

Deflection: Sharing Information With Team Members

Can a deflection team member, such as a peer recovery specialist or a clinician, share health or treatment-related information learned from the client with other members of the deflection team?

Response

If the peer recovery specialist or clinician is employed by a health care or treatment provider, or otherwise qualifies as a Health Insurance Portability and Accountability Act (HIPAA)-covered entity, they may only share client-specific information with the remainder of the deflection team if the client has signed a HIPAA-compliant authorization form or a 42 Code of Federal Regulations (CFR) Part 2-compliant consent form, or preferably both, authorizing that disclosure. In the absence of client authorization—or if the client later revokes authorization or consent—client-specific information cannot be shared.

Practice Tip: It is important to note that client authorization or consent must be in writing and can be revoked at any time. Deflection programs should have standard HIPAA-compliant authorization and 42 CFR Part 2-compliant consent forms ready to be signed by program participants upon their entry into the program.

If the peer recovery specialist or clinician is not employed by either a HIPAA-covered entity or Part 2 program or does not otherwise qualify as a covered entity, they may share information received directly from the client with other deflection team members without a signed client authorization and/or consent form. This situation would occur if, for example, the peer recovery specialist or clinician is employed by law enforcement. If, however, the client-specific health or treatment information is received from the client's health or treatment provider, rather than the client themselves, that information is subject to HIPAA and 42 CFR Part 2 restrictions on disclosure or redisclosure of information.

Additional Discussion

If the patient has signed an authorization form allowing the disclosure of such information, HIPAA does not prohibit a HIPAA-covered entity from sharing a patient's protected health information (PHI) with anyone, including law enforcement.

Practice Tip: The contents and requirements of an authorization form to use or disclose PHI are described in 45 CFR § 164.508(c). These include six core elements, three statements, use of plain language, and access to a copy of the signed document.

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If the original source for client information comes from a substance use disorder (SUD) treatment provider that qualifies as a Part 2 program, that information cannot be shared with team members without client consent. Federal regulations provide specific requirements for the contents of this consent.

Practice Tip: The contents and requirements of a consent form to use or disclose SUD treatment information are described in 42 CFR § 2.31. There are nine required elements for a valid, written consent.

States may have additional privacy protections in place via statute or regulation that might impinge on a peer support specialist's or clinician's ability to share information, so programs should make sure to check with a local attorney regarding any state-specific provisions that might need to be addressed in an authorization or consent form.

If the client has signed an authorization and/or consent form authorizing the peer support specialist or clinician to share information with other program members, any information obtained by the peer support specialist or clinician regarding the client can—and should—be shared with the other members of the team. In addition, programs should enter into a memorandum of understanding (MOU) with all of their partners, including their law enforcement partners, to specify what information will be shared, with whom, and how the information can and will be used. The purpose of entering into the MOU is to establish data sharing limitations between partners and to allay any client concerns about sharing their PHI.

Definitions

Deflection initiative—A collaborative intervention designed to (1) connect law enforcement agencies and/or other first responder entities with public health/behavioral health systems to create pathways to community-based treatment, recovery support services, housing, case management, or other services for individuals with SUDs, mental health disorders, or co-occurring disorders; and (2) keep these individuals out of the criminal justice system, when possible, by addressing their unmet health needs. Throughout the country, particular types of deflection initiatives are referred to by a host of names, including pre-arrest diversion, pre-booking diversion, law enforcement diversion, co-responder teams, crisis intervention teams, and mobile crisis teams.

Deflection team—A unit of individuals working together within a deflection initiative to provide deflection services to participants. Examples of deflection teams include an individual post-overdose response team, a crisis intervention team, or a co-responder team.

HIPAA-covered entity [45 CFR § 160.103]—A health plan, health care clearinghouse, or health care provider who transmits any health information in electronic form in connection with a transaction covered by HIPAA.

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Individually identifiable health information [45 CFR § 160.103]—Health information that:

- Identifies the individual or provides a reasonable basis to identify the individual.
- Relates to (1) the individual's past, present, or future physical health or condition; (2) the provision of health care to the individual; or (3) the individual's past, present, or future payment for health care.

Part 2 program [42 CFR §§ 2.11 and 2.12(b)]—An individual or entity that (1) holds itself out as providing, and actually provides, assessment, treatment, or referral to treatment for SUD and (2) receives federal assistance (as defined by regulation). Most SUD treatment providers qualify as Part 2 programs.

Protected health information [45 CFR § 160.103]—Subject to a few exceptions, PHI is individually identifiable health information that is maintained or transmitted in any form or media. In the context of HIPAA-protected information, PHI does not include information about a person deceased for more than 50 years.