

Community-Wide EHR Data and Patient Referrals – A Legal Perspective

Healthcare for the
Homeless Association



Henry C. Fader, Esq.

Washington D.C. March 15, 2013

Today's Objectives

- Recognize the difficulties of coordinating care for the homeless within communities.
- Identify a system that can assist in patient tracking of acute care visits.
- Developing a method of securing appropriate referral resources.
- Analyze the legal issues involved in the sharing of community-wide information.

Project Background



- JWCH Institute, Inc. operates two Medical Respite Programs in addition to six health centers, two residential substance abuse treatment facilities, and HIV medical services and primary care satellite clinics.
- Founding member of Skid Row Homeless Healthcare Initiative.
- Medical Respite Care program assists recently hospital discharged homeless patients with recovery.

The Electronic Medical Home Project



- Prior to 2009, care for homeless persons on Skid Row was fragmented and not coordinated.
- In 2009, JWCH established the Center for Community Health (CCH), a private and public partnership that provides integrated care utilizing a single main medical and behavioral health medical record.
- Results so far: An unduplicated census of 11,509 patients has shown that they are more engaged in their care, are obtaining better treatment, and consider CCH to be their primary medical home.

The Electronic Medical Home Project



- Received funding from LA Care's Robert E. Tranquada, Health Care Safety Net Award to establish an electronic database to share data for care coordination.
- Open MRS selected as platform and customized as Open MRS-LA.
- Memorandum of Understanding executed among agencies governing use and maintenance of database and security of protected health information.

Importance of Community Engagement



Public and Private

AIDS Healthcare Foundation
Downtown Women's Center
Homeless Health Care Los Angeles
JWCH Medical Clinic at the Weingart Center
L.A. Care Health Plan

Medical and Social

Los Angeles County Department of Health Services
Los Angeles County Department of Mental Health
Los Angeles County Department of Public Health
Los Angeles Mission

Religious and Secular

Los Angeles Mission Community Clinic
Mental Health Advocacy Services of Los Angeles
Midnight Mission
QueensCare Family Clinics
Skid Row Housing Trust
Union Rescue Mission
Weingart Center

Developing the Platform



- Project used community-developed, open-source enterprise electronic medical framework.
- Open MRS was developed by the Regenstrief Institute, Inc. of Indianapolis and Partners In Health of Boston to assist providers addressing the HIV/AIDS crisis in Africa.
- Sharing of source code increases transparency in software functionality, makes customization easier.

Memorandum of Understanding



- Patient Centric – patient retains choice to participate
- Creation of Patient Client Record
- Restricted Access for Patient Care
- Notice of Privacy Practices
 - Disclosures to family and friends involved in care
 - Disclosure when required by law
 - Disclosure for Public Health
 - Disclosure to Law Enforcement

Memorandum of Understanding



- Separate Authorization for Disclosure to JWCH
- Separate Authorization for Permission for JWCH Disclosure to Others
- Ownership of Data as Intellectual Property v. Other Third Parties
- License of Database to each Agency
- JWCH Responsible for Data Security

Electronic Medical Home Implementation



- Execution of Memorandum of Understanding
- Workflow Integration
- Computer Workstation Verification
- Training
- Policies and Procedures

Electronic Medical Home Privacy and Security Concerns



- HIPAA consent forms
- Password protection
- Network-based intrusion detection
- Transmission encryption
- User activity logs retained indefinitely
- Disaster Recovery
- Penetration Testing

Developing Community-Wide Resources



- Vancouver Island Health Authority
- Full Service/Cross-Continuum EHR for the Entire Island
- Next Generation EHR with Decision Support
- Getting People Into Beds
- Covers Home, Community and Residential Care
- Matrices of Client Functionality and Clinical Availability



Strata Pathways

- Develops descriptions of patients
- Develops express referral program inclusion/exclusion criteria
- Connecting People to Programs
 - For example, mental health and addiction services are established by category
 - SMI (serious mental illness)
 - SPMI (serious and persistent mental illness)
 - Severe Addictions
 - SPMI plus substance abuse/addictions
 - Psycho geriatric – challenging dementias



Strata Pathways

- Establishes a description of client functionality
 - High risk – intentional or functional impairments
 - Homeless
 - Cognitive impairments
 - High medical co-morbidity
 - Chronic relapsing
 - Clinically volatile



Strata Pathways Reports What Services Are Available For the Patient

- Crisis/Emergency Response
- Acute Care
- Specialized Addiction Services
- Ambulatory Services
- Case Management Services
- Support Housing/Residential Care
- Tertiary Residential Services
- Services outside Vancouver Island Health Services

Legal and Other Compliance Issues



- EMTALA
- IRS Section 501(r)(3): Community Health Needs Assessment
- Medicare Compliance
- Privacy/Security of Patient Information

Homelessness and EMTALA



- EMTALA (42 U.S.C. 1395dd): requires hospitals to provide emergency medical care without regard to citizenship, legal status or ability to pay.
- Significant exposure issue for hospitals.
 - Hospitals and doctors that violate EMTALA are subject to fines of up to \$50,000 per violation.
 - Violators of EMTALA may be excluded from participation in the Medicare and Medicaid programs.
 - Hospitals are also subject to civil lawsuits by patients for violations of the Act.

Internal Revenue Code Section 501(r)(3)

- Tax reporting requirements now include the necessity of nonprofit hospitals to prepare every 3 years a community health needs assessment (See Section 501(r)(3) of the Internal Revenue Code of 1986, as amended).
- To the extent that the homeless constitute a part of the service area of the hospital, the needs assessment should describe:
 - what the organization is doing to meet those needs, and
 - how it intends to implement programs or actions to alleviate the health problems of the community served.

Medicare Compliance



- Anti-Kickback Statute; False Claims Act
 - Potential exposure for failure to discharge patients appropriately.
- Medicare Conditions of Participation
 - COP violations can arise from the premature discharging of patients or for the discharge of patients to environments where the hospital knows the patient will be unable to follow his or her discharge plan.
- Readmission Regulations
 - Hospitals with excessive readmissions of Medicare patients associated with acute myocardial infarction, heart failure and pneumonia within 30 days of hospital discharge will be financially penalized.

Homeless Patient Information and Privacy Concerns



- Transient patients often do not possess a valid record of their health information.
- To properly coordinate care for this population, health care providers must collect and share patients' health information.
- State and federal law privacy protections (including HIPAA/HITECH) dictate required permissions and safeguards.



- HIPAA/HITECH Penalties
 - Civil monetary penalties increased under HITECH
 - Tiers of civil penalties depending on violation
 - Civil penalties can range from \$100 - \$50,000 per violation (annual aggregate of \$1.5M)
 - Criminal penalties
 - Fines range from \$50K for basic violations, imprisonment for one year or both to \$250,000, ten-year imprisonment for up to 10 years or both for intent to sell, transfer or use PHI for commercial advantage



- HIPAA/HITECH
 - Protect privacy and security of protected health information (“PHI”), including information transmitted electronically
 - Mandate breach notification
 - Most common compliance complaints investigated
 - Impermissible uses and disclosures of PHI
 - Lack of safeguards of PHI
 - Uses or disclosures of more than the Minimum Necessary
 - Lack of patient access to PHI

State Law Privacy Protections



- State consumer protection and breach notification laws
 - Protect confidentiality of consumer’s personal information
 - Require notice in the event of a breach of personal and/or medical information
- State laws governing confidentiality of medical information
 - Place additional limits on the use and disclosure of patient medical information

Health Information Exchanges (HIEs)

- Electronic exchange of individual medical information among health care providers.
- HIPAA/HITECH regulations apply.
- State laws vary on the question of whether and what consent is necessary to exchange health information:
 - No Choice
 - Opt In (California)
 - Opt Out
 - Granular Consent (type of consent required varies based on the type of information or type of provider)



- Opt In: Patient must consent to have information shared.
- Exceptions
 - Emergency situations-patient or representative is unable to give consent
 - Mandatory public health and communicable disease reporting
- Revocation of Consent: Applies to information yet to be exchanged.

Summary



- It is possible to design systems to share information on homeless patients.
- Looking ahead, examine other opportunities to share resource data.
- Always keep a knowledgeable lawyer available.

Thank You!



Henry C. Fader, Esq.

Phone: 215.981.4640

Email:

faderh@pepperlaw.com

Twitter: @PhillyFader

- Corporate and health care partner in the Philadelphia office of Pepper Hamilton LLP; Chair of the firm's health care practice.
- Counsels clients with respect to organizational structures, governance and on the implementation of telemedical solutions and electronic health records and related regulatory, licensing, compliance and payment issues.