Laws & Rules Governing the Practice of Nursing in Florida

Speaker:

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LEARNING OBJECTIVES

The learner will be able to:

• Describe the legislative purpose for the Nurse Practice Act.
• Verbalize specific laws and rules related to the practice of nursing.
• Identify the pertinent levels and general scope of nursing practice in the State.
• Discuss the general requirements for continuing licensure in Florida.
Learning Objectives continued

• Differentiate between ethical and legal practice.
• Discuss the process for discipline related to nursing practice.
• Be aware of the Laws that regulate R.N.s in Florida Schools.
Nursing as a Regulated Practice

- All states have Nurse Practice Acts
- Defines the practice of professional nursing.
- Sets minimum educational qualifications and other requirements for licensure.
- Determines legal titles and abbreviations nurses may use.
- Provides for disciplinary action of licensees.
- Preserves the health, safety and welfare of the public.
Board of Nursing

- Created by the Department of Health consists of 13 members, appointed by the Governor, confirmed by the Senate, regulates the scope of nursing practice in FL.

- 7 members must be RN, residents FL, engaged in the practice of nursing 4 years; at least 1 ARNP, 1 nurse educator from an approved program, and 1 nurse executive all representatives of different areas of nursing practice.

- 3 members must be LPN, resident FL, worked 4 years as LPN.

- 3 members residents FL, never been licensed as nurses, nor connected with the practice of nursing.

- Lay member may not be connected with or have financial interest in HC facility, agency, or insurer.

- 1 member must be 60 years of age or older.

- Terms of office are 4 years.
The Board of Nursing Role

• To protect the public safety by ensuring quality professionals are prepared & conduct themselves within the scope of their practice & licensure

• To monitor nurse’s personal & professional behaviors

• To initiate, regulate & enforce provisions of the Nurse Practice Act

• Responsible for approving schools of nursing curriculum & other issue licenses
An out of state nursing program providing didactic & clinical instruction for initial nursing licensure in FL must comply with the application requirements for distance learning instruction. There must be methods to ensure that the program meets program curriculum plan, that students meet the goals, competencies, and objectives of the educational set per the standards of the Board.
Community Based Learning- CBL

Includes the following:

• CBL experience must have clearly defined outcomes for theory.
• CBL experiences may not comprise the majority of clinical experience hours of the total curriculum.
• Faculty-student ratio shall be at a maximum ratio of 1:12 in CBL setting.
• Faculty must be accessible by two-way communication for inquiries when made, & available for consultation.
• Faculty must retain the responsibility for the selection & guidance of the student CBL experiences & evaluate performance.
• CBL is only appropriate for the Professional Nursing program preceptorships.
Qualifications for Examination
64B9-3.002

- If seeking to take the licensure exam:
  - application for Nursing Licensure by Examination, form number DH-MQA 1094 must be completed.
  - If seeking Re-Examination, must submit form number DH-MQA 1120
  - The forms are available from the Board’s website: @ www.doh.state.fl.us/mqa/nursing

In addition applicant must provide:
- (1) High school diploma, or equivalent
- Official transcript or equivalent documentation of all courses completed, minimum passing scores, and graduate graduation requirements.
This applicant can only practice if they:

- Have submitted the application and fee to the Department.
- Have been authorized by the Board to practice as a graduate nurse or graduate practical nurse, and authorized to test by the examination vendor.
- A graduate nurse, or a graduate PN may practice nursing only under the direct supervision of a Registered Nurse.
- If fail the first, or any subsequent examination, may not practice nursing until they pass the nursing licensing examination.
- If eligible to write the professional examination (RN) but elects to write the practical examination on the basis of practical nursing education equivalency and fails the practical examination (PN) they will not be permitted to work as a Graduate Nurse until they pass the professional examination.
Endorsement means holding a current license in another state.

Florida requires:

• Evidence of current licensure from another state.

• Verification from the Board that the applicant has submitted the proper endorsement form and fee.

• If a license by endorsement has not been issued within the 60-day limit, applicant may make a written or verbal request to the Board to continue working on the permit.
Licensee must retain certificates of attendance and other records to document the completion of the continuing education (CEUs) requirements for 4 years - the Board may randomly audit any licensee to ensure CE requirements. Starting in 2015, all licensees will be audited.

DOH now requires using either:

their free site [www.Flhealthsource.com](http://www.Flhealthsource.com) or
CE Broker [www.cebroker.com](http://www.cebroker.com)
to record CEUs necessary for relicensure.
Florida CE Requirements for Nursing Licensure

24 hours of continuing education (CE) during each renewal period, including (2) hours medical error and in addition every third renewal (2) hours of domestic violence CE for a total of 26 hours. For initial licensure, RNs must complete one (1) hour of HIV/AIDS (one time requirement) and a two (2) hour course relating to prevention of medical errors.

**New Requirement** Beginning with the biennium ending in **2015**, each licensee shall complete a two-hour course on the laws and rules that govern the practice of nursing in Florida. This will be part of the total 24 hours that are required each biennium.
Contact Hour: 1 contact hour equals a minimum of fifty (50) minutes
Provider. Individual/agency conducting the CE offering.
Self-Directed Study-learning experience, with specific objectives to increase knowledge base in a given area.
Content must be specifically designed to meet the objectives, learning needs, & professional educational needs of the learner in the Health Care (HC) field.
All licensees must complete 2 hours of inservice education on domestic violence (DV) during every 3 re-licensure cycles (6 years) – this is in addition to the 24 hours of required CEs.
Prevention of Medical Errors
64B9-5.011

- Licensees must complete a 2-hour course on prevention of medical errors as part of initial licensure & biennial renewal. Either a home study or in CR setting.

The following subject areas must be included:

- Factors that impact the occurrence of medical errors,
- Recognizing error-prone situations,
- Processes to improve patient outcomes,
- Responsibilities for reporting,
- Safety needs of special populations,
- Public education
Beginning with the biennium ending in 2015, each licensee shall complete a two hour course on the laws and rules that govern the practice of nursing in Florida. To receive Board approval, each course must include content on Chapters 456 and 464 of the Florida Statutes and the rules in Title 64B9 of the Florida Administrative Code.
Q -

What are the requirements for renewal of your R.N./LPN license in the state of Fla.?
• Licensed nurse presenting CE course as the lecturer or author may earn a maximum 12 contact hours of CE biennium; licensed nurse participating as a lecturer or author of CE may receive credit for the portion they presented or authored. Courses must have learner objectives, subject matter of the program, teaching methods documented.

• CE credit may be awarded to a lecturer/author for the initial presentation of each program only; repeat presentations credit are not granted.

• CE credit awarded to licensed nurse participating as faculty or author (d) CE credit for publications and presentations of research are considered on an individual basis by the Board.
An inactive license must be renewed biennially during the biennium renewal period for active licenses prescribed by the Department and within 60 days prior to the end of the biennium,

To renew an inactive licensee must pay the fee for renewal of inactive status.
A license to practice nursing not renewed at the end of the biennium with the Board automatically reverts to delinquent status & to renew the licensee must demonstrate completion of all CE required & must pay the delinquency fee.

Licensee may apply to the Board to place their license on inactive status, must provide the form with fee for inactive status.

It is unlawful to practice nursing with an inactive or delinquent license.
Graduates foreign nursing programs or nursing programs in jurisdictions not members of the National Council of State Boards of Nursing (NCSBN) must submit an evaluation from a credentialing agency approved by the Board.
Any retired practical or Registered Nurse desiring to serve indigent, underserved, or critical need populations in this state may apply to the Board as a retired volunteer nurse.
Q-

How many people serve on the Florida state board of nursing and what are their required backgrounds?
7- R.N.’s – residents of FL, engaged in the practice of nursing 4 years; at least 1 ARNP, 1 nurse educator from an approved program, and 1 nurse executive - all representatives of different areas of nursing practice.

3- LPN’s, residents of FL, worked 4 years as LPN’s.

3- members must be residents of FL, must never have been licensed as nurses, nor connected with the practice of nursing.
Scope of Practice and Titles-Advanced
Registered Nurse Practioner ( ARNP )

• Certified in advanced or specialized nursing practice
• Perform within the framework of standing protocols under supervision of licensed physician.
• Maintain malpractice insurance and document compliance
• Must register with Board of Nursing if dispensing medications.
ARNP may only perform medical acts of diagnosis, treatment, & operation with protocol between the ARNP & a FL licensed MD, OD, or dentist.

Supervision of the ARNP per MD or dentist must have specific written protocol & appropriate health care providers.

Provisional ARNP certification will be valid for a period of 12 months.
Registered Nurses

- Observation, Assessment, Nursing Diagnosis, Planning, Intervention, Evaluation of Care and Health Teaching
- Administration of Medications and Treatments as prescribed by a duly authorized licensed practitioner in the state
- Supervision and Teaching of other personnel in the performance of the above acts.
Licensed Practical Nurses (L.P.N.)

- Administration of treatments and medications to the ill, injured, or infirmed
- Maintenance of health and promotion of wellness
- Prevention of illness of others
- Works UNDER THE DIRECTION OF:
  - A LICENSED PHYSICIAN, Licensed Osteopath, Licensed Podiatric Physician, Dentist or REGISTERED NURSE.
  - A registered professional nurse can delegate IV therapy functions to a qualified LPN.
Unlicensed Assistive Personnel (UAP)

- Are assigned to function in an assistive role to RN’s or LPN’s in the provision of patient care services through regular assignments, or delegated tasks or activities, and under the supervision of a nurse.

- “Assignments” are the normal daily functions of the UAP based on institutional job duties which do not involve delegation of nursing duties or nursing judgment. (UAP’s in schools will be discussed in a later slide)
What functions can an ARNP perform?
ARNP may perform medical acts of diagnosis, treatment, & operation with protocols between the ARNP & a FL licensed MD, OD, or dentist. This includes writing prescriptions.
How often does an ARNP have to renew her licensure?
ARNPs renew licensure every 2 years – the same as other RNs.

In addition the state of FL requires national certification.
Is a LPN allowed to administer medication?

I.V.’s ?
Yes. Under the supervision of an R.N.

64B9-12.002
• Nurse Practice Act- delineates the educational requirements, roles and functions along with disciplinary actions for Nursing.

• Knowledge of the FL Nurse Practice Act will help you in making nursing decisions and protect you against acts and decisions that could involve you in lawsuits and criminal prosecution.
Standards of Nursing Care

- Standard of care is based on an unwritten, usually acceptable way of giving care
- This is supported by the nurse practice act
- The hospital or agency where you work will have written policies and procedures, and you will be responsible for following these
- If a question of care comes up in court, you will be held responsible for these policies
Code of Ethics for Nurses

• Framework for nurses to use in ethical analysis and decision-making.
• Guide for carrying out nursing responsibilities.
• Deals with rules of conduct, what is right and what you ought to do in a particular situation and ethical values are the basis of nursing law.
• Established by American Nurses Association – available on ANA homepage
Legal and Ethical Practice of Nursing

- Identifies what colleagues should expect from each other within the profession.
- Identifies what the public should expect from the profession.
- Acceptance of accountability and responsibility
- Assessing own competence
- Important to identify what can and cannot be done in the school setting
- Delegating activities of care to Unlicensed Assistive Personnel
Ethics in Nursing
Give examples of the following:

- Respect for Human Dignity
- The Right of Self Determination
- An Informed Consent
- Primacy of Patient’s Interest
- Conflict of Interest for Nurses
- Collaboration
- Professional Boundaries
- Privacy and Confidentiality
Negligence

- Negligence is the failure to act as a reasonably prudent person would have acted in a similar situation. Conduct which falls below the standards of care established by law for the protection of others against the unreasonable risk of harm.
- It is your conduct, not your intent, that is the issue

Commission: doing something that should not have been done

Omission: failing to do things that should have been done
Malpractice

The improper or unethical conduct or the unreasonable lack of skill by a professional as defined by nurse practice act & policies/guidelines.

Four elements must be established for the ruling of malpractice:

1. Duty: Meet a particular standard of care
2. Breach of duty: Nurse fails to perform the owed duty.
3. Causation: Connection between the nurse’s failure and the client’s injury
4. Damages: Injury occurs for which monetary compensation is adequate relief.
Q-

An R.N. is supposed to give 10 mg morphine IM. She gives 40 mg. Does this fall under Negligence or Malpractice?
It is negligence & can be malpractice if there was injury to the client.
Prevention of Legal Problems

• Practice in safe setting- adhere to policies and procedures that promote quality improvement (Risk Management).

• Employ appropriate number and skill mix of personnel.

• Keep equipment in good working order.

• Provide orientation when necessary.

• Communicate with providers, patient and family.

• Document accurately, in timely manner, and concisely.

• Meet the standards of care for the facility and work in accordance with state Nursing Practice Act.

• Provide for continuing education as required and for new equipment, procedures.
• Malpractice claim - evidence presented to jury to determine if elements of liability are present.
• Must consider the following:
  - Prevailing standards of care, what another prudent nurse would have done.
  - Expert witness testimony.
  - Scope of Care that prevailed at the time.
  - National standards of nursing practice.
  - Patient record.
  - Direct testimony of patient, nurse and others.
Ways to Protect your Practice

- Charting
- Ask questions if you do not know how to do something
- Clarify orders
- Stay informed about clients
- Use all safety precautions
- Accept responsibility for your actions
- Careful delivery of medications
- Treat your clients with respect and courtesy
- Develop rapport with clients
- Stay within the scope of your practice
Liability in Nursing

Six Major Categories:
1. Failure to follow standard of care
2. Failure to use equipment in responsible manner
3. Failure to communicate
4. Failure to document
5. Failure to assess and monitor
6. Failure to act as a patient advocate
When a complaint is made, the Probable Cause Panel considers whether probable cause exists for discipline & by a majority vote, make recommendations to the BON, including penalties.

There are Three Panels in FL. Each one reviews a different region.
The legislature created the Board to assure protection of the public from nurses who do not meet minimum requirements for safe practice or who pose a danger to the public. They may recommend suspensions, restrictions of practice, and conditions of probation.
The Agency for Health Care Administration (AHCA)

- Allows the Board access to its background screening database and records.
Denial, Suspension, or Revocation of Certification; Disciplinary Actions 464.204

The following acts constitute grounds for the Board to determine disciplinary sanctions:

(a) Obtaining or attempting to obtain certification or exemption, or possessing or attempting to possess certification or a letter of exemption, by bribery, misrepresentation, deceit, or through an error of the Board.

(b) Violating any provision of this chapter or the rules

If the Board finds a person guilty of any of the grounds, they may impose an order of one or more of the following penalties:

(a) Denial, suspension, or revocation of certification.

(b) Administrative fine not to exceed $150 for each count or separate offense.

(c) Probation or restriction of certification, conditions of corrective actions or compliance with treatment program for impaired practitioners.

(3) Exempt the licensee from certain specific terms of employment.
Citation is an instrument which meets the requirements set forth in Section 456.077, F.S., and which is served upon a licensee for the purpose of assessing a penalty in an amount established by this rule.

In lieu of the disciplinary procedures contained in Section 456.073, F.S., the Agency may issue a citation to the subject within six months after the filing of the complaint which is basis for the citation.

All citations will include a requirement that the respondent correct the violation, if remediable, within a specified period of time and impose whatever obligations will remedy the offense.

The Board will assess a penalty depending on the violation & whether it is a first or second instance of $100-$1500.
The Board deems the following violations to be minor:

1. False, deceptive or misleading advertising, no criminal prosecution resulted

2. Issuance of a worthless bank check to the Agency

3. Failure to report address change provided the licensee was not ordered to do so in a Board disciplinary order;

4. Improper use of a nursing title, no practice issue involved, no criminal prosecution resulted.
Unprofessional Conduct 64B9-8.005

1. Inaccurate recording
2. Misappropriating supplies or equipment
3. Leaving a nursing assignment without advising licensed nursing personnel
4. Stealing from a patient
5. Violating the integrity of a medication administration or information technology (IT) system
6. Falsifying or altering of patient records or nursing progress records, employment applications or time records
7. Violating the confidentiality of information or knowledge concerning a patient
8. Discriminating on the basis of race, creed, religion, sex, age or national origin, in the rendering of nursing services as it relates to human rights and dignity of the individuals.
9. Engaging in fraud, misrepresentation, or deceit in taking the licensing examination;
10. Impersonating another licensed practitioner, or permitting another person to use his certificate for the purpose of practicing nursing;
11. Providing false or incorrect information to the employer regarding the status of the license;
12. Practicing beyond the scope of the licensee’s license, educational preparation or nursing experience;
13. Using force against a patient, striking a patient, or throwing objects at a patient;
14. Using abusive, threatening or foul language in front of a patient or directing such language toward a patient.
Grounds for Denial of a License or Disciplinary Action

- Using bribery, knowing misrepresentations to procure or renew a license to practice nursing
- Having a license to practice nursing revoked, suspended, or acted against
Disciplinary Action (Cont)

- Making or filing a false report or negligently failing to file a report or record required by state or federal law
- False misleading or deceptive advertising
- Unprofessional conduct
- Engaging in the possession, sale or distribution of controlled substances
- Being unable to practice nursing by reason of illness or use of alcohol, drugs, narcotics as result of any mental or physical condition
- Failure to report to the Department any person in violation of the rules of the Department or the Board.
The nurse-patient relationship is founded on mutual trust. Sexual misconduct in the practice of nursing means violation of the nurse-patient relationship through which the nurse uses the relationship to induce or attempt to induce the patient to engage, or attempt to engage, in sexual activity outside the scope of the practice or the scope of generally accepted examination or treatment of the patient. Sexual misconduct in the practice of nursing is prohibited.
Q- Who determines the penalties for practitioner’s who violate standards of their profession?
The Board sets disciplinary guidelines for disciplinary penalties for practitioners guilty of violating single or multiple counts of violations.
Which of the following scenarios would not be grounds for disciplinary action?
Administering CPR w/ an expired certification.

Misappropriating supplies or equipment

Leaving a nursing assignment without advising personnel

Practicing as a RN, LPN, or CNA in the State of Florida with a delinquent license for more than 90 days
Acts of negligence by omission or commission

Submitting the attestation of 24 hours of CE for licensure renewal when did not attend or complete

Stealing from a patient

(Violating the integrity of a medication administration or information technology (IT) system)
Administering CPR w/ an expired certification.
It is a misdemeanor of the first degree, punishable as provided for any person, knowingly or intentionally, to fail to disclose, by false statement, misrepresentation, impersonation, or other fraudulent means, in any application for voluntary or paid employment or certification regulated under this part, used in making a determination as to such person's qualifications to be an employee or certificate holder.
First Degree Misdemeanors

- Using the name or title “nurse”, RN, LPN, CNA, CRNA, CNMW, ARNP or any name or title that implies a person is licensed or certified

- Concealing information relating to violations of the above.
Felonies

• Practicing without active license or certificate
• Using suspended or revoked license or certificate
• Employing unlicensed persons in the practice of nursing
• Obtaining a license or certificate by misleading statements or knowing misrepresentation.
The Board finds mediation an acceptable resolution of the violations that are economic in nature or can be remedied by the licensee.
Reinstatement of Suspended and Revoked Licenses 64B9-8.011

A nurse with relinquished licensure must show compliance with all terms & conditions of the final order and must demonstrate the ability to safely practice for reinstatement.

Nurses who have three separate violations relating to the use or diversion of drugs/narcotics are not eligible for reinstatement of license.
Q-
Which of the following are considered Felonies?

a. Employing unlicensed persons in the practice of nursing.

b. Delegating a dressing change to UAP.

c. Obtaining a license or certificate by misleading statements or knowing misrepresentation.
a. Employing unlicensed persons in the practice of nursing.

c. Obtaining a license or certificate by misleading statements or knowing misrepresentation.
Transference to a competent individual the authority and the experience to perform a selected task or activity in a selected situation by a licensed nurse.

- The RN remains responsible for the task.
- The R.N. provides supervision and training, and performs acts requiring specialized knowledge.
- The RN can delegate but must use critical thinking and professional judgment.
5 Rights of Delegation

1. The right task- is it safe?
2. Under the right circumstances-client condition/setting?
3. To the right person-is it within their scope of practice?
4. With the right directions and communication-clear, concise?
5. Under the right supervision and evaluation-follow-up?
Know Your Practice Environment

Assess your school district’s and health department’s readiness to employ assistive personnel in the school health program
Delegation to UAP

• May not delegate beyond supervising nurse’s scope of practice

• May not delegate activities that use nursing process and require special knowledge, nursing judgment or skill of a RN. This includes – *nursing assessments* – *diagnosis* or *interpretations of assessments* – establishment of nursing care goals and development of the plan of care and evaluation of progress in relationship to the plan of care.

• UAP’s must follow the UAP Florida Statute, s.1006.062

• Rules for administration of medication and provision of medical services by district school personnel are in Chapter 64B9-14, F.A.C.
Delegation by R.N. in School Setting

- Recommend that UAP has current certification in first aide and CPR by a nationally recognized certifying agency.
- Recommend they receive education in confidentiality, infection control, district specific policies and procedures, and medication administration - UAP’s need to receive child specific training.
- R.N. needs to monitor and evaluate the UAP’s performance and the student progress.
- R.N. needs to be available by phone or pager to provide direction when needed.
What is the Key to the Delegation Process?
A – Communication

1. Identification of the task or activity
2. The expected or desired outcome
3. The limits of authority
4. The time frame
5. The nature of supervision required
6. Verification of the delegate’s understanding of the assignment
7. Verification of monitoring and equipment
Q-

What are the 5 Rights of Delegation?
1. Right Task Under the
2. Right Circumstance To the
3. Right Person With the
4. Right Direction Under the
5. Right Supervision
What is the one thing a Registered Nurse cannot delegate?
The RN may delegate elements of care but does not delegate the Nursing Process.

The RN transfers the responsibility for the performance of a task, but retains professional accountability for the overall care of the client.
Health Insurance Portability and Accountability Act - HIPAA

- Law which went into effect on April 14, 2003
- Requires all health care professionals to ensure patient privacy and confidentiality
- Allows patients to obtain their medical records
- Providers must provide written notice on patient rights
Educational institutions that provide health or medical services to students may qualify as “covered entities” under the HIPAA Privacy Rule.

However, the HIPAA Privacy Rule specifically excludes from its coverage those records that are protected by FERPA (next slide).
FERPA- Family Educational Rights and Privacy Act

Statute: 20 U.S.C. § 1232g
Regulations: 34 CFR Part 99

- FERPA is the Federal law that protects the privacy of students’ education records.
- FERPA applies to educational agencies and institutions that receive funds under any program administered by the Secretary of Education. § 99.1.
- Most private and parochial schools at the elementary and secondary levels do not receive such funds and are, therefore, not subject to FERPA.
Primary Rights of Parents under FERPA

• Right to inspect and review education records.

• Right to seek to amend education records.

• Right to consent to the disclosure of information from education records except as provided by law.
Education records are:

- Directly related to a student
- Maintained by an educational agency or institution or by a party acting for the agency or institution.
- Under Part B Individuals with Disabilities Education Act (IDEA) “education records” are subject to FERPA.
- Medical or health related records are “education records” subject to FERPA.
  - Statute 99.3
Education Records exceptions are:

- Records created and maintained by a law enforcement unit for a law enforcement purpose.

- Medical and psychological treatment records of eligible students if they are made, maintained, and used only in connection with treatment of the student and disclosed only to professionals providing the treatment.
Student:

Any individual who is or has been in attendance at a school and the school has maintained their education records.

§ 99.3
Rights of Eligible Students under FERPA

Rights under FERPA transfer to the student when he or she turns 18 years of age or enters a postsecondary institution at any age. They are then considered an “eligible student”.
Right to Inspect and Review by Parent or Eligible student

- School must comply with request within 45 days.
- Generally required to give copies only if failure to do so would effectively deny access
  - example would be a student or former student who does not live within commuting distance.
- School may *not* destroy records if request for access is pending. § 99.10
A parent requests to see the police record of a student who assaulted another student at school. Should the school give that record to the parent?
No

This record is an exception to an education record. The parent can get this information from the local police department if the student was charged.
Q-
Does a parent have the right to see a student's educational record? Health record?
A-

• School must comply on both accounts with request within 45 days.

• School may *not* destroy records if request for access is pending.
Personally identifiable information ( PII )

Includes, but is not limited to:

• The student’s name
• The name of the student’s parent or other family members.
• A personal identifier, such as the student’s social security number, student number, or biometric record.
• Other indirect identifiers, such as the student’s date of birth, place of birth, and mother’s maiden name.
Can a school put a child’s name in:

- The annual yearbook?
- Honor roll or other recognition lists?
- Graduation program?
• Yes, Yes and Yes. Directory information, which is information that is generally not considered harmful or an invasion of privacy if released, can be disclosed to outside organizations without a parent's prior written consent.
Q-
What latitude do school nurses or school administrators have in divulging information about teen pregnancy to parents/guardians?

Does the pregnant student have the right to refuse schools to notify their parents?
The school health room and administration do not notify a student’s parents of the pregnancy. A parent has the right to ask for a child’s medical record. Schools are not prohibited by FERPA from disclosing a student’s record about teen pregnancy to parents, even if the teen requests that the parents not be notified.
Disclosure of PII by an Educational Agency or Institution

Except for specific exceptions, a parent or eligible student shall provide a signed and dated written consent before a school may disclose education records. The consent must:

• Specify records that may be disclosed
• State the purpose of disclosure
• Identify the party or class of parties to whom disclosure may be made
• § 99.30
When disclosing information from education records to one of the parties listed under § 99.31, a school should inform the receiving party that the information may not be further disclosed, except when:

- The receiving party discloses information on behalf of the school under § 99.31.
- The disclosure was made pursuant to a court order, subpoena, or in connection with litigation between the school and parent/student.
- The disclosure is to the parent or eligible student.
- The information disclosed is directory information.
The exceptions which relate to K-12 schools and school districts are:

- To school officials with legitimate educational interests (defined in the school’s annual notification).
- To schools in which a student seeks or intends to enroll.
- To Federal, State, and local educational authorities conducting an audit, evaluation, or enforcement of education programs. § 99.31
Disclosure Exceptions-Cont.

- To organizations conducting studies for or on behalf of the school.
- To parents of a dependent student.
- To comply with a judicial order or subpoena (reasonable effort to notify).
- In connection with a health or safety emergency.
- Directory information.
- To State and local officials in connection with serving the student under the juvenile justice system (established by State law).
School Officials

- The disclosure is to school officials, including teachers, within the agency or institution whom the agency or institution has determined to have legitimate educational interests. § 99.31

- Criteria for who is considered a “school official” and what is a “legitimate educational interest” must be included in annual notification of rights to parents and students currently in attendance. § 99.7
A contractor, consultant, volunteer or other party to whom an agency or institution has outsourced institutional services or functions may be considered a “school official” under FERPA provided that the outside party –

- Performs an institutional service or function for which the agency or institution would otherwise use employees
- Is under the *direct control* of the agency or institution with respect to the use and maintenance of education records
- Is subject to the requirements of § 99.33 governing the use and redisclosure of PII from education records.
FPCO
Family Policy Compliance Officer

• Reviews potential conflicts with FERPA.
• School officials are required to report potential conflicts to FPCO within 45 days of making a determination there is such a conflict.
• If there is a conflict and a school wishes to continue to receive U.S. Department of Education funds, it must comply with FERPA.
Q -
May health records or other education records maintained by a school be disclosed, without consent, to the public health department?
Yes, if the disclosure meets the conditions for FERPA’s health or safety emergency exception to the general consent rule. Typically public health officials and trained medical personnel are among the types of appropriate parties to whom information may be disclosed under FERPA’s health or safety emergency provision.
Which law – FERPA or the HIPAA governs records on health care delivered through a school-based health center when the center is organized and implemented by the school district?
• Any records that a school nurse or health center maintains that are directly related to a student are considered “education records” subject to FERPA.

• If a person or entity is acting on behalf of a school subject to FERPA, such as a school nurse who is under contract with, is an employee of, or is otherwise under the direct control of the school, their student health records are “education records” subject to FERPA.
Q-
If a school wants to contact a child’s doctor about an inaccuracy on an excuse note do we need any special permission or may we contact the doctor directly?
FERPA permits a targeted release of records back to the stated source for verification purposes in order to provide schools with flexibility while preserving a more general prohibition on the release of information from education records.
Health or Safety Emergencies

• Disclosure must be to appropriate parties in connection with an emergency if knowledge of information is necessary to protect the health or safety of the student or others.

• “Appropriate parties” may include parents of an eligible student.

• § 99.36
Health or Safety Emergencies

• An educational agency or institution must record the following information when it discloses PII under the health or safety emergency exception in FERPA:
  ▪ The articulable and significant threat to the health or safety of a student or other individuals that form the basis for the disclosure and
  ▪ The parties to whom the institution disclosed the information.

§ 99.32(a)(5)
Q-

Bus drivers in our district are trained in emergency care for certain life-threatening disorders. Is it legal for us to provide to the drivers the names of students with these types of disorders who may require assistance?
A- A school district may determine that bus drivers should be considered “school officials” with “legitimate educational interests” so that such information on students can be disclosed to them.
Q-

How should conflicts among Federal and State laws, organizational policies, and professional ethical codes addressing confidentiality be resolved?
A-

FPCO (Family Policy Compliance Officer which falls under the Dept. of Education) routinely reviews potential conflicts with FERPA.

School officials are required to report potential conflicts to FPCO within 45 days of making a determination there is such a conflict.
Disclosure to organizations conducting studies for, or on behalf of, educational agencies or institutions is permitted to:

- Develop, validate, or administer predictive tests
- Administer student aid program
- Improve instruction.

§ 99.31(a)(6)
The school must have a written agreement with the receiving organization that:

- Specifies the purpose, scope and duration of the study or studies and the information to be disclosed;
- Requires the organization to use information only to meet the purpose of the study;
- Requires the organization to conduct the study in a manner that does not permit PII of parents and students by anyone other than organization representatives with legitimate interests;
- Requires the organization to destroy or return all PII when no longer needed for purposes of the study; and
- Specifies the time period in which the information must be returned or destroyed.
A school should inform the receiving party that the information may not be further disclosed, except when:

- The receiving party discloses information on behalf of the school under § 99.31.
- The disclosure was made pursuant to a court order, subpoena, or in connection with litigation between the school and parent/student.
- The disclosure is to the parent or eligible student.
- The disclosure is to the parents of a dependent student.
- The information disclosed is directory information.
• Educational institutions that provide health or medical services to students may qualify as “covered entities” under the HIPAA Privacy Rule.

• However, the HIPAA Privacy Rule specifically excludes from its coverage those records that are protected by FERPA.

• See definition of “Protected health information” in 45 CFR

• This law interacts with FERPA

45 CFR § 160.103
Laws w/ which FERPA Interacts:

• Individuals with Disabilities Education Act (IDEA) – IDEA has additional or separate confidentiality requirements in addition to FERPA Part B – 34 CFR § 300.610 - § 300.627., Part C – 34 CFR § 303.402 and § 303.460.

• Federal Child Abuse Prevention and Treatment Act (CAPTA).
  – Provides that a State must have a State law that provides for the reporting of known or suspected instances of child abuse and neglect in order to receive a grant for child abuse prevention and treatment programs. May provide add’l. rights for parents. May not remove FERPA rights.
Protection of Pupil Rights Amendment (PPRA)

PPRA governs the administration to students of a survey, analysis, or evaluation that concerns one or more protected area.

PPRA requires that schools offer parents an opportunity to opt their children out of participating in these specific activities.
Q-

Can a school disclose information containing a student's ID number to a restaurant research group doing a school survey on the number of students who attend an area school?
No. Records containing the ID # of a student cannot be given to an agency conducting an unrelated outside survey.
Q-

What latitude do school nurses or school administrators have in divulging information to parents/guardians concerning other matters, such as sexually transmitted diseases/infections and substance abuse?
FERPA requires that school officials – including school nurses – provide parents with an opportunity to inspect and review education records on their children. “Education records” include health records.
Resources

Florida Statute Nursing Chapter 464 and Practice Act
http://www.flsenate.gov/Laws/Statutes/2013/Chapter464

Florida Licensure
http://www.doh.state.fl.us/mqa/initial_licensure.html

FL CME/CEU
http://doh.state.fl.us/mqa/continuingeducation/index.htm

FL Board of Nursing http://www.floridasnursing.gov/

FL CME/CEU http://www.ceatrenewal.com/

FL Nursing Practice Act and Rules of the Board

Delegation of Nursing per ANA and NCSBN
Resources on FERPA

• FERPA regulations:  

• FERPA & H1N1:  http://www2.ed.gov/policy/gen/guid/fpco/pdf/ferpa-h1n1.pdf

• FERPA & Emergencies & Other Disasters:  

• Amendments to FERPA regulations (2008):  
Any Questions?

Thank You.
Acknowledgment

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