

## HHS & Department of Education Issue Joint HIPAA/FERPA Privacy Rule Guidance

The U.S. Department of Health & Human Services Office of Civil Rights (“HHS”) and U.S. Department of Education (“DOE”) jointly have issued new guidance about the interplay between the privacy requirements applicable to health care providers and other covered entities under the Health Insurance Portability & Accountability Act (“HIPAA”) and the privacy rules applicable to educational agencies and other organizations receiving funds from the DOE. The release of the Joint Guidance follows HHS’s September 16, 2008 release of guidance for patients and health care providers about when health care providers may communicate with a patient's family, friends, or others involved in a patient's care.

FERPA is a Federal law that protects the privacy of student education records and addresses certain rights of students or their parents relating to such records and their access. The HIPAA Privacy Rule requires health care providers, health plans and healthcare clearinghouses (“Covered Entities”) to protect individuals protected health information, regulates the use, access and disclosure of that information by covered entities and requires that covered entities honor certain rights of individuals that are the subject of such information.

Many educational organizations have expressed confusion about how HIPAA impacts certain health related activities and services provided or administered within the educational organization since the HIPAA privacy rules took effect. Meanwhile, many health care providers providing services within educational organizations or dealing with such organization and others also have expressed questions about the interaction between HIPAA and FERPA.

Published November 25, 2008, the newly issued “Joint Guidance on the Application of the Family Educational Rights and Privacy Act (FERPA) And the Health Insurance Portability and Accountability Act of 1996 (HIPAA) To Student Health Records” dated November, 2008 (the “Joint Guidance” provides additional insight about the relationship between FERPA and the HIPAA Privacy Rule.

The agencies issued the rule to address reported confusion on the part of school administrators, health care professionals, and others as to how these two laws apply to records maintained on students. It also addresses certain disclosures that are allowed without consent or authorization under both laws, especially those related to health and safety emergency situations.

Covered entities face rising HIPAA enforcement risks from HHS. Prompted in part by criticism by oversight agencies, HHS recently has announced plans to step up its oversight and enforcement of HIPAA compliance. The announcement of these plans follow HHS’ announcement in July of its entry into its first ever HIPAA resolution agreement settling certain potential HIPAA Privacy Rule violations with Seattle-based Providence Health & Services. When announcing that Resolution Agreement, HHS officials indicated that they anticipated that it would reach Resolution Agreements with other covered entities seeking to settle potential HIPAA Privacy Rule civil penalty exposures.

For assistance with questions about the Joint Guidance or other assistance with monitoring, assessing, administering or defending the adequacy of your organization’s HIPAA, FERPA or other compliance policies and controls, to arrange HIPAA, FERPA or other compliance training, or for help with other compliance and risk management concerns, please contact Cynthia Marcotte Stamer at [cstamer@solutionslawyer.net](mailto:cstamer@solutionslawyer.net) or via telephone at 972-419-7188.

### About Cynthia Marcotte Stamer

**Cynthia Marcotte Stamer** has extensive experience advising, and representing health care providers, health plans, healthcare clearinghouses and other clients about HIPAA and other regulatory compliance, public policy, human resources, technology, privacy, licensing and credentialing, contracting, and other risk management and operational concerns. Her clients include hospitals, physicians, clinics, IPAs, PHOs, skilled nursing facilities, assisted living and home health, rehabilitation, imaging and other diagnostic services providers, DME, physician practice management companies and other management services organizations, health care technology, payers, employers, public health, school and other health involved governmental entities, and other health industry clients.

Recognized in the International Who's Who of Professionals and bearing the Martindale Hubble (the highest) AV-Rating, Ms. Stamer is a highly regarded legal advisor and consultant, known for her practical, direct problem-solving approach to helping clients.

Immediate Past Chair of the American Bar Association (ABA) Health Law Section Managed Care & Insurance Interest Group, Ms. Stamer also applies her extensive industry experience in numerous professional and industry leadership roles. In addition to her ABA Health Law Section involvement, Ms. Stamer serves on the editorial advisory boards of and is a contributing author for the Bureau of National Affairs and other publications, served as the Compliance Committee Chair and a member of the Board of the National Kidney Foundation of North Texas

Board of Directors, serves on the continuing education and conference planning committees of the ABA Joint Committee On Employee Benefits (JCEB), the HFMA Lone Star Chapter, TAHFA, the IRS TEGE Advisory Council, and numerous other health industry groups. She also is the past-president of the Alliance for Health Care Excellence, and founder of its Health Care Heroes and Patient Empowerment Programs. She also is active in numerous other industry organizations including the American Health Lawyers Association, the Medical Group Management Association, the Alliance for Healthcare Excellence, the Dallas Bar Association Health Law Section.

Ms. Stamer also is a widely published author and highly sought-after speaker nationally and internationally sought out for her strategic knowledge and insights on operational and technical health care risk management and operational concerns, she frequently conducts workshops and other training activities on privacy and other compliance matters. She also is the author of numerous highly regarded publications on HIPAA, FERPA, FACTA, FCRA and other privacy and data security rules including "Privacy and Securities Standards - A Brief Nutshell" published in the BNA Journal of Tax Management & Compensation, "Chapter 35, Medical Privacy" in ERISA Litigation (BNA), "Chapter 8, Other Liability-Tort & Regulatory," in E-Health Business and Transactional Law (BNA), "Cybercrime and Identity Theft: Health Information Security Beyond HIPAA," and various other health privacy related publications for the American Bar Association, "Keeping Lists in Line with the Law" and "Establishing a Data-Protection

Policy" published by Western Association News, workshops on HIPAA and other privacy concerns in the public health, health plan, employer and other contexts presented to organizations such as the Association of State & Territorial Organizations (ASTHO), the Los Angeles Department of Public Health, and many others. A columnist for MD News and recurring author for various other health industry publications, Ms. Stamer's insights have been quoted by the Wall Street Journal, the Bureau of National Affairs (BNA), HIPAA Comply, Private Payer News, Modern Health Care, Managed Healthcare Executive, Health Leaders, Caring for The Elderly Magazine, For The Record, the Dallas Morning News, Spencer Publications, the Dallas Business Journal, the Houston Business Journal, and a various other national and local publications. Ms Stamer is the author of 100s of publications on health plan and health industry matters including numerous highly regarded works published by the American Bar Association, Aspen Publishers, BNA, the American Health Lawyers Association, the Medical Group Management Association, Government Institutes, Inc., Decision Health, Loreman, Spencer Publications, and others.

For more information about Ms. Stamer, a listing of selected publications and other health industry links, information about workshops and other training and other health industry information and resources or other details about Cynthia Marcotte Stamer, P.C. and Glast, Phillips & Murray, P.C., see [CynthiaStamer.com](http://CynthiaStamer.com) or contact Ms. Stamer.

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