

Confidentiality, the Child Care Program, and the HCC

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Who is subject to HIPPA and FERPA?

HIPPA (Health Insurance Portability and Accountability Act): Law that addresses the privacy of medical records. Most child care settings and providers, including health consultants, would not be subject to HIPPA regulations unless they desire to speak with a medical professional about a child or employee who is likely subject to HIPPA.

HIPPA applies only to information obtained from a 'covered' transaction (i.e. a bill) and electronically transmit the health information.

A child's health care provider would likely be covered by HIPPA and therefore they cannot disclose medical information without authorization with the exception of treatment purposes, and payment/operational purposes. Since 'treatment purposes' is one of the exceptions, a health care provider may relay or clarify treatment orders to individuals involved in the treatment of the patient without obtaining authorization.

FERPA (Family Educational Rights and Privacy Act): A federal law that outlines who has access to education records. It applies to all schools that receive federal funds from a program administered by the U.S. Department of Education.

This would not apply to most center and home-based child care or Head Start with the possible exception of Universal Pre-Kindergarten (UPK) or Early Pre-Kindergarten (EPK) who receive funding from the US Dep.t of Education via State Education Department.

Source: <http://www2.ed.gov/policy/gen/guid/fpco/doc/ferpa-hipaa-guidance.pdf>

Confidentiality in Regulation: Despite not being subject to either HIPPA or FERPA in most situations, the maintenance of confidential information regarding children in child care is required by NYS Child Day Care Regulations for all modalities:

418-1.15(a)(6) Confidentiality (i) Information relating to an individual child is confidential and cannot be disclosed without written parental permission to anyone other than the Office, its designees or other persons authorized by law.

This means that, as Health Care Consultants, our access to child care program records is subject to child day care regulations regarding confidentiality and programs should obtain written parental consent prior to our accessing child files including, but not limited to, medical statements, medication consent forms and logs, daily health check forms, and incident reports.

Recommendations: This sample program policy is taken from the AAP's *Model Child Care Health Policies* and is consistent with *Caring for Our Children* 3rd Ed. Standard 9.4.1.3

“The parent/legal guardian will complete the following forms and submit them to [TITLE/NAME OF STAFF MEMBER] prior to the child’s first day of attendance. Program staff members will return any incomplete forms to the parent/legal guardian for completion prior to the child’s first day of attendance and at any time during the child’s enrollment and attendance when information that the facility requires needs updating. Information concerning the child will not be made available to anyone, by any means, other than as described in this paragraph, without the expressed written consent of the parent/legal guardian. Parents/legal guardians will be informed that the information will be shared with the child’s teacher/caregiver, other staff members who are involved in caring for the child, consultants, and accreditation or regulation inspectors only as required to meet the needs of the child or certification of the program’s operation. Except for unannounced inspections, the parent/legal guardian will be given the name(s) of the individual(s) who will be given access and the reason for giving access to confidential information.”

In addition a letter explaining how you plan to treat confidential information should be sent to the program when a visit is scheduled. The purpose of the letter is that it be posted or in another way provided to parents.

Examples of what this letter should contain include, but are not limited, to the following:

- Date and time of the visit
- Purpose of the visit
- Examples of files that will be accessed
- Assurance that no identifying information about the child will be removed from the program (with the possible exception of information needed to access the child’s immunization records on NYSSIS if you do this)
- Assurance that review of the files is not intended to glean personal and confidential information about enrolled children, but to monitor a program’s compliance with regulatory health policies and to provide assistance making the program as safe and healthy as possible.
- Assurance that you will purposefully not make notice of children’s names, birthdates, or other identifying information except to communicate clearly with the child care provider.

This above information is intended as guidance for the Health Care Consultant to assist child care programs maintain confidentiality of child information while granting access needed by the consultant to perform his/her duties.