



Privacy and Behavioral Health: Much More Than HIPAA

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Start with HIPAA Privacy Rule



- HIPAA Privacy Rule
 - Protects all PHI – including medical information, mental health information, substance abuse treatment information
 - Applies only to covered entities (and their business associates)
- Protected Health Information cannot be used or disclosed without an authorization unless the use or disclosure is for:
 - Treatment purposes
 - Payment purposes
 - Health care operations purposes
 - Fits another exception under the Privacy Rule
- Health Care Operations
 - Includes uses and disclosures for “sale, transfer, merger, or consolidation....” and due diligence related to the transaction

42 CFR Part 2



- Confidentiality of Alcohol and Drug Abuse Patient Records
 - Applies to
 - federally funded individuals or entities that
 - “hold themselves out as providing, and provide, alcohol or drug abuse diagnosis, treatment or treatment referral” including units within a general medical facility that hold themselves out as providing diagnosis, treatment or treatment referral
 - 42 CFR § 2.11
 - Overriding objective
 - provide protection to individuals undergoing treatment for alcohol or drug abuse, *i.e.*, to prevent the disclosure of information that will identify the individuals as receiving those services

42 CFR Part 2



- No disclosure without written consent
 - A treatment program may include a unit of a hospital if the unit “holds itself out as providing, and provides, alcohol or drug abuse diagnosis, treatment or referral for treatment” services
 - The requirements of the consent form are rather stringent
- Limited exceptions to this requirement
 - Emergencies
 - Disclosures to an entity with direct administrative control
 - Disclosures to a “qualified service organization”
- Not all information collected falls under protection
 - Treatment for hypertension likely not- but treatment for cirrhosis likely would

42 CFR Part 2



- Proposed Regulations issued on February 9, 2016
 - Clarification of definitions
 - Recognition of impact on population health activities
- Still strict disclosure limitations

42 CFR Part 2



- Impact on diligence
 - Will have very limited access to some information
 - Want confirmation that entity has processes in place to reflect Part 2 requirements

- Impact going forward
 - Importance of processes

State Mental Health Laws



- State mental health and/or substance abuse laws
 - Regulate entities even if not captured under HIPAA and/or 42 CFR Part 2
 - Many states reference 42 CFR Part 2 as standard for protection of information for alcohol and substance abuse treatment facilities
 - Many states have similar protections for mental health information
 - DC law just modified to allow disclosures of mental health records for treatment purposes
 - Consent for other disclosures limited to one year
 - Impact on HIEs and population health management
- Impact on diligence
 - May impact access to information
 - Confirmation target understands state law requirements and has processes in place

Questions?



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Behavioral Health Crash Course Series



- **Corporate Behavioral Healthcare: "Not So Fast"**
March 15 at 2:00 - 2:15 p.m. ET
Kevin Ryan
- **Mental Health Parity Implementation: Are We There Yet?**
March 22 at 2:00 - 2:15 p.m. ET
Lesley R. Yeung
- **Managed Care and Behavioral Health**
March 29 at 2:00 - 2:15 p.m. ET
Jackie Selby

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Thank you.