

Sharing of Health Information

Federal Privacy Restrictions and State Initiatives

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The National Conference of State Legislatures (NCSL)

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2. Providing legislators opportunities for an exchange of ideas, and
3. Providing research and technical assistance support.

Sharing of Health Information

What are the limitations placed on state law which would prohibit the sharing of health information between the Criminal Justice Information Systems and the Department of Health and Mental Hygiene?

Federal Laws Governing Privacy of Medical Information

- Health Insurance Portability and Accountability Act of 1996 (HIPAA)
- Family Education Rights and Privacy Act of 1974 (FERPA)

Health Insurance Portability and Accountability Act of 1996 (HIPAA)

- Enacted August 21, 1996.
- The HIPAA final Rules establish standards for the protection of individually identifiable health information relating to:
 1. The individual's past, present or future physical or mental health or condition,
 2. The provision of health care to the individual, or
 3. The past, present, or future payment for the provision of health care to the individual.

Disclosures Allowed Under HIPAA

1. To the individual who is the subject of the record.
2. For the delivery of medical treatment.
3. In situations where privacy is outweighed by certain other interests i.e., imminent threats to the public's health, or as dictated by state law.

Entities Subject to HIPAA Requirements :

- Health care providers who transmit health information in electronic transactions,
- Health plans, and
- Health care clearinghouses

How Does HIPAA Affect State law

The provisions supersede state laws, except:

1. Where the Secretary determines that the State law is necessary to prevent fraud and abuse,
2. To ensure appropriate state regulation of insurance or health plans,
3. Addresses controlled substances, or for other purposes.

Family Educational Rights and Privacy Act (FERPA)

- Enacted in 1974.
- Applies to all schools that receive funds under an applicable program of the U.S. Department of Education.
- Protects the privacy of student education records including all health records maintained by school employees who provide school health services.

Federal Resources

- HHS Office of Civil Rights-
<http://www.hhs.gov/ocr/hipaa/>
- ED.gov-Family Educational Rights and Privacy Act (FERPA)
<http://www.ed.gov/policy/gen/guid/fpco/ferpa/index.html>

Question:

How do we balance the privacy of personal medical information while assuring the safety of the community?

Issues Raised by the Virginia Tech Tragedy

President Bush directs the Secretaries Health and Human Services, and the Department of Education, and the Attorney General of the United States to meet with community leaders.

Issues Raised by the Virginia Tech Tragedy

Key Findings

- Critical Information Sharing Faces Substantial Obstacles.
- Accurate and Complete Information on Individuals Prohibited from Possessing Firearms is Essential to Keep Guns Out of the Wrong Hands,
- Improved Awareness and Communication are Key to Prevention.

Issues Raised by the Virginia Tech Tragedy

Key Findings

- It is Critical to Get People with Mental Illness the Services They Need.
- Where We Know What to Do, We Have to be Better at Doing It.

Issues Raised by the Virginia Tech Tragedy

Virginia Governor Kaine issues an executive order forming a panel of experts to perform a comprehensive review of the incident at Virginia Tech.

Issues Raised by the Virginia Tech Tragedy

Virginia Tech Review Panel

Key Findings Regarding Medical Records Privacy:

1. The lack of understanding of privacy laws.
2. Inconsistent application of privacy laws may block the sharing of information for effective intervention with troubled students.
3. The privacy laws need amendment and clarification.

Issues Raised by the Virginia Tech Tragedy

Virginia Tech Review Panel Recommendations:

1. Accurate guidance should be developed by the attorney general of Virginia regarding the application of information privacy laws to the behavior of troubled students.
2. Privacy laws should be revised to include “safe harbor” provisions.
3. Clarifying amendments to FERPA should be considered.

Firearm Licensure: 50 State Picture

- 43 States and DC have some prohibitions of firearm licensure for persons with mental illness.
- 36 States have prohibitions for drug abuse.
- 31 States have prohibitions for alcohol abuse.
- 20 States and DC have databases that track individuals with mental illness.

Delaware

- Prohibits those committed to “a mental institution, sanitarium, or hospital for mental disorders.”
- If the above have occurred, must have a “certificate of rehabilitation” and a certificate from an MD or psychiatrist.
- Drug and alcohol prohibitions.
- Has a mental health database.

District of Columbia

- All firearms must be registered.
- To obtain registration, individual must not be found not guilty by reason of insanity or adjudicated as an “alcoholic” within 5 years.
- Must not have been committed to a mental hospital within 5 years.
- Has mental health database.

Pennsylvania

- The following disqualifies an individual for a license to carry a firearm for a period of 3 years:
 - Treatment for a mental health condition requiring medication or supervision;
 - Inpatient substance abuse treatment;
 - Two or more convictions of public intoxication.
- The following prohibits individuals from possessing a firearm:
 - Conviction of a controlled-substance abuse offense resulting in more than 2 years in prison;
 - Adjudication of “mentally incompetent;”
 - Involuntary commitment to a mental institution.
- Has Mental Health Database.

Virginia

- The following prohibits individuals from purchasing, possessing or transporting a firearm:
 - Adjudicated as legally incompetent;
 - Found to be “mentally incapacitated;”
 - Committed to treatment involuntarily.
- Unlawful to transfer a firearm to above individuals.
- Has Mental Health Database.
- Executive Order 50 (2007)-clarifies rules around reporting a person to database when found to be a danger to self or others and committed to inpatient or outpatient treatment.

Resources

- Norris, D.M., Price, M., Gutheil, T., & Reid, W.H. (2006). Firearm Laws, Patients, and the Roles of Psychiatrists. *American Journal of Psychiatry*, 163:8.

For More Information

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