STATE OF MARYLAND
DHMH
Maryland Department of Health and Mental Hygiene
Larry Hogan, Governor - Boyd Rutherford, Lt. Governor - Van Mitchell, Secretary

November 9, 2015

The Honorable Edward J. Kasemeyer
Chair
Senate Budget & Taxation Committee
3 West Miller Senate Office Bldg.
Annapolis, MD 21401-1991

The Honorable Maggie McIntosh
Chair
House Appropriations Committee
121 House Office Bldg.
Annapolis, MD 21401-1991

Re: 2015 Joint Chairmen's Report (p. 71) – Report on Specialty Behavioral Health Information Sharing

Dear Chair Kasemeyer and Chair McIntosh:

In keeping with the requirements of the 2015 Joint Chairmen's Report (p. 71), enclosed is the Department of Health and Mental Hygiene's report on specialty behavioral health information sharing. It details the efforts conducted by the Department's behavioral health administrative service organization and managed care organizations on how they are working together to improve the exchange of information and the coordination of care for Medicaid-eligible individuals who use specialty behavioral health services, while at the same time ensuring compliance with federal regulations on data-sharing.

Thank you for your consideration of this information. If you have questions or need more information on the subjects included in this report, please contact Allison Taylor, Director of Governmental Affairs at (410) 767-6480.

Sincerely,

Van T. Mitchell
Secretary

Enclosure

cc: Shannon McMahon
Tricia Roddy
Susan Tucker
Erin McMullen
Allison Taylor

Improving the Exchange and Coordination of Care for Medicaid-Eligible Individuals Accessing Specialty Behavioral Health Services

Submitted by the Department of
Health and Mental Hygiene

2015 Joint Chairmen's Report, pg. 71

Introduction

This report is submitted to comply with budget language adopted by the Maryland General Assembly in the 2015 legislative session. The budget language requires the Department of Health and Mental Hygiene ("the Department") to describe the efforts conducted by the behavioral health Administrative Services Organization (ASO) and Medicaid managed care organizations (MCOs) to improve the exchange of information and coordination of care for Medicaid-eligible individuals who use specialty behavioral health services, in the context of federal regulations governing data-sharing.

Maryland's Integrated Behavioral Health System

On January 1, 2015, the Department implemented an integrated behavioral health service delivery and finance system for Medicaid beneficiaries and uninsured individuals. The new system resulted from a multi-year stakeholder process intended to align services for individuals with mental health and substance use disorder (SUD) needs. Prior to 2015, SUD services were included as part of the Medicaid managed care benefit package, and specialty mental health services were carved out and administered by an ASO. The Mental Hygiene Administration (MHA), the ASO, and local entities coordinated mental health treatment services for uninsured individuals, while SUD services were provided via grant-funded programs administered by the local jurisdictions. Effective January 1, 2015, all specialty mental health services and SUD services for Medicaid recipients are now administered by a single ASO. The ASO also manages authorization and payment of Medicaid-covered mental health services for the uninsured population, including psychiatric rehabilitation services, counseling, and intensive outpatient services.[1] A competitive procurement process selected the previous ASO, ValueOptions, to implement the new integrated behavioral health carve-out, in close conjunction with the Medicaid program and the newly-formed Behavioral Health Administration (BHA).

Federal Regulations on the Confidentiality of Alcohol and Drug Use Patient Records

The use and disclosure of protected health information (PHI) is governed, generally, by the Health Insurance Portability and Accountability Act (HIPAA). Under HIPAA, PHI may be disclosed for purposes of treatment, payment and health care operations without patient consent. However, in nearly all cases, the disclosure of drug and alcohol abuse (SUD) treatment and prevention records is subject to the more restrictive and stringent standard of 42 CFR Part 2 ("Part 2"), which prohibits the disclosure of PHI absent specific authorization from the patient.

Specifically, Part 2 applies to federally-assisted programs that hold themselves out as providing, and do provide, alcohol or drug abuse treatment, diagnosis or referral for treatment.[2] Part 2 protects the disclosure of any information that "would identify a patient as an alcohol or drug abuser either directly,

[1] Local authorities continue to provide SUD services for the uninsured through grant awards from the BHA. Data on these services is submitted to the ASO.

[2] 42 CFR § 2.11. Part 2 does not apply to providers who do not meet these criteria, including emergency rooms, emergency services, general or psychiatric hospitals and mental health providers who do not also "hold themselves out" as providing SUD treatment.

by reference to other publicly available information, or through verification of such an identification by another person."[3] Express patient consent is required before records can be disclosed, subject to a few limited exceptions, and patient records cannot be re-disclosed to third parties.[4] Exceptions to the consent requirement include disclosure to medical personnel in the event of a bona fide medical emergency, for the purposes of scientific research or audit, pursuant to a court order, for purposes of child abuse and neglect investigations or pursuant to a Qualified Services Organization Agreement (QSOA). In addition, Part 2 restrictions do not apply to communications between a program and an entity with direct administrative control over that program.[5] Information disclosed under one of these exceptions may not be re-disclosed without express patient consent.

Prior to the implementation of the carve-out, as the payers of SUD claims, Medicaid MCOs had limited access to data otherwise protected by Part 2. However, an MCO's ability to re-disclose this information to a patient's somatic care providers or for care coordination purposes was still subject to Part 2's guidelines and thus required express consent from the patient. As the carve-out implementation date of January 1, 2015, approached, MCOs were faced with losing access to enrollees' SUD data and with it, the ability to effectively and proactively coordinate the physical health and behavioral health needs of their members.

Development of Maryland's Behavioral Health Data-Sharing Framework

In the fall of 2014, prior to the implementation of the integrated behavioral health carve-out, the Department organized several meetings to identify challenges posed by the Part 2 restrictions on data-sharing and to develop strategies to mitigate them. The meetings were facilitated by Medicaid, the Department's Office of the Attorney General, and BHA leadership; representatives from the MCOs and ASO participated as well. The MCOs identified several data-sharing use cases critical to their ability to successfully provide coordinated and quality care to their enrollees; these use cases included referrals to complex case management programs, promoting primary care, and coordinating behavioral and somatic care.

Several options were considered to allow MCOs to continue in these functions, including adopting a QSOA framework—with the ASO serving as a link between the MCOs and SUD providers—as well as an individual consent process. The QSOA model, which would authorize the sharing of patient identifying SUD treatment information without individual patient consent, posed legal and logistical challenges given the complexities inherent to Part 2 and the limited guidance available. As a result, a system of requesting consent to share data from each Medicaid recipient receiving SUD services was identified as the most expedient means to balance patient confidentiality concerns under Part 2 with the MCOs' request to use the data to coordinate care.

Current Status of Behavioral Health Data-Sharing

Since the decision was made to obtain individual Release of Information (ROI) forms from Medicaid beneficiaries accessing SUD services, the ASO and the MCOs have worked collaboratively with SUD providers toward a goal of obtaining a signed consent form from every SUD services recipient willing to

[3] 42 CFR § 2.12(a).
[4] 42 CFR 2.33.
[5] 42 CFR 2.12(c)(3).

provide consent. All SUD programs and providers —as well as mental health providers delivering SUD services to Maryland Medicaid members —have been instructed to request an ROI form prior to the provision of SUD services. Completed forms allow the ASO to release authorization and claims data to the enrollee's MCO—along with additional providers specified by the patient—and thereby coordinate care across the continuum of care. (See Appendix A for a copy of the ROI form.) The consent form is required to be updated by the patient annually.

Working jointly, Medicaid and BHA developed the ROI form. Part 2 requires patient consent forms to include: (1) Name or designation of person or entity disclosing the information; (2) Name of each and every person or entity to receive the information (a general description is not sufficient); (3) Name of the patient; (4) Purpose of the disclosure; (5) How much and what kind of information to be disclosed; (6) Signature of patient (or parent/guardian) and date; (7) Statement that it may be revoked, and (8) Date, circumstances, or event when consent expires.

In March 2015, the ASO initiated an authorization function within its provider portal, alerting providers to review the ROI form with Medicaid-eligible individuals seeking behavioral health services. Providers are required to select one of four options:

1. Mental health services only (no ROI form needed);
2. ROI presented with consumer consent;
3. ROI presented and consumer did not consent; or
4. ROI not presented.

This function is prompted on all authorization requests until the ASO receives a valid ROI for the individual. Thus far, this approach has resulted in significant gains in the number of patients who have been presented with and completed an ROI. As of mid-September 2015, 78% of patients accessing SUD services had completed an ROI form. Approximately 21% of patients have not been presented with or completed the ROI. Only 1% of patients have elected not to consent to share their SUD data and have declined to complete the ROI.

Overall, the percentage of providers not presenting the ROI form, as well as patients who have not consented, have decreased over the implementation period, while the percentage of patients who have consented has increased over time. Notably, the vast majority of individuals, approximately 99%, who are presented with the ROI form as part of their service encounter, complete the form by consenting to disclosure. Charts 1 through 3 display the trends of not presented, consented and not consented.

Chart 1: ROI Forms Not Presented—Weekly Percentages

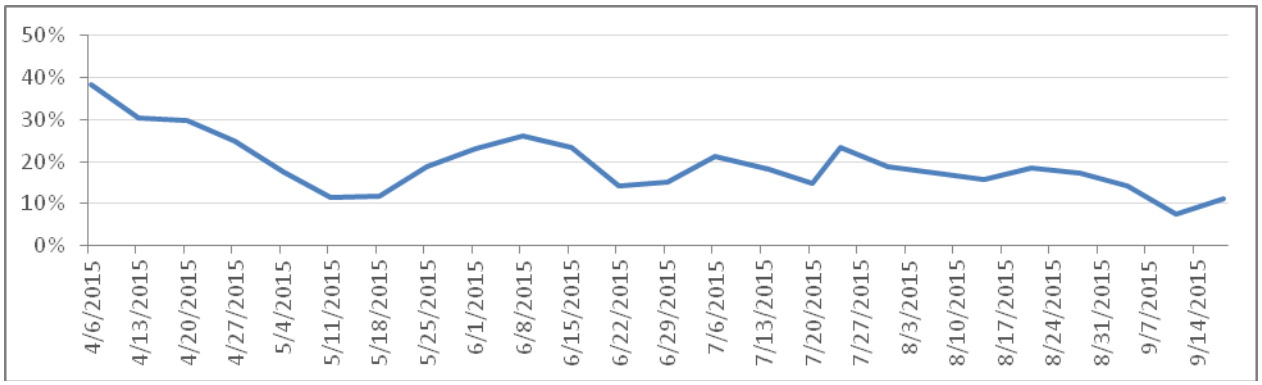


Chart 2: ROI Forms with Consents Obtained—Weekly Percentages

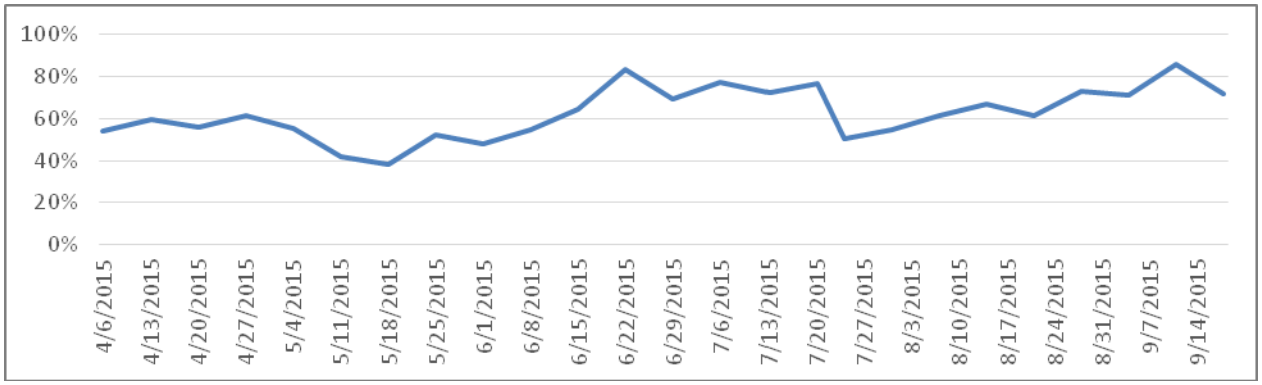
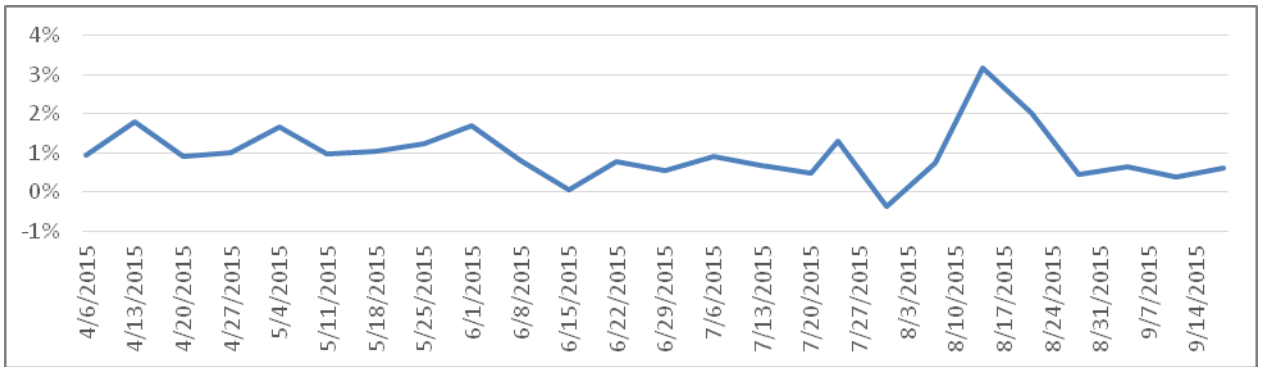


Chart 3: ROI Forms Presented with Consents Not Obtained

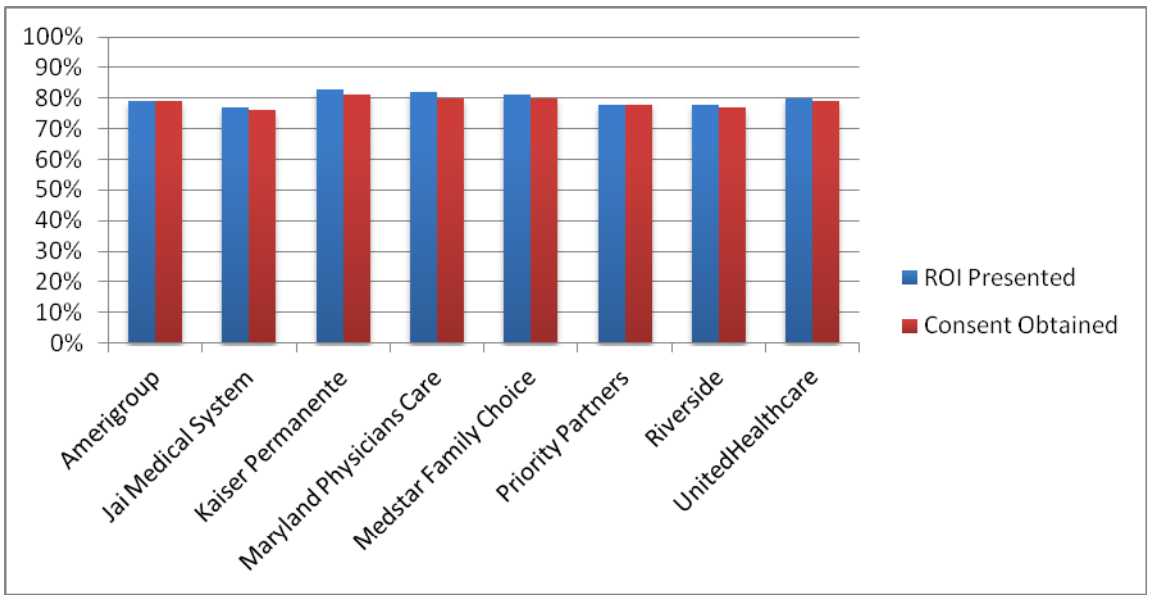


The ASO actively tracks and conducts extensive outreach to those providers who have higher numbers of not presenting the ROI form. The ASO and MCOs also work closely to increase the consent counts. The ASO Addictions Director, Medical Director and liaisons for the MCOs meet regularly to discuss plans for coordinated care and complex patients. On a daily basis, the MCO care coordinators and ASO Nurse Liaison work on individual cases requiring coordination. If an ROI form is not already in place, proactive efforts are undertaken to pursue one, whether by the individual's SUD provider (ASO manages) or somatic care provider (MCO manages). Additionally, several of the MCOs have developed worksheets to exchange information pertaining to their highest-risk medical patients who also present with behavioral

health issues, for whom the MCOs would like to prioritize care coordination and other interventions. Lastly, the ASO coordinates with MCO case managers to identify high-risk pregnant women.

Chart 4 displays the ROI presentation and consent figures by MCO; these figures demonstrate the great progress that has occurred since the ROI form process was introduced in March.

Chart 4: Cumulative Counts of Member ROI Dispositions by MCO, September 2015



The Department, the ASO and the MCOs are committed to continuing their collaborative efforts to further increase the proportion of SUD users who consent to allowing data related to their SUD treatment to be shared with their somatic care providers. This effort will continue over time, with annual prompts for the provider to obtain successor consent forms.

Conclusion

The Department respects the need for confidentiality surrounding SUD data, which originally prompted the development of the Part 2 rules in 1975. However, the evolution of health care service delivery—supported by innovations in health information technology—has changed the nature in which diverse providers collaborate to provide person-centered care. Maryland's health information exchange, the Chesapeake Regional Information System for our Patients (CRISP) presents an incredible opportunity for enhanced care coordination, but given the complexity of the Part 2 rules, CRISP does not currently contain behavioral health data. There is precedent for the easing of confidentiality rules governing data-sharing, a prominent example being the establishment of HIPAA in 1996. Maryland and other states continue to encourage the federal government to similarly ease the Part 2 rules to allow for broader and appropriate data-sharing.

Until changes are effected at the federal level, Medicaid, BHA and their partners in care are committed to the holistic provision of health services to Medicaid beneficiaries, as evidenced by the successful execution of the individual consents process. The data-sharing use cases identified by the MCOs play an important role in improving health outcomes and the quality of care for Marylanders, as well as decreasing costs.

Appendix A: Release of Information Form

AUTHORIZATION TO DISCLOSE SUBSTANCE USE TREATMENT INFORMATION FOR COORDINATION OF CARE

Name of Patient: _____ **DOB:** _____

Address: _____ **Phone Number:** _____

Medical Assistance Number: _____

Section 1: Purpose of Authorization

This Authorization to disclose is for the purpose of permitting the Maryland Medical Assistance Program (the Medicaid program), my substance use treatment provider, and any other providers identified in this form to coordinate my care so that it is more beneficial to me. By giving my consent, my Medicaid Managed Care Organization and any other providers specifically identified on this form will have access to information about substance use treatment I am receiving, which will help avoid conflicts in medication or treatment and improve the care I am receiving. By giving this consent, I may also gain access to other case management services offered through the Medicaid program.

Section 2: Name of Substance Use Treatment Provider [TO BE COMPLETED BY PROVIDER]

_____

Address: _____

_____

Section 3: Duration and Revocation of Authorization

I may revoke this Authorization at any time either verbally or in writing by informing my substance use treatment provider of my wish to revoke authorization. I may also revoke this authorization by writing to the Maryland Medicaid Program's administrative services organization, ValueOptions Maryland, at:

ValueOptions, Inc.

EDI Helpdesk / PO Box 1287, Latham, NY 12110

Phone: 800.888.1965

Fax: 877.502.1044

This Authorization's effective date is: _____. This Authorization expires when (1) I revoke the Authorization; (2) I am no longer enrolled in a Medicaid Managed Care Organization; or (3) I am no longer receiving treatment from a substance use treatment provider.

Section 4: Authorization

I hereby authorize my substance use treatment provider to disclose to the Maryland Medicaid Program (including its administrative services organization, ValueOptions Maryland), claims and authorization data resulting from my treatment, for purposes of coordination of my care. I also authorize the Maryland Medicaid Program (including ValueOptions Maryland), to redisclose my claims and authorization data to the Medicaid Managed Care Organization in which I am enrolled, and with any additional health care providers listed on this form below, for purposes of coordinating my health care. I further authorize my

Appendix A: Release of Information Form, continued

substance use treatment provider to disclose medical records requested by my MCO's patient care coordination team, for purposes of coordinating my care.

I understand that the information that may be disclosed as a result of this authorization may not be re-disclosed to any entity other than those entities identified in this authorization.

I have been provided a copy of this Authorization.

_____ _____

Patient Signature Date

_____ _____

Parent or Guardian Signature* (if applicable) Date

Additional health care provider(s) with whom information about my care may be shared:

Name:_____

Address:_____

_____

Name:_____

Address:_____

_____

* NOTE: If you are signing as the member's Legally Authorized Representative, attach a copy of the legal document(s) granting you the authority to do so. Examples are a health care power of attorney, a court order, guardianship papers, etc.

The following are the Maryland Medicaid Managed Care Organizations (MCOs):

Amerigroup Community Care
Compliance Officer
7550 Teague Road, Ste 500
Hanover, Maryland 21076
410-859-5800

Jai Medical Systems
Compliance Officer
5010 York Road
Baltimore, MD 21212
410-433-2200

Kaiser Permanente
Compliance Officer
2101 East Jefferson Street
Rockville, MD 20852
301-816-2424

Maryland Physicians Care
Compliance Officer
509 Progress Drive
Linthicum, MD 21090-2256
800-953-8854

MedStar Family Choice
Compliance Officer
8094 Sandpiper Circle, Ste O
Baltimore, MD 21236
410-933-3014

Priority Partners
Compliance Officer
Baymeadow Industrial Park
6704 Curtis Court
Glen Burnie, MD 21060
410-424-4400

Riverside Health of Maryland
Compliance Officer
1966 Greenspring Dr., 6th Floor
Timonium, MD 21093
410-878-7709

UnitedHealthcare
Compliance Officer
Lyndwood Executive Center
6095 Marshalee Dr., Ste 200
Elkridge, MD 21075
410-379-3457