

Patient Privacy and Confidentiality in the Changing Health Care Environment

HIPAA, 42 C.F.R. Part 2, and Health Care Reform

Who is your trainer?

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What is the Legal Action Center?

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- Nonprofit law and policy organization
- Antidiscrimination and privacy work
 - ▣ Substance use disorders
 - ▣ HIV/AIDS
 - ▣ Criminal records

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Who is today's audience?

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- Health care providers and others involved in colocated and integrated primary care and behavioral health care

Handouts

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- This PowerPoint
- Two sets of SAMHSA FAQs
 - ▣ “Applying the Substance Abuse Confidentiality Regulations 42 C.F.R. Part 2 (Revised)” (2011)
 - ▣ “FAQS: Applying the Substance Abuse Confidentiality Regulations to Health Information Exchange (HIE)” (2010)
- 42 C.F.R. Part 2 (the regulations)

Today's training is on...

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- Overview of laws governing confidentiality/privacy of health records, including alcohol/drug patient records
 - ▣ HIPAA
 - ▣ 42 C.F.R. Part 2
- How do the confidentiality laws apply to colocated and integrated primary care and behavioral health services?
- Including alcohol/drug patient records in electronic health record (EHR) systems

Why this topic?

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- Health care reform is changing the landscape in which health care is delivered, organized, and paid for
- Key feature of emerging environment is integration and coordination of care, including integration of primary and behavioral (addiction and mental health) health care
- Adoption and use of health information technology—health IT—is essential to achieving health reform goals

1. Overview of Laws...

...governing the confidentiality/privacy of health information, including alcohol/drug patient records

Overview of Health Privacy Laws

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- Privacy of health information is governed by Federal and State law
- Two Federal laws govern confidentiality of health information, including alcohol/drug patient records:
 - ▣ HIPAA
 - ▣ 42 C.F.R. Part 2
- There are also many State laws protecting certain health information such as—
 - ▣ Mental health, HIV/AIDS, reproductive health

Overview of Health Privacy Laws

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Why are these privacy laws important for providers of colocated and integrated care?

- These laws tell providers and others how they can share health information, including behavioral health information (which has extra privacy protections)

Overview of Health Privacy Laws

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- We will start with an overview of the two Federal laws HIPAA and 42 C.F.R. Part 2....
 - ▣ What does each do?
 - ▣ How do they work together?
 - ▣ How does State law fit in?



Overview of Health Privacy Laws

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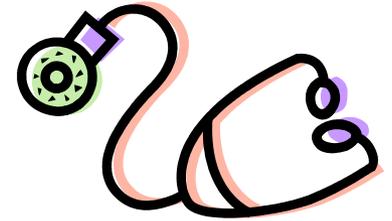
What is HIPAA?

- **H**ealth **I**nsurance **P**ortability and **A**ccountability **A**ct of 1996

Overview of Laws: HIPAA

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HIPAA generally



- Federal law
- Establishes a floor (minimum) of safeguards to protect privacy of “protected health information” (PHI)
- Applies to PHI no matter how it is shared (electronic, written, or oral form)
- Establishes patient rights



Overview of Laws: HIPAA

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Who is covered by HIPAA?

- “Covered entities” (must comply with HIPAA)
 - ▣ Health care providers
 - ▣ Health plans
 - ▣ Health care clearinghouses



If they transmit PHI *electronically* in connection with carrying out certain covered transactions (e.g., to process payment or make eligibility determinations)

Continued

Overview of Laws: HIPAA

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Who is covered by HIPAA? (continued)

- What is a “health care provider” under HIPAA?
 - ▣ Individual or entity that –
 - Furnishes, bills, or is paid for
 - Health care
 - In the normal course of business



Continued

Overview of Laws: HIPAA

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Who is covered by HIPAA? (continued)



- What is “health care” under HIPAA?
 - ▣ Broadly defined—includes preventive, diagnostic, therapeutic, counseling, and assessment services for a physical or mental condition
 - ▣ Includes programs that treat, diagnose, assess, or refer people with drug/alcohol problems and drug/alcohol prevention programs

Overview of Laws: HIPAA

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What is protected health information?

Protected Health Information (PHI)—

- ▣ Any information
- ▣ Oral or recorded
- ▣ Created or received by
- ▣ Certain entities (including health care providers and health plans)
- ▣ That relates to past, present, or future
- ▣ Physical or mental health of an individual



Overview of Health Privacy Laws

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What is 42 C.F.R. Part 2?

Regulations implementing Federal drug and alcohol confidentiality law (42 U.S.C. § 290dd-2)

Overview of Laws: 42 C.F.R. Part 2

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What is 42 C.F.R. Part 2?

- Federal law
- Governs confidentiality of alcohol and drug treatment and prevention information
- Regulations implement statutes enacted in 1970s
- Purpose of law: Privacy protections encourage people to seek treatment (stigma)



Rehabilitation



Overview of Laws: 42 C.F.R. Part 2

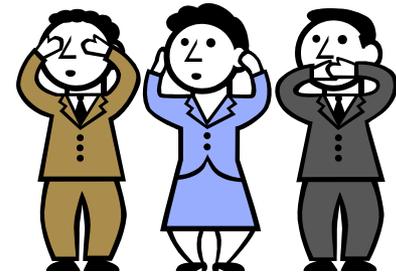
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42 C.F.R. Part 2, generally

- Disclosure of information 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
- Another exception applies



Continued

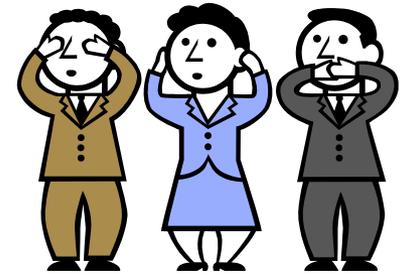
Overview of Laws: 42 C.F.R. Part 2

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42 C.F.R. Part 2, generally (continued)

□ This is true **even if** the person seeking the information—

- Already has it
- Has other ways to get it
- Has some kind of official status
- Has obtained a subpoena or warrant
- Is authorized by State law



Overview of Laws: 42 C.F.R. Part 2

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Who is covered?

- Drug/alcohol treatment and prevention **programs** that are
- **Federally assisted**

must follow 42 C.F.R. Part 2



Definitions

Overview of Laws: 42 C.F.R. Part 2: Who Is Covered? (continued)

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What is a “program”? Three definitions...

- First definition
 - ▣ Individual or entity
 - ▣ Other than general medical facility
 - ▣ That holds itself out as providing, and does provide,
 - ▣ Drug/alcohol diagnosis, treatment, or referral for treatment....



OR....

Continued

Overview of Laws: 42 C.F.R. Part 2: Who Is Covered? (continued)

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What is a “program”? Three definitions (continued)

- Second definition
 - ▣ An identified unit
 - ▣ Within a general medical facility
 - ▣ That holds itself out as providing, and does provide,
 - ▣ Drug/alcohol diagnosis, treatment, or referral for treatment....



OR....

Continued

Overview of Laws: 42 C.F.R. Part 2: Who Is Covered? (continued)

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What is a “program”? Three definitions (continued)

- Third Definition
 - ▣ Medical personnel or other staff
 - ▣ In a general medical care facility
 - ▣ Whose primary function is
 - ▣ The provision of drug/alcohol diagnosis, treatment, or referral for treatment, and
 - ▣ Who are identified as such



Overview of Laws: 42 C.F.R. Part 2: Who Is Covered? (continued)

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What is a “program”? (continued)

- The law does not define “**general medical facility,**” but SAMHSA FAQs give some examples:
 - Hospitals
 - Trauma Centers
 - Federally Qualified Health Centers

Overview of Laws: 42 C.F.R. Part 2: Who Is Covered? (continued)

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What is a “program”? (continued)

- Key point
 - ▣ When dealing with a general medical facility...
 - ▣ It is the **unit** or **medical personnel**
 - ▣ That is the “**program**”
 - ▣ NOT the whole general medical facility

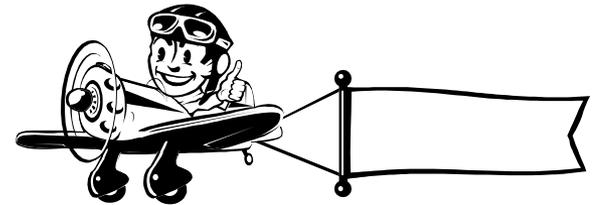
Overview of Laws: 42 C.F.R. Part 2: Who Is Covered? (continued)

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What is a “program”? (continued)

What does “holds itself out” mean?

- ▣ Law does not define
- ▣ SAMHSA FAQs give examples:



- State licensing procedures, advertising, or posting notices in office, certifications in addiction medicine, listings in registries, Internet statements, consultation activities for non-“programs,” information given to patients and families, any activity that would reasonably lead one to conclude those services are provided

Overview of Laws: 42 C.F.R. Part 2: Who Is Covered? (continued)

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- Examples of a “program”
 - ▣ First definition
 - Freestanding drug/alcohol treatment program
 - Student assistance program in a school
 - Primary care providers who provide drug/alcohol services as their principal practice
 - ▣ Second definition
 - Detox unit
 - Inpatient or outpatient drug/alcohol program within a general medical facility
 - ▣ Third definition
 - Addiction specialist working in a primary care practice

Overview of Regulations: 42 C.F.R. Part 2

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Case Scenario: “Program”



- Dr. Draper works in a hospital E.R. (let’s assume the hospital gets Federal assistance—will discuss more later). A patient comes in after an accident and is visibly intoxicated. Dr. Draper calls staff from the hospital’s specialized drug/alcohol unit to come to the E.R. and assess the patient for alcoholism. The patient leaves before the assessment can occur.
- Is Dr. Draper a “program” under 42 C.F.R. Part 2?

Overview of Laws: 42 C.F.R. Part 2

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Case Scenario Answer

- ❑ **No**, Dr. Draper is not a “program”
- ❑ Because he works in a general medical facility but not in an identified unit that holds itself out as providing drug/alcohol diagnosis, treatment, or referral for treatment
- ❑ Dr. Draper would only be a “program” if his “primary function” was the provision of drug/alcohol services (it is not)



Overview of Laws: 42 C.F.R. 2: Who Is Covered? (continued)

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When is a program “federally assisted”?

- Receives Federal funds in any form (even if not used for drug/alcohol services), or
- Is authorized, licensed, certified, registered by the Federal government, such as—
 - ▣ Assisted by IRS by grant of tax-exempt status
 - ▣ Has DEA registration to dispense controlled substances to treat drug/alcohol abuse
 - ▣ Is authorized to provide methadone treatment
 - ▣ Is certified to receive Medicaid or Medicare reimbursement



Overview of Laws: 42 C.F.R. Part 2

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Case scenario: Who is covered?

- Dr. Sterling is a primary care provider in a federally assisted practice who prescribes buprenorphine for opiate addiction as his primary practice. Is Dr. Sterling covered by 42 C.F.R. Part 2?



Overview of Laws: 42 C.F.R. Part 2

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Case Study Answer

- Yes, Dr. Sterling is a “program” under 42 CFR 2
- Because his principal practice consists of providing drug/alcohol diagnosis, treatment, or referral for treatment, and he holds himself out as providing those services

Overview of Laws: 42 C.F.R. Part 2: Who Is Covered? (continued)

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What is a “disclosure”?

- Communication (oral or written) of information that identifies someone as having a past or current drug/alcohol problem or being a past or current patient in a drug/alcohol program
- Disclosure includes communications to people who already know the information



Continued

Overview of Laws

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How do HIPAA and 42 C.F.R. Part 2 Fit Together?



Overview of Laws: HIPAA and 42 C.F.R. Part 2

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HIPAA

- Health care provider, health plan, health care clearinghouse
- +
- Transmits health information electronically (covered transactions)
- =
- **Covered by HIPAA**

42 C.F.R. Part 2

- Program
- +
- Federally assisted
- =
- **Covered by 42 C.F.R. Part 2**

Overview of Laws: HIPAA and 42 C.F.R. Part 2

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HIPAA and 42 C.F.R. Part 2: Who must comply with both?

- **The vast majority of alcohol/drug treatment programs are covered by both**

Overview of Laws: HIPAA and 42 C.F.R. Part 2

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HIPAA and 42 C.F.R. Part 2: What happens if both apply?

- **General rule: Follow the law that gives patients *more* privacy protections**



Overview of Laws: HIPAA and 42 C.F.R. Part 2

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How does State law fit in?

- Same general rule: Follow the law that gives patients *more* privacy protections



Overview of Laws: HIPAA and 42 C.F.R. Part 2

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What does this mean for providers?

- Know which laws you are covered by
- Generally follow the law that provides the most privacy protection to patients



Overview of Laws: Exceptions to Rule Prohibiting Disclosure

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HIPAA and 42 C.F.R. Part 2

Ten exceptions to the general rule
prohibiting disclosure

42 C.F.R. Part 2 and HIPAA: Exceptions to General Rule

Permitted Disclosures

Internal
communications

No patient-identifying
information

Proper consent

Qualified service organization/
business associate agreement

Medical
emergency

Crime on program
premises or against
program personnel

Research/audit

Court order

Reporting suspected child
abuse and neglect

Overview of Laws: Exceptions to Rule Prohibiting Disclosure

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Ten Exceptions

1. Written consent
2. Internal communications
3. Medical emergency
4. Qualified service organization agreement
5. No patient-identifying information
6. Crime on program premises/against program personnel
7. Research
8. Audit
9. Court order
10. Reporting child abuse/neglect

Overview of Laws: Exceptions to Rule Prohibiting Disclosure

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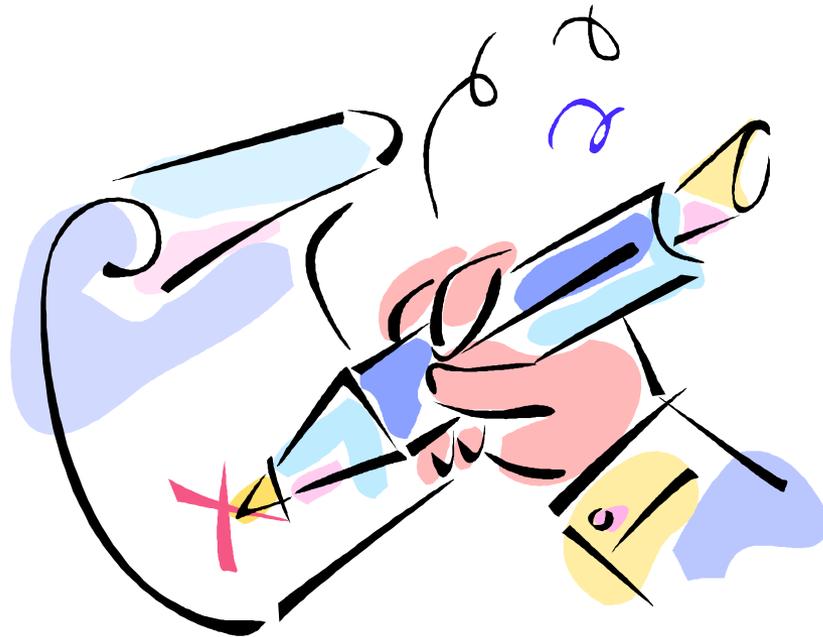
Ten Exceptions (continued)

- We will focus on the following four exceptions to the general rule prohibiting disclosure because they are most relevant to colocated and integrated services
- These are—
 - ▣ Exception 1: Written consent
 - ▣ Exception 2: Internal communications
 - ▣ Exception 3: Medical emergency
 - ▣ Exception 4: Qualified service organization agreement (QSOA)

Overview of Laws: Exceptions to Rule Prohibiting Disclosure

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Exception 1: Written Consent



Overview of Laws: Exceptions to Rule Prohibiting Disclosure

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Exception 1: Written Consent

- Most disclosures are allowed if patient signed a valid consent form (called “authorization” under HIPAA) that has not expired or been revoked
- The consent must adhere to proper format; otherwise, it is NOT sufficient!
- HIPAA: Provide patient with copy of consent



Proper Format for Consent

Overview of Laws: Exceptions to Rule Prohibiting Disclosure

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Exception 1: Written Consent

Proper Format for Consent to Release Information

Must be in writing!

1. Name/general designation of program making disclosure
2. Name of individual/entity receiving disclosure
3. Name of patient who is subject of disclosure
4. Purpose/need for disclosure
5. Description of how much and type of information will be disclosed



Continued

Overview of Laws: Exceptions to Rule Prohibiting Disclosure

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Exception 1: Written Consent

Proper Format for Consent To Release Information

Must be in writing!

6. Patient's right to revoke consent and any exceptions
7. Date/event/condition on which consent expires
8. Patient's signature
9. Date signed
10. HIPAA: program's ability to condition treatment, payment, enrollment, or eligibility on the consent



Overview of Laws: Exceptions to Rule Prohibiting Disclosure

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Written Consent: Note on 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
- Under 42 C.F.R. Part 2, the program must **always** obtain minor's consent for disclosure
 - ▣ Must also obtain parental consent for disclosure only if State law requires parental consent to treatment

Overview of Laws: Exceptions to Rule Prohibiting Disclosure

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Exception 1: Written Consent

Written Prohibition on Redisclosure

- **Rule:** Any disclosure made pursuant to written patient consent must be accompanied by a written statement that the information disclosed is protected by Federal law and that the recipient may not disclose it further unless permitted by the regulations
 - ▣ This is true even for verbal disclosures



Overview of Laws: Exceptions to Rule Prohibiting Disclosure

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Exception 1: Written Consent

Written Prohibition on Redisclosure (continued)

□ Language dictated by regulations:

“This information has been disclosed to you from records protected by Federal confidentiality rules (42 CFR part 2). The Federal rules prohibit you from making any further disclosure of this information unless further disclosure is expressly permitted by the written consent of the person to whom it pertains or as otherwise permitted by 42 CFR part 2. A general authorization for the release of medical or other information is NOT sufficient for this purpose. The Federal rules restrict any use of the information to criminally investigate or prosecute any alcohol or drug abuse patient.” (42 CFR § 2.32)

Overview of Laws: Exceptions to Rule Prohibiting Disclosure

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Exception 2: Internal Communications



Overview of Laws: Exceptions to Rule Prohibiting Disclosure

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Exception 2: Internal Communications

- OK to disclose information to—
 - ▣ Other **program staff**
 - ▣ Entity that has **administrative control** over the program (e.g., records or billing department of a general hospital program is part of)
- But only to the extent the recipient needs information in connection with provision of drug/alcohol services (purpose and amount)
- HIPAA: “minimum necessary”



Overview of Laws: Exceptions to Rule Prohibiting Disclosure

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Exception 3: Medical Emergencies



Overview of Laws: Exceptions to Rule Prohibiting Disclosure

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Exception 3: Medical Emergencies

- OK to disclose—
 - ▣ To medical personnel
 - ▣ To the extent necessary
 - ▣ To meet a bona fide medical emergency
 - ▣ Of the patient or any other individual



Overview of Laws: Exceptions to Rule Prohibiting Disclosure

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Exception 3: Medical Emergencies

- What is a **medical emergency**?
 - ▣ Immediate threat to health of individual AND
 - ▣ Requires immediate medical attention



Overview of Laws: Exceptions to Rule Prohibiting Disclosure

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Exception 3: Medical Emergency

- Who decides if there is a medical emergency?
 - Treating personnel (i.e., those treating the medical emergency)
 - Using professional judgment
 - NOT a computer system (e.g., health information organization clinical support function)



Overview of Laws: Exceptions to Rule Prohibiting Disclosure

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Exception 3: Medical Emergency

- When disclosure is made in connection with medical emergency, program must document in patient's records—
 - ▣ Name and affiliation of recipient of information
 - ▣ Name of person making disclosure
 - ▣ Date and time of disclosure
 - ▣ Nature of emergency



Overview of Regulations: Exceptions to Rule Prohibiting Disclosure

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Case Study: Medical Emergencies



- Betty, a patient at ABC drug treatment program, overdoses and lapses into a coma.
- Can ABC drug treatment program disclose Betty's information to the E.R. of a local hospital so it can treat her overdose?
- If so, can the E.R. doctor inform Betty's family that she is in treatment at ABC drug treatment program?

Overview of Regulations: Exceptions to Rule Prohibiting Disclosure

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Case Study Answer

- **Yes**, ABC program may disclose to the E.R. because this is a medical emergency.
- **Yes**, E.R. may disclose to Betty's family because once the information protected by 42 C.F.R. Part 2 was disclosed to medical personnel under the medical emergency exception, it lost its 42 C.F.R. Part 2 protection and may be redisclosed by the E.R. medical personnel as permitted by HIPAA.



Overview of Regulations: Exceptions to Rule Prohibiting Disclosure

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Exception 4: Qualified Service Organization Agreements (QSOAs)



Overview of Regulations: Exceptions to Rule Prohibiting Disclosure

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Exception 4: QSO/BA AGREEMENTS

- OK to disclose **without patient consent** to certain outside organizations that provide services to the program or its patients
 - 42 C.F.R. Part 2 calls these organizations **Qualified Service Organizations** (“QSOs”)
 - HIPAA calls these organizations **Business Associates** (“BAs”)



Continued

Overview of Regulations: Exceptions to Rule Prohibiting Disclosure

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Exception 4: QSO Agreements

- Examples of services provided by QSOs
 - Medical services, data processing, dosage prep, lab analyses, vocational counseling, patient transport, legal or accounting services, electronic storage of patient records, etc.



Continued

Overview of Regulations: Exceptions to Rule Prohibiting Disclosure

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Exception 4: QSO Agreements

Requirements of a QSO Agreement

- Program **must** enter into **written agreement** with the QSO, agreeing—
 - ▣ QSO is fully bound by 42 C.F.R. Part 2
 - ▣ QSO will resist an effort to obtain access to patient information except as permitted by 42 C.F.R. Part 2
 - ▣ The written agreement must contain certain elements required by 42 C.F.R. Part 2

Continued

Overview of Regulations: Exceptions to Rule Prohibiting Disclosure

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Exception 4: QSO Agreements

Requirements of a QSO Agreement

- If organization serving as QSO is also covered by HIPAA, must also meet requirements of a BA agreement
- NOTE: HITECH Act, passed in 2009, changed requirements for BAs and BA agreements—providers covered by HIPAA must therefore update their BA agreements to comply
 - For more information, see <http://www.hhs.gov/ocr/privacy/hipaa/understanding/index.html>

2. Colocated and Integrated Services

Colocated and Integrated Services

Questions

- When primary care and behavioral health care services are colocated or integrated, how do Federal and State privacy laws apply, and how can they work together to allow needed communications among health care providers?
- What challenges face providers involved in colocated and integrated services, and what solutions enable them to communicate effectively while still complying with applicable confidentiality protections?

Colocated and Integrated Services

Recap

- Privacy of health information is governed by Federal and State laws, including HIPAA and 42 C.F.R. Part 2
- Providers must understand these laws and how they interact to share patients' health information
- This is especially important for colocated and integrated services since sharing and coordinating information is a major part of care

Colocated and Integrated Services

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What are colocated/integrated primary care and behavioral health services?

Colocated and Integrated Services: What Are They?

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- The integration and coordination of primary health care and behavioral health care (i.e., mental health care and substance use disorder care)
- Common models
 - ▣ Behavioral health care provided in primary care setting
 - ▣ Primary health care provided in behavioral health care setting
 - ▣ Patient-centered medical homes and “health homes”

Colocated and Integrated Services: What Are They?

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- What is a patient-centered medical home?
 - ▣ A team-based clinical approach that includes the patient, his/her providers, and sometimes family members
- What is a health home?
 - ▣ Like patient-centered medical homes, but for—
 - Low-income patients (Medicaid)
 - With chronic medical conditions (e.g., substance use disorder)
 - ▣ Authorized by the Affordable Care Act: States can receive 90 percent Federal match for services not previously covered by Medicaid (e.g., coordination of care)
- NOT a single place or location—coordination of care

Continued

Colocated and Integrated Services: What Are They?

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- Centers for Medicare & Medicaid Services (CMS) established additional criteria for health homes, including—
 - Must provide mental health and substance use disorder services
 - Must coordinate and provide access to preventative services
 - Must link services with health information technology (“HIT”)

Colocated and Integrated Services

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How do privacy and confidentiality laws apply to colocated and integrated services?

Colocated and Integrated Services: How Do Privacy Laws Apply?

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Remember

- Most health care providers are covered by **HIPAA**, including—
 - ▣ Most primary health care providers
 - ▣ Most alcohol/drug treatment providers
 - ▣ Most mental health care providers

Colocated and Integrated Services: How Do Privacy Laws Apply?

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Remember

- Any provider that meets the definition of a “program” and is federally qualified must also follow **42 C.F.R. Part 2**

- This includes, for example—
 - ▣ Freestanding alcohol/drug treatment provider
 - ▣ Identified unit or medical personnel within a general medical facility
 - Recall that in a general medical facility, it is the unit or personnel that is the “program,” not the whole facility

Colocated and Integrated Services: How Do Privacy Laws Apply?

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Remember

- Many **State laws** add extra protections to certain medical information, such as—
 - ▣ Mental health
 - ▣ Reproductive health
 - ▣ HIV/AIDS
- Providers generally must follow whichever law gives patients the most privacy protection

Colocated and Integrated Services: How Do Privacy Laws Apply?

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Case Study

- Roger is a patient at Ansel Adams Drug Treatment Program. The program wants to bill Roger's insurance for his treatment.
- May the program bill Roger's insurance provider without getting Roger's written consent?



Colocated and Integrated Services: How Do Privacy Laws Apply?

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Case Study Answer

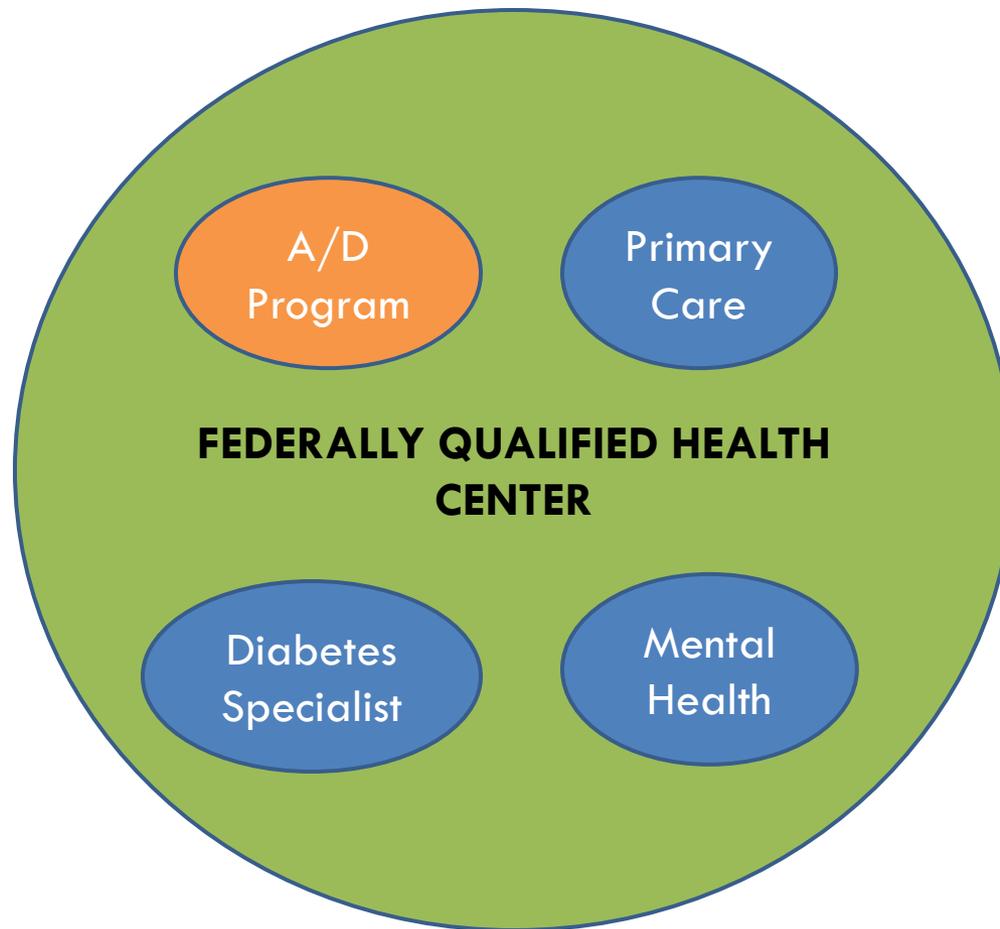


- **No.** The Program may **not** bill Roger's insurer without his written consent.
- Even though HIPAA allows disclosures without consent for payment purposes, 42 C.F.R. Part 2 does **not** have any payment exception.
- Billing Roger's insurer would disclose his protected information by identifying him as a patient in a drug/alcohol program, so the program **MUST** get written consent first!

Colocated and Integrated Services: How Do Privacy Laws Apply?

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Example: “program” within larger entity



Colocated and Integrated Services: How Do Privacy Laws Apply?

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Case Study

- Rothko Health, a federally qualified health center, provides various health services, including primary care and drug treatment. Providers in all Rothko's units conduct "SBIRT" (Screening, Brief Intervention, and Referral to Treatment).
- Does this mean Rothko is covered by 42 C.F.R. Part 2?



Colocated and Integrated Services: How Do Privacy Laws Apply?

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Case Study Answer

- It depends on which providers at Rothko are conducting the SBIRT.
- When a unit/provider within Rothko that is a 42 C.F.R. Part 2 “program” conducts SBIRT, the SBIRT services and all corresponding patient records are covered by 42 C.F.R. Part 2.
- When a unit/provider within Rothko that is not such a program conducts SBIRT, the services and records are not covered by 42 C.F.R. Part 2.

Colocated and Integrated Services: How Do Privacy Laws Apply?

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How can a “program” share information with colocated/integrated providers?

- Written patient consent
- Internal communications exception
- Medical emergency exception
- QSO Agreement (“QSOA”)

Colocated and Integrated Services: How Do Privacy Laws Apply?

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Remember: Patient Consent



- Patient can sign a **written consent** form, with all elements required by 42 C.F.R. Part 2, authorizing her alcohol/drug treatment providers (“program”) to communicate with her primary care (and/or other) providers
- Don’t forget: Program must provide the **Notice Prohibiting Redisclosure** when it discloses patient’s protected alcohol/drug information pursuant to consent

Colocated and Integrated Services: How Do Privacy Laws Apply?

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Remember: Internal Communications



- Under the internal communications exception, “programs” covered by 42 C.F.R. Part 2 may disclose information without patient consent to an entity with administrative control over the program, **to the extent** the recipient needs the information in connection with providing alcohol/drug services
- “Entity with administrative control” could include, for example, a records or billing department of a general medical facility

Colocated and Integrated Services: How Do Privacy Laws Apply?

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Remember: Medical Emergency



- If the patient's primary care physician (or other treating personnel) determines, in her professional judgment, that the patient is experiencing a medical emergency, the alcohol/drug treatment provider may disclose the patient's alcohol/drug information to the treating personnel without the patient's consent
- Don't forget: The "program" must document certain information in the patient's record when a disclosure is made in connection with a medical emergency

Colocated and Integrated Services: How Do Privacy Laws Apply?

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Remember: QSO Agreement



- A “program” can enter into a QSO Agreement with an outside organization providing services to the “program”—then may disclose patient information to the QSO without patient consent, though information shared by the “program” must be limited to that necessary for the QSO to provide the services
- Don’t forget: These are only **two-way** agreements!

3. Electronic Health Records (EHRs)...

...incorporating alcohol/drug treatment records into EHR systems

Electronic Health Records

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What are EHRs and EHR systems?

Electronic Health Records

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What are EHRs and EHR systems?

- What are electronic health records (“EHRs”)?
 - ▣ EHRs are electronic versions of patients’ paper charts

Electronic Health Records

What are EHRs and EHR systems?

- What are EHR systems?
 - A health care provider can have its own, internal EHR system to replace paper records
 - A provider with EHRs can also store its EHRs in an outside system, often run by a health information organization (“HIO”)
 - A provider with EHRs can share information via health information exchange (“HIE”)

Electronic Health Records

- Regardless of the type of EHR system in place, providers must be mindful of the requirements of 42 C.F.R. Part 2 when including alcohol/drug patient records

Electronic Health Records

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How can alcohol/drug treatment records (covered by 42 C.F.R. Part 2) be included in EHR systems?

Electronic Health Records: Including Alcohol/Drug Records

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- Remember the ways in which a 42 C.F.R. Part 2 “program” can share information with colocated providers:
 - ▣ Written patient consent
 - ▣ Internal communications exception
 - ▣ Medical emergency exception
 - ▣ QSO agreement

- These are the same ways alcohol/drug records protected by 42 C.F.R. Part 2 can be integrated into EHR systems with providers not covered by 42 C.F.R. Part 2

Electronic Health Records: Including Alcohol/Drug Records

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- What must providers consider when integrating alcohol/drug records into EHR systems?
 - System must be able to implement patients' consent choices
 - Consent form must comply with 42 C.F.R. Part 2 requirements
 - System must be able to comply with medical emergency requirements
 - System must be capable of implementing QSO/BA agreement limitations

Electronic Health Records: Including Alcohol/Drug Records

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Implementing patients' consent choices

- For alcohol/drug records, EHR system must be able to—
 - Ensure records are disclosed
 - Only pursuant to proper written consent
 - Only with amount/type of information listed on consent form
 - Only for purpose listed on consent form
 - Implement patients' revocation of consent
 - Ensure information ceases to flow when consent expiration is reached
 - Provide Notice Prohibiting Redisdisclosure with information disclosed

Electronic Health Records: Including Alcohol/Drug Records

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Consent Form Must Be 42 C.F.R. Part 2 Compliant

- Remember: Consent forms for disclosure of patient information protected by 42 C.F.R. Part 2 must contain certain elements (see earlier slides)
- Any consent form authorizing disclosure of alcohol/drug records through EHR system must comply with those requirements

Electronic Health Records: Including Alcohol/Drug Records

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Medical Emergency Requirements

- Remember: When information protected by 42 C.F.R. Part 2 is disclosed in connection with medical emergency, “program” must document certain information
- EHR system must be able to—
 - Notify the “program” when its patients’ records are disclosed in medical emergency
 - Capture information “program” is required to document in its records and include the information with the notification

Electronic Health Records: Including Alcohol/Drug Records

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Implement QSO/BA Agreement Limitations

- Remember: A QSO/BA agreement is a two-party agreement between the “program” and the QSO/BA; the QSO/BA cannot redisclose the information
- When alcohol/drug patient information is included in an EHR system pursuant to a QSO/BA agreement, the EHR system must have capability to ensure the information is not redisclosed without proper patient consent

Questions?

Areas in Which You Would
Like Further Training?

We would like your input on the following:

- **Please describe your interest/need for further information on the content presented today.**
Low _____ High

- **Please describe your interest/need for further information on the following topics:**

- **Privacy laws important for providers of colocated and integrated care, including health homes**
Low _____ High

- **Developing Qualified Services Organizational/Business Associate Agreements**
Low _____ High

- **Electronic medical records**
Low _____ High

- **Case studies describing HIPAA/42 C.F.R. challenges and solutions**
Low _____ High