



Substance Use Disorder Confidentiality Regulations and Care Integration in Medicaid

Draft Chapter and Recommendations



Medicaid and CHIP Payment and Access Commission

Erin McMullen and Nevena Minor

Session Overview

Commission previously noted 42 CFR Part 2 as a barrier to improving behavioral and physical health care integration

Review draft chapter

- Need for confidentiality of health information related to substance use disorders (SUDs)
- Summary of 42 CFR Part 2 regulations
- Comparison of HIPAA and Part 2
- Challenges associated with Part 2

Review and discuss draft recommendations

Need for Protection of SUD Information

Disclosure of diagnosis or treatment can expose patients to harm; deterrent to seeking care

- Particular concern when outside of health care system
 - E.g.: criminal prosecution; employment, housing, or child custody loss; denial of life or disability insurance
- Discrimination in health care system also possible
 - Providers with inadequate training or support can have negative attitudes towards patients with SUD
 - Cases where physician “fires” patient when SUD is disclosed

Part 2 Regulations

Consent required any time:

- Treatment providers subject to Part 2 want to share SUD information (“disclosure”)
 - Recipient of information may not share further (“re-disclosure”) without new consent
- Exceptions include: medical emergencies, research, Medicaid/CHIP audits or evaluations, special court orders, communications with qualified service organizations

Consent must include:

- Purpose
- How much and what kind of information to disclose
- A date or condition of expiration
- To whom the patient is disclosing the information

Part 2 Regulations (cont.)

Provider subject to Part 2, if “federally assisted” and meets definition of a “program”

- Federally assisted – e.g., receiving federal funds, even for non-SUD care; registered w/DEA for medication-assisted treatment
- Program:
 - Individual/entity, other than general medical facility, or
 - Identified unit within a general medical facility, if it “holds itself” out as providing and does provide SUD care; or
 - Staff in general medical care facility whose primary function is SUD care and who are identified as such

“Holds itself out”

- Activity leading to reasonable conclusion that provider delivers SUD care

HIPAA vs. 42 CFR Part 2

HIPAA, generally:

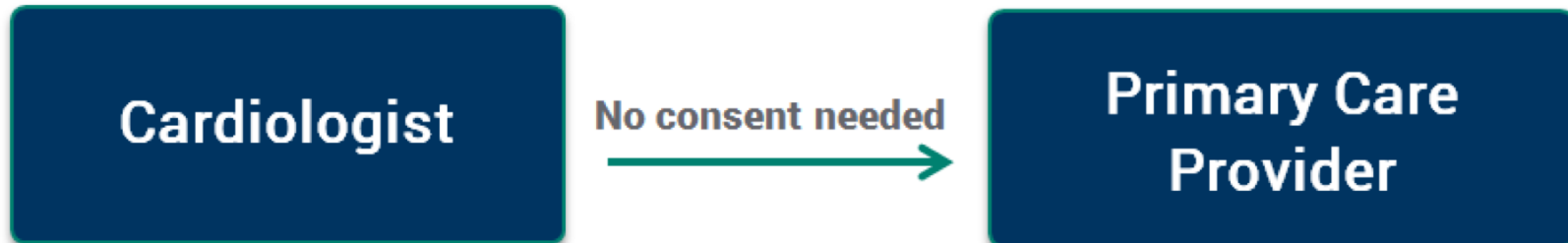
- Governs disclosure of protected health information
- Disclosure permitted without patient consent for payment, treatment, and health care operations
- Law enforcement access with court order, court-ordered warrant, subpoena

Part 2:

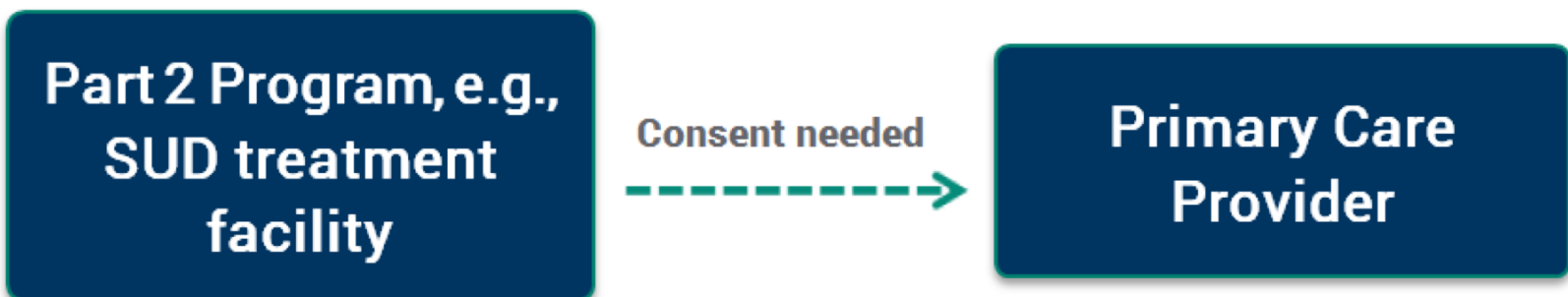
- Governs disclosure of SUD treatment and prevention records
- Law enforcement access only with special court order

HIPAA vs. 42 CFR Part 2 (cont.)

Sharing of HIPAA-Protected Information

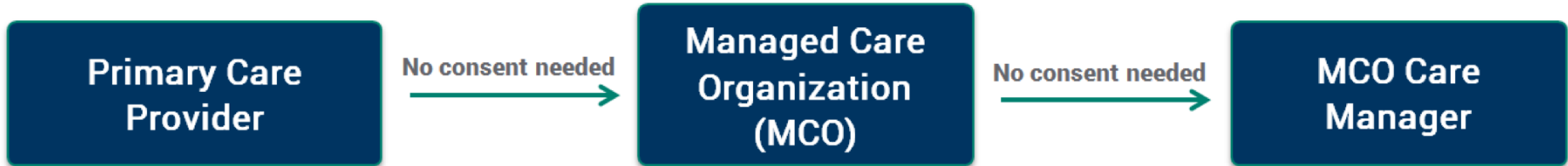


Sharing of Part 2-Protected Information

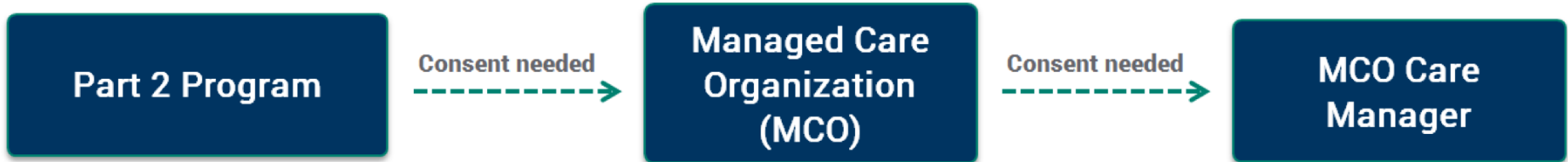


HIPAA vs. 42 CFR Part 2 (cont.)

Sharing of HIPAA-Protected Information

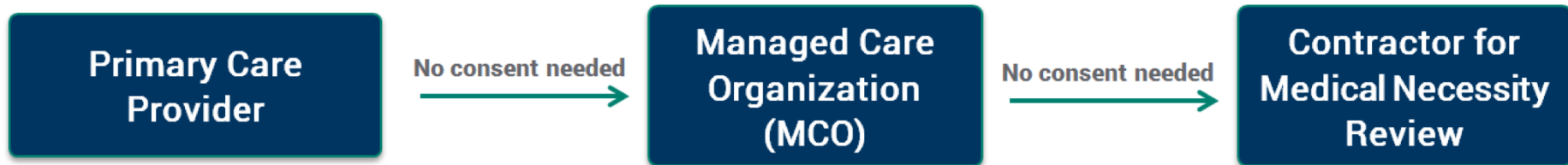


Sharing of Part 2-Protected Information

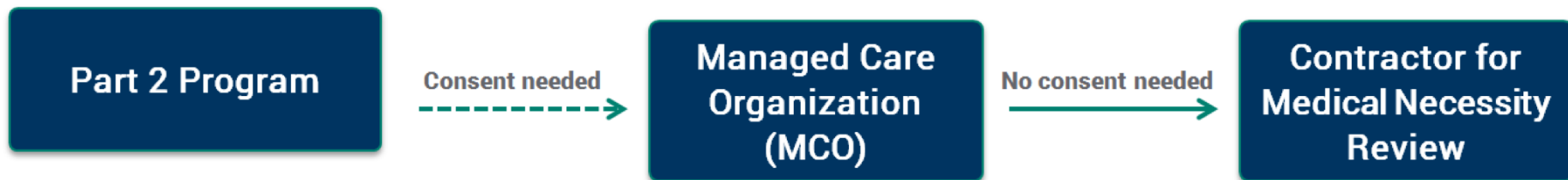


HIPAA vs. 42 CFR Part 2 (cont.)

Sharing of HIPAA-Protected Information



Sharing of Part 2-Protected Information



Limitations on Sharing May Cause Harm

Sharing information within health system is important

- But disagreement to what extent consent should be required
- Consent requirements make it difficult to coordinate care
- Reinforces stigma

Barriers to information sharing

- Limited electronic health record (EHR) adoption by SUD providers
- EHRs and Health Information Exchanges generally can't segment Part 2 data

Effects on Medicaid Delivery Systems

Limits on data sharing

- Make assuming financial risk difficult
- Complicates management of high-risk, high-cost patients
- Providers held accountable for health outcomes despite missing SUD information

Changes to Part 2

- 2018 update: Medicaid agencies and MCOs can re-disclose information without patient consent for payment and health care operations
- But not for treatment purposes

Confusion Over Part 2's Application

Who is considered a provider subject to Part 2?

- Key concepts in regulation largely open to interpretation
- No definitive guidance on this topic

Which patients, and what part of their records are covered?

- Unclear how Part 2 applies to records for:
 - unrelated medical care delivered in conjunction with SUD treatment;
 - medical care for illnesses resulting from SUD; or
 - medications used to treat SUD
- Patients may be unsure whether Part 2 applies to their records

Confusion Over Part 2's Application (cont.)

When can SUD information be shared within a Part 2 program?

- Sharing between program and entity with “direct administrative control” permitted
- “Direct administrative control” not defined

What information must be captured in patient consent?

- Confusion regarding:
 - how to specify recipient of SUD information
 - “granular” options for patients to select what information to share

Draft Recommendation 1

The Secretary of Health and Human Services should direct relevant agencies to issue joint subregulatory guidance that addresses Medicaid and CHIP provider and plan needs for clarification of key 42 CFR Part 2 provisions.

Draft Recommendation 2

The Secretary should direct a coordinated effort by relevant agencies to provide education and technical assistance on 42 CFR Part 2. Such efforts should target state Medicaid and CHIP programs, health plans, primary care and specialty providers, patients and their families, and other relevant stakeholders.

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