

Family Educational Rights and Privacy Act (FERPA – Title 20; Chapter 31); CFR 34, §99.30 - 38

*Title 20, §1232g may be retrieved in its entirety at: http://www.law.cornell.edu/uscode/html/uscode20/usc_sec_20_00001232---g000-.html

*34CFR, §99.3 may be retrieved in its entirety at: <http://www2.ed.gov/policy/gen/reg/ferpa/index.html>

<p>Release of education records; parental consent requirement; exceptions; compliance with judicial orders and subpoenas; audit and evaluation of federally-supported education programs; recordkeeping.</p>	<p>§1232g(1)(A), (B), (3) and (b)(1)</p>	<p>(A) No funds shall be made available under any applicable program to any educational agency or institution which has a policy of denying, or which effectively prevents, the parents of students who are or have been in attendance at a school of such agency or at such institution, as the case may be, the right to inspect and review the education records of their children. If any material or document in the education record of a student includes information on more than one student, the parents of one of such students shall have the right to inspect and review only such part of such material or document as relates to such student or to be informed of the specific information contained in such part of such material. Each educational agency or institution shall establish appropriate procedures for the granting of a request by parents for access to the education records of their children within a reasonable period of time, but in no case more than forty-five days after the request has been made.</p> <p>(B) No funds under any applicable program shall be made available to any State educational agency (whether or not that agency is an educational agency or institution under this section) that has a policy of denying, or effectively prevents, the parents of students the right to inspect and review the education records maintained by the State educational agency on their children who are or have been in attendance at any school of an educational agency or institution that is subject to the provisions of this section.</p> <p>(3) For the purposes of this section the term “educational agency or institution” means any public or private agency or institution which is the recipient of funds under any applicable program.</p> <p>(b)(1) No funds shall be made available under any applicable program to any educational agency or institution which has a policy or practice of permitting the release of education records (or personally identifiable information contained therein other than directory information, as defined in paragraph (5) of subsection (a) of this section) of students without the written consent of their parents to any individual, agency, or organization, other than to the following—</p> <p>(I)The allowed reporting or disclosure concerns the juvenile justice system and such system’s ability to effectively serve, prior to adjudication, the student whose records are released;</p>
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Definition - "education records"	§1232g(a)(4)(A) & (B)	<p>(4)(A) For the purposes of this section, the term "education records" means, except as may be provided otherwise in subparagraph (B), those records, files, documents, and other materials which—</p> <ul style="list-style-type: none"> (i) contain information directly related to a student; and (ii) are maintained by an educational agency or institution or by a person acting for such agency or institution. <p>(B) The term "education records" does not include—</p> <ul style="list-style-type: none"> (i) records of instructional, supervisory, and administrative personnel and educational personnel ancillary thereto which are in the sole possession of the maker thereof & which are not accessible or revealed to any other person except a substitute; (ii) records maintained by a law enforcement unit of the educational agency or institution that were created by that law enforcement unit for the purpose of law enforcement; (iii) in the case of persons who are employed by an educational agency or institution but who are not in attendance at such agency or institution, records made and maintained in the normal course of business which relate exclusively to such person in that person's capacity as an employee and are not available for use for any other purpose; or (iv) records on a student who is eighteen years of age or older, or is attending an institution of postsecondary education, which are made or maintained by a physician, psychiatrist, psychologist, or other recognized professional or paraprofessional acting in his professional or paraprofessional capacity, or assisting in that capacity, and which are made, maintained, or used only in connection with the provision of treatment to the student, and are not available to anyone other than persons providing such treatment, except that such records can be personally reviewed by a physician or other appropriate professional of the student's choice.
Definition - "directory information"	§1232g(a)(5)(A) & (B)	<p>(5) (A) For the purposes of this section the term "directory information" relating to a student includes the following: the student's name, address, telephone listing, date and place of birth, major field of study, participation in officially recognized activities and sports, weight and height of members of athletic teams, dates of attendance, degrees and awards received, and the most recent previous educational agency or institution attended by the student.</p> <p>(B) Any educational agency or institution making public directory information shall give public notice of the categories of information</p>

		<p>which it has designated as such information with respect to each student attending the institution or agency and shall allow a reasonable period of time after such notice has been given for a parent to inform the institution or agency that any or all of the information designated should not be released without the parent's prior consent.</p>
<p>Under what conditions is prior consent required to disclose information?</p>	<p>34 CFR §99.30(a-d) and (2)</p>	<p>(a) The parent or eligible student shall provide a signed and dated written consent before an educational agency or institution discloses personally identifiable information from the student's education records, except as provided in §99.31.</p> <p>(b) The written consent must:</p> <ol style="list-style-type: none"> (1) Specify the records that may be disclosed; (2) State the purpose of the disclosure; and (3) Identify the party or class of parties to whom the disclosure may be made. <p>(c) When a disclosure is made under paragraph (a) of this section:</p> <ol style="list-style-type: none"> (1) If a parent or eligible student so requests, the educational agency or institution shall provide him or her with a copy of the records disclosed; and (2) If the parent of a student who is not an eligible student so requests, the agency or institution shall provide the student with a copy of the records disclosed. <p>(d) "Signed and dated written consent" under this part may include a record and signature in electronic form that—</p> <ol style="list-style-type: none"> (1) Identifies and authenticates a particular person as the source of the electronic consent; and (2) Indicates such person's approval of the information contained in the electronic consent. <p>(Authority: 20 U.S.C. 1232g (b)(1) and (b)(2)(A))</p>
<p>Conditions under which prior consent is not required to disclose information?</p>	<p>34 CFR §99.31(a)(5i)(A) & (9)(i)</p>	<p>(a) An educational agency or institution may disclose personally identifiable information from an education record of a student without the consent required by Sec. 99.30 if the disclosure meets one or more of the following conditions:</p> <ol style="list-style-type: none"> (5)(i) The disclosure is to State and local officials or authorities to whom this information is specifically: <ol style="list-style-type: none"> (A) Allowed to be reported or disclosed pursuant to State statute adopted before November 19, 1974, if the allowed reporting or disclosure concerns the juvenile justice system and the system's

		<p>ability to effectively serve the student whose records are released;</p> <p>(9)(i) The disclosure is to comply with a judicial order or lawfully issued subpoena.</p> <p>(Authority: 20 U.S.C. 1232g(a)(5)(A), (b)(1),(b)(2)(B), (b)(6), (h), and (i))</p>
<p>Release of education records; parental consent requirement; exceptions; compliance with judicial orders and subpoenas; audit and evaluation of federally-supported education programs; recordkeeping.</p>	<p>34 CFR §99.31(a)(6)(b)</p>	<p>(6) For the purposes of this section, the term “student” includes any person with respect to whom an educational agency or institution maintains education records or personally identifiable information, but does not include a person who has not been in attendance at such agency or institution.</p> <p>(b) Release of education records; parental consent requirement; exceptions; compliance with judicial orders and subpoenas; audit and evaluation of federally-supported education programs; recordkeeping.</p> <p>(Authority: 20 U.S.C. 1232g(a)(5)(A), (b)(1),(b)(2)(B), (b)(6), (h), and (i))</p>
<p>Release of education records; parental consent requirement; exceptions; compliance with judicial orders and subpoenas; audit and evaluation of federally-supported education programs; recordkeeping. (cont)</p>	<p>34 CFR §99.31(a)(6)(b)(1)(A)–(I)</p>	<p>(1) No funds shall be made available under any applicable program to any educational agency or institution which has a policy or practice of permitting the release of education records (or personally identifiable information contained therein other than directory information, as defined in paragraph (5) of subsection (a) of this section) of students without the written consent of their parents to any individual, agency, or organization, other than to the following—</p> <p>(A) other school officials, including teachers within the educational institution or local educational agency, who have been determined by such agency or institution to have legitimate educational interests, including the educational interests of the child for whom consent would otherwise be required;</p> <p>(B) officials of other schools or school systems in which the student seeks or intends to enroll, upon condition that the student’s parents be notified of the transfer, receive a copy of the record if desired, and have an opportunity for a hearing to challenge the content of the record;</p> <p>(C)(i) authorized representatives of</p> <p>(I) the Comptroller General of the United States,</p> <p>(II) the Secretary, or</p> <p>(III) State educational authorities, under the conditions set forth in paragraph (3), or (ii) authorized representatives of the Attorney General for law enforcement purposes under the same conditions as apply to the Secretary under paragraph (3);</p> <p>(D) in connection with a student’s application for, or receipt of, financial aid;</p>

<p>Release of education records; parental consent requirement; exceptions; compliance with judicial orders and subpoenas; audit and evaluation of federally-supported education programs; recordkeeping. (cont)</p>	<p>34 CFR §99.31(a)(6)(b)(1)(A)–(I)</p>	<p>(E) State and local officials or authorities to whom such information is specifically allowed to be reported or disclosed pursuant to State statute adopted—</p> <ul style="list-style-type: none"> (i) before November 19, 1974, if the allowed reporting or disclosure concerns the juvenile justice system and such system’s ability to effectively serve the student whose records are released, or (ii) after November 19, 1974, if— <ul style="list-style-type: none"> (I) the allowed reporting or disclosure concerns the juvenile justice system and such system’s ability to effectively serve, prior to adjudication, the student whose records are released; and (II) the officials and authorities to whom such information is disclosed certify in writing to the educational agency or institution that the information will not be disclosed to any other party except as provided under State law without the prior written consent of the parent of the student. <p>(F) organizations conducting studies for, or on behalf of, educational agencies or institutions for the purpose of developing, validating, or administering predictive tests, administering student aid programs, and improving instruction, if such studies are conducted in such a manner as will not permit the personal identification of students and their parents by persons other than representatives of such organizations and such information will be destroyed when no longer needed for the purpose for which it is conducted;</p> <p>(G) accrediting organizations in order to carry out their accrediting functions;</p> <p>(H) parents of a dependent student of such parents, as defined in § <u>152</u> of Title <u>26</u>;</p> <p>(I) subject to regulations of the Secretary, in connection with an emergency, appropriate persons if the knowledge of such information is necessary to protect the health or safety of the student or other persons; and</p> <p>(Authority: 20 U.S.C. 1232g(a)(5)(A), (b)(1), (b)(2)(B), (b)(6), (h), and (i))</p>
<p>Release of education records; parental consent requirement; exceptions; compliance with judicial orders and subpoenas; audit and evaluation of federally-supported education programs; recordkeeping. (cont)</p>	<p>34 CFR §99.31(a)(6)(J)(i) & (ii)</p>	<p>(J) (i) the entity or persons designated in a Federal grand jury subpoena, in which case the court shall order, for good cause shown, the educational agency or institution (and any officer, director, employee, agent, or attorney for such agency or institution) on which the subpoena is served, to not disclose to any person the existence or contents of the subpoena or any information furnished to the grand jury in response to the</p>

		<p>subpoena;</p> <p>and</p> <p>(ii) the entity or persons designated in any other subpoena issued for a law enforcement purpose, in which case the court or other issuing agency may order, for good cause shown, the educational agency or institution (and any officer, director, employee, agent, or attorney for such agency or institution) on which the subpoena is served, to not disclose to any person the existence or contents of the subpoena or any information furnished in response to the subpoena.</p> <p>Nothing in subparagraph (E) of this paragraph shall prevent a State from further limiting the number or type of State or local officials who will continue to have access there under. (Authority: 20 U.S.C. 1232g(b)(1)(D))</p>
<p>Release of education records; parental consent requirement; exceptions; compliance with judicial orders and subpoenas; audit and evaluation of federally-supported education programs; recordkeeping. (cont)</p>	<p>34 CFR §99.31(b)(2) - (7)</p>	<p>(2) No funds shall be made available under any applicable program to any educational agency or institution which has a policy or practice of releasing, or providing access to, any personally identifiable information in education records other than directory information, or as is permitted under paragraph (1) of this subsection, unless—</p> <p>(A) there is written consent from the student’s parents specifying records to be released, the reasons for such release, and to whom, and with a copy of the records to be released to the student’s parents and the student if desired by the parents, or</p> <p>(B) except as provided in paragraph (1)(J), such information is furnished in compliance with judicial order, or pursuant to any lawfully issued subpoena, upon condition that parents and the students are notified of all such orders or subpoenas in advance of the compliance therewith by the educational institution or agency.</p> <p>(3) Nothing contained in this section shall preclude authorized representatives of</p> <p>(A) the Comptroller General of the United States,</p> <p>(B) the Secretary, or</p> <p>(C) State educational authorities from having access to student or other records which may be necessary in connection with the audit and evaluation of Federally-supported education programs, or in connection with the enforcement of the Federal legal requirements which relate to</p>

<p>Release of education records; parental consent requirement; exceptions; compliance with judicial orders and subpoenas; audit and evaluation of federally-supported education programs; recordkeeping. (cont)</p>	<p>34 CFR §99.31(b)(2) - (7)</p>	<p>such programs: Provided, That except when collection of personally identifiable information is specifically authorized by Federal law, any data collected by such officials shall be protected in a manner which will not permit the personal identification of students and their parents by other than those officials, and such personally identifiable data shall be destroyed when no longer needed for such audit, evaluation, and enforcement of Federal legal requirements.</p> <p>(4)(A) Each educational agency or institution shall maintain a record, kept with the education records of each student, which will indicate all individuals (other than those specified in paragraph (1)(A) of this subsection), agencies, or organizations which have requested or obtained access to a student's education records maintained by such educational agency or institution, and which will indicate specifically the legitimate interest that each such person, agency, or organization has in obtaining this information. Such record of access shall be available only to parents, to the school official and his assistants who are responsible for the custody of such records, and to persons or organizations authorized in, and under the conditions of, clauses (A) and (C) of paragraph (1) as a means of auditing the operation of the system.</p> <p>(B) With respect to this subsection, personal information shall only be transferred to a third party on the condition that such party will not permit any other party to have access to such information without the written consent of the parents of the student. If a third party outside the educational agency or institution permits access to information in violation of paragraph (2)(A), or fails to destroy information in violation of paragraph (1)(F), the educational agency or institution shall be prohibited from permitting access to information from education records to that third party for a period of not less than five years.</p> <p>(5) Nothing in this section shall be construed to prohibit State and local educational officials from having access to student or other records which may be necessary in connection with the audit and evaluation of any federally or State supported education program or in connection with the enforcement of the Federal legal requirements which relate to any such program, subject to conditions specified in the proviso in paragraph (3).</p> <p>(6)(A) Nothing in this section shall be construed to prohibit an institution of postsecondary education from disclosing, to an alleged victim of any crime of violence (as that term is defined in section 16 of title 18), or a non-forcible sex offense, the final results of any disciplinary proceeding</p>
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<p>Release of education records; parental consent requirement; exceptions; compliance with judicial orders and subpoenas; audit and evaluation of federally-supported education programs; recordkeeping. (cont)</p>	<p>34 CFR §99.31(b)(2) - (7)</p>	<p>conducted by such institution against the alleged perpetrator of such crime or offense with respect to such crime or offense.</p> <p>(B) Nothing in this section shall be construed to prohibit an institution of post-secondary education from disclosing the final results of any disciplinary proceeding conducted by such institution against a student who is an alleged perpetrator of any crime of violence (as that term is defined in section 16 of title 18), or a non-forcible sex offense, if the institution determines as a result of that disciplinary proceeding that the student committed a violation of the institution’s rules or policies with respect to such crime or offense.</p> <p>(C) For the purpose of this paragraph, the final results of any disciplinary proceeding—</p> <ul style="list-style-type: none"> (i) shall include only the name of the student, the violation committed, and any sanction imposed by the institution on that student; and (ii) may include the name of any other student, such as a victim or witness, only with the written consent of that other student. <p>(7)(A) Nothing in this section may be construed to prohibit an educational institution from disclosing information provided to the institution under section 14071 of title 42 concerning registered sex offenders who are required to register under such section.</p> <p>(B) The Secretary shall take appropriate steps to notify educational institutions that disclosure of information described in subparagraph (A) is permitted.</p>
<p>What limitations apply to the re-disclosure of information?</p>	<p>34 CFR §99.33(a)(1) & (2)</p>	<p>(a)(1) An educational agency or institution may disclose personally identifiable information from an education record only on the condition that the party to whom the information is disclosed will not disclose the information to any other party without the prior consent of the parent or eligible student.</p> <p>(2) The officers, employees, and agents of a party that receives information under paragraph (a)(1) of this section may use the information, but only for the purposes for which the disclosure was made.</p> <p>(Authority: 20 U.S.C. 1232g(b)(1)(D))</p>
<p>What conditions apply to disclosure of information in health and safety emergencies?</p>	<p>34 CFR §99.36</p>	<p>(a) An educational agency or institution may disclose personally identifiable information from an education record to appropriate parties, including parents of an eligible student, in connection with an emergency if knowledge of the information is necessary to protect the health or safety of the student</p>

<p>What conditions apply to disclosure of information in health and safety emergencies? (cont)</p>	<p>34 CFR §99.36</p>	<p>or other individuals.</p> <p>(b) Nothing in this Act or this part shall prevent an educational agency or institution from—</p> <p>(1) Including in the education records of a student appropriate information concerning disciplinary action taken against the student for conduct that posed a significant risk to the safety or well-being of that student, other students, or other members of the school community;</p> <p>(2) Disclosing appropriate information maintained under paragraph (b)(1) of this section to teachers and school officials within the agency or institution who the agency or institution has determined have legitimate educational interests in the behavior of the student; or</p> <p>(3) Disclosing appropriate information maintained under paragraph (b)(1) of this section to teachers and school officials in other schools who have been determined to have legitimate educational interests in the behavior of the student.</p> <p>(c) In making a determination under paragraph (a) of this section, an educational agency or institution may take into account the totality of the circumstances pertaining to a threat to the health or safety of a student or other individuals. If the educational agency or institution determines that there is an articulable and significant threat to the health or safety of a student or other individuals, it may disclose information from education records to any person whose knowledge of the information is necessary to protect the health or safety of the student or other individuals. If, based on the information available at the time of the determination, there is a rational basis for the determination, the Department will not substitute its judgment for that of the educational agency or institution in evaluating the circumstances and making its determination.</p> <p>(Authority: 20 U.S.C. 1232g (b)(1)(I) and (h))</p>
<p>What conditions apply to disclosing directory information?</p>	<p>34 CFR §99.37</p>	<p>(a) An educational agency or institution may disclose directory information if it has given public notice to parents of students in attendance and eligible students in attendance at the agency or institution of:</p> <p>(1) The types of personally identifiable information that the agency or institution has designated as directory information;</p> <p>(2) A parent's or eligible student's right to refuse to let the agency or institution designate any or all of those types of information about the student as directory information; and</p> <p>(3) The period of time within which a parent or eligible student has to notify the agency or institution in writing that he or she does not want</p>

<p>What conditions apply to disclosing directory information? (cont)</p>	<p>34 CFR §99.37</p>	<p>any or all of those types of information about the student designated as directory information.</p> <p>(b) An educational agency or institution may disclose directory information about former students without complying with the notice and opt out conditions in paragraph (a) of this section. However, the agency or institution must continue to honor any valid request to opt out of the disclosure of directory information made while a student was in attendance unless the student rescinds the opt out request.</p> <p>(c) A parent or eligible student may not use the right under paragraph (a)(2) of this section to opt out of directory information disclosures to prevent an educational agency or institution from disclosing or requiring a student to disclose the student's name, identifier, or institutional e-mail address in a class in which the student is enrolled.</p> <p>(d) An educational agency or institution may not disclose or confirm directory information without meeting the written consent requirements in §99.30 if a student's social security number or other non-directory information is used alone or combined with other data elements to identify or help identify the student or the student's records.</p> <p>(Authority: 20 U.S.C. 1232g(a)(5) (A) and (B))</p>
<p>What conditions apply to disclosure of information as permitted by State statute adopted after November 19, 1974, concerning the juvenile justice system?</p>	<p>34 CFR §99.38</p>	<p>(a) If reporting or disclosure allowed by State statute concerns the juvenile justice system and the system's ability to effectively serve, prior to adjudication, the student whose records are released, an educational agency or institution may disclose education records under § 99.31(a)(5)(i)(B).</p> <p>(b) The officials and authorities to whom the records are disclosed shall certify in writing to the educational agency or institution that the information will not be disclosed to any other party, except as provided under State law, without the prior written consent of the parent of the student.</p> <p>(Authority: 20 U.S.C. 1232g(b)(1)(J))</p>
<p>Uninterrupted Scholars Act (USA) - S.3472; §2. Family Educational Rights and Privacy. Section 444(b) of the General Education Provisions Act (20 U.S.C. 1232g(b)) as amended; (passed by the 112th Congress of the United States of America on January 3, 2012)</p>		
<p>Uninterrupted Scholars Act (USA)</p>	<p>§444(b)</p>	<p>(1) in paragraph (1)-- (A) in subparagraph (J)(ii), by striking 'and' after the semicolon at the end; (B) in subparagraph (K)(ii), by striking the period at the end and inserting 'and'; and</p>

Uninterrupted Scholars Act (USA)	§444(b)	<p>(C) by inserting after subparagraph (K), the following:</p> <p>(L) an agency caseworker or other representative of a State or local child welfare agency, or tribal organization (as defined in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b)), who has the right to access a student’s case plan, as defined and determined by the State or tribal organization, when such agency or organization is legally responsible, in accordance with State or tribal law, for the care and protection of the student, provided that the education records, or the personally identifiable information contained in such records, of the student will not be disclosed by such agency or organization, except to an individual or entity engaged in addressing the student’s education needs and authorized by such agency or organization to receive such disclosure and such disclosure is consistent with the State or tribal laws applicable to protecting the confidentiality of a student’s education records.; and</p> <p>(2) in paragraph (2)(B), by inserting ‘except when a parent is a party to a court proceeding involving child abuse and neglect (as defined in section 3 of the Child Abuse Prevention and Treatment Act (42 U.S.C. 5101 note)) or dependency matters, and the order is issued in the context of that proceeding, additional notice to the parent by the educational agency or institution is not required’ after ‘educational institution or agency.</p>
<p>Health Insurance Portability and Accountability Act (HIPAA) of 1996. P. L. 104-191; Title 45 CFR *HIPAA can be retrieved in its entirety at http://aspe.hhs.gov/admsimp/pl104191.htm *CFR 45, Part 160 & 164 can be retrieved in its entirety at: http://www.hhs.gov/ocr/privacy/hipaa/administrative/privacyrule/index.html</p>		
Subtitle F—Administrative Simplification. Purpose	§261	It is the purpose of this subtitle to improve the Medicare program under title XVIII of the Social Security Act, the Medicaid program under title XIX of such Act, and the efficiency and effectiveness of the health care system, by encouraging the development of a health information system through the establishment of standards and requirements for the electronic transmission of certain health information.
Definitions	§1171(4)(a) & (B)	(4) Health Information --The term 'health information' means any information, whether oral or recorded in any form or medium, that- (A) is created or received by a health care provider, health plan, public health authority, employer, life insurer, school or university, or health care clearinghouse; and

		(B) relates to the past, present, or future physical or mental health or condition of an individual, the provision of health care to an individual, or the past, present, or future payment for the provision of health care to an individual.
Definitions (cont)	§1171(6)(A) & (B)	(6) Individually Identifiable Health Information. The term 'individually identifiable health information' means any information, including demographic information collected from an individual, that (A) is created or received by a health care provider, health plan, employer, or health care clearinghouse; and (B) relates to the past, present, or future physical or mental health or condition of an individual, the provision of health care to an individual, or the past, present, or future payment for the provision of health care to an individual, and-- (i) identifies the individual; or (ii) with respect to which there is a reasonable basis to believe that the information can be used to identify the individual.
Penalty	§1177(a)(1), (2) & (3)	(a) Offense. A person who knowingly and in violation of this part (1) uses or causes to be used a unique health identifier; (2) obtains individually identifiable health information relating to an individual; or (3) discloses individually identifiable health information to another person, shall be punished as provided in subsection (b). (b) Penalties -- A person described in subsection (a) shall (1) be fined not more than \$50,000, imprisoned not more than 1 year, or both; (2) if the offense is committed under false pretenses, be fined not more than \$100,000, imprisoned not more than 5 years, or both; and (3) if the offense is committed with intent to sell, transfer, or use individually identifiable health information for commercial advantage, personal gain, or malicious harm, be fined not more than \$250,000, imprisoned not more than 10 years, or both.
General Effect	§1178(a)(1)	(a) General Effect. (1) General Rule. Except as provided in paragraph (2), a provision or requirement under this part, or a standard or implementation specification adopted or established under sections 1172-1174, shall supersede any contrary provision of State law, including a provision of State law that requires medical or health plan records (incl. billing info.) to be maintained or transmitted in written rather than electronic form.

Definitions	45 CFR, §160.103	<p><i>Health information</i> means any information, whether oral or recorded in any form or medium, that:</p> <p>(1) Is created or received by a health care provider, health plan, public health authority, employer, life insurer, school or university, or health care clearinghouse; and</p> <p>(2) Relates to the past, present, or future physical or mental health or condition of an individual; the provision of health care to an individual; or the past, present, or future payment for the provision of health care to an individual.</p> <p><i>Protected health information</i> means individually identifiable health information:</p> <p>(1) Except as provided in paragraph</p> <p>(2) of this definition, that is:</p> <p>(i) Transmitted by electronic media;</p> <p>(ii) Maintained in electronic media; or</p> <p>(iii) Transmitted or maintained in any other form or medium.</p> <p>Protected health information excludes individually identifiable health information in:</p> <p>(i) Education records covered by the Family Educational Rights and Privacy Act, as amended, 20 U.S.C. 1232g;</p> <p>(ii) Records described at 20 U.S.C. 1232g(a)(4)(B)(iv); and</p> <p>(iii) Employment records held by a covered entity in its role as employer.</p>
General Rule & Exception	45 CFR, §160.203(a) & (b)	<p>A standard, requirement, or implementation specification adopted under this subchapter that is contrary to a provision of State law preempts the provision of State law. This general rule applies, except if one or more of the following conditions is met:</p> <p>(a) A determination is made by the Secretary under § 160.204 that the provision of State law is</p> <p>(1) necessary:</p> <p>(i) To prevent fraud and abuse related to the provision of or payment for health care;</p> <p>(ii) To ensure appropriate State regulation of insurance and health plans to the extent expressly authorized by statute or regulation;</p> <p>(iii) For State reporting on health care delivery or costs; or</p> <p>(iv) For purposes of serving a compelling need related to public health, safety, or welfare, and, if a standard, requirement, or implementation</p>

General Rule & Exception (cont)	45 CFR, §160.203(a) & (b)	<p>specification under part 164 of this subchapter is at issue, if the Secretary determines that the intrusion into privacy is warranted when balanced against the need to be served; or</p> <p>(2) Has as its principal purpose the regulation of the manufacture, registration, distribution, dispensing, or other control of any controlled substances (as defined in 21 U.S.C. 802), or that is deemed a controlled substance by State law.</p> <p>(b) The provision of State law relates to the privacy of individually identifiable health information and is more stringent than a standard, requirement, or implementation specification adopted under subpart E of part 164 of this subchapter.</p>
Definitions	45 CFR, §164.501	<p><i>Psychotherapy notes</i> means notes recorded (in any medium) by a health care provider who is a mental health professional documenting or analyzing the contents of conversation during a private counseling session or a group, joint, or family counseling session and that are separated from the rest of the individual’s medical record. <i>Psychotherapy notes</i> excludes medication prescription and monitoring, counseling session start and stop times, the modalities and frequencies of treatment furnished, results of clinical tests, and any summary of the following items: Diagnosis, functional status, the treatment plan, symptoms, prognosis, and progress to date.</p> <p><i>Law enforcement official</i> means an officer or employee of any agency or authority of the United States, a State, a territory, a political subdivision of a State or territory, or an Indian tribe, who is empowered by law to:</p> <p>(1) Investigate or conduct an official inquiry into a potential violation of law; or</p> <p>(2) Prosecute or otherwise conduct a criminal, civil, or administrative proceeding arising from an alleged violation of law.</p>
General Rules – Standard: Permitted Uses & Disclosures	45 CFR, §164.502(a)	<p>(a) <i>Standard</i>. A covered entity may not use or disclose protected health information, except as permitted or required by this subpart or by subpart C of part 160 of this subchapter.</p> <p>(1) <i>Permitted uses and disclosures</i>. A covered entity is permitted to use or disclose protected health information as follows:</p> <p>(i) To the individual;</p> <p>(ii) For treatment, payment, or health care operations, as permitted by and in compliance with § 164.506;</p> <p>(iii) Incident to a use or disclosure otherwise permitted or required by this subpart, provided that the covered entity has complied with the</p>

		applicable requirements of § 164.502(b), § 164.514(d), and § 164.530(c) with respect to such otherwise permitted or required use or disclosure;
General Rules – Standard: Minimum Necessary	45 CFR, §164.502(b)	(b) <i>Standard: Minimum necessary</i> — (1) <i>Minimum necessary applies.</i> When using or disclosing protected health information or when requesting protected health information from another covered entity, a covered entity must make reasonable efforts to limit protected health information to the minimum necessary to accomplish the intended purpose of the use, disclosure, or request.
General Rules – Standard: Personal Representatives	45 CFR, §164.502(g)(1)	(g)(1) <i>Standard: Personal representatives.</i> As specified a covered entity must, except as provided in paragraphs (g)(3) and (g)(5) of this section, treat a personal representative as the individual for purposes of this subchapter.
General Rules – Implementation Specification: Unemancipated Minors	45 CFR, §164.502(g)(3)(i)	(3)(i) <i>Implementation specification: Unemancipated minors.</i> If under applicable law a parent, guardian, or other person acting in loco parentis has authority to act on behalf of an individual who is an unemancipated minor in making decisions related to health care, a covered entity must treat such person as a personal representative under this subchapter, with respect to protected health information relevant to such personal representation, except that such person may not be a personal representative of an unemancipated minor, and the minor has the authority to act as an individual, with respect to protected health information pertaining to a health care service, if: (A) The minor consents to such health care service; no other consent to such health care service is required by law, regardless of whether the consent of another person has also been obtained; and the minor has not requested that such person be treated as the personal representative; (B) The minor may lawfully obtain such health care service without the consent of a parent, guardian, or other person acting in loco parentis, and the minor, a court, or another person authorized by law consents to such health care service; or (C) A parent, guardian, or other person acting in loco parentis assents to an agreement of confidentiality between a covered health care provider and the minor with respect to such health care service.
General Rules – Implementation Specification: Unemancipated Minors	45 CFR, §164.502(g)(5)(i – ii)	(5) <i>Implementation specification: Abuse, neglect, endangerment situations.</i> Notwithstanding a State law or any requirement of this paragraph to the contrary, a covered entity may elect not to treat a person as the personal representative of an individual if: (i) The covered entity has a reasonable belief that:

<p>General Rules – Implementation Specification: Unemancipated Minors (cont)</p>	<p>45 CFR, §164.502(g)(5)(i – ii)</p>	<p>(A) The individual has been or may be subjected to domestic violence, abuse, or neglect by such person; or (B) Treating such person as the personal representative could endanger the individual; and (ii) The covered entity, in the exercise of professional judgment, decides that it is not in the best interest of the individual to treat the person as the individual’s personal representative.</p>
<p>General Rules – Organization Requirements: Definitions (Plan Administration and Summary Health Information); Business Associate Contracts</p>	<p>45 CFR, §164.504(a) and (2)(i)</p>	<p>(a) <i>Definitions.</i> As used in this section: <i>Plan administration functions</i> means administration functions performed by the plan sponsor of a group health plan on behalf of the group health plan and excludes functions performed by the plan sponsor in connection with any other benefit or benefit plan of the plan sponsor. <i>Summary health information</i> means information, that may be individually identifiable health information, and: (1) That summarizes the claims history, claims expenses, or type of claims experienced by individuals for whom a plan sponsor has provided health benefits under a group health plan; and (2) From which the information described at § 164.514(b)(2)(i) has been deleted, except that the geographic information described in § 164.514(b)(2)(i)(B) need only be aggregated to the level of a five digit zip code. <i>Implementation specifications: Business associate contracts.</i> A contract between the covered entity and a business associate must: (i) Establish the permitted and required uses and disclosures of such information by the business associate. The contract may not authorize the business associate to use or further disclose the information in a manner that would violate the requirements of this subpart, if done by the covered entity, exceptions detailed in (A) – (I) of this subpart.</p>
<p>General Rules - Uses and disclosures to carry out treatment, payment, or health care operations.</p>	<p>45 CFR, §164.506(a), (b) and (c)</p>	<p>(a) <i>Standard: Permitted uses and disclosures.</i> Except with respect to uses or disclosures that require an authorization under § 164.508(a)(2) and (3), a covered entity may use or disclose protected health information for treatment, payment, or health care operations as set forth in paragraph (c) of this section, provided that such use or disclosure is consistent with other applicable requirements of this subpart. (b) <i>Standard: Consent for uses and disclosures permitted.</i> (1) A covered entity may obtain consent of the individual to use or disclose protected health information to carry out treatment, payment,</p>

<p>General Rules - Uses and disclosures to carry out treatment, payment, or health care operations. (cont)</p>	<p>45 CFR, §164.506(c)</p>	<p>or health care operations.</p> <p>(2) Consent, under paragraph (b) of this section, shall not be effective to permit a use or disclosure of protected health information when an authorization, under § 164.508, is required or when another condition must be met for such use or disclosure to be permissible under this subpart.</p> <p><i>(c) Implementation specifications: Treatment, payment, or health care operations.</i></p> <p>(1) A covered entity may use or disclose protected health information for its own treatment, payment, or health care operations.</p> <p>(2) A covered entity may disclose protected health information for treatment activities of a health care provider.</p> <p>(3) A covered entity may disclose protected health information to another covered entity or a health care provider for the payment activities of the entity that receives the information.</p> <p>(4) A covered entity may disclose protected health information to another covered entity for health care operations activities of the entity that receives the information, if each entity either has or had a relationship with the individual who is the subject of the protected health information being requested, the protected health information pertains to such relationship, and the disclosure is:</p> <ul style="list-style-type: none"> (i) For a purpose listed in paragraph (1) or (2) of the definition of health care operations; or (ii) For the purpose of health care fraud and abuse detection or compliance. <p>(5) A covered entity that participates in an organized health care arrangement may disclose protected health information about an individual to another covered entity that participates in the organized health care arrangement for any health care operations activities of the organized health care arrangement.</p>
<p>General Rules - Uses and disclosures for which an authorization is required.</p>	<p>45 CFR, §164.508(a)</p>	<p><i>(a) Standard: authorizations for uses and disclosures—(1) Authorization required general rule.</i> Except as otherwise permitted or required by this subchapter, a covered entity may not use or disclose protected health information without an authorization that is valid under this section. When a covered entity obtains or receives a valid authorization for its use or disclosure of protected health information, such use or disclosure must be consistent with such authorization.</p>

<p>General Rules - Uses and disclosures for which an authorization or opportunity to agree or object is not required</p>	<p>45 CFR, §164.512(a) & (b)</p>	<p>A covered entity may use or disclose protected health information without the written authorization of the individual, as described in § 164.508, or the opportunity for the individual to agree or object as described in § 164.510, in the situations covered by this section, subject to the applicable requirements of this section. When the covered entity is required by this section to inform the individual of, or when the individual may agree to, a use or disclosure permitted by this section, the covered entity's information and the individual's agreement may be given orally.</p> <p><i>(a) Standard: Uses and disclosures required by law.</i> (1) A covered entity may use or disclose protected health information to the extent that such use or disclosure is required by law and the use or disclosure complies with and is limited to the relevant requirements of such law.</p> <p><i>(b) Standard: uses and disclosures for public health activities—(1) Permitted disclosures.</i> A covered entity may disclose protected health information for the public health activities and purposes described in this paragraph and as articulated in §164.512(a) – (l).</p>
<p>General Rules - Other requirements relating to uses and disclosures of protected health information.</p>	<p>CFR 45 §164.514(a) & (b)</p>	<p><i>(a) Standard: de-identification of protected health information.</i> Health information that does not identify an individual and with respect to which there is no reasonable basis to believe that the information can be used to identify an individual is not individually identifiable health information.</p> <p><i>(b) Implementation specifications: requirements for de-identification of protected health information.</i> A covered entity may determine that health information is not individually identifiable health information only as articulated in §164.514(b)(1-2).</p>
<p>Confidentiality of Alcohol and Drug Abuse Patient Records; §527 of the Public Health Service Act. P.L. 98-24. Title 42 CFR Part 2</p> <p>*The Public Health Service Act of 2000 (§527 of P.L. 98-24) can be retrieved in its entirety at: http://www.fda.gov/RegulatoryInformation/Legislation/ucm148717.htm</p> <p>*Title 42 CFR Part 2 can be retrieved in its entirety at: http://ecfr.gpoaccess.gov/cgi/t/text/text-idx?c=ecfr&tpl=/ecfrbrowse/Title42/42cfr2_main_02.tpl</p>		
<p>Confidentiality of Records</p>	<p>43 USC §290dd2-(a)</p>	<p><i>(a) Requirement</i> Records of the identity, diagnosis, prognosis, or treatment of any patient which are maintained in connection with the performance of any program or activity relating to substance abuse education, prevention, training, treatment, rehabilitation, or research, which is conducted, regulated, or directly or indirectly assisted by any department or agency of the United States shall, except as provided in subsection (e) of this section, be confidential and be disclosed only for the purposes and under the circumstances expressly authorized under subsection (b) of this section.</p>

Confidentiality of Records – Permitted Disclosure	43 USC §290dd2-(b)(1-2)	<p>(b) Permitted disclosure</p> <p>(1) Consent The content of any record referred to in subsection (a) of this section may be disclosed in accordance with the prior written consent of the patient with respect to whom such record is maintained, but only to such extent, under such circumstances, and for such purposes as may be allowed under regulations prescribed pursuant to subsection (g) of this section.</p> <p>(2) Method for disclosure Whether or not the patient, with respect to whom any given record referred to in subsection (a) of this section is maintained, gives written consent, the content of such record may be disclosed as follows:</p> <p>(A) To medical personnel to the extent necessary to meet a bona fide medical emergency.</p> <p>(B) To qualified personnel for the purpose of conducting scientific research, management audits, financial audits, or program evaluation, but such personnel may not identify, directly or indirectly, any individual patient in any report of such research, audit, or evaluation, or otherwise disclose patient identities in any manner.</p> <p>(C) If authorized by an appropriate order of a court of competent jurisdiction granted after application showing good cause therefore, including the need to avert a substantial risk of death or serious bodily harm. In assessing good cause the court shall weigh the public interest and the need for disclosure against the injury to the patient, to the physician-patient relationship, and to the treatment services. Upon the granting of such order, the court, in determining the extent to which any disclosure of all or any part of any record is necessary, shall impose appropriate safeguards against unauthorized disclosure.</p>
Confidentiality of Records – Use in Criminal Proceedings	43 USC §290dd2-(c)	(c) Except as authorized by a court order granted under subsection (b)(2)(C) of this section, no record referred to in subsection (a) of this section may be used to initiate or substantiate any criminal charges against a patient or to conduct any investigation of a patient.
Subpart B, General Provisions - Minor patients: Definition and Parental consent to treatment	42 CFR, Pt. 2, §2.14(a-b)	<p>(a) <i>Definition of minor.</i> As used in these regulations the term “minor” means a person who has not attained the age of majority specified in the applicable State law, or if no age of majority is specified in the applicable State law, the age of eighteen years.</p> <p>(b) <i>State law not requiring parental consent to treatment.</i> If a minor patient</p>

<p>Subpart B, General Provisions - Minor patients: Definition and Parental consent to treatment (cont)</p>	<p>42 CFR, Pt. 2, §2.14(c)</p>	<p>acting alone has the legal capacity under the applicable State law to apply for and obtain alcohol or drug abuse treatment, any written consent for disclosure authorized under subpart C of these regulations may be given only by the minor patient. This restriction includes, but is not limited to, any disclosure of patient identifying information to the parent or guardian of a minor patient for the purpose of obtaining financial reimbursement. These regulations do not prohibit a program from refusing to provide treatment until the minor patient consents to the disclosure necessary to obtain reimbursement, but refusal to provide treatment may be prohibited under a State or local law requiring the program to furnish the service irrespective of ability to pay.</p> <p>(c) <i>State law requiring parental consent to treatment.</i> (1) Where State law requires consent of a parent, guardian, or other person for a minor to obtain alcohol or drug abuse treatment, any written consent for disclosure authorized under subpart C of these regulations must be given by both the minor and his or her parent, guardian, or other person authorized under State law to act in the minor's behalf.</p>
<p>Subpart C—Disclosures With Patient's Consent: Form of Written Consent.</p>	<p>42 CFR, Part 2, §2.31(a)(1-9)</p>	<p>(a) <i>Required elements.</i> A written consent to a disclosure under these regulations must include:</p> <ol style="list-style-type: none"> (1) The specific name or general designation of the program or person permitted to make the disclosure. (2) The name or title of the individual or the name of the organization to which disclosure is to be made. (3) The name of the patient. (4) The purpose of the disclosure. (5) How much and what kind of information is to be disclosed. (6) The signature of the patient and, when required for a patient who is a minor, the signature of a person authorized to give consent under §2.14; or, when required for a patient who is incompetent or deceased, the signature of a person authorized to sign under §2.15 in lieu of the patient. (7) The date on which the consent is signed. (8) A statement that the consent is subject to revocation at any time except to the extent that the program or person which is to make the disclosure has already acted in reliance on it. Acting in reliance includes the provision of treatment services in reliance on a valid consent to disclose information to a third party payer. (9) The date, event, or condition upon which the consent will expire if not revoked before. This date, event, or condition must insure that the consent

		will last no longer than reasonably necessary to serve the purpose for which it is given.
Subpart D—Disclosures Without Patient Consent: medical emergencies.	42 CFR, Part 2, §2.51(a-c)	<p>(a) <i>General Rule.</i> Under the procedures required by paragraph (c) of this section, patient identifying information may be disclosed to medical personnel who have a need for information about a patient for the purpose of treating a condition which poses an immediate threat to the health of any individual and which requires immediate medical intervention.</p> <p>(b) <i>Special Rule.</i> Patient identifying information may be disclosed to medical personnel of the Food and Drug Administration (FDA) who assert a reason to believe that the health of any individual may be threatened by an error in the manufacture, labeling, or sale of a product under FDA jurisdiction, and that the information will be used for the exclusive purpose of notifying patients or their physicians of potential dangers.</p> <p>(c) <i>Procedures.</i> Immediately following disclosure, the program shall document the disclosure in the patient's records, setting forth in writing:</p> <ol style="list-style-type: none"> (1) The name of the medical personnel to whom disclosure was made and their affiliation with any health care facility; (2) The name of the individual making the disclosure; (3) The date and time of the disclosure; and (4) The nature of the emergency (or error, if the report was to FDA).
Subpart D— Disclosures Without Patient Consent: research activities	42 CFR, Part 2, §2.52(a) and (b)	<p>(a) Patient identifying information may be disclosed for the purpose of conducting scientific research if the program director makes a determination that the recipient of the patient identifying information:</p> <ol style="list-style-type: none"> (1) Is qualified to conduct the research; (2) Has a research protocol under which the patient identifying info: <ol style="list-style-type: none"> (i) Will be maintained in accordance with the security requirements of §2.16 of these regulations (or more stringent requirements); and (ii) Will not be re-disclosed except as permitted under paragraph (b) of this section; and (3) Has provided a satisfactory written statement that a group of three or more individuals who are independent of the research project has reviewed the protocol and determined that: <ol style="list-style-type: none"> (i) The rights and welfare of patients will be adequately protected; and (ii) The risks in disclosing patient identifying information are outweighed by the potential benefits of the research. <p>(b) A person conducting research may disclose patient identifying information obtained under paragraph (a) of this section only back to the program from which that information was obtained and may not identify</p>

		any individual patient in any report of that research or otherwise disclose patient identities.
Subpart E—Court Orders Authorizing Disclosure and Use: Legal effect of order	42 CFR, Part 2, §2.61(a) and (b)	<p>(a) <i>Effect.</i> An order of a court of competent jurisdiction entered under this subpart is a unique kind of court order. Its only purpose is to authorize a disclosure or use of patient information which would otherwise be prohibited by 42 U.S.C. 290ee–3, 42 U.S.C. 290dd–3 and these regulations. Such an order does not compel disclosure. A subpoena or a similar legal mandate must be issued in order to compel disclosure. This mandate may be entered at the same time as and accompany an authorizing court order entered under these regulations.</p> <p>(b) <i>Examples.</i></p> <p>(1) A person holding records subject to these regulations receives a subpoena for those records: a response to the subpoena is not permitted under the regulations unless an authorizing court order is entered. The person may not disclose the records in response to the subpoena unless a court of competent jurisdiction enters an authorizing order under these regulations.</p> <p>(2) An authorizing court order is entered under these regulations, but the person authorized does not want to make the disclosure. If there is no subpoena or other compulsory process or a subpoena for the records has expired or been quashed, that person may refuse to make the disclosure. Upon the entry of a valid subpoena or other compulsory process the person authorized to disclose must disclose, unless there is a valid legal defense to the process other than the confidentiality restrictions of these regulations.</p>