

# LEGAL SERVICES

DIVISION OF LEGAL AND RESEARCH SERVICES  
LEGISLATIVE AFFAIRS AGENCY  
STATE OF ALASKA

(907) 465-3867 or 465-2450  
FAX (907) 465-2029  
Mail Stop 3101


State Capitol  
Juneau, Alaska 99801-1182  
Deliveries to: 129 6th St., Rm. 329

## MEMORANDUM

April 11, 2011

**SUBJECT:** Physician Reports to DMV and HIPAA Confidentiality Laws  
(HB 149; Work Order No. 27-LS0275\M)

**TO:** Representative Anna Fairclough  
Attn: Kim Skipper

**FROM:** Gerald P. Luckhaupt   
Assistant Revisor

You have asked how laws on physician reporting of impaired drivers to the motor vehicle authorities interact with the privacy provisions of the Health Insurance Portability and Accountability Act (HIPAA). While I am not an expert on HIPAA I will attempt to provide some guidance. It might be wise to contact the U.S. Department of Health and Human Services, the Department of Law, or some other source for further information.

The HIPAA Privacy Rule generally requires covered entities from disclosing patient health information without the consent of the patient. Various exceptions are provided, including when the disclosure is: (1) required by law, including state law; (2) made to public health entities to prevent or control disease, injury, or disability; and (3) necessary to prevent a serious threat to a person or the public. States with mandatory physician disclosure laws would clearly come under the first exception. At least two mandatory disclosure states, Pennsylvania and Oregon, provide that disclosures to DMV also meet the second exception.

It would appear that states with nonmandatory physician disclosure laws would also meet the second exception and may meet the third, depending upon the information available to the physician and the nature of the impairment of the driver. It is unclear to me if a permissive physician disclosure law would meet the first exception I listed.

I have included a number of materials relating to this section, including several discussions of how HIPAA relates to physician disclosure laws.

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Enclosures