Barriers to Sharing Health Information in Behavioral Health

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What’s Changing?

• Everyone understands that the increase in the cost of health care in the U.S. is unsustainable

• In order to reduce the increase in per capita costs, the underlying causes of illness need to be addressed
Weaknesses of the Current Health Care Delivery System

The existence of silos in the health care delivery system results in:

- Unnecessary costs – redundant tests, paperwork
- Limited access to health care – particularly for vulnerable segments of the population
- Operational inefficiencies and the potential for compromised outcomes and quality due to lack of communication among providers

What’s Changing

A new emphasis on the integration of health care services, reflected in the Triple Aim

Adopted by the Centers for Medicare and Medicaid (CMS), the goals of the Triple Aim are defined as:

- Improving the patient experience of care (including quality and patient/client satisfaction)
- Improving the health of populations
- Reducing the per capita cost of healthcare
Information Needs to Achieve the Triple Aim

- To achieve the Triple Aim, information must flow synergistically across all domains, through all business processes and among all authorized users.
- In order for that to happen, however, existing privacy and security laws need to be re-examined within the context of integrated care.

Reform and Information Sharing

Sharing patient information critical to:
- Managing individual patient care
- Managing the health of populations
- Evidence-based medicine
- Creating clinical protocols and pathways
- Monitoring clinical performance
- Protecting patients (Jessie’s Law)
Challenges to Information Sharing

- While HIPAA provides health care providers and payors a fair amount of flexibility in sharing a patient’s health information without authorization, the disclosure of protected health information associated with the treatment of substance abuse is much more restrictive; i.e., 42 CFR Part 2.

HIPAA vs. Part 2

No authorization is needed in some cases
- HIPAA
  - Treatment
  - Payment
  - Health Care Operations
- 42 CFR Part 2
  - Director acts as PR for disclosure to insurer
  - Medical emergency
Who is Covered by 42 CFR Part 2

- Federally assisted substance abuse programs who hold themselves out as providing, and do provide, substance use disorder diagnosis, treatment or referral for treatment.

- These programs are health care providers, so they must comply with HIPAA unless the Part 2 regulations are more stringent.

42 CFR Part 2

- Basic Rule: no patient authorization, no disclosure absent a court order

- Part 2 gives way to more stringent state law

- But “no State law may either authorize or compel any disclosure prohibited by these regulations”
Authorization under Part 2

- The authorization form for Part 2 clients must contain Part 2 boiler plate language
- The recipient must be informed that redisclosure of Part 2 information is prohibited
- A general designation of the recipient(s) may be used but, if it is, an accounting of disclosures is required

Part 2 Exceptions to the Authorization Requirement

- Administrative entity with direct control
- Qualified service organizations
- Child abuse reporting
- Medical emergencies – when patient consent cannot be obtained
- Personal representatives – more restrictive than HIPAA
- Audit and evaluation by third party payors
- Imminent threat to public
No Exceptions for the Following

• Treatment, payment and healthcare operations
• Public health disclosures
• Elder abuse reporting
• Facility directories
• Disclosures required by law
• Judicial or administrative proceedings (absent court order)

Disclosure for Criminal Investigation

• Use of covered information to initiate or substantiate criminal charges against a patient or to conduct any criminal investigation is prohibited by Part 2 absent an appropriate court order.

• This restriction also applies to any entity that obtains information from a federally assisted program, regardless of the entity’s status or of whether the information was properly obtained
Operational Barriers Presented by Part 2 Restrictions

• Substance use disorder clients are less likely to authorize the disclosure of their PHI due to stigma related concerns
• Part 2 prohibits even the disclosure that a client is receiving substance use disorder treatment
• This inability to disclose PHI for the coordination of care without authorization can expose the patient to significant risk (Jessie’s Law)

Operational Barriers Presented by Part 2 Restrictions

• Behavioral health treatment providers with integrated health records need authorization from Part 2 clients to access their records
• Dual diagnosis clients present additional need for care
HIE Related Problems

• Health information exchanges (HIE) are typically qualified service organizations (business associates)

• HIE may disclose Part 2 info without client authorization to an entity with which they contract as QSO, but with no one else

HIE Related Problems

• Significant challenges exist to the ability of HIEs to segregate PHI in order to safeguard SUD PHI as required by Part 2

• How do HIEs determine whether a treating provider relationship exists?
Questions?

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