

Practice Toolkit: Substance Abuse Treatment Programs

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by Pamela Haines, RHIA

HIPAA's privacy rule has heightened awareness about confidentiality of healthcare information among the general public. However, pockets of confusion still exist. Misunderstandings between healthcare providers and law enforcement officials (LEOs) abound about the laws governing protected health information (PHI). This is especially true with LEOs and substance abuse treatment programs (SATPs). SATPs and LEOs need to know where their responsibilities lie and how to work together to ensure that their actions are in accord with the Federal Alcohol and Drug Abuse Confidentiality Law (42 CFR, part 2), HIPAA, and state laws—whether it be in the interest of an individual's privacy rights or public safety at large.

Divergent Responsibilities

When at substance abuse treatment program facilities, LEOs are generally looking to locate, question, or apprehend a patient who may have been involved in an illegal activity or who may know of such activity. In other instances, LEOs may want to examine patient records or other PHI for similar reasons. In any case, SATPs have a certain responsibility to work with LEOs to help keep their communities safe.

Clearly, in instances of a crime or of a threat to commit a crime on the property of the program or against staff, 42 CFR, part 2, allows staff members to contact LEOs without patient authorization. LEOs may also be allowed into a program facility when following in hot pursuit of an individual. However, in other instances staff may be too ready to allow entrance or to disclose confidential information to LEOs with a search or arrest warrant when it is not permitted by 42 CFR, part 2. This may be because they feel intimidated by LEOs' presence or perceived threats or because they do not understand the unconditional compliance required by the law (2.13).

Good Policies Still Need Expert Involvement

The privacy rule requires privacy officers develop, implement, and conduct training on a covered entity's policies and procedures. This includes any nuances such as dealing with LEOs in the program facility and outlining what should be said and done. SATP privacy officers must be knowledgeable of all laws governing PHI. This is no simple task, considering at least two federal laws and state laws collectively require the most protective directive of patient privacy be applied.

Sometimes policies and procedures and work force training will not be enough to alleviate tension for both SATP staff and LEOs. Because of the complexity of the circumstances, some programs require immediate contact of a supervisor or privacy officer to handle situations with LEOs.

The Key: Communication

Some programs and their privacy officers have made special efforts to forestall problems and confrontations between their staff and LEOs by networking with local law enforcement supervisors about management issues on both sides. This builds an understanding of laws governing an SATP and possible legal sanctions for violation of patient privacy rights. Identifying lawful ways to meet the needs of LEOs is also important.

Some state hospital associations have convened a variety of interested parties, such as attorneys, healthcare and payer privacy officers, the attorney general's office, and LEOs, to discuss healthcare providers and law enforcement issues. This approach has proven very helpful and can also be done by state SATP associations. State HIM associations might also consider taking the lead in setting up similar representation to address issues with the statewide law enforcement agency.

As a member of AHIMA's HIPAA Community of Practice affirmed in a discussion thread, the bottom line is good communication between the program and law enforcement, which is key to ensuring the laws governing PHI are upheld.

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