



*Records And The Law

Chapter 8

*This chapter focuses on legislation and its impact on records. We will cover the five principles of privacy-confidentiality, abridgment, access, anonymity and security and then present a brief history of federal privacy legislation.

*Introduction

*New technologies have also raised the potential for access to, and misuse of, information in the client's record.

*Introduction

- * Five basic principles

- * Confidentiality - means safeguarding from disclosure personal information that the client reveals or the worker learns in the context of providing services.

- * NASW Code of Ethics

* **Basic Privacy
Principles**

- * Abridgement - means that information that is revealed in the context of service delivery, but is not relevant to the purpose of service, is left out of the record.
- * Access to records by clients, their families, or their agents enhances client privacy by allowing the recipient of services to learn what information is being collected, documented, and stored, and how information is being interpreted and used by the agency.

* Basic Privacy Principles

- * Anonymity protects privacy by permitting the use of client information for specific and valued purpose of the client's name and other identifying information are obscured.
- * Security protects privacy through a system of administrative policies and procedures and physical and technical safeguards, that prevent unwarranted access to records and unauthorized release of or tampering with the personal information they contain.

* Basic Privacy Principles

- * Prior to the 1970s, there was minimal legal regulation of how practitioners and the agencies they worked for handled client information.
- * 1965 - Federal government began to address issues of privacy and its relationship to client records.

* A Brief History of Federal Privacy and Records Legislation

* 1973 - establish the U.S. Department of Health, Education and Welfare (now Health and Human Services) Stated the following practices:

* There must be no personal data record-keeping systems whose very existence is secret.

* A Brief History of Federal Privacy and Records Legislation

- * There must be a way for an individual to find out what information about him is in a record and how it is used.
- * There must be a way for an individual to prevent information about him obtained for one purpose from being used or made available for other purpose without his consent.

* A Brief History of Federal Privacy and Records Legislation

- * There must be a way for an individual to correct or amend a record of identified information about him.
- * Any organization creating, maintaining, using, or disseminating records of identifiable personal data must assure the reliability of the data for their intended use and must take precautions to prevent misuse of the data.

* A Brief History of Federal Privacy and Records Legislation

- * 1966 - The Freedom of Information act - established the public's right to obtain information contained in records and documents of federal government agencies.
- * 1970 - The Fair Credit Reporting Act gave consumers the right to know what information lenders had when making decisions about providing them credit and other services.

* A Brief History of Federal Privacy and Records Legislation

- * 1974 - The Privacy Act regulated the government's use of individual personal information.
- * 1974 - The Family Education Rights and Privacy Act allowed parents access to the education records of their children.

* A Brief History of Federal Privacy and Records Legislation

* Since the 1980s, the emergence of computer and other technologies and the potential of misuse of personal data have led to public concerns regarding the privacy of personal information. Page 227-228

* A Brief History of Federal Privacy and Records Legislation

- * The legislation enacted in the 1990s reflects the federal government's concern for individual privacy and its response to the use of technology by third parties to gain information about individuals.
- * 2001 - USA Patriot Act to investigate and conduct surveillance of personal information, including information contained in personal files on the Internet.

* A Brief History of Federal Privacy and Records Legislation

- * The Patriot Act signals a reversal in this policy of protect a person's personal privacy.

* A Brief History of Federal Privacy and Records Legislation

- * Federal legislation applies to all federal social service agencies.

- * Freedom Information Act - 1966

- * Privacy Act of 1974

- * Family Education Rights and Privacy Act 1974

* Important Federal Laws Related to Social Work Records

- * FERPA - Parents have access to the children school record until they are 18, then the students have rights concerning their records.

* Important Federal Laws Related to Social Work Records

- * Federal Alcohol and Drug Abuse Records (2 Laws)
 - * Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act 1970
 - * Drug Abuse Prevention, Treatment and Rehabilitation Act of 1972
 - * 1990s Congress combined these two laws, as substance abuse

* Important Federal Laws Related to Social Work Records

- * The federal regulations that govern substance abuse records are known as the Confidentiality of Alcohol and Drug Abuse Patient Record (2007) Part 2 regulations
- * Part 2 regulations are based on the idea that people with substance abuse problems are more likely to seek and successfully complete treatment if they are assured that their need for treatment and their personal information will not be disclosed to others.

* Important Federal Laws Related to Social Work Records

- * Part 2 regulations apply to federally assisted substance abuse programs.
- * Part 2 regulations divide the disclosure of patient identifying information into three distinct parts.
 - * Situations where the patient provides written consent
 - * Situations where disclosure is allowed without patient consent, and

* Important Federal Laws Related to Social Work Records

- * Situations where disclosures are made pursuant to a court order. Under federal regulations, a substance abuse program may not disclose patient identifying information without the written consent of the patient.
- * Under some circumstances, patient consent is not necessary to disclose information contained in the records.
- * Child abuse or neglect

* Important Federal Laws Related to Social Work Records

- * For medical emergency
- * Patient consent also is not required for disclosure for the purpose of scientific research, audits, and evaluations.

* Important Federal Laws Related to Social Work Records

* 1996 - Public Law 104-191, the Health Insurance Portability and Accountability Act (HIPAA) Two major parts

* Title I provides for the portability of health care insurance, so that workers and their families retain health insurance coverage when they change or lose their jobs.

* Health Insurance Portability and Accountability Act

* Title II of HOPAA covers the measure entities must take to simplify the administration of health care, which includes protecting the privacy and confidentiality of health care information.

* Privacy Rule - 2003

* Health Insurance Portability and Accountability Act

The Privacy Rule

- *The Privacy rule creates basic principles that apply to almost all providers of health care and supersedes any state law that falls below federal standards.

*Health Insurance Portability and Accountability Act

Protected Health Information

- * Under HIPPA, the general rule is that covered entities may not reveal PHI (protected health information) without the authorization of a patient or their personal representative.

* Health Insurance Portability and Accountability Act

Protected Health Information

- * A valid authorization must contain core elements. These elements include:
 - * A specific and meaningful description of the information to be used or disclosed

* Health Insurance Portability and Accountability Act

Protected Health Information

- * The name or the class of people who can use or disclose the information
- * The name or description of the person authorized to make the disclosure
- * The purpose of the requested information

* Health Insurance Portability and Accountability Act

Protected Health Information

- * The expiration date or event
- * The signature of the person authorized to make disclosure and the date of the signing.
- * Disclosure is also permitted without patient authorization in situations where the patient or others may be at a serious risk of harm

* Health Insurance Portability and Accountability Act

Protected Health Information

- * There are other situations in which covered entities may disclose PHI without permission.
 - * Judicial and administrative proceedings
 - * Situations required by law
 - * Research

* Health Insurance Portability and Accountability Act

Protected Health Information

- * Workers' compensation cases
- * Fundraising
- * Marketing
- * Health oversight activities

* Health Insurance Portability and Accountability Act

Privacy Practices

- * HIPAA requires covered entities to follow certain administrative procedures to safeguard client information.
- * The right to request restrictions on certain uses and disclosures of protected health information

* Health Insurance Portability and Accountability Act

Privacy Practices

- * The right to receive confidential communications of PHI
- * The right to inspect and copy PHI
- * The right to amend PHI
- * The right to receive an accounting of when and how the covered entity has disclosed PHI

* Health Insurance Portability and Accountability Act

Privacy Practices

- * The right of an individual to receive the notice electronically

* Health Insurance Portability and Accountability Act

The Security Rule

- * While the Privacy Rule protects the privacy of protected health information in any form, the Security Rule sets standards specific to guarding electronic PHI from unauthorized access, alteration, deletion, and transmission.

* Health Insurance Portability and Accountability Act

The Security Rule

- * Set standards of safeguards for e-PHI.
- * Physical safeguards as well
- * Technical safeguards

* **Health Insurance
Portability and
Accountability Act**

Becoming HIPAA Compliant

- * Feds have created minimum, national standards for protecting privacy of PHI and e-PHI of all individuals who receive health care from covered entities.
- * How material should be handled

* Health Insurance Portability and Accountability Act

- * There are state laws and requirements that are required of Social Workers for individual states that HIPPA don't apply.
- * A social worker who moves from one state to another may be surprised to learn that the new state handles issues of records differently than their form state.

* HIPAA And Its Relationship to State Laws

- * Social Workers must become familiar with HIPPA and State Laws concerning specific Client Populations.

Records and Child Abuse and Neglect

- * 1974 - Child Abuse Prevention Treatment Act

* HIPPA, State Law, And The Records of Specific Client Populations

Records of Minors

- * Social workers must become aware of their own state's legal requirements when working with children and their parents.

* HIPPA, State Law, And The Records of Specific Client Populations

Records of Minors

- * When does a child become an adult? In most states, the age of majority is 18. Certain rules may change the age, for example, marriage or military service. Some states have different rules concerning when a child may petition the state to be mature enough to make their own decisions.

* HIPPA, State Law, And The Records of Specific Client Populations

Records And Adults With Cognitive Impairments

- * State laws determines when other people can make decisions on behalf of adults who do not have the ability to consent to the use of their records.

* HIPPA, State Law, And The Records of Specific Client Populations

Records and Mental Health

- * States often treat the records of people with mental health problems differently than the records of people with other medical conditions, placing stricter controls over access to and disclosure of mental health information to outside parties.
- * “Duty to Warn”

* HIPPA, State Law, And The Records of Specific Client Populations

Records and HIV /AIDS

- * Voluntarily to be tested...and limited access to files
- * Some states have stricter rules concerning disclosure of HIV /Aids patients.

*** HIPPA, State Law, And
The Records of Specific
Client Populations**