

Overview of HIPAA for Substance Abuse & Social Work Professionals

Dismas House of Kansas City, Inc.
Professional Ethics Training

About the presenter...

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 - 23 years of experience, most of which has been in health care and/or nonprofit service
 - 3 years working for the Missouri Department of Health
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 - 6 years of experience working with Truman Medical Centers in the Office of Public Relations
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Objectives:

- Provide a working definition of HIPAA
- Brief overview of the law & consequences
- Review HIPAA's relevance and application to the field of substance abuse

✓ Working Definition of HIPAA

Working Definition of HIPAA

Health Insurance Portability & Accountability Act

- HIPAA was enacted by Congress in 1996, and became law July 1, 1997.
- It was designed to improve effectiveness and efficiency in the health care delivery system, creating portability and continuity of health insurance coverage
- It also created consequences for those who do not apply with the regulations established in the act.
- It protects insurance coverage for workers and their families when they lose or change jobs
- It promotes the use of medical savings accounts, access to long-term care services and simplify the administration of health insurance

HIPAA

- The Privacy Rule, published in 2000 and compliance enforced in 2003
- Security Rule, published in 2003, compliance enforced in 2005

The Privacy Rule

- Determines the following:
 - Who is required to comply with HIPAA –
 - Covered Entities (CEs): Healthcare Providers, Healthcare Clearing Houses and Health Plans
 - Business Associates
 - What is protected
 - Protected Health Information - 18 identifiers
 - How health information can be used and under which circumstances
 - Coordinating Care
 - Healthcare Payments
 - Healthcare Operations*
- * Healthcare includes mental health services.

Protected Health Information (PHI)

- Under HIPAA, protected health information is **any information about health status, provisions of health care or payment for health care** that can be linked to a specific individual.
 - Includes any part of the medical record, including attendance, participation, diagnosis
 - Includes payment history

Part 2 and the Privacy Rule

Covered Entities must comply with both

42 CFR PART 2

- Programs may not use or disclose any information about any patient unless the patient has **consented in writing** (on a form that meets the requirements established by regulations).
- ***Any disclosure must be limited to the information necessary to carry out the purpose of the disclosure.***

THE PRIVACY RULE

- The Privacy Rule permits uses and disclosures for “treatment, payment and health care operations” as well as certain other disclosures without the individual’s prior written authorization. Disclosures are not otherwise specifically permitted or required by the Privacy Rule must have an authorization that meets certain requirements. With certain exceptions, **the Privacy Rule generally requires that uses and disclosures of PHI be the minimum necessary for the intended purpose of the use or disclosure.**

Subpoenas & Court Ordered Disclosures

- Part 2 & The Privacy Rule seem to be in contradiction to each other as each has different requirements.
- Protect your agency and ethical obligations by complying with both.
 - Obtain a written release of information that complies with Part 2 or the court order denoting compliance with Part 2.

What's the Difference Between Consent and Authorization

CONSENT

- The Privacy Rule does not require a covered entity to obtain consent for uses and disclosures of PHI for treatment, payment and health care operations.
- CEs may obtain consent for these purposes, but it is not required.
 - See Permitted Exchange for Treatment and Healthcare Operations Handout

AUTHORIZATION

- Authorization is required for the sharing of information that is otherwise not allowed by the Privacy Rule.
 - Reporting information to DFS, Courts or DOC requires authorization.
 - Authorization must include:
 - Description of PHI to be used/disclosed
 - Person/entity authorized to make disclosure
 - Person/entity to whom information may be disclosed
 - Expiration Date
 - Purpose of Disclosure

Minors in Treatment

- A minor in treatment must sign a consent form to release information even to his/her parent or guardian (42CFR S2.14)
- Recommendation is to obtain the parent's consent before providing treatment to a minor. Requirements vary by state.

Child Abuse/Mandated Reporters

- Part 2 allows programs to comply with state laws that require the reporting of child abuse and neglect. It is limited to the **initial report**.
- Part 2 limits does not allow programs to respond to follow-up requests or subpoenas, unless the patient has signed a consent form or the court has issued an order that complies with Part 2.

Revocation of Consent

- Patients may revoke their consent orally according to 42CFR, and the Privacy Rule requires that revocation be completed in writing.
 - Substance Abuse programs must honor oral revocations, but may want to obtain written revocation and at a minimum document the oral revocation in the client's record.

Crimes On Program Premises or Against Program Personnel

- Part 2 permits programs to disclose limited information to law enforcement officers if they are directly related to a crimes or threats to commit crimes on the program premises or against program personnel and must be limited to the circumstances of the incident, patient's status, name, address and last known whereabouts. See 42 CFT S.12 c5.
- The Privacy Rule permits programs to report PHI that in good faith constitutes evidence of a crime that occurred on the program's premises.

Medical Emergencies

- Part 2 allows patient identifying information to be disclosed to medical personnel who have a need for the information for the purposes of treating a condition that poses an immediate threat or requires immediate medical intervention.
- Information must be limited to the information required for treatment.
 - Disclosure must be documented in the patient's records.

Substance Abuse Treatment Recommendations & Requirements:

- Recommendation:
 - Provide a written authorization form for release of information.
 - Make sure your consent form complies with 42CFR.
 - Keep a copy of the signed consent for form six years.
- Requirement
 - Provide each consumer with a Notice of Privacy Practices upon their engagement with program. Consumers are not required to take the notice, but acknowledge that the privacy practices have been made available.
 - Dismas House of KC Front Desk Staff: Make sure that copies are available.
 - Sample Privacy Practices for other agencies included in toolkit.

✓Consequences & Fines

HIPAA Violations and Fines

- Penalties range from \$100 per violation to \$50,000 per violation with a maximum of \$1.5 million in fines.
- Covered entities and specified individuals who knowingly obtain or disclose individually identifiable health information face a fine of up to \$50,000 as well as imprisonment for up to one year.
 - See University of Mississippi \$2.75 million settlement
 - See 10 Common HIPAA Violations
 - See HHS Case Examples

UMMC Investigated After Theft of Unencrypted Laptop Computer

- Hot on the heels of the 2.7 million HIPAA breach settlement with Oregon Health & Science University comes news of another multi-million-dollar settlement with another university.
- The Department of Health and Human Services' Office for Civil Rights announced yesterday that University of Mississippi Medical Center (UMMC) has agreed to settle alleged HIPAA violations and will pay a financial penalty of \$2.75 million. UMMC has also agreed to adopt a corrective action plan (CAP) to bring privacy and security standards up to the level required by HIPAA.

UMMC SETTLEMENT

- The settlement stems from a breach of patients' protected health information (PHI) in 2013. A laptop computer issued to UMMC's Medical Intensive Care Unit (MICU) was discovered to be missing. The laptop computer contained the PHI of 500 patients. The data were not encrypted, although the laptop computer was password protected. The laptop is believed to have been stolen by a visitor who had asked about borrowing one of MICU's laptops

UMMC SETTLEMENT

- OCR conducted an investigation into the breach and discovered the exposure of 500 patients PHI was one of the least worrying issues. Potentially much more serious was the failure of UMMC to adequately secure its wireless network from external access. Investigators discovered 67,000 files were stored in an active directory, which included 328 files containing ePHI. A generic username and password had not been changed, which could have been exploited to gain access to the data of 10,000 patients that were stored on one of UMMC's network drives.

HIPAA Violations and Fines

- Offenses committed under false pretenses allow penalties to be increased to \$100,000 with up to five years in prison.
- Offenses committed with the intent to sell, transfer or use individually identifiable health information for commercial advantage, personal gain or malicious harm permit fines of \$250,000 and imprisonment for up to 10 year.

HIPAA Protection Begins When...

- Part 2 protects all information about any person who has applied for or been given a diagnosis or treatment for alcohol or drug abuse .
- Information is subject to the Privacy Rule if it is individually identifiable information, created, received or maintained by a covered entity. Former patients and deceased patients are protected under Part 2 and the Privacy Rule.

Practices & Content to consider for your agency's HIPAA toolbox:

- Release(s) of Information signed by the client
- Confidentiality agreement
 - Staff and volunteers
- Business Associate agreement
 - Anyone who has access to your client data/records
- Posted and signed privacy practices
- Secured medical records
- Secured fax machine
- Encrypted email capabilities

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**Let's discuss real life application
of HIPAA for substance abuse,
corrections and/or social work
professionals.**

Case Analysis

- Design an intervention considering the following:
 - The task/priorities at hand
 - What actions should be taken?
 - Your professional and legal obligations?
 - What are your ethical reporting responsibilities?
 - What are the treatment considerations?
 - What is your agency's policy?
 - What are the HIPAA considerations?
 - Avoid personal or agency fines

Questions/Comments?