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

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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



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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, catherizations, medications/injections, gastrostomy
- Therapy: physical, occupational, speech



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Student Health Records

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



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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



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Electronic School Health Records

>25%

26%

58%

- Wisconsin
- Washington
- lowa 32%
- Massachusetts
- Delaware 100%

New York, California, Oregon, Colorado >50%



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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

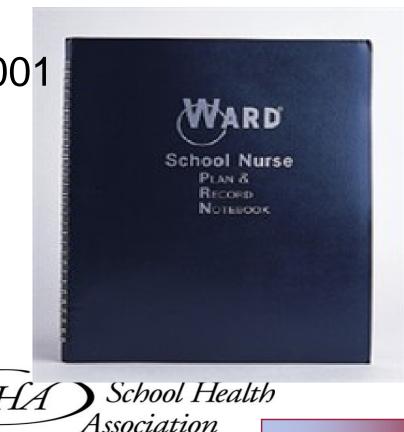


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Traditional practices

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



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Impact of Increasing privacy protections

Positive

Negative

Negligible



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- 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



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- 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



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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



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



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



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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



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



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- 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



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- 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



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



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



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- 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



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NegligibleFERPA & 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

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Negligible

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



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

Thank you

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