

The HIPAA Privacy Rule: What Does it Mean for SBHCs?

by Abigail English, Director, Center for Adolescent Health & the Law

The HIPAA Privacy Rule^{i[1]} was issued in 2000 and modified in 2002, with an implementation deadline for most entities of April 14, 2003. The Rule affects much of the information associated with health care services for adolescents.^{ii[2]} Its complexity has baffled many health care providers, including school-based health centers (SBHCs).

SBHCs, their sponsoring entities, and schools are concerned about many questions related to the HIPAA Privacy Rule:

- Is information in SBHC records covered by the HIPAA Privacy Rule?
- When is authorization required to use or disclose information in SBHC records and who should give the authorization?
- When do minors and parents have access to information covered by the HIPAA Privacy Rule?
- What is the relationship between HIPAA and FERPA (the Federal Educational Rights and Privacy Act)?
- What is the relationship between the HIPAA Privacy Rule and the SBHC enrollment and consent process?
- How can information be shared about a student's immunizations?
- Do special rules apply to information about mental health?
- What information can be shared with assistance teams and other school personnel?

This article addresses threshold questions. Subsequent articles will address some of the more specific and specialized questions.

Overview

The HIPAA Privacy Rule was issued by the federal Department of Health & Human Services (HHS) under the Health Insurance Portability and Accountability Act of 1996 (HIPAA). The Rule protects the privacy of individuals' health information and medical records.

The Privacy Rule applies to "covered entities," which include health care providers, health plans, and health care clearinghouses. Most SBHCs would fit the definition of "health care providers." HHS has a decision tree for helping to determine who is a covered entity.^{iii[3]}

The Rule applies to "protected health information" – individually identifiable information that is: created by or received by a covered entity; and is related to the physical or mental health of an individual, or to the provision of health care to an individual, or to payment for health care. Protected health information is not limited to information in electronic records, as is sometimes mistakenly thought to be the case.

Authorization to Release Information

The HIPAA Privacy Rule sometimes *requires* authorization to use or disclose protected health information. Significantly, authorization often is *not required* when information is used or disclosed for one of three purposes: treatment, payment, or health care operations. These are broad concepts and

SBHCs must be careful to learn about the specifics of how and with whom information may be used and disclosed without authorization for these purposes. The Rule permits consent to be voluntarily obtained for use and disclosure even when authorization is not required.

Under the HIPAA Privacy Rule, a parent is generally the “personal representative” of a minor who is not emancipated, while anyone who is age 18 or older or is emancipated is considered to be an individual with rights. When authorization for use or disclosure is required, it must be obtained from the individual if that person is age 18 or older or emancipated, or from the parent for an unemancipated minor, although sometimes authorization would be required from an unemancipated minor rather than the minor’s parent.

Minors As “Individuals” Under the Rule

In specific circumstances, minors are considered “individuals” and may exercise rights under the Rule, such as authorizing disclosure or having access to their own protected health information. These circumstances include when minors have the right to consent to health care or receive it without parental consent, or when their parents have acceded to an agreement of confidentiality between the minor and the health care provider.

Access to Protected Health Information

One of the rights created by the HIPAA Privacy Rule is for individuals to have access to their own protected health information. For unemancipated minors, parents would generally have that access as personal representatives. When a minor is considered “the individual,” a parent’s access to the minor’s health information depends on state or other law:

- If state or other law explicitly requires information to be disclosed to a parent, the Rule allows a health care provider to comply with that law and to disclose the information.
- If state or other law explicitly permits, but does not require, information to be disclosed to a parent, the Rule allows a health care provider to exercise discretion to disclose or not.
- If state or other law prohibits disclosure of information or records to a parent without the consent of the minor, the rule does not allow a health care provider to disclose without the minor’s permission.
- If state or other law is silent on the question of parents’ access, a health care provider or health plan has discretion to determine whether or not to grant access to a parent who requests it.

Therefore, SBHCs need to learn about the state minor consent laws and other laws that pertain to confidentiality and disclosure of adolescents’ health information.

Future articles in this newsletter will discuss the relationship between HIPAA and FERPA, as well as specific issues such as immunizations, mental health, and assistance teams.

SIDEBAR #1:

Several websites contain important information interpreting and explaining the HIPAA Privacy Rule:

CDC – information about the HIPAA Privacy Rule and public health <http://www.cdc.gov/privacyrule/>

Health Privacy Project – general information about the HIPAA Privacy Rule
<http://www.healthprivacy.org>

NIH – information about the HIPAA Privacy Rule for researchers <http://privacyruleandresearch.nih.gov/>

OCR – extensive information from the federal agency responsible for implementation of the HIPAA Privacy Rule
<http://www.hhs.gov/ocr/hipaa/>

SIDEBAR #2:

The Center for Adolescent Health and the Law recently has produced two documents that are relevant to implementation of the HIPAA Privacy Rule:

English A, Kenney, KE. State Minor Consent Laws: A Summary, 2nd Edition. Chapel Hill, NC: Center for Adolescent Health & the Law (2003). Order form available at www.cahl.org.

English A. Confidentiality in Adolescent Health Care: The Role of the HIPAA Privacy Rule. Chapel Hill, NC: Center for Adolescent Health & the Law, forthcoming Spring 2004. Available at www.cahl.org.

^{i[1]} Standards for Privacy of Individually Identifiable Health Information, 45 C.F.R. Parts 160 and 164. Final Rule, 65 Federal Register 82461 (Dec. 28, 2000); Final Rule, 67 Federal Register 53182 (Aug. 14, 2002).

^{ii[2]} English A, Ford CA. The HIPAA Privacy Rule and Adolescents: Legal Questions and Clinical Challenges. Perspectives on Sexual and Reproductive Health (forthcoming, March-April 2004).

^{iii[3]} Centers for Medicare and Medicaid Services. Covered Entity Decision Tools.
<http://www.cms.hhs.gov/hipaa/hipaa2/support/tools/decisionsupport/default.asp>.