

# Differences in School Nursing and SBHC Nursing Practices in Oregon

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Leslie Currin, RN, School Health Specialist

Janet Matthews, MSN, FNP, WHNP

# Webinar Panelists

- Marilyn Hudson, RN, MSN, CNS  
OSBN Nursing Practice Consultant
- Tracy Klein, RN, MS, FNP  
OSBN Advanced Practice Consultant
- Katherine J. Bradley, PhD, RN  
Administrator, Office of Family Health  
Department of Human Services

# Resources available

<http://egov.oregon.gov/DHS/ph/ah/sbhc/sbhc.shtml>

- Webinar Audio Checklist
- Oregon Dept. of Justice (DOJ) HIPAA-FERPA letter
- Oregon Dept. of Justice (DOJ) FAQs
- Oregon Minor Statutes
- Oregon School Nursing Statutes
- School Nursing Task Force Report
- NASBHC Policy on School Nurses and SBHCs
- Oregon SBHC KPM policy
- Joint Guidance on the Application of FERPA and HIPAA to Student Health Records
- Powerpoint presentation

# QUESTIONS?

- Raise your electronic hand or
- Use chat box to text a question

# Multiple Influences

- Federal Statutes
  - Nursing
  - Education
  - Disabled students
  - Privacy
- State Statutes
  - Nursing
  - Education
  - Privacy
- Employer
  - Limits of employment
  - Institutional licensure
- OSBN
  - Scope of practice
  - Licensure

# History of Healthcare Delivery in Oregon Schools

- 1950s - school nurse duties:
  - Basic health promotion/screening
  - Injury prevention/treatment
- 1970s - federal laws mandate students with physical and mental impairments be mainstreamed i.e. changed focus of school nurse duties to:
  - IEPs
  - Case management

# School Healthcare Cont.

- 1980's – “Doctor's offices on school grounds” AKA SBHCs start in Oregon and evolve from Title V Grants to State GF Grants through DHS (5)
- 1990's – State SBHC competitive RFP process initiated
- 2000's – SPO closed, reopened; SBHC Funding Formula based on # certified SBHCs in @ county initiated; largest expansion in history (46)

# Reimbursement Based Healthcare in Schools

- School Nursing
  - Reimbursement through federal funding
  - School District (SD) budget
- SBHC
  - Comply with certification
  - Comply with site specific grants
  - Comply with Key Performance Measures
  - Ongoing lobbying to keep state funding alive

# SBHC Key Performance Measures & Certification Requirements

## KPMs

### Sentinel Conditions:

AARA, CPE, BMI

### Method:

annual random chart  
audit of 20% of total  
charts \*

### State Goal:

15% of audit: AARA and  
CPE

25% of audit: BMI

- SBHC Certification Requirements
  - Biennial visits
  - Administrative
  - Operations and staffing
  - Laboratory
  - Clinical Services
  - Data Collection
  - QA

# HIPAA and FERPA Federal Privacy Statutes

- Health Insurance Portability and Accountability Act of 1996
- Family Educational Rights and Privacy Act of 1974

# HIPAA

- Applies to SBHCs
- Generally ROI is required to disclose PHI  
However, PHI may be released for payment or treatment purposes or if an exception applies
- If a minor does not self-consent, generally a parent is able to access PHI
- If a minor self-consents, Oregon statute is silent on parent's right of access, i.e. the decision is deferred to the provider's professional judgment

# HIPAA Exceptions (DOJ page 8)

- Legal requirements
  - ORS 433.004 disease reporting
- Public Health purposes
- Child Abuse/Neglect
- Domestic Violence/Abuse/Neglect
- Court Order/Subpoena
- Law enforcement
- Serious threat to health or safety

# HIPAA “Treatment Exception”

- SBHC Staff may share information about a student with providers (school nurse) for treatment purposes without a ROI

# FERPA

- Applies to School Officials (School Nurses)
- Applies to all educational records
  - Health records, Immunizations
- Protects privacy interests of the parents (or emancipated minor) in their children's education records i.e. requires written consent from parents to release education records
- Age 18 (eligible student) or enrolled in post secondary institution = all rights go to student

# FERPA Exceptions (DOJ, Page 11)

- School officials with legitimate educational interests
- Officials of another school where the student seeks to enroll
- Subpoena
- Health or safety emergency (page 12)

# FERPA to HIPAA

- Admit to SBHC with appropriate consent on file before treatment
- ROI for medical records prn
- School nurse CANNOT refer directly to SBHC unless consent obtained

# HIPAA to FERPA

- HIPAA ROI for release of PHI
- Dated
- Specific
- Limited
- Minimum necessary

- **SBHC Nurses**

- Covered entity (CE)

- **HIPAA & PHI**

- **Written ROI\* required**

- **CE shall limit PHI disclosure, minimum amt. required**

- **Seek legal counsel prn**

- **School Nurses**

- School official

- **FERPA & Ed. Records**

- Shared among “need-to-know” school officials

- **Parental consent req. for non school officials**

# QUESTIONS?

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# Frequently Asked Questions #1

- **Can school nurses and school based health center (SBHC) staff work in the same space if hired by different entities?**

# Frequently Asked Questions #1

- **Answer:** Given the constraints both FERPA and HIPAA place on information sharing between school nurses and SBHC staff, having SBHC staff and school nurses work in the same space is not advisable because it would likely be impossible to retain the confidentiality required by these laws.

# Frequently Asked Questions #2

- **Are there standard authorizations for the release of information that meet HIPAA or FERPA requirements?**

# Frequently Asked Questions #2

- **Answer:** Yes.
- DHS has a standard HIPAA compliant authorization that can be found at the following web address:  
<http://dhsforms.hr.state.or.us/Forms/Served/DE2099.pdf>
- The Department of Education has a standard FERPA compliant authorization that can be found at the following web address:  
<http://www.ode.state.or.us/pubs/forms/schoolage/1196-P.pdf>

# Frequently Asked Questions #3

- **If a school nurse wants to have a parent sign a release so that information can be shared with a SBHC, how should the release be drafted?**

# Frequently Asked Questions #3

- **Answer:** See answer to question #2. The written consent to release information should state what records can be disclosed, the purpose of the disclosure, and the party or class of parties to whom the disclosure may be made.

# Frequently Asked Questions #4

- **Are there exceptions to FERPA that allow the sharing of information without written consent?**

# Frequently Asked Questions #4

- **Answer:** Yes, there are exceptions.

For a complete list of the exceptions the federal regulations should be reviewed and can be found at 34 CFR § 99.31. Legal counsel should be sought before releasing records in response to a court order or subpoena. The health or safety emergency exception is construed narrowly. See 12/3/08 DOJ Letter of Advice to Matthews and Currin.

# Frequently Asked Questions #5

- **If a school nurse is asked to attend a multi-disciplinary meeting about a student where community persons (e.g. a mental health therapist), SBHC staff, school staff are present, what can that school nurse share about a child's health?**

# Frequently Asked Questions #5

- **Answer:** The school nurse can only share information with non-school staff if the parent or guardian has authorized the sharing of this information, or one of the exceptions applies. See answer to question #4. Information can be shared with school staff if they have a legitimate educational interest in the information.

# Frequently Asked Questions

## #5a

- **Is the answer any different for a school nurse if the above meeting occurs with all but the SBHC persons?**

# Frequently Asked Questions

## #5a

- **Answer:** No, unless all those present were school officials with a legitimate educational interest in the records, and in that case, no written consent would be required.

# Frequently Asked Questions #6

- **If the local Lion's Club, for example, does a health screening that the school arranges who controls the records?**

# Frequently Asked Questions #6

- **Answer:** If the Lion's Club provides a record of the screening to the school, it becomes an educational record and is covered by FERPA. If the Lion's Club retains a copy of the record, the Lion's Club may or may not be subject to FERPA, depending on what sort of relationship exists between a school or school district and the Lion's Club.

# Frequently Asked Questions

## #6a

- **Can a school nurse share information about a student's health with a volunteer from the Lion's Club?**

# Frequently Asked Questions

## #6a

- **Answer:** Unless the school has an agreement with the Lion's Club that complies with FERPA and would thus permit information sharing between the school nurse and the volunteer, without written consent the school nurse cannot share information from an educational record with the volunteer.

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# Frequently Asked Questions #7

- **Should a school district have a contract with a SBHC specifying what can or cannot be shared about student health information?**

# Frequently Asked Questions #7

- **Answer:** A contract is not needed nor would a contract be appropriate for this purpose. However, it is a good idea for SBHC and school staff, including school nurses, to have a common understanding about how and when information between them can be shared.

# Frequently Asked Questions #8

- **Should a school district be encouraged to designate a SBHC as a school official, allowing information sharing between the school nurse and SBHC staff?**

# Frequently Asked Questions #8

- **Answer:** These FAQs are meant to answer legal questions, not to weigh in on policy decisions about whether a school district should be encouraged or discouraged from taking a particular action. Whether a school district could enter into an agreement with a SBHC that would allow information sharing between the two, without written consent, is a matter that must be discussed with legal counsel and it may or may not be legally permissible under FERPA.

# Frequently Asked Questions

## #8a

- **If such a designation is made, and the school nurse has a release of information, who can the school nurse talk to? Must it be an RN/NP? Can it be the clerk?**

# Frequently Asked Questions

## #8a

- **Answer:** See answer to questions #4 and #5. The release will specify who information can be disclosed to. One of the exceptions must apply if written consent is not needed for disclosure. As is stated in answers to questions four and five, disclosures may be made to a school official with a legitimate educational interest in the record.

# Frequently Asked Questions #9

- **How can it clearly be explained to school districts the differentiation between a SBHC and school nurses and the subsequent limits on information sharing to avoid the misperception that the limit of communication is a turf issue?**

## SCHOOL NURSE

- Case mgmnt
- Oversight
  - Immunizations
  - School health programs
- Consultation
  - IEPs
  - Student health needs
- Participate
  - School health policy

## SBHC NURSING STAFF

- CPEs
- Diagnose and treat acute/chronic illnesses
- Treat minor injuries
- Administer immies
- Supply MH services
- Prescribe meds
- Give classroom talks

# Frequently Asked Questions #9

- **Answer:** A school district can review the 12/3/08 letter of advice to Matthews and Currin by the Oregon Department of Justice (DOJ). However, DOJ cannot give legal advice to school districts and the school district should be encouraged to contact its own attorney. The limits on information sharing are set by law.

# Frequently Asked Questions

## #10

- **In the interest of trying to provide services to students is there a way to facilitate information sharing, about immunization records for example, without a release of information for each student?**

# Frequently Asked Questions

## #10

- **Answer:** No. A release of information must be obtained unless an exception applies.

# Frequently Asked Questions

## #10a

- **Is there a way that parents could learn in a school handbook about a general practice of sharing immunization information to overcome an individual release for each student?**

# Frequently Asked Questions

## #10a

- **Answer:** No. A general notice about information sharing does not obviate the need for a release.

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# Frequently Asked Questions

## #11

- **What are the consequences of violating FERPA?**

# Frequently Asked Questions

## #11

- **Answer:** A school could lose federal funding.

# Frequently Asked Questions

## #11a

- **Is there a potential consequence to my nursing license?**

# Frequently Asked Questions

## #11a

- **Answer:** This is a licensing question that must be answered by the Oregon State Board of Nursing (OSBN).

# Frequently Asked Questions

## #12

- **What can I release from a student's educational record or nurse records if I receive a subpoena?**

# Frequently Asked Questions

## #12

- **Answer:** You should talk to your supervisor if you receive a subpoena or court order for the release of records and legal counsel should be sought.
- Records can be disclosed in response to a validly issued subpoena, but only after a reasonable effort has been made to notify the parent or student before information is released, unless it is a federal grand jury subpoena or a law enforcement subpoena where the court or issuing agency has ordered that the existence or the contents of the subpoena not be disclosed.
- Unless the subpoena is quashed, the subpoena itself will govern what is released because it will specify the records and information being sought.

# Frequently Asked Questions

## #13

- **What should I do if a principal wants to see my nursing record?**

# Frequently Asked Questions

## #13

- **Answer:** If the principal has a legitimate educational interest in the records, disclosure is permitted without written consent, otherwise not.

# Frequently Asked Questions

## #14

- **What if risk management in the district wants to talk to a school nurse about a student incident?**

# Frequently Asked Questions

## #14

- **Answer:** If risk management has a legitimate educational interest in the information and is a "school official" as that is defined under FERPA, a school nurse may discuss the incident with risk management.

# Frequently Asked Questions

## #15

- **Is there anything else beyond FERPA that influences information sharing with SBHC staff?**

# Frequently Asked Questions

## #15

- **Answer:** There might be, but FERPA is restrictive enough that a school nurse can likely rely on it for guidance about when information can be released. The one exception may be drug and alcohol records that are protected by federal law. 42 USC 290dd-2; 42 CFR Part 2. If you have a question about whether drug or alcohol records can be disclosed, talk to your supervisor and seek legal advice. ( See Pg 11 of DOJ letter for FERPA exceptions list)

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# Referrals

- School Nurse

*Must have consent  
to refer a student to  
SBHC*

- SBHC Nurse

*May refer a student to  
school nurse without  
consent*

# Federal Influences

- Federal Disability Acts
  - “Students with Disability” Acts
    - Individuals with Disabilities Education Act, (IDEA)
      - Requires IEP
    - Section 504 of the Rehabilitation Act 1973
- Federal Privacy Acts
  - Educational Records (FERPA, 1974)
  - Health Information, (HIPAA, 1996)

# Oregon Influences

- OARs
  - 581-022-0705 – Requires School Districts to provide following health services. Contact Leslie Currin if SBHC requested to provide any of the following:
    - Services for students that are medically fragile/special HC needs
    - Health Screenings (vision and hearing)
    - Immunization monitoring
    - 504 plan and IEP development and implementation
    - Communicable disease control
    - Written plans for response to medical emergencies
    - Coordinated school health
    - First Aid and CPR certified Staff
    - Compliance with OR-OSHA regulations
    - Adoption of P&P for medication administration
    - Coordination with health & social service agencies (public & private)

# Oregon Influences cont.

- ORS 109.650 Oregon HIPAA- MD, NP, hospital or DDS may advise parent of minor's care without consent of minor
- ORS109.675 requires parental involvement for mental and emotional disorders or chemical dependency before the end of the treatment

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# Task Force on Oregon School Nurses

- Legislatively mandated Nov 2007 per HB 2773
- As response to: Increased health mandates in schools and reducing numbers of school nurses
- ODE appointed task force to recommend a plan for Oregon schools

# Findings of the Nursing Task Force

- Children must be healthy to learn and learn to be healthy. Health & academic success are related.
- Healthcare needs of Oregon's students have increased in quantity & complexity.
- Availability of School Nurses is severely limited, putting students at risk.
- School Nurse shortages means higher risks for SDs

# Nursing Task Force Recommendations

- 1. ST, LT mandated funding of school nurses to student ratios to meet national standards:
  - 1:750 general student population
  - 1:225 medically complex
  - 1:125 medically fragile
  - 1:1 nursing dependent
- 2. Improve statewide infrastructure to support increasing numbers of school nurses

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- Leslie Currin RN  
Health Services Specialist  
Student Learning and Partnerships  
Oregon Department of Education  
Telephone 503-947-5812  
Leslie.Currin@state.or.us

Janet Matthews, MS, FNP, WHCNP  
School-Based Health Center Program Manager  
Office of Family Health  
Adolescent Health Section  
Oregon State Public Health Division, DHS  
800 NE Oregon Street, Ste. 825  
Portland, OR 97232

Phone: 971-673-0241

FAX: 971-673-0240

Email: janet.matthews@state.or.us

<http://egov.oregon.gov/DHS/ph/ah/sbhc/sbhc.shtml>