• FORGET MUCH OF WHAT IS IN HIPAA – FOR THE MOST PART, 42 CFR IS MORE RESTRICTIVE

• There are exceptions, such as:
  • Client right to access records
  • Client right to modify records
  • Client right to list of releases of information
42 CFR Part 2

• CLIENT: anyone who has applied for and/or been assessed for substance abuse services (treatment, diagnosis, or referral).

• At Village, protected information includes even statement that person is or was ever a client of Village.

• At a federally assisted drug abuse program
  – Direct funding
  – Block Grant
  – Medicaid, Medicare
  – Tax exempt (not for profit)
42 CFR - Releasing Information

• Rule #1 – Don’t release any client information to anyone
• Three sets of exceptions to this:
  • 1. Client consent/authorization
  • 2. When rule does not apply:
    – Communication internal to agency
    – Crimes on the program premises or against agency personnel
    – Qualified Service Organization Agreement (QSOA)
    – Reporting suspected child abuse and neglect
Disclosures without Consent

• Medical Emergencies
• Research
• Audit and Evaluation

3. Court Order authorizing disclosure and use

Subpoena is not same as a court order
ELEMENTS OF INFORMED CONSENT

- Name of Client □ request □ authorize
- Name of organization to make the disclosure
- Name of organization to which the disclosure will be made
- Kind and Amount of information to be disclosed
- Purpose of the disclosure
- Statement that consent may be revoked at any time, except as already relied upon (and CJS consent)
- Date or condition when consent will terminate
- Client Signature and Date Signed (&signature of parent or other authorized to sign in lieu of client, where required)
What is HIPAA

- Health Insurance Portability and Accountability Act
  - Portable
  - Uniform Codes and Forms
  - Protection of Privacy of people’s health care information
HIPAA

• PHI
  Protected Health Information

• TPO
  Treatment, Payment, Operations

• NPP
  Notice of Privacy Practices
Protected Health Information
2 components

• Identifies the Client
• Health Information
• = Any info :
  – oral, fax, written, electronic
  – Created or received
  – By health care provider, health plan, public health authority, employer, insurer, others
  – Relating to past, present or future
    • Physical or mental health status
    • Health care
    • Payment for health care
Identifier

- Names
- Geographic references smaller than a state, including street addresses, city, county, zip code (except for first 3 digits)
- Telephone numbers, fax numbers
- E-mail addresses
- Social security number
- Medical record number
- Vehicle identifiers and serial numbers, including license plate numbers
- Website URL’s, IP addresses
- Full face photographs and any comparable images
- Any unique identifying number, characteristic, or code.
- Biometric identifiers, such as voice and finger print
Issues

Information received from another covered program cannot be re-released

Information we release cannot be re-released by others — each disclosure must be accompanied by a statement that clearly says this (exact language is in the rule)
PROHIBITION of DISCLOSURE

- This information has been disclosed to you from records protected by Federal confidentiality rules (42 CFR Part 2). The Federal rules prohibit you from making any further disclosure of this information unless the further disclosure is expressly permitted by the written consent of the person to whom it pertains or as otherwise permitted by 42CRF Part 2. A general authorization for the release of medical or other information is NOT sufficient for this purpose. The Federal rules restrict any use of the information to criminally investigate or prosecute any alcohol or drug abuse patient.
HIPAA beyond 42CFR

• NPP

• Patient Rights
  – Right to request restriction of uses and disclosures
  – Right to access PHI in order to inspect and/or obtain copy
  – Right to amend PHI
  – Right to accounting of disclosures for previous 6 year period
Issues

• Arrest warrant or subpoena are insufficient to obtain client information — requires also court order or consent (Should Privacy Officer be consulted?)


• The burden is on the organization to not disclose client information
Issues

DOCUMENTATION OF RELEASES
When Village releases information to
• EMT in medical emergency
• police in case of crime on premises
• child abuse report
• prevent harm (Tarasoff - technically does not apply)
• Court Order

****this must be documented in chart.

• 4. When we release any information in response to any request for info, we should document what was released.
HIPAA Issues

• Information received under promise of confidentiality is not subject to client right to access of records (red progress note)

• Confidentiality of client PHI assured through secure transmissions (email, fax)?

• Program must determine the identity and authority of person requesting PHI before it is released.
COMMON SECURITY VIOLATIONS that threaten confidentiality

• Inappropriate management of user ID, password, computer equipment
  – Leaving terminal turned on and unattended
  – Sharing user ID and/or password
  – Requesting others to use their password
  – Posting of a password (e.g., on post-it)
COMMON SECURITY VIOLATIONS

- Revealing of client information—Unauthorized disclosure of PHI
- Misuse of internet, e-mail, fax, mail systems to send PHI to individuals without a right to know
- Obtaining PHI about clients for other than work related, need to know reasons
PRACTICAL SAFEGUARDS

• Do not leave papers containing PHI lying around where others can see them
• At end of workday, clear desk or other exposed areas of PHI and place in secure location (file cabinet, desk drawer)
• Do not talk about patient PHI in public areas (elevator, restaurant, reception area, etc)
• If you take work home or generate PHI out of office (home visit progress notes), don’t leave in place accessible to people not agency employees, keep in locked briefcase, briefcase in locked car trunk
PRACTICAL SAFEGUARDS

• Don’t leave PHI on computer monitor where non-Village employees can see it.
• Reposition monitor facing away from hallway or office visitors
• When stepping away from computer, type small MS flag button + L to lock computer
• When using email to transmit PHI, uses encrypted, password protected means
• When forwarding email, make sure it does not contain PHI anywhere in the chain of forwarded email (re-release of PHI prohibited, not PW protected)
PRACTICAL SAFEGUARDS

Faxing:
• Make sure receiving fax is secure
• Use cover sheet with confidentiality no re-release statement
• Make sure incoming faxed or opened mail containing PHI is not left sitting in public area
• Staff observing violations or opportunities to improve safeguards should report this to their supervisors and/or the Privacy Officer