California HealthCare Foundation

Fine Print: Rules for Exchanging Behavioral Health Information in California

November 12, 2015

Our Vision

Health Care That Works for All Californians

The California HealthCare Foundation is leading the way to better health care for all Californians, particularly those whose needs are not well served by the status quo. We work to ensure that people have access to the care they need, when they need it, at a price they can afford.

CHCF informs policymakers and industry leaders, invests in ideas and innovations, and connects with changemakers to create a more responsive, patient-centered health care system.

Webinar Agenda and Speakers

Robert Belfort, JD

Manatt, Phelps and Phillips, LLC

Jennifer M. M. Schwartz, Chief Counsel

California Office of Health Information Integrity

Kathleen Clanon, MD

Alameda County Health Care Services Agency

Mary Rainwater

Consultant to CHCF

Exchanging Behavioral Health Information in California

Robert Belfort
Manatt, Phelps & Phillips, LLP
Nov. 12, 2015

manatt

Overview of Applicable Law

Jurisdiction	Statute/Regulation	Scope
Federal	HIPAA	Protected health information maintained by providers, plans and their contractors
	42 C.F.R. Part 2	Records of federally assisted alcohol and drug abuse treatment programs
State	Confidentiality of Medical Information Act	Medical information maintained by providers, plans and their contractors
	Lanterman-Petris-Short Act	Records of certain inpatient, outpatient and residential mental health providers
	Section 11845.5 of CA Health & Safety Code	Substance abuse treatment information maintained by certain facilities and programs

HIPAA

Who's Covered?

- Health care providers
- Health plans
- Health care clearinghouses
- Business associates

What's Covered?

- All individually identifiable health information
- All information subject to same rules except psychotherapy notes

Permitted Disclosures?

- Treatment
- Payment
- Health care operations (includes care management and quality improvement)

Broad patient consent defining class of recipients permitted

42 C.F.R. Part 2

Who's Covered?

- Receipt of federal support through grants, Medicare, Medicaid, tax exemption, etc.
- Licensed to provide or holds itself out as providing specialized substance abuse treatment

What's Covered?

- All patient records
- Includes identity of patients being served

Permitted Disclosures

- Medical emergencies
- No exception for other types of treatment or payment or health care operations

Patient consent must identify specific person or organization receiving records

CMIA

Who's Covered?

- Providers
- Health plans
- Contractors

What's Covered?

- All medical information
- Single rule applies to all information unless regulated under another CA law

Permitted Disclosures?

- Similar exceptions as under HIPAA

Similar to HIPAA, broad consent permitted

LPS Act

Who's Covered?

- Federal, state and county mental hospitals
- Institutions that treat involuntarily detained patients
- Residential programs
- Outpatient providers participating in certain government programs

What's Covered?

- Information obtained in the course of providing mental health services

Permitted Disclosures?

- "Qualified professional persons" may exchange information for treatment purposes
- Law presumably intended to permit exchange at institutional level, but some providers may take a narrower view based on "qualified professional" language

Form of written consent not specified

Health & Safety Code Section 11845.5

Who's Covered?	What's Covered?	Permitted Disclosures?
• Substance abuse programs "conducted, regulated, or directly or indirectly assisted" by CA DHCS • Hospital emergency departments?	• All records of covered programs	• Medical emergencies • No exception for other types of treatment, or payment or health care operations

Form of written consent not specified

Key Barriers to Behavioral Health Integration

- Part 2's strict consent form requirements impede the sharing of substance abuse information within multi-provider networks.
- Ambiguity in LPS Act leaves some providers uncertain as to whether patient consent is needed for the exchange of mental health information from certain providers.
- Even when information sharing is clearly permissible, other barriers remain:
  - EHR systems of behavioral health providers may be nonexistent or unable to interface with physical health providers' EHRs (interoperability problem).
  - Providers may be reluctant to modify workflows in ways necessary to share information.

Pathways to Improve Information Sharing

- **LPS Act interpretation**: Although the LPS Act appears to allow institutional providers to exchange mental health information for treatment without consent, some providers are reluctant to interpret the law in this manner. Clarification from the State would help promote information sharing.
- **Interoperability**: Federal efforts to promote interoperability of EHRs and encourage behavioral health providers to adopt EHRs would enhance information exchange.
- **SAMHSA flexibility**: Revised SAMHSA guidance on Part 2 consent requirements could facilitate multi-provider data exchange.
- **Consent-to-access model**: A consent-to-access model would allow Part 2 data to be exchanged so long as a Part 2 compliant consent was obtained by the accessing provider. Pending consent, Part 2 data may be stored in an exchange under a QSOA.

Alameda County Example

November 12, 2015

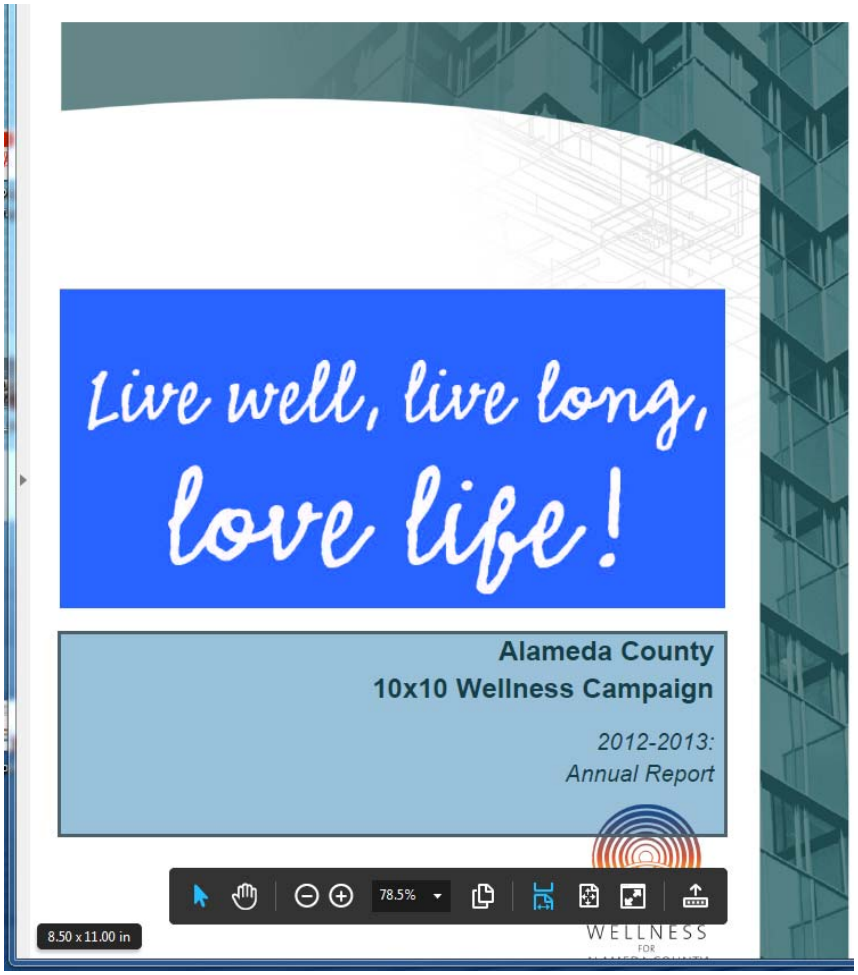
Kathleen Clanon, MD

Kathleen.clanon@acgov.org

What We Are Doing

- Sharing Specialty Mental Health encounter data with patient's assigned Primary Care Medical Home
  - HealthPAC* patients only to start
  - Working on Medi-Cal to follow
- Facilitating:
  - Outreach to patients for Primary Care needs
  - Monitoring workflow processes
  - Contact with SMH Providers for care coordination

Recognizing the Problem

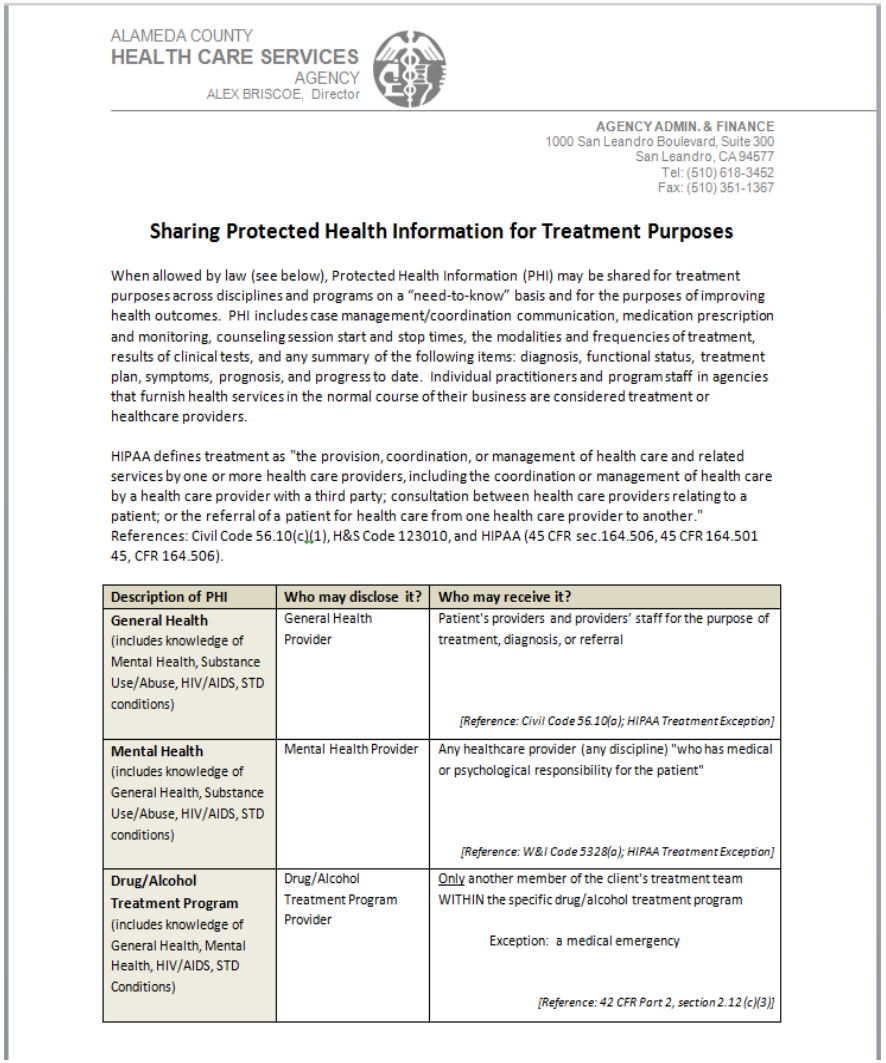


- BHCS 10x10 Initiative
  - Promoting improved physical health outcomes for those with severe mental health issues
- Provider frustration on both “sides” re: disconnects in care for patients

Steps in Our Process

- Getting **permissions**
- Making the **data systems** talk to each other
- Developing the **work flow** – making sure the data are being used
- Investing in **relationships** between the MH and PH staffs

Getting Permissions



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Sharing Protected Health Information for Treatment Purposes

When allowed by law (see below), Protected Health Information (PHI) may be shared for treatment purposes across disciplines and programs on a "need-to-know" basis and for the purposes of improving health outcomes. PHI includes case management/coordination communication, medication prescription and monitoring, counseling session start and stop times, the modalities and frequencies of treatment, results of clinical tests, and any summary of the following items: diagnosis, functional status, treatment plan, symptoms, prognosis, and progress to date. Individual practitioners and program staff in agencies that furnish health services in the normal course of their business are considered treatment or healthcare providers.

HIPAA defines treatment as "the provision, coordination, or management of health care and related services by one or more health care providers, including the coordination or management of health care by a health care provider with a third party; consultation between health care providers relating to a patient; or the referral of a patient for health care from one health care provider to another." References: Civil Code 56.10(c)(1), H&S Code 123010, and HIPAA (45 CFR sec.164.506, 45 CFR 164.501 45, CFR 164.506).

Description of PHI	Who may disclose it?	Who may receive it?
General Health (includes knowledge of Mental Health, Substance Use/Abuse, HIV/AIDS, STD conditions)	General Health Provider	Patient's providers and providers' staff for the purpose of treatment, diagnosis, or referral *[Reference: Civil Code 56.10(a); HIPAA Treatment Exception]*
Mental Health (includes knowledge of General Health, Substance Use/Abuse, HIV/AIDS, STD conditions)	Mental Health Provider	Any healthcare provider (any discipline) "who has medical or psychological responsibility for the patient" *[Reference: W&I Code 5328(a); HIPAA Treatment Exception]*
Drug/Alcohol Treatment Program (includes knowledge of General Health, Mental Health, HIV/AIDS, STD Conditions)	Drug/Alcohol Treatment Program Provider	Only another member of the client's treatment team WITHIN the specific drug/alcohol treatment program Exception: a medical emergency *[Reference: 42 CFR Part 2, section 2.12 (c)(3)]*

- Shamelessly stole and adapted a useful policy tool from SFDPH.
- Got sign off from County Counsel.
- Sent out policy with the matrix.
- Dealt with resulting excitement.

Resistance to Sharing Data

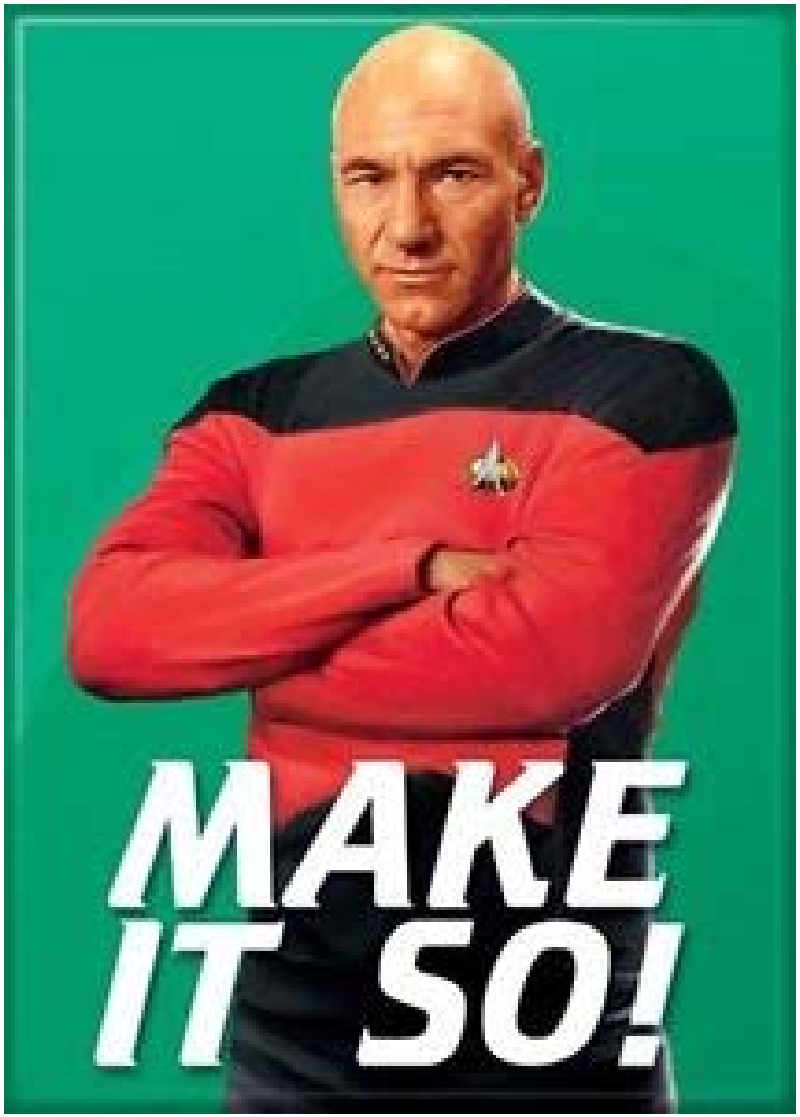
Primary care clinics worried:

- Does receiving mental health encounter data mean there is an **expectation** they will act on it?

Specialty mental health sites worried:

- Are the primary care sites really clear about the potential impact of disclosure on patients, and **are patients with SMI really welcome** in primary care clinics?

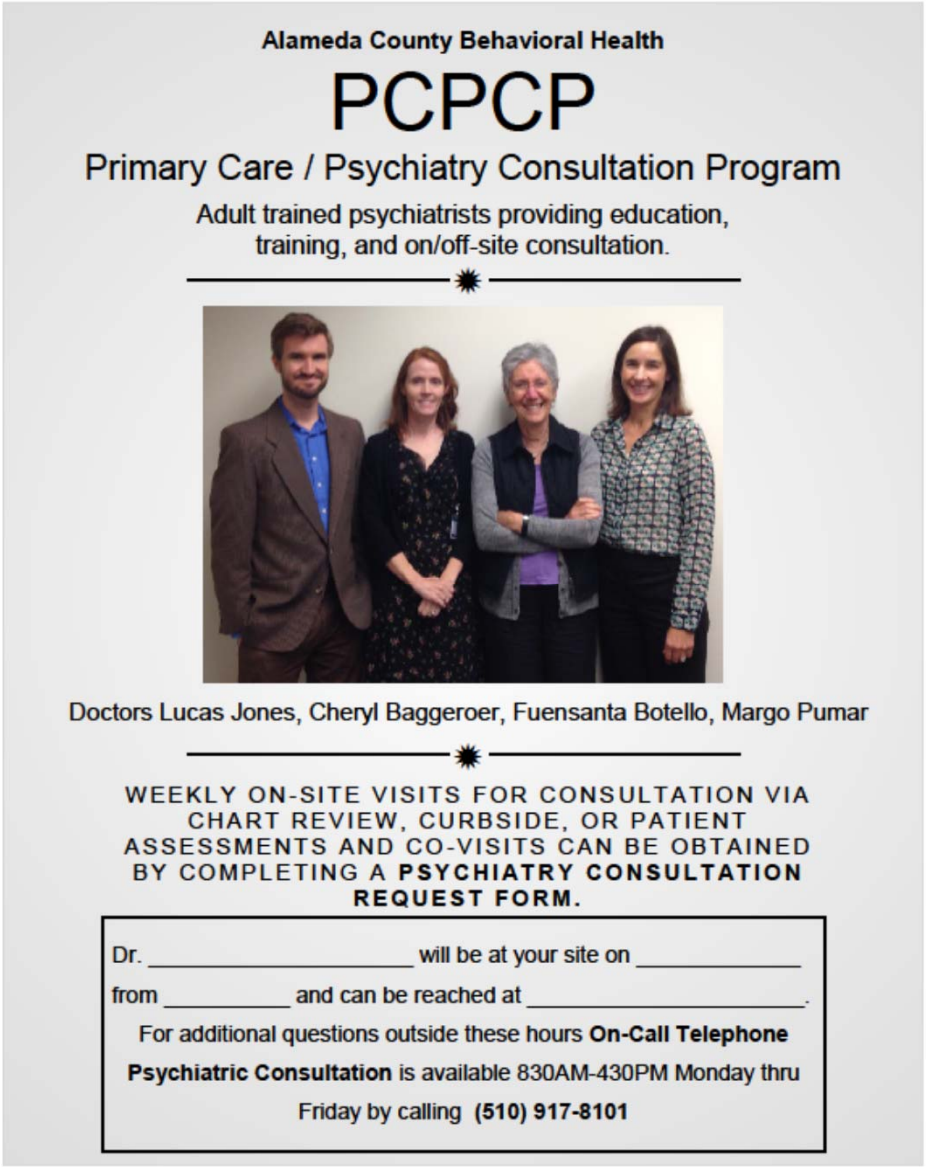
Making Data Systems Talk to Each Other



Developing the Work Flows

- Identified at each medical home a SPOC (single point of contact).
- Convened the SPOCs to share info and solve problems.
  - Initial in-person meeting and then monthly webinar
- Medical directors were asked to prioritize actions for patients on the lists such as calls to patients, to MH providers, etc.

Investing in Relationships



Alameda County Behavioral Health

PCPCP

Primary Care / Psychiatry Consultation Program

Adult trained psychiatrists providing education, training, and on/off-site consultation.

Doctors Lucas Jones, Cheryl Baggeroer, Fuensanta Botello, Margo Pumar

WEEKLY ON-SITE VISITS FOR CONSULTATION VIA CHART REVIEW, CURBSIDE, OR PATIENT ASSESSMENTS AND CO-VISITS CAN BE OBTAINED BY COMPLETING A **PSYCHIATRY CONSULTATION REQUEST FORM.**

Dr. _____ will be at your site on _____ from _____ and can be reached at _____.

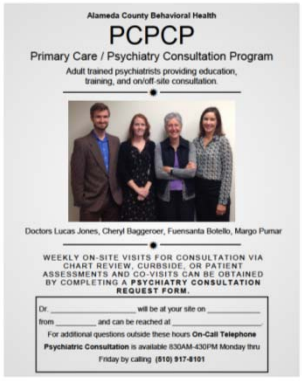
For additional questions outside these hours **On-Call Telephone Psychiatric Consultation** is available 830AM-430PM Monday thru Friday by calling **(510) 917-8101**

- Primary care providers STILL not calling their MH colleagues.
- We invested in circuit-riding psychiatrists to help bridge between systems.
- Many presentations to both PH and MH practitioners to encourage collaboration contacts.
- Working on a technology fix – secure direct messaging.

Reflecting on our Work

Successful Strategies

SPOCs



People bridging the divide

Building on PH analogs

Ongoing Challenges

Getting providers to talk to each other

Medi-Cal Data

Sharing med lists and labs

A Perspective Regarding Behavioral Health Data Sharing

Jennifer M. M. Schwartz, Chief Counsel
California Office of Health Information Integrity

CalOHII

- Statewide statutory authority over state entities in the executive branch
  - Compliance with state and federal privacy, security, patient rights, and TCS laws and regulations
  - Statewide policy development
  - Oversight and leadership for HIPAA implementation
  - Liaisons with the federal government

State Policy

- State agencies implement legislation through policy and regulations
  - State agencies develop regulations that interpret and implement laws
- Policy changes faster than law or regulations
  - Impacted by changes in understanding and philosophy
- Balancing policy vs. law

Recent Views

- The cycle of stigma
  - Fear and lack of understanding
  - Prejudice and discrimination
  - Silence
    - "Super protecting" particular medical or behavioral conditions, disorders, or diseases
- Integrated care
  - Requires sharing
  - Increases health outcomes
    - Health Care Reform
- Health Information Technology

Recent Legislation

- Use and Disclosure:
  - AB 1337 Electronic discovery – Chaptered
    - Attorneys obtaining client medical information
  - AB 503 Emergency Medical Services – Chaptered
    - Disclosure of patient information to EMS provider, local EMS agency, and EMSA for QA

Needed Changes

- Update privacy laws for current technology
  - Electronic Health Records
  - Health Information Exchange
  - Authorizations
- Clarify and support integrated care
  - Clarify and expand use and disclosure of 42 CFR Part 2 and LPS-covered information and records
- More discussion about how privacy laws support care vs. are a barrier to it

Questions and Next Steps

- Please submit questions via the text screen.
- We'll get to as many as we can, and will follow up with an FAQ addressing others

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