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Navigating HIPAA and FERPA: What do schools and providers need to know?

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Introduction

- Who are we?
- Who are you?
 - School-based health care providers
 - Health care providers outside of schools
 - School districts
 - Health plans
 - State agencies
 - Other



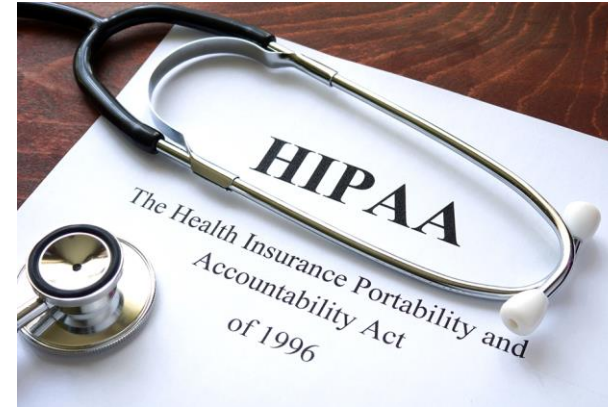
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Agenda

- HIPAA, 42 CFR Part 2, and FERPA
 - What is the purpose of the law?
 - To whom does the law apply?
 - What information does the law protect?
 - What does it mean when the law applies?
 - When may a parent access information under the law?
 - When may a minor consent under the law?
 - How do the three laws work together and how do they apply to services delivered in a school-based health center?
- Miscellaneous Information
- Best Practices



What is the purpose of the law?

HIPAA	42 CFR Part 2	FERPA
- Federal law that: - Protects the privacy of patient information - Provides for the security of protected health information (PHI) - Specifies patient rights to approve access and use of their medical information	- Federal law that: - Protects patient records (which set forth the prognosis or treatment of the patient) - Protects the patient's identity as a Part 2 patient. - Prohibits the disclosure of SUD treatment records without patient consent, other than as statutorily authorized. - Prohibits law enforcement's use of SUD patient records in criminal prosecutions against patients, absent patient consent or a court order.	- Federal law that: - Protects the privacy of students' personal records held by educational agencies or institutions - Ensures access to education records by a student's parents or by a student 18 years or older.

To whom does the law apply?

HIPAA	42 CFR Part 2	FERPA
• Applies to health care providers, health plans, and health care clearinghouses (Covered Entities) that transmit health information in electronic form regarding certain covered transactions • Also applies to Business Associates of Covered Entities	• Applies to federally assisted programs for the treatment of substance use disorder	• Applies to educational agencies and school officials • Also applies to organizations and individuals that contract with, or volunteer or consult for, an educational agency if certain conditions are met and they are considered a “school official.”

What information does the law protect?

HIPAA	42 CFR Part 2	FERPA
• Limits use or disclosure of PHI unless authorized. • PHI includes individually identifiable health information created or received by a Covered Entity in any form, including oral communications as well as written or electronically transmitted information.	• Limits use or disclosure of SUD treatment records unless authorized.	• Controls disclosure of information maintained in the education record.

What does it mean when the law applies?

HIPAA	42 CFR Part 2	FERPA
• In general, a CE may only use or disclose PHI if (1) HIPAA specifically permits or requires it; or (2) the individual who is the subject of the information gives written authorization. • Psychotherapy note exception	• Part 2 prohibits the disclosure of SUD treatment records without patient consent unless statutorily authorized • SUD counseling note exception	• Generally, FERPA prohibits educational agencies from releasing any “personally identifiable information” (PII) in the education record unless they have written permission for the release. • Exceptions

When may a parent access their child's information under the law?

HIPAA	42 CFR Part 2	FERPA
• In most cases, a parent, guardian, or other person acting <i>in loco parentis</i> is the personal representative of their unemancipated minor child and can exercise the minor's rights with respect to PHI <i>unless</i> an exception applies. • If the minor patient is emancipated, or the minor patient legally consented to their own treatment (see next slide), then their parent/guardian does not have a legal right of access to their records.	• Ohio law permits a minor to consent to the diagnosis and/or treatment of any condition caused by a drug of abuse, beer, or intoxicating liquor. • When a minor has the legal capacity under state law to obtain SUD treatment, any written consent for use or disclosure of SUD treatment information may be given only by the minor patient. • Where state law requires consent of a parent/guardian, written consent must be given by both the minor and their parent/guardian.	• Parents have access to their child's education records until the student turns 18 or enrolls in a postsecondary institution, at which point the student becomes an "eligible student". • If the student is an eligible student but is claimed as a dependent on their parents' tax return, then the parents retain a right to access the student's records.

When may a minor consent to health care under the law?

- Minor consent to treatment is governed by State law.
- Ohio law generally requires the consent of a minor patient's parent or guardian before the minor is treated for most health care services.
- However, Ohio law permits minor patients to consent to receiving some health care services without parental consent. Those services include:
 - Diagnosis and treatment of a venereal disease by a licensed physician;
 - Outpatient mental health services of limited duration
 - Diagnosis and treatment for substance abuse by a licensed physician



How do the three laws work together and how do they apply to services delivered in a school-based health center?

- Depending on the situation, either FERPA or HIPAA may apply—not both.
 - FERPA and HIPAA can never apply at the same time because HIPAA excludes education records from the definition of PHI.
 - Part 2 still applies when FERPA or HIPAA apply.
- **Student health records are subject to HIPAA** if they are maintained by a clinic that is funded, administered, or operated by or on behalf of a public or private health agency (including an FQHC) or another non-educational agency.
- **Student health records are subject to FERPA** if they are maintained by a clinic that is funded, administered or operated by or on behalf of a school or educational institution.
- **Student health records are subject to Part 2** if they are maintained by a clinic (which can be operated by an FQHC or a school) that is (1) federally assisted and (2) providing SUD treatment to students.



How do the three laws work together and how do they apply to services delivered in a school-based health center?

- Are the records of a health care provider on a school campus subject to HIPAA or FERPA?
- Are records from healthcare services provided on a school campus always subject to FERPA?
- When are records from health care services provided on a school campus subject to FERPA?
- When are records from health care services provided on a school campus subject to HIPAA?



How do the three laws work together and how do they apply to services delivered in a school-based health center?

- Does HIPAA allow a health care provider or school-based health center subject to HIPAA requirements to disclose PHI to a school-employed health care provider?
- Does FERPA allow a school or school employee to disclose information from a FERPA-protected education record to a school-based health center that is not a school employee or official?
- Does FERPA allow a school or school employee to disclose information from a FERPA-protected education record to a school-based health center acting as a school official?

Miscellaneous Information

- Responding to requests for information under HIPAA, Part 2, and FERPA
- Hot topics
 - Reproductive health
 - State law
 - New HIPAA requirement
 - Health care for transgender students
 - State law
 - Health care for undocumented students and families



Best Practices

- Train staff on HIPAA, Part 2, and FERPA and applicable obligations under each federal law.
- If there is a Memorandum of Understanding between a school district and health center that includes additional restrictions or requirements, train staff on those limitations.
- Know the situations under state law in which a minor can unilaterally consent to treatment. Draft or revise your Minor Consent to Treat form to reflect state law.
- Draft policies and procedures related to disclosure and access to student records.
- Develop compliant forms authorizing release of records when appropriate. Know which federal and state laws apply to the situation and who can consent to the release of information and execute the release.
- Document any executed release in the appropriate record.
- Know when a health center can share with a school and when a school can share with a health center.



Questions?

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