Privacy and Confidentiality of Behavioral Health Data in EHRs

Maureen Boyle, PhD
Lead Public Health Advisor, Health Information Technology
Center for Substance Abuse Treatment
Substance Abuse and Mental Health Services Administration
April 24, 2014
SAMHSA’S STRATEGIC INITIATIVES

To reduce the impact of substance abuse and mental illness on America's communities

AIM: Improving the Nation’s Behavioral Health (1-4)
AIM: Transforming Health Care in America (5-6)
AIM: Achieving Excellence in Operations (7-8)
SAMHSA’s Strategic Initiative - Health IT

Goal: Widespread Implementation of HIT Systems that Support Quality Integrated Behavioral Health Care for All Americans

- Ensure that behavioral health provider networks fully participate in the adoption of Health IT
- Promoting the development of advanced functionality to improve the quality and efficiency of behavioral health care
National HIT Landscape

➡ The Health Information Technology for Economic and Clinical Health Act (HITECH Act)
  • Meaningful Use
  • EHR Certification

➡ The Affordable Care Act
  • Coordinated care, ACOs, Pay-for-performance

➡ Privacy and Confidentiality Regulations
  • HIPAA, 42 CFR Part 2, State laws
SAMHSA’s Current HIT Priorities

Improving patient care with HIT

- Privacy and Confidentiality to promote integrated care
- Data Standards to support interoperability
- Advanced functionality for Behavioral Health HIT
  - Data segmentation and consent management
  - Behavioral Health Clinical decision support
  - Patient engagement and self-management tools
- Electronic clinical quality measurement
- Delivering technical assistance
Increased accessibility to health records raises the question of how to ensure patient confidentiality and trust.

To be sustainable, electronic exchange efforts must establish trusting relationships with all participants, including patients.
NAMA Poll - Confidentiality

How do you feel about Confidentiality Regulations? Are they Important to you?

- **72%** Confidentiality is very important, I would not want my clinic information given to anyone without authorization.
- **19%** Confidentiality regulations need to be expanded so that hospitals, doctors and other health care providers are included.
- **9%** I would not mind if my information is available for medical purposes (i.e. hospitals, doctors have access).
- **1%** No, I am not concerned if my clinic information is accessed.
Recent Vendome Webinar Poll

How concerned are you (or your patients) about MH/SUD information being shared with other health care providers?

- Very concerned: 25%
- Concerned: 36%
- Somewhat concerned: 29%
- Unconcerned: 10%
The purpose of the statute and regulations prohibiting disclosure of records relating to substance abuse treatment, except with the patient's consent or a court order after good cause is shown, is to encourage patients to seek substance abuse treatment without fear that by doing so their privacy will be compromised.

Federal Privacy Regulations

- Patient consent must be obtained before sharing information from a substance abuse treatment facility that is subject to 42 CFR Part 2 or Title 38 (VA)
- Prohibition on re-disclosure without consent
- Not intended to prevent information sharing but to set standards on how to share patient information

Source: 42 CFR Part 2
Limited exceptions for disclosure without consent:

- Medical emergencies
- Child abuse reporting
- Crimes on program premises or against program personnel
- Communications with a qualified service organization of information needed by the organization to provide services to the program
- Public Health research
- Court order
- Audits and evaluations

Source: 42 CFR Part 2
Mental health records may be treated as ultra-sensitive in many jurisdictions.

Each state approaches the confidentiality of mental health records from their own perspective.

State laws also often provide additional protections for HIV infection, genetics, minors, domestic violence, reproductive health etc.

EHR systems have to recognize this variability in state statutes and regulations.
To help providers in the behavioral health field better understand privacy issues related to Health IT, SAMHSA, in collaboration with ONC has created two sets of Frequently Asked Questions (FAQs).

These FAQs can be accessed at:

- [http://www.samhsa.gov/healthprivacy/docs/EHR-FAQs.pdf](http://www.samhsa.gov/healthprivacy/docs/EHR-FAQs.pdf)
- [http://www.samhsa.gov/about/laws/SAMHSA_42CFRPART2FAQII_Revised.pdf](http://www.samhsa.gov/about/laws/SAMHSA_42CFRPART2FAQII_Revised.pdf)

Federal and state regulations provide the ground rules. Careful analysis determines how the rules are applied to ensure effective treatment of substance use and mental health disorders.

- Who needs what information when?
- Who determines who needs what information when?
- How should psychotherapy notes be treated?
- How should HIT systems be designed to control disclosure and re-disclosure of sensitive information?
- What policies provide the optimal balance of safety and privacy?
In 2012, 5 Sub-awards given to support sharing of health records among behavioral health providers and general medical providers through state HIEs (ME, KY, IL, OK, RI)

To develop infrastructure supporting the exchange of health information among behavioral health and physical health providers

Identified technology and policy solutions for compliance with federal and state regulations

Developed a 42 CFR Compliant Consent that is computable in a HIE environment
Barriers to inclusion of behavioral health in the state HIEs

- Consent management
- Naming the receiving provider/organization
- Workflow
- Technical capacity of current systems
HIEs have diverse models, every HIE developed a unique solution for incorporating behavioral health

- Utilizing short consent duration and latency period
- Dual consent
- Using Qualified Service Organization Agreements (QSOA)
- Direct secure messaging
- Patient driven transmission (Blue button)
- Provider portal to view data in the repository
Advanced Solutions for Privacy

How can HIT systems be designed to control disclosure and re-disclosure of sensitive information in compliance with federal and state regulations?

Working with the ONC S&I Framework and the VA to develop open source technology for consent management and data segmentation to give the patient granular control over information sharing

- Will support compliance with 42 CFR Part 2, Title 38, and state mental health privacy laws
- Open source tool that can be integrated into existing EHR platforms, Consent2Share
Advanced Solutions for Privacy

- SAMHSA/VA team demonstrated DS4P Implementation guide use cases at HIMSS 2013
- [https://github.com/OBHITA/Consent2Share](https://github.com/OBHITA/Consent2Share)
Overview of Consent2Share

- Consent2Share Policies Store
- Terminology Server
- Inferred Clinical facts
- DROOLS
- POLICY EXPERTS

POLICIES
- Value sets
- Organizational privacy policies
- State regulations

OBLIGATIONS:
- redact:HIV
- redact:66214007 (substance abuse disorder)
- purposeOfUse: treatment

Segmented CCDA is delivered and viewed by recipient.
Privacy Metadata

class 3.2: Privacy Metadata for Requesting and Sending Information

Metadata that is associated with an inbound request for health information.

Metadata that accompanies information disclosed to as a result of a push (e.g. referral, consult) or a pull (e.g. request from an agency).

«privacy metadata»

InformationRequest

+ purposeOfUse :PurposeOfUseCode [1..*]
+ requestingOrganization :Organization
+ requestingProvider :Provider [0..1]
- informationRequested [0..*]

«privacy metadata»

InformationResponse

+ effectiveTime :DateTime
+ expirationTime :DateTime [0..1]
+ purposeOfUse :PurposeCode [1..*]
+ obligation :ObligationCode [0..*]
+ confidentialityCode :Confidentiality [0..*]
+ uri :URI [0..1]
- authoringOrganization :Organization

confidentialityCode set by policy decision point/rules engine.

«enumeration»

PurposeOfUseCode

- Treatment
- Operations
- Payment
- Emergency

«enumeration»

ObligationCode

- DoNotRedisclose
- AuditAccess
- AuditDisclosure
Data Segmentation Standards Development

SAMHSA has been working with the International Standards Organization Health Level 7 (HL-7) to define consensus standards for behavioral health information to be included in the standard Continuity of Care Document (CCD)

- Sensitivity value sets

- HL7 Privacy and Security Classification System

- HL7 Implementation Guide: Data Segmentation for Privacy
We are just beginning real world pilot tests

- First pilot: Prince Georges County Health Department
- HIE enabling exchange between a Part 2 program and a primary care organization
- Full implementation should be achieved by September 2014

http://www.youtube.com/watch?v=PzICMAb_cEQ
Questions and Comments

Contact: maureen.boyle@samhsa.hhs.gov or SAMHSA.HIT@samhsa.hhs.gov