Using GoToWebinar
(Live participants only)

- Control Panel
- Asking Questions
- Handouts
- Audio (phone option)
- Polling Questions
Definitions

- Privacy: the right of clients
- Confidentiality: legal exceptions to privacy
- Privileged Communication: legal parameters
- Informed Consent – Mandatory Disclosure: Limits explained
- Re-disclosure – don’t do it
Applicability & Re-Disclosure
42 C.F.R. §§ 2.11, 2.12, 2.32

• What changed?
  • Treatment records created by non-Part 2 providers based on their own patient encounter(s) are explicitly not covered by Part 2, unless any SUD records previously received from a Part 2 program are incorporated into such records. Segmentation or holding a part of any Part 2 patient record previously received can be used to ensure that new records created by non-Part 2 providers will not become subject to Part 2.

• Why was this changed?
  • To facilitate coordination of care activities by non-part-2 providers.

Disposition of Records
42 C.F.R. § 2.19

• What changed?
  • When an SUD patient sends an incidental message to the personal device of an employee of a Part 2 program, the employee will be able to fulfill the Part 2 requirement for "sanitizing" the device by deleting that message.

• Why was this changed?
  • To ensure that the personal devices of employees will not need to be confiscated or destroyed, in order to sanitize in compliance with Part 2.

Consent Requirements
42 C.F.R. § 2.31

• What changed?
  • An SUD patient may consent to disclosure of the patient’s Part 2 treatment records to an entity (e.g., the Social Security Administration), without naming a specific person as the recipient for the disclosure.

• Why was this changed?
  • To allow patients to apply for benefits and resources more easily, for example, when using online applications that do not identify a specific person as the recipient for a disclosure of Part 2 records.
Ethics in Practice, Part 2: Principle II

Disclosures Permitted with Written Consent
42 C.F.R. § 2.33

• What changed?
  • Disclosures for the purpose of “payment and health care operations” are permitted with written consent, in connection with an illustrative list of 18 activities that constitute payment and health care operations now specified under the regulatory provision.

• Why was this changed?
  • In order to resolve lingering confusion under Part 2 about what activities count as “payment and health care operations,” the list of examples has been moved into the regulation text from the preamble and expanded to include care coordination and case management activities.

Disclosures to Central Registries and PDMPs
42 C.F.R. §§ 2.34, 2.36

• What changed?
  • Non-OTP (opioid treatment program) and non-central registry treating providers are now eligible to query a central registry, in order to determine whether their patients are already receiving opioid treatment through a member program.
  • OTPs are permitted to enroll in a state prescription drug monitoring program (PDMP) and permitted to report data into the PDMP when prescribing or dispensing medications on Schedules II to V, consistent with applicable state law.

• Why was this changed?
  • To prevent duplicative enrollments in SUD care, duplicative prescriptions for SUD treatment, and adverse drug events related to SUD treatment.

Medical Emergencies
42 C.F.R. § 2.51

• What changed?
  • Declared emergencies resulting from natural disasters (e.g., hurricanes) that disrupt treatment facilities and services are considered a “bona fide medical emergency,” for the purpose of disclosing SUD records without patient consent under Part 2.

• Why was this changed?
  • To ensure clinically appropriate communications and access to SUD care, in the context of declared emergencies resulting from natural disasters.
Research
42 C.F.R. § 2.52

• What changed?
  • Disclosures for research under Part 2 are permitted by a HIPAA-covered entity or business associate to individuals and organizations who are neither HIPAA covered entities, nor subject to the Common Rule (re: Research on Human Subjects).

• Why was this changed?
  • To facilitate appropriate disclosures for research, by streamlining overlapping requirements under Part 2, the HIPAA Privacy Rule and the Common Rule.

Audit and Evaluation
42 C.F.R. § 2.53

• What changed?
  • Clarifies specific situations that fall within the scope of permissible disclosures for audits and/or program evaluation purposes.

• Why was this changed?
  • To resolve current ambiguity under Part 2 about what activities are covered by the audit and evaluation provision.

Undercover Agents and Informants
42 C.F.R. § 2.67

• What changed?
  • Court-ordered placement of an undercover agent or informant within a Part 2 program is extended to a period of 12 months, and courts are authorized to further extend the period of placement through a new court order.

• Why was this changed?
  • To address law enforcement concerns that the current policy is overly restrictive to some ongoing investigations of Part 2 programs.
HIPAA

What's New?

Presented by: Mita M. Johnson, EdD, LAC, MAC, SAP, CTHP-II and Cynthia Moreno Tuohy, BSW, NCAC II, CDC III, SAP

Defining Important Terms

• Covered Entity
• Privacy Rule & Security Rule
• Psychotherapy Notes
• Consents & Authorization
• Authorization
• Risk Assessment & Management
• Breach Assessment
• Breach Notification Rule

Purpose of HIPAA

• HIPAA's primary purpose is to protect the privacy of people receiving health care services.
• During the course of behavioral/addiction health treatment, there may come a point where the therapist providing care believes it necessary to share certain information with a client's partner, parent, or doctor, or with law enforcement. HIPAA establishes standards for sharing this kind of information with other people involved in someone's care.

• HIPAA requirements help protect not only people in therapy, but also the therapists providing treatment. The protections offered by HIPAA not only protect confidentiality of people receiving health care, they can also lead to improved treatment by allowing health care professionals and family members to collaborate.
1. HIPAA has become the standard of care in regard to storage and transmission of electronic-digital records. Generally, it applies to all therapists regardless of their billing practices.
2. HIPAA will be determined by case law. This reason alone suggests that all therapists comply ASAP, thus eliminating the need to face it in court.
3. Unpredictable emergencies or future events might happen where you will have to submit PHI electronically and need to be instantly compliant, i.e., suicidal clients or a new insurance company that bills electronically.
4. HIPAA can be triggered unexpectedly by actions outside of control or even your knowledge, i.e., your billing company changes to electronic billing.

HIPAA Recommendations

Continued

5. HIPAA is not only about electronic transmission it is also about privacy, security and the therapist’s entire operation. HIPAA also concerns privacy and security of file cabinets, computers, etc.
6. Many states have amended their state laws to be aligned with HIPAA laws. As a result, HIPAA has, generally, become the standard of care regarding the privacy and security of electronic-digital records.
7. The entire field will become electronically dependent and HIPAA compliant. Most likely, in the future the only way to be reimbursed by any third party will be by electronic billing.
8. The risks and potential penalties for non-compliance are great. Fines and charges for non-compliant therapists can be severe and damaging.

HIPAA: Steps towards Compliance

1. Gain general knowledge of HIPAA regulations.
2. Create a HIPAA Check List – HIPAA forms, logs, documentation, etc.
3. Designate yourself as the “Privacy Officer”
5. Secure records – double locked system. Monitor who has access.
6. Provide basic computer security: virus protection, firewalls, backup, passwords (change regularly), encryption, log out, access log.
7. Keep answering machines, fax machines & computer screens confidential and away from unauthorized individuals.

8. Consider keeping separate and more protected clinical notes for some clients – check with your state rules and laws. Many states do not allow double set of notes.

9. Post public notices regarding the Privacy Officer and the Notice of Privacy Practices in the waiting room and, when appropriate, on your website.

10. Obtain, if relevant, from your “Business Associates” (i.e., clearinghouses, answering services) a HIPAA Business Associate contract.

11. Train your employees or staff (if you have any) in HIPAA compliance. Document the training and re-training as necessary.

12. Make sure you are not shut out of insurance reimbursement when they stop accepting paper claims. Following are two basic options: 1) For the low-tech therapist, fax or mail your paper invoices to a billing service which, with the help of a clearinghouse, will transmit your bills electronically to the insurance companies; 2) For the high-tech therapist, a more complex option is for you to install a basic billing program, such as Medisoft, and either submit your claim to a clearinghouse or, if you like the challenge, submit them directly yourself.
**Principle I: The Counseling Relationship**

- Informed Consent: mandatory disclosure; living document
- Limits of Confidentiality: responsibility falls on clinician to not disclose anything that is not in the best interests of the client – even when the client does not understand that
- Mandated Clients

**Principle II: Confidentiality & Privileged Communication**

- Informed Consent: Limits to Confidentiality
- Documentation, Storage & Disposal
- Access: On a need-to-know basis
- Multidisciplinary Care
- Encryption
- Minors
- Transfer of records
- Termination

**Principle III: Professional Responsibilities & Workplace Standards**

- Dual Relationships
- Clinical Supervision
Principle IV: Working in a Culturally-Diverse World

- Respect
- Cultural Meanings
- Credibility
- Advocacy – protecting client information

Principle V: Assessment, Evaluation & Interpretation

- Assessment
- Administration
- Sharing Results
- Security

Principle VI: e-Therapy, e-Supervision & Social Media

- Informed Consent
- Encryption
- Security of platforms
- Records
- Social Media
Principle VII: Supervision & Consultation
- Supervision Informed Consent
- Client informed of who else has access to information
- Client information protected
- e-Supervision

Principle VIII: Resolving Ethical Concerns
- Violations without Harm

Principle IX: Research & Publication
- Client informed consent
- Confidentiality in research practices
- Proprietary information
- Publications
When you’re stuck.

**Code of Ethics, Laws, Policies & Regulations**

- NAADAC Code of Ethics: [https://www.naadac.org/code-of-ethics](https://www.naadac.org/code-of-ethics)
- Addictionary® (Recovery Research Institute): [https://www.recoveryanswers.org/addiction-ary/](https://www.recoveryanswers.org/addiction-ary/)
- Legal Action Center: [https://www.lac.org/](https://www.lac.org/)
- National Center on Substance Abuse and Child Welfare: [https://ncsacw.samhsa.gov/research/key-legislation.aspx](https://ncsacw.samhsa.gov/research/key-legislation.aspx)
- SAMHSA Laws and Regulations: [https://www.samhsa.gov/about-us/who-we-are/laws-regulations](https://www.samhsa.gov/about-us/who-we-are/laws-regulations)

**Code of Ethics, Laws, Policies & Regulations**

- National Alliance for Model State Drug Laws: [https://namsdl.org/](https://namsdl.org/)
Code of Ethics, Laws, Policies & Regulations

- Rural Health Information Hub – Legal Issues: Legal Issues - RHIhub Substance Use Disorder Toolkit (ruralhealthinfo.org)
- Mental Health America (MHA) Policy: https://www.mhanational.org/issues/position-statement-33-substance-use-disorders

Confidentiality in Practice

- If I tell my psychologist about a crime I committed, can I get in trouble?: https://www.nolo.com/legal-encyclopedia/if-i-tell-psychologist-crime-i-committed-can-i-get-trouble.html

AMHCA (American Mental Health Counselors Association)

- Ethics FAQs: https://www.amhca.org/publications/ethics/ethicsfaq
- AMHCA Practice Guidelines: https://www.amhca.org/publications/practiceguidelines
APA (American Psychological Association)

- Ethics: https://www.apa.org/topics/ethics
- Potential ethical violations: https://www.apa.org/topics/ethics/potential-violations
- Workplace issues: https://www.apa.org/topics/workplace

The Center for Ethical Practice

- Why "Who is the Client?" Is the Wrong Ethical Question: https://centerforethicalpractice.org/articles/articles-mary-alice-fisher/why-who-is-the-client-is-the-wrong-ethical-question/
- Practice Resources: https://centerforethicalpractice.org/ethical-legal-resources/practice-resources/
- More Forms & Resources Online Links: https://centerforethicalpractice.org/ethical-legal-resources/links/

Thank You! Any Questions?

Presented by: Mita M. Johnson, EdD, LAC, MAC, SAP, CTHP-II and Cynthia Moreno Tuohy, BSW, NCAC II, CDC III, SAP
UPCOMING WEBINARS

- February 17, 2021
  Wellness and Recovery in the Addiction Profession Part Two: Understanding Diversity
  By: Mita M. Johnson, EdD, LAC, MAC, SAP, CTHP-II

- February 26th, 2021
  Wellbeing and Recovery in the Addiction Profession Part Three: Food as Medicine
  By: Mukta Kaur Khalsa, PhD

- February 24, 2021
  Rehabilitating Addiction Treatment: An Anti-Racist Recovery Approach
  By: Sarah Buino, LCSW, RDDP, CADC, CDWF and Sarah Suzuki, LCSW, CADC

- March 12, 2021
  Part Three: NAADAC/NCC AP Code of Ethics, Principles III, IV & IX - Professional Responsibilities & Workplace Standards; Working in a Culturally Diverse World; and Research and Publication
  By: Mita M. Johnson, EdD, LAC, MAC, SAP, CTHP-II and Angela Maxwell, PhD, CSAPS

- March 12th, 2021
  Part Four: NAADAC/NCC AP Code of Ethics, Principle VII - Supervision and Consultation
  By: Mita M. Johnson, EdD, LAC, MAC, SAP, CTHP-II, Cynthia Moreno Tuohy, BSW, NCAC II, CDC III, SAP and Thomas Durham, PhD

www.naadac.org/webinars

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February 23–26, 2021
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www.naadac.org/certificate-for-wellness-and-recovery-online-training-series

Presented by: Mita M. Johnson, EdD, LAC, MAC, SAP, CTHP-II and Cynthia Moreno Tuohy, BSW, NCAC II, CDC III, SAP
The Ethics In Practice Specialty Online Training Series will provide a thorough dive into the NAADAC/NCC AP Code of Ethics, bringing to life how the code plays out in the work of addiction professionals and ways to handle and avoid ethical dilemmas.

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- Certificate in Substance Abuse Counseling
- Certificate in Prevention Counseling
- Certificate in Addictions Counseling for Clients with HIV/AIDS
- Certificate in Addictions Counseling for Clients with Mental Health

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Thank You

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