Protecting Patient Privacy While Working in an Integrated Care Environment

Changes to CFR 42
My Background

- National Council Senior Medical Adviser
- Distinguished Professor of Science, MIMH
- Missouri Medicaid Director
- Practicing Psychiatrist
- Previously - MO Department of Mental Health Medical Director – 20 years
Brief History

• 42 CFR Part 2 was enacted as the Drug Abuse Office and Treatment Act of 1972
  • Intended to encourage people to seek treatment
  • Regulations – Effective August 1, 1975
  • Last revised and updated 1983

• HIPAA was enacted as the Kennedy-Kassebaum Bill of 1996
  • Intended as “administrative simplification”
  • Proposed rule issued 1999
  • Final rule issued 2002
  • Last revised and updated 2013
42 U.S. Code § 290dd–2 - Confidentiality of records

• The Federal Statute behind 42 CFR part 2
• Short and Simple – only 474 words
• Only 2 Requirements stricter than HIPAA
  – Patient Consent required for all releases of identifiable patient information for treatment except in a medical emergency
  – Prohibits use of patient information for criminal charges or investigation unless there is a substantial risk of death or bodily harm
Current 42 CFR Part 2 Regulation adds additional Requirements

• Consent for a specific purpose
• Consent to a specific organization
• Consent must be time limited
• Consent is limited to minimum necessary for the specific purpose
• Prohibits Re-disclosure
Disclosure of info that identifies patient (directly or indirectly) as having a current or past drug or alcohol problem (or participating in a drug/alcohol program) is generally PROHIBITED,

UNLESS:

– Patient consents in writing, or
– Other exception applies
Exceptions to Rule Prohibiting Disclosure

- 10 EXCEPTIONS:
  - Written Consent
  - Medical Emergency
  - Qualified Service Organization Agreement
  - Research
  - Internal Communications
  - Crime on Program Premises/Against Program Personnel
  - No Patient-Identifying Information
  - Audit
  - Court Order
  - Reporting Child Abuse/Neglect
HIPAA is Much Broader

• Allows Disclosure for
  – Treatment
  – Operations
  – Payment

• Allows Disclosure without Consent for Treatment
Main Points

Proposed Rule amending 42 CFR Part 2:
Proposed Rule – 42 CFR Part 2: Main points

• Consent:
• New option for general designation in “to whom” section of consent form
• Limited to those who have “treating provider relationship” with patient
• Can include past, present, and/or future treating providers
  – Example: Consent to HIE & “all my treating providers” (who are members of the HIE)
Proposed Rule – 42 CFR Part 2: Main points

• Prohibition on re-disclosure remains.
• “From whom” section of consent form would now need to name specific individual/entity.
• New patient right: Can request & receive list of individuals/entities to whom their info has been disclosed pursuant to a general designation consent.
Proposed Rule – 42 CFR Part 2: Main points

• Medical Emergencies

• A patient’s SUD info can be disclosed w/o consent to medical personnel to meet a “bona fide medical emergency” in which the patient’s prior consent cannot be obtained.”

• Currently - SUD information could be disclosed w/o consent “for the purpose of treating a condition which poses an immediate threat to the health of any individual and which requires immediate medical intervention.”
Proposed Rule – 42 CFR Part 2: Main points

• Research

• Changes make it more consistent with HIPAA research requirements (e.g., Institutional Review Board).

• Maintains core protections of 42 CFR Part 2 (including prohibition on re-disclosure).
Proposed Rule – 42 CFR Part 2: Main points

• Security of Records

• Updated - more in line with HIPAA.
The Law Of Unintended Consequences
“I say it’s government-mandated broccoli, and I say the hell with it.”