

US health department changing substance abuse disclosure rules

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The US Department of Health and Human Services has proposed changes to rules governing records disclosures of people receiving treatment for drug addiction – sparking fears that the changes would discourage drug abusers from receiving help.

Lawyers told GDR that the proposals do not satisfy some in the medical community, who think the proposals do not go far enough to enable effective treatment of opioid addicts.

The HHS's proposed changes are to its Confidentiality of Substance Use Disorder Records regulations, which were originally implemented in 1975 to protect the privacy of people seeking treatment for drug addictions. As the US drug war was ramping up around that time, there were worries that “law enforcement authorities would go to clinics and round up their information,” Squire Patton Boggs partner Elliot Golding, a member of the firm’s health industry group leadership team, explained.

Golding said the regulations remained largely unchanged over the next four decades until several years ago, when policymakers turned their attention to the opioid crisis spreading through the country. In 2017 and 2018, the HHS made several changes that made it easier to disclose patient payment information within the healthcare system.

Frost Brown Todd member Chad Eckhardt, the chair of the firm's healthcare team, said one of the substantial changes the HHS is proposing now would provide further flexibility for sharing payment information of those receiving treatment for drug addictions.

Eckhardt said that with patient consent, drug treatment centres are currently allowed to share patient payment information with specific people. However, new consent was needed for every individual that handled that patient's information.

Therefore, this rule change would allow a treatment centre to provide payment information – with the patient's consent – to an insurance company, for example, rather than having to name a specific individual working at the insurance company, Eckhardt explained.

The HHS touted this proposal as a change that would make it easier for patients to apply for benefits and resources such as social security, as well as local sober-living and halfway house programmes.

Golding and Eckhardt agreed the change would allow for more flexibility of sharing payment information, but they said many in the medical community think the rules about sharing treatment information are still too rigid.

"My sense is they didn't really change the key provisions, which are that you need patient authorisation to disclose information to third parties for treatment purposes in nearly all cases," said Golding.

"This is helpful, but they're not everything people were hoping for," said Eckhardt.

Golding explained that there are still restrictions on treatment centres sharing information with care providers. This is to the dissatisfaction of some in the medical community who argue that they cannot separate the mental and physical health of a person and still treat them effectively.

"For example, if someone goes in for surgery, many believe the doctor should know if they have an opioid addiction to better address risks associated with pain management," said Golding.

At least one person responding to the HHS's requests for comments on the proposals made similar comments to Golding. Vicky Mieseler, who identified herself as being affiliated with the behavioural health service provider Ozark Center, said current HHS regulations are far too restrictive on the sharing of patient treatment information among providers.

"Persons with substance use disorders are at a distinct disadvantage over other patients, as providers cannot deliver the informed, coordinated care that is the cornerstone of integrated delivery system models," said Mieseler. "In particular, these outdated regulations run counter to new, innovative delivery care models in which healthcare providers must use patient data and analytics to manage the health of a population and identify patients for targeted outreach."

However, the vast majority of the comments objected to another HHS proposed rule change – one that would allow opioid treatment providers to share patient information on prescription drug monitoring programmes (PDMPs), which are state-wide databases that collect information on prescription data and controlled substances prescribed by practitioners and pharmacies.

The HHS said this change would allow for greater patient safety, better patient treatment, and better care coordination among the patient's providers.

However, dozens of commenters said sharing this information will discourage addicts from seeking help.

"Would you go to confession if you knew that law enforcement could force the confessor to share information obtained about you in the confessional?" said a commenter named Peter Crumb. "What would happen to your soul?"

"Absolutely not," said another commenter, Kim Robinson. "The right to privacy must be upheld. This is simply big brother violating hippo [sic] and the 4th amendment."

The HHS said in its proposal that it acknowledges the concerns about law enforcement accessing PDMPs, particularly in the states where the databases are operated by law enforcement agencies.

However, disclosure of patient records would still require consent, the HHS said.

And "while the reporting of patient data to a PDMP by an [opioid treatment provider] would make it possible for law enforcement, prescribers, and pharmacies with access to a PDMP to determine that a specific patient had received services at a specific OTP, law enforcement would still require a court order meeting the

requirements of 42 U.S.C. 290dd-2(c) to access the covered records of that patient or any other patient served at the OTP,” the HHS added.

The deadline for comments on the HHS’s proposals is 25 October.