Polling Interested Stakeholders on...
Patient Choice, Confidentiality and the Affordable Care Act

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Polling Interested Stakeholders

• Today we are polling interested stakeholders on the following important topics:
  ○ Federal confidentiality regulations that govern substance use disorder (SUD) information at 42 CFR Part 2
  ○ Patient choice
  ○ Electronic health records and health information exchange
  ○ Sharing of health information contemplated by the Affordable Care Act (ACA)
  ○ Stigma and discrimination
  ○ Inherent tensions between 42 CFR Part 2 and the ACA

• We are seeking to advance the confidentiality conversation
#1 Polling of Stakeholders

Which of the below best describes your interest in the behavioral health care field? *(select all that apply)*

A. Consumer
B. Person in recovery
C. Counselor/therapist/behavioral health treatment provider
D. Physician (includes pediatricians, emergency room physicians, primary care physicians, addictionologists, psychiatrists)
E. Technology stakeholders (includes technology and software vendor consultants, health information exchanges, security experts)
F. Government, legal, consulting and other public policy leaders and stakeholders
G. Program evaluation or research
H. Family member/caregiver
Federal Regulations at 42 CFR Part 2

- Important protections to encourage people to seek treatment
- Many consumers express concerns about access to records by law enforcement
- Keeps SUD treatment information separate from other health information
- Only protects SUD treatment information in certain settings → setting sets the rules
- Only in very limited circumstances can SUD treatment information be shared (even among providers) without patient consent
Federal Regulations at 42 CFR Part 2

- The penalties for violating 42 CFR Part 2 are low starting at $500 and not exceeding $5,000.
- 42 CFR Part 2 does not provide for other remedies.
- Discrimination based on SUD treatment information is **not** prohibited by the regulations.
- Civil Rights Provision in ACA prohibits discrimination in health programs and activities. How do we reconcile this? Should we seek stronger protections?
Triple Aim of Health Reform

Better healthcare

Improving patients’ experience of care within the Institute of Medicine’s 6 domains of quality: Safety, Effectiveness, Patient-Centeredness, Timeliness, Efficiency, and Equity.

Better health

Keeping patients well so they can do what they want to do. Increasing the overall health of populations: address behavioral risk factors; focus on preventive care.

Reduced costs

Lowering the total cost of care while improving quality, resulting in reduced monthly expenditures for Medicare, Medicaid, and CHIP beneficiaries. Supporting new models of payment.
As a result of the ACA and other recent health care reforms, the SUD treatment system will be transformed considerably:

- In the future, SUD treatment will be delivered in a variety of different settings:
  - Less federally-assisted, stand alone SUD facilities (where application of 42 CFR Part 2 is clear)
  - Trending towards more integrated programs/care systems where both general medical and MH/SUD treatment is delivered (ACOs, medical homes, health homes)
Associated Challenges under the ACA

- MH/SUD treatment will need to integrate with physical medicine/primary health care despite conflicts in the ways that each handles confidential patient information.
- Integrated care entities will require access to SUD information in order to provide patients with improved, coordinated care.
- Addiction now being viewed as disease of the brain → increased role of the physician in the treatment and recovery of individuals with addiction.
Associated Challenges under the ACA

- General health care industry used to being able to exchange health information freely
  - As SUD treatment becomes more integrated with physical medicine/primary health care, providers will see increased barriers to the free exchange of health information as a result of the various federal and state regulations governing sensitive health information (e.g., 42 CFR Part 2)
- How can we facilitate the *legal exchange* of medical information in order to advance the quality of care as envisioned by the ACA?
42 CFR Part 2 protects patients’ SUD information collected by:

A. Primary care physician
B. Emergency room
C. Hospital psychiatric unit
D. None of the above
What is your position on the confidentiality protections afforded SUD information under 42 CFR Part 2?

A. The protections are sufficient in ensuring that such information remains confidential
B. The protections are insufficient in ensuring that such information remains confidential
C. The protections are overly restrictive
D. The protections are insufficient in some respects and overly restrictive in other respects
E. Use the Q&A area below the slides for an alternative response
More than half of doctors now use electronic health records.

ACA envisions a system where records are electronic and can be readily exchanged among providers.

Important functions of health information exchange include:

- Promote coordinated care
- Improve safety
- Improve efficiency of care delivery
- Provide more complete patient record
- Reduce administrative costs and burdens
- Further communication between providers
- Promote use of data pooled across clients to improve outcomes

Federal government has actually put in place incentives to promote the adoption and use of electronic health records.

Currently, behavioral health care providers aren’t eligible for those incentives.
• Generally, under HIPAA, health care providers do not have to obtain consent for treatment, payment and health care operations (TPO)
  ○ That is why hospitals and health care systems find behavioral health data so challenging
  ○ Legally, unless there is a state law more stringent, an HIE can transmit non-sensitive data (meaning no MH/SUD, HIV/AIDS, genetics) without consent
• That is why a digital divide exists and some behavioral health providers have already been excluded in HIEs
A solution to this problem should focus on 2 things:

1. Allowing the greatest number of MH/SUD patients the right and choice to participate, and
2. Facilitating the legal exchange of medical information as needed to advance the quality of care as envisioned by the ACA

So, how do we get there? How do we achieve integrated care for the benefit of improving overall health and long-term recovery?
#4 Sharing MH/SUD Information

How concerned are you (or your patients) about MH/SUD information being shared with other health care providers?

A. Very concerned  
B. Concerned  
C. Somewhat concerned  
D. Unconcerned
#5 Integrated Care

How important do you think care coordination/integration of substance use, medical and mental health care is to improved outcomes for patients?

A. Very important  
B. Important  
C. Somewhat important  
D. Unimportant
#6 Health Information Exchange Barriers

What is the most significant barrier to inclusion of MH/SUD information in health information exchange?

A. The lack of incentives for the adoption of interoperable technologies
B. Confidentiality laws
C. Current payment models
D. The lack of technologies that enable the exchange of such information
#7 Health Information Exchange Consent

How often should patients be given the opportunity to consent to the exchange of their health information among providers?

A. When the health information is first provided to the health information exchange (HIE) by the provider
B. At every encounter a patient has with a provider
C. Once per organization
D. Annually
E. Use the Q&A area below the slides for an alternative response
Revising 42 CFR Part 2?

- It’s time to advance the confidentiality conversation
- Federal regulations at 42 CFR Part 2 are over 40 years old
  - Is it time for change? Are we ready? What do patients want and need when it comes to privacy?
- ACA emphasizes preventive holistic care and wellness, such that individuals are being treated by their primary and specialty care providers in a coordinated way
  - These aims appear to directly conflict with the restrictions of 42 CFR Part 2
  - How can patients be treated in a coordinated way if their SUD information can’t be shared with their primary care provider, for example?
What is your position on revising the regulations at 42 CFR Part 2?

A. I am in favor of revising 42 CFR Part 2 to ease consent requirements in order to facilitate the sharing of SUD information among providers

B. I am in favor of revising 42 CFR Part 2 to make it more consistent with HIPAA

C. I am in favor of revising 42 CFR Part 2 to expand the protections to cover SUD information collected by all medical providers

D. I am against revising 42 CFR Part 2

E. Use the Q&A area below the slides for an alternative response
Revising Part 2 Penalties

What is your position on revising the regulations at 42 CFR Part 2 to increase the penalty/remedy provisions?

A. I am in favor of revising 42 CFR Part 2
B. I am against revising 42 CFR Part 2
C. I am undecided
D. Use the Q&A area below the slides for an alternative response
Patient Choice & Trust

- Patient choice for sharing of information is critical
- In the end, it’s about the patients and what they deserve and need from their providers and the larger health care system that serves them
  - Are you concerned about stigma and discrimination?
  - What’s most important to you when it comes to your health care?
  - Do you trust providers to protect your privacy when it comes to electronic health record adoption and health information exchange?
#10 Patient Trust

In general, I trust my doctors and other health care professionals to protect the privacy and confidentiality of my MH/SUD information.

A. Strongly agree  
B. Agree  
C. Disagree  
D. Strongly disagree
#11 Parity & Documentation

How do you feel about the level of documentation clinicians make in patient records concerning SUDs?

A. I feel that the level of documentation is appropriate
B. I feel that the level of documentation is appropriate to satisfy payors
C. I feel that clinicians write/enter too great of detail in the medical record concerning SUDs and have concerns about who ends up seeing that information
D. Use the Q&A area below the slides for an alternative response
#12 Stigma

How do you think 42 CFR Part 2 impacts stigma as it relates to SUD treatment?

A. I think 42 CFR Part 2 promotes stigma
B. I think 42 CFR Part 2 helps to prevent stigma
C. I think 42 CFR Part 2 has no impact on stigma
D. Use the Q&A area below the slides for an alternative response
If you have not elected to have your information available in an HIE (opted out), does a life threatening situation change your decision where you want the provider to have the information?

A. Yes, I want the provider to “break the glass” and access whatever health information is necessary to treat my medical emergency

B. Yes, I want the provider to “break the glass” and access whatever health information is necessary to treat my medical emergency, but I believe additional restrictions need to be placed on the redisclosure of MH/SUD information

C. No, once I decide to opt-out, my information should not be available for a provider to access even in a medical emergency regardless of the circumstances

D. Use the Q&A area below the slides for an alternative response
#14 Data Segmentation

Assuming a patient can restrict a provider’s ability to view MH/SUD information about the patient, which of the below best describes your belief?

A. The patient has an absolute right of privacy and the treating provider should not be made aware that the patient has withheld information from the provider

B. The treating provider should receive an alert that the patient has withheld information from the provider so he/she can inquire further with the patient to seek relevant information for treatment purposes

C. Providers should assume they don’t have all of the patient’s health information and should ask appropriate questions of the patient in order to treat him/her

D. Use the Q&A area below the slides for an alternative response
#15 Sensitive Data

Do you feel that SUD information should be afforded greater privacy and confidentiality protections than MH information?

A. Yes, SUD information should continue to receive greater federal confidentiality protections than MH information
B. No, SUD information and MH information should be treated similarly and the laws should be changed to increase the protections afforded MH information
C. No, SUD information and MH information should be treated similarly and the laws should be changed to relax the protections afforded SUD information
D. Use the Q&A area below the slides for an alternative response
“The Best Kept Secrets About Confidentiality: Is Our Field Ready for Change and Integration?”

- **When:** September 23, 2013, 10:30am – 12pm
- **Who:** Presented by…
  - Renée Popovits, J.D., Principal Attorney, Popovits & Robinson
  - Scott Weinstein, Presidential Management Fellow, Office of the Chief Privacy Officer, Office of the National Coordinator for Health Information Technology

- Results of the polling from this webinar will help inform our presentation at the Behavioral Healthcare Leadership Summit
Additional thoughts?

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