

Confidentiality of Substance Abuse Treatment Records – Where is New Hampshire

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Goals for Today

1. Discuss and introduce the legal and ethical concerns surrounding population based care
2. Compare differing perspectives on confidentiality and data sharing of health care information.
3. Describe practical solutions to navigate patient and provider concerns of confidentiality.

We Know We Have a Problem

- New Hampshire's rates of alcohol and other drug misuse, particularly among adolescents, are some of the very highest in the country.
- **We know we have a gateway to Help:** SBIRT is a public health approach to reducing alcohol and other drug-related problems through annual screenings in community-based settings.
- **We know what SBIRT is** – screening, intervention, therapy and referrals

We Know SBIRT is a Valued Service

- Can be billed as a service
- Is valued in integrated settings as a prevention tool – all payers
- Helps ensure patients get the right type of care in the right setting
- SBIRT will impact total cost of care for patients

Progress Towards Progressive Treatment

- We have figured out a process for screening and brief treatment
- We have coverage for behavioral health and substance use disorder treatment
- We are developing innovative projects through 1115 that will impact the way our Medicaid providers deliver treatment
- We have established a learning collaborative to clear the way for the integration of behavioral health interventions in primary care settings
- We are exploring possible ways to integrate health care interventions in acute behavioral health settings.

We Are Clearing the Pathways!

- Developing workforce education and training
- Developing financial models for payment
- Delivery System: Consistent care upstream and downstream
- Clearing the pathways for continuity of care, integrated care, whole person care, health care
- Clearing the way for respectful communication around patient care.

What do Integrated Practices Need to Do about Privacy and Confidentiality?

- ❖ Brief overview of Existing Law Relating to Privacy and Confidentiality
 - ❖ HIPAA/NH/Part 2
 - ❖ Proposed changes
- ❖ Steps to take towards compliance for integrated practices

Overview of Applicable Privacy and Confidentiality Law

| Jurisdiction | Statute/Regulation | Scope |
|---------------|---------------------|--|
| Federal | HIPAA Privacy Rules | Protects individually identifiable health information maintained by providers, payers and their contractors from disclosure. Heightened protections for psychotherapy notes. |
| | 42 CFR Part 2 | Protects the confidentiality of substance abuse patient records from disclosure without express patient consent |
| New Hampshire | RSA 332-I:1 | Medical information in the medical records in the possession of any health care provider shall be deemed to be the property of the patient. |
| | RSA 318-B:12-a | Protects reports and records of treatment of minors for drug dependency as confidential. |
| | RSA 330-A:32 | Protects communications between mental health practitioners and patients as privileged. |
| | RSA 330-C:26 | Protects information held by a licensed alcohol or other drug use professional performing substance use counseling services unless permitted by 42 CFR Part 2. |

Confidentiality and Minors

- ❖ Both HIPAA and 42 C.F.R. Part 2 leave the issue of who is a minor and whether a minor can obtain health care or alcohol/drug treatment without parental consent entirely to State law.
- ❖ *In New Hampshire* a minor 12 years old or older may seek and be treated for drug dependency or any problem related to the use of drugs without parental consent (RSA 318-B:12-a)

Specific Laws of Minor Consent

Providing Emergency Services

Minor Seeking Drug and Alcohol Abuse Treatment (CFR Part 2 Discussion)

Minor Seeking STD Treatment

Minor Seeking Abortion Services

Minor Seeking HIV Testing

Emancipated Minor (rare cases)

Other issues re minors in NH

- ❖ The age of majority in NH is 18 (RSA 21-B:1)
- ❖ NH law provides that a health care provider can only perform an HIV test with the consent of the individual being tested (RSA 141-F:5)
 - ❖ Example if a 15 year old is seeking an HIV test, that 15 year old must consent to the test even if the parent does not consent
 - ❖ Results of a test may only be given to the individual tested (RSA 141-F:7, II)
 - ❖ If the individual tested is under 18 or lacks the mental capacity to understand a *positive* HIV test, the provider **may** disclose to the parent or guardian (RSA 141-F:7, III)
- ❖ A provider is not liable for failing to obtain consent when treating a patient in an emergency no matter what age (RSA 153-A:18)
- ❖ A minor who is 14 years or older may seek and be treated for a sexually transmitted disease (STD) without the consent of a parent or guardian (RSA 141-C:18)

Legal Action Center

- Will explain the details of Part 2
- How we can accommodate the heightened confidentiality in an integrated care setting

HIPAA v. Part 2

HIPAA - Who's Covered?

- 1. Health care providers, both physical and behavioral health**
- 2. Health plans**
- 3. Health care clearinghouses**
- 4. Business Associates**

Part 2 – Who's Covered?

- 1. An individual or entity (or a unit in a general medical care facility) that holds itself out as providing and does provide alcohol/drug abuse diagnosis, treatment or referral for treatment services; or**
- 2. Medical personnel or staff in a general medical care facility whose primary function is the provision of such services and who are identified as SUD providers; and**
- 3. That are federally funded**
- 4. [Providing SBIRT services does not make a provider Part 2!]**

HIPAA v. Part 2

HIPAA Permitted Disclosures

- With a patient's valid verbal or written authorization.
- After a patient receives notice of the provider's privacy policy, a covered provider may disclose health information for the purposes of: Treatment; Payment; Health care operations; other purpose as consent authorizes.

Part 2 Permitted Disclosures

- **Express Consent**
- Internal communications
- Medical emergency
- Qualified service organization agreement
- De-identified information
- Crime on program premises
- Research
- Audit
- Court order
- Reporting child abuse/neglect

HIPAA What is Covered?

- All individually identifiable health information
- Psychotherapy notes documenting or analyzing a conversation during a private counseling session or group session must be maintained separately.

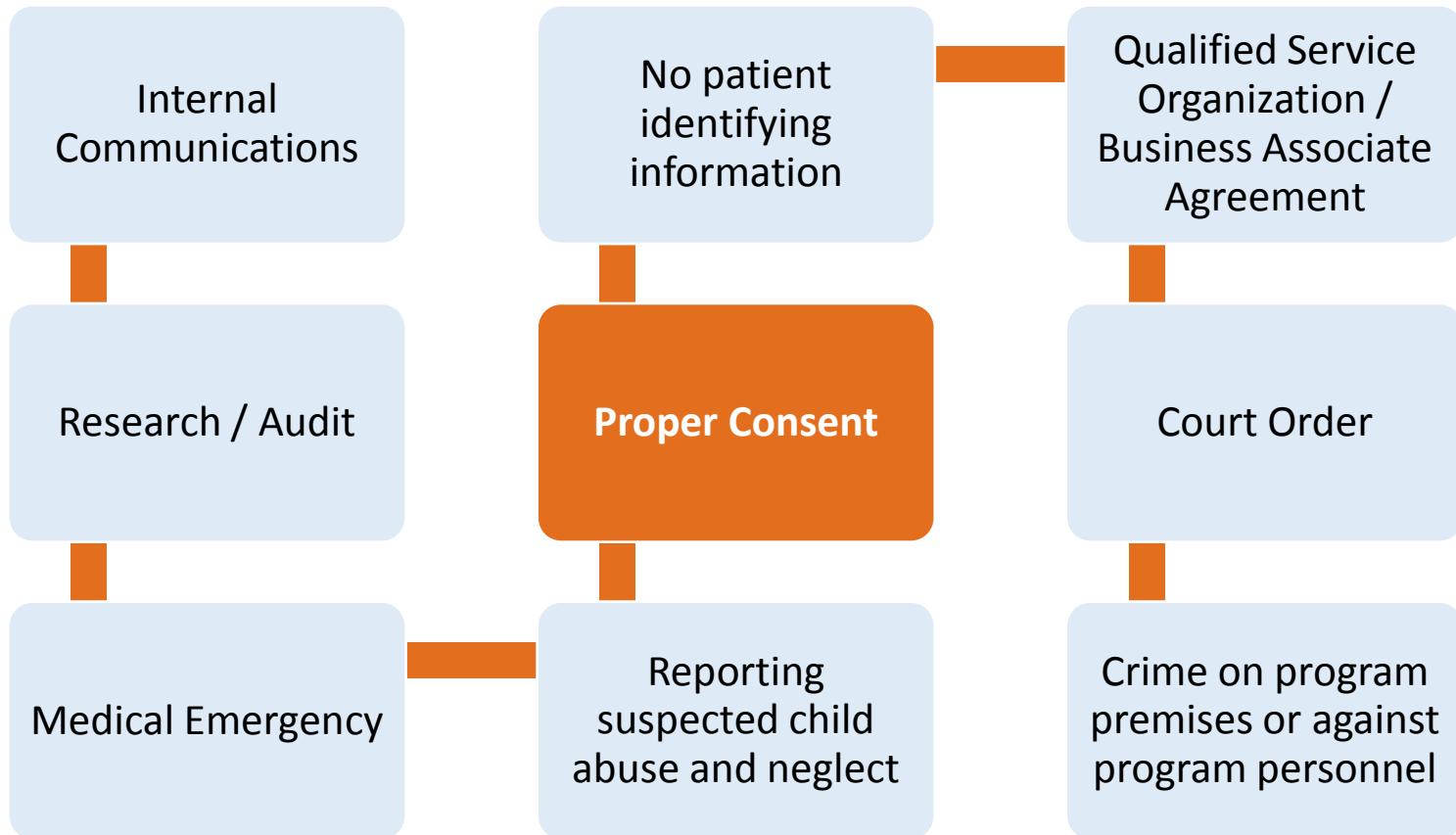
Part 2 What is Covered?

Information, whether or not recorded, which:

1. Would identify a patient as an alcohol or drug abuser
2. Is drug alcohol abuse information obtained by a federal program for the purpose of treating alcohol or drug abuse, making a diagnosis for that treatment or making a referral for that treatment.

42 C.F.R. Part 2:

Permitted Disclosures



Resources

- Proposed regulations for Part 2 –
<https://www.gpo.gov/fdsys/pkg/FR-2016-02-09/pdf/2016-01841.pdf>
- [http://lac.org/wp-content/uploads/2014/12/Video DVD Training Workbook 2014.pdf](http://lac.org/wp-content/uploads/2014/12/Video%20DVD%20Training%20Workbook%202014.pdf)
- [https://www.oregon.gov/oha/amh/docs/Legal Action Center Questions and Answers 42 CFR Part 2.pdf](https://www.oregon.gov/oha/amh/docs/Legal%20Action%20Center%20Questions%20and%20Answers%2042%20CFR%20Part%202.pdf)
- <http://www.samhsa.gov/about-us/who-we-are/laws/confidentiality-regulations-faqs>
- <https://oasas.ny.gov/mis/forms/trs/index.cfm>

Questions?

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