

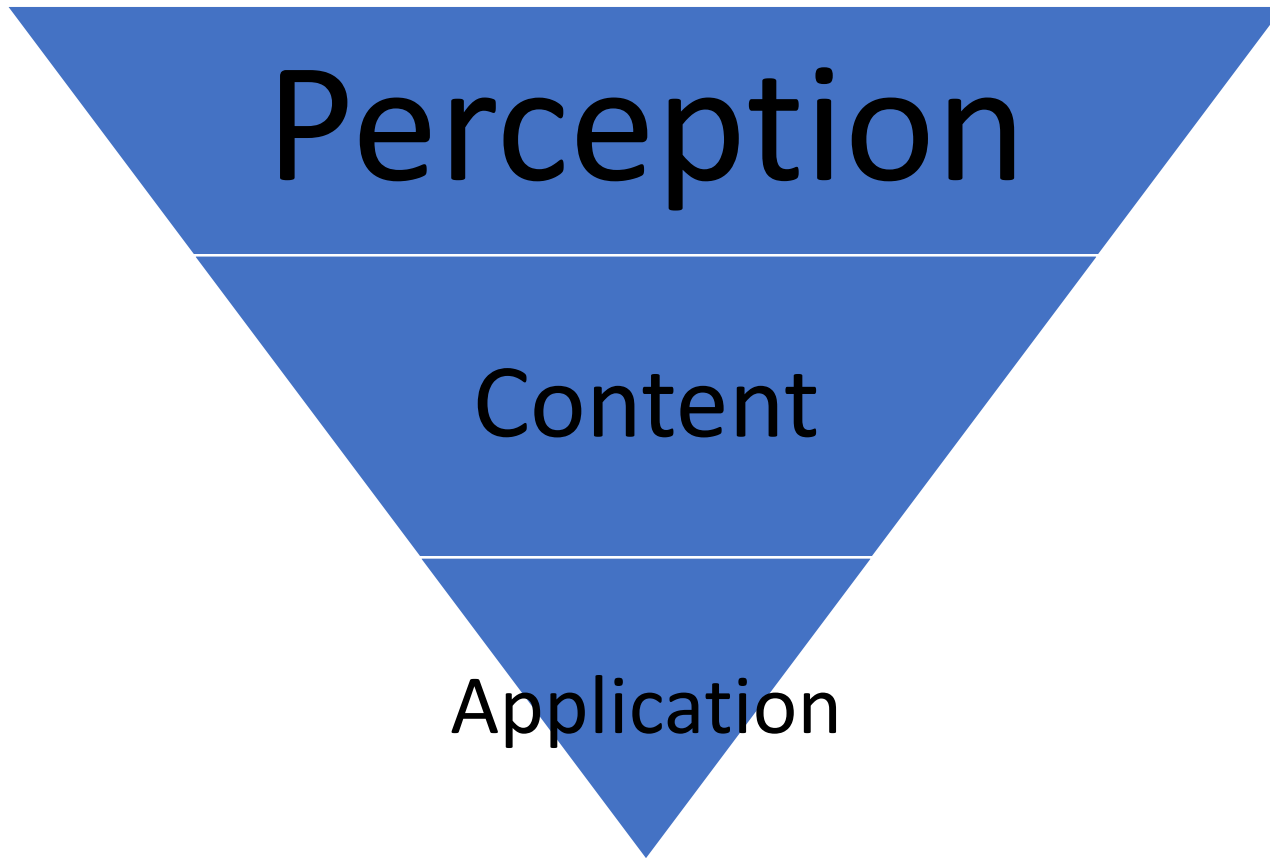
HIPAA & FERPA Guidance Update

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U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES
Office for Civil Rights

HIPAA Privacy Rule: Context & Frame



Background

- First published in 2008
- Jointly issued by HHS and the Dept. of Education
- Updated to clarify further how FERPA and HIPAA apply to records maintained on students.
- Addresses certain disclosures that are allowed without the written consent of the parent or “eligible student” under FERPA or without authorization under the HIPAA Privacy Rule, especially those related to emergency health or safety situations.

FERPA Basics

- Applies to educational agencies and institutions (“schools”) that receive Federal funds administered by the U.S. Department of Education.
- Protects the privacy of students’ “education records” and “treatment records.”
- Generally requires consent of a parent (or an “eligible student,” *i.e.*, 18 or more years old or attending postsecondary school) for disclosures.
- Some exceptions, including in emergencies.

When HIPAA and FERPA Intersect

- Occasionally, a school may be subject to FERPA and also be a HIPAA covered entity (CE)
- In most instances, a school that is a CE is subject to HIPAA transaction standards, but not the Privacy Rule.
- The Privacy Rule excludes FERPA education and treatment records from the definition of “protected health information.”
- In limited circumstances, the Privacy Rule applies.

Does the HIPAA Privacy Rule Apply?

Elementary and secondary school health records.

- Generally, no.
- Categories of elementary and secondary schools
 - FERPA
 - Not a HIPAA covered entity
 - CE, but no PHI
 - Certain private school placements
 - HIPAA
 - CE, not subject to FERPA

Does the HIPAA Privacy Rule Apply?

Student health records of a health care provider not employed by elementary or secondary school.

- Education records: HIPAA covered provider acting for FERPA covered school
- PHI: HIPAA covered provider not acting for a FERPA covered school.

Does the HIPAA Privacy Rule Apply?

Student health records of clinics run by postsecondary institutions.

- Generally, no.
- Records on students maintained by campus health clinics and other health care facilities are either education or treatment records under FERPA

Does the HIPAA Privacy Rule Apply?

Health records of individual who is a student and an employee of a university.

- Generally, no.
- Considered education or treatment records under FERPA.

Does the HIPAA Privacy Rule Apply?

Health records on students who are university hospital patients.

- Generally, yes.
- University hospitals generally provide services without regard to whether patients are students, and not on behalf of the university.

Does HIPAA Permit...

Disclosing PHI to a parent of an adult patient without an authorization?

- Caregivers
- Personal representatives
- Directories
- Health or safety threats

Does HIPAA Permit...

Disclosures about a student to a school nurse or physician without an authorization?

- Treatment
- Serious and imminent threat

Does HIPAA Permit...

Disclosures to a parent about a minor child's mental health condition or substance use disorder?

- Personal representative considerations
- Harm to self or others

What if...

A parent is concerned about the wellbeing of an adult patient with serious mental illness who has capacity to agree or object, does not pose a danger, and does not agree to disclosures?

- HIPAA does not prevent a health care provider from:
 - Listening to family members' concerns
 - Taking the information into account in providing care

Where To Find More Information

Joint Guidance on the Application of the Family Educational Rights and Privacy Act (FERPA) And the Health Insurance Portability and Accountability Act of 1996 (HIPAA) To Student Records available at:

<https://www.hhs.gov/sites/default/files/2019-hipaa-ferpa-joint-guidance-508.pdf>



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