Medicaid Exchanging Health Information: Overview of Confidentiality Issues

Joy L. Pritts, JD
Research Associate Professor
Health Policy Institute
Georgetown University
jlp@georgetown.edu
Health Information Exchange:
Different Parties Subject to Different Rules

- General health clinic
- Substance abuse clinic
- Behavioral health plan subcontractor
- Mental health care provider
- Medicaid
Some Potentially Applicable Standards

- HIPAA Privacy Rule
- Medicaid confidentiality standards
- Federal alcohol and substance abuse regulations
- Other state privacy/confidentiality statutes and regulations (e.g., HIV/AIDS, mental health)
Framework

- Who is holding the health information?
  - Health care provider?
- What type?
  - General clinical
  - Mental health
  - Alcohol and substance abuse treatment program
  - Health plan?
  - Some other type of entity?
Framework

• How are they funded?
  – State- or county-funded or contractor?
  – Federally funded substance abuse treatment program
• Note that some state-funded alcohol and substance abuse programs flow-through federal dollars, essentially making state or local programs subject to same rules
Framework

- With whom would they like to share the health information? And how are recipients funded?
  - Health care provider?
  - Health plan?
  - State- or county-funded or contractor?
  - Federally funded substance abuse treatment program
Framework

• What type of health information would they like to share?
  – General clinical
  – Mental health medications
  – Mental health (psychotherapy notes)
  – Alcohol and substance abuse treatment-related

• For what purpose?
Framework

• Conduct analysis for each component of exchange
• Determine whether consent is required for specific exchange (e.g., disclosures between mental health care providers sometimes do not require consent)
• Determine elements of consent required
  – Consent may be general or must it specify
    • Includes HIV or mental health information
    • Specific provider to whom disclosure may be made
Framework

- There really are no shortcuts to conducting analysis.
HIPAA Privacy Rule
Treatment, Payment & Health Care Operations

- HIPAA does *not* require individual’s written permission to use or disclose protected health information for these purposes

- Neither does it *prohibit* covered entity from obtaining such permission
  - Called “consent”

- Exception: Psychotherapy notes

45 CFR §164.506
When Is Individual Permission (Consent) Required To Disclose Health Information?

- Psychotherapy notes
- When required by law other than HIPAA
  - These laws remain in effect
42 CFR Part 2

• Not superseded by HIPAA
• Applies to alcohol and drug abuse patient records maintained by federally assisted alcohol and drug abuse program
• Requires prior written consent to disclose even for treatment (except in emergency)
  – Must specify name of receiving provider or organization

42 CFR § 2.34
Medicaid Programs

• Medicaid and CHIP programs must restrict the use or disclosure of information concerning applicants and recipients to purposes directly related to plan administration.

See § 1902(a)(7) of the Social Security Act; 42 USC § 1396a (a)(7) 42 CFR § 431.301; 42 CFR § 457.1110
Purposes Directly Related to Medicaid Plan Administration Include

- Establishing eligibility
- Determining the amount of medical assistance
- Providing services for recipients

42 CFR § 431.302
Other Medicaid Confidentiality Restrictions

• Access limited to persons or agencies that are subject to standards of confidentiality comparable to Medicaid/CHIP program

• Agency must, whenever possible, obtain permission of the individual or family before responding to a request for information from an outside source
  – (unless info. is to be used to verify income, eligibility, and amount of medical assistance payments)

• Apply to all requests for information from outside sources including other governmental bodies

42 CFR § 431.306
Non-Medicaid State Laws

May require individual permission before disclosing health information
• General health information confidentiality statutes and regulations
• Mental health laws
• HIV/AIDS laws
• Alcohol and substance abuse treatment
  – Whether or not federally funded
Example of Obtaining Permission

- Meds-Info ED regional HIE for providing prescription data to emergency departments

- MA Medicaid provided eligibility and paid prescription history to emergency rooms for treatment to an emergency room upon ER’s request

- ER obtained individual consent when requesting information

Example of Permitting Exchange for Care Coordination in “Circle of Care” Where all Parties Subject to Same Rules on Use of Information: North Carolina
Example of “Uniform Consent Form”

- Minnesota developed a uniform consent form for the state which must be accepted by health care providers as part of HISPC project.
Basic Principle

Whether notice of sharing or consent to share…

• There should be “no surprises” to clients
• Goal
  – Preserve trust
  – Ensure people get care they need
Contact Information

Joy Pritts, JD
Research Associate Professor
Health Policy Institute
Georgetown University
jlp@georgetown.edu
202-687-4039