

## ODE Fact Sheet HIPAA vs. FERPA- What regulations should I follow in MSP? 7/15/2009

The purpose of this Fact Sheet is to inform providers in Ohio's Medicaid Schools Program of privacy/confidentiality regulations impacting student MSP records.

Questions have been raised regarding which set of regulations apply to student records, as FERPA is usually the governing standard for educational records, while HIPAA is the governing standard for most medical records. MSP is a program dealing with the delivery of medically related services within an educational setting. So which set of requirements apply?

The preamble to the HIPAA regulation includes this statement by the Department of Health and Human Services, the entity responsible for developing HIPAA:

While we strongly believe every individual should have the same level of privacy protection for his/her individually identifiable health information, Congress did not provide us with authority to disturb the scheme it had devised for records maintained by educational institutions and agencies under FERPA. We do not believe Congress intended to amend or preempt FERPA when it enacted HIPAA.

The HIPAA final rule explains that <u>records that are subject to FERPA are not subject to HIPAA</u>. Additionally, medical records exempt from FERPA's definition of "education records" under the section 99.3 provision are also exempt from coverage by HIPAA. (*Page 82483 of the December 28, 2000, Federal Register HIPAA final rule*)

ODE feels all MSP documentation, treatment plans, and IEP medically related information in the hands of school district employees and their contractors fall under the provisions that require FERPA, not HIPAA, to be followed.

Exception: Records in possession of schools would fall under HIPAA regulations if they are electronically transferred directly to ODJFS for billing. However, the school would need to be an Electronic Data Interface (EDI) trading partner. Currently, very few MSP providers meet these criteria. Third party billing agents do follow HIPAA when transferring billing data to ODJFS, but it is the responsibility of the billing agent, not the school, to follow these requirements.