

Modernize Federal Addiction Confidentiality Law & Regulations

Improve Patient Safety, Increase Healthcare Quality and Foster Electronic Health Records Exchange

Background/Problem

- Federal addiction confidentiality law (*42 USC sec. 290dd-2*) and regulations (*42 CFR Part 2*) enacted back in 1973 are outdated.
- They provide important confidentiality protections so people will seek the treatment they need.
- Sensitive information must still be protected to prevent discrimination and stigma.
- **Without written authorization, physicians cannot access patients' substance use history and current treatment regimen, except in cases of emergency.**
- This creates communication barriers between substance use treatment programs and other health care providers resulting in grave implications for patient care and hindering the exchange of electronic health records.
- **Physicians who are unaware of a patient's alcohol or drug use may inadvertently prescribe medications that dangerously interact, trigger relapse or contribute to a patient's addiction.**
- Patients who don't know about interactions between alcohol, illicit drugs, and their prescription and over-the-counter drugs can seriously and inadvertently hurt themselves.
- As our nation moves toward the goal of an integrated electronic health record, the current limitation on the exchange of information negatively impacts national health care reform and electronic health records exchange among general health care providers and specialty addiction providers.
- A broader sharing of substance use information among HIPAA-covered health care entities -- for specific uses only -- is necessary to provide effective, coordinated health care and to protect patient safety. At the same time, given the discrimination and stigma issues associated with addiction treatment, the statutory and regulatory language must be carefully drafted to protect patient rights and prohibit discrimination based on pre-existing conditions or other reasons.
- Several provisions of the **Genetic Information Nondiscrimination Act of 2008** (GINA, PL 110-233; 42 USC 2000ff) offer a good model for these changes.

We ask Congress to Amend the Confidentiality Law

- 1) Mandate amendment of the addiction confidentiality regulations within 12 months of the enactment of said law; and
- 2) Provide a framework in the statute for necessary changes to update the 42 CFR Part 2 regulations to:
 - Be consistent with advances in evidence based treatment practices and technology;
 - Address and resolve the inconsistencies with HIPAA;
 - Improve collaboration among multi-systems in order to improve patient outcomes and better coordinate care;
 - Anticipate changes demanded by health care reform and the electronic health record;
 - Safeguard the privacy and discrimination concerns of persons in recovery; and
 - Prohibit use of addiction-related records by health plans, employers and others to discriminate against patients.

These Confidentiality Changes would reflect Current Addiction Treatment & Medical Needs

In the 36 years since federal substance use privacy laws were first enacted, treatment of addictions has changed significantly:

- Primary care physicians and hospital emergency departments are increasingly screening patients for alcohol and drug use, providing medication-assisted treatment, and referring patients to specialized addiction treatment programs;
- People are using and abusing a much broader range of intoxicating drugs that may have negative interactions, including alcohol, heroin, marijuana, cocaine, methamphetamines, hallucinogens, opiate pain medications, prescription stimulants and anti-anxiety drugs;
- Addiction treatment programs operate under a medical model, and frequently need to exchange information with primary care physicians to provide effective treatment and support safe health care; and
- The co-occurrence of addiction with mental illnesses and other illnesses is widely recognized.

The Time is Now

Congress is on the brink of passing national health care reform, and the economic stimulus bill invests billions of dollars in electronic medical records and health information exchanges to improve patient safety, quality and contain costs. Addiction treatment cannot be left out of these important developments.

With so much national attention on promoting safe, effective and less costly health care, now is the time to modernize the federal addiction confidentiality law and regulations. We look forward to working with you to develop appropriate statutory and regulatory language to address these important issues.

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