

Sharing Behavioral Health Information

Tips and Strategies for Police-Mental Health Collaborations

Whether it's positioning a law enforcement officer to respond appropriately to a call for service or determining whether a co-responder program has reduced jail bookings, sharing information is both a critical and challenging part of successful police-mental health collaborations (PMHCs). While the Health Insurance Portability and Accountability Act (HIPAA) and its regulations are the most oft-cited barriers to information sharing,¹ PMHCs may also struggle to develop appropriate processes and technology to facilitate information collection and sharing. Further, behavioral health professionals are trained to protect individual privacy about mental health or addiction treatment and may also understandably hesitate about sharing this information with law enforcement.

However, as the value of these collaborations becomes more apparent, communities of all sizes have figured out ways to appropriately share behavioral health information to support their PMHCs that comply with federal regulations for both HIPAA and 42 C.F.R. Part 2 (which governs privacy for substance use disorder patients). Some of these strategies are simple, like posting the "law enforcement exceptions" to HIPAA in the breakroom.² Others involve thoughtful design of training programs or database architecture. This brief provides practical strategies communities can use to safely and legally share behavioral health information to improve outcomes for people in their communities.

Police-Mental Health Collaboration Strategies

- ✓ **Take it on together:** Working together to understand privacy law and develop shared goals can facilitate trusting relationships among partners that ensure the right information is available for those who need it when they need it. Consider engagement strategies for different circles of partners. Some are best served by regular working meetings, such as law enforcement and mental health agencies that work together every day on shared clients. For others, such as community groups or the judiciary, regular but less frequent outreach can help create a shared understanding of goals, current strategies, and challenges.
- ✓ **Clarify terminology for shared understanding:** Taking the time to clarify potentially ambiguous terms is an important step in accurately sharing behavioral health information. Terms like "risk" likely have different meanings to officers and treatment providers. Similarly, officers may be surprised by how clinicians and administrators define different types of behavioral health needs and what constitutes protected health information (PHI).³
- ✓ **Provide training on relevant legal basics:** Managers and staff from both criminal justice and behavioral health partners should be familiar with relevant federal and state privacy laws, as well as local rules and agency policies and procedures that are relevant for their roles. Appropriate staff should also receive training on security rules for handling health information.

Tips from the field

Many jurisdictions have developed strategies to facilitate appropriate information sharing among behavioral health and law enforcement agencies. The following tips are based on their experiences:

- Effective collaboration builds on cooperation and trust between agencies.
- It is possible to share information legally.
- Remember the principle of sharing the minimum necessary health information.
- Think about engaging people with lived experiences in establishing strategies.

For specific examples of information-sharing strategies some of these jurisdictions have implemented, visit csgjusticecenter.org/law-enforcement/information-sharing.

1. For more on the legal framework for sharing protected health information, see: The Council of State Governments Justice Center, *Information Sharing in Criminal Justice-Mental Health Collaborations*, <https://csgjusticecenter.org/cp/publications/information-sharing-in-criminal-justice-mental-health-collaborations/>; and Policy Research Associates, *Point-of-Service Information Sharing Between Criminal Justice and Behavioral Health Partners*, <https://www.prainc.com/point-service-information-sharing-criminal-justice-behavioral-health-partners-addressing-common-misconceptions/>. The Substance Abuse and Mental Health Services Administration's Center of Excellence on Protected Health Information is available online at: https://caiglobal.org/index.php?option=com_content&view=article&id=1149&Itemid=1953.

2. The U.S. Department of Health and Human Services has developed fliers of relevant provisions for law enforcement that can be shared and posted in common areas. For example, *Health Insurance Portability and Accountability Act (HIPAA) Privacy Rule: A Guide for Law Enforcement* is available online at: https://www.hhs.gov/sites/default/files/ocr/privacy/hipaa/understanding/special/emergency/final_hipaa_guide_law_enforcement.pdf.

3. Protected health information under HIPAA is information about a person's health that is both individually identifiable and transmitted electronically. For more specifics, see, 45 C.F.R. § 160.103, available online at: <https://www.law.cornell.edu/cfr/text/45/160.103>.

- ✓ **Establish agency policies and procedures governing different points of contact:** When developing these policies, county attorneys should be included in the planning process from the beginning so that they understand the goals of the policies and procedures. Agencies should also identify and consult the entity at the state level who provides guidance on state privacy law to ensure that local policies and procedures comply.
- ✓ **Establish agreements to share information appropriately:** Both HIPAA and 42 CFR Part 2 have provisions to create interagency agreements for appropriately sharing information with partners, such as criminal justice agencies, as long as they comply with relevant privacy laws.
- ✓ **Get permission on file:** Regulations provide guidance on what constitutes PHI and how it can be shared with a person's written authorization. Agencies can add collecting these permissions and recording them as part of their policies and procedures and can also establish voluntary databases where people have their own behavioral health needs on file. Officers and other personnel on the scene should be trained in engagement strategies and given sample language to help engender trust so that individuals will be able to provide permission.
- ✓ **Build databases that can talk to each other:** Think about ways to build in data matching potential by ensuring that criminal justice and behavioral health datasets use a common unique identifier. Attention to harmonizing terminology and using national information-sharing data standards⁴ can help communities develop both simple and sophisticated data exchanges. Developing different permissions levels based on roles also helps ensure PHI is kept private.

In the Moment Strategies

- ✓ **Avoid PHI when possible:** Identify places where health information that is not protected will serve the need. For example, could a flag for “mental health need” be developed that does not meet the PHI threshold?
- ✓ **Have authorization forms on hand:** Having authorizations available at multiple system points provides the opportunity to quickly get permission to share needed information. Tablet computers may also be a way to quickly secure authorization on the scene.
- ✓ **Understand exceptions:** Federal laws provide some exceptions for the usual privacy protections to prevent a threat to individual or community safety or to locate a fugitive, for example.

State Policymaker Strategies

State policymakers also have a number of unique tools at their disposal that can help facilitate information sharing among criminal justice and behavioral health partners.

- ✓ **Clarify the legal framework:** An executive agency, such as an Attorney General, may be positioned to provide authoritative or persuasive guidance on how applicable federal and state law apply. Statutes may also be used to highlight permitted information exchanges.
- ✓ **Provide model forms:** In a similar vein, model forms created or shared by authoritative state entities can greatly facilitate information sharing among criminal justice and behavioral health partners. Key documents include individual authorizations that cover mental health and substance use disorder patient records, Business Association Agreements, and Qualified Service Organization agreements.
- ✓ **Support or incentivize training and collaborative data systems:** Often the investment to develop training or data systems may be beyond the reach of local policymakers, especially in smaller communities. Expertise and IT supplied at the state level has the potential for substantial improvement locally, especially when local stakeholders are consulted in development.

4. For more information about justice information-sharing standards, such as the National Information Exchange Model (NIEM), see information available through the IJIS Institute and The National Consortium for Justice Information and Statistics: SEARCH.

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