

Confidential Records and Protected Disclosures

Juvenile Legislative Update 2013



Interagency Sharing of Non-Educational Records

Family Code 58.0052

- Who can share or request confidential personal health information about whom?
- What is confidential personal health information and what can be shared?
- When can this information be shared or requested?
- How should this information be handled once in possession?

Who can share or request confidential personal health information?

- A Juvenile Service Provider
- Juvenile must be a Multi-System Youth:
 - Younger than 19 years of age; and
 - Have received services from 2 or more JSP

Juvenile Service Provider

- Includes:
 - Any state or local juvenile justice agency with custody or control over the juvenile offender
 - Health and human services agencies and the Health and Human Services Commission
 - Juvenile justice alternative education programs
 - Court with jurisdiction over juveniles
 - District and County Attorneys
 - Children's advocacy centers

What confidential personal health information can be shared?

- Definition of Personal Health Information:
 - Any personally identifiable information regarding a multi-system youth's physical or mental health or
 - The provision of or payment for health care services, including case management services
- Examples:
 - Program Placements
 - Medical Records
 - Psychological Diagnoses
 - Excludes
 - Clinical psychological notes or
 - Substance abuse treatment information

When can this information be shared or requested?

- For the purpose of identifying a multi-system youth
- Coordinating and monitoring care for a multi-system youth and
- Improving the quality of juvenile services provided to a multi-system youth

How should this information be handled?

- Internal protocol for information sharing may be established
- Information **cannot be disclosed to a third party**
- **Reminder:** No psychological notes or substance abuse treatment information may be disclosed in open court or other public forums without the express consent of the individual or his parents

Confidentiality of Alcohol and Drug Abuse Patient Records

42 C.F.R. Section 2

- What constitutes patient records?
- Who can request patient records?
- When can disclosure be requested?
- How should patient records be handled?

What constitutes Patient Records?

- Any information, whether or not recorded, in connection to treatment with the performance of drug abuse prevention, regarding the patient's:
 - Identity
 - Diagnosis or
 - Treatment
- Diagnosis would include any reference to an individual's alcohol or drug abuse
 - Example: Urinalysis Testing

Who can request patient records from the program providers?

- Individual making the request **must have a need for the information** in connection to his duty to monitor the patient's progress

When can disclosure be requested?

- Only when the patient has signed a written consent form
and
- For the purpose of evaluating the need for treatment services
or to monitor the patient's progress

How should patient records be handled?

- Agency or person receiving the records **cannot** disclose them to a third party without the patient's consent
 - Exception: Emergency Situations
- Must be kept from public disclosure
 - Kept in a secure room, locked filing cabinet, safe or other such container **and**
 - Each program or department must execute written procedures to regulate control and access to these records

A brief overview of HIPAA and how it applies here

- Who is covered?
- What constitutes Protected Health Information (PHI)?
- How can PHI be used or disclosed?
- What can be disclosed?
- How must PHI be stored or handled?

Who is covered?

- Any entity or individual who provides any kind of health care or health care plan must operate under the laws of HIPAA

What constitutes Protect Health Information?

- **All physical and mental health information**, past, present, and future, that identifies an individual or creates a reasonable belief that the information could be used to identify the individual
- **Note:** All PHI that overlaps with the alcohol and drug abuse treatment records is governed by those rules and **not HIPAA**

How can PHI be used or disclosed?

- Permitted uses and disclosures:
 - To the individual or
 - For treatment, payment or health care operations
 - With the authorization of the individual or
 - Without the authorization of the individual, but when necessary to prevent harm (emergency situations)
 - Exceptions to the individual's control over PHI:
 - As required by law;
 - Disclosures about victims of abuse, neglect, or domestic violence;
 - For judicial and administrative proceedings; and
 - For law enforcement purposes

What should be disclosed?

- Reasonable efforts must be made to **limit disclosure** of PHI to the minimum necessary to accomplish the intended purpose of the use, disclosure or request
- Express written consent must be given by the individual to disclose any information regarding clinic psychotherapy notes

How must PHI be stored and handled?

- All electronic and physical records must be stored so that **only authorized persons** can access them
- Regulations for such storage procedures shall be determined by the department in possession of the PHI

Reminder: Covered Entities Must:

- Ensure the confidentiality, integrity, and availability of all PHI created, received, maintained, or transmitted;
- Protect against any reasonably anticipated threats or hazards to the security or integrity of such information;
- Protect against any reasonably anticipated uses or disclosures of such information that are not permitted or required; and
- Ensure compliance with HIPAA