

**Topic:** Schools, Child Care Facilities and IIS

**Request Date:** December 28, 2017

**Information Requested:** We are interested to know from other IIS:

- Does your state operate as a covered entity under the HIPAA rule or can you explain why your state's immunization program is not subject to HIPAA?
- Are child care facilities included in your state's definition of school for HIPAA purposes?
- How do you obtain and document the required agreement from the parent/guardian before disclosing the child's immunization record to a school through the IIS?
- If you consider the exception (45 CFR 164.512(b)(vi)) to include child care facilities, do you have any written documentation or legal analysis to support the inclusion? How do you obtain and document the required agreement from the parent/guardian before disclosing the child's immunization record to a child care facility through the IIS?
- If required, how do the child care facilities acquire parent/guardian authorization for the disclosure of immunization records?
- Do any of the participating states have a state law requiring proof of immunizations be disclosed from the Department of Health to schools and/or child care facilities? Do they have a state law requiring the Department of Health provide IIS access to schools or child care facilities?
- What agreement(s) are utilized in order to grant access to the IIS to child care facilities?

**Requesting Member:** Jude Alden (WY)

**Responding Member(s):** Cindy Lesinger (AL), Steve Nickell (CA), Megan Berry (CO), Patricia Swartz (MD), Amanda Harris (NV), Amy Metroka (NYC), Bridget Ahrens (VT)

**Results:**

**AL:**

According to CDC and HHS, public health is exempt from HIPAA if it is surveillance, intervention, or investigation without permission of patient or parents. The registry can act as 1 or more of these activities. AL has granted access to public and private school, Head Starts, and childcare centers, because they are the responsible party to comply with the school/childcare immunization law and rules.

<https://www.cdc.gov/mmwr/preview/mmwrhtml/su5201a1.htm>

## CA:

You can learn about the California policy here: <http://cairweb.org/hipaa-and-privacy-compliance/>

## CO:

1. The Colorado Department of Public Health and Environment (CDPHE) is a public health authority under HIPAA and is authorized by the Colorado Immunization Registry Act (Section 25-4-24-3, C.R.S.) to collect and receive immunization information for the purpose of preventing or controlling disease outbreaks and implementing public health interventions. The reporting of immunization data to the Colorado Immunization Information System (CIIS) is exempt from HIPAA because CDPHE is considered a public health authority. HIPAA allows public health authorities to collect immunization information without an authorization.
2. Per Colorado Board of Health rule 6 CCR 1009-2, licensed child care facilities are included in the definition of "school" for school entry immunization requirements. This definition is not related to HIPAA.
3. Schools and child cares [to which FERPA applies](#) must collect written parent/guardian consent prior to recording any information in CIIS. Schools do not have to obtain written consent to look up records in CIIS. CDPHE is not responsible for obtaining or documenting FERPA consent. Per the CIIS Letter of Agreement, schools must notify parents/guardians about their use of CIIS, as parents legally have the right to exclude their child's information from the registry. Most do this through posting a notice in the school/child care building, noting it on their website, or including information in school/child care registration materials.
4. Because CDPHE is not a covered entity under HIPAA, this exception is not applicable. See third question.
5. See third question.
6. Colorado does not. No, Colorado does not have a state law requiring the Department of Health to provide IIS access to schools or child care facilities. Colorado law does allow for schools and childcares to access the IIS.
7. Schools and child cares wishing to join CIIS must submit a Letter of Agreement and CIIS Site Administrator Form. Individual users must agree to comply with the CIIS Privacy and Confidentiality Policy. All new users must also complete required online training prior to accessing CIIS.

## MD:

1. Maryland operates as a covered entity under HIPAA.
2. No.
3. Maryland is an opt-out state so parent/guardian can opt their child out of our IIS if they do not wish to share the records with providers/schools.
4. Child care facilities are included in our statute (§18-109) as authorized users. Maryland is an opt-out state so parent/guardian can opt their child out of our IIS if they do not wish to share the records with providers/schools.

5. They can fill in a state medical release form to release the records.
6. No, as schools/child care facilities can obtain the information themselves. Yes, they are included in our statute (§18-109) as authorized users.
7. When they first sign in to our IIS, all users have to virtually agree to abide by its usage policies, and must annually agree to the terms of the user agreement.

## NV:

1. Nevada State Immunization Program does not provide direct services
2. We maintain confidentiality of the data in our IIS, and provide access to those authorized by law. Child care facilities are defined separately in NV law from schools, and FERPA is typically the act referenced in relation to them, rather than HIPAA.
3. Nevada Administrative Code (NAC) [439.895](#) authorizes access to the IIS by child care facilities, public & private schools, and colleges and universities operating in Nevada.
4. We aren't sure we understand what is being asked; however, child care facilities are authorized to access the IIS data without parent/guardian permission.
5. N/A
6. NAC 439.895 authorizes access, but does not require that our Program provide the data. Child care facilities are responsible for ensuring immunization status is verified, and do so by asking parents/guardians for records, or by accessing the IIS.
7. All entities requesting access to the IIS use the same Enrollment Form (to gather details about the location and intended use) and each individual with a need to access the IIS must sign a Confidentiality Agreement.

## NY:

1. NYSIIS is NOT a covered entity. NYS DOH PHL 2168 identifies reporting of immunization to NYS as a function of public health.
2. PHL 2169 defines authorized users and includes schools, colleges, children's overnight and day camps among others.
3. As an authorized users PHL2168 allows them to provide or receive information from NYSIIS without needing consent of parent.
4. As an authorized users PHL2168 allows them to provide or receive information from NYSIIS without needing consent of parent.
5. Child care do not report immunization but can receive histories.
6. NYSIIS can be used for school entry but not required. A child can still provide a history from their doctor.
7. Stated in PHL 2168

## NYC:

Please note that immunization information systems (IIS) are exempt from HIPAA under the public health exemption. Our immunization program runs an immunization clinic which is a covered entity under HIPAA but our IIS is exempt. We have a state law in New York (attached) which specifies authorized users of our state and city IIS. School and child care

programs are authorized users under that law. Our IIS can give immunization records to schools, child care programs, etc. without parental consent but schools cannot give immunization records to our IIS without parental consent due to FERPA.

**VT:**

[http://www.healthvermont.gov/sites/default/files/documents/2017/03/IMR\\_Confidentiality\\_agreement\\_practices.pdf](http://www.healthvermont.gov/sites/default/files/documents/2017/03/IMR_Confidentiality_agreement_practices.pdf)

The link above is the confidentiality agreement that all health care providers in Vermont who wish to access the Registry are required to sign.

[http://www.healthvermont.gov/sites/default/files/documents/2017/03/IMR\\_agreement\\_childcareproviders.pdf](http://www.healthvermont.gov/sites/default/files/documents/2017/03/IMR_agreement_childcareproviders.pdf)

The link above is the confidentiality agreement that all licensed child care providers in Vermont who wish to access the Registry are required to sign.

Here is Vermont's law regarding the Immunization Registry:

<https://legislature.vermont.gov/statutes/section/18/021/01129>

Licensed child care providers are required by law to report on the immunization status of children in their care. They may apply for access to the Registry to help with this, but must have written parental consent before they look up a record. This is their responsibility to track. LCC providers may have read-only access to the Registry.

As a side note: we had challenges with the fact that LCC providers are not medical professionals, and were not familiar with Registry information like antigen abbreviations and forecasts. To help with this, we limited their access to a special "red light/green light" report that gave them the information they needed for their reporting without unnecessary jargon, or the need to count doses and understand immunization schedules.