

PRIVACY PROTECTIONS FOR MEDICAL RECORDS OF NON- COVERED ENTITIES

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administrators, counselors, health educators, physical
educators, psychologists, school health coordinators, school
nurses, school physicians, & social workers
oversee health education or health services programs in
schools & state agencies

School Health Records

- Maintained by schools
- School personnel - health & education services
- Preschool through 12th grade
- Not school based primary health care clinics
 - outside agencies
 - not education records, covered by HIPAA, not FERPA

School Health Records

- Personally identifiable student health records
- Family Education Rights and Privacy Act
- Public schools & private schools-federal funds
- Part of education record
- Enacted 1974, prior to Individuals with Disabilities Education Act

FERPA & IDEA

- FERPA does not address health records privacy or sensitivity of health information
- IDEA changed the nature of school health
- Acute care: tracheotomy, ventilators, catheterizations, medications/injections, gastrostomy
- Therapy: physical, occupational, speech

Student Health Records

- Complete health histories
- Family health information
- Third party records: hospitals, primary care providers consultants, counseling, psychiatric, laboratory and genetic testing

Florida

100,000 office visits daily

80,000 medication doses daily

1,000,000 nursing assessments annually

2,000,000 consultations annually

180,000 complex medical procedures annually

1999 GAO \$2.3 billion school health services

Electronic School Health Records

- Wisconsin >25%
- Washington 26%
- Iowa 32%
- Massachusetts 58%
- Delaware 100%

New York, California, Oregon, Colorado >50%

Electronic School Health Records

- Non-networked
- Networked
- Laptops & PDAs
- Health records software
 - Individual password protection, authentication, audit capability, partitioning, overwrite protection
- Health module in school enterprise system
 - Lack rudimentary protections

Traditional practices

Paper records

- Iowa (Adams, 2006)
- 53% nurses notes sequential multi-student daily log
- Sales down 30% since 2001
- Violates FERPA



Traditional practices

Health Concerns Lists (Adams, 2006)

- 41% nurses national survey distribute health concerns lists
- 14% “some information”
- 9 % “a little information”
- Only 33% never
- Teachers, bus drivers, administrators, playground aides...
- Violates FERPA

Impact of Increasing privacy protections

Positive

Negative

Negligible

Positive

- Decrease confusion over where FERPA ends and HIPAA begins
 - Awaiting technical guidance
 - Every state has own interpretation
 - Exemption did not take into consideration
 - FERPA does not address health records
 - Acute level of care & volume of care in schools
 - Electronic billing for school health services
 - Schools as clearinghouses
 - Covered Entity Algorithms do not work for schools

Positive

- Increase communication between primary care providers and school health providers
 - FERPA has no TPO exception
 - Releasing records to schools removes assurance of HIPAA level privacy

Positive

- Public Health
 - FERPA does not have a Public Health Exception
 - School Health has traditionally been public health
 - Reportable communicable diseases
 - Immunization reporting
 - Surveillance
 - Registry of congenital and chronic diseases

Positive

- Privacy Training
 - FERPA does not require training
 - Culture is one of sharing
 - Changes in traditional practices
 - Locks
 - Physical separation of health and academic records

Positive

- Software and Electronic Record Standards
 - Privacy and security safeguards
 - Theft prevention
 - Password protection
 - Electronic communication
 - Encryption

Positive

- Privacy Officer
 - Health information - Health office, main office, classrooms, buses, cafeterias, sports fields, gymnasiums, playgrounds, record archives
 - Transportation - interoffice mail, faxes and emails
 - Licensed school health providers – no authority over other school locations
- Accountability
 - Climate limits direct access to the student health record & protects student privacy
 - Authority to enact changes in practices & procedures that threaten privacy & confidentiality
 - Consequences
 - Procedures for external disclosure

Positive

- Transfer to new school – FERPA exception
- IDEA requires transfer of all records
- Parents and students may want to limit

Negative

- Educational mission, not health care mission
- No Child Left Behind – strain on resources
- Costs
 - Labor and materials
 - Software
 - Training
 - Privacy Officer
 - Policies & procedures
 - Attorney & consultant fees

Negative

- Penalties
- FERPA – Withholding federal funds
- Doe vs. Gonzaga
 - FERPA does not create federal rights
 - Congress did not intend FERPA rights to be enforceable
- HIPAA penalties

Negative

- Decreased and delayed communication for education planning
- Legitimate Educational Interest
- Educational versus care team
- Threat of penalties
 - Overzealous
 - Safety
 - Education

Negative

- Transfer to new school – FERPA exception
- Delay information needed to provide care and education

Negative

- Not panacea
- Inability to exchange immunization and physical exam information between schools and primary providers
- Schools are not recognized public health entities
- Immunizations & physical exams do not meet the definition of treatment

Negligible

FERPA & HIPAA

- Annual notice of information practices
- Right to inspect records
- Right to request an amendment to the record
- Record access log (IDEA)
- Directory information
- Emergency
- Judicial order or subpoena
- Research
- Federal and state officials for auditing purposes

Negligible

- Billing vendors - Business Associates
- HIPAA compliant with the Privacy, Security & Transactions Rule.

Protect health information in any setting
Recognize role of schools in public health

Thank you

American School Health Association