

Health Insurance Portability and Accountability Act (HIPAA)
And
The Family Educational Rights and Privacy Act-Buckley Amendment (FERPA)

The Health Insurance Portability and Accountability Act of 1996 (HIPAA) requires standards to be adopted in two areas.

1. Electronic health-care transactions (include standardizing the manner in which health services are claimed by any entity for any person in receipt of such a service), and
2. Privacy (confidentiality) of all health-related services provided. This involves protection of health information for anyone in receipt of such services.

Electronic health-care transactions: Since the Central New York Regional Information Center (CNYRIC) submits all Medicaid claim data to the **electronic Medicaid system in New York State (eMedNY)** for processing; it is a covered entity under this act. The electronic transmission of Medicaid data is now HIPAA compliant.

Privacy: The Family Educational Rights and Privacy Act-Buckley Amendment (FERPA a.k.a. Buckley Amendment) is more restrictive than HIPAA with respect to the protection of privacy and security of all health related services. Since all school districts /§4201 schools/counties (and any other educational entities that have access to student data) are obligated to be in compliance with FERPA, they are also HIPAA compliant.

In order to assure compliance with FERPA (and thus with HIPAA), the following minimum procedures must be in place:

- ✓ All student data files and information must be protected (i.e. student files are locked or only accessible by appropriate personnel).
- ✓ Any student information/files transmitted to other appropriate recipients must also be protected. Information files must be encrypted and password protected.
- ✓ Student information/files may be faxed to appropriate personnel, but only to secure sites.
- ✓ Parental consent is required for the release of any personally identifiable information other than those specifically excluded in the attached FERPA Fact Sheet (see Page 2).
- ✓ See Procedures for Transmission of Student Specific Information (Page 3) for all communications between **school districts/§4201 schools/counties** and SED/DOH pertaining to student specific information.

Family Policy Compliance Office Fact Sheet

The Family Educational Rights and Privacy Act (FERPA) (20 U.S.C. § 1232g; 34 CFR Part 99) is a Federal law that protects the privacy of student education records. The law applies to all schools that receive funds under an applicable program of the U.S. Department of Education.

FERPA gives parents certain rights with respect to their children's education records. These rights transfer to the student when he or she reaches the age of 18 or attends a school beyond the high school level. Students to whom the rights have transferred are "eligible students."

Parents or eligible students have the right to inspect and review the student's education records maintained by the school. Schools are not required to provide copies of records unless, for reasons such as great distance, it is impossible for parents or eligible students to review the records. Schools may charge a fee for copies.

Parents or eligible students have the right to request that a school correct records which they believe to be inaccurate or misleading. If the school decides not to amend the record, the parent or eligible student then has the right to a formal hearing. After the hearing, if the school still decides not to amend the record, the parent or eligible student has the right to place a statement with the record setting forth his or her view about the contested information.

Generally, schools must have written permission from the parent or eligible student in order 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;
- 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; and
State and local authorities, within a juvenile justice system, pursuant to specific State law.

Schools may disclose, without consent, "directory" information such as a student's name, address, telephone number, date and place of birth, honors and awards, and dates of attendance. However, schools must tell parents and eligible students about directory information and allow parents and eligible students a reasonable amount of time to request that the school not disclose directory information about them. Schools must notify parents and eligible students annually of their rights under FERPA. The actual means of notification (special letter, inclusion in a PTA bulletin, student handbook, or newspaper article) is left to the discretion of each school.

For additional information or technical assistance, you may call **(202) 260-3887 (voice)**. Individuals who use TDD may call the Federal Information Relay Service at **1-800-877-8339**. Or you may contact the Compliance Office at the following address: Family Policy Compliance Office
U.S. Department of Education
400 Maryland Avenue, SW
Washington, D.C. 20202-4605

Procedures for the Transmission of Student Specific Information

To maintain security all staff (including school district/§4201 school/county, State agency, RIC, and other third party vendor staff) who handle data with student identifying information, especially while seeking clarification on the processing of claims, must abide by the following rules:

FAX TRANSMISSIONS:

The sender should place the student last name, first name, date of birth and gender on a numbered line. This will allow the receiving staff to provide a response using only the number, without having to repeat the identifying information.

Call the receiver ahead of time to be immediately available to retrieve the document. The intended receiver needs to provide the sender with a phone number for a fax machine that is located in a secure environment and not open to the general public.

E-MAIL TRANSMISSIONS:

E-mail transmissions are permissible only if the data is encrypted and password protected. Information on encryption software is available from SED.

TELEPHONE:

The telephone is preferable for small numbers of requests. Leave messages containing identifying data only on voice mail systems that are password protected.

MAILING OF DISKETTES or PAPER DOCUMENTS:

Diskettes and printed documents may be mailed but be sure to mail only to a specific individual with the right to know. General addresses, where anyone can open the mail, would be inappropriate.

HAND DELIVERED FILES:

Diskettes (files such as your Medicaid Demographic File [MD], Medicaid Services File [MS], Medicaid Eligibility File [ME] or Medicaid Remittance File [MR] and printed documents with personally identifiable information may be hand delivered without encrypting the files. However, the information must be hand delivered to an appropriate individual with the right to know.

FILES, LOGS, DOCUMENTATION OR ANY MEDIUM CONTAINING STUDENT PERSONALLY IDENTIFIABLE INFORMATION:

All files must be maintained in a secure environment with access to only appropriate staff who requires access to such information to carry out their work responsibilities. Information left unattended should be locked or maintained where access would be denied.

ENCRYPTION INFORMATION:

School Districts, §4201 schools and counties may continue to use their current encryption software as long as it meets industry standards for security and privacy and is password protected. However, if you do not currently have any encryption software you will need to purchase a package in order to meet FERPA requirements for security and privacy regarding the sending or transmitting of personally identifiable student information. The New York State Education Department (SED) does not recommend that school districts or counties use any particular software package or vendor. School districts, §4201 schools, or counties may pursue appropriate options, based on their existing infrastructure and support, and should involve their information technology support staff in deciding which option or software is in its best interest. However, SED requires that any software selected must be compatible with the PGP software used by SED, the Department of Health (DOH) and the Central New York Regional Information Center (CNYRIC). The WEB site to inquire about the PGP Encryption Software is <http://www.pgp.com/products/workgroup/index.html>. The PGP version that is most compatible for this purpose is the PGP Desktop 8.0 version. Whatever option you choose or software you use, the recipient of your data must be able to open the file with the password you choose.

LOCAL REGIONAL INFORMATION CENTER (RIC) FILE TRANSFER PROTOCOL (FTP).

If your local RIC offers an electronic file transfer process to submit or retrieve files, the RIC takes the responsibility for the securing the information and the authorization for its use. The site automatically protects all personally identifiable information using the Secure Socket Layer (SSL) software. If interested in submitting or retrieving information using this process, contact your RIC for details and authorization. You will be able to submit your MS file directly to CNYRIC through the new MEDWEB site in late fall of 2005. You can now receive all your reports, ME files, and MR files through the new CNY WEB REPORT Site.

NOTE: The Health Information Portability and Accountability Act (HIPAA) expressly excludes from HIPAA coverage any information maintained in school district educational records which are subject to the Family Educational Rights and Privacy Act (FERPA). Any questions regarding the above should be addressed to:

The New York State Education Department
The Medicaid Services Unit
Robert J. Scalise, Coordinator
Room 304 Education Building (EB)
89 Washington Avenue
Albany, New York 12234
Email: rscalise@mail.nysed.gov
Phone: 518 474-3227