written authorization; prohibiting disclosures to relatives or friends involved in care absent patient's written authorization. Preempted to the extent that disclosures to patient's attorney are permitted without patient's written authorization.
Alternative Procedures for Involuntary Hospitalization – Uses and Disclosures	§ 27-5-11	Generally provides for alternative procedures that may be implemented in up to six judicial circuits 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, 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	164.512(e)	No	HIPAA	

SUBJECT	WV CODE	EFFECT ON PROTECTED HEALTH INFORMATION	HIPAA CITES	PREEMPTED	HIPAA OR STATE MORE STRINGENT	COMMENTS
Criminal Defendants - Competency Determinations	§ 27-6A-1; § 27-6A-2; § 27-6A-3; § 27-6A-4; § 27-6A-5; § 27-6A-8	In the context of competency proceedings involving criminal defendants, authorizes court to order examination of defendant by a psychiatrist and/or psychologist (including juvenile defendant); authorizes release of a report of such examination to be made available to the court; requires involuntary commitment of a defendant found incompetent, and requires a new review of competency to be performed every 6 months thereafter; requires court to be notified of any impending release of a committed defendant from custody to allow court to impose such conditions as are necessary to protect all safety of the public; requires all medical and psychological expenses incurred in such proceedings to be paid by the State.	164.512(a),(b),(e),(f),(j),(k)	No	State law	

SUBJECT	WV CODE	EFFECT ON PROTECTED HEALTH INFORMATION	HIPAA CITES	PREEMPTED	HIPAA OR STATE MORE STRINGENT	COMMENTS
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; (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.	164.512(a),(b),(e),(j)	No	State law	

SUBJECT	WV CODE	EFFECT ON PROTECTED HEALTH INFORMATION	HIPAA CITES	PREEMPTED	HIPAA OR STATE MORE STRINGENT	COMMENTS
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 mentally retarded.	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 potentially dangerous; such notice should be calculated to facilitate the speedy apprehension of the escaped patient.	164.506 164.512(a),(b)	No	State law	
Interstate Compact on the Mentally	§ 27-1 5-1	Establishes interstate compact dealing with individuals who have been	164.506 164.512(e),(k)	No	State law	

SUBJECT	WV CODE	EFFECT ON PROTECTED HEALTH INFORMATION	HIPAA CITES	PREEMPTED	HIPAA OR STATE MORE STRINGENT	COMMENTS
Disordered Offender		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 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	Authorizes a parent, guardian, committee, or other authority responsible for a person who has been declared mentally incompetent to petition a circuit court for sterilization of such incompetent person; requires the court to order a complete medical/social evaluation to be performed by two physicians, at least one of whom shall be qualified in the field of psychiatry, neurology, or	164.506 164.508 164.512(a)	No	State law	

SUBJECT	WV CODE	EFFECT ON PROTECTED HEALTH INFORMATION	HIPAA CITES	PREEMPTED	HIPAA OR STATE MORE STRINGENT	COMMENTS
		genetics; requires the results of this examination to be reported to the court.				
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	
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 mental retardation to be committed to, or retained by, the Commissioner of Corrections.	164.506 164.51 2(a),(e), (k)	No	State law	

SUBJECT	WV CODE	EFFECT ON PROTECTED HEALTH INFORMATION	HIPAA CITES	PREEMPTED	HIPAA OR STATE MORE STRINGENT	COMMENTS
Youthful Female Offenders - Examinations	§ 28-3-4	Requires every youthful female 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 mental retardation to be committed to, or retained by, the Commissioner of Corrections; requires each examination of a youthful female offender to be undertaken in the presence of a woman of good character and mature years.	164.506 164.512(a),(b),(e),(k)	No	State law	
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, mental retardation, or addiction of an inmate to the chief administrative officer of a	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	COMMENTS
		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 to seek the transfer of the inmate to another facility in order to obtain necessary treatment.				
State Boxing Commission - Examinations	§ 29-5A-1 8	Req u i re s 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-1-4	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	164.512(a) 164.524	No	State law	State law allows patient access to psychotherapy notes held by public body.

SUBJECT	WV CODE	EFFECT ON PROTECTED HEALTH INFORMATION	HIPAA CITES	PREEMPTED	HIPAA OR STATE MORE STRINGENT	COMMENTS
		exemption from disclosure shall not be construed as precluding an individual from inspecting or copying his or her own personal, medical, or similar file.				
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, Uses, Disclosures	§ 30-3-9; § 30-3-14; § 30-3-16	Authorizes the Board of Medicine to conduct investigations of physicians, podiatrists, and PA's 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 records; authorizes the Board to enter into a voluntary agreement with any physician, podiatrist, or PA who has reported his or her own participation in an alcohol or chemical dependency treatment program, and to maintain the confidentiality of such agreement	164.508 164.512(a),(b), (d),(e) 164.514(a)	No	Both	HIPAA more stringent for authorization and de-identification. Otherwise, state law more stringent.

SUBJECT	WV CODE	EFFECT ON PROTECTED HEALTH INFORMATION	HIPAA CITES	PREEMPTED	HIPAA OR STATE MORE STRINGENT	COMMENTS
		<p>as long as the practitioner is not otherwise subject to complaints and complies with any conditions imposed by the 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 report relevant facts about professional competency of any licensed practitioner to the Board.</p>				
Confidentiality of Peer Review Records	§ 30-3C-3	Requires that proceedings and records of a peer review organization to remain confidential and privileged	164.506	No	State law	State law prohibits disclosure in related civil actions.

SUBJECT	WV CODE	EFFECT ON PROTECTED HEALTH INFORMATION	HIPAA CITES	PREEMPTED	HIPAA OR STATE MORE STRINGENT	COMMENTS
		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 his or her own acts or omissions.				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	COMMENTS
Board of Dental Examiners - Investigations, and Reporting	§ 30-4A-7; § 30-4A-8; § 30-4A-9	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, misadventures, or other adverse occurrences; requires on-site inspections to be performed upon initial application, and thereafter at least once every five years for all permit holders except those designated as Class II; 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 five days, including the patient's name, age, address, and complete medical records.	164.512(b),(d)	No	State law	

SUBJECT	WV CODE	EFFECT ON PROTECTED HEALTH INFORMATION	HIPAA CITES	PREEMPTED	HIPAA OR STATE MORE STRINGENT	COMMENTS
Board of Dental Examiners - Investigations, Inspections	§ 30-4A-7; § 30-4A-8; § 30-4A-9	Authorizes the Board of Dental Examiners to investigate and inspect any dental practitioner who applies for or obtains a permit to administer general anesthesia or parenteral conscious sedation; requires such inspections to be performed upon initial application, and thereafter at least once every five years; requires all on-site inspections to be held during regular business hours and with at least 48 hours' notification.	164.512(b),(d)	No	State law	

SUBJECT	WV CODE	EFFECT ON PROTECTED HEALTH INFORMATION	HIPAA CITES	PREEMPTED	HIPAA OR STATE MORE STRINGENT	COMMENTS
Board of Pharmacy - Investigations, Uses, Disclosures	§ 30-5-1 b; § 30-5-7; § 30-5-7a; § 30-5-7b	Makes confidential PHI maintained by a pharmacist in the patient's record; permits release of such information only to the patient, to other health care providers where release is necessary to the patient's health and well being, to other persons or governmental agencies authorized by law to receive such information, to organizations engaged in peer review and utilization review, as authorized by the patient, or as required by court order; 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; requires all entities providing professional liability insurance to report to the Board any judgment, dismissal, or settlement of any civil action involving a licensed pharmacist; authorizes any person to report to the Board relevant facts about the professional competency of a licensed pharmacist; authorizes the Board to enter into a voluntary agreement with any licensed pharmacist who has reported his or her own participation in an alcohol or chemical dependency treatment program, and to maintain	164.506 164.508 164.512(a),(b),(d),(e) 164.514(a)	No	Both	State law requires patient authorization to use or disclose pharmacy records for payment purposes. HIPAA more stringent for authorization and de-identification

SUBJECT	WV CODE	EFFECT ON PROTECTED HEALTH INFORMATION	HIPAA CITES	PREEMPTED	HIPAA OR STATE MORE STRINGENT	COMMENTS
		<p>the confidentiality of such agreement as long as the pharmacist is not otherwise subject to complaints and complies with any conditions imposed by the Board; requires the Board to report annually to the Legislature regarding such voluntary and confidential arrangement, but prohibits disclosure of any personally identifiable information; provides that any restrictions on the disclosure of confidential information do not apply in any investigation or proceeding by the Board, a medical peer review committee, or a hospital governing board with respect to relevant medical records.</p>				

SUBJECT	WV CODE	EFFECT ON PROTECTED HEALTH INFORMATION	HIPAA CITES	PREEMPTED	HIPAA OR STATE MORE STRINGENT	COMMENTS
Collaborative Pharmacy Practice – Uses and Disclosures	§ 30-5-27	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, 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	164.506	No	State law	

SUBJECT	WV CODE	EFFECT ON PROTECTED HEALTH INFORMATION	HIPAA CITES	PREEMPTED	HIPAA OR STATE MORE STRINGENT	COMMENTS
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 proceedings of the Board involving disciplinary actions shall be open to the public, except for medical records of individual patients.	164.512(a),(b),(d),(e)	No	State law	

SUBJECT	WV CODE	EFFECT ON PROTECTED HEALTH INFORMATION	HIPAA CITES	PREEMPTED	HIPAA OR STATE MORE STRINGENT	COMMENTS
Board of Osteopathy - Disclosures	§ 30-14A-1	Requires any health care facility to report to the Board of Osteopathy any formal disciplinary procedure undertaken involving an osteopathic physician assistant, and to make related records available.	164.512(b),(d)	No	State law	
Board of Chiropractic - Investigations, Uses, Disclosures	§ 30-16-5; § 30-16-8a; § 30-16-11; § 30-16-1 2; § 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.	164.512(a),(b),(d),(e)	No	State law	

SUBJECT	WV CODE	EFFECT ON PROTECTED HEALTH INFORMATION	HIPAA CITES	PREEMPTED	HIPAA OR STATE MORE STRINGENT	COMMENTS
Board of Physical Therapy - Investigations, Subpoenas	§ 30-20-5; § 30-20-11	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 documents related to these purposes.	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)	No	State law	
Radiologic Technology Board - Investigations, Subpoenas	§ 30-23-5; § 30-23-11	Authorizes the Radiologic Technology Board to undertake investigations related to the licensure of radiology technicians; authorizes the Board to issue subpoenas for witnesses and documents related to these purposes.	164.512(b),(d)	No	State law	
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.	164.512(b),(d)	No	State law	

SUBJECT	WV CODE	EFFECT ON PROTECTED HEALTH INFORMATION	HIPAA CITES	PREEMPTED	HIPAA OR STATE MORE STRINGENT	COMMENTS
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.	164.51 2(b),(d)	No	State law	
Board of Social Work Examiners - Uses, Disclosures, Subpoenas	§ 30-30-2; § 30-30-5	Authorizes the Board of Social Work Examiners to issue subpoenas for witnesses and documents relevant to the licensure of social workers; authorizes any person with knowledge relating to the competency of a social worker to report such information to the Board; requires entities to report disciplinary actions involving social workers to the Board; requires entities providing professional liability insurance to social workers to report any settlements or awards involving social workers to the Board; makes confidential any communication between a patient and a social worker; exception based upon the written consent of the patient; exception when the communication reveals the contemplation of a crime or harmful act; exception when otherwise required by law; exception when a patient initiates formal charges against a social worker; exception when a minor has been a victim of a crime.	164.512(a),(c), (d),(e) 164.508	Yes	Both	State law requires a patient consent to use or disclose PHI for treatment, payment, and health care operations. State law preempted to the extent that disclosure of a communication contemplating a crime is permitted when there is not a serious threat to health or safety.

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Board of Examiners in Counseling - Uses, Disclosures, Subpoenas	§ 30-31-1 0; § 30-31-13	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.	164.508 164.512(d),(e)	No	State law	State law requires consent to use or disclose PHI for treatment, payment, and health care operations.
Board of Speech Pathology and Audiology - Investigations, Subpoenas	§ 30-32-1 0; § 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.	164.512(b),(d)	No	State law	

SUBJECT	WV CODE	EFFECT ON PROTECTED HEALTH INFORMATION	HIPAA CITES	PREEMPTED	HIPAA OR STATE MORE STRINGENT	COMMENTS
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.	164.512(a)	No	State law	

SUBJECT	WV CODE	EFFECT ON PROTECTED HEALTH INFORMATION	HIPAA CITES	PREEMPTED	HIPAA OR STATE MORE STRINGENT	COMMENTS
Small Employer Health Plans	§ 33-16D-15	Creation of health plans for small employers under auspices of PEIA	164.506 164.512(b)	No	HIPAA	
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 examination of the HMO; exception	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.

SUBJECT	WV CODE	EFFECT ON PROTECTED HEALTH INFORMATION	HIPAA CITES	PREEMPTED	HIPAA OR STATE MORE STRINGENT	COMMENTS
		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; § 33-25C-6	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.	160.203(d) 164.506 164.508 164.512(a),(e)	No	HIPAA	

SUBJECT	WV CODE	EFFECT ON PROTECTED HEALTH INFORMATION	HIPAA CITES	PREEMPTED	HIPAA OR STATE MORE STRINGENT	COMMENTS
Prepaid Health Service Organizations - Uses, Disclosures, Examinations	§ 33-25D-1 1; § 33-25D-1 8; § 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 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.	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 stringent.

SUBJECT	WV CODE	EFFECT ON PROTECTED HEALTH INFORMATION	HIPAA CITES	PREEMPTED	HIPAA OR STATE MORE STRINGENT	COMMENTS
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	164.512(a)	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 TPA's to provide access to the Commissioner of all books and records maintained by the TPA for purposes of examination, audit, and 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.	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.
Model Health Plan for Uninsurable Individuals	§ 33-48-2	Creates a model health plan for uninsurable individuals as public corporation within State Department of Tax and Revenue.	164-506 164-512(b)	No	HIPAA	

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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	

SUBJECT	WV CODE	EFFECT ON PROTECTED HEALTH INFORMATION	HIPAA CITES	PREEMPTED	HIPAA OR STATE MORE STRINGENT	COMMENTS
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	
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	
Domestic Violence Fatality Review Team - Investigations	§ 48-27A-1	Requires establishment of a Domestic Violence Fatality Review Team under the Chief Medical Examiner; requires the Team to review deaths resulting from suspected domestic violence to identify trends, patterns, and risk factors; requires the Team to submit an annual report to the Legislature concerning its activities; prohibits the Team from calling witnesses or taking testimony from individuals involved in the investigation of a domestic violence fatality, or otherwise contacting family members; provides that the proceedings and records of the Team are confidential, and are not subject to discovery, subpoena, or introduction into evidence in any civil	164.512(b)	No	State law	

SUBJECT	WV CODE	EFFECT ON PROTECTED HEALTH INFORMATION	HIPAA CITES	PREEMPTED	HIPAA OR STATE MORE STRINGENT	COMMENTS
		<p>or criminal proceeding; also provides that no Team member may be questioned in any civil or criminal proceeding regarding information presented in or opinions formed as a result of a meeting of the Team.</p>				
<p>Domestic Violence Shelters - Uses and Disclosures</p>	<p>§ 48-26-701</p>	<p>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; 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.</p>	<p>164.506 164.508 164.512(a), (c), (e),(j)</p>	<p>No</p>	<p>State law</p>	<p>State law requires patient consent for any disclosure of shelter records for payment purposes.</p>

SUBJECT	WV CODE	EFFECT ON PROTECTED HEALTH INFORMATION	HIPAA CITES	PREEMPTED	HIPAA OR STATE MORE STRINGENT	COMMENTS
Reporting of Congenital Deformities	§ 49-4-4	Requires a physician, midwife, or other person attending the birth of a child with congenital deformities to report such to the Bureau of Public Health within 30 days; requires such reports to be used solely by the DHHR, and not be open for public inspection.	164.512(a),(b)	No	State law	
Juvenile Commitment Proceedings and Records – Uses and Disclosures	§ 49-5-13; § 49-5-13a; § 49-5-17	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, 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	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 requirements of 45 C.F.R. § 164.512(e)

SUBJECT	WV CODE	EFFECT ON PROTECTED HEALTH INFORMATION	HIPAA CITES	PREEMPTED	HIPAA OR STATE MORE STRINGENT	COMMENTS
Multidisciplinary Teams for Abused and Neglected Children - Uses and Disclosures	§ 49-5D-2 § 49-5D-3	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; requires state, county, and local agencies to provide such treatment teams with any information requested in writing as allowable by law or upon receipt of an order of the circuit court; requires such treatment teams to maintain the confidentiality of all such information received.	164-51 2(a), (b),(c)	No	State law	

SUBJECT	WV CODE	EFFECT ON PROTECTED HEALTH INFORMATION	HIPAA CITES	PREEMPTED	HIPAA OR STATE MORE STRINGENT	COMMENTS
Child Fatality Review Team - Investigations	§ 49-5D-5	Requires the establishment of a Child Fatality Review Team under the Chief Medical Examiner; requires the Team to review all deaths of children under the age of 18 years to identify trends, patterns, and risk factors; requires the Team to submit an annual report to the Legislature concerning its activities; prohibits the Team from calling witnesses or taking testimony from individuals involved in the investigation of a child fatality, or otherwise contacting family members; provides that the proceedings and records of the Team are confidential, and are not subject to discovery, subpoena, or introduction into evidence into any civil or criminal proceeding; also provides that no member of the Team may be questioned in any civil or criminal proceeding regarding information presented in or opinions formed as a result of a meeting of the Team.	164.512(b)	No	State law	
Medical Care of Juveniles in Custody	§ 49-5e-6	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	§ 49-6-1	Authorizes any reputable person who believes that a child is neglected or	164.512(b),(c), (e),(j)	No	State law	

SUBJECT	WV CODE	EFFECT ON PROTECTED HEALTH INFORMATION	HIPAA CITES	PREEMPTED	HIPAA OR STATE MORE STRINGENT	COMMENTS
Proceedings		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.				
Reporting Child Abuse and Neglect	§ 49-6A-2	Requires any medical, dental, or mental health professional, 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 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	164.502(g)(3) 164.512(a),(b), (c),(e),(f),(j),(k)	No	Both	HIPAA mores stringent for abuse and neglect reports, and disclosures to judicial proceedings and law enforcement agencies. Otherwise, state law more stringent.

SUBJECT	WV CODE	EFFECT ON PROTECTED HEALTH INFORMATION	HIPAA CITES	PREEMPTED	HIPAA OR STATE MORE STRINGENT	COMMENTS
		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.				
Special Guardians to Consent to Treatment for Minors	§ 49-6B-1	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	§ 49-7-1	Generally requires that all juvenile records maintained by the Division of Juvenile Services, the DHHR, a child agency or facility, a court, or a law enforcement agency must be kept confidential and not released to	164.502(g)(3) 164.508 164.512(a),(c),(e),(f)	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

SUBJECT	WV CODE	EFFECT ON PROTECTED HEALTH INFORMATION	HIPAA CITES	PREEMPTED	HIPAA OR STATE MORE STRINGENT	COMMENTS
		<p>anyone, including any federal or state agency; except for adoption records, juvenile court records, and records disclosing the identity of a person making a complaint of child abuse or neglect, 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 the child or parent; 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 the Child Fatality Review Team, to child abuse citizen review panels, to multi-disciplinary investigative and treatment teams, and to the grand jury, circuit court, or family court based upon a finding that such records are necessary for determination of an issue pending in such tribunal.</p>				<p>judicial proceedings and law enforcement agencies. Otherwise, state law more stringent.</p>
<p>Emancipation of Children</p>	<p>§ 49-7-27</p>	<p>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 shall</p>		<p>No</p>	<p>State law</p>	

SUBJECT	WV CODE	EFFECT ON PROTECTED HEALTH INFORMATION	HIPAA CITES	PREEMPTED	HIPAA OR STATE MORE STRINGENT	COMMENTS
		provide the child with all the privileges, rights and duties of an adult, including the right of contract.				
Interstate Compact on Juveniles	§ 49-8-2	Provides for the appointment of an administrator to act as a contact person with respect to issues involving delinquent juveniles who may require services in another state; provides that a delinquent juvenile may be transferred to another state for care, treatment, and rehabilitation if the juvenile court determines it to be more appropriate, and if the parent, guardian, person, or agency entitled to legal custody consents to such care, treatment, and rehabilitation in another state.	164.506 164.508 164.512(b)	No	State law	
Missing Children - Uses and Disclosures	§ 49-9-9	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.	164.508 164.51 2(e),(j)	No	Both	HIPAA more stringent as to authorizations. Otherwise, state law more stringent.

SUBJECT	WV CODE	EFFECT ON PROTECTED HEALTH INFORMATION	HIPAA CITES	PREEMPTED	HIPAA OR STATE MORE STRINGENT	COMMENTS
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),(e)	No	State law	

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Medical Professional Liability Actions - Uses and Disclosures	§ 55-7B-6a	Requires any party to a medical professional liability action to provide access to medical records which are reasonably related to the plaintiff's claim.	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; 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.	164.512(e) 164.524	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.
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	

SUBJECT	WV CODE	EFFECT ON PROTECTED HEALTH INFORMATION	HIPAA CITES	PREEMPTED	HIPAA OR STATE MORE STRINGENT	COMMENTS
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), (c), (d),(e)	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 research; in such circumstances, individual identification cannot be compelled in any civil, criminal, administrative, legislative, or other proceeding.	164.512(i)	No	State law	Under state law, PHI not subject to disclosure in court proceedings or to law enforcement agencies.

SUBJECT	WV CODE	EFFECT ON PROTECTED HEALTH INFORMATION	HIPAA CITES	PREEMPTED	HIPAA OR STATE MORE STRINGENT	COMMENTS
Reporting Prescriptions for Controlled Substances	§ 60A-9-3; § 60A-9-4; § 60A-9-5	Requires the Board of Pharmacy to establish a central repository wherein information shall be reported regarding prescriptions for Schedule II, III, and IV controlled substances 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 to report to this repository 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 of the transaction; and the number of refills; provides that such information shall remain confidential, and open to inspection by the Board of Pharmacy or the West Virginia State Police for law enforcement purposes.	164.512(a),(b),(d),(f)	No	State law	

Methamphetamine Eradication – Registration and Reporting	§ 60A-9-4; § 60A-9-5; § 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 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	164.512(a), (b), (f), (j)	No	State law	
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.	164.512(a),(b), (f)	No	State law	

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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 cause to suspect that the injury occurred as a result of the commission or attempted commission of an arson.	164.512(a),(b),(f)	No	State law	
Payment for Forensic Medical Examinations	§ 61-8B-16	Provides that anyone who has been the victim of a sexual assault may obtain a forensic medical examination from a licensed medical facility, the cost of which shall be paid by funds made available from the Prosecuting Attorney's Institute; prohibits any facility from collecting the cost of a forensic medical examination from the victim.	164.506	No	State law	

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Reporting Violent or Unusual Deaths	§ 61-12-8	Requires any physician in attendance to report when any person dies from violence, apparent 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.	164.512(a),(b),(f),(g)	No	State law	
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	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.

SUBJECT	WV CODE	EFFECT ON PROTECTED HEALTH INFORMATION	HIPAA CITES	PREEMPTED	HIPAA OR STATE MORE STRINGENT	COMMENTS
		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.				
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	Rule of Civil Procedure 35	West Virginia Rule of Civil Procedure 35 authorizes the court to order a	164.512(a),(e)	No	HIPAA	HIPAA more stringent as to uses and disclosures of PHI in administrative and

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Examinations in Civil Cases		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.				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 results or reports of physical or mental examinations made in connection with a particular case.	164.512(e)	No	HIPAA	HIPAA more stringent as to uses and disclosures of PHI in administrative or judicial proceedings.

SUBJECT	WV CODE	EFFECT ON PROTECTED HEALTH INFORMATION	HIPAA CITES	PREEMPTED	HIPAA OR STATE MORE STRINGENT	COMMENTS
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..