Resolving conflicts between FERPA and public health data collection

American Public Health Association
135th Annual Exposition
Washington DC
November 8, 2007
Martha Dewey Bergren, DNS, RN
bergren@uic.edu

Clinical Assistant Professor
Public Health Nursing
University of Illinois-Chicago

Consultant, National Confidentiality Taskforce

ASHA Testimony to NCVHS Privacy Subcommittee
Federal Laws & Privacy

FERPA – Family Education Rights and Privacy Act

HIPAA – Health Insurance Portability & Accountability Act

Martha Dewey Bergren

Copyright 2007, Martha Dewey Bergren, bergren@uic.edu
Interface:

Public Schools: FERPA

Student’s health care providers & agencies: HIPAA

Copyright 2007, Martha Dewey Bergren, bergren@uic.edu
Family Educational Rights & Privacy Act

- FERPA – passed in 1974
- Protects the privacy of students and families
- Sets standards of confidentiality for all education records
- Does not address health records

FERPA: No TPO Exemption

- **Treatment**
  - HIPAA providers share information with schools for Treatment without authorization
  - FERPA does not allow sharing information with prescribers of Treatment without authorization
  - Immunizations, physical exams, & education assessments = No treatment = no exemption
FERPA: No TPO Exemption

- Payment

Letter to Iowa Department of Education re: Disclosure of Education Records to Medicaid Agency for Reimbursement Purposes (10/25/05)

- If submitting for Medicaid reimbursement, MUST have parent consent

Martha Dewey Bergren

Copyright 2007, Martha Dewey Bergren, bergren@uic.edu
<table>
<thead>
<tr>
<th>FERPA</th>
<th>HIPAA</th>
</tr>
</thead>
<tbody>
<tr>
<td>Annual notice of rights to students</td>
<td>Notice of Information Practices</td>
</tr>
<tr>
<td>Right to inspect education records</td>
<td>Right to access information</td>
</tr>
<tr>
<td>Right to request amendment</td>
<td>Right to request amendment</td>
</tr>
<tr>
<td>Record access log</td>
<td>Disclosure logs</td>
</tr>
<tr>
<td>Transfer of ed records to new school</td>
<td></td>
</tr>
</tbody>
</table>

Martha Dewey Bergren

Copyright 2007, Martha Dewey Bergren, bergren@uic.edu
<table>
<thead>
<tr>
<th><strong>FERPA EXCEPTIONS</strong></th>
<th><strong>HIPAA EXCEPTIONS</strong></th>
</tr>
</thead>
<tbody>
<tr>
<td>Directory</td>
<td>Directory</td>
</tr>
<tr>
<td>Emergencies</td>
<td>Emergencies</td>
</tr>
<tr>
<td>Research</td>
<td>Research</td>
</tr>
<tr>
<td>Judicial order/subpoena</td>
<td>Judicial order/subpoena</td>
</tr>
<tr>
<td>Audit by state/federal officials</td>
<td>Audit by state/federal officials</td>
</tr>
</tbody>
</table>

• *School officials with legitimate educational interest*

• Quality Assurance
• Body Identification
• Public Health
• TPO
FERPA

- Internal release: OK for "legitimate educational interest"
- Educational purposes
- No policies/procedure

HIPAA

- Internal release: OK for Treatment, Payment, Operation
- Health purposes
- Policies & procedures detailed

Copyright 2007, Martha Dewey Bergren, bergren@uic.edu
FERPA: No TPO Exemption

- **Treatment**
  - HIPAA providers share information with schools for Treatment without authorization
  - FERPA does not allow sharing information with prescribers of Treatment without authorization
  - Immunizations, physical exams, & education assessments = No treatment = no exemption***

*** State exceptions

Martha Dewey Bergren
FERPA: No TPO Exemption

Payment

Letter to Iowa Department of Education re: Disclosure of Education Records to Medicaid Agency for Reimbursement Purposes (10/25/05)  

If submitting for Medicaid reimbursement, MUST have parent consent

Martha Dewey Bergren
FERPA: No Public Health Exemption

Letter to Alabama Department of Education re: Disclosure of Immunization Records (2/25/04)

Letter to University of New Mexico re: Applicability of FERPA to Health and Other State Reporting Requirements (11/29/04)

Letter to Pennsylvania Department of Education re: Disclosure of Education Records to CDC Grantees (2/25/04)

Letter to California Department of Education re: Disclosure of Education Records to CDC Grantees (2/18/04)

Martha Dewey Bergren

Copyright 2007, Martha Dewey Bergren, bergren@uic.edu
FERPA: No Public Health Exemption

Letter to Alabama Department of Education re: Disclosure of Immunization Records (2/25/04)

- Cannot disclose without written consent
- Emergency
  - Strictly construed
  - Narrow interpretation
  - Imminent danger

*** State exceptions

Martha Dewey Bergren
FERPA: No Public Health Exemption

Letter University of New Mexico: Applicability of FERPA to Health & Other State Reporting Requirements (11/29/04)

- State law requires principals, teachers, school nurses report immediately:
  - Communicable diseases, vaccine preventable & STDs
  - Bio-terrorism & chemical agents: anthrax, smallpox
  - Food, waterborne & environmental
  - Tic, encephalitis, hepatitis, Legionnaires, etc
  - Spinal cord, TBI, tumor registry

- Decision: Subject to all FERPA requirements

Martha Dewey Bergren

Copyright 2007, Martha Dewey Bergren, bergren@uic.edu
FERPA: No Public Health Exemption

Letter University of New Mexico: Applicability of FERPA to Health & Other State Reporting Requirements (11/29/04)

Emergency:
- Imminent danger
- Immediate need
- Narrow interpretation
- Case-by-Case determination

Decision: NO routine reporting = written consent

Martha Dewey Bergren
FERPA: No Public Health Exemption

Letter to Pennsylvania Department of Education re: Disclosure of Education Records to CDC Grantees (2/25/04)  

Letter to California Department of Education re: Disclosure of Education Records to CDC Grantees (2/18/04)  

- Interagency agreements autism
- Decision: Unless a SOE agency or official:  
  - NO exception to written consent

Martha Dewey Bergren
February 2004 DOE memorandum:
- CDC state-related activities using student records without individual parent consent do not comply with FERPA

Options, passive consent & local record review, were not acceptable. Report made to Congress

Preempted inter-agency data sharing agreements
FERPA Dilemmas

- Measuring & sharing student health information:
  - Height, weight, BMI
  - Mental health screening
  - Lifestyle
  - Chronic and acute illnesses mandated reports
  - Environmental Surveillance

- Must have authorization
FERPA: Child Abuse Reporting

FERPA superseded by CAPTA

Child Abuse Prevention, Adoption and Family Services Act of 1988 amended the Child Abuse Prevention and Treatment Act (CAPTA)

Letter to University of New Mexico re: Applicability of FERPA to Health and Other State Reporting Requirements (11/29/04)

Martha Dewey Bergren
Balancing school privacy and safety

- October 30, 2007
- Empowers school officials to act quickly when need arises
- Disclose without consent for health or safety of students
- Release without consent to law enforcement, public health, trained medical personnel

Martha Dewey Bergren
Balancing school privacy and safety

- Law enforcement units
  - Not covered by FERPA
  - No release needed
  - Access to student education records
- Security video not FERPA

Copyright 2007, Martha Dewey Bergren, bergren@uic.edu
Balancing school privacy and safety

- Observed or personal knowledge, not covered by FERPA
- Transfer all records without consent (IDEA 2004)
HIPAA De-identify information

- Name
- SS#
- State, zip
- DOB, DOE.....
- Vehicle #
- Record number
- Serial number
- Device number
- Fax and phone number
- Email, IP address
- Web address
- Certificate and license number
- VIN & registration

Copyright 2007, Martha Dewey Bergren, bergren@uic.edu
FERPA De - identify information

- Name
- ID#
- Gender
- DOB, place
- Religion
- Country of origin
- Sports & clubs
- Academic performance
- Employer
- Discipline
- “Anything else traceable”

Copyright 2007, Martha Dewey Bergren, bergren@uic.edu
Only acceptable strategies

- De-identify
- Obtain parental authorization for ANY sharing outside school

Martha Dewey Bergren

Copyright 2007, Martha Dewey Bergren, bergren@uic.edu
References

References


Martha Dewey Bergren

Copyright 2007, Martha Dewey Bergren, bergren@uic.edu

References


