Health Law and Policy
Institute for Health Policy and Practice

SUBSTANCE USE DISORDERS CONFIDENTIALITY BOOT CAMP FIRST IN- PERSON SESSION

JUNE 6, 2017

University of New Hampshire School of Law

Rich Conference Room

Today's Agenda

- Welcome – Goals for the day
- Today's Agenda
  - Boot Camp Timeline
  - Introductions
  - 42 CFR Summary Level Set/ Introduction to Exercise
  - Case Study of Expansion in Intensive SUD Treatment Options D3
  - Break
  - Group Work – D3 Inbound
  - Group Work – D3 Outbound
  - Debrief & Next Steps

Privacy Boot Camp Timeline

May 23rd Webinar
Intro to 42 CFR Part 2

July 13th Webinar

Home Work Scan of Entities with part 2 providers

June 6th
In-Person Session
- Compliance Update
- Identifying "Part 2" Providers
- Identify Part 2 Patients and Patient Flow

June 29th
In-Person Session
- Review project patient flows
- Assess Medical Record Capacity and Part 2 Record Keeping
- Clarify Types of Forms and Policies Necessary for IDN based on Part 2 Providers

July 17th
In-Person Session
- Assess Need for Revised BAA/QSO Agreements
- Finalize Forms and Trouble Shoot Individual IDN Participant compliance and implementation issues
- Plenary Session Presentation of Overall Recommendations

Introductions

- Name
- IDN Region
- Brief Overview on Projects
- One Proud Professional Accomplishment

42 CFR Summary Level Set

Lucy Hodder, JD, Director, Health Law and Policy

Part 2 Rules Were Recently Amended

- First substantial update since 1987 to Confidentiality of Alcohol and Drug Abuse Patient Records regulations (Part 2) – designed to:
  - Encourage care integration and information exchange
  - Update consent form requirements
  - Address healthcare technology changes
  - Address prohibition against re-disclosures and accounting for disclosures
  - Address research uses of data
  - Address security of records
- Proposed amendments published on February 9, 2016; comment period ended on April 9, 2016
- Final rule published January 18, 2017; effective February 17, 2017 (delayed by Trump administration to March 2017)

Overview of Applicable Privacy and Confidentiality Law

Jurisdiction	Statute/Regulation	Scope
Federal	**HIPAA Privacy Rules**	Protects individually identifiable health information maintained by providers, payers and their contractors from disclosure. Heightened protections for psychotherapy notes.
	42 CFR Part 2	Protects the confidentiality of substance abuse patient records from disclosure without express patient consent
New Hampshire	**RSA 332-I:1**	Medical information in the medical records in the possession of any health care provider shall be deemed to be the property of the patient.
	RSA 318-B:12-a	Protects reports and records of treatment of minors for drug dependency as confidential.
	RSA 330-A:32	Protects communications between mental health practitioners and patients as privileged.
	RSA 330-C:26	Protects information held by a licensed alcohol or other drug use professional performing substance use counseling services unless permitted by 42 CFR Part 2.

HIPAA ≠ Part 2 – Who is Covered?

HIPAA

1. Health care providers, both physical and behavioral health
2. Health plans
3. Health care clearinghouses
4. Business associates

Part 2 Program (2.11)

1. An individual or entity (or a unit in a general medical care facility) that holds itself out as providing and does provide SUD treatment, diagnosis or referral; or
2. Medical personnel or staff in a general medical facility whose primary function is the provision of such services and who are identified as SUD providers; and
3. That are federally "assisted"

Who is a Part 2 Provider/Program (2.11)

- Medical personnel or staff:
  - Holds herself out as providing and does provide SUD treatment, diagnosis, or referral (t/d/r); or
  - In a general medical facility whose primary function is SUD t/d/r; or
  - Is a NH Licensed LADC
- An entity (other than a general medical facility) that holds itself out as providing SUD t/d/r
- An identified unit within a general medical facility that holds itself out as providing and does provide SUD t/d/r

Example: A family practitioner screens a patient using SBIRT and refers the patient to a SUD provider for follow-up assessment. Conducting SBIRT does not make the practitioner a Part 2 program.

Federally assisted means (2.12(b)):

- Recipients of federal financial assistance
- Licensed, certified, registered, or authorized by the federal government to conduct business
- Tax-exempt through the IRS
- Conducted by the fed., state, or local gov. which receives fed. funds that could be used for SUD programs
- Exception: Department of Veterans Affairs (doesn't cover their records)

HIPAA v. Part 2 – What information is covered?

HIPAA

- All individually identifiable health information
- Psychotherapy notes documenting or analyzing a conversation during a private counseling session or group session must be maintained separately.

Part 2 Records (2.12)

Information, whether or not recorded, which:

- Would identify a patient as a SUD patient either directly or by verification
- Is any SUD patient information created, received or acquired *by a Part 2 program* for the purpose of treating alcohol or drug abuse, making a diagnosis for treatment, or making a referral for that treatment.

Who is a Part 2 Patient?

- A patient is any individual who has applied for or been given a diagnosis, treatment or referral for treatment for a SUD **at a part 2 program.** (2.11)
- ***Treatment*** means the care of a patient suffering from a substance use disorder, a condition which is identified as having been caused by the SUD or both, in order to reduce or eliminate the adverse effects upon the patient.

HIPAA v. Part 2 – When are disclosures permitted?

HIPAA

- With a patient's valid verbal or written authorization
- After a patient receives notice of the provider's privacy policy, a covered provider may disclose health information for the purposes of:
  - Treatment;
  - Payment;
  - Health care operations; and
  - Other purposes as consent authorizes

Part 2

- **Express written consent**
- Internal admin communications if direct admin control (2.12(c)(3))
- Medical emergency
- Qualified service organization agreement
- De-identified information
- Crime on program premises
- Research
- Audit by CMS
- Court order
- Reporting child abuse/neglect

Questions So Far

Question

- Who is a Part 2 Program?

Question

- Who is a Part 2 patient?

Question

- Are Part 2 records being disclosed or re-disclosed?

Part 2 Requirements

I. Notice of privacy policies that meet Part 2 requirements

II. Compliant consent forms

III. Non re-disclosure notices when Part 2 information disclosed

IV. Qualified Service Organization Agreements when necessary

Part 2 Notice Requirements

Policies and Procedures (2.16)

- Part 2 program or holder of Part 2 information
- Must have formal policies and procedures
- To reasonably protect against unauthorized uses and disclosures of patient identifying information
- Should be included in practices general privacy policies and procedures

Notice to Patients of Part 2 Rights (2.22)

- Notice must be given at the time of admission to a Part 2 program (or as soon thereafter as the patient has capacity)
- Notice of the federal law and regulations protecting privacy
- A summary in writing of the federal law and regulations
- Must include the "required elements" set forth in Section 2.22
- Can include state law information

Qualified Services Agreement Exception (2.14(c)(4)

- A QSO is like a business associate
- Provides services to a Part 2 program, such as data processing, professional services or **population health management** (2.11)
- The QSO must enter into an agreement with the Part 2 program
- The agreement must acknowledge the QSO's obligations to comply with Part 2
- Part 2 program can only share what's necessary.

Example: A Part 2 program can enter into a QSO agreement with a locum tenens physician or community provider covering call for the practice.

Medical Emergency

(new 2.51)

- *Patient identifying information may be disclosed by a Part 2 program to medical personnel to the extent necessary to meet a bona fide medical emergency in which the patient's prior consent cannot be obtained.*
- *Conditions:* Part 2 Program must document in the patient's record to whom and by whom the disclosure was made and why.

Example: A mental health center providing SUD services to a patient could inform an ER physician at the hospital whether an ER patient who is apparently overdosing is on Suboxone.

Part 2 Consents

- Consent form must be in writing
- Clearly explain your integrated delivery model of practice
- Identify Part 2 providers as the entity making the disclosure
- Describe how treatment records will be disclosed for the purpose of treatment and coordinated care in an integrated care setting
- Clarify "*to whom*" the disclosure will be made
- Let the patient know of his/her right to revoke
- Identify a date the consent expires – can be longer than a year!
- Be signed and dated by the patient

To Whom? (2.31)

Can Name [Entity]

- If disclosure is to a treating provider
- If disclosure is to treating providers through a Health Information Exchange
  - *However*, HIE must provide patient with a list of the entities to whom Part 2 records are provided if requested
- If disclosure is to a third party payer

Must Name [Individual]

- If the recipient entity **does not** have a treating provider relationship

Every Disclosure Must Include Special Non-Disclosure Language

"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 in this record that identifies a patient as having or having had a substance use disorder either directly, by reference to publicly available information, or through verification of such identification by another person unless further disclosure is expressly permitted by the written consent of the individual whose information is being disclosed 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 (see 2.31). The Federal rules restrict any use of the information to investigate or prosecute with regard to a crime any patient with a substance use disorder, except as provided at Sections 2.12(c)(5) and 2.65."

2 - Questions So Far

Question

- Notice?
- Polices and procedures?

Question

- Consent?
- To whom?

Question

- Notice of non-re-disclosed language with every disclosure?

Case Study of Expansion in Intensive SUD Treatment Options D3

Lucy Hodder, JD, Director, Health Law and Policy

Jacqui Abikoff, LICSW, MLADC, IDN Region 5

Objectives

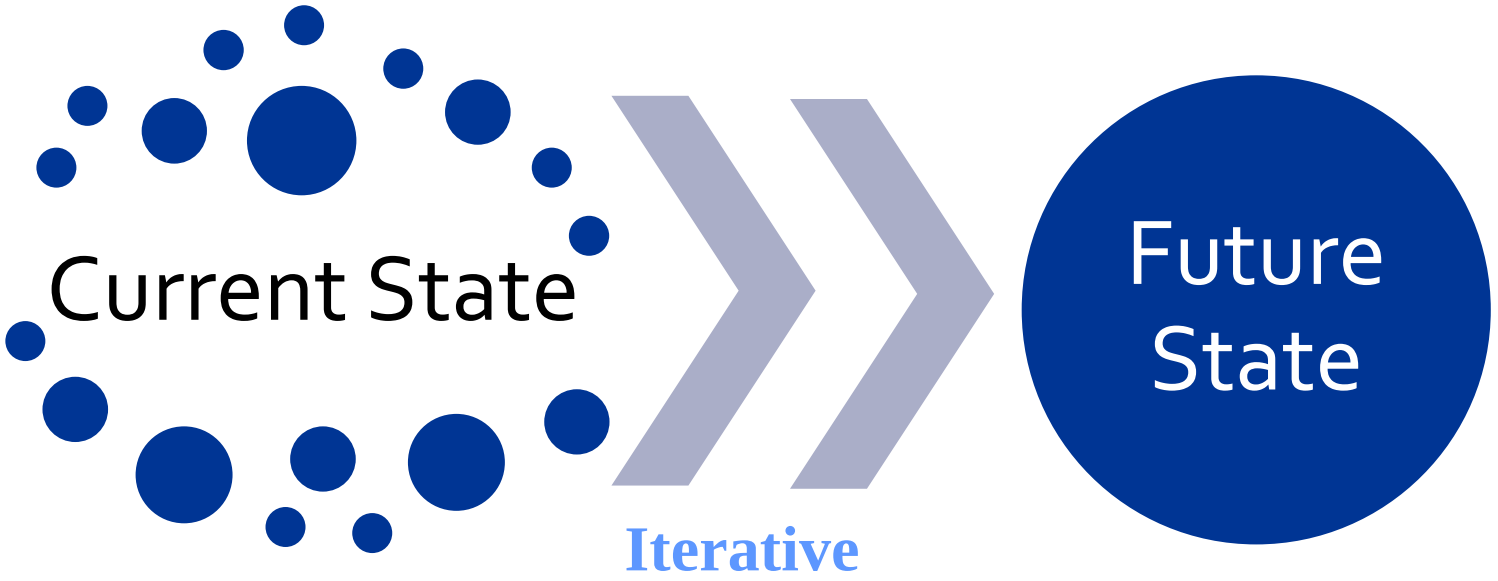
- Develop patients flows to and from new or enhanced/improved SUD DSRIP services to establish next steps in developing consents
- Determine "to whom" Part 2 information will be disclosed or re-disclosed and for what purpose
- Provide an example of a patient process flow for DSRIP projects
- Model group work for D3 Project with IDN 5

BREAK

Strategies to Achieving Success

- Communicate purpose
- Agree on ground rules and processes
- Parking lot items
- Manage time
- Acknowledge differences
- Follow the agenda and document decisions
  - Share key information with IDN colleagues between meetings.

Workflow Analysis



Identify redundancy, gaps, engage stakeholders

Share key information efficiently, reduce waste, rework and missed opportunity

Directions

- Focus will be on Project D3 Inbound/Outbound
- Break into IDN work groups (stations assigned with facilitator)
- Assign roles (note taker, time keeper, leader, spokes person)
- Identify your project and goal
- Utilize worksheets and process tools

GROUP WORK
D3 INBOUND

10:25 am – 10:55 am

GROUP WORK
D3 OUTBOUND

11:10 am – 12:00 pm

DEBRIEF

NEXT STEPS

Homework

June 29th Next In Person Session

QUESTIONS