

7.) State Preemption Requirements Applicable to Subchapter C – All HIPAA Rules (Part 160, Subpart B)

- § 160.201 – Applicability
- § 160.202 – Definitions (contrary, more stringent)

Provision	HIPAA Requirements	Proposed/Interim Final Rules	Final Rule
§ 160.201 – Applicability	The HIPAA regulations governing the preemption of State law implement § 1178 of the Social Security Act, which was added by HIPAA § 262. ¹	The Proposed Rule re-titled this section “Statutory basis” and added references to HIPAA § 264(c) and HITECH § 13421(a). ²	Adopts as proposed. ³
§ 160.202 – Definitions, <i>contrary</i>	When used to compare a provision of State law to a HIPAA provision, <i>contrary</i> means that: (1) a covered entity would find it impossible to comply with both provisions; ⁴ or (2) the State law is an obstacle to the	The Proposed Rule expanded the definition so that a state law is also <i>contrary</i> if a business associate would find it impossible to comply with both provisions, or if the law is an obstacle to the accomplishment and execution of	Adopts as proposed. ⁷

¹ 45 C.F.R. § 160.201 (2007). Section 1178 of the Social Security Act (contained within Part C of Title 11, which was added by HIPAA § 262) provides that a HIPAA provision or requirement will supersede any contrary provision of State law unless the State law is more stringent than HIPAA (subject to certain exceptions), or the Secretary determines that the State law is necessary for certain purposes or addresses controlled substances (Social Security Act § 1178, 42 U.S.C. 1320d-7).

² 75 Fed. Reg. at 40874-75.

³ 78 Fed. Reg. at 5577; 45 C.F.R. § 160.201.

⁴ 45 C.F.R. § 160.202, at ¶ (1) of “Contrary” (2007).

Provision	HIPAA Requirements	Proposed/Interim Final Rules	Final Rule
	accomplishment and execution of the full purposes and objectives of HIPAA’s administrative simplification provisions. ⁵	the full purposes and objectives of subtitle D of HITECH (§§ 13400 - 13424). ⁶	
§ 160.202 – Definitions, <i>more stringent</i>	A State law is <i>more stringent</i> than a contrary HIPAA privacy standard (and thus not preempted) if the State law meets one or more of six specified criteria. ⁸ A State law is not <i>more stringent</i> if it prohibits or restricts a disclosure required by the Secretary to determine whether a covered entity is in compliance with the HIPAA regulations. ⁹	The Proposed Rule modified <i>more stringent</i> so that a state law also does not meet the definition if it prohibits a disclosure required by the Secretary to determine a business associate’s compliance. ¹⁰	Adopts as proposed. ¹¹

⁷ 78 Fed. Reg. at 5577; 45 C.F.R. § 160.202.

⁵ 45 C.F.R. § 160.202, at ¶ (2) of “Contrary” (2007).

⁶ 75 Fed. Reg. at 40875.

⁸ 45 C.F.R. § 160.202, at “More stringent” (2007).

⁹ 45 C.F.R. § 160.202, at ¶ (1)(i) of “More stringent” (2007).

¹⁰ 75 Fed. Reg. at 40875.

¹¹ 78 Fed. Reg. at 5577; 45 C.F.R. § 160.202, at ¶ (1)(i) of “More stringent.”