



Do proposed regulations properly protect client privacy?

Question: I work for an agency as a substance abuse counselor. We were recently told in a staff meeting that the federal regulations governing privacy of substance abuse treatment information are changing. Are you aware of how that might impact my work?

Answer: To borrow a phrase from Bob Dylan, “The times they are a-changin’.” Not only are the times changing, but so are the regulations on the confidentiality of alcohol and drug abuse patient records, found at 42 CFR Part 2. Originally promulgated in 1975, the regulations were designed to allay concerns that use of substance abuse treatment information in criminal prosecutions might deter substance users from seeking counseling and other needed treatment.

The proposed regulations, published Feb. 9, will be open for comment through April 11 at 5 p.m. Go to federalregister.gov and search “confidentiality of substance use disorder patient records.” A full explanation of the many proposed changes are set forth in the proposed regulations.

The impetus for change was the development of new models of integrated care following the enactment of the Affordable Care Act, as well as the creation of an electronic infrastructure for

exchanging patient information and an emphasis on performance standards and cost containment within the health care industry. The Substance Abuse and Mental Health Services Administration, which oversees these regulations, has a laudable goal of ensuring that patients with substance use disorders can participate in new integrated treatment programs without fear of adverse consequences, such as loss of employment, incarceration, discrimination and loss of child custody. However, some questions are being raised regarding whether the exact language of the proposed regulations might fall short in the area of patient protection.

For example, one of the many proposed changes calls for a relaxation of the current requirement, for most disclosures, that patient consent must specify the name or title of each person or the name of the entity to whom or which disclosure will be made. According to the proposed rule, the consent form could designate the recipients of information in a broad form, such as a health information exchange, or the form could designate “my treating providers” in lieu of specifically naming physicians, counselors and other providers. Unless a patient/client truly understands who will be receiving this information, the concern remains that it may not be truly “informed” consent to release information.

There are many other proposed changes in the 144-page document, including updated definitions, new requirements for security of electronic records and the “sanitizing” of electronic media after discontinuation of a program. I would strongly encourage you and your colleagues to read the regulations and offer your comments on specific proposed requirements that you support, as well as those requirements you believe may harm your clients or impose undue burdens on providers.



The question addressed in this column was developed from a de-identified composite of calls made to the Risk Management Helpline sponsored by the American Counseling Association. This information is presented solely for educational purposes. For specific legal advice, please consult your own local attorney. ♦

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