

Memorandum

To: Health care providers and school nurses

From: Dora Ann Mills, M.D., MPH, Director, Maine CDC
Philip W. Haines, M.D., MPH, Privacy Officer, CDC
Susan Gendron, Commissioner, Department of Education
Paul Gauvreau, Assistant Attorney General

Subject: Disclosure of Immunizations records from a health provider to school nurses without parental authorization.

Date: October 26, 2004

Background: This Memorandum is intended to supersede the Memorandum dated January 2, 2004 regarding the issue of health provider disclosure of Immunization regards to school nurses without parental authorization.

Background

Maine law requires that students present documentation of immunization for school entry or provide necessary waivers. *See* 20-A M.R.S.A. §6534. Since the adoption of the HIPPA Privacy Rule, there has been confusion regarding whether health care providers could release student immunization records to schools without parental authorization. This Memorandum is intended to clarify the law in relationship to providing immunization information to schools without parental authorization.

As documentation of immunization is required before school entry, it is important that schools receive this information expeditiously, in order to prevent the unnecessary loss of school days for students. Immunizations are central to public

health prevention and important to the control of communicable disease.

HIPAA:

The Health Insurance Portability and Accountability Act of 1996, P.L. 104-91, requires health care providers to secure the written authorization of a child's parent or guardian prior to the disclosure of protected health information (PHI). Unless state law regarding medical confidentiality is more restrictive, there are exceptions to this general requirement. A health care provider subject to HIPAA is not required to obtain authorization from a parent or guardian before disclosing protected health information about a child for treatment purposes. See 45 C.F.R. §164.506(c)(2). The Privacy Rule defines treatment as "the provision, coordination, or management of health care and related services by one or more health care providers, including the coordination of management of health care by a health care provider with a third party; consultation between health care providers relating to a patient; or the referral of a patient from one health care provider to another", 45 C.F.R §164.501. Therefore, the HIPAA Privacy Rule allows a physician to engage in discussions with a nurse, including a school nurse, regarding the administration of medication, immunizing agents, or other treatment related issues, even in the absence of a written authorization from a child's parent or legal guardian.

FERPA:

The Family Education Rights and Privacy Act, 20 U.S.C. §1232g, governs the use and disclosure of educational records. Under FERPA, the term "education records" includes any records maintained or received by a school which are either directly related to a student or are maintained by an educational agency or institution, or party acting on behalf of such educational agency or institution. 20 U.S.C. §1232g(a)(B)(i). Student health information included in an education record is protected by the privacy provisions of FERPA rather than the HIPAA Privacy rule. Generally, a school may not disclose any portion of a child's educational records without the consent of

the child's parent or legal guardian. As a result, in non-emergency situations a school nurse is not allowed to discuss aspects about a child's health with other health care providers with parental consent.

Maine Law: Maine law authorizes health care practitioners to share or disclose a child's vaccination status information with schools without the necessity of prior parental authorization. Specifically, 22 M.S.R.A §1711-C(6)(M) authorizes a health care practitioner to disclose information regarding the immunization of an individual to a school, educational institution, camp, correctional facility or other health care practitioner without the necessity of an authorization from the person's parent or legal guardian.

Conclusion: Consistent with the HIPAA Privacy Rule, which allows health care providers to disclose protected health information about their patients with school nurses for treatment purposes, even in the absence of parental authorization, Maine law allows health care practitioners to share a child patient's vaccine status information with school officials. In receiving a child's vaccination status information from a health care provider, school nurses must be careful not to disclose any child health information in their education records without parental consent.