Care Coordination within the context of criminal justice reform: Should the same restrictions on data privacy and security still apply?

Daniel Mistak

And

Bruce Copley

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COCHS
COMMUNITY ORIENTED CORRECTIONAL HEALTH SERVICES

The COCHS Approach: Public Safety and Community Health

- Public safety and public health systems are intertwined.
- Similarly, the health of the justice-involved population is intertwined with the health of the general population.
- Connecting health care in the criminal justice system to health care in the greater community preserves the investments jurisdictions make in their vulnerable justice-involved populations.

Goals

- 1. List two examples of criminal justice reforms that are bringing behavioral health professionals into more collaborative relationships with criminal justice personnel;
- 2. List at least two examples in which more information shared by behavioral health providers with such criminal justice entities as Drug Court or Probation may or may not benefit clients.
- 3. Define care management portals for criminal justice re-entry and evaluate the tradeoffs of sharing client information through them to support care coordination;
- 4. Describe how some states and counties are devising creative ways to share more client information while remaining compliant with HIPAA and 42CFR.2.

Why Do We Care About Privacy?

- Readiness for treatment is an incredible victory.
- Not all of our partners understand the complexities of substance abuse treatment
  - Denial of parental rights due to methadone treatment
  - Eviction from shelters
  - Bars to employment

Health Insurance Portability and Accountability Act (HIPAA)

- Broad law that governs health insurance privacy.
- Regarding Substance Abuse:
  - Health care providers treating patients experiencing a drug or alcohol overdose, who wish to share the patient's health information with family members, friends, or others involved with the patient's care or payment for care
- Disclosure Standard: the *Best Interest of the Patient*. 45 C.F.R. § 164.510 (b)(3).
- Generally, providers can disclose information when they receive a subpoena, discovery request, or administrative request.

The Tension: Does 42 CFR §2 Do More Harm Than Good?

- On the one hand, restrictions that are too tight might lead to inefficiencies in shared care
- On the other hand, too few restrictions could lead to lead unjust outcomes

42 CFR § 2

- Regulation promulgated in accordance with 42 USC § 290dd-2
- Governs *substance use disorder* patient records in certain, limited circumstances.
- Applies to Federally assisted “programs”

What is a Federally Assisted Program?

- "[other than a general medical care facility]. . .any person or organization that *holds itself out as providing, and provides, alcohol or drug abuse diagnosis, treatment, referral for treatment or prevention*." 42 CFR § 2.11.
- Patient records for those patients who receive treatment (or diagnosis or referral for treatment) from

  (a) *an identified unit* of a general medical facility that holds itself out as providing, and provides, alcohol or drug abuse diagnosis, treatment or referral for treatment, or

  (b) *medical personnel or other staff in the general medical care facility whose primary function* is to provide those services

Protected Information

- Information that would identify a patient, either directly or indirectly, as having or having had a substance use disorder, or being or having been a patient in a federally-assisted “program”

Disclosure

- No disclosure without *written* patient consent or unless another exception applies (and there are no new exceptions).
  - There is a prohibition on redisclosure
  - Can disclose to those subcontractors listed in the consent form, but cannot disclose for activities related to a patient's diagnosis, treatment, referral for treatment, or care coordination

How to Disclose

- Consenting to disclosure has changed in the new regulations finalized this year.

Consenting

If the recipient is…	Then the form must include:
An Individual	The Name of the Individual
An entity with a treating provider relationship	The name of the entity
Third-Party Payer	The name of the entity
An entity *without* a treating provider relationship	Name of the entity, *and*: • Name of individual participant(s) • Name of entity participant who has treating provider relationship; and/or • General designation of individual or entity participants or class of participants, who has treating provider relationship

NEW CHANGES IN AMOUNT TO SHARE

- **SAMHSA has made the requirements about the amount of sharing and kind of sharing to be more specific**
- **Form must** *explicitly* describe the substance use disorder-related information to be disclosed, and with sufficient specificity to allow the disclosing program or other entity to comply with the request.
  - Okay: All my substance abuse records
  - Not okay: All my records

Other Changes

- Qualified Service Organizations
  - now includes population health management services
  - QSO Agreements have been tightened to avoid the QSOAs being used as a workaround to consent.
  - Care coordination was not added to the QSO list of permissible services
- Record Security
  - Both Part 2 programs and "lawful holders" *must* have established formal policies and procedures for security of records (aligns closely with HIPAA Security rules)

New Patient Rights

- Right to ”list of disclosures” after a written request for disclosures
- Consent form must contain information about the rights to disclosure.

Questions?

www.cochs.org
510-595-7360

Dan Mistak dmistak@cochs.org