

“What keeps you up at night?”

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New Federal Guidance for Handling Student Health Records

By James A. Keller and Amy C. Foerster

The Family Educational Rights and Privacy Act (FERPA) and the Health Insurance Portability and Accountability Act (HIPAA) create a number of unique issues for postsecondary institutions. The U.S. Department of Health and Human Services and the U.S. Department of Education recently posted joint guidance on the application of these laws to student health records. The guidance, developed based on recommendations from the “Report to the President on Issues Raised by the Virginia Tech Tragedy,” can be found here.

<http://www.hhs.gov/ocr/hipaa/HIPAAFERPAjointguide.pdf>

FERPA applies to most private and public postsecondary institutions. HIPAA applies to those colleges and universities that provide health care to students, and its Privacy Rule requires covered entities to safeguard the privacy of health records. Questions arise when the two laws intersect.

For example, records created at a campus health clinic are generally either education records or treatment records under FERPA, but both categories are specifically excluded from HIPAA's Privacy Rule. Other covered health records may be dispersed across several areas of a campus, including the health clinic, security office, and research department. With that possibility in mind, a postsecondary institution can be designated as a “hybrid entity” under HIPAA's Privacy Rule by identifying a specific “health care component” of the school. Records kept in the health-care unit are protected by the Privacy Rule, while those outside the area are not.

If you have any questions about the application of FERPA and HIPAA on campus, please contact Karen Palestini, who addresses these issues as part of her health care law practice, at 609-452-5044 or kpalestini@saul.com, or James Keller, Chair of Saul Ewing's Higher Education Practice Group, at 215-972-1964 or jkeller@saul.com.

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