

*Quick Guide to the Health Insurance Portability and Accountability Act (HIPAA)
and Family Educational Rights and Privacy Act (FERPA)*

	FERPA	HIPAA
Applies to:	Educational institutions and agencies receiving federal funding, covering educational records that include health records maintained by the school.	Health plans and health care providers maintaining or transmitting individually identifiable health information (i.e., protected health information (PHI)), in any form, including electronically. <u>HIPAA does not cover information considered education records under FERPA.</u>
Information covered:	Educational records, including personally identifiable information (PII).	PHI, including individually identifiable health information.
Information-sharing between schools and health care providers:	Generally requires written consent for school to share information, with exceptions for emergencies and legitimate educational interests.	Permits health care providers to share information for treatment purposes, emergencies, and imminent threats.

1. What is HIPAA and its privacy rule?

The HIPAA Privacy Rule applies to health plans, health care providers, and others that maintain or transmit individually identifiable health information (i.e., their protected health information (PHI)), in any form or media, whether electronic, paper, or oral. The purpose is to protect the privacy and security of individuals' PHI. Covered entities (e.g., health care providers, health plans, and health care clearing houses) must obtain written authorization before disclosing PHI the entities maintain or transmit. HIPAA does allow disclosure of PHI in order to treat a patient during an emergency or in the case of an imminent threat. It also allows providers to share information for treatment purposes.¹

2. What is FERPA?

FERPA is a federal law that protects the privacy of educational records. It applies to all educational agencies and institutions that receive federal funds from the US Department of Education, including public elementary and secondary schools. Private and religious schools also are covered as long as they receive federal funding. Under FERPA, educational institutions may not disclose educational records or personally identifiable information (PII) from those records without the written consent of a parent (or the student, if 18 or older or attending a post-secondary institution). Schools may disclose information from a student's education record, including health and medical information, to teachers and other staff within the school who have legitimate educational interests in the records without obtaining written consent. Schools also may disclose information without written consent in an emergency if necessary to protect the health or safety of the student or other individuals.²

¹45 CFR §§ 164.502(a)(1)(ii), 164.506(c), and the definition of "treatment" at § 164.501.

²20 U.S.C. § 1232g(b)(1)(I); 34 CFR §§ 99.31(a)(10) and 99.36.

3. Does HIPAA apply to schools? What about a school nurse?

Generally, no. In most cases, HIPAA will not apply to elementary and secondary schools because the school is not a HIPAA-covered entity or, if it is a covered entity, the student's health information is considered part of the student's broadly-defined "education records" under FERPA.³ For example, a student's health records maintained by a school nurse would generally constitute educational records subject only to FERPA. Under HIPAA, educational records are *not* covered.⁴ In short, where FERPA applies, HIPAA does not apply.

An exception is "treatment records" for students 18 or older (or a student attending a post-secondary educational institution) created by a physician or other professional offering direct treatment to the student.⁵

4. Do HIPAA or FERPA enable a student's provider to communicate with the school nurse without parental consent?

HIPAA allows health care providers to disclose PHI to school nurses or other health care providers for treatment purposes without obtaining authorization from the parent or patient. For example, a student's pediatrician may discuss the patient's health care needs with the school nurse responsible for administering medications and providing other health care while the student is in school.

FERPA places more limits on information sharing from the school nurse to the provider. Under FERPA, school nurses are not allowed to share PII with a student's physician without obtaining written consent unless there is a specific and significant threat to health and safety, or if the nurse is verifying information provided by that physician.

For example, if the nurse is verifying information on the Diabetes Medical Management Plan (DMMP) or contacting the provider that they used glucagon due to an emergency (or another response to the emergency), consent would not be required. If a school nurse has a question for the provider outside of verifying information in the DMMP or in the case of an emergency, consent from the parent/guardian is required. School nurses should have the parent/guardian sign a consent form at the beginning of the school year so the provider may be contacted without delay.

5. May a school nurse text a parent or guardian with health information regarding their student? Does this violate HIPAA or FERPA?

It depends on what device the school nurse is using to text. School nurses may use official devices, such as a work-provided phone, iPad, or other smart device. However, school nurses should not use their personal devices to transmit or receive student health information because the confidentiality of that information cannot be ensured once the transmittal is made. For example, a school nurse should not use their personal cell phone to text a parent or school staff member with a student's blood glucose readings. This would violate FERPA. If permitted by state law, school nurses may use an encrypted device or app provided by the school for this purpose.⁶

6. Is a school nurse using their personal device to store and communicate student health information in violation of HIPAA or FERPA?

Yes, it would violate FERPA for the same reasons as above. Therefore, school nurses should not use their personal device to monitor continuous glucose monitor (CGM) data.

³20 U.S.C. § 1232g(a)(4)(B)(iv); 34 CFR § 99.3 (definition of "education records").

⁴45 CFR 160(2)(i), defining "protected health information" under HIPAA to exclude "education records covered by the Family Educational Rights and Privacy Act, as amended, 20 U.S.C. 1232g."

⁵20 U.S.C. §1232g(a)(4)(B)(iv); 34 CFR §99.3.

⁶Network for Public Health Law's [Data Privacy in School Nursing: Navigating the Complex Landscape of Data Privacy Laws \(Part II\)](#)