

# Sharing Behavioral Health Information in Massachusetts: Obstacles and Potential Solutions

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March 30, 2016



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# Objectives for Today's Webinar

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**Review applicable Massachusetts and federal privacy laws** and evaluate extent to which they impede exchange of information among physical and behavioral health providers

**Assess technological and operational challenges** faced by providers seeking to integrate care through enhanced data exchange

**Discuss potential solutions** for facilitating data exchange to support care integration without sacrificing critical privacy protections

**Apply learnings** to case study scenarios

# Overview of Applicable Law

Jurisdiction	Statute/Regulation	Scope
Federal	HIPAA	Protected health information maintained by providers, plans and their contractors
	42 C.F.R. Part 2	Records of federally assisted alcohol and drug abuse treatment programs
Massachusetts	Professional and Occupational Law; Professional Board regulations <sup>1</sup>	Records of psychologists, social workers, and allied mental health professionals
	Department of Mental Health regulations <sup>2</sup>	Records of mental health facilities and programs
	Public Health Law; Department of Public Health regulations <sup>3</sup>	Substance abuse treatment information maintained by certain facilities and programs

## Who's Covered?

- Health care providers
- Health plans
- Health care clearinghouses
- Business associates

## What's Covered?

- All individually identifiable health information
- All information subject to same rules except psychotherapy notes

## Permitted Disclosures?

- Treatment
- Payment
- Health Care Operations

**Broad patient authorization defining class of recipients permitted**

# 42 C.F.R. Part 2

## Who's Covered?

- Program (individual or entity) in receipt of federal support through grants, Medicare, Medicaid, tax exemption, etc.
- Program licensed to provide, or holding itself out as providing, specialized substance abuse treatment

## What's Covered?

- All patient records
- Includes identity of patients being served

## Permitted Disclosures?

- Medical emergencies
- No exception for other types of treatment or payment or health care operations

**Patient consent must identify specific person or organization receiving records**

### **Proposed Rule:**

In some circumstances involving HIEs and potentially other networks, the consent form is not required to identify the recipient, BUT the consent form must always identify the Part 2 program disclosing the information by name. This is essentially the opposite approach of the current rule.



# Massachusetts Law: Mental Health Professionals

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## GENERAL RULE:

Psychologists, social workers, and allied mental health professionals cannot disclose patient information without patient consent except in limited circumstances<sup>1</sup>

## Exceptions Relevant to Treatment:

- Consultation: Psychologists and allied mental health professionals can disclose to another professional as part of a consultation<sup>2</sup>
- Patient acquiescence: Social workers can disclose to another professional treating the patient if they inform patient in advance and patient does not object<sup>3</sup>

## Psychiatrists:

- No specific state limitations

# Massachusetts Law: Mental Health Facilities & Programs 7

## GENERAL RULE:

**No disclosure without patient consent except in limited circumstances<sup>1</sup>**

### Exception Relevant to Treatment:

- Can disclose if in “best interest” of the patient AND not practical to obtain consent.<sup>2</sup> Disclosure may be in the patient’s best interest if:
  - The patient is being transferred between facilities
  - There’s an emergency
  - Facility receiving information is currently caring for the patient and information is necessary for treatment
  - Recipient is treating a patient and the patient has consented to that treatment
- MassHealth: This exception is not available if the patient is covered by MassHealth<sup>3</sup>

# Massachusetts Law: Substance Use Disorder Providers 8

## GENERAL RULE:

All state-licensed facilities must follow 42 C.F.R. Part 2 (even ones that aren't "federally assisted")<sup>1</sup>

### Drug Rehabilitation Programs

- Consent form must state the name of the information recipient<sup>2</sup>

### Impact

- If Part 2 Proposed Rule is enacted, drug rehabilitation programs must still comply with this requirement

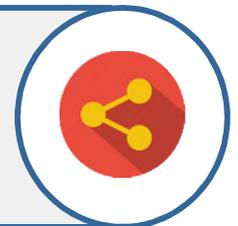
# Technological Barriers to Information Sharing

In addition to privacy laws, several technological obstacles to electronic data exchange impede the integration of physical and behavioral health care

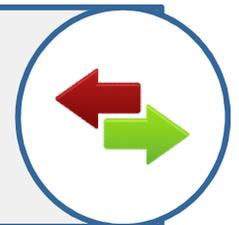
**Lack of EHR Systems:** Many behavioral health providers do not store patient information electronically



**Lack of Interoperability:** One provider's EHR system is unable to share information with another provider's EHR system



**Segmenting Sensitive Information:** EHR systems often are unable to distinguish between general health information and sensitive information subject to more stringent privacy rules





**Goal: Reduce barriers to the sharing of behavioral health information without sacrificing critical privacy protections**

## **Solutions within the current regulatory environment**

- Massachusetts officials clarify existing rules
  - Does the consultation exception apply to care coordination?
  - Under the best interest exception, when is it not practical to obtain patient consent?
  - When a professional provides care in a mental health facility, which rules apply?
  - In cases where a consent is required, is a HIPAA compliant consent form sufficient?
- Develop model consent form for Mass Hlway
- Move from consent-to-disclose to consent-to-access model

# Potential Solutions (continued)

## Changes to laws and regulations

- Modify Part 2 rules to remove requirement to list all information recipients on the face of the consent form
- Reassess State behavioral health laws and regulations to determine if appropriate balance between information sharing and privacy has been struck
  - Can the State establish (or select) one privacy standard for MassHealth patients?
  - Is the best interest exception useful to providers and patients?
  - Should the rules for social workers and allied mental health professionals be stricter than the rules for psychologists?
  - If the Part 2 rules are amended, should Massachusetts' public health law adopt the same change?

## Foster EHR adoption, interoperability through targeted funding

## Participate in development of data segmentation technologies

# Case Study #1

## FACTS:

- Behavioral health integration project
- Mental health professionals from mental health clinic offer behavioral health treatment in an FQHC's facility
- Mental health professionals are employees of the mental health clinic, not the FQHC
- Patient visits a PCP in the FQHC's facility and then is referred to a psychologist working in the same facility



### Discussion Questions

- Can the psychologist obtain a list of medications that have been prescribed by the PCP?
- Can the PCP obtain the patient's treatment plan that was developed with the psychologist?
- Can the FQHC employees and the visiting mental health professionals use the same EHR system?
- Can the PCP and mental health professional jointly develop a treatment plan?

# Case Study #2

## FACTS:

- HIE Participants include physical health, mental health, and substance use disorder providers
- HIE uses a consent form that allows all HIE Participants to access patient information; consent form does not name all Participants
- HIE does not have the capability of segregating Part 2 information from other health information
- Part 2 program that has patients with both physical and substance use disorders seeks to join HIE



### Discussion Questions

- Can the Part 2 program access information from the HIE?
- Can the Part 2 program share information with other providers participating in the HIE?
- If the HIE gained the ability to segment Part 2 data, how would this impact the ability of the Part 2 program to participate?

# Case Study #3

## FACTS:

- Patient is admitted to psychiatric hospital in the midst of a manic episode
- Patient had been admitted to the hospital before while having commercial coverage, is now covered by MassHealth
- As with previous admissions, hospital notifies patient's psychologist when patient is admitted without obtaining patient's consent
- Patient's psychologist asks to visit patient in the hospital and asks the hospital for the patient's file; patient is still in a manic state and cannot consent



### Discussion Questions

- Was it appropriate for the hospital to notify the psychologist about the admission?
- May the hospital share the patient's records with the psychologist?
- Is there anything the hospital can do to assist the psychologist with care of the patient?

# Thank You!

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FOR MORE INFORMATION, ACCESS THE FULL WHITE PAPER AT:

<http://bluecrossfoundation.org/publication/sharing-behavioral-health-information-massachusetts-obstacles-and-potential-solutions>