# Health Information Exchange Steering Committee Meeting

April 8, 2024



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# Agenda

- Welcome new Team Member
- Analytics Layer Discussion
- VDH-HIE Integration Plan, *Amanda Jones*
- Various Updates:  Federal / State / HIE
- Education session:  TEFCA, *Beth Anderson*
- Education session:  42 CFR Part 2 Final Rule, *John Wallace*

# Analytics Layer Discussion

- Prioritization Discussion
  - Different Stakeholders:  Providers, Payers, Policy Makers, Public Health
  - Separate Platform for Patients (Engagement Platform)

- KM Preferred approach:
  - Whichever method we choose, we tailor it to each stakeholder specifically.  To integrate into their workflow in a meaningful way for them.

- Approach for Analytics Layer
  - Options:
    - 1 Analytics vendor for all stakeholders
    - 1 Analytics vendor for each stakeholder
    - Different Analytics vendor for each stakeholder

# VDH-HIE Integration Plan

- Scope:
  - VITL will complete discovery, scoping, documentation of requirements, project planning and execution of a pilot integration.
  - Two data sources have been identified, specifically birth data (death data is already transmitted by VDH) and immunization data from manual and bulk updates.
- Schedule:
  - The project planning has already begun with VITL, the pilot is expected to be completed during the next VITL contract, starting 7/1/24 and ending by 6/30/25.
- Budget:
  - $107,750, covered by a VDH grant.

# Various Updates

- Federal:
  - 42 CFR Part 2:  Final Rule
- State:
  - Legislative session underway
  - H.121
  - Others?
- HIE:
  - Suggestions for Educational topics for next mtg in July?



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# Education Session:  TEFCA



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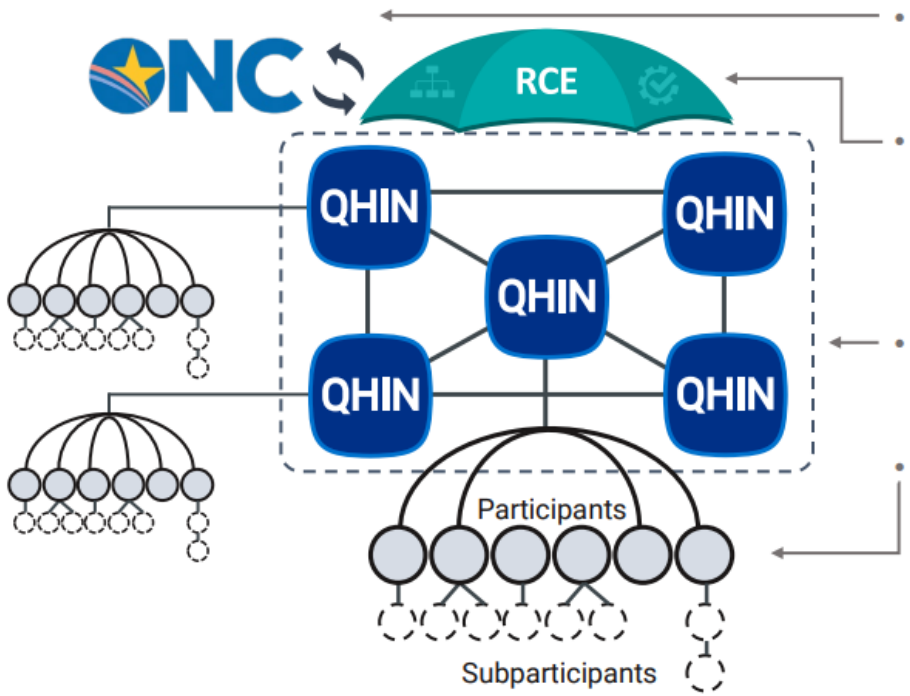
# Trusted Exchange Framework & Common Agreement (TEFCA)




- ONC defines overall policy and certain governance requirements.
- The Recognized Coordinating Entity® (RCE™) provides oversight and governing approach for the Qualified Health Information Network™ (QHIN™).
- QHINs connect directly to each other to facilitate nationwide interoperability.
- Each QHIN connects Participants, which connect Subparticipants.

**Exchange Purposes:** Currently, TEFCA will support exchange for the following Exchange Purposes: Treatment; Payment; Health Care Operations; Public Health; Government Benefits Determination; and Individual Access Services (IAS). This means organizations connected to TEFCA are ***optionally*** allowed to request for or respond to any of these purposes. As a starting point, TEFCA will only require responses for Treatment and IAS. Over time, responses will be required for the remaining Exchange Purposes and other Exchange Purposes may be added.

Trusted Exchange Framework and Common Agreement (TEFCA) | HealthIT.gov



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# According to ONC, TEFCA:

- Establishes a universal floor for nationwide interoperability
- Provides individuals and organizations with easier, more efficient, secure access to more health information
- Significantly reduces the number of connections that individuals, health care providers, and other interested parties need to make
- Creates baseline governance, legal, and technical requirements that will enable secure information sharing
- Enables an expanded set of exchange purposes beyond Treatment
- Supports existing health information networks and expands and improves the access to health information they can provide

# Main Components

- The **Common Agreement** is the legal contract that the recognized Coordinating Entity® will sign with each QHIN. It defines the baseline legal and technical requirements for secure information sharing on a nationwide scale.
- The **Trusted Exchange Framework** is a common set of principles designed to facilitate trust between HINs and by which HINs voluntarily elect to abide to enable widespread information exchange: standardization; openness and transparency; cooperation and non-discrimination; privacy, security, and safety; access; equity; and public health.
- **QHIN Technical Framework** focuses on the technical components for exchange among QHINs, including patient identity resolution, authentication, and performance measurement.

# Who are the QHINs

- eHealth Exchange
- Epic Nexus
- Health Gorilla
- KONZA
- MedAllies
- CommonWell Health Alliance
- Kno2

# Additional Reading

- Trusted Exchange Framework and Common Agreement (TEFCA) | HealthIT.gov
- tefca_summary_fin.pdf (ahima.org)
- TEFCA and eHealth Exchange - eHealth Exchange
- TEFCA: How It Works in Tandem With Your HIE – Contexture
- TEFCA: A Better User Experience for Exchanging Public Health Data | ASTHO
- TEFCA Awareness Among Hospitals and Variations Regarding Intent to Participate - Health IT Buzz Health IT Buzz

# Education Session:
# 42 CFR Part 2 Final Rule



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ATTORNEYS AT LAW

PRIMMER PIPER EGGLESTON & CRAMER PC

# Part 2 Substance Use Disorder Confidentiality 2024 Final Rule Impacts on Operations


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# OBJECTIVES

1. Review changes from the current Part 2 Rule (2020 Rule) to the 2024 Final Rule that will affect operations for
   - Part 2 Programs (P2P)
   - HIPAA covered entities that receive Part 2 records
   - Health Information Exchanges
2. Review impacts on operations and challenges to implementation
3. Identify questions for further discussion.

# OUTLINE

1. Effective date and Compliance date (2 year implementation)
2. What is a Part 2 Program (P2P)? (unchanged)
3. What is a Part 2 Record? (unchanged)
4. What are the Consent Requirements? (revised)
   - Single (1 time) consent for future disclosures for TPO
5. P2Ps must provide Notice and Consent

# CARES Act 2020 § 3221, align Part 2 with HIPAA

Requires HHS to revise Part 2 regulations and HIPAA to include:

- General consent - future uses for TPO
- Patient consent - P2P, CE, BA may use, disclose, and redisclose for TPO in the same manner as HIPAA
- Authorize disclosure of de-identified records for public health purposes.

# Effective Date & Compliance Date
# 2 year implementation

- Feb. 16, 2024 HHS published Final Rule, Confidentiality of Substance Use Disorder (SUD) Patient Records
- April 16, 2024, Final Rule Effective Date
- Feb. 16, 2026, Compliance Date
  - Organizations have up to 2 years to develop policies, consent processes, and provide training to staff to comply with the Final Rule.
  - EHR system development to comply with the rule

# Two issues will affect implementation

1. **NPP Rule:** HHS will release changes to HIPAA Notice of Privacy Practices (2024) for CEs to provide notice regarding use of Part 2 records

2. **Technology:** EHR systems will need to develop functionality for P2Ps to send downstream record recipients required Part 2 notice and summary of patient consent

- HHS to provide technical guidance to P2Ps to help with implementation

# What Hasn't Changed

- What is a P2P
- What is a Part 2 Record
- P2Ps cannot disclose patient records without consent unless an exception applies
- P2Ps and recipients of records are obligated to prevent unauthorized disclosure for use in legal proceedings against the patient

  (Note: segmentation/segregation is no longer required but Notice and Consent is required)

# P2P

1. Federally assisted, nonprofit providers
    - Receive federal grants;
    - Participate in state or federal health programs; or
    - Receive tax deductions or are tax-exempt; and are
2. SUD Provider or P2P: How entity or individual **holds itself out**
    a. Entity that holds itself out as providing SUD diagnosis, treatment or referral
    b. **\Identified unit** within a  general medical facility that holds itself out as providing SUD dx, tx, referral; or
    c. Staff in a general medical facility whose **primary function** is identified as providing SUD dx, tx, or referral

# Part 2 Record

- Information (recorded or not)
- Created, received, or acquired by a P2P
- **Relates to a patient**
- **Patient identifying information**
  - Name, address, SSN, photo, or similar info where identity can be determined with reasonable accuracy and speed, or by reference to other publicly available information
  - Not internal numbers (MRN) assigned by a P2P

Records, other than verbal communications for treatment

- Transmitted from a P2P to a non-part 2 provider
- Retain their characteristics as a part 2 record

# SUD Diagnosis Information is a Part 2 Record:

- Any record reflecting a diagnosis identifying a patient as having a SUD; **and**
- Initially prepared by a P2P in connection with treatment or referral.
  - Connection between diagnosis and P2P
  - Part 2 records must include notice identifying Part 2 information
  - Rule does not apply to SUD diagnosis or treatment not connected to a P2P (eg ED or primary care)

# Significant changes that will affect operations

1. Consent process to capture single consent
2. Requirement for disclosing Part 2 records
    - Record must include
        - notice of the prohibition on unauthorized use in legal proceedings; (currently required) and
        - Summary of individual's consent (new)

# Consent forms – 9 elements

1. Patient name
2. Name(s) of entities or individuals permitted to disclose records
3. **Amount & kind** of information to be disclosed
4. **To whom** information can be disclosed
5. **Purpose** of the disclosure
6. Statement that consent subject to revocation at any time
7. **Expiration** of the consent
8. Patient signature
9. Date signed

# **3. Amount & Kind** of information to disclose

## 2020 Amount & Kind:

- an explicit description of information to be disclosed

## 2024 Amount & Kind:

- specific description of the information to be used and disclosed.

“all records and information related to my treatment and payment for services.”

# 4. To Whom

## 2020 To Whom requirement:

- *Name or title of the individual or entity* to whom Part 2 information can be disclosed
- Health Information Exchange (HIE)
  - Names of participating individuals or entities, or
  - General designation of participants that is limited to treating providers

## 2024 To Whom requirement:

- Single Consent - class of recipients

"all providers involved in my health care, entities involved in payment for my care, and entities that support the sharing of my health information with all providers and payers involved in my health care"

# 5. Purpose of Disclosure

## 2020 Purpose of disclosure:

- disclosure limited to the information necessary to carry out the stated purpose

## 2024 Purpose of disclosure:

- TPO consent - single consent for treatment, payment, and health care operations
- CE and BAs my use and disclose for TPO (HIPAA)
- Consent form must include a statement about the potential for records to be redisclosed by recipients when they are disclosed under a TPO consent.
- P2P may condition treatment on patient signing TPO consent
    - P2Ps that condition treatment on a TPO consent should take reasonable steps to address patients' request for restrictions on uses and disclosures for TPO. 89 FR 12546

# 7. Consent to Disclosure: Expiration

## 2020 Expiration:

- Date, event, or condition that would cause consent to expire that lasts not longer than reasonably necessary to serve the purpose of the disclosure

## 2024 Expiration:

- “none”

## Notice and copy of consent

For disclosures with patient consent, P2Ps must provide downstream record recipients with\:

1. Notice of the prohibition on unauthorized use in legal proceedings.
2. Each disclosure must include patient's consent or a clear explanation of the scope of the consent

# Notice of Prohibition on Re-Disclosure

## To prevent unauthorized re-disclosure, all SUD records must be accompanied with one of the following notices

### Long Version

This record which has been disclosed to you is protected by federal confidentiality rules (42 CFR part 2). The federal rules prohibit you from making any further disclosure of this record unless further disclosure is expressly permitted by the written consent of the individual whose information is being disclosed in this record or, is otherwise permitted by 42 CFR part 2. A general authorization for the release of medical or other information is NOT sufficient for this purpose (see § 2.31). The federal rules restrict any use of the information to investigate or prosecute with regard to a crime any patient with a substance use disorder, except as provided at §§ 2.12(c)(5) and 2.65.

### Short version 80 characters

42 CFR Part 2 prohibits unauthorized disclosure of these records

# Notice and Copy or Summary of Consent

- Notice to inform downstream recipients of restrictions on redisclosure for use in a legal proceeding
- Each disclosure made with consent must be accompanied with a notice and a copy of the consent or a clear explanation of the scope of consent provided. 89 FR 12555
- Notice is required only for disclosures made with consent, notice not required for re-disclosures as permitted by HIPAA for TPO 89 FR 12555

**Cares Act:** Once a Part 2 record has been disclosed for TPO pursuant to patient's consent, any information may then be redisclosed in accordance with HIPAA.

Recipient still has obligation to protect records from unauthorized use.

# Accounting for Disclosures

- P2Ps are required to provide an accounting of all disclosures made with consent in the 3 years prior to the request.
- P2Ps are required to provide an accounting of all disclosures for TPO that are made through an EMR.

# Public Health Disclosures

The final rule permits disclosure to public health authorities without patient consent provided that the records are first de-identified in accordance with HIPAA.

# SUD Counseling Notes

- The rule creates a special protections for SUD counseling notes that is similar to HIPAA's protection of psychotherapy notes.
- SUD counseling notes involve contents of conversations
- are separated from the rest of the patient's SUD and medical record.
- excludes medication prescription and monitoring, counseling session start and stop time, modalities and frequency of treatment, clinical test results, diagnosis, functional status, treatment plan, symptoms, prognosis, and progress to date.
- may only be disclosed with the patient's specific consent, and treatment cannot be conditioned on the requirement to consent to the disclosure of counseling notes.

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# Questions?