

Sharing Confidential Mental Health and Addiction Information in Ohio

Mental Health and Addiction Providers,
Jails and Courts:
During Initial Detention & Court Hearings

Video Conference

April 2, 2020



Purpose of Manual

- Simplify application of confidentiality laws
- Provide a common understanding
- Facilitate information sharing
- Improve collaboration
- Address common scenarios
- Provide tools and resources
- Ultimately improve assistance provided to persons with mental illness and substance use disorders

Overview of Manual

- Summary of Confidentiality Laws (HIPAA and 42 CFR Part 2)
- Exchange of Information with Jails During Initial Detention
- Exchange of Information with Courts During Initial Hearing

Overview of Manual -continued-

- Common Scenarios/FAQs
- Resources
 - Text of the applicable laws
 - Forms

Some Highlights

- “Important Considerations” sections
- What is NOT protected
- Recommendations Sections
- Release of Information/Authorization forms

Next Manual:

Jails and Courts
(Intercept 3)

Today's Presentation

- Confidentiality Laws
- Permitted Disclosures to CJ System
- Sharing Information Between Systems
- Q & A



Confidentiality Laws

Applicable Confidentiality Laws

Federal Laws:

- HIPAA
- Confidentiality of Substance Use Disorder Patient Records
(42 CFR Part 2)



State Law:

- OhioMHAS Statute/Rules

HIPAA

HIPAA – Covered Entities

- Health Care Providers that conduct certain transactions in electronic format
 - Physical, Mental Health, Addiction Services Providers
- Health Plans
 - Private Insurance Companies
 - Example: Anthem
 - Public Benefit Payers
 - Examples: ADAMH Boards and OhioMHAS

NOT HIPAA- Covered

- Law Enforcement
- Probation/Parole Officers
- Court Personnel
- Schools
- Family Members/Friends
- Jails ** sometimes covered**
- Persons/organizations that do not PROVIDE health care services, PAY FOR health care services, provide other SERVICES to those that do

HIPAA - Protected Information

“Protected health information” (PHI) is info that:

- Relates to the individual’s physical or mental health or condition;
 - Is created, received or transmitted by a HIPAA-covered entity in the provision of health care or payment for health care services; AND
 - Identifies the individual or can be used to identify the individual.
- ** Basically any information that a covered entity has in its records about a person that has received health care services, including demographic information ****

*Confidentiality of
Substance Use Disorder Patient Records
(42 CFR Part 2)*

Required to Comply with Part 2's Disclosure Requirements

- Most SUD Treatment Programs (“Part 2 programs”)
- “Lawful Holders” of Part 2 information
 - Persons/entities that receive Part 2-protected information from a Part 2 program
- Persons/entities that receive Part 2-protected information from a “lawful holder” of Part 2 information

Part 2- Protected Information

Information that is:

- Created or obtained by a Part 2-program;
- For the purpose of SUD treatment, making a diagnosis for treatment or referral for treatment; AND
- Identifies an individual as an SUD services recipient or as having a SUD.

Becomes protected at point person seeks, applies for, inquires directly about services

NOT Part 2-Protected Information

- Information that does not identify an individual as receiving addiction services or as having a substance use problem (even if it is information from the individual's records/chart)
- Disclosing that an individual was a no-show for an appointment that was arranged by a third party if no prior contact with individual

Note: If individual personally contacted program to make the appointment, he/she has "sought services" from the program and no-show info is protected

Prohibition on Use of Information

Part 2 information is prohibited from being used to initiate or substantiate any criminal charges against a person or to conduct any criminal investigation of a person.

- Only exceptions:
 - crime on premises/against staff
 - pursuant to very specific court order issued for this purpose



Permitted Disclosures

General Rule

Persons/Organizations covered by these laws must obtain written authorization to disclose protected information unless the applicable law(s) contains an exception that applies to the disclosure

HIPAA
Permitted Disclosures

HIPAA-Permitted Disclosures to CJ System

- Treatment Purposes
- As Required by State or Federal Law
- Reports of Child Abuse or Neglect and Other Victims of Abuse, Neglect, or Domestic Violence
- Law Enforcement Purposes
- Judicial and Administrative Proceedings
- To Reduce or Prevent a Serious Threat to Public Health and Safety
- Correctional Institutions and other Law Enforcement Custodial Situations

** Note: There are specific requirements related to each of these disclosures. See the regulations for additional information prior to disclosure.*

Treatment Purposes

- By a provider for its treatment activities or the treatment activities of another healthcare provider (even if not a HIPAA-covered provider)
- By other covered entities for a health care provider's treatment activities

Example: Board disclosure of client PHI to a contract provider for the purpose of coordinating treatment for that client

Treatment Purposes

- **Treatment** includes the *coordination, or management of health care and related services among health care providers, consultation between health care providers regarding a patient, or the referral of a patient from one health care provider to another*
- Minimum Necessary requirement does not apply to disclosures for treatment purposes
- HHS: Exchange of information intended to be wide open between mental health and physical treatment providers if purpose falls within the definition of “**treatment**”!

As Required by Law

- *Required by law*: a mandate contained in law that compels a use or disclosure of PHI that is enforceable in a court of law.

Examples:

- court orders and court-ordered warrants
- subpoenas or summons issued by a court, grand jury, inspector general, or administrative body authorized to require the production of information
- a civil or an authorized investigative demand
- statutes or regulations that require the production of information

Law Enforcement Purposes

- As required by state or federal law, including reporting laws
- Pursuant to court order, court-ordered warrant or judicial subpoena
- Pursuant to administrative subpoena or summons, civil or authorized investigative demand or similar process
- For identification/location of suspect, fugitive, material witness or missing person (not treatment information except date and time)

Law Enforcement Purposes (continued)

- Information pertaining to crimes that occurred on premises of the provider
- To provide information about crime victims (if victim unable to agree to disclosure and law enforcement asserts that law enforcement activity requires disclosure)
- To report crime when providing emergency health care to alert LE to commission/nature of crime, location of crime/victims and identity/location/description of perpetrator

Correctional Institutions/Jails and Other Custodial Situations

To a correctional institution/jail or law enforcement official having lawful custody of a person if the info is needed for the:

- provision of health care to the individual
- health and safety of the individual, other inmates, officers or employees and others at the facility
- health and safety of persons responsible for the transporting or transferring of inmates
- law enforcement on the premises
- administration and maintenance of the correctional institution

Re-disclosure of HIPAA-Protected Info

- No prohibition unless:
 - Recipient is also a HIPAA-covered entity
 - Contractually bound to not re-disclose
 - Another confidentiality law applies
(example: jail confidentiality rule)

Part 2-Permitted Disclosures

Part –2 Permitted Disclosures to CJ System

- Crimes on program premises or against program personnel
- Medical Emergencies
- Child Abuse and Neglect Reporting
- Pursuant to Part 2 –compliant Court Orders

Medical Emergencies

To medical personnel who have a need for information

- for purpose of treating a condition which poses an immediate threat to the health of the individual

AND

- requires immediate medical intervention

Court Orders

- Court must follow specific requirements of Part 2 in issuing court order to authorize program to make disclosure under Part 2
- Court Order authorizes program to make disclosure
- Subpoena alone does not authorize program to make disclosure under Part 2
- Court order authorizes disclosures, accompanying subpoena compels disclosure

Re-disclosure of Part 2 Information

- Re-disclosure requires applicable exception or person's written authorization



Sharing Information
Between Systems

Jails

Is the Jail a HIPAA-Covered Entity?

- If health care staff and transmitting electronic transactions = jail HIPAA-covered
 - Jail can/should set itself up as a “hybrid entity” where only health care units are HIPAA-covered
- If health care providers are external/community-based (not part of jail workforce):
 - jail not HIPAA-covered
 - external provider most likely HIPAA-covered

Exchange of Information Between HIPAA-Covered Providers

- Can exchange PHI with one another for treatment purposes

Examples: on-going treatment needs, medications, at time of release for continuity of care purposes

Disclosures by HIPAA-Covered Community Providers (including Jail-contracted providers) to Jail Staff

- To provide health care to inmates (e.g. medications)
- If necessary for the health and safety of the inmate (e.g. suicidal) or others (e.g. threat of harm)
- For the administration and maintenance of the facility (i.e. special accommodations, need for recurring medication management appointments, factors in being placed in isolation)
- To jail health care providers for treatment purposes
- With authorization

Disclosures by Jail Administrator

- Can re-disclose HIPAA-protected information obtained from a HIPAA-covered provider

Example: notify court of persons booked with history of mental illness or on psychiatric medication to determine if diversion and early resolution of cases possible

Ohio's Jail Confidentiality Rules (applicable to jail workforce)

- Access to specific medical information by non-health trained staff:
 - Need to know basis
 - To preserve the health and safety of inmate or others
- Health records (electronic or written) are confidential and only accessible to personnel designated by the health authority (designated provider)
 - Correctional staff may be advised of inmates' health/mental health status to preserve health and safety of inmate/others and in accordance with state and federal laws

Part 2: Disclosures to Jails

- Person's authorization
- Part 2-compliant court order
- To medical personnel to treat immediate threat to health requiring immediate medical intervention

Courts

HIPAA: Court and Court Proceedings

HIPAA-Covered providers can disclose mental health information to prosecutors, defenders, court, parole board, etc.:

- With authorization
- Pursuant to a court order (required by law)
- Pursuant to a subpoena or summons issued by a court (required by law)
- If could prevent or lessen serious and imminent threat to health or safety to person or others
- From court journal entries and court docket entries (not protected)

HIPAA: Mental Health Courts/Court-Ordered Treatment

- Disclosures to court permitted with client's authorization or court order
- Court should require authorization as condition of participation
- Probation officer can disclose information to court (not a HIPAA covered entity and re-disclosures not prohibited)

HIPAA: Forensic Monitoring

- Board/provider permitted to release tracking updates to court/court coordinator
- State law requires “coordinated system for tracking and monitoring persons on conditional release” and notification to trial court if terms of release violated

Part 2: Courts and Court Proceedings

- Part 2-covered providers can disclose Part 2-protected info to prosecutors, defenders, court, parole board, etc.:
 - With authorization
 - Pursuant to Part 2-compliant court order
 - Programs should ensure local courts aware of those requirements
 - From court journal entries and court docket entries (not protected)

Part 2

Drug Courts/Court-Ordered SUD Treatment

Disclosures to court about participation in drug treatment/rehab program as condition of community control, parole, post-release control sanction or rehab in lieu of conviction:

- Part 2-compliant court order or authorization required
- OhioMHAS statute requires authorization as condition of participation for most SUD treatment programs
- Court should require authorization as condition of participation

Part 2

Drug Courts/Court-Ordered SUD Treatment

Special Part 2 authorization requirements:

- Disclosure limited to the court or governmental personnel having the responsibility for supervising and monitoring
- Re-disclosure permitted to carry out official duties re: the conditional release or other action for which authorization was given
- Person cannot revoke authorization “at will”

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Recommendations & Considerations

Recommendations & Considerations

- Mental health and addiction providers can share general information about how to best handle an interaction with someone experiencing MH/SU issues with court/jail/LE.
- Non-HIPAA covered persons/organizations can generally re-disclose PHI that they obtain from a covered entity to a third party.
 - Jail, court and provider staff should examine flow of the necessary disclosures so they can adjust their processes to allow for sharing of necessary information.

Recommendations & Considerations

- Written authorization can be obtained by provider, court staff, jail staff or LE
 - Educate clients/inmates that in best interests to allow disclosures
- Use a multi-party authorization form that lists all parties that need to exchange information
- Ohio has a standard authorization form for sharing of information between two parties that must be honored
- Judge can condition consideration of placement in a specialized docket program, eligibility for diversion, etc. on signing of authorization form



Questions??



Thank you!!