



STATE OF TENNESSEE

PCMH AND THL WEBINAR

**Navigating HIPAA:
Optimizing Coordination and Collaboration**

09/22/2022

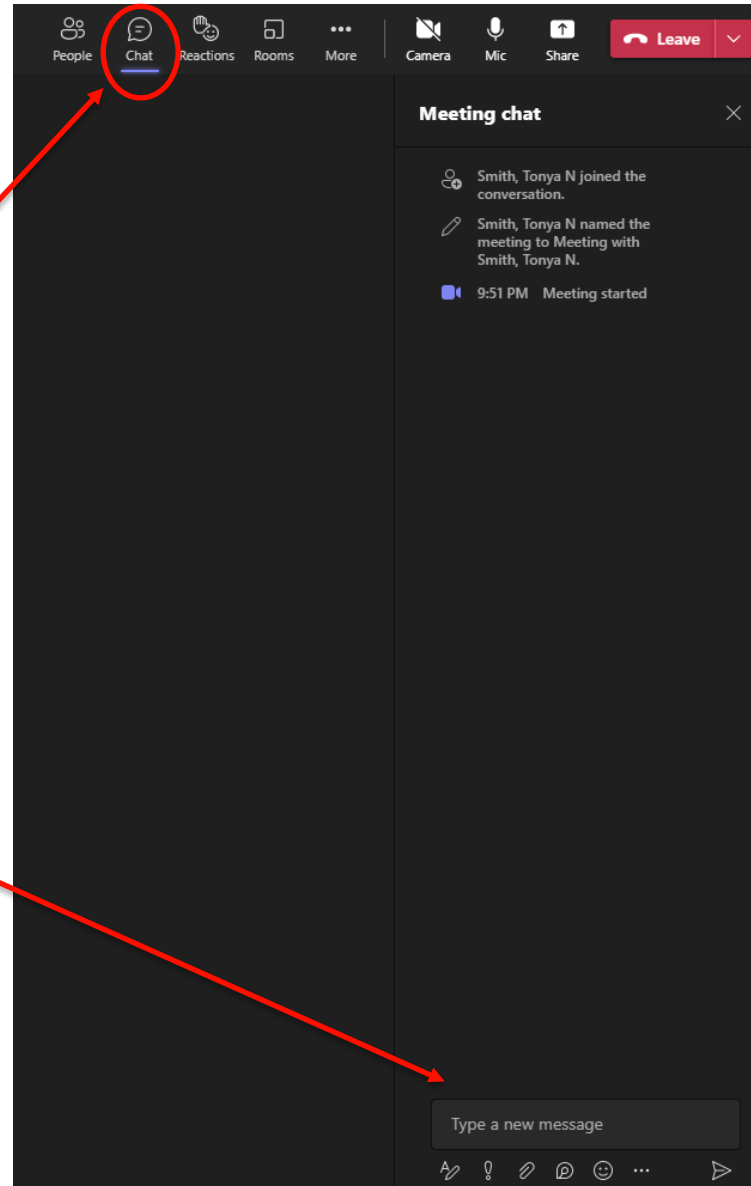
Agenda

- Introduction and Updates
- Navigating HIPAA-Optimizing Coordination and Collaboration
- Q & A
- Conclusion

Interactive Webinar

Communicating during the webinar:

- For questions or comments during the presentation, please click on the **Chat** function
- Enter your question or comment in the **dialogue box in the lower right corner of the screen**
- This will also be used during all Q&A portions of the presentation



Reminder: 2022 PCMH/THL Provider Surveys

- TennCare continually strives to improve our programs, and your feedback on this annual survey will assist us in this process!
- The [2022 PCMH/THL Survey](#) is currently available and will be open until October 4th.
- You can also find the link to the survey in the August PCT Newsletter.





**INTRODUCING OUR
TOPIC AND OUR
SPEAKER**



Janelle Burns is currently in the private practice of law and provides HIPAA consulting services. Previously, Ms. Burns served as the Corporate Privacy & Security Officer for Baptist Memorial Health Care Corporation in Memphis, Tennessee, where she oversaw compliance with patient privacy laws for fourteen hospitals and approximately 150 physician practices located in Tennessee, Mississippi, and Arkansas. Ms. Burns began her career with Baptist in January 2002. Ms. Burns received her Doctor of Jurisprudence and a Certificate in Health Law from the University of Tulsa College of Law in 1999.



Navigating HIPAA: Optimizing Coordination and Collaboration

By Janelle Burns, JD, CHPS

General Disclaimer

- This presentation is for educational purposes only and is not intended to be legal advice. No attorney-client relationship exists unless I have entered into an Engagement Letter with your organization. No attorney-client privilege applies to this setting. All fact patterns are unique and must be analyzed individually.

Overview

- Types of Permitted Disclosures
- Application to specific topic areas/hypothetical scenarios
- Time for Questions
 - Note: This presentation assumes you have a general working knowledge of HIPAA, but if I use a term that you don't understand, please feel free to stop me and ask. Someone else may have the same question.

Starting Point



Treating patient is Goal # 1



HIPAA is not meant to stand in the way of treating the patient



Focus on the types of allowable disclosures

HIPAA Definition of Treatment

45 CFR §164.501

- The provision, **coordination**, or **management of health care** and related services by one or more health care providers, **including the coordination or management of health care by a health care provider with a third party**; consultation between health care providers relating to a patient; or the **referral of a patient for health care from one health care provider to another**.
 - *Minimum Necessary does not apply to uses and disclosures by and between Health Care Providers for Treatment purposes. 45 CFR §164.502(b)(2)(i).*

HIPAA Definition of Health Care Provider

45 CFR §160.103

- **Health Care Provider** is a provider of services (as defined in section 1861(u) of the Act, 42 U.S.C. 1395x(u)), a provider of medical or health services (as defined in section 1861(s) of the Act, 42 U.S.C. 1395x(s)), and any other person or organization who **furnishes, bills, or is paid for health care in the normal course of business.**
- **Health Care is defined** to include preventive, diagnostic, therapeutic, rehabilitative, maintenance, or palliative care, and counseling, service, assessment, or procedure with respect to the physical or mental condition, or functional status, of an individual or that affects the structure or function of the body and the sale or dispensing of a drug, device, equipment, or other item in accordance with a prescription

Allowable Disclosure of PHI by a Covered Entity

45 CFR §164.506(c)

- Covered Entity (CE) may **use or disclose** PHI for its own treatment, payment, or health care operations
- CE may **disclose** PHI for treatment activities of a Health Care Provider
- CE may **disclose** PHI to another CE or a Health Care Provider for payment activities of the entity that receives the information
- CE may **disclose** PHI to another CE for health care operations activities of the entity that receives the information, IF each entity either has or had a relationship with the individual who is the subject of the PHI being requested, the PHI pertains to such relationship, AND the disclosure is EITHER for a purpose listed in paragraph 1 or 2 of the definition of health care operations OR for the purpose of health care fraud and abuse detection or compliance
- CE that participates in an Organized Health Care Arrangement (OHCA) may **disclose** PHI to other participants in the OHCA for any health care operations activities of the OHCA

Information Needed to Analyze a Disclosure of PHI



Who will be making the Disclosure of PHI?



Who will receive the PHI?



Do both parties have a relationship with the patient?



What is the purpose of the Disclosure of PHI?

Tips to Aid Disclosure of PHI



When requesting PHI from a CE, keep in mind that you are best served if you can explain why you need the information and how it helps the patient or is in the best interest of the health care system

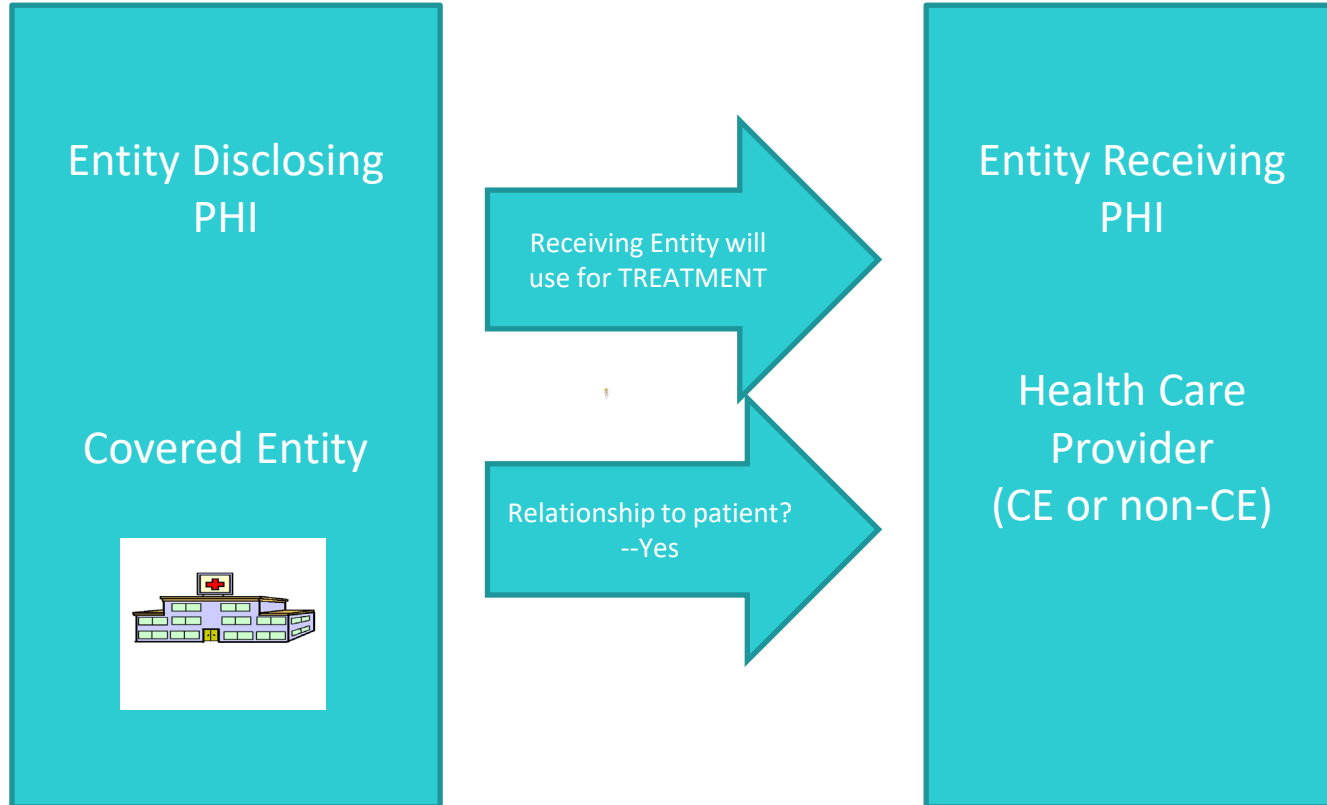


Explain which type of entity you represent

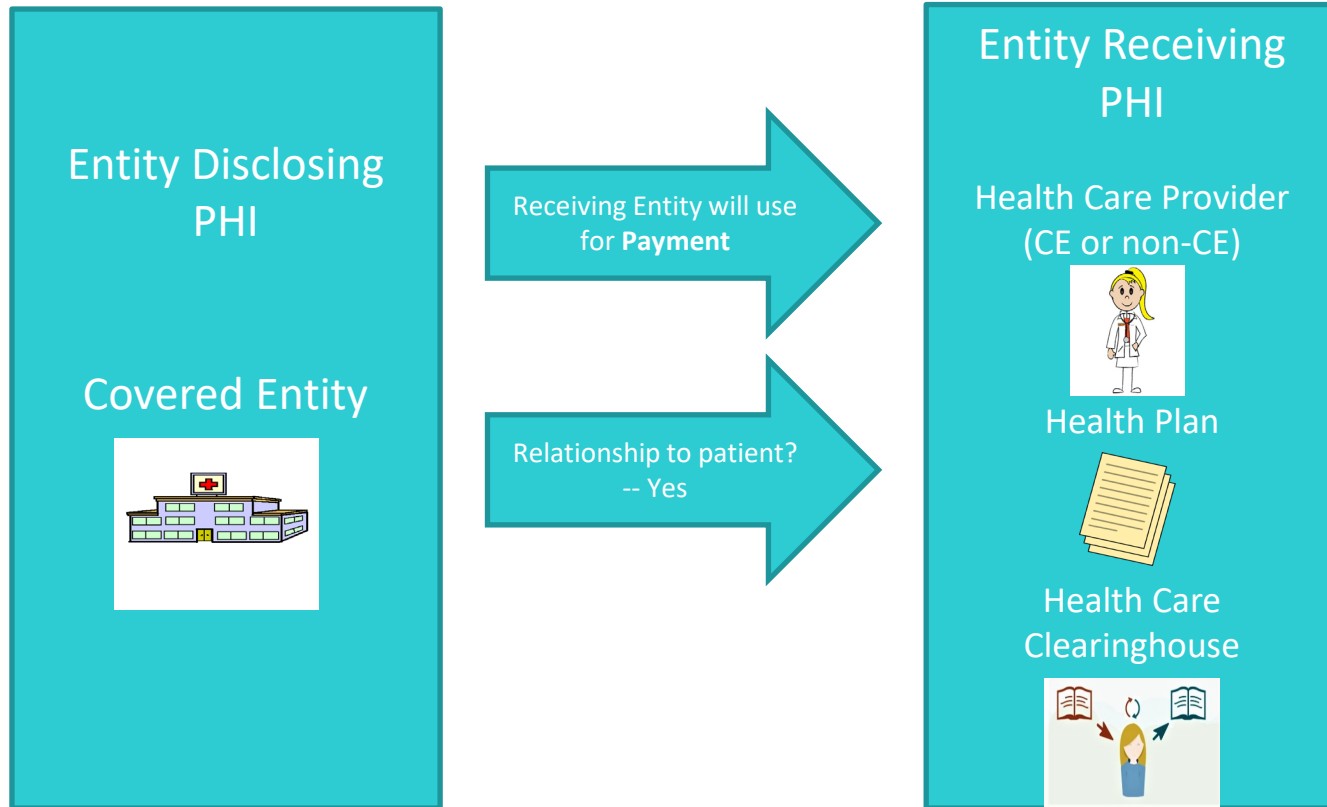


Explain which specific rule allows the CE to disclose information to you

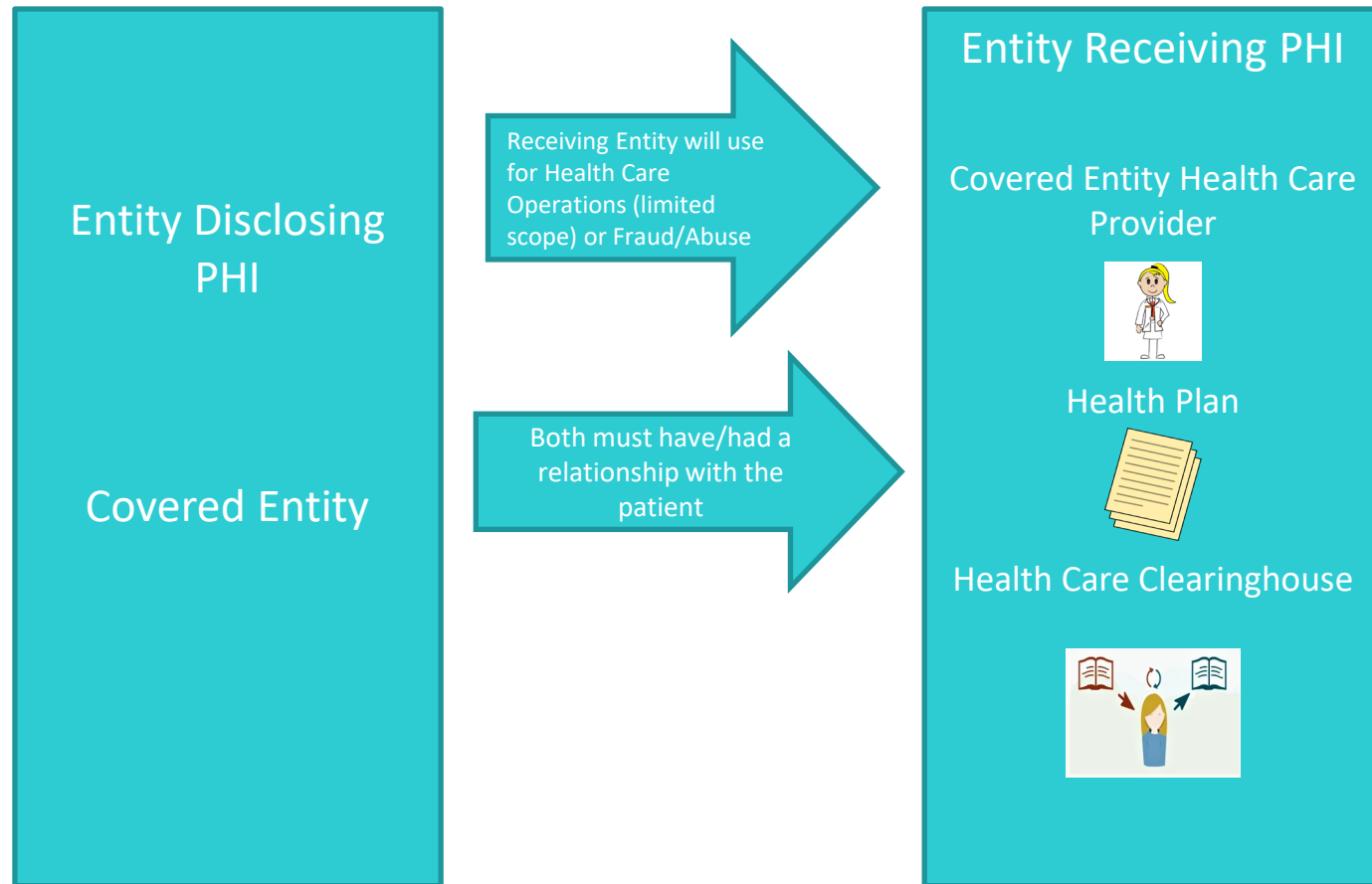
Allowable Disclosures -- Treatment



Allowable Disclosures -- Payment



Allowable Disclosures -- Health Care Operations



Health Care Operations Limited Scope – Section 1

45 CFR § 164.501

- Health Care Operations includes the following activities of a covered entity to the extent the activities are related to covered functions:
- (1) **Conducting quality assessment and improvement activities**, including outcomes evaluation and development of clinical guidelines, provided that the obtaining of generalizable knowledge is not the primary purpose of any studies resulting from such activities; **patient safety activities** (as defined in 42 CFR 3.20); **population-based activities** relating to improving health or reducing health care costs, **protocol development**, **case management** and **care coordination**, contacting of health care providers and patients with information about **treatment alternatives**; and related functions that do not include treatment;

Health Care Operations Partial Definition – Section 2

45 CFR § 164.501

- Health Care Operations includes the following activities of a covered entity to the extent the activities are related to covered functions:
- (2) Reviewing the competence or qualifications of health care professionals, evaluating practitioner and provider performance, health plan performance, conducting training programs in which students, trainees, or practitioners in areas of health care learn under supervision to practice or improve their skills as health care providers, training of non-health care professionals, accreditation, certification, licensing, or credentialing activities

Fraud & Abuse Carve Out

- Although the purpose of health care fraud and abuse detection and compliance is listed in Section 4 of the definition of Health Care Operations and not in Section 1 or 2, health care fraud and abuse detection and compliance is listed as an allowable purpose for the disclosure of PHI from one CE to another CE under 45 CFR §164.506(c)(4)

Other Permitted Disclosures by CE

- 45 CFR § 164.512 lists uses and disclosures of PHI that a CE is permitted to make without obtaining an authorization from the patient or giving the patient the opportunity to agree or object to the use or disclosure
- Requirements of each subsection must be read carefully to make sure the CE fully complies
- Some examples include:
 - Public health activities
 - Child abuse reporting
 - Reporting a crime on premises
 - Coroners and medical examiners
 - Funeral directors
 - Organ procurement organizations

Other Ways to Obtain PHI

There are times when an entity that falls into the “Other” category seeks to obtain PHI from a CE for a purpose that is not covered by 45 CFR § 164.506(c) or 45 CFR § 164.512.

For example:

- The American Red Cross pays for transportation to chemo, but wants to confirm from the hospital providing chemo that the patient came for services and the date and time that the patient will need return transportation
- The Red Cross is not a health care provider
- The Red Cross is not a health plan
- How can the Red Cross obtain information from the hospital?
 - A HIPAA compliant authorization signed by patient

Additional Resources

- The Office for Civil Rights posts many FAQs for Professionals that are grouped by topic categories and can be searched by keywords
 - <https://www.hhs.gov/hipaa/for-professionals/faq/index.html>

Specific Topic Areas Generating Questions

Mental Health and Release of PHI

HIPAA generally does not limit disclosures of PHI between health care providers for treatment, case management, and care coordination, except that covered entities must obtain individuals' authorization to disclose separately maintained psychotherapy session notes for such purposes.

Note: Covered entities should determine whether other rules, such as state law or professional practice standards place additional limitations on disclosures of PHI related to mental health.

Information typically found in medical records that is handled in the same way as other PHI:

- medication prescription and monitoring
- counseling session start and stop times
- the modalities and frequencies of treatment furnished
- results of clinical tests
- summaries of: diagnosis, functional status, treatment plan, symptoms, prognosis, and progress to date

Mental Health and Release of PHI

- Tennessee has several privilege statutes that grant the same type of privilege as the “attorney-client” privilege to conversations between the client and their mental health care provider. The mental health care provider cannot reveal the details of the conversations, except in specific circumstances, unless the client waives the privilege.
- Tennessee Code Annotated § 63-11-213
 - For the purpose of this chapter, the confidential relations and communications between licensed psychologist or psychological examiner or senior psychological examiner or certified psychological assistant and client are placed upon the same basis as those provided by law between attorney and client; and nothing in this chapter shall be construed to require any such privileged communication to be disclosed.
- Tennessee Code Annotated § 63-22-114
 - The confidential relations and communications between licensed marital and family therapists, licensed professional counselors or certified clinical pastoral therapists and clients are placed upon the same basis as those provided by law between attorney and client, and nothing in this part shall be construed to require any such privileged communication to be disclosed. However, nothing contained within this section shall be construed to prevent disclosures of confidential communications in proceedings arising under title 37, chapter 1, part 4 concerning mandatory child abuse reports.

Re-Release of Information

- How/When can a Health Care Provider (CE or non-CE) release PHI that it obtained from another Health Care Provider (re-release of information) (excluding information about SUDs)
 - As long as the re-release is for treatment purposes, it is allowable under HIPAA
 - Each provider will have its own policies for what it treats as its Designated Record Set/Official Health Record
 - Did the provider rely on the PHI from the other provider in deciding how to treat the patient?
 - Did the provider incorporate the PHI from the other provider into its own record?
 - Current trend is to re-disclose
 - Some EMRs will automatically search for a patient's information from another provider and pull the information into the system

Substance Use Disorders and Release of PHI

Must determine if the provider falls under 42 CFR Part 2

- Part 2 Program is an individual, entity (other than a general medical facility), or an identified unit in a general medical facility, that “holds itself out” as providing and provides diagnosis, treatment, or referral for treatment for a SUD. Medical personnel or other staff in a general medical facility who are identified as providers whose primary function is to provide diagnosis, treatment, or referral for treatment for a SUD are also Programs.
- If the provider falls under Part 2, must comply with both Part 2 and HIPAA
- Part 2 includes an additional requirement for specific consent to share and a notice of prohibition on re-disclosure by recipients of the SUD patient information.

For additional info about Part 2, review <https://www.samhsa.gov/about-us/who-we-are/laws-regulations/confidentiality-regulations-faqs>

Proposed HIPAA Changes that *MAY* affect you in the future

Proposed Changes stem from a Request for Information that was initiated in 2018

Comment period for the Proposed Changes ended on May 6, 2021

Currently awaiting the Final Rule

Enforcement is anticipated to begin 180 days following the publishing of the Final Rule

Proposed HIPAA Changes: Right of Access

- Requiring covered health care providers and health plans to submit an individual's access request to another health care provider and to receive back the requested electronic copies of the individual's PHI in an EHR
 - Example of patient from one state receiving care in another state. Treating doctor has 15 days to forward the patient's request for records to the primary care doctor back home and that doctor has 15 days to respond to the request. The primary care doctor is now **required** to respond; previously the Privacy Rule **permitted** the doctor to respond for treatment purposes

Proposed HIPAA Changes: Care Coordination and Exception to the Minimum Necessary Standard

- Modify definition of “Health Care Operations” to clarify that the term includes care coordination and case management for individuals, not just population-based activities. Seeks to clarify that health plans are permitted to use and disclose PHI to coordinate care for individuals
- Add an express exception to the minimum necessary standard for disclosures to, or requests by, a health plan or covered health care provider for care coordination and case management for individuals

Proposed HIPAA Changes: Disclosures to Social and Community Services

- Expressly permit covered entities to disclose PHI to social services agencies, community-based organizations, home and community-based service providers, or similar third parties that provide or coordinate health-related services that are needed for care coordination and case management with respect to an individual
 - Example provided by OCR: Doctor could disclose the PHI of a patient with an opioid use disorder to a community counseling program, a nutrition assistance program, or a health care supportive housing agency, to support and coordinate care.

Proposed HIPAA Changes: Disclosures of PHI in the Best Interest of Individuals Experiencing Emergencies or Health Crises, Including Serious Mental Illness and Substance Use Disorder Crises

- Modify the standard for certain permitted disclosures from a covered entity's "professional judgment" to a "good faith" belief that the disclosure would be in the best interests of the individual
 - Addresses concerns that only licensed personnel or those with professional training can make a determination
 - A good faith belief may be based on knowledge of the facts of the situation, including any prior expressed privacy preferences of the individual, or the representations of a person or persons who reasonably can be expected to know relevant facts
 - Extent of the permitted disclosure would continue to be limited to the level of involvement of the family member or caregiver of which the staff is aware, consistent with the covered health care provider's policies and procedures for disclosures of PHI by workforce members

Q & A

Janelle Burns

Attorney at Law

Email: hipaaadvice@gmail.com

Phone: 901-289-1100



Resources



Resources

- Information Related to Mental and Behavioral Health, including Opioid Overdose
 - <https://www.hhs.gov/hipaa/for-professionals/special-topics/mental-health/index.html>
- SAMHSA Substance Abuse Confidentiality Regulations
 - <https://www.samhsa.gov/about-us/who-we-are/laws-regulations/confidentiality-regulations-faqs>
- The Real HIPAA: Care Coordination, Care Planning, and Case Management Examples
 - <https://www.healthit.gov/buzz-blog/privacy-and-security-of-ehrs/real-hipaa-care-coordination-care-planning-case-management-examples>
- HIPAA Journal
 - <https://www.hipaajournal.com/>
- HIPAA Privacy Rule
 - <https://www.hhs.gov/hipaa/for-professionals/privacy/index.html>