



A SUMMARY OF HIPAA COMPLIANCE VULNERABILITY EXPOSURE IN SCHOOLS

The Health Insurance Portability and Accountability Act (HIPAA) specifically affect schools and universities as entities that are subject to HIPAA regulations.¹ While many educational organizations understand how HIPAA impacts the benefits and human resources areas, often there are many other vulnerabilities that are not adequately addressed, which could expose a district to risks of litigation, criminal prosecution and disruption of daily operations with the associated costs and negative publicity surrounding those types of situations.²

The enforcement penalties associated with HIPAA regulations include both civil and criminal penalties and the potential of class action litigation which could be initiated by as few as two people. There are many different areas in a school district that may be impacted by HIPAA. Below are listed the types of incidents that might occur in a school district on any given day and the types of questions that should be asked and properly addressed for a district to avoid the risks of non-compliance.

SUPERINTENDENTS . . . A STUDENT IS INJURED & THE SUPERINTENDENT MUST MAKE A PUBLIC STATEMENT TO THE PRESS . . .

- ◆ What information can be given in press release?
- ◆ What details can be shared with an attorney?
- ◆ Should announcements be made to employees?
- ◆ Should Superintendent call physician for status?
- ◆ What information can be given to physician?

While the general instinct in this type of situation is to provide a compassionate response to requests from media, central administrators or campus staff, the improper release or exchange of information could violate the privacy regulations of HIPAA. Requests and disclosure of health information must be handled within specific guidelines and documentation of the exchange of information may be specifically required by HIPAA.

SPED . . . A CHILD NEEDS TO HAVE PHYSICAL THERAPY AT SCHOOL PRESCRIBED BY TREATING PHYSICIAN . . .

- ◆ Who should be told by SPED staff?
- ◆ Do others need to be notified?
- ◆ Who in school district should know about child?
- ◆ Should SPED staff call the physician for status?
- ◆ Should SPED staff keep progress updates?
- ◆ How are SPED records managed & protected?
- ◆ What information can be given to physician?

The Admission Review and Dismissal Committee must meet to update the individualized education plan of a paraplegic student who is being taught how to transfer from their wheelchair to use the school restrooms. The homeroom

teacher may wish to notify other teachers and staff of the plan details and the cause of the medical condition which might be in the best interests of the student. The release of more information than necessary or the failure to appropriately document the exchange of information might create an exposure to HIPAA violations and the potential for a legal action.

HUMAN RESOURCES . . . AN EMPLOYEE FILES FOR LEAVE BENEFITS . . .

- ◆ Who should be told by HR staff?
- ◆ Should others be notified?
- ◆ What about an attorney or risk manager?
- ◆ Should announcements be made?
- ◆ Should the HR staff call the physician for status?
- ◆ What information can be given to physician?

The request by an employee who has submitted leave paperwork with a medical certificate attached may originate at the campus department level. The campus and department may wish to support the staff member who is diagnosed with a terminal illness. The information shared through the human resources department will related to the status of the illness and will be used in evaluations for filling that employee's position. While the Principal may wish to convey information to parents or students, the inappropriate release or use of the information or lack of documentation of information exchange could result in litigation or penalties.

RISK MANAGERS . . . A STUDENT IS INJURED IN A SCHOOL VEHICLE ACCIDENT & THE INSURANCE COMPANY DEMANDS MEDICAL RECORDS ON ALL INVOLVED . . .

- ◆ Who should be told by risk manager?
- ◆ Can others be notified?
- ◆ Should school attorney or outside counsel be given details?
- ◆ Should the risk manager call physician for status?
- ◆ Should the risk manager track updates and what information should be exchanged with physician or insurance company?

A parent has initiated legal action against the school district in an attempt to secure compensation for injury to their child. The school district claims adjustor assumes that they have access to all student records with no limitations. However, under HIPAA regulations, specific restrictions and guidelines exist about how information must be handled and communicated in this type of scenario. While it is in the best interest of the district for a free flow of information with the insurance company, the improper release or improper documentation may result in the potential for litigation or penalties.



HIPAA ISSUES & SCHOOLS

NURSE . . . A CHILD IS INJURED AT SCHOOL & BROUGHT TO THE NURSES OFFICE FOR TREATMENT & AN AMBULANCE IS CALLED . . .

- ◆ Who should be told by staff or nurse?
- ◆ Should law enforcement be called?
- ◆ What about an attorney or risk manager?
- ◆ Do others need to be notified?
- ◆ Should the nurse call the physician for status?
- ◆ What information can be given to physician?

A student suffers a severe traumatic injury on school property during a school event and emergency services are required. The nurse receives a request from a teacher for information on the student's condition to be shared with classmates. While the instinct of the nurse would be to compassionately share the medical information, HIPAA regulations require that privacy and security measures be used in such situations. Unless proper procedures are followed, there is the potential in this case for multiple violations of the privacy regulations and the exposure to litigation or penalties.

COUNSELORS . . . A STUDENT'S BEHAVIOR APPEARS TO BE ERRATIC & MAY BE SELF DESTRUCTIVE . . .

- ◆ Who should be told by counselor?
- ◆ Can others be notified?
- ◆ Who in district should know about the student?
- ◆ Should the counselor call the parent or guardian?
- ◆ Should counselor track status updates & what information should be exchanged with treating physician or parents?

During a counseling session, it becomes apparent that a student is undergoing severe personal crises and may be in imminent danger of self harm. The student is adamant that parents or a guardian should not be notified and behaves erratically and aggressively. The factors that may need to be considered relative the privacy regulations include the age of the student and whether they are an "emancipated minor". While the counselor may need to contact administration and or law enforcement representatives, the improper handling of this situation could result in litigation and or penalties at multiple levels in the school district.

ATHLETIC DEPARTMENT . . . A STUDENT SUFFERS A SPINAL INJURY DURING A SCHOOL SPONSORED ATHLETIC EVENT . . .

- ◆ Who should be told by athletic trainer?
- ◆ Can others be notified?
- ◆ Who in district should know about the student?
- ◆ Should trainer or coach call physician for status?
- ◆ Should trainer keep progress updates?
- ◆ What information can be given to physician?

A student athlete is injured in a school athletic event. The incident required a life flight transport of the student in full view of thousands of onlookers. There are a tremendous number of requests for information by citizens and media about the incident and, as the student undergoes rehabilitation, school trainers and other staff members may require access to the medical information of the student. All exchanges of information must be handled by all departments with sensitivity to the nature of the information and the requirements of HIPAA for information exchange and documentation.

¹ **Texas Association of School Boards:** ". . . The long and short of it is that virtually all public school districts will be affected, [by HIPAA], directly or indirectly, due to their status as employers, providers of medical services to students, or processors of medical claims for themselves or other entities, or because they have business relationships with covered entities . . . (TASB – Jan-Feb 2003)

National School Board Association: ". . . Individual notes of a physical therapist or a school psychologist about a student are not records protected by FERPA but might be governed by HIPAA. . ." **NSBA Council of School Attorneys – "Inquiry & Analysis" (January 2003)**

Texas Department of Human Services: ". . . School nurses, school-based health clinics, and local education agencies (LEAs) may be regulated by the HIPAA privacy rule . . . "

CDC (HHS): "Rather there is an exception to the definition of PHI..." [which] "means ...that the HIPAA requirements regarding PHI do apply to any PHI in the school that is not an education record under FERPA." **(CDC / UNIV. OF N.C. OPINION)**

² **SUMMARY OF PENALTIES FOR NONCOMPLIANCE:** HIPAA seriously impacts both the organizational and operational aspects of healthcare providers, businesses and government entities that use or provide resources involving "**Protected Health Information" (PHI)**, including group health plans. HIPAA is a **PRIVACY ISSUE** concerned with more than just electronic transfers and technical security. It is a legal mandate dealing with PHI. Elements affect many areas of organizations with serious risks for non-compliance.

NON-COMPLIANCE with HIPAA brings risks of **FINES, JAIL & LAWSUITS** that can impact either individuals or corporate entities and exposes an organization to complaint-driven Federal audits that may be initiated by unhappy employees, vendors, or citizens. The organization must assist the person who is filing the complaint. Those responsible for improper disclosure of PHI face civil penalties including fines from \$100 per incident up to \$25,000 for the same violation per calendar year. The Department of Justice prosecutes wrongful disclosure and penalties can range from \$50,000 and 1 year in prison up to \$250,000 and not more than 10 years in prison for responsible parties.

LAWSUITS by parties claiming damages by improper or illegal release of PHI can be costly in both time and disruption of operations to an organization. Class action legal action can be initiated by as few as two individuals.