ADOLESCENTS AND SUD TREATMENT

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AN INTRODUCTION

- A mixture of federal and state laws govern—and the federal laws have been undergoing revision for the past few years
- "Adolescent" can encompass a range of ages and competencies
- Answers to questions might be clinical AND legal

42 CFR PART 2

- Federal regulation governing confidentiality of SUD client records
- Punishes disclosure - $500/first offense, $5,000/additional offense
- Could be used as the basis for a civil lawsuit (sets the standard of care treatment providers are supposed to follow)

TWO ISSUES

- When to admit adolescents into treatment
- How to communicate about adolescent clients' welfare

ADMISSION INTO TREATMENT

- Few adolescents enter treatment of their own accord
- Adolescents' right to consent depends on
  - state statutes governing consent and parental notification about SUD
  - Variables such as age and cognitive/emotional/social development
- State laws are messy
  - if adolescent and parents disagree, some defer to minor, some to parents, most aren't clear
- More than half of states permit adolescents to consent to SUD treatment without parental consent
- Parents are likely to consent
  - Refusal could mean charges of child neglect

IF ADOLESCENT REFUSES PERMISSION – ADMISSION INTO TREATMENT

- Program can either refuse to admit or admit despite the law (chancing penalty)
- Importance of developing an admissions policy (and note all decision-making steps in records)
- Factors
  - Age
  - Maturity
  - Family situation (parent notification may be detrimental)
  - Type of treatment provided (the more intrusive and intensive, the more risk the program assumes)
  - Federal confidentiality restrictions
  - Possible liability for refusing admission (state law may impose legal duty to treat clients in need
  - Possible liability for treating adolescent without parental consent (unlikely to be sued)
  - Program's financial condition (might not be paid without parental consent)

COMMUNICATION ABOUT ADOLESCENT WELFARE

- Can be complex – information might not be just about SUD
  - Can be different age requirements under state law for different types of records (SUD treatment vs. psychiatric treatment)
  - School systems usually won't consent to release educational records if patient is under 18
- What is a Part 2 Program? (individuals can be "programs" too!)
  - Any program specializing in whole or in part in providing treatment, counseling, assessment, referral services for adolescents with SUD
    - Carried out under license or authorization provided by U.S. department/agency
    - Supported by funds provided by U.S. department/agency (Medicare/Medicaid)
    - Tax-exempt status
    - Conducted directly or by contract

WHAT INFORMATION IS PROTECTED?

- Any information about an adolescent who has applied for or received services that would identify that individual as having SUD directly or by implication
- Applies whether person has the information already or has other ways of getting it
- Even applies to disclosures under subpoena or warrant
- *Adolescent must provide consent before disclosure* (aside from exceptions)

EXCEPTIONS

- Communication within a Part 2 program
  - But NOT between a Part 2 program and a broader health care system of which it is a part – then consent is required
  - Need to know basis within Part 2 program
- Medical emergency when patient can't consent
- Reporting crimes/threats on Part 2 program premises or against Part 2 program personnel
  - To law enforcement, limited information only
- Report child abuse/neglect
- Research (new under revisions)
- Audit of Part 2 program (with conditions)

MEDICAL INFORMATION

- Facts relevant to reducing a threat to life or physical well-being of adolescent or another person WHEN
  - Program director believes adolescent lacks capacity to decide whether or not to consent to parental notification
  - OR believes disclosure to parent or another adult is necessary to cope with substantial threat

RESEARCH EXCEPTIN

- Under the revised rule, researchers can use data sets without 42 CFR requirements
- Any lawful holder of patient identifying information can disclose Part 2 information if researcher meets certain regulatory requirements (HIPAA, HHS Common Rule)
- Researchers are allowed to link data sets from data repositories holding Part 2 data if they follow certain regulatory requirements

CONSENT TO DISCLOSE FORMS

- General medical consents don't work
- Electronic signature now permitted (if allowed under other law)
- Includes: purpose of disclosure, how much/what information will be disclosed, statement that adolescent can revoke consent, date/event/condition of expiration
- Specific – named entity/individual
- Can be specific disclosure or general disclosure
  - General designation consent is ONLY to providers who are treating the patient ("my treating providers")
  - Requires explicit description of "amount and kind" of SUD treatment info
  - Patients must be told they can request a list of entities who whom their information has been disclosed

CONSENT TO DISCLOSE FORMS

- Notice against redisclosure
  - Disclosed information must be accompanied by a written statement that recipient can't disclose or release information
- Program must "act in reliance" on consent
- Can disclose to qualified service organizations (QSOs) that provide services to a Part 2 program (data processing, lab analyses, legal services, etc.) but must have a written agreement between the Part 2 program and the QSO
- Right to revoke consent
  - Can be oral (note must be made in treatment record)

SPECIAL SITUATIONS – VERIFYING INFORMATION

- Contacting schools or health care providers to verify information
  - Should get consent to contact beforehand
  - Can risk right to confidentiality

SPECIAL SITUATIONS – ADOLESCENTS IN JUVENILE JUSTICE SYSTEM

- No one can use information to initiate or sustain criminal charges against patient OR conduct criminal investigation without appropriate court order
- Still need consent form, but the rules concerning the length of time the consent is valid and the process for revoking consent are different
- Rules allow programs to draft consents to expire when there is a substantial change in the adolescent's justice system status (end of probation, etc.)—can provide regular reports to probation or testify at hearing
- Also can draft so that consent can't be revoked until a specified date/condition so that adolescent can't prevent court from monitoring progress (has to end by final disposition)
- Subpoena/search warrant isn't enough to require disclosure
  - Program/adolescent must be given notice of application for order and opportunity for statement to the court, must use aliases
  - Must be good cause for disclosure – threat against life/serious bodily injury, prosecution of extremely serious crime, in connection with proceeding where adolescent has already present evidence concerning confidential communications

ISSUES

- Do Part 2 programs comply and seek consent from adolescents?
- In treatment programs, are some doctors afraid to prescribe MAT because it is not typically approved for adolescents?
- Future revision of 42 CFR – will it be aligned with HIPAA?
  - Fall 2018 – U.S. House passes bill committing to alignment but fails in Senate
    - AMA wrote letter to Congressional leadership stating this would deter patients from seeking treatment
  - April 2019 – alignment bill was reintroduced
    - CRITICS feel that it would deter treatment-seeking
    - SUPPORTERS want alignment because they feel it separates SUD information from rest of health record, prevents prescribers from making fully informed clinical decisions
    - Evidence that right now primary care providers (not even subject to Part 2) won't do screening/brief intervention/referral to treatment (SBIRT) for fear of liability