



**FERPA and HIPAA  
Privacy Awareness**

# Presenter

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## Faculty Disclosure

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# Course Description

In this course, you will review FERPA (The Family Educational Rights and Privacy Act) and HIPAA (The Health Insurance Portability and Accountability Act), the two pieces of federal legislation that pertain to the privacy and protection of healthcare records and protected health information on our college and university campuses.

You will look at the similarities and differences between FERPA and HIPAA, and the situations under which one or both may apply. You will learn the difference between FERPA educational and treatment records, and why that is important in your college health program. You will review “TPO” and the “Minimum Necessary Rule.”

The course will close with answers to common FERPA/HIPAA privacy questions.

# Learning Objectives

- Define FERPA and HIPAA and their applicability at College/University health and counseling services
- Compare FERPA vs. HIPAA standards and how they compare and contrast
- Compare FERPA education vs. treatment records
- Explain the definition of protected information
- Describe protected information use and disclosure
- List common FERPA/HIPAA compliance questions

# FERPA and HIPAA at Colleges/Universities

# Colleges and Universities. . .

Have an ethical and legal obligation to protect the privacy of our students/patients/clients, including their healthcare records.

# Important

- As with all legal situations, it is **very** important to **consult with your college/university general counsel/attorney** regarding your individual campus approach to FERPA, HIPAA, and patient/student/client privacy.
- Your General Counsel's instructions should supersede any information provided in this webinar.
- There may be statutes/regulations in your state that supersede FERPA and HIPAA guidelines. FERPA and HIPAA are privacy **minimums**, not maximums.



# Training Employees

- Colleges/universities should train all the members of their healthcare workforce on the policies and procedures regarding protecting the privacy of healthcare information (FERPA and HIPAA).
- The training should be designed to fit the specific college/university to allow each employee to be able to carry out his/her/their day-to-day activities within healthcare services/settings.



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# FERPA vs. HIPAA

# FERPA and HIPAA: Federal Privacy Legislation

## FERPA

FAMILY EDUCATIONAL RIGHTS & PRIVACY ACT

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## HIPAA

HEALTH INSURANCE PORTABILITY &  
ACCOUNTABILITY ACT

# Patient/Client Privacy and Confidentiality Rules

Two Privacy Rules:

- FERPA is a federal law that protects the privacy of students' "education records," including "treatment records."
- In most college health settings, FERPA applies to care provided to **students** at our student health and counseling services.
- The HIPAA Privacy Rule creates national standards to protect individuals' personal health information (PHI) and gives patients/clients increased access to their healthcare records.

In most college health settings, HIPAA applies to care provided to **non-students** (e.g. faculty/staff or dependents seen at student health services). There may be settings (centers completely under the umbrella of a university health system/school of medicine, outsourced centers, others) where HIPAA applies to the care provided to all patients/clients.

*Note: Consult your college's/university's general counsel if you believe this applies to your setting.*

# Why FERPA and not HIPAA for Students?

- Per DOE/HHS Guidance and Jan. 2013 revisions to HIPAA regulations, it is clear that HIPAA does not apply to college/university education records or treatment records.
- FERPA has actually covered college student health and counseling records for several years, but the regulations were not “operationalized”
- FERPA applies to colleges/universities that receive funds that are administered by the U.S. Department of Education (so most everybody).
- Under FERPA, “Education” and “Treatment” Records are treated differently.



# FERPA: Education Records

- Under FERPA, The term “**Education Records**” is defined as those records that are: (1) directly related to a student; and (2) maintained by an educational agency or institution, or by a party acting for the agency or institution.
- FERPA requires written consent from parents or “Eligible Students” (students who are at least 18 years of age or attending a postsecondary institution) in order to release personally identifiable information (PII) from education records.
- FERPA provides ways in which a school may — but is not required to — share information from an eligible student's education records with parents, without the student's consent.



# FERPA: Education Records

## Education Records:

- Student has a right to review.
- Limits on how records can be used without written consent from student.
- Can be disclosed without written consent in connection with court proceeding/subpoena; and in connection with health and safety emergency.
- However, **education records** can be disclosed without student consent to parents who claim student as a dependent on taxes (Treatment records cannot).



# FERPA: Treatment Records

Treatment records are excluded from the FERPA definition of “Education Records.”

## **Treatment Records** are:

- Made by physician, psychiatrist, psychologist (or any recognized professional or paraprofessional),
- Made, maintained and used **ONLY** in connection with treatment, and
- Either not shared, or shared **ONLY** with other treatment providers.





# FERPA: Treatment Records

Your student health and counseling records are “**Treatment Records**” under FERPA.

- Treatment records under FERPA are handled in most ways like Protected Health Information (PHI) under HIPAA, but not in all ways.
- Under FERPA, treatment records, by definition, are not available to anyone other than professionals providing treatment to the student, or to physicians, counselors or other appropriate professionals of the student's choice.



# FERPA: Can a Treatment Record *Change* to an Education Record?

- Under FERPA, when treatment records are used or disclosed for any reason besides treatment, then they become education records and are covered by FERPA rules on Education Records (e.g. You send a letter of accommodation to your Office of Undergraduate Education; once it is in their files, the letter is an **Education Record**, not a Treatment Record).
- On the other hand, that is also true for HIPAA. Non-healthcare individuals and organizations are not governed by HIPAA privacy laws, so once healthcare information leaves the healthcare arena, it has always been fair game.



# US Dept. of Education “Dear Colleague Letter” about FERPA (8/24/2016)

- “To provide a clarifying example, if an institution provided counseling services to a student and the student subsequently sued the institution claiming that the services were inadequate, the school's attorneys should be able to access the student's treatment records without obtaining a court order or consent.”
- “However, if instead the litigation between the institution and the student concerned the student's eligibility to graduate, the school should not access the student's treatment records without first obtaining a court order or consent.”
- “And under no circumstances should an institution seek to access such records in an effort to intimidate or otherwise retaliate against a student for reporting or litigating claims of discrimination, including but not limited to sexual harassment and assault.”

# Other Important Differences between HIPAA and FERPA

- FERPA does not specifically allow disclosure for public health activities; therefore, a notice to student is required in most settings (e.g. disease surveillance, FDA reporting).
- FERPA does not specifically allow disclosure for reporting abuse to a relevant authority; therefore, a notice to student is required in most settings (e.g. mandatory reporting to state officials of child abuse).
- Therefore, many sites add specific information about these required disclosures in their paper or electronic FERPA privacy acknowledgement forms; generally it does not need to be done one student at a time. *(Check with your general counsel if you are unsure).*

# Quick Summary

- HIPAA does not apply to student medical/counseling records at the college or university the student attends; FERPA does.
- Treatment Records under FERPA are handled in most ways like Protected Health Information under HIPAA, but not in all ways.
- A student does not have a FERPA right to “inspect and review” unshared treatment records.
- A student **does** have a FERPA right to “inspect and review” treatment records that have been shared **outside** of the healthcare arena.
- *Ask your College/University general counsel for guidance on your campus and in your state.*



# Protected Information

# What is Protected Information?

- Under FERPA (Personally Identifiable Information or **PII**) and HIPAA (Protected Health Information or **PHI**), protected information is any information that identifies the past, present or future physical or mental health of an individual, and includes all communication media - written, verbal and electronic.
- These policies extend to all individually identifiable health information in the hands of covered entities (healthcare providers and administrative staff).





# Identifiers of PII/PHI:

*There are many, including some odd ones!*

- Name
  - Address
  - Zip
  - Names of relatives
  - Name of employer
  - DOB
  - Telephone number
  - Fax number
  - E-mail address
  - Finger or voice prints
  - Photographic images
  - SSN
  - Medical record number
- Health plan beneficiary number
  - Account number
  - Certificate/license number
  - **Vehicle or other device serial number!**
  - IP address any other unique identifier, character, code
  - **Any other identifying information that could reasonably identify the patient.**

# Verbal Communications

Watch out for verbal communications containing PII/PHI in:

- Elevators
- Hallways
- Cafeteria
- Public Areas



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# State Law Supersedes if More Restrictive

- Essentially, FERPA and HIPAA are the **minimum** privacy standards that your healthcare organization must meet.
- If state law is **more restrictive** on a subject that FERPA/HIPAA cover, you must meet the privacy standards in your state.
- This situation occurs most commonly with mental health and counseling records.
- *Check with your general counsel if you are unsure.*



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# Protected Information Use and Disclosure

# “TPO” and the Min. Necessary Rule

*Uses and disclosures of PHI under HIPAA*

Protected Health Information can only be used for “TPO”

**T**reatment\*

**P**ayment

Health Care **O**perations

*\* Treatment is **all** healthcare provided, not just prescriptions, surgeries, etc..*

**Minimum Necessary Rule** -- A disclosure of protected health information, even where authorized by the regulations, must be limited to the “minimum necessary” to accomplish the purpose for which it is made.

*While these are HIPAA rules, they are good “guidelines” to keep in mind in FERPA settings.*

# Incidental Use and Disclosure

- Under FERPA, there are no penalties for incidental or unintentional disclosure of Personally Identifiable Information (PII) and patients/clients do not need to be notified (but many student health and counseling centers do so – it is the right and ethical thing to do).
- HIPAA acknowledges incidental disclosures may occur. Such disclosures are not a HIPAA violation.
- Under both FERPA and HIPAA, we must take “reasonable” safeguards of PII/PHI.
- Only disclose the minimum necessary information.



# Inappropriate Access to PHI/PII

- Healthcare employees, staff and physicians should only access PII/PHI in order to perform their job duties or perform functions on behalf of the patient/client and/or the organization.
- Most healthcare systems monitor their electronic health records (EHRs) and paper medical records. Generally, it is against policy to access your own healthcare records – you must go through medical records and/or your provider.
- Do not access records at the request of a friend or co-worker if you are not involved in the care.  
*At many universities, it is a terminable offense (i.e. you could get fired!)*





# Verify before Access

You should verify the identity and the authority to have access to PII/PHI of any individual requesting PII/PHI.

- Patients/Clients
- Personal Representatives
- Law Enforcement
- Research
- Public Officials

# HIPAA Security Rule = Everybody

- Whereas the HIPAA Privacy Rule deals with Protected Health Information (PHI) in general, the HIPAA Security Rule deals with electronic Protected Health Information (ePHI), which is essentially a subset of what the HIPAA Privacy Rule encompasses.
- The HIPAA Security Rule “establishes national standards to protect individuals’ electronic personal health information that is created, received, used, or maintained by a covered entity.”
- For details, go to <https://www.hhs.gov/hipaa/for-professionals/security/guidance/index.html>.

# Your Overall Approach whether FERPA or HIPAA

You probably don't need to  
**markedly** change what you are  
doing!

Continue to treat all patient/client information  
with respect for the patient's/client's privacy.

*When in doubt, seek advice from your general counsel!*

# Common FERPA/HIPAA compliance questions

# FERPA/HIPAA Common Questions

1. If a patient is at our student health clinic and they ask for copies of lab results, EKG's, radiology reports etc., can we give them to the patient?

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1. If a patient is at our student health clinic and they ask for copies of lab results, EKG's, radiology reports etc., can we give them to the patient?



Yes. Under both FERPA and HIPAA, patients are allowed to have access to their own health records upon request.

# FERPA/HIPAA Common Questions

2. Can we leave text messages or messages on a patient's/client's voice mail or answering machine?

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YES, *BUT*. . . Text messaging is not a secure, confidential way to communicate. Many schools get specific permission to text students, or have it be part of the standard consent form with an opt out. You also need to follow the Minimum Necessary Information rule and meet your obligation to verify patient/client identity and that you have the correct text/phone number-answering machine before releasing protected information.



# FERPA/HIPAA Common Questions

3. Can we call the patient/client by name in the waiting area?

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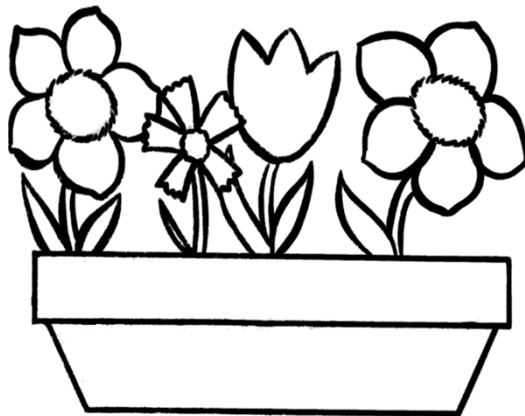
YES. Calling a patient/client from the waiting room is part of Healthcare Operations (TPO). We also have an obligation to verify identity before releasing protected information, so we must have the correct patient/client!

# FERPA/HIPAA Common Questions

4. If I want to send flowers to a patient's/client's home, can I look up their address in our health record?

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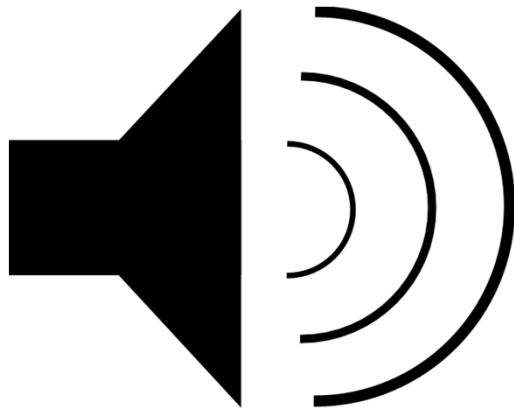
NO! You can only access a patient's/client's healthcare records for TPO: Treatment, Payment and Healthcare Operations. Flowers, though lovely, do not qualify (sorry!)

# FERPA/HIPAA Common Questions

5. Is it OK to talk to a patient/client on a speaker phone?

# FERPA/HIPAA Common Questions

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YES. But you have an obligation to verify identity before releasing information and to do your best to insure auditory privacy (if possible, on both ends of the call, but absolutely on your end).

# FERPA/HIPAA Common Questions

6. Can we fax/email PII/PHI to someone?

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YES, But. For a fax, you have an obligation to verify identity (and that you have the correct fax number) before releasing information. Email is not a secure communication system (unless you are inside a secure university firewall; be sure this applies to your campus. Many student health centers instead use a **EHR Patient Portal/Secure Messaging** to communicate with students rather than email. It is far more secure.



# FERPA/HIPAA Common Questions

7. Is it permissible to share patient/client information with a campus behavioral intervention team (and under what circumstances)?

# FERPA/HIPAA Common Questions

7. Is it permissible to share patient/client information with a campus behavioral intervention team (and under what circumstances)?

Tricky Question! There may be circumstances under which you can share information (e.g. danger to self, danger to others, etc.), depending upon the make-up and role of the behavioral intervention team.

*It is important to establish guidelines with your general counsel/university attorney.*

# Final FERPA/HIPAA comments and tips

# Final comments: What can you do to ensure patient/client privacy at your college/university?

- Make sure that you follow your privacy policies and procedures. Do not access any patient/client information unless it is for TPO.
- Make sure that patient/client information that is no longer needed is destroyed either through shredding or placing in a locked collection box. Get a paper shredder for your area.
- Conduct a walk about in your area to identify where you may have privacy and security concerns.
- Do your best to make sure your computer screen is not visible to anyone behind your work area.
- When you get up from your desk or leave the exam room, make sure to securely store any patient/client information and to log-off of your computer.

# Final comments: What can you do to ensure patient/client privacy at your college/university?

- Don't provide anyone with your computer log-in/user ID or password.
- Don't talk about patients/clients in public areas such as elevators, buses, cafeterias, or restaurants.
- Take extra privacy precautions if your work area is accessible by the public.
- If you are transporting patient/client information make sure the identifiable information isn't showing.
- At the end of the day, make sure you have properly shut down your computer and **lock** all your cabinets/rooms that contain patient information.

# Final Comments = Opening Comments

## Colleges and Universities . . .

Have an ethical and legal obligation to protect the privacy of our students/patients/clients, including their healthcare records.

# For More Information

For more information about FERPA v. HIPAA in college health and wellness programs, go to the US Department Of Health and Human Services and the US Department of Education “**Joint Guidance on the Application of the *Family Educational Rights and Privacy Act (FERPA)* and the *Health Insurance Portability and Accountability Act of 1996 (HIPAA)* to Student Health Records” (2008) at: <https://www2.ed.gov/policy/gen/guid/fpco/doc/ferpa-hipaa-guidance.pdf>**

For information about the **HIPAA Security Rule (ePHI)**, go to: <https://www.hhs.gov/hipaa/for-professionals/security/guidance/index.html>

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# Thank you!

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