

Data Sharing Strategies – How to Address Superutilizers within the Confines of Confidentiality

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Data-Driven Health & Justice

- Use data to identify and proactively break the cycle of incarceration
- Equip law enforcement and first responders with the tools to respond and divert
- Use data-driven, validated, pre-trial risk assessment tools to inform pre-trial release decisions

OVERVIEW

- Friction Between Sharing Data and Confidentiality Laws that Restrict Use and Disclosure
- Need to Identify Strategies that Allow for Sharing and Yet Still Comply with Laws
- Today Will Include a Summary of Confidentiality Restrictions and Potential Strategies to Comply and Address the Need for Data Exchange

Barriers to Sharing

- What are the Barriers You Face?
- What Issues Have You Confronted?
- Describe How You Have Addressed Superutilizers Within the Confines of Confidentiality Laws

HIPAA

- HIPAA is Generally the Least Stringent Limitation on Data Sharing
- Relies upon Authorization or One of Several Exceptions
- Only applies to Covered Entities and Business Associates

HIPAA

- Permitted Disclosures:
 - To a correctional institution or a law enforcement official having lawful custody of an inmate
 - If PHI is needed to provide health care to the individual
 - For the health and safety of the individual, other inmates, officers or employees of or others at a correctional institution or responsible for the transporting or transferring inmates
 - “Lawful custody” includes: juvenile offenders adjudicated delinquent, non-citizens detained awaiting deportation, persons committed to mental institutions through the criminal justice system, witnesses, or others awaiting charges or trial

HIPAA

- Relevant Permitted Disclosures:
 - Court order or court-ordered warrant, a subpoena or summons issued by a judicial officer, or a grand jury subpoena
 - Administrative request
 - Authorization
 - Prevent or lessen a serious and imminent threat to the health or safety of an individual or the public

42 CFR Part 2

- Covers Federally-Assisted Substance Use Disorder (“SUD”) Treatment Programs
- Covers All Information that Could Identify an Individual as a SUD Patient
- Prohibits Re-Disclosure – so Anyone that Receives the Information is Prohibited from Further Disclosing

42 CFR Part 2

- Current 42 CFR Part 2 Severely Limits Ability to Share SUD Information
 - Most disclosures require consent
 - Must identify each recipient specifically
 - No duty to warn exception
 - Subpoenas and warrants not sufficient
 - Re-disclosure prohibited

42 CFR Part 2

- Criminal Justice Consents
 - May be non-revocable
 - Where court-mandated treatment
- Court Orders - Criminal
 - Serious crimes
 - Information is significant for matter
 - There is no other practical way to get data
 - Public interest in disclosing outweighs harm to patient
 - Opportunity for program to retain legal counsel

42 CFR Part 2

- Court Orders – Non-Criminal
 - Court orders authorizing disclosure for noncriminal purposes require good cause
 - Based on findings that other ways of obtaining the information are unavailable or ineffective
 - The public need for disclosure outweighs potential injury to the patient, the provider–patient relationship, and the treatment services

42 CFR Part 2

- Proposed Revisions to Part 2 Regulations
 - NPRM February 9, 2016
 - SAMHSA recognized potential barriers to exchange of data and integration of care
 - Greater flexibility for sharing data for treatment and collaboration
 - Will not change disclosures for criminal justice purposes

Illinois Law

- Mental Health and Developmental Disabilities Confidentiality Act
 - Applies to records kept by a therapist or by an agency in the course of providing mental health or developmental disabilities services
 - Generally more stringent than HIPAA
 - Consent in many circumstances
 - Some applicable exceptions

Illinois Law

- Mental Health and Developmental Disabilities Confidentiality Act Exception:
 - Disclosure for admission, treatment, planning, coordinating care, discharge, or governmentally mandated public health reporting
 - Includes DHS, community agencies funded by DHS, licensed private hospitals, integrated health systems, members of an interdisciplinary team, federally qualified health centers, or physicians or therapists or other healthcare providers, State correctional facilities, juvenile justice facilities, mental health facilities operated by a county, mental health court professionals, veterans and servicemembers, court professionals and jails and juvenile detention facilities operated by any county
 - No records or communications may be disclosed to a county jail or State correctional facility pursuant to this Section unless DHS has entered into a written agreement with the county jail or State correctional facility requiring the jail or facility adopt written policies and procedures ensuring records and communications are disclosed only to those persons employed by or under contract to the jail or facility who are involved in mental health services to inmates without further disclosure

Illinois Law

- MHDDCA Exception:
 - HFS and DHS records of a recipient may be disclosed without consent by county jails, insurance companies, integrated health systems, and State agencies, including the Department of Corrections, to hospitals, physicians, therapists, emergency medical personnel, and members of an interdisciplinary team treating a recipient for the purposes of treatment and coordination of care

Illinois Law

- MHDDCA Exception:
 - Person transported by a peace officer to a mental health facility upon the request of a peace officer, if the person is allowed to leave the mental health facility within 48 hours of arrival, excluding Saturdays, Sundays, and holidays, the facility director shall notify the local law enforcement authority prior to the release of the person. The local law enforcement authority may re-disclose the information as necessary to alert the appropriate enforcement or prosecuting authority

Illinois Law

- MHDDCA Exception:
 - Upon the request of a peace officer who takes a person into custody and transports a person to or from a mental health or developmental disability facility, a facility director shall furnish the peace officer the name, address, age and name of the nearest relative of the person transported
 - Facility director may not disclose to the peace officer any information relating to the diagnosis, treatment or evaluation of the person's mental or physical health

Justice Limitations

- Generally Speaking Not a Covered Entity or Business Associate Under HIPAA
- Generally Not a Federally-Assisted SUD Treatment Program
 - Could still be bound to protect Part 2 covered information from re-disclosure
- Generally Not Covered by MHDDCA

Strategies

- Disclosure of Information from Justice to Health is Generally not Limited
 - Ability to share information with health care providers
- Disclosure by the Individual is Generally not Limited
 - Ability to have individual share information in his/her possession
 - Could not impose condition of disclosure upon treatment

Strategies

- Current 42 CFR Part 2 is Difficult Barrier
 - Consent or court order required
 - Consent must identify each recipient
 - Court order must meet criteria
 - Proposed modifications to Rule may not alleviate
 - Potential for integrated care environment?

Questions?

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