

THE LEGISLATIVE ANALYSIS AND PUBLIC POLICY ASSOCIATION

Risks and Legal Liabilities of Deflection

(with bonus discussion of information sharing laws)

TASC's Center for Health and Justice – COSSUP Quarterly Call
September 14, 2023

Jon Woodruff, Esq.
Legislative Analysis and Public Policy Association (LAPPA)

About LAPPA

501(c)(3) nonprofit organization whose mission is to conduct legal and legislative research and analysis and draft legislation on effective law and policy in the areas of public safety and health, substance use disorders, and the criminal justice system.

- ONDCP's Model Acts Program Grant recipient for 2019-21, 2021-23, and 2023-25
- COSSAP subaward – [information sharing scenarios](#)
- www.legislativeanalysis.org



Pathways of deflection

PATHWAYS TO COMMUNITY



Self-Referral • An individual voluntarily initiates contact with a first responder agency (law enforcement, fire, or EMS) for a referral to treatment and services. If the contact is initiated with a law enforcement agency, the individual makes contact without fear of arrest.

Active Outreach • A first responder intentionally identifies or seeks out individuals with SUD to refer them to or engage them in treatment and services; outreach is often done by a team consisting of a behavioral health professional and/or peer with lived experience.

Naloxone Plus • A first responder and program partner (often a behavioral health professional or peer with lived experience) conduct outreach *specifically* to individuals who have recently experienced an opioid overdose to engage them in and provide linkages to treatment and services.

First Responder and Officer Referral • As a preventative approach, during routine activities such as patrol or response to a service call, a first responder engages individuals and provides a referral to treatment, services, or to a case manager. *(Note: if law enforcement is the first responder, no charges are filed or arrests made.)*

***Officer Intervention** • (Only applicable to law enforcement) During routine activities such as patrol or response to a service call during which charges otherwise would be filed, law enforcement provides a referral to treatment, services, or to a case manager, or issues a non-criminal citation to report to a program. Charges are held in abeyance until treatment and/or a social service plan is successfully completed.

Community Response • In response to a call for service, a team comprising community-based behavioral health professionals (e.g., crisis workers, clinicians, peer specialists, etc.), and/or other credible messengers—individuals with lived experience—sometimes in partnership with medical professionals, engages individuals to help de-escalate crises, mediate low-level conflicts, or address quality of life issues by providing a referral to treatment, services, or to a case manager.

To learn more about PTACC, contact Jac Charlier, Executive Director
at info@ptaccollaborative.org



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Types of risks

Legal liability

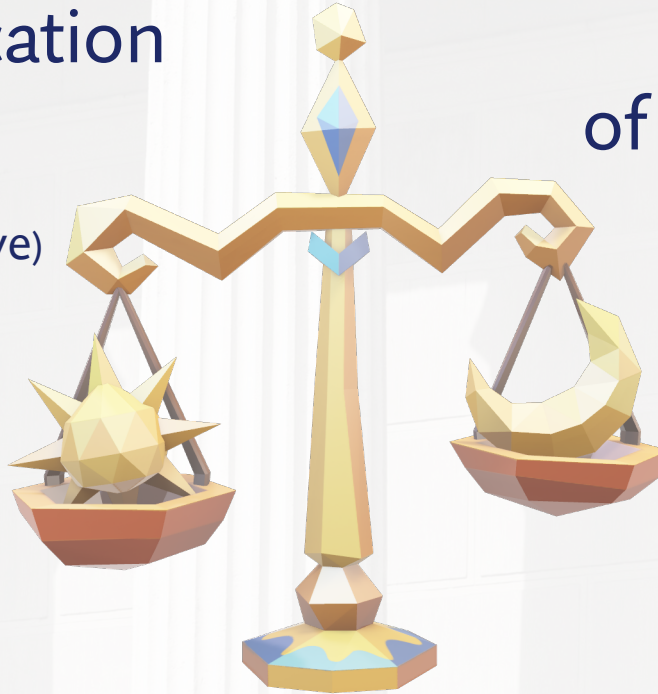
Political / public perception

Unequal or biased application

Sustainability

(categories not mutually exclusive)

Risk to community
(and/or entity)
of not doing anything



Legal liability

Sharing protected information

PHI, SUD treatment records,
criminal records

Individuals' actions

Actions by team members or
approached individuals

Local laws surrounding harm reduction

Definition of “drug paraphernalia,”
drug checking, SSPs

Considerations for reducing/managing

- Learn about the law
- Determine actual extent of risk and how it compares to risks under *status quo*
- Actively encourage state/local law changes that reduce potential avenues for liability
- Analysis, planning, and documentation about sharing information
- Purpose and makeup of deflection team(s) impact liability concerns

Legal liability

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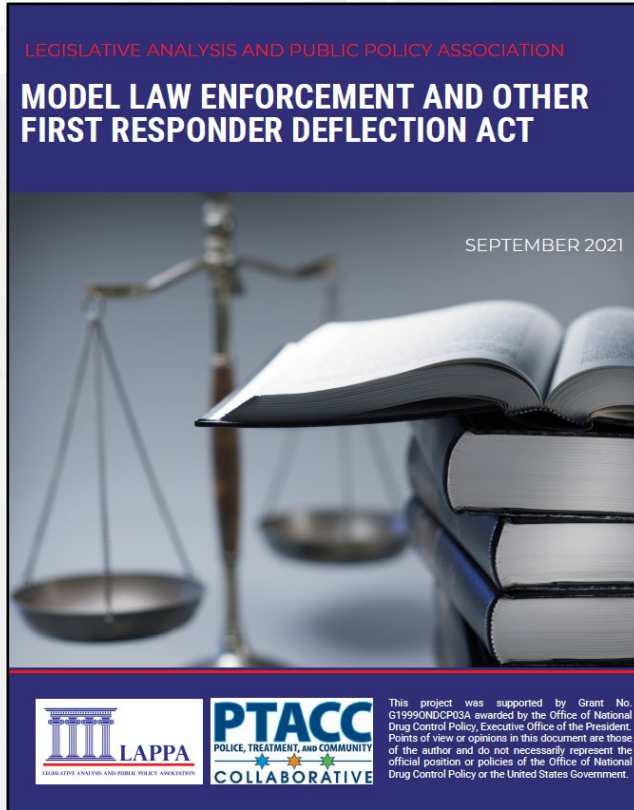
MODEL LAW ENFORCEMENT AND OTHER FIRST RESPONDER DEFLECTION ACT

SEPTEMBER 2021



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Legal liability



authority on drugs and alcohol], [state mental health agency], state health department, and [any other appropriate state department or agency] for inclusion in planning efforts for services to persons with substance use disorder or mental health disorder.

- (d) Data publishing.—On an annual basis beginning one year after the effective date of this Act, the [state administering authority on criminal justice] shall publish to its website the aggregate, de-identified data and performance measures reported by deflection programs for the prior year.
- (e) Report.—On an annual basis beginning one year after the effective date of this Act, the [state administering authority on criminal justice] shall provide a report concerning the effectiveness of deflection programs to the Governor and [appropriate state legislative committee(s)].
- (f) Eligibility for funding.—A deflection program is not eligible to receive funding pursuant to this Act unless the deflection program reports the data required by this section.

Commentary

As described in the commentary to Section II, deflection programs are an emerging and relatively new concept. As a result, the entities developing and managing deflection programs do not yet have a large body of empirical research to rely upon when implementing new programs or striving to improve existing ones. Among other things, developing a body of research through data collection on ongoing programs should help: (1) build the developing entities' knowledge base; (2) demonstrate that deflection addresses substance use disorder and mental health disorder issues without sacrificing public safety; (3) demonstrate that deflection reduces demand on the justice system, EMS agencies, and other community resources; and (4) demonstrate that expanding access to services and treatment saves lives, reduces costs, and is a good public investment.⁷⁶

Accordingly, the Model Act contains a robust data collection provision. In particular, Section VII directs the agencies identified in subsection (a) to develop a standardized set of data and performance measures—listed in subsection (b)—to be reported regularly. Law enforcement, included in subsection (a) by name (as an association representing state chiefs of police), is a key component of any data collection effort, even if local police department(s) are not involved in a deflection initiative. Often, local law enforcement operates 911 emergency call centers and, thus control that data. Moreover, law enforcement may have access to data sources



Legal liability

LEGISLATIVE ANALYSIS AND PUBLIC POLICY ASSOCIATION

MODEL LAW ENFORCEMENT AND OTHER FIRST RESPONDER DEFLECTION ACT

SEPTEMBER 2021

SECTION VIII. EXEMPTION FROM CIVIL LIABILITY.

Except as may otherwise be provided in this Act, and unless there is a finding of [gross negligence, malice, criminal intent, or lack of good faith], any law enforcement, other first responder, treatment provider, case management provider, case manager, or community member or organization shall not, as the result of acts or omissions in providing services under this Act, be subject to civil liability, administrative action, or other legal or equitable relief.

<< IL ST CH 5 § 820/30 >>

[S.H.A. 5 ILCS 820/30] (5 ILCS 820/30)

§ 30. Exemption from civil liability. The law enforcement agency, ~~or~~ peace officer, ~~or~~ other first responder, or local government agency or employee of the agency acting in good faith shall not, as the result of acts or omissions in providing services under Section 15 of this Act, be liable for civil damages, unless the acts or omissions constitute willful and wanton misconduct.

(Source: P.A. 100-1025, eff. 1-1-19; 101-652, eff. 7-1-21.)

Political/public perception

“Too soft” on crime

Encouraging harm reduction
Not enough LEO discretion
“NIMBY”

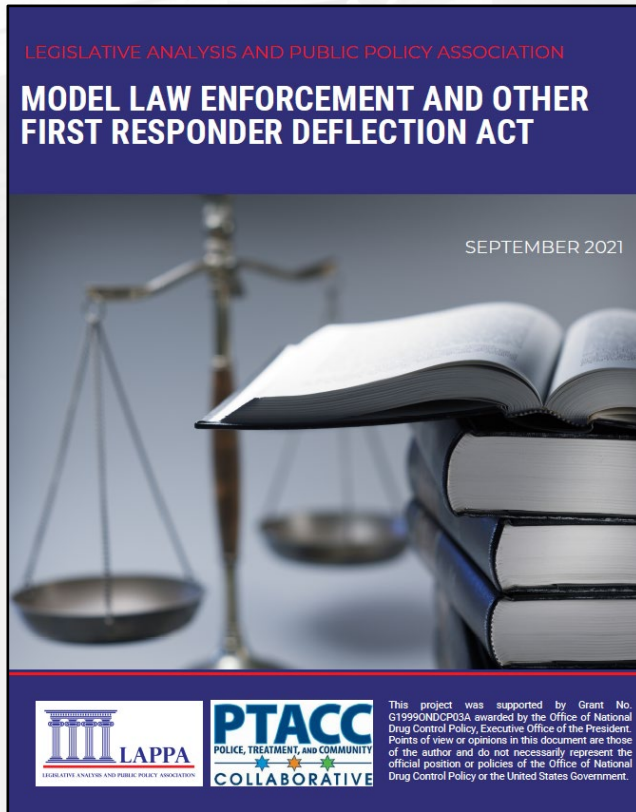
Too focused on crime (vs. offering services)

Too much LEO discretion to not deflect
Checking open warrants

Considerations for reducing/managing

- Educate policymakers, public, and FRs about SUD and what deflection is/isn't
- Clear, repeatable deflection protocols understood by all initiative partners
- Highlight success stories → some data collection
- Demonstrate effectiveness → more advanced data collection/analysis

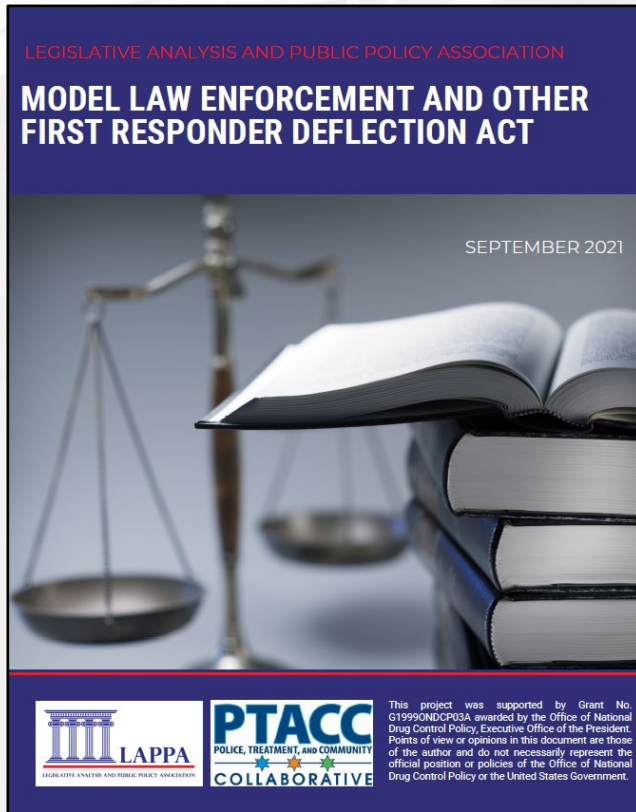
Political/public perception



SECTION VI. PUBLIC EDUCATION AND PROGRAM PARTNER TRAINING.

- (a) Education and awareness.—Deflection programs should include education, training, technical assistance, community forums, and other similar activities intended to:
 - (1) Increase awareness of the deflection program by the general public; and
 - (2) Solicit community feedback about existing deflection programs.
- (b) Training.—Deflection programs should include training courses for all partners involved in the deflection program that cover as many of the following areas as is reasonably possible:
 - (1) Science of substance use disorder, including how and why treatment works, the neuroscience of addiction, the stages of change and how to identify the stage of an individual, and reducing the stigma associated with substance use disorder through person-first language training;
 - (2) Understanding the criminogenic nature of drugs and how that relates to

Political/public perception



SECTION VI. PUBLIC EDUCATION AND PROGRAM PARTNER TRAINING.

(a) Education and awareness.—Deflection programs should include education, training,

technical assistance

(1) Increase awareness

(2) Solicit community

(b) Training.—Deflection

in the deflection program

possible:

(1) Science of substance

neuroscience

individual, and

person-first language

(2) Understanding

criminogenic risk-need-responsivity;

(3) Medication for addiction treatment;

(4) Identifying individuals with substance use disorder, mental health disorder, or co-occurring disorders and how to effectively engage such individuals in the program;

(5) Reducing the stigma associated with substance use disorder, mental health disorder, and co-occurring disorders by implementing a harm-reduction approach in deflection programming;

(6) Promoting racial and gender equity in deflection programs and avoiding bias based on race or gender;

(7) Understanding adverse childhood experience and trauma-informed care;

(8) Motivational interviewing for law enforcement and other first responders;⁷⁴

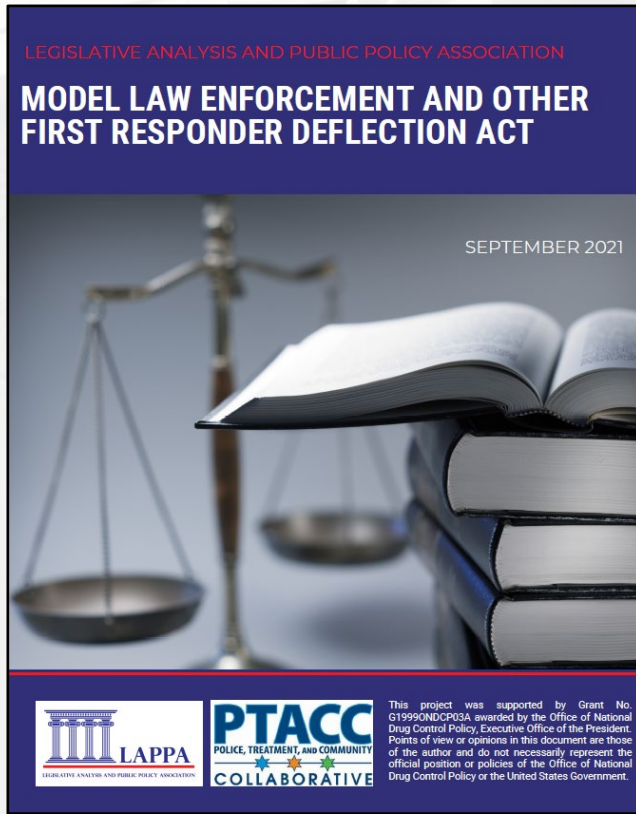
(9) HIV and hepatitis C testing and tracking for communities; and

(10) Any other topic or area potentially useful to program partners.

(c) Guidelines.—The [state administering agency on criminal justice] shall adopt rules and regulations that set out the guidelines and requirements pertaining to the development of education and training efforts provided for in subsections (a) and (b).

(d) Eligibility for funding.—A deflection program is not eligible to receive funding for education or awareness activities pursuant to this section unless the deflection program institutes a training course addressing [X] or more of the topics set out in subsection (b) above.

Political/public perception



SECTION V. MEMORANDUM OF UNDERSTANDING AND CONFIDENTIALITY.

- (a) In general.—For each deflection program created pursuant to this Act, the entity or entities that establish the program shall create one or more memoranda of understanding in conjunction with, and agreed to by, all deflection program partners.
- (b) Contents of memorandum.—Each memorandum of understanding created pursuant to subsection (a) shall identify the rights and responsibilities of all deflection program partners, identify the partner or partners that will perform each aspect of the memorandum of understanding, and include policies and procedures associated with:
 - (1) Information sharing between and among program partners and any third parties responsible for one or more program components, including procedures in cases where a program partner serves in multiple roles;
 - (2) Participant identification, eligibility, screening, and assessment;
 - (3) Facilitating participant access to treatment or other services, including linkage agreements and other necessary contracts with partners and third parties responsible for one or more program components;
 - (4) Ongoing monitoring of program participants;
 - (5) Strategies to promote equity and diversity, measure equitable outcomes, and ensure accountability;
 - (6) Collecting, preserving, and reporting data to the [state administering agency on criminal justice], as described in this Act; and
 - (7) Any other element agreed to by all deflection program partners.

Unequal/biased application of initiative

Who is offered deflection services?

Compared to local population
Compared to local justice population

Geographic areas covered by initiative

Availability and location of service providers

Considerations for reducing/managing

- Educate/train deflection team members
- More advanced data collection/analysis
- Clear, repeatable deflection protocols understood by all initiative partners
- Expansion to underserved communities → requires funding

Unequal/biased application of initiative



Three Actionable Items Deflection Teams Can Take to Advance Equity in Deflection

At its core, our field and practice of deflection holds out the promise of being a strategy for advancing equity in both the justice and health systems. To achieve this, deflection teams should incorporate principles and activities that promote greater equity of resources while also demonstrating a reduction in racial, gender, and income disparity in their initiative.

PTACC DEFINITIONS

PTACC defines **DIVERSITY** as intentionally seeking to engage in these programs as staff, volunteers, citizens, clients, and participants; people from a broad range of demographic characteristics including but not limited to race, ethnicity, national origin, gender or gender identity, age, ability or disability, sexual orientation, health status, geographical orientation, or socioeconomic status.

DIVERSITY should, in some sense, match the community in which a deflection initiative operates as represented in its staff, volunteers, citizens, clients and participants. In this way, diversity in deflection is highly contextual. Yet seeking is not enough as the work must yield positive change, which is the work of equity.

PTACC defines **EQUITY** as fair opportunity and access to participate in a deflection or pre-arrest diversion program, whether as an enrollee, volunteer, citizen, staff member, or partner in (early) planning and operations, regardless of race, ethnicity, national origin, gender or gender identity, age, ability or disability, sexual orientation, health status, or socioeconomic status. Improving equity requires understanding root causes of inequities and eliminating barriers that prevent full engagement.

Even more, **EQUITY** in deflection means that the resources available to a deflection site are offered equally to all, and that where that does not occur, the deflection team stops, corrects, and then works to correct the situation so it does not continue going forward.

Notice that in both PTACC's suggested application of **DIVERSITY** and **EQUITY** to our field and practice of deflection, it is necessary, but not sufficient to attempt progress (not perfection). A new and better state must be achieved.

As our field is young and still emerging after less than 10 years in existence, and yet not a new issue for our communities, PTACC offers these three steps for deflection teams to take to advance **DIVERSITY** and **EQUITY** in your initiative.

PTACC Community, Diversity, and Equity Three Action Items for Deflection Teams
July 2022

Step Up to the Plate: **DIVERSITY** and **EQUITY** Action Steps for Deflection Sites

I. Embed **DIVERSITY** and **EQUITY** from the very earliest stages as you are designing your deflection initiative, and ideally before it ever launches:

- Ensure that all relevant stakeholders are included from early stage ideation of your initiative through to operationalization and ongoing evaluation.
- Start with the basics and commit to collection simple demographic data on gender, age, race, ethnicity, income, and more. Absent these quick to collect demographics, a deflection site really cannot begin to know what is going on in terms of diversity and equity. It really starts this simply.
- Include 2-3 measurable **DIVERSITY** and **EQUITY** goals (and make them SMART) as you are putting your initiative together.
- Use PTACC's Core Measures for Deflection that incorporate suggested metrics for this area (www.ptaccollaborative.org; click on PTACC Deflection Starter Kit, then click on Core Measures.)
- If you are already underway with your deflection initiative, then put in the above and start from where you are. Not doing it is the past. Correcting and doing it is the future.

II. Ensure **EQUITY** - offer, access, use, acceptance, rejection, discharge, and follow-up in your deflection initiative:

- Once you are collecting your data as your deflection initiative is operational, monitor it at the systems, leadership, and line-staff level. Share it openly and without judgement. When things are going well, remember to celebrate. We are all in this together!
- Critical and easy to overlook in this regard once a deflection initiative is operational, measure ongoing stakeholder engagement in the initiative. This will not show up in the data itself as this does not refer to participants, but to the community and organizations that actually put your initiative together. If they stick around, things are likely good. If they walk, it's time to stop, reassess, correct, and restart.

III. Make known your progress and especially your success (and where you must still do more):

- Doing the above first two action items is excellent! Now, it's time to share it openly and honestly with others. This is a measure of professionalism, transparency, and integrity. It is never anything to hide or tuck away.
- Include **DIVERSITY** and **EQUITY** indicators in the evaluation of staff and programs.
- Include **DIVERSITY** and **EQUITY** outcomes in your deflection site's annual report and presentation. It's OK to let others know where you are on this. It actually inspires help and assistance!

Related, please share with PTACC your work, successes, lessons learned, toolkits, stories, and more from working to and achieving greater **DIVERSITY** and **EQUITY** in your deflection site. info@ptaccollaborative.org

To get more involved in PTACC's work in Community, Diversity, and Equity, consider joining our CDE Strategy Area: https://ptaccollaborative.org/strategy-areas/cdi_strategy_area/

PTACC Community, Diversity, and Equity Three Action Items for Deflection Teams
July 2022

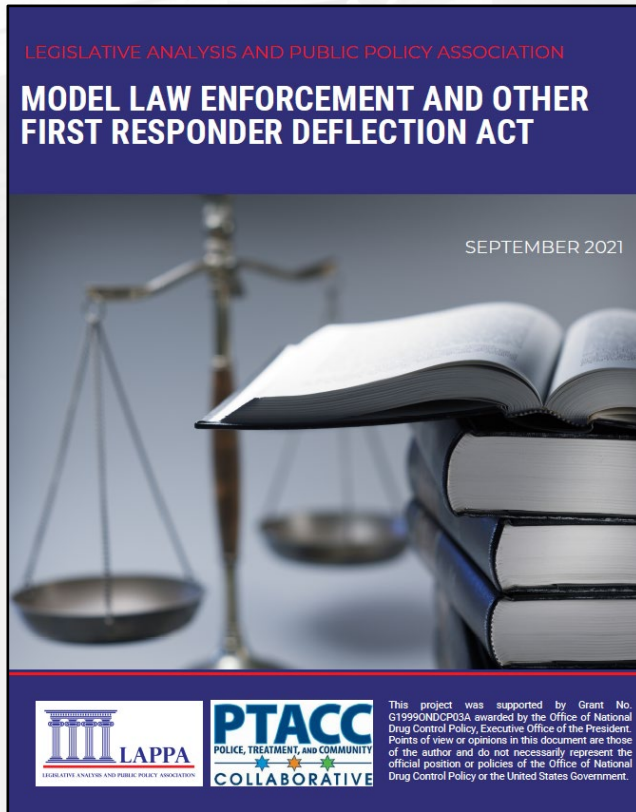
Data collection/evaluation

PTACC RECOMMENDED CORE MEASURES FOR FIVE PRE-ARREST DIVERSION FRAMEWORKS*			
FRAMEWORK/TARGET POPULATION	LAW ENFORCEMENT	TREATMENT OR SERVICES	COMMUNITY
<p>Self-Referral - Individual initiates contact with law enforcement for a treatment referral (without fear of arrest), preferable a warm handoff to treatment.</p> <p>TP: Severe SUD, MI</p>	<ul style="list-style-type: none"> % referrals that are racial and minority representation Number of districts/agencies making referrals % of districts/agencies making referrals Number of referrals per officer % of referrals per officer Number of officers making referrals 	<ul style="list-style-type: none"> Racial and minority representation Assessment Rate Initiation Rate Engagement Rate Level of functioning Housing stability Employment stability 	<ul style="list-style-type: none"> Racial and minority representation % of jail population with Mod/Sev SUD or MI LE/Community relationship Reductions in jail admissions
<p>Active Outreach - Law enforcement initially IDs or seeks individuals; a warm handoff is made to treatment provider, who engages them in treatment.</p> <p>TP: Mod/Severe SUD, MI</p>	<ul style="list-style-type: none"> % referrals that are racial and minority representation Number of districts/agencies making referrals % of districts/agencies making referrals Number of officers making referrals Number of referrals per officer % of referrals per officer 	<ul style="list-style-type: none"> Racial and minority representation Assessment Rate Initiation Rate Engagement Rate Level of functioning Housing stability Employment stability 	<ul style="list-style-type: none"> Racial and minority representation % of jail population with Mod/Sev SUD or MI LE/Community relationship Reductions in jail admissions
<p>Naloxone Plus (Supplemental Handout) - Engagement with treatment as part of an overdose response or a severe substance use disorder at acute risk for opioid overdose.</p> <p>TP: severe opioid SUDs/Opioid OD</p>	<ul style="list-style-type: none"> % referrals that are racial and minority representation Number of districts/agencies making referrals % of districts/agencies making referrals Number of referrals per officer % of referrals per officer Number of Times Officers Use Naloxone 	<ul style="list-style-type: none"> Racial and minority representation According to needs: <ul style="list-style-type: none"> Housing stability Employment stability Drug use reduction Level of functioning 	<ul style="list-style-type: none"> Racial and minority representation Naloxone kits dispersed Number of subsequent referrals Number of fatal overdoses
<p>Officer Prevention Referral - Law enforcement initiates treatment engagement; no charges are filed.</p> <p>TP: drug arrestees, drug-related behaviors, or public disorder crimes occurring in non-justice settings, MI encounters - crisis, serious and non-crisis</p>	<ul style="list-style-type: none"> % referrals that are racial and minority representation Number of districts/agencies making referrals % of districts/agencies making referrals Number of referrals per officer % of referrals per officer Number of officers making referrals 	<ul style="list-style-type: none"> Racial and minority representation Initiation Rate Engagement Rate BH needs Completion Rates 	<ul style="list-style-type: none"> Racial and minority representation Number of ED visits Reduction in jail admissions Police/community relationship
<p>Officer Intervention Referral - Law enforcement initiates treatment engagement; <u>charges are held in abeyance or citations issued</u>, with requirement for completion of treatment and/or social service plan.</p> <p>TP: MI or SUD</p>	<ul style="list-style-type: none"> % referrals that are racial and minority representation Number of districts/agencies making referrals % of districts/agencies making referrals Number of referrals per officer % of referrals per officer Number of officers making referrals 	<ul style="list-style-type: none"> Racial and minority representation Initiation Rate Engagement Rate BH needs Completion Rates 	<ul style="list-style-type: none"> Racial and minority representation Number of ED visits Reduction in jail admissions LE/community relationship



Source: [PTACC Core Data Metrics for Deflection Initiatives \(2018\)](#)

Data collection/eva



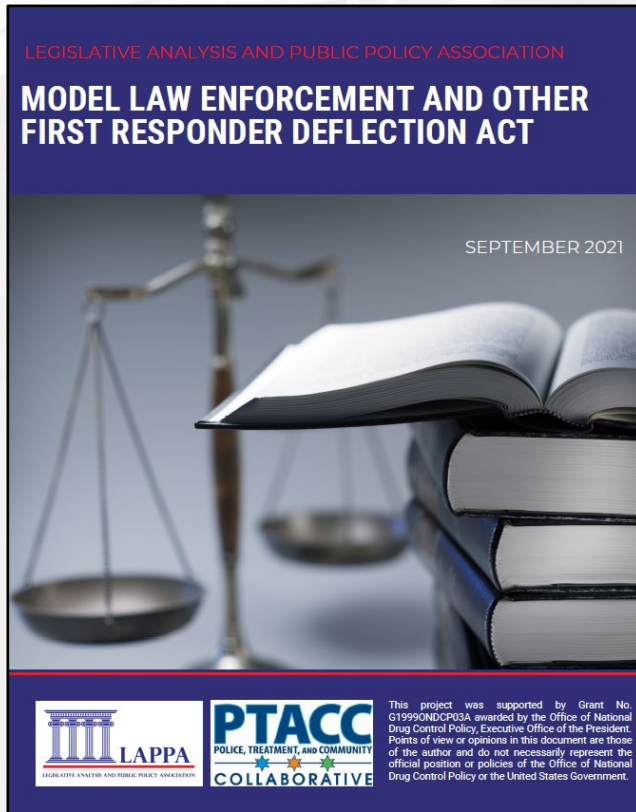
SECTION VII. DATA REPORTING AND PERFORMANCE MANAGEMENT.

(a) In general.—The [state administering agency on criminal justice], in conjunction with the:

- (1) [Single state authority on drugs and alcohol];
- (2) [State mental health agency];
- (3) [State health department];
- (4) [An association representing state chiefs of police]; and
- (5) [Any other appropriate state department or agency],

Shall, within six (6) months of the effective date of this Act, develop a standardized set of data and performance measures to be reported quarterly by each deflection program that receives funding pursuant to this Act to the [state administering agency on criminal

Data collection/eva



SECTION VII. DATA REPORTING AND PERFORMANCE MANAGEMENT.

- (a) I justice].
- (b) Standardized data and performance measures.—The standardized set of data and performance measures developed pursuant to subsection (a) shall include, at a minimum:
- (1) [Number of encounters with individuals that resulted in persons accepting entry into a deflection program];
 - (2) [Number of encounters with individuals that resulted in persons declining entry into a deflection program];
 - (3) [Demographic information on deflection program participants];
 - (4) [Demographic information on the community in which the deflection program operates];
 - (5) [To the extent allowable by law, demographic information on individuals who declined to participate in a deflection program];
 - (6) [Number of encounters with individuals that resulted in the following, separately recorded for substance use disorder and mental health disorder:
 - (A) Referral to treatment;
 - (B) Engagement with treatment;
 - (C) Referral to case management; or
 - (D) Engagement with recovery support services];
 - (7) [Length of time from the initial encounter to:
 - (A) Engagement with treatment; and
 - (B) Engagement with recovery support services];
 - (8) [Rate of engagement with treatment or recovery support services at [certain specified periods of time] from the point of initial contact];
 - (9) [Rate of recidivism and re- or subsequent arrest];
 - (10) [Results of quality of life assessments from deflection program participants]; and
 - (11) Any other data point or performance measure provided for in regulations developed pursuant to Section X or agreed to by the entities identified in subsection (a).

Data collection/evaluation

Effective: January 1, 2019

5 ILCS 820/25

820/25. Reporting and evaluation

Currentness

§ 25. Reporting and evaluation.

(a) The Illinois Criminal Justice Information Authority, in conjunction with an association representing police chiefs and the Department of Human Services' Division of Substance Use Prevention and Recovery, shall within 6 months of the effective date of this Act:

- (1) develop a set of minimum data to be collected from each deflection program and reported annually, beginning one year after the effective date of this Act, by the Illinois Criminal Justice Information Authority, including, but not limited to, demographic information on program participants, number of law enforcement encounters that result in a treatment referral, and time from law enforcement encounter to treatment engagement; and
- (2) develop a performance measurement system, including key performance indicators for deflection programs including, but not limited to, rate of treatment engagement at 30 days from the point of initial contact. Each program that receives funding for services under Section 35 of this Act shall include the performance measurement system in its local plan and report data quarterly to the Illinois Criminal Justice Information Authority for the purpose of evaluation of deflection programs in aggregate.

Sustainability

Funding sources

Federal, state, local, philanthropic,
Medicaid expansion

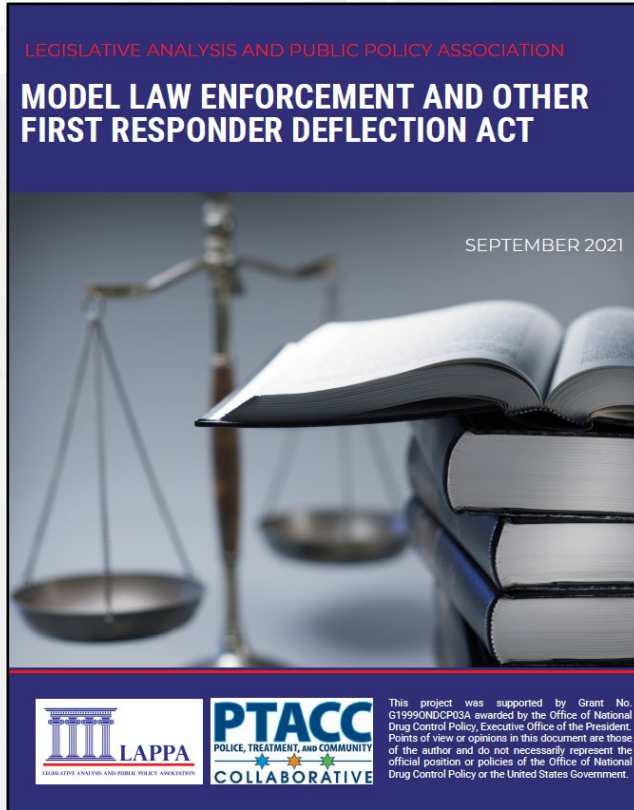
Adaptability

Different emerging substances

Considerations for reducing/managing

- Diversify funding sources
- Stand-alone budget
- Build flexibility into initiative
- Highlight success stories and program effectiveness → more advanced data collection/analysis

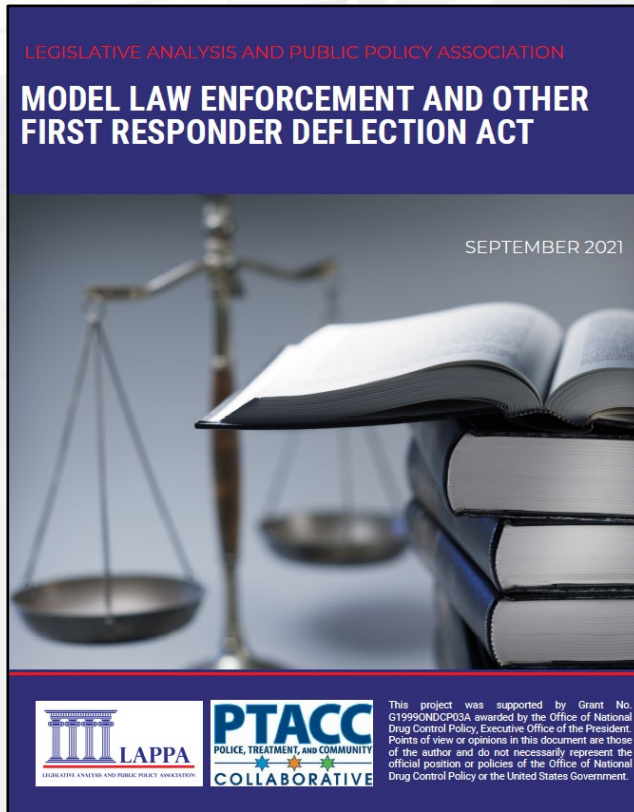
Sustainability



SECTION IX. FUNDING.

- (a) In general.—The [state legislature] shall appropriate funds to the [state administering agency on criminal justice] for the express purpose of the [state administering agency on criminal justice] funding new and established deflection programs, subject to the provisions of this Act.
- (b) Pursuit of funding.—The [state administering agency on criminal justice] may pursue all federal funding, matching funds, and foundation or other charitable funding for the initial start-up and ongoing activities required under this Act.
- (c) Acceptance of gifts.—The [state administering agency on criminal justice] may accept such gifts, grants, and endowments, from public or private sources, as may be made from time to time, in trust or otherwise, for the use and benefit of the purposes of this Act and expend the same or any income derived from it according to the term of the gift, grant, or endowment.
- (d) Education and public awareness.—Up to 10 percent of funds appropriated by [the legislature] may be disseminated by the [state administering agency on criminal justice] for activities related to educational programs, training, technical assistance, community forums, or other activities intended to increase public awareness of deflection programs.
- (e) Guidelines and requirements.—The [state administering agency on criminal justice]:
 - (1) Shall adopt rules and regulations that set out guidelines and requirements to direct the distribution of funds for expenses related to deflection programs; and
 - (2) Shall make funding available to support both new and existing deflection programs in a broad spectrum of geographic regions in [state], including urban, suburban, and rural communities.

Sustainability



SECTION IX. FUNDING.

- (a) In general.—The [state agency on criminal justice/criminal justice] funding provisions of this Act.
- (b) Pursuit of funding.—The federal funding, matching start-up and ongoing activities.
- (c) Acceptance of gifts.—The such gifts, grants, and endowment time to time, in trust or expend the same or any endowment.
- (d) Education and public awareness [legislature] may be disseminated for activities related to forums, or other activities.
- (e) Guidelines and requirements
 - (1) Shall adopt rules and the distribution of
 - (2) Shall make funding in a broad spectrum rural communities

- (f) Priority of funding.—Funding for deflection programs shall be prioritized for communities:
 - (1) Disproportionately impacted by substance misuse; or
 - (2) With a disproportionate lack of access to treatment and treatment providers.
- (g) Eligibility for funding.—A deflection program is not eligible to receive funding pursuant to this section unless the deflection program:
 - (1) Meets the requirements provided for in sections IV(b), VI(d), and VII(f); and
 - (2) Includes, as one of its program activities, harm reduction services, including providing naloxone and related supplies essential for carrying out overdose reversal for distribution to program participants or for use by law enforcement or other first responders.
- (h) Eligible activities.—For all appropriated funds not disseminated pursuant to subsection (d), the activities eligible for funding under this Act include, but are not limited to:
 - (1) Program administration, coordination, or management, including, but not limited to, the development of collaborative partnerships with treatment providers and community members or organizations, collection of program data, or monitoring program partners' compliance with any memorandum of understanding developed pursuant to this Act;
 - (2) Case management, including hiring staff, and case management provided prior to assessment, diagnosis, and engagement in treatment, as well as assistance navigating and gaining access to various treatment modalities and recovery support services;
 - (3) Recovery support services;
 - (4) Procurement and upkeep of transitional housing [subject to a cap of ____ percent];
 - (5) Transportation to a treatment provider or other program partner location;
 - (6) Program performance measurement activities;
 - (7) Software, hardware, and other technology necessary to track and measure program performance metrics and outcomes;
 - (8) Treatment necessary to prevent gaps in service delivery; and
 - (9) Academic research.

820/35. Funding

<Text of section effective ~~until~~ Jan. 1, 2024. See, also, text of section 5 ILCS 820/35, effective ~~until~~ Jan. 1, 2024.>

§ 35. Funding.

(a) The General Assembly may appropriate funds to the Illinois Criminal Justice Information Authority for the purpose of funding law enforcement agencies ~~or~~ , other first responder entities , or local government agencies for services provided by deflection program partners as part of deflection programs subject to subsection (d) of Section 15 of this Act.

(a.1) Up to 10 percent of appropriated funds may be expended on activities related to knowledge dissemination, training, technical assistance, or other similar activities intended to increase practitioner and public awareness of deflection and/or to support its implementation. The Illinois Criminal Justice Information Authority may adopt guidelines and requirements to direct the distribution of funds for the

(b) For all appropriated funds not distributed under subsection (a.1), the Illinois Criminal Justice Information Authority shall direct the distribution of funds for expenses related to deflection programs. Funding shall be distributed to deflection programs in a broad spectrum of geographic regions in this State, including urban, suburban, and rural areas, and shall be prioritized for communities that have been impacted by the war on drugs, communities that have a disproportionate lack of access to mental health and drug treatment. Activities eligible for funding shall include the following:

(1) activities related to program administration, coordination, or management, including activities related to outreach and engagement with licensed treatment providers and community members or organizations; collection and analysis of data; and development of a program plan;

(2) case management including case management provided prior to assessment, diagnosis, and engagement in treatment, as well as assistance navigating and gaining access to various treatment modalities and support services;

(3) peer recovery or recovery support services that include the perspectives of persons with the experience of recovering from a substance use disorder, either themselves or as family members;

(4) transportation to a licensed treatment provider or other program partner location;

(5) program evaluation activities;

(6) naloxone and related **harm reduction** supplies necessary for carrying out overdose **prevention and** reversal for purposes of distribution to program participants or for use by law enforcement ~~or~~ , other first responders , or local government agencies ; and

(7) treatment necessary to prevent gaps in service delivery between linkage and coverage by other funding sources when otherwise non-reimbursable: ; and

(8) wraparound participant funds to be used to incentivize participation and meet participant needs. Eligible items include, but are not limited to, clothing, transportation, application fees, emergency shelter, utilities, toiletries, medical supplies, haircuts, and snacks. Food and drink is allowed if it is necessary for the program's success where it incentivizes participation in case management or addresses an emergency need as a bridge to self-sufficiency when other sources of emergency food are not available.

(c) Specific linkage agreements with recovery support services or self-help entities may be a requirement of the program services protocols. All deflection programs shall encourage the involvement of key family members and significant others as a part of a family-based approach to treatment. All deflection programs are encouraged to use evidence-based practices and outcome measures in the provision of **case management**, substance use disorder treatment , and medication-assisted treatment for persons with opioid use disorders.

Questions on this first part?

Information sharing laws

 **r/ABoringDystopia**
Posted by u/Maurens • 11h • i.redd.it

  3 Awards

**Remember to disable the hospital spy
before discussing sensitive information**



 35.9k   981  Share  Award

Information sharing laws

Federal laws and regulations

State (specific) laws and regulations

Federal information sharing laws/regulations

HIPAA Privacy Rule

42 C.F.R. Part 2

28 C.F.R. Part 23

FERPA

CAPTA

Resources online

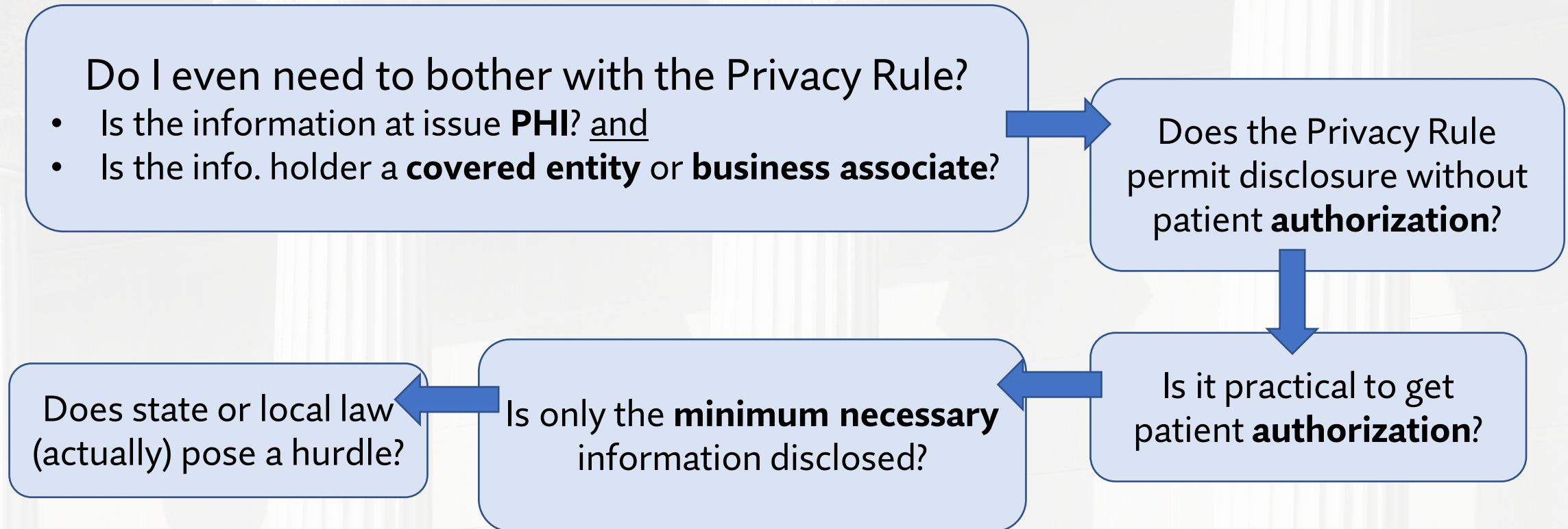
Federal information sharing laws/regulations

HIPAA Privacy Rule

- Title II to the Health Insurance Portability and Accountability Act (Section 264)
- Privacy Rule regulations → 45 C.F.R. Parts 160 and 164 (A and E)
- **Covered entity** or **business associate** may not use or disclose **protected health information (PHI)**, except as permitted or required
- Patient **authorization** is necessary for uses and disclosures of PHI not otherwise allowed
- More avenues for sharing under Privacy Rule than 42 C.F.R. Part 2

Federal information sharing laws/regulations

HIPAA Privacy Rule – Scenario analysis



Federal information sharing laws/regulations

HIPAA Privacy Rule – Protected health information (PHI)

- PHI = individually identifiable health information (IIHI) that is
 - ❖ Transmitted by or maintained in any form or medium and
 - ❖ Not one of the following:
 - In records covered by FERPA
 - Certain physician, psychiatrist, psychologist records pertaining to student over 18
 - In employment records held by **covered entity** employer
 - Regarding person who died 50+ years ago

Federal information sharing laws/regulations

HIPAA Privacy Rule – Protected health information (PHI)

- De-identified health information is not **PHI**
- How can information be de-identified?
 - ❖ Remove 18 identifiers listed in [45 C.F.R. § 164.514\(b\)\(2\)\(i\)\(A\)-\(R\)](#)
 - OR
 - ❖ Have a person with appropriate knowledge of and experience with generally accepted statistical and scientific principles and methods conclude info is de-identified

Federal information sharing laws/regulations

HIPAA Privacy Rule – Covered entity

- Covered entity = one of the following
 - ❖ Health plan
 - ❖ Health care clearinghouse or
 - ❖ Health care provider who transmits any health information in electronic form in connection with a transaction covered by HIPAA
- Hybrid **covered entity**

Federal information sharing laws/regulations

HIPAA Privacy Rule – Business associate

- Business associate = Person or entity that performs certain activities or services involving the use or disclosure of **PHI** either on behalf of, or to, a **covered entity** (but not the covered entity's employees).
- **Covered entity** can be business associate of another **covered entity**

SERVICES

Legal; actuarial; accounting; consulting; data aggregation; management; administrative; accreditation; financial

ACTIVITIES

Claims processing; data analysis, processing, or administration; utilization review; quality assurance; billing; benefit management; practice management

Federal information sharing laws/regulations

HIPAA Privacy Rule – Business associate

- **Covered entity** must include certain protections for the information in a **business associate** agreement (BAA)
- BAA must impose specified written safeguards on **PHI** used or disclosed by its **business associates**
- **Covered entity** cannot use BAA to authorize a **business associate** to make disclosures not allowed under Privacy Rule

Federal information sharing laws/regulations

HIPAA Privacy Rule – Disclosures w/o authorization

- Six (6) permitted (but not required) disclosures
 - ❖ To the individual who is subject of the **PHI**
 - ❖ For treatment, payment, or healthcare operations
 - ❖ Where individual given opportunity to agree or object
 - ❖ Incident to an otherwise permitted use and disclosure
 - ❖ Limited data set for research, public health, or health care purposes
 - ❖ “Public interest and benefit activities” (12)


Federal information sharing laws/regulations

HIPAA Privacy Rule – Disclosures w/o authorization

- Public interest and benefit activities (“Uses and disclosures for which an authorization or opportunity to agree or object is not required”)
 - Required by law
 - Public health activities
 - About victims of abuse, neglect, or domestic violence
 - Health oversight activities
 - Judicial and administrative proceedings
 - Certain law enforcement purposes
 - Decedent information
 - Cadaveric organ, eye or tissue donation purposes
 - Research purposes
 - Avert a serious threat to health or safety
 - Specialized government functions
 - Workers compensation compliance

Federal information sharing laws/regulations

HIPAA Privacy Rule – Disclosures w/o authorization

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- **Avert a serious threat to health or safety**
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- Workers compensation compliance

Federal information sharing laws/regulations

HIPAA Privacy Rule – Patient authorization

- Valid authorization requires:
 - ❖ Six core elements
 - ❖ Three statements
 - ❖ Plain language
 - ❖ Copy to individual

ELEMENTS

Description of information; who is authorized to disclose/receive; purpose; expiration date; signature

STATEMENTS

Patient may revoke; potential for re-disclosure; ability/inability to condition treatment, payment, enrollment or eligibility for benefits on the authorization

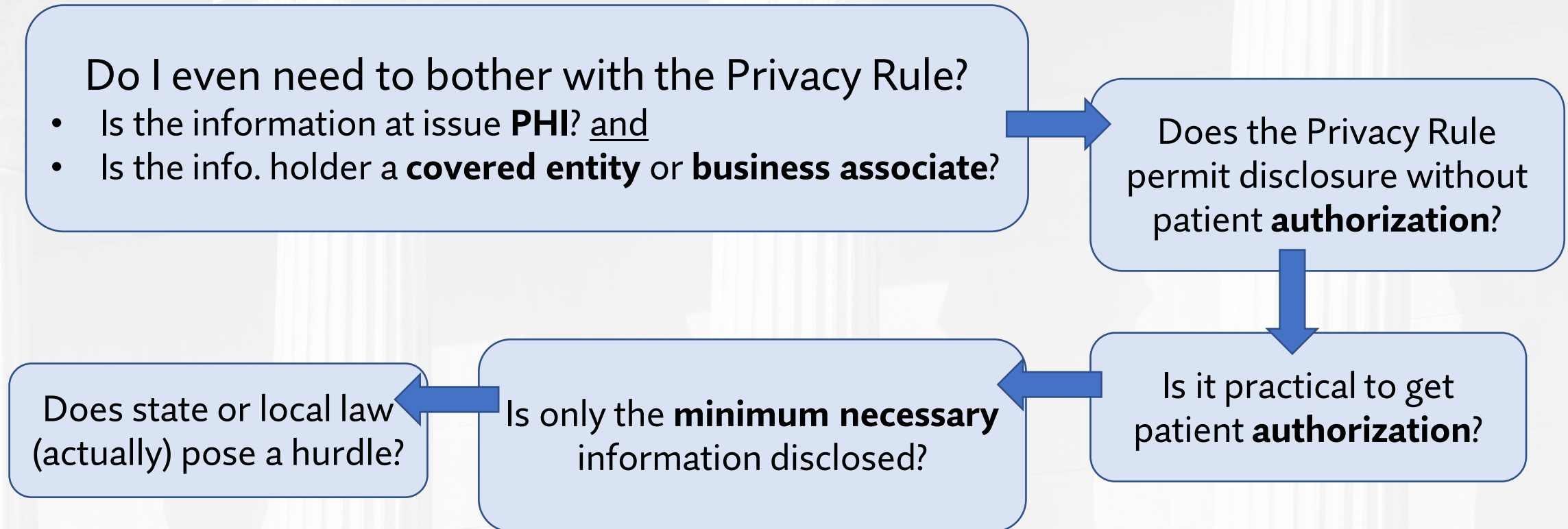
Federal information sharing laws/regulations

HIPAA Privacy Rule – Decedents' records

- **Covered entity** must treat **personal representative** the same as the individual with respect to uses and disclosures of **PHI**
- Personal representative = person with legal authority (based on state law) to act on behalf of the decedent or the decedent's estate

Federal information sharing laws/regulations

HIPAA Privacy Rule – Scenario analysis



Federal information sharing laws/regulations

HIPAA Privacy Rule – Deflection initiatives

- Challenges vary depending type of initiative
- Post-overdose outreach program; mental health co-responder and a CRS
 - ❖ Is OD victim info covered by HIPAA or can it be shared with/between response team members?
 - ❖ Does it make a difference if referral is LE or EMS?
 - ❖ What if outreach team wants to share information with family members?

laws/regulations

WHEREAS, integral members of the QRT, in addition to first responders, such as CCEMS and HPD, are local mental health providers, such as Prestera, Recovery Point and HCTC, and researchers working at Marshall University through its Departments of Public Health and Health Informatics (“Marshall University”) and University Physicians & Surgeons, Inc., d/b/a Marshall Health (“Marshall Health”); and

WHEREAS, CCEMS, Prestera, Recovery Point, and HCTC are each Covered Entities, as the term “Covered Entity” is defined by HIPAA at 45 CFR §160.103, and subject to the Privacy and Security Rules, as well as HITECH; and,

WHEREAS, the City of Huntington, HPD and Marshall University, do not meet the definition of Covered Entity under HIPAA; and,

WHEREAS, for the purposes of the QRT Project, those Parties that are Covered Entities, of necessity, must share protected health information with other QRT Project Members that are not Covered Entities—namely, the City of Huntington and HPD —prior to any individual giving their consent or authorization for such disclosure of personal health information, and also with Marshall University and Marshall Health for follow-up data collection and analysis

WHEREAS the Privacy Rule, the Security Rule and HITECH require that the Covered Entities receive adequate assurances that protected health information shared for the purposes of further referral and treatment, as well as research, will remain protected by the other non-Covered Entity Parties and/or that further disclosure of the protected health information will be with the individual’s consent or consistent with HIPAA and other applicable laws; and,

WHEREAS, there is no clear exception under law for the sharing of protected health information by and among the Members of the QRT Project, as they attempt to address the opioid overdose crisis in Huntington, in light of the fact that (a) the QRT Project is not a separate legal entity and does not meet the definition of a Covered Entity, and (b) the non-Covered Entity Parties do not clearly constitute Business Associates of the Covered Entities, as the term “Business Associate” is defined by HIPAA under 45 CFR 160.103; and,

WHEREAS, to effectuate the purpose of the QRT Project and honor the spirit and intent of the Privacy and Security Rules under HIPAA and HITECH, the City of Huntington, HPD, Marshall University, and Marshall Health each agree that they will assume the mantle of Business Associates to the Covered Entity Parties, and comply with certain obligations with respect to the protected health information received from the Covered Entity Parties as part of the QRT Project;

Source: HIPAA Privacy and Security Agreement for Huntington (W.V.) Quick Response Team Project Members



Federal information sharing laws/regulations

HIPAA Privacy Rule - Resources

- [Administrative Simplification Regulations](#) (HHS; as of 2013)
- [45 CFR Part 164 - SECURITY AND PRIVACY](#) (LII/Cornell Law School)
- [Summary of HIPAA Privacy Rule](#) (HHS)
- [HIPAA FAQs for Professionals](#) (HHS)
- [Information Sharing Scenarios](#) (COSSUP)
- [Examples of Compliance Cases](#) (HHS)
- [ODMAP and PHI under HIPAA](#) (LAPPA)
- [Information Sharing in Criminal Justice – Mental Health Collaborations](#) (BJA)

Federal information sharing laws/regulations

42 C.F.R. Part 2 (42 C.F.R. §§ 2.1 to 2.67)

- Confidentiality of substance use disorder (SUD) treatment records
- Authority from 42 U.S.C. § 290dd-2
- Regulations first adopted in 1975 (prior to electronic records)
- Restricts the disclosure and use of SUD **patient records** which are maintained in connection with the performance of any **part 2 program**
- More straightforward and direct than HIPAA Privacy Rule
- Changes forthcoming (2023? 2024?)

Federal information sharing laws/regulations

42 C.F.R. Part 2 – Scenario analysis

Do I even need to bother with Part 2?

- Does the **record** identify a **patient** as having or having had SUD either directly or by reference to other info. or person? and
- Does the **record** contain info. obtained by a **part 2 program** for purposes of SUD treatment, diagnosis, or referral?

Does Part 2 permit disclosure w/o **consent**?

Generally, no

Is it practical to get patient **consent**?

Does state or local law pose a hurdle?

Federal information sharing laws/regulations

42 C.F.R. Part 2 – Patient, record, patient identifying info.

- Patient = individual who applies for or receives diagnosis, treatment, or referral for treatment for SUD at a **part 2 program**
- Record = any information, whether recorded or not, created by, received, or acquired by a **part 2 program** relating to a **patient** (e.g., diagnosis, treatment, and referral for treatment information, billing information, emails, voice mails, and texts)
- Patient identifying information (PII) = name, address, SSN, fingerprints, photo, or other information by which the identity of **patient** can be determined with reasonable accuracy

Federal information sharing laws/regulations

42 C.F.R. Part 2 – Part 2 program

- Part 2 program = [federally assisted] [program]
- Federally assisted = defined in 45 C.F.R. § 2.12(b)
- Program = one of the following:
 - ❖ Individual or entity holding itself out as providing SUD diagnosis, treatment, or referral for treatment
 - ❖ Identified unit within a general medical facility doing the above
 - ❖ Medical personnel /other staff in a general medical facility whose primary function is providing SUD diagnosis, treatment, or referral for treatment and who are identified as providers

Federal information sharing laws/regulations

42 C.F.R. Part 2 – Types of disclosures

- Disclosure without patient **consent**
- Disclosure with patient **consent**
- Court orders authorizing disclosure and use

Federal information sharing laws/regulations

42 C.F.R. Part 2 – Disclosure without patient consent

- Disclosure of **PII** may occur in three (3) situations:
 - ❖ By medical personnel, during bona fide medical emergency
 - ❖ Scientific research, if researcher meets specific requirements
 - ❖ During the course of an audit or evaluation of the **Part 2 program** that provided the treatment

Federal information sharing laws/regulations

42 C.F.R. Part 2 – Disclosure with patient consent

- Nine (9) required elements for **consent**, including:
 - ❖ How much, what kind, and explicit description of info.
 - ❖ Names/entities to which disclosure will be made
 - ❖ Purpose of disclosure
 - ❖ **Patient's** right to revoke
 - ❖ Date, event, or condition upon which **consent** expires
- Disclosure itself must be accompanied by notice to recipient that re-disclosure is prohibited, absent further consent by **patient**

Federal information sharing laws/regulations

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Federal information sharing laws/regulations

42 C.F.R. Part 2 – Changes forthcoming (?)

- Required by Section 3221 of CARES Act (2020)
- NPRM published 11/28/2022; comments due 1/31/2023
- More closely aligns Part 2 with Privacy Rule
 - ❖ Permits use and disclosure of **patient records** based on a single patient **consent** given once for all future uses and disclosures
 - ❖ Permits re-disclosure of **patient records** in any manner permitted by the HIPAA Privacy Rule, with certain exceptions
 - ❖ Expands prohibitions on the use and disclosure of **patient records** in civil, criminal, administrative, and legislative proceedings
 - ❖ New HHS enforcement authority

Federal information sharing laws/regulations

42 C.F.R. Part 2 – Decedents' records

- No expiration on protection of decedents' **PII** (unlike Privacy Rule)
- **PII** disclosable in two (2) circumstances:
 - ❖ PII related to **patient's** cause of death under laws: (1) requiring the collection of death or other vital statistics or (2) permitting inquiry into the cause of death
 - ❖ After **consent** by personal representative
- Personal rep. =
 - (1) executor, administrator, or other personal representative
 - (2) spouse, if no (1);
 - (3) any responsible member of the patient's family, if no (1) or (2)

Federal information sharing laws/regulations

42 C.F.R. Part 2 - Resources

- [42 C.F.R. Part 2](#) (LII/Cornell Law School)
- [Proposed changes to 42 C.F.R. Part 2](#) (Federal Register)
- [Information Sharing Scenarios](#) (COSSUP)
- [Information Sharing in Criminal Justice – Mental Health Collaborations](#) (BJA)

State (specific) laws/regulations

Key issues

- Open meeting and open records laws
- PDMP information
- Criminal justice information
- Access to death certificates
- Educational records (institution-specific)
- Persons to approach for more information

State (specific) laws/regulations

Key issues – Resources

- [Open Government Guide \(RCFP\)](#) – open records and open meetings

The screenshot shows the website for the Reporters Committee. The navigation bar includes: REPORTERS COMMITTEE, OUR WORK +, LEGAL RESOURCES +, FREE PRESS TOPICS +, WHO WE ARE +, and GET INVOLVED +. The left sidebar menu lists: 11. Fines, 12. Other penalties, 13. Settlement, pros and cons, F. Appealing initial court decisions (with sub-items: 1. Appeal routes, 2. Time limits for filing appeals, 3. Contact of interested amici), G. Addressing government suits against disclosure (with sub-items: Open Meetings, I. Statute - basic application (with sub-item: A. Who may attend?), B. What governments are subject to the law? (with sub-items: 1. State, 2. County, 3. Local or municipal)), and C. Open Meetings (with sub-items: 1. Appeal routes, 2. Time limits for filing appeals, 3. Contact of interested amici).

The main content area displays the following sections:

- G. Addressing government suits against disclosure**
COMPARE
- Open Meetings**
COMPARE
- I. Statute - basic application**
COMPARE
- A. Who may attend?**
All meetings shall be open to the public as provided in Va. Code Ann. § 2.2-3707.A., unless the topic of discussion at such meetings falls within one of the enumerated exemptions in Va. Code Ann. § 2.2-3711.A. [listing grounds for closed meetings] or Va. Code Ann. § 2.2-3707.01 (concerning meetings of the General Assembly and its committees). No closed meeting shall be held unless the public body proposing to convene such meeting has followed the procedures for closing a meeting. Va. Code Ann. § 2.2-3712.
COMPARE

State (specific) laws/regulations

Key issues – Resources

- [Open Government Guide](#) (RCFP) – open records and open meetings
- [First Responder Deflection Resource Library](#) (COSSUP)
- [OFR Tools](#) (IIR)

Questions?

Jon Woodruff, Esq.
Managing Attorney

Legislative Analysis and Public Policy Association

jwoodruff@thelappa.org

434.252.3303