

**PARENTS OF THE
COLLEGE-BOUND CHILD:
WHAT YOU DON'T KNOW COULD HURT YOUR
CHILD**

Heading to college is arguably one of the most important events in a person's life. Overnight, a child is viewed as an adult in many respects, even though mom and dad (with good reason) are the last to see it that way. Nevertheless, in the eyes of the law, on their eighteenth birthday, your child is vested with important new rights and responsibilities. Eighteen year olds have many things on their mind — legal, medical and financial affairs aren't typically among them. That's where mom and dad step in. It's important for them to continue to provide guidance on these important matters.

When preparing for the departure of their children for college, parents typically assist them in many different ways. These include new clothes, school supplies, last minute visits to the family doctor, etc. In the manic rush to check everything off the to-do list, most parents never consider what if anything has changed in the event their child gets injured or sick. In the past, mom or dad would get a phone call from school, be told their child's condition and asked to pick them up, or alternatively, asked to confirm the medicine or treatment to be dispensed. It's important parents planning for their child's departure also focus on having basic health care planning documents prepared. These documents could prove critically important if their child gets sick or seriously injured at school.

There are two federal laws, that together, substantially limit a parent's ability to obtain information about their college student from hospitals, university health clinics, and private physicians. One of the laws even prevents parents from independently receiving a copy of their child's educational records, including their grades!



“Two federal laws, together, substantially limit a parent's ability to obtain information about their college student's health condition.”



The Law: HIPAA & FERPA

No, these aren't the names of two circus animals. They're two federal laws designed to protect the privacy of individuals' medical information (HIPAA), and the educational records of college students (FERPA).

The Health Insurance Portability and Accountability Act of 1996 (HIPAA) provides federal privacy protection to patients for their health information held by doctors, hospitals, college health clinics, health insurance carriers and

others. HIPAA greatly restricts who can look at and receive a person's health information without their written consent. The well intentioned goal of this law is to assure the confidentiality of protected health information.

When a college provides health care to students in the normal course of business, such as through a health clinic, it becomes a "health care provider" as defined by HIPAA. If the college also conducts any covered transactions electronically in connection with that health care, those records are then covered by HIPAA.

"It's the hospital or doctor (and not you!) who determines whether your child is sufficiently injured or sick to share their medical information with you".

"HIPAA greatly restricts who can look at and receive a person's health information without their written consent".

When Can Health Information Be Shared

Under HIPAA, the health care provider **may** share your child's health information if:

- 1) Your child gives the health care provider written permission to share the information with you. But, what happens if your child isn't able to provide written permission, or for some reason, refuses to give permission? You won't be provided their vital health and medical information.
- 2) Your child is very ill and the medical provider determines based on their professional judgment, it's in your child's best interest to share health information with you in order to provide the appropriate treatment. The obvious problem with this exception is that it's only optional on the part of the health care provider. It's the hospital or doctor (and not you!) who determines whether your child is sufficiently injured or sick to share their medical information with you.

Family Educational Rights & Privacy Act (FERPA)

This Act is designed to protect the privacy of students' "educational records" and applies to virtually all colleges. Additionally, the term "educational records" is broadly defined to mean those records that are directly related to a student, including their grades. With several exceptions, schools must have an 18 year old student's consent prior to the disclosure of educational records. FERPA directly applies to school employees passing on information to anyone other than the student about the student's grades or behavior, and college billing information. Generally, colleges must have written permission from the student in order to release any information from a student's educational record - even to a parent!

FERPA does permit a college to disclose a student's personally identifiable information to his or her parents if: 1) the student is a "dependent student" as that term is defined in Section 152 of the Internal Revenue Code; 2) the student is involved in a health or safety emergency; (3) the student violates a law or school policy regarding alcohol or controlled substances and the student is

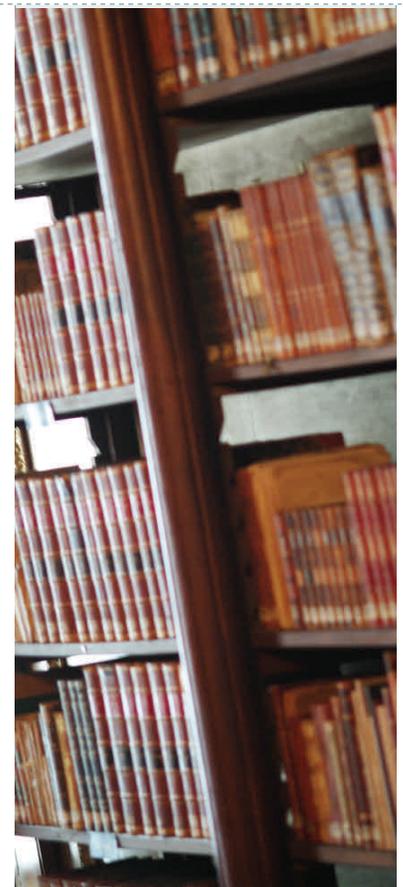


“Generally, colleges must have written permission from the student in order to release any information from a student's education record - even to a parent!”

under 21 years of age; (3) if a court order or subpoena requires such disclosure; and 4) there is an emergency and the parent's knowledge of the information is necessary to protect the health or safety of their child or other persons. Again, the problem with these exceptions is that they are optional. Many colleges do not provide protected information under these exceptions unless the student has consented in writing.

Since the enactment of FERPA and HIPAA, there has been significant confusion on the part of school administrators, health care professionals and others as to how they apply to health records maintained on college students. A college that finds itself also a "health care provider" under HIPAA must determine whether a particular student record is protected by FERPA (in which case HIPAA doesn't apply) or whether the record is excluded from FERPA and likely protected by HIPAA.

FERPA regulations state that patient records maintained by a hospital affiliated with a university that is subject to FERPA are not typically "education records" or "treatment records" because university hospitals generally do not provide health care services to students on behalf of the college. Rather, these hospitals provide such services without regard to the person's status as a student and not on behalf of a college. However, these records are still subject to all the non-disclosure limitations of the HIPAA rules. In a situation where a hospital does run the student health clinic on behalf of a university, however, students' clinic records would be subject to FERPA, either as "educational records" or "treatment records," and not subject to the HIPAA privacy rule.



WHAT TO DO? HEALTH CARE POWER OF ATTORNEY & HIPAA DISCLOSURE AUTHORIZATION

For a child going away to college, a health care power of attorney in favor of mom and dad should be a prerequisite. It isn't uncommon for a college student away from home for four or more years to face health and medical issues during that time. An appropriately drafted health care power of attorney makes sure that, when necessary, the child's privacy rights under HIPAA will not stand in the way of mom and dad accessing important medical information and making appropriate health care decisions. If your child is going to an out of state college, a health care power of attorney should be drawn up by a qualified attorney in both the child's home state

and in the state of the college being attended. This will help to ensure its enforceability in both states. Upon arriving on campus, the child should provide a copy of the health care power of attorney to the health center's records administrator.



CONSENT TO RECEIVE EDUCATIONAL RECORDS

Most colleges have their own Consent Form or other process authorizing parents to receive, upon request, any educational records relating to their child, including grades. After the Consent is executed by your child, you will have the right to receive any requested educational records relating to your child. This document should be promptly filed with the college office that's responsible for maintaining your child's academic record.

DURABLE POWER OF ATTORNEY

Advising your college bound child to execute a durable power of attorney in mom and dad's favor is also a good idea. In the case of divorced parents, the child should specify the order of the parent with the power of attorney. This will allow mom and dad to keep an eye on, and if necessary, handle the child's financial affairs. This is especially practical when it comes to executing banking transactions on behalf of the child.

LAST WILL AND TESTAMENT



If significant assets have already been given to the child, it would be wise for a Will to be prepared and executed by the child. Without a Will, at death the child's assets would revert back to mom and dad. This could have the effect of unwinding certain estate planning objectives of the parents. With a Will, the assets could be left directly to the child's siblings or put into a trust.

88 Kercheval Avenue,
Suite 100-4
Grosse Pointe Farms, MI
48236

Phone: 313-618-7447
alan@lowenthallegal.com

DON'T JUST SAY “GOOD-BYE”

Saying good-by to your college bound child doesn't mean your need to be aware of their health, financial and academic affairs abruptly ends. To properly carry out your continuing roles as a parent, it's important you have access to vital information. You don't want to find yourself having to call

their roommate for details about your child's emergency appendectomy.



Consider contacting an experienced attorney in your area to discuss these issues and your specific needs. It might just be the most important thing on your lengthy to-do list!

This article is for informational purposes only and is not intended to constitute legal advice. The issues discussed in this article are highly fact-sensitive. It is recommended you contact your legal and financial professionals to advise you and your family on specific healthcare, estate planning and family law matters.

