

HIPAA, FERPA, and Compliance at Wardenburg Health Services (WHS)

Michele Van Pelt, WHS Director of Finance and Operations

Jane Huseman, WHS Compliance Coordinator

September 25, 2017



WHS commitment to privacy and ethics

- WHS upholds the highest standards in maintaining, using, and disclosing patient information
- Factors to consider: CU policies, WHS polices, compliance with federal and state laws, health care accreditation standards



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Confidentiality Laws

The privacy of patient information at WHS is protected by FERPA, HIPAA, and Colorado state laws

- **FERPA** - protection of student information, including student health records at WHS
- **HIPAA** - protection of health information, including non-student health records at WHS
- **Colorado state laws** - influence policies at WHS and guide the confidentiality of both student and non-student health records



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Case Study:
University of Oregon
In the News
2015

Source: [NPR Health Shots](#)

POLICY-ISH

College Rape Case Shows A Key Limit To Medical Privacy Law

March 9, 2015 · 4:32 PM ET

Heard on All Things Considered

KRISTIAN FODEN-VENCIL

FROM 



The University of Oregon is under fire from students and some employees for turning a student's mental-health records over to its lawyers.

Rick Obst/Flickr

FERPA

Family Educational Rights and Privacy Act

- Federal law, defines access and release of personally identifiable information from a student's educational records
- Enforced by the U.S. Department of Education Family Policy and Compliance Office



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FERPA Important Points

- Information from a student's education records cannot be disclosed without the student's written consent, except as required by law
- Students have the right to review and request amendments to their education records
- Parental rights to a student's record transfer to the student once they begin attending college, regardless age
- Third parties and school officials must have a legitimate educational interest to gain access to a student's records



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FERPA Education Records

WHS student health records are Education Records under FERPA

- Education records - records, including health records, maintained by an educational institution about a student
- At WHS student can review, request amendment, share their health records
- WHS may be required to share records for reporting purposes



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Student Health Records are not Covered by HIPAA

- **HIPAA excludes FERPA education records from coverage**
- HIPAA and FERPA cannot overlap
- WHS student health records are education records under FERPA because we may share the records



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HIPAA

Health Insurance Portability and Accountability Act

- Federal law, protects the privacy of protected health information (PHI) and provides administrative, physical, and technical security of health information
- Enforced by the U.S. Department of Health and Human Services Office of Civil Rights (OCR)
- CU is considered a “Hybrid Entity”, both covered and non-covered components



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HIPAA Important Points

- Information may not be disclosed without the patient's authorization except for treatment, payment, or operations purposes or in limited other circumstances required by law
- Patients have the right to access, request a copy, request amendment, request an accounting of disclosures, or request to restrict access to their health records
- Covered entities, such as the University of Colorado, must protect information physically and electronically
- Breaches of health information must be reported according to regulations
- A Business Associate Agreement (BAA) must be made with any entity that receives or transmits PHI for WHS



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HIPAA Privacy Rule

- PHI may only be used or disclosed with the patient's authorization except as permitted
- Permitted disclosures:
 - To the patient
 - Treatment, payment, operations
 - Public interest or benefit activities
- Minimum necessary standard



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HIPAA Security Rule

- The HIPAA Security Rule protects PHI from unauthorized alteration and destruction
- Covered entities must maintain reasonable and appropriate administrative, technical, and physical safeguards for PHI



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State Regulations

- Colorado Medical Practice Act, Mental Health Practice Act, CDPHE rules for licensed facilities, other statutes protecting patients health information.
- Patient health information is confidential except in specific circumstances permitted by law
- Reportable injuries and conditions



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- Student health information at WHS is covered by FERPA
- Non-student health information at WHS is covered by HIPAA
- State confidentiality laws apply to both student and non-student records

The core requirement for FERPA and HIPAA is that records for all patients must be kept confidential



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How WHS practices privacy and security

Different laws apply to student and non-student records, but at WHS we generally **use and disclose all health information in the same way and provide the same rights regarding health information to all patients.**



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Notice of Privacy Practices



Wardenburg Health Services
**Notice of Privacy Practices and
Disclosure of Health Information**

Effective August 2016

Students: Please read the following information regarding your health information.

Non-students: If you are not a CU student, please see the section below for Non-Students.

STUDENTS:

Notice of Privacy Practices and Disclosure of Health Information for Students

If you are a student at the University of Colorado Boulder, the following Notice of Privacy Practices (Notice) describes how Wardenburg Health Services (WHS) will use and disclose your health information. Your health information has confidentiality and privacy protections under the Family Educational Rights and Privacy Act (FERPA) and Colorado law. Your health information will remain confidential and private to the extent provided by law and this notice.

FERPA Protections

FERPA protects the privacy of your information and does not allow disclosure of your education record without your consent outside the university, except in limited circumstances. FERPA defines education records as records that are directly related to a student and maintained by an educational agency or institution or a party acting for the agency or institution and does not include treatment records unless disclosed for purposes other than treatment. FERPA defines treatment records as records that are maintained by a physician, psychiatrist, psychologist, or other recognized professional or paraprofessional acting in his or her professional capacity or assigned capacity that are made, maintained, or used only in connection with treatment of the student and disclosed only for treatment. Most WHS health information is considered education records and not treatment records as defined under FERPA because we disclose information to meet certain payment, operational, and legal requirements as described in this Notice.

HIPAA ensures the privacy of protected health information (PHI). The definition of PHI in the HIPAA Privacy Law excludes education records that are subject to FERPA, therefore the privacy of your WHS education records is protected by FERPA instead of HIPAA. In addition, Colorado state law may be applicable to afford confidentiality under the psychotherapy or physician-patient privilege.

State Law Protections

Medical Health Information

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General Agreement for Health Care Services

____ CONSENT FOR TREATMENT:

- I voluntarily consent to the provision of health care services including, but not limited to, diagnostic tests, medications, injections, and medical treatment that may be considered necessary by my Wardenburg Health Services (WHS) health care provider(s) or allied health professional(s).
- I understand that it is my right to discuss any proposed service with my health care provider(s) and that I have the right to refuse care, treatment, and services in accordance with law and regulation.
- I understand that the practice of medicine is not an exact science, and I acknowledge that no promises or guarantees have been made to me regarding the efficacy of treatment or services rendered to me at WHS.
- I understand that WHS may serve as a training site for health care professionals, students, interns, and residents and that health care services may be rendered by these individuals under supervision. I further understand that these individuals will always be clearly identified and that I have the right to refuse their involvement in my care.
- I understand that the content of phone calls, voice mail messages, and email/secure messaging will be incorporated into my health record.
- I understand that I, or my designated representative, have the right to inspect my WHS health records at reasonable times and upon reasonable notice as permitted by law.
- I understand WHS may use or disclose health information about me when required to do so by federal, state, or local law.

____ NOTICE OF PRIVACY PRACTICES:

- I hereby acknowledge that I read WHS's Notice of Privacy Practices and Disclosure of Health Information and I consent to the terms included.

____ PAYMENT AGREEMENT:

- I understand that I am financially responsible to WHS for:
 - (1) charges not paid for by insurance or any third party payor, unless otherwise prohibited by state or federal regulations and
 - (2) any costs and fees, including attorney fees, in the event that WHS brings any action because of any failure by me or someone on my behalf to pay WHS bills in full.

I understand that I am responsible for obtaining all pre-authorizations necessary to comply with any insurance or medical/hospital plan upon which I am relying for coverage. I authorize and request any and all third parties responsible for any portion of WHS's bill to the patient to make payment directly to WHS.
- I understand that WHS is not contracted with and does not bill any third-party insurance company other than the student health plan. I understand that it is my responsibility to bill my insurance company if I do not have the student health plan.
- I understand that pre-authorized work-related injuries will be paid for by the appropriate agency. I understand that I am responsible for obtaining pre-authorization for care associated with a work-related injury.

____ OTHER:

- I understand that copies of the General Agreement for Health Care Services, the Patient Rights and Responsibilities, and the Notice of Privacy Practices are available upon request.
- I understand that a chaperone shall be provided upon request by either myself/parent/guardian or my health care provider(s) for any part or all of an examination or procedure.
- I understand that if I have concerns about safety, care, or services at WHS, I should speak to the department manager. A patient representative is available upon request.
- I understand that my health record will be destroyed in compliance with the law.
- I understand that I can revoke any part of this consent or authorization at any time in writing to WHS; such revocation may affect WHS's ability to provide me with health care



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Patient Requests Regarding their Health Information

- Copies
- Amendments
- Accounting of disclosures
- Requests for restrictions
- Confidential communication



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Disclosures that do not Require Authorization

- Information released directly to the patient
- Treatment, payment, operations
- Uses and disclosures with an opportunity to agree or object
- Public interest and benefit activities



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Ethics Considerations

- Patient Rights
- Conflict of Interest
- Other ethical considerations



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Examples

Ethics:

- [10/2014 Davita pays \\$350 Million to US Government for Violating the Anti KickBack Statue](#)

Privacy:

- [Lost or stolen data](#)
 - 10/2016 Advocate pays \$5.55 million to OCR to settle HIPAA violation claims.
- [Snooping](#) –
 - 2007 27 workers suspended for looking at George Clooney's records
 - 2008 13 employees fired for snooping in Brittny Spear's records
 - 2010 4 staff members were fired for inappropriately accessing Michael Jackson's records
 - 2013 5 workers were fired for snooping in records including Kim Kardashian
- [Cyber Attacks](#)
 - 150 Countries were affected by the wannacry ransomware in May 2017 including the National Health Service in England and Scotland.



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Group Work

Review the following scenarios.

How would you handle these ethically and in compliance with the law?

1. A parent calls WHS and asks for information about their child's recent visit at WHS. Their child is 17 years old and a CU student. What should you tell the parent?
2. A CU student is in the news for breaking the law. The news article says that the student has a mental illness. A WHS care provider is wondering if the student is a patient of WHS. Is it appropriate for that care provider to access this student's chart? Does your answer change if the care provider has treated the patient for a mental illness in the past?



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Jane Huseman, WHS compliance coordinator

Jane.huseman@Colorado.edu 303-492-6712

Michele Van Pelt, WHS Director of Finance and Operations

Michele.vanpelt@Colorado.edu



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Resources

- Wardenburg Health Services <http://www.colorado.edu/health/>
- http://familypolicy.ed.gov/sites/fpco.ed.gov/files/DCL_Medical%20Records_Final%20Signed_dated_9-2.pdf
- Family Policy and Compliance Office at U.S. Department of Education <http://www2.ed.gov/policy/gen/guid/fpco/ferpa/index.html>
- Office of Civil Rights at U.S. Department of Health and Human Services <http://www.hhs.gov/hipaa/index.html>
- Colorado Department of Public Health and Environment <http://www.cdphe.state.co.us/privacyandsecurity/hipaa.html>
- Information Technology (IT) Services <http://www.colorado.edu/oit/>



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