



Virginia Department of
Behavioral Health &
Developmental Services

Development of an Information Sharing Process
Between Jails & Community Services Boards (SB1644)
Update for SJ 47
October 7, 2019

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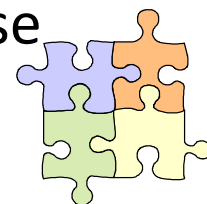
Assistant Commissioner – Forensic Svcs
Virginia Department of Behavioral Health
and Developmental Services

Legislative Mandate for Study

- During 2019 session SB 1644 was supported by both chambers and signed by Governor Northam
- Requires DBHDS to:
 - Convene a workgroup
 - Study the issue of information sharing between CSBs and Jails
 - Develop a plan for sharing of protected health information (PHI) for individuals in jails who have previously received treatment from a CSB
 - Identification of individuals in jail who have previously received CSB services
 - Transfer of PHI from the CSB to the jail
 - Status report due to Governor and GA by October 1, 2019
 - Steps necessary to implement the plan
 - Statutory or regulatory changes needed to support plan
 - Appropriation needs

The Study in the Broader Context – General Assembly Actions Arising out of 2019 Session

- HB 1942 – mandates that the Board of Corrections create minimum standards for behavioral healthcare in jails, and makes clear the jail administrator’s entitlement to information & records
- HB 1918/ SB1598 – mandates the BOC establish minimum standards for medical, dental, behavioral health, and pharmacy services in jails
- HB 1933 – allows jail administrators to petition for judicial authorization of treatment for inmates who lack the capacity to consent and when the proposed treatment is in the best interest of the individual
- JCHC Request to DBHDS, VADOC, SCB – Requested the creation of a uniform, HIPAA compliant release of information form to use with justice involved individuals



Why Information Sharing With Jails Is Critical

- National research shows:
 - 70% of offenders have a substance use disorder
 - 17-34% of inmates have some form of mental illness (MI)
 - Point in time prevalence rate for serious mental illness (SMI) in community is 4.5%
- Virginia (per SCB Mental Illness in Jails report)
 - 19.84% are known or suspected of having a MI
 - 10.42% are known or suspected of having a SMI
- Jails admit new individuals 24/7/365 and many of the individuals admitted are in crisis
- Jails generally not staffed to assess and respond to behavioral health disorders 24/7/365 thus access to prior treatment records becomes more critical

Some Cautions About Information Sharing

- Expectation of privacy in patient/healthcare provider relationship
- Minimum necessary rule
- Prejudice towards individuals with mental illness & stigma about mental illness is still rampant
- Caution about unintended consequence of keeping individuals away from treatment
- Differential treatment of individuals who access the public behavioral health treatment system vs. those who access private services



Laws Regulating Health Information Sharing

Federal Laws

- Health Information Portability & Accountability Act
 - Allows for some sharing without signed release to other providers involved in individual's care, when it's in the patient's best interest
 - Other exceptions, but those do not generally apply to individuals in jail
 - Law is permissive not obligatory
 - Differing interpretations of HIPAA
 - In general, health provider in jail can be viewed as provider involved in individuals care, but jail superintendent is not.
- 42 CFR §2.2
 - Covers health records related to substance abuse treatment
 - Created because of stigma & discrimination towards individuals with SUD issues
 - Prohibits sharing without signed release

Laws Regulating Health Information Sharing

Virginia Laws

- Virginia Code §53.1-133.03
 - Person in charge of jail entitled to obtain medical & mental health information and records even without consent
 - While it makes clear the jail administrators authority, it does not address the community provider's obligation to release
- Virginia Code §37.2-804.2
 - Requires community providers to release (upon request) prior treatment records
 - Only applies to individuals subject to involuntary commitment pursuant to §37.2-800 et seq and is not applicable to jails.

Process for Developing a Plan for Information Sharing

- Explored already existing information sharing platforms – Emergency Department Care Coordination Program (EDCC)
 - Not all CSBs currently using
 - Would only contain information on a subset of CSB clients
 - Have to broaden user pool to include jail medical providers
- Consulted with Texas who has an information sharing system
 - Their CSBs all utilize one EHR system
 - Their jails all utilize the same jail management system
 - Built statewide data exchange system
- Researched publically available data matching systems (e.g. LinX System)
 - Would have to build from scratch & would be expensive
 - Would have to enter into BAA
 - Would have to write code from each EHR to be able to get data into platform

Creative Use of Existing System for New Purpose

- DBHDS has a data warehouse which can match data sets
- DBHDS receives data from the CSBs about clients served (CCS3)
- DBHDS receives data from the State Compensation Board about individuals in jail (LIDS)
- DBHDS can write inquiry to match these two data systems to identify individuals in jail who have previously received services from the CSB
 - Limiting Factor – There is a two month delay in CCS3 data being downloaded into data warehouse
 - Limiting Factor – DBHDS currently only receives LIDS download once a month (exploring feasibility of increasing frequency)
 - Limiting Factor – Data warehouse does not have ability to push data out to multiple sources
 - This approach would only identify CSB consumers and not those who received services from private provider

Deciding What Data to Share

- Convened work group
- Differing opinions about how much data to share, however, prevailing opinion was to share information on the following types of clients:
 - Clients receiving case management services
 - Clients receiving psychiatric services
 - Clients who have been pre-screened for hospital admission/ crisis services
 - Clients who have received services within the last year
- What type of information to share
 - Diagnoses (excluding SUD diagnoses)
 - Current medications
 - Incidents of self-injury
 - Types of services being provided

How the System Would Work

- DBHDS would run cross-matching at set intervals
 - Frequency of cross-matching will be determined by frequency of getting new LIDS downloads
- Data warehouse would identify individuals in jail who have previously received services from a CSB(s) who meet the specified criteria
- DBHDS would notify respective CSB(s) of clients to whom they provided the identified types of services within the last year who are currently in jail (Manual process)
- CSB would either share information with jail and/or go see client, and/or get client to sign release (CSBs receive differing opinions about whether they can release information to jail mental health provider).
- DBHDS would follow-up with CSBs to ensure action was taken
- Still could not share information about SUD

Resource Needs

- One-time funds of approximately \$144,000 to write computer code to facilitate automatic download of LIDS data thus allowing for more frequent downloads
- Ongoing funds of approximately \$65,000 for 1 FTE at DBHDS to perform the notifications and follow-up.
- Work group suggested a “pilot” of this process to determine if indeed the information is shared, if it is useful to the jails, and to work out any barriers
- Alternative is to build out entirely new data platform
 - Likely would better meet needs
 - Costs are unknown but expected to be high
 - Challenging because it would need to interact with the various EHRs and jail management systems

Legislative Solution to Facilitate Information Sharing

- Regardless of system built, differing interpretation of HIPAA will likely continue to be barrier to information sharing
 - While HIPAA does permit information sharing it does not mandate it
 - Provider not provided any protections if they choose to share information
 - Limited incentives to share
- May want to consider amending §53.1-133.03 (1) to add:

“Any health care provider as defined in §32.1-127.1:03 who has been notified that an individual to whom they provided services is incarcerated shall disclose to the jail any information that is necessary and appropriate for the continuity of care. Any health care provider disclosing records pursuant to this section shall be immune from civil liability for any harm resulting from the disclosure, including any liability under the federal Health Insurance Portability and Accountability Act (42 U.S.C. §1320D et seq.) as amended, unless the provider disclosing such records intended the harm or acted in bad faith.”
- Alternative approach is to codify DBHDS responsibility to cross-match and CSB responsibility to share information (See appendix B of report for Texas Code language as example)