Substance Abuse and Mental Health Services Administration

SAMHSA

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DEPARTMENT OF HEALTH & HUMAN SERVICES · USA

Behavioral Health is Essential To Health

Prevention Works

Treatment is Effective

People Recover

Substance Abuse and Mental Health Services Administration

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42 CFR Part 2

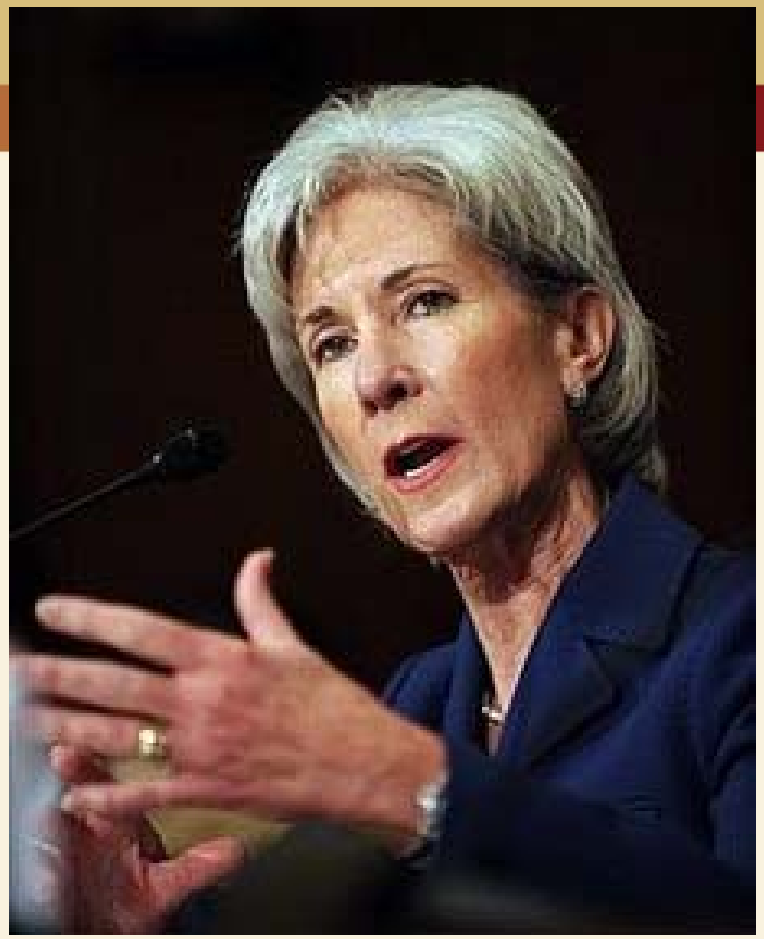
H. Westley Clark, M.D., J.D., M.P.H., CAS, FASAM
Director
Center for Substance Abuse Treatment
Substance Abuse Mental Health Services Administration
U.S. Department of Health & Human Services

2011 Health Information Technology Regional Forum
Austin, TX • June 16, 2011

President Barack Obama

"We'll computerize our health care system, at last, to save billions of dollars and countless lives as we reduce medical errors."

February 13, 2009
Washington, DC



Kathleen Sebelius
Secretary
U.S. Department of Health & Human Services

"The increased use of health information technology is a key focus of our reform efforts because it will help to improve the safety and quality of health care generally while also cutting waste out of the system."

September 29, 2009

Barriers or Opportunities

- "Health information exchanges (HIEs) and regional health information organizations (RHIOs) are forming the National Health Information Network's backbone."
- "Interoperability standards for electronic information exchange are under development. Yet the addiction treatment and behavioral healthcare fields are just beginning to review, discuss, and debate the effect of interoperable systems for electronic health record (EHR) exchange."

Source: Connors, B. MSW, Leipold, J. DBA, MBA (2009 July/August) The 42 CFR Part 2 and NHIN conundrum *Behavioral Healthcare* 29(7):52-53

Electronic Health Records & Confidentiality

- "Evolving health information technology (HIT) is dragging healthcare providers into a world in which confidentiality rules, designed when patient records were maintained almost universally in paper charts, either do not apply or are in serious practical conflict with electronic information exchange."

Source: Connors, B. MSW, Leipold, J. DBA, MBA (2009 July/August) The 42 CFR Part 2 and NHIN conundrum *Behavioral Healthcare* 29(7):52-53

EHR for Whose Benefit?

- "Thus, the free movement of electronic health information collides with privacy and security rules when interoperable electronic information exchange systems are required to comply with patient confidentiality standards."
- "This collision profoundly impacts addiction treatment providers, who function under the most restrictive confidentiality constraints."

Source: Connors, B. MSW, Leipold, J. DBA, MBA (2009 July/August) The 42 CFR Part 2 and NHIN conundrum *Behavioral Healthcare* 29(7):52-53

The Hippocratic Oath

➔The modern version of the Hippocratic Oath states:

"I will respect the privacy of my patients, for their problems are not disclosed to me that the world may know."

The Question of Privacy & Trust

- Doctors are supposed to be nosy. They're trained to peer into the patient's life, past and present, and ask sensitive, if not uncomfortable, questions
- However much people share personal information via Facebook or Twitter, the public remains jittery about losing control of personal health information.
- Any debate or discussion regarding patient privacy rights needs to keep in mind the physician-patient – or counselor-patient – relationship.

Ensuring Confidentiality and Trust

- Increased accessibility to health records raises the question of how to ensure patient confidentiality and trust.
- In order to achieve any level of systemic durability and success, electronic exchange efforts must establish trusting relationships with all participants, including patients. *(Melissa M. Goldstein, JD et al, 2010)*

Principles of Fair Information Practices

- Individual Access
- Correction
- Openness and Transparency
- Individual Choice
- Collection, Use, and Disclosure Limitation
- Data Quality and Integrity
- Safeguards
- Accountability

42 USC § 290dd-2 & 42 CFR Part 2

- The purpose of the statute and regulations prohibiting disclosure of records relating to substance abuse treatment, except with the patient's consent or a court order after good cause is shown, is to encourage patients to seek substance abuse treatment without fear that by doing so their privacy will be compromised.

Source: STATE of Florida v CENTER FOR DRUG-FREE LIVING, INC, 842 So.2d 177 (2003) at 181.

Clarifying 42 CFR Part 2

- Some believe that under the current statutory and regulatory framework physicians and case managers cannot access any information about an individual's substance use.
- Others believe that substance use disorder information regarding treatment covered by 42 USC 290dd and 42 CFR Part 2 is unnecessarily withheld from physicians, payers, health information exchanges, and health plans.

Clarifying 42 CFR Part 2 (cont'd.)

- Still others believe that the extra protections of 42 CFR Part 2 are critical to protecting the rights of persons with a history of substance abuse or substance use disorders who might otherwise face discrimination in the workplace or community due to that history or current treatment.

Non-applicability of Restrictions on Disclosure of 42 CFR Part 2

- The restrictions on disclosure in these regulations do not apply to communications between a program and a qualified service organization of information needed by the organization to provide services to the program.

Source: 42 CFR § 2.12 (c)(4)

Qualified Service Organization (QSO)

- (a) Provides services to a program, such as data processing, bill collecting, dosage preparation, laboratory analyses, or legal, medical, accounting, or other professional services, or services to prevent or treat child abuse or neglect, including training on nutrition and child care and individual and group therapy, and

Source: 42 CFR § 2.11

QSO Written Agreement

- (b) Has entered into a written agreement with a program under which that person:
  - (1) Acknowledges that in receiving, storing, processing or otherwise dealing with any patient records from the programs, it is fully bound by these regulations; and
  - (2) If necessary, will resist in judicial proceedings any efforts to obtain access to patient records except as permitted by these regulations.

Source: 42 CFR § 2.11

Critical Health IT Questions

- 42 CFR Part 2 and other regulations provide the ground rules, but how those rules are applied to ensure effective treatment of substance use and mental health disorders needs to be determined through careful analysis.
  - Who needs what information when?
  - Who determines who needs what Information when?
  - How should psychotherapy notes be treated – as part of the patient record?

Thank you.