NOTES AND COMMENTS

Achieving Coordination of Care in Behavioral Health: A Call for Revisiting Confidentiality Laws

Tom O’Donnell, Daniel H. Willick, and Suzette E. Gordon

ABSTRACT: The reforms set forth in the Patient Protection and Affordable Care Act are being implemented on both the federal and state levels. One goal is to shift the traditional fee-for-service healthcare delivery system to one that supports value-based quality care, is patient-centric, and utilizes coordination-of-care principles. To achieve this, the federal government has supported and encouraged providers’ use of electronic health records to enhance health information sharing among all providers working in a coordinated effort to address patient needs. This article examines a legal impediment to a robust application of coordination-of-care principles: confidentiality provisions that limit providers’ ability to share fully behavioral health patients’ health information across all caregiver lines. The authors propose reforming these confidentiality laws and regulations to achieve the necessary sharing of health information.

KEYWORDS: Patient Protection and Affordable Care Act, Accountable Care Organization, Behavioral Health, Health Reform, Care Coordination, Covered Entity, Health Insurance Portability and Accountability Act, Health Home, Health Information, Health Information Technology for Economic and Clinical Health Act, Electronic Health Record, Mental Health, Patient-Centric, Regional Health Information Organization, Substance Use


Author biographies appear on the next page.
Tom O’Donnell, Esquire, has over thirty years of experience representing the healthcare community. Mr. O’Donnell has focused his practice for the past several years on privacy and security issues related to patient health information. He is senior counsel in the Health Care Practice Group of Polsinelli Shughart, PC, a national healthcare law firm. He is located in their Kansas City, Missouri office. Contact him via email at TODonnell@Polsinelli.com.

Daniel H. Willick, Esquire, practices in Los Angeles specializing in healthcare law. Mr. Willick is general counsel to the California Psychiatric Association and has been a legal consultant to the University of California system on mental health law. He advises boards of directors, negotiates healthcare contracts, and advises on proposed healthcare legislation and regulations. Additionally, he represents clinics providing psychotherapy and other medical services. He is an Assistant Clinical Professor at the U.C.L.A. Geffen School of Medicine. Contact him via email at: dwillick@willicklaw.com.

Suzette E. Gordon, Esquire, is a senior healthcare attorney with the New York City Department of Health and Mental Hygiene. She primarily counsels programs in the Health Department’s Division of Healthcare Access and Improvement, including the correctional health services program, which provides healthcare services to individuals in New York City jails, and the Primary Care Information Project, which uses health information technology to improve healthcare for New Yorkers. Contact her via email at sgordon2@health.nyc.gov.

The opinions that are expressed in this article do not necessarily represent the opinions of the New York City Department of Health and Mental Hygiene.
O’Donnell, Willick, and Gordon: Revisiting Confidentiality Laws

CONTENTS

Introduction ............................................................................................ 59
The History of Health Information Exchange Reform Efforts ............... 62
  The Administrative Simplification Act .............................................. 63
  Coordination of care and shifts in payment models ....................... 64
  Electronic health records ............................................................... 66
  Health information exchanges ......................................................... 68
  Confidentiality/consent requirements:
    Obstacles to effectiveness .......................................................... 68
The Benefits of Sharing ........................................................................ 70
Legal Obstacles to Sharing .................................................................. 73
  HIPAA ........................................................................................... 73
  Laws recognizing confidentiality as the core of
    behavioral health therapy .......................................................... 75
  Legal complexity ............................................................................ 77
  Provider checklist ......................................................................... 81
  The added complexity of HIEs ........................................................ 86
Conclusion .............................................................................................. 89