

COMPARATIVE HEALTH PRIVACY LAW MATRIX

This template has been developed to assist the State of Washington compare state and federal Health Information Privacy laws. Specifically, the matrix will assist with our pre-emption analysis of the Health Insurance Portability and Accountability Act (HIPAA). HIPAA sets a national “floor” or minimum level of privacy protection for health information. State law that sets a higher standard remains valid, while state law that sets a lower standard than HIPAA is superceded. Any state law that is both contrary to and more stringent than HIPAA must be submitted to the Secretary of HHS for a decision about which law prevails.

The Matrix is designed to be used as a template for comparison of other state’s laws to facilitate a national view, using the same categories, of where state law and HIPAA intersect. The matrix is currently divided into three sections, each containing a word table.

INDEX: The first table contains the standard categories or terms down the left side, and the citation to HIPAA and state law in the next columns. Once completed, the citations will be color coded (probably red, yellow, green) to indicate which state laws we believe are superceded by HIPAA and which state laws remain in effect.

TERMS COMPARISON: The second table lists the same standard categories, the HIPAA and state law citations, and brief descriptions of these provisions.

CONTEXT SPECIFIC STATE LAW: The third table contains state laws that are not comprehensive privacy laws, but have smaller or some provision related to health information privacy. This table is in alphabetic order by context specific information with HIPAA provision highlighted in the next column.

FEDERAL LAW: A fourth table may be added to compare additional federal law that contains comprehensive privacy protections. It will be laid out similar to Section two and may include such statutes and regulations related to HIVAIDS records, mental health records, drug and alcohol treatment records, domestic violence records, and Medicaid participant records.

Health Privacy Matrix - INDEX

Term	HIPAA Privacy 45 CFR §164	Uniform Health Care Information Act - RCW 70.02	Patient Bill of Rights (GLB) RCW 48.43 / WAC 284-04	Governor's Exec Order EO 00-03
APPLICABILITY				
Applicable Entity	§160.102; 164.104; 500	§70.02.010(5) (7) (13)	§48.43.505; 284-04-120	00-03
Applicable Information	§164.501	§70.02.010(6)	284-04-120 (21)(23)	00-03
Applicable Individuals	§164.501; 502(f)(g)	§70.02.010 (10); .130	284-04-120 (6)(9)	00-03
Minors	§160.202; 164.502(g)		284-04-510 (3)	
USE AND DISCLOSURE RESTRICTIONS				
General	§164.502(a)	§70.02.020	§48.43.500; 021; 284-04-505	00-03.1, .2, .3
Minimum Necessary	§164.502(b)	§70.02.050		00-003.4
De-Identified	§164.514			
Permitted - No Restrictions	§164.512	§70.02.050	284-04-505(2); 284-04-510	
Permitted - Agree or Object	§164.510	§70.02.050(c)(e)(j)	284-04-505(2)	
Permitted - Consent Required	§164.506			
Permitted - Authorization Required	§164.508	§70.02.030	284-04-505; 515; 605	
Research	§164.512			
Marketing or Fundraising	164.514(e) and (f)		284-04-310; 284-04-400	00-03.3, .6
Required Disclosures	§164.502(a)(2)	§70.02.050(2)	284-04-505	
INDIVIDUAL RIGHTS				
Individual Rights - General	§164.522	§70.02.005	§48.43.500; 284-04-510	
Right to Notices and other Forms	§164.520	§70.02.120		00-03.7, .8
Right to Access, Copy or Amend	§164.524; §164.526	§70.02.080; 090; 100; 100		00-03.8
Right to Audit or Accounting	§164.528	§70.02.010		
Waiver	§164.530(h)			
ADMINISTRATIVE REQUIREMENTS				
General Privacy Standard	§164.530(l)(l)	§70.02.150	§48.43.505; §284-04-500	00-03.1
Provide Notice and Forms	§164.530(j); §164.506; §164.508; §164.520	§70.02.120		00-03.8
Personnel Requirements	§164.530(a); (b); (e)		284-04-500	00-03.9
Policies and Procedures	§164.530(l)	§70.02.120; .020; 030.	284-04-500	00-03.1
Safeguards	§164.530(c)	§70.02.150	284-04-500	
Business Associates	§164.502(e); 164.504(e)	§70.02.050		00-03.5
Security and Destruction	§164.514(H)	§70.02.150	284-04-500	
Documentation and Retention	§164.530(d)	§70.02.020; 030; 060	284-04-515; 284-04-500.	
REMEDIES AND PENALTIES				
Complaints - Internal	§164.530(d)		§48.43.530; 284-04-605	00-03.7, .9
Complaints - Other	§160.306		§48.43.055	00-03.9
Enforcement and Sanctions	Future and Statute			00-03.9
Private Right of Action	None	§70.02.170	284-04-610	00-03.10

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APPLICABILITY				
Applicable Entity	<p>§160.102; 164.104; 500. Applies to Covered Entities (CE): health care providers that conduct electronic transactions, health plans, and clearinghouses.</p> <p>Providers broadly defined: provider of medical or health care services; or is paid for health care services/supplies in normal course of business.</p> <p>Health Plan is any group that provides or pays the cost of medical care (with some exceptions for government programs).</p> <p>Clearinghouses perform data translation and other services on behalf of providers, plans and others.</p> <p>CE's must also pass on requirements to business associates (BA) through contracts. BA's are not directly regulated.</p>	<p>§70.02.010(5), (7) Applies to health care providers, facilities, and third party payers.</p> <p>Providers are licensed, certified, registered, or otherwise authorized by WA law to provide health care in the ordinary course of business or practice of a profession. Facility is a hospital, clinic, nursing home, lab, office or similar place where a provider provides care to patients.</p> <p>§70.02.010(13) and .030 an insurer regulated under title 48 and authorized to transact business in this state, including health care service contractor, and HMO, employee welfare benefit plan, or state or federal benefit program.</p>	<p>§48.43.505. Applies to health carriers and insurers.</p> <p>284-04-120. Applies to Financial institutions and licensees. Licensees are all licensed insurers, health care service contractors, HMOs and fraternal benefit societies, producers and other persons licensed or required to be licensed, or authorized or required to be authorized, or registered or required to be registered pursuant to the insurance law of Wa. State.</p>	<p>00-03. Applies to all state agencies and via contracts, to their contractors.</p>
Applicable Information	<p>§164.501. Any information created or received by or on behalf of the CE that identifies or reasonably could be used to identify an individual; and relates to health condition, care or payment.</p>	<p>§70.02.010(6) Any information, whether oral or recorded in any form or medium, that identifies or can readily be associated with the identity of a patient and directly relates to the patient's health care. The term includes</p>	<p>284-04-120(21)(23) Applies to non-public personal financial and health information. Non-public health info. NPPHI is any data except age or gender held in any medium, created or derived from a health care</p>	<p>00-03. All information collected by a state agency about a natural person that is readily identifiable to that specific individual.</p>

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	Applies to information in any form, including oral. Protected health Information (PHI) excludes educational records governed by FERPA. §164.508 Psychotherapy notes are subject to authorization.	any record of disclosures of health care information.	provider or a consumer that relates to health condition, care or payment, and that identifies or could be used to identify an individual	
Applicable Individuals	§164.501, 502(f)(g). Any individual person who is the subject of protected health information, whether alive or deceased. Allows for personal representative to act on the individual's behalf.	§70.02.010 (10) any individual who receives or has received health care. The term includes a deceased individual who has received health care. §70.02.130; 140 Allows for health care representatives to act on the individual's behalf.	284-04-120(6)(9). Consumers are individuals who seek to obtain or have obtained an insurance product or service from a licensee that is primarily for personal or household purposes. Customers have continuing relationships with a licensee.	00-03. All information about a natural person collected by a state agency.
Applicable to Minors	§160.202; 164.502(g). Defers to State Law. Allows parent or guardian to act as personal representative.	Not Specified.	284-04-510(3). A licensee must recognize the rights of any minor who may obtain health care without consent of a parent under state/ federal law.	Not specified.
USE AND DISCLOSURE RESTRICTIONS				
General	§164.502(a). Generally, CE cannot use or disclose PHI except pursuant to a consent, authorization, or specific exception.	§70.02.020. Providers, agents, or employees may not disclose health care information about a patient to any other person without the patient's written authorization. Applies to third payers as well. Exceptions are listed below and at 70.02.050.	§48.42.500. Customers are assured that personal health information will be used only as necessary to obtain and pay for health care or improved quality of care. §48.43.021. Carrier and WA. insurance pool cannot disclose PHI unless explicit, written authorization by subject or authorized by law. 284-04-505. Licensee shall not disclose NPPHI unless an authorization is obtained or an	00-03.1 State agencies must establish procedures to safeguard public records that contain confidential personal information. 00-03.3 May not sell personal information except as provided by law. 00-03.2 Protect social security numbers and financial identifiers.

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			exception applies.	
Minimum Necessary	§164.502(b). CE may only use or disclose the minimum amount of information that is necessary to accomplish the purpose or task. §164.514(d) details implementation specifications for minimum use.	§70.02.050. Provider or payor may disclose information ... to the extent a recipient needs to know the information.	None Specified.	00-003.4 Limit collection and retention of personal information to that reasonably necessary to conduct agency operations.
De-Identified Information	§164.514. De-identified information is not subject to restrictions. Extremely specific: must have statistical analyst certify not likely to re-identify or the following identifiers removed: names, geographical subdivisions smaller than a state (first three digit zipcode with population over 20,000 ok); all elements of date except year; telephone number; fax number; email; social security number; medical record numbers; health plan beneficiary numbers; account numbers; certificate/license numbers; vehicle identifiers; devise identifiers; URLs; IP address numbers; biometric identifiers; full face photo image; and nay other unique identifying number, code. Re-identification codes are PHI.	None Specified.	None Specified.	None Specified.
Permitted -No Restrictions by Individual	§165.512. CE may disclose without consent, authorization, or opportunity to agree or object by the individual for following	§70.02.050. May disclose without patient authorization to extent need to know (limitations apply):	284-04-505(2). No restriction or authorization required for disclosure by the licensee for performance of insurance	None Specified.

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	<p>uses, but specific limitations may apply: Uses and disclosures <u>required</u> by law; Uses and disclosures for public health activities; Disclosures about victims of abuse, neglect or domestic violence; Uses and disclosures for health oversight activities; Disclosures for judicial and administrative proceedings; Disclosures for law enforcement purposes; Uses and disclosures about decedents; Uses and disclosures for cadaveric organ, eye, or tissue donation purposes; Uses and disclosures for research purposes; Uses and disclosures to avert a serious threat to health or safety; Uses and disclosures for specialized government functions; and Disclosures for workers compensation.</p>	<p>to care giver of patient; any other person who requires health care information for education, planning, quality assurance, peer review, administrative, legal, financial, or actuarial services; or for assisting in delivery of health care if the provider reasonably believes that the recipient: will not use information for any other purpose; will take appropriate steps to protect information. (d) Disclosure to anyone to avoid or minimize imminent danger to health or safety of patient or another individual; (f) to a provider that is a successor in interest; (g) for research where IRB has approved; (h)(i) (k) for audit purposes or to custodial institution in which the patient is detained, demographic information to public authority, with limits.</p>	<p>functions, for activities permitted under 70.02.050 (see left); and for activities permitted under HIPAA. <u>Exception</u> where individual has exercised right to limit disclosure under 284-04-510. Individuals can request limit of any information if information could jeopardize the safety of individual. Individual can request any info related to reproductive health; sexually transmitted diseases; chemical dependency and mental health shall not be disclosed by licensee (including disclosure for above insurance functions).</p>	
Permitted - Opportunity to Agree or Object	<p>§164.510 A CE may use or disclose IIHI, provided the individual has an opportunity to agree or object to the use or disclosure for the following purposes:</p> <ul style="list-style-type: none"> ▪ Use and disclosure for a facility directory; ▪ Disclosures to a friend or relative that the individual has identified as being 	<p>§70.02.050(c)(e)(j). May disclose unless the patient has instructed the provider in writing not to: (c) information to previous health care provider (e) Oral disclosure to immediate family or close relationship unless the patient has instructed the provider in writing not to. (j) to provide directory information</p>	<p>284-04-505(2). References 70.02.050 (see left). *Note also that 284-04-200 et seq. set forth different requirements for non-public <u>financial</u> information (which is defined as not including health information). These requirements include notices and opt out procedures that applicable entities must abide by. The financial information</p>	None Specified.

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	<p>involved with the individual's health care or payment for the health care;</p> <ul style="list-style-type: none"> ▪ Uses and disclosures for notification of the individual's locations, condition or death to a family member, personal representative, or another person responsible for the care of the individual. <p>If the individual is not present or unable to agree or object due to incapacity or an emergency situation, the covered entity may disclose information directly related to the person's involvement in the individual's care. The disclosure must be determined, in the professional judgement of the covered entity, to be in the individual's best interest.</p>	information.	by. The financial information requirements are not addressed here as there is no HIPAA pre-emption issue.	
Permitted - Consent Required	<p>§164.506 CE may use or disclose information for treatment, payment of health care operations (TPO). Providers must obtain a consent for use and disclosures for TPO but can condition treatment or enrollment on consent. Consent is valid until revoked. Consent must refer to Notice of Privacy practices. Plans and clearinghouses are</p>	None Specified.	None specified.	None Specified.

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	not required to obtain a consent for uses and disclosures for TPO.			
Permitted - Authorization Required	§164.508. The individual can authorize to release to anyone for any reason. CE must obtain authorization to use or disclose PHI for any other purpose. CE cannot condition treatment or enrollment on authorization. CE must follow detailed requirements for valid authorization. Psychotherapy notes disclosure require authorization.	§70.02.030 The individual may authorize provider to release information, provider must honor. Authorization required for all uses if not otherwise specified. .040. Authorization can be revoked by individual in writing.	284-04-505. A licensee shall not disclose nonpublic personal health information about a consumer or customer unless an authorization is obtained from the consumer or customer. Exceptions noted above. 284-04-515, 605. Authorizations must be in writing, not more than 24 months, may be revoked; and licensee may not discriminate based option not to sign.	None Specified.
Research	§164.512(i) CE may use or disclose for research subject to limitations. CE may obtain authorization, or receive a Board approval of a waiver, or IRB or privacy board review.	None Specified.	None Specified.	None Specified.
Marketing or Fundraising	§164.514(e)(1) and (f)(1). Generally requires the authorization of individual.	None Specified.	None Specified.	00-03.3 No sale of personal information unless explicitly allowed by law; 00-03.6 No release of lists of names/addresses for commercial purposes.
Required Disclosures	§164.502(a) CE must disclose information to the individual or personal representative and to the Secretary of HHS for compliance investigations.	§70.02.050(2) Must disclose pursuant to individual authorization or to federal, state, or local public health authorities as required by law; when needed to determine compliance with licensure; certification or	None Specified. 284-04-505 references 70.02.050 (see left).	None Specified. Note does not supercede Public Records Disclosure Act.

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		rules; when needed to protect public health; to county coroner or medical examiner for death investigations; under compulsory process under 70.02.060.		

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INDIVIDUAL RIGHTS				
Individual Rights - General	§164.522. Individual has right to request restriction on use and disclosures. CE can refuse, but if agrees must abide. Individual has a right to request communication by alternative means or location.	§70.02.005 General Findings. Health care info. is sensitive, patients need access to their own health care information and have an interest in assuring that health care information is not improperly disclosed.	§48.43.500. Individuals are protected from unnecessary invasions of health care privacy. 284-04-510. Individuals have right to limit disclosure of certain sensitive health information for any purpose.	None Specified.
Right to Notices and other Forms	§164.520. Individual has a right to receive notice of information practices detailing the CE's use and disclosure of information. Individual rights re: consent and authorization, see above. All forms have specific requirements.	§70.02.120. Provider who provides care at a facility must create a notice of information practices. Rights to authorization, see above. Patient can revoke in writing.	None Specified. Individual right to authorization, see above.	00-03.8 Individuals have a right to notification at point of collection that law may require disclosure and under what circumstances this may occur. 00-03.7 Internet privacy policy to give information on use and restrictions in standard format.
Right to Access, Copy or Amend	§164.524. Individual has right to access designated record (DRS) set as long as CE retains. Individual has a right to access and copy DRS. §164.526. Individual can request amendment to the DRS. CE must respond within 60 days by 1)amend inaccurate or incomplete data or determine record complete and accurate and notify individual. CE must have procedures for review. CE must also attempt to notify others of amendment who the individual requests or who may rely on the information to the	§70.02.080; 090; 100; 100. Can inspect, copy, amend; provides for disagreement if amendment/correction denied. In compulsory process, a patient can pursue a protective order to prevent release.	None specified.	00-03.8 Must have procedures for individuals to review their information and recommend corrections.

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	detriment of the individual.			
Right to Audit or Accounting	§164.528 Right to accounting of disclosures by or on behalf of CE for up to six years. Exceptions for accounting include disclosures for treatment, payment, operations, to individual, and others.	§70.02.010. Record of disclosures is part of health information. 70.02.020. Requires providers chart of all disclosures, except those to third party payers.	None Specified.	None Specified.
Waiver	§164.530(b). CE may not require an individual to waive their rights under HIPAA in order to receive services.	None specified.	None Specified.	None Specified.
ADMINISTRATIVE REQUIREMENTS				
General Privacy Standard	§164.530(i)(l). CE must develop and implement policies and procedures relating to PHI that are designed to comply with the privacy regulations. The policies and procedures must take into account the size of and the type of activities that relate to PHI undertaken.	§70.02.150. A healthcare provider shall effect reasonable safeguards for the security of all health care in maintains.	§48.43.505. Must adopt procedures that conform administrative, business and operational practices to protect an enrollee's right to privacy or right to confidential health care services granted under state or federal laws. §284-04-500. Develop and implement written policies for management of health info., guard against unauthorized collection, use, or disclosure.	00-03.1 State agencies must establish procedures to safeguard public records that contain confidential personal information.
Provide Notice and Forms	§164.520 CE must display notice of information use and disclosures prominently and copy given to patient or enrollee. There are specific requirements for the content and form of the notice. See above for consent, authorization, and other form	§70.02.120. Must create notice of information practices if provider gives care at facility. §70.02.030. Authorization must be in writing, signed, and dated, identify nature of information to be disclosed, recipient, provider, and patient. Period of validity generally limited to 90 days.	None Specified.	00-03.8 Requires notice at point of collection that law may require disclosure and under what circumstances this may occur. Must provide notice for how individuals can review and correct their information.

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	conditions and requirements.			
Personnel Requirements	§164.530(a). Designate a privacy official responsible for implementation and a contact person to receive complaints and provide information. §164.530(b). Train all employees about Privacy policy and procedures. §164.530(e). Develop and apply sanctions against employees who fail to comply.	None Specified.	284-04-500. Policies shall include designations of persons who need access to do their jobs; appropriate training for all employees; disciplinary measures; identification of job titles and descriptions of persons authorized to disclose info.; periodic monitoring of employee compliance.	00-03.9 Each agency must have a privacy contact for public complaints and information.
Policies and Procedures	§164.530(i). Must implement reasonable policies and procedures designed to comply with regulations and revise or eliminate non-compliant policies. If policies changed, must comply with Notice of Privacy Practices requirements.	§70.02.120; .020; 030. Requires notice of information practices. Required to chart all disclosures and maintain as part of the health care information, except those to third party payers. Requires providers to retain authorization and revocation, but not third party payers.	284-04-500. Requires policies on personnel issues as above; procedures for authorizing and restricting collection, use, disclosure; methods for exercising right to access and amend incorrect health info.; methods for handling, storing, and disposing of info.; methods for informing individuals of right to request specialized disclosure or nondisclosure.	00-03.1 Requires development and posting of Internet privacy policies, with links to all pages where personal information is collected. Requires procedures for handling and disposal of public records with personal information.
Safeguards	§164.530(c). Must have appropriate administrative, technical, and physical safeguards to protect the privacy of PHI and reasonably safeguard PHI from any intentional or unintentional use of disclosure, or violation of the requirements of the regulation.	§70.02.150. Must have reasonable safeguards for the security of all health care information.	284-04-500. Must have written policy, standards to guard against unauthorized collection, use, or disclosure.	None Specified.
Business Associates	§164.502(e); §164.504(e) Business associates (BA) are	Not specified. However, §70.02.050 – some disclosures	None Specified.	00-03.5 State agencies must require contractors to

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	individual or entities that carry out a function on or behalf of the CE. CE must have reasonable assurances in the form of a contract or interagency agreement with business associates containing specified provisions relating to protection of PHI. CE must also document mitigation or sanction policies and actions against BA.	without authorization require the provider to believe that the recipient will not use or disclose information for other purposes and will safeguard it.		agree to use information solely for the purpose of the contract and may not be sold or transferred. Must monitor and include penalties.
Security and Destruction	§164.514(d-h) CE must have verification procedures, establish administrative and physical safeguards, component barriers within the organization, and establish policy which may include role based access, for compliance with minimum use. Additional security provisions will be outlined in a separate security regulation. Destruction requirements for BA's are detailed in BA provision	§70.02.150. Must have reasonable safeguards for the security of all health care information.	284-04-500. Must have policy related to method of storing and disposing of health information.	None Specified.
Documentation and Retention	§164.530. Compliance designations and policies must be documented and retained for six years from date of creation or effect. Also maintain consents, authorizations, disclosures, amendments, and alternative communication requests.	§70.02.020; 030; 060. Requires providers to retain authorization and revocation. Maintain a record of health care information for at least one year and during pendency of requests to change.	284-04-515 Licensee shall retain authorization or copy in individual's record. 284-04-500. Must make policies available to insurance commissioner review.	None Specified. State Retention Schedules
REMEDIES AND PENALTIES				
Internal Complaint	§164.530(d) CE must have and notify individuals of right to	None Specified.	§48.43.530. Requires comprehensive process to as	00-03.7 and .9 Must have contact person regarding

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Procedures	complain/ procedure Must have policy protecting individual against retaliation.		a complaint of dissatisfaction about customer services or quality/ availability of health service. 284-04-605. May not discriminate based option not to sign authorization.	website questions and general personal information.
Other Complaint Procedures	§160.306 Individual can complain to Secretary of HHS or enforcement designee (OCR) of HIPAA violations.	None Specified.	§48.43.055. Requires complaint procedures to be filed with commissioner.	00-03.9 Governors office appoints contact person to receive complaints.
Enforcement and Sanctions	42 USC 1320(d) Significant civil and criminal penalties may be imposed for each violation. Secretary of HHS may audit for compliance. Federal funds may be at risk for non-compliance.	None Specified.	None Specified.	00-03.9 Governors office oversees. Does not supercede state law.
Private Right of Action	None explicitly given. HIPAA could be used as standard of care.	§70.02.170. Limited civil penalties; must be commenced within 2 years of discovery.	284-04-610. Violation is unfair method of competition/ unfair or deceptive act.	00-03.10 Specifically states no private right of action or benefit created.

Context Specific State Requirements

Context	State Law Cite and Requirement	HIPAA Privacy Provision Implication
Adoption		
	70.54.260>??	
Cancer Registry Disclosure	WAC 246-102-070. --may be conflicts?.	
Cancer Registry Reporting	WAC 246-102-020. Principal health care provider or contractor must identify and report cancer cases to DOH or designee. Data requirements at 246-102-040.	§165.512. CE may disclose without consent if required by law; or uses and disclosures for public health activities.
Child Abuse		
Child Support and Paternity Test		
Civil Commitment		
Communicable Disease Records	WAC 246-100	
Communicable Disease Reporting	WAC 246-101	
Drug and Alcohol Abuse Treatment	RCW 70.96A.150 - look for wac, see also fed.	
Elder Abuse	RCW 74.34.090 – look for wac	
HIV/AIDS	WAC 246-101-520	
Hospital Patient Records	WAC 246-320; comprehensive hospital records requirements, see regulation.	
Local Health Department Records	RCW 70.05.170;	

Context	State Law Cite and Requirement	HIPAA Privacy Provision Implication
Long Term Care Ombudsman	RCW 43.190.110	
Mental Health: Children		
Mental Health: Adult		
Minors – Emancipated	RCW 13.64.060. Emancipated minor has right to give informed consent for health care services.	
Minors – Out of Home Placement	RCW 13.32. Placement agency has authority to authorize medical treatment for: runaway child	
Sexually Transmitted Disease Tests	RCW 70.24.105.	
Tuberculosis	WAC 246-170-031 and –061. Local health district must maintain register and report quarterly to DOH on all suspected or diagnosed cases of tuberculosis. Treatment can occur involuntarily (without consent).	
Worker’s Compensation Claims	RCW 51.28.070 – L&I must maintain confidentiality of records of injured workers.	N/A – Workers Compensation exempt from HIPAA.