



Does opioid crisis change thinking on confidentiality?

Question: I am a counselor in a state that has seen a large increase in opioid addiction in recent years. A colleague told me that HIPAA (the Health Insurance Portability and Accountability Act) recently has been modified to allow greater sharing of information about clients who are addicted to opioids. This doesn't sound right to me. Is this true?

Answer: I think you may be referring to new HIPAA “guidance” titled “How HIPAA Allows Doctors to Respond to the Opioid Crisis” (see hhs.gov/sites/default/files/hipaa-opioid-crisis.pdf). It was issued by the federal government as a result of the Trump administration declaring the opioid crisis a public health emergency. Frankly, the guidance doesn't really change HIPAA. It clarifies that protection of human life in urgent circumstances may prevail over the protection of privacy in certain situations.

For example, the current HIPAA regulations permit a release of protected health information when necessary to prevent a serious and imminent

threat to a patient's health and safety. The guidance provides the example of a doctor giving information about a patient's overdose to family members to help facilitate treatment when the patient is unconscious or incapacitated. However, if the patient regains capacity, direct permission from the patient may be necessary. The guidance also suggests that some information may be divulged to caregivers, family members or friends upon a patient's discharge when the patient poses a serious and imminent threat to his or her own health through continued opioid abuse.

However, counselors are cautioned that the guidance does not address the strict federal regulations governing confidentiality of substance use disorder patient records maintained as part of federally funded programs under 42 CFR Part 2. Furthermore, some state confidentiality and mental health/substance use disorder laws are more stringent than HIPAA and must be followed if there is a conflict with the terms of the HIPAA privacy and security

regulations. Public policy considerations support the need for privacy to encourage clients to engage in treatment and stay out of the criminal justice system.

All counselors, whether or not specifically engaged in substance use disorder treatment, have important roles to play as mental health professionals and advocates in both rural America and in our cities. You are encouraged to open a dialogue with your colleagues and local attorney on how to address such issues in your particular state. ♦

Anne Marie “Nancy” Wheeler is an attorney licensed in Maryland and the District of Columbia. The information presented here is for educational purposes only. For specific legal advice, please consult your own local health care attorney.

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