

Ethical Dimensions of Justice and Health Information Sharing

It is imperative for healthcare professionals and criminal justice practitioners to be mindful of the ethical dimensions of information sharing. Even when the law permits agencies to share information about a client, clinicians, case-workers, and others may still worry about their ethical obligations to preserve the privacy, safety, and wellbeing of those they serve. Information about a person's treatment history, especially for mental health and substance use issues, and involvement with the criminal justice system is highly sensitive information that when carelessly disclosed to unintended parties can lead to negative consequences. This concern makes some healthcare providers reluctant to share information, fearing that release of information will violate their provider-client relationship, jeopardize their patient's autonomy, or be misused in ways that lead to worse outcomes for their clients. Similarly, justice officials must ensure that data are used accurately, properly, and by the right people, and that release of health information does not lead to harsh or unsafe treatment of people under their supervision.

There is an array of strategies agencies can use to ensure that information sharing initiatives are ethically responsible, foster trust among stakeholders, and safeguard the personal interests of people involved in the justice system. In planning or implementing an initiative, justice and health agencies should: (a) reach a shared understanding about what information will be used, in what circumstances it will be shared, and who will have access; (b) clarify the relationship between the entities sharing information; (c) apply universally recognized ethical principles designed to preserve privacy of personal information and autonomy in medical decisions; and (d) develop legal and technical tools that effectively limit the use of sensitive health and justice information to its intended purpose.

Ethical Considerations

- > **Professional codes of ethics.** In addition to complying with privacy laws, health professionals, including mental health providers and social workers, must abide by their professional codes of ethics, which generally hold that information can be released only in certain circumstances or with the consent of the client. This professional obligation allows healthcare providers to build a patient-client relationship that facilitates trust and more effective treatment. Thus, providers are often reluctant to share information with the criminal justice system, particularly if they believe doing so will subject their patients to sanctions, incarceration, or stigmatization. For example, mental health treatment records contain details about a person's life conveyed to a clinician under a presumption of confidentiality. If such information is improperly revealed, it may result in unwarranted prosecutions or probation violations, and harm the clinical relationship.

- > **Data misuse.** Once data move beyond the original source, it is hard to monitor its use. This may raise concerns that shared information could be misused or fall into the hands of unauthorized users. For instance, there are clear ethical concerns surrounding the unauthorized disclosure of substance use or mental health information that may lead to stigmatization and harsher treatment in the criminal justice system or detrimentally affect a person's employment, housing, education, or other social entitlements. Healthcare professionals and social workers may be concerned about the security of information they release, and criminal justice practitioners may be apprehensive about the safety of inmates if data are misused or misinterpreted. For example, identifying someone as high risk for suicide or self-harm in a jail or prison setting could lead to more punitive treatment if incorrectly interpreted as an indication of threat to the safety of staff or other inmates.
- > **Data quality.** Inaccurate data can result in the inclusion of misinformation in a person's medical record or misidentification, which can subject patients to incorrect treatment, stigmatization, and embarrassment, as well as damaging the client-provider relationship and jeopardizing coordination of care between agencies.
- > **Fair treatment and safety in correctional settings.** Because of the significant stigma that often surrounds behavioral health issues, health and justice professionals face concerns that release of information can lead to harsher sentencing and treatment in correctional facilities and potentially unsafe conditions for inmates who are mistreated by corrections staff and/or other inmates.

Alleviating Ethical Concerns

Strategies for addressing ethical concerns can involve the use of informed consent, developing technology that safeguards confidential information and addressing obstacles related to differences in agency culture that can stand in the way of trust and mutual understanding.

- > **Observing OECD's Privacy Principles and FTC's Fair Information Principles.** Justice and health practitioners engaging in information sharing can use the Organization of Economic Cooperation and Development's (OECD) Privacy Principles and the Federal Trade Commission's (FTC) Fair Information Principles as a starting point for setting the parameters of information sharing and as guidelines for navigating thorny ethical issues. These standards, which are embedded in laws that govern the privacy of health, are universally recognized and cover a range of issues related to the use of personal information, including collection, use, storage, and dissemination.
- > **Informed consent.** Obtaining a patient's knowing and voluntary consent to share information is one solution to alleviating ethical concerns. Practitioners who wish to develop informed consents must consult HIPAA, 42 CFR Part 2, and state and local laws to learn about the specific requirements for and limits to consents. Practitioners should be alert to challenges related to using consents for people who suffer from serious mental illness and those who are incarcerated. To learn more about laws that affect information sharing, read [The Legal Landscape of Justice and Health Information Sharing](#).

- > **Technological solutions.** The development of technology that provides secure inter- and intra-agency data sharing will alleviate concerns about data inaccuracy or unauthorized release of information. For example, data segmentation, a process that allows only certain parties to access specific pieces of information based on predefined roles and responsibilities, can mitigate against data misuse, protect patient autonomy, and help alleviate the ethical concerns of treatment providers and justice practitioners.
- > **Memorandums of understanding/minimum data agreements.** Agencies may develop interagency memorandums of understanding delineating the use of sensitive information and the safeguards against its misuse. Limited data exchanges that include only information that must be shared may alleviate concerns health professionals and social workers have about violating their professional code of ethics. Examples of information that should be shared include, but are not limited to, prescriptions for medications, diagnoses of serious mental illness or communicable diseases, and medical histories of chronic health conditions like diabetes that need ongoing monitoring.
- > **Interagency trust and understanding.** As mental health professionals and social workers develop trust in criminal justice practitioners and begin to understand how data that is exchanged will be used, they may feel more comfortable sharing necessary information about their clients and believe that information will be used to assist their clients rather than to harm them.
- > **Making sure the benefits of information sharing outweigh the risks.** Ethical information sharing assumes that the benefits of the data exchange outweigh the risks posed to the individual whose information is shared. In most cases, when information is shared appropriately, there are significant benefits for justice-involved individuals with minimal risk of harm. Some examples of these benefits include better treatment for people in correctional facilities, safer jails and prisons, and improved continuity of care, reducing health disparities and recidivism. Health and justice practitioners can alleviate some of their concerns that in sharing information they are placing the individuals in their care at risk and violating their professional code of ethics by evaluating whether the benefits to justice-involved individuals in their jurisdiction outweigh the possible harm to these individuals. And, in fact, by sharing information in order to maximize benefits to the people they care for, health and justice practitioners are fulfilling an ethical duty to provide quality care. Justice and health practitioners considering implementation of an information-sharing initiative may want to collaborate to brainstorm some of the short-term and long-term benefits specific to their jurisdiction and the population they work with, and, as the initiative is rolled out, evaluate whether the assumed benefits are being achieved.

Resources

Federal Trade Commission. "Fair Information Principles."

<http://www.ftc.gov/reports/privacy3/fairinfo.shtm>.

Organization of Economic Cooperation and Development. "Privacy Principles."

<http://oecdprivacy.org/>.

The American Bar Association. "Standards on Treatment of Prisoners."

http://www.americanbar.org/publications/criminal_justice_section_archive/crimjust_standards_treatmentprisoners.html.

The American Psychiatric Association. "The Principles of Medical Ethics."

<http://psychiatry.org/File%20Library/Practice/Ethics%20Documents/Ethics-Principles-2009.pdf>.

American Mental Health Counselors Association. "Code of Ethics." 2000.

<http://www.amhca.org/assets/content/CodeofEthics1.pdf>.

National Association for Social Workers. "Code of Ethics." Revised 2008.

<http://www.socialworkers.org/pubs/code/code.asp>.