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## - HIPAA Preemption Analysis of State Privacy Laws

### - **Background:**

- HIPAA's privacy regulations set the "floor" for compliance - that is, they do not preempt state laws that are more stringent than the federal requirements. As a result, if a state law is not preempted, pharmacies are required to maintain compliance with the state law requirement in addition to the HIPAA privacy regulations. Non-preempted state laws may necessitate programmatic changes to pharmacy management systems, a revised notice of privacy practices, differing practices with respect to minors' prescription records, and state-specific procedures.

- Unlike a typical survey of state law, a pharmacy-specific survey and analysis for HIPAA purposes require knowledge of the HIPAA requirements to determine whether a state law is applicable, and whether it is stringent than, and/or "contrary to" the HIPAA privacy standards. Moreover, to conduct this survey effective knowledge of the privacy regulations' impact on specific pharmacy operations is essential.

### - **Additional Infor**

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## HIPAA Preemption Analysis of State Privacy Laws

### Project Funding

Funding for this legal analysis was provided, in part, by many community pharmacy companies and a generous grant from the Community Pharmacy Foundation.



The NACDS Foundation requested that pharmacy companies contribute based upon the number of states in which the company operates:

- 1-9 states: \$2,000 per state
- 10-19 states: \$25,000 total
- 20+ states: \$50,000 total

The NACDS Foundation is still taking contributions to cover the costs of the analysis, updating and maintaining the analysis in subsequent years. Contributions do not have to follow the suggested amounts, any contribution would be helpful.

If you are willing to help fund this project, please email [Joyce Garlington](#) at the NACDS Foundation and include the following in your email:

- Company name
- Amount of commitment
- Contact person's name and contact information

Contributions should be payable to "NACDS Foundation" and may be sent to:  
 NACDS Foundation  
 P.O. Box 1417-D49  
 Alexandria, VA 22313-1480

### Registration Form

Name:

Title:

Company:

Email Address:

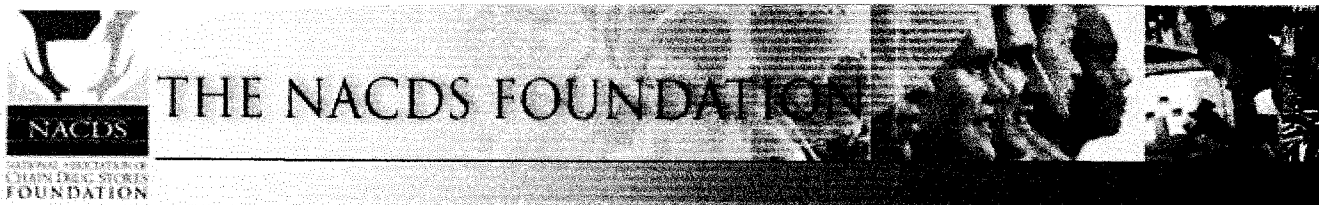
Is your company/organization

- A chain pharmacy (4 or r
- An independent pharmac
- Other:

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I read and understand the HI  
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- I Agree \*Required
- I Disagree



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## HIPAA Preemption Analysis of State Privacy Laws

Mintz Levin has compiled all privacy and confidentiality laws that govern pharmacies, including statutes, regulations, court decisions, and attorney general opinions. Mintz Levin reviewed all laws that are relevant to the requirements of the HIPAA privacy regulations, including but not limited to the following areas:

- individual permissions (authorization, etc.);
- individual rights such as access, amendment, confidential communications, accounting of disclosures, and notices;
- use and disclosure restrictions;
- patient communications (e.g., refill reminders, marketing, log books, research recruitment, etc.);
- business associate requirements;
- disclosures to third parties; and
- record retention requirements.

Mintz Levin has also researched state laws regarding the treatment of minors and addressed such issue: minor may provide lawful consent to treatment, the rules regarding emancipation, and whether a pharr disclose to a parent, guardian or other lawful representative a minor's records related to treatments for minor may provide lawful consent.

In addition, Mintz Levin has attempted to confirm its research findings with each state's Board of Pharm other agencies charged with enforcement of the applicable statutes or regulations.

After compiling this information, Mintz Levin performed a preemption analysis and is presenting its findi matrices and easy-to-follow narratives for each of the 50 states plus DC and Puerto Rico.



### Additional Infor

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## HIPAA Preemption Analysis of State Privacy Laws

Alabama

**Legal Disclaimer.** The analysis is provided for general education and information, and is not intended to be legal advice. The authors have attempted to assure that the information presented in the analysis is accurate as of the date of publication. However, the HIPAA privacy standards and state privacy standards are voluminous, vague, and subject to change, and the applicability or inapplicability of a particular standard depends upon the precise factual circumstances. Contact an attorney at Mintz Levin or another experienced privacy attorney to discuss legal advice regarding implementation of the HIPAA requirements as they relate to your unique

### Summary Docu

- [Introduction - HIPAA Preemption Analysis Privacy Laws](#)
- [Overview Chart](#)
- [Complete List of Provisions](#)
- [HIPAA Parent-Mir](#)

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[http://meetings.nacds.org/NACDSfoundation/2002/anylas\\_agreement.htm](http://meetings.nacds.org/NACDSfoundation/2002/anylas_agreement.htm)

3/10/2003

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