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HIPAA and Schools: Fact Sheet

By Nadine Schwab, MPH, PNP, C.S.N., FNASN

In the summer of 2003, several national organizations began working together to seek clarity from the U.S. Departments of Health and Human Services (DHHS) and Education (DOE) regarding the interface of the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and the Family Educational Rights and Privacy Act of 1974 (FERPA). These organizations included the National Association of State School Nurse Consultants (NASSNC), the National Association of School Nurses (NASN), the American Academy of Pediatrics, the American School Health Association, the National Assembly for School-Based Health Care (NASBHC), and the National School Boards Association. As part of this collaborative effort, NASSNC, NASN, and NASBHC wrote letters to both the DHHS and DOE on permissible communications between health care providers and school nurses related to students' immunization status and other health information (e.g., student diagnosis, treatment plans, medications, medical orders). A response from DHHS (Campanelli, personal communication, July 23, 2004) provides guidance in these two areas, as reflected in the Q & A that follow.

Immunizations

Question: Many states mandate that students have immunizations and physical exams or health assessments prior to school entry and for reentry at certain grade levels.

Compliance with these public health mandates is necessary for students to enter or reenter school each fall. May physicians¹ share this information with school nurses or school officials, without written authorization from the parent, to expedite student entry or reentry into school?

Answer: If state law for school entry or reentry requires these immunizations and exams, AND the state law specifically requires the disclosure of health information to school officials, then they are exempt under HIPAA's public health and public policy exceptions; a written authorization is not required to share this information. If there is no state law that specifically requires the disclosure of health information to school officials, physicians cannot share this information with school officials without the written

authorization of the parent. A law stating that immunizations and physical exam results are "public health information" is not sufficient to enable physicians to release this information to schools or school nurses without a written authorization of the parent or eligible student.

Communication Regarding Treatment and Medication Orders

Question: Without written authorization from the parent, may a physician discuss a child's medical orders and school-based treatment plan with a school nurse? For example, a parent delivers to the school nurse the written order of his child's pediatrician for the child to be administered asthma medication as needed in school. The school nurse has a question about the dose or the student's health status related to the asthma or medication. Does the pediatrician need a written authorization form from the parent to discuss that order with the school nurse?

Answer: HIPAA-covered entities may, but are not required to, share patient information with other health care providers (whether or not the health care providers are HIPAA-covered entities) if such sharing is for treatment purposes. The term "health care provider" under FERPA includes school nurses. Thus, physicians may share treatment information with school nurses without the written authorization of the parent.

While the DHHS letter did not address FERPA or state law issues, it is important to understand that student health records are generally covered by FERPA. Under FERPA, schools must have written permission from the parent or eligible student to release any information from a student's education record. However, FERPA allows schools to disclose those records, without consent, to the following parties or under the following conditions (34 CFR §99.31):

- School officials with legitimate educational interest.
- Other schools to which a student is transferring.
- Specified officials for audit or evaluation purposes.

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¹Includes authorized prescriber and other health care providers licensed to order medical treatments and immunizations, for example, advanced practice registered nurses and physician assistants.

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- Appropriate parties in connection with financial aid to a student.
- Organizations conducting certain studies for or on behalf of the school.
- Accrediting organizations.
- To comply with a judicial order or lawfully issued subpoena.
- Appropriate officials in cases of health and safety emergencies.
- State and local authorities, within a juvenile justice system, pursuant to specific State law. (USDOE, 2004)

State licensure statutes and professional standards of practice for nurses and physicians imply, although rarely explicitly state, that nurses must be able to question and clarify medical orders, when indicated, before carrying them out. They also imply that physicians must provide nurses with sufficient information for safe execution of the treatment plan they have ordered. Thus, although physician

obligations under HIPAA regarding communications for treatment reasons are relatively clear, conflicts remain for school nurses. To address this conflict in a practical way, Hootman, Schwab, and Gelfman (2001) recommended that school districts require parents to provide written consent to communications for treatment-related purposes whenever parents request the administration of any specialized care in school, including medication administration.

References

- Hootman, N. Schwab, & M. Gelfman. (2001). School nursing practice: Clinical performance issues. In N. Schwab & M. Gelfman (Eds.), *Legal issues in school health services: A resource for school nurses, administrators and attorneys* (pp. 177-178). North Branch, MN: Sunrise River Press.
- United States Department of Education. (n.d.) Family Educational Rights and Privacy Act (FERPA). Retrieved October 6, 2004, from <http://www.ed.gov/policy/gen/guid/fpco/ferpa/index.html>

"Managing Infectious Diseases in the School Setting"

New Online Continuing Education for NASN Members

By Dee-Dee Vallez RN, MS, Nurse Grant Coordinator

"Managing Infectious Diseases in the School Setting," the second self-study online CE offered by NASN, went live in October 2004. The 64 slides and reader's notes in this learning module cover tetanus, rabies, severe acute respiratory syndrome (SARS), viral hepatitis, meningitis, and smallpox. The key author of this learning activity is Gregory Moran, MD, FACEP, from the Department of Emergency Medicine, UCLA Medical Center. A NASN task force of Margie Golden, RN, BSN, and Carol Zirkle, RN, BSN, NCSN, reviewed and provided feedback on the module. Judy Vessey, PhD, MBA, FAAN, PNP, provided the evaluation questions. NASN authorized this continuing nursing education to assist school nurses in

learning both old and new information about these infectious diseases.

The module is available to NASN members only. Upon a passing post test score of 80%, members will be awarded 1.2 contact hours at no charge. Go to www.nasn.org and click on "Education" at the left side of the home page screen to access this module.

This module was made possible by an education grant from Bayer Biologicals and coordinated by JL Company of Newton, Massachusetts. The National Association of School Nurses is accredited as a provider of Continuing Nursing Education by the American Nurses Credentialing Center's Commission on Accreditation.