

# 6.04 The Interaction Between 42 CFR Part 2 and HIPAA Privacy



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# Background...

- ◆ **NOT a Lawyer**
- ◆ Counseling background
- ◆ Electronic Medical Record Design/SA
- ◆ Corporate Privacy Office
  - Assessment/Gap Analysis
  - Training
  - Monitoring



# Hazelden Foundation

- ◆ Since 1949
- ◆ 3 MN Facilities
  - Center City, Plymouth, St. Paul
- ◆ Chicago, IL
- ◆ New York, NY
- ◆ Newberg, OR

[www.hazelden.org](http://www.hazelden.org)





# Hazelden

- ◆ Hazelden provides men, women, and teens with treatment for alcoholism and addiction.
- ◆ Hazelden's programs and publications are grounded in 12 Step philosophy for lifelong recovery.
- ◆ Hazelden pioneered the model of care for drug addiction and alcoholism treatment that is now used around the world.



# 2004 Statistics

- ◆ **Patients Served:**  
4,611
- ◆ **Publishing:** Products Sold = 3,158,791
- ◆ **Education:**
  - 22 Master of Arts Graduates
  - 5 Certificate in Addiction Counseling Graduates
  - 244 Professionals in Residence
- ◆ **Research:** 18 clinical research projects and papers
- ◆ **Volunteer Support:**
  - Over 140 volunteers donated more than 11,000 hours of service
- ◆ **Employees:** 1,020



# Hazelden Center City Campus



# Goals

- ◆ Brief review of Federal Drug & Alcohol Confidentiality law
- ◆ Examples where the two rules do not agree
- ◆ Examples of how Hazelden complies with both rules
- ◆ Outcomes
- ◆ Resources





# Federal Drug and Alcohol Confidentiality Regulations

- ◆ Two laws enacted in the early 1970's (one for alcohol, one for drugs)
- ◆ Guarantee strict confidentiality of information about persons receiving alcohol and drug prevention and treatment services
- ◆ Regulations implementing the statutes were issued in 1975
- ◆ Amended in 1987: Mandated abuse reporting
- ◆ Consolidated the statutes in 1992 (42 U.S.C 290-2), the regulations were not changed (42 CFR Part 2)





# Applicability

- ◆ Any information (including referral and intake) about alcohol and drug abuse patients obtained by a program
- ◆ Includes (not limited to):
  - Treatment or rehab programs
  - EAP
  - Programs within a general hospital
  - School-based programs
  - Private practitioners who provide alcohol or drug abuse diagnosis, treatment or referral



## Intent of 42 CFR Part 2

- ◆ Insure that an alcohol or drug abuse patient is not made more vulnerable by reason of the availability of his or her patient record than an individual who has an alcohol or drug problem and who does not seek treatment



## More about 42 CFR Part 2

- ◆ Regulations PROHIBIT the disclosure and use of patient records, with a few exceptions.
- ◆ Disclosure MAY occur if an exception exists but it does not REQUIRE the disclosure (except with a court order).



# 42 CFR Part 2 Allowable Disclosures

- ◆ Written authorization
- ◆ Internal communication (“need to know”)
- ◆ No patient-identifying information
- ◆ Medical emergency
- ◆ Qualified Service Organization
- ◆ Audit and evaluation
- ◆ Crimes (or threats of) on program premises or against program personnel
- ◆ Initial reports of suspected child abuse or neglect
- ◆ Court order meeting specifications of 42
- ◆ Research



# More interesting 42 CFR Part 2 facts

- ◆ Applies even if the person seeking the information already has it or has other ways to obtain it
- ◆ Applies to law enforcement or other official, even with a subpoena
- ◆ Disclosing even the presence of a patient at a facility or unit which is identified as a place where only drug/alcohol services are provided requires written authorization



# Of Interest

- ◆ The memories and impressions of program staff are considered “records” protected by the regulations even if they are never recorded in any form.
- ◆ A payer or funding source that maintains records of a recipient of drug/alcohol treatment becomes subject to 42 CFR Part 2 to the same extent as the program from which the information came.



# The Challenge

- ◆ Hazelden is covered by two federal laws and six states' laws.
- ◆ Some differences
- ◆ Some inconsistencies
- ◆ Need to understand both
  - How they interact
  - How to comply





# Which “wins”?

- ◆ Generally, the more recently enacted, **HOWEVER:**
- ◆ Not if earlier law has a more narrow, precise, or specific subject
- ◆ Not if later law addresses an issue on which an earlier law was silent



# Continued...

- ◆ Many HIPAA provisions PERMIT something but don't mandate it.
- ◆ 42 CFR Part 2 PROHIBITS all disclosures unless specifically allowed by the regulation.



Examples of “rule conflict”



# Disclosure for Payment

- ◆ HIPAA PERMITS disclosure with out patient consent for the purpose of payments.
- ◆ 42 CFR Part 2 PROHIBITS these disclosures with out patient consent.

CD providers must follow 42 CFR Part 2.



# Patient Rights & Administrative Requirements

- ◆ HIPAA imposes several new administrative requirements and establishes new patient rights.
- ◆ These are not included in 42 CFR Part 2.

CD providers must follow HIPAA.



# Personal Representatives

- ◆ HIPAA permits a “personal representative” (e.g. power of attorney) to sign consent forms on behalf of the patient.
- ◆ 42 CFR Part 2 limits those who may act in the place of the patient to individuals who have been legally appointed the patients’ guardian.

CD providers must follow 42 CFR Part 2.



# Re-disclosure of Information

- ◆ HIPAA is silent on this topic.
- ◆ 42 CFR Part 2 requires that a statement prohibiting re-disclosure accompanies the patient information that is disclosed.

CD providers must follow 42 CFR Part 2.





# Disclosures to Other Providers

- ◆ HIPAA allows, but does not require, programs to make disclosures to other healthcare providers without authorization.
- ◆ 42 CFR Part 2 limits this to medical emergencies.

CD providers must follow 42 CFR Part 2.



# Medical Emergencies

- ◆ HIPAA allows health care providers to inform family members of the individual's location and condition without consent in emergency circumstances or if a person is incapacitated.
- ◆ 42 CFR Part 2 limits this disclosure to medical personnel ONLY.

CD providers must follow 42 CFR Part 2.



# Disclosure to Public Health

- ◆ HIPAA permits disclosure to a public health authority for disease prevention or control, or to a person who may have been exposed to or at risk of spreading a disease or condition.
- ◆ 42 CFR Part 2 prohibits these disclosures unless there is an authorization, court order, or the disclosure is done with out revealing patient information.

CD providers must follow 42 CFR Part 2.



# Court Orders

- ◆ HIPAA makes no mention of any standards or procedures that a court must follow when issuing a court order.
- ◆ 42 CFR Part 2 has specific requirements.

CD providers must follow 42 CFR Part 2.



# Disclosure of Abuse

- ◆ HIPAA permits disclosure about any individual believed to be a victim of abuse, neglect or domestic violence.
- ◆ 42 CFR Part 2 limits the exception to initial reports of child abuse or neglect (no other kinds of abuse or neglect).

CD providers must follow 42 CFR Part 2, but if a state law compels to report other abuse:

Obtain authorization      Anonymous reporting  
QSO/BA with state agency      Court order



# Right to Access Records

- ◆ HIPAA REQUIRES a covered program to give an individual access to his/her own health information (with few exceptions).
- ◆ 42 CFR Part 2 gives programs DISCRETION to decide whether to permit patients to view or obtain copies of their records, unless they are governed by a state law that gives right to access.

CD providers must follow HIPAA.



# Privacy Notice

- ◆ HIPAA requires the Privacy Notice to be given at the time of first service.
- ◆ 42 CFR Part 2 requires the notice must be given at admission or as soon as a patient is capable of rational communication.

CD providers must follow HIPAA.





# Minimum Necessary

Under HIPAA, the standard of “Minimum Necessary” does not apply to uses or disclosures:

- to or by a health care provider for treatment
- made pursuant to a consent
- made to HHS for compliance and enforcement
- required by law
- Or required for compliance with the regulations



# HOWEVER...

- ◆ 42 CFR Part 2 overrides these permissible exceptions to “Minimum Necessary”.
- ◆ CD providers must limit ALL DISCLOSURES to that information which is necessary to carry out the purpose of the disclosure (except to the patient him/herself).



# Integrating HIPAA and 42 CFR Part 2



# Action Steps

- ◆ Conducted risk assessment and gap analysis
- ◆ Determined Privacy Officer and privacy structure
- ◆ Determined which Hazelden services are covered by which law
- ◆ Combined the Privacy Notices and added acknowledgment
- ◆ Combined the QSOA and BA
- ◆ Formulated written policies and formalized procedures around patient rights and administrative requirements.
- ◆ Set up a Privacy Board for research



# Action Steps, Cont...

- ◆ Set up training for “workforce”
- ◆ Set up complaint system
- ◆ Formulated a formal sanction policy
- ◆ Added a system to track and document disclosures needed for Accounting of Disclosures
- ◆ Changed Authorizations: format and giving copies
- ◆ Developed a process for written revocation of authorizations
- ◆ Developed auditing system


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Local intranet

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**HAZELDEN**

Corporate Privacy and Confidentiality Policies **2.1 Access to Protected Health Information & Procedures**

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**Purpose**  
This policy defines practices involving right of access to *protected health information (PHI)*.

**Scope**  
This policy applies to all Hazelden owned and managed programs and operations (see [Appendix C](#)) that create, maintain, access, use, or disclose *protected health information (PHI)* as defined by applicable law and regulation.

**Policy**

**Rights Statement**  
A *patient/participant* generally has the right of access to information contained within his/her *designated record set* for the purpose of inspecting and/or copying that information.

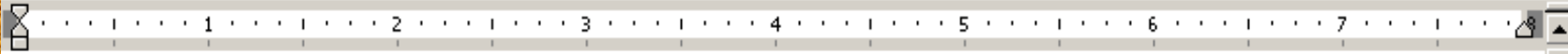
Under *HIPAA* this right of access does not apply to:

- ◆ Information compiled in reasonable anticipation of, or for use in, a civil criminal, or administrative action or

Done Local intranet

Example of On-line Privacy & Confidentiality Policy





### Request to Access Health Records

**Part A:** (to be completed by requestor)

Date: \_\_\_\_\_

Patient Name: \_\_\_\_\_ DOB: \_\_\_\_\_

Mailing Address: \_\_\_\_\_ City \_\_\_\_\_ State/Country \_\_\_\_\_ Zip \_\_\_\_\_

Phone Number: (\_\_\_\_) \_\_\_\_\_

Specify Information Requested: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Format Requested:  verbal  view  print

Please note: You have the right of access to your protected health information for the purpose of inspecting and or/copying that information. Your right **does not** include the following:

- Research information connected with treatment, as long as you signed the appropriate consent forms
- Information covered by the Privacy Act
- Information compiled in reasonable anticipation of, or for use in, a civil, criminal, or administrative action or proceeding

There may be additional limitations in accordance with applicable state and/or federal law. You will be told the reason for any limitations under state and/or federal law.

Example of On-line Privacy & Confidentiality Form



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Chicago Programs	RMIS Code	45 CFR (HIPAA)	42 CFR Part 2	Name of Individual Served	Type of Notice
Day Treatment	11405	yes	yes	Patient	Privacy Notice
Outpatient - Day	11005	yes	yes	Patient	Privacy Notice
Outpatient - Evening	11505	yes	yes	Patient	Privacy Notice
Continuing Care Groups	10805	yes	yes	Patient	Privacy Notice
Assessment - Non Res	10005	yes	yes	Patient	Privacy Notice
Chicago Evaluation	11605	yes	yes	Patient	Privacy Notice
Family Program - Non Res	11305	no	no	Attendee	Notice to Attendees & Registrants on Privacy
Sober Residence	10501	Yes	Yes	Patient	Privacy Notice

Fellowship Club-St. Paul Programs	RMIS Code	45 CFR (HIPAA)	42 CFR Part 2	Name of Individual Served	Type of Notice
Outpatient	11003	Yes	Yes	Patient	Privacy Notice
Intermediate Care	10903	yes	yes	Patient	Privacy Notice
Mental Health (* with CD diagnosis)	11103	yes	yes	Patient	Privacy Notice
Mental Health (* no CD diagnosis)	11103	Yes	No	Client	Privacy Notice
Assessment - Non Res	11603	yes	yes	Patient	Privacy Notice
Family/Cpls Therapy	11203	yes	No	Client	Privacy Notice

Program/Service Classification Grid



Other: (Specify) \_\_\_\_\_  
  Follow Up:  To locate me  Progress update

**Purpose for the Disclosure: Is to assist program staff with treatment and recovery unless checked below:**

Legal (Specify case type and client/attorney relationship): \_\_\_\_\_  
 Application for Insurance  Insurance benefits ID/claim review  Crisis Contact  Other \_\_\_\_\_

**PATIENT RESTRICTIONS ON METHODS FOR DISCLOSURE:**  
 I understand that communication of the items to be obtained or disclosed can occur:

Verbally  In-person conference  Written questionnaire  Mailed or faxed medical record/correspondence

**I understand that:**

- My health information is protected by federal regulations (Alcohol and Drug Abuse Patient Records, 42 CFR Part 2; and/or HIPAA, 45 CFR) and state privacy laws, and disclosure is allowed only with my authorization except in limited circumstances described in Hazelden's Privacy Notice. I understand that I have a right to inspect and receive a copy of my treatment records that may be disclosed to others, as provided under applicable state and federal laws.
- I can revoke this authorization at any time except to the extent that action has been taken in reliance on it. Hazelden's Privacy Notice outlines the procedure for revocation. This authorization will expire in one year from the date I sign it unless I request an earlier expiration in writing.
- For disclosures other than for treatment, payment and health care operations purposes, treatment may not be conditioned on my agreement to sign an authorization (unless I am receiving care solely to create protected health information for disclosure to a third party) [45 CFR § 164.508(b)(4)(iii)].
- Communications resulting from this authorization will reveal that I received services at Hazelden.
- Federal confidentiality regulations (42 CFR Part 2) prohibit redisclosure of information from alcohol and drug abuse patient records. However, HIPAA requires Hazelden to notify me of the potential that information disclosed pursuant to this authorization might be redisclosed by the recipient and is no longer protected by the HIPAA rules.
- This authorization may be used by Hazelden owned or managed programs upon transfer of my care to them.

**Client Signature:** \_\_\_\_\_ **Date:** \_\_\_\_\_

**Witness Signature:** \_\_\_\_\_ **Date:** \_\_\_\_\_

*14 Apr 2003; July 2003; Oct. 2004*

## Section of Authorization to Disclose Information



# Outcomes

- ◆ Increased protection of patients privacy and confidentiality
- ◆ Compliance with HIPAA
- ◆ Strengthened compliance with 42 CFR Part 2
- ◆ Lower risk for organization
- ◆ Streamlined, cohesive privacy and confidentiality policies on the intranet
- ◆ Structure to support operational needs and questions around both rules
- ◆ Accountability and awareness
- ◆ Standardized training and tools



# Resources

- ◆ To order “Confidentiality and Communication: A Guide to the Federal Drug & Alcohol Confidentiality Law and HIPAA” by The Legal Action Center:  
[http://www.lac.org/Merchant2/merchant.mvc?Screen=CTGY&Category\\_Code=P](http://www.lac.org/Merchant2/merchant.mvc?Screen=CTGY&Category_Code=P)
- ◆ **42 CFR Part 2 Regulation**  
<http://cfr.law.cornell.edu/cfr/cfr.php?title=42&type=part&value=2>
- ◆ **HIPAA and 42 CFR Part 2 Crosswalk**  
<http://www.tcada.state.tx.us/HIPAA/Crosswalk.pdf>
- ◆ [jwesloh@hazelden.org](mailto:jwesloh@hazelden.org)