



HEALTH CARE LAW SECTION

THE HIPAA MATRIX

Privacy Rule Preemption Analysis Matrix for Michigan Law

SECOND EDITION

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FOREWORD

The Publication Committee of the Health Care Law Section of the State Bar of Michigan is extremely pleased to present the *Second Edition* of the HIPAA Privacy Rule Preemption Analysis Matrix for Michigan Law (the “Matrix”).

The *First Edition* of the Matrix was originally published in 2002 by the HIPAA Taskforce of the Health Care Law Section Council of the State Bar of Michigan and the Michigan Society of Health Care Attorneys. This *Second Edition* of the Matrix attempts to incorporate several changes and developments in case law and state privacy laws since the publication of the *First Edition*. This *Second Edition* also expands upon the *First Edition* by incorporating The Michigan’s Medical Records Access Act Preemption Analysis Matrix, which was separately published by the Publication Committee of the State Bar of Michigan, Health Care Law Section, in April of 2013.

The aim of the *Second Edition* remains the same as the *First Edition*, to achieve a consensus among health facilities, providers, payors, health plans, employers and regulators on health information protections afforded patients under HIPAA, HIPAA privacy regulations, Michigan law and Michigan regulations and to assist healthcare providers and attorneys in the complicated task of determining whether Michigan state statutes are preempted by HIPAA.

This Matrix is a working document that is subject to continual review and revision. All individuals and entities that review this document are encouraged to provide feedback to the Health Care Law Section of the State Bar of Michigan.

Both the *First Edition* and *Second Edition* of the Matrix have been the cooperative effort of a number of Michigan attorneys and organizations, law firms, and other supporters. They are listed below. The Publication Committee appreciates their significant efforts and would like to thank them for donating substantial time, research, analysis, advice and talent to the preparation of the *First Edition* and *Second Edition* of the Matrix. A number of additional attorneys participated in teleconferences, made suggestions and supported and contributed to the Matrix. Our failure to list them individually is not intended as a diminution of their assistance. Their contributions have made this Matrix a better product and their efforts are much appreciated.

CONTRIBUTORS:

Carol S. Allis

U.S. Department of HHS, Office of General Counsel

Vikram Arora

2nd Circuit Court of Michigan

Diane S. Arsenault

Trinity Health Corporation

Linda S. Ross

Cindy Wisner

Joy Berent

Henry Ford Health System

Michael Bossenbroek

Wachler & Associates, P.C.

Nicole D. Bogard

Seyfarth Shaw, LLP

William M. Brodhead

Elizabeth O. Callahan-Morris

Hall, Render, Killian, Heath & Lyman, P.C

Dorothy D. Cherry

John A. Cook

Donna Craig

The Health Law Center

Brandon Dalziel

Bodman PLC

Erin Dombos

Linda D. Denomme

UAW Retiree Medical Benefits Trust

M. Elizabeth Derwin

Mercedes Varasteh Dordeski

Behavioral Health Professionals, Inc.

Jeanne M. Dunk

John H. Eggersten

Eggersten Consultant

Matthew Ehrlich

McLaren Health Plan

Amy K. Fehn

Jennifer Colagiovanni

Law Offices of Fehn & Colagiovanni PLLC

Craig E. Feringa

Law Firm of Craig E. Feringa

Michael J. Friedman

Jennifer Gentz

Zachary Race Glaza

Sally Guindi

Tariq S. Hafeez

Aaron Hammings

*Jonathan P. Horenstein
Valerie S. Rup*

Mark Hynes

Carol Issacs

*Leslie H. Kamil
Laura Napiewocki
Colleen M. McClorey*

*Kathrin E. Kudner
Donna A. O'Connor*

*Andrea Lee
Jenna Simon
Gregory Nowakowski
Greg R. Schermerhorn*

Joan L. Lowes

*Marcia Malouin
Suzanne D. Nolan
Lisa Panah*

Glaza Law

St. Joseph Mercy Health System

Fausone Bohn LLP

Michigan Professional Insurance Exchange

Beaumont Health System

Hope Network

University of Michigan Health System

Dykema Gossett PLLC

Honigman Miller Schwartz and Cohn LLP

Kitch, Drutchas, Wagner, Valitutti & Sherbrook P.C.

<i>Julie M. Markgraf</i>	<i>Ascension Michigan</i>
<i>Shelly Miller</i>	<i>Blue Cross Blue Shield of Michigan</i>
<i>Monica P. Navarro</i>	<i>Vezina Law</i>
<i>Michele A. Rivas</i>	<i>Kapnick Insurance Group</i>
<i>Zeinab Saad</i>	
<i>Lindsay Schacher</i>	<i>MESSA</i>
<i>Courtney Schoch</i>	
<i>Sheerin Siddique</i>	
<i>Louis C. Szura</i>	<i>Szura & Delonis, P.L.C.</i>
<i>Mariann Thompson</i>	
<i>Mila C. Todd</i>	<i>Southwest Michigan Behavioral Health</i>
<i>Lisa Diehl Vandecaveye</i>	<i>The Joint Commission</i>
<i>Ben VanGeldereren</i>	<i>Benjamin VanGeldereren PLC</i>
<i>John Weber</i>	<i>Hall Render Killian Health & Lyman PLLC</i>
<i>Rose Willis</i>	<i>Dickinson Wright PLLC</i>
<i>Theresa Wisk</i>	

We are extremely pleased to present to the Section the HIPAA Michigan State Law Preemption Analysis Matrix.

Matthew Keuten
Chair of the State Bar of Michigan Health Care Law Section

NOTE TO USERS OF THE HIPAA PREEMPTION ANALYSIS MATRIX FOR MICHIGAN LAW

The HIPAA Preemption Analysis Matrix for Michigan law is intended to serve as a preliminary research tool for attorneys faced with a HIPAA preemption issue with respect to Michigan law. The Matrix should be viewed as a first-tier resource to obtain a perspective on HIPAA preemption issues with respect to Michigan law; it is not intended to be a treatise, nor should it be used as the sole basis for making critical business or legal decisions regarding HIPAA. The Matrix does not constitute, and may not be relied upon, as legal advice.

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USERS' GUIDE TO THE HIPAA PRIVACY RULE PREEMPTION ANALYSIS MATRIX FOR MICHIGAN LAW

A. Format of this Matrix

1. This Matrix provides an overview of Michigan health care privacy related laws and analyzes the preemption issues arising under the Health Insurance Portability and Accountability Act of 1996, as amended by the Health Information Technology for Economic and Clinical Health Act (collectively referred to in this Matrix as the “Rule”).
2. This Matrix has been organized into five numbered columns. In some cases, the reader is referred by the information contained in one column to information contained in another column.
3. Gray shaded horizontal headings divide each section of the Matrix by the source of the particular Michigan law (*e.g.*, Public Health Code, Mental Health Code).
4. A parenthetical phrase has been included below the citation in Column 1 of the Matrix entitled, “Citation,” to provide the reader with the context of each Michigan law analyzed.
5. In some cases, we have included numbers in brackets and bold typeface in Column 2 of the Matrix entitled, “Brief Summary of Pertinent Provision.” We have not attempted to summarize the state law in its entirety, but have addressed only the provisions concerning privacy or confidentiality. *See also*, Section C.8 below. These bracketed numbers, therefore, do not correspond to any specific subsection of the Michigan law that is being analyzed. The bracketed numbers merely separate, for purposes of this Matrix, the different issues addressed by various subsections of the Michigan law. For each such bracket, a brief descriptive title is included at the corresponding number in Columns 3, 4 and 5 to help the reader identify each separate analysis. Readers are encouraged to refer to the applicable statute, regulation, rule, Attorney General opinion or case citation for the full and precise wording of each Michigan law.
6. The Michigan laws analyzed in this Matrix sometimes include cross-references to other Michigan laws. Such cross-referenced laws either are addressed elsewhere in the Matrix, or were not relevant to the preemption analysis.
7. HIPAA contains an express provision preempting state law that is “contrary to” its requirements. 42 U.S.C. § 1320d-7(a)(1); *see also* 45 C.F.R. § 160.203. State law is contrary to HIPAA if (1) it is impossible to comply with both state and federal requirements; or (2) state law is an obstacle to accomplishing the law’s goals and objectives. 45 C.F.R. § 160.202. On the other hand, HIPAA does not preempt a state law that is “more stringent” than the requirements under HIPAA. 45 C.F.R. § 160.203(b). A state law is more stringent than HIPAA if the state law increases the privacy protections afforded, provides the patient access to more information than HIPAA requires, increases an individual’s right to access or amend health information, or restricts the use or disclosure of information that HIPAA would otherwise permit. 45 C.F.R. § 160.202.

8. Column 4 analyzes if the Rule preempts the applicable state statute or whether state law applies because it is more stringent than HIPAA. A reference in Column 4 to “Both” means that Michigan law and the Rule are not contrary to one another and, therefore, in accordance with the Rule, a covered entity must comply with both laws. 65 Fed. Reg. 82581.

B. Scope of this Matrix

1. This Matrix is intended as a guide to assist readers in determining when the Rule preempts Michigan law, and, further, to aid readers in preparing forms that meet the requirements of the Rule.
2. The preemption analysis contained in this Matrix analyzes Michigan court rules, statutes, the Michigan Constitution, administrative rules, Attorney General opinions and case law. This Matrix does not include or analyze bulletins or other materials which may have the “force and effect of law,” such as Medicaid bulletins, even though such items may fall within the Rule’s definition of state law. Readers are advised that such items also will warrant a preemption analysis.
3. Michigan law contains several substantially similar statutes regarding the obligations of covered entities to report specific exposures or diseases to a state agency. We have included some, but not all, of these laws in the Matrix (*see, e.g.*, MCL 333.5129) because the preemption analysis is substantially the same for each of them.
4. This Matrix does not analyze any other federal laws besides the Rule. Readers are reminded that the Rule, by its terms, does not preempt other federal laws.
5. The preemption analysis contained in this Matrix does not address any determinations by the Secretary of the Department of Health and Human Services that a particular Michigan law is not preempted because the Michigan law is necessary to prevent fraud and abuse, ensure appropriate state regulation of health plans and insurance, report on health care delivery costs, regulate controlled substances or serve a compelling public need. *See* 45 C.F.R. § 160.203(a).
6. The Michigan laws cited within this Matrix are current as of January 1, 2018. Readers are reminded of the need to update Michigan laws after January 1, 2018.

C. Assumptions or General Rules Adopted for Purposes of this Preemption Analysis

1. Each Michigan law is analyzed in isolation without regard to the analysis of other potentially applicable Michigan laws. Therefore, the reader is advised to examine the preemption analysis of a particular Michigan law in the context of its relationship to other applicable Michigan laws.
2. Unlike the Rule, Michigan law does not distinguish between the terms “consent” and “authorization.” Whenever possible, we have identified whether Michigan law contemplates a consent (which is no longer required by the Rule) or authorization (as defined under the Rule). In our analysis, we then used the term which comports with the Rule’s usage, even if the Michigan law uses another term. For example, if Michigan law speaks of consent, but the context of the law indicates that an authorization (as defined under the Rule) is intended, we have used the term authorization.

3. In cases where both state law and the Rule would require an authorization, the form of the authorization would likely have to comport with the Rule’s requirements, except that informed consent provisions of state law address circumstances that are distinct and different from the consent required under the Rule. In this circumstance, the informed consent requirements under state law are likely to control.
4. For purposes of our analysis, we generally have referred to “protected health information,” “individually identifiable health information,” and information protected under Michigan law as “confidential health information.” When it is clear that we are discussing such information as treated under the Rule, we have used the term PHI.
5. When Michigan law involving informed consent includes no references to requirements pertaining to the use and disclosure of confidential health information, we have concluded that no Rule counterpart exists.
6. Unlike the Rule, Michigan law generally does not distinguish between “use” and “disclosure.” Therefore, we have made certain judgments, as indicated throughout this Matrix, as to whether a use or disclosure is contemplated under Michigan law.
7. Unless otherwise indicated, we have assumed that health care providers described in the Matrix transmit health information electronically in connection with a transaction covered by the Rule.
8. Many Michigan laws analyzed in this Matrix which contain provisions that “relate to the privacy of individually identifiable health information,” as defined in the Rule, also contain provisions which speak to other matters. In general, we have not included provisions of state law which do not speak to the protection of confidential health information. Some of these provisions may, nevertheless, be included if they are needed to provide a context for those provisions that are relevant to this preemption analysis. Readers should realize, therefore, that the summaries of Michigan law included in the Matrix at Column 2 are not intended to be complete descriptions of the referenced law.
9. Various Michigan laws have not been amended to reflect the name changes of certain state agencies. The Matrix generally uses the current name of the relevant state agencies.
10. In analyzing Michigan law, it was not always possible to discern when a state agency is acting as a covered entity, a hybrid entity or a business associate. In such circumstances, we made reasoned judgments regarding the role of the state agency and explained those judgments in our conclusions.
11. The analysis in the Matrix focuses on when the Rule preempts state law. Occasionally, the analysis includes references to the Preamble or Commentary to the Rule, or to the Guidance issued on July 6, 2001, where necessary.
12. The analysis contained in this Matrix with respect to Michigan Attorney General opinions and common law is limited to the precise issue decided by the Attorney General or the court.
13. Certain Michigan laws regulate the conduct of employers in their capacities as employers. Since employers are not covered entities under the Rule, their regulation as employers likely will be a matter of Michigan law. Nevertheless, where the Rule imposes obligations on employers in their role as covered entities, we determined which regulatory scheme applies.

14. Where we have stated that the Rule and state law contain “compatible” provisions, the intent is to indicate that the provisions of state law do not pose an obstacle to compliance with the Rule, and that they are, therefore, not “contrary” to one another.
15. There are many state laws which speak to certain processes or procedures (*e.g.*, referrals) that would necessarily contain confidential health information, but which contain no specific requirements for protecting the privacy or confidentiality of that information, or simply do not speak to that issue. Generally, we have not referenced those state law provisions in this Matrix. In these cases, the Rule would probably control, unless a different state law addresses the requirement to protect the confidential health information. We have included only those state laws which address requirements, limitations, exceptions, *etc.* for protecting confidential health information.

**HIPAA Privacy Rule
Preemption Analysis Matrix for Michigan Law**

1. Citation	2. Brief Summary of Pertinent Provision	3. Is There a HIPAA Counterpart?	4. Which Law Applies?	5. Why?
MICHIGAN COURT RULES				
MCR 2.314 (Release of Medical Information by Subpoena)	This Section provides the procedures for the release of medical information pursuant to a subpoena. If a party asserts that medical information is subject to a privilege preventing discovery, the party may not thereafter produce or introduce physical, documentary or testimonial evidence of that party's medical history or mental or physical condition absent a court order. Medical information subject to discovery includes medical records and medical knowledge. A valid privilege may prevent discovery of medical information. Medical information concerning persons who are not parties to the litigation is not discoverable.	Yes, 164.512(e)(1)(i) and 164.512(e)(1)(ii).	Both as to 164.512(e)(1)(i), where an order signed by a judge or magistrate is provided. State law as to 164.512(e)(1)(ii).	Both state law and the Rule apply because each permits covered entities to release confidential health information pursuant to a court order (<i>see</i> 164.512(e)(1)(i)). With respect to a subpoena, discovery request or other lawful process not accompanied by a court or administrative order, state law applies because it precludes disclosure absent an express waiver of the privilege. The Rule would permit disclosure upon a lesser standard (<i>i.e.</i> , receipt of "satisfactory assurances"). <i>See</i> 164.512(e)(1)(ii).
MCR 2.506 (Compliance with Subpoena by Hospitals)	A hospital may comply with a subpoena calling for production of medical records belonging to the hospital by producing copies in accordance with Michigan Court Rule procedures.	<i>See</i> analysis at MCR 2.314 discussed above in this Matrix.	<i>See</i> analysis at MCR 2.314 discussed above in this Matrix.	<i>See</i> analysis at MCR 2.314 discussed above in this Matrix. Note: The Rule does not speak to providing copies of the medical record directly to the court in response to a subpoena for production of records.

1. Citation	2. Brief Summary of Pertinent Provision	3. Is There a HIPAA Counterpart?	4. Which Law Applies?	5. Why?
THE FREEDOM OF INFORMATION ACT				
MCL 15.243 (Items Exempt from Disclosure Under FOIA)	This Section specifies items exempt from disclosure under the Freedom of Information Act (“FOIA”), such as information or records subject to privilege and medical, counseling or psychological facts or evaluations concerning an individual if the individual’s identity would be revealed by a disclosure of those facts or evaluations. Privileges exempt from FOIA disclosure include: psychiatrist/patient (MCL 330.1700 (definition of privileged communication) and MCL 330.1750, described below in this Matrix); dentist/patient (MCL 333.16648, described below in this Matrix); licensed professional counselor/patient (MCL 330.1750 and 333.18237, described below in this Matrix); social worker/client (MCL 333.18513, described below in this Matrix); and physician/patient (MCL 600.2157), described below in this Matrix, or other privilege recognized by statute or court rule.	No.	State law.	State law applies because no Rule counterpart exists regarding the scope of disclosures required by FOIA. Note: If the government entity responding to a FOIA request is not a covered entity, the Rule would not apply.
THE UNIFORM CRIME REPORTING SYSTEM ACT				
MCL 28.258 (Information for LEIN)	[1.] Information relating to missing individuals and children shall be entered into the Law Enforcement Information Network (“LEIN”), information clearinghouse, and the National Crime Information Center.	[1.] <u>Mandatory Disclosure to LEIN.</u> Yes, 164.512(a)(2) and 164.512(f)(2).	[1.] <u>Mandatory Disclosure to LEIN.</u> Both.	[1.] <u>Mandatory Disclosure to LEIN.</u> Both state law and the Rule apply because the Rule permits disclosure without authorization where, as here, required by law. Note: To the extent that the state law mandated information is not protected health information as defined by the Rule

1. Citation	2. Brief Summary of Pertinent Provision	3. Is There a HIPAA Counterpart?	4. Which Law Applies?	5. Why?
	<p>[2.] The information shall include, if available, the name, address, vital statistics (including physical description), date of disappearance and any other information that would assist in locating the missing person. If the missing person is a child, the following additional information shall be included: date and state of birth, mother's maiden name and date the child turns 17 ("Minor Information").</p>	<p>[2.] <u>Information Disclosed to LEIN.</u></p> <p>Yes, 164.510(b)(2) and 164.512(f)(2)(i).</p>	<p>[2.] <u>Information Disclosed to LEIN.</u></p> <p>Both, but see Column 5.</p>	<p>("PHI"), or the source of the information is not a covered entity, the Rule would not apply.</p> <p>[2.] <u>Information Disclosed to LEIN.</u></p> <p>Both state law and the Rule apply because each permits disclosure of the name, address and vital statistics (including physical description) for law enforcement purposes. Note: If the information entered does not include PHI, or the source of the information is not a covered entity, the Rule would not apply.</p>
	<p>[3.] Once the child turns 18, any information entered into the LEIN shall be retained and the child shall be considered an emancipated minor.</p>	<p>[3.] <u>Retention of Minor Information.</u></p> <p>No.</p>	<p>[3.] <u>Retention of Minor Information.</u></p> <p>State law.</p>	<p>[3.] <u>Retention of Minor Information.</u></p> <p>State law applies because no Rule counterpart exists.</p>
	<p>[4.] If after 30 days the missing person is not found, the law enforcement agency that received the report shall request the dental records of the individual (under MCL 333.48442a) by obtaining a written consent from the family or next-of-kin to contact the missing person's dentist to request the patient's dental records. Such information</p>	<p>[4.] <u>Disclosure of Dental Records.</u></p> <p>Yes, 164.512(f)(2)(ii).</p>	<p>[4.] <u>Disclosure of Dental Records.</u></p> <p>Both.</p>	<p>[4.] <u>Disclosure of Dental Records.</u></p> <p>Both state law and the Rule apply because each requires authorization by the individual or personal</p>

1. Citation	2. Brief Summary of Pertinent Provision	3. Is There a HIPAA Counterpart?	4. Which Law Applies?	5. Why?
	once obtained, shall be entered into the National Crime Information Center.			representative for the disclosure of dental records.
MCL 52.205 (Coroners and Medical Examiners)	<p>[1.] This Section addresses the procedures for medical examinations following deaths occurring under certain circumstances. It also provides for the designation of an individual to take custody of bodies, make pertinent inquiries and if necessary, transport bodies to the morgue for examination.</p> <p>[2.] The medical examiner can perform or direct the performance of an autopsy, and shall document the facts and circumstances showing the condition of the body, the manner of death and the persons present at the autopsy.</p> <p>[3.] The medical examiner shall ascertain the identity of a deceased individual and notify the next-of-kin of the death and location of the deceased, unless notice has already occurred. The medical examiner may conduct an autopsy without consent following unsuccessful efforts to notify the next-of-kin. The medical examiner shall keep written records of efforts to notify the</p>	<p>[1.] <u>Duties of Medical Examiners.</u> Yes, 164.512(g)(1).</p> <p>[2.] <u>Autopsy Procedures and Records.</u> No.</p> <p>[3.] <u>Notice to Next-of-Kin and Autopsy.</u> Yes, 164.510(b)(1)(ii) and 164.512(g)(1).</p>	<p>[1.] <u>Duties of Medical Examiners.</u> Both.</p> <p>[2.] <u>Autopsy Procedures and Records.</u> State law.</p> <p>[3.] <u>Notice to Next-of-Kin and Autopsy.</u> Both.</p>	<p>[1.] <u>Duties of Medical Examiners.</u> Assuming that the medical examiner receives confidential health information from covered entities in the course of his or her duties addressed under this state law, both state law and the Rule apply because each permits disclosure of confidential health information to medical examiners.</p> <p>[2.] <u>Autopsy Procedures and Records.</u> State law applies because no Rule counterpart exists governing autopsy procedures or the content of autopsy records.</p> <p>[3.] <u>Notice to Next-of-Kin and Autopsy.</u> Both state law and the Rule apply because each permits disclosure without authorization with respect to decedents and to medical</p>

1. Citation	2. Brief Summary of Pertinent Provision	3. Is There a HIPAA Counterpart?	4. Which Law Applies?	5. Why?
	next-of-kin for one year from the autopsy date.			examiners for purposes of identifying decedents.
THE MICHIGAN VEHICLE CODE				
MCL 257.625a (Driving While Intoxicated)	<p>[1.] Results of preliminary chemical breath analysis tests are admissible in criminal prosecutions or administrative hearings. Other results of chemical tests, including analyses of blood, urine or breath, are admissible in civil, criminal or administrative proceedings. Persons charged with a crime must be advised of such admissibility.</p> <p>[2.] A medical facility or provider performing chemical analysis shall disclose results of the analysis to the prosecuting attorney on request, and the facility or provider will not be civilly or criminally liable for making the disclosure. Should an accident result in the death of the driver, the medical examiner shall give the results of the chemical analysis to a law enforcement agency, and the agency shall forward the results to the state police department.</p>	<p>[1.] <u>Admissibility.</u> No.</p> <p>[2.] <u>Disclosure of Test Results.</u> Yes, 164.512(a)(2) and 164.512(f).</p>	<p>[1.] <u>Admissibility.</u> State law.</p> <p>[2.] <u>Disclosure of Test Results.</u> Both.</p>	<p>[1.] <u>Admissibility.</u> State law applies because no Rule counterpart exists addressing the admissibility of confidential health information in the context of civil, criminal or administrative proceedings.</p> <p>[2.] <u>Disclosure of Test Results.</u> Both state law and the Rule apply because the Rule permits disclosure without authorization where, as here, required by law and for law enforcement purposes.</p>
THE AERONAUTICS CODE OF MICHIGAN				
MCL 259.187 (Flying Aircraft While Intoxicated)	<p>[1.] The amount of alcohol or the presence of controlled substances or other drugs or a combination thereof, as determined by chemical analysis, is admissible in a criminal prosecution. The results of a chemical analysis of the blood of a person transported to a medical facility for treatment after an accident are admissible.</p>	<p>[1.] <u>Admissibility.</u> No.</p>	<p>[1.] <u>Admissibility.</u> State law.</p>	<p>[1.] <u>Admissibility.</u> State law applies because no Rule counterpart exists addressing the admissibility of confidential health information in the context of civil, criminal or administrative proceedings.</p>

1. Citation	2. Brief Summary of Pertinent Provision	3. Is There a HIPAA Counterpart?	4. Which Law Applies?	5. Why?
	[2.] If a test is given, the results shall be made available to the person charged, the person's attorney (on written request to the prosecutor), and a copy shall be filed with the court. A medical facility or person performing a chemical analysis shall disclose the results of the analysis to the prosecuting attorney on request, and the provider or facility will not be civilly or criminally liable for making the disclosure.	[2.] <u>Disclosure of Test Results.</u> Yes, 164.512(a)(2), 164.512(f), and 164.524.	[2.] <u>Disclosure of Test Results.</u> Both.	[2.] <u>Disclosure of Test Results.</u> Both state law and the Rule apply because each requires confidential health information to be made available to the person to whom the confidential health information pertains, and the Rule permits disclosure without authorization where, as here, required by law and for law enforcement purposes.

THE NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION ACT

MCL 324.80182 (Marine Safety)	[1.] The results of chemical tests showing presence of alcohol or controlled substances in connection with the operation of a marine or watercraft vessel are admissible in civil, criminal or administrative proceedings. [2.] A medical facility or a person performing a chemical analysis shall disclose the results of the analysis to a prosecuting attorney on request and shall not be civilly or criminally liable for making the disclosure. In the context of a deceased operator, the medical examiner shall disclose the results of a chemical analysis to a law enforcement agency and the agency shall forward the results to the state police department.	[1.] <u>Admissibility.</u> No. [2.] <u>Disclosure of Test Results.</u> Yes, 164.512(a)(2) and 164.512(f).	[1.] <u>Admissibility.</u> State law. [2.] <u>Disclosure of Test Results.</u> Both.	[1.] <u>Admissibility.</u> State law applies because no Rule counterpart exists addressing the admissibility of confidential health information in the context of civil, criminal or administrative proceedings. [2.] <u>Disclosure of Test Results.</u> Both state law and the Rule apply because the Rule permits disclosure without authorization where, as here, required by law and for law enforcement purposes.
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1. Citation	2. Brief Summary of Pertinent Provision	3. Is There a HIPAA Counterpart?	4. Which Law Applies?	5. Why?
MCL 324.81136 (Off-Road Vehicles)	<p>[1.] The amount of alcohol in a driver's blood, as shown in a chemical analysis of the driver's blood, urine or breath, is admissible into evidence for the purposes stated in this subsection.</p> <p>[2.] The chemical test results shall be made available to the person charged or the person's attorney with a copy of the request filed in court.</p> <p>[3.] A medical facility or a provider performing a chemical analysis shall disclose the results of the analysis to the prosecuting attorney on request, and the facility or provider will not be civilly or criminally liable for making the disclosure. If the driver is deceased, the medical examiner shall disclose the results of a chemical analysis to a law enforcement agency and the agency shall forward the results to the state police department.</p>	<p>[1.] <u>Admissibility.</u> No.</p> <p>[2.] <u>Disclosure of Test Results.</u> Yes, 164.512(a)(2), 164.512(f), and 164.524.</p> <p>[3.] <u>Notice of Test Results.</u> Yes, 164.512(a)(2) and 164.512(f).</p>	<p>[1.] <u>Admissibility.</u> State law.</p> <p>[2.] <u>Disclosure of Test Results.</u> Both.</p> <p>[3.] <u>Notice of Test Results.</u> Both.</p>	<p>[1.] <u>Admissibility.</u> State law applies because no Rule counterpart exists addressing the admissibility of confidential health information in the context of judicial or administrative proceedings.</p> <p>[2.] <u>Disclosure of Test Results.</u> Both state law and the Rule apply because each requires confidential health information be made available to the person to whom the confidential health information pertains, and the Rule permits disclosure without authorization where, as here, required by law and for law enforcement purposes.</p> <p>[3.] <u>Notice of Test Results.</u> Both state law and the Rule apply because the Rule permits disclosure without authorization where, as here, required by law and for law enforcement purposes.</p>

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MCL 324.82138 (Snowmobiles)	<p>[1.] The results of chemical tests administered in connection with the operation of snowmobiles are admissible in civil or criminal proceedings to show the amount of alcohol and/or presence of a controlled substance at the time of an accident.</p> <p>[2.] A medical facility or provider performing a chemical analysis shall disclose the results of the analysis to the prosecuting attorney on request, and the facility or provider will not be civilly or criminally liable for making the disclosure. In the context of a deceased driver, the medical examiner shall disclose the results of a chemical analysis to a law enforcement agency and the agency shall forward the results to the state police department.</p>	<p>[1.] <u>Admissibility.</u></p> <p>No.</p> <p>[2.] <u>Disclosure of Test Results.</u></p> <p>Yes, 164.512(a)(2) and 164.512(f).</p>	<p>[1.] <u>Admissibility.</u></p> <p>State law.</p> <p>[2.] <u>Disclosure of Test Results.</u></p> <p>Both.</p>	<p>[1.] <u>Admissibility.</u></p> <p>State law applies because no Rule counterpart exists addressing the admissibility of confidential health information in the context of civil, criminal or administrative proceedings.</p> <p>[2.] <u>Disclosure of Test Results.</u></p> <p>Both state law and the Rule apply because the Rule permits disclosure without authorization where, as here, required by law and for law enforcement purposes.</p>
THE CRITICAL HEALTH PROBLEMS REPORTING ACT				
MCL 325.75 (Critical Health Data Reporting)	<p>[1.] A report or other data relating to a critical health problem that discloses the identity of an individual who was reported as having a critical health problem shall be made available only to persons who demonstrate a need for the report or other data which is essential to health-related research. The information compiled shall be designated as a critical health problem report and shall include information the Director of the Michigan Department of Health and Human Services (“MDHHS”) considers necessary to identify, locate and investigate the occurrence.</p>	<p>[1.] <u>Disclosure of Content of Critical Health Problem Report.</u></p> <p>Yes, 164.502(b), 164.512(b)(1)(i), 164.512(i), 164.512(j), and 164.514(d).</p>	<p>[1.] <u>Disclosure of Content of Critical Health Problem Report.</u></p> <p>Both.</p>	<p>[1.] <u>Disclosure of Content of Critical Health Problem Report.</u></p> <p>Assuming a covered entity is making the report, both state law and the Rule apply because each permits disclosure without authorization for public health purposes. The Rule’s “minimum necessary” standard and role-based access are consistent with limits imposed by state law.</p>

1. Citation	2. Brief Summary of Pertinent Provision	3. Is There a HIPAA Counterpart?	4. Which Law Applies?	5. Why?
	<p>[2.] Physician/patient privilege shall not apply to a critical health problem report prepared pursuant to this Section.</p> <p>[3.] A report or data that does not disclose the identity of the individual shall be made available to the public under FOIA.</p>	<p>[2.] <u>Application of Physician/Patient Privilege.</u></p> <p>No.</p> <p>[3.] <u>Public Disclosure.</u></p> <p>No.</p>	<p>[2.] <u>Application of Physician/Patient Privilege.</u></p> <p>State law.</p> <p>[3.] <u>Public Disclosure.</u></p> <p>State law.</p>	<p>Note: Despite the state law's express reference to "health-related research," we concluded this research was epidemiological in nature (and not research in the context of treatment), and was intended to track critical health factors.</p> <p>[2.] <u>Application of Physician/Patient Privilege.</u></p> <p>State law applies because no Rule counterpart exists regarding physician/patient privilege.</p> <p>[3.] <u>Public Disclosure.</u></p> <p>State law applies because MDHHS is not functioning as a covered entity in this context.</p>
THE MENTAL HEALTH CODE				
<p>MCL 330.1143a</p> <p>(Confidentiality of Peer Review Information for Psychiatric Facilities)</p>	<p>[1.] The records, data and knowledge collected for or by individuals or committees assigned a review function of a psychiatric hospital, unit or program are confidential,</p>	<p>[1.] <u>Confidentiality of Mental Health Peer Review Records.</u></p> <p>Yes, 164.501 (definition of health care operations), 164.502(a), and 164.506(a).</p>	<p>[1.] <u>Confidentiality of Mental Health Peer Review Records.</u></p> <p>Both.</p>	<p>[1.] <u>Confidentiality of Mental Health Peer Review Records.</u></p> <p>Assuming that the peer review records include PHI and are used or disclosed by a covered entity, both state law and the Rule apply because each contains</p>

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	[2.] are not public records and shall be used only for the purposes of review, and	<p>[2.] <u>Limited Use and Disclosure of Peer Records.</u></p> <p>Yes, 164.502(b) and 164.514(d).</p>	<p>[2.] <u>Limited Use and Disclosure of Peer Records.</u></p> <p>Both.</p>	<p>compatible requirements that confidential health information be protected. Note: While state law assumes that a covered entity will disclose PHI for peer review functions, 164.506(a) of the Rule permits such disclosure as part of treatment, payment and health care operations (“TPO”). Peer review is included in the definition of health care operations. <i>See</i> 164.501. Also, the Rule limits disclosures by a covered entity for health care operations of another covered entity to situations where each has or had a relationship with the subject of the PHI and the PHI relates to that relationship.</p> <p>[2.] <u>Limited Use and Disclosure of Peer Records.</u></p> <p>Both state law and the Rule apply because each contains compatible requirements limiting the use of confidential health information to what is necessary for peer review purposes. Note: The Rule limits disclosures for the health care operations of</p>

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	[3.] are not subject to court subpoena.	[3.] <u>Not Subject to Court Subpoena.</u> Yes, 160.203(b), 164.512(a)(2), and 164.512(e).	[3.] <u>Not Subject to Court Subpoena.</u> State law.	another covered entity to situations when each had or has a relationship with the individual who is the subject of the protected health information and such information relates to that relationship. [3.] <u>Not Subject to Court Subpoena.</u> State law applies because it is contrary to and more stringent than the Rule by prohibiting public disclosure or disclosure even by court subpoena.
MCL 330.1244 (Collection of Information by MDHHS)	MDHHS shall not collect any information that would make it possible to identify by name any individual who needs a service from a community mental health services program while trying to develop or operate its community health services program information system.	No.	State law.	State law applies because no Rule counterpart exists precluding the collection of such information. Additionally, to the extent MDHHS is not acting as a covered entity, the Rule does not apply.
MCL 330.1435 (Civil Admission and Discharge for Mental Illness)	Examining physician or licensed psychologist performing court ordered psychiatric examinations must transmit a clinical certificate to the court or a report that such a certificate is not warranted.	Yes, 164.512(a)(2) and 164.512(e).	Both.	Both state law and the Rule apply because each permits disclosure of confidential health information without authorization pursuant to a court order and as required by law.

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MCL 330.1498i (Notification to Parent or Guardian of Hospital Admission of Minor)	A parent or guardian shall be immediately notified of the admission of a minor to a hospital in any case where the parent or guardian of the minor did not execute the application for hospitalization.	Yes, 164.502(g), 164.510(b)(1), and 164.512(a).	Both.	Both state law and the Rule apply because the Rule permits disclosure of confidential health information to a parent or guardian where, as here, required by state law. Note: State law here is more stringent by definition but it is not contrary to the Rule and, therefore, both state law and the Rule apply. <i>See</i> 160.202 (definition of more stringent at (2)).
MCL 330.1707 (Parent or Guardian Not to be Notified of Mental Health Services Provided to Minor)	<p>[1.] A parent, guardian, or person acting <i>in loco parentis</i> of a minor 14 years of age, or older, shall not be informed of the mental health services provided to the minor without the consent of the minor,</p> <p>[2.] unless the mental health professional treating the minor determines that there is a compelling need for disclosure and if the minor is notified of the mental health professional's intent to inform the minor's parent, guardian or person acting <i>in loco parentis</i>.</p>	<p>[1.] <u>Nondisclosure to Parents.</u> Yes, 160.203(b) and 164.502(g)(3).</p> <p>[2.] <u>Compelling Need.</u> Yes, 164.502(g)(3)(ii)(A).</p>	<p>[1.] <u>Nondisclosure to Parents.</u> Both.</p> <p>[2.] <u>Compelling Need.</u> Both.</p>	<p>[1.] <u>Nondisclosure to Parents.</u> Both state law and the Rule apply because personal representation under the Rule is invalidated when state law decrees that the minor consents to the treatment and requests nondisclosure. <i>See</i> 164.502(g)(3)(i) and 164.502(g)(3)(ii)(B).</p> <p>[2.] <u>Compelling Need.</u> Both state law and the Rule apply because state law permits disclosure when there is a compelling need and the Rule permits disclosure to the extent</p>

1. Citation	2. Brief Summary of Pertinent Provision	3. Is There a HIPAA Counterpart?	4. Which Law Applies?	5. Why?
	<p>[3.] This Section does not apply to pregnancy termination referral services or the use of psychotropic drugs.</p> <p>[4.] Mental health services provided without the consent or knowledge of a minor's parent, guardian or persons acting <i>in loco parentis</i> shall be limited to not more than 12 sessions or 4 months per request for services.</p> <p>[5.] This Section does not relieve a mental health professional from his or her duty to report suspected child abuse or neglect.</p>	<p>[3.] <u>Disclosure to Parents Regarding Pregnancy Termination and Drugs.</u></p> <p>164.502(g)(3).</p> <p>[4.] <u>Mental Health Services without Parental Consent.</u></p> <p>No.</p> <p>[5.] <u>Abuse or Neglect Reporting.</u></p> <p>Yes, 164.512(a)(1) and 164.512(b)(1)(ii).</p>	<p>[3.] <u>Disclosure to Parents Regarding Pregnancy Termination and Drugs.</u></p> <p>Both.</p> <p>[4.] <u>Mental Health Services without Parental Consent.</u></p> <p>State law.</p> <p>[5.] <u>Abuse or Neglect Reporting.</u></p> <p>Both.</p>	<p>permitted by state law.</p> <p>[3.] <u>Disclosure to Parents Regarding Pregnancy Termination and Drugs.</u></p> <p>Both state law and the Rule apply because state law does not prohibit such disclosure and since the Rule is silent on exceptions for pregnancy termination referral services or the use of psychotropic drugs, the Rule defers to state law.</p> <p>[4.] <u>Mental Health Services without Parental Consent.</u></p> <p>State law applies because no Rule counterpart exists. While 164.502(g)(3) speaks generally to a minor's right to obtain services without consent, the Rule does not address the number or duration of such services.</p> <p>[5.] <u>Abuse or Neglect Reporting.</u></p> <p>Both state law and the Rule apply because each permits disclosure for abuse or neglect reporting without prior authorization, and the</p>

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				Rule permits disclosure where, as here, required by law. Note: MCL 330.1723, discussed below in this Matrix, imposes a duty to report instances of abuse or neglect, while the Rule only permits such disclosure.
MCL 330.1723 (Obligation of Mental Health Professional to Report Abuse or Neglect)	<p>[1.] A mental health professional is obligated to file a written report of suspected criminal abuse. The report shall become part of the recipient's clinical record once the names of the reporting individual and accused are deleted from the report.</p> <p>[2.] The identity of the individual who makes the report of suspected criminal abuse is confidential and not subject to disclosure without consent of that individual or by court order. An individual acting in good faith who makes a report of abuse is immune from civil or criminal liability.</p> <p>[3.] Confidential information or privileged information may be disclosed if the suspected abuse occurred in or by (1) a mental health</p>	<p>[1.] <u>Abuse or Neglect Reporting.</u> Yes, 164.512(a)(1), 164.512(b)(1)(ii), and 164.512(c).</p> <p>[2.] <u>Nondisclosure of Reporter.</u> No.</p> <p>[3.] <u>Disclosure for Health Oversight Activities.</u></p>	<p>[1.] <u>Abuse or Neglect Reporting.</u> Both.</p> <p>[2.] <u>Nondisclosure of Reporter.</u> State law.</p> <p>[3.] <u>Disclosure for Health Oversight Activities.</u></p>	<p>[1.] <u>Abuse or Neglect Reporting.</u> Both state law and the Rule apply because each permits disclosure without authorization for abuse and neglect reporting, and the Rule permits disclosure where, as here, required by law.</p> <p>[2.] <u>Nondisclosure of Reporter.</u> State law applies because no Rule counterpart exists regarding the confidentiality of the identity of individuals reporting abuse or neglect.</p> <p>[3.] <u>Disclosure for Health Oversight Activities.</u></p>

1. Citation	2. Brief Summary of Pertinent Provision	3. Is There a HIPAA Counterpart?	4. Which Law Applies?	5. Why?
	professional; (2) an individual employed by or under contract with MDHHS, a licensed facility, or a community mental health services program; (3) a state or licensed facility; (4) a program site; or (5) a worksite or place where a recipient is supervised by a person referenced above.	Yes, 164.512(b)(1)(i), 164.512(b)(1)(ii), 164.512(c), 164.512(d), and 164.512(j).	Both.	Both state law and the Rule apply because each permits disclosure without authorization for abuse or neglect reporting, for health oversight and to avert a serious threat of harm.
MCL 330.1726 (Rights of Residents of Mental Health Facilities to Unimpeded Communication)	A resident is entitled to unimpeded, private, and uncensored communication with others by mail and telephone and to visit with persons of his or her choice (such rights shall not be further limited except as authorized in the resident's individual plan of services).	No.	State law.	State law applies because no Rule counterpart exists regarding uncensored and unimpeded resident communications.
MCL 330.1746 (Maintenance of Records for Mental Health Services)	[1.] A complete record shall be maintained for each recipient of mental health services.	[1.] <u>Record Maintenance.</u> No.	[1.] <u>Record Maintenance.</u> State law.	[1.] <u>Record Maintenance.</u> State law applies because no Rule counterpart exists requiring maintenance of a mental health record. Note: The Rule, however, assumes that a covered entity will create and maintain medical records and that the covered entity will document which of those records are part of a "designated record set." See 164.524(e)(1).

1. Citation	2. Brief Summary of Pertinent Provision	3. Is There a HIPAA Counterpart?	4. Which Law Applies?	5. Why?
	[2.] The material in the record shall be confidential to the extent it is made confidential by MCL 330.1748 (confidentiality of mental health records), discussed below in this Matrix.	[2.] <u>Confidentiality.</u> See analysis at MCL 330.1748 discussed below in this Matrix.	[2.] <u>Confidentiality.</u> See analysis at MCL 330.1748 discussed below in this Matrix.	[2.] <u>Confidentiality.</u> See analysis at MCL 330.1748 discussed below in this Matrix.
MCL 330.1748 (Confidentiality of Mental Health Records)	[1.] Information in the record of a recipient, and other information acquired in the course of providing mental health services to a recipient, shall be kept confidential and shall not be open to public inspection except as provided herein or under MCL 330.1748a (use of mental health records as evidence of abuse or neglect), discussed below in this Matrix.	[1.] <u>Confidentiality.</u> Yes, 164.502(a).	[1.] <u>Confidentiality.</u> Both.	[1.] <u>Confidentiality.</u> Both state law and the Rule apply because each contains compatible requirements that confidential health information be protected. For analysis of exceptions, see analysis of [2.] – [9.] in this Section of the Matrix.
	[2.] If permissibly disclosed, information is limited to that which is germane to the authorized purpose.	[2.] <u>Manner of Disclosure.</u> Yes, 164.502(b) and 164.514(d).	[2.] <u>Manner of Disclosure.</u> Both.	[2.] <u>Manner of Disclosure.</u> Both state law and the Rule apply because the state law “germane to the authorized purpose” standard and the Rule “minimum necessary” standard are compatible.
	[3.] If permissibly disclosed, the receiver of such information may only redisclose to the extent consistent with authorized purpose.	[3.] <u>Redisclosure.</u> No.	[3.] <u>Redisclosure.</u> State law.	[3.] <u>Redisclosure.</u> State law applies because no Rule counterpart exists prohibiting redisclosure. Note: In a number of specific instances (e.g., business associates, group health plans, one covered entity to another), the Rule requires limitations on redisclosure. See

1. Citation	2. Brief Summary of Pertinent Provision	3. Is There a HIPAA Counterpart?	4. Which Law Applies?	5. Why?
	<p>[4.] Confidential information may be disclosed pursuant to a court order or a judicial or legislative subpoena to the extent the information is not privileged.</p> <p>[5.] Confidential information may be disclosed pursuant to a legislative subpoena to the extent that the information is not privileged.</p>	<p>[4.] <u>Disclosure for Legal Proceedings.</u></p> <p>Yes, 164.512(e).</p> <p>[5.] <u>Disclosure for Legislative Investigation.</u></p> <p>No.</p>	<p>[4.] <u>Disclosure for Legal Proceedings.</u></p> <p>Both, but see Column 5.</p> <p>[5.] <u>Disclosure for Legislative Investigation.</u></p> <p>State law, but see Column 5.</p>	<p>164.504(e)(2)(ii) and 164.504(f)(2)(ii).</p> <p>[4.] <u>Disclosure for Legal Proceedings.</u></p> <p>Both state law and the Rule apply because each permits disclosure without authorization pursuant to a court order in connection with legal proceedings. As to subpoenas, however, the Rule applies because state law permits disclosure of nonprivileged information pursuant to a subpoena without a court order, while the Rule permits such disclosure pursuant to a subpoena without a court order only if certain additional requirements short of a court order are met. <i>See</i> 164.512(e)(1).</p> <p>[5.] <u>Disclosure for Legislative Investigation.</u></p> <p>Both state law and the Rule apply because state law requires compliance with legislative subpoenas and, thus, both state law and the Rule permit disclosure when required by law. Note: To</p>

1. Citation	2. Brief Summary of Pertinent Provision	3. Is There a HIPAA Counterpart?	4. Which Law Applies?	5. Why?
	<p>[6.] Confidential information may be disclosed to the prosecuting attorney as necessary to participate in a proceeding governed by this Act.</p> <p>[7.] Confidential information may be disclosed to the recipient's attorney with the recipient's or recipient's guardian's, parent's or personal representative's consent.</p> <p>[8.] Confidential information may be disclosed to comply with other law.</p>	<p>[6.] <u>Disclosure to Prosecuting Attorney.</u> Yes, 164.512(e) and 164.512(f)(1)(C).</p> <p>[7.] <u>Disclosure to Attorney.</u> Yes, 164.502(a)(1)(iv), 164.502(g), and 164.508.</p> <p>[8.] <u>Disclosure as Required by Law.</u> Yes, 164.512(a)(1).</p>	<p>[6.] <u>Disclosure to Prosecuting Attorney.</u> Both.</p> <p>[7.] <u>Disclosure to Attorney.</u> Both.</p> <p>[8.] <u>Disclosure as Required by Law.</u> Both.</p>	<p>the extent that the state agency that receives the legislative subpoena is not a covered entity, the Rule does not apply.</p> <p>[6.] <u>Disclosure to Prosecuting Attorney.</u> Both state law and the Rule apply because each permits disclosure of confidential health information without authorization in civil proceedings if certain requirements are met. Note: The Rule's provisions, however, do not specifically address proceedings for civil commitment.</p> <p>[7.] <u>Disclosure to Attorney.</u> Both state law and the Rule apply because each permits disclosure with authorization. Note: 164.502(g)(5) describes when a personal representative cannot act in that capacity.</p> <p>[8.] <u>Disclosure as Required by Law.</u> Both state law and the Rule apply because the Rule</p>

1. Citation	2. Brief Summary of Pertinent Provision	3. Is There a HIPAA Counterpart?	4. Which Law Applies?	5. Why?
	<p>[9.] Confidential information may be disclosed to MDHHS or the auditor general to discharge their duties.</p> <p>[10.] Confidential information may be disclosed to a surviving spouse or other relative for purposes of applying for or receiving benefits.</p>	<p>[9.] <u>Disclosure to MDHHS or Auditor General.</u></p> <p>Yes, 164.512(b)(1)(i) and 164.512(d).</p> <p>[10.] <u>Disclosures Regarding Deceased.</u></p> <p>Yes, 164.502(f) and 164.502(g)(4).</p>	<p>[9.] <u>Disclosure to MDHHS or Auditor General.</u></p> <p>Both.</p> <p>[10.] <u>Disclosures Regarding Deceased.</u></p> <p>The Rule, but see Column 5.</p>	<p>permits disclosure where, as here, required by law.</p> <p>[9.] <u>Disclosure to MDHHS or Auditor General.</u></p> <p>Both state law and the Rule apply because each permits disclosure without authorization to state agencies for public health purposes and health oversight activities.</p> <p>[10.] <u>Disclosures Regarding Deceased.</u></p> <p>The Rule applies because it limits disclosures to persons who have authority to act on behalf of the deceased's estate, and requires disclosures for all purposes relevant to the personal representation. Note: The Rule also provides for notification of death to be given to relatives. <i>See</i> 164.510(b)(1)(ii). Relatives who are not personal representatives otherwise entitled to benefits under state law would have to obtain necessary information about the deceased from a source other than the covered entity.</p>

1. Citation	2. Brief Summary of Pertinent Provision	3. Is There a HIPAA Counterpart?	4. Which Law Applies?	5. Why?
	<p>[11.] If confidential information is disclosed, the identity of the individual to whom it pertains shall be protected.</p> <p>[12.] Case record entries made after March 28, 1996 must be disclosed to an adult recipient upon request, if the recipient does not have a guardian and has not been adjudicated legally incompetent. Otherwise, confidential information may be withheld from an adult or minor recipient, the recipient's guardian, parent or personal representative if, in the written judgment of the recordholder, the disclosure would be detrimental to the recipient or others.</p> <p>[13.] If consent is obtained from the recipient, the recipient's guardian, parent or personal representative, confidential information may be disclosed to the recipient's mental health services provider.</p>	<p>[11.] <u>Nondisclosure of Patient Identity.</u></p> <p>No.</p> <p>[12.] <u>Denial of Access.</u></p> <p>Yes, 164.524.</p> <p>[13.] <u>Disclosure with Consent to Mental Health Services Provider.</u></p> <p>Yes, 164.502(a)(1)(ii), 164.502(a)(1)(iv), 164.506, and 164.508.</p>	<p>[11.] <u>Nondisclosure of Patient Identity.</u></p> <p>State law.</p> <p>[12.] <u>Denial of Access.</u></p> <p>Both, but see Column 5.</p> <p>[13.] <u>Disclosure with Consent to Mental Health Services Provider.</u></p> <p>Both, but see Column 5.</p>	<p>[11.] <u>Nondisclosure of Patient Identity.</u></p> <p>State law applies because no Rule counterpart exists prohibiting disclosure of patient identity when the disclosure is otherwise permissible under the Rule.</p> <p>[12.] <u>Denial of Access.</u></p> <p>State law applies because it is contrary to and more stringent than the Rule in that, depending on the circumstances, state law either requires access to be given where the Rule allows access to be given or state law is more restrictive than the Rule regarding conditions under which access may be denied. Note: The Rule gives recipients a right of review for denials otherwise permitted under state law.</p> <p>[13.] <u>Disclosure with Consent to Mental Health Services Provider.</u></p> <p>Both state law and the Rule apply because each permits disclosure with authorization. Note: State</p>

1. Citation	2. Brief Summary of Pertinent Provision	3. Is There a HIPAA Counterpart?	4. Which Law Applies?	5. Why?
	<p>[14.] Information may be disclosed by the holder of the record in its discretion as necessary in order for the recipient to apply for or receive benefits.</p> <p>[15., 16. and 17.] Information may be disclosed by the holder of the record in its discretion as necessary for the purpose of outside research, evaluation, accreditation or statistical compilation provided the recipient is not identified unless the identification is essential or if preventing identification would clearly be impractical (but not if the subject of the information is likely to be</p>	<p>[14.] <u>Disclosure for Benefits Purposes.</u></p> <p>Yes, 164.502(a)(1)(ii), 164.502(a)(1)(iv), 164.506(a)(1), and 164.508(a)(1).</p> <p>[15.] <u>Disclosure for Research Purposes.</u></p> <p>Yes, 164.508, 164.512(i) and 164.514.</p>	<p>[14.] <u>Disclosure for Benefits Purposes.</u></p> <p>The Rule.</p> <p>[15.] <u>Disclosure for Research Purposes.</u></p> <p>The Rule.</p>	<p>law is more stringent because it prohibits such disclosures without authorization while the Rule permits disclosure without authorization for the treatment and payment activities of the provider that receives the information.</p> <p>[14.] <u>Disclosure for Benefits Purposes.</u></p> <p>To the extent the disclosure involves PHI used for purposes other than TPO, state law is contrary to and preempted by the Rule because the Rule requires an authorization. For payment purposes, both state law and the Rule apply because both permit disclosure without authorization for payment purposes. <i>See</i> definition of payment at 164.501 (includes benefit eligibility determinations).</p> <p>[15.] <u>Disclosure for Research Purposes.</u></p> <p>The Rule applies because it either requires, for disclosure of PHI, an authorization or an authorization waiver</p>

1. Citation	2. Brief Summary of Pertinent Provision	3. Is There a HIPAA Counterpart?	4. Which Law Applies?	5. Why?
	harmful by the identification).	<p>[16.] <u>Evaluation and Accreditation.</u></p> <p>Yes, 164.502(a)(1)(ii), 164.506, and 164.512(d).</p> <p>[17.] <u>Statistical Compilation.</u></p> <p>Yes, 164.502(a)(1)(ii), 164.506, and 164.512(d).</p> <p>[18.] <u>Disclosure to Avert Harm.</u></p>	<p>[16.] <u>Evaluation and Accreditation.</u></p> <p>Both.</p> <p>[17.] <u>Statistical Compilation.</u></p> <p>Both.</p> <p>[18.] <u>Disclosure to Avert Harm.</u></p>	<p>approved by the Institutional Review Board (“IRB”) or privacy board; or the Rule limits disclosure to a limited data set where there is a data use agreement in place. By allowing disclosure without authorization, an authorization waiver, or a data use agreement, state law is contrary to and preempted by the Rule.</p> <p>[16.] <u>Evaluation and Accreditation.</u></p> <p>Both state law and the Rule apply because each permits disclosure without authorization for health care operations and for health oversight purposes.</p> <p>[17.] <u>Statistical Compilation.</u></p> <p>Both state law and the Rule apply because each permits disclosure without authorization for health care operations and for health oversight activities.</p> <p>[18.] <u>Disclosure to Avert Harm.</u></p>

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	<p>provider or public agency if a compelling need for disclosure based upon a substantial probability of harm to the recipient or other individuals exists.</p> <p>[19.] If required by federal law, MDHHS shall grant a representative of the protection and advocacy system access to the following records: a recipient if the recipient or his or her guardian, parent or legal representative has consented; a deceased or missing recipient if the recipient is unable to give consent due to physical or mental condition, the recipient does not have a guardian or other legal representative (or the representative is the State) and the protection and advocacy system has received a complaint on behalf of the recipient or has probable cause to believe the recipient has been subject of neglect or abuse; or a recipient's guardian or other legal representative has refused to or failed to act on behalf of the recipient when probable cause of neglect or abuse exists and MDHHS has so notified the guardian or other legal representative.</p>	<p>Yes, 164.512(b)(1)(i), 164.512(c), and 164.512(j).</p> <p>[19.] <u>Disclosure Required by Law.</u></p> <p>Yes, 164.502(g), 164.512(a), 164.512(b)(1)(ii), and 164.512(c).</p>	<p>Both.</p> <p>[19.] <u>Disclosure Required by Law.</u></p> <p>Both.</p>	<p>Both state law and the Rule apply because each permits disclosure without authorization to avert a serious threat of harm to an individual or the public.</p> <p>[19.] <u>Disclosure Required by Law.</u></p> <p>Both state law and the Rule apply because each permits disclosure without authorization for abuse or neglect reporting and as required by law, or pursuant to the authorization of the patient or his or her personal representative. Note: If MDHHS is not functioning as a covered entity in this context, the Rule does not apply.</p>
<p>MCL 330.1748a</p> <p>(Use of Mental Health Records as Evidence of Abuse or Neglect)</p>	<p>[1.] If there is a compelling need for mental health records or information to determine whether child abuse or child neglect has occurred or to take action to protect a minor where there may be a substantial risk of harm, a family independence agency caseworker or administrator directly involved in the child abuse or neglect investigation shall notify a mental health professional that a child abuse or neglect investigation has been initiated involving a person who has received services from the mental health</p>	<p>[1.] <u>Abuse or Neglect Reporting.</u></p> <p>Yes, 164.512(b)(1)(ii).</p>	<p>[1.] <u>Abuse or Neglect Reporting.</u></p> <p>Both.</p>	<p>[1.] <u>Abuse or Neglect Reporting.</u></p> <p>Both state law and the Rule apply because both permit disclosure without authorization for abuse or neglect reporting. The state law is silent with regard to individual notification (<i>i.e.</i>, notifying the victim), while</p>

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	<p>professional and shall request in writing mental health records and information that are pertinent to that investigation.</p> <p>[2.] Within 14 days after receipt of a request made under this subsection, the mental health professional shall release those pertinent mental health records and information to the caseworker or administrator directly involved in the child abuse or neglect investigation.</p> <p>[3.] Any health professional/patient privilege recognized by law is not applicable to this Section.</p>	<p>[2.] <u>Method of Disclosure.</u> No.</p> <p>[3.] <u>Privilege.</u> No.</p>	<p>[2.] <u>Method of Disclosure.</u> State law.</p> <p>[3.] <u>Privilege.</u> State law.</p>	<p>the Rule contains specific provisions related to such notification and would control.</p> <p>[2.] <u>Method of Disclosure.</u> State law applies because no Rule counterpart exists as to the timing of the disclosure.</p> <p>[3.] <u>Privilege.</u> State law applies because no Rule counterpart exists regarding professional/patient privilege.</p>

1. Citation	2. Brief Summary of Pertinent Provision	3. Is There a HIPAA Counterpart?	4. Which Law Applies?	5. Why?
MCL 330.1750 (Privileged Communications as Evidence)	[1.] Privileged communications shall not be disclosed in civil, criminal, legislative or administrative hearings unless the patient has waived the privilege.	[1.] <u>Consent to Disclosure of Privileged Information in Legal Proceedings.</u> Yes, 164.512(e)(1)(iii).	[1.] <u>Consent to Disclosure of Privileged Information in Legal Proceedings.</u> Both.	[1.] <u>Consent to Disclosure of Privileged Information in Legal Proceedings.</u> Assuming that the privileged communications contain confidential health information, both state law and the Rule apply by requiring an effective waiver of the privilege. While state law here requires an express waiver of the privilege, the Rule sets forth a procedure to determine whether the privilege has been effectively waived.
	[2.] Privileged communications, however, may be disclosed in circumstances that are: relevant to the physical or mental condition of the patient introduced into a case or proceeding; relevant to a matter under consideration in a proceeding governed by this Act provided the patient was informed that any communications made could be used in such proceeding; relevant to determine legal competence or the patient's need for a guardian, provided the patient was informed that any communications made could be used in such proceeding; in a civil action by or on behalf of the patient or criminal action arising from the treatment of the patient against the mental health professional for malpractice; if the communication was made during an examination ordered by a court prior to which the patient was informed, the communications would not be privileged; or the communication was made	[2.] <u>Disclosure in Legal Proceedings.</u> Yes, 164.512(e).	[2.] <u>Disclosure in Legal Proceedings.</u> The Rule.	[2.] <u>Disclosure in Legal Proceedings.</u> Assuming that the privileged communications contain confidential health information, the Rule applies because it requires a court order for disclosure without authorization, or upon satisfaction of other criteria, while state law allows disclosure in civil or administrative proceedings simply upon notice to the individual.

1. Citation	2. Brief Summary of Pertinent Provision	3. Is There a HIPAA Counterpart?	4. Which Law Applies?	5. Why?
	<p>during a competency evaluation.</p> <p>[3.] Privileged communications may be disclosed in order to comply with the duty to warn contained in MCL 330.1946 (duty of mental health professional to warn), discussed below in this Matrix.</p>	<p>[3.] <u>Disclosure to Avert Harm.</u></p> <p>Yes, 164.512(j).</p>	<p>[3.] <u>Disclosure to Avert Harm.</u></p> <p>Both.</p>	<p>[3.] <u>Disclosure to Avert Harm.</u></p> <p>Assuming that privileged communications contain confidential health information, both state law and the Rule apply because each permits disclosure without authorization if necessary to avert a serious threat of harm to an individual or the public.</p>
<p>MCL 330.1920</p> <p>(Interstate Compact on Mental Health)</p>	<p>[1.] This Section codifies the Interstate Compact on Mental Health (the “Compact”) which provides the legal basis for institutionalization and care and treatment of mental health patients. This Section also provides for persons to be eligible for care in any state that is a party to the Compact, when required, based on the patient’s full record. Generally, the sending state must send all available medical and pertinent records (e.g., complete medical history) regarding the patient to the receiving state for treatment or after-care.</p> <p>[2.] States that are parties to the Compact must notify authorities both within and outside the state of a dangerous or potentially dangerous patient’s escape from a facility in a state that is a party to the Compact.</p>	<p>[1.] <u>Transmittal of Medical Records.</u></p> <p>Yes, 164.512(a)(1).</p> <p>[2.] <u>Notice of Escapes.</u></p> <p>Yes, 164.512(a), 164.512(f), and 164.512(j).</p>	<p>[1.] <u>Transmittal of Medical Records.</u></p> <p>Both.</p> <p>[2.] <u>Notice of Escapes.</u></p> <p>Both.</p>	<p>[1.] <u>Transmittal of Medical Records.</u></p> <p>Both state law and the Rule apply because the Rule permits disclosure without authorization where, as here, required by law.</p> <p>[2.] <u>Notice of Escapes.</u></p> <p>Both state law and the Rule apply because each permits disclosure without authorization for law</p>

1. Citation	2. Brief Summary of Pertinent Provision	3. Is There a HIPAA Counterpart?	4. Which Law Applies?	5. Why?
	[3.] Each party state shall appoint a “Compact Administrator” who, on behalf of his or her state, serves as a coordinator and receives copies of reports and documents regarding patients processed in his or her state as a sending or receiving state.	[3.] <u>Appointment of Coordinator.</u> No.	[3.] <u>Appointment of Coordinator.</u> State law.	enforcement purposes, to avert a serious threat of harm and as required by law. [3.] <u>Appointment of Coordinator.</u> State law applies because no Rule counterpart exists requiring the appointment of a coordinator in this context. Note: The Rule would allow covered entities to disclose confidential health information among state Compact Administrators to administer this program. <i>See</i> 164.512(k)(6).
MCL 330.1946 (Duty of Mental Health Professional to Warn)	If a patient communicates a threat of physical violence against a reasonably identifiable third person to a mental health professional who is treating the patient, and the recipient has the apparent intent and ability to carry out that threat in the foreseeable future, the mental health professional has a duty to do one of the following in a timely manner: hospitalize the patient or initiate proceedings to hospitalize the patient; make a reasonable attempt to communicate the threat to the third person and communicate the threat to the local police in the area where the third person resides or the area where the patient resides; and if the mental health professional has reason to believe that the third person who is threatened is a minor or is incompetent, communicate the threat to the department of social services in the county where the minor resides and to the third person’s custodial parent	Yes, 164.502(g), 164.512(a), 164.512(b)(1)(ii), 164.512(c), and 164.512(j).	Both.	Both state law and the Rule apply because each permits disclosure without authorization to avert a serious threat of harm, for public health purposes and for abuse or neglect reporting. Also, the Rule permits disclosure where, as here, required by law.

1. Citation	2. Brief Summary of Pertinent Provision	3. Is There a HIPAA Counterpart?	4. Which Law Applies?	5. Why?
	or legal guardian. Except as provided in this Section, the mental health professional has no duty to warn the third person unless required by other state law.			
THE RELEASE OF INFORMATION FOR MEDICAL RESEARCH AND EDUCATION ACT				
MCL 331.531 (Disclosures to Peer Review Entities)	[1.] A person, organization, or entity may provide, to a reviewing entity, information or data relating to the physical or psychological condition of a person, the necessity, appropriateness, or quality of health care rendered to a person, or the qualifications, competence, or performance of a health care provider.	[1.] <u>Disclosure of Conditions for Peer Review.</u> Yes, 164.501 (definition of health care operations and definition of psychotherapy notes), 164.506(c)(1) (use in covered entity's operations), and 164.506(c)(1)(4)(i) (disclosure to another covered entity for that entity's health care operations, if both covered entities have a relationship with the individual whose records are being shared and the PHI relates to that relationship).	[1.] <u>Disclosure of Conditions for Peer Review.</u> Both, but see Column 5.	[1.] <u>Disclosure of Conditions for Peer Review.</u> Both state law and the Rule apply to the extent the peer review records involve PHI other than psychotherapy notes because disclosure is permissible under the Rule as part of health care operations, and state law permits such disclosure. Note: Under the Rule a covered entity must obtain a valid authorization for use or disclosure of psychotherapy notes, even for the health care operations of the covered entity in question, excepting only certain enumerated exclusions. Peer review is not included in the enumerated exclusions.
	[2.] Entities that employ or contract with licensed health care providers must report certain	[2.] <u>Disclosure for Oversight Activities.</u>	[2.] <u>Disclosure for Oversight Activities.</u>	[2.] <u>Disclosure for Oversight Activities.</u>

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	<p>disciplinary, investigatory or related actions to the Department of Community Health (“MDCH”).</p> <p>[3.] Immunity provided by this Section does not apply to persons or entities acting with malice.</p> <p>[4.] Certain entities that employ, contract with or grant privileges to registered or licensed health professionals must report disciplinary actions regarding health professionals that adversely affect the professional’s clinical privileges for more than 15 days or which require surrender of the professional’s clinical privileges, or termination or non-renewal of contract in lieu of disciplinary action. Disciplinary or other action may be disclosed by certain health care entities to other health care entities seeking a reference in connection with privileging decisions.</p>	<p>Yes, 164.512(b)(1)(i) and 164.512(d).</p> <p>[3.] <u>Scope of Liability.</u> Yes, 42 U.S.C. §§ 1176 and 1177.</p> <p>[4.] <u>Disclosure of Records.</u> Yes, 164.512(d)(1).</p>	<p>Both.</p> <p>[3.] <u>Scope of Liability.</u> Both.</p> <p>[4.] <u>Disclosure of Records.</u> Both.</p>	<p>Both state law and the Rule apply because each permits disclosure without authorization for public health purposes and for health oversight activities.</p> <p>[3.] <u>Scope of Liability.</u> Both state law and HIPAA impose liability for using or disclosing PHI with malice under federal and state law.</p> <p>[4.] <u>Disclosure of Records.</u> Assuming PHI is involved, both the Rule and state law apply because each permits disclosure without authorization for health oversight activities. Note: The Rule does not apply to information that does not constitute PHI.</p>
<p>MCL 331.533</p> <p>(Confidentiality of Information Utilized by Peer Review Entity)</p>	<p>[1.] The identity of a person whose condition or treatment has been studied by a peer review entity is confidential, and</p> <p>[2.] A reviewing entity shall remove a person’s name and address from the record before the</p>	<p>[1.] <u>Confidentiality.</u> Yes, 164.502(a).</p> <p>[2.] <u>Nondisclosure of Patient Identity.</u></p>	<p>[1.] <u>Confidentiality.</u> Both.</p> <p>[2.] <u>Nondisclosure of Patient Identity.</u></p>	<p>[1.] <u>Confidentiality.</u> Both state law and the Rule apply because each contains compatible requirements that confidential health information be protected.</p> <p>[2.] <u>Nondisclosure of Patient Identity.</u></p>

1. Citation	2. Brief Summary of Pertinent Provision	3. Is There a HIPAA Counterpart?	4. Which Law Applies?	5. Why?
	reviewing entity releases or publishes a record of its proceedings, or its reports, findings and conclusions.	No.	State law.	Assuming the peer review entity is not acting as a covered entity or a business associate of a covered entity in this context, state law applies because no Rule counterpart exists that prohibits disclosure of a patient's identity when the disclosure is otherwise permissible under the Rule. Note: The Rule regarding de-identification of PHI, 164.514, merely describes how PHI is to be de-identified, but does not mandate de-identification. Additionally, merely removing a person's name and address would not constitute de-identification under the Rule.
	[3.] The records produced are confidential, and	[3.] <u>Confidentiality</u> . Yes, 164.502(a).	[3.] <u>Confidentiality</u> . Both.	[3.] <u>Confidentiality</u> . To the extent peer review records contain PHI, both state law and the Rule apply because each contains compatible requirements that confidential health information be protected.
	[4.] are not discoverable.	[4.] <u>Discoverability</u> . Yes, 160.203(b) and 164.512(e)(2).	[4.] <u>Discoverability</u> . State law.	[4.] <u>Discoverability</u> . State law applies as to the discoverability of peer

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				review and related records because it is contrary to and more stringent than the Rule in not permitting disclosure in response to a discovery request. Note: While these records need not be produced in response to a discovery request, they may be produced pursuant to a subpoena, court ordered warrant, <i>etc.</i> See 164.512(f)(1).
THE PUBLIC HEALTH CODE				
MCL 333.2221 (Public Health Programs)	Pursuant to the Michigan Constitution, MDHHS shall strive to prevent disease, prolong life and promote public health through organized programs. MDHHS shall, among other things, collect and utilize vital and health statistics and provide for epidemiological and other research studies to protect public health.	No.	State law.	State law applies because MDHHS is not functioning as a covered entity in this context.
MCL 333.2611 (MDHHS's Confidentiality Policies)	MDHHS shall coordinate and establish a policy to administer: health services research, evaluation, and demonstration and statistical activities undertaken or supported by MDHHS. In establishing the policy, MDHHS shall consider, among other things: the individual's right and reasonable expectations of privacy concerning its use, including the protection of privileged communications, the expectations of the individual when giving information and the individual's interest about himself or herself.	No.	State law.	State law applies because MDHHS is not functioning as a covered entity in this context.

1. Citation	2. Brief Summary of Pertinent Provision	3. Is There a HIPAA Counterpart?	4. Which Law Applies?	5. Why?
MCL 333.2619 (Establishment of Cancer Registry)	<p>[1.] A cancer registry must be established.</p> <p>[2.] All cancer and certain tumors must be reported to MDHHS.</p> <p>[3.] Cancer registry reports maintained by MDHHS shall be subject to the same confidentiality requirements as provided in MCL 333.2631 (reporting or sharing research information with MDHHS), discussed below in this Matrix.</p>	<p>[1.] <u>Establishment of Registry.</u></p> <p>No.</p> <p>[2.] <u>Disclosure to State Agencies.</u></p> <p>Yes, 164.512(a)(1), 164.512(b)(1)(i), and 164.512(d).</p> <p>[3.] <u>Confidentiality.</u></p> <p>See analysis at MCL 333.2631 discussed below in this Matrix.</p>	<p>[1.] <u>Establishment of Registry.</u></p> <p>State law.</p> <p>[2.] <u>Disclosure to State Agencies.</u></p> <p>Both.</p> <p>[3.] <u>Confidentiality.</u></p> <p>See analysis at MCL 333.2631 discussed below in this Matrix.</p>	<p>[1.] <u>Establishment of Registry.</u></p> <p>State law applies because no Rule counterpart exists regarding establishment of a cancer registry.</p> <p>[2.] <u>Disclosure to State Agencies.</u></p> <p>Both state law and the Rule apply because each permits disclosure without authorization for health oversight, for public health purposes and as required by law.</p> <p>[3.] <u>Confidentiality.</u></p> <p>See analysis at MCL 333.2631 discussed below in this Matrix.</p>
MCL 333.2631 (Reporting or Sharing Research Information with MDHHS)	Records, information, and reports furnished to, procured by, or voluntarily shared with MDHHS in the conduct of a medical research project for purposes of reducing morbidity or mortality from any cause or condition of health are confidential and shall be used solely for statistical, scientific, and medical research purposes.	Yes, 164.502(a), 164.512(b)(1)(i), 164.512(i), 164.532(a), and 164.532(c).	State law, but see Column 5.	If MDHHS is not functioning as a covered entity with respect to the collection of research data, state law applies. Otherwise, both state law and the Rule apply because each requires that PHI used or disclosed in the course of

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				research be kept confidential and be used and disclosed only for specified purposes. Unlike the Rule, state law does not address the required steps to establish or administer the research project or to enroll subjects in the research project. State law only addresses the reporting of research projects to MDHHS, and MDHHS's treatment of such data.
MCL 333.2632 (Confidentiality of Information Obtained During Research)	<p>[1.] A person participating in a designated medical research project shall not disclose the information obtained except in strict conformity with the research project.</p> <p>[2.] Information described in MCL 333.2631 (reporting or sharing research information with MDHHS), discussed above in this Matrix, is not</p>	<p>[1.] <u>Disclosure of Research Information.</u></p> <p>Yes, 164.512(i), 164.532(a), and 164.532(c).</p> <p>[2.] <u>Admissibility.</u></p> <p>Yes, 160.203(b) and</p>	<p>[1.] <u>Disclosure of Research Information.</u></p> <p>The Rule.</p> <p>[2.] <u>Admissibility.</u></p> <p>State law.</p>	<p>[1.] <u>Disclosure of Research Information.</u></p> <p>The Rule applies because it requires either an authorization or IRB or privacy board approval of an authorization waiver prior to using or disclosing PHI for research purposes, whereas state law appears to allow the use or disclosure of confidential health information without such authorization or approval of an authorization waiver, provided it is in strict conformity with the research project.</p> <p>[2.] <u>Admissibility.</u></p> <p>State law applies because it</p>

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	admissible as evidence in an action in a court or before any other tribunal, board, agency or person. [3.] Information shall not be disclosed except as necessary to further the medical research project.	164.512(e). [3.] <u>Scope of Disclosure.</u> Yes, 160.203(b), 164.502(b)(1), 164.512(i), and 164.514(d).	 [3.] <u>Scope of Disclosure.</u> State law.	is contrary to and more stringent than the Rule because it precludes the admissibility of research-related information, while the Rule would permit it under certain circumstances. [3.] <u>Scope of Disclosure.</u> State law applies because it provides greater limitations than the Rule by requiring disclosures that further the medical research project, whereas the Rule contains no such limitations other than the “minimum necessary” standard.
MCL 333.2633 (Provider Liability for Disclosures to MDHHS)	The furnishing of information, records, reports, statements, notes, memoranda or other data to MDHHS, either voluntarily or as required by the Public Health Code, or to a person, agency or organization designated as a medical research project does not subject a physician, hospital, or other person or agency furnishing the information to liability in an action for damages or other relief, and is not considered to be the willful betrayal of a professional secret or the violation of a confidential relationship.	Yes, 164.512(a)(1), 164.512(b)(1)(i), and 164.512(d).	Both.	Both state law and the Rule apply because each permits disclosure without authorization for public health purposes, for health oversight activities and as required by law. Note: For voluntary disclosures, however, the minimum necessary standard would apply. <i>See</i> 164.502(b).
MCL 333.2637 (MDHHS Confidentiality Procedures)	[1.] MDHHS shall establish procedures consistent with MCL 333.2611 (MDHHS’s confidentiality policies), discussed above in this Matrix, and MCL 333.2613 to protect the confidentiality and regulate the disclosure of data	[1.] <u>Establishment of Procedures.</u> No.	[1.] <u>Establishment of Procedures.</u> State law.	[1.] <u>Establishment of Procedures.</u> State law applies because MDHHS is not functioning

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	<p>and records contained in a data system.</p> <p>[2.] Recipient of information may not further disclose information except as authorized.</p> <p>[3.] Procedures established shall specify that records within the data system require deletion of the name, address, number, symbol or other identifying information prior to disclosure.</p> <p>[4.] The MDHHS Director is empowered to contract with researchers in order to implement and enforce this Section.</p>	<p>[2.] <u>Disclosure to Recipient.</u></p> <p>Yes, 164.502(e)(1) and 164.504.</p> <p>[3.] <u>Nondisclosure of PHI.</u></p> <p>No.</p> <p>[4.] <u>Empowerment to Contract.</u></p> <p>No.</p>	<p>[2.] <u>Disclosure to Recipient.</u></p> <p>Both.</p> <p>[3.] <u>Nondisclosure of PHI.</u></p> <p>State law.</p> <p>[4.] <u>Empowerment to Contract.</u></p> <p>State law.</p>	<p>as a covered entity in this context.</p> <p>[2.] <u>Disclosure to Recipient.</u></p> <p>Both state law and the Rule apply if the recipient is a business associate. If the recipient is not a business associate, state law would apply.</p> <p>[3.] <u>Nondisclosure of PHI.</u></p> <p>State law applies because state law requires the removal of certain information prior to disclosure whether or not the disclosure is authorized. The Rule permits disclosure of such identifiers pursuant to authorization.</p> <p>[4.] <u>Empowerment to Contract.</u></p> <p>State law applies because no Rule counterpart exists empowering state agencies to contract with researchers. Also, in contracting with researchers, MDHHS is not functioning as a covered entity.</p>

1. Citation	2. Brief Summary of Pertinent Provision	3. Is There a HIPAA Counterpart?	4. Which Law Applies?	5. Why?
MCL 333.2640 (Provision of Medical Records for Child Abuse or Neglect)	If there is a compelling need for medical records or information to determine whether (i) child abuse or neglect has occurred, or (ii) to take action to protect a child where there may be a substantial risk of harm, MDHHS shall give, regardless of client consent, to a family independence agency caseworker or administrator directly involved in the investigation, access to the child's medical records and other information that is pertinent to the child abuse or neglect investigation. Medical records or information disclosed under this Section shall include the identity of the individual to whom the record pertains. This Section does not apply to records or information whose confidentiality is governed by MCL 333.5131 (confidentiality of HIV and AIDS test results), discussed below in this Matrix.	No.	State law, but see Column 5.	State law applies because MDHHS is not functioning as a covered entity in this context. To the extent that MDHHS is functioning as a covered entity, then both state law and the Rule apply because each permits disclosure of confidential health information for reporting of child abuse or neglect. <i>See</i> 164.512(b)(ii).
MCL 333.2821 (Vital Records)	Birth registration is required for each person born in this State and a record of the birth must be filed with the local registrar within 5 days of the birth. The information filed is to be transmitted to the Michigan Childhood Immunization Registry ("MCIR").	No.	State law, but see Column 5.	State law applies because no Rule counterpart exists mandating the registration of births and transmittal of information to immunization registries. Note: The Rule, however, would permit disclosure for the reporting of vital statistics under 164.512(b)(1)(i).
MCL 333.2834 (Fetal Death)	Fetal deaths must be reported by a physician, an individual in charge of the institution (or his or her authorized representative) or others to the state registrar within 5 days of the death for vital statistics purposes. This Section prescribes the manner and form of the report. Such report must not include information that makes it possible to identify the biological parents of the fetus. If a	Yes, 164.512(a)(1), 164.512(b)(i)(1), and 164.512(g).	Both.	Both state law and the Rule apply because the Rule permits disclosure without authorization where, as here, required by law, for public health purposes and to medical examiners.

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	fetal death occurs without medical attendance or if an inquiry is required by the medical examiner, the attendant, mother or another person with knowledge of the death, shall notify the medical examiner who shall investigate the death and file the report. MDHHS and its employees may not disclose the content of the report outside of MDHHS in any manner that would identify the biological parents.			
MCL 333.2835 (Abortion Reporting)	<p>[1.] A physician who performs an abortion shall report it to MDHHS on prescribed forms within 7 days of the abortion. Reports shall not contain identifying information that would make it possible to identify in any manner and under any circumstances the identity of the individual who has obtained or sought an abortion.</p> <p>[2.] MDHHS shall destroy individual reports and copies thereof after 5 years. The reports are for statistical purposes and are not to be incorporated into official vital statistic records. MDHHS and its employees may not disclose the records or contents outside of MDHHS in any manner that would identify the subject of the report. A person who violates these confidentiality obligations is guilty of a felony, punishable by imprisonment for not more than 3 years or a fine of not more than \$5000, or both.</p>	<p>[1.] <u>Reporting Obligation of Provider.</u></p> <p>Yes, 164.512(a)(1) and 164.512(b)(1)(i).</p> <p>[2.] <u>Reporting Obligation of MDHHS.</u></p> <p>No.</p>	<p>[1.] <u>Reporting Obligation of Provider.</u></p> <p>Both.</p> <p>[2.] <u>Reporting Obligation of MDHHS.</u></p> <p>State law.</p>	<p>[1.] <u>Reporting Obligation of Provider.</u></p> <p>Both state law and the Rule apply because the Rule permits disclosure without authorization where, as here, required by law and for public health purposes.</p> <p>[2.] <u>Reporting Obligation of MDHHS.</u></p> <p>State law applies because MDHHS is not functioning as a covered entity in this context.</p>
MCL 333.2837 (Abortion-Related Deaths or Complications)	[1.] A physician shall file a written report with MDHHS regarding patients who under his or her professional care suffer a physical complication or death resulting from an abortion. The report shall be on a standardized MDHHS form.	<p>[1.] <u>Duty to Report.</u></p> <p>Yes, 164.512(a)(1).</p>	<p>[1.] <u>Duty to Report.</u></p> <p>Both.</p>	<p>[1.] <u>Duty to Report.</u></p> <p>Both state law and the Rule apply because the Rule permits disclosure without authorization where, as here,</p>

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	<p>[2.] MDHHS shall summarize the aggregate data regarding abortions from required reports in an annual statistical report. MDHHS shall destroy each individual report and each copy of the report after a retention period of 5 years from receipt of the report in an annual statistical report.</p> <p>[3.] Standardized reporting forms shall not include the name, address or any other information that could reasonably be expected to identify the patient who is the subject of the report.</p>	<p>[2.] <u>MDHHS Summary of Data.</u></p> <p>No.</p> <p>[3.] <u>No Identifying Information.</u></p> <p>No.</p>	<p>[2.] <u>MDHHS Summary of Data.</u></p> <p>State law.</p> <p>[3.] <u>No Identifying Information.</u></p> <p>State law.</p>	<p>required by law.</p> <p>[2.] <u>MDHHS Summary of Data.</u></p> <p>State law applies because no Rule counterpart exists mandating a summary of aggregate data or the destruction of reports, and MDHHS is not functioning as a covered entity in this context.</p> <p>[3.] <u>No Identifying Information.</u></p> <p>State law applies because no Rule counterpart exists prescribing the contents of standardized reporting forms in this context, and MDHHS is not functioning as a covered entity in this context.</p>
<p>MCL 333.2843b</p> <p>(Infectious Agents in Deceased Persons)</p>	<p>[1.] A physician required to complete a certification of death who has knowledge of the presence of infectious agents (including AIDS) in a deceased individual at the time of death shall notify the funeral director (or his or her agent) of appropriate infection control procedures before the body is released to the funeral director or agent.</p>	<p>[1.] <u>Notice of Infectious Agent in Deceased Individual.</u></p> <p>Yes, 164.512(a)(1) and 164.512(g)(2).</p>	<p>[1.] <u>Notice of Infectious Agent in Deceased Individual.</u></p> <p>Both.</p>	<p>[1.] <u>Notice of Infectious Agent in Deceased Individual.</u></p> <p>Both state law and the Rule apply because the Rule permits disclosure without authorization where, as here, required by law and, specifically, to funeral</p>

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	[2.] Information contained in the above-required notification is confidential, and the recipient shall disclose the information only to the extent consistent with the authorized purposes for which the information was obtained.	[2.] <u>Confidentiality of Information.</u> Yes, 164.502(a), 164.502(b), and 164.514(d).	[2.] <u>Confidentiality of Information.</u> Both.	directors. [2.] <u>Confidentiality of Information.</u> Both state law and the Rule apply because each contains compatible requirements that confidential health information be protected, and each contains compatible limits on disclosures (e.g., to the extent consistent with authorized purposes under state law and pursuant to the “minimum necessary” standard under the Rule).
MCL 333.2844a (Release of Information to Find Missing Persons)	If a person, reported missing, has not been found within 30 days, the law enforcement agency conducting the investigation for the missing person shall request the family or next-of-kin of the missing person to give written consent for the agency to contact the dentist of the missing person and request the person’s dental records.	Yes, 164.512(f)(2)(ii).	Both.	Both state law and the Rule apply because each requires authorization prior to the provider’s disclosure of dental records.
MCL 333.2888 (Inspection and Disclosure of Vital Records)	A person or governmental entity shall not permit inspection or disclosure of information contained in vital records, or copy or issue a copy of all or part of a record, except as authorized by this Section, by rule or by court order. MDHHS may establish procedures for disclosure of information contained in vital records for research purposes. The procedures shall provide for adequate security and the confidentiality of vital records.	Yes, 164.512(b)(2).	State law, but see Column 5.	State law applies because neither the person nor MDHHS is functioning as a covered entity in this context. To the extent that either is functioning as a covered entity, then both state law and the Rule apply. Under those circumstances, the Rule would permit disclosure of confidential

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				health information by a public health authority for public health purposes. State law permits disclosure of such information under specified circumstances pursuant to specified procedures.
MCL 333.5111 (Prevention and Control of Disease)	MDHHS is authorized to promulgate rules for the prevention and control of disease, infection and disabilities. Such rules may require reporting and other surveillance methods for measuring the occurrence of disease, infection and disability and the potential for epidemics. Such rules may require licensed health care professionals or health facilities to submit reports to MDHHS within a prescribed period after determining that an individual has a serious communicable disease or infection. MDHHS shall promulgate rules providing for the confidentiality of reports, records and data regarding testing, care, treatment, reporting and research associated with communicable diseases or infections.	No.	State law, but see Column 5.	State law applies because no Rule counterpart exists authorizing promulgation of rules to prevent and control disease, infection and disabilities, and MDHHS is not functioning as a covered entity in this context. Note: The Rule would permit disclosure for disease and infection prevention and control under 164.512(b)(1)(i) and 164.512(b)(1)(iv).
MCL 333.5114 (Reporting HIV Test Results)	[1.] Positive test results showing human immunodeficiency virus (“HIV”) infection are required to be reported to MDHHS and local health department, including specific information (<i>i.e.</i> , probable method of transmission, age, name, <i>etc.</i>).	[1.] <u>Reporting to MDHHS.</u> Yes, 164.512(a) 164.512(b)(1)(i), 164.512(b)(1)(iv), and 164.512(d).	[1.] <u>Reporting MDHHS.</u> Both.	[1.] <u>Reporting to MDHHS.</u> State law and the Rule apply because each permits disclosure without authorization to state agencies for health oversight, for public health purposes, for communicable disease reporting and as required by law.

1. Citation	2. Brief Summary of Pertinent Provision	3. Is There a HIPAA Counterpart?	4. Which Law Applies?	5. Why?
	<p>[2.] A local health department shall not maintain a roster of names obtained under this Section, but shall maintain individual files encoded to protect test subject identities.</p> <p>[3.] Upon request of the patient, a physician employed by a health maintenance organization, or in private practice, shall withhold the name, address and telephone number of the patient required to be included in the report to MDHHS.</p>	<p>[2.] <u>Manner of Compilation.</u></p> <p>No.</p> <p>[3.] <u>Nondisclosure of Patient Identity.</u></p> <p>Yes, 164.522.</p>	<p>[2.] <u>Manner of Compilation.</u></p> <p>State law.</p> <p>[3.] <u>Nondisclosure of Patient Identity.</u></p> <p>Both, but see Column 5.</p>	<p>[2.] <u>Manner of Compilation.</u></p> <p>State law applies because local health departments are not functioning as covered entities in maintaining files of HIV test results.</p> <p>[3.] <u>Nondisclosure of Patient Identity.</u></p> <p>Both state law and the Rule apply if the covered entity agrees to the restriction requested by a patient. If the covered entity does not agree, state law applies.</p>
<p>MCL 333.5114a</p> <p>(Partner Notification of HIV Test Results)</p>	<p>[1.] A person or governmental entity that administers testing for HIV or HIV antibodies shall refer individuals with positive test results to the local health department. Such referral shall include sexual and drug-sharing information for the purposes of notifying partners of individuals having HIV or HIV antibodies.</p> <p>[2.] The health department interview with such partner(s) shall be confidential and conducted in the form of a direct, one-to-one conversation between the employee of the local health department and the partner of the test subject.</p>	<p>[1.] <u>Confidentiality.</u></p> <p>Yes, 164.512(b)(1)(i), 164.512(b)(1)(iv), 164.512(d) and 164.512(j).</p> <p>[2.] <u>Reporting and Partner Disclosure.</u></p> <p>Yes, 164.502(a).</p>	<p>[1.] <u>Confidentiality.</u></p> <p>Both.</p> <p>[2.] <u>Reporting and Partner Disclosure.</u></p> <p>Both.</p>	<p>[1.] <u>Confidentiality.</u></p> <p>Both state law and the Rule apply because each allows providers to use or disclose information for purposes of health oversight, to report communicable diseases and to avoid a serious of threat of harm.</p> <p>[2.] <u>Reporting and Partner Disclosure.</u></p> <p>Both state law and the Rule apply because each contains compatible requirements that confidential health information be protected.</p>

1. Citation	2. Brief Summary of Pertinent Provision	3. Is There a HIPAA Counterpart?	4. Which Law Applies?	5. Why?
	<p>[3.] The reports, records, and data of the local health department shall be retained for not more than 90 days after receipt.</p>	<p>[3.] <u>Record Retention.</u></p> <p>No.</p>	<p>[3.] <u>Record Retention.</u></p> <p>State law.</p>	<p>[3.] <u>Record Retention.</u></p> <p>State law applies because no Rule counterpart exists establishing retention periods for patient records. Note: The Rule, however, assumes that a covered entity will create and maintain medical and payment records and that the covered entity will document which of those records are part of a “designated record set.” See 164.512(e)(1).</p>
	<p>[4.] The local health department must inform the individual of his or her legal obligation to notify sexual or drug-sharing partners.</p>	<p>[4.] <u>Duty to Inform.</u></p> <p>No.</p>	<p>[4.] <u>Duty to Inform.</u></p> <p>State law.</p>	<p>[4.] <u>Duty to Inform.</u></p> <p>State law applies because no Rule counterpart exists regarding notification obligations under state law.</p>
	<p>[5.] Within 35 days of interviewing the infected individual, the local health department shall contact his or her partners regarding such partners’ possible exposure to HIV.</p>	<p>[5.] <u>Partner Notification.</u></p> <p>No.</p>	<p>[5.] <u>Partner Notification.</u></p> <p>State law.</p>	<p>[5.] <u>Partner Notification.</u></p> <p>State law applies because no Rule counterpart exists requiring partner notification by a health department.</p>
	<p>[6.] The local health department shall not reveal the identity of the infected individual unless prior authorization from the infected individual has been obtained or disclosure is necessary to protect others from HIV exposure or transmission.</p>	<p>[6.] <u>Nondisclosure of Infected Individual Upon Partner Notification.</u></p>	<p>[6.] <u>Nondisclosure of Infected Individual Upon Partner Notification.</u></p>	<p>[6.] <u>Nondisclosure of Infected Individual Upon Partner Notification.</u></p>

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	[7.] Information obtained by a local health department pursuant to this Section is exempt from FOIA.	No. [7.] <u>Freedom of Information Act</u> . No.	State law, but see Column 5. [7.] <u>Freedom of Information Act</u> . State law.	State law applies because the local health department is not functioning as a covered entity in this context. Note: If the local health department is functioning as a covered entity, both state law and the Rule would apply because each permits disclosure pursuant to a valid authorization, or to protect others from communicable diseases. See 164.508, 164.512(b)(1)(iv) and 164.512(j). [7.] <u>Freedom of Information Act</u> . State law applies because no Rule counterpart exists regarding exemptions from FOIA.
MCL 333.5119 (HIV Tests for Marriage Licenses)	If either applicant for a marriage license undergoes a test for HIV or an antibody to HIV, and if the test results indicate that an applicant is HIV infected, the physician, local health officer, or designee of the local health officer administering the test immediately shall inform both applicants of the test results.	Yes, 164.512(a)(1), 164.512(b)(1)(i), 164.512(b)(1)(iv), and 164.512(j).	Both.	Both state law and the Rule apply because each permits disclosure without authorization for public health purposes, to inform about communicable diseases, to avoid a serious threat of harm and where, as here, required by law.

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MCL 333.5123 (VD, HIV or Hepatitis B Tests for Pregnant Women)	<p>[1.] The results of tests for venereal disease, HIV or Hepatitis B performed on pregnant women are not public records,</p> <p>[2.] but shall be available to a local health department, and to a physician who provides medical treatment to the woman or her offspring.</p>	<p>[1.] <u>Public Records.</u></p> <p>No.</p> <p>[2.] <u>Availability to Local Health Department and Treating Physician.</u></p> <p>Yes, 164.512(b)(1)(i) and 164.512(b)(1)(iv).</p>	<p>[1.] <u>Public Records.</u></p> <p>State law.</p> <p>[2.] <u>Availability to Local Health Department and Treating Physician.</u></p> <p>Both.</p>	<p>[1.] <u>Public Records.</u></p> <p>State law applies because no Rule counterpart exists that determines what constitutes a public record.</p> <p>[2.] <u>Availability to Local Health Department and Treating Physician.</u></p> <p>Both state law and the Rule apply because each permits disclosure, without authorization, of confidential health information about communicable diseases and for public health purposes.</p>
MCL 333.5127 (Consent by Minor for VD or HIV Testing)	<p>[1.] Consent by a minor to testing or treatment for venereal disease or HIV is valid and binding as if the minor had achieved the age of majority.</p> <p>[2. and 3.] For medical reasons, a treating physician, and on the advice and direction of the treating physician, another physician, a member of the medical staff of a hospital or clinic, or other health professional, may, but is not obligated to, inform the spouse, parent, guardian or person acting <i>in loco parentis</i> as to the treatment given to or needed by a minor for HIV or venereal diseases.</p>	<p>[1.] <u>Minor Consent.</u></p> <p>Yes, 164.502(g)(3)(ii).</p> <p>[2.] <u>Disclosure Regarding Minors.</u></p> <p>Yes, 160.202, 164.502(g)(2), and 164.502(g)(3) (definition of more stringent at (2)).</p>	<p>[1.] <u>Minor Consent.</u></p> <p>Both.</p> <p>[2.] <u>Disclosure Regarding Minors.</u></p> <p>Both.</p>	<p>[1.] <u>Minor Consent.</u></p> <p>Both state law and the Rule apply because the Rule expressly defers to state law regarding a minor's capacity to consent.</p> <p>[2.] <u>Disclosure Regarding Minors.</u></p> <p>Both state law and the Rule apply because the Rule expressly defers to state law regarding disclosures of a minor's confidential health information to parents, guardians or persons acting</p>

1. Citation	2. Brief Summary of Pertinent Provision	3. Is There a HIPAA Counterpart?	4. Which Law Applies?	5. Why?
		<p>[3.] <u>Disclosure to Minor's Spouse.</u></p> <p>Yes, 164.510(b).</p>	<p>[3.] <u>Disclosure to Minor's Spouse.</u></p> <p>The Rule.</p>	<p><i>in loco parentis.</i></p> <p>[3.] <u>Disclosure to Minor's Spouse.</u></p> <p>The Rule applies because it provides greater protection of PHI by permitting the minor to object to the disclosure to his or her spouse, whereas state law does not grant a similar right.</p>
<p>MCL 333.5129</p> <p>(Communicable Disease Test Results of Prostitutes and Intravenous Drug Users)</p>	<p>[1.] Test results and any other medical information obtained by court order from a defendant allegedly engaging or offering to engage in prostitution, solicitation, gross indecency or intravenous drug use by the agency administering the test for HIV, Hepatitis B, Hepatitis C, acquired immunodeficiency syndrome ("AIDS") and/or other venereal diseases shall be transmitted to the court and, after the defendant is sentenced, made part of the court record.</p> <p>[2.] These test results are confidential and shall be disclosed only to the defendant,</p>	<p>[1.] <u>Judicial Procedures.</u></p> <p>No.</p> <p>[2.] <u>Disclosure to Defendant.</u></p> <p>Yes, 164.502(a)(1)(i).</p>	<p>[1.] <u>Judicial Procedures.</u></p> <p>State law.</p> <p>[2.] <u>Disclosure to Defendant.</u></p> <p>Both.</p>	<p>[1.] <u>Judicial Procedures.</u></p> <p>State law applies because no Rule counterpart exists regarding the substantive requirements for judicial procedures.</p> <p>[2.] <u>Disclosure to Defendant.</u></p> <p>Both state law and the Rule apply because each contains compatible requirements that confidential health information be protected, and each permits disclosure to the individual.</p>

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	<p>[3.] the local health department, MDHHS,</p> <p>[4.] the victim or other person required to be informed of the results if the victim is a minor or otherwise incapacitated, to the victim’s parent, guardian or person <i>in loco parentis</i>, or</p> <p>[5.] as otherwise provided by law.</p> <p>[6.] If the defendant is placed in the custody of the Michigan Department of Corrections (“MDOC”), the court shall transmit a copy of the defendant’s examination, test results and other medical information to MDOC.</p>	<p>[3.] <u>Disclosure to State Agencies.</u></p> <p>Yes, 164.512(b)(1)(i) and 164.512(b)(1)(iv).</p> <p>[4.] <u>Disclosure to Victim.</u></p> <p>Yes, 164.512(b)(1)(iv), 164.512(f)(3), and 164.512(j).</p> <p>[5.] <u>Disclosure Required by Law.</u></p> <p>Yes, 164.512(a)(1).</p> <p>[6.] <u>Disclosure to Correctional Facility.</u></p> <p>Yes, 164.512(k)(5).</p>	<p>[3.] <u>Disclosure to State Agencies.</u></p> <p>Both.</p> <p>[4.] <u>Disclosure to Victim.</u></p> <p>Both.</p> <p>[5.] <u>Disclosure Required by Law.</u></p> <p>Both.</p> <p>[6.] <u>Disclosure to Correctional Facility.</u></p> <p>Both.</p>	<p>[3.] <u>Disclosure to State Agencies.</u></p> <p>Both state law and the Rule apply because each permits disclosure without authorization related to communicable diseases and for public health purposes.</p> <p>[4.] <u>Disclosure to Victim.</u></p> <p>Both state law and the Rule apply because each permits disclosure without authorization as necessary to lessen a serious threat of harm related to a communicable disease and, specifically, to the victim.</p> <p>[5.] <u>Disclosure Required by Law.</u></p> <p>Both state law and the Rule apply because the Rule permits disclosure where, as here, required by law.</p> <p>[6.] <u>Disclosure to Correctional Facility.</u></p> <p>Both state law and the Rule apply because each permits disclosure without authorization for the health and safety of the inmate,</p>

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	<p>[7.] In crimes involving sexual penetration, the court is required to order testing for venereal diseases, Hepatitis B, Hepatitis C, AIDS and/or HIV.</p>	<p>[7.] <u>Court Ordered Testing.</u></p> <p>No.</p>	<p>[7.] <u>Court Ordered Testing.</u></p> <p>State law.</p>	<p>other inmates and correctional employees.</p> <p>[7.] <u>Court Ordered Testing.</u></p> <p>State law applies because no Rule counterpart exists regarding mandated testing, and the court is not a covered entity.</p>
<p>MCL 333.5131</p> <p>(Confidentiality of HIV or AIDS Test Results)</p>	<p>[1.] All reports, test results, records and data pertaining to testing, care, treatment, reporting and research and information pertaining to partner notification associated with the serious communicable diseases, HIV infection and AIDS are confidential. The fact that an HIV or AIDS test was ordered is confidential.</p> <p>[2.] Limited disclosure by court order is permitted if certain requirements and limitations set forth in the statute are satisfied (<i>i.e.</i>, prevent further transmission of disease to partners (5)(b), transmission of disease to pupils (5)(c), authorization by individual (5)(d), report required by the child protection law, (5)(e), <i>etc.</i>).</p> <p>[3.] A person who violates this Section is guilty of a misdemeanor punishable by imprisonment for not more than one year or a fine of not more than \$5,000, or both. A person violating this Section is also liable in a civil action for actual damages or \$1,000, whichever is greater, and reasonable attorneys' fees and costs.</p>	<p>[1.] <u>Confidentiality.</u></p> <p>Yes, 164.502(a).</p> <p>[2.] <u>Disclosures.</u></p> <p>Yes, 164.508, 164.512(a), 164.512(d), 164.512(e), and 164.512(j).</p> <p>[3.] <u>Penalties.</u></p> <p>Yes, 42 U.S.C. §§ 1176 and 1177.</p>	<p>[1.] <u>Confidentiality.</u></p> <p>Both.</p> <p>[2.] <u>Disclosures.</u></p> <p>Both.</p> <p>[3.] <u>Penalties.</u></p> <p>Both.</p>	<p>[1.] <u>Confidentiality.</u></p> <p>Both state law and the Rule apply because each contains compatible requirements that confidential health information be protected.</p> <p>[2.] <u>Disclosures.</u></p> <p>Both state law and the Rule apply because each permits disclosure without authorization as required by law, to avert a serious threat of harm, for health oversight and in connection with legal proceedings.</p> <p>[3.] <u>Penalties.</u></p> <p>Both state law and the Rule apply because each provides civil and criminal penalties for violations of medical record privacy</p>

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				under federal and state law.
MCL 333.5133 (Consent Forms for HIV and AIDS Testing)	<p>[1.] Written and informed consent forms for HIV testing must include an explanation of the test and of the rights to withdraw testing consent, to confidentiality, and to anonymous testing, as well as the class of persons to whom the test results may be disclosed.</p> <p>[2.] A physician or individual with delegatory authority who orders an HIV test must distribute to each test subject a pamphlet regarding HIV testing provided by MDHHS free of charge. The test subject must execute a form indicating that he or she has been given a copy of the pamphlet to be included in the test subject's medical records.</p> <p>[3.] Provisions of this Section do not apply to HIV tests performed on a potentially HIV infected patient without the patient's written consent either because a health professional came in contact with the patient's bodily fluids, the test subject is unable to understand or receive the required pamphlet, or the test subject is unable to execute the informed consent form when a legally authorized representative is not readily available,</p>	<p>[1.] <u>HIV Testing Disclosures in Consent.</u> No.</p> <p>[2.] <u>Pamphlet.</u> No.</p> <p>[3.] <u>Testing without Consent or Pamphlet.</u> Yes, 164.506(a)-, 164.512(b)(1)(iv), 164.512(d), and 164.512(j).</p>	<p>[1.] <u>HIV Testing Disclosures in Consent.</u> State law.</p> <p>[2.] <u>Pamphlet.</u> State law.</p> <p>[3.] <u>Testing without Consent or Pamphlet.</u> Both.</p>	<p>[1.] <u>HIV Testing Disclosures in Consent.</u> The Rule applies because no Rule counterpart exists requiring informed consent for testing.</p> <p>[2.] <u>Pamphlet.</u> State law applies because no Rule counterpart exists requiring pamphlet distribution.</p> <p>[3.] <u>Testing without Consent or Pamphlet.</u> Both state law and the Rule apply because each permits the use or disclosure of confidential health information without authorization when</p>

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	or the test is performed pursuant to a request made under MCL 333.20191 (infectious agent and emergency treatment), discussed below in this Matrix.			necessary to prevent harm to others.
MCL 333.5611 (Occupational Diseases)	<p>[1.] A physician, hospital-, clinic -or employer shall report to MDHHS individuals known, or suspected, to have an occupational disease or a health condition aggravated by workplace exposures within 10 days of discovery of the disease or condition.</p> <p>[2.] The report shall be on a MDHHS form and include the name and address of the individual, the name and business address of the employer or business of the employer, the site of the individual's employment and the length of his or her employment, where the illness occurred, the nature of disease, <i>etc.</i></p>	<p>[1.] <u>Obligation to Report.</u> Yes, 164.512(a)(1) and 164.512(b)(1)(i).</p> <p>[2.] <u>Contents of Report.</u> No.</p>	<p>[1.] <u>Obligation to Report.</u> State law, but see Column 5.</p> <p>[2.] <u>Contents of Report.</u> State law.</p>	<p>[1.] <u>Obligation to Report.</u> To the extent that state law addresses a physician, hospital or clinic in its capacity as an employer, the Rule does not apply because an employer is not a covered entity. Note: In their capacity as providers, both state law and the Rule would apply because the Rule permits disclosure of confidential health information without authorization where, as here, required by law and for public health purposes.</p> <p>[2.] <u>Contents of Report.</u> State law applies because no Rule counterpart exists prescribing the contents of reports in this context.</p>

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MCL 333.5613 (Diagnosis and Treatment of Occupational Disease)	To aid diagnosis and treatment of an occupational disease, MDHHS shall advise the physician in charge of a patient of the nature of the hazardous substance or agent and the conditions of exposure as established by the investigation. In so doing, MDHHS shall protect the confidentiality of trade secrets or privileged information disclosed by the investigations.	No, but <i>see</i> MCL 333.2631 discussed above in this Matrix.	State law.	State law applies because no Rule counterpart exists, and MDHHS is not functioning as a covered entity in this context.
MCL 333.5703 (Toxicological Studies of Vietnam Veterans)	<p>[1.] MDHHS shall conduct toxicological studies, including analysis of appropriate specimens, on selected Vietnam veterans to determine their exposure to agent orange or other chemical agents.</p> <p>[2.] MDHHS shall obtain prior written consent from each Vietnam veteran to be studied and compile the information obtained into a report to submit for review.</p>	<p>[1.] <u>MDHHS Toxicological Studies.</u> Yes, 164.512(b)(1)(i).</p> <p>[2.] <u>MDHHS Consent.</u> Yes, 164.512(i).</p>	<p>[1.] <u>MDHHS Toxicological Studies.</u> Both, but see Column 5.</p> <p>[2.] <u>MDHHS Consent.</u> State law.</p>	<p>[1.] <u>MDHHS Toxicological Studies.</u> Assuming that MDHHS is directly involved in collecting and analyzing specimens (<i>e.g.</i>, through local health departments), both state law and the Rule apply because each permits disclosure of confidential health information without authorization for public health purposes. Note: To the extent MDHHS only collects data from other covered entities and analyzes and prepares reports based upon this data, MDHHS would not be a covered entity and only state law would apply.</p> <p>[2.] <u>MDHHS Consent.</u> State law applies irrespective of whether MDHHS is a covered entity because it requires prior</p>

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				consent from prospective study participants. Note: While the requirements of 164.512(i) provide many protections that may be the equivalent of informed consent, the Rule foregoes the requirement of express written consent or authorization. Additionally, 164.508(f) does not apply because these toxicological studies do not appear to include treatment of the Vietnam veteran.
MCL 333.5715 (Confidentiality of Chemical Herbicide Exposure)	Medical information pursuant to MCL 333.5703 (toxicological studies of Vietnam veterans), discussed above in this Matrix, or pursuant to MCL 333.5713 (about a person exposed to chemical herbicides) is confidential and is subject to the same confidentiality requirements as exist for records concerning medical research projects. Such information is subject to FOIA, however, and may be made public unless it discloses the identity of individuals who do not consent.	No.	State law.	State law applies because the state agencies maintaining this information are not functioning as covered entities.
MCL 333.5721 (Reporting Birth Defects)	[1.] Each diagnosed incidence of a birth defect, biochemical or genetic disease shall be reported to the MDHHS Birth Defects Registry.	[1.] <u>Disclosure to State Agency.</u> Yes, 164.512(a)(1) and 164.512(b)(1)(i).	[1.] <u>Disclosure to State Agency.</u> Both.	[1.] <u>Disclosure to State Agency.</u> Both state law and the Rule apply because each permits disclosure without authorization for public health activities or where, as here, required by law.

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	<p>[2.] Information reported in the MDHHS Birth Defects Registry shall be subject to the same confidentiality requirements as exist for records concerning medical research projects.</p> <p>[3.] MDHHS shall maintain statewide records of all information reported to its birth defects registry. The MDHHS Director shall promulgate rules establishing, among other things, the terms and conditions under which records, including those containing the name and medical condition of a specific person may be released by MDHHS. MDHHS shall publish and make available to the public summaries of information collected.</p>	<p>[2.] <u>Confidentiality.</u></p> <p>No.</p> <p>[3.] <u>MDHHS Birth Defects Registry.</u></p> <p>No.</p>	<p>[2.] <u>Confidentiality.</u></p> <p>State law.</p> <p>[3.] <u>MDHHS Birth Defects Registry.</u></p> <p>State law.</p>	<p>[2.] <u>Confidentiality.</u></p> <p>State law applies because MDHHS, in maintaining these records, is not functioning as a covered entity.</p> <p>[3.] <u>MDHHS Birth Defects Registry.</u></p> <p>State law applies because no Rule counterpart exists regarding the maintenance of a birth defect registry, release of birth defect registry information or public access to summaries. Additionally, MDHHS is not functioning as a covered entity in this context.</p>
<p>MCL 333.5874</p> <p>(Records of Children with Special Health Care Needs)</p>	<p>Records regarding a child with special health care needs are confidential to the extent required by state and federal statutes and rules.</p>	<p>Yes, 164.502(a).</p>	<p>Both.</p>	<p>Both state law and the Rule apply because state law incorporates federal law, and each contains compatible requirements that confidential health information be protected.</p> <p>Note: Insofar as state law protects the “records of children with special health care needs,” state law protects such records irrespective of whether they contain confidential health information.</p>

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MCL 330.1261 (Substance Use Disorder Services – Records, Confidentiality, Disclosure)	Records of the identity, diagnosis, prognosis, and treatment of an individual maintained in connection with the performance of a program, an approved service program, or an emergency medical service authorized or provided or assisted under this chapter are confidential and may be disclosed only for the purposes and under the circumstances authorized by MCL 330.1262 (consent to disclose content) or MCL 330.1263 (limited disclosure without consent) discussed below in this Matrix.	Yes, 164.502(a).	Both.	Both state law and the Rule apply because each contains compatible requirements that confidential health information be protected.
MCL 330.1262 (Consent to Disclose Content of Record)	<p>[1.] An individual who is the subject of a record maintained under MCL 330.1261 (records of substance abuse treatment), discussed above in this Matrix, may consent in writing to the disclosure of the content of the record to health professionals for purposes of diagnosis or treatment, to government personnel to receive benefits, and to any other person authorized by the individual to receive such information.</p> <p>[2.] An individual may revoke the authorization at any time by giving written notice to the program, unless expressly prohibited by federal legislation on confidentiality of alcohol and drug abuse patient records.</p>	<p>[1.] <u>Disclosure with Consent or Authorization.</u></p> <p>Yes, 164.502(a)(1)(ii) and 164.506.</p> <p>[2.] <u>Consent Revocation.</u></p> <p>Yes, 164.508(b)(5).</p>	<p>[1.] <u>Disclosure with Consent or Authorization.</u></p> <p>State law.</p> <p>[2.] <u>Consent Revocation.</u></p> <p>Both.</p>	<p>[1.] <u>Disclosure with Consent or Authorization.</u></p> <p>State law applies because it clearly implies (if read in conjunction with MCL 330.1263) that a prior written consent is required before disclosures may be made for the purposes enumerated in MCL 330.1262, but not for the purposes in MCL -330.1263. The Rule has no requirement for consent for TPO or other purposes otherwise permitted by the Rule.</p> <p>[2.] <u>Consent Revocation.</u></p> <p>Both state law and the Rule apply because each permits revocation of consent or authorization as applicable,</p>

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	[3.] The authorization or revocation shall be in a form specified by the department in accordance with regulations specifying the form of the written consent issued by the United States department of health, education, and welfare and the special action office for drug abuse prevention.	[3.] Form of Authorization/Revocation. Yes, 164.508(c)	[3.] Form of Authorization/Revocation. Both.	consistent with limitations of other federal law. [3.] Form of Authorization/Revocation. State law incorporates the form specified by federal regulations and the Rule sets forth core elements and requirements for a valid authorization.
MCL 330.1263 (Additional Disclosures when Consent to Disclose not Given)	[1.] Disclosure of the content of records maintained under MCL 330.1261 (substance -use disorder records, confidentiality, disclosure), discussed above in this Matrix, may be permitted without prior written consent under the following circumstances: [2.] medical emergencies; [3.] scientific statistical research, financial audits, or program evaluation, without directly or indirectly identifying an individual; and	[1.] <u>Disclosure without Consent.</u> Yes, 164.502(a)(1)(ii), 164.502(a)(1)(iv), 164.506, 164.508, and 164.512. [2.] <u>Emergency.</u> Yes, 164.502(a)(1)(ii) and 164.506. [3.] <u>Research Purposes.</u> Yes, 164.512(i) and 164.514(a).	[1.] <u>Disclosure without Consent.</u> Both. [2.] <u>Emergency.</u> Both. [3.] <u>Research Purposes.</u> Both.	[1.] <u>Disclosure without Consent.</u> Both state law and the Rule apply because each prescribes circumstances when the use or disclosure of confidential health information is permitted without authorization. [2.] <u>Emergency.</u> Both state law and the Rule apply because each permits disclosure of PHI without consent in medical emergencies. [3.] <u>Research Purposes.</u> The Rule applies if the information is PHI because the Rule requires an

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	[4.] court order to disclose of whether a specific individual is under treatment by a program.	[4.] <u>Court Order</u> . Yes, 164.512(e)(1)(i).	[4.] <u>Court Order</u> . Both.	authorization or an IRB (Institutional Review Board) or privacy board approved authorization waiver to disclose PHI for research purposes. If the information is de-identified, state law applies because the Rule does not apply to de-identified information. [4.] <u>Court Order</u> . Both state law and the Rule apply because each permits disclosure without authorization pursuant to a court order.
MCL 330.1264 (Validity of Minor Consent to Substance Abuse Treatment)	[1.] The consent to substance use disorder related medical or surgical care, treatment, or services by a hospital, clinic, or health professional authorized by law executed by a minor who is or professes to be an individual with a substance use disorder is valid and binding as if the minor had achieved the age of majority. The minor's consent is not subject to disaffirmance by reason of minority. The consent of another person (spouse, parent, guardian) is not necessary to authorize services. [2. and 3.] For medical reasons, the treating physician and on the advice and direction of the treating physician, or a member of the medical staff of a hospital or clinic or other health professional, may, but is not obligated to, inform the spouse, parent, guardian, or person <i>in loco</i>	[1.] <u>Minor Consent</u> . Yes, 164.502(g)(3). [2.] <u>Disclosures Regarding Minors</u> . Yes, -160.202 (definition of more stringent at (2)), 164.502(g)(3)(ii), and	[1.] <u>Minor Consent</u> . Both. [2.] <u>Disclosures Regarding Minors</u> . Both.	[1.] <u>Minor Consent</u> . Both state law and the Rule apply because the Rule expressly defers to state law regarding a minor's capacity to consent. [2.] <u>Disclosures Regarding Minors</u> . Both state law and the Rule apply because the Rule expressly incorporates state

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	<p><i>parentis</i> as to the substance abuse treatment given to or needed by a minor.</p> <p>[4.] For medical reasons, the information may be given to or withheld from these persons without consent of the minor and notwithstanding the express refusal of the minor to the providing of the information.</p>	<p>164.510(b).</p> <p>[3.] <u>Disclosure to Minor's Spouse.</u></p> <p>Yes, 164.510(b).</p> <p>[4.] <u>Disclosure without Minor's Consent.</u></p> <p>Yes, 164.202 (definition of more stringent at (2)).</p>	<p>[3.] <u>Disclosure to Minor's Spouse.</u></p> <p>The Rule.</p> <p>[4.] <u>Disclosure without Minor's Consent.</u></p> <p>Both.</p>	<p>law regarding disclosure of confidential health information to parents, guardians or persons acting <i>in loco parentis</i>.</p> <p>[3.] <u>Disclosure to Minor's Spouse.</u></p> <p>The Rule applies because it provides greater protection of PHI by permitting the individual to object to the disclosure to his or her spouse, whereas state law does not grant a similar right.</p> <p>[4.] <u>Disclosure without Minor's Consent.</u></p> <p>Both state law and the Rule apply because the Rule expressly defers to state law Regarding the validity of a minor's consent allowing disclosure to a personal representative.</p>

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MCL 330.1285 (Confidentiality of Substance Abuse Records)	<p>[1.] Records of diagnostic evaluation, psychiatric, psychological, social service care, and referral of an individual which are maintained in connection with the performance of an approved service program or emergency medical service authorized or provided for substance abuse treatment are confidential.</p> <p>[2.] Disclosure of such information may be permitted if MCL 330.1262 (consent to disclose content of records) or MCL 330.1263 (additional disclosures when consent not given), discussed above in this Matrix, are satisfied.</p> <p>[3.] Disclosure of such information may be permitted at the specific request of a parole or probation officer seeking information with regard to a parolee or probationer in the officer's charge who agrees to the release of the information.</p>	<p>[1.] <u>Confidentiality.</u> Yes, 164.501 (definition of psychotherapy notes), 164.502(a) and 164.508(a)(2).</p> <p>[2.] <i>See</i> analysis at MCL 330.1262 and 330.1263 discussed above in this Matrix.</p> <p>[3.] <u>Disclosure to Parole or Probation Officer.</u> Yes, 160.203(b) and 164.512(f)(1)(ii)(C).</p>	<p>[1.] <u>Confidentiality.</u> Both.</p> <p>[2.] <i>See</i> analysis at MCL 330.1262 and 330.1263 discussed above in this Matrix.</p> <p>[3.] <u>Disclosure to Parole or Probation Officer.</u> State law.</p>	<p>[1.] <u>Confidentiality.</u> Both state law and the Rule apply because each contains compatible requirements that confidential health information, including psychotherapy notes, be protected.</p> <p>[2.] <i>See</i> analysis at MCL 330.1262 and 330.1263 discussed above in this Matrix.</p> <p>[3.] <u>Disclosure to Parole or Probation Officer.</u> State law applies because it is contrary to and more stringent than the Rule by permitting disclosure of confidential health information to a parole or probation officer only with the parolee's or probationer's authorization, whereas, the Rule permits disclosure without authorization for specified law enforcement purposes, such as in response to inquiries by parole or probation officers.</p>

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MCL 333.7335 (Marijuana Research Studies)	Participation in marijuana controlled substances therapeutic research programs shall be limited to cancer chemotherapy and glaucoma patients who are certified to MDHHS by a physician as having a life-threatening or sense-threatening situation, are not responding to conventional medical treatment and have incurred severe side effects. Notwithstanding the foregoing, MDHHS may include any other disease groups for participation in marijuana controlled substances therapeutic research programs for which MDHHS has obtained an investigational drug permit from the Food and Drug Administration (“FDA”).	Yes, 164.512(b)(1)(i).	Both.	Both state law and the Rule apply because each permits disclosure without authorization for public health purposes. Note: The disclosure of PHI for research purposes would be subject to 164.508(c) and 164.512(i).
MCL 333.7516 (Practitioner Duty to Maintain Confidentiality of Patient Information)	A practitioner engaged in professional practice or research may not be compelled in any state or local civil, criminal, administrative, legislative, or other proceeding to furnish the name or identity of an individual that the practitioner is obligated to keep confidential.	Yes, 164.512(d)(1) and 164.512(e).	State law.	State law applies because it provides greater protection of the patient or research subject by requiring that practitioners not disclose the identity of the patient or research subject to a licensing board, or other administrative or judicial forum, even if ordered to do so, while the Rule would permit such disclosure pursuant to a court order, an administrative order and/or for public health oversight.
MCL 333.7544 (Power of MBP to Authorize Research)	[1.] The Michigan Board of Pharmacy (“MBP”) may authorize persons engaged in research on the use and effects of controlled substances to withhold the names and other identifying characteristics of individuals who are subjects of the research.	[1.] <u>Confidentiality of Research Subject.</u> No.	[1.] <u>Confidentiality of Research Subject.</u> State law.	[1.] <u>Confidentiality of Research Subject.</u> State law applies because MBP is not functioning as a covered entity in this context.

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	[2.] Persons who obtain such authorization may not be compelled to divulge the identity of a research subject in a civil, criminal, administrative, legislative or other proceeding.	[2.] <u>Nondisclosure for Legal Proceedings.</u> Yes, 160.203(b), 164.512(d)(1) and 164.512(e)(1).	[2.] <u>Nondisclosure for Legal Proceedings.</u> State law.	[2.] <u>Nondisclosure for Legal Proceedings.</u> State law applies because it provides greater protection of the confidential health information of the research subject by precluding his or her identification in a civil, criminal, administrative, legislative or other proceeding.
MCL 333.9132 (Minor's Capacity to Consent to Treatment)	[1.] A minor is capable of giving valid and binding consent to the provision of prenatal and pregnancy related health care or health care for a child of the minor by a hospital, clinic, or physician. The minor's consent is not subject to disaffirmance by reason of minority. [2.] Prior to providing prenatal and pregnancy-related health care to a minor, the health facility or agency or health professional shall inform the minor that the putative father of the child or the minor's spouse, parent, guardian or person acting <i>in loco parentis</i> may, but is not required to, be notified. At the initial visit to the health facility or health professional, the minor's permission shall be requested to contact the minor's parents for any additional medical information that may be necessary or helpful to the provision of proper health care. [3.] For medical reasons, the treating physician or a member of the medical staff of a health facility or other health professional, on the advice	[1.] <u>Consent by Minor.</u> Yes, 164.502(g)(3). [2.] <u>Disclosure Regarding Minor.</u> Yes, 160.202 (definition of more stringent at (2)), 164.502(g)(3)(ii), and 164.510(b). [3.] <u>Disclosure to the Putative Father or Others.</u>	[1.] <u>Consent by Minor.</u> Both. [2.] <u>Disclosure Regarding Minor.</u> Both. [3.] <u>Disclosure to the Putative Father or Others.</u>	[1.] <u>Consent by Minor.</u> Both state law and the Rule apply because the Rule expressly defers to state law regarding a minor's capacity to consent. [2.] <u>Disclosure Regarding Minor.</u> Both state law and the Rule apply because the Rule expressly defers to state law regarding disclosure of confidential health information to parents, guardians or persons acting <i>in loco parentis</i> . [3.] <u>Disclosure to the Putative Father or Others.</u>

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	and direction of the treating physician, may, but is not obligated to, notify the putative father of the child and/or others of health care given to or needed by the minor, minor's child or fetus regardless of the minor's consent.	Yes, 164.510(b)(1).	Both, but see Column 5.	Both state law and the Rule apply because both contemplate permissive disclosure of confidential health information about the minor's or fetus' health condition, but the Rule precludes disclosure to the putative father or others if the minor expressly objects to such disclosure. In such cases, the Rule would apply as it is more protective of the minor's PHI.
MCL 333.9206 (Immunizations)	[1.] A health care provider administering an immunization agent to a child must provide the person accompanying the child with a certificate of immunization.	[1.] <u>Certificate of Immunization.</u> Yes, 164.502(a)(1)(i), 164.502(a)(2)(i), 164.502(g)(1) and (3), and 164.512(a)(1).	[1.] <u>Certificate of Immunization.</u> Both.	[1.] <u>Certificate of Immunization.</u> Both state law and the Rule apply because the Rule permits disclosure without authorization where, as here, required by law. Additionally, the Rule permits disclosure to the individual or his or her personal representative.
	[2.] Health care providers shall report each immunization administered as required by rules established pursuant to MCL 333.9227. Before administering an immunization, however, the health care provider shall notify the parent, guardian or personal representative of the right to object to the reporting requirement.	[2.] <u>Reporting Obligations.</u> Yes, 164.502(g)(1)(3), 164.512(a)(1), and 164.512(b)(1)(i).	[2.] <u>Reporting Obligations.</u> Both.	[2.] <u>Reporting Obligations.</u> Both state law and the Rule apply because the Rule permits disclosure without authorization where, as here, required by law and for

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				public health purposes.
MCL 333.9207 (Childhood Immunization Registry)	Information contained in the MCIR is subject to the confidentiality and disclosure requirements of MCL 333.2637 (MDHHS's confidentiality procedures) and 333.2888 (inspection and disclosure of vital records), discussed above in this Matrix, as well as the rules promulgated under MCL 333.9227. MDHHS may access the MCIR when necessary to fulfill its duties under the Public Health Code.	No.	State law.	State law applies because MDHHS is not functioning as a covered entity in maintaining the childhood immunization registry.
MCL 333.9307 (Hearing and Vision Testing for School Registration)	<p>[1.] Individual hearing and vision testing screening records are confidential.</p> <p>[2.] The principal or administrator shall provide a summary of hearing and vision testing reports to state and local health departments.</p> <p>[3.] Hearing and vision records shall be available to health agencies and other persons to assist in obtaining proper and necessary health and educational care, attention and treatment as</p>	<p>[1.] <u>Confidentiality.</u> Yes, 164.502(a).</p> <p>[2.] <u>Summary of Hearing and Vision Testing.</u> No.</p> <p>[3.] <u>Record Availability to State Agencies.</u> No.</p>	<p>[1.] <u>Confidentiality.</u> Both.</p> <p>[2.] <u>Summary of Hearing and Vision Testing.</u> State law.</p> <p>[3.] <u>Record Availability to State Agencies.</u> State law.</p>	<p>[1.] <u>Confidentiality.</u> Both state law and the Rule apply because each contains compatible requirements that confidential health information be protected.</p> <p>[2.] <u>Summary of Hearing and Vision Testing.</u> State law applies because no Rule counterpart exists mandating such summary, and principals or school administrators are not covered entities.</p> <p>[3.] <u>Record Availability to State Agencies.</u> State law applies because</p>

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	permitted by MDHHS.			MDHHS is not functioning as a covered entity in this context.
MCL -333.10104 -(Anatomical Gift)	<p>[1.] Subject to section 10108 (Persons other than donor barred from making, amending, or revoking anatomical gift), an anatomical gift of a donor's body or body part may be made during the life of the donor for the purpose of transplantation, therapy, research, or education in the manner provided in section 10105 by adult donor, emancipated minor donor, minor issued a driver's license or identification card at age 16, agent, parent, or guardian of the donor. Section specifies a hierarchy of individuals who may authorize organ donation of a decedent. Donees with actual notice of contrary indications by a decedent, or opposition to donation by a member of an authorized class, shall not accept the gift.</p> <p>[2.] A gift of all or part of a body authorizes an examination necessary to assure medical acceptability of the gift for the intended purposes.</p>	<p>[1.] <u>Organ Donation.</u> No.</p> <p>[2.] <u>Authorization for Examination.</u> Yes, 164.512(h).</p>	<p>[1.] <u>Organ Donation.</u> State law.</p> <p>[2.] <u>Authorization for Examination.</u> Both.</p>	<p>[1.] <u>Organ Donation.</u> State law applies because no Rule counterpart exists authorizing the donation of organs.</p> <p>[2.] <u>Authorization for Examination.</u> Both state law and the Rule apply because each speaks to different aspects of the organ donation process and they are not contrary to one another. State law authorizes a medical examination once an organ gift has been made, which examination may well include confidential health information. The Rule</p>

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				authorizes a covered entity to disclose PHI derived from such examination to organ procurement organizations.
MCL 333.11101 (Blood Bank)	A blood bank or other health facility to which blood is knowingly donated by a donor testing positive for the presence of HIV or an antibody to HIV must notify the local health department.	Yes, 164.512(a)(1), 164.512(b)(1)(i), and 164.512(b)(1)(iv).	Both.	Both state law and the Rule apply because each permits disclosure without authorization for disease reporting, for public health purposes and where, as here, required by law.
MCL 333.16168 (LARA to retain consultant for health professional recovery program)	<p>[1.] The Department of Licensing and Regulatory Affairs (“LARA”) shall contract with a private entity (which has demonstrated expertise and knowledge regarding the treatment of impaired health professionals) to act as a consultant to assist the health professional recovery committee with the administration of the health professional recovery program, including the duties of MCL 333.16167(b) (development and implementation of criteria for the identification, assessment and treatment of health professionals who may be impaired) and MCL 333.16167(c) (development and implementation of mechanisms for the evaluation of continuing care or aftercare plans for health professionals who may be impaired).</p> <p>[2.] Such contract shall require the private entity to immediately report to LARA any circumstances known to the private entity that indicate that an impaired health professional may be a threat to public health.</p>	<p>[1.] <u>Retention of Consultant.</u></p> <p>No.</p> <p>[2.] <u>Duty to Report.</u></p> <p>No.</p>	<p>[1.] <u>Retention of Consultant.</u></p> <p>State law.</p> <p>[2.] <u>Duty to Report.</u></p> <p>State law.</p>	<p>[1.] <u>Retention of Consultant.</u></p> <p>State law applies because LARA is not functioning as a covered entity in this context, and no Rule counterpart exists regarding the hiring of a consultant for a program to rehabilitate impaired health providers.</p> <p>[2.] <u>Duty to Report.</u></p> <p>State law applies because no Rule counterpart exists regarding such contracts. Note: It is not clear whether the consultant will perform any duties as a covered</p>

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				entity. If it does act as a covered entity, then both state law and the Rule would apply. <i>See</i> 164.512(a)(1) and 164.512(d)(1).
MCL 333.16169 (Health Professional Recovery Committee; impairment of health professional; transmitting information; determination)	<p>[1.] A LARA employee or contract worker having reasonable cause to believe a health professional may be impaired shall report such information to the health professional recovery committee.</p> <p>Upon receipt of such information, the health professional recovery committee shall request that the consultant retained under MCL 333.16168 (LARA to retain consultant), discussed above in this Matrix, determine whether or not the health professional is impaired.</p> <p>[2.] If, on the basis of information received under MCL 333.16168 (LARA to retain consultant), discussed above in this Matrix, LARA determines that a health professional may be a threat to the public health, safety, or welfare and has violated the licensure and related standards and rules under this Section or MCL 333.7101 <i>et seq.</i>, LARA may proceed under MCL 333.16211 (recording of any resulting licensure or</p>	<p>[1.] <u>Duty to Report.</u></p> <p>No.</p> <p><u>Referral to Consultant.</u></p> <p>No.</p> <p>[2.] <u>Disciplinary and Licensure Proceedings.</u></p> <p>No.</p>	<p>[1.] <u>Duty to Report.</u></p> <p>State law, but see Column 5.</p> <p><u>Referral to Consultant.</u></p> <p>State law.</p> <p>[2.] <u>Disciplinary and Licensure Proceedings.</u></p> <p>State law.</p>	<p>[1.] <u>Duty to Report.</u></p> <p>State law applies because employees of or workers contracted to LARA are not covered entities. If such worker is a covered entity, both state law and the Rule would apply because the Rule permits disclosure of PHI when required by state law. <i>See</i> 164.512(a).</p> <p><u>Referral to Consultant.</u></p> <p>State law applies because the health professional recovery committee is not functioning as a covered entity in this context.</p> <p>[2.] <u>Disciplinary and Licensure Proceedings.</u></p> <p>State law applies because LARA is not functioning as a covered entity in this context.</p>

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	disciplinary action in professional's record), discussed below in this Matrix and MCL 333.16231 (disciplinary proceedings against professional).			
MCL 333.16170a (Confidentiality; destruction of records; applicability of subsection (3).)	<p>[1.] The identity of an individual submitting information to a committee or LARA regarding suspected impairment of a health professional is confidential.</p> <p>[2.] The identity of a health professional who participates in the health professional recovery program is confidential.</p> <p>The identity of a health professional who participates in the health professional recovery program is not subject to disclosure under discovery, subpoena or FOIA unless the health professional fails to satisfactorily participate in and complete a treatment plan.</p>	<p>[1.] <u>Confidentiality of Informant.</u> No.</p> <p>[2.] <u>Health Professional as Patient.</u> Yes, 164.502(a).</p> <p><u>Nondisclosure for Legal Process.</u> Yes, 160.203(b), 164.512(a), 164.512(d), and 164.512(e).</p>	<p>[1.] <u>Confidentiality of Informant.</u> State law.</p> <p>[2.] <u>Health Professional as Patient.</u> Both.</p> <p><u>Nondisclosure for Legal Process.</u> State law, but see Column 5.</p>	<p>[1.] <u>Confidentiality of Informant.</u> State law applies because no Rule counterpart exists. The identity of the informant is not PHI.</p> <p>[2.] <u>Health Professional as Patient.</u> Both state law and the Rule apply because each contains compatible requirements that confidential health information be protected.</p> <p><u>Nondisclosure for Legal Process.</u> State law applies because it provides greater protection of PHI by precluding disclosure if the health professional completes treatment, whereas the Rule would permit disclosure without authorization in such circumstances. The Rule, however, imposes greater prerequisites to the</p>

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	<p>[3.] If the health professional successfully completes a treatment plan, then LARA shall destroy all records pertaining to the health professional's impairment 5 years after the committee's determination of successful completion.</p>	<p>[3.] <u>Record Destruction.</u></p> <p>No.</p>	<p>[3.] <u>Record Destruction.</u></p> <p>State law.</p>	<p>disclosure of PHI concerning a health professional who fails to satisfactorily complete the treatment program, and with respect to judicial processes, while state law permits such disclosures.</p> <p>[3.] <u>Record Destruction.</u></p> <p>State law applies because the Rule does not require destruction of records in this context, and LARA is not functioning as a covered entity in this context.</p>
<p>MCL 333.16211</p> <p>(Licensee Records)</p>	<p>-LARA shall create and maintain a permanent historical record for each licensee regarding information and data the licensee and registrant must by law submit. The records shall include written allegations against licensees or registrants that are substantiated after investigation, and may include other items designated by rule that concern the licensee's or registrant's record of practice. LARA shall review the entire file upon receipt of certain notices or allegations (e.g., discipline, malpractice settlements, awards or judgments, felony convictions, certain misdemeanor convictions, exclusions from federal insurance or benefit programs for failure to meet standards of practice, etc.). Records of unsubstantiated allegations must be retained for 5 years and may be destroyed thereafter, absent further allegations, during the five year period. Subject to certain exceptions, a licensee or</p>	<p>No.</p>	<p>State law.</p>	<p>State law applies because LARA is not functioning as a covered entity in this context, and no Rule counterpart exists requiring a governmental agency to maintain records regarding licensees or registrants. Also, while the licensees or registrants may be covered entities under the Rule, the information required by this Section does not appear to include PHI. If PHI is included, both state law and the Rule would apply. See 164.512(d).</p>

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	registrant may review his or her individual records.			
MCL 333.16221 (Licensee Investigations)	This Section empowers LARA to investigate licensees, registrants or applicants for licensure on a variety of specific grounds, including, for example, unprofessional conduct (<i>e.g.</i> , betrayal of professional confidence) and personal disqualifications (mental or physical incompetence of licensee).	No.	State law.	State law applies because LARA is not functioning as a covered entity in this context.
MCL 333.16222 (Licensee or Registrant Duty to Report Violations)	<p>[1.] A licensee or registrant with knowledge that another licensee or registrant has committed a violation under 333.16221 (listing grounds for disciplinary investigation) or a rule promulgated under Article 7 (controlled substances) or Article 9 (pharmaceutical-grade cannabis) shall report the conduct and the name of the subject of the report to LARA.</p> <p>[2.] This Section does not apply to a licensee or registrant who obtains knowledge of a violation while providing professional services to the subject licensee or registrant, while serving on an ethics or peer review committee of a professional association, or while serving on a committee assigned a professional review function in a health facility or agency.</p>	<p>[1.] <u>Duty to Report.</u> Yes, 164.512(a) and 164.512(d).</p> <p>[2.] <u>Exceptions.</u> Yes, 160.203(b) and 164.512(d).</p>	<p>[1.] <u>Duty to Report.</u> Both.</p> <p>[2.] <u>Exceptions.</u> State law.</p>	<p>[1.] <u>Duty to Report.</u> Assuming the report includes PHI, both state law and the Rule apply because each permits disclosure without authorization for health oversight, and the Rule permits disclosure where, as here, required by law.</p> <p>[2.] <u>Exceptions.</u> State law applies because it is contrary to and more stringent than the Rule. While the Rule permits disclosure for health oversight, it does not specify exemptions to these reporting obligations. State law, on the other hand, expressly exempts disclosure in these circumstances.</p>

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	<p>[3.] Information obtained by LARA under this Section is confidential and subject to MCL 333.16238 (confidentiality of information obtained in a disciplinary action) and 333.16244 (waiver of privilege for disciplinary actions), discussed below in this Matrix.</p> <p>[4.] Failure of a licensee or registrant to make a required report does not give rise to a civil action for damages against the licensee or registrant, but subjects him or her to administrative action under MCL 333.16221 (licensee investigations), discussed above in this Matrix, and 333.16226 (dealing with grounds and procedures for disciplinary investigations and sanctions).</p> <p>[5.] Unless the reporting licensee or registrant otherwise agrees, in writing, his or her identity shall remain confidential unless disciplinary proceedings are initiated against the licensee or registrant who is the subject of the report, and the reporting licensee or registrant is required to testify in the proceedings.</p>	<p>[3.] <u>Confidentiality.</u></p> <p>No.</p> <p>[4.] <u>Failure to Report.</u></p> <p>No.</p> <p>[5.] <u>Confidentiality of Reporting Licensee or Registrant.</u></p> <p>No.</p>	<p>[3.] <u>Confidentiality.</u></p> <p>State law.</p> <p>[4.] <u>Failure to Report.</u></p> <p>State law.</p> <p>[5.] <u>Confidentiality of Reporting Licensee or Registrant.</u></p> <p>State law.</p>	<p>[3.] <u>Confidentiality.</u></p> <p>State law applies because LARA is not functioning as a covered entity in this context.</p> <p>[4.] <u>Failure to Report.</u></p> <p>State law applies because no Rule counterpart exists specifying authorized actions against a licensee or registrant who fails to make reports regarding violations of other licensees or registrants.</p> <p>[5.] <u>Confidentiality of Reporting Licensee or Registrant.</u></p> <p>State law applies because no Rule counterpart exists regarding the confidentiality of the identity of a licensee or registrant reporting violations by another licensee or registrant.</p>
<p>MCL 333.16223</p> <p>(Licensee or Registrant Duty to Report</p>	<p>[1.] Except as otherwise provided in this Section, a licensee or registrant with reasonable cause to believe that another licensee, registrant or applicant is impaired shall report that fact to LARA. Failure to do so may subject the non-</p>	<p>[1.] <u>Reporting Obligation.</u></p> <p>Yes, 164.512(a) and 164.512(d).</p>	<p>[1.] <u>Reporting Obligation.</u></p> <p>Both.</p>	<p>[1.] <u>Reporting Obligation.</u></p> <p>Assuming the report includes PHI, both state law and the Rule apply because</p>

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Impairment)	<p>reporting licensee or registrant to administrative actions under MCL 333.16221 (licensee investigations), discussed above in this Matrix, and 333.16226.</p> <p>[2.] This Section does not apply to a licensee or registrant who is in a <i>bona fide</i> health professional/patient relationship with the impaired licensee or registrant.</p>	<p>[2.] <u>Exceptions to Reporting Obligations.</u></p> <p>Yes, 160.203(b) and 164.512(d).</p>	<p>[2.] <u>Exceptions to Reporting Obligations.</u></p> <p>State law.</p>	<p>each permits disclosure without authorization for health oversight, and the Rule permits disclosure where, as here, required by law.</p> <p>[2.] <u>Exceptions to Reporting Obligations.</u></p> <p>State law applies because it is contrary to and more stringent than the Rule. While the Rule permits disclosure for health oversight, it does not provide for exemptions to these reporting obligations. State law, on the other hand, expressly exempts disclosure of information protected by the professional/patient privilege.</p>
<p>MCL 333.16236</p> <p>(Examination Required for Disciplinary Investigations)</p>	<p>In a hearing or investigation where mental or physical inability, substance abuse or impairment under MCL 333.16221 (licensee investigations), discussed above in this Matrix, is alleged, a disciplinary subcommittee, a hearings examiner or LARA (with approval of the disciplinary subcommittee) may require the licensee to submit to a physical or mental examination at LARA's expense by the physicians or health professionals</p>	<p>No.</p>	<p>State law.</p>	<p>State law applies because LARA and its agents are not functioning as covered entities in this context, and no Rule counterpart exists regarding compelled licensee examinations and automatic waiver of the privileges involved.</p>

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	designated by the disciplinary subcommittee. For purposes of this Section, a licensee who accepts the privilege of practicing in this State consents to submit to a mental or physical examination when so directed. The licensee waives all objections to the admissibility of the testimony or examination reports of the physician or health professional on the grounds that such testimony or examination constitutes privileged communications.			
MCL 333.16238 (Confidentiality of Information Obtained in a Disciplinary Action)	Except as provided in FOIA, information including, but not limited to, patient names obtained in an investigation or a compliance conference before a complaint is issued, is confidential and shall not be disclosed, except to the extent necessary for the proper functioning of a hearings examiner, a disciplinary subcommittee or -LARA.	No.	State law.	State law applies because LARA is not functioning as a covered entity in this context.
MCL 333.16243 (Disclosure to LARA for Disciplinary Investigation)	<p>[1.] LARA or a disciplinary subcommittee may request, and shall receive, among other things, information from a licensed health care facility as to disciplinary action taken by it and reported pursuant to MCL 333.16222 (licensee or registrant duty to report violations), discussed above in this Matrix;</p> <p>[2.] Reports from a professional liability insurer; and</p>	<p>[1.] <u>Disclosure by Health Care Facility for Investigation Purposes.</u></p> <p>Yes, 164.512(d).</p> <p>[2.] <u>Disclosure by Insurers and Attorneys.</u></p> <p>No.</p>	<p>[1.] <u>Disclosure by Health Care Facility for Investigation Purposes.</u></p> <p>Both.</p> <p>[2.] <u>Disclosure by Insurers and Attorneys.</u></p> <p>State law.</p>	<p>[1.] <u>Disclosure by Health Care Facility for Investigation Purposes.</u></p> <p>Assuming the information in the report contains PHI, both state law and the Rule apply because each permits a health care provider to disclose confidential health information without authorization for health oversight.</p> <p>[2.] <u>Disclosure by Insurers and Attorneys.</u></p> <p>State law applies because professional liability</p>

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	<p>[3.] Reports from any appropriate sources, including public or private peer review entities, to determine the competency and safety of the practice of a licensee.</p>	<p>[3.] <u>Disclosure of Peer Review Records.</u></p> <p>Yes, 164.512(d).</p>	<p>[3.] <u>Disclosure of Peer Review Records.</u></p> <p>Both.</p>	<p>insurers are not covered entities.</p> <p>[3.] <u>Disclosure of Peer Review Records.</u></p> <p>Assuming the peer review record contains PHI, both state law and the Rule apply because each permits disclosure without authorization for health oversight.</p>
<p>MCL 333.16244</p> <p>(Waiver of Privilege for Disciplinary Actions)</p>	<p>[1.] Physician/patient privilege does not apply in an investigation or proceeding by a board, task force disciplinary subcommittee, a hearing examiner or when LARA is acting within its authorized scope.</p> <p>[2.] Unless expressly waived by the patient or required by a court order, the information obtained shall be confidential and shall not be disclosed except to the extent necessary for the proper functioning of a board, task force, disciplinary subcommittee, a hearing examiner or</p>	<p>[1.] <u>Disclosure for Licensure and Disciplinary Actions.</u></p> <p>Yes, 164.512(b)(1)(i) and 164.512(d).</p> <p>[2.] <u>Confidentiality.</u></p> <p>No.</p>	<p>[1.] <u>Disclosure for Licensure and Disciplinary Actions.</u></p> <p>Both.</p> <p>[2.] <u>Confidentiality.</u></p> <p>State law.</p>	<p>[1.] <u>Disclosure for Licensure and Disciplinary Actions.</u></p> <p>Although LARA is not functioning as a covered entity, both state law and the Rule apply because each permits disclosure without authorization of confidential health information by a licensee for health oversight and public health activities.</p> <p>[2.] <u>Confidentiality.</u></p> <p>State law applies because LARA is not functioning as a covered entity in this context.</p>

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	<p>LARA.</p> <p>[3.] Except as otherwise provided in this Section, a person shall not use or disseminate the information except pursuant to a valid court order.</p>	<p>[3.] <u>Disclosure Only with Court Order.</u></p> <p>No.</p>	<p>[3.] <u>Disclosure Only with Court Order.</u></p> <p>State law.</p>	<p>[3.] <u>Disclosure Only with Court Order.</u></p> <p>State law applies because neither LARA nor any other person referenced in the state law is functioning as a covered entity in this context.</p>
<p>MCL 333.16267</p> <p>(Obligation to Report Positive HIV Test Results)</p>	<p>A licensee who obtains a test result indicating that a subject is HIV positive shall comply with the reporting requirements of MCL 333.5114 (reporting HIV test results), discussed above in this Matrix.</p>	<p>Yes, 164.512(a)(1), 164.512(b)(1)(i), 164.512(b)(1)(iv), and 164.512(j).</p>	<p>Both.</p>	<p>Both state law and the Rule apply because each permits disclosure without authorization for public health purposes, to avert a serious threat of harm and where, as here, required by law.</p>
<p>MCL 333.16281</p> <p>(Disclosure of Child Abuse Investigation Records)</p>	<p>[1.] If there is a compelling need for records or information to determine whether child abuse or child neglect has occurred or to take action to protect a child where there may be a substantial risk of harm, a family independence agency caseworker or administrator directly involved in the child abuse or neglect investigation shall notify a licensee or registrant that a child abuse or neglect investigation has been initiated regarding a child who has received services from the licensee or registrant and shall request in writing the child's medical records and information pertinent to that investigation.</p> <p>[2.] A licensee or registrant must review medical records and information in his or her possession and release records and information pertinent to</p>	<p>[1.] <u>Notification of Abuse and Neglect Investigation.</u></p> <p>No.</p> <p>[2.] <u>Obligation to Release Records.</u></p>	<p>[1.] <u>Notification of Abuse and Neglect Investigation.</u></p> <p>State law.</p> <p>[2.] <u>Obligation to Release Records.</u></p>	<p>[1.] <u>Notification of Abuse and Neglect Investigation.</u></p> <p>State law applies because no Rule counterpart exists requiring such notification.</p> <p>[2.] <u>Obligation to Release Records.</u></p>

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	<p>the investigation within 14 days of notice.</p> <p>[3.] No health professional/patient privilege (<i>i.e.</i>, physician/patient, dentist/patient, licensed counselor/patient, psychologist/patient, <i>etc.</i>) applies to medical records and information released or made available under this Section.</p> <p>[4.] This Section does not apply to information protected under MCL 333.5131 (confidentiality of HIV or AIDS test results), discussed above in this Matrix.</p>	<p>Yes, 164.512(a)(1) 164.512(b)(1)(ii), and 164.512(j).</p> <p>[3.] <u>Waiver of Privilege.</u></p> <p>No.</p> <p>[4.] <u>MCL 333.5131.</u></p> <p>Yes, 160.203(b), 164.512(b)(1)(i), and 164.512(b)(1)(ii).</p>	<p>Both.</p> <p>[3.] <u>Waiver of Privilege.</u></p> <p>State law.</p> <p>[4.] <u>MCL 333.5131.</u></p> <p>State law.</p>	<p>Both state law and the Rule apply because each permits disclosure without authorization pertinent to an abuse or neglect investigation and as required by law.</p> <p>[3.] <u>Waiver of Privilege.</u></p> <p>State law applies because no Rule counterpart exists regarding waiver of privilege.</p> <p>[4.] <u>MCL 333.5131.</u></p> <p>State law applies because the Rule would allow disclosure of confidential health information for child abuse or neglect investigations, including information regarding HIV or AIDS protected under MCL 333.5131, while state law does not. Therefore, state law is contrary to and more stringent than the Rule.</p>
<p>MCL 333.16644</p> <p>(Retention of Dental Records)</p>	<p>[1.] A dentist shall make a record of all dental treatment performed and shall retain that record for not less than 10 years after the performance of the last service on the patient.</p>	<p>[1.] <u>Retention of Dental Records.</u></p> <p>No.</p>	<p>[1.] <u>Retention of Dental Records.</u></p> <p>State law.</p>	<p>[1.] <u>Retention of Dental Records.</u></p> <p>State law applies because no Rule counterpart exists requiring the creation or retention of dental records.</p>

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	[2.] The Dental Board shall prescribe the form and content of the required record so that it may be used for identification purposes.	[2.] <u>Dental Board Form</u> . No.	[2.] <u>Dental Board Form</u> . State law.	Note: The Rule, however, assumes that a covered entity will create and maintain dental records and that the covered entity will document which of those records are part of a “designated record set.” See 164.524(e)(1). [2.] <u>Dental Board Form</u> . State law applies because no Rule counterpart exists regarding prescribed forms for dental records and the Dental Board is not a covered entity.
MCL 333.16645 (Patient Identification on Orthodontic Devices and Dentures)	A dentist or dental laboratory that sells or furnishes denture or orthodontic devices shall permanently mark the patient’s name or social security number on the denture or orthodontic device, unless the patient specifically declines. A dentist must notify the patient that he or she has the right to decline to have identification marked on his or her denture or orthodontic device, ask the patient to choose the information to be marked and reflect those choices on the work order to the dental laboratory.	Yes, 164.502(a)(1)(ii) and 164.506.	State law.	State law applies because the Rule does not require consent prior to disclosure of confidential health information for TPO.
MCL 333.16648 (Confidentiality of Dental Records)	[1.] Absent prior written patient or personal representative consent, information relative to the care and treatment of a dental patient acquired as a result of providing professional dental services shall be confidential and privileged.	[1.] <u>Confidentiality</u> . Yes, 164.502(a).	[1.] <u>Confidentiality</u> . Both.	[1.] <u>Confidentiality</u> . Both state law and the Rule apply because each contains compatible requirements that confidential health information be protected.

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	<p>[2.] This Section does not prohibit disclosure of information if the disclosure is part of a defense in legal or administrative proceedings challenging the dentist's professional competence;</p> <p>[3.] the disclosure is pursuant to MCL 331.531 (disclosure to peer review entities) and 331.533 (confidentiality of information utilized by peer review entity), discussed above in this Matrix;</p> <p>[4.] the disclosure is in relation to a claim for payment;</p> <p>[5.] the disclosure is to a third party payor in order to conduct good faith predeterminations, treatment reviews or audits;</p>	<p>[2.] <u>Disclosure Due to Waiver.</u> Yes, 164.512(d) and 164.512(e)(2).</p> <p>[3.] <i>See</i> analysis at MCL 331.531 and 331.533 discussed above in this Matrix.</p> <p>[4.] <u>Disclosure Regarding Claim for Payment.</u> Yes, 164.501 (definition of payment), 164.502(a)(1)(ii), and 164.506.</p> <p>[5.] <u>Disclosure for Payment Purposes.</u> Yes, 164.501 (definition of payment), 164.502(a)(1)(ii), and 164.506.</p>	<p>[2.] <u>Disclosure Due to Waiver.</u> Both.</p> <p>[3.] <i>See</i> analysis at MCL 331.531 and 331.533 discussed above in this Matrix.</p> <p>[4.] <u>Disclosure Regarding Claim for Payment.</u> Both.</p> <p>[5.] <u>Disclosure for Payment Purposes.</u> Both.</p>	<p>State law, however, permits disclosure with prior written consent while the Rule permits disclosure for TPO without consent.</p> <p>[2.] <u>Disclosure Due to Waiver.</u> Both state law and the Rule apply because each permits disclosure without authorization in circumstances where the quality of treatment is placed at issue.</p> <p>[3.] <i>See</i> analysis at MCL 331.531 and 331.533 discussed above in this Matrix.</p> <p>[4.] <u>Disclosure Regarding Claim for Payment.</u> Both state law and the Rule apply because each permits disclosure for purposes of payment without prior consent or authorization, as applicable.</p> <p>[5.] <u>Disclosure for Payment Purposes.</u> Both state law and the Rule apply because each permits disclosure for</p>

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	<p>[6.] the court-ordered disclosure is to a police agency as part of a criminal investigation;</p> <p>[7.] the disclosure is provided in MCL 333.2844a (release of information to missing persons), discussed below in this Matrix;</p> <p>[8.] the disclosure is provided in MCL 333.16222 (licensee or registrant duty to report violations), discussed above in this Matrix; or</p> <p>[9.] the disclosure is provided under MCL 333.16281 (disclosure of child abuse investigation records), discussed above in this Matrix.</p>	<p>[6.] <u>Court Ordered Disclosure.</u></p> <p>Yes, 164.512(e) and 164.512(f)(1)(ii)(A).</p> <p>[7.] <i>See</i> analysis at MCL 333.2844a discussed below in this Matrix.</p> <p>[8.] <u>Duty to Report Violations.</u></p> <p>No.</p> <p>[9.] <i>See</i> analysis at MCL 333.16281 discussed above in this Matrix.</p>	<p>[6.] <u>Court Ordered Disclosure.</u></p> <p>Both.</p> <p>[7.] <i>See</i> analysis at MCL 333.2844a discussed below in this Matrix.</p> <p>[8.] <u>Duty to Report Violations.</u></p> <p>State law.</p> <p>[9.] <i>See</i> analysis at MCL 333.16281 discussed above in this Matrix.</p>	<p>predeterminations, treatment reviews and audits without prior consent or authorization, as applicable.</p> <p>[6.] <u>Court Ordered Disclosure.</u></p> <p>Both state law and the Rule apply because each permits disclosure without authorization pursuant to a court order in connection with a criminal investigation.</p> <p>[7.] <i>See</i> analysis at MCL 333.2844a discussed below in this Matrix.</p> <p>[8.] <u>Duty to Report Violations.</u></p> <p>State law applies because no Rule counterpart exists imposing a duty to report known professional violations by another licensed professional.</p> <p>[9.] <i>See</i> analysis at MCL 333.16281 discussed above in this Matrix.</p>

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MCL 333.16911 (Family and Marriage Therapy Privileged Information)	[1.] Information regarding a patient of a marriage and therapy counselor, including referrals made by a circuit court or its counseling service, is privileged information and not subject to waiver by the patient. This privilege may be waived only in the following circumstances:	[1.] <u>Privilege.</u> No.	[1.] <u>Privilege.</u> State law.	[1.] <u>Privilege.</u> State law applies because no Rule counterpart exists addressing privileges created under state law.
	[2.] if the disclosure is required by law or as necessary to protect the health or safety of an individual;	[2.] <u>Waiver Required by Law or Protection of Individual.</u> Yes, 164.512(a)(1) and 164.512(j).	[2.] <u>Waiver Required by Law or Protection of Individual.</u> Both.	[2.] <u>Waiver Required by Law or Protection of Individual.</u> Both state law and the Rule apply because each permits disclosure without authorization to avoid a threat of serious harm and where, as here, required by law.
	[3.] if the licensed marriage and family therapy provider is a party defendant to a civil, criminal or administrative action arising from services as such a provider; or	[3.] <u>Waiver of Judicial or Administrative Proceedings.</u> Yes, 164.512(d), 164.512(e)(2), and 164.512(f).	[3.] <u>Waiver of Judicial or Administrative Proceedings.</u> Both.	[3.] <u>Waiver of Judicial or Administrative Proceedings.</u> Both state law and the Rule apply because each permits disclosure without authorization in circumstances where the quality of treatment is placed at issue, for health oversight and for law enforcement purposes.
	[4.] if a waiver specifying the terms of disclosure is obtained in writing from each individual over the age of 18 involved in the marriage and family therapy.	[4.] <u>Authorization to Disclosure.</u> Yes, 164.502(a)(1)(ii), 164.502(a)(1)(iv), 164.506,	[4.] <u>Authorization to Disclosure.</u> Both.	[4.] <u>Authorization to Disclosure.</u> Both state law and the Rule apply because each permits

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		and 164.508.		disclosure of confidential health information pursuant to an authorization.
MCL 333.17015 (Informed Consent for Abortion)	[1.] Absent an emergency as defined in this Section, a physician shall not perform an abortion otherwise permitted by law without the patient's informed written consent provided freely and without coercion. Twenty-four hours prior to performing an abortion, a physician or qualified person assisting in performing an abortion must make certain clinical determinations as to the pregnancy; provide certain oral descriptions to the patient about the pregnancy, complications and access to pregnancy prevention information; explain the patient's option to review a written summary of information regarding the procedure and provide the patient with a copy of a state-distributed pamphlet regarding pregnancy and prenatal care. Before performing an abortion, the physician must provide the patient with certain information and inform the patient of her right to withhold or withdraw consent to the abortion and orally describe risks of the procedure and of continued pregnancy. Before performing an abortion, a physician, among other things, must obtain the patient's signature on a form prepared or approved by MDHHS consenting to the abortion and acknowledging the patient has received the required information and provide the patient with a copy of her written consent and acknowledgement. In a medical emergency, a physician may perform an abortion without meeting various informed consent requirements in this Section.	[1.] <u>Informed Consent for Abortion.</u> No.	[1.] <u>Informed Consent for Abortion.</u> State law.	[1.] <u>Informed Consent for Abortion.</u> State law applies because no Rule counterpart exists relating to informed consent procedures for abortions performed by a physician.

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	<p>[2.] The information required to be disclosed by this Section shall not be disclosed in front of another patient.</p> <p>[3.] MDHHS shall develop various informational materials regarding abortion and a consent form for an abortion that authorizes the physician to perform the abortion, acknowledges the length of the pregnancy, advises the patient of her right to withdraw consent and acknowledges the receipt of specific information required by this Section.</p> <p>[4.] The consent required in this Section is presumed to be valid if signed by the patient, but the validity can be rebutted.</p> <p>[5.] The identity and address of a patient who consents to an abortion or is provided information about pregnancy or abortion is confidential,</p>	<p>[2.] <u>Seclusion of Patient Receiving Information.</u></p> <p>Yes, 164.502(a) and 164.530(c)(1).</p> <p>[3.] <u>Content of Consent.</u></p> <p>No.</p> <p>[4.] <u>Validity of Consent.</u></p> <p>No.</p> <p>[5.] <u>Confidentiality.</u></p> <p>Yes, 164.502(a).</p>	<p>[2.] <u>Seclusion of Patient Receiving Information.</u></p> <p>Both.</p> <p>[3.] <u>Content of Consent.</u></p> <p>State law.</p> <p>[4.] <u>Validity of Consent.</u></p> <p>State law.</p> <p>[5.] <u>Confidentiality.</u></p> <p>Both.</p>	<p>[2.] <u>Seclusion of Patient Receiving Information.</u></p> <p>Both state law and the Rule apply because each contains compatible requirements that confidential health information be protected. The Rule also requires appropriate administrative, technical and physical safeguards to protect the privacy of PHI, while state law merely applies such safeguards in the context of abortion-related information.</p> <p>[3.] <u>Content of Consent.</u></p> <p>State law applies because MDHHS is not functioning as a covered entity in this context.</p> <p>[4.] <u>Validity of Consent.</u></p> <p>State law applies because no Rule counterpart exists relating to informed consent procedures for abortions performed by a physician.</p> <p>[5.] <u>Confidentiality.</u></p> <p>Both state law and the Rule</p>

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	<p>[6.] subject to disclosure only with the consent of the patient or by judicial process.</p> <p>[7.] The local health department with a file identifying an abortion patient shall only disclose the identity and address of the patient to a physician or person assisting the physician to verify receipt of the required information.</p> <p>[8.] The information containing the name and address of the patient shall be destroyed within 30</p>	<p>[6.] <u>Disclosure with Patient Consent by Judicial Process.</u></p> <p>Yes, 160.203(b), 164.502(a)(1)(ii), 164.502(a)(1)(iv), 164.506, 164.508, and 164.512(e).</p> <p>[7.] <u>Disclosure Limitations.</u></p> <p>Yes, 160.203(b), 164.502(b), and 164.514(d).</p> <p>[8.] <u>Record Destruction.</u></p>	<p>[6.] <u>Disclosure with Patient Consent by Judicial Process.</u></p> <p>State law.</p> <p>[7.] <u>Disclosure Limitations.</u></p> <p>State law.</p> <p>[8.] <u>Record Destruction.</u></p>	<p>apply because each contains compatible requirements that confidential health information be protected.</p> <p>[6.] <u>Disclosure with Patient Consent by Judicial Process.</u></p> <p>State law applies because it permits disclosure only with consent or pursuant to judicial process. The Rule not only would permit disclosure under these circumstances, but also would permit disclosure under other circumstances not permitted by state law (e.g., public health purposes). Thus, state law is contrary to and more stringent than the Rule.</p> <p>[7.] <u>Disclosure Limitations.</u></p> <p>State law applies because it is contrary to and more stringent than the Rule with regard to what information can be disclosed to the local health department for verification purposes.</p> <p>[8.] <u>Record Destruction.</u></p>

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	days.	No.	State law.	State law applies because the Rule does not require the destruction of patient records in this context.
MCL 333.17020 and 333.17520 (Consent to Genetic Testing)	A physician or an individual to whom the physician has delegated authority must obtain a written informed consent from a test subject prior to performing a presymptomatic or predictive genetic test. The informed consent shall include who will have access to the sample taken from the test subject to conduct the tests who will have access to the information obtained from the tests and the test subject's right to confidential treatment.	Yes, 164.502(a)(1)(ii), 164.502(a)(1)(iv), 164.506, and 164.508.	Both.	State law applies because it requires, as part of the informed consent process, that the individual sign a document akin to an authorization under the Rule specifying who will have access to the sample and the information obtained from the tests. The Rule, however, would permit such disclosures without the individual's authorization if the disclosure is for TPO, or otherwise permitted by the Rule. If the disclosure is not for TPO, or otherwise permitted by the Rule, both state law and the Rule would apply as each would require an authorization and the form of authorization would be governed by the Rule.
MCL 333.17752 (Prescription Drug Records)	[1.] Prescription records must be kept for 5 years.	[1.] <u>Record Retention</u> . No.	[1.] <u>Record Retention</u> . State law.	[1.] <u>Record Retention</u> . State law applies because no Rule counterpart exists prescribing a retention period for medical records. Note: The Rule, however,

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	<p>[2.] A prescription or equivalent record on file in a pharmacy is not a public record and shall remain confidential,</p> <p>[3.] absent patient authorization except for disclosures:</p> <p>[4.] to the patient;</p> <p>[5.] another pharmacist, the authorized prescriber, a licensed health professional treating the patient;</p>	<p>[2.] <u>Confidentiality.</u> Yes, 164.502(a).</p> <p>[3.] <u>Disclosure with Authorization.</u> Yes, 164.502(a)(1)(ii), 164.502(a)(1)(iv), 164.506, and 164.508.</p> <p>[4.] <u>Disclosure to Patient.</u> Yes, 164.502(a)(1)(i) and 164.502(a)(2)(i).</p> <p>[5.] <u>Disclosure for Treatment.</u> Yes, 164.502(a), 164.502(a)(1)(ii), and</p>	<p>[2.] <u>Confidentiality.</u> Both.</p> <p>[3.] <u>Disclosure with Authorization.</u> Both.</p> <p>[4.] <u>Disclosure to Patient.</u> Both.</p> <p>[5.] <u>Disclosure for Treatment.</u> Both.</p>	<p>assumes that a covered entity will create and maintain medical records and that a covered entity will document which of those records are part of a “designated record set.” See 164.524(e)(1).</p> <p>[2.] <u>Confidentiality.</u> Both state law and the Rule apply because each contains compatible requirements that confidential health information be protected.</p> <p>[3.] <u>Disclosure with Authorization.</u> Both state law and the Rule apply because each permits disclosure with authorization.</p> <p>[4.] <u>Disclosure to Patient.</u> Both state law and the Rule apply because each permits disclosure to the individual to whom the confidential health information pertains.</p> <p>[5.] <u>Disclosure for Treatment.</u> Both state law and the Rule apply because neither</p>

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	<p>[6.] an agency or agent of the government agency responsible for the enforcement of laws relating to drugs and devices;</p> <p>[7.] a person authorized by court order; or</p> <p>[8.] a person engaged in research projects or studies with protocols approved by MBP.</p>	<p>164.506(a).</p> <p>[6.] <u>Disclosure for Law Enforcement Purposes.</u></p> <p>Yes, 164.512(b)(1)(i), 164.512(b)(1)(iii), and 164.512(f).</p> <p>[7.] <u>Disclosure for Legal Proceedings.</u></p> <p>Yes, 164.512(e).</p> <p>[8.] <u>Disclosure for Research Purposes.</u></p> <p>Yes, 164.508(a)(1) and 164.512(i).</p>	<p>[6.] <u>Disclosure for Law Enforcement Purposes.</u></p> <p>Both.</p> <p>[7.] <u>Disclosure for Legal Proceedings.</u></p> <p>Both.</p> <p>[8.] <u>Disclosure for Research Purposes.</u></p> <p>The Rule.</p>	<p>requires consent prior to treatment-related disclosures.</p> <p>[6.] <u>Disclosure for Law Enforcement Purposes.</u></p> <p>Both state law and the Rule apply because each permits disclosure without authorization for law enforcement activities and FDA regulation.</p> <p>[7.] <u>Disclosure for Legal Proceedings.</u></p> <p>Both state law and the Rule apply because each permits disclosure without authorization pursuant to a court order.</p> <p>[8.] <u>Disclosure for Research Purposes.</u></p> <p>The Rule applies because it requires either an authorization or an IRB or privacy board approval of an authorization waiver for the disclosure of PHI used in research, whereas state law permits such disclosure without authorization.</p>

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MCL 333.18117 (Confidentiality of Counselor Communications)	[1. and 2.] The confidential relations and communications between a licensed professional counselor or a limited license counselor and a client are privileged.	[1.] <u>Confidentiality.</u> Yes, 164.502(a).	[1.] <u>Confidentiality.</u> Both.	[1.] <u>Confidentiality.</u> Both state law and the Rule apply because each contains compatible requirements that confidential health information be protected.
		[2.] <u>Privilege.</u> No.	[2.] <u>Privilege.</u> State law.	[2.] <u>Privilege.</u> State law applies because no Rule counterpart exists regarding counselor/client privilege.
	[3.] Disclosure is permitted with the client's consent; or	[3.] <u>Disclosure with Consent.</u> Yes, 164.502(a)(1)(ii), 164.506, and 160.203(b).	[3.] <u>Disclosure with Consent.</u> State law.	[3.] <u>Disclosure with Consent.</u> State law applies because it is more stringent in that it requires consent. The Rule would permit disclosure for TPO without consent or authorization. Note: If, however, the disclosure is not for TPO, and is not otherwise permitted by the Rule, the Rule requires an authorization and the form of the authorization would be controlled by the Rule.
	[4.] to comply with MCL 333.16222 (licensee or registrant duty to report violations) and 333.16281 (disclosure of child abuse investigation records), discussed above in this Matrix.	[4.] See analysis at MCL 333.16222 and 333.16281 discussed above in this Matrix.	[4.] See analysis at MCL 333.16222 and 333.16281 discussed above in this Matrix.	[4.] See analysis at MCL 333.16222 and 333.16281 discussed above in this Matrix.

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MCL 333.18237 (Privileged Disclosures to Psychologists)	[1.] A licensed psychologist or an individual under his or her supervision cannot be compelled to disclose confidential information acquired from an individual consulting the psychologist in his or her professional capacity if the information is necessary to enable the psychologist to render services.	[1.] <u>Confidentiality.</u> No.	[1.] <u>Confidentiality.</u> State law.	[1.] <u>Confidentiality.</u> State law applies because no Rule counterpart exists establishing a psychologist/client privilege.
	[2.] Information may be disclosed with the consent of the individual consulting the psychologist;	[2.] <u>Disclosure with Authorization.</u> Yes, 164.502(a)(1)(iv) and 164.508(a)(2).	[2.] <u>Disclosure with Authorization.</u> Both.	[2.] <u>Disclosure with Authorization.</u> Both state law and the Rule apply because each permits disclosure with authorization.
	[3.] if the individual consulting the psychologist is a minor, or with the consent of the minor's guardian;	[3.] <u>Authorization of Minor's Guardian.</u> Yes, 164.508(a)(2).	[3.] <u>Authorization of Minor's Guardian.</u> Both.	[3.] <u>Authorization of Minor's Guardian.</u> Both state law and the Rule apply because each permits disclosure if authorized by the guardian of a patient who is a minor.
	[4.] if the psychologist believes it is necessary to disclose the information to comply with MCL 333.16222 (licensee or registrant duty to report violations) or to comply with MCL 333.16281 (disclosure of child abuse investigation records), discussed above in this Matrix; or	[4.] <i>See</i> analysis at MCL 333.16222 and 333.16281 discussed above in this Matrix.	[4.] <i>See</i> analysis at MCL 333.16222 and 333.16281 discussed above in this Matrix.	[4.] <i>See</i> analysis at MCL 333.16222 and 333.16281 discussed above in this Matrix.
	[5.] in a will contest, an heir at law and personal representative may waive the privilege created by this Section.	[5.] <u>Privilege Waiver.</u> No.	[5.] <u>Privilege Waiver.</u> State law.	[5.] <u>Privilege Waiver.</u> State law applies because no Rule counterpart exists for waiver of privilege.

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MCL 333.18513 (Confidentiality of Communications to Social Workers)	[1.] A certified social worker, social work technician or an employee or officer of an organization that employs such persons is not required to disclose a communication made by the client or advice given in the course of professional employment. Client communications are confidential and shall not be disclosed unless:	[1.] <u>Confidentiality.</u> Yes, 164.502(a).	[1.] <u>Confidentiality.</u> Both.	[1.] <u>Confidentiality.</u> Both state law and the Rule apply because each contains compatible requirements that confidential health information be protected.
	[2.] the disclosure is part of a required supervisory process; or	[2.] <u>Disclosure for Supervisory Process.</u> Yes, 164.501 (definition of TPO), 164.502(a)(1)(ii) and 164.506.	[2.] <u>Disclosure for Supervisory Process.</u> Both.	[2.] <u>Disclosure for Supervisory Process.</u> Both state law and the Rule apply because neither requires consent prior to disclosure for health care operations (e.g., required supervisory process).
	[3.] the privilege is waived by the client or the client's personal representative.	[3.] <u>Disclosure with Authorization.</u> Yes, 164.502(a)(1)(ii), 164.502(a)(1)(iv), 164.502(g), 164.506, 164.508, and 160.203(b).	[3.] <u>Disclosure with Authorization.</u> State law.	[3.] <u>Disclosure with Authorization.</u> State law applies because it requires waiver of the privilege by the client for any disclosure other than required by supervisory process. The Rule permits disclosure for TPO as well as in certain situations excepted from the Rule. Any other disclosures would require an authorization under the Rule and the form of authorization would be governed by the Rule.

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	<p>[4.] If requested by the court, a social worker or social work technician shall submit a written evaluation of the client's prognosis without disclosing privileged communications.</p>	<p>[4.] <u>Disclosure in Connection with Legal Proceedings.</u></p> <p>Yes, 164.512(a)(2) and 164.512(e).</p>	<p>[4.] <u>Disclosure in Connection with Legal Proceedings.</u></p> <p>Both, but see Column 5.</p>	<p>[4.] <u>Disclosure in Connection with Legal Proceedings.</u></p> <p>To the extent the information disclosed is not privileged as defined under state law, both state law and the Rule apply because each permits disclosure without authorization pursuant to court order. Where the information disclosed is privileged, state law applies because it is contrary to and more stringent than the Rule by precluding its disclosure. <i>See</i> 160.203(b).</p>
	<p>[5.] If required for the exercise of a public purpose by a legislative committee, a social worker or social work technician may make available statistical and program information without violation of the privilege established under this Section.</p>	<p>[5.] <u>Disclosure for Public Purpose by Legislative Committee.</u></p> <p>No.</p>	<p>[5.] <u>Disclosure for Public Purpose by Legislative Committee.</u></p> <p>State law.</p>	<p>[5.] <u>Disclosure for Public Purpose by Legislative Committee.</u></p> <p>State law applies because no Rule counterpart exists regarding disclosures to legislative committees.</p>
	<p>[6.] A social worker or social work technician may disclose a communication made by a client pursuant to the duty to warn contained in MCL 330.1946 (duty of mental health professional to warn), discussed above in this Matrix.</p>	<p>[6.] <i>See</i> analysis at MCL 330.1946 discussed above in this Matrix.</p>	<p>[6.] <i>See</i> analysis at MCL 330.1946 discussed above in this Matrix.</p>	<p>[6.] <i>See</i> analysis at MCL 330.1946 discussed above in this Matrix.</p>

1. Citation	2. Brief Summary of Pertinent Provision	3. Is There a HIPAA Counterpart?	4. Which Law Applies?	5. Why?
MCL 333.20155 (Facility Accreditation and Audits)	[1.] Accreditation information provided to LARA during an audit is confidential, is not a public record, and	[1.] <u>Confidentiality</u> . Yes, 164.502(a).	[1.] <u>Confidentiality</u> . Both.	[1.] <u>Confidentiality</u> . Assuming the accreditation information provided includes PHI, both state law and the Rule apply because each contains compatible requirements that confidential health information be protected.
	[2.] is not subject to court subpoena.	[2.] <u>Disclosure to Judicial Subpoena</u> . Yes, 160.203(b) and 164.512(e).	[2.] <u>Disclosure to Judicial Subpoena</u> . State law.	[2.] <u>Disclosure to Judicial Subpoena</u> . State law applies because the Rule permits disclosure pursuant to judicial subpoena, whereas state law affords greater protection of PHI by prohibiting such disclosure. Note: If LARA is the recipient of the subpoena, state law would apply because LARA would not be functioning as a covered entity in that context.
	[3.] However, if a hospital is substantially noncompliant with the licensure standards and represents a threat to public safety or patient care, then LARA will prepare a written report of the hospital's noncompliance and deficiencies that becomes a public document.	[3.] <u>Noncompliance Disclosures</u> . No.	[3.] <u>Noncompliance Disclosures</u> . State law.	[3.] <u>Noncompliance Disclosures</u> . State law applies because no Rule counterpart exists regarding noncompliance disclosures, and LARA is not functioning as a covered entity in this context.

1. Citation	2. Brief Summary of Pertinent Provision	3. Is There a HIPAA Counterpart?	4. Which Law Applies?	5. Why?
	<p>[4.] LARA shall respect the confidentiality of a patient's records and shall not divulge identifying patient information unless court ordered.</p> <p>[5.] MCL 333.20155(11) grants LARA access to books and records, including patient records, to carry out its licensure functions.</p>	<p>[4.] <u>Court Ordered Disclosure.</u></p> <p>No.</p> <p>[5.] <u>Access to Books and Records.</u></p> <p>Yes, 164.512(d).</p>	<p>[4.] <u>Court Ordered Disclosure.</u></p> <p>State law.</p> <p>[5.] <u>Access to Books and Records.</u></p> <p>Both.</p>	<p>[4.] <u>Court Ordered Disclosure.</u></p> <p>State law applies because LARA is not functioning as a covered entity in this context.</p> <p>[5.] <u>Access to Books and Records.</u></p> <p>Both state law and the Rule apply because each permits disclosure of confidential health information without authorization for health oversight activities.</p>
MCL 333.20175 (Patient Records)	<p>[1.] A health facility shall maintain patient records, including a full and complete record of tests and examinations performed, treatments provided, <i>etc.</i></p>	<p>[1.] <u>Record Maintenance.</u></p> <p>No.</p>	<p>[1.] <u>Record Maintenance.</u></p> <p>State law.</p>	<p>[1.] <u>Record Maintenance.</u></p> <p>State law applies because no Rule counterpart exists requiring the completion and maintenance of medical records. Note: The Rule, however, assumes that a covered entity will create and maintain medical records and that the covered entity will document which of those records are part of a "designated record set." <i>See</i> 164.524(e)(1). Additionally, the accounting requirements of the Rule assume that medical records will be maintained by covered entities. (<i>See</i> 164.528.)</p>

1. Citation	2. Brief Summary of Pertinent Provision	3. Is There a HIPAA Counterpart?	4. Which Law Applies?	5. Why?
	<p>[2.] A hospital shall take precautions to assure that patient records are not wrongfully altered or destroyed. Failure to do so will result in administrative sanctions.</p>	<p>[2.] <u>Wrongful Alteration or Destruction of Medical Records.</u></p> <p>No.</p>	<p>[2.] <u>Wrongful Alteration or Destruction of Medical Records.</u></p> <p>State law.</p>	<p>[2.] <u>Wrongful Alteration or Destruction of Medical Records.</u></p> <p>State law applies because no Rule counterpart exists prohibiting wrongful alteration or destruction of medical records. Note: The Rule requires that covered entities have in place appropriate physical, technical and administrative safeguards to protect PHI. <i>See</i> 164.530(c). The Rule, however, contains no express prohibition against the wrongful alteration or destruction of patient records, though the amendment procedures contemplated in 164.526 are designed to protect the integrity of the “designated record set.”</p>
	<p>[3.] LARA officers and employees shall respect the confidentiality of patient clinical records and shall not divulge or disclose the contents of records in a manner that identifies an individual except pursuant to court order or as otherwise authorized by law.</p>	<p>[3.] <u>Court Ordered Disclosure.</u></p> <p>No.</p>	<p>[3.] <u>Court Ordered Disclosure.</u></p> <p>State law.</p>	<p>[3.] <u>Court Ordered Disclosure.</u></p> <p>State law applies because LARA is not functioning as a covered entity in this context.</p>

1. Citation	2. Brief Summary of Pertinent Provision	3. Is There a HIPAA Counterpart?	4. Which Law Applies?	5. Why?
	<p>[4.] The records, data, and knowledge collected for or by individuals or committees assigned a professional review function in a health facility or agency are confidential, shall be used only for the purposes provided in this Article, are not public records, and</p> <p>[5.] are not subject to court subpoena.</p>	<p>[4.] <u>Peer Review Records.</u></p> <p>Yes, 164.501 (definition of health care operations), 164.502(a), and 164.506.</p> <p>[5.] <u>Nondisclosure for Court Subpoena.</u></p> <p>Yes, 164.512(e).</p>	<p>[4.] <u>Peer Review Records.</u></p> <p>Both.</p> <p>[5.] <u>Nondisclosure for Court Subpoena.</u></p> <p>State law.</p>	<p>[4.] <u>Peer Review Records.</u></p> <p>Assuming compliance with the Rule's Notice of Privacy Practice requirements are met, both state law and the Rule apply because each contains compatible requirements that confidential health information be protected, and each permits disclosure for purposes of peer review.</p> <p>[5.] <u>Nondisclosure for Court Subpoena.</u></p> <p>State law applies because peer review records are not subject to disclosure even under a court subpoena, while the Rule would permit such disclosures pursuant to a court subpoena.</p>
<p>MCL 333.20191</p> <p>(Infectious Agent and Emergency Treatment)</p>	<p>[1.] Police officer, firefighter or other emergency personnel shall be notified that he or she may have been exposed to an infectious disease if a person he or she transferred subsequently tests positive for an infectious disease.</p> <p>[2.] If the test results indicate that the emergency</p>	<p>[1.] <u>Infectious Disease Notification.</u></p> <p>Yes, 164.512(a)(1), 164.512(b)(1)(iv) and 164.512(j).</p> <p>[2.] <u>Nondisclosure of</u></p>	<p>[1.] <u>Infectious Disease Notification.</u></p> <p>Both.</p> <p>[2.] <u>Nondisclosure of</u></p>	<p>[1.] <u>Infectious Disease Notification.</u></p> <p>Both state law and the Rule apply because each permits disclosure without authorization for communicable disease notification, to avert a threat of serious harm and where, as here, required by law.</p> <p>[2.] <u>Nondisclosure of</u></p>

1. Citation	2. Brief Summary of Pertinent Provision	3. Is There a HIPAA Counterpart?	4. Which Law Applies?	5. Why?
	<p>patient is HIV infected, the health facility shall not reveal that the infectious patient is HIV infected unless that police, firefighter or other emergency personnel demonstrates in writing that he or she was exposed to blood, bodily fluids or airborne agents while providing assistance.</p> <p>[3.] A police officer, firefighter or other emergency personnel may request that an emergency patient with an open wound be tested for HIV or Hepatitis B.</p> <p>[4.] Test result information shall be transmitted (a) to the primary care physician or health professional of the potentially exposed police officer, firefighter or other emergency personnel if he or she provides the primary care physician's name and address, or (b) to the person's employer if the identity of the potentially exposed individual is unknown.</p>	<p><u>Infectious Agent.</u></p> <p>Yes, 160.203(b) and 164.512(b)(1)(iv).</p> <p>[3.] <u>Request for Testing.</u></p> <p>No.</p> <p>[4.] <u>Physician Notification.</u></p> <p>Yes, 164.512(a)(1), 164.512(b)(1)(iv), and 164.512(j).</p>	<p><u>Infectious Agent.</u></p> <p>State law.</p> <p>[3.] <u>Request for Testing.</u></p> <p>State law.</p> <p>[4.] <u>Physician Notification.</u></p> <p>Both.</p>	<p><u>Infectious Agent.</u></p> <p>State law applies because although the Rule permits communicable disease notification, state law is more protective of confidential health information by requiring the need for disclosure to be demonstrated in writing prior to such disclosure. Therefore, state law is contrary to and more stringent than the Rule.</p> <p>[3.] <u>Request for Testing.</u></p> <p>State law applies because no Rule counterpart exists authorizing a request for infectious agent testing.</p> <p>[4.] <u>Physician Notification.</u></p> <p>Assuming that the conditions at [2.] above are met, both state law and the Rule apply because each permits disclosure without authorization for communicable disease notification, to avert a serious threat of harm and where, as here, required by law.</p>

1. Citation	2. Brief Summary of Pertinent Provision	3. Is There a HIPAA Counterpart?	4. Which Law Applies?	5. Why?
	<p>[5.] If the health care provider has notified the medical control authority or chief elected official, having been unable to notify the potentially exposed person who is either a police officer, fire fighter or emergency medical services person, or his or her physician (or designated health professional), the medical control authority or chief elected official shall provide notification. If unable to do so, notification efforts shall be documented along with the reasons for being unable to provide the notification.</p> <p>[6.] Notice of police officer's, fire fighter's or other emergency personnel's request for results of suspected infectious disease exposure shall not include the emergency patient's name.</p> <p>[7.] Information in the notification is confidential, and</p>	<p>[5.] <u>Notification to Locate Patient.</u></p> <p>Yes, 164.510(b), 164.512(a)(1), 164.512(b)(1)(iv), and 164.512(j).</p> <p>[6.] <u>Nondisclosure of Patient Identity.</u></p> <p>Yes, 160.203(b), 164.512(a)(1), and 164.512(b)(1)(iv).</p> <p>[7.] <u>Confidentiality.</u></p> <p>Yes, 164.502(a).</p>	<p>[5.] <u>Notification to Locate Patient.</u></p> <p>Both.</p> <p>[6.] <u>Nondisclosure of Patient Identity.</u></p> <p>State law.</p> <p>[7.] <u>Confidentiality.</u></p> <p>Both.</p>	<p>[5.] <u>Notification to Locate Patient.</u></p> <p>Assuming that the conditions at [2.] above are met, both state law and the Rule apply because each permits disclosure of information for such notification purposes to avert a serious threat of harm and where, as here, required by law.</p> <p>[6.] <u>Nondisclosure of Patient Identity.</u></p> <p>State law applies because it prohibits disclosure of patient identity, while such disclosure, including patient identity, is otherwise permitted under the Rule. Therefore, state law is contrary to and more stringent than the Rule by providing greater protection of confidential health information.</p> <p>[7.] <u>Confidentiality.</u></p> <p>Both state law and the Rule apply because each contains compatible requirements that confidential health information be protected.</p>

1. Citation	2. Brief Summary of Pertinent Provision	3. Is There a HIPAA Counterpart?	4. Which Law Applies?	5. Why?
	<p>[8.] subject to MCL 333.5111 (prevention and control of disease) and 333.5131 (confidentiality of HIV or AIDS test results), discussed above in this Matrix.</p> <p>[9.] Recipients of confidential information shall disclose information to others only to the extent consistent with the authorized purpose for which the information was obtained.</p>	<p>[8.] <i>See</i> analysis at MCL 333.5111 and 333.5131 discussed above in this Matrix.</p> <p>[9.] <u>Manner of Disclosure.</u></p> <p>Yes, 164.502(b) and 164.514(d).</p>	<p>[8.] <i>See</i> analysis at MCL 333.5111 and 333.5131 discussed above in this Matrix.</p> <p>[9.] <u>Manner of Disclosure.</u></p> <p>Both.</p>	<p>[8.] <i>See</i> analysis at MCL 333.5111 and 333.5131 discussed above in this Matrix.</p> <p>[9.] <u>Manner of Disclosure.</u></p> <p>Both state law and the Rule apply because the state law “consistent with authorized purpose” standard and the Rule “minimum necessary” standard are compatible. Note: The business associate contract provisions in the Rule also limit redisclosure of information received by the business associate. <i>See</i> 164.504(e).</p>
<p>MCL 333.20201</p> <p>(Policies Regarding Patient Rights and Responsibilities in Facilities and Agencies)</p>	<p>[1.] A health facility or agency that provides services directly to patients or residents shall adopt a policy describing the patients’ or residents’ rights and responsibilities that includes, among other things, the confidential treatment of personal and medical records and entitlement of information related to treatment or payment. This Section specifies minimum requirements that must be reflected in such policies.</p>	<p>[1.] <u>Establishment and Maintenance of Policy.</u></p> <p>Yes, 164.530(i).</p>	<p>[1.] <u>Establishment and Maintenance of Policy.</u></p> <p>Both.</p>	<p>[1.] <u>Establishment and Maintenance of Policy.</u></p> <p>Both state law and the Rule apply because each requires adoption of policies with compatible requirements. Note: MCL 333.20203 provides that the rights and responsibilities found in MCL 333.20201 (regarding patient rights and responsibilities) and MCL 333.20202 are “guidelines” and that individuals are not to be civilly or criminally liable for failure to comply</p>

1. Citation	2. Brief Summary of Pertinent Provision	3. Is There a HIPAA Counterpart?	4. Which Law Applies?	5. Why?
	<p>[2.] The policy shall be posted. Nursing home and home for the aged patients shall be given a copy of the policy upon admission.</p> <p>[3.] The staff shall be trained as to policy implementation.</p>	<p>[2.] <u>Delivery of Policy to Patient.</u> Yes, 164.520(c).</p> <p>[3.] <u>Training.</u> Yes, 164.530(b).</p>	<p>[2.] <u>Delivery of Policy to Patient.</u> Both.</p> <p>[3.] <u>Training.</u> Both.</p>	<p>with those sections. While both state law and the Rule provide for confidentiality, the Rule has penalties for noncompliance while state law has no penalties.</p> <p>Given that Michigan case law and another Michigan statute clearly protect the privacy of health information, MCL 333.20201 is read and applied here and below consistent with such other law.</p> <p>[2.] <u>Delivery of Policy to Patient.</u> Both state law and the Rule apply because each requires informing a patient upon admission of the facility's privacy practices.</p> <p>[3.] <u>Training.</u> Both state law and the Rule apply because state law generally requires staff training to protect patient privacy. The Rule also sets forth specific timelines and requires documentation of such training.</p>

1. Citation	2. Brief Summary of Pertinent Provision	3. Is There a HIPAA Counterpart?	4. Which Law Applies?	5. Why?
	<p>[4.] The nursing home or home for the aged patient or resident must provide written acknowledgement of the patient's receipt of the policy.</p> <p>[5.] A patient or resident is entitled to confidential treatment of personal and medical records.</p> <p>[6.] A third party shall not be given a copy of the patient's or resident's medical record without prior patient authorization.</p>	<p>[4.] <u>Written Acknowledgement of Policy.</u></p> <p>Yes, 164.520, 164.520(c)(2)(ii), and 164.520(e).</p> <p>[5.] <u>Confidentiality.</u></p> <p>Yes, 164.502(a).</p> <p>[6.] <u>Authorization.</u></p> <p>Yes, 164.502(a)(1)(ii), 164.502(a)(1)(iv), 164.506, and 164.508.</p>	<p>[4.] <u>Written Acknowledgement of Policy.</u></p> <p>Both.</p> <p>[5.] <u>Confidentiality.</u></p> <p>Both.</p> <p>[6.] <u>Authorization.</u></p> <p>Both.</p>	<p>[4.] <u>Written Acknowledgement of Policy.</u></p> <p>Both state law and the Rule apply because each require a patient's written acknowledgement of receipt of the covered entity's policy. Note: The Rule, however, provides for documentation of good faith efforts to obtain the acknowledgement should the covered entity's effort to obtain the acknowledgement fail.</p> <p>[5.] <u>Confidentiality.</u></p> <p>Both state law and the Rule apply because each contains compatible requirements that confidential health information be protected.</p> <p>[6.] <u>Authorization.</u></p> <p>Both state law and the Rule apply because each permits disclosure upon prior authorization. While the Rule permits certain disclosures without authorization, this portion of state law would not permit such disclosures except as noted below.</p>

1. Citation	2. Brief Summary of Pertinent Provision	3. Is There a HIPAA Counterpart?	4. Which Law Applies?	5. Why?
	<p>[7.] A patient or resident may refuse the release of his or her personal and medical records to a person outside the facility except:</p> <p>[8.] as required because of a transfer to another health care facility;</p> <p>[9.] as required by law; or</p> <p>[10.] as required by a third party payment</p>	<p>[7.] <u>Right to Restrict Disclosure.</u></p> <p>Yes, 164.506(c)(4) and 164.522.</p> <p>[8.] <u>Disclosure for Transfer.</u></p> <p>Yes, 164.502(a)(1)(ii) and 164.506.</p> <p>[9.] <u>Disclosure Required by Law.</u></p> <p>Yes, 164.512(a)(1).</p>	<p>[7.] <u>Right to Restrict Disclosure.</u></p> <p>State law.</p> <p>[8.] <u>Disclosure for Transfer.</u></p> <p>Both.</p> <p>[9.] <u>Disclosure Required by Law.</u></p> <p>Both.</p>	<p>[7.] <u>Right to Restrict Disclosure.</u></p> <p>State law applies because while both state law and the Rule allow individuals to refuse disclosure in this context, the Rule does not require covered entities to agree to the request. State law mandates compliance with such request.</p> <p>[8.] <u>Disclosure for Transfer.</u></p> <p>Both state law and the Rule apply where the covered entity is disclosing confidential health information absent authorization pursuant to the transfer of an emergency patient consistent with the Emergency Medical Treatment and Active Labor Act.</p> <p>[9.] <u>Disclosure Required by Law.</u></p> <p>Both state law and the Rule apply because the Rule permits disclosure where, as here, required by law.</p>

1. Citation	2. Brief Summary of Pertinent Provision	3. Is There a HIPAA Counterpart?	4. Which Law Applies?	5. Why?
	<p>contract.</p> <p>[11.] A patient is entitled to privacy, to the extent feasible, in treatment and in caring for personal needs with consideration, respect, and full recognition of his or her dignity and individuality.</p> <p>[12.] A nursing home patient, or a person authorized by a patient in writing, may inspect and copy the patient's personal and medical records.</p> <p>[13.] Patient or resident has a right to file grievances.</p>	<p>[10.] <u>Disclosure for Payment Purposes.</u></p> <p>Yes, 164.501 (definition of payment), 164.502(a)(1)(ii), and 164.506.</p> <p>[11.] <u>Patient Rights.</u></p> <p>No.</p> <p>[12.] <u>Access Rights.</u></p> <p>Yes, 164.502(a)(1)(iv), 164.502(g), 164.508, 164.510(b), and 164.524.</p> <p>[13.] <u>Grievance Procedures.</u></p> <p>Yes, 164.502(b)(1)(vi) and 164.530(d).</p>	<p>[10.] <u>Disclosure for Payment Purposes.</u></p> <p>Both.</p> <p>[11.] <u>Patient Rights.</u></p> <p>State law.</p> <p>[12.] <u>Access Rights.</u></p> <p>Both.</p> <p>[13.] <u>Grievance Procedures.</u></p> <p>Both.</p>	<p>[10.] <u>Disclosure for Payment Purposes.</u></p> <p>Both state law and the Rule apply because neither requires consent for payment purposes.</p> <p>[11.] <u>Patient Rights.</u></p> <p>State law applies because no Rule counterpart exists. Note: While no Rule counterpart expressly exists, the policies underlying the Rule are compatible with this state law as to the policies for protecting individual privacy.</p> <p>[12.] <u>Access Rights.</u></p> <p>Both state law and the Rule apply because each permits access to confidential health information by the individual or another authorized person.</p> <p>[13.] <u>Grievance Procedures.</u></p> <p>Both state law and the Rule apply because each provides a grievance procedure to address alleged violations of patient confidentiality.</p>

1. Citation	2. Brief Summary of Pertinent Provision	3. Is There a HIPAA Counterpart?	4. Which Law Applies?	5. Why?
MCL 333.20821 (Requirements for Freestanding Surgical Outpatient Facility)	Among other things, a freestanding surgical outpatient facility shall assure that a clinical record is established for each patient, including a history, physical examination results, justifications for treatments, tests and examinations performed and treatment provided.	No.	State law.	State law applies because no Rule counterpart exists requiring the establishment of medical records or the content of those records. Note: The Rule, however, assumes that covered entities will create and maintain medical records and that the covered entity will document which records are part of a “designated record set.” <i>See</i> 164.524(e)(1). Additionally, the Rule provides for accountings of disclosures of PHI. <i>See</i> 164.528.
MCL 333.21515 (Confidentiality of Hospital Peer Review Records)	<p>[1.] The records, data and knowledge collected for or by individuals or committees assigned a review function described in this Article are confidential and shall not be public records,</p> <p>[2.] shall be used only for the purposes provided in this Article, and</p>	<p>[1.] <u>Confidentiality of Hospital Peer Review Records.</u></p> <p>Yes, 164.501 (definition of health care operations) and 164.502(a).</p> <p>[2.] <u>Limited Purposes.</u></p> <p>Yes, 164.502(b), 164.512(a), and 164.514(d).</p>	<p>[1.] <u>Confidentiality of Hospital Peer Review Records.</u></p> <p>Both.</p> <p>[2.] <u>Limited Purposes.</u></p> <p>Both.</p>	<p>[1.] <u>Confidentiality of Hospital Peer Review Records.</u></p> <p>To the extent such records, data and knowledge include PHI, both state law and the Rule apply because each contains compatible requirements that confidential health information be protected.</p> <p>[2.] <u>Limited Purposes.</u></p> <p>Both state law and the Rule apply because each requires that confidential health information be used only for</p>

1. Citation	2. Brief Summary of Pertinent Provision	3. Is There a HIPAA Counterpart?	4. Which Law Applies?	5. Why?
	[3.] shall not be available for court subpoena.	<p>[3.] <u>Nondisclosure in Legal Proceedings.</u></p> <p>Yes, 160.203(b) and 164.512(e).</p>	<p>[3.] <u>Nondisclosure in Legal Proceedings.</u></p> <p>State law.</p>	<p>the purposes for which it is needed, including for health care operations, or where, as here, required by law. The state law requirement that confidential health information be used only for articulated purposes arguably is consistent with the Rule’s “minimum necessary” standard. Note: An exception to the “minimum necessary” obligation applies to those uses or disclosures which are mandated by law. For example, a practitioner in Michigan is obligated to report violations of professional standards of conduct. <i>See</i> MCL 333.16222. These reports are mandated by law, therefore the “minimum necessary” standard does not apply to these reports of violations.</p> <p>[3.] <u>Nondisclosure in Legal Proceedings.</u></p> <p>State law applies because it is contrary to and more stringent than the Rule. State law provides greater protection by precluding disclosure of peer review records pursuant to a court</p>

1. Citation	2. Brief Summary of Pertinent Provision	3. Is There a HIPAA Counterpart?	4. Which Law Applies?	5. Why?
				subpoena.
MCL 333.21743 (Confidentiality of Clinical Records by Departments and Nursing Homes)	<p>[1.] The department of public health and the department of social services and the nursing home shall respect the confidentiality of a patient's clinical records as provided in MCL 333.20175 (patient records), discussed above in this Matrix, and</p> <p>[2.] shall not divulge or disclose the contents of a record in a manner which identifies a patient except:</p> <p>[3.] to a relative or guardian upon a patient's death (provided, however, that personal representatives may always have access to a patient's confidential medical records before and after the patient's death);</p>	<p>[1.] See analysis at MCL 333.20175 discussed above in this Matrix.</p> <p>[2.] <u>Nondisclosure of Patient Identity.</u> No.</p> <p>[3.] <u>Disclosure Upon Death.</u> Yes, 164.502(f), 164.502(g)(4), and 164.510(b)(1)(ii).</p>	<p>[1.] See analysis at MCL 333.20175 discussed above in this Matrix.</p> <p>[2.] <u>Nondisclosure of Patient Identity.</u> State law.</p> <p>[3.] <u>Disclosure Upon Death.</u> Both, but see Column 5.</p>	<p>[1.] See analysis at MCL 333.20175 discussed above in this Matrix. Note: The departments of public health and social services are not functioning as covered entities in this context, and this observation should be kept in mind throughout the analysis of MCL 333.21743.</p> <p>[2.] <u>Nondisclosure of Patient Identity.</u> State law applies because no Rule counterpart exists that prohibits disclosure of patient identity when the disclosure is otherwise permissible under the Rule.</p> <p>[3.] <u>Disclosure Upon Death.</u> Both state law and the Rule apply to the extent that each permits disclosure of a deceased's confidential medical record to properly designated personal representatives under state law. State law, however,</p>

1. Citation	2. Brief Summary of Pertinent Provision	3. Is There a HIPAA Counterpart?	4. Which Law Applies?	5. Why?
	[4.] or pursuant to judicial proceedings.	<p>[4.] <u>Disclosure for Legal Proceeding.</u></p> <p>Yes, 164.512(e).</p>	<p>[4.] <u>Disclosure for Legal Proceeding.</u></p> <p>Both, but see Column 5.</p>	<p>also permits disclosure to relatives and guardians irrespective of whether they are the designated personal representatives. To the extent that such relatives and/or guardians are not also personal representatives of the estate or the deceased individual, then the Rule would apply. Note: Insofar as state law would permit disclosure of the entire medical record of a deceased individual to a relative or guardian, it is compatible with the Rule provisions authorizing disclosure of the fact of death. 164.510(b)(1)(iii).</p> <p>[4.] <u>Disclosure for Legal Proceeding.</u></p> <p>Both state law and the Rule apply because each permits disclosure without authorization in connection with legal proceedings. Note: The Rule conditions disclosure in legal proceedings upon receipt of a court order or satisfactory assurances that PHI will be protected. State law here is silent in this regard. Based on other provisions of state law, however, both state law</p>

1. Citation	2. Brief Summary of Pertinent Provision	3. Is There a HIPAA Counterpart?	4. Which Law Applies?	5. Why?
	[5.] Confidential medical, social, personal or financial information identifying a patient shall not be available for public inspection in a manner that identifies a patient.	[5.] <u>Nondisclosure of Patient Identity</u> . No.	[5.] <u>Nondisclosure of Patient Identity</u> . Both, but see Column 5.	and the Rule apply for disclosures pursuant to a court order or a subpoena. Absent either, state law would apply. [5.] <u>Nondisclosure of Patient Identity</u> . To the extent that disclosures are required pursuant to the state FOIA or other comparable state law, both state law and the Rule apply because the Rule permits disclosures where, and to the extent, required by state law. <i>See</i> 164.512(a). To the extent disclosures contemplated by this law are not otherwise required by state law, the Rule would apply because it would preclude the use and disclosure of PHI without authorization. If the confidential health information is de-identified pursuant to the Rule, state law would apply.
MCL 333.21763 (Confidentiality of Communications by Nursing Home Residents)	[1.] Communications between a nursing home patient and a representative from an approved organization shall be confidential,	[1.] <u>Confidentiality</u> . Yes, 164.502(a).	[1.] <u>Confidentiality</u> . Both, but see Column 5.	[1.] <u>Confidentiality</u> . To the extent that the communication is by a patient to an approved organization that is a

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	<p>[2.] unless the patient authorizes the release of the information.</p>	<p>[2.] <u>Disclosure with Authorization.</u></p> <p>Yes, 164.502(a)(1)(iv) and 164.508.</p>	<p>[2.] <u>Disclosure with Authorization.</u></p> <p>Both, but see Column 5.</p>	<p>covered entity and includes confidential health information, both state law and the Rule apply because each requires that the information communicated be kept confidential. To the extent that the communication does not involve PHI or the approved organization is not a covered entity, the Rule does not apply and state law would control.</p> <p>[2.] <u>Disclosure with Authorization.</u></p> <p>Assuming that the communication is to an approved organization that is a covered entity and includes confidential health information, both state law and the Rule apply because each permits disclosure of the patient's confidential health information with the patient's authorization. To the extent that the communication does not involve PHI, or the approved organization is not a covered entity, the Rule does not apply and state law would control.</p>

1. Citation	2. Brief Summary of Pertinent Provision	3. Is There a HIPAA Counterpart?	4. Which Law Applies?	5. Why?
MCL 333.21771 (Mistreatment of Patients)	<p>[1.] A nursing home employee who becomes aware of abuse, mistreatment or harmful neglect of a patient shall report the matter to the nursing home administrator or the nursing director, and the nursing home administrator or director shall report the matter to MDHHS. MDHHS may require the person making the report to submit a written report and/or supply additional information. Any person may report a violation to MDHHS. A physician or other licensed health care personnel of a hospital or other health care facility to which a patient is transferred who becomes aware of a prohibited act shall report the act to MDHHS.</p> <p>[2.] A licensee or nursing home administrator may not retaliate against a patient, a patient's representative or an employee who makes a report of abuse or neglect.</p>	<p>[1.] <u>Duty to Report.</u></p> <p>Yes, 164.512(a), 164.512(b)(1)(i), 164.512(b)(1)(ii), 164.512(c), and 164.512(d).</p> <p>[2.] <u>No Retaliation.</u></p> <p>No.</p>	<p>[1.] <u>Duty to Report.</u></p> <p>Both.</p> <p>[2.] <u>No Retaliation.</u></p> <p>State law.</p>	<p>[1.] <u>Duty to Report.</u></p> <p>Both state law and the Rule apply because the Rule permits disclosure without authorization where, as here, required by law, for abuse or neglect reporting, for health oversight and for public health purposes.</p> <p>[2.] <u>No Retaliation.</u></p> <p>State law applies because no Rule counterpart exists precluding retaliation for reporting abuse. Note: The Rule precludes retaliation for reporting violations of the Rule. <i>See</i> 164.530(g).</p>
MCL 333.22210 (Privacy Policy for Short Term Facilities)	<p>[1.] As part of a hospital's policy describing the rights and responsibilities of patients admitted to the hospital as required by MCL 333.20201 (policies regarding patient rights and responsibilities in facilities and agencies), discussed above in this Matrix, a hospital for short-term patients must: provide a copy of the hospital's policy;</p>	<p>[1.] <u>Delivery of Policy to Patient.</u></p> <p>Yes, 164.520(a) and 164.520(c).</p>	<p>[1.] <u>Delivery of Policy to Patient.</u></p> <p>Both.</p>	<p>[1.] <u>Delivery of Policy to Patient.</u></p> <p>Both state law and the Rule apply because each requires adoption of policies with compatible requirements, and each requires informing a patient upon admission of the facility's privacy practices. The Rule, however, only requires delivery of a notice of</p>

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	<p>[2.] train hospital staff as to policy implementation;</p> <p>[3.] permit the patient or a person authorized in writing by the patient to inspect and copy the patient's personal or medical records;</p>	<p>[2.] <u>Training.</u> Yes, 164.530(b).</p> <p>[3.] <u>Disclosure to Patient or Authorized Person.</u> Yes, 164.502(a)(1)(i), 164.502(a)(1)(iv), 164.502(g), 164.508, and 164.524.</p>	<p>[2.] <u>Training.</u> Both.</p> <p>[3.] <u>Disclosure to Patient or Authorized Person.</u> Both.</p>	<p>privacy practices that summarizes the covered entity's policies, while state law requires copies of the complete policies to be delivered to the patient. While state law is technically more stringent, it is not contrary to the Rule. Thus, it is necessary to comply with both state law and the Rule.</p> <p>[2.] <u>Training.</u> Both state law and the Rule apply because each generally requires staff training to protect patient privacy. The Rule also sets forth specific timelines and requires documentation of such training.</p> <p>[3.] <u>Disclosure to Patient or Authorized Person.</u> Both state law and the Rule apply because each permits disclosure to the individual to whom the confidential health information pertains or to his or her designated personal representative.</p>

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	<p>[4.] the hospital shall make the records available for inspection and copying within a reasonable time, not exceeding 7 days after receipt of the written request; and</p> <p>[5.] receive written acknowledgement of receipt of the policy prior to and during admission.</p>	<p>[4.] <u>Record Access Requests and Timely Response.</u></p> <p>Yes, 164.524(b)(2).</p> <p>[5.] <u>Written Acknowledgement of the Patient's Receipt of Policy.</u></p> <p>Yes, 164.520(c)(2)(ii) and 164.520(e).</p>	<p>[4.] <u>Record Access Requests and Timely Response.</u></p> <p>Both, but see Column 5.</p> <p>[5.] <u>Written Acknowledgement of the Patient's Receipt of Policy.</u></p> <p>Both, but see Column 5.</p>	<p>[4.] <u>Record Access Requests and Timely Response.</u></p> <p>Both state law and the Rule apply because each permits access to patient records for inspection and copying. State law, however, is more stringent by requiring a covered entity to respond within 7 days while the Rule generally requires a response within 30 days.</p> <p>[5.] <u>Written Acknowledgement of the Patient's Receipt of Policy.</u></p> <p>Both state law and the Rule apply because both require a covered entity to obtain an acknowledgement of receipt of a privacy policy or a Notice of Privacy Practices. Note: While the Rule provides a procedure for documenting a good faith effort to obtain the acknowledgement when a covered entity is not successful in obtaining it, state law contains no such procedure. Therefore, to comply with both state law and the Rule, it appears that it is necessary to obtain the</p>

1. Citation	2. Brief Summary of Pertinent Provision	3. Is There a HIPAA Counterpart?	4. Which Law Applies?	5. Why?
				acknowledgement. Also because the Patient Rights Notice includes topics in addition to Privacy, it is necessary to comply with State law.
THE SOCIAL WELFARE ACT				
MCL 400.11a (Reporting of Suspected Abuse of Adults)	<p>[1.] Health care providers, law enforcement officers, county medical examiner employees and other service providers and employees of agencies providing health care, educational, social welfare, mental health and other human services must report suspected abuse, neglect, exploitation or endangerment of an adult to the County Family Independence Agency (“County FIA”).</p> <p>[2.] A report of suspected adult abuse made by a physician is not considered a violation of any legally recognized privileged communication.</p> <p>[3.] The report under this Section shall contain the abused adult’s name, a description of the abuse, the adult’s age, the names and addresses of the adult’s guardian or next-of-kin and persons residing with the victim and any other available information as to cause and manner of the abuse.</p>	<p>[1.] <u>Abuse and Neglect Reporting.</u> Yes, 164.512(a), 164.512(b)(1)(ii), 164.512(c), 164.512(d) and 164.512(j). (note that HIPAA permits such disclosures but does not require)</p> <p>[2.] <u>Privilege.</u> No.</p> <p>[3.] <u>Content of Neglect or Abuse Report.</u> No.</p>	<p>[1.] <u>Abuse and Neglect Reporting.</u> Both, but see Column 5.</p> <p>[2.] <u>Privilege.</u> State law.</p> <p>[3.] <u>Content of Neglect or Abuse Report.</u> State law.</p>	<p>[1.] <u>Abuse and Neglect Reporting.</u> To the extent the person or entity reporting adult abuse or neglect is a covered entity, both state law and the Rule apply because each permits disclosure without authorization for abuse and neglect reporting, for public health oversight and as required by law.</p> <p>[2.] <u>Privilege.</u> State law applies because no Rule counterpart exists regarding privileged communications.</p> <p>[3.] <u>Content of Neglect or Abuse Report.</u> State law applies because no Rule counterpart exists addressing the content of reports of adult abuse.</p>

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MCL 400.11c (Confidentiality of Identity of Reporter)	The identity of a person making a report of abuse under MCL 400.11a, discussed above in this Matrix, or MCL 400.11b shall be confidential, subject to the person's consent or judicial process. Any legally recognized privileged communication, except the attorney/client privilege, is abrogated and shall not constitute grounds for excusing a report otherwise required to be made.	No.	State law.	State law applies because no Rule counterpart exists regarding the identity of a person making a report of abuse.
MCL 400.64 (Public Assistance Records)	<p>[1.] Applications in records relating to public assistance, except for medical assistance, shall be considered public records and open to inspection by persons authorized by the federal or state government and those persons who signed the application.</p> <p>[2.] Records relating to persons applying for, receiving or formerly receiving medical services under the categorical assistance program shall be confidential and shall be used only for purposes related specifically and directly to medical program administration.</p>	<p>[1.] <u>Limited Access to Public Records.</u></p> <p>No.</p> <p>[2.] <u>Medical Program Administration.</u></p> <p>Yes, 160.103 (definition of health plan).</p>	<p>[1.] <u>Limited Access to Public Records.</u></p> <p>State law.</p> <p>[2.] <u>Medical Program Administration.</u></p> <p>The Rule.</p>	<p>[1.] <u>Limited Access to Public Records.</u></p> <p>State law applies because no Rule counterpart exists regarding limited access to public records.</p> <p>[2.] <u>Medical Program Administration.</u></p> <p>Both the Rule and the State law apply because MDHHS/MSA is functioning as a covered entity in its capacity as the state Medicaid authority and, therefore, is a covered entity (health plan) under the</p>

1. Citation	2. Brief Summary of Pertinent Provision	3. Is There a HIPAA Counterpart?	4. Which Law Applies?	5. Why?
	<p>[3.] Subject to federal and state regulations preventing disclosure of confidential information, County FIA shall make available to Michigan public utilities or municipalities information concerning applicants for public assistance when the disclosure is necessary and the use is strictly limited. The names, addresses and other information regarding applicants shall not be disclosed except in cases where fraud is charged or alleged.</p>	<p>[3.] <u>Confidentiality and Disclosure to Public Utilities and Municipalities.</u></p> <p>No.</p>	<p>[3.] <u>Confidentiality and Disclosure to Public Utilities and Municipalities.</u></p> <p>State law.</p>	<p>Rule. However, it is also possible to comply with the state law which requires confidentiality.</p> <p>[3.] <u>Confidentiality and Disclosure to Public Utilities and Municipalities.</u></p> <p>State law applies because County FIA is not functioning as a covered entity in this context.</p>
<p>MCL 400.111b</p> <p>(Requirements for Providers Participating in Medical Assistance Programs)</p>	<p>[1.] This Section describes how providers can participate in and receive reimbursement from MDHHS/MSA for a medical assistance program. Upon request and at a reasonable time and place, a provider shall make available any record required to be maintained for examination and photocopying by authorized agents of the director, the Michigan Attorney General or federal authorities whose duties and functions are related to state programs of medical assistance under Title XIX.</p> <p>[2.] As a condition of any contract, a provider shall require that a person, sole proprietor or other business entity engaged for the purposes of generating billings in the name of the provider, must retain all documents used in the generation of the billings for not less than 6 years.</p>	<p>[1.] <u>Disclosure to State and Federal Agencies.</u></p> <p>Yes, 164.501 (definition of payment), 164.512(b)(1)(i), 164.512(d)(1)(ii), 164.512(d)(1)(iii), and 164.512(k)(6).</p> <p>[2.] <u>Record Retention.</u></p> <p>No.</p>	<p>[1.] <u>Disclosure to State and Federal Agencies.</u></p> <p>Both.</p> <p>[2.] <u>Record Retention.</u></p> <p>State law, but see Column 5.</p>	<p>[1.] <u>Disclosure to State and Federal Agencies.</u></p> <p>Both state law and the Rule apply because each permits disclosure without an authorization for public health, health oversight activities and compliance with public assistance programs.</p> <p>[2.] <u>Record Retention.</u></p> <p>State law applies because no Rule counterpart exists prescribing a retention period for billing records. Note: The Rule, however, assumes that a covered entity will create and</p>

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				maintain patient records that include billing records and that a covered entity will document which of those records are part of a “designated record set.” <i>See</i> 164.524(e)(1). Additionally, the required provisions for business associate agreements (<i>see</i> 164.504(e)(1)) would require a business associate that provides billing services to retain records that include PHI for the life of the contract and to return or destroy such records (if feasible) upon termination of the contract.
STATUTE FROM THE MICHIGAN CHILDREN’S INSTITUTE ACT				
MCL 400.211 (Michigan Children’s Institute)	<p>[1.] The Michigan Social Welfare Commission pursuant to its control of management of the Michigan Children’s Institute (“MCI”) shall preserve all reports of investigation of parentage, family conditions and a brief history of each child indicating his or her name, age, county of residence, former residence, occupations, habits and character and the name, residence and occupation of the person who has taken the child by agreement or for adoption.</p> <p>[2.] In a report of MCI, no children’s names shall be published.</p>	<p>[1.] <u>Record Content.</u></p> <p>No.</p> <p>[2.] <u>Nondisclosure of Identity.</u></p> <p>No.</p>	<p>[1.] <u>Record Content.</u></p> <p>State law.</p> <p>[2.] <u>Nondisclosure of Identity.</u></p> <p>State law.</p>	<p>[1.] <u>Record Content.</u></p> <p>State law applies because no Rule counterpart exists regarding record content. Note: For purposes of MCL 400.211, it is assumed that MCI is a covered entity or a hybrid entity engaged in covered functions.</p> <p>[2.] <u>Nondisclosure of Identity.</u></p> <p>State law applies because no</p>

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	<p>[3.] All records pertaining to any child committed to MCI shall be filed as confidential and shall not be made public thereafter,</p> <p>[4.] except as the commission shall authorize disclosure when deemed necessary for the child's best interest.</p>	<p>[3.] <u>Confidentiality.</u> Yes, 164.502(a).</p> <p>[4.] <u>Disclosure by State Agency Discretion.</u> Yes, 164.502(a) and 164.512.</p>	<p>[3.] <u>Confidentiality.</u> Both.</p> <p>[4.] <u>Disclosure by State Agency Discretion.</u> Both.</p>	<p>Rule counterpart exists that prohibits disclosure of identity when the disclosure is an otherwise permissible disclosure under the Rule.</p> <p>[3.] <u>Confidentiality.</u> Both state law and the Rule apply because each contains compatible requirements that confidential health information be protected.</p> <p>[4.] <u>Disclosure by State Agency Discretion.</u> Both state law and the Rule apply because each permits disclosure of PHI without authorization in circumstances that would be in the child's best interest (<i>e.g.</i>, to avert a serious threat of harm, public health and health oversight).</p>
THE ADULT FOSTER CARE LICENSING ACT				
MCL 400.712 (Adult Foster Care)	[1.] The records of residents of a facility required to be kept by the facility under the Adult Foster Care Facility Licensing Act shall be confidential, and	<p>[1.] <u>Confidentiality.</u> Yes, 164.502(a).</p>	<p>[1.] <u>Confidentiality.</u> Both.</p>	<p>[1.] <u>Confidentiality.</u> Both state law and the Rule apply because each contains compatible requirements that confidential health information be protected.</p>

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	<p>[2.] properly safeguarded.</p> <p>[3.] The records of residents shall be open only to the inspection of the director of the facility, his or her agent or another executive department of the State pursuant to a contract between that department and the facility;</p> <p>[4.] a party to a contested case involving the facility; or</p> <p>[5.] on the order of a court or tribunal of competent jurisdiction.</p>	<p>[2.] <u>Safeguards.</u> Yes, 164.530(c).</p> <p>[3.] <u>Limited Access.</u> Yes, 164.512(a)(1) and 164.512(d).</p> <p>[4.] <u>Contested Case.</u> Yes, 164.502(a) and 164.512(e).</p> <p>[5.] <u>Court Order.</u> Yes, 164.512(e)(1)(i).</p>	<p>[2.] <u>Safeguards.</u> Both.</p> <p>[3.] <u>Limited Access.</u> Both.</p> <p>[4.] <u>Contested Case.</u> The Rule.</p> <p>[5.] <u>Court Order.</u> Both.</p>	<p>[2.] <u>Safeguards.</u> Both state law and the Rule apply because each requires appropriate safeguards to protect confidential health information.</p> <p>[3.] <u>Limited Access.</u> Both state law and the Rule apply because the Rule permits disclosure where, as here, required by law and for health oversight.</p> <p>[4.] <u>Contested Case.</u> The Rule applies because state law permits disclosure to a party to a contested case, whereas the Rule only permits disclosure in such context to a party in response to a subpoena or where the covered entity obtains satisfactory assurances of confidentiality.</p> <p>[5.] <u>Court Order.</u> Both state law and the Rule apply because each permits disclosure pursuant to a court order without authorization.</p>

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	<p>[6.] The records of a resident are open to inspection by the resident (unless medically contraindicated), or</p> <p>[7.] inspection by the resident's guardian.</p>	<p>[6.] <u>Disclosure to Resident.</u></p> <p>Yes, 164.502(a)(1)(i), 164.502(b)(2)(ii), and 164.524(a).</p> <p>[7.] <u>Resident's Guardian.</u></p> <p>Yes, 164.502(g) and 164.510(b).</p>	<p>[6.] <u>Disclosure to Resident.</u></p> <p>Both.</p> <p>[7.] <u>Resident's Guardian.</u></p> <p>Both.</p>	<p>[6.] <u>Disclosure to Resident.</u></p> <p>Both state law and the Rule apply because each generally permits an individual access to his or her records, and each allows some discretion to withhold access.</p> <p>[7.] <u>Resident's Guardian.</u></p> <p>Both state law and the Rule apply because each allows disclosure to guardians or personal representatives.</p>
THE OCCUPATIONAL SAFETY AND HEALTH ACT				
<p>MCL 408.1024</p> <p>(Occupational Health Standards)</p>	<p>[1.] LARA prescribes standards that medical exams and tests are available at the employer's expense to employees to determine if employees have been adversely affected by exposure to hazardous substances.</p> <p>[2.] The results of the examinations or tests furnished by an employer-retained physician shall be furnished to the employer,</p>	<p>[1.] <u>Commission Standards.</u></p> <p>No.</p> <p>[2.] <u>Disclosure to Employer.</u></p> <p>Yes, 164.512(b)(1)(v).</p>	<p>[1.] <u>Commission Standards.</u></p> <p>State law.</p> <p>[2.] <u>Disclosure to Employer.</u></p> <p>Both.</p>	<p>[1.] <u>Commission Standards.</u></p> <p>State law applies because LARA is not functioning as a covered entity in this context.</p> <p>[2.] <u>Disclosure to Employer.</u></p> <p>Both state law and the Rule apply because each permits disclosure to employers to evaluate work-related illness or injury and medical</p>

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	<p>[3.] the employee, and</p> <p>[4.] upon the request of the employee, to the employee's personal physician.</p> <p>[5.] If requested, the employer must supply LARA with these records.</p>	<p>[3.] <u>Disclosure to Individual.</u></p> <p>Yes, 164.502(a)(2)(i) and 164.512(a)(1).</p> <p>[4.] <u>Disclosure with Authorization.</u></p> <p>Yes, 164.502(a)(1)(ii), 164.502(a)(1)(iv), 164.506, and 164.508.</p> <p>[5.] <u>Disclosure to LARA by Employer.</u></p> <p>No.</p>	<p>[3.] <u>Disclosure to Individual.</u></p> <p>Both.</p> <p>[4.] <u>Disclosure with Authorization.</u></p> <p>Both, but see Column 5.</p> <p>[5.] <u>Disclosure to LARA by Employer.</u></p> <p>State law.</p>	<p>surveillance.</p> <p>[3.] <u>Disclosure to Individual.</u></p> <p>Both state law and the Rule apply because each requires disclosure to the individual to whom the confidential health information pertains.</p> <p>[4.] <u>Disclosure with Authorization.</u></p> <p>Both state law and the Rule apply because each would permit disclosure with authorization. Note: To the extent that the disclosure requested by the employee is for treatment purposes, no authorization is required by the Rule; however, state law would require a request by the employee prior to providing the results to the employee's personal physician.</p> <p>[5.] <u>Disclosure to LARA by Employer.</u></p> <p>State law applies because employers are not covered entities subject to the Rule. Note: The Rule expressly provides that state law governing reports of injury</p>

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				are not preempted. <i>See</i> 160.203(c).
THE WORKER'S DISABILITY COMPENSATION ACT				
MCL 418.230 (Worker's Compensation Records)	<p>[1.] Worker's compensation records submitted by employers to DIFS ("Department of Insurance and Financial Services") and information concerning the injury of and benefit paid to an individual are confidential and exempt from FOIA disclosure.</p> <p>[2.] DIFS may release, disclose or publish information described in this Section: if aggregate information is compiled for statistical or research purposes so long as it is not disclosed in such a way that the confidentiality of information concerning the individual and financial records of employers is protected; if a recognized academic or scholarly institution provides satisfactory assurances of confidentiality for research purposes; to another governmental agency if it provides satisfactory assurances of confidentiality; or to a nonprofit healthcare corporation to determine financial liability. Any information released is confidential.</p>	<p>[1.] <u>Confidentiality.</u> No.</p> <p>[2.] <u>Other Disclosures by DIFS.</u> No.</p>	<p>[1.] <u>Confidentiality.</u> State law.</p> <p>[2.] <u>Other Disclosures by DIFS.</u> State law.</p>	<p>[1.] <u>Confidentiality.</u> State law applies because no Rule counterpart exists addressing disclosures to governmental entities by entities that are not covered entities.</p> <p>[2.] <u>Other Disclosures by DIFS.</u> State law applies because DFIS is not functioning as a covered entity in this context. Note: The Rule specifically allows disclosures by covered entities for worker's compensation purposes (without authorization or opportunity to object). <i>See</i> 164.512(l), 164.512(a) and Preamble at 65 FR 82707-08.</p>

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	[3.] Confidentiality requirements of this Section do not apply to records maintained by the Bureau of Worker's Compensation ("BWC") which are part of or directly related to a contested case or records of a self-insured employer that becomes unable to pay benefits under this Act due to insolvency or declaration of bankruptcy. Any employee or employer shall be entitled to inspect and obtain a copy of any records maintained by BWC pertaining to the employer or employee.	[3.] <u>Disclosure for Legal Proceedings.</u> No.	[3.] <u>Disclosure for Legal Proceedings.</u> State law.	[3.] <u>Disclosure for Legal Proceedings.</u> State law applies because BWC is not functioning as a covered entity in this context. Note: To the extent BWC is a covered entity or a hybrid entity engaged in covered functions, both state law and the Rule would apply.
MCL 418.315 (BWC's Right to Review Medical Records and Invoices)	BWC may review records and medical bills of a health care provider to determine if the provider is in compliance with the schedule of changes. By accepting payment for worker's disability compensation, the health care provider is deemed to have consented to submitting to a carrier, for utilization review purposes, necessary records and other information concerning health care or health care services provided.	Yes, 164.512(b)(1) and 164.512(d), <i>but see</i> 164.512(l), 164.512(a), and 65 Preamble at 65 FR 82707-08.	Both.	Both state law and the Rule apply because each permits disclosure by a provider without an authorization for health oversight and for public health purposes, worker's compensation and where, as here, required by law.
THE BULLARD-PLAWECKI EMPLOYEE RIGHT TO KNOW ACT				
MCL 423.501 (Bullard-Plawecki)	Employee personnel records do not include medical reports or records made or obtained by the employer if the medical records or reports are available to the employee from the doctor or medical facility involved.	No.	State law.	State law applies because no Rule counterpart exists defining personnel records, and employers are not covered entities under the Rule. Note: Both state law and the Rule require separation of personnel and employee medical records. Both are aimed at limiting or prohibiting employers from using health information in

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				employment-related decisions.
THE INSURANCE CODE				
MCL 500.115, 500.501 – .547 and 500.2013 (Gramm-Leach-Bliley)	The provisions of the Michigan Insurance Code referenced in Column 1 incorporate into state law the obligations imposed on financial institutions by the Gramm-Leach-Bliley Financial Modernization Act, P.L. 106-102, codified at 12 U.S.C. § 1811 <i>et seq.</i> as applied to those financial institutions regulated under the Michigan Insurance Code. These provisions impose various obligations on licensees to maintain the confidentiality of nonpublic personal financial information (“NPFI”), require licensees to notify customers and consumers of their privacy practices and as to when they disclose NPFI both to affiliates and non-affiliates, and the licensee must give the customer or consumer the opportunity to “opt-out” (<i>i.e.</i> , not permit the licensee to make those disclosures).	No Rule counterparts exist for these provisions of state law, as described in Column 5, though there are many parallel provisions regarding obligations to protect individually identifiable health information, provide notice, obtain authorization, <i>etc.</i> , as the federal statute was modeled to some extent on HIPAA and the Rule.	Both, but see Column 5.	To the extent that a covered entity is also a licensee (<i>e.g.</i> , a health maintenance organization), both state law and the Rule apply because each contemplates distinct and separate schemes for protecting confidential information, and the confidential information each seeks to protect is different. Thus, the privacy practices, disclosure requirements and mandatory notices, though different, are parallel and complementary to those imposed by the Rule, and are not duplicative or contradictory. Under state law, the definition of “licensee,” MCL 500.501(1), includes insurers generally and nonprofit health care and dental care corporations. For nonprofit health care corporations, state law does not extend to member personal data and information otherwise protected under the

1. Citation	2. Brief Summary of Pertinent Provision	3. Is There a HIPAA Counterpart?	4. Which Law Applies?	5. Why?
				<p>Nonprofit Health Care Corporation Act. State law expressly does not address member personal data and information otherwise protected under the Nonprofit Dental Care Corporation Act.</p> <p>The definition of NPFI includes personally identifiable financial information or any list or summary derived therefrom, but excludes health and medical information otherwise protected by state or federal law. MCL 500.501(n)(i). Thus, state law here does not address privacy protections relating to confidential health information. Moreover, the state law definitions of consumer, MCL 500.501(f), and customer, MCL 500.501(h), each expressly excludes a participant or beneficiary of an employee benefit plan administered or insured by a licensee. MCL 500.501(f)(ii)(A) and 500.501(h)(i). Thus, for a covered entity, these state laws are not contrary to the Rule because it is not impossible to comply with both. Nor do</p>

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				<p>these provisions of state law stand as obstacles to compliance with the Rule. <i>See</i> 160.202 (definition of contrary). Moreover, this state law does not have the specific purpose of protecting the privacy of health information. <i>See</i> 160.202 (definition of relates to the privacy of individually identifiable health information). Thus, covered entities which are also licensees are obligated to comply with both state law and the Rule.</p> <p>For those covered entities who are not licensees, the Rule would apply because they are not covered by these provisions of state law. In such cases, the state law here is simply inapplicable; it is not preempted.</p>
MCL 500.3407b (Non-discrimination Based on Genetic Information)	Commercial insurers and HMOs are prohibited from requiring a person or his or her dependents to (a) undergo genetic testing, (b) disclose whether genetic testing has occurred, or (c) disclose the results of such testing or genetic information as a condition of issuing, renewing or continuing a health policy or certificate.	No.	State law.	State law applies because no Rule counterpart exists specifically protecting genetic information in this context. Note: While no Rule counterpart exists, the HIPAA requirements (outside of the Rule) for nondiscrimination on the basis of health status-related factors applicable to

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				group health plans list genetic information and health status-related factors, and the HIPAA prohibitions applicable to group health plans parallel the state law prohibitions here. Also, while this state law arises in the context of prohibiting discrimination in coverage based on genetic status which is not governed by the Rule, the genetic information involved may well constitute PHI which is subject to the protections of the Rule.
MCL 500.3523(3)(i) (HMO Contracts)	Among other covenants, an HMO contract must provide covenants that address the confidentiality of an enrollee's medical records and disclosure of an enrollee's right to inspect and review his or her medical records.	Yes, 164.502(a) and 164.524	Both, but see Column 5.	Both state law and the Rule apply because each requires that HMOs maintain the confidentiality of medical information about enrollees and permit enrollees access to review their medical records, except that, unlike the Rule, there is no prohibition in state law on the enrollees' access to psychotherapy notes. In those circumstances, state law would control.

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MCL 500.8106 (Insolvent Insurer Cooperation with DIFS)	An insurer or its agents shall cooperate with <u>DIFS</u> in connection with liquidation or other delinquency proceedings under the Insurance Code by, among other obligations, making its books, accounts, documents or other records, information or property of, or pertaining to, the insurer and in its possession, custody or control available to <u>DIFS</u> .	Yes, 164.512(a)(1), 164.512(d), and 164.501, (definition of health care operations).	Both.	Assuming such records or information contain PHI, both state law and the Rule apply because the Rule permits disclosure without authorization where, as here, required by law and for health oversight. Additionally, the Rule permits the use or disclosure of PHI in connection with the sale of a business and a liquidation is a form of a “sale of business.”
MCL 500.8111 (Insolvency and Liquidation of Insurers)	<p>[1.] All records and other documents, insurance bureau files, and court records and papers of the insurer, insofar as they pertain to or are a part of the record of court proceedings or judicial review, are confidential and shall be held by the clerk of the court in a confidential file unless court ordered to become public information.</p> <p>[2.] Without compromising the confidentiality of the records of the DIFS Commissioner or supervisor, third parties may be advised of the existence of a supervision order and of the supervisor’s authority if considered necessary to further the insurer’s compliance with the supervision order or with regard to other regulatory matters affecting the insurer or a person or entity related to the insurer.</p>	<p>[1.] <u>Confidentiality</u>.</p> <p>No.</p> <p>[2.] <u>Disclosure of Supervision Order</u>.</p> <p>No.</p>	<p>[1.] <u>Confidentiality</u>.</p> <p>State law.</p> <p>[2.] <u>Disclosure of Supervision Order</u>.</p> <p>State law, but see Column 5.</p>	<p>[1.] <u>Confidentiality</u>.</p> <p>State law applies because the court is not a covered entity.</p> <p>[2.] <u>Disclosure of Supervision Order</u>.</p> <p>State law applies because no Rule counterpart exists concerning the disclosure of supervision orders.</p>
GENERAL INSURANCE LAW, VIATICAL SETTLEMENT CONTRACTS				
MCL 550.524	[1.] A person or entity entering into a contract	[1.] <u>Written Authorization</u>	[1.] <u>Written Authorization</u>	[1.] <u>Written Authorization</u>

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(Viatical Settlement Contracts)	<p>with a viator shall obtain a written statement from a physician that the viator is of sound mind and free of undue influence, a signed document consenting to the contract acknowledging the terminal condition and an understanding of contract and policy benefits, a release of the medical records and an acknowledgement that the contract has been entered into freely and voluntarily.</p> <p>[2.] The person or entity entering into a contract shall keep all medical records confidential.</p>	<p><u>Requirement.</u></p> <p>Yes, 164.502(a)(1)(iv) and 164.508.</p> <p>[2.] <u>Confidentiality.</u></p> <p>No, but a written authorization requires the individual to acknowledge that the information disclosed may be subject to disclosure and no longer protected by HIPAA. 164.508(c)(2)(iii)</p>	<p><u>Requirement.</u></p> <p>Both.</p> <p>[2.] <u>Confidentiality.</u></p> <p>State law.</p>	<p><u>Requirement.</u></p> <p>Both state law and the Rule apply because each requires a written authorization prior to disclosure of confidential health information.</p> <p>[2.] <u>Confidentiality.</u></p> <p>State law -is more stringent for keeping information confidential after its release. The Rule requires individuals to acknowledge that information disclosed as part of a release may no longer be protected under HIPAA. NOTE - State law here is more stringent by definition but it is not contrary to the Rule and, therefore, both state law and the Rule apply. See 160.202 (definition of more stringent at (2)).</p>

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STATUTE FROM THE THIRD PARTY ADMINISTRATOR ACT				
MCL 550.934 (Confidentiality Obligations of TPAs)	[1.] A third party administrator (“TPA”) shall provide for the confidentiality of personal data identifying an individual covered by a plan.	[1.] <u>Confidentiality.</u> Yes, 164.502(a).	[1.] <u>Confidentiality.</u> Both.	[1.] <u>Confidentiality.</u> If the TPA is a business associate, both state law and the Rule apply because each contains compatible requirements that confidential health information must be protected.
	[2.] A TPA shall not disclose records containing personal information that may be associated with an identifiable individual covered by a plan to a person other than the individual to whom the information pertains.	[2.] <u>Disclosure to Individual.</u> Yes, 164.502(a)(1)(i) and 164.502(a)(2)(i).	[2.] <u>Disclosure to Individual.</u> Both.	[2.] <u>Disclosure to Individual.</u> Both state law and the Rule apply for disclosing to the covered individual because each permits disclosure to the individual to whom the PHI pertains. Note: State law is more stringent here, because it limits permissible disclosures, but see the exceptions in sections 3, and 5-10 below.
	[3.] Except as necessary to comply with a court order, a TPA shall not disclose personal data about an individual without prior consent of the individual.	[3.] <u>Disclosure upon Court Order or with Authorization.</u> Yes, 164.502(a)(1)(iv), 164.508, and 164.512(e)(1)(i).	[3.] <u>Disclosure upon Court Order or with Authorization.</u> Both.	[3.] <u>Disclosure upon Court Order or with Authorization.</u> Both state law and the Rule apply because each permits disclosure pursuant to a court order and prior authorization. (State law

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	<p>[4.] If the individual covered by a plan has authorized the release of information to a third person, the third person shall not release that information unless the individual executes, in writing, another consent authorizing the additional release.</p> <p>[5.] The confidentiality and disclosure restrictions noted above do not apply to information disclosed: for claims adjudication, claims verification or other proper plan administration;</p>	<p>[4.] <u>Redisclosure.</u></p> <p>Yes, 160.203(b), 164.502(a)(1)(ii), 164.502(e)(1), and 164.506.</p> <p>[5.] <u>Disclosure for Claims Adjudication, Verification and Plan Administration.</u></p> <p>Yes, 164.501 (definitions of health care operations and payment), 164.502(a)(1)(ii), and 164.506(a).</p>	<p>[4.] <u>Redisclosure.</u></p> <p>State law.</p> <p>[5.] <u>Disclosure for Claims Adjudication, Verification and Plan Administration.</u></p> <p>Both.</p>	<p>consent- is more stringent than the Rule because it limits the permissible disclosures. However, the law provides for exceptions also permitted under the Rule). See 5-10 below.</p> <p>[4.] <u>Redisclosure.</u></p> <p>State law applies because state law is contrary to and more stringent than the Rule. While both state law and the Rule require authorization (see [3.] above) prior to disclosure, state law requires an additional authorization (see [3.] above) for redisclosure, whereas the Rule permits redisclosure for TPO or in connection with business associate contracts and in a written authorization the individual must be advised that his/her PHI may be subject to redisclosure.</p> <p>[5.] <u>Disclosure for Claims Adjudication, Verification and Plan Administration.</u></p> <p>Both state law and the Rule apply because each allows disclosure for TPO by a health plan or its business</p>

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	<p>[6.] for an audit pursuant to the Employee Retirement Income Security Act and as required by law;</p> <p>[7.] to an insurer for the purchase of excess loss insurance and for claims under such insurance;</p>	<p>[6.] <u>Disclosure as Required by Law.</u></p> <p>Yes, 164.512(a)(1) and Rule Preamble at 65 Fed. Reg. 82481 and 82482. Also, see 164.512(d).</p> <p>[7.] <u>Disclosure for Purchase of Insurance.</u></p> <p>Yes, 164.501 (definition of health care operations), 164.502(a)(1)(ii), and 164.506(a).</p>	<p>[6.] <u>Disclosure as Required by Law.</u></p> <p>Both.</p> <p>[7.] <u>Disclosure for Purchase of Insurance.</u></p> <p>Both.</p>	<p>associate.</p> <p>[6.] <u>Disclosure as Required by Law.</u></p> <p>Both state law and the Rule apply because the Rule permits disclosure where, as here, required by law, including federal law. Additionally, audits may be subject to health oversight activities under 164.512.</p> <p>[7.] <u>Disclosure for Purchase of Insurance.</u></p> <p>Both apply when TPAs are acting as business associates for group health plans may disclose PHI of participants and beneficiaries for payment and health care operations without consent under the Rule.</p> <p>Note: The Rule -would apply if the stop loss policyholder is the employer (not a covered entity), but not if the policyholder is the group health plan (a covered entity). Disclosure for TPO pursuant to consent only is applicable to covered entities.</p>

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	[8.] to the plan;	<p>[8.] <u>Disclosure to Plan.</u></p> <p>Yes, 164.501 (definitions of health care operations and payment), 164.504(f), and 164.506(a).</p>	<p>[8.] <u>Disclosure to Plan.</u></p> <p>Both.</p>	<p>[8.] <u>Disclosure to Plan.</u></p> <p>Both state law and the Rule apply because neither requires consent prior to disclosure for TPO. Additionally, in general, a TPA will be a business associate of the plan and disclosures are permitted in accordance with the business associate agreement.</p>
	[9.] to the plan fiduciary; or	<p>[9.] <u>Disclosure to Plan Fiduciary.</u></p> <p>Yes, 164.501 (definitions of health care operations and payment) and 164.504(f), and 164.504(e).</p>	<p>[9.] <u>Disclosure to Plan Fiduciary.</u></p> <p>The Rule, but see Column 5.</p>	<p>[9.] <u>Disclosure to Plan Fiduciary.</u></p> <p>The Rule applies because other than for the provision of summary health information, and enrollment and disenrollment information (<i>see</i> 164.504(f)(1)(ii) and (iii)), it would prohibit disclosure to a plan fiduciary who is an employer sponsoring a group health plan administered by the TPA, while state law would permit such disclosure. Note: Both state law and the Rule would apply if the plan fiduciary is not the plan sponsor (employer).</p>

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	[10.] to the DIFS Director.	[10.] <u>Disclosure to the DIFS Director.</u> Yes, 164.512(d)(1)(i).	[10.] <u>Disclosure to the DIFS Director.</u> Both.	[10.] <u>Disclosure to the DIFS Director.</u> Both state law and the Rule apply because each permits disclosure without authorization for health oversight purposes.

THE NONPROFIT HEALTH CARE CORPORATION REFORM ACT

MCL 550.1401(3)(e) (Nondisclosure of Genetic Information)	A nonprofit health care corporation is prohibited from requiring a member, an applicant for coverage or his or her respective dependents as a condition of coverage to undergo genetic testing, or to disclose (a) whether prior genetic tests were performed, (b) the results of such tests or (c) genetic information.	No.	State law.	State law applies because no Rule counterpart exists prohibiting a covered entity from requiring a person to disclose a genetic test or its results. HIPAA also prohibits use and disclosure of genetic information for underwriting purposes. See 164.502(a)(5). Note: While no Rule counterpart exists, the HIPAA requirements applicable to group health plans (apart from the Rule) regarding nondiscrimination on the basis of health status list genetic information and health status. These HIPAA prohibitions applicable to group health plans parallel the state law prohibitions here. Also, while this state law arises in the context of prohibiting
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				<p>discrimination in coverage based on genetic status which is not governed by the Rule, the genetic information involved may well constitute PHI which is subject to the protections of the Rule.</p> <p>Also Note: The Genetic Information Nondiscrimination Act (GINA) also prohibits plans from collecting genetic information that relates to the enrollment (including prior to) in a plan.</p>
<p>MCL 550.1406</p> <p>(Duty to Maintain Confidentiality and Security of Members' Health Information)</p>	<p>[1.] A nonprofit health care corporation shall use reasonable care to secure records containing personal data that may be associated with identifiable members from unauthorized access and collect only personal data that is necessary for the proper review and payment of claims.</p> <p>[2.] A nonprofit health care corporation shall not disclose records containing personal data that may be associated with an identifiable member or</p>	<p>[1.] <u>Protection of Personal Data.</u></p> <p>Yes, 164.502(b), 164.514(d), and 164.530(c).</p> <p>[2.] <u>Limited Disclosure.</u></p> <p>Yes, 164.502(a) and</p>	<p>[1.] <u>Protection of Personal Data.</u></p> <p>Both.</p> <p>[2.] <u>Limited Disclosure.</u></p> <p>Both.</p>	<p>[1.] <u>Protection of Personal Data.</u></p> <p>Both state law and the Rule apply because each includes provisions requiring security of confidential information by limiting the amount of information that can be requested, and because the “necessary for the proper review and payment of claims” standard in state law and the “minimum necessary” standard in the Rule are compatible.</p> <p>[2.] <u>Limited Disclosure.</u></p> <p>Both state law and the Rule</p>

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	personal information concerning a member to a person other than the member without the prior and specific written informed consent of the member to whom the information pertains, except:	164.508.		apply because each permits disclosure of confidential health information in circumstances where the individual has given prior specific authorization. -State law -may be more stringent if the Rule provides for other exceptions not identified in state law.
	[3.] as necessary to comply with MCL 550.1603 (allowing full access by administrative agencies);	[3.] <u>MCL 550.1603.</u> Yes, 164.512(a)(1) and 164.512(d).	[3.] <u>MCL 550.1603.</u> Both.	[3.] <u>MCL 550.1603.</u> Both state law and the Rule apply because each permits access without authorization to confidential health information required by law and also required by administrative agencies charged with assuring compliance with applicable law.
	[4.] for claims adjudication, claims verification; or	[4.] <u>Disclosure for Claims Adjudication and Claims Verification.</u> Yes, 164.501 (definitions of payment and health care operations), 164.502(a)(1)(ii), and 164.506.	[4.] <u>Disclosure for Claims Adjudication and Claims Verification.</u> Both.	[4.] <u>Disclosure for Claims Adjudication and Claims Verification.</u> Both state law and the Rule apply because neither requires health plans to obtain consent for payment or health care operations.
	[5.] as required by law.	[5.] <u>Disclosure Required by Law.</u>	[5.] <u>Disclosure Required by Law.</u>	[5.] <u>Disclosure Required by Law.</u>

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	<p>[6.] If a member has authorized the release of personal data to a specific person, a health care corporation shall make a disclosure to that person conditioned on that person's agreement not to release the data to a third person absent the execution of another informed consent authorizing the additional release.</p> <p>[7.] Consent is not required for the release of information to a member about the member by telephone upon verification of the member's identity.</p> <p>[8.] This Section shall not preclude a representative of a subscriber group, upon request of a member of the group, from assisting an individual in resolving a claim.</p>	<p>Yes, 164.512(a)(1).</p> <p>[6.] <u>Redisclosure.</u></p> <p>Yes, 164.502(a)(1)(ii), 164.502(e)(1), 164.506, and 164.508.</p> <p>[7.] <u>Disclosure to Individual upon Appropriate Verification.</u></p> <p>Yes, 164.502(a)(1)(i), 164.502(a)(2)(i), 164.506, and 164.514(h).</p> <p>[8.] <u>Resolution of Claim.</u></p> <p>Yes, 164.502(a)(1)(iv), 164.502(g)(1) and (2), 164.508, and 164.510(b)(1)(i).</p>	<p>Both.</p> <p>[6.] <u>Redisclosure.</u></p> <p>Both.</p> <p>[7.] <u>Disclosure to Individual upon Appropriate Verification.</u></p> <p>Both.</p> <p>[8.] <u>Resolution of Claim.</u></p> <p>Both.</p>	<p>Both state law and the Rule apply because the Rule permits disclosure where, as here, required by law.</p> <p>[6.] <u>Redisclosure.</u></p> <p>Both state law and the Rule apply because each permits redisclosure of confidential health information pursuant to a proper authorization. NOTE - state law is more stringent in part because the Rule does not require disclosure to a third party upon authorization to contain further restrictions on use.</p> <p>[7.] <u>Disclosure to Individual upon Appropriate Verification.</u></p> <p>Both state law and the Rule apply because each permits disclosure to the individual upon appropriate verification.</p> <p>[8.] <u>Resolution of Claim.</u></p> <p>Both state law and the Rule apply because each permits disclosure to a representative of a subscriber group when it can be verified that the member has authorized or</p>

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	<p>[9.] The Board of Directors of a nonprofit health care corporation must establish and make public a corporate policy regarding the protection of member privacy and the confidentiality of personal data.</p> <p>[10.] The policy must, at a minimum, provide for the implementation of the provisions of the Nonprofit Health Care Corporation Reform Act and other applicable laws respecting the collection, security, use, release and access to personal data and identify the routine uses of personal data; and</p> <p>[11.] prescribe the means by which members will be notified regarding such uses;</p>	<p>[9.] <u>Establishment of Policy.</u></p> <p>Yes, -164.520, 164.530(i)(1), , and 164.316.</p> <p>[10.] <u>Policy Content.</u></p> <p>Yes, 164.530(c) and 164.530(i).</p> <p>[11.] <u>Notification of Policies.</u></p> <p>Yes, 164.520.</p>	<p>[9.] <u>Establishment of Policy.</u></p> <p>Both.</p> <p>[10.] <u>Policy Content.</u></p> <p>Both.</p> <p>[11.] <u>Notification of Policies.</u></p> <p>Both.</p>	<p>identified the individual to serve as his or her representative. Note: the Rule may have additional requirements when the request is made in writing.</p> <p>[9.] <u>Establishment of Policy.</u></p> <p>Both state law and the Rule apply because each requires the adoption and notice of a nonprofit health care corporation's privacy policies. However, HIPAA has its own requirements for policies. To the extent that HIPAA requirements are in addition to the state law requirements, they control.</p> <p>[10.] <u>Policy Content.</u></p> <p>Both state law and the Rule apply because each requires the establishment of privacy and security policies and procedures, and identification of routine uses of data.</p> <p>[11.] <u>Notification of Policies.</u></p> <p>Both state law and the Rule apply because each contains compatible obligations that</p>

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	<p>[12.] provide for notification regarding the actual release of personal data and information that may be identified with, or that concern a member, upon specific request of that member;</p> <p>[13.] assure that no person shall have personal data access, except on a need to know basis;</p> <p>[14.] establish contractual and other conditions under which personal data will be released; and</p>	<p>[12.] <u>Notice of Release of Information.</u> Yes, 164.528.</p> <p>[13.] <u>Need to Know Basis.</u> Yes, 164.502(b), 164.514(d), and 164.530(c).</p> <p>[14.] <u>Conditions for Release of Personal Data.</u> Yes, 164.530(i)(1).</p>	<p>[12.] <u>Notice of Release of Information.</u> Both, but see Column 5.</p> <p>[13.] <u>Need to Know Basis.</u> Both.</p> <p>[14.] <u>Conditions for Release of Personal Data.</u> Both, but see Column 5.</p>	<p>require notification of the routine uses of personal data.</p> <p>[12.] <u>Notice of Release of Information.</u> Both state law and the Rule apply because each includes provisions for accounting to individuals for actual disclosures of confidential health information. Note: The Rule excepts certain disclosures from this obligation. In those circumstances, state law would apply. <i>See</i> 164.528(a)(1).</p> <p>[13.] <u>Need to Know Basis.</u> Both state law and the Rule apply because the state law “need to know basis” and the Rule “minimum necessary” standard are compatible, requiring that only those who need to know confidential information have access to such information.</p> <p>[14.] <u>Conditions for Release of Personal Data.</u> Both state law and the Rule apply because each requires</p>

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	<p>[15.] provide that enrollment applications and claim forms shall contain a member's consent to the release of data and information that is limited as necessary for the proper review and payment of claims and shall reasonably notify members of their rights pursuant to the board's policy and applicable law.</p>	<p>[15.] <u>Enrollment Forms.</u></p> <p>Yes, 164.501 (definition of payment), 164.502(a), and 164.506.</p>	<p>[15.] <u>Enrollment Forms.</u></p> <p>Both.</p>	<p>the establishment of policies and procedures governing the release of personal data to third parties to the extent the data contains confidential health information. Note: While state law requires that a nonprofit health care corporation's policies contain contractual conditions for the release of personal data, the Rule does not require such provisions in its mandated policies and procedures except -for business associates. <i>See</i> 164.504(e).</p> <p>[15.] <u>Enrollment Forms.</u></p> <p>Both state law and the Rule apply because each requires notice to the member of his or her rights pursuant to the nonprofit health care corporation's privacy policy. The term "consent" referred to here in connection with the enrollment form is not a requirement to obtain "permission" to disclose information for the purpose of payment. Rather, the reference to "consent" reflects member acknowledgement of the statutory right of the</p>

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				nonprofit health care corporation to disclose confidential health information for this purpose.
MCL 550.1407 (Complaint System)	<p>[1.] Nonprofit health care corporations shall establish a complaint system with procedures providing for the expeditious resolution of written complaints by members. Such corporations must provide written response to written complaints within 30 days. The DIFS Commissioner shall have free access to complaints and responses.</p> <p>[2.] This Section provides for managerial conferences, maintenance of records regarding complaints and disposition of complaints and annual reports to the DIFS Commissioner regarding the complaint system.</p>	<p>[1.] <u>Complaint System.</u></p> <p>Yes, 164.512(d)(1), 164.530(d)(1) and 164.530(i)(1), and 164.512(a).</p> <p>[2.] <u>Supervision and Maintenance of Complaint System.</u></p> <p>No.</p>	<p>[1.] <u>Complaint System.</u></p> <p>Both.</p> <p>[2.] <u>Supervision and Maintenance of Complaint System.</u></p> <p>State law.</p>	<p>[1.] <u>Complaint System.</u></p> <p>Both state law and the Rule apply because each provides for a grievance system to handle complaints arising under their respective provisions. Also, the Rule would permit disclosure to the DIFS Commissioner for health oversight and as required by law.</p> <p>[2.] <u>Supervision and Maintenance of Complaint System.</u></p> <p>State law applies because no Rule counterpart exists regarding supervision and maintenance of the complaint system.</p>

1. Citation	2. Brief Summary of Pertinent Provision	3. Is There a HIPAA Counterpart?	4. Which Law Applies?	5. Why?
MCL 550.1604 (Confidentiality of Records/Medical Care and Hospital Services)	The DIFS Commissioner shall ensure the confidentiality of records containing personal data that may be associated with identifiable individuals. The DIFS Commissioner may not disclose records with personal data that may be associated with an identifiable individual without the individual's prior informed written consent, except as necessary to comply with a court order, claims adjudication or as required by law. If an individual has authorized release of personal data to a specific person, that person may not redisclose such information absent the execution of another written consent by the individual authorizing such release.	No.	State law.	State law applies because no Rule counterpart exists. Also, the DIFS Commissioner is not functioning as a covered entity.
THE PATIENT'S RIGHT TO INDEPENDENT REVIEW ACT				
MCL 550.1907 (Right to Internal Grievance and External Review Procedures)	A health carrier must provide a covered person with a written notice, in plain English, of the internal grievance and external review processes at the time of an adverse benefit determination. Along with the notice, the health carrier must include an authorization form by which the covered person authorizes the health carrier and health care provider to disclose the covered person's protected health information that relates to the external review.	No.	State law.	State law applies because no Rule counterpart exists requiring health carriers to provide an authorization form with an adverse benefit determination.
MCL 550.1911 (External Review Process)	[1.] Within 60 days after receipt of an adverse determination (120 days after December 31, 2016), a covered person may file a request for an external review by the DIFS Director. The DIFS Director shall notify and send a copy of the request to the health carrier that is the subject of the request.	[1.] <u>Notice to Health Carrier of External Review Request.</u> No.	[1.] <u>Notice to Health Carrier of External Review Request.</u> State law.	[1.] <u>Notice to Health Carrier of External Review Request.</u> State law applies because no Rule counterpart exists regarding appeals of adverse determinations of health benefits. Also, the DIFS

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	<p>[2.] Within five (5) business days after the date of receipt of a request, the -DIFS Director must preliminarily review the request to determine whether the covered person provided all of the required information and forms, including, among other things, the health information release form.</p> <p>[3.] Within 7 business days after notice of acceptance of an external review, the health carrier must provide the independent review organization assigned by the -DIFS Commissioner with the documents and information, including medical records, considered in making an adverse insurance determination.</p> <p>[4.] Upon receipt of any information submitted by the covered person, the -DIFS Commissioner shall forward the information to the independent review organization (“IRO”) and the health carrier.</p>	<p>[2.] <u>Health Information Release.</u></p> <p>No.</p> <p>[3.] <u>Health Carrier Providing Medical Information to Review Entity.</u></p> <p>Yes, 164.512(a).</p> <p>[4.] <u>Health Information to Health Carrier and Independent Review Organization.</u></p> <p>No.</p>	<p>[2.] <u>Health Information Release.</u></p> <p>State law.</p> <p>[3.] <u>Health Carrier Providing Medical Information to Review Entity.</u></p> <p>Both.</p> <p>[4.] <u>Health Information to Health Carrier and Independent Review Organization.</u></p> <p>State law.</p>	<p>Director is not functioning as a covered entity.</p> <p>[2.] <u>Health Information Release.</u></p> <p>State law applies because no Rule counterpart exists regarding appeals of adverse determinations of health benefits. Also, the DIFS Director is not functioning as a covered entity.</p> <p>[3.] <u>Health Carrier Providing Medical Information to Review Entity.</u></p> <p>Both state law and the Rule apply because the Rule permits disclosure where, as here, required by law.</p> <p>[4.] <u>Health Information to Health Carrier and Independent Review Organization.</u></p> <p>State law applies because no Rule counterpart exists. Neither the -Director of DIFS nor the independent</p>

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				review organization are covered entities subject to the Rule. Note: While I RO may use providers, they are not functioning as covered entities in this context.
MCL 550.1919 (Standards for Independent Review Organization)	An independent review organization must have and maintain written policies and procedures that, among other things, ensure the confidentiality of medical and treatment records and clinical review criteria.	No.	State law.	State law applies because no Rule counterpart exists and the independent review organization is not functioning as a covered entity in this context.

THE REVISED JUDICATURE ACT OF 1961

MCL 600.2157 (Waiver of Physician/Patient Privilege)	[1.] Except as otherwise provided by law, a person duly authorized to practice medicine or surgery shall not disclose any information that the person has acquired in attending to a patient in a professional character, if the information was necessary to enable the person to prescribe for the patient as a physician, or to otherwise act for the patient as a surgeon.	[1.] <u>Confidential Information.</u> Yes, 164.502(a).	[1.] <u>Confidential Information.</u> The Rule.	[1.] <u>Confidential Information.</u> <i>See</i> Thomas v. 1156728 Ontario Inc., 979 F.Supp.2d 780 (2013) (holding that Michigan law under MCL 600.2157 is not more stringent and is superseded by HIPAA).
	[2.] If a patient brings an action against any defendant to recover personal injuries, or for malpractice, and the patient produces as a witness on his or her behalf a physician who has treated the patient for the injury, the patient is considered	[2.] <u>Waiver of Privilege.</u> Yes, 164.512(e).	[2.] <u>Waiver of Privilege.</u> The Rule.	[2.] <u>Waiver of Privilege.</u> The Rule applies because it only permits disclosure of the confidential health

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	<p>to have waived his or her physician/patient privilege as to another physician who has treated the patient for the injury.</p> <p>[3.] The heirs at law of a deceased patient will be considered personal representatives of the deceased patient, and such heirs or any life insurance beneficiaries may waive this privilege.</p>	<p>[3.] <u>Designation of Personal Representative.</u></p> <p>Yes, 164.502(a)(1)(ii), 164.502(f), 164.502(g)(4), 164.506, and 164.508.</p>	<p>[3.] <u>Designation of Personal Representative.</u></p> <p>Both.</p>	<p>information in connection with a court proceeding in response to a court order or subpoena or, if a court order or subpoena has not been issued, and the covered entity has given the person whose confidential health information is at issue an opportunity to object and assert the privilege.</p> <p>[3.] <u>Designation of Personal Representative.</u></p> <p>Both state law and the Rule apply because the Rule defers to the authority granted by state law of personal representatives to act on behalf of deceased individuals.</p>
<p>MCL 600.2912b</p> <p>(Notice of Medical Malpractice Action Against Health Care Provider)</p>	<p>[1.] A person filing a medical malpractice action must give notice to the health care professional before filing the action. Within 56 days after giving notice under this Section, the claimant shall allow the health professional or health facility receiving the notice access to all of the medical records related to the claim that are in the claimant's control and shall furnish releases for any medical records related to the claim that are not in the claimant's control.</p>	<p>[1.] <u>Filing Medical Malpractice Claim.</u></p> <p>Yes, 164.512(a)(1) and 164.508(a)(1).</p>	<p>[1.] <u>Filing Medical Malpractice Claim.</u></p> <p>Both.</p>	<p>[1.] <u>Filing Medical Malpractice Claim.</u></p> <p>Both state law and the Rule apply because the Rule permits disclosure where, as here, required by law. State law applies for disclosure of information in the claimant's control because there is no counterpart in the Rule for disclosure of protected health information that an individual (not a covered</p>

1. Citation	2. Brief Summary of Pertinent Provision	3. Is There a HIPAA Counterpart?	4. Which Law Applies?	5. Why?
	<p>[2.] Within 56 days of the notice, the health facility or health professional shall allow the claimant access to all medical records related to the claim that are in the control of the health facility or health professional.</p>	<p>[2.] <u>Access by Claimant.</u></p> <p>Yes, 164.502(a)(1)(i), 164.502(a)(2)(i), and 164.524.</p>	<p>[2.] <u>Access by Claimant.</u></p> <p>Both.</p>	<p>entity) has.</p> <p>[2.] <u>Access by Claimant.</u></p> <p>Both state law and the Rule apply because each gives the claimant a right to access his or her confidential health information and both require granting such access. The Rule also permits disclosure where, as here, required by law.</p> <p>NOTE – The Rule requires providing access to a designated record set within 30 days of request, with the possibility of a 30 day extension (subject to meeting certain requirements). The 30 day time period would apply from the request, but the 56 day time period would apply if there was an extension).</p>
<p>MCL 600.2912f</p> <p>(Waiver of Privileges After Filing Medical Malpractice Claims)</p>	<p>A person who has given notice under MCL 600.2912b (notice of medical malpractice action against health care provider), discussed above in this Matrix, or who has commenced an action alleging medical malpractice waives, for purposes of that claim or action, the privilege created by MCL 600.2157 (waiver of physician/patient privilege), discussed above in this Matrix), and any other similar privileges created by law. This waiver is limited to acts, transactions, events or</p>	<p>See analysis at MCL 600.2157 discussed above in this Matrix.</p>	<p>See analysis at MCL 600.2157 discussed above in this Matrix.</p>	<p>See analysis at MCL 600.2157 discussed above in this Matrix.</p>

1. Citation	2. Brief Summary of Pertinent Provision	3. Is There a HIPAA Counterpart?	4. Which Law Applies?	5. Why?
	occurrences that are the basis for the claim or action and to those persons who provided care or treatment to the claimant or plaintiff. A person who discloses confidential medical information surrounding the claim to a person or entity who receives a notice pursuant to 600.2912b, discussed above in the Matrix, does not violate section 600.2157, discussed above in this Matrix, or any similar duty or obligation created by law and owed to the claimant.			
MCL 600.2912g (Disclosure of Medical Records for Arbitration)	<p>[1.] If the total amount of damages claimed is \$75,000 or less, all claimants and health professionals may, by agreement, submit the claim to arbitration. The Michigan Court Rules pertaining to discovery do not apply except that all relevant medical records or medical authorizations sufficient to obtain the relevant medical records shall be exchanged among the parties upon written consent.</p> <p>[2.] This Section requires a “sufficient medical authorization” to obtain relevant medical records upon written request of the -records.</p>	<p>[1.] <u>Submission to Arbitration.</u> Yes, 164.512(e).</p> <p>[2.] <u>Receipt of Authorization.</u> Yes, 164.508(a) and 164.508(b).</p>	<p>[1.] <u>Submission to Arbitration.</u> Both.</p> <p>[2.] <u>Receipt of Authorization.</u> Both.</p>	<p>[1.] <u>Submission to Arbitration.</u> Both state law and the Rule apply when an authorization is obtained.</p> <p>[2.] <u>Receipt of Authorization.</u> Both state law and the Rule apply because, upon receipt of a proper authorization, each permits disclosure of confidential health information- at issue in a dispute which the parties have agreed to arbitrate. Note: Because the state law arbitration contemplated here is an alternative to a standard judicial proceeding, 164.512(e) does not apply.</p>

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				The Rule controls the the form and contents of the authorization -(see 164.508(b)).
THE MICHIGAN PROBATE CODE				
MCL 710.68 (Release of Information to Adopted Children and Adoptive Parents)	This Section provides for the release of identifying and nonidentifying information relating to adopted children and adoptive parents. Identifying information regarding a birth parent or adoptive child may only be released if prior written consent to release the information in compliance with the Michigan Adoptive Code was obtained. Upon receipt of a written request for identifying information from an adult adoptee, a child placing agency, a court or the Family Independence Agency (“FIA”), if it maintains an adoption file for that adoptee, shall submit a clearance request form to the central adoption registry. Within 28 days after receipt of the clearance reply form from the central adoption registry, the child placing agency, court or department shall notify the adoptee in writing of the identifying information to which the adoptee is entitled or if the identifying information cannot be released, the reason why the information cannot be released.	No.	State law.	State law applies because child placing agencies, FIA and the courts are not covered entities subject to the Rule.
MCL 712A.13a (Release of	Where a child is placed in foster care, the public or private organization, institution or facility responsible under court order or contractual	No.	State law.	State law applies because no Rule counterpart exists regulating a public or

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Medical and Education Reports to Foster Parents)	arrangement for a juvenile's care and supervision shall, within 10 days after receipt of a written request, provide a foster parent with copies of all initial, updated, and revised case service plans and court orders relating to the child, and all of the child's medical, mental health and education reports.			private organization, institution or facility responsible under court order or contractual arrangement for a juvenile's care and supervision. Additionally, such organizations, institutions or facilities are not functioning as covered entities.
THE CHILD CUSTODY ACT				
MCL 722.30 (Parents' Right to Records and Information)	Notwithstanding any other law, a parent shall not be denied access to records or information concerning his or her child because the parent is not the child's custodial parent, unless prohibited by protective order.	Yes, 164.502(g)(2) and 164.502(g)(3).	Both.	Both state law and the Rule apply because the Rule expressly defers to state law regarding disclosures to parents, guardians and persons acting <i>in loco parentis</i> .
THE CHILD PROTECTION LAW				
MCL 722.623 (Reporting Child Abuse)	[1.] Providers of health care, educational, social or mental health services with reasonable cause to suspect child abuse or neglect shall immediately report such information to the FIA. If the reporting person is a member of the staff of a hospital, agency or school, the reporting person shall notify the person in charge of the hospital, agency or school of his or her findings and that the report has been made. The written report shall contain the name of the child, description of the suspected abuse or neglect and, if possible, the names and addresses of the child's parents,	[1.] <u>Abuse and Neglect Reports.</u> Yes, 164.512(a)(1), 164.512(b)(1)(ii), and 164.512(j).	[1.] <u>Abuse and Neglect Reports.</u> Both, but see Column 5.	[1.] <u>Abuse and Neglect Reports.</u> Both state law and the Rule apply because while state law requires reporting of child abuse, the Rule expressly defers to state law with respect to reporting obligations. <i>See</i> 160.203(c). The Rule also permits disclosure without

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	<p>the child's guardian, the persons with whom the child resides, the child's age and other information available that may establish the cause of the suspected abuse or neglect. For purposes of this Section, pregnancy of a child less than 12 years of age or the presence of venereal disease in a child who is over one month of age, but less than 12 years of age, shall be reasonable cause to suspect child abuse or neglect has occurred.</p> <p>[2.] Upon receipt of the written report, FIA may provide copies of the report to the prosecuting attorney and probate court in the county in which the suspected victim resides. If a local law enforcement agency receives a credible written report of suspected child abuse or neglect, the local law enforcement agency shall provide a copy of the written report and results of any investigation to the County FIA.</p> <p>[3.] A member of the staff of a hospital, agency or school shall not be dismissed or penalized for making a report required by this Section or cooperating with an investigation.</p>	<p>[2.] <u>Disclosure of Reports.</u></p> <p>No.</p> <p>[3.] <u>Whistleblower.</u></p> <p>Yes, 164.530(g).</p>	<p>[2.] <u>Disclosure of Reports.</u></p> <p>State law.</p> <p>[3.] <u>Whistleblower.</u></p> <p>Both.</p>	<p>authorization in cases of child abuse and to avert a serious threat of harm.</p> <p>[2.] <u>Disclosure of Reports.</u></p> <p>State law applies because neither FIA nor law enforcement agencies are covered entities subject to the Rule.</p> <p>[3.] <u>Whistleblower.</u></p> <p>Both state law and the Rule apply because each prohibits retaliation against whistleblowers.</p>
<p>MCL 722.623a</p> <p>(Reporting of Child Abuse Involving Alcohol or Controlled Substances)</p>	<p>In addition to the reporting requirements in MCL 722.623, discussed above in this Matrix, a person is required to report suspected child abuse or neglect and who knows, or from the child's symptoms has reasonable cause to suspect, that a newborn infant has any amount of alcohol, a controlled substance, or a metabolite of a controlled substance in his or her body shall report to the FIA in the same manner as required under MCL 722.623. A report is not required under this Section if the person knows that the</p>	<p>Yes, 164.512(a)(1), and 164.512(b)(1)(ii).</p>	<p>Both.</p>	<p>Both state law and the Rule apply because while state law requires reporting of child abuse, the Rule expressly defers to state law at 160.203(c), and also permits disclosure without authorization in cases of child abuse.</p>

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	alcohol, controlled substance or metabolite, or the child's symptoms are the results of medical treatment administered to a newborn infant or his or her mother.			
MCL 722.625 (Protection of the Identity of Person Reporting Child Abuse)	Except for records available under MCL 722.627, (FIA Central Registry), discussed below in this Matrix, the identity of a person reporting child abuse is confidential and subject to disclosure only with the consent of that person or by judicial process.	No.	State law.	State law applies because no Rule counterpart exists that prohibits disclosure of the reporting person's identity when the disclosure is otherwise permissible under the Rule.
MCL 722.626 (Detention of Abused or Neglected Child by Hospital)	If a child suspected of being abused or neglected is admitted to a hospital or brought to a hospital for outpatient services and the attending physician determines release would endanger the child, the attending physician must notify the person in charge at the hospital to evaluate child detainment and FIA. When child abuse or neglect is suspected, a private physician must provide a written report to the FIA, which includes medical test results. If the report is deemed incomplete, FIA shall have a medical evaluation of the child made without a court order if the child's health is seriously endangered and a court order cannot be obtained.	Yes, 164.512(a)(1), 164.512(b)(1)(ii), and 164.512(j).	Both.	Both state law and the Rule apply because while state law requires reporting of child abuse, the Rule expressly defers to state law at 160.203(c), and also permits disclosure without authorization in cases of child abuse.
MCL 722.627 (FIA Central Registry and Release, Amendment and Expunction of	[1.] FIA shall maintain a statewide, electronic central registry to carry out the intent of the Child Protection Law.	[1.] <u>FIA Central Registry.</u> No.	[1.] <u>FIA Central Registry.</u> State law.	[1.] <u>FIA Central Registry.</u> State law applies because no Rule counterpart exists regarding mandated central registries, and the FIA is not functioning as a covered

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Central Registry Records)	<p>[2.] Unless made public as specified in this Section, a written report, document, or photograph filed with FIA is a confidential record, and these FIA records are only available to: a legally mandated public or private child protective agency investigating the report; police or other investigating law enforcement agency, including child fatality review team and medical examiner; a physician or other agency treating the child; a person legally authorized to place a child in protective custody when child abuse or neglect is reasonably suspected; the alleged perpetrator; court or grand jury; lawyer; guardian-<i>ad litem</i>; a person, agency or organization engaged in <i>bona fide</i> research or evaluation without disclosing any identifying information without consent; or to legislative committee ombudsman or citizen review panel.</p> <p>[3.] If FIA classifies a report of suspected child abuse or neglect as a central registry case, FIA shall within 30 days after classification notify each individual who is named in the record as a perpetrator of the suspected child abuse or neglect. The notice shall set forth the individual's right to request expunction of the record and the right to a hearing. This notification shall not identify the person reporting the suspected child abuse or neglect.</p> <p>[4.] A person who is the subject of a record or report under the Child Protection Law may request that FIA amend an inaccurate report or expunge a report or record in which no relevant or accurate evidence of abuse is found to exist. If</p>	<p>[2.] <u>FIA</u>.</p> <p>No.</p> <p>[3.] <u>Central Registry Case Classification and Notification</u>.</p> <p>No.</p> <p>[4.] <u>Request for Amendment or Expunction from FIA and Investigation Records</u>.</p>	<p>[2.] <u>FIA</u>.</p> <p>State law.</p> <p>[3.] <u>Central Registry Case Classification and Notification</u>.</p> <p>State law.</p> <p>[4.] <u>Request for Amendment or Expunction from FIA and Investigation Records</u>.</p>	<p>entity.</p> <p>[2.] <u>FIA</u>.</p> <p>State law applies because FIA is not functioning as a covered entity in this context.</p> <p>[3.] <u>Central Registry Case Classification and Notification</u>.</p> <p>State law applies because FIA is not a covered entity in this context, and no Rule counterpart exists regarding central registry classification and notification.</p> <p>[4.] <u>Request for Amendment or Expunction from FIA and Investigation Records</u>.</p>

1. Citation	2. Brief Summary of Pertinent Provision	3. Is There a HIPAA Counterpart?	4. Which Law Applies?	5. Why?
	FIA refuses or fails to act upon a request for amendment or expunction, the FIA must hold a hearing for a determination. In releasing information under the Child Protection Law, FIA shall not include a report compiled by a police agency or other law enforcement agency related to an ongoing investigation of suspected child abuse or neglect.	No.	State law.	State law applies because the FIA is not functioning as a covered entity.
THE FOSTER CARE AND ADOPTION SERVICES ACT				
MCL 722.904 (Judicial Waiver of Parental Consent)	Judicial proceedings relating to a waiver of parental consent for, among other things, a minor's abortion shall be confidential and the minor shall be notified of such right to confidentiality. The confidentiality requirements of this Section do not prohibit the court from reporting suspected child abuse or sexual abuse.	No.	State law.	State law applies because the court is not a covered entity. Note: The Rule expressly defers to state law permitting or prohibiting disclosures to parents, guardians and persons acting <i>in loco parentis</i> . See 164.502(g)(3). The Rule, however, does not govern the confidentiality of judicial proceedings.
MCL 722.954a (Foster Child's Confidential Information)	A child-placing agency shall provide foster parents confidential information concerning the foster child to enable the foster family to provide a safe, healthy environment for the foster child. This confidential information may include the history of child abuse or neglect, all known emotional and psychological problems, and all behavioral problems that may present a risk to the foster parent. The child-placing agency shall explain to the foster parents that the information provided is confidential.	No.	State law.	State law applies because a child-placing agency is not a covered entity, and the Rule expressly defers to state law in cases of child abuse. See 160.203(c).

1. Citation	2. Brief Summary of Pertinent Provision	3. Is There a HIPAA Counterpart?	4. Which Law Applies?	5. Why?
MCL 722.954c (Medical Records for Child Placed in Foster Care)	The supervising agency shall obtain from the parent, guardian, or custodian of each child who is placed in its care the name and address of the child's medical provider and a signed document for the release of the child's medical records. The supervising agency shall develop a medical passport for each child under its care containing all medical information required by policy or law to be provided to foster parents, the child's basic medical history, a record of immunization and other information concerning the child's physical and mental health. Upon transfer, each foster care worker must sign and date the passport verifying receipt of the necessary information required under this Section.	No.	State law.	State law applies because the supervising agency is not a covered entity, and no Rule counterpart exists regarding mandated parental release of medical records, or regarding the use and maintenance of a medical passport. The form of the document required for the release of medical records, however, will be governed by the Rule.
THE PENAL CODE				
MCL 750.410 (Prohibited Sale of Medical Records)	Any person or entity who furnishes, receives, buys, sells or identifies a patient's medical records for consideration and without patient consent is guilty of a misdemeanor punishable by imprisonment for not more than 6 months, a fine of not more than \$750, or both.	Yes, 42 U.S.C. §§ 1176 and 1177 (criminal penalties for violations of the Rule).	Both.	Both state law and the Rule apply because each provides criminal penalties for violations of medical record privacy protections under federal and state law.
MCL 750.411 (Injury Reporting)	Every hospital and pharmacy is required to report to the police department any person suffering from any wound or other injury inflicted by means of a knife, gun, pistol or other deadly weapon, or by other means of violence. The report shall disclose the person's name and address, if known, whereabouts and the character and extent of the injuries.	Yes, 164.512(a)(2) and 164.512(f)(1)(i).	Both.	Both state law and Rule apply because each permits disclosure of certain types of wounds for law enforcement purposes, and the Rule expressly defers to state law generally (<i>see</i> 164.512(a)), and regarding injury reporting in particular. <i>See</i> 160.203(c).

1. Citation	2. Brief Summary of Pertinent Provision	3. Is There a HIPAA Counterpart?	4. Which Law Applies?	5. Why?
MCL 750.492a (Deliberate Falsification of Medical Records)	[1.] A health care provider or other person shall not intentionally, willfully or recklessly place or direct, or direct another to place or direct, misleading or inaccurate information in a patient's medical record knowing that such information is misleading or inaccurate.	[1.] <u>Deliberate Falsification of Medical Records.</u> No.	[1.] <u>Deliberate Falsification of Medical Records.</u> State law.	[1.] <u>Deliberate Falsification of Medical Records.</u> State law applies because no Rule counterpart exists prohibiting deliberate falsification of medical records.
	[2.] A health care provider shall not intentionally or willfully alter or destroy, or direct another to alter or destroy, the patient's medical records for purposes of concealing his or her responsibility for the patient's injury, illness or death.	[2.] <u>Deliberate Alteration or Destruction of Medical Records.</u> No.	[2.] <u>Deliberate Alteration or Destruction of Medical Records.</u> State law.	[2.] <u>Deliberate Alteration or Destruction of Medical Records.</u> State law applies because no Rule counterpart exists prohibiting deliberate alteration or destruction of medical records to conceal the responsibility of the medical provider for adverse outcomes.
	[3.] Medical records may be destroyed if the medical record is otherwise retained by means of mechanical or electronic recording, reproduction or other equivalent techniques accurately reproducing all information contained in the original medical record.	[3.] <u>Alternative Means of Record Retention.</u> No.	[3.] <u>Alternative Means of Record Retention.</u> State law.	[3.] <u>Alternative Means of Record Retention.</u> State law applies because no Rule counterpart exists authorizing record destruction if alternative means exist for retention of the identical information in the record.
	[4.] Medical records may be supplemented and corrected with information if the medical record contains an error so long as the correction or supplement reasonably discloses that it was not made to conceal a prior entry.	[4.] <u>Record Supplementation of Correction.</u> Yes, 164.526.	[4.] <u>Record Supplementation of Correction.</u> Both.	[4.] <u>Record Supplementation of Correction.</u> Both state law and the Rule

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				apply because each permits supplementation and correction of medical records.
THE CODE OF CRIMINAL PROCEDURE				
MCL 767.5a (Confidentiality of Physician/Patient Communication)	Communications between physicians in their professional capacity with their patients are privileged and confidential.	No.	State law.	State law applies because no Rule counterpart exists establishing physician/patient privileges.
THE DEPARTMENT OF CORRECTIONS ACT				
MCL 791.267 (Testing of Prisoners for HIV)	<p>[1.] Each incoming prisoner shall be tested for HIV.</p> <p>[2.] Any prisoner who has tested positive for HIV and has been disciplined for sexual misconduct, illegal use of intravenous drugs, or predatory behavior that could transmit HIV may be placed in administrative segregation, or other unit separate from the general prison population.</p>	<p>[1.] <u>Required Testing of Prisoners.</u></p> <p>No.</p> <p>[2.] <u>Disciplining Prisoners with HIV.</u></p> <p>No.</p>	<p>[1.] <u>Required Testing of Prisoners.</u></p> <p>State law.</p> <p>[2.] <u>Disciplining Prisoners with HIV.</u></p> <p>State law.</p>	<p>[1.] <u>Required Testing of Prisoners.</u></p> <p>State law applies because no Rule counterpart exists requiring testing prisoners for any health condition. Note: The Rule permits disclosure of HIV test results to prison officials. <i>See</i> 164.512(k)(5).</p> <p>[2.] <u>Disciplining Prisoners with HIV.</u></p> <p>State law applies because no Rule counterpart exists regarding disciplinary authority of correctional institutions.</p>

1. Citation	2. Brief Summary of Pertinent Provision	3. Is There a HIPAA Counterpart?	4. Which Law Applies?	5. Why?
	[3.] MDOC shall report every positive HIV test result to MDHHS.	<p>[3.] <u>Reporting Obligations of MDOC.</u></p> <p>Yes, 164.512(a)(1), 164.512(b)(1)(i), 164.512(b)(1)(iv), and 164.512(j).</p>	<p>[3.] <u>Reporting Obligations of MDOC.</u></p> <p>Both, but see Column 5.</p>	<p>[3.] <u>Reporting Obligations of MDOC.</u></p> <p>Assuming that the required report to MDHHS is submitted by a covered provider working for or contracted by MDOC, both state law and the Rule apply because both permit disclosure required for public health purposes, for communicable disease reporting, to avert a serious threat of harm and as required by law.</p>
<p>MCL 791.267b</p> <p>(Right of Prison Employees to Have Prisoners Tested)</p>	<p>[1.] If an MDOC employee is exposed to the blood or bodily fluids of a prisoner, such employee may request that the prisoner be tested for HIV or Hepatitis B infection.</p> <p>[2.] If MDOC reasonably believes that the exposure reported has occurred, it may test the prisoner without the prisoner's consent.</p>	<p>[1.] <u>Right of MDOC Employee to Have Prisoner Tested for HIV or Hepatitis B.</u></p> <p>No.</p> <p>[2.] <u>Testing Prisoners Following Report of Exposure.</u></p> <p>No.</p>	<p>[1.] <u>Right of MDOC Employee to Have Prisoner Tested for HIV or Hepatitis B.</u></p> <p>State law.</p> <p>[2.] <u>Testing Prisoners Following Report of Exposure.</u></p> <p>State law.</p>	<p>[1.] <u>Right of MDOC Employee to Have Prisoner Tested for HIV or Hepatitis B.</u></p> <p>State law applies because no Rule counterpart exists addressing when prison employees may require prisoners to be tested for any condition.</p> <p>[2.] <u>Testing Prisoners Following Report of Exposure.</u></p> <p>State law applies because no Rule counterpart exists requiring testing. Note: Both state law and the Rule would permit disclosure of</p>

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	<p>[3.] MDOC shall notify the employee of the test results, whether positive or negative, though the identity of the prisoner shall be kept confidential in this report. The report of the prisoner's test results shall remain confidential and be subject to disclosure only to the extent consistent with the authorized purpose for which the information was obtained.</p>	<p>[3.] <u>Reporting Test Results to Prison Employee.</u></p> <p>No.</p>	<p>[3.] <u>Reporting Test Results to Prison Employee.</u></p> <p>State law.</p>	<p>the test results to prison authorities. <i>See</i> 164.512(k)(5).</p> <p>[3.] <u>Reporting Test Results to Prison Employee.</u></p> <p>State law applies because MDOC is not functioning as a covered entity in this context. Rather, in reporting test results, MDOC is functioning as an employer.</p>
THE MICHIGAN MEDICAL RECORDS ACCESS ACT				
<p>MCL 333.26263(a)</p> <p>(Definition of Authorized Representative)</p>	<p>[1.] <u>Authorized Representative</u></p> <p>Authorized Representative means either of the following:</p> <p>(i) A person empowered by the patient by explicit written authorization to act on the patient's behalf to access, disclose, or consent to the disclosure of the patient's medical record, in accordance with this act.</p> <p>(ii) If the patient is deceased, his or her personal representative or his or her heirs at law (including but not limited to his or her spouse) or the beneficiary of the patient's life insurance policy, to the extent provided by Section 2157 of the revised judicature act of 1961, 1961 PA 236, MCL 600.2157.</p>	<p>[1.] <u>Authorized Representative</u></p> <p>No, except the Rule contains standards applicable to "personal representatives" seeking access to a patient's medical record.</p>	<p>[1.] <u>Authorized Representative</u></p> <p>State law, but see Column 5.</p>	<p>[1.] <u>Authorized Representative</u></p> <p>State law applies because no Rule counterpart exists containing a definition of the term "authorized representative". However, the Rule uses the phrase "personal representative" and specifies that state law governs which individual may act as the "personal representative" of the patient.</p> <p>Specifically, under Section 164.502(g)(2) if under applicable state law, a person has authority to act</p>

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				<p>on behalf of an individual who is an adult or emancipated minor in making decisions relating to health care, a covered entity must treat such person as personal representative under this subchapter. <i>See</i> Section 164.502(g)(4) regarding access to PHI by personal representatives of deceased individuals.</p> <p>Additionally, the Rule allows a provider to refuse to treat an Authorized Person as a personal representative (for purposes of access to PHI) if the individual who is the subject of the PHI has been or may be subject to abuse, endangerment or the covered entity otherwise believes in its exercise of professional judgment, that it is not in the best interest of the individual to treat the person as the individual's personal representative. <i>See</i> 164.502(g)(5).</p> <p>Although the Rule does not include a definition of authorized representative, to the extent the Rule applies to a request from an authorized representative of a patient</p>

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				for access or disclosure of the patient's protected health information, the Rule establishes required elements of an authorization. <i>See</i> 164.508.
MCL 333.26263(c) (Definition of Guardian)	<p><u>[1.] Guardian</u></p> <p>Guardian means an individual who is appointed under section 5306 of the estates and protected individuals code, 1998 PA 386, MCL 700.5306, to the extent that the scope of the guardianship includes the authority to act on the individual's behalf with regard to his or her health care. Guardian includes an individual who is appointed as the guardian of a minor under section 5202 or 5204 of the estates and protected individuals code, 1998 PA 386, MCL 700.5202 and 700.5204, or under the mental health code, 1974 PA 258, MCL 330.1001 to 330.2106, to the extent that the scope of the guardianship includes the authority to act on the individual's behalf with regard to his or her health care.</p>	<p><u>[1.] Guardian</u></p> <p>No.</p>	<p><u>[1.] Guardian</u></p> <p>State law.</p>	<p><u>[1.] Guardian</u></p> <p>State law applies because no Rule counterpart exists containing a definition of guardian, however the Rule sets forth standards relating to "personal representatives" which may include a Guardian.</p> <p>Note: The Rule allows a provider to refuse to treat a Guardian as a personal representative (for purposes of access to PHI) if the individual who is the subject of the PHI has been or may be subject to abuse, endangerment or the covered entity otherwise believes in its exercise of professional judgment, that it is not in the best interest of the individual to treat the person as the individual's personal representative. <i>See</i> 164.502(g)(5).</p> <p>Additionally, the Rule allows a provider to refuse to treat a Guardian as a</p>

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				personal representative in certain circumstances (See 164.502(g)(3)).
MCL 333.26263(d) (Definition of Health Care)	<u>[1.] Health Care</u> Health care means any care, service, or procedure provided by a health care provider or health facility to diagnose, treat, or maintain a patient's physical condition, or that affects the structure or a function of the human body.	<u>[1.] Health Care</u> Yes, 160.103.	<u>[1.] Health Care</u> Both, but see Column 5.	<u>[1.] Health Care</u> State law and the Rule apply because each includes compatible definitions of health care. However, unlike State law, the Rule's definition of health care is not limited to care, service or procedure provided by a health care provider or health facility.
MCL 333.26263(e) (Definition of Health Care Provider)	<u>[1.] Health Care Provider</u> Health care provider means a person who is licensed or registered or otherwise authorized under Article 15 of the Public Health Code, 1978 PA 368, MCL 333.16101 to 333.18838, to provide health care in the ordinary course of business or practice of a health profession. Health care provider does not include a person who provides health care solely through the sale or dispensing of drugs or medical devices or a psychiatrist, psychologist, social worker, or professional counselor who provides only mental health services.	Yes, 160.103.	State law.	State law applies because state law is more stringent than HIPAA since it applies to providers that do not submit claims electronically, i.e., the Rule applies only to providers that submit transactions electronically.
MCL 333.26263(f) (Definition of Health Facility)	<u>[1.] Health Facility</u> Health facility means a health facility or agency licensed under Article 17 of the Public Health Code, 1978 PA 368, MCL 333.20101 to 333.22260, or any other organized entity where a health care provider provides healthcare to patients.	<u>[1.] Health Facility</u> No.	<u>[1.] Health Facility</u> State law, but see Column 5.	<u>[1.] Health Facility</u> State law applies because no Rule counterpart exists containing a definition of health facility. However, note that the Rule

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				defines “health care provider” in a manner that would include a health facility.
MCL 333.26263(i) (Definition of Medical Record)	<p><u>[1.] Medical Record</u></p> <p>Medical record means information oral or recorded in any form or medium that pertains to a patient’s health care, medical history, diagnosis, prognosis, or medical condition and that is maintained by a health care provider or health facility in the process of a patient’s health.</p>	<p><u>[1.] Medical Record</u></p> <p>No.</p>	<p><u>[1.] Medical Record</u></p> <p>State law.</p>	<p><u>[1.] Medical Record</u></p> <p>State law applies because no Rule counterpart exists containing a definition of medical record. <i>See</i> 160.103; 164.501, 164.502(d).</p> <p>Note: The Rule defines “Individually Identifiable Health Information” in a manner that would include a “Medical Record”, as defined by state law.</p> <p>Note: The Rule expressly includes payment information in all of the referenced definitions, while the state law definition of medical record does not expressly include payment information.</p>
MCL 333.26263(m) (Definition of Minor)	<p><u>[1.] Minor</u></p> <p>Minor means an individual who is less than 18 years of age, but does not include who is emancipated under Section 4 of 1968 PA 293, MCL 722.4.</p>	<p><u>[1.] Minor</u></p> <p>No, but see Column 5.</p>	<p><u>[1.] Minor</u></p> <p>State law.</p>	<p><u>[1.] Minor</u></p> <p>State law applies because no Rule counterpart exists containing a definition of minor.</p> <p>Note: The Rule does not define minor but does</p>

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				address uses and disclosures of a minor's PHI at 164.502(g)(3).
MCL 333.26263(n) (Definition of Patient)	<p><u>[1.] Patient</u></p> <p>Patient means an individual who receives or has received health care from a health care provider or health facility. Patient includes a guardian, if appointed, and a parent, guardian, or person acting in loco parentis, if the individual is a minor, unless the minor lawfully obtained health care without the consent or notification of a parent, guardian, or other person acting in loco parentis, in which case the minor has the exclusive right to exercise the rights of a patient under this act with respect to those medical records relating to that care.</p>	<p><u>[1.] Patient</u></p> <p>No, but see Column 5.</p>	<p><u>[1.] Patient</u></p> <p>State law.</p>	<p><u>[1.] Patient</u></p> <p>State law applies because no Rule counterpart exists containing a definition of patient. The Rule, however, defines "individual" as the person who is the subject of PHI. In addition, the Rule correlates to state law as it addresses use and disclosure of PHI concerning un-emancipated minors and indicates that generally the Rule must treat personal representatives as the patient. <i>See</i> §160.103; §164.502(g).</p>
MCL 333.26263(p) (Definition of Personal Representative)	<p><u>[1.] Personal Representative</u></p> <p>Personal representative means that term as defined in section 1106 of the estates and protected individuals code, 1998 PA 386, MCL 700.1106.</p>	<p><u>[1.] Personal Representative</u></p> <p>Yes, Section 164.502(g)(2).</p>	<p><u>[1.] Personal Representative</u></p> <p>State law.</p>	<p><u>[1.] Personal Representative</u></p> <p>State law applies because the Rule counterpart states that if under applicable state law, a person has authority to act on behalf of an individual who is an adult or emancipated minor in making decisions relating to health care, a covered entity must treat such person as personal representative under this subchapter.</p> <p>Note: OCR guidelines</p>

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				define personal representative as a person authorized (under state or other applicable law) to act on behalf of the individual in making health care related decisions.
MCL 333.26263 (Additional Definitions)	<u>[1.] Additional Definitions</u> (b) “Detroit Consumer Price Index (g) “Maintain” (h) “Medicaid” (j) “Medical Records Company (k) “Medically Indigent Individual” (l) “Medicare” (o) “Person” (q) “Third Party Payer”	<u>[1.] Additional Definitions</u> No.	<u>[1.] Additional Definitions</u> State law.	<u>[1.] Additional Definitions</u> State law applies because no Rule counterpart exists.
MCL 333.26265 (Right of Patient or Authorized Representative to Examine or Obtain Copies of Medical Records)	<u>[1.] Access to PHI (Medical Records)</u> (1) Except as otherwise provided by law or regulation, a patient or his or her authorized representative has the right to examine or obtain the patient’s medical record.	<u>[1.] Access to PHI (Medical Records)</u> Yes, 164.524(a) (a) Standard: Access to protected health information. (1) Right of access. Except as otherwise provided in paragraph (a)(2) or (a)(3) of this section, an individual has a right of access to inspect and obtain a copy of protected health information about the individual in a designated record set, for as long as the protected health information is maintained in	<u>[1.] Access to PHI (Medical Records)</u> Both.	<u>[1.] Access to PHI (Medical Records)</u> Both state law and the Rule apply because, in general, each provides for access and disclosure to the individual to whom the confidential health information pertains or to his or her authorized representative. However, HIPAA preempts state law to the extent it has more stringent or additional permitted reasons for denying persons access to their medical records.

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		<p>the designated record set, except for:</p> <p>(i) Psychotherapy notes;</p> <p>(ii) Information compiled in reasonable anticipation of, or for use in, a civil, criminal, or administrative action or proceeding; and</p> <p>(iii) Protected health information maintained by a covered entity that is:</p> <p>(A) Subject to the Clinical Laboratory Improvements Amendments of 1988, 42 U.S.C. 263a, to the extent the provision of access to the individual would be prohibited by law; or</p> <p>(B) Exempt from the Clinical Laboratory Improvements Amendments of 1988, pursuant to 42 CFR 493.3(a)(2).</p>		
	<p>[2.] <u>Time for Access</u></p> <p>(2) An individual authorized under subsection (1) who wishes to examine or obtain a copy of the patient's medical record shall submit a written request that is signed and dated by that individual not more than 60 days before being submitted to the health care provider or health facility that</p>	<p>[2.] <u>Time for Access</u></p> <p>Yes, 164.524(c)(3) 164.524(c)(3)(ii).</p>	<p>[2.] <u>Time for Access</u></p> <p>Both.</p>	<p>[2.] <u>Time for Access</u></p> <p>Both state law and the Rule apply because each permits access to confidential health information for inspection and copying.</p>

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	<p>maintains the medical record that is the subject of the request. Upon request receipt of a request under this subsection, a health care provider or health facility shall, as promptly as required under the circumstances, but not later than 30 days after receipt of the request or if the medical record is not maintained or accessible on-site not later than 60 days after receipt of the request, do one or more of the following:</p> <p>[3.] <u>Access Procedure</u></p> <p>(a) Make the medical record available for inspection or copying, or both, at the health care provider's or health facility's business location during regular business hours or provide a copy of all or part of the medical record, as requested by the patient or his or her authorized representative.</p> <p>[4.] <u>Access When Records in Storage or Maintained by Another Provider</u></p> <p>(b) If the health care provider or health facility has contracted with another person or medical records company to maintain the health care provider's or health facility's medical records, the health care provider or health facility shall</p>	<p>[3.] <u>Access Procedure</u></p> <p>Yes, 164.524(a); 164.524(b)(2); 164.524(c)(1); and 164.524(c)(2).</p> <p>[4.] <u>Access When Records in Storage or Maintained by Another Provider</u></p> <p>Yes, 164.524(b)(2)(ii) (storage).</p> <p>Yes, 164.524(d)(3) (another</p>	<p>[3.] <u>Access Procedure</u></p> <p>Both.</p> <p>[4.] <u>Access When Records in Storage or Maintained by Another Provider</u></p> <p>Both.</p>	<p>Note: The Rule will preempt state law to the extent state law prohibits a request signed and dated more than 60 days before it was submitted. The Rule does not provide that a request expires or becomes invalid after a specific period.</p> <p>[3.] <u>Access Procedure</u></p> <p>Both state law and the Rule apply because, in general, each permits access to confidential health information within mandated time frames pursuant to a written request.</p> <p>Note: The Rule will preempt state law to the extent state law prohibits a request signed and dated more than 60 days before it was submitted. The Rule does not provide that a request expires or becomes invalid after a specific period.</p> <p>[4.] <u>Access When Records in Storage or Maintained by Another Provider</u></p> <p>Both state law and the Rule apply because each permits access to records in storage.</p>

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	<p>transmit a request made under this subsection to the person or medical records company maintaining the medical records. The health care provider or health facility shall retrieve the medical record from the person or medical records company maintaining the medical records and comply with subdivision (a) or shall require the person or medical records company that maintains that medical record to comply with subdivision (a).</p> <p>(d) If the health care provider or health facility to which the request is directed does not maintain the medical record requested and does not have a contract with another person or medical records company as described in subdivision (b), so inform the patient or his or her authorized representative and provide the name and address, if known, of the health care provider or health facility that maintains the medical records.</p> <p><u>[5.] Notification if Medical Records Cannot be Located</u></p> <p>(c) Inform the patient or his or her authorized representative if the medical record does not exist or cannot be found.</p> <p><u>[6.] Denial if Disclosure Likely to Have an Adverse Effect</u></p> <p>(e) if the health care provider or health facility determines that disclosure of the requested medical record is likely to have an adverse effect on the patient, the health care provider or health</p>	<p>provider).</p> <p><u>[5.] Notification if Medical Records Cannot be Located</u></p> <p>Yes, 164.524(b)(2)(ii), 164.524(d)(3).</p> <p><u>[6.] Denial if Disclosure Likely to Have an Adverse Effect</u></p> <p>Yes, 164.524(a)(3)(i), (grounds for denial) 164.524(d) (requirement of</p>	<p><u>[5.] Notification if Medical Records Cannot be Located</u></p> <p>Both.</p> <p><u>[6.] Denial if Disclosure Likely to Have an Adverse Effect</u></p> <p>Both, but see Column 5.</p>	<p><u>[5.] Notification if Medical Records Cannot be Located</u></p> <p>Both state law and the Rule apply because each requires notification when confidential health information cannot be located.</p> <p><u>[6.] Denial if Disclosure Likely to Have an Adverse Effect</u></p> <p>Both state law and the Rule apply because each requires the provider to issue a clear</p>

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	<p>facility shall provide a clear statement supporting that determination and provide the medical record to another health care provider, health facility, or legal counsel designated by the patient or his or her authorized representative.</p> <p><u>[7.] Denial of Access if Confidentiality Agreement</u></p> <p>(f) If the health care provider or health facility receives a request for a medical record that was obtained from someone other than a health care provider or health facility under a confidentiality agreement, the health care provider or health facility may deny access to that medical record if access to that medical record would be reasonably likely to reveal the source of the information. If the health care provider or health facility denies access under this subdivision, it shall provide the patient or his or her authorized representative with a written denial.</p> <p><u>[8.] Verification of Identity</u></p> <p>(g) The health care provider, health facility, or medical records company shall take reasonable steps to verify the identity of the person making the request to examine or obtain a copy of the patient's medical record.</p>	<p>covered entity).</p> <p><u>[7.] Denial of Access if Confidentiality Agreement</u></p> <p>Yes, 164.524(a)(2)(v), (b)(2) and (d)(2).</p> <p><u>[8.] Verification of Identity</u></p> <p>Yes, 164.514(h).</p>	<p></p> <p><u>[7.] Denial of Access if Confidentiality Agreement</u></p> <p>Both.</p> <p><u>[8.] Verification of Identity</u></p> <p>Both.</p>	<p>statement supporting that the denial is due to the likelihood that the disclosure will have an adverse effect.</p> <p>Note: As for the right of a patient under state law to request that such denied records be sent to another health care provider, health facility or legal counsel, the patient's authorization must comply with the Rule.</p> <p><u>[7.] Denial of Access if Confidentiality Agreement</u></p> <p>Both state law and the Rule apply because each permits a provider to deny access to protected health information if the information is subject to a confidentiality agreement.</p> <p><u>[8.] Verification of Identity</u></p> <p>Both state law and the Rule apply because each requires a provider to reasonably confirm the identity of a person requesting access to copies of protected health</p>

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	<p><u>[9.] Extension for Compliance</u></p> <p>(3) If the health care provider, health facility, or medical records company is unable to take action as required under subsection (2) and the health care provider, health facility, or medical records company provides the patient with a written statement indicating the reasons for its delay within the required time period, the health care provider, health facility, or medical records company may extend the response time for no more than 30 days. A health care provider, health facility, or medical records company may only extend the response time once per request under this subsection.</p>	<p><u>[9.] Extension for Compliance</u></p> <p>Yes, 164.524(b).</p>	<p><u>[9.] Extension for Compliance</u></p> <p>Both.</p>	<p>information.</p> <p><u>[9.] Extension for Compliance</u></p> <p>Both state law and the Rule apply because each allows a 30 day extension for compliance with a request for access.</p>
<p>MCL 333.26267</p> <p>(Prohibition Against Inquiring About Purpose of Request for Access to Medical Records)</p>	<p><u>[1.] Prohibition Against Inquiring About Purpose</u></p> <p>A health care provider or health facility that receives a request for a medical record under Section 5 shall not inquire as to the purpose of the request.</p>	<p><u>[1.] Prohibition Against Inquiring About Purpose</u></p> <p>No.</p>	<p><u>[1.] Prohibition Against Inquiring About Purpose</u></p> <p>State law, but see Column 5.</p>	<p><u>[1.] Prohibition Against Inquiring About Purpose</u></p> <p>State law applies because no Rule counterpart exists prohibiting inquiry into the purpose of the request.</p> <p>Note: When someone other than the individual requests access or a copy and an authorization is required, the Rule requires that the authorization include a description of such representative's authority to act for the individual. If a representative is asking for access or a copy, it would not violate either the Rule or</p>

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				<p>state law to ask the representative to describe his/her authority to act and/or relationship to the patient or deceased patient.</p> <p>Note: To the extent an authorization under the Rule is required, the Rule permits insertion of the phrase “at the request of the individual” as the description of the purpose when an individual initiates the authorization and does not, or elects not to provide a statement of the purpose. A provider can comply with state law and the provisions for a valid authorization under the Rule. Therefore, on the authorization form (or other form used to request records), the provider may state, “You are not required to tell us the purpose of your request. If you do not wish to tell us, simply check the box that states, ‘at my request.’ If you wish to provide more detailed information, you may do so here. . . .” <i>See</i> §164.508(c)(iv).</p>
MCL 333.26269 (Allowable	[1.] Fees (1) Except as otherwise provided in this section,	[1.] Fees Yes, 164.524(c)(4).	[1.] Fees Both.	[1.] Fees Both State law and the Rule

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Charges for Copying Medical Records)	<p>if a patient or his or her authorized representative makes a request for a copy of all or part of his or her medical record under Section 5, the health care provider, health facility, or medical records company to which the request is directed may charge the patient or his or her authorized representative a fee that is not more than the following amounts:</p> <p><u>[2.] Initial Fee</u></p> <p>(a) An initial fee of \$20.00 per request for a copy of the record.</p>	<p><u>[2.] Initial Fee</u></p> <p>No.</p>	<p><u>[2.] Initial Fee</u></p> <p>The Rule.</p>	<p>apply insofar as both permit a provider of PHI in hard copy or electronic format to charge a fee for the labor of copying, the cost of supplies, and postage or shipping costs when the individual seeking PHI has requested that it be mailed.</p> <p>State law provides limits for the fee that can be charged for hard copies while the Rule states that fees for the labor and supply costs of copying PHI should be <i>reasonable</i> and <i>cost-based</i>. The preamble to the Rule states that copying and postage fees enumerated under state law are presumed reasonable.</p> <p>The Rule prohibits charging a fee for handling or retrieval of PHI or cost associated with processing the request for PHI.</p> <p><u>[2.] Initial Fee</u></p> <p>State law permits providers of PHI to charge an initial fee of \$20.00 per request but does not define “initial fee”. The Rule prohibits fees for anything other than the cost</p>

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				<p>of labor and supplies for copying and the cost of postage or shipping. The Rule also prohibits charging a fee for retrieval, handling, and processing of PHI. As to flat fees specifically, HIPAA guidance describes how a covered entity may charge individuals a flat fee, but the flat fee must not exceed \$6.50 for electronic copies of PHI maintained electronically, inclusive of all labor, supplies, and any applicable postage.¹ Insofar as the initial \$20.00 fee allowed by State law includes fees for retrieval, handling, and processing of PHI, such fee would be prohibited by the Rule. Additionally, an initial flat fee of \$20.00 would exceed the allowed \$6.50 flat fee for electronic copies of PHI maintained electronically. The only way an initial fee of \$20.00 could be allowed pursuant to the Rule, is if the \$20.00 fee was not a flat fee, but instead a reasonable, cost-based charge for copying, supplies or postage,</p>

¹ See OCR FAQs, published May 26, 2016, section titled “Flat fee for electronic copies of PHI maintained electronically.”

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	<p>[3.] Paper Copies</p> <p>(b) Paper copies as follows:</p> <p>(i) One dollar per page for the first 20 pages.</p> <p>(ii) Fifty cents per page for pages 21 through 50.</p> <p>(iii) Twenty cents for pages 51 and over.²</p>	<p>[3.] Paper Copies</p> <p>No.</p>	<p>[3.] Paper Copies</p> <p>Both.</p>	<p>which is permitted by the Rule.</p> <p>Note: Subsection (5) of MCL 333.26269 describes how notwithstanding this subsection (1), a health care provider, health facility or medical records company shall not charge a patient an initial fee for his or her medical record. Thus, a “patient” as defined by the MCL 333.26263(n), may not be charged the initial fee for his or her own medical record, even under State law.</p> <p>[3.] Paper Copies</p> <p>Note: The Rule does not enumerate specific costs allowed for paper copies, however, it does state that fees must be reasonable and cost-based. HIPAA guidance, however, only allows per page fees in cases where PHI requested is</p>

² Medical Records Access Act, Public Act 47 of 2004, MCL 333.26269(9)(b). As of 2017, taking into account the Consumer Price Index, the maximum charges are as follows:
-a fee of \$23.71; plus
-\$1.19 / page (for pages 1-20);
-\$.60 / page (for pages 21-50); and
-\$.23 / page (for all pages 51 and above).
The 2016 Medical Records Access Act Fees can be found here.

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				<p>maintained in paper form and the individual requests a paper copy of the PHI or asks that the paper PHI be scanned into an electronic format. Per page fees are not permitted for paper or electronic copies of PHI maintained electronically.³</p> <p>Additionally, a DHHS report on the effect of the HITECH Act on the Rule comments on the reasonableness of a fee in reference to fees allowed by the State. It explains that if the State allows for a fee of 20 cents per page requested but the PHI provider can provide an electronic copy for 5 cents per page then the provider must charge 5 cents per page because that is the cost-based amount. Additionally, if the cost-based amount for the provider of PHI is 30 cents per page but the State has set a limit of 25 cents per page the covered entity cannot charge more than 25 cents per page as the preamble to the Rule states that costs of copying and</p>

³ See OCR FAQs, published May 26, 2016, section titled “Average costs.”

1. Citation	2. Brief Summary of Pertinent Provision	3. Is There a HIPAA Counterpart?	4. Which Law Applies?	5. Why?
	<p>[4.] <u>Electronic Format</u></p> <p>(c) If the medical record is in some form or medium other than paper, the actual cost of preparing a duplicate.</p>	<p>[4.] <u>Electronic Format</u></p> <p>Yes, §164.524(c)(4)(ii).</p>	<p>[4.] <u>Electronic Format</u></p> <p>Both.</p>	<p>postage set by the State are assumed to be reasonable.</p> <p>Accordingly, only where PHI requested is maintained in paper form and the individual requests a paper copy of the PHI or asks that the paper PHI be scanned into an electronic format, could the per page fees be charged. Then, such per page fee should be capped at the lesser of the per page fee or the cost-based amount.</p> <p>[4.] <u>Electronic Format</u></p> <p>Both the Rule and State law allow for fees that reflect the actual cost.</p> <p>Note: State law speaks of the cost of “preparing” a duplicate. This would indicate allowing a fee for all actual costs of the preparation. The Rule is contrary and allows fees only for the actual labor costs associated with the copying of PHI, while it prohibits charging for retrieval, handling, or processing of PHI. The comments in the DHHS report on the effect of the</p>

1. Citation	2. Brief Summary of Pertinent Provision	3. Is There a HIPAA Counterpart?	4. Which Law Applies?	5. Why?
	<p>[5.] <u>Postage</u></p> <p>Any postage or shipping costs incurred by the health care provider, health facility, or medical records company in providing the copies.</p> <p>[6.] <u>Retrieval Costs</u></p>	<p>[5.] <u>Postage</u></p> <p>Yes, 164.524(c)(4)(iii).</p> <p>[6.] <u>Retrieval Costs</u></p>	<p>[5.] <u>Postage</u></p> <p>Both.</p> <p>[6.] <u>Retrieval Costs</u></p>	<p>HITECH Act explain that labor costs could include “skilled technical staff time spent to create and copy the electronic file, such as compiling, extracting, scanning and burning protected health information to media, and distributing the media.”</p> <p>Thus, actual costs can be charged as allowed under State law, but only to the extent allowed by the Rule, which allows charging for the actual labor costs associated with the copying of PHI.</p> <p>[5.] <u>Postage</u></p> <p>The Rule and State law allow for a fee that accounts for the cost of postage and shipping of PHI. The Rule limits the application of this fee to instances where the entity/individual requesting the PHI has asked that it be mailed. Thus, postage or shipping costs can be charged, but only when the entity or individual has requested the PHI be mailed.</p> <p>[6.] <u>Retrieval Costs</u></p>

1. Citation	2. Brief Summary of Pertinent Provision	3. Is There a HIPAA Counterpart?	4. Which Law Applies?	5. Why?
	<p>(e) Any actual costs incurred by the health care provider, health facility, or medical records company in retrieving medical records that are 7 years old or older and not maintained or accessible on-site.</p> <p>[7.] <u>Refusal to Copy</u></p> <p>(2) A health care provider, health facility, or medical records company may refuse to retrieve or copy all or part of a medical record for a patient or his or her authorized representative until the applicable fee is paid.</p>	<p>Yes, 164.524(c)(4).</p> <p>[7.] <u>Refusal to Copy</u></p> <p>No.</p>	<p>The Rule.</p> <p>[7.] <u>Refusal to Copy</u></p> <p>State law, but see column 5.</p>	<p>The Rule does not refer to retrieval costs in 164.524(c)(4) but limits fees that can be charged to those that include the cost of labor and supplies for copying and cost for shipping and postage. The preamble to the Rule prohibits assessing a fee for retrieval costs.</p> <p>[7.] <u>Refusal to Copy</u></p> <p>State law applies because there is no counterpart in the Rule permitting a provider to deny access or copies until the appropriate fee is paid.</p> <p>Note: HIPAA guidance describes how a covered entity may not withhold or deny an individual access to his PHI on the grounds that the individual has not paid the bill for health care services the covered entity provided to the individual, a covered entity may not withhold or deny access on the grounds that the covered entity used the individual's payment of the fee for a copy of his PHI to offset or pay the individual's outstanding bill for health care.</p>

1. Citation	2. Brief Summary of Pertinent Provision	3. Is There a HIPAA Counterpart?	4. Which Law Applies?	5. Why?
	<p>[8.] <u>Provisions for Indigents</u></p> <p>(3) A health care provider, health facility, or medical records company shall not charge a fee for retrieving, copying, or mailing all or part of a medical record other than a fee allowed under subsection (1). Except as otherwise provided in subsection (4), a health care provider, health facility, or medical records company shall waive all fees for a medically indigent individual. The health care provider, health facility, or medical records company may require the patient or his or her authorized representative to provide proof that the patient is a recipient of assistance as described in this subsection.</p> <p>[9.] <u>Initial Requests for Copies</u></p> <p>(4) A medically indigent individual that receives copies of medical records at no charge under subsection (3) is limited to 1 set of copies per health care provider, health facility, or medical records company. Any additional requests for the same records from the same health care provider, health facility, or medical records company shall be subject to the fee provisions under subsection (1).</p>	<p>[8.] <u>Provisions for Indigents</u></p> <p>Yes, 164.524(c)(4).</p> <p>[9.] <u>Initial Requests for Copies</u></p> <p>No.</p>	<p>[8.] <u>Provisions for Indigents</u></p> <p>(3) Provisions for Medically Indigent.</p> <p>Both, but see Column 5.</p> <p>[9.] <u>Initial Requests for Copies</u></p> <p>Both, but see column 5.</p>	<p>[8.] <u>Provisions for Indigents</u></p> <p>Regarding fees both state law and the Rule apply because each permits a provider to charge a fee for the labor of copying, costs of supplies and postage or shipping costs.</p> <p>Regarding medically indigent individuals, state law applies because no Rule counterpart exists regarding waiver of fees for medically indigent and the state law provides more access to individuals.</p> <p>[9.] <u>Initial Requests for Copies</u></p> <p>With regard to the waiver of fees for medically indigent individuals state law applies because there is no counterpart in the Rule.</p> <p>With regard to the fees, after an initial no-charge copy is requested, both state law (MCL §333.26269(1)) and the Rule (§164.524(c)(4)) apply to subsequent copies of the same PHI requested from the same providers.</p>

1. Citation	2. Brief Summary of Pertinent Provision	3. Is There a HIPAA Counterpart?	4. Which Law Applies?	5. Why?
	<p>[10.] <u>Prohibition of Initial Fee</u></p> <p>(5) Notwithstanding subsection (1), a health care provider, health facility, or medical records company shall not charge a patient an initial fee for his or her medical record.</p> <p>[11.] <u>Annual Adjustment of Fees</u></p> <p>(6) Beginning 2 years after the effective date of this act, the department of community health shall adjust on an annual basis the fees prescribed by subsection (1) by an amount determined by the state treasurer to reflect the cumulative annual percentage change in the Detroit consumer price index.</p>	<p>[10.] <u>Prohibition of Initial Fee</u></p> <p>Yes, 164.524(c)(4).</p> <p>[11.] <u>Annual Adjustment of Fees</u></p> <p>No.</p>	<p>[10.] <u>Prohibition of Initial Fee</u></p> <p>Both.</p> <p>[11.] <u>Annual Adjustment of Fees</u></p> <p>State law.</p>	<p>[10.] <u>Prohibition of Initial Fee</u></p> <p>Both state law and the Rule apply because each permits a provider to charge a fee for the labor of copying, costs of supplies and postage or shipping costs. See above note on initial fees.</p> <p>[11.] <u>Annual Adjustment of Fees</u></p> <p>State law applies because there is no Rule counterpart providing for maximum fees for copying medical records or an annual adjustment to such fees.</p>
<p>MCL 333.20170</p> <p>(Medical Records Access/Compliance by Licensed Health Facilities or Agencies)</p>	<p>[1.] <u>License Requirements</u></p> <p>A health facility or agency shall comply with the Medical Records Access Act.</p>	<p>[1.] <u>License Requirements</u></p> <p>No.</p>	<p>[1.] <u>License Requirements</u></p> <p>State law.</p>	<p>[1.] <u>License Requirements</u></p> <p>State law applies because compliance with the Medical Records Access Act is established by state law. The State Department of Community Health is responsible for investigating and enforcing licensing standards, including compliance with the Medical Records Access Act, against health facilities and agencies. See MCL</p>

1. Citation	2. Brief Summary of Pertinent Provision	3. Is There a HIPAA Counterpart?	4. Which Law Applies?	5. Why?
				333.20101, <i>et seq.</i>
MCL 333.26271 (Exclusion of Third Party Payers)	<u>[1.] Exclusion of 3rd Party Payers</u> This act does not apply to copies of medical records provided to a third party payer, insurer as defined in section 106 of the insurance code of 1956, 1956 PA 218, MCL 500.106, or self-funded plan.	<u>[1.] Exclusion of 3rd Party Payers</u> No.	<u>[1.] Exclusion of 3rd Party Payers</u> State law.	<u>[1.] Exclusion of 3rd Party Payers</u> State law applies because there is no Rule counterpart.
MCL 333.16221(s) (Enforcement of Medical Records Access Act Against Health Professionals)	<u>[1.] Investigation and Enforcement Action</u> The department may investigate activities related to the practice of a health profession by a licensee, a registrant, or an applicant for licensure or registration. The department may hold hearings, administer oaths, and order the taking of relevant testimony and shall report its findings to the appropriate disciplinary subcommittee. The disciplinary subcommittee shall proceed under section 16226 if it finds that 1 or more of the following grounds exist: (s) A violation of the Medical Records Access Act, 2004 PA 47, MCL 333.26261 to 333.26271.	<u>[1.] Investigation and Enforcement Action</u> No.	<u>[1.] Investigation and Enforcement Action</u> State law.	<u>[1.] Investigation and Enforcement Action</u> State law applies because the state, and not the federal government, is responsible for investigating health professionals' compliance with state licensing standards, including compliance with the Medical Records Access Act.
MICHIGAN ATTORNEY GENERAL OPINIONS				
Opinion No. 7092 (October 16, 2001)	Section 10 of Michigan's Child Custody Act does not require disclosure of a minor's mental health records to the child's noncustodial parent without the consent of the custodial parent as required by MCL 330.1748(6) (confidentiality of mental	Yes, 160.203(b) and 164.502(g)(3).	State law.	State law applies because the Rule defers to state law to the extent disclosures regarding unemancipated minors are permitted or

1. Citation	2. Brief Summary of Pertinent Provision	3. Is There a HIPAA Counterpart?	4. Which Law Applies?	5. Why?
(Disclosure of Minor's Mental Health Records to Noncustodial Parent)	health records), discussed above in this Matrix.			prohibited. State law prohibits disclosure without the consent of the custodial parent and the record holder's determination that disclosure is not harmful.
Opinion No. 6819 (September 28, 1994) (Changes to Medical Record)	Interpreting MCL 333.20175 (patient records), discussed above in this Matrix, a hospital may not permit a doctor, even with patient consent, to change a patient's medical record unless the change is a supplement or correction that does not conceal or alter a prior entry.	Yes, 164.526(a)(1), 164.526(c)(1), and page 82736 (column 1) of Preamble.	Both, but see Column 5.	Both state law and the Rule apply because each permits a patient to request that a covered entity supplement or correct information in the patient's medical records. Both state law and the Rule would permit the covered entity to refuse to make the requested change. State law, however, would prohibit amending the medical record if the result would be to conceal or alter the prior entry. The Rule differs from state law in this regard because, under the Rule, a requested change may be rejected if it would render the record inaccurate or incomplete. (<i>See</i> 164.526(a)(2)(iv)). Note: The Rule contains additional grounds that are not contained in state law for denying a patient's request to revise medical records.

1. Citation	2. Brief Summary of Pertinent Provision	3. Is There a HIPAA Counterpart?	4. Which Law Applies?	5. Why?
<p>Opinion No. 6764 (August 11, 1993)</p> <p>(Nondisclosure of Mental Health Information)</p>	<p>[1.] Interpreting MCL 330.1748 (confidentiality of mental health records), discussed above in this Matrix, the holder of the record within this Section refers to MDHHS, a community mental health program or a licensed private facility. MCL 330.1748(6)(b) permits the holder of the record to withhold disclosure if detrimental to the recipient or others. The decision to withhold the record must not be arbitrary or capricious and must be based on a good faith medical judgment that release of the information would be detrimental to the recipient or others.</p>	<p>[1.] <u>Right to Refuse Disclosure of Mental Health Information.</u></p> <p>Yes, 164.524(a)(3)(i).</p>	<p>[1.] <u>Right to Refuse Disclosure of Mental Health Information.</u></p> <p>Both.</p>	<p>[1.] <u>Right to Refuse Disclosure of Mental Health Information.</u></p> <p>Both state law and the Rule apply because each permits a covered entity to deny access to the patient's record if such access would be, in the covered provider's professional judgment, harmful to the patient or others.</p>
	<p>[2.] The decision to withhold any record must be in writing and contained in the patient's file.</p>	<p>[2.] <u>Recording the Decision to Deny Access.</u></p> <p>Yes, 164.524(d)(2), 164.524(e) and 164.530(j).</p>	<p>[2.] <u>Recording the Decision to Deny Access.</u></p> <p>Both.</p>	<p>[2.] <u>Recording the Decision to Deny Access.</u></p> <p>Both state law and the Rule apply because both require written notation in the patient's record of the denial of access and/or disclosure and the reasons for the denial.</p>
	<p>[3.] A mental health provider cannot condition the disclosure of a recipient's record upon the execution of a hold harmless agreement. The policies and procedures for the release of records by mental health providers may only govern the mechanics of the release of records, and may not attach any additional conditions not specifically authorized by MCL 330.1748, discussed above in this Matrix.</p>	<p>[3.] <u>Conditioning Access and/or Disclosure.</u></p> <p>No.</p>	<p>[3.] <u>Conditioning Access and/or Disclosure.</u></p> <p>State law.</p>	<p>[3.] <u>Conditioning Access and/or Disclosure.</u></p> <p>State law applies because no Rule counterpart exists addressing whether disclosure can be conditioned upon a hold harmless agreement.</p>

1. Citation	2. Brief Summary of Pertinent Provision	3. Is There a HIPAA Counterpart?	4. Which Law Applies?	5. Why?
	[4.] The decision to withhold any record may be appealed to the Department of Mental Health Director, and the Director's decision may be judicially reviewed.	[4.] <u>Appeal of the Decision to Deny.</u> Yes, 164.524(a)(4) and 164.524(a)(4)(d).	[4.] <u>Appeal of the Decision to Deny.</u> Both.	[4.] <u>Appeal of the Decision to Deny.</u> Both state law and the Rule permit an appeal of the provider's decision to deny access or refuse disclosure.
Opinion No. 6660 (September 12, 1990) (Records of Stillbirths and Fetal Deaths)	MCL 333.2834 (fetal death), discussed above in this Matrix, prohibits MDHHS from publicly disclosing information regarding stillbirths or fetal deaths that includes the identity of the biological parents. Pursuant to MCL 333.2882 regarding certified copies of vital records, a copy of such records may only be issued to the biological parents of the fetus or stillborn infant since the identifying information provided would not violate the statutory purpose of MCL 333.2834.	No.	State law.	State law applies because MDHHS is not functioning as a covered entity in this context.
Opinion No. 6593 (July 12, 1989) (Access by Worker's Compensation or Insurance Representative)	[1.] Interpreting MCL 418.385, an employer's worker's compensation or insurance representative may have access to medical records of an employee/patient examined and treated in an employer's medical clinic for injuries sustained during the employment.	[1.] <u>Disclosure of PHI in Connection with Worker's Compensation.</u> Yes, 164.512(l).	[1.] <u>Disclosure of PHI in Connection with Worker's Compensation.</u> Both.	[1.] <u>Disclosure of PHI in Connection with Worker's Compensation.</u> Both state law and the Rule permit disclosure of confidential health information for purposes of worker's compensation reimbursement. Moreover, the Rule specifically provides that a covered entity may disclose PHI to the extent necessary to comply with state laws relating to worker's compensation.

1. Citation	2. Brief Summary of Pertinent Provision	3. Is There a HIPAA Counterpart?	4. Which Law Applies?	5. Why?
	[2.] Information secured and placed in the medical record by the attending physician that is not relevant to the employee's worker's compensation claim may not be disclosed without a waiver of the physician/patient privilege.	[2.] <u>Protection of PHI not Relevant to Worker's Compensation.</u> Yes, 164.502(a).	[2.] <u>Protection of PHI not Relevant to Worker's Compensation.</u> Both.	[2.] <u>Protection of PHI not Relevant to Worker's Compensation.</u> Both state law and the Rule apply because each requires covered providers to maintain the confidentiality of confidential health information unrelated to a worker's compensation claim and to not disclose it without express authorization.
Opinion No. 6439 (May 29, 1987) (Disclosure of Medical Records to the FIA to Substantiate Payments to Providers)	Interpreting MCL 400.111a, the Director of the FIA may request medical records from a medical service provider relating to a claim without prior consultation with the provider.	Yes, 164.502(a), 164.512(d)(1)(ii), and 164.512(d)(1)(iii).	Both.	Both state law and the Rule apply because each permits disclosure of a patient's medical record by a provider to ensure compliance with government-funded benefit programs and to audit provider compliance with program standards.
Opinion No. 6376 (June 30, 1986) (Examining Records of Deceased Persons)	Rule 325.9011(2) authorizes MDHHS to review medical records of patients who have reported diseases that are required to be reported to MDHHS. This Rule requires that all information disclosed remain confidential and not be open to public inspection absent consent of the individual or the individual's guardian.	Yes, 164.502(a) and 164.512(b)(1)(i).	Both, but see Column 5.	Both state law and the Rule apply because each permits covered entities to disclose confidential health information for public health purposes and both impose an ongoing duty to maintain the confidentiality of confidential health

1. Citation	2. Brief Summary of Pertinent Provision	3. Is There a HIPAA Counterpart?	4. Which Law Applies?	5. Why?
				information. Note: To the extent MDHHS is acting as a repository of confidential health information, it is not functioning as a covered entity, and state law would apply.
Opinion No. 6369 (June 9, 1986) (Rights of Next-of-Kin Regarding Organ Donations)	A hospital or health care institution has no legal duty under the Public Health Code to: inform the next-of-kin of the hospital's or institution's knowledge of a gift by a deceased donor of his or her body or physical part of his or her body; inform the next-of-kin that, where applicable, the removal of the physical part of the body in accordance with the donor's gift to the hospital; or solicit from the next-of-kin either an objection to or permission for removal of the body organ, except that the medical examiner must attempt to notify the next-of-kin of his or her intent to perform an autopsy and the next-of-kin have limited rights to object to removal of corneas and pituitary glands.	No.	State law.	State law applies because no Rule counterpart exists. Note: The Rule generally permits disclosure of PHI to an individual's personal representative, allows a coroner or medical examiner to use PHI for determining the cause of death or other duties authorized by law. The Rule also permits a covered entity to share PHI with an organ procurement organization to facilitate organ, eye or tissue donation and transplantation. <i>See</i> 164.502(g), 164.512(g)(1) and 164.512(h). The Rule, however, does not speak to the precise issues addressed in this Attorney General Opinion concerning the necessity of informing the deceased's next-of-kin regarding an autopsy or organ removal, and the extent to which the next-of-kin can object to or stop the

1. Citation	2. Brief Summary of Pertinent Provision	3. Is There a HIPAA Counterpart?	4. Which Law Applies?	5. Why?
				organ removal.
Opinion No. 6270 (January 31, 1985) (Access to Work-Related Medical Records Maintained by Employer)	Interpreting Rules 325.3466 and 325.3467, an employee's representative may demand access to exposure records or medical records of the employee only with specific prior written authorization of the employee.	No.	State law, but see Column 5.	State law applies because this Attorney General Opinion addresses solely the disclosure obligation of employers, not covered entities, and the Rule is clear that employers <i>per se</i> are not covered entities. Note: The Rule, however, would permit covered entities to disclose medical records of employees to employers in connection with work-related conditions and workplace-related medical surveillance without authorization. <i>See</i> 164.512(b)(1)(v). Unlike state law, the Rule does not address the right of an employee or personal representative to obtain the information directly from the employer.
Opinion No. 5709 (May 20, 1980) (County Mental Health Board and Recipient Mental Health Records)	[1. and 2.] Interpreting sections of the Mental Health Code, amended since this opinion was issued, and as discussed above in this Matrix, a county community mental health board may obtain information concerning a recipient of mental health services from public and private agencies that are funded by the Board without the written consent of the recipient, provided the information does not disclose the identity of the recipient unless germane to the authorized	[1.] <u>Disclosure by Public or Private Agencies.</u> Yes, 164.512(b)(1)(i) and 164.512(d).	[1.] <u>Disclosure by Public or Private Agencies.</u> Both.	[1.] <u>Disclosure by Public or Private Agencies.</u> To the extent the public or private agencies are covered entities, both state law and the Rule apply because each permits disclosure without authorization for public health purposes and for

1. Citation	2. Brief Summary of Pertinent Provision	3. Is There a HIPAA Counterpart?	4. Which Law Applies?	5. Why?
	<p>purpose for which the information is sought.</p> <p>[3.] Such information may be shared within the community mental health program.</p>	<p>[2.] <u>Board Access to Treatment Records.</u></p> <p>Yes, 164.501 (definition of health oversight agency); 160.103 (exclusions from definition of “health plan.”)</p> <p>[3.] <u>Shared Mental Health Information.</u></p> <p>Yes, 164.512(b).</p>	<p>[2.] <u>Board Access to Treatment Records.</u></p> <p>Both.</p> <p>[3.] <u>Shared Mental Health Information.</u></p> <p>Both.</p>	<p>health oversight.</p> <p>[2.] <u>Board Access to Treatment Records.</u></p> <p>Both state law and the Rule apply because state law permits disclosure to the Board and the Rule permits disclosure to a health oversight agency. Note: The Board here is operating as a health oversight agency as defined at 164.501, and not as a covered entity. See 160.103(ii)(B)(2) (exclusions to definition of health plan).</p> <p>[3.] <u>Shared Mental Health Information.</u></p> <p>Both state law and the Rule apply because each permits public and private agencies funded by the Board to disclose confidential health information within a county mental health program without authorization of the individual for TPO, and both include minimum necessary type standards. Note: The continued validity of the Attorney General opinion in light of the amendments to the law on which it is based and recent case law is</p>

1. Citation	2. Brief Summary of Pertinent Provision	3. Is There a HIPAA Counterpart?	4. Which Law Applies?	5. Why?
				questionable.
Opinion No. 5446 (February 23, 1979) (Hospital Release of Child's Medical Records to Attorney Representing Child)	Hospitals are required to release medical records to a child's court-appointed attorney without parental consent or a court order.	Yes, 164.502(g)(3) and 164.512(a)(1).	Both.	Both state law and the Rule apply because each permits disclosure as required by law and to a personal representative acting on behalf of an unemancipated minor (<i>e.g.</i> , the attorney appointed to represent the child).
Opinion No. 5420 (December 22, 1978) (Parent or Guardian Not Required to Give Consent)	The Department of Mental Health may not require a parent or guardian to consent to the release of a child's mental health information as a condition for the child's admission to a state-owned inpatient mental health facility.	Yes, 160.203(b) and 164.506(b)(1).	State law.	State law applies because the Rule permits a health care provider to condition treatment on receipt of a consent, whereas state law prohibits a state-owned mental health facility from imposing such a requirement.
Opinion No. 5406 (December 15, 1978) (FIA Access to Child's Medical Records)	A hospital must allow FIA access to a child's medical information where FIA is conducting a protective services investigation. No parental release is required.	Yes, 164.512(a)(1), 164.512(b)(1)(ii), and 164.512(d).	Both.	Both state law and the Rule apply because the Rule permits disclosure without authorization where, as here, required by law and in the context of a protective services investigation.
Opinion No. 5125 (May 30, 1978) (Ownership and Access to Medical	[1.] In the absence of an agreement to the contrary, the physician and the hospital own patient medical records generated and maintained by them.	[1.] <u>Ownership of Medical Records.</u> No.	[1.] <u>Ownership of Medical Records.</u> State law.	[1.] <u>Ownership of Medical Records.</u> State law applies because no Rule counterpart exists

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Records)	<p>[2.] A patient has a right of access to and a right to receive copies of his or her medical records.</p> <p>[3.] A health provider may establish and implement a policy by which a patient's right of access is limited to viewing his or her records during normal business hours in a manner that does not interfere with the normal routine of the health provider.</p>	<p>[2.] <u>Patient's Right of Access to Medical Records.</u></p> <p>Yes, 160.202 (definition of more stringent at (2)), 160.203(b), 164.502(a)(1)(i), 164.502(a)(2)(i), and 164.524.</p> <p>[3.] <u>Time and Manner of Access to Medical Records.</u></p> <p>Yes, 164.524(c)(3) and 164.530(i).</p>	<p>[2.] <u>Patient's Right of Access to Medical Records.</u></p> <p>State law, but see Column 5.</p> <p>[3.] <u>Time and Manner of Access to Medical Records.</u></p> <p>Both.</p>	<p>regarding the ownership of medical records.</p> <p>[2.] <u>Patient's Right of Access to Medical Records.</u></p> <p>State law applies because, while both state law and the Rule each generally grant patients access to their medical records and rights to receive copies of their medical records, the Rule contains broader grounds for denying access than are provided under state law (<i>e.g.</i>, under the Rule, access to medical records held by correctional institutions may be denied). Therefore, except as discussed in [3.] and [4.] below, state law is contrary to and more stringent than the Rule because state law permits greater rights of access to individuals.</p> <p>[3.] <u>Time and Manner of Access to Medical Records.</u></p> <p>Both state law and the Rule apply because each requires a covered entity to establish and implement policies regarding an individual's</p>

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	<p>[4.] A health provider may deny access by a patient to his or her mental health records to the extent it determines in good faith that such disclosure would be detrimental to the patient or others.</p> <p>[5.] Any such determination to withhold access must be recorded in the patient's mental health</p>	<p>[4.] <u>Limiting Access to Mental Health Records.</u></p> <p>Yes, 164.524(a)(3)(i) and 164.524(d).</p> <p>[5.] <u>Documentation of Denial.</u></p>	<p>[4.] <u>Limiting Access to Mental Health Records.</u></p> <p>Both, but see Column 5.</p> <p>[5.] <u>Documentation of Denial.</u></p>	<p>right to access his or her confidential health information, and each permits reasonable limitations on the times and manner of access.</p> <p>[4.] <u>Limiting Access to Mental Health Records.</u></p> <p>Both state law and the Rule apply because each permits a covered entity to deny a patient access to his or her mental health records in cases where disclosure may cause harm to the patient. State law, however, would apply as to the patient's access to psychotherapy notes because in such instance, state law is contrary to the Rule by providing greater access to the individual (<i>i.e.</i>, more stringent) to psychotherapy notes that could not be accessed under the Rule. As to documentation of any denial, both state law and the Rule apply because the state law standard is not contrary to the Rule.</p> <p>[5.] <u>Documentation of Denial.</u></p>

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	records.	Yes, 164.524(b)(2)(i)(B) and 164.524(d)(2).	Both.	Both state law and the Rule apply because each requires a provider to document, in writing, a denial of access to medical records and the reasons for such denial.
ADMINISTRATIVE CODE RULES FOR (CHILD) IMMUNIZATION REGISTRY				
Rule 325.162 (Access to Immunization Registry)	MDCH shall maintain a registry of all MDCH-authorized users of the Michigan Care Improvement Registry (“MCIR”). MDCH may grant a user access to MCIR upon the user’s written agreement to maintain the confidentiality of such information.	No.	State law.	State law applies because no Rule counterpart exists regarding maintenance of a registry, and MDCH is not functioning as a covered entity in this context.
Rule 325.163 (Reporting Immunization Data to MDCH)	<p>[1.] A health care provider who administers an immunization to a child up to 20 years of age must report such immunization data to MDCH.</p> <p>[2.] A health care provider who receives written notification from a parent requesting that his or her child’s immunization data not be reported to the registry must forward the parent’s request to MDCH.</p>	<p>[1.] <u>Health Care Providers Reporting of Immunization Data to MDCH.</u></p> <p>Yes, 164.512(a)(1) and 164.512(b)(1)(i).</p> <p>[2.] <u>Forwarding of Parent’s Request to Withhold Immunization Data.</u></p> <p>Yes, 164.508(a),</p>	<p>[1.] <u>Health Care Providers Reporting of Immunization Data to MDCH.</u></p> <p>Both.</p> <p>[2.] <u>Forwarding of Parent’s Request to Withhold Immunization Data.</u></p> <p>Both.</p>	<p>[1.] <u>Health Care Providers Reporting of Immunization Data to MDCH.</u></p> <p>Both state law and the Rule apply because while state law requires the health care provider to report child immunization data to MDCH, the Rule permits such disclosure where, as here, required by law and for public health purposes.</p> <p>[2.] <u>Forwarding of Parent’s Request to Withhold Immunization Data.</u></p> <p>Assuming the provider’s</p>

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	<p>[3.] After receipt of a parent's request, MDCH shall not add any immunization information to a child's MCIR record.</p> <p>[4.] A health care provider submitting immunization data to MDCH by electronic media shall ensure that the data meets MDCH data quality, format, security, and timeliness standards.</p>	<p>164.512(a)(1), and 164.512(b)(1)(i).</p> <p>[3.] <u>Withholding of Immunization Data from MCIR.</u></p> <p>No.</p> <p>[4.] <u>Requirements for Transmission of Immunization Data by Electronic Media.</u></p> <p>Yes, 164.530(c).</p>	<p>[3.] <u>Withholding of Immunization Data from MCIR.</u></p> <p>State law.</p> <p>[4.] <u>Requirements for Health Care Provider's Transmission of Immunization Data by Electronic Media.</u></p> <p>Both, but see Column 5.</p>	<p>notification to MDCH includes PHI, both state law and the Rule apply because state law requires a health care provider to forward the parent notification to MDCH, while the Rule permits disclosures where, as here, required by law and for public health purposes.</p> <p>[3.] <u>Withholding of Immunization Data from MCIR.</u></p> <p>State law applies because no Rule counterpart exists, and MDCH is not functioning as a covered entity in this context.</p> <p>[4.] <u>Requirements for Health Care Provider's Transmission of Immunization Data by Electronic Media.</u></p> <p>Both state law and the Rule apply because each requires that electronic transmissions be conducted with appropriate security. Note: State law contains details regarding specific information to be disclosed. Final security regulations may include additional requirements and should be</p>

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				consulted when issued.
<p>Rule 325.164</p> <p>(Release of Medical Records to MDCH for Review)</p>	<p>[1.] A health care provider shall allow MDCH access to a patient's medical records necessary to verify the accuracy of submitted immunization data. Where agreed to by each party, a health care provider may submit copies of medical records to MDCH rather than submit to a physical inspection of such records where MDCH seeks to verify the accuracy of immunization data. Upon MDCH's request, a health care provider shall supply missing immunization data or clarify immunization data.</p> <p>[2.] MDCH must follow use, storage, and destruction procedures for such records.</p>	<p>[1.] <u>MDCH Inspection of Patient Medical Records.</u></p> <p>Yes, 164.512(a)(1) and 164.512(b)(1)(i).</p> <p>[2.] <u>MDCH's Use of Copied Medical Records.</u></p> <p>No.</p>	<p>[1.] <u>MDCH Inspection of Patient Medical Records.</u></p> <p>Both.</p> <p>[2.] <u>MDCH's Use of Copied Medical Records.</u></p> <p>State law.</p>	<p>[1.] <u>MDCH Inspection of Patient Medical Records.</u></p> <p>Both state law and the Rule apply because the Rule permits disclosure of confidential health information where, as here, required by law and for public health purposes.</p> <p>[2.] <u>MDCH's Use of Copied Medical Records.</u></p> <p>State law applies because no Rule counterpart exists, and MDCH is not functioning as a covered entity in this context.</p>

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Rule 325.165 (Right to Amend MCIR)	[1. and 2.] A provider or MDCH may amend the immunization data, and the subject, the subject's parents or legal representative may request such amendment. MDCH may accept or deny the request and must provide any denial to such request in writing. MDCH shall expunge or reinstate immunization information requested upon written request by the subject, the subject's parents or legal representatives and maintain a record of all changes to MCIR information.	[1.] <u>Amendment by MDCH.</u> No. [2.] <u>Amendment by Provider.</u> Yes, 164.526.	[1.] <u>Amendment by MDCH.</u> State law. [2.] <u>Amendment by Provider.</u> State law.	[1.] <u>Amendment by MDCH.</u> State law applies because MDCH is not functioning as a covered entity in this context. [2.] <u>Amendment by Provider.</u> State law applies because the Rule is silent as to provider's independent right to amend.
Rule 325.166 (Confidentiality and Release of MCIR Immunization Data)	MDCH shall maintain the confidentiality of all immunization reports and shall not release the reports, immunization assessments or other information that would identify the patient. MDCH may release immunization data to certain persons, provided certain conditions are met and procedures followed.	No.	State law.	State law applies because MDCH is not functioning as a covered entity in this context.
ADMINISTRATIVE CODE RULES FOR COMMUNICABLE AND RELATED DISEASES				
Rule 325.173 (Reporting of Diseases and Infections)	[1.] Physicians, clinical laboratories and other listed health care provider personnel are required to report certain diagnosed or suspected diseases and infections to local health departments, and such reports (as to physicians and clinical laboratories) shall include specific patient information.	[1.] <u>Reporting by Health Care Providers.</u> Yes, 164.512(a)(1) and 164.512(b)(1)(i).	[1.] <u>Reporting by Health Care Providers.</u> Both.	[1.] <u>Reporting by Health Care Providers.</u> Both state law and the Rule apply because each permits disclosure for disease reporting, and the Rule permits disclosure where, as here, required by law. Note: State law contains

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	<p>[2.] Schools, camps and daycare centers are required to report certain suspected diseases or infections to local health department.</p> <p>[3.] Local health authorities receiving such reports must record and forward the reports to MDHHS and to the local health authority where the individual resides.</p>	<p>[2.] <u>Reporting by Schools, Camps and Daycare Centers.</u></p> <p>No.</p> <p>[3.] <u>Local Health Authority to Record Reports.</u></p> <p>No.</p>	<p>[2.] <u>Reporting by Schools, Camps and Daycare Centers.</u></p> <p>State law.</p> <p>[3.] <u>Local Health Authority to Record Reports.</u></p> <p>State law.</p>	<p>details regarding specific information to be disclosed.</p> <p>[2.] <u>Reporting by Schools, Camps and Daycare Centers.</u></p> <p>State law applies because schools, camps, and daycare centers are not covered entities. Note: If the report is provided by a covered health care provider retained by the school, camp or daycare center (e.g., a hybrid entity), both state law and the Rule would apply because each permits disclosure for disease reporting and as required by law.</p> <p>[3.] <u>Local Health Authority to Record Reports.</u></p> <p>State law applies because local health authorities in this context are not covered entities.</p>
Rule 325.181 (Confidentiality of Reports)	Medical and epidemiological information gathered pursuant to the reporting rules for the listed diseases and infections and which contain information identifying an individual shall be confidential and shall not be released to the public	No.	State law.	State law applies because neither local health authorities nor MDHHS is functioning as a covered entity in this context.

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	except upon the individual's consent. Reported information that is released by MDHHS or a local health authority to a legislative body shall not contain information that identifies a specific individual.			
ADMINISTRATIVE CODE RULE FOR CANCER REPORTING				
Rule 325.971 (Reporting of Cancer Cases)	<p>[1.] Health care providers (physicians, dentists, hospital superintendents and clinic directors) shall report cancer cases, including the name and address of the patient and other required data to MDHHS.</p> <p>[2.] All MDHHS cancer case reports and records are confidential.</p>	<p>[1.] <u>Cancer Reporting.</u> Yes, 164.512(a)(1) and 164.512(b)(1)(i).</p> <p>[2.] <u>Confidentiality.</u> No.</p>	<p>[1.] <u>Cancer Reporting.</u> Both.</p> <p>[2.] <u>Confidentiality.</u> State law.</p>	<p>[1.] <u>Cancer Reporting.</u> Both state law and the Rule apply because each permits disclosure without authorization for purposes of reporting disease. The Rule permits disclosure where, as here, required by law.</p> <p>[2.] <u>Confidentiality.</u> State law applies because MDHHS is not functioning as a covered entity in this context.</p>
ADMINISTRATIVE CODE RULE FOR MINIMUM STANDARDS OF HOSPITALS				
Rule 325.1028 (Hospital Medical Record Requirements)	Hospitals are required to maintain accurate and complete medical records on all admitted patients. Such records must include specific medical information enumerated in the Rule.	No.	State law.	State law applies because no Rule counterpart exists requiring completion or maintenance of medical records. Note: The Rule, however, assumes that a covered entity will create

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				and maintain medical records and that a covered entity will document which of those records are part of a “designated record set.” <i>See</i> 164.524(e)(1).
ADMINISTRATIVE CODE RULES FOR PHENYLKETONURIA TEST ON NEWBORN INFANTS				
Rules 325.1473 and 325.1475 (Laboratory Reports)	Laboratory performing phenylketonuria tests immediately must report presumptive positive test results to the responsible physician and state health director, and submit written reports of tests or unsatisfactory specimens to the responsible physician.	Yes, 164.512(a)(1) and 164.512(b)(1)(i).	Both.	Both state law and the Rule apply because the Rule permits disclosure without authorization where, as here, required by law and for public health reporting purposes.
ADMINISTRATIVE CODE RULES FOR HOMES FOR THE AGED				
Rule 325.1941 (Records of Homes for the Aged)	Homes for the aged must maintain a resident register, resident records, accident records, incident reports, employee records and work schedules. The Family Independence Agency shall have access to these records.	No.	State law.	State law applies because “homes for the aged,” as defined under the Public Health Code, MCL 333.20106.amended, are entities that only provide custodial care and are not, therefore, covered entities. Additionally, no Rule counterpart exists requiring homes for the aged to maintain specific records relating to residents of a home for the aged. Note: While many homes for the aged also provide medical services, the Rule would

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				apply to them only with respect to their covered functions.
Rule 325.1942 (Content of Homes for the Aged Records)	Homes for the aged must have a current resident record containing specific items, including health information, for each resident with all entries dated and signed.	No.	State law.	State law applies because no Rule counterpart exists requiring that records maintained by a home for the aged contain specific information about the resident.
ADMINISTRATIVE CODE RULES FOR VITAL RECORDS				
Rule 325.3203 (Confidentiality of Vital Records Collected by State Registrar)	The state registrar shall identify on vital records forms all items which are confidential or collected only for statistical, health or medical purposes and such information on vital record forms shall not be retained at a local registrar's office beyond the time required by the rules to properly file and forward the records to the state registrar.	No.	State law.	State law applies because no Rule counterpart exists, and the state registrar is not functioning as a covered entity in this context.
Rule 325.3233 (Listing of Marriages, Divorces and Deaths by Registrar)	Upon request, the state registrar or local registrar may prepare a listing of marriages, divorces or deaths containing any information of record, except for the mailing address or residence address of the registrant and information identified as being collected for statistical or health purposes.	No.	State law.	State law applies because no Rule counterpart exists, and the state registrar is not functioning as a covered entity in this context.
Rule 325.3234 (Inspection of Vital Records Maintained by Registrar)	Original vital records are not open to public inspection. Vital records at the local registrar's office shall not be open to public inspection unless the local registrar determines that a person eligible to receive a copy of a record has a legitimate research interest in inspecting the	No.	State law.	State law applies because no Rule counterpart exists, and the local registrar is not functioning as a covered entity in this context.

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	record. A registrar shall release a copy or certified copy of a vital record only to a person who is eligible to receive such a copy.			
Rule 325.3235 (Security of Records Maintained by Registrar)	Vital records registered at the state registrar or on file with the local registrar must be maintained in a locked and secured area when not under office personnel supervision. A local registrar must adopt written security procedures governing access to vital records.	No.	State law.	State law applies because no Rule counterpart exists, and neither the state registrar nor the local registrar are functioning as covered entities in this context. Note: The Rule contains security requirements for protected health information. <i>See</i> 164.530(c).
ADMINISTRATIVE CODE RULES FOR EMPLOYEE MEDICAL RECORDS AND TRADE SECRETS				
Rules 325.3451-325.3476 (Maintenance and Access to Hazardous Exposure Records Maintained by Employers)	These Rules apply to all employers who make, maintain, contract for, or have access to employee exposure or medical records pertaining to an employee's exposure to toxic substances or harmful physical agents. These Rules also apply to all such records whether or not the records relate to specific occupational safety or health rules. Employers have certain responsibilities with respect to the preservation and maintenance of these records and the provision of access to the relevant records to their employees and their representatives. Also, the employers must notify employees who are exposed to toxic substances or harmful physical agents of the existence, location and availability of these records, and the person responsible for maintaining and providing access to them. The employees have a right to access these records. Notification to employees must be conducted upon employment and at least annually thereafter.	No.	State law.	State law applies because employers are not covered entities subject to the Rule.

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ADMINISTRATIVE CODE RULES FOR FREESTANDING SURGICAL OUTPATIENT FACILITIES				
Rule 325.3828 (Informed Consent)	The owner or governing body of a freestanding surgical outpatient facility shall adopt and enforce a policy requiring that a written informed consent be obtained from the patient or the patient's guardian prior to any surgical procedure being performed on such patient and that such consent be maintained in the patient's chart.	No.	State law.	State law applies because no Rule counterpart exists requiring informed consent for surgical procedures.
Rule 325.3831 (Records to be Maintained)	[1. and 2.] In addition to individual patient medical records, a facility shall maintain administrative records, including specific data (<i>i.e.</i> , surgical procedures performed each day, monthly statistical summaries, <i>etc.</i>).	[1.] <u>Individual Patient Medical Records.</u> No. [2.] <u>Administrative</u>	[1.] <u>Individual Patient Medical Records.</u> State law. [2.] <u>Administrative</u>	[1.] <u>Individual Patient Medical Records.</u> State law applies because no Rule counterpart exists requiring the maintenance of medical records. Note: The Rule, however, assumes that a covered entity will create and maintain medical records and that the covered entity will document which of those records are part of a "designated record set." <i>See</i> 164.524(e)(1). Where administrative records and logs contain PHI (<i>e.g.</i> , patient name and procedure performed), however, the Rule's protections for confidentiality of PHI may apply. [2.] <u>Administrative</u>

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		<u>Records.</u> No.	<u>Records.</u> State law.	<u>Records.</u> State law applies because no Rule counterpart exists requiring administrative records of medical procedures performed. Note: Where administrative records and logs contain PHI (e.g., patient name and procedure performed), however, the Rule’s protections for confidentiality of PHI may apply.
Rule 325.3847 (Maintenance of Medical Records by Freestanding Surgical Outpatient Facilities)	[1.] Medical records must be maintained on all patients undergoing surgery with specific minimum criteria (<i>i.e.</i> , patient identification, medical history, laboratory findings, <i>etc.</i>), signed by the responsible physician, indexed and filed to assure ready access and future availability. Specific information must be maintained for facilities performing pregnancy terminations. [2.] Medical records shall be maintained as confidential documents.	[1.] <u>Requirement to Maintain Records.</u> No. [2.] <u>Requirement of Confidentiality.</u> Yes, 164.502(a).	[1.] <u>Requirement to Maintain Records.</u> State law. [2.] <u>Requirement of Confidentiality.</u> Both.	[1.] <u>Requirement to Maintain Records.</u> State law applies because no Rule counterpart exists requiring the maintenance of medical records. Note: The Rule, however, assumes that a covered entity will create and maintain medical records and that the covered entity will document which of those records are part of a “designated record set.” <i>See</i> 164.524(e)(1). [2.] <u>Requirement of Confidentiality.</u> Both state law and the Rule apply because each contains

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	<p>[3.] Medical records may be disclosed as otherwise provided by law or as authorized in writing by the patient.</p> <p>[4.] Medical records shall be available for survey and content review at any time by LARA.</p>	<p>[3.] <u>Permitted Disclosures.</u></p> <p>Yes, 164.502(a)(1)(iv), 164.508, and 164.512(a).</p> <p>[4.] <u>Disclosure to LARA.</u></p> <p>Yes, 164.512(a), 164.512(b)(i), and 164.512(d).</p>	<p>[3.] <u>Permitted Disclosures.</u></p> <p>Both.</p> <p>[4.] <u>Disclosure to LARA.</u></p> <p>Both.</p>	<p>compatible requirements that confidential health information be protected.</p> <p>[3.] <u>Permitted Disclosures.</u></p> <p>Both state law and the Rule apply because each allows disclosure of confidential health information pursuant to specific written authorization, and the Rule permits disclosure where, as here, required by law.</p> <p>[4.] <u>Disclosure to LARA.</u></p> <p>Both state law and the Rule apply because each permits disclosure of medical records without authorization for licensure and health oversight purposes.</p>
<p>Rule 325.3848</p> <p>(Protection of Medical Records)</p>	Adequate space must be provided for medical record storage to ensure confidentiality and protection from unauthorized access.	Yes, 164.530(c).	Both.	Both state law and the Rule apply because each requires that medical records be protected by adequate physical, technical and administrative safeguards.
ADMINISTRATIVE CODE RULES FOR HEALTH MAINTENANCE ORGANIZATIONS				
<p>Rule 325.6405</p> <p>(HMO Contracts)</p>	Among other covenants, a health maintenance organization (“HMO”) contract must provide covenants that address the confidentiality of an	Yes, 164.502(a) and 164.524.	Both, but see Column 5.	Both state law and the Rule apply because each requires that HMOs maintain the

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	enrollee's medical records and disclosure of an enrollee's right to inspect and review his or her medical records.			confidentiality of medical information about enrollees and permit enrollees' access to review their medical records. Note: Unlike state law, however, the Rule does not address specific requirements for contracts between HMOs and individual enrollees or group contracts with employers. Also, unlike the Rule, state law contains no prohibition on the enrollee's access to psychotherapy notes. In these circumstances, state law would control.
Rule 325.6805 (HMO Patient Records)	A health maintenance organization shall assure the maintenance of clinical patient records which include specific information (<i>i.e.</i> , name, past medical history, consultation reports, <i>etc.</i>).	No.	State law.	State law applies because no Rule counterpart exists requiring the maintenance of medical records. Note: The Rule, however, assumes that a covered entity will create and maintain patient records and that the covered entity will document which of those records are part of a "designated record set." <i>See</i> 164.524(e)(1).
Rule 325.6810 (Confidentiality of HMO Clinical Patient Records)	[1.] Information contained in clinical patient records shall be confidential.	[1.] <u>Confidentiality of Clinical Patient Records.</u> Yes, 164.502(a).	[1.] <u>Confidentiality of Clinical Patient Records.</u> Both.	[1.] <u>Confidentiality of Clinical Patient Records.</u> Both state law and the Rule

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	<p>[2.] Information contained in clinical patient records shall be disclosed only to authorized persons.</p> <p>[3.] Information contained in clinical patient records shall be available to LARA for examination and review.</p>	<p>[2.] <u>Right to Disclose.</u></p> <p>Yes, 164.502(a)(1)(ii), 164.502(a)(1)(iv), 164.506, and 164.508.</p> <p>[3.] <u>Disclosure to Public Health Agency.</u></p> <p>Yes, 164.512(a)(1), 164.512(b)(1)(i), and 164.512(d).</p>	<p>[2.] <u>Right to Disclose.</u></p> <p>Both, but see Column 5.</p> <p>[3.] <u>Disclosure to Public Health Agency.</u></p> <p>Both.</p>	<p>apply because each contains compatible requirements that confidential health information be protected.</p> <p>[2.] <u>Right to Disclose.</u></p> <p>Both state law and the Rule apply to the extent each would permit disclosure as authorized by the patient. Note: The state law here does not clarify or explain what is meant by “authorized persons.” In short, determining which law applies may turn on who, in a given context, is an authorized person under the state law.</p> <p>[3.] <u>Disclosure to Public Health Agency.</u></p> <p>Both state law and the Rule apply because each permits disclosure without authorization for public health and for health oversight, and the Rule permits disclosure where, as here, required by law.</p>
ADMINISTRATIVE CODE RULES FOR CANCER REPORTING				
<p>Rule 325.9053</p> <p>(Information for Cancer Reporting)</p>	<p>[1.] MDHHS is entitled to inspect patient records to verify the accuracy of cancer data reported to MDHHS. In lieu of inspection, the reporting entity may elect to submit copies of the medical</p>	<p>[1.] <u>Right of MDHHS to Review Patient Records.</u></p>	<p>[1.] <u>Right of MDHHS to Review Patient Records.</u></p>	<p>[1.] <u>Right of MDHHS to Review Patient Records.</u></p>

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	<p>records upon mutual agreement. To preserve the confidentiality of a patient's medical record, the reporting entity shall provide enumerated information to MDHHS (<i>i.e.</i>, tissue analyses, radiological examinations, <i>etc.</i>). A reporting entity may provide redacted patient medical records to comply with this rule.</p> <p>[2.] Each medical record copied shall be used only for verification, shall not be recopied and shall remain in a locked file cabinet when unused. All medical record copies shall be destroyed by MDHHS following verification or clarification.</p>	<p>Yes, 164.512(a)(1) and 164.512(b)(1)(i), 1645.512(d).</p> <p>[2.] <u>Purpose and Protection of Records.</u></p> <p>No.</p>	<p>Both.</p> <p>[2.] <u>Purpose and Protection of Records.</u></p> <p>State law.</p>	<p>Both state law and the Rule apply because each allows a public health agency to review patient records to verify the accuracy of data reported. State law would allow the covered entity to submit redacted information and the Rule does not expressly preclude doing so.</p> <p>[2.] <u>Purpose and Protection of Records.</u></p> <p>State law applies because MDHHS is not functioning as a covered entity in this context.</p>
<p>Rule 325.9054</p> <p>(Confidentiality of Cancer Reports)</p>	<p>MDHHS shall maintain the confidentiality of all cancer reports submitted and shall not release such reports with identifying information except in limited circumstances (<i>i.e.</i>, with written consent, to the patient's attorney, <i>etc.</i>). This Rule also implements specific requirements for a written request for the release of information.</p>	<p>No.</p>	<p>State law.</p>	<p>State law applies because MDHHS is not functioning as a covered entity in this context.</p>
<p>Rule 325.9055</p> <p>(Release of Cancer Registry Information)</p>	<p>[1.] Following a review by a scientific advisory panel, MDHHS will permit the release of cancer registry information, including identifying information for an approved research project.</p> <p>[2.] The study or research project shall not publish a name or other identifying information as to the cancer patients.</p>	<p>[1.] <u>Science Panel.</u></p> <p>No.</p> <p>[2.] <u>Research Projects.</u></p> <p>Yes, 164.508 and 164.512(i).</p>	<p>[1.] <u>Science Panel.</u></p> <p>State law.</p> <p>[2.] <u>Research Projects.</u></p> <p>State Law.</p>	<p>[1.] <u>Science Panel.</u></p> <p>State law applies because MDHHS is not functioning as a covered entity in this context.</p> <p>[2.] <u>Research Projects.</u></p> <p>Assuming that the study or research project is</p>

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				performed by a covered entity, -state law applies to the publication and release of identifying information because it prohibits publication of the name of any individual who is or was the subject of a report of cancer submitted to the department, and prohibits the study or research project releasing any identifying number, mark, or description which can be readily associated with an individual who is or was the subject of a report of cancer submitted to the department. Unlike the Rule, it has no provision or waiver or authorization.
Rule 325.9056 (MDHHS Sharing of Cancer Statistics with Other State and Federal Agencies)	By agreement, MDHHS may transmit transcripts or copies of cancer diagnosis reports to state or national cancer registries. The agreement shall require that the transcripts or records be used for statistical purposes only and that the identity of the patient shall not be released.	No.	State law.	State law applies because MDHHS is not functioning as a covered entity in this context.
RULES FOR BIRTH DEFECTS REPORTING				
Rule 325.9072 (Reportable Birth Defects)	Diagnoses of birth defects shall be reported by hospitals and by clinical laboratories within 30 days of diagnosis on prescribed forms.	Yes, 164.512(a) and 164.512(b)(1)(i).	Both.	Both state law and the Rule apply because the Rule permits disclosure, where, as here, required by law and for public health purposes.

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Rule 325.9073 (Quality Assurance)	<p>[1.] All hospitals and clinical laboratories reporting birth defects must provide MDCH with access to or copies of a patient's medical record for verification purposes. In order to ensure confidentiality, a reporting entity may provide either limited information (<i>i.e.</i>, reports of diagnosis, notations, <i>etc.</i>) or redacted patient records.</p> <p>[2.] If copies are submitted, they shall be used for verification purposes only, shall not be recopied and shall be kept in a locked file cabinet when unused. Such copies must be promptly destroyed following verification or clarification the reported data.</p>	<p>[1.] <u>Access for Verification.</u></p> <p>Yes, 164.512(a)(1) and 164.512(b)(1)(i).</p> <p>[2.] <u>Copies and Destruction of Copies.</u></p> <p>No.</p>	<p>[1.] <u>Access for Verification.</u></p> <p>Both.</p> <p>[2.] <u>Copies and Destruction of Copies.</u></p> <p>State law.</p>	<p>[1.] <u>Access for Verification.</u></p> <p>Both state law and the Rule apply because the Rule permits disclosure where, as here, required by law and for public health purposes.</p> <p>[2.] <u>Copies and Destruction of Copies.</u></p> <p>State law applies because MDCH is not functioning as a covered entity in this context.</p>
Rule 325.9074 (Confidentiality of Reports)	MDCH shall maintain confidentiality of all birth defect reports and shall not release the reports or any identifying information except in limited circumstances (<i>i.e.</i> , to the patient, a court-appointed guardian, <i>etc.</i>). The specific requirements for a written request for release of information are set forth in the Rule. MDCH may release birth defect registry information to a study or research project if prior consent of the patient or the patient's legal guardian was obtained. MDCH may authorize information from the birth defect registry to be used within MDCH to offer medical or other support services to the patient.	Yes, 164.512(b)(2).	State law.	State law applies because MDCH is not functioning as a covered entity in this context.
Rule 325.9075 (Release for Research)	<p>[1.] Following review by a scientific advisory panel, MDCH may authorize the release of birth defect registry information to a study or research project;</p> <p>[2.] provided the name or other identifying</p>	<p>[1.] <u>Science Panel.</u></p> <p>Yes, 164.512(b)(2).</p> <p>[2.] <u>Research Projects.</u></p>	<p>[1.] <u>Science Panel.</u></p> <p>State law.</p> <p>[2.] <u>Research Projects.</u></p>	<p>[1.] <u>Science Panel.</u></p> <p>State law applies because MDCH is not functioning as a covered entity.</p> <p>[2.] <u>Research Projects.</u></p>

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	information of a patient shall not be disclosed as evidenced by a formal agreement. The agreement must provide specific covenants (<i>i.e.</i> , pre-publication copies to MDCH, released information shall not be copied, <i>etc.</i>).	Yes, 164.508 and 164.512(i)	Both.	Assuming that the study or research project is performed by a covered entity, -state law applies because state law contains no provision for a waiver or authorization for disclosure and requires that researchers maintain the confidentiality of the study or research project participant's confidential health information.
ADMINISTRATIVE CODE RULES FOR BLOOD LEAD ANALYSIS REPORTING				
Rule 325.9085 (Quality Assurance)	<p>[1.] To assure quality of clinical laboratory reporting, MDCH has the right to inspect copies of medical records. The reporting entity shall only submit those portions of the medical record dealing with blood lead testing.</p> <p>[2.] MDCH shall protect the medical records submitted to it using reasonably appropriate privacy and security safeguards. After verification, MDCH shall promptly destroy the copies.</p>	<p>[1.] <u>Right to Inspect.</u> Yes, 164.512(a)(1) and 164.512(b)(1)(i).</p> <p>[2.] <u>Security.</u> No.</p>	<p>[1.] <u>Right to Inspect.</u> Both.</p> <p>[2.] <u>Security.</u> State law.</p>	<p>[1.] <u>Right to Inspect.</u> Both state law and the Rule apply because the Rule permits disclosure where, as here, required by law and for public health purposes.</p> <p>[2.] <u>Security.</u> State law applies because MDCH is not a covered entity.</p>
Rule 325.9086 (Confidentiality of Blood Lead Testing Reports)	MDCH shall maintain the confidentiality of all blood lead testing reports and shall not release the reports or any identifying information unless prior written consent of the patient or the patient's legal guardian is received, if necessary for law	No.	State law.	State law applies because MDCH is not a covered entity.

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	enforcement investigation or prosecution of a property manager, housing commission, or owner of a rental unit, or the department determines that the release is crucial to protect the public health against imminent threat or danger. Medical and epidemiological information released to a legislative body shall not contain identifying information. Aggregate epidemiological information concerning public health that is publicly released shall not contain identifying information.			

RULES FOR HOSPICE CARE

Rule 325.13109 (Hospice Care)	[1.] A hospice care program shall maintain written policies and procedures relating to, among other things: the confidentiality of medical information; the release or provision of copies of medical information to a patient-family unit or authorized person with prior written consent of the patient or guardian; transfer of medical information to another hospice program or inpatient unit; and record retention for at least 5 years, or as to minors, 3 years after a minor comes of age.	[1.] <u>Policies and Procedures.</u> Yes, 164.530(i) and 164.530(j).	[1.] <u>Policies and Procedures.</u> Both.	[1.] <u>Policies and Procedures.</u> Both state law and the Rule apply because each contains compatible requirements for written policies and procedures regarding confidentiality of medical information. No Rule counterpart exists requiring that records be maintained for any given period, though 164.530(j)(2) requires privacy policies and related documentation to be kept for 6 years. State law and the Rule requirements in this regard address different classes of documents to be retained and are compatible.
	[2.] This Rule also provides for notice to LARA of the storage location of records if a hospice	[2.] <u>Notice of Record Storage.</u>	[2.] <u>Notice of Record Storage.</u>	[2.] <u>Notice of Record Storage.</u>

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	<p>ceases operation.</p> <p>[3.] This Rule also provides for periodic review of policies and procedures by a hospice and for availability of policies and procedures on-site for inspection by LARA.</p>	<p>No.</p> <p>[3.] <u>Review of and Availability of Policies and Procedures.</u></p> <p>Yes, 164.512(b)(1)(i), 164.512(d), and 164.530(i).</p>	<p>State law.</p> <p>[3.] <u>Review of and Availability of Policies and Procedures.</u></p> <p>Both.</p>	<p>State law applies because the Rule does not require policies in this context.</p> <p>[3.] <u>Review of Availability of and Policies and Procedures.</u></p> <p>Both state law and the Rule apply because each permits access by public health agencies to the policies for review and revision as appropriate.</p>
Rule 325.13205 (LARA Licensure Surveys of Hospices)	LARA may conduct a survey and investigation of a hospice for initial licensure that includes, among other things, inspection and copying of patient-family unit medical records.	Yes, 164.512(d).	Both.	Both state law and the Rule apply because the Rule permits disclosure without authorization by a hospice for health oversight.
Rule 325.13213 (Inspection of Licensure Records for Hospice Care Facilities)	Unless otherwise provided by law, records pertaining to the licensure and certification of hospice care facilities are available for public inspection and copying. LARA shall delete any confidential information contained in these records.	No.	State law.	State law applies because LARA is not functioning as a covered entity in this context.
ADMINISTRATIVE CODE RULES FOR LICENSURE OF SUBSTANCE ABUSE TREATMENT PROGRAMS AND MENTAL HEALTH AND SUBSTANCE ABUSE SERVICES				
Rule 325.14205 (Investigations and Inspections)	While conducting an investigation for initial licensure or renewal of licensure of a substance abuse treatment program, MDCH may inspect and copy patient clinical records.	Yes, 164.512(a)(1) and 164.512(d); see also 42 CFR 2.13(a) and 2.53(b).	Both.	Part 2 permits copying or removal of records containing patient identifying information if there is a written agreement containing the elements of 42 CFR 2.53(b). If Part 2

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				does not apply to the substance abuse program, both state law and the Rule apply because each permits disclosure without authorization by health care providers (e.g., substance abuse treatment programs) for health oversight activities and as required by law
Rule 325.14304 (Substance Abuse Treatment Program Patient's Right to Review Records)	<p>[1.] A substance abuse patient has the right to review, copy or receive a summary of his or her program records, unless in the judgment of the program director, such disclosure would be detrimental to the recipient or others. If a patient is denied the right to review all or part of his or her records, the reason for the denial must be provided in writing to the patient.</p> <p>[2.] If disclosure would be detrimental, the patient is permitted to review the non-detrimental portions of his or her record.</p>	<p>[1.] <u>Patient's Right to Access Records.</u></p> <p>Yes, 164.524(a)(1), 164.524(a)(3)(i), 164.524(b) and 164.524(d); see also 42 CFR 2.23.</p> <p>[2.] <u>Review of Portions of Record.</u></p>	<p>[1.] <u>Patient's Right to Access Records.</u></p> <p>Both.</p> <p>[2.] <u>Review of Portions of Record.</u></p>	<p>[1.] <u>Patient's Right to Access Records.</u></p> <p>Both state law and the Rule apply because each grants access to confidential health information, and each contains compatible requirements that the reasons for denial of access be provided to the patient in writing. The Rule contains additional requirements that are not contrary to state law (e.g., if the covered entity denies such access, the patient must receive a written denial within 30 days after receipt of the request and has a right to have the decision reviewed).</p> <p>[2.] <u>Review of Portions of Record.</u></p>

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	[3.] An explanation of which portions of the record are detrimental and why shall be stated in the patient record and shall be signed by the program director.	Yes, 164.524(d)(1). [3.] <u>Basis for Denial.</u> Yes, 164.524(d)(2), 164.530(j)(1)(ii), and 164.530(j)(1)(iii).	Both. [3.] <u>Basis for Denial.</u> Both.	Both state law and the Rule apply because each requires disclosure to the patient of non-detrimental portions of the patient's record. [3.] <u>Basis for Denial.</u> Both state law and the Rule apply because each requires that the covered entity maintain documentation of the written denial in its records.
Rule 325.14910 (Content and Maintenance of Patient Records for Substance Abuse Treatment Programs)	[1.] Patient records for substance abuse treatment programs must contain specified information pertaining to the patient, including, for example, results of examinations, tests and assessment information and treatment plans. [2.] Substance drug abuse programs must provide sufficient locked and secured facilities for the storage, processing and handling of client case records. If a program stores patient data electronically, security measures must be developed to prevent inadvertent and	[1.] <u>Content of Patient Records.</u> No. [2.] <u>Security for Patient Records.</u> Yes, 164.530(c)-; see also 42 CFR 2.16.	[1.] <u>Content of Patient Records.</u> State law. [2.] <u>Security for Patient Records.</u> Both.	[1.] <u>Content of Patient Records.</u> State law applies because no Rule counterpart exists pertaining to the required content of patient records. Note: The Rule, however, assumes that a covered entity will create and maintain medical records and that a covered entity will document which of those records are part of a "designated record set." See 164.524(e)(1). [2.] <u>Security for Patient Records.</u> Both state law and the Rule apply because each requires covered entities to

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	<p>unauthorized access to data files.</p> <p>[3.] Appropriate patient records shall be readily accessible to those staff members who provide services directly to the patient.</p> <p>[4.] Patient records shall be maintained for not</p>	<p>[3.] <u>Access to Patient Records by Staff.</u></p> <p>Yes, 164.502(a)(1)(ii), 164.502(b), and 164.514(d); see also 42 CFR 2.13(a).</p> <p>[4.] <u>Retention of Patient</u></p>	<p>[3.] <u>Access to Patient Records by Staff.</u></p> <p>The Rule.</p> <p>[4.] <u>Retention of Patient</u></p>	<p>reasonably safeguard confidential health information with appropriate administrative, technical and physical safeguards.</p> <p>[3.] <u>Access to Patient Records by Staff.</u></p> <p>The Rule applies because although state law and the Rule both permit access by program personnel in treatment, the Rule imposes limitations- on those personnel with access rights who are not health care providers, based on the “minimum necessary” standard- Part 2 contains a version of the minimum necessary rule for disclosures at 42 CFR 2.13(a), that “any disclosure made under these regulations must be limited to that information which is necessary to carry out the purpose of the disclosure.” State law, on the other hand, would permit all personnel involved in treatment to access the entire record.</p> <p>[4.] <u>Retention of Patient</u></p>

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	less than 3 years after services are discontinued.	<u>Records.</u> No.	<u>Records.</u> State law.	<u>Records.</u> State law applies because it requires the maintenance of medical records. Note: The Rule, however, assumes that a covered entity will create and maintain medical records and that the covered entity will document which of those records are part of a “designated record set.” <i>See</i> 164.524(e)(1).
ADMINISTRATIVE CODE RULES FOR NURSING HOMES AND NURSING CARE FACILITIES				
Rule 325.20112 (Nursing Homes’ Policies for Access to Records)	A nursing home must develop and publicly post its policies relating to patient rights, including a policy providing reasonable access to patient records for inspection and copying upon receipt of a written request.	Yes, 164.530(i).	Both.	Both state law and the Rule apply because each requires the covered entity to develop and maintain policies and procedures for patient access to and copies of records. Unlike the Rule, state law requires that the policy be posted in the facility. <i>See also</i> MCL 333.20201 discussed above in this Matrix.
Rule 325.20215 (Nursing Home Licensure Records)	Unless otherwise provided by law, records pertaining to the licensure and certification of a nursing home are available for public inspection and copying. LARA shall delete from these records any information exempt from disclosure under law.	No.	State law.	State law applies because LARA is not functioning as a covered entity in this context.

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<p>Rule 325.20404</p> <p>(Life-Threatening Accident or Injuries in Nursing Home)</p>	<p>[1.] If a nursing home patient has a life-threatening accident or injury, the nursing home administrator shall notify the attending physician, or</p> <p>[2.] the patient's legal guardian.</p> <p>[3.] In the absence of a legal guardian or if the nursing home is unable to contact the legal guardian, the nursing home shall notify the next-of-kin or the person responsible for placing the patient in the nursing home.</p> <p>[4.] The suspected occurrence of any reportable disease or condition shall be reported to MDHHS and the local health department in accordance with regulations. The nursing home administrator shall furnish all available information related to such disease or poisoning and cooperate with resolution of the problem.</p>	<p>[1.] <u>Notification to Physician.</u></p> <p>Yes, 164.501 (definition of treatment) and 164.512(a)(1).</p> <p>[2.] <u>Notification to Legal Guardian.</u></p> <p>Yes, 164.502(g)(1).</p> <p>[3.] <u>Notification of Next-of-Kin.</u></p> <p>Yes, 164.510(b)(1)(i).</p> <p>[4.] <u>Reporting to MDHHS or Local Health Department.</u></p> <p>Yes, 164.502(a), 164.512(a)(1), and 164.512(b)(1)(i).</p>	<p>[1.] <u>Notification to Physician.</u></p> <p>Both.</p> <p>[2.] <u>Notification to Legal Guardian.</u></p> <p>Both.</p> <p>[3.] <u>Notification of Next-of-Kin.</u></p> <p>Both.</p> <p>[4.] <u>Reporting to MDHHS or Local Health Department.</u></p> <p>Both.</p>	<p>[1.] <u>Notification to Physician.</u></p> <p>Both state law and the Rule apply because the Rule permits disclosure where, as here, required by law.</p> <p>[2.] <u>Notification to Legal Guardian.</u></p> <p>Both state law and the Rule apply because each permits disclosure to legal guardians.</p> <p>[3.] <u>Notification of Next-of-Kin.</u></p> <p>Both state law and the Rule apply because each permits disclosure to persons responsible for the patient's health care.</p> <p>[4.] <u>Reporting to MDHHS or Local Health Department.</u></p> <p>Both state law and the Rule apply because the Rule permits disclosure for public health activities and where, as here, required by law.</p>

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<p>Rule 325.21101</p> <p>(Disclosure of Nursing Home Patient Records to LARA)</p>	<p>Patient clinical records, among other records, must be kept in the nursing home available for review and copying by LARA.</p>	<p>Yes, 164.512(a)(1), 164.512(b)(1)(i), and 164.512(d).</p>	<p>Both.</p>	<p>Both state law and the Rule apply to the disclosure of the confidential health information to LARA by the nursing home because the Rule permits disclosure without authorization for health oversight activities and where, as here, required by law.</p>
<p>Rule 325.21203</p> <p>(Medical Audits by Nursing Homes)</p>	<p>The nursing home and at least one attending physician must complete an annual medical audit to ensure, among other things, the adequacy of documentation, clinical information and data in a patient's clinical record. Audit results and specific recommendations for corrected action or improvement must be reported to the nursing home owner.</p>	<p>No.</p>	<p>State law.</p>	<p>State law applies because no Rule counterpart exists regarding an annual medical audit. Note: The Rule, however, includes audits as part of the definition of health care operations. <i>See</i> 45 C.F.R. § 164.501.</p>
<p>Rule 325.21411</p> <p>(Transfer Agreements Between Child Care Home and Hospital Pediatric Department)</p>	<p>A child care home or a home with a child care unit shall have in effect a written transfer agreement with at least one hospital pediatric department to provide services to children and to provide for the exchange of necessary medical and other information.</p>	<p>No.</p>	<p>State law.</p>	<p>State law applies because no Rule counterpart exists requiring a written transfer agreement.</p>

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ADMINISTRATIVE CODE RULES OCCUPATIONAL HEALTH STANDARDS FOR HAZARDOUS WASTE OPERATIONS AND EMERGENCY RESPONSE				
Rules 325.51474, 325.51881 and 325.77111 (Recordkeeping Requirements for Certain Occupational Health Exposures)	An employer must maintain accurate records of employee exposures to formaldehyde, cadmium and benzene containing specific information for employees under medical surveillance, including the physician's written opinion, list of employee health complaints, and a copy of the medical examination results. These employee records shall be provided upon request for examination and copying by the subject employee, former employee, or anyone with the specific consent of the subject or former employee.	No.	State law.	State law applies because an employer is not a covered entity subject to the Rule.
Rule 325.52115 (Physician's Written Opinion Regarding Employee)	[1. and 2.] An employer shall obtain and furnish an employee with a copy of the attending physician's written opinion following each examination or consultation under these provisions with respect to occupational medical surveillance of the workplace.	[1.] <u>Disclosure to Employer by Physician.</u> Yes, 164.512(b)(1)(v). [2.] <u>Disclosure by Employer to Employee.</u> No.	[1.] <u>Disclosure to Employer by Physician.</u> Both. [2.] <u>Disclosure by Employer to Employee.</u> State law.	[1.] <u>Disclosure to Employer by Physician.</u> Although employers are not covered entities under the Rule, both state law and the Rule apply with respect to disclosures by physicians to employers in this context because the Rule permits disclosure of confidential health information to an employer about an employee for workplace medical surveillance. [2.] <u>Disclosure by Employer to Employee.</u> State law applies because no Rule counterpart exists and the employer is not a covered entity subject to the

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	[3.] The physician's written opinion provided to the employer and the employee shall not reveal specific findings or diagnosis unrelated to the occupational environment.	[3.] <u>Content of Physician's Written Opinion.</u> Yes, 164.502(b) and 164.514(d).	[3.] <u>Content of Physician's Written Opinion.</u> Both.	Rule. [3.] <u>Content of Physician's Written Opinion.</u> Both state law and the Rule apply because while no Rule counterpart exists as to the content of a physician's written opinion, state law and the Rule each require that the use and disclosure of confidential health information be limited to the purposes for which it is needed.
Rule 325.52116 (Employer Retention of Medical Records)	For occupational safety and health purposes, an employer shall retain medical records for any of its employees subject to medical surveillance. Such records may be produced to third parties as provided for by other rules.	No.	State law.	State law applies because the employer is not a covered entity subject to the Rule.
ADMINISTRATIVE CODE RULES FOR BLOODBORNE INFECTIOUS DISEASE STANDARD				
Rule 325.70013 (Records of Vaccination and Post Exposure Follow-up)	An employer shall maintain medical records relating to the medical examination and vaccination of employees and other health care follow-up of employee exposure to blood borne diseases, including HIV and Hepatitis B. Such employer shall also make such records available to health care professionals responsible for administering employee vaccinations.	No.	State law.	State law applies because the employer is not a covered entity subject to the Rule.

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Rule 325.70015 (Employer's Duties as to Medical Records)	Employers of employees who have occupational exposure to blood or other potentially infectious materials must establish, maintain, and keep confidential medical records evidencing the medical evaluations required under the occupational safety and health standards. Such records may be disclosed only as required by law or pursuant to the employee's written consent. LARA or its representative may access such records.	No.	State law.	State law applies because the employer is not a covered entity subject to the Rule.
ADMINISTRATIVE CODE RULES FOR HAZARDOUS WORK IN LABORATORIES				
Rule 325.70108 (Medical Examination Records for Lab Accidents)	[1. And 2.] An employer shall provide all employees who work with hazardous chemicals a medical examination and consultation when an employee exhibits symptoms associated with hazardous chemical exposure, laboratory accidents, <i>etc.</i> The employer shall obtain a written opinion from the examining physician relating to the results of the employee's examination.	[1.] <u>Disclosure to Employer by Physician.</u> Yes, 164.512(b)(1)(v). [2.] <u>Disclosure by Employer to Employee.</u> No.	[1.] <u>Disclosure to Employer by Physician.</u> Both. [2.] <u>Disclosure by Employer to Employee.</u> State law.	[1.] <u>Disclosure to Employer by Physician.</u> Although the employer is not a covered entity under the Rule, both state law and the Rule apply because the Rule permits a health care provider to disclose confidential health information to an employer about an employee for workplace medical surveillance. [2.] <u>Disclosure by Employer to Employee.</u> State law applies because no Rule counterpart exists, and the employer is not a covered entity.

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	[3.] Such opinion shall exclude findings of diagnosis unrelated to the occupational exposure.	[3.] <u>Content of Physician's Written Opinion.</u> Yes, 164.502(a) and 164.514(d).	[3.] <u>Content of Physician's Written Opinion.</u> Both.	[3.] <u>Content of Physician's Written Opinion.</u> Both state law and the Rule apply because while no Rule counterpart exists as to the content of a physician's written opinion, state law and the Rule each require that the use and disclosure of confidential health information be limited to the purposes for which it is needed.
Rule 325.70111 (Employer to Maintain Exposure and Exposure-Related Medical Records)	An employer must maintain employee records, including any medical consultations or examinations related to workplace hazards. The employer must assure that these records are protected from unauthorized disclosure.	No.	State law.	State law applies because the employer is not a covered entity subject to the Rule.
ADMINISTRATIVE CODE GENERAL RULES FOR LICENSING OF FACILITIES				
Rule 330.1239 (Construction Requirements of Psychiatric Nursing Units)	Among other requirements, a psychiatric nursing unit must have a separate charting area with acoustical privacy. If patient records cannot be read from outside the charting area, the psychiatric nursing unit must have a viewing window to permit observation of patient areas by the chart nurse or physician.	Yes, 164.530(c).	Both.	Both state law and the Rule apply because each requires the implementation of appropriate physical safeguards to protect the privacy of confidential health information.

1. Citation	2. Brief Summary of Pertinent Provision	3. Is There a HIPAA Counterpart?	4. Which Law Applies?	5. Why?
Rule 330.1252 (Public Inspection of MDCIS Records)	MDCIS shall make available for public inspection hospital licensure application records which may contain redacted confidential information contained in the application.	No.	State law.	State law applies because MDCIS is not functioning as a covered entity in this context.
Rule 330.1276 (Hospitals to Maintain Patient Records)	<p>[1.] A hospital shall maintain designated records, including records containing detailed patient information.</p> <p>[2.] All medical records shall remain confidential.</p> <p>[3.] MDCIS may review records maintained by the hospital, including patient medical records.</p>	<p>[1.] <u>Maintenance of Records.</u></p> <p>No. The Rule does not include medical record retention requirements.</p> <p>[2.] <u>Confidentiality.</u></p> <p>Yes, 164.502(a).</p> <p>[3.] <u>MDCIS Review of Patient Records.</u></p> <p>Yes, 164.512(a)(1), 164.512(b)(1)(i), and 164.512(d).</p>	<p>[1.] <u>Maintenance of Records.</u></p> <p>State law.</p> <p>[2.] <u>Confidentiality.</u></p> <p>Both.</p> <p>[3.] <u>MDCIS Review of Patient Records.</u></p> <p>Both.</p>	<p>[1.] <u>Maintenance of Records.</u></p> <p>State law applies because no Rule counterpart exists requiring the maintenance of medical records. Note: The Rule, however, assumes that a covered entity will create and maintain medical records and that the covered entity will document which of those records are part of a “designated record set.” <i>See</i> 164.524(e)(1).</p> <p>[2.] <u>Confidentiality.</u></p> <p>Both state law and the Rule apply because each contains compatible requirements that confidential health information be protected.</p> <p>[3.] <u>MDCIS Review of Patient Records.</u></p> <p>Both state law and the Rule apply because each permits disclosure without authorization for public health purposes and for health oversight, and the</p>

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				Rule permits disclosure where, as here, required by law.
ADMINISTRATIVE CODE RULE FOR RIGHTS OF RECIPIENTS				
Rule 330.7051 (Disclosures Regarding Mental Health Proceedings)	<p>[1.] A provider shall document any disclosures of a recipient's treatment records, and such documentation shall indicate: the information released; to whom the information was released; the purpose claimed for requesting the information and a statement of how the disclosed information is germane to the purpose; the statutory authority for the release of the information pursuant to MCL 330.1748 (confidentiality of mental health records), discussed above in this Matrix; and a statement that the recipient of the disclosed information was informed that further disclosure must be consistent with the authorized purpose for the disclosure.</p> <p>[2.] Unless otherwise provided by law, the director of a provider may refuse to disclose a recipient's treatment information where such disclosure would be detrimental to the recipient or others. If disclosure is denied, the provider shall determine whether a portion of the information can be released.</p>	<p>[1.] <u>Disclosure of Record.</u> Yes, 164.502(b), 164.514(d), 164.528(a), 164.528(d) and 164.530(j).</p> <p>[2.] <u>Withholding of Disclosure.</u> Yes, 164.524(a)(3)(i) and 164.524(d)(1).</p>	<p>[1.] <u>Disclosure of Record.</u> State law.</p> <p>[2.] <u>Withholding of Disclosure.</u> Both.</p>	<p>[1.] <u>Disclosure of Record.</u> State law applies because state law is more comprehensive than the requirements under the Rule, which does not require a covered entity to document disclosures of PHI for treatment, payment or health care operations purposes. 45 C.F.R. § 164.528.</p> <p>[2.] <u>Withholding of Disclosure.</u> Both state law and the Rule apply because each allows a provider to withhold all or part of a recipient's treatment information following a determination that disclosure would be detrimental, and each provides for release of that portion of the information</p>

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	<p>[3.] A determination of detriment shall not be made if the benefit to the recipient from the disclosure outweighs the detriment.</p> <p>[4.] Information about a recipient of health services shall be provided to an attorney who represents the recipient where the attorney presents a valid consent of the recipient, the recipient's legal guardian, the parents of a minor recipient or where the attorney has been retained or appointed to represent a minor recipient pursuant to the minor recipient's objection to hospitalization. Disclosures to attorneys who do not represent the recipient are permitted only pursuant to a valid authorization or court order.</p> <p>[5.] A recipient's treatment information shall be provided to physicians or psychologists acting under a court order for the purposes of diagnosing the recipient's current condition.</p>	<p>[3.] <u>Determination of Detriment.</u></p> <p>No.</p> <p>[4.] <u>Disclosure to Attorney.</u></p> <p>Yes, 164.502(a)(1)(iv), 164.502(g), 164.508, 164.512(a)(2), and 164.512(e)(1)(i).</p> <p>[5.] <u>Disclosure for Diagnosis.</u></p> <p>Yes, 164.508(a)(2)(ii), 164.512(a)(2), and 164.512(e)(1)(i).</p>	<p>[3.] <u>Determination of Detriment.</u></p> <p>State law.</p> <p>[4.] <u>Disclosure to Attorney.</u></p> <p>Both.</p> <p>[5.] <u>Disclosure for Diagnosis.</u></p> <p>Both.</p>	<p>that is not detrimental to the recipient or others.</p> <p>[3.] <u>Determination of Detriment.</u></p> <p>State law applies because no Rule counterpart exists setting the standard by which a professional must exercise judgment regarding patient detriment.</p> <p>[4.] <u>Disclosure to Attorney.</u></p> <p>Both state law and the Rule apply because the Rule permits disclosure where, as here, required by law and is pursuant to a valid authorization or court order.</p> <p>[5.] <u>Disclosure for Diagnosis.</u></p> <p>Both state law and the Rule apply because state law requires and the Rule permits a provider to disclose a recipient's treatment information, including psychotherapy notes, pursuant to a court order.</p>

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	<p>[6.] Privileged information may not be disclosed except as permitted or required by law.</p> <p>[7.] A prosecutor may be given nonprivileged information and certain privileged information if the information is relevant to the admission proceeding. The information may include the names of witnesses to acts that support the criteria for involuntary admission, information relative to alternatives to admission to a hospital or facility or other information designated in the policies of the provider.</p> <p>[8.] The holder of the recipient's information may disclose it without consent of the recipient or the recipient's representative for purposes of enabling the recipient to apply for or receive benefits that are payable to or collectible by the</p>	<p>[6.] <u>Disclosure of Privileged Information.</u> Yes, 164.512(a)(1).</p> <p>[7.] <u>Disclosure to Prosecutor.</u> Yes, 164.512(j).</p> <p>[8.] <u>Disclosure for Payment.</u> Yes, 164.502(a)(1)(ii) and 164.506.</p>	<p>[6.] <u>Disclosure of Privileged Information.</u> Both.</p> <p>[7.] <u>Disclosure to Prosecutor.</u> Both, but see Column 5.</p> <p>[8.] <u>Disclosure for Payment.</u> Both.</p>	<p>[6.] <u>Disclosure of Privileged Information.</u> To the extent state law requires disclosure, both state law and the Rule apply because the Rule permits disclosure where, as here, required by law. To the extent state law merely permits disclosure, the Rule would apply because it is contrary to and more protective than state law.</p> <p>[7.] <u>Disclosure to Prosecutor.</u> Both state law and the Rule apply because each allows disclosure without authorization to prevent harm to the individual or the public. To the extent that state law provides a limited waiver of the physician/patient privilege, state law applies because the Rule does not expressly address the scope of state law privileges.</p> <p>[8.] <u>Disclosure for Payment.</u> Both state law and the Rule apply because neither requires consent or</p>

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	provider.			authorization prior to a provider's disclosure of confidential health information for payment purposes. The Rule, additionally, does not require health plans to obtain consent or authorization for payment purposes and, thus both state law and the Rule apply to health plans that elect not to obtain consent or authorization.
ADMINISTRATIVE CODE RULES FOR ADULT FOSTER CARE				
Rules 400.14316 and 400.15316 (Maintenance of Resident Records by Adult Foster Care Group Homes)	<p>[1.] An adult foster care group home shall maintain complete and separate records in the group home for each resident that include, among other things, identifying information and health records.</p> <p>[2.] These records must be maintained in the group home for 2 years after the date of the</p>	<p>[1.] <u>Maintenance of Resident Records.</u> No.</p> <p>[2.] <u>Record Retention.</u></p>	<p>[1.] <u>Maintenance of Resident Records.</u> State law.</p> <p>[2.] <u>Record Retention.</u></p>	<p>[1.] <u>Maintenance of Resident Records.</u> State law applies because no Rule counterpart exists requiring maintenance of complete medical records. Note: The Rule, however, assumes that a covered entity will create and maintain medical and payment records and that the covered entity will document which of those records are part of a "designated record set." See 164.524(e)(1).</p> <p>[2.] <u>Record Retention.</u></p>

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	resident's discharge from the group home.	No.	State law.	State law applies because no Rule counterpart exists requiring maintenance of complete medical records. Note: The Rule, however, assumes that a covered entity will create and maintain medical records and that the covered entity will document which of those records are part of a "designated record set." See 164.524(e)(1).
ADMINISTRATIVE CODE RULES FOR WORKER'S COMPENSATION HEALTH CARE SERVICES				
Rule 418.101402 (Access by BWC)	<p>[1.] BWC shall have access to necessary worker's compensation health care records and other information concerning health care or health care services.</p> <p>[2.] BWC shall assure confidentiality of the individual case record regarding health care services provided to any individual.</p>	<p>[1.] <u>Access by BWC.</u> Yes, 164.502(a), 164.512(a)(1) and 164.512(l).</p> <p>[2.] <u>Confidentiality.</u> No.</p>	<p>[1.] <u>Access by BWC.</u> Both.</p> <p>[2.] <u>Confidentiality.</u> State law.</p>	<p>[1.] <u>Access by BWC.</u> Both state law and the Rule apply because each permits disclosure by covered entities for compliance with worker's compensation laws and payment of worker's compensation benefits.</p> <p>[2.] <u>Confidentiality.</u> State law applies because BWC is not a covered entity.</p>

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MICHIGAN CASE LAW				
<i>Meier v Awaad</i> , 299 Mich App 655 (2013) (Physician/Patient Privilege)	Physician/patient privilege is an absolute bar prohibiting unauthorized disclosure of patients' medical records, including when the patients are not parties to the action. Physician/patient privilege applies even when patient names are not disclosed.	No.	State law.	State law applies because no Rule counterpart exists regarding physician/patient privilege.
<i>Antoinne D. Tomas v 1156728 Ontario Inc a/k/a CB Deliveries and Danny Mysklik</i> , 979 FSupp2d 780 (2013) (Waiver of Physician-Patient Privilege Upon Filing Lawsuit)	HIPAA does not allow for automatic waiver of the physician-patient privilege upon the filing of a lawsuit, and therefore, MCL 600.2157 is not "more stringent" and is superseded by HIPAA. Moreover, unlike Michigan law, HIPAA does not permit unfettered access to a patient's medical providers to conduct <i>ex parte</i> interviews just because a lawsuit has been filed.	Yes. 45 C.F.R. § 164.512.	HIPAA.	HIPAA does not allow for automatic waiver of the physician-patient privilege upon the filing of a lawsuit.
<i>Dorris v Detroit Osteopathic Hospital</i> , 460 Mich. 26 (1999) (Physician/Patient Privilege)	The names of the unknown patients are protected by the physician/patient privilege, and defendant hospitals have a duty to refrain from disclosure.	No.	State law.	Because Michigan law is more protective of patients' privacy than HIPAA, Michigan law applies to plaintiff's attempted discovery of a patient's information.
<i>People v Sullivan</i> , 231 Mich App 510	Defendant's voluntary release of medical records in connection with an insanity defense constituted	No.	State law.	State law applies because no Rule counterpart exists

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(1998) (Physician/Patient Privilege)	a waiver of the physician/patient privilege.			regarding the application of the physician/patient privilege.
<i>Oakland County Prosecutor v Department of Corrections</i> , 222 Mich App 654 (1997) (Psychologist/Patient Privilege and FOIA)	Where a prosecutor seeks records of a prisoner's psychological or psychiatric treatment pursuant to a FOIA request for purposes of evaluation of a parole board decision, records are not protected by the psychologist/patient privilege. By seeking parole, a prisoner places his or her mental health at issue and gives implicit consent that such information may be furnished to the parole board to enable it to fulfill its statutory duties.	Yes, 164.512(a).	Both.	Although the Rule does not address the psychologist/patient privilege, both state law and the Rule apply because the Rule permits disclosure of confidential health information where, as here, required by law.
<i>Landelius, et al., v Rafko</i> , 453 Mich 470 (1996) (Physician/Patient Privilege)	Defendant is estopped from asserting a physician/patient privilege with respect to medical records previously disclosed. An implied waiver of the physician/patient privilege occurred with regard to the same underlying event.	No.	State law.	State law applies because no Rule counterpart exists regarding the assertion of the physician/patient privilege in this context.
<i>Doe v Mills, et al</i> , 212 Mich App 73 (1995) (Waiver of Common Law Right of Privacy)	In the context of an invasion of privacy claim, no express or implied waiver of common law privacy rights occurs in connection with disclosure of private and embarrassing facts found in a dumpster outside of an abortion clinic.	No.	State law.	State law applies because no Rule counterpart exists regarding what constitutes a waiver of common law privacy rights or the elements of the tort of invasion of privacy.
<i>People v Keskimaki</i> , 446 Mich 240, 521 NW 2d 241 (1994) (Accident)	[1.] Generally, information relating to medical treatment falls within the ambit of physician/patient privilege.	[1.] <u>Physician/Patient Privilege</u> . No.	[1.] <u>Physician/Patient Privilege</u> . State law.	[1.] <u>Physician/Patient Privilege</u> . State law applies because no Rule counterpart exists creating a physician/patient

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Exception to the Physician/Patient Privilege)	<p>[2.] The implied consent statute carves out a limited exception to the physician/patient privilege by allowing the results of a blood test of a motorist to be obtained following an accident irrespective of whether the privilege has been waived or a valid search warrant has been obtained. The admission of such evidence does not violate the privilege prohibiting disclosure. Thus, where there has been an accident, the results of any chemical analysis of the driver's blood can be disclosed to the court and the people regardless of any physician/patient privilege and without consent of the driver who is technically a patient of the medical facility. The patient-driver has no expectation of privacy in the -blood-alcohol results of any blood sample -that falls within the accident exception to the physician/patient privilege under the implied consent statute.</p>	<p>[2.] <u>Implied Consent Exception to the Privilege.</u></p> <p>Yes, 164.512(a), 164.512(e), and 164.512(f).</p>	<p>[2.] <u>Implied Consent Exception to the Privilege.</u></p> <p>Both.</p>	<p>privilege.</p> <p>[2.] <u>Implied Consent Exception to the Privilege.</u></p> <p>Both state law and the Rule apply because each permits disclosure where, as here, required by law, pursuant to court order and for law enforcement purposes.</p>
	<p>[3.] Determination of whether an accident has occurred for the purposes of accident exception to physician/patient privilege contained in the implied consent statute will depend on an examination of all circumstances surrounding the incident. The relevant factors in making such determination are whether there has been a collision, whether personal injury or property damage has resulted from the occurrence, and whether the incident was undesirable for or was unexpected by any of the parties involved. Intoxicated motorist asleep behind wheel of vehicle pulled over on side of road with motor running was not involved in an accident for purposes of accident exception to physician/patient privilege contained in implied</p>	<p>[3.] <u>Accident Exception to the Physician/Patient Privilege.</u></p> <p>No.</p>	<p>[3.] <u>Accident Exception to the Physician/Patient Privilege.</u></p> <p>Both.</p>	<p>[3.] <u>Accident Exception to the Physician/Patient Privilege.</u></p> <p>State law applies because no Rule counterpart exists regarding the issue before the court, which was whether an "accident" had occurred, thereby triggering the implied consent exception to the physician/patient privilege. Note: The Rule would permit disclosure to the extent the implied consent exception was held</p>

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	consent statute.			to apply.
<p><i>Densmore v Department of Corrections</i>, 203 Mich App 363, 512 NW 2d 72 (1994)</p> <p>(Multiple FOIA Requests for Confidential Health Information)</p>	<p>[1.] A prisoner is not entitled to multiple copies of the same information. Where records have already been furnished, it is abusive and a waste of agency resources to make and process a second request. The purpose of the FOIA is to provide access to government materials, not to provide endless copies of the same materials.</p> <p>[2.] Due to the sensitive nature of the material requested, the request sent to the custodian of the prisoner's medical records was granted, and the request to the custodian of the prisoner's institutional file was denied based on an exemption.</p>	<p>[1.] <u>Multiple Requests Under FOIA.</u></p> <p>No.</p> <p>[2.] <u>Disclosure by Covered Entity Permitted.</u></p> <p>Yes, 164.502(a)(1)(i) and 164.524(a)(2)(ii).</p>	<p>[1.] <u>Multiple Requests Under FOIA.</u></p> <p>State law.</p> <p>[2.] <u>Disclosure by Covered Entity Permitted.</u></p> <p>Both.</p>	<p>[1.] <u>Multiple Requests Under FOIA.</u></p> <p>State law applies because no Rule counterpart exists addressing permitted disclosure of information by governmental units that are not covered entities.</p> <p>[2.] <u>Disclosure by Covered Entity Permitted.</u></p> <p>Both state law and the Rule apply because each permits disclosure of confidential health information to the individual to whom it pertains, and correctional institutions may deny inmates access to their own PHI.</p>
<p><i>Scott v Henry Ford Hospital</i>, 199 Mich App 241, 501 NW 2d 259 (1993)</p>	<p>[1.] Only the personal representative could waive physician/patient privilege on behalf of deceased patient. Privileged matters are protected after death unless privilege is waived by authorized person.</p>	<p>[1.] <u>Waiver of Physician/Patient Privilege.</u></p> <p>No.</p>	<p>[1.] <u>Waiver of Physician/Patient Privilege.</u></p> <p>State law.</p>	<p>[1.] <u>Waiver of Physician/Patient Privilege.</u></p> <p>State law applies because no</p>

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(Disclosure to Personal Representative Regarding Deceased)	[2.] A hospital is not required to release a former patient's medical records to his widow, where the widow was not the personal representative of the former patient's estate.	[2.] <u>Disclosure to Personal Representative of Deceased.</u> Yes, 164.502(f) and 164.502(g)(4).	[2.] <u>Disclosure to Personal Representative of Deceased.</u> Both.	Rule counterpart exists regarding waiver of the physician/patient privilege. [2.] <u>Disclosure to Personal Representative of Deceased.</u> Both state law and the Rule apply because each would permit disclosure only to those persons designated by state law as personal representatives of the deceased person.
<i>People v Sayles</i> , 200 Mich App 594 (1993) (Physician/Patient Privilege in Subsequent Trial)	Physician's testimony from prior trial is admissible in subsequent trial and is not barred by the physician/patient privilege.	No.	State law.	State law applies because no Rule counterpart exists regarding application of the physician/patient privilege.
<i>Swickard v Wayne County Medical Examiner</i> , 438 Mich 536, 475 NW 2d 304 (1991) (Physician/Patient Privilege and Autopsies)	[1.] Confidential relationship between a physician and patient could not arise when the patient was already deceased. Autopsy results are not subject to the physician/patient privilege. [2.] Disclosure of the cause of death by the medical examiner of a prominent judge does not give rise to an invasion of privacy cause of action	[1.] <u>Physician/Patient Privilege and Autopsy Results.</u> No. [2.] <u>Actions for Invasion of Privacy.</u>	[1.] <u>Physician/Patient Privilege and Autopsy Results.</u> State law. [2.] <u>Actions for Invasion of Privacy.</u>	[1.] <u>Physician/Patient Privilege and Autopsy Results.</u> State law applies because no Rule counterpart exists addressing the establishment of the physician/patient relationship after a death. [2.] <u>Actions for Invasion of Privacy.</u>

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	<p>for family members. Except for the appropriation of one's name or likeness, any action for the invasion of privacy can be maintained only by the living person whose privacy is actually invaded.</p> <p>[3.] Autopsy reports are in the nature of public records and, thus, they may be exempted from disclosure only where the information is of such a personal nature that the disclosure would constitute a clearly unwarranted invasion of an individual's privacy.</p> <p>[4.] The disclosure of an autopsy report and toxicology test results pursuant to a freedom of information request would not violate any statutory or common law privacy right of the decedent.</p>	<p>No.</p> <p>[3.] <u>Autopsy Reports As Public Records.</u></p> <p>No.</p> <p>[4.] <u>Disclosure of Autopsy Reports.</u></p> <p>Yes, 164.512(a) and 164.512(g)(1).</p>	<p>State law.</p> <p>[3.] <u>Autopsy Reports As Public Records.</u></p> <p>State law.</p> <p>[4.] <u>Disclosure of Autopsy Reports.</u></p> <p>Both.</p>	<p>State law applies because no Rule counterpart exists creating a cause of action for invasion of privacy. Note: A close relative who becomes a personal representative under applicable state law, <i>see</i> 164.502(g), may protect the PHI of the decedent from disclosure inconsistent with the Rule, but not on the basis that the privacy interests of the personal representative have been violated.</p> <p>[3.] <u>Autopsy Reports As Public Records.</u></p> <p>State law applies because no Rule counterpart exists addressing the status of autopsy reports as public records for purposes of FOIA disclosure.</p> <p>[4.] <u>Disclosure of Autopsy Reports.</u></p> <p>Both state law and the Rule apply because the Rule permits disclosure where, as here, required by law and the court has determined that the disclosure is required.</p>
<i>Domako v Rowe</i> , 438 Mich 347,	After a patient voluntarily waives the physician/patient privilege and allows discovery	Yes, 164.512(e)(1)(iii).	Both.	Both state law and the Rule apply because each would

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475 NW 2d 30 (1991) (Waiver of Physician/Patient Privilege)	of her medical information, she cannot thereafter assert the privilege in order to prevent the manner of discovery by opposing counsel.			permit disclosure where the claimant had had an opportunity to object to the disclosure and the objections were found, as in the circumstances here, to have been waived.
<i>Navarre v Navarre</i> , 191 Mich App 395 (1991) (Waiver of Physician/Patient Privilege in Child Custody)	Michigan's Child Custody Act, MCL 722.21 <i>et. seq.</i> , requiring consideration of a parent's mental and physical health for child custody determination does not waive any physician/patient privilege created under MCL 600.2157 (waiver of physician/patient privilege), discussed above in this Matrix.	No.	State law.	State law applies because no Rule counterpart exists regarding the waiver of physician/patient privilege.
<i>People v Perlos</i> , 436 Mich 305 (1990) (Disclosure of Blood Samples for Criminal Prosecution)	The withdrawal of blood for purposes of medical treatment by medical personnel that later is used for criminal conviction of operating a motor vehicle under the influence of alcohol does not implicate the Fourth Amendment of the Michigan Constitution. The Michigan Implied Consent Act, MCL 257.625a (driving while intoxicated), discussed above in this Matrix, codifies the diminished expectation of privacy while driving and, therefore, no legitimate expectation of privacy exists for purposes of the Fourth Amendment of the Michigan Constitution with respect to the privacy of blood samples later disclosed by a medical provider to the prosecution without a search warrant.	No.	State law.	State law applies because no Rule counterpart exists regarding the constitutionality of the disclosure of confidential health information pursuant to state statute.
<i>Estate of Green v St. Clair County Road Commission</i> , 175 Mich App 478 (1989)	[1.] Michigan's Implied Consent Act, MCL 257.625a (driving while intoxicated), as discussed above in this Matrix, does not preclude the admissibility of a decedent's blood test results in a civil case for wrongful death.	[1.] <u>MCL 257.625a</u> . Yes, 164.502(f), 164.502(g)(4), and 164.512(e).	[1.] <u>MCL 257.625a</u> . Both.	[1.] <u>MCL 257.625a</u> . Both state law and the Rule apply because each permits disclosure of a decedent's

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(Admissibility of a Decedent's Blood Alcohol Level in Civil Action)	[2.] No physician/patient privilege arises in connection with performing an autopsy because the decedent is not a patient within the meaning of the privilege.	[2.] <u>Physician/Patient Privilege.</u> No.	[2.] <u>Physician/Patient Privilege.</u> State law.	confidential health information without authorization in connection with legal proceedings. [2.] <u>Physician/Patient Privilege.</u> State law applies because no Rule counterpart exists regarding the application of the physician/patient privilege.
<i>Popp v Crittenton Hospital</i> , 181 Mich App 662 (1989) (Release of Nonparty Medical Records)	The physician/patient privilege precludes a hospital from releasing the medical records of a nonparty to determine the priority of treatment in a malpractice action.	No.	State law.	State law applies because no Rule counterpart exists regarding the constitutionality of the disclosure of confidential health information pursuant to state statute.
<i>Saldana v Kelsey-Hayes Company</i> , 178 Mich App 230 (1989) (Invasion of Privacy)	Employer's act of sending a letter to employee's personal physician to elicit information within the physician/patient privilege, where the personal physician did not provide any information to the employer, does not amount to an invasion of privacy cause of action.	No.	State law.	State law applies because no Rule counterpart exists regarding the application of physician/patient privilege and invasion of privacy claims.
<i>VanSickle v McHugh</i> , 171 Mich App 622	Deposition of a physician is not precluded by the physician/patient privilege, when the physician examined the plaintiff pursuant to the plaintiff's	No.	State law.	State law applies because no Rule counterpart exists regarding the scope of the

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(1988) (Scope of Physician/Patient Privilege)	no-fault insurance carrier's request, in an effort to determine the plaintiff's claim for benefits under the no-fault insurance policy. Physician/patient privilege does not apply when the medical examination is not conducted for the purpose of rendering medical advice or care to the person asserting the privilege.			physician/patient privilege.
<i>Dierickx v Cottage Hospital Corporation</i> , 152 Mich App 162 (1986) (Discovery of Nonparty Medical Records)	Court denied a motion to compel the production of medical documents of the plaintiff's relatives who were not parties to the action. The physician/patient privilege is personal to the patient. Waiver of the physician/patient privilege by bringing a medical malpractice action does not extend to third parties that have not placed their health in controversy.	No.	State law.	State law applies because no Rule counterpart exists regarding the application of the physician/patient privilege to nonparty medical records.
<i>People v Johnson</i> , 181 Mich App 662 (1981) (Release of Nonparty Medical Records)	A physician's testimony regarding the number of controlled substance tablets prescribed is not protected by the physician/patient privilege when the patient is charged with a crime arising out of such prescription. The physician/patient privilege must yield where the evidence sought is demonstrably relevant to the establishment of the criminal act itself.	No.	State law.	State law applies because no Rule counterpart exists regarding the application of the physician/patient privilege to criminal acts.
<i>Drouillard v Metropolitan Life Insurance Company</i> , 107 Mich App 608 (1981) (Waiver of Physician/Patient Privilege by Personal Representative)	Personal representative could waive physician/patient privilege on behalf of deceased individual.	No.	State law.	State law applies because no Rule counterpart exists regarding the application of the physician/patient privilege.

1. Citation	2. Brief Summary of Pertinent Provision	3. Is There a HIPAA Counterpart?	4. Which Law Applies?	5. Why?
<i>Cartwright v Maccabees Mutual Life Insurance Company</i> , 65 Mich App 670 (1976)	Supreme Court overruled Court of Appeals decision that held that a transcript of an oral report made by a physician to a life insurance company with respect to information the physician obtained while treating the patient was subject to physician/patient privilege and should not have been admitted as an exhibit at trial.	No.	State law.	State law applies because no Rule counterpart exists regarding the application of the physician/patient privilege.
<i>Gaertner v State of Michigan</i> , 385 Mich 49 (1971) (Legal Representative's Access to Incompetent Minor's Medical Records)	<p>[1.] State hospital may not lawfully deny the guardian of an incompetent minor access to the hospital records of his ward.</p> <p>[2.] A psychiatrist may withhold from a patient the contents of medical records to the extent such records contain information certain to upset the patient severely. Although no evidence was presented in this case supporting that medical records contained such information, the court held that courts may take appropriate action in the future to suppress such portions of the mental patients' record to adequately protect the patient.</p> <p>[3.] The physician/patient privilege belongs to the patient and not to the physician, and the privilege can be waived only by the patient.</p>	<p>[1.] <u>Disclosures to Legal Representative.</u></p> <p>Yes, 164.502(g) and 164.524.</p> <p>[2.] <u>Denial of Patient's Access to Medical Records.</u></p> <p>Yes, 164.502(a)(1)(i) and 164.524(a)(3).</p> <p>[3.] <u>Physician/Patient Privilege.</u></p>	<p>[1.] <u>Disclosures to Legal Representative.</u></p> <p>Both.</p> <p>[2.] <u>Denial of Patient's Access to Medical Records.</u></p> <p>Both.</p> <p>[3.] <u>Physician/Patient Privilege.</u></p>	<p>[1.] <u>Disclosures to Legal Representative.</u></p> <p>Both state law and the Rule apply because each permits disclosure of confidential health information to an incompetent minor's legal representative.</p> <p>[2.] <u>Denial of Patient's Access to Medical Records.</u></p> <p>Both state law and the Rule apply because each permits the provider to deny access to confidential health information by a patient if such disclosure, in the professional judgment of the provider, is reasonably likely to cause substantial harm to the individual or another person.</p> <p>[3.] <u>Physician/Patient Privilege.</u></p>

1. Citation	2. Brief Summary of Pertinent Provision	3. Is There a HIPAA Counterpart?	4. Which Law Applies?	5. Why?
		No.	State law.	State law applies because no Rule counterpart exists regarding the application of the physician/patient privilege.
<i>Orlich v Buxton</i> , 22 Mich App 96, 177 NW 2d 184 (1970) (Scope of Physician/Patient Privilege)	Notwithstanding MCL 600.2157 (waiver of physician/patient privilege), described above in this Matrix, the physician/patient privilege still applies to any physician who treated a patient for illness or condition not at issue in the malpractice lawsuit.	No.	State law.	State law applies because no Rule counterpart exists addressing the scope of the physician/patient privilege.
<i>Franklin Life Ins. Co v William J. Champion & Co</i> , 353 F2d 919 (6th Cir. 1965) (Scope of Physician/Patient Privilege)	The physician/patient privilege extends to communications between the patient and an intern whose duties include the taking of medical histories and who acts under the direction of the patient's attending physician and the hospital administrator.	No.	State law.	State law applies because no Rule counterpart exists addressing physician/patient privilege.
<i>Polish Roman Catholic Union of America v Palen</i> , 302 Mich 557, 5 NW 2d 463 (1942) (Physician/Patient Privilege)	The physician/patient privilege belongs to the patient. It cannot be waived by publication by a third party of privileged communications.	No.	State law.	State law applies because no Rule counterpart exists addressing physician/patient privilege

INDEX OF DEFINED TERMS AND ABBREVIATIONS

AIDS means Acquired Immunodeficiency Syndrome

Board means a county community mental health board

BWC means the Bureau of Worker's Compensation

County FIA means the County Family Independence Agency

FDA means the Food and Drug Administration

FIA means the Family Independence Agency

FOIA means the Freedom of Information Act

HIPAA means the Health Insurance Portability and Accountability Act of 1996

HIV means Human Immunodeficiency Virus

HMO means a health maintenance organization

IRB means an Institutional Review Board

LEIN means the Law Enforcement Information Network

MBP means the Michigan Board of Pharmacy

MCI means the Michigan Children's Institute

MCIR means the Michigan Childhood Immunization Registry

MDHHS means the Michigan Department of Health and Human Services

MDCH means the Michigan Department of Community Health

MDCIS means the Michigan Department of Consumer and Industry Services

MDOC means the Michigan Department of Corrections

NPFI means nonpublic personal financial information

NPRM means Notice of Proposed Rulemaking

DIFS means the Department of Insurance and Financial Services

PHI means protected health information

TPA means a third party administrator

TPO means treatment, payment and health care operations