NAVIGATING CONFIDENTIALITY IN INTEGRATED CARE: 42 CFR PART 2

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Learning Objectives for Today

Participants will...

■ Gain a better understanding of the federal regulations related to exchanging behavioral health information

■ Understand how CORHIO is working to integrate behavioral health data into the HIE

■ Identify national resources to assist them in navigating 42 CFR Part 2
What is 42 CFR Part 2? The Basics

- 42 CFR Part 2 is a federal regulation that restricts the disclosure and use of patient records maintained in connection with the performance of any federally-assisted substance use disorder treatment program.

- Congress first passed the law in 1975. Revised rules were most recently promulgated by the Substance Abuse Mental Health Services Administration (SAMHSA) in 2017.

- Part 2 regulates any “federally assisted” “treatment “program” that “holds itself out as providing, and provides, substance use disorder diagnosis, treatment, or referral for treatment. . . .”
Why Was 42 CFR Part 2 Implemented?

- Stigma and Discrimination
- Loss of Child Custody
- Criminal Prosecution
- Loss of Employment
Despite Consequences and Disease Burden, Treatment Gaps Remain Vast

PAST YEAR, 2017

- Substance Use Disorder (SUD) 12+: 50M, 92.3% NO TREATMENT
- Any Mental Illness (AMI) 18+: 46.6 M, 57.4% NO TREATMENT
- Serious Mental Illness 18+: 19.7 M, 33.3% NO TREATMENT
- Co-Occurring AMI & SUD 18+: 11.2 M, 91.7% NO TREATMENT FOR BOTH
- Major Depressive Episode (MDE) 12-17: 8.5 M, 58.5% NO TREATMENT

See the 2017 NSDUH Report for additional information.
Program means: (1) An individual or entity (other than a general medical facilities) who holds itself out as providing, and provides, substance use disorder diagnosis, treatment, or referral for treatment; Example: free standing, specialty care SUD treatment

or (2) An identified unit within a general medical facility that holds itself out as providing, and provides, substance use disorder diagnosis, treatment, or referral for treatment; Example: detox unit or inpatient/outpatient SUD program in larger hospital system

or (3) Medical personnel or other staff in a general medical facility whose primary function is the provision of substance use disorder diagnosis, treatment, or referral for treatment and who are identified as such providers.” Example: Addiction specialist working in a primary care practice

Key point: When dealing with a general medical facility... It is the unit or medical personnel that is the “program” - NOT the whole general medical facility
“Federally assisted” encompasses a broad set of activities, including management by a federal office or agency, receipt of any federal funding, or registration to dispense controlled substances related to the treatment of SUDs.
“Holds Itself Out”

- SAMHSA has established the definition of “holds itself out” and is defined as any activity that would lead one to reasonably conclude that the individual or entity provides substance use disorder diagnosis, treatment, or referral for treatment including but not limited to:
  - Authorization by the state or federal government (e.g. licensed, certified, registered) to provide, and provides, such services,
  - Advertisements, notices, or statements relative to such services, or
  - Consultation activities relative to such services.
42 CFR Part 2: Consent Requirements

- Requires patient consent for disclosures of protected health information even for the purposes of treatment, payment, or health care operations (TPO)
- Consent for disclosure must be in writing
- No redisclosure without patient consent
- Patients can now disclose their SUD information to their “treating providers” in entities (e.g., health information exchanges, networks of care, accountable care organizations). The consent form does not need to list the names of each individual healthcare provider. 42 CFR § 2.31
42 C.F.R. Part 2 and HIPAA: Exceptions to General Rule

Permitted Disclosures

- Internal communications
- No patient-identifying information
- Proper consent
- Qualified service organization/business associate agreement
- Medical emergency
- Crime on program premises or against program personnel
- Research/audit
- Court order
- Reporting suspected child abuse and neglect
1. Name of the entities making the disclosure

2. Name of the entities to receive the disclosure

3. Name of the patient who is the subject of the disclosure

4. Specific purpose or need for the disclosure

5. How much and type of information to be disclosed
6. The patient’s **right to revoke the consent** in writing and exceptions to the right to revoke

7. The program’s ability to condition treatment, payment, enrollment, or eligibility of benefits on the patient

8. **The date, event, or condition on which the consent expires**

9. The signature of the patient (and/or other authorized person)

10. The date that the consent is signed
Some Best Practices

- **Consult**: Consult your attorney
- **Obtain**: When in doubt, obtain consent
- **Utilize**: Utilize a 42 CFR Part 2 compliant consent form
- **Build**: Build into your workflow
- **Explain**: Explain the value of sharing patient health information – this is about coordinating care and achieving better patient outcomes.
- **Train**: Train appropriate staff in trauma-informed care and/or motivational interviewing
- **Maximize**: Maximize your behavioral health providers (when available)
When exchanging information with a 42 CFR Part 2 covered organization...

- Use THEIR release of information
- Understand their legal and regulatory compliance needs
- Implement systems that allow you to document and track referrals and assign care coordinators to do follow ups (as resources allow)
National Resources

- The Disclosure of Substance Use Disorder Patient Records: Does Part 2 Apply to Me? [https://www.samhsa.gov/sites/default/files/does-part2-apply.pdf](https://www.samhsa.gov/sites/default/files/does-part2-apply.pdf) Fact Sheet - developed by the Office of the National Coordinator (ONC) for Health Information Technology and SAMHSA – uses real-world case examples that involve disclosures of SUD-related information to illustrate how health care organization and programs can comply with 42 CFR Part 2.


- SAMHSA maintains a part 2 mailbox for questions: PrivacyRegulations@samhsa.hhs.gov

- Prepared by the Legal Action Center, this document compiles a number of frequently asked questions related to the application of substance abuse confidentiality regulations to Health Information Exchanges. [https://lac.org/wp-content/uploads/2014/12/SAMHSA_42CFRPART2FAQ.pdf](https://lac.org/wp-content/uploads/2014/12/SAMHSA_42CFRPART2FAQ.pdf)

- The Legal Action Center developed this webinar - titled “Patient Privacy and Confidentiality in the Changing Health Care Environment” - which in addition to providing a thorough overview of 42 CFR Part 2 and its application to integrated care settings, outlines a number of considerations when integrating SUD records into EHR systems and sharing SUD-related information using your EHR.


- California maintains an updated website offering guidance for providers: State Health Information Guidance (SHIG) on Sharing Sensitive Health Information [https://www.californiahia.org/shig](https://www.californiahia.org/shig)
What is Colorado SIM Doing?

- This is challenging to address at the state level since it’s a federal policy that doesn’t give states the authority to interpret.

- Nonetheless through SIM, Colorado is exploring:
  - Feasibility of state-wide policy (SHIG as example)
  - Aligning data sharing policies of state agencies
  - Delegating an agency to operationalize 42CFR11 at a state level
Colorado’s Behavioral Health Exchange Pilots

Cooperative agreement 90IX0012
Office of the National Coordinator in partnership with
Colorado Department of Health Care Policy and Financing
CAII Behavioral Health: Two Approaches

CORHIO

- Patient-directed consent: patient updates technology
- Specific providers, specific dates
- Goal: Increase patient engagement; Provider query at POC

QHN

- Patient-directed consent: provider updates technology
- Specific providers, specific dates
- Goal: Reduce/eliminate faxing
Mind Springs Health (MSH) Acquires Patient Consent

PUSHED to authorized providers

QHN HIE

Process:
- MSH updates patient consent in QHN to share data
- MSH sends report to HIE
- Report is pushed to authorized providers (EHRs)
  - Includes re-disclosure notice
Using QHN to Deliver MSH Documents

Number of Behavioral Health reports sent out by method
- Data includes the following reports: Inpatient Discharge Summary, Crisis Stabilization Unit Discharge Summary, Psychiatric Clinic Visit Diagnostic Evaluation, and Psychiatric Clinic Visit Medication Management.

Outpatient Therapy Assessment PCP
- Data includes both Adult and Child/Adolescent assessments
1. Success Factors:
   - Shared collective vision of improving the community standard of care through the exchange of behavioral and physical health information
   - A dedicated multi-disciplinary project team
   - A cultivated trust relationship among all partners

2. Patient Perspective:
   Comments from Mind Springs Health: “We asked our consumer focus groups for their input. Their initial response was one of caution as they were worried about the stigma. Once they understood that they have control to opt out and that it’s in their hands to decide whether to share information with their primary care providers, they have unanimously said yes. They think it’s good that we are collaborating.”

3. Provider Perspective:
   “The big advantage of a centralize health information repository is that we do have a much better understanding of the full scope of care our patients are receiving and which other providers are involved in their care. Patients are not good historians, especially if they have an inlaying mental illness.”
   – Dr. Tom Moore, Family Medicine Physician with Western Medical Associates
1. Success Factors:
   - Trusted partnerships (between patients and providers as well as between technology partners) are key; these take time to build.
   - Since new workflows for MHCD and patients were needed, additional funding for their efforts enhanced success.

2. Patient Perspective:
   - Patients understood the concept of granular consent; most said they already try to remember the information available in a care summary to relay to their different doctors, and that weight off their shoulders would be a relief if the doctors could access information electronically.
   - When people realized that C2S would not include all the other medical providers they see, they were more hesitant to sign up. C2S marketing emphasizes the benefit of providers getting a "whole picture" of a person, but the data that can truly tell a whole person's story is often dispersed across different practices and state lines.
Lessons Learned

1. Start by automating existing workflows
2. Make it easy for CMHCs to share their 42 CFR Part 2 data no matter how they interpret the rule
3. Clients want to share with “all their treating providers”

Where do we go from here?
Discussion
Contact Information

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