

# Federal and State Laws Impacting Data Sharing

## Mental Health

### Federal Laws

#### **42 U.S.C. §1320d**

#### **45 CFR Part 160 and Subparts A and E of Part 164**

There are no specific federal laws dealing with mental health. Instead, we again turn to the Health Insurance Portability and Accountability Act (HIPAA),<sup>1</sup> which mandates privacy and security safeguards for medical information about a person's health status, care, or payment for care, all of which are considered "protected health information" (PHI).<sup>2</sup> The law applies to all covered entities and defines a "covered entity" as individuals or entities that transmit protected health information for transactions for which the federal government has adopted standards.<sup>3</sup> Transactions include transmission of healthcare claims, payment and remittance advice, healthcare status, coordination of benefits, enrollment and disenrollment, eligibility checks, healthcare electronic fund transfers, and referral certification and authorization. Covered entities include health plans, healthcare providers, and healthcare clearinghouses. Health plans include government programs that pay for health care, such as Medicaid and Medicare, and the military and veterans' health care programs.

Protected health information (PHI) is health data created, received, stored, or transmitted by a covered entity and their business associates in relation to the provision of healthcare, healthcare operations, and payment for healthcare services.<sup>4</sup> Such information relates to the past, present, or future physical or mental health or condition of an individual, the provision of health care to the individual, or the payment for the provision of health care to an individual that is:

1. Transmitted by electronic media;
2. Maintained in electronic media; or
3. Transmitted or maintained in any other form or medium.

PHI includes all "individually identifiable health information", including demographic data, medical histories, test results, insurance information, and other information used to identify a patient or to provide healthcare services or coverage.

HIPAA also provides regulations describing the circumstances that covered entities are permitted, but not required, to use and disclose PHI for certain activities without first obtaining the patient's authorization. Such activities include payment, treatment, and health care operations.<sup>5</sup> "Treatment" generally means the provision, coordination, or management of health care and related services among

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<sup>1</sup> 45 CFP Part 160 and Subparts A and E of Part 164.

<sup>2</sup> 45 CFR §160.103

<sup>3</sup> 45 CFR §160.130

<sup>4</sup> 45 CFR §160.103

<sup>5</sup> 45 CFR §164.501

health care providers. “Health care operations” include certain administrative and quality improvement activities of the covered entity that are necessary to operate a business and to support the core functions of treatment. Case management and care coordination are noted as health care operations.

A covered entity could be the entire organization or a hybrid entity. A hybrid entity under HIPAA is a single legal entity that is a covered entity whose business activities include both covered and non-covered functions and that designates certain units as health care components and therefore covered by HIPAA. Normally, if any activities performed by an organization are covered by HIPAA, then the entire organization must comply with HIPAA regulations as to privacy<sup>6</sup> and security.<sup>7</sup> A properly drafted and enforced hybrid entity policy can help an organization avoid the global application of the HIPAA rules. Instead, the organization draws “invisible” lines throughout the organization. Only the designated components will be covered under HIPAA and only such components have the right to use, maintain, access or transmit PHI. Therefore, the hybrid HIPAA organization limits the application of the HIPAA-required divisions, including but not limited to sharing data when necessary.

The HIPAA Privacy Rule permits the covered entity to disclose protected health information without individual authorizations within the entity for its own health care operations purposes. If the disclosure is for health care operations, the Privacy Rule requires that: (i) each entity (or part of the entity in this situation) has or had a relationship with the individual whose PHI is involved; (ii) the PHI pertains to that relationship; and (iii) the disclosure is for specific activities within the definition of health care operation.<sup>8</sup> Case management and care coordination are among the specific listed activities.<sup>9</sup> As for mental health services, generally, HIPAA treats mental health information the same as other health information. Some examples of the types of mental health information that may be shared are medication prescription and monitoring, modalities and frequencies of treatment furnishes, and summaries of diagnosis, functional status, treatment plans, symptoms, prognosis, and progress to date. An exception to sharing mental health information for health care operations purposes or treatment purposes without obtaining an individual’s authorization deals with psychotherapy session notes.<sup>10</sup> For the disclosure of psychotherapy session notes, HIPAA requires the patient to sign an authorization, whether for treatment, case management, care coordination or any other purpose.<sup>11</sup>

## **State Laws**

### **C.G.S.A. § 52-146**

Under C.G.S. § 52-146e(a), all mental health communications and records shall be confidential. No person may disclose or transmit any communications and records or the substance or any part or any resume thereof which identifies a patient to any person, corporation, or governmental agency without the consent of the patient or his authorized representative.<sup>12</sup> For example, “A person must receive

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<sup>6</sup> 45 CFR Part 160 and Subparts A and E of Part 164

<sup>7</sup> 45 CFR Part 160 and Subparts A and C of Part 164

<sup>8</sup> 45 CFR §§164.502(a)(1)(ii); 164.506(c)(4)

<sup>9</sup> 45 CFR §164.501

<sup>10</sup> 45 CFR §164.501

<sup>11</sup> 45 CFR §164.508

<sup>12</sup> C.G.S.A. § 52-146e(a)

consent from a patient in order to transmit any portion of communications and records to any person, corporation, or government agency.” Any consent given to waive the confidentiality shall specify to what person or agency the information is to be disclosed and to what use it will be put. Each patient shall be informed that his refusal to grant consent will not jeopardize his right to obtain present or future treatment, except where disclosure of the communications and records is necessary for the treatment.<sup>13</sup> The patient may withdraw any consent at any time in writing addressed to the person or office in which the original consent was filed. Withdrawal of consent shall not affect communications or records disclosed prior to the notice of the withdrawal.<sup>14</sup>

Consent is not required for disclosure of mental health information in the following situations:

1. For diagnosis and treatment;<sup>15</sup>
2. For involuntary commitment;<sup>16</sup>
3. For collection of fees for psychiatric services;<sup>17</sup>
4. To court when made in the course of a psychiatric examination ordered by court;<sup>18</sup>
5. To civil court when patient introduces his mental condition as an element of his claim or defense;<sup>19</sup>
6. To Commissioner of Public Health in connection with any inspection, investigation, or examination of an institution or the Commissioner of Mental Health and Addiction Services in connection with any inspection, investigation or examination of an institution;<sup>20</sup>
7. To the family member of a homicide victim if the patient was found not guilty by reason of insanity for the crime;<sup>21</sup> or
8. If provider of behavioral health services that contracts with the Department of Mental Health and Addiction Services requests payment.<sup>22</sup>

A person engaged in research may have access to mental health communications and records which identify patients where needed for such research, if the person’s research plan is first submitted to and approved by the director of the mental health facility or his designee.<sup>23</sup> The communications and records shall not be removed from the mental health facility. Coded data or de-identified data may be removed from a mental health facility, provided the key to the code shall remain on the premises of the facility.<sup>24</sup> The mental health facility and the person doing the research shall be responsible for the preservation of the anonymity of the patients of the patients and shall not disseminate identified data.<sup>25</sup>

All written communications of records disclosed to another person or agency shall contain the following statement:

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<sup>13</sup> C.G.S.A. § 52-146e(b)

<sup>14</sup> C.G.S.A. § 52-146e(c)

<sup>15</sup> C.G.S.A. § 52-146f(1)

<sup>16</sup> C.G.S.A. § 52-146f(2)

<sup>17</sup> C.G.S.A. § 52-146f(3)

<sup>18</sup> C.G.S.A. § 52-146f(4)

<sup>19</sup> C.G.S.A. § 52-146f(5)

<sup>20</sup> C.G.S.A. § 52-146f(6)

<sup>21</sup> C.G.S.A. § 52-146f(7)

<sup>22</sup> C.G.S.A. § 52-146f(8)

<sup>23</sup> C.G.S.A. § 52-146g(a)

<sup>24</sup> C.G.S.A. § 52-146g(g)

<sup>25</sup> C.G.S.A. § 52-146g(c)

The confidentiality of this record is required under chapter 899 of the Connecticut general statutes. This material shall not be transmitted to anyone without written consent or other authorization as provided in the aforementioned statutes.

A copy of the consent form specifying to whom and for what specific use the communication or record is transmitted or a statement setting forth any other statutory authorization for transmittal and the limitations imposed thereon shall accompany such communication or record. In cases where the disclosure is made orally, the person disclosing the information shall inform the recipient that such information is governed by the provisions of this statute.

In addition, state law requires that the Commissioner of Mental Health and Addiction Services is responsible for the coordination of all activities in the state relating to substance use disorders and treatment, including activities of the Departments of Children and Families, Correction, Public Health, Social Services and Veterans' Affairs, the Judicial Branch and any other department or entity providing services to persons with substance use disorders.<sup>26</sup>

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<sup>26</sup> C.G.S.A. § 17a-451