Focus:PHI **TIPS**
The Center of Excellence for Protected Health Information

TELEHEALTH AND PRIVACY:
Federal Guidance for SUD and Mental Health Treatment Providers

Providers of SUD and mental health services are working rapidly to make sure their patients have access to the care they need during the COVID-19 pandemic.

This includes working to recreate the treatment experience in a virtual setting through telehealth. As part of this rapid transition providers are concerned about maintaining patient privacy when **sharing protected health information** in accordance with federal health privacy laws.

HERE IS WHAT YOU NEED TO KEEP IN MIND:

① **You Should Still Take Action to Protect Client Confidential Information**
- Telehealth may increase the number of people and systems with access to confidential health information. Providers should try to avoid public wi-fi, password protect their devices, and keep any confidential files secure.

② **You Can Use Widely Available Apps to Support Service Delivery**
- OCR announced that it will waive potential penalties for violations arising out of good faith use of telehealth. Providers can use widely available private facing apps such as Zoom, FaceTime, or Skype, even without a BAA in place. The OCR announcement includes a comprehensive list of telehealth options providers can use.

③ **Key Points for Part 2 Consent Forms**
- In-person consent for sharing protected health information is not needed
- Part 2 allows e-signatures on consent forms, as long as state law permits.
- Providers should obtain consent from the patient to disclose to the telehealth service if it will have access to patient information.
- Consent is needed for disclosures of patient-identifying information to payers and other non-medical third parties and must be accompanied by a notice prohibiting re-disclosure.

④ **You Can Share Patient Information for Treatment Purposes When a Medical Emergency Exists**
- Part 2's current exception for medical emergencies *already permits* the disclosure, or sharing, of patient identifying information for treatment purposes without a consent form[1] when a medical emergency exists.[2]
- SAMHSA's recent guidance *emphasizes* that providers can make their own determinations whether a "medical emergency" exists.
- Any disclosures must be documented in the patient record
- Providers should remember that disclosures made under this exception do not continue to have Part 2 protections.

1. AKA authorization or Release of Information (ROI)
2. 42 CFR §2.51

⑤ **Document How Consent to Share Information was Obtained in Patient's Chart**
- Providers must document in the patient's chart when information has been shared without patient consent due to a medical emergency.
- Providers should also note how consent was obtained.
- It is good practice to document how services were provided (e.g., Telehealth platform used, group or individual, etc.).

⑥ **Develop an Agency-specific Written Protocol for Obtaining Consent Via Telehealth**
- To ensure standardization, agencies should consider developing agency-wide protocols for obtaining patient consent virtually. This should include staff training on new protocols including standards for documentation.

⑦ **Share with Clients Ways They Can Protect Their Information**
- Remember to inform your clients that they should try to avoid public wi-fi and password protect their devices.
- Inform your clients that confidential communications overheard by others will generally not be protected by the federal health privacy laws and that they should find a private space for receipt of services.

⑧ **Check Your State Laws**
- Remember to check whether state laws or licensing requirements have additional privacy requirements for using telehealth.

UNDERSTANDING PRIVACY PROTECTIONS HELPS THE CARE TEAM PROVIDE THE BEST POSSIBLE CARE

NOTICE:

The preceding tips refer to **consent to sharing or disclosing** protected health information rather than **consent to treatment** (i.e., the patient's agreement to receive services) Please check with your state agency for guidance about how requirements may have changed for consent to **treatment.**

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