

CONFIDENTIALITY AND HIPAA (RESPITE PROVIDERS)

Introduction

The confidentiality of information about people who receive services through the Disabilities Board of Charleston County (DBCC) is protected by state and federal laws. The Health Insurance Portability and Accountability Act (HIPAA) is a federal law that addresses the privacy and confidentiality of “personally identifiable health information.” Its provisions apply to health and treatment information about people who receive services from DBCC.

Review questions

Q: What laws protect confidentiality? **A:** *State and federal laws.*

Q: What federal law addresses privacy of “personally identifiable health information?” **A:** *HIPAA*

Permission required

Service providers, whether employees of DBCC or contractors such as respite providers, are prohibited by these laws from sharing information about consumers without proper authorization. Written permission is needed for most matters, although in an emergency, verbal permission may be accepted. The responsible party (the person who is receiving services or the legal guardian) has a right to information about the consumer. Information can be shared with other care providers, *after getting permission from the responsible party*, for the purposes of accessing needed care for the person. Other care providers might include doctors, therapists, home health personnel, and so on.

Review questions

Q: What does a service provider need before releasing information about a consumer? **A:** *Written permission from the responsible party.*

Q: What does “responsible party” mean? **A:** *The “responsible party” is either the consumer him- or herself, or the legal guardian for the consumer.*

When permission is NOT required

Information about a consumer can only be shared without permission in true emergencies, such as giving information to EMS, or in situations required by law. For example, if information is subpoenaed for legal procedures, permission of the person is

not required. If information is needed by law enforcement for a criminal investigation, permission is not required. In cases where a care provider suspects abuse, neglect or exploitation of a child or a vulnerable adult, the care provider may have to disclose protected information in order to make a legally required report to DSS or other state investigative agencies.

Review questions

Q: When is permission from the consumer or responsible party not required?

A: *In an emergency situation, or if the information is required for legal reasons, such as a law enforcement investigation.*

What is covered by privacy laws?

All information about the consumer's health condition, care and support needs, diagnosis, treatments, and condition is considered protected information. The information does not have to be written. It may be in electronic records, in written records, or simply be information a care provider knows but does not have recorded anywhere. You can violate privacy laws without giving copies of written information to someone, as well. Verbally telling someone protected information without having appropriate permission is a violation of privacy laws. Likewise, allowing a third party access to the information – for example by overhearing your conversation,- is also a violation of privacy laws. Care providers have a responsibility to actively protect health information about the people they support.

Review questions

Q: What information is protected by these federal and state laws, like HIPAA?

A: *All information about the individual, including his or her health condition, support needs, treatment, and diagnosis is covered by these laws.*

Q: Do the laws cover only written records? **A:** *No, written records, electronic records, and even verbal information are all covered.*

How to protect a person's confidential information

The easiest and best way to protect confidential information is to not share information unless you need to. If you do need to share information, after getting proper permission, give the other person the minimum necessary information. "Don't give them a book if they only need a page." Don't discuss personal information about a consumer in a public

place where you may be overheard. Don't leave written records about a person lying around where someone else might see them.

Review questions

Q: What are four steps should a service provider take to protect confidential information?

A: *Four steps a provider can take are (1) Do not share information unless required, (2) If required to release information, give the minimum necessary information, (3) Keep written records in a secure place, and (4) Make sure discussions about confidential information can not be overheard.*

Conclusion

HIPAA and other state and federal laws protect the privacy and security of information about consumers of services. These laws apply to support providers, whether they are DBCC employees or contractors such as respite providers. The laws provide penalties for knowingly violating a person's confidentiality, including monetary penalties. Criminal violations of privacy and confidentiality laws may result in up to one year imprisonment.

Review questions:

Q: Are there penalties for knowingly violating a service recipient's confidentiality? **A:** *Yes, including monetary penalties and imprisonment.*