Navigating Privacy Requirements When Integrating Mental Health, Substance Use Disorder and Primary Care Services

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About this Session

- Successfully providing co-located and integrated services depends on timely sharing of client information—but there is no "one size fits all" approach.
- Understanding state and federal privacy laws is key when developing an integration program for behavioral health and primary care services.
- Today, we'll highlight key privacy issues and share practical lessons learned from our first-hand experience with integrated services.

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Agenda

- Introductions
- Background
- Reviewing the Legal Landscape
- Discussing Case Examples
  - Co-Locating Primary Care with Mental Health and SUD Services
  - Medical-Legal Partnerships
  - Embedded Mental Health Professional in a Classroom
- Wrap-up

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About Us

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Elizabeth Winchell

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Background: Why integrate services?

- Behavioral and physical health problems are interconnected.
  - **A person's thoughts, feelings, and behaviors directly impact physical health, just as physical health has an influence on behavioral health.**
- More than 25% of adults in the U.S. experience some type of behavioral health issue each year.
  - **But 2/3 of people with a behavioral health disorder may not obtain treatment.**
- An estimated 80% of people with a behavioral health disorder will visit a primary care provider at least annually.
  - **Primary care providers need training to recognize and address behavioral health concerns, and**
  - **30-50% of patients who receive a referral by their primary care provider for behavioral healthcare do not make even <u>one</u> appointment with the provider to whom they are referred.**

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Reviewing the Legal Landscape

Including HIPAA, 42 CFR Part 2, and State Law Considerations

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Key Federal Laws

HIPAA

- Applies to "Covered Entities" and their "Business Associates"
- Regulates the use and disclosure of "Protected Health Information"
- Generally requires individual authorization for the use and disclosure of PHI
- But contains many exceptions that permit the use and disclosure of PHI in specific situations, without individual authorization

42 CFR Part 2

- Applies to "Part 2 Programs" and their "Qualified Service Organizations"
- Establishes stringent confidentiality protections for certain records related to Substance Use Disorder diagnosis, treatment, and/or referral for treatment
- Specially-documented individual consent needed to disclose records, unless one of Part 2's narrow exceptions applies

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Key Federal Laws: Relationship to State Law

HIPAA

- Preempted by any state law that is more stringent than HIPAA (i.e., state laws that are more protective of individual privacy than HIPAA).

42 CFR Part 2

- If a disclosure permitted under Part 2 is prohibited under state law, neither the Part 2 regulations nor the authorizing statute may be construed to authorize any violation of that state law.
- And, no state law may either authorize or compel any disclosure prohibited by Part 2.

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State Law Considerations

- Mental health
  - Provider-specific requirements
  - Involuntary commitment information
- SUD
- Infectious/communicable disease (including HIV/AIDS)
- Reproductive health (including STI, pregnancy, and abortion services)
- Laws applicable to specific settings (such as correctional facilities, schools and child care settings, etc.)
- Treatment exceptions (not available in all states)

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Eliminating Kickbacks in Recovery Act of 2018 (EKRA)

- Creates criminal penalties for the improper exchange of remuneration in return for referring a patient to a recovery home, clinical treatment facility, or laboratory.
- "Laboratory" defined very broadly (not just SUD-focused labs).
- EKRA prohibitions extend to services covered by both government **and private payors**.
- Violations punishable by a fine of up to $200,000 and/or imprisonment of up to 10 years for each occurrence.

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Case Examples

Example #1 – Co-located Behavioral Health, Primary Care & Teaching Model

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Example #1 – Co-located Primary Care & Teaching Model

- Federal grant used to create collaboration between a community-based behavioral health clinic, school of nursing, and a university-affiliated multi-specialty group practice.
- Goal: train pharmacy, psychiatry, family nurse practitioner, and family outpatient behavioral health students on how to breach barriers between disciplines and provide better client care.
- Setting: unrelated primary care clinic co-located within an existing behavioral health clinic.

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Example #1 – Co-located Primary Care & Teaching Model

- Information sharing is necessary for the various disciplines to work together to measure and improve the quality of health care services that are delivered to participating clients and to provide meaningful educational opportunities for the students.

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Challenges

- Separate EHRs
- Managing individual authorizations
- Facilitating information sharing for purposes other than treatment (i.e., education)
- Legal complexity around co-location/shared space arrangements

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Potential Solutions/Key Features

- Multi-Party Authorization Form for Clients
- Institutional Agreement for Students
- A lease agreement that considered any Stark, Anti-Kickback, CMS billing requirements, and other laws applicable to the proposed arrangement
- Other ideas?

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Case Examples

Example #2 – Health Care Legal Partnership

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Example #2 – Health Care Legal Partnership

- Community-based behavioral health clinic and nonprofit legal services law firm collaborate to address the civil legal needs (housing, public benefits, domestic violence, and immigration) of low income individuals and families facing barriers to good health by integrating legal services into direct services model.
- Holistic, person-centered and family-centered approach.
- Goal: Low income individuals and families obtaining community-based mental health and SUD services will have increased access to legal resources that allow them to meet their basic needs, leading to improved health and well-being.

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Challenges

- Building trust with clients who may have had negative experiences interacting with the legal system
- Reaching an appropriate understanding regarding data ownership and the different types of records generated as a result of the collaboration

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Potential Solutions/Key Features

- A Health Legal Partnership Agreement
- Strict Privacy & Confidentiality Requirements:
  - Each party must comply with its own privacy and confidentiality policies and must act in accordance with state and federal law.
  - Explicitly address ownership of legal files and health/medical records.
- Education
  - Educate behavioral health treatment providers to recognize civil legal issues affecting clients' health.
  - Help behavioral health treatment providers acquire basic knowledge of how legal services can be critical to clients' health.
  - Help attorneys navigate relationships with clients who have significant behavioral health issues.
- Other Ideas?

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Case Examples

Example #3 – Embedded Mental Health Professional in a Classroom Setting

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Example #3 – Embedded Mental Health Professional in a Classroom Setting

- Innovation grant funds used by a community-based behavioral health clinic and an intermediate school district to develop a Therapeutic Teaching Model that places a mental health professional directly in the classroom of K-3 students with some of the greatest social-emotional needs and learning disabilities. Classroom therapists use clinical expertise to assist and coach the teacher on immediate interventions and/or redirection, as well as provide ongoing individual & family therapy. Services are designed to help:
  - 1) coordinate services,
  - 2) improve clinical and functional outcomes for students,
  - 3) improve academic outcomes for students,
  - 4) provide supports/training for school staff, and
  - 5) provide supports/training for parents.

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Challenges

- Complex interplay of laws (HIPAA, the Family Educational Rights and Privacy Act (FERPA), state health records privacy laws, state laws applicable to government entities, etc.
- Legal issues related to providing services to minors

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Potential Solutions/Key Features

- Each organization responsible for compliance with its own applicable state/federal regulations for education and/or provision of mental health services including credentialing, licensure, and supervision.
- Master Agreement that clarifies roles and responsibilities and creates mutual understanding.
- Joint Authorization for Sharing of Health & Education Information that complies with state and federal health privacy laws and FERPA.
- Other ideas?

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Wrap-Up

- Throughout the country, providers are collaborating in innovative ways to integrate primary care with critical behavioral health services.
- These collaborations often raise complex issues related to information sharing/data privacy and security.
- Most of these issues can be resolved with robust front-end planning and ongoing dialogue that thoughtfully considers the ways in which information will be shared, including how patient authorization will be documented.

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Questions?

Contact Us

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