

The Social Determinants of Health: The Next HIPAA Frontier

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Overview of Presentation

Key issues to address:

- What are the social determinants of health (SDOH)?
- Why are they important?
- Who addresses the SDOH?
- Under HIPAA, how can covered entities partner and share PHI with social service agencies?

What Are the Social Determinants of Health (SDOH)?

Consider the World Health Organization's definition:

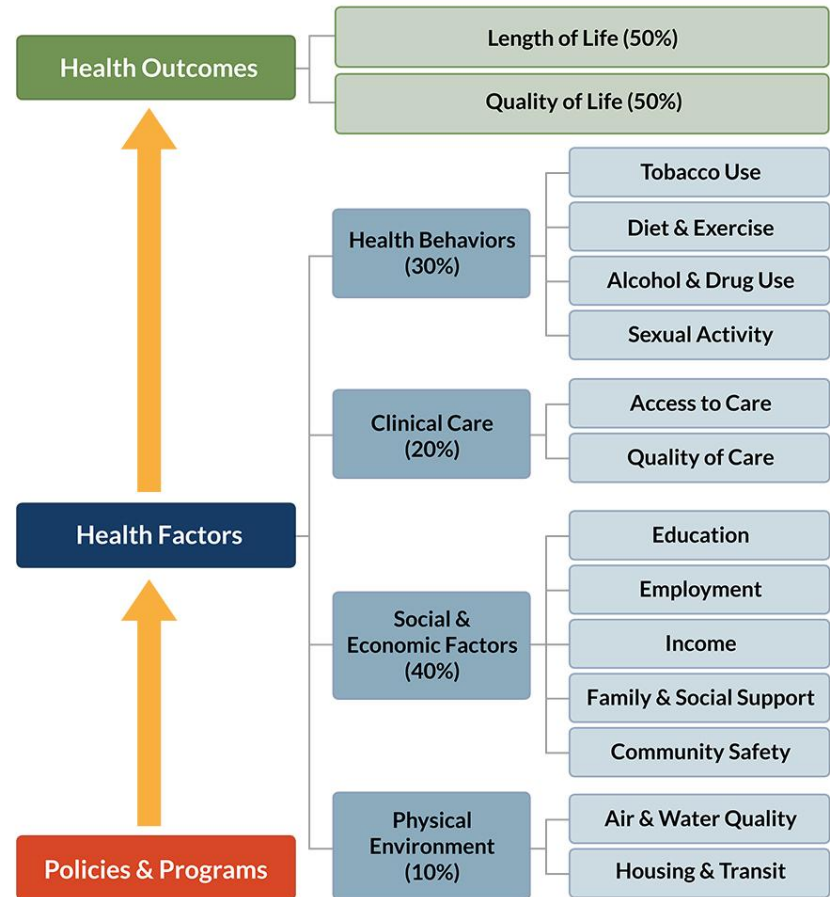
“The social determinants of health (SDH) are the conditions in which people are born, grow, work, live, and age, and the wider set of forces and systems shaping the conditions of daily life. These forces and systems include economic policies and systems, development agendas, social norms, social policies and political systems.”

SDOH at a Glance

Social Needs Domains	Examples
Food Insecurity	Limited or uncertain access to adequate & nutritious food
Housing Instability	Homelessness, unsafe housing quality, inability to pay mortgage/rent, frequent housing disruptions, eviction
Utility Needs	Difficulty paying utility bills, shut-off notices, disconnected phone
Transportation	Difficulty accessing/affording transportation (medical or public)
Exposure to Violence	Intimate partner violence, elder abuse, community violence

Why Are SDOH Important?

They are important because they contribute so largely to health outcomes!



County Health Rankings model © 2016 UWPHI

Who Addresses the SDOH?

Generally speaking, **social service agencies**

- Housing placement agencies and homeless shelters
- Transportation agencies (Uber, Lyft)
- Food banks
- Domestic violence/trafficking agencies
- May be public or private

Who Addresses the SDOH?

- With a greater emphasis on population health management, hospitals and other care providers are increasingly expected to screen for and respond to SDOH
- **Case in Point: Accountable Healthy Communities Model (AHCM)**
 - Funding opportunity through CMS's Center for Medicare and Medicaid Innovation (created by the ACA) to “test whether systematically identifying and addressing beneficiaries’ health-related social needs impacts total health care costs and reduces inpatient and outpatient utilization”
 - Dignity Health – St. Joseph’s Hospital and Medical Center in Phoenix is participating in the project as a “bridge organization,” which will screen beneficiaries for unmet health-related social needs and refer them to social service providers

Sharing PHI to Address SDOH

- To facilitate patient access to health-related social services, care providers will increasingly be called on to share information with social service agencies
- Information sharing may occur through direct sharing or through linkage on Web-based platforms (e.g., Healthify)
- Shared information may include “protected health information” or “PHI,” implicating HIPAA

Sharing PHI to Address SDOH

How can covered entities under HIPAA share PHI with social service agencies?

Problems:

- Social service agencies are rarely considered covered entities or business associates of covered entities
- Organized Health Care Arrangements (OHCAs) are composed solely of covered entities – so no social service agencies included
- Addressing the SDOH is not generally thought of as “treatment” as defined under HIPAA

Social Service Agencies: The Options

- **An “Involved Person”** – Patient oral agreement needed (and documentation recommended)
- **A Business Associate** – BA agreement needed
- **A “Third Party”** – Working with covered entity needed
- **A Health Care Provider** – Definition must be met
- **None of the Above** – Patient authorization needed

Social Service Agency: An “Involved Person”?

- 45 C.F.R. 164.510(b) permits a covered entity to disclose to a “family member, other relative, or a close personal friend of the individual, or any other person identified by the individual,” such PHI as is “directly relevant to such person’s involvement” with individual’s care or payment of care
- Generally, to permit such disclosure, all a covered entity must do is:
 - Obtain the individual’s agreement (may be oral);
 - Provide an opportunity to object to disclosure, and the individual does not object; or
 - Reasonably infer from the circumstances, based on professional judgment, that the individual does not object

Social Service Agency: An “Involved Person”?

- If individual is “not present, or the opportunity to agree or object” cannot be practicably be provided because of individual’s incapacity or an emergency, covered entity may use professional judgment to “determine whether the disclosure is in the best interests of the individual and, if so, disclose only the PHI that is directly relevant” to person’s involvement
- Arguably, 45 C.F.R. 164.510(b) allows covered entity, with individual’s approval, to disclose such limited PHI as is necessary to connect an individual to a social service agency
- **Example:** After getting patient’s approval, hospital social worker shares name and demographic and contact information with “meals on wheels”-type organization so it can contact patient to arrange for services

Social Service Agency: A “Business Associate”?

- Business associates perform certain functions “on behalf of” a covered entity and to that end may access or receive PHI
- Typically, social service agencies perform distinct services that often occur after a covered entity’s encounter with the patient/client – these services likely would not be characterized as “on behalf of” covered entity
- In these cases, business associate agreement would not be appropriate vehicle to share PHI
- There may be cases, however, where the social service agency undertakes certain obligations of a covered entity and thus does become a business associate

Social Service Agency: A “Third Party”?

- A covered entity may use or disclose PHI for its own or another health care provider’s “treatment” activities, without authorization (45 C.F.R. 164.506(c))
- **“Treatment”** is “the provision, coordination, or management of health care and related services by one or more health care providers, including the coordination or management of health care by a health care provider with a third party; consultation between health care providers relating to a patient; or the referral of a patient for health care from one health care provider to another” (45 C.F.R. 164.501)

Social Service Agency: A “Third Party”?

- **“Related services”** and **“third party”** not separately defined terms
- In preamble to initial HIPAA regulations (65 Fed. Reg. 82,628), HHS rejected call to remove “related services” reference in “treatment” definition
- HHS “disagree[d] with the concept that only health care services are appropriately included in the treatment definition”
- “Treatment” definition “allows health care providers to offer or coordinate social, rehabilitative, or other services” so long as they are “associated with the provision of health care”

Social Service Agency: A “Third Party”?

- Whether a “third party” social service agency’s services are “related” to covered entity’s other “treatment” activities is highly fact-specific
- **Let’s consider a hypothetical: Is the social service agency in the following example acting as a “third party” to whom the covered entity may provide PHI?**

A “Third Party” Hypothetical



- 25-year-old female presents to ED with symptoms of physical abuse
- Following applicable care protocols, clinical staff suspect patient may be a victim of human trafficking



- Social worker asks patient if she would like assistance from local organization that helps abused women and patient orally affirms
- Social worker contacts human trafficking organization by phone and provides patient's name, age, and description of symptoms



- Organization sends attorney and “survivor advocate” to hospital
- Attorney provides information about legal assistance to patient; “survivor advocate” provides a basic care kit with clothing and hygiene products and comforts patient with her story as a survivor of human trafficking

Social Service Agency: A “Third Party”?

Thus:

Covered entity provides, coordinates, or manages a patient/client's health care

Social service agency acts as “third party” providing “related services” to covered entity's services

Covered entity may share PHI with social service agency – no authorization required

Social Service Agency: A “Health Care Provider”?

- Health care providers have unique role under HIPAA
- Under 45 C.F.R. 160.103, a “**health care provider**” includes any person or organization who “furnishes, bills, or is paid for health care in the normal course of business”
- “**Health care**” is “care, services, or supplies related to the health of an individual,” which “includes, but is not limited to, the following:
 - (1) Preventive, diagnostic, therapeutic, rehabilitative, maintenance, or palliative care, and counseling, service, assessment, or procedure with respect to the physical or mental condition, or functional status, of an individual or that affects the structure or function of the body; and
 - (2) Sale or dispensing of a drug, device, equipment, or other item in accordance with a prescription.”

Social Service Agency: A “Health Care Provider”?

HHS has suggested “health care providers” could broadly include:

- State and local public health agencies
- Maternity support services (provided by nutritionists, social workers, and public health nurses and the Special Supplemental Nutrition Program for Women, Infants and Children)
- “Auxiliary providers,” such as child play therapists, and speech and language therapists
- “Alternative” or “complementary” providers, such as naturopathic physicians and acupuncturists

(65 Fed. Reg. 82,573)

Social Service Agency: A “Health Care Provider”?

- If a social service agency is a “health care provider,” then it may receive PHI to provide its own services to the patient/client – **without an authorization**
- Note that even if social service agency is a “health care provider” it will not be a “covered entity” subject to all of HIPAA’s regulations unless it engages in certain HIPAA-covered transactions

In Summary

If social service agency is acting as an

- Involved person;
- Business associate;
- Third party providing related services; or
- Health care provider

The covered entity may provide PHI –
without an authorization

Additional Considerations

- Closely scrutinize the type of services provided by social service agency, the location and duration, and interrelationship with clinical care to determine appropriate characterization of the agency under HIPAA
- Ensure that relevant contracts accurately characterize the social service agency and the basis under HIPAA that covered entity will disclose PHI
- If covered entity cannot adequately determine social service agency's characterization under HIPAA, written authorization should be obtained before any disclosure of PHI
- Remember that “minimum necessary” and other standard HIPAA requirements still apply to any disclosure of PHI
- Ensure relevant staff are adequately educated and trained on protocols for sharing PHI in the absence of an authorization

QUESTIONS?

Thank You