

GUIDELINES FOR EXCHANGING BEHAVIORAL HEALTH RECORDS THROUGH A HEALTH INFORMATION EXCHANGE IN OKLAHOMA

Statement of Guideline:

The current method of exchanging health records through a health Information exchange (HIE) in Oklahoma is through the opt-out method. This same approach will be used with behavioral health records; however, individual provider agencies may decide if they require an opt-in or opt-out consent process. If the former, the patient must sign an opt-in informed consent before allowing the patient's records to flow through the HIE. The behavioral health provider acknowledges that any divergence from the policies of the selected HIO to make consent more stringent is the sole responsibility of the behavioral health provider.

Providers submitting treatment information through an HIE should inform the patient of this mode of transmittal through its Notice of Privacy.

Definitions:

Behavioral Healthcare – the term “behavioral healthcare” refers to both mental health and substance abuse treatment collectively.

Certified Health Information Organizations (HIO) – a health information organization (HIO) is an organization that oversees and governs the exchange of health-related information among organizations through a health information exchange (HIE). To be certified, an HIO must have successfully completed either the Basic or Full OHIET HIO Certification process.

Health information Exchange - a service that enables exchange of protected health information between healthcare providers who share at least one patient. The information is used to coordinate care and provide statistics for public health in general.

Procedures:

A. Publically Funded Mental Health Treatment Records:

- 1) The provider agency may use the opt-out process for patients. However, they may also utilize an opt-in model, where an informed consent is obtained from the patient to share mental health information through a HIE.
- 2) If the patient chooses to opt-in or does not choose to opt-out, depending on the provider agency protocol, all parts of their mental health records that are

permitted by law to be shared will be shared through the HIE. If the patient does not opt in or chooses to opt out, none of their mental health information will be shared.

- 3) The opt-out methodology is generally HIO wide, meaning that if a patient chooses to opt out, none of the treatment records from any of his or her providers are shared through the HIO. If the behavioral health provider chooses the opt-in methodology, then the records are never sent but the client does not officially opt out of the HIO so his or her treatment from other providers may be shared through the HIO. The electronic health record (EHR) utilized by the mental health provider agency must have the capability to filter out records of patients who choose not to share their information.
- 4) The liability of releasing information about the patient who chooses not to participate in an HIE rests with the provider agency - not the HIE.

B. Publically Funded Substance Abuse Treatment Records:

- 1) Some substance abuse treatment records fall under a stricter federal requirement than that of physical or mental health records. 42 CFR Part 2 requires that the patient consent indicate which specific providers can receive the treatment record, for what purpose and a consent termination date or event. If technology used by the HIO cannot restrict the data to such granularity, substance abuse treatment records from Part 2 programs will not be sent through an HIE.
- 2) Part 2 substance abuse treatment provider agencies may participate in an HIE by sending substance abuse treatment records through the secure messaging system, Direct, and by receiving other health records from providers treating the patient through the HIE web portal.
- 3) If a technology is utilized that conforms with the requirements of 42 CFR Part 2, substance abuse treatment records from Part 2 programs will be allowed to be shared through an HIE. The Health Information Organization (HIO) which oversees the HIE will make the determination whether the technology utilized in the HIE can conform to the requirements of 42 CFR Part 2.
- 4) Provider agencies must always use a consent form that is compliant with 42 CFR Part. 2,

C. Programs with both Publically Funded Mental Health and Substance Abuse Treatment Records:

- 1) Treatment facilities with both mental health and substance abuse treatment programs will need a filter to signify whether or not the patient is in a substance abuse program covered by 42 CFR Part 2.
- 2) Treatment records from a Part 2 program will not be sent to an HIE unless technological methods are in place to conform to the requirements of 42 CFR Part 2. Part 2 covered records can be transmitted to other treating providers through Direct secure messaging with proper consent.
- 3) Patients receiving substance abuse treatment in a mental health program are not subject to 42 CFR Part 2 restrictions.
- 4) If a program holds itself out as a co-occurring program, meaning it treats individuals with both mental health and substance abuse disorders, and it is considered a Part 2 program and must comply with 42 CFR Part 2.
- 5) The liability of not releasing information about the patient in a Part 2 program rests with the provider agency - not the HIE.

References:

Confidentiality of Alcohol and Drug Abuse Patient Records, 42 C.F.R. Part 2

The Health Information Portability and Accountability Act, (HIPAA), 45 C.F.R. Parts 142, 160 and 164

Oklahoma Mental Health Law, 43A O.S. § 1-109