

MEMORANDUM

TO: Health care providers and school nurses.

FROM: Philip W.Haines, Dr.PH, Privacy Officer, Bureau of Health
Dora Ann Mills, M.D., MPH, Director, Bureau of Health
Susan Gendron Commissioner, Department of Education
Paul Gauvreau, Assistant Attorney General

SUBJECT: Release of immunization records from a health provider to school nurses without authorization.

DATE: January 2, 2004

Background: Title 20-A MRSA § 6354 requires that students present documentation of immunization for school entry or provide necessary waivers. Since the implementation of the HIPAA Privacy Rule, there has been confusion regarding the release of student immunization records to schools without parental consent. This memorandum is intended to clarify the law in relationship to providing immunization information to schools without authorization.

As documentation of immunization is required before school entry, it is important that schools receive this information expeditiously to prevent the unnecessary loss of school days for students. Immunizations are central to public health prevention and important in the control of communicable disease.

HIPAA: The Health Insurance Portability and Accountability Act requires that providers secure the authorization of the parent or guardian prior to the disclosure of protected health information (PHI). There are exceptions to this requirement. HIPAA does allow the release of protected health information to public health authorities without prior authorization for public health purposes. More specifically, 45 CFR§164.512(b) allows disclosure of PHI to a public health authority for certain public health activities, where the public health authority is authorized by law to collect or receive such information for, among other things, preventing or controlling disease, public health surveillance and public health interventions.

The prevailing questions are: Does the school function as a public health authority in collecting immunization information about students? Is there

state authorization for the school to gather immunization information from health providers? Is this information being gathered for the purpose of preventing or controlling disease?

Public Health Authority: HIPAA Privacy Rule defines a public health authority as “an agency or authority of the United States, a State, a territory, a political subdivision of a State or territory, or an Indian tribe, or a person or entity acting under a grant of authority from or contract with such public agency, including the employees or agents of such public agency or its contractors or persons or entities to whom it has granted authority, that is responsible for public health matters as part of its official mandate”. [45 C.F.R.§ 164.501]

Schools are charged with the enforcement of state vaccination requirements. Title 20-A MRSA § 6354 and Department of Education Rule 05-071 Chapter 126 requires that schools not permit students to be enrolled or attend school without evidence of immunization for required vaccines or submit specified waivers. The Legislature has imposed upon schools the critical responsibility of determining whether each student has been properly immunized and the responsibility to enforce the requirements. In addition, schools collect and provide to the Bureau of Health important information about immunization rates and outbreaks of disease. Under these circumstances, a school and school nurse may be considered a public health authority.

Statutory Authority: Maine law does authorize health care practitioners to share vaccination status information with schools without the necessity of parental consent. Specifically, 22 M.R.S.A. § 1711-C(6)(M) authorizes a health care practitioner to disclose information regarding the immunization of an individual to a school, educational institution, camp, correctional facility or other health care practitioner, without the necessity of authorization from the person’s guardian or parent.

Prevention or Controlling Disease: Clearly, gathering immunization information is for the purpose of public health prevention and control of communicable diseases.

Conclusion: Consistent with the HIPAA Privacy Rule, Maine law authorizes health providers to share information regarding a child patient’s immunization status to school officials for the purpose of determining vaccination status without the necessity of securing an authorization from the child’s parent or guardian to share such information.

