

Dos and Don'ts

Do...

- Collaborate to provide good patient/client care
- Know the Privacy Rule
- Know the Minimum Necessary Rule
- Find out which other providers your patient/client is seeing

Don't...

- Assume that you cannot share information – Find out
- Use non secured methods of communication (talk to your Privacy/Security Officer for more details)
- Confuse a psychotherapy note with a progress note

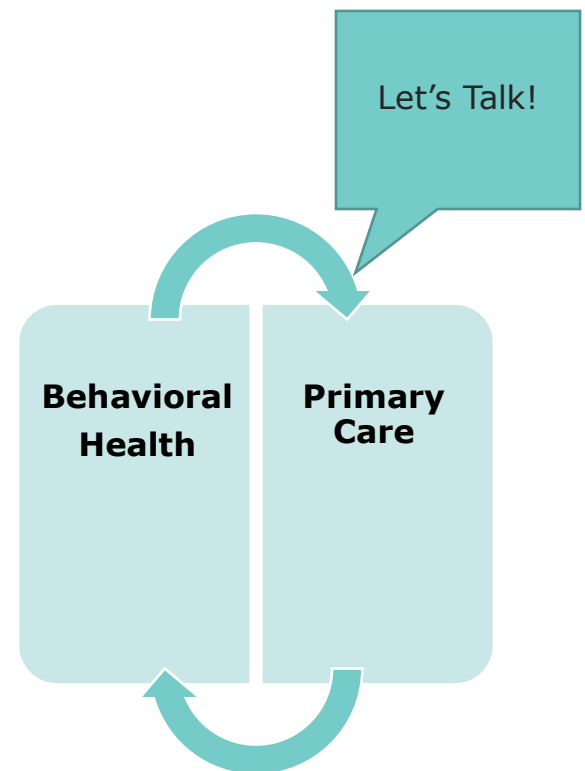
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Let's Talk Dos and Don'ts: Information Sharing Between Agencies

Co-Management in Behavioral Health and
Primary Care



Frequently Asked Questions:

What information can be disclosed between treatment providers without a patient/legal guardian's written authorization under HIPAA?

Any pertinent clinical care information, including mental health treatment information, can be disclosed and discussed between a patient's current treatment providers without written disclosure authorization except for the following two types of information: A) the content of written psychotherapy notes (see below), and B) substance abuse treatment records that are maintained by a licensed substance abuse program (42 USC § 290dd-2; 42 CFR 2.11). Substance abuse information obtained in other treatment settings may be communicated among a patient's treating providers without written consent.

What constitutes psychotherapy note information that cannot be disclosed under HIPAA without a patient's explicit consent?

The HIPAA definition of a "psychotherapy note" is quite restrictive. A psychotherapy note per HIPAA can only consist of a mental health professional's written analysis of a conversation that occurred during a private counseling session that is maintained separately from the medical record. These written analyses serve as working process notes about sessions to assist the therapist, and are not put into the medical record billing document. Anything which appears in the patient's medical record cannot be categorized as a psychotherapy note under the HIPAA rule. Specific content that has been listed as not falling under the "psychotherapy note" protections include medication management information, counseling session start and stop times, the type and frequency of treatment delivered, the results of clinical tests, diagnosis summaries, functional status, treatment plan, symptoms, prognosis, and progress to date. 45 CFR 164.501.

Can treatment providers who work in separate care systems communicate with each other about a shared patient?

Yes. Treatment providers do not have to share the same employer or share the same electronic health record in order to disclose pertinent protected health information about a mutual patient without consent from the patient or parent. The key component for this HIPAA allowance is that both providers have a treatment or consultative role with that patient. (See also <http://www.hhs.gov/ocr/hipaa>).

Whenever PHI is transmitted electronically (eg, telephone voice response, text messaging, faxback, or email, etc) it is covered by the [Security Rule](#) and must be made secure by measures such as encryption, secure platforms, or closed systems. Voice mail messages, telephone conversations, and paper-to-paper faxes are not subject to the Security Rule. All PHI (eg, in oral, electronic and written forms) fall under the [Privacy Rule](#).

Does HIPAA allow for sharing treatment information via an electronic health record without written consent?

Yes, but there are additional regulations around the security standards needed for protecting electronic health records. Essentially, rules and procedures are required in the maintenance of an electronic health record to prevent their unauthorized access, alteration, deletion, and transmission. These security regulations for electronic records are outlined in the HIPAA security rule of 2005, and the HITECH act of 2009.

Are there any other regulations that conflict with HIPAA communication allowances?

Yes. Providers need to be aware that any state regulations that are more restrictive than the HIPAA rules will take precedence in those states, and so providers need to be aware of their own state's information regulations. If you are unfamiliar with your state's regulations, it will be important to specifically seek out your state department of health's privacy rules. To obtain information on current state laws, you may also contact the AAP Division of State Government Affairs at stgov@aap.org.

Also, clinical information obtained at a certified substance abuse treatment center is subject to additional federal privacy rules, which at this time do not allow provider to provider communication without formal consent.

Steps to Collaboration

1. Identify key partners:
Who do you refer to most often?
Where can your patients consistently access good quality care?
2. Gather data.
How many patients do you send to this office?
How often is there a communication breakdown?
3. Reach out.
Contact the office manager and leadership to schedule a time to discuss co-management of patients.
Come prepared to discuss what can be improved and the value add for staff and clients.
4. Establish shared expectations for communication.
Create MOUs or consistent workflows (who to contact, what information to share and when, etc).

HIPAA References:

www.ama-assn.org

www.aap.org

www.hhs.gov