

OMHSAS

MAAC 9/23/21

Agenda

- Substance Use Disorder Confidentiality
- Telehealth
- Home & Community Based Services Funding

READY FOR CHANGE

Findings from a stakeholder assessment of SUD confidentiality in Pennsylvania



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Seconded via Vital Strategies | Overdose Prevention Program

BACKGROUND

- Pennsylvania is one of three states (including OK and KS) with SUD data regulations that go above and beyond the federal government's 42 CFR Part 2 (or Part 2)
 - In most states, policies regulating SUD confidentiality align with Part 2
 - <http://www.healthinfolaw.org/comparative-analysis/disclosure-substance-use-records-patient-consent-50-state-comparison-0>
- Pennsylvania's SUD confidentiality is controlled by:
 - Statute: Act 63 of 1972, The Pennsylvania Drug & Alcohol Abuse & Control Act (71 P.S. § 1690.108)
 - Regulations: 4 Pa. Code § 255.5; 28 Pa. Code § 709.28
 - Compiled state and federal laws and regulations available on DDAP's website:
 - https://www.ddap.pa.gov/Documents/Agency%20Publications/Confidentiality_Federal_State_Regulations_Guide.pdf

BACKGROUND

- Stakeholder assessment aimed to understand if and how Pennsylvania's SUD confidentiality requirements can be improved
 - Partnership with Vital Strategies
- Two guiding questions:
 - Do current SUD confidentiality policies affect access to care and services for people living with SUD?
 - How can Pennsylvania address challenges and concerns with SUD confidentiality policies in a way that maximizes benefits and reduces harms to people living with SUD?

PARTICIPANT BACKGROUND

- **1,267** participants completed an anonymous, online survey between May-Aug 2020
 - Diversity of stakeholder groups represented in findings show that confidentiality is a cross-sector issue
- Top five stakeholder groups represented:
 - 38.8% SUD treatment/prevention provider (n=451)
 - 25.7% Behavioral health provider (n=299)
 - 20.4% Friend or family member of someone with a history of SUD (n=237)
 - 13.1% Advocate (n=152)
 - 13.1% Person with a history of/lived experience with SUD (n=152)
- Other entities represented included CBOs, government agencies, SCAs, health care providers, insurers/payers, academia, and courts/criminal justice entities
- Interviews with **70** people representing approximately **30** entities provided additional context to survey findings

BENEFITS OF CURRENT SUD CONFIDENTIALITY POLICIES

- Over half of all survey participants agree that the current policies:
 - **60.7%** Encourage people to seek treatment because they know privacy will be protected (n=646)
 - **57.4%** Keep client in control of own records (n=612)
 - **57.4%** Protect client from adverse actions by employer (n=612)
- Free text replies described stakeholder feelings that Pennsylvania's current policies benefit people living with SUD by:
 - Fostering honesty and openness among clients in treatment
 - Ensuring privacy in treatment
 - Helping SUD treatment providers protect the client
 - Protecting clients from judgement
- Some stakeholders expressed support for the current policies because they feel:
 - Change is not needed, collaboration among providers is possible under the current policies
 - Changing Pennsylvania's policies could cause harm to people living with SUD

CHALLENGES OF CURRENT SUD CONFIDENTIALITY POLICIES

- Over half of all survey participants agree that the current policies:
 - **75.9%** Give providers an incomplete client history because of exclusion of SUD from client records (n=809)
 - **67.4%** Are too restrictive about which entities can receive data (n=718)
 - **60.5%** Make it difficult to integrate SUD services in health care settings (n=645)
 - **55.1%** Perpetuate stigma by setting SUD apart from other health conditions (n=587)
 - **53.8%** Do not fully prevent negative consequences (e.g. in areas of employment or child custody) (n=574)
 - **50.5%** Make it difficult to evaluate programs and improve services (n=539)
- Free text replies described stakeholder feelings that Pennsylvania's current policies pose a challenge to people living with SUD by:
 - Limiting care coordination and service integration
 - Impeding SUD treatment access or continuity of care
 - Being broadly too restrictive

ATTITUDES TOWARDS CHANGING SUD CONFIDENTIALITY

- **Does Pennsylvania need SUD confidentiality policies that go above and beyond Federal regulations?**
 - **63.9%** No (n=677)
 - **23.5%** Neutral or Unsure (n=249)
 - **12.6%** Yes (n=133)

- **Can Pennsylvania's SUD confidentiality policies be improved?**
 - **80.9%** Yes (n=817)
 - **16.5%** Neutral or unsure (n=167)
 - **2.6%** No (n=26)

HOW WOULD PART 2 ALIGNMENT EFFECT PEOPLE LIVING WITH SUD?

- **It would improve care for people living with SUD by...** (362 free text replies)
 - Making it easier to expand and improve coordinated care, integrated SUD services, and communication between a client's providers
 - Providing clarity which would improve consistency and compliance with confidentiality policies
 - Improving entry into SUD treatment and streamlining a client's movement through the SUD treatment continuum
 - Improving cross-state care coordination
 - Improving the process of authorization for insurance and other benefits
- **It would make access to care more challenging for people living with SUD...** (103 free text replies)
 - People living with SUD might:
 - Not seek care or receive the care they need
 - Not be as open or share as much information
 - Be more exposed to stigma and/or discrimination
 - Client data could get out or be misused beyond what a person consents to share
 - It could create more restrictions and/or barriers to care and treatment
 - Legal or criminal justice entities could have access to more data

SURVEY RECOMMENDATIONS

1. Modernize Pennsylvania's SUD confidentiality policies

- Align Pennsylvania's SUD confidentiality requirements with federal privacy protections

2. Protect and empower people living with SUD

- Develop resources on client privacy rights
- Establish a clearer pathway for clients to report grievances if they think their data has been misused or if they feel their SUD status has resulted in discrimination

3. Train and inform SUD stakeholders

- Publish and disseminate guidance materials to summarize changes to SUD policies
- Update DDAP's confidentiality training to reflect policy changes
 - Offer a skills-based component to help providers effectively counsel clients on consent

NEXT STEPS

- Recommendation 1: Modernize Pennsylvania's SUD confidentiality policies
 - Work with the General Assembly to update Pennsylvania's policies
- Recommendation 2: Protect and empower people living with SUD
 - Talk to states with an Ombudsman position to learn best practices
 - Work with the Administration to consider whether existing state advocacy entities could play a role in helping to protect the privacy and rights of people living with SUD
- Recommendation 3: Train and inform SUD stakeholders
 - Pending action on Recommendations 1 and 2

SUD CONFIDENTIALITY RESOURCES

- Policy Briefing: *Pennsylvania Law & Policy Governing the Confidentiality of Substance Use Treatment Information: Challenges & Opportunities* (2019)
 - http://www.healthinfolaw.org/PA_substance_use_information_confidentiality
- DDAP Stakeholder Assessment Summary Report (2020)
 - <https://www.ddap.pa.gov/Pages/SUD-Confidentiality.aspx>
- DDAP's SUD confidentiality training
 - Create an account in DDAP's Training Management System to register for trainings
 - <https://www.ddap.pa.gov/Training/Pages/default.aspx>

THANK YOU!

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Bulletin OMHSAS-21-09

“Guidelines for the Delivery of Behavioral Health Services Through Telehealth”

Jill Stemple – Section Chief, BPPPD

Telehealth Forms: Obsolete Bulletins

- OMHSAS-11-09 and OMHSAS-14-01 *Request for Approval of Telepsych Program*
 - This requirement was removed when OMHSAS-20-02 was issued.
- OMHSAS-20-02 *Attestation Form to Provide Telehealth*
 - Currently approved Attestations under OMHSAS-20-02 will remain in effect through 9/29/21
 - [OMHSAS-21-09](#) does not require an attestation form. Please do not send attestation forms effective 9/30/2021.

Telehealth Forms: 45-mile/60-minute Exception Process

- The exception form is only to be used for submitting a request for an exception to the 45-mile/60-minute access to in-person services guidance. No other modifications to OMHSAS telehealth policy will be considered through this process.
- Only HealthChoices Primary Contractors (HC-PC) may submit these forms to OMHSAS
- Providers interested in an exception will need to contact the local HC-PC for the area where the provider would like to deliver services.

Telehealth Forms: Regulatory Waiver Requests

OMHSAS-21-09 cannot supersede or nullify existing regulations.

When statewide regulatory suspensions issued under authority of the COVID-19 Emergency Disaster Declaration Period end on 9/30/21, providers must return to full regulatory compliance or request an agency/facility specific waiver for consideration.

Telehealth Forms: Regulatory Waiver Requests

OMHSAS-21-09 identifies three potential regulatory barriers that partially limit certain providers' utilization of telehealth and/or audio-only service delivery. Waiver requests for the effected licensed providers can be submitted for OMHSAS review.

Verbal Consent/Verification

- Mental Health Intensive Case Management 55 Pa. Code § 5221.33(4)(iii)

Audio-Only Service Delivery

- Outpatient Drug and Alcohol Clinic Services 55 Pa. Code § 1223.14(2)
- Outpatient Psychiatric Services 55 Pa. Code § 1153.14(1)
 - Includes Psychiatric Outpatient Clinics, Partial Hospitalization Outpatient Facilities, and Mobile Mental Health Treatment (55 Pa. Code § 1153.11)

Telehealth Forms: Regulatory Waiver Requests

- Regulatory Waiver Requests need to follow the process in [OMHSAS-16-03 Revised Procedures for Waiver of Office of Mental Health and Substance Abuse Services \(OMHSAS\) Program Regulations and Standards](#)
- A template has been provided by PACA to assist providers in completing documentation requirements and is available [here](#)
- Satellite locations can be included with the primary license on the waiver request
- Waivers will be granted for a maximum of 1 year
- Counties will be copied on OMHSAS waiver request response letters to providers (except for OP D&A)

Telehealth Forms: Regulatory Waiver Requests

Mental Health Providers

- **Letter of Support:** Required from the County Mental Health Administrator in the county of the primary license
- **Submit to:** The appropriate OMHSAS Regional Field Office

D&A Providers

- **Letter of Support:** No letter of support required from County Mental Health Administrators
- **Submit to:** RA-PWBPPPD@pa.gov

Frequently Ask Questions

OMHSAS is actively developing a Telehealth FAQ for publication. Popular questions include:

- Does OMHSAS-21-09 specify which behavioral health services can be delivered through telehealth?
- Does OMHSAS-21-09 specify which licensed behavioral health practitioners or unlicensed behavioral health staff can deliver services through telehealth?
- Does use of a telehealth platform with the video off count as telehealth service delivery or audio-only service delivery?
- Does OMHSAS-21-09 require full HIPAA compliance now or recognize the current HHS OCR non-enforcement under the federal PHE?
- Can provider agencies continue to deliver services through telehealth from locations outside the licensed agency/facility, such as practitioner's homes?

Frequently Ask Questions In Development

OMHSAS is also in the process of addressing questions that require legal feedback for inclusion in the upcoming FAQ document, such as:

- Guidance on Group Services, including IBHS Group Services
- Measuring the 45-mile/60-minute distance
- Supervision when services delivered through telehealth
- 25% limit on telephone services in the Peer Handbook
- Initial assessments and telehealth
- 55 Pa. Code 5200.22 requirement for 50% psychiatric time

Additional Information

- To submit an FAQ or a question specific to a particular situation regarding the use of telehealth, please email: RA-PWTBHS@pa.gov
- Please note: due to the volume of inquiries, questions submitted which are covered in the FAQ may not receive an individualized response and may be referred to the FAQ.