

A New Age for Mental and Substance Abuse Health Records: Considerations for Protecting Highly Sensitive Records in Electronic Systems

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Mental health and substance abuse records are generally recognized as containing "sensitive" protected health information (PHI) in need of privacy and security measures above and beyond what is required by HIPAA. There was a time when this sensitive PHI was kept separate and apart from a patient's health record and the access to it highly restricted.

Today these records remain highly restricted in access, but as mental health and substance disorder records are transitioning to electronic systems, the risk for inappropriate uses and disclosures increases. An increase in the number of medical necessity requests by health insurance companies is only one example of how mental health and substance abuse PHI is leaving the trusted hands of the HIM department and entering the world of greater access even as it relates to reimbursement.

With paper records, auditor requests were mailed; with the electronic health record, auditors are now requesting electronic access. In this new electronic age, ensuring effective privacy and security processes are in place is imperative.

This article reviews considerations in protecting mental and substance abuse health records in a new age of electronic information.

Laws and Regulations

HIM professionals have the obligation of understanding the complexity of the mental and substance abuse healthcare system, its rules and regulations, and its unique position in the healthcare delivery system to ensure that organizational privacy and security policies meet all state and federal regulations. They must understand how these laws and regulations directly affect the ability to access and disclose sensitive PHI.

For instance, HIPAA mandates each covered entity develop and distribute a notice of privacy practice. It also requires that this document contain explanations of how PHI is used within an organization and offer patients the option to opt out of certain uses, such as providing an alternate mailing address or phone number for individual confidentiality.

However, there is a question as to whether some electronic systems can truly afford patients the service to opt out in regards to restrictions on mental health and substance abuse records. As healthcare systems transition to EHRs, HIM professionals should ask whether the system allows a patient to restrict portions of his or her sensitive PHI from being included in a health information exchange (HIE).

Federal regulations providing guidance on the privacy and security of sensitive PHI are sparse, but they do exist. One example is 42 CFR 2, the federal regulation that governs substance abuse. It is very clear about what, when, how, and to whom sensitive PHI may be released.

State statutes also play a vital role in properly maintaining overall confidentiality and security. State statutes vary and have different levels of protections.

Privacy and Security Considerations

How can organizations continue to protect the privacy and confidentiality of psychiatric and substance abuse records in the new age of electronic health information? Providing safe, quality healthcare to a patient includes providing access to all PHI relevant to the care provided. For instance, psychotropic medications, just like any medication, may have counterindications

with certain medications. Providers must have knowledge of the full history of medications currently taken by a patient to ensure overall quality and safety of the care given.

It is critical for HIM professionals to assist in the safety, quality of care, and positive customer satisfaction. As the custodians of patient information, HIM professionals have the knowledge and understanding to provide leadership for the organization in meeting these challenges. Some questions HIM professionals must now consider include:

- Is the minimum necessary rule being met? When does it have to be met?
- When disclosing medication information, is a patient's psychiatric condition included in the disclosure? Is that permissible? What safeguards should be in place to ensure patient safety and prevent inappropriate disclosure of sensitive PHI?
- Are health information professionals requesting an authorization or is this information being freely provided under continuity of patient care?
- Is the patient informed of this disclosure and is he or she aware it is being disclosed? Who is responsible for informing the patient?

HIM professionals must also ensure that their organization's vendors, HIEs, business associates, and physician office practices have safeguards in place to ensure sensitive PHI is not disclosed when access is granted to an electronic record.

Some healthcare entities, like HIEs, have not fully embraced how mental health and substance abuse records should be managed and disclosed. When an individual is part of an HIE, his or her mental health or substance abuse records would also be contained within it. It is important for patients to know their rights in regards to how their PHI is exchanged within an HIE.

Tips and Guidance

There is no one right answer or best practice to ensure the protection of sensitive PHI. Furthermore, every EHR and HIE are unique in their processes, functions, and capabilities. Each difference must be strongly considered and planned for when developing and implementing privacy and security protections.

At a minimum, the following should be taken into account:

- The use and disclosure of sensitive PHI must be stated in a clear and concise manner within the notice of privacy practices.
- Policies and procedures for disclosure of mental health and substance abuse records must be reviewed and updated regularly to reflect any changes in regulations and requirements and changes in organizational processes. For example, updates should be completed when new upgrades or revisions to the EHR occur.
- Regular employee education and training is imperative for staff disclosing this information. Staff should be educated on how to restrict sensitive PHI disclosure if the EHR system has the capability to block or limit access to this information. Staff must receive ongoing training on current and up-to-date regulations, requirements, and organizational systems and processes.
- Organizations should regularly track and audit information that is released to ensure:
 - Policies and procedures are followed
 - The request meets appropriate guidelines for releasing sensitive data
 - Only information requested was released
- Organizations should audit access in the EHR if and when auditors are granted access to review sensitive information online.

HIM professionals must ensure that mental health and substance abuse records are maintained at the highest level of confidentiality without impeding patient safety or obstructing a valid authorization to disclose information. As the healthcare industry advances electronically, HIM professionals need to campaign for regulations and statutes governing mental health and substance abuse records to be reviewed and updated to reflect current practices in the management and storage of sensitive health information.

Regulations must be augmented to meet the expectations of confidentiality, privacy, and security of these records in electronic systems.

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