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September 6, 2003

To Whom It May Concern:

Jeff Neccuzi in the WV Immunization Program received e-mail from a contact in the Randolph County Health Department. The following is an excerpt from that e-mail:

“Our agency had a HIPAA training last Friday. The attorney/RN who went through all of our information stated that it is her interpretation that we need to have signed parental permission to release immunization records to schools. That immunizations are waived when they're being released for treatment (so another office will know what a child is due to receive), but not for school entry.”

This communication raises questions about whether a County Health Department or other provider can, under HIPAA, release immunization records to Public Schools without a specific authorization to do so. I have researched HIPAA and applicable state laws and regulations and offer the following observations relative to this question:

The HIPAA Privacy Rule allows for certain disclosures of PHI without authorization. Among those disclosures are disclosures for Public Health purposes. Details can be found at 45 CFR 164.512(a) and 45 CFR 164.512(b). The Privacy Rule allows covered entities to disclose PHI to public health authorities when required by federal, tribal, **state, or local laws** [45 CFR 164.512(a)]. This includes state laws (or state procedures established under such law) that provide for receiving reporting of disease or injury, child abuse, birth, or death, or conducting public health surveillance, investigation, or intervention.

For disclosures not required by law, covered entities may still disclose, without authorization, to a public health authority authorized by law to collect or receive the information for the purpose of preventing or controlling disease, injury, or disability, the minimum necessary information to accomplish the intended public health purpose of the disclosure [45 CFR 164.512(b)]. Although it is not a defined term, DHHS has interpreted the phrase "authorized by law" to mean that a legal basis exists for the activity.

Further, the Privacy Rule permits covered entities to make disclosures that are required by other laws, including laws that require disclosures for public health purposes.

In the case of Public Schools in WV, their authority to collect or receive immunization records is found in several different laws and rules:

West Virginia State Code § 16-3-4 addresses Compulsory immunization of school children.

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West Virginia's Reportable Disease Legislative Rule 64CSR7 also addresses immunizations and immunization data. 64-7-1.5 specifies that the rule applies to **administrators of schools**. 64-7-6 specifies that immunization data may be shared with other entities with a legally defined access to the data.

The Board of Education's Legislative Rule on Attendance, 126CSR81 also addresses immunizations. 126-81-5.3 states that each county board of education shall:

(5) immediately assist in obtaining immunizations or record of immunizations or other medical records . . .

The Board of Education's Legislative Rule, Communicable Disease Control Policy (2423), 126CSR51, states that "School personnel **will** cooperate with county/state health personnel in completing and coordinating all immunization data, waivers and exclusions."

126CSR51 also specifies that County Boards of Education are responsible for adopting and enforcing Communicable Disease policies. That rule includes a Model Communicable Disease Policy that among other things requires County Boards of Education to work cooperatively with County Health Departments to adhere to West Virginia Code 16-3-4. The Model Communicable Disease Policy further states that "Students are **expected** to be in compliance with the required immunization schedule," and that, "School personnel will cooperate with county/state health personnel in completing and coordinating all immunization data, waivers and exclusions." Depending upon the specific policies adopted by the individual County Boards of Education, Public Schools may be required by law to collect immunization information. Even if the specific County policies do not require the collection of the information, State laws and rules certainly authorize it.

Based on the above-cited laws and rules, it seems clear to me that with regard to immunization information, Public Schools in West Virginia do act as Public Health Authorities and that they are, if not specifically required by law, at the very least authorized by law to collect or receive immunization information. To that end, no specific authorization should be required for a County Health Department or other provider to supply immunization information to a Public School. However, if the Health Department or other provider is a HIPAA covered entity, such a disclosure would be an accountable disclosure.

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Sources and citations used in the preparation of this brief:

**TITLE 64
LEGISLATIVE RULE
BUREAU FOR PUBLIC HEALTH
DEPARTMENT OF HEALTH AND HUMAN RESOURCES

SERIES 7
REPORTABLE DISEASES, EVENTS AND CONDITIONS**

1.5. Applicability. -- This rule applies to physicians and other licensed health practitioners; local health officers; other public health providers; private or public laboratories; all health care facilities; the bureau; health care professional licensing boards and agencies; any individual administering immunizations; administrators of schools, camps, and vessels; administrators of health care facilities operated by the department; the State registrar of vital statistics; county humane officers, dog wardens, sheriffs, pathologists, coroners, and medical examiners; and any other person investigating or treating disease, health conditions, or cause of death.

§64-7-6. Other Reportable Events: Administration of Immunizations.

6.5. Immunization data that must be reported to the Department is confidential, except it may be shared with other health care providers, or other entities with a legally defined access to the data, who are enrolled in the system, without the specific consent of the parent or patient. The data shall only be used for the ongoing care of the patient to assess immunization status, to determine immunization coverage rates, to assist in outbreak investigations or for other purposes determined by the commissioner.

**TITLE 126
LEGISLATIVE RULE
BOARD OF EDUCATION

SERIES 81
ATTENDANCE (4110)**

5.3. Each county board of education shall:

(5) **immediately assist in obtaining immunizations or record of immunizations or other medical records** for those students who do not have them, and assure that students are enrolled in school while the records are being obtained.

**TITLE 126
LEGISLATIVE RULE
BOARD OF EDUCATION**

**SERIES 51
COMMUNICABLE DISEASE CONTROL POLICY (2423)**

§126-51-2. Applicability.

Effective July 1, 1989 each of the fifty-five (55) county boards of education will adopt or amend communicable disease policies to reflect understanding of disease transmission in the school setting and to reflect understanding of students/staff rights to attend school or remain employed. The goal of the policy is to protect individual students, staff members and the school population in general.

Model Communicable Disease Policy

COMMUNICABLE DISEASE CONTROL POLICY

The County School System will work cooperatively with the County Health Department to enforce and adhere to the West Virginia Codes: §§18a-5-1; 16-3-4; 16-3-4A; 16-3-5; 16-3c-1 thru 16-3C-9, 18-2-5, 18-5-9; 18-5-22 and 18-5-34 for prevention, control and containment of communicable disease in schools. Decisions related to student or employee attendance will be based on P.L. 94-142 and Federal 504 Regulations.

1. **Students are expected to be in compliance with the required immunization schedule.** The building principal is required under State Statute §16-3-4 to exclude children from school attendance who are out of compliance with the immunizations required by this act. **School personnel will cooperate with county/state health personnel in completing and coordinating all immunization data, waivers and exclusions.**

§16-3-4. Compulsory immunization of school children; information disseminated; offenses; penalties.

Whenever a resident birth occurs, the state director of health shall promptly provide parents of the newborn child with information on immunizations mandated by this state or required for admission to a public school in this state.

All children entering school for the first time in this state shall have been immunized against diphtheria, polio, rubeola, rubella, tetanus and whooping cough. Any person who cannot give satisfactory proof of having been immunized previously or a certificate from a reputable physician showing that an immunization for any or all diphtheria, polio, rubeola, rubella, tetanus and whooping cough is impossible or improper or sufficient reason why any or all immunizations should not be done, shall be immunized for diphtheria, polio, rubeola, rubella, tetanus and whooping cough prior to being admitted in any of the schools in the state. No child or person shall be admitted or received in any of the schools of the state until he or she has been immunized as hereinafter provided or produces a certificate from a reputable physician showing that an immunization for diphtheria, polio, rubeola, rubella, tetanus and whooping cough has been done or is impossible or improper or other sufficient reason why such immunizations have not been done. Any teacher having information concerning any person who attempts to enter school for the first time without having been immunized against diphtheria, polio, rubeola, rubella, tetanus and whooping cough shall report the names of all such persons to the county

health officer. **It shall be the duty of the health officer in counties having a full-time health officer to see that such persons are immunized before entering school:**

HIPAA Privacy Rule and Public Health

Guidance from CDC and the U.S. Department of Health and Human Services

* Prepared by CDC staff, in consultation with the Office of the General Counsel, the Office for Civil Rights, other offices and agencies within the U.S. Department of Health and Human Services, Washington, D.C., and health privacy specialists.

DHHS recognized the importance of sharing PHI to accomplish essential public health objectives and to meet certain other societal needs (e.g., administration of justice and law enforcement). Therefore, **the Privacy Rule expressly permits PHI to be shared for specified public health purposes.** For example, **covered entities may disclose PHI, without individual authorization, to a public health authority legally authorized to collect or receive the information for the purpose of preventing or controlling disease,** injury, or disability [45 CFR § 164.512(b)]. **Further, the Privacy Rule permits covered entities to make disclosures that are required by other laws, including laws that require disclosures for public health purposes.**

Permitted PHI Disclosures Without Authorization

The Privacy Rule permits a covered entity to use and disclose PHI, with certain limits and protections, for TPO activities [45 CFR § 164.506]. Certain other permitted uses and disclosures for which authorization is not required follow. Additional requirements and conditions apply to these disclosures. The Privacy Rule text and OCR guidance should be consulted for a full understanding of the following:

- Required by law. **Disclosures of PHI are permitted when required by other laws, whether federal, tribal, state, or local.**
- Public health. **PHI can be disclosed to public health authorities and their authorized agents for public health purposes including but not limited to public health surveillance, investigations, and interventions.**

Disclosures for Public Health Purposes

The Privacy Rule allows covered entities to disclose PHI to public health authorities when required by federal, tribal, state, or local laws [45 CFR 164.512(a)]. This includes state laws (or state procedures established under such law) that provide for receiving reporting of disease or injury, child abuse, birth, or death, or conducting public health surveillance, investigation, or intervention.

For disclosures not required by law, covered entities may still disclose, without authorization, to a public health authority authorized by law to collect or receive the information for the purpose of preventing or controlling disease, injury, or disability, the minimum necessary information to accomplish the intended public health purpose of the disclosure [45 CFR 164.512 (b)] ([Box 1](#)).

The Privacy Rule continues to allow for the existing practice of sharing PHI with public health authorities who are authorized by law to collect or receive such information to aid them in their mission of protecting the health of the public. Examples of such activities include those directed at the reporting of disease or injury, reporting adverse events, reporting births and deaths, and investigating the occurrence and cause of injury and disease (*1*).

Although it is not a defined term, **DHHS interpreted the phrase "authorized by law" to mean that a legal basis exists for the activity.** Further, DHHS called the phrase "a term of art," including both actions that are permitted and actions that are required by law [64 FR 59929, November 3, 1999]. **This does not mean a public health authority at the federal, tribal, state, or local level must have multiple disease or condition-specific laws that authorize each collection of information. Public health authorities operate under broad mandates to protect the health of their constituent populations.**