

# 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



# 42 C.F.R. Part 2 - Generally

- 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).

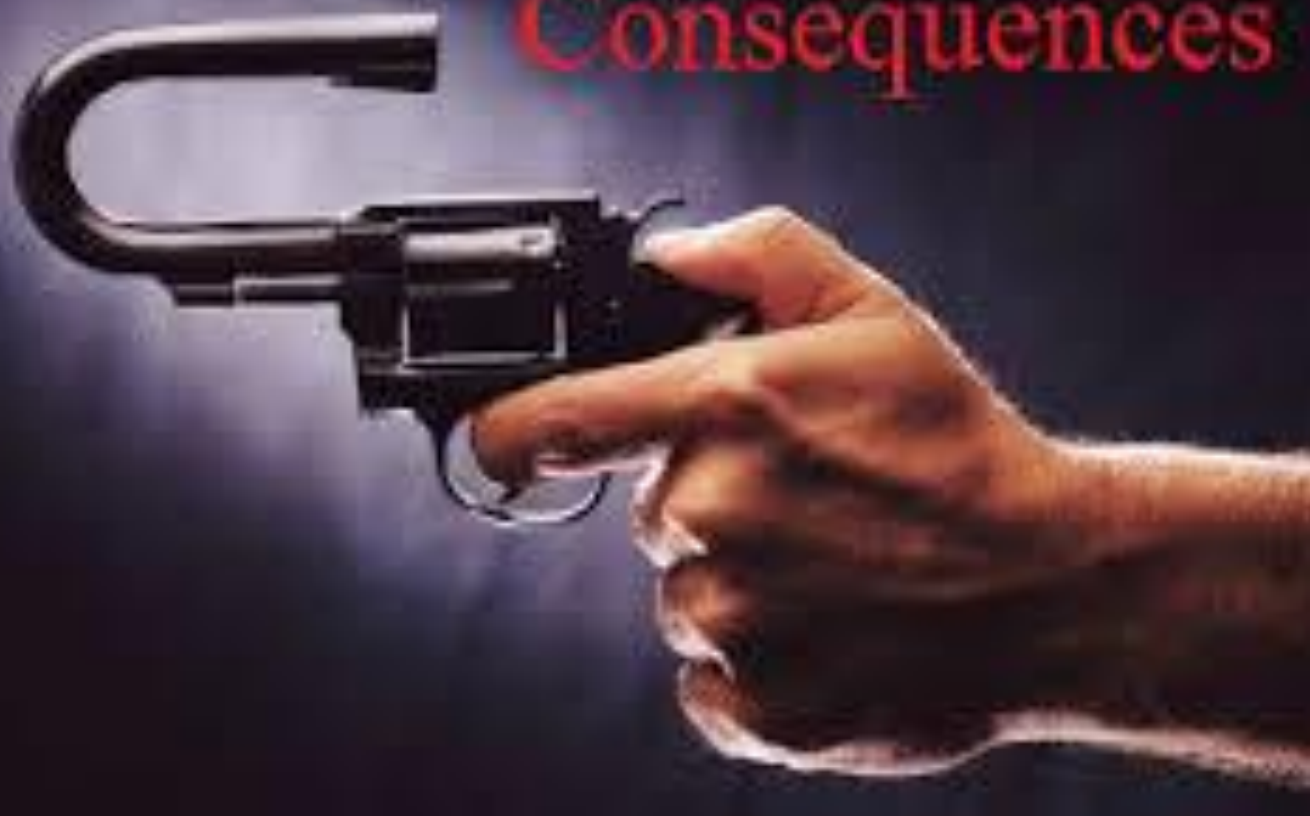


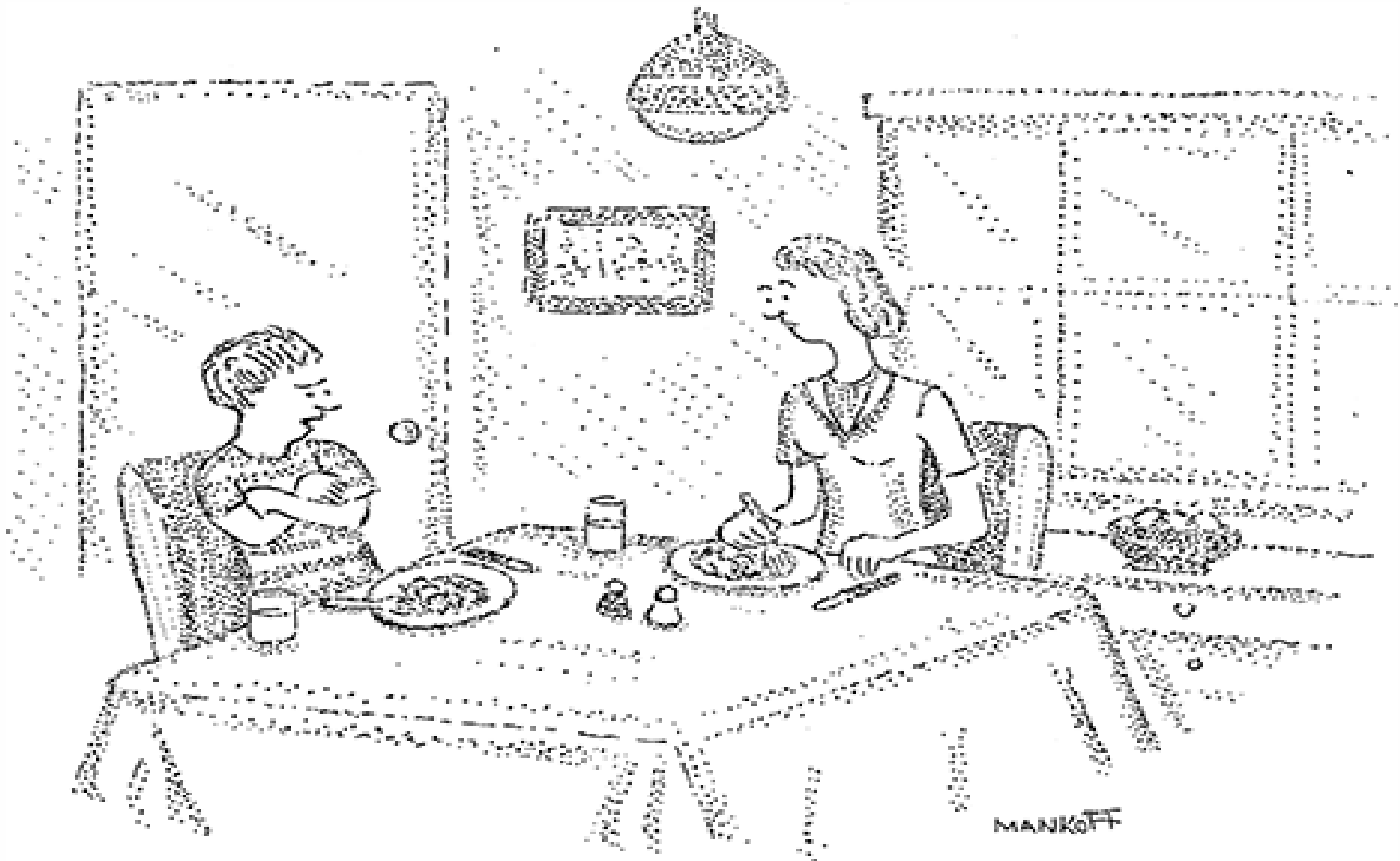
# Proposed Rule – 42 CFR Part 2: Main points

- 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."*