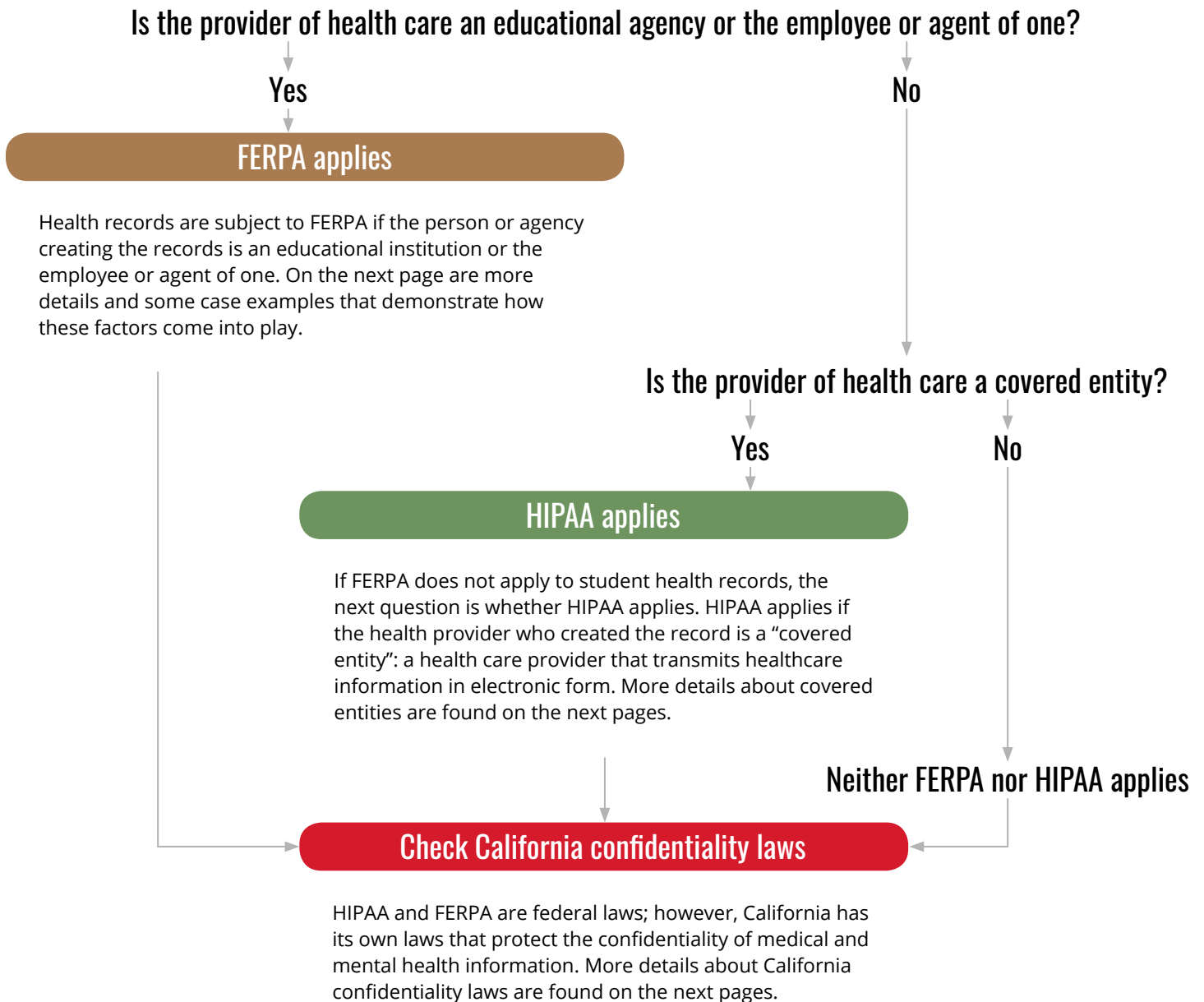


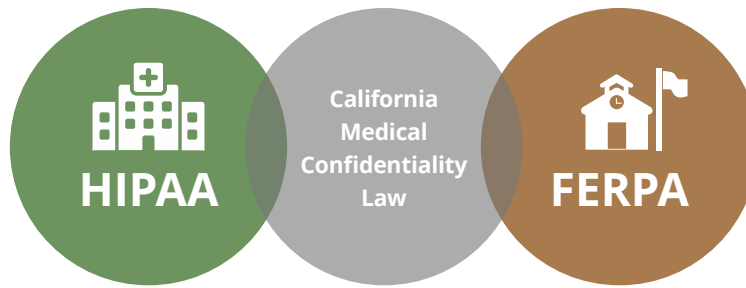
HIPAA, FERPA, BOTH* OR NEITHER? A FLOWCHART FOR DECISION-MAKING

Health providers of various kinds, from school nurses and psychologists to community-based pediatricians, provide important services to students in California schools. Depending on the provider's role, their employer and other key factors, there may be limitations on how they can share information about student health needs with their health and education colleagues. This flowchart helps providers determine whether HIPAA or FERPA is the relevant federal law and what that law means about their legal rights to release student records to parents and guardians, to exchange information with other individuals and agencies, as well as whose consent is required to release this information.



*Is it possible to be "both"?

No, HIPAA and FERPA laws cannot apply to the same records at the same time.



More on FERPA

The records of a school health center are subject to FERPA when the health services are provided to students by the school and not by a separate health agency. This is the case regardless of whether the health services are provided to students on school grounds or off-site. In addition, this is regardless of the source of funding. For example, if the nurse is hired as a school official (or a contractor) and is funded by a grant, the records maintained by the nurse are subject to FERPA.

More on HIPAA

Individual providers are only subject to HIPAA if they transmit health information in electronic form. The fact that a school-based program or provider may not use electronic records onsite does not automatically mean it is exempt from HIPAA. Providers may be transmitting electronic health information in another way, for example, by using electronic billing or using a billing service that transmits information electronically. Providers should consult with legal counsel in making this assessment.

More on California Confidentiality Laws

One of the most comprehensive set of statutes is called the California Confidentiality of Medical Information Act (CMIA). There are additional laws that protect specific types of information (such as drug treatment and HIV-related records). Providers and clinics, particularly those with specialty care, should consult legal counsel to understand which California laws may apply to the health services provided. It is also important to note that in addition to state and federal statute, licensed health professionals may practice under state ethical and licensing regulations that also include obligations related to confidentiality. These principles may impose greater confidentiality obligations than HIPAA. Each provider and clinic should be familiar with the rules that apply to them.

Tips for Supporting Students

Regardless of which law applies, HIPAA or FERPA, here are three things you can always do to support students:

1. Share information with appropriate consent to release of information
2. Share unidentified and aggregated information about students
3. Create systems and collaborations that help young people get the services they need