Information Sharing and Privacy

OHA Dental Sealant Program Clinical Training

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Disclaimer

This presentation is not legal advice.

Please consult legal counsel regarding local scenarios.

For additional information, see resources such as *FERPA HIPAA Joint Guidance from the US Department of Education and Department of Health and Human Services*, and others listed at the end of this presentation.

Outline

1. Intro to Information Sharing
2. HIPAA and FERPA Overview
3. Scenarios and Strategies

Intro to Information Sharing

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What is the challenge?

School dental sealants programs have legal and ethical responsibilities to

- ***secure information*** to keep it **private and safe**

- ***share information*** to support **student health** with parents/guardians and other providers

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Who needs health records?

Sealant program providers, dental clinics, dental care organizations

- …to ensure continuity of care and compliance with standards
- *HIPAA regulations apply*

School staff, school districts

- …to ensure each student's safety and access to education.
- *FERPA regulations apply*

Families and students

- …to maintain individual health

~~**General public**~~

Could this be a privacy violation?

Student: “Why did my friend get a happy face on their paper, and I got a sad face?”

School administrator: “I’ll need the list of which students were screened today.”

Parent volunteer: “That’s my neighbor’s kid getting screened. If you give me their results, I’ll drop them off this afternoon.”

Office manager: “I want to post smile superstars on our bulletin board. Let me know which kids qualify.”

HIPAA and FERPA Overview

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HIPAA and FERPA

Health Insurance Portability and Accountability Act

Family Educational Rights and Privacy Act

Federal privacy laws

Apply based on **organization function**

Require entities to **protect confidential information**

Have key differences in **permissible sharing**

Consult legal counsel regarding specific scenarios.

HIPAA Regulations

HIPAA applies to *covered entities*

- Hospitals, clinics, other *facilities* that bill Medicaid
- *Employees* who work in/for these facilities

HIPAA requires protection and confidential handling
of *protected health information* (PHI)
in *all forms* (verbal, written, electronic)

Question:

What about volunteers? Would they be bound by HIPAA regulations?

- *The provider is responsible to ensure information sharing meets their own regulations.*
- *In some cases, volunteers are restricted to specific duties; are bound by written agreements; and/or are referenced in the privacy policy of the organization.*
- *Local legal counsel may address specific scenarios.*

Protected health information (PHI)

PHI is any health-related information that can be used, alone or in combination with other information, to identify an individual.

PHI may include:

- Names of individuals and relatives
- Addresses (mailing and e-mail)
- Health plan beneficiary numbers
- Unique diagnosis details

HIPAA regulations

PHI can only be used and disclosed for specific purposes:

- Treatment; continuity of care *within care organization*
- Payment (billing)
- Healthcare operations

Only the *minimum necessary*

Organizations are responsible

HIPAA and emergencies

PHI may be shared without consent from the patient in **specific situations** including:

- When emergency rule applies, PHI may be shared with **specific entities**
  - public health authorities (CDC, state, local)
  - emergency response personnel
  - others responsible for ensuring health and safety

~~**General public**~~

Question:

In a school setting, can a dental sealant provider share student information with front office staff, or only with licensed providers like the school nurse?

Depending on privacy policies and consent/permission forms, student information might be shared with either or both.

HIPAA ***does not*** *permit sharing just because staff is licensed.*

"Minimum necessary" standards will also apply.

FERPA Regulations

FERPA protects *personally identifiable information* (PII) in **student educational records**

PII may include:

- Name of student or family members
- Addresses (home, email)
- Personal identifiers (student ID, social security number)
- Grades, academic transcript
- Attendance record
- School health records

- Exceptions apply → key differences from HIPAA

FERPA regulations

Parents/guardians

Guardians may access their minor student’s entire educational record, including physical and mental health records, until the student is 18.

School staff

Staff with *legitimate educational interest* may share/access specific information without prior consent.

Directory information

If the school has adopted directory information policies that include disclosure and parents have not opted out of the disclosure, information may be shared without prior consent.

Health and safety emergencies

PII may be disclosed to health authorities without prior consent to ensure health and safety (specific conditions).

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Question:

On days when an oral health staff provides services in schools, which regulations should they follow: HIPAA or FERPA?

*If an individual is employed by a HIPAA-regulated entity, HIPAA applies regardless of where they provide services.**

School staff are bound by FERPA. Basic understanding of both laws may help navigate communications.

*(*Exception: providers functioning as school staff, such as a school nurse contracted from a hospital, charting in school records).*

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Scenarios and Strategies

Could this be a privacy violation?

Student: "Why did my friend get a happy face on their paper, and I got a sad face?"

Privacy violation risks

Shoulder Surfing

- looking over someone's shoulder to obtain information
- commonly occurs in busy environments, such as an office or hotel lobby – or school setting

Eavesdropping

- someone secretly listens in on a conversation

Unsecured mobile devices

- Mobile devices such as laptops, cell phones, and USB flash drives are vulnerable to theft and unauthorized access if they are left unattended and unsecured

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Preventing privacy violation

Prevent shoulder surfing and other unauthorized viewing

- **Cover** paper charts. Use binders or clipboard cover sheets.
- **Retrieve** documents promptly from printers or fax machines. Clean whiteboards after use.
- **Organize** workspaces. Clutter often leaves sensitive information in plain view.
- **Position** electronic devices where they cannot be viewed by others. Don’t leave a screen logged in and unattended.
- **Dispose** of papers and electronics properly. Don't throw away sensitive information in an unsecured waste bin.

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Preventing privacy violation

Protect against eavesdropping.

- **Don't** discuss identifiable information in a public space, including around young children.

Protect electronic devices and records.

- **Secure mobile devices**. Don't leave devices unattended.
- **Password protect** mobile devices and use **strong passwords.**
- **Use antivirus software**
- **Secure your network**
    - Use only **secure Wi-Fi**, not public networks
    - **Encrypt** data when downloading or transmitting

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Preventing privacy violation

Additional strategies

- Take the iPad/laptop with you during breaks and at lunchtime.
- Hide completed forms from sight.
- Use tamper resistant envelopes.
- Store completed forms and technology in secure locations at home or in a hotel room safe *(not visible in a car)*
- When in transit to a school or home, securely lock completed forms or an iPad/laptop in a vehicle trunk or hidden from sight.

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Could this be a privacy violation?

School administrator: “I’ll need the list of which students were screened today.”

Privacy violation risk

Unauthorized disclosure

a privacy breach in which protected information is intentionally or unintentionally shared with individuals who do not have permission to access that information

Information may be shared with specific individuals for specific purposes.

- *treatment/continuity of care; billing/payment; healthcare operations*

Consider how to provide necessary support while keeping information secure

- *minimum necessary*

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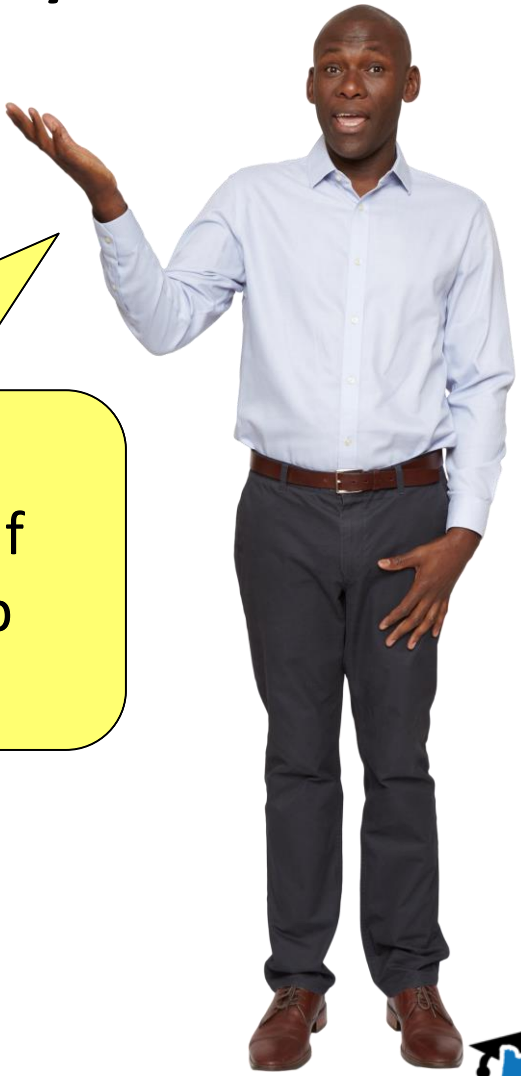
Preventing privacy violation

Privacy policy and consent forms / Release of Information (ROI) forms can help to clarify.

- Be familiar with approved information sharing per privacy practices and permission forms
- Distribute HIPAA forms (i.e. notice of privacy practices) along with parent/guardian permission forms.
- Opt-out notices are used in some settings, generally with MOU in place

Could this be a privacy violation?

Parent volunteer: "That's my neighbor's kid getting screened. If you give me their results, I'll drop them off this afternoon."



Privacy violation risk

Unauthorized disclosure

- *includes both intentional and unintentional sharing of protected information*

Tailgating

- a person following another into a secured area without using their own key, access code, etc.

Preventing privacy violation

Share information with authorized individuals only.

- HIPAA **does not** permit neighbors, friends, etc. to access protected health information, **except with consent** from the patient, or parent/guardian if applicable.

Do not provide access to sensitive areas.

- Never assume you know the access privileges of others. Visitors may not be authorized to access the same areas as you.
- Never let anyone follow you into a secured area (including schools).
- Never prop open a door to a secured area. Doing so defeats the purpose of access controls for preventing unauthorized entry.

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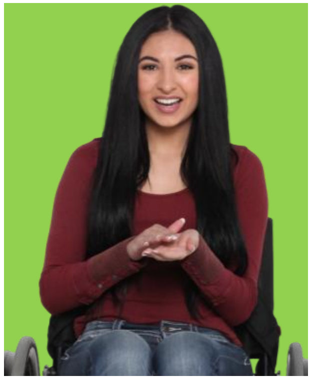
Could this be a privacy violation?

Office manager: "I want to post smile superstars on our bulletin board. Let me know which kids qualify."

Privacy violation risks



Unauthorized disclosure may include security breaches such as

- Posting identifiable information where it can be viewed by unauthorized persons
- E-mail Errors – sending sensitive information to the wrong person.
- Misplaced Health Insurance Info – misplaced document containing health insurance information.

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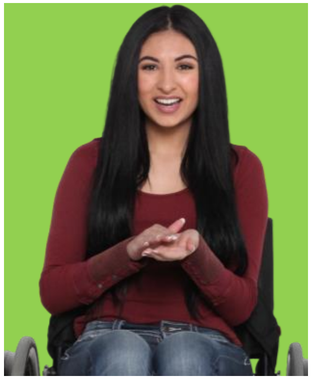
Preventing privacy violation



Client-level data, either in paper or electronic format, should be secured at all times. Protect against

- **unauthorized disclosure**
- **shoulder surfing**
- **eavesdropping**
- **unsecured mobile devices**
- **tailgating**

~~General public~~

The general public **does not** have a need-to-know regarding protected health information.

- *Don't post personal information in public view!*

Summary

Federal privacy laws
Apply based on **organization function**
Require entities to **protect confidential information**
Have key differences in **permissible sharing**

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Summary

HIPAA	FERPA
Health care setting Medicaid billing	Education setting
Protected Health Information (PHI)	Personally identifiable information (PII)
• Client/Patient authority • *Minimum necessary* • Treatment • Billing • Health care operations	• Family/Parent authority • School staff with *legitimate educational interest* • Directory information

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Summary

Consult legal counsel regarding local scenarios.

Resources

- FERPA HIPAA Joint Guidance from US DOE/HHS https://www.hhs.gov/sites/default/files/2019-hipaa-ferpa-joint-guidance.pdf
- SBHC HIPAA FERPA Infographic https://www.sbh4all.org/wp-content/uploads/2023/07/A5_SBHA-HIPAA-FERPA-Infographic-Handout.pdf
- Information Sharing and Confidentiality Protection in School Based Health Centers, a Resource Guide to HIPAA and FERPA (Part 3: HIPAA basics) https://www.sbh4all.org/wp-content/uploads/2023/06/Resource-Guide-to-HIPAA-FERPA-06-26-23.pdf
- ODE Student Records and Privacy https://www.oregon.gov/ode/students-and-family/Pages/Student-Records-and-Privacy.aspx
- Local legal counsel