

School-Related Questions
About the Health Insurance Portability and Accountability Act (HIPAA)
December 2, 2003

<p>Disclaimer: The enforcement authority for the HIPAA privacy regulations is the Office for Civil Rights (OCR), U.S. Department of Health and Human Services. TDH has no enforcement role for HIPAA, and no role in determining how HIPAA applies to schools. School districts should consult with their legal advisors on any matters of interpretation.</p>

Covered Entity

Q: Do school districts have to comply with HIPAA?

A: Yes, some school districts have to comply with HIPAA because they fit the definition of a “covered entity” under HIPAA. Other school districts, however, do not fit the definition of a “covered entity.” School districts must consult with their legal advisors to determine if HIPAA applies to them.

Q: What are “covered entities” under HIPAA?

A: The federal HIPAA regulations apply only to those entities defined in the regulations as “covered entities.” Covered entities under HIPAA are group and individual health care plans, clearinghouses, and providers who transmit health information electronically. Health care plans, clearinghouses, and providers that do not conduct any electronic transactions for which a standard has been adopted in the federal electronic transaction regulations are not covered entities under HIPAA.

Q: Why might school districts be considered “covered entities”?

A: School districts could be covered entities as health care providers, health plans, or health care clearinghouses. Many school districts, for example, conduct electronic transactions for payment as Medicaid providers in the SHARS Program. School districts that are self-insured for employee insurance may be covered entities as health plans. School districts that process Medicaid and other medical claims for third parties may be considered health care clearinghouses.

Q: Is a fax transmission of immunization records to a school for enrollment purposes considered an "electronic transaction"?

A: No.

Q: How can my school district determine whether or not it is a “covered entity”?

A: School districts must consult with their legal advisors to determine if HIPAA applies to them. The federal office that enforces HIPAA has developed an online decision-tool

to help individuals and organizations determine if they are covered entities. The decision tool is available at the following web site for the U.S. Department of Health and Human Services: <http://www.cms.hhs.gov/hipaa/hipaa2/support/tools/decisionsupport/default.asp>

Q: If a school district is a SHARS provider, does that automatically make the district a “covered entity” under HIPAA?

A: Yes, if the school district is a Medicaid provider under the SHARS program, AND the school district submits electronic transactions to receive payment from Medicaid, then the school district is a “covered entity” under HIPAA.

Disclosing PHI to Teachers/Staff

Q: As a school nurse, am I able to tell a teacher that one of her students has a specific health problem, such as diabetes?

A: Yes. Appropriate information needs to be disclosed; however, every teacher may not need to know specific diagnoses. Teachers can be told what types of symptoms to look for and what should be done in the event that those symptoms appear.

Q: Is it all right to disclose students’ health problems to the entire school staff if there is a policy in place that allows it?

A: No. Only the minimum necessary information should be disclosed, and only to those with a justifiable need to know.

Immunization Records

Q: Are school nurses authorized by law to get immunization records from the state immunization registry, ImmTrac?

A: Yes.

Q: Are health care providers authorized by law to give immunization records directly to school nurses without authorization from a child's parent/guardian?

A: No. Health care providers who are covered entities under HIPAA must obtain authorization from the parent/guardian before sharing immunization records with school nurses or with the state immunization registry, ImmTrac.

Q: May schools continue to contact the city or county public health clinic and ask staff to look up students in ImmTrac on the school’s behalf?

A: Yes. ImmTrac rules allow city or county public health clinics to share information from ImmTrac with schools. Schools may also obtain direct access to ImmTrac. For more information, you may want to visit the TDH Immunization Division web site at <http://www.tdh.state.tx.us/immunize/default.htm>.

Q: Why can schools get information from ImmTrac but not directly from physician's offices or clinics?

A: When parents sign up for ImmTrac, they agree that their child's information in ImmTrac may be shared with schools. If the information is not in ImmTrac, the physician's office or clinic must obtain authorization from the parent before disclosing the information, unless the disclosure is for treatment, payment, or other specific purposes.

Physician's Orders

Q: Can a physician's office release specific orders to a school nurse regarding the treatment she is to provide to a student during the school day? (Example – insulin pump, sliding scale or glucagons protocols for a student with diabetes, nebulizer or inhaler treatments for a student with asthma)

A: Yes. HIPAA allows providers to use or disclose protected health information for treatment purposes. Consent for such disclosure is optional under HIPAA, even if the school district receiving the information is not a covered entity.

Note: Registered nurses have an obligation by law to collaborate with other members of the health care team. Receiving telephone orders from the physician is sometimes a necessity in treating patients appropriately. See rule §217.1, Standards of Professional Nursing Practice, at <http://www.bne.state.tx.us/rr217.htm#11>. In particular, see item numbers 19, 21, and 22.

Q: Are physician's orders covered by HIPAA?

A: Health information is covered by HIPAA if the information is held by a HIPAA "covered entity." If a school nurse receives physician's orders for treatment, and the school district is not a HIPAA covered entity, the physician's orders are protected by other privacy and confidentiality laws. Information in school records, for example, is covered by the Family Educational Rights and Privacy Act (FERPA).

Q: Is an authorization required before physicians and other covered providers are permitted under HIPAA to discuss the treatment of patient with a school nurse, regarding a patient enrolled at the school?

A: No, an authorization is not required. The HIPAA Privacy Rule permits a health care provider to disclose protected health information about an individual, without the

individual's authorization, to another health care provider for that provider's treatment of the individual. See 45 CFR 164.506 and the definition of "treatment" at 45 CFR 164.501.

Q: What types of disclosures may a covered entity permissibly make to a school nurse under HIPAA?

A: A covered provider may permissibly disclose PHI to a school nurse including, but not limited to, the following situations:

- PHI for which there is an individual authorization;
- PHI necessary for treatment of the child. The provider may disclose treatment information to a school nurse regardless of whether the school nurse is also a covered entity. See 45 CFR 164.506(c)(1) or (2).

Fax

Q. Can a covered entity fax protected health information (PHI)?

A: Yes. Sending information by fax is allowable under the HIPAA privacy regulations, as long as the covered entity uses "reasonable safeguards" and the "minimum necessary" standard. Reasonable safeguards for faxing might include a process for confirming the fax number and receipt of the fax. The covered entity might also include a confidentiality statement on the fax cover sheet. The minimum necessary standard means that the covered entity would send the least amount of information necessary.

Q: Can a covered entity honor an individual authorization form that is a faxed copy rather than the original form?

A: Yes. According to guidance from the U.S. Department of Health and Human Services (HHS), covered entities may rely upon a faxed copy of an individual authorization form as long as it is legible. The original is not required to meet the covered entity's responsibilities under the Privacy Rule.¹ HHS also considers a copy or electronically transmitted version of a signed authorization a valid authorization under the Privacy Rule.

Leaving Messages

Q: May school nurses and/or school-based health center staff leave messages for patients at their homes, either on an answering machine or with a family member,

¹ "In accordance with the requirements of § 164.530(j), the covered entity must retain a written record of authorization forms signed by the individual. Covered entities . . . [may] rely on *copies* of authorizations . . ." 65 Fed. Reg. 82660 (Dec. 28, 2000). Note that the Social Security Administration has taken an active role in clarifying the acceptability of using faxes under HIPAA. See Soc. Security Admin., *HIPAA and the Social Security Disability Programs: Information for Consultative Examination Providers - Fact Sheet*, at <http://www.ssa.gov/disability/professionals/hipaa-cefactsheet.htm> (viewed July 7, 2003).

to remind them of appointments or to inform them that a prescription is ready? May providers continue to mail appointment or prescription refill reminders to patients' homes? What about vaccine reminder postcards?

A: Yes. The HIPAA Privacy Rule permits health care providers to communicate with patients regarding their health care. This includes communicating with patients at their homes, whether through the mail or by phone or in some other manner. In addition, the Rule does not prohibit covered entities from leaving messages for patients on their answering machines. However, to reasonably safeguard the individual's privacy, covered entities should take care to limit the amount of information disclosed on the answering machine. For example, a covered entity might want to consider leaving only its name and number and other information necessary to confirm an appointment, or ask the individual to call back.

A covered entity also may leave a message with a family member or other person who answers the phone when the patient is not home. The Privacy Rule permits covered entities to disclose limited information to family members, friends, or other persons regarding an individual's care, even when the individual is not present. However, covered entities should use professional judgment to assure that such disclosures are in the best interest of the individual and limit the information disclosed. See 45 CFR 164.510(b)(3).

In situations where a patient has requested that the covered entity communicate with him in a confidential manner, such as by alternative means or at an alternative location, the covered entity must accommodate that request, if reasonable. For example, the U.S. Department of Health and Human Services considers a request to receive mailings from the covered entity in a closed envelope rather than by postcard to be a reasonable request that should be accommodated. Similarly, a request to receive mail from the covered entity at a post office box rather than at home, or to receive calls at the office rather than at home are also considered to be reasonable requests, absent extenuating circumstances. See 45 CFR 164.522(b).

Immunization reminder postcards can be mailed to participants but only if the specific vaccine is not indicated on the card. If the vaccine is listed on the card, it must be mailed in an envelope.

HIPAA Privacy Notice

Q: Does HIPAA require SHARS providers to give privacy notices to students receiving SHARS?

A. Yes. If the school district is a covered entity as a provider, then the district needs to develop its own privacy notice and give the notice to each client (student) who receives services. Covered providers must also obtain each client's (or parent/guardian's) signature acknowledging receipt of the privacy notice. For more information about the

requirements for distributing a HIPAA Privacy Notice, see the federal guidance at <http://www.hhs.gov/ocr/hipaa/privacy.html>.

Consent for Billing

Q: Does HIPAA require SHARS providers to obtain a consent signature for billing purposes?

A. No. Consent is optional (not required) for treatment, payment, and health care operations.

Forms

Q: Are there templates or examples of privacy notices, authorization forms, and other HIPAA-related forms?

A: Many examples are available on web sites for health care providers and in providers' offices. For official guidance, visit the web site for the Office for Civil Rights, U.S. Department of Health and Human Services:
<http://www.hhs.gov/ocr/hipaa/privacy.html>.

Employee Records

Q: Are employee records protected by HIPAA?

A: No, HIPAA does not apply to information held by an employer about an employee. There are other laws that protect employee information.

Links

Office for Civil Rights, U.S. Department of Health and Human Services
<http://www.hhs.gov/ocr/hipaa/privacy.html>

Texas Association of School Boards
<http://www.tasb.org/>
http://www.tasb.org/texas_lonestar/2003/jan_feb/lgl_information.shtml

National Association of School Nurses
<http://www.nasn.org/briefs/hipaa.htm>

National School Board Association
<http://www.nsba.org>

American School Health Association
<http://www.ashaweb.org/>