

## Report on Medicare Compliance Volume 27, Number 8. February 26, 2018 Substance-Use Confidentiality Rules Bring Some Changes; Push to Align With HIPAA Continues

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By Nina Youngstrom

A patient being treated for chest pain was on methadone to recover from heroin addiction, but the emergency room physician was unaware because the patient had not consented to its disclosure, and the hospital kept that information out of the electronic health records (EHR) to prevent an inadvertent disclosure. As a result, the physician had an incomplete picture of the patient, and although the hospital worries about patient safety in these situations, it was trying to comply with the fiercely protective regulations on the Confidentiality of Substance Use Disorder Patient Records.

That's one of the challenges faced by hospitals and other providers as they navigate the substance use disorder confidentiality regulations. Even with an updated regulation that took effect Feb. 2 and a regulation finalized last year designed to "modernize and update" for an EHR world, more changes are needed to harmonize with HIPAA, says Rebecca Klein, director of government affairs for the Association for Behavioral Health and Wellness (ABHW) in Washington, D.C. This could come from Congress, where several bills are pending to allow providers and plans more leeway to share information for treatment, payment and operations (TPO), consistent with HIPAA.

"There is a lot of attention on the opioid epidemic, but how do you effectively communicate across all providers to help those patients?" says Christine Bachrach, vice president and chief compliance officer of the University of Maryland Medical System. "Either you keep a clinic on paper or in its own unconnected system, which is clearly not the goal these days in a meaningful use and interoperability world."

In the new regulation (42 CFR Part 2), the HHS Substance Abuse and Mental Health Services Administration (SAMHSA) finalized a 2017 supplemental notice of proposed rulemaking (SNPRM). It had been proposed with a regulation finalized last year, and both were significant updates to the confidentiality regulations, which date back to 1972. But they stop short of bringing the sort of alignment that some experts think is necessary to reflect the realities of the opioid crisis, the advent of electronic health records and the move toward pay-for-performance delivery models, such as accountable care organizations (ACOs).

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