The Impact of FERPA on the Sharing of Immunization Data

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Disclaimer: This presentation provides basic information about FERPA in the context of public health. Those who must comply with FERPA are encouraged to seek legal counsel to determine how the laws could apply to a specific activity.
Overview

• Background
• Scope
• Requirements for disclosure
• Recent developments
• Options for compliance
• Resources
Background

Family Educational Rights and Privacy Act (FERPA) (20 USC §1232g, 34 CFR Part 99):
- Federal law that protects privacy of school education record
- Enacted in 1974
- Affords parents rights to access, request amendments to, and exercise some control over disclosure of personally identifiable information from child’s education record
Scope

FERPA governs disclosure of personally identifiable information from education record

- Health care information (e.g. immunizations) is part of education record
- Applies to schools that receive federal funds from U.S. Department of Education (ED)
- Includes records on services received under Individuals with Disabilities Education Act (IDEA)
Disclosure From Schools

FERPA requires written parental consent to disclose almost all information from education record

• “Eligible” students (child over 18 or attending institution of postsecondary education) may consent
Consent Requirements

• Consent must specify:
  – records that may be disclosed
  – purpose of disclosure
  – party or class of parties to whom disclosure may be made
• May be given out at beginning of school year
• UT developed consent form for disclosure of immunization information from schools to registry
  – Simple language works best
  – More of an administrative burden than expected
Directory Information

Schools may disclose directory information without consent

- Includes student’s name, address, telephone #, date and place of birth, honors and awards, dates of attendance
- School decides on categories of information designated as directory information
- Must allow parents and eligible students a reasonable amount of time to request that school not disclose directory information without prior consent
Health and Safety Exception (1)

- Schools may disclose identifiable information without consent under very limited circumstances
  - Includes disclosure to appropriate officials in cases of health and safety emergency
- Regulations implementing law state that provision is to be strictly construed
- ED has interpreted application to specific situations that present imminent danger to students or community
Health and Safety Exception (2)

2004 letter from ED Family Policy Compliance Office states:

- Exception would apply in case of a smallpox, anthrax, or other bioterrorism attack
- Agency or institution determines whether exception applies on a case-by-case basis
- “Certainly an outbreak of diseases such as measles, rubella, mumps and polio not only pose threat of permanent disability or death for the individual, but have historically presented themselves as epidemic in
Health and Safety Exception (3)

2004 letter cont’d:
nature. Thus, disclosure of personally identifiable information from students’ education record to State health officials for such reasons would generally be permitted under FERPA’s health or safety emergency Provisions.”

- Exception is temporally limited to period of emergency
- Disclosure must be made only to parties who can address specific emergency
Relationship of FERPA to HIPAA and to State Laws

• HIPAA excludes records covered by FERPA

• Since FERPA is a federal law, it preempts or supercedes state laws (e.g. laws allowing exchange of information with schools)
Recent Developments (1)

• 5 year CDC MOU with ED expired 12/05
  – CDC was authorized agent of ED
  – Provided access to data on autism

• Congress asked ED and HHS to work together and submit report to Congress on issue by May 2005
  – Report still in HHS
Recent Developments (2)

- WV asked ED for opinion on whether birth date and vaccination history is identifiable
  - ED opinion likely to indicate that month and year of birth and vaccination history is deidentified in samples where more than 10 records are audited
- MN survey to states on experience with FERPA and school validation audits due May 12
Recent Developments (3)

ASTHO Position Statement, March 2006

• States that public health agencies should be allowed access to education records by law or agreement for public health purposes

• Options for Resolution
  – ED could be asked to re-assess their interpretation of “authorized representative”
  – Congress could be asked to amend FERPA to specifically authorize disclosure of health information to public health (like HIPAA does)
Options for Compliance

• Obtain consent
  – Must comply with FERPA consent requirements
  – May be done at the beginning of school year

• Deidentify information before public health has access
  – School would need to do this
  – Must be consistent with ED interpretation of deidentified
For More Information: FERPA


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