



**STATE OF VERMONT
OFFICE OF THE STATE AUDITOR**

To: House Committee on Government Operations

Re: S.9

Date: 28 April 2023

I'd like to thank the Committee for continuing its work on S.9 and briefly address a few concerns that have been raised by other witnesses.

Is disclosure of HIPAA information to state auditors allowed by federal law?

The Privacy Rule permits disclosure of protected health information to a health oversight agency¹ for oversight activities authorized by law, **such as audits...**[See [45 C.F.R. 164.512\(d\)](#)].

(d) A covered entity may disclose protected health information to a health oversight agency for oversight activities authorized by law, including audits...for appropriate oversight of:

- i. The health care system;
- ii. Government benefit programs for which health information is relevant to beneficiary eligibility;
- iii. Entities subject to government regulatory programs for which health information is necessary for determining compliance with program standards.

What is the risk of unauthorized disclosure of HIPAA information?

A HIPAA violation can be a **felony** if it is related to the knowing and wrongful disclosure of individually identifiable health information. The minimum fine for criminal violations of HIPAA is \$50,000. The maximum criminal penalty for a HIPAA violation by an individual is \$250,000. Restitution may also need to be paid to the victims. In addition to the financial penalty, a jail term is possible for a criminal violation of HIPAA Rules.

With this in mind, it is almost inconceivable that a State employee would risk his or her reputation, position, livelihood and freedom to disclose private health information.

¹ [Includes entities like the State Auditor's Office](#) that are authorized to oversee the health care system (whether public or private) or government programs in which health information is necessary to determine eligibility or compliance.

States with Audit Provisions for Contractors Comparable to S.9

California – [State Contracting Manual - Volume 1](#) See [7.50](#)

Explicit reference to the authority of the State Auditor

Illinois - [5. AUDIT/RETENTION OF RECORDS](#) (explicit reference to OAG / [Office of the Auditor General](#))

Iowa – [Model contract](#)

See 16.22 - Record Retention and Access for audit (explicit reference to State Auditor)

Louisiana – [OFFICE OF STATE PROCUREMENT \(OSP\) PROFESSIONAL SERVICES CONTRACT GUIDELINES](#)

See top of page 35 (explicit reference to State Legislative Auditor)

Massachusetts – General Laws [Section 12](#) (explicit reference to State Auditor)

Michigan – [Section 18.1470](#)

Refers to compliance (which should include deliverables) (explicit reference to Auditor General)

New York - [Appendix A – Standard Clauses for New York State Contracts](#) See 10. RECORDS

(explicit reference to the [Comptroller](#) who is also the state auditor)

North Carolina – [§ 147-64.7. Authority.](#)

See (a)(2)a. (a)(4) and (a)(5) (explicit reference to State Auditor)

Oklahoma - [74 O.S. § 85.41. Professional Services Contracts](#) See #5. (explicit reference to State Auditor)

Tennessee – [Contracts Guideline : G-030](#) See 4.(i). Audit & Documentation

(explicit reference to the [Comptroller](#); as in NY, the Comptroller performs audit functions)

Texas - [Sec. 2262.154.](#) Required Provision Relating to Auditing (explicit reference to State Auditor)

Utah - [Utah Admin. Code 33-12-605](#) See section (2)

(1)(a)(iv) – “authorized representative” includes the state auditor.