

# Policy Surveillance and State Law Research Methods

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[www.healthinfolaw.org](http://www.healthinfolaw.org)

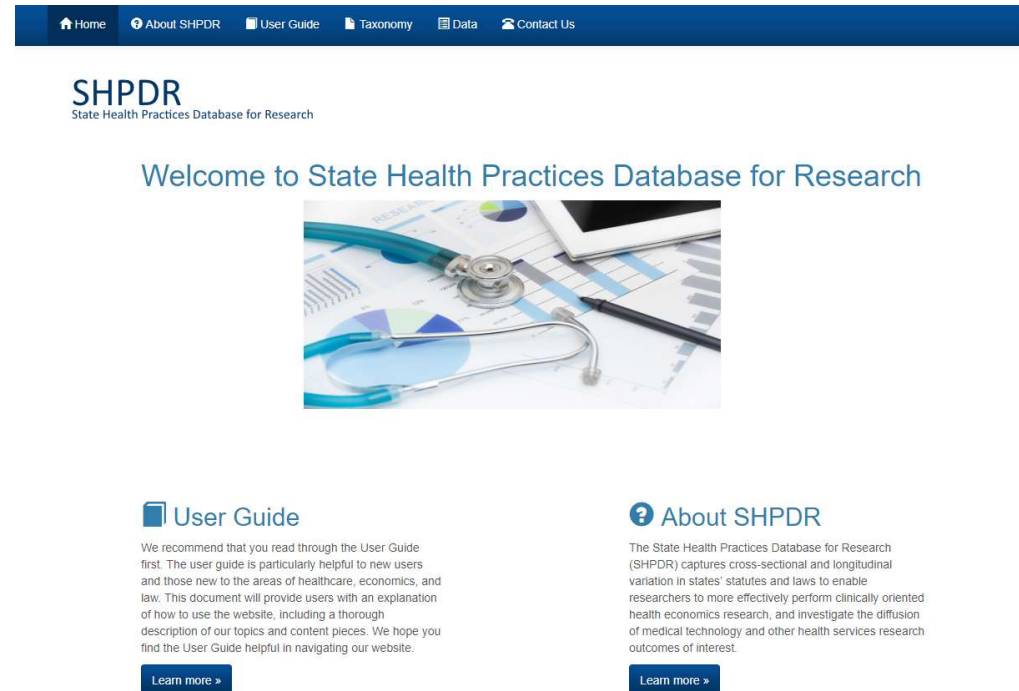
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# Lessons Learned and Best Practices

- Structure
  - Broad vs Narrow
  - Audience
  - Taxonomy
- Research
  - Potential pitfalls
- Communication
- Working with other disciplines

# State Health Practice Database for Research (SHPDR)

- Funded by NIH
- State law database designed to facilitate health economics research
- [www.shpdr.org](http://www.shpdr.org)





# SHPDR Insurance Domain Variables

Topic	Subtopic	Variable (INDIVIDUAL AND SMALL GROUP MARKETS ONLY)
Benefits	Covered Services	State requires insurers to provide care management services
Benefits	Covered Services	State requires coverage for contraceptive drugs, devices, and related services
Benefits	Covered Services	State requires coverage of breast cancer screening
Benefits	Covered Services	State requires coverage of colorectal cancer screening
Benefits	Covered Services	State requires coverage of HIV, AIDS, or HIV-related illnesses
Benefits	Covered Services	State requires coverage of in vitro fertilization treatments
Benefits	Covered Services	State requires coverage of minimum set of essential benefits
Benefits	Covered Services	State requires coverage of prostate cancer screening
Benefits	Covered Services	State requires coverage of treatment, screening, and/or services for autism spectrum disorder
Benefits	Covered Services	State requires insurers to cover wellness programs (including incentives for wellness programs)
Benefits	Covered Services	State requires insurers to cover mental health services
Benefits	Covered Services	State requires insurers to cover substance abuse services
Eligibility	Pre-existing condition	State prohibits or limits pre-existing condition exclusions
Markets and Operations	Any willing provider	State has any willing provider law/regulation
Markets and Operations	Claims reviews	State regulates grievance and appeals for insurance products
Markets and Operations	Consumer Protection	State regulates consumer protection requirements for insurance products
Markets and Operations	High Risk	State has high risk pool
Markets and Operations	Mandates	State elects to operate state based health insurance exchange
Markets and Operations	Mandates	State limits out of pocket costs
Markets and Operations	Mandates	State opts out of Federal employer mandate requirements
Markets and Operations	Mandates	State opts out of Federal individual mandate requirements
Markets and Operations	Mandates	State passes legislation to address relationship with Federal exchange
Markets and Operations	Mandates	State prohibits or limits waiting periods for coverage
Markets and Operations	Mandates	State requires guaranteed issue
Markets and Operations	Mandates	State requires insurers to report claims data to a central database
Markets and Operations	Medical loss ratios	State regulates medical loss ratios
Markets and Operations	Provider Incentives	State requires or encourages insurers to implement value-based purchasing programs
Markets and Operations	Rate setting	State regulates actuarial value
Markets and Operations	Rate setting	State regulates premium rate setting
Markets and Operations	Rate setting	State restricts use of health status or other factors when setting premium rates

# SHPDR Provider Domain Variables

Topic	Subtopic	Variable
Care Delivery and Financing	Billing	State restricts provider balance billing managed care enrollees
Care Delivery and Financing	Delivery Model	State regulates ACOs
Care Delivery and Financing	Delivery Model	State regulates primary care or patient-centered medical homes
Care Delivery and Financing	Delivery Model	State regulatory structure allows hospital shared savings programs
Care Delivery and Financing	Delivery Model	State regulatory structure allows physician shared savings programs
Care Delivery and Financing	Malpractice	State allows for patient compensation or injury fund
Care Delivery and Financing	Malpractice	State has statute of limitations for medical liability/malpractice claims
Care Delivery and Financing	Malpractice	State limits attorney fees in medical liability/malpractice claims
Health Care Professionals & Facility Licensure Requirements	Abortion Services	State regulates abortion facilities
Health Care Professionals & Facility Licensure Requirements	Abortion Services	State regulates abortion providers
Care Delivery and Financing	Malpractice	State sets a cap on medical liability/malpractice damage awards
Quality, Safety & Monitoring	Pay-for-performance	State regulates hospital value-based purchasing programs
Quality, Safety & Monitoring	Pay-for-performance	State regulates nursing home value-based purchasing programs
Quality, Safety & Monitoring	Pay-for-performance	State regulates physician value-based purchasing programs
Quality, Safety & Monitoring	Quality Reporting	State requires hospital reporting on established performance metrics
Quality, Safety & Monitoring	Quality Reporting	State requires nursing home reporting on established performance metrics
Quality, Safety & Monitoring	Quality Reporting	State requires physician reporting on established performance metrics
Technology and Infrastructure	Certificate of Need	State has CON law
Technology and Infrastructure	Certificate of Need	State has CON moratorium or moratoria in place
Technology and Infrastructure	Health Information Technology	State allows financial incentives for e-prescribing
Technology and Infrastructure	Health Information Technology	State has established a body to address HIT (i.e., to develop infrastructure)
Health Care Professionals & Facility Licensure Requirements	Scope of Practice	State has scope of practice for emergency medical service providers
Workforce and Facilities	Physician Ownership and Financial Interests	State requires reporting of physician financial interests in medical facilities or practices (e.g., Sunshine Laws)
Workforce and Facilities	Physician Ownership and Financial Interests	State regulates physician ownership or financial interests in medical facilities or practices (e.g., Physician Self-Referral Laws)
Health Care Professionals & Facility Licensure Requirements	Scope of Practice	State regulates scope of practice for chiropractors
Health Care Professionals & Facility Licensure Requirements	Scope of Practice	State regulates scope of practice for nurse professionals
Health Care Professionals & Facility Licensure Requirements	Scope of Practice	State regulates scope of practice for physician assistants
Workforce and Facilities	Underserved areas/Populations	State provides or allows financial incentives for dentists to work in underserved areas
Workforce and Facilities	Underserved areas/Populations	State provides or allows financial incentives for primary care providers to work in underserved areas
Workforce and Facilities	Underserved areas/Populations	State provides funding to programs that provide medical services to low-income individuals

# GW team legal research and coding process

## Data Extraction Method Process Flow – State Health Practices Database for Research (SHPDR)

GW Legal Team

Part 1: Identify  
Statutes and  
Regulations

1.1 Identify keywords

1.2 Identify relevant statutes  
and regulations

1.3 Catalog state statutes  
and regulations

Part 2: Variable  
analysis

2.1 Read the text of the  
statute/and or regulation

2.2 Analyze according to  
relevant Variable

2.3 Draft the justification

2.4 Add Statute/Regulation,  
Variable, Justification, and  
other elements to the data  
collection template.

# Example: Licensing laws, nurse practitioner prescriptive authority

[Home](#) [About SHPDR](#) [User Guide](#) [Taxonomy](#) [Data](#) [Contact Us](#)

[By State](#) [By Year](#) [By Domain](#) [By Topic](#) [By Subtopic](#) [By Variable](#) [Custom Filter](#)

[Data](#) > [Subtopic](#) > Scope of Practice

User Note: Subvariables were derived from the narrative text of the justifications and are state-specific. Users should review the legal source material associated with the primary variable to ensure accuracy and completeness. Variable values of "not identified" mean that the review of statutes and regulations based on the keywords in the User Guide did not return any information. Subvariable values of "not identified" mean that the parent variable's justification did not have material pertinent to the subvariable.

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Show  entries

Search:

Year	State	Variable	Variable Value	Justification
2010	AR	Parent Variable: State regulates scope of practice for nurse professionals	Yes	Establishes authority of the Arkansas State Board of Nursing and Prescriptive Authority Advisory Committee to implement regulations relating to prescriptive authority of nurses.
2010	DC	Parent Variable: State regulates scope of practice for nurse professionals	Yes	Education and certification requirements for certified nurse-anesthetists; Scope of practice of nurse-anesthetists; Standards of conduct; Prescriptive authority. Note: Scope of practice set out specifically in CDCR 17-5708.
2010	DC	Parent Variable: State regulates scope of practice for nurse professionals	Yes	Education and licensure requirements for certified nurse-midwives; Scope of practice of certified nurse-midwives; Standards of conduct; Prescriptive authority. Note: Scope of practice set out specifically in CDCR 17-5808.
2010	DC	Parent Variable: State regulates scope of practice for nurse professionals	Yes	Education and certification requirements for nurse-practitioners; Scope of practice of nurse-practitioners; Standards of conduct; Prescriptive authority.
2010	DC	Parent Variable: State regulates scope of practice for nurse professionals	Yes	Education and certification requirements for clinical nurse specialists; Scope of practice of clinical nurse specialists; Standards of conduct; Prescriptive authority. Note: Scope of practice set out specifically in CDCR 17-6008.
2010	AK	Parent Variable: State regulates scope of practice for nurse professionals	Yes	Prescriptive authority for advanced nurse practitioners.
2010	DC	Parent Variable: State regulates scope of practice for physician assistants	Yes	Definitions for all health occupations; "Practice by physician assistants" means the performance, in collaboration with a licensed physician or osteopath, of acts of medical diagnosis and treatment,

# Example: Licensing laws, nurse practitioner prescriptive authority

The screenshot displays the SHPDR (State Health Policy Data Repository) website. A modal window titled "Law Text" is open, showing the text of "12 Alaska Admin. Code 44.440". The background shows a search interface with "prescript" entered and a table of results.

**Law Text**

**12 Alaska Admin. Code 44.440**

(a) The board will, in its discretion, authorize an advanced nurse practitioner or "ANP" to prescribe and dispense legend drugs in accordance with applicable state and federal laws.

(b) Repealed 3/28/2008.

(c) An advanced nurse practitioner who applies for authorization to prescribe and dispense drugs

(1) must be currently designated as an ANP in Alaska at the time of application;

(2) shall provide evidence of completion of 15 contact hours of education in advanced pharmacology and clinical management of drug therapy within the two-year period immediately before the date of application; and

(3) shall submit a completed application as required in 12 AAC 44.400(a)(6) accompanied by the application fee established in 12 AAC 02.280.

(d) Authorized prescriptions by an ANP must

(1) comply with all applicable state and federal laws; and

(2) contain the signature of the prescriber followed by the initials "ANP" and the prescriber's identification number assigned by the board.

(e) Prescriptive authorization will, in the board's discretion, be terminated if the ANP has

**Search:** prescript

Year	State	Variable
2010	AR	Parent Variable: State regulates scope of practice for nurse professionals
2010	DC	Parent Variable: State regulates scope of practice for nurse professionals
2010	DC	Parent Variable: State regulates scope of practice for nurse professionals
2010	DC	Parent Variable: State regulates scope of practice for nurse professionals
2010	DC	Parent Variable: State regulates scope of practice for nurse professionals
2010	DC	Parent Variable: State regulates scope of practice for nurse professionals
2010	AK	Parent Variable: State regulates scope of practice for nurse professionals
2010	DC	Parent Variable: State regulates scope of practice for physician assistants



# Health Information & the Law

## ([www.healthinfolaw.org](http://www.healthinfolaw.org))

- Mission: Inform and empower a broad audience to understand and navigate federal and state laws and regulations that may be perceived or real barriers to health system transformation, including the sharing of health information to support new delivery, clinical integration, consumer engagement, and payment models, as well as the exchange of information between health care and public health systems.
- Contents:
  - Law library: 50 state (+DC) database of state laws and regulations and all relevant federal laws summarized, organized, and tagged with topics and subtopics
    - Includes summaries, analyses, and links directly to relevant federal and state law organized by a topical taxonomy
  - Additional Products: Issue briefs, Fast Facts, Myth Busters, comparative state maps with accompanying explanatory tables, decision support tools, interviews with experts from the field, information about key developments in the field
- Website launched in May 2012, grew out of research funded by RWJF since 2007

# HealthInfoLaw Topics Covered

- Antitrust
- Care Coordination/Care Management
- Delivery System Reform
- Equity and Disparities
- Federal and State Program Integrity
- Health Information Technology
- Health Insurance Exchanges
- Medicaid/CHIP Data Requirements
- Medicare Data Requirements
- Medical Peer Review
- Medical Records Collection, Retention, and Access
- Patient Engagement/Shared Decision-Making
- Patient Safety
- Payment Reform
- Privacy and Confidentiality
- Private Insurance Data Requirements
- Public Health Data Collection and Reporting
- Quality Measurement and Reporting
- Research
- Resource Use (Cost/Utilization) Measurement and Reporting
- Security of Health Information

# Example: California records requirements for ASCs

Path: State-California-Privacy and Confidentiality - Subtopics

Subtopic	Statute/Regulation	Description
Patient's right to confidentiality of medical records/medical information	Written Statement of Confidentiality to Patients for Health Service Plans - Cal. Health & Safety Code § 1264.5	All health service plans operating in the state of California must provide to the Director of the Department of Managed Care, a copy of their...
	Ambulatory Surgery Data Records - Cal. Health & Safety Code § 128737	Each general acute hospital and freestanding ambulatory surgical clinic must file an Ambulatory Surgery Data Record for each patient where surgery...
	Businesses Organized For The Purpose of Maintaining Medical Information-Cal. Civ. Code § 56.06	A business that maintains medical information for individuals or health care providers should be construed as a health care provider for the purposes...
	Electronic Record Keeping Systems and Additional Record Requirements - Cal. Health & Safety Code § 123149	Electronic recordkeeping systems; additional requirements Providers using electronic records systems for patient records must use an offsite backup...
	Emergency Care Data Records - Cal. Health & Safety Code § 128736	Each hospital must file an Emergency Care Data Record for each patient in a hospital emergency department and must include the following: Date of...
	Establishment of the Office of Health Information Integrity - Cal. Health & Safety Code § 130200	An Office of Health Information Integrity is established within the California Health and Human Services to ensure enforcement of state law mandating...
	Information Security Program Requirements - Cal. Code Regs. tit. 10 § 2689.14	A licensee is an insurance institution, agent, or support organization licensed by the California Department of Insurance that handles information in...
	Patient Record Requirements for Community Health Centers - Cal. Code Regs. tit. 22 § 80070	A separate, current and complete record must be maintained for each patient/client admitted into a community health center. The patient's...
	Patient Records: Confidentiality and Disclosure - Cal. Health & Safety Code § 11845.5	All substance abuse treatment records are confidential and privileged to the patient and may only be disclosed according to the statute, irrespective...
	Patients Health Records Requirements for Nursing Facilities - Cal. Code Regs. tit. 22 § 72543	Records must be kept on each patient admitted into the nursing facility. The records must be kept for 7 years after the patient is discharged...
	Release of Health Information to Employers - Cal. Health & Safety Code § 1374.8	A health plan may not release to an employer any information showing that a covered employee has received services from a health care provider...
	Reporting Requirements of	This is from a larger excerpt about the

## Ambulatory Surgery Data Records - Cal. Health & Safety Code § 128737

[Link to the law](#)

*This will open in a new window*

[Return to Privacy and Confidentiality in California](#)

Each general acute hospital and freestanding ambulatory surgical clinic must file an Ambulatory Surgery Data Record for each patient where surgery was performed and must include the following:

1. Date of birth
2. Sex
3. Race
4. Ethnicity
5. Principal language spoken
6. Zip code
7. Patient social security number
8. Service date
9. Diagnoses
10. Causes of injury
11. Procedures
12. Patient disposition
13. Expected source of payment

The statute outlines that it is the intent that patient confidentiality not be violated in reporting the above. The data is also required to be de-identified when disclosing.

Current as of June 2015

### Recent Related Content

- Establishment of the Centralized Consumer Response Unit and Consumer Complaints - Cal. Health & Safety Code §1419
- Confidential information and records; disclosure; consent - Cal. Welf. & Inst. Code § 5328
- Cal. Health & Safety Cod 11845.5.
- Regulations For an Appointed Special Master and Applications for Court Orders Regarding Disclosure - Cal. Penal Code§ 1524(c)

### See Also

#### Topics

- Medical Records Collection, Retention, and Access
- Privacy and Confidentiality

First

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# Example: Comparative Map

## Who Owns Medical Records: 50 State Comparison



This map and table show laws that confer ownership of a medical record to a health care provider, hospital, or patient. We did not include laws that only apply to specific providers other than physicians (such as chiropractors and optometrists) or facilities other than hospitals (such as ambulatory surgery centers, birth centers, abortion clinics, nursing homes, prisons, and schools). Note that there may be court decisions regarding record ownership that apply to providers in a particular state under common law even where there is no statute or regulation (e.g., *McGarry v. J.A. Mercier Co.*, 272 Mich. 501, 262 N.W. 296 (1935) (Michigan case holding that x-ray negatives were the property of the physician who made them, not the patient); *Holtkamp Trucking Co. v. David J. Fletcher, M.D., L.L.C.*, 402 Ill. App. 3d 1109, 932 N.E.2d 34 (2010) (Illinois case holding that medical records were physician's property)). Many states have specific laws addressing how providers must maintain, protect, and dispose of records, as well as laws giving patients, providers, and others access to medical records, regardless of ownership status. In addition, patients in all states have many rights with respect to their medical records under the HIPAA Privacy and Security Rules.

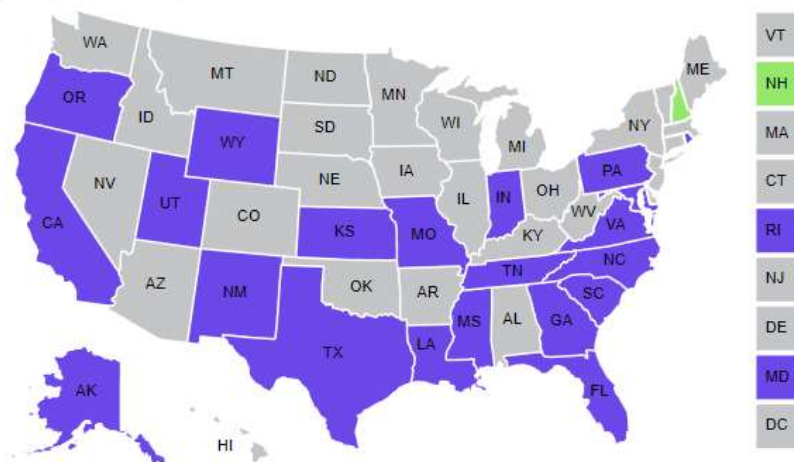
Notes:

\* Provider ownership of medical record is referenced in language of law

± Ownership is of the physical conveyance for the medical information

‡ Ownership is of the information contained in the record

[Last Updated 08/20/15]



Click on a state to see more information on **Medical Records Collection, Retention, and Access** in that state

### Medical Record Ownership Laws

- Hospital and/or physician owns medical record
- Patient owns information in medical record
- No law identified conferring specific ownership or property right to medical record

Hide All ▲

State	Medical Record Ownership Laws	Details
Alabama	No law identified conferring specific ownership or property right to medical record	
Alaska	Hospital and/or physician owns medical record	<a href="#">Alaska Admin. Code tit. 7, § 12.770</a> : The medical records, including x-ray films, are the property of the facility (applies to hospitals and other specified health care facilities).
Arizona	No law identified conferring specific ownership or property right to medical record	
Arkansas	No law identified conferring specific ownership or property right to medical record	
California	Hospital and/or physician owns medical record	<a href="#">Cal. Code Regs. tit. 22, § 70751</a> : Medical records are the property of the hospital.
Colorado	No law identified conferring specific ownership or property right to medical record	
Connecticut	No law identified conferring specific ownership or property right to medical record	
Delaware	No law identified conferring specific ownership or property right to medical record	
District of Columbia	No law identified conferring specific ownership or property right to medical record	
Florida	Hospital and/or physician owns medical record	<a href="#">Fla. Stat. § 456.057</a> : Defines "records owner" as any health care practitioner who generates a medical record after treating patient, any health care practitioner to whom records are transferred by a previous owner, or any health care practitioner's employer.
Georgia	Hospital and/or physician owns medical record	<a href="#">Ga. Code Ann. § 31-33-3</a> : All records are owned by and are property of provider.
Hawaii	No law identified conferring specific ownership or property right to medical record	
Idaho	No law identified conferring specific ownership or property right to medical record	

<http://www.healthinfolaw.org/comparative-analysis/who-owns-medical-records-50-state-comparison>



# State HIE Consent Policies – Opt-In or Opt-Out

Deliverable was a table with the following columns:

- **Type of Consent Policy** – Opt-in, opt-out, something else.
- **Source of Consent Policy** – The most authoritative source that articulates the patient consent policy: statute, regulation, or a state agency-produced policy document. The source is hyperlinked to the relevant statute, regulation, or policy document for that state.
- **State Involvement in Generating the Consent Policy** – For states where the most authoritative source articulating the consent policy is a state agency-produced policy document, this column provides information on the connection between the state government and the agency or organization that produced the consent policy. **The following types of policies are not considered to be produced by a state agency and as such are NOT included, even where the HIE is state-designated: Policies articulated by HIEs that are neither a state government entity nor actively run, overseen, or managed by a state government entity; Policies articulated by HIEs in states that only provide funding for HIE activities without conditioning the funding upon adherence to state-approved patient consent requirements; Policies articulated by HIEs in states where state actors may participate as stakeholders on the board of the state-designated HIE but do not have any powers of oversight or approval.**
- **Statewide Applicability** – This column indicates whether or not a state's consent policy applies statewide (i.e., to all HIEs operating in the state). Most state HIE consent policies that do not apply statewide only apply to the state-run HIEs in those states.
- **Scope of Consent Policy** – This column describes the breadth of the state HIE consent policy's applicability. When a consent policy applies statewide, it usually applies in one of the following ways: 1) by giving rights to all patients in the state; 2) by requiring healthcare providers to abide by the consent policy; or 3) by requiring health information organizations in the state to abide by the consent policy. When a consent policy does not apply statewide, this column describes the organization(s) required to follow the state HIE consent policy.
- **Details About Consent Policy** – If available from the source of the state HIE consent policy, this column provides a description of the depth of the consent policy and how it works.

Narrow and Clarify

# Legal Research Challenges

- Laws may be changed, moved, consolidated, renumbered, or accidentally left out of the code.
- Laws may be on the books but unenforceable.
- Policies may not be published in statute or regulation.
- Practices may differ from policies.