

## **2013 Juvenile Legislative Update**

### **Handling of Confidential Information**

#### **Interagency Sharing of Non-Educational Records (Family Code 58.0052)**

- Who can share or request confidential personal health Information?
  - A Juvenile Service Provider (JSP) may request the information from another JSP, and
  - The juvenile must be a Multi-System Youth. Meaning the juvenile is:
    - Younger than 19 years of age; and
    - Had received services from 2 or more JSP
  - The term “Juvenile Service Provider” includes:
    - A state or local juvenile justice agency that has custody or control over juvenile offenders;
    - Health and human services agencies and the Health and Human Services Commission;
    - Texas Education Agency;
    - An independent school district;
    - A juvenile justice alternative education program;
    - A charter school;
    - A local mental health or mental retardation authority;
    - A court with jurisdiction over juveniles;
    - A district attorney’s office;
    - A county attorney’s office; and
    - A children’s advocacy center
- What confidential personal health information can be shared?
  - Personal Health Information is defined as:
    - 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
  - Specifically records, including:
    - Identity;
    - **Medical Records;**
    - Assessment Results;
    - Special Needs;
    - Program Placements; and
    - Psychological Diagnoses

- **Excluded** from being shared:
  - Clinical psychological notes or
  - Substance abuse treatment information
  
- When can confidential personal health 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 confidential personal health information be handled?
  - An internal protocol can be established for the purpose of making interagency sharing more efficient, so long as it complies with the above regulations
  - The sharing of information does not affect its confidential status. **Personally identifiable information disclosed to a JSP under this section is not subject to disclosure to a third party**
    - What this means:
      - ◆ Any of the above information that would directly identify the individual cannot be read aloud in open court or other public forums, especially medical information
      - ◆ Only recommendations for treatment based on the above information can be disclosed in open court or other public forums, but be careful to only disclose what is necessary
    - Remember: Under no circumstances can psychological notes or substance abuse treatment information be disclosed in open court or other public forums without the express consent of the individual or his parents
      - ◆ This would include drug or alcohol test results

### **Confidentiality of Alcohol and Drug Abuse Patient Records (42 C.F.R. §2)**

- What constitutes patient records?
  - Any information, whether or not recorded, which:
    - Identifies a patient as an alcohol or drug abuser, directly or by reference; or
    - Is maintained for the purpose of:
      - ◆ Treating alcohol or drug abuse;
      - ◆ Making a diagnosis for that treatment; or
      - ◆ Making a referral for that treatment
  - Diagnosis would include **any reference to an individual's alcohol or drug abuse** (i.e. Urinalysis Testing)
  
- Who can request patient records from the program providers?

- Disclosure can only be made to those individuals within the criminal justice system **who have a need for the information in connection to their duty to monitor the patient's progress**
  - Generally, disclosure can be made to any individual or organization, so long as the patient signs a written consent naming that particular individual or organization as recipient
- 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
  - Without Patient's Consent:
    - Patient identifying information can be released to medical personnel who have a need for the purpose of treating a condition posing an immediate threat to the patient's health
    - If information is released during an emergency situation, the disclosure must be documented in the patient's records
- How should patient records be handled?
- The agency or person receiving the records **cannot** disclose those records to a third party with out the patient's consent or as otherwise determined by law (ex. Emergency Situations)
  - As with other juvenile records, patient records must be kept sealed from public disclosure, including any proceedings in which the record may have been mentioned
    - Must be kept in a secure room, locked file cabinet, safe or other similar container when not in use **and**
    - Each program or department must execute written procedures which regulate control and access to these records

#### **Application of HIPAA to Non-Educational Records (45 C.F.R. §164)**

- Who is a covered entity?
- Any entity or individual who provides any kind of health care or health care plan must operate under the laws of HIPAA
- What constitutes Protected Health Information (PHI)?
- **All physical and mental health information**, past, present or future, that identifies an individual or creates a reasonable belief that the information could be used to identify the individual.

- **Includes** Information:
    - ◆ Transmitted by electronic media;
    - ◆ Maintained in electronic media; or
    - ◆ Transmitted or maintained in any other form or medium
  - **Excludes** Information:
    - ◆ In education records
  - **Note:** All PHI that overlaps with the alcohol and drug abuse patient records rules 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
  - Notable exceptions to individual's control over PHI:
    - As required by law;
    - Disclosures about victims of abuse, neglect, or domestic violence;
    - For judicial and administrative proceedings; and
      - ◆ If there is an order from the court or
      - ◆ In response to a subpoena
    - 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.
    - Minimum Disclosure **does not** apply to disclosures to or requests by a health care provider for treatments or disclosures to the individual
  - In order to disclose any information regarding psychotherapy notes, **express written consent** must be given by the individual
- 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
  - To be noted: 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