Q&A's about the Mental Health Care Coordination and HIPAA Harmonization Bill

Q: Would all mental health records be shared without consent if the Mental Health Care Coordination and HIPAA Harmonization Bill were enacted?

A: No. Some, but not all, mental health records could be shared without consent.
Not all mental health information could be shared without consent if the Bill were enacted. Importantly, psychotherapy notes - the notes recorded by a mental health professional documenting or analyzing the contents of conversation during a counseling session that are separated from the rest of the individual's medical record - could not be shared without consent pursuant to the Bill and federal HIPAA law.

Q: Is it true that under current Wisconsin law a psychiatrist can share a patient's mental health diagnosis with the patient's other treating providers without the patient's consent?

A: Yes, Wisconsin law already permits the sharing of a mental health diagnosis without consent

Under a law passed with the support of consumer organizations in 2008, an individual's diagnosis, medications, non-psychologic test results, and symptoms can be shared between treating providers without the patient's consent.

Q: Is mental health treatment information strictly confidential under current law?

A: There are currently over 27 exceptions in Wisconsin's mental health confidentiality law that permit the release of treatment records without informed written consent.

Some of the notable exceptions include:

- Disclosures by DHS "to the extent necessary to coordinate treatment for mental illness, developmental disabilities, alcoholism or drug abuse of individuals who have been committed to or who are under the supervision of the department." §51.30(4)(a)7.
- Disclosures to DHS or county human services agencies "as is necessary to determine progress and adequacy of treatment." §51.30(4)(a)5.
- Disclosures to DHS or county human services agencies for purposes of billing and collections. §51.30(4)(a)2.
- Disclosures for treatment of an individual in a medical emergency, if the patient cannot provide consent. However, disclosures under this provision, must be limited to only that part of the records necessary to meet the medical emergency. §51.30(4)(a)8.

Q: Why isn't the information permitted under Act 108 enacted in 2008 sufficient for a modern integrated care team approach to patient centered care?

A: The items listed in §51.30(4)(a)8g. of Act 108 provides important information, but not a full picture of information that would be relevant to a treating provider.

For example, such information does not include important information on plans of care, medical history, discharge instructions, functional status, treatment goals, etc. Also missing from that list is important summary information in medical notes from a mental health care provider such as why certain medications were prescribed as opposed to others.

Q: Why is the Bill necessary? Can't a physician just get a patient's consent?

A: The process for getting the legal consent required by Wisconsin's statute is often not easy, which can lead to delays in getting the right care.

Under current Wisconsin law, the disclosing health care provider, not the requesting health care provider, has the duty to get the written consent of the individual before disclosing most mental health information to the requesting provider. Further, Wisconsin's mental health law does not have a "general" consent to disclose but requires that the written consent contain specific information, including the "specific type" of information to be disclosed, the "purpose or need" for the disclosure, and the name of the person or organization to which the disclosure is being made.

Thus, if an individual sees multiple providers for multiple reasons at different times, the individual could be asked to sign several different consents at several different times, and the individual's mental health care provider would have to ensure that they have all of the appropriate consents before providing the information to the individual's other providers.

In a modern health care system where care is coordinated across multiple providers, this process is unnecessarily time consuming for both the patient and providers, and is likely to result in providers not getting information that could be medically appropriate. For example, a primary health care provider would have to request that the individual's mental health provider get the individual's written consent to share information from the mental health provider before the mental health care provider could send information to the primary health care provider. If the primary health care provider is seeing the individual for the first time, that could mean the primary health care provider would not see information from the individual's mental health care provider until the next visit. And that presumes that the primary health care provider even knows that the individual has a mental health care provider, and that the individual has consented to the disclosure.

Q: Will the Bill dis-empower consumers from making decisions about their health care?

A: Consumers have multiple other effective ways to exercise decision making about their health care that will

continue to exist, including through informed consent for treatment laws, HIPAA rights, rights to terminate their relationship with their provider, and rights to report any inappropriate or discriminatory provider behavior to the State. <u>In fact, by having additional relevant information available, a provider can empower a consumer to make more informed decisions about their health care</u>.

The Bill does not change the requirement that a consumer provide informed consent to treatment, whether for mental health needs or other health needs. With additional information available to the provider, a provider can provide a consumer a more accurate set of treatment options for the consumer to consider.

The Bill provides the same rights to an individual receiving mental health treatment as an individual receiving other health treatment.

Pursuant to Federal HIPAA privacy law, a consumer and his/her mental health provider may agree to not share mental health records with other providers, however, a provider does not always have to agree to do what the consumer asks, particularly if it could affect the consumer's care. If such an agreement is made, the mental health provider must abide by such an agreement.

A consumer has the right to terminate his/her relationship with his/her health care provider if the patient believes his/her health care provider is discriminating against him/her because of his/her mental illness or is simply not satisfied with the care he/she is receiving – AND SHOULD TERMINATE THAT RELATIONSHIP AND FIND A NEW HEALTH CARE PROVIDER THAT THEY ARE COMFORTABLE WITH.

A consumer that has been discriminated against by their health care provider has a right to and should report their discrimination to the Department of Health Services Division of Quality Assurance or the Department of Safety and Professional Services as appropriate. Those Departments can discipline health care providers for inappropriate behavior.

Q: Will the Bill require mental health providers to share mental health treatment information with other treating providers?

A: <u>No, the Bill makes sharing permissive; sharing is not required.</u>

If it is important to a consumer that their mental health provider not share information with other treating providers, a consumer should exercise their right under HIPAA to request that their health information not be shared with other treating providers. If the provider does not agree to that request, a consumer should consider finding another mental health provider that is more compatible with the consumer's views on mental health treatment and that agrees to not share such information without the patient's consent.

Q: Isn't aligning state mental health confidentiality laws with the Federal HIPAA privacy law controversial?

A: <u>Washington state in 2009 and Hawaii in 2012 enacted nearly identical legislation to the Mental Health Care</u>

Coordination Bill/HIPAA Harmonization Bill. Those bills passed both houses of each state without a single no vote.

A: Mental health providers, including the Wisconsin Psychiatric Association, support the Mental Health Care Coordination and HIPAA Harmonization Bill.

A: As a federal organization, the Veterans Health Administration's (VA) applies HIPAA, but not Wisconsin's law, to disclosures of mental health information. Thus, except for psychotherapy notes, Wisconsin veterans receiving mental health care in VA facilities are not required to provide written consent to permit disclosure by their VA providers of mental health information except as required by HIPAA.

Q: Do some mental health consumers support aligning state mental health confidentiality laws with the Federal HIPAA privacy law?

A: Consumers and families of consumers all have different experiences, perceptions, and values. There is no single view of all consumers and families on aligning state mental health confidentiality laws with HIPAA. While some consumers have expressed concern about the Bill, some consumers and families of consumers support "making parity real" by breaking down the historical silos between mental health care and physical health care and support aligning state mental health confidentiality laws with the Federal HIPAA privacy law to increase the likelihood that a person is treated as a whole, not their head and body separately.

A: Hawaii's HIPAA harmonization bill had the support of consumer organizations including the National Alliance on Mental Health – Hawaii, Mental Health America – Hawaii, and the Hawaii Clubhouse Coalition. In a group letter of support, they wrote: "We support the streamlining of access to health records and believe that the HIPAA protections that are currently in place provide adequate protection for Hawaii's consumers."

Q: Would this bill allow my physician to send information to my employer without my permission?

A: No. The sharing of health information for employment-related purposes without patient authorization remains prohibited under HIPAA and state law.

Q: If I pay in full for a clinic visit, can I prohibit my health care professional from sending mental health information created during that clinic visit to my insurance company?

A: Yes. The bill does not change federal HIPAA provisions that prohibit disclosures of information to an insurer upon request from a self-pay patient.

Q: Does the bill modify the law regarding disclosures made to family members regarding my care?

A: No.

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YOUR HEALTH INFORMATION PRIVACY RIGHTS

Most of us feel that our health information is private and should be protected. That is why there is a federal law that sets rules for health care providers and health insurance companies about who can look at and receive our health information. This law, called the Health Insurance Portability and Accountability Act of 1996 (HIPAA), gives you rights over your health information, including the right to get a copy of your information, make sure it is correct, and know who has seen it.

Get It.

You can ask to see or get a copy of your medical record and other health information. If you want a copy, you may have to put your request in writing and pay for the cost of copying and mailing. In most cases, your copies must be given to you within 30 days.

Check It.

You can ask to change any wrong information in your file or add information to your file if you think something is missing or incomplete. For example, if you and your hospital agree that your file has the wrong result for a test, the hospital must change it. Even if the hospital believes the test result is correct, you still have the right to have your disagreement noted in your file. In most cases, the file should be updated within 60 days.

Know Who Has Seen It.

By law, your health information can be used and shared for specific reasons not directly related to your care, like making sure doctors give good care, making sure nursing homes are clean and safe, reporting when the flu is in your area, or reporting as required by state or federal law. In many of these cases, you can find out who has seen your health information. You can:

- **Learn how your health information is used and shared by your doctor or health insurer.** Generally, your health information cannot be used for purposes not directly related to your care without your permission. For example, your doctor cannot give it to your employer, or share it for things like marketing and advertising, without your written authorization. You probably received a notice telling you how your health information may be used on your first visit to a new health care provider or when you got new health insurance, but you can ask for another copy anytime.
- **Let your providers or health insurance companies know if there is information you do not want to share.** You can ask that your health information not be shared with certain people, groups, or companies. If you go to a clinic, for example, you can ask the doctor not to share your medical records with other doctors or nurses at the clinic. You can ask for other kinds of restrictions, but they do not always have to agree to do what you ask, particularly if it could affect your care. Finally, you can also ask your health care provider or pharmacy not to tell your health insurance company about care you receive or drugs you take, if you pay for the care or drugs in full and the provider or pharmacy does not need to get paid by your insurance company.

- **Ask to be reached somewhere other than home.** You can make reasonable requests to be contacted at different places or in a different way. For example, you can ask to have a nurse call you at your office instead of your home or to send mail to you in an envelope instead of on a postcard.

If you think your rights are being denied or your health information is not being protected, you have the right to file a complaint with your provider, health insurer, or the U.S. Department of Health and Human Services.

To learn more, visit **www.hhs.gov/ocr/privacy/**.

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