NARRATOR: Welcome to this presentation on HIPAA: An Overview for California Health Professionals.

The content for this presentation was written by Rebecca Gudeman, at the National Center for Youth Law. This video provides legal information only and is accurate as of June 2020. To understand how this information would apply to your situation, please talk to legal counsel for specific advice.

HIPAA is the Health Insurance Portability and Accountability Act. In this video, we will review the basics of HIPAA regulations and relevant California laws. After reviewing the laws, specific case studies will show how these laws may apply to sharing information in a school setting.

Let's start by reviewing the confidentiality laws. Confidentiality laws tell us three important things: what must **not** be disclosed, what **may** be disclosed, and what **must** be disclosed. Having the right tools in place, such as compliant forms and memoranda of understanding, can support and encourage appropriate and balanced sharing of information.

Next, let’s review HIPAA and the other laws that apply to control the release of health information created by health or mental health care providers.

In California, there are both federal and state laws that may apply to control the release of health information. At the federal level, there is HIPAA. HIPAA sets a base for confidentiality nationally. HIPAA then states: “*to the extent your state has any confidentiality laws that provide greater protection, those state laws control.”*

In addition to HIPAA, there are other federal laws that protect certain types of medical or mental health information, based on, for example, a funding stream or the type of services provided.

In California, there are confidentiality laws. For example, there is the Confidentiality of Medical Information Act, which covers most health records and some mental health records. There also is the Lanterman-Petris-Short Act, which covers certain mental health records.

Even though we tend to refer to HIPAA when talking about confidentiality of health information, in California, providers are often following California laws because they provide greater confidentiality protections than does HIPAA. For this reason, the rules that health care providers follow in California may actually look a little bit different than the rules that health care providers follow in other states.

Now, let’s look at who must follow HIPAA. HIPAA applies to records created by what are called covered entities and business associates. Covered entities can include health plans, health care clearinghouses, and health care providers. There are a few health care providers whose records may not be subject to HIPAA. That may be because they don't conduct certain transactions electronically or because another law supersedes.

When a health care provider is working in a school setting, their records may be subject to HIPAA and California medical confidentiality law, or they may be subject to FERPA, the Family Educational Rights and Privacy Act.

You can find a flowchart that can help health care providers in a school setting understand when their records are subject to HIPAA or FERPA at <http://schoolhealthcenters.org/flowchart>.

The general rule under HIPAA and California law is that health care providers must protect the confidentiality of individually identifiable health information. This information cannot be shared unless a signed authorization allows the release of the protected health information.

However, there are exceptions in HIPAA and state law that allow or require disclosure of information to specific individuals or for specific purposes in some cases.

Authorization forms are important. Who must sign an authorization? In California, the minor must sign if records relate to services that a minor consented to or could have consented to. Otherwise, a legal representative signs. This is typically a parent or guardian.

In California, minors can consent to pregnancy-related care and sexual assault services at any age. Youth who are 12 or older can consent to outpatient mental health counseling, substance abuse diagnosis and treatment, diagnosis and treatment of intimate partner violence, and testing, treatment, and prevention for STIs. And youth who are 15 years or older, living apart from their parents, and managing their own financial affairs **can consent** to their own health care. There are additional minor consent laws, as well.

You can find a California Minor Consent and Confidentiality Laws chart that describes all the minor consent laws at <http://teenhealthlaw.org/consent/>.

Now, let’s review some case studies of how these confidentiality laws apply to sharing information in a school setting. We will be reviewing three case studies on Sylvia, Joey, and Liam.

Sylvia is 16. She gets a pregnancy test at her school-based health clinic. The clinic’s records are subject to HIPAA and the California Medical Information Act. The test comes back positive. Sylvia is distracted the rest of the day. The principal notices this and asks the nurse practitioner what is happening with Sylvia.

May the nurse practitioner share anything about Sylvia’s pregnancy or health status with the principal? No. Because the information is protected health information, it cannot be shared with the principal without a written authorization. In this case, because this information is about pregnancy-related care — services Sylvia consented to or could have consented to receive — Sylvia must sign any authorization to release information.

Here is another case example. Joey is nine and has been receiving therapy from a private clinician in the community. His parents want the therapist to talk to Joey's teacher in order to help the teacher understand what support Joey needs in class.

May the therapist talk to the teacher based on the parent's verbal consent? The answer is no. The therapist’s records are subject to HIPAA. HIPAA does require a signed authorization. However, in this case, everyone involved supports disclosure, so that requirement should not be a barrier to collaboration. Joey’s parents would sign the release form.

HIPAA requires certain elements and advisements in an authorization form. California law includes some additional requirements. For example, in California law, an authorization form must be in 14-point font.

There are some exceptions in HIPAA that allow a health care provider to share information even if there's no written authorization in place. Some examples include sharing information for payment purposes, child abuse reporting, and when there is a court order.

We will discuss one exception using the following case study. A local hospital has a school-based health clinic on a school campus. Liam visits the school-based health clinic practitioner to discuss the headaches he’s been having more and more frequently. He mentions he just started taking a new allergy medication prescribed by his pediatrician. He can’t rememb er the name of it. While they're in the exam room, the practitioner picks up the phone and calls the pediatrician to ask what she prescribed.

What may the pediatrician tell the school-based health clinic practitioner on the phone? The general rule is that any disclosure of health information needs a written authorization; however, there is a relevant exception.

HIPAA and the California Confidentiality of Medical Information Act allow a health care provider to share information with other providers of health care, health care service plans, or other health care professionals or facilities for purposes of diagnosis or treatment, including referral or care coordination. This exception allows, but does not require, Liam’s pediatrician to share health information with the school-based clinician once the pediatrician confirms that she is speaking with another provider of care.

The content for this video was developed by the National Center for Youth Law in partnership with the California School-Based Health Alliance.

This was a very basic overview of HIPAA. For more information on HIPAA and school professionals, please visit “A Guide for Sharing Student Health and Education Information” at <https://schoolhealthcenters.org/hipaa-ferpa>.