

## **Health Insurance Portability and Accountability Act (HIPAA) Privacy Rule: A Guide for Law Enforcement**

### **What is the HIPAA Privacy Rule?**

The Health Insurance Portability and Accountability Act of 1996 (HIPAA) Privacy Rule provides Federal privacy protections for individually identifiable health information, called protected health information or PHI, held by most health care providers and health plans and their business associates. The HIPAA Privacy Rule sets out how and with whom PHI may be shared. The Privacy Rule also gives individuals certain rights regarding their health information, such as the rights to access or request corrections to their information.

### **Who must comply with the HIPAA Privacy Rule?**

HIPAA applies to health plans, health care clearinghouses, and those health care providers that conduct certain health care transactions electronically (e.g., billing a health plan). These are known as covered entities. Hospitals, and most clinics, physicians and other health care practitioners are HIPAA covered entities. In addition, HIPAA protects PHI held by business associates, such as billing services and

others, hired by covered entities to perform services or functions that involve access to PHI.

### **Who is not required to comply with the HIPAA Privacy Rule?**

Many entities that may have health information are not subject to the HIPAA Privacy Rule, including:

- employers,
- most state and local police or other law enforcement agencies,
- many state agencies like child protective services, and
- most schools and school districts.

While schools and school districts maintain student health records, these records are in most cases protected by the Family Educational Rights and Privacy Act (FERPA) and not HIPAA. HIPAA may apply however to patient records at a university hospital or to the health records of non-students at a university health clinic.



### **Under what circumstances may a HIPAA covered entity disclose PHI to law enforcement?**

**A HIPAA-covered entity may disclose PHI to law enforcement with the individual's signed HIPAA authorization.**

**A HIPAA covered entity also may disclose PHI to law enforcement without the individual's signed HIPAA authorization in certain incidents, including:**

- To report PHI to a law enforcement official reasonably able to prevent or lessen a serious and imminent threat to the health or safety of an individual or the public.
- To report PHI that the covered entity in good faith believes to be evidence of a crime that occurred on the premises.
- To alert law enforcement to the death of the individual, when there is a suspicion that death resulted from criminal conduct.
- When responding to an off-site medical emergency, as necessary to alert law enforcement to criminal activity.
- To report PHI to law enforcement when required by law to do so (such as reporting gunshots or stab wounds).

- To comply with a court order or court-ordered warrant, a subpoena or summons issued by a judicial officer, or an administrative request from a law enforcement official (the administrative request must include a written statement that the information requested is relevant and material, specific and limited in scope, and de-identified information cannot be used).
- To respond to a request for PHI for purposes of identifying or locating a suspect, fugitive, material witness or missing person, but the information must be limited to basic demographic and health information about the person.

To respond to a request for PHI about an adult victim of a crime when the victim agrees (or in limited circumstances if the individual is unable to agree). Child abuse or neglect may be reported, without a parent's agreement, to any law enforcement official authorized by law to receive such reports.

#### **For More Information**

This is a summary of the relevant provisions and does not include all requirements that are found in the HIPAA Privacy Rule. For complete information, please visit the U.S. Department of Health and Human Service's Office for Civil Rights HIPAA web site at <http://www.hhs.gov/ocr/privacy>.





## Family Educational Rights and Privacy Act A Guide for First Responders and Law Enforcement

### What is FERPA?

The Family Educational Rights and Privacy Act (*FERPA*) is a Federal law that protects the privacy of student education records. The law applies to all educational institutions and agencies (termed "schools" below) that receive funds under any U.S. Department of Education program. *FERPA* gives parents certain rights with respect to their children's education records. These rights transfer to the student when he or she reaches the age of 18 or attends a postsecondary institution. Students to whom the rights have transferred are "eligible students."

*FERPA protects the rights of parents or eligible students to:*

- *inspect and review education records;*
- *seek to amend education records;*
- *consent to the disclosure of information from education records, except as specified by law.*



### What information can schools provide to law enforcement?

Generally, schools may disclose personally identifiable information (PII) from students' education records to outside parties, including local law enforcement, only if the parent or the eligible student has provided prior written consent. "Education records" are defined as those records that are directly related to a student and maintained by a school or a party acting for the school, and include student records such as transcripts, disciplinary records, immunization records, and other similar records.

However, there are exceptions to the definition of "education records." One of these exceptions is for school "law enforcement unit (LEU) records." These records are defined as records that are (1) created by a LEU; (2) created for a law enforcement purpose; and (3) maintained by the LEU. These records are not protected under *FERPA* and can be disclosed according to school policy or as required by law. Education records that are in the possession of the LEU do not lose their status as education records and must continue to be protected under *FERPA*.



### FERPA permits the non-consensual disclosure of PII from "education records" for health and safety emergencies and judicial orders.

Discussed below are some relevant exceptions to *FERPA*'s general consent rule that permit the non-consensual disclosure of PII from education records to law enforcement agencies:

#### Schools may non-consensually disclose designated "directory information" to law enforcement agencies.

This is permitted if the school has provided notice to parents and eligible students of PII from student education records that the school has designated as directory information and if the parents and eligible students have not opted out of directory information disclosures. Directory information is information from an education record that would not generally be considered harmful or an invasion of privacy if disclosed and may include items such as name, address, telephone listing, and participation in sports.



#### Schools may non-consensually disclose PII from education records in connection with a health or safety emergency.

When an articulable and significant threat exists – anything from an active shooter to a hazardous weather event to a chemical spill – school officials are permitted to disclose PII from education records to appropriate parties, such as law enforcement, in order to protect the health and safety of students or other individuals. Schools are allowed to share this information only during the period of the emergency, and they have to meet certain recordkeeping requirements.

#### Schools may non-consensually disclose PII from education records in order to comply with a judicial order or a lawfully issued subpoena.

Prior notification to parents and students is generally required, though there are some exceptions for law enforcement subpoenas where the court or issuing agency has ordered that the existence or contents of the subpoena or the information furnished in response to the subpoena not be disclosed.

#### Questions about FERPA?

Email the U.S. Department of Education's Family Policy Compliance Office with questions about *FERPA* at [FERPA.Customer@ed.gov](mailto:FERPA.Customer@ed.gov). You may also contact your legal counsel for advice.

