Drug and Alcohol Records: Confidential Treatment Under 42 C.F.R. Part 2

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Protected Health Information

- General health records
  - General mental health records
    - Health records pertaining to diagnosis/treatment of drug and alcohol abuse
      - Health records for minors pertaining to diagnosis/treatment of drug and alcohol abuse
- HIPAA & HITECH
- 42 C.F. R. Part 2
- Indiana law defers to Federal law
Who is Required to Follow Part 2 Requirements?

• Applies to facilities [or portion(s) of facilities] that meet the definition of a “program” under Federal law

• Two-pronged test
An individual or entity other than a general medical facility which holds itself out as providing and provides alcohol/drug diagnosis, treatment, or referral for treatment

or

An identified unit within a general medical facility which holds itself out as providing and provides alcohol/drug diagnosis, treatment, or referral for treatment

or

Medical personnel or other staff in a general medical care facility whose primary function is the provision of alcohol/drug diagnosis, treatment, or referral for treatment and who are identified as such
“Holds itself out...” and “General Medical Facility”

- Not specified in regulations
- Guidance from SAMHSA
What is a “Disclosure”? 

- Communication of records containing “patient identifying information”
- “Patient identifying information”
- Defining “patient”
Authorized Disclosure: Consent

• Programs may disclose most patient information if patient signed consent that complies with Part 2 and hasn’t expired or been revoked

• Requirements for proper consent

• Re-disclosure by receiving entity
Authorized Disclosure: Qualified Service Organization Agreement

• What is a Qualified Service Organization Agreement?

• Examples

• Outside organization agrees to specific requirements

• Joint QSO/BA Agreement
Exception: Medical Emergency

• May disclose to medical personnel if:
  – Immediate threat to an individual’s health
  – Requiring immediate medical intervention

• Documentation requirements
Exception: Internal Communications

- Within program itself
- To entity with administrative control
  - Needs information to provide the drug/alcohol services
Exception: Crime

- Crime committed/threatened on the program’s campus or against program’ personnel
- By a program patient
- No duty to warn imposed by Part 2
- Indiana duty to warn
Exception: Court Order

- Subpoena alone = not enough
- Court order alone = not enough
Exception: Child Abuse/Neglect

- Initial report to comply with state law
- Indiana law
Exception: Audit/Evaluation

- Researchers

- Auditors/evaluators may only re-disclose:
  - Back to program
  - Pursuant to court order to investigate/prosecute the program
  - To government agency overseeing Medicare/Medicaid audit/evaluation
Minors’ Medical Records

- Minor controls authorization for disclosure
- Indiana law allows minors to receive medical treatment for drug/alcohol abuse without notifying or obtaining consent of parent/guardian
- However, Indiana law is contradictory where it allows notification to the parent/guardian at the discretion of the facility
- Best practice
Does my facility need to treat its drug and alcohol treatment records with Part 2 confidentiality?

It depends...
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