

# Improving Community-Wide Communications for Students



June 3, 2021

Brief FERPA, HIPAA, 42 CFR Part 2 Overview

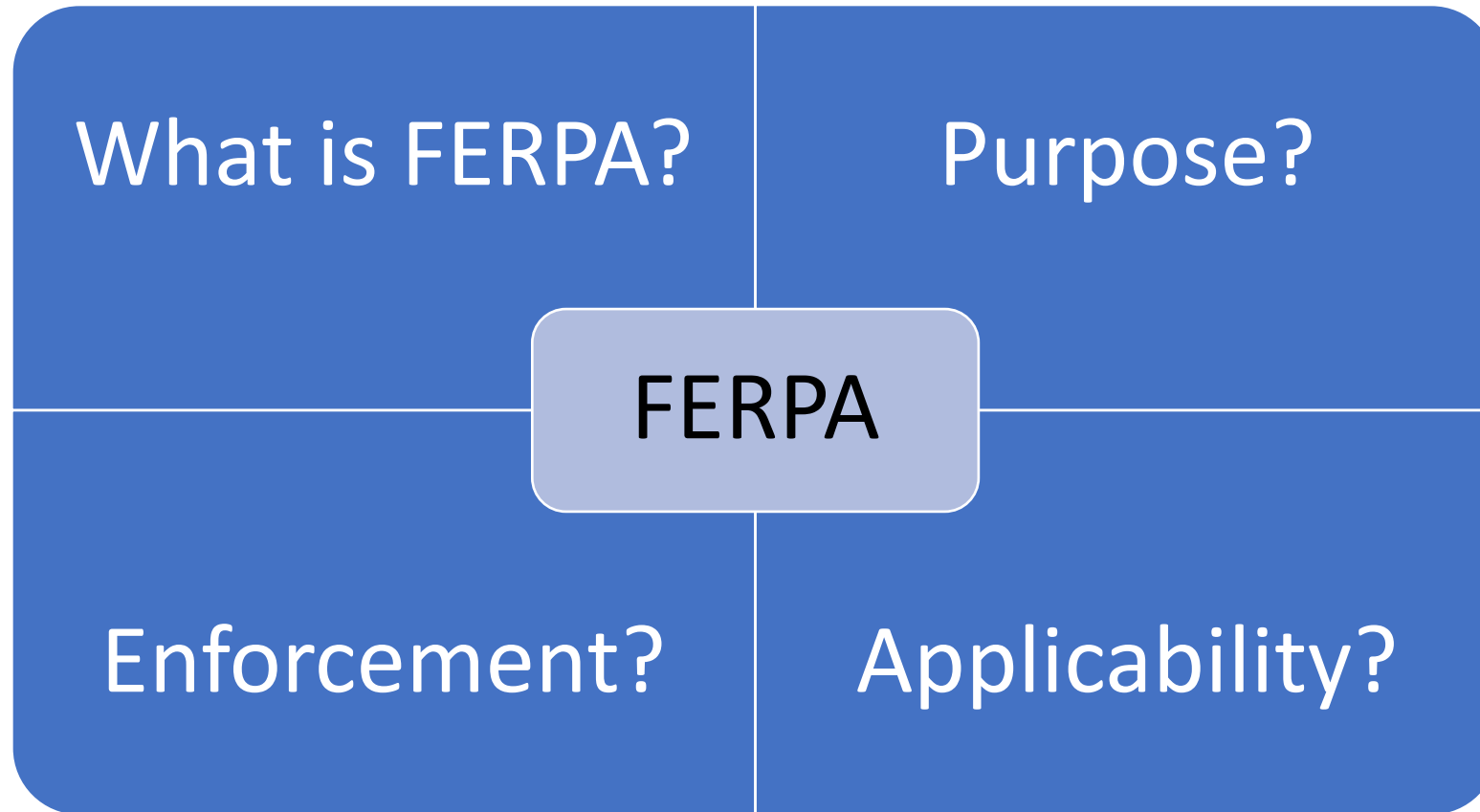
Health Law and Policy Programs  
UNH Franklin Pierce School of Law  
College of Health and Human Services  
Institute for Health Policy and Practice

# Relevant Privacy and Confidentiality Law

Jurisdiction	Statute or Regulation	Scope
Federal	<b>HIPAA Privacy Rules</b>	Protects individually identifiable health information maintained by providers, payers and their contractors from disclosure. Heightened protections for psychotherapy notes.
	<b>42 CFR Part 2</b>	Protects the confidentiality of substance abuse patient records from disclosure without express patient consent.
	<b>FERPA</b>	Protects the confidentiality of education records.
New Hampshire	<b>RSA 332-1:1</b>	Medical information in the medical records in the possession of any health care provider shall be deemed to be the property of the patient
	<b>RSA 318-B:12-a</b>	Protects reports and records of treatment of minors for drug dependency as confidential
	<b>RSA 330-A:32</b>	Protects communications between mental health practitioners and patients as privileged
	<b>RSA 330-C:26</b>	Protects information held by a licensed alcohol or other drug use professional performing substance use counseling services unless permitted by 42 CFR Part 2
	<b>RSA 135-C:19-a</b>	Requires and/or permits disclosure of certain information by treating providers and community mental health centers to designated receiving facilities (DRFs) re: patients who are seriously mentally ill

# Getting to know FERPA

---



# What is an education record?

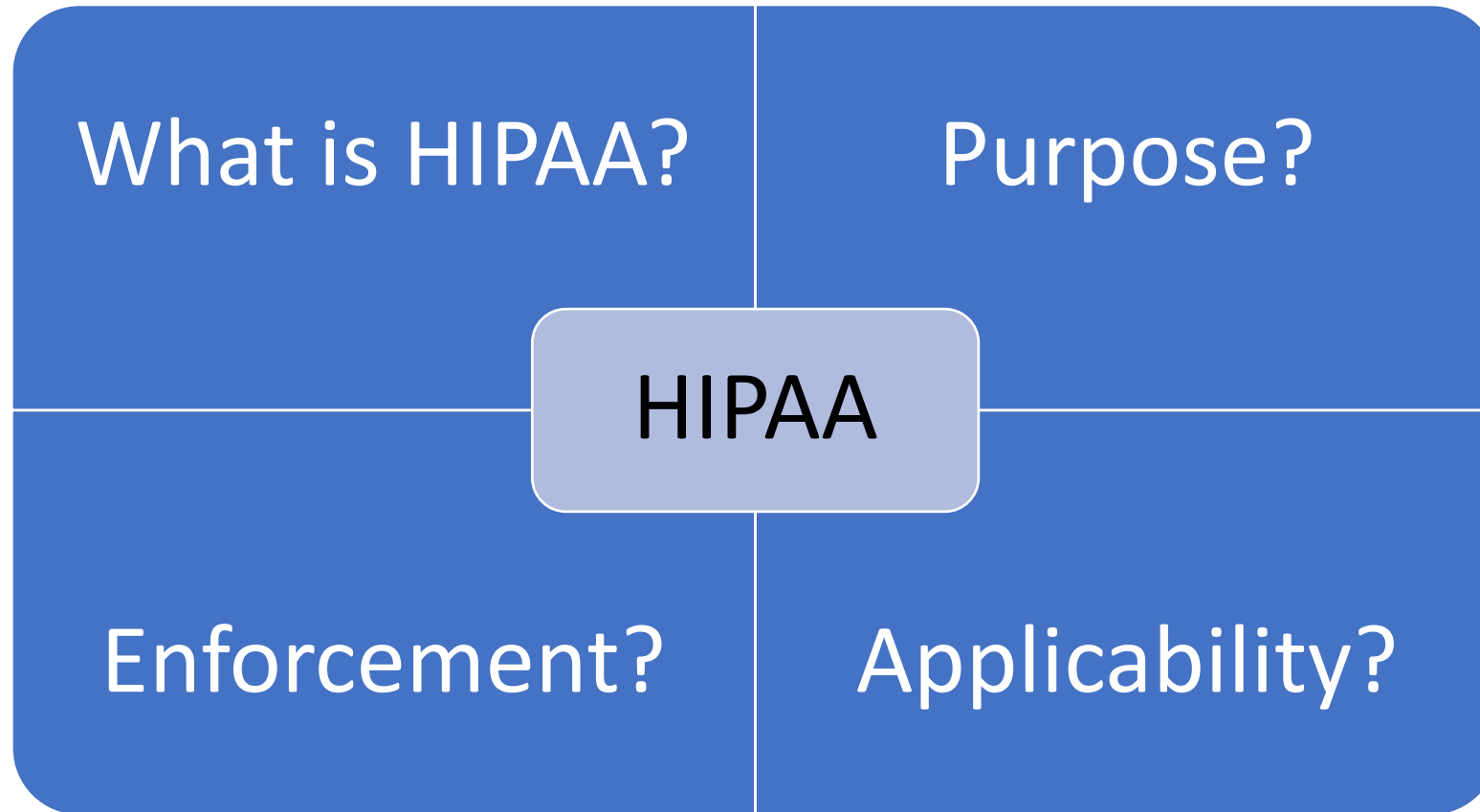
**Education records** are records that are directly related to a student and that are maintained by an educational agency or a party acting on its behalf. Records include, but are not limited to,

- Grades
- Transcripts
- Class lists
- Student course schedules
- **Health records (at the K-12 level),** and
- Student discipline files.

The information may be recorded in any way, including handwriting, print, computer media, videotape, audiotape, film, and email.

# Getting to know HIPAA

---



# Who is covered by HIPAA?

**Covered entities** and **business associates of covered entities**. A **covered entity** is any of the following who transmit health information **electronically**:

1. A health care provider, both physical and behavioral health;
2. Health plan; and
3. Health care clearinghouse

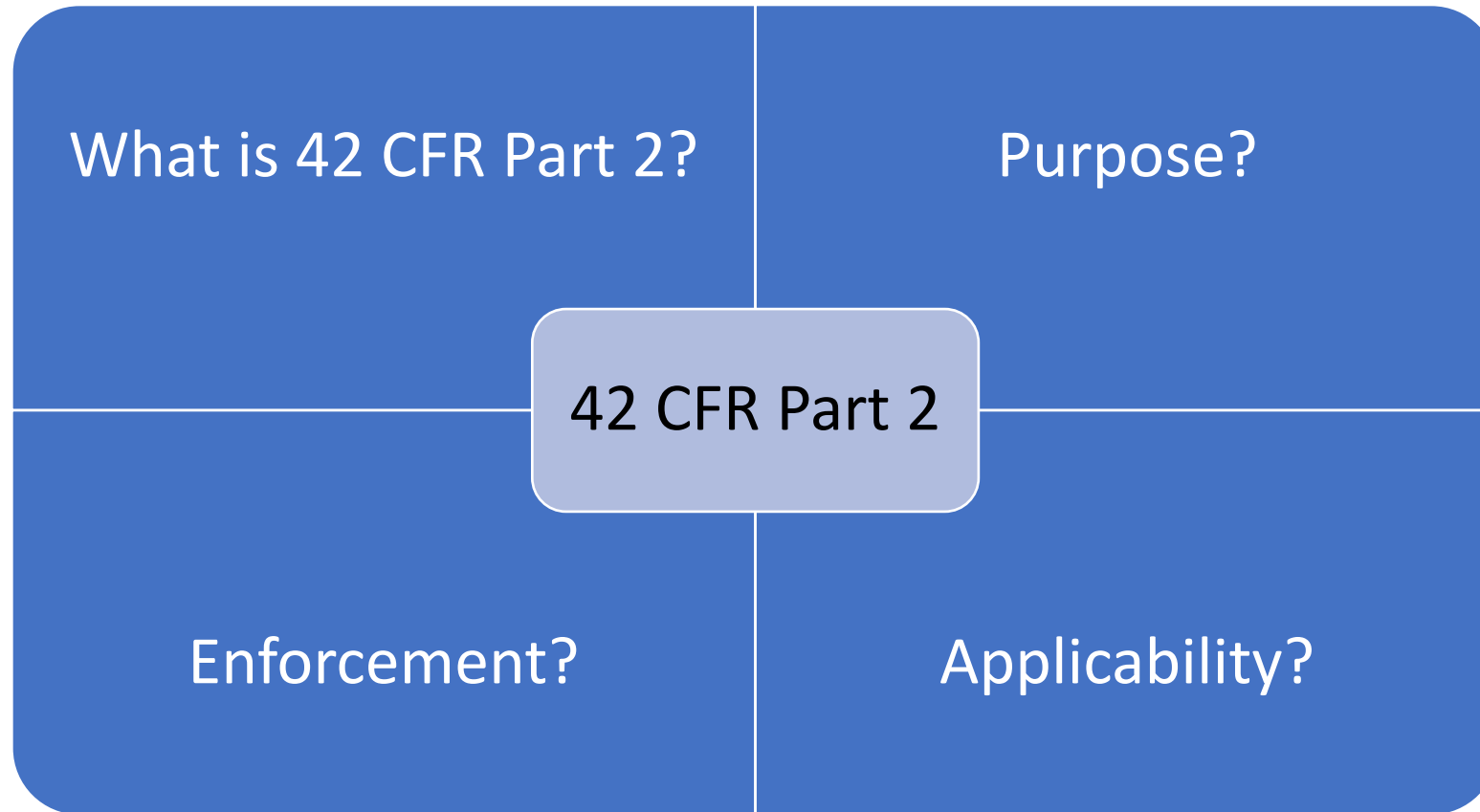
The rule **also** applies to business associates of a covered entity.

**Protected health information** is individually identifiable health information held or transmitted by a covered entity or its business association.

Health care providers **may share protected health information** for treatment purposes without consent.

# Getting to know 42 CFR Part 2

---



# Who is a Part 2 Provider or Program?

## **A Part 2 program is**

1. An individual or entity (or a unit in a general medical care facility) that holds itself out as providing and does provide SUD treatment, diagnosis or referral; or
2. Medical personnel or staff in a general medical facility whose primary function is the provision of such services and who are identified as SUD providers; and
3. That are federally “assisted”

A **Part 2 patient** is any individual who has applied for or been given a diagnosis, treatment, or referral for treatment for a SUD at a Part 2 program

“**Treatment**” means the care of a patient suffering from a SUD, a condition which is identified as having been caused by the SUD, or both, in order to reduce or eliminate the adverse effects on the patient

A **Part 2 Program** is prohibited from disclosing any information that would identify a person as having or having had a SUD unless that person provides a written consent, or the disclosure meets another exception.



# Consent Elements

---

Name of  
Patient/Student

To Whom

From Whom

Why? What  
Purpose?

What  
information?

What  
authority?

Signature

Date and  
Duration

## Age of Consent

Substance Use	STDs	Medicaid Family Planning	Seriously Mentally Ill
<p>Minor age <b>12 or older</b> may consent to treatment for drug dependency or any problem related to the use of drugs without the consent of a parent or legal guardian. RSA 318-B:12-a</p>	<p>Minor age <b>14 or older</b> may voluntarily consent for medical diagnosis and treatment for sexually transmitted diseases, and a licensed physician may diagnose, treat or prescribe for the treatment of sexually transmitted diseases in a minor age 14 or older without the knowledge or consent of the parent or guardian. RSA 141-C:18</p>	<p>Adolescent minors who are eligible for Medicaid may receive confidential family planning services funded by Medicaid</p>	<p>Treatment information regarding seriously or chronically mentally ill person receiving services from community mental health program or state facility may be disclosed to a family member who lives with the person or provides direct care after the facility has received the written consent of the patient or, if consent cannot be obtained, has notified the patient in writing as to what is being disclosed, the reason for its disclosure</p>

# FERPA Umbrella

- Who is under the umbrella?
- Has a parent consented to share outside the school?
- Is there an emergency which makes disclosure necessary to protect the student or other individual?
- Is the nurse learning information from an outside health professional for the student's treatment?



# HIPAA Umbrella



- Who is under the HIPAA umbrella?
- Is the HIPAA provider sharing information with the school nurse or other treating provider at the school?
- Does the provider have authorization to disclose from the patient?
- Is the provider 'under contract' with the school?

Questions?  
Panel  
Discussion



# Consents: HIPAA, Part 2, FERPA comparison

	HIPAA (health information) 45 CFR 164.508 “Authorization”	42 CFR Part 2 (substance use disorders), 42 CFR 2.31, 2.32 “Consent”	Family Education Rights Privacy Act (FERPA), 34 CFR 99.30, 99.33 “Consent”
<b>Required Core Elements</b>			
<b>Whose information?</b>	Name of Patient	Name of Patient	Name of student
<b>What information – describe?</b>	<p>Must describe information in “specific and meaningful” way</p> <p>Remuneration: If purpose involves remuneration (e.g. marketing, sale of data), must state that disclosure will result in remuneration to covered entity</p>	<p>Must <b>describe how much</b> and <b>what kind</b> of information may be disclosed, including an explicit description of what substance use disorder information may be disclosed; must be limited to that information necessary to carry out the purpose of the disclosure</p>	<p>Must specify the records that may be disclosed</p>
<b>Who is disclosing the information?</b>	<p>Must include the name or other specific identification of person(s) or classes of persons authorized to make the disclosure</p>	<p>Must include the specific name(s) or general designation(s) of Part 2 program(s), entity(ies), or individual(s)</p>	<p>Must state the educational agency or institution disclosing the information</p>

# Consent comparison cont.: Who May Receive the Information?

	HIPAA (health information) 45 CFR 164.508 “Authorization”	42 CFR Part 2 (substance use disorders), 42 CFR 2.31, 2.32 “Consent”	Family Education Rights Privacy Act (FERPA), 34 CFR 99.30, 99.33 “Consent”
<b>Required Core Elements</b>			
<b>“TO WHOM” may the disclosure be made?</b>	Authorization can be made without written consent to other covered entities for purposes of treatment, payment and health care operations. Written authorizations must identify the persons or class of person to whom disclosure it to be made	Must include the names of the individual(s) to receive the information, or for the following types of recipients: <ul style="list-style-type: none"> <li>• Name of person or entity</li> <li>• Entities that facilitate health information exchange: the name of the entity or the name of the entity’s participant(s) that has a treating provider relationship with the patient</li> </ul>	Must identify the party or class of parties to whom the disclosure may be made

## Consent comparison, cont.

	HIPAA (health information) 45 CFR 164.508 “Authorization”	42 CFR Part 2 (substance use disorders), 42 CFR 2.31, 2.32 “Consent”	Family Education Rights Privacy Act (FERPA), 34 CFR 99.30, 99.33 “Consent”
<b>Required Core Elements</b>			
<b>Purpose(s) for which the information may be disclosed</b>	Must describe each purpose of disclosure When initiated by individual, “at the request of the individual” is sufficient	Must describe each purpose of disclosure, as specific as possible	Must state the purpose of the disclosure
<b>Signature of Individual</b>	Must include signature of patient or authorized representative; if representative signs, must also include description of authority to act	Must include signature of patient or authorized representative	Must include signature of signature of parent or individual with authority to consent; a signature in electronic form must identify and authenticate a particular person as the source of the electronic consent and indicates such person’s approval of the information contained in the electronic consent
<b>Signature of witness</b>	None required	None required	None required
<b>Date Signed</b>	Must include date signed	Must include date signed	Must include date signed





# Lucy C. Hodder

Director of Health Law and Policy  
Professor, UNH Franklin Pierce School of Law  
Institute for Health Policy and Practice  
[Lucy.Hodder@unh.edu](mailto:Lucy.Hodder@unh.edu)

Lucy Hodder is the Director of Health Law and Policy Programs at the University of New Hampshire College of Health and Human Services, Institute for Health Policy and Practice, and Professor of Law at UNH Franklin Pierce School of Law. She developed and oversees the Certificate in Health Law and Policy program for law students and teaches a variety of health law courses. Lucy's research addresses the health care payment and delivery system reform, and her projects focus on developing strategies for sustainable and patient centered systems.

She has practiced law for over 30 years, most recently serving as Legal Counsel to New Hampshire Governor Maggie Hassan and her senior health care policy advisor, working with the Governor on initiatives to expand access to health, mental health and substance use disorder services for New Hampshire citizens. Lucy is an experienced New Hampshire health care and regulatory attorney. Previously a shareholder in the firm of Rath, Young and Pignatelli, P.C., and Chair of the firm's Healthcare Practice Group, Lucy assisted providers and businesses navigate the changing health care environment. Prior to private practice, Lucy served as an Assistant Attorney General in the New Hampshire Department of Justice and began her practice in the San Francisco offices of Brobeck, Phleger and Harrison.

# Resources

---

[https://studentprivacy.ed.gov/  
frequently-asked-questions](https://studentprivacy.ed.gov/frequently-asked-questions)

***A 6 hour training event with Dean Eggert &  
Foad Afshar***

***NHADACA***

September 15, 2021

8:30am-4:00pm

130 Pembroke Rd. Suite 100, Concord, NH  
03301

[Understanding Your Ethical Confidentiality  
Obligations Under FERPA, 42 CFR Part 2, State  
Law and HIPAA](#)