Proposed Changes to the Substance Use Privacy Rules: Overview and Discussion with State Policymakers

Webinar will start at 4:00 PM, ET
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Proposed Changes to the Substance Use Privacy Rules: Overview and Discussion with State Policymakers

March 17, 2016, 4:00 – 5:00 PM, ET
Agenda

• Welcome & Introductions

• Overview: Karla Lopez

• Discussion with State Policymakers: Dr. Joe Parks, MO & Flo Stein, NC

• Question & Answer
Logistics for Today’s Webinar

- Use the chat box on your screen to ask a question or share a comment
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Today’s Speakers

**Karla Lopez**, Staff Attorney, Legal Action Center

**Dr. Joe Parks**, Director, MO HealthNet Division, Missouri Department of Social Services

**Flo Stein**, Deputy Director, Community Policy Management Section, Division of Mental Health, Developmental Disabilities and Substance Use Services, North Carolina Department of Health and Human Services
TODAY’S PRESENTATION:

1. Background: 42 CFR Part 2
2. Background: Push for Modernization
3. Overview of Rulemaking Process
BACKGROUND: 42 CFR PART 2

- 42 CFR Part 2 = federal regulations governing confidentiality of alcohol/drug patient records

- Became law in 1970s (much older than HIPAA)

- Purpose: Ensure people are not made more vulnerable to negative consequences as a result of seeking alcohol/drug treatment
What negative consequences?

- Loss of employment
- Loss of housing
- Loss of child custody
- Discrimination by medical professionals & insurers
- Arrest, prosecution, incarceration
42 CFR Part 2 is more protective of patient privacy than HIPAA, since substance use disorders (SUD) have unique negative consequences.

HIPAA allows many disclosures without patient consent; 42 CFR Part 2 requires patient consent for most disclosures of SUD information (with exceptions, e.g., medical emergencies).

42 CFR Part 2 also has prohibition on re-disclosure (unless patient consents).
BACKGROUND: PUSH FOR MODERNIZATION

- Changing health care environment
  - Electronic health records (EHR) & health information exchange (HIE)
  - Integrated care of SUD & physical health (e.g., health homes, ACOs)
  - More data flowing for research
BACKGROUND: PUSH FOR MODERNIZATION

- SAMHSA issued FAQs in 2010 & 2011 to clarify questions arising from changing health care environment

- SAMHSA held Listening Session in 2014 & collected comments

- Proposed Rule to update the regulations released Feb. 9, 2016
RULEMAKING PROCESS: OVERVIEW

- Federal agencies, like HHS/SAMHSA, interpret laws passed by Congress & signed by President by issuing rules/regulations—this is called rulemaking.
- Rulemaking must be open & public process.
- New rulemaking can be prompted by various things, such as new technologies.
RULEMAKING PROCESS: OVERVIEW

- Agency issues a Proposed Rule and gives the public a certain amount of time to comment.

- Agency considers comments received and then issues a Final Rule.
  - Agency may issue an Interim Final Rule to solicit more comments from the public before issuing a Final Rule.

- Final Rule must be followed as part of the law.
PROPOSED RULE – 42 CFR PART 2

- SAMHSA issued Proposed Rule amending 42 CFR Part 2 on Feb. 9

- SAMHSA struck appropriate balance between maintaining patient control/ confidentiality and making it easier for patients to share info

- Public has 60 days to comment—until April 11, 2016 at 5pm

- All stakeholders should comment!
Consent

- New option for general designation in “to whom” section of consent form
- Limited to those who have “treating provider relationship” with patient
- Can include past, present, and/or future treating providers
- Example: Consent to HIE & “all my treating providers” (who are members of the HIE)
PROPOSED RULE – 42 CFR PART 2: MAIN POINTS

Consent, cont’d....

- Prohibition on re-disclosure remains
- “From whom” section of consent form would now need to name specific individual/entity
- New patient right: Can request & receive list of individuals/entities to whom their info has been disclosed pursuant to a general designation consent
Research

- Changes make it more consistent with HIPAA research requirements (e.g., Institutional Review Board)

- Maintains core protections of 42 CFR Part 2 (including prohibition on re-disclosure)
PROPOSED RULE – 42 CFR PART 2: MAIN POINTS

Qualified Service Organizations (QSO)

- Proposed Rule adds “population health management” to list of services QSOs can provide to SUD programs
- Cannot use Qualified Service Organization Agreement (QSOA) for “care coordination” (patient treatment component – should use consent)
- Can use QSOA for “medical staffing services” but not “medical services” (should get consent to make disclosures for treatment purposes)
Medical Emergency

- Patient info can be disclosed w/o consent to medical personnel to meet a “bona fide medical emergency in which the patient’s prior consent cannot be obtained.”
- Previously could be disclosed w/o consent “for the purpose of treating a condition which poses an immediate threat to the health of any individual and which requires immediate medical intervention.”
Security of Records

- Updated—more in line with HIPAA.
PROPOSED RULE – 42 CFR PART 2: MAIN POINTS

- Remember: Comments are due by 5pm on April 11, 2016

- Legal Action Center will be circulating a template you can use to submit comments

- Subscribe to our email list at www.lac.org / Follow us on social media
Discussion with Policymakers

Submit questions and comments in the chat box on the bottom left
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