

## Navigating HIPAA and other Confidentiality Issues

**Presentation by Joseph Monahan, MSW, JD  
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Joe Monahan, one of the leading special education and disability attorneys in Illinois, is also a social worker. So he offered some practical tips to family members who feel shut out by privacy laws before jumping into the law.

**Confidentiality laws do not prohibit mental health professionals from receiving information.** Hospital staff and clinicians can be fired for providing information without a release, but Monahan stressed that they often want to help family members who are trying to help a loved one.

1) Write a narrative or timeline of your child/family member's illness, including the things that you want mental health professionals to know about your loved one. State that you understand mental health professionals can't talk to you without a signed release, but that you want them to know your loved one's story. Include previous hospitalizations, past and current meds, big events such as suicide attempts, and when symptoms first appeared. Keep it current. This is important because your ill family member may not share the whole story with clinicians. You can give this to a psychiatrist or hospital charge nurse, or to a professional treating your family member out-patient.

2) If a family member is hospitalized, visit them. Bring donuts, fruit, chocolate, etc., and share these goodies with the staff. Show that you are interested, kind, and that you love the person who is hospitalized,. Express appreciation for the staff. "Words get out," Monahan said. You may learn important information from nurses or other staff who decide that they like you.

3) If your family member refuses to see you while hospitalized, go to the hospital to see them anyway. If he or she won't see you one day, try again and again, or rotate days with other family members. Your loved one may have 4 bad days and finally a good one. Monahan told the story of a woman who refused to eat hospital food, so family members brought granola bars for her each day for 5 days. She still wouldn't talk with them. So they took a few days off. When they returned, with more granola bars, the woman was very happy to receive granola bars, and no longer refused to speak with them.

4) Family members often complain that the treating psychiatrist does not return calls. So call the charge nurse or the unit social worker. These professionals know what's going on, and they might respond to your expression of concern and desire to help your child by providing some information.

5) If the inpatient unit staff member who answers the phone won't confirm or deny if your loved one is a patient, keep trying. Call at night, at times that are less

busy. Don't ask if your child is there—you'll probably get no information. Just assume he/she is there and ask to speak to him/her. If you still are unable to get an answer, ask a clinician whom you know and who has worked with your child to call the unit. Hospital staff are not prohibited from sharing information with a mental health professional who has a therapeutic relationship with your child. Get information through the clinician you know.

Monahan provided information on HIPAA which, contrary to what we've all heard, is not about confidentiality at all – it is a law intended to make it easier for treatment professionals to share information about patients, to get paid and to make money from medical information. For example, Monahan said, someone who gets a hip replacement will begin to get solicitations from the Arthritis Foundation, which has bought a patient list from the hospital. HIPAA allows sharing of information without patient permission. You have to opt out in order to prevent this sharing.

Monahan said IL privacy laws are stricter than HIPAA regulations, and therefore supercede HIPAA. Most of his presentation focused on Illinois. Under Illinois law, there are two ways to access medical records for someone 18 and older – with their permission on a signed release, and through a court order, such as guardianship or power of attorney.

There are ways around this. Monahan says he advises psychiatrists and therapists to get a written release before a parent/spouse/friend to be present for a patient appointment, but a signed release is *not* essential. He offered the example of a patient who is asked if it is ok for a family member to be present. If the patient says "I don't care," this constitutes waiving confidentiality during this appointment.

Confidentiality laws also cover children and teens who receive mental health care. If the child is under 12 years old, the parent/guardian can legally request to receive, copy or request psychiatric records. If the child is between 12 and 17 years old, Illinois law states that the parent/guardian may receive or copy records only if "the minor is informed and does not object", or the child's treating "therapist finds no compelling reason to withhold."

If the minor 12-17 years old does not consent, the parent may still receive limited information without consent: current physical and mental condition, diagnosis, treatment needs, services provided and services needed. This is specified in the following Illinois statute: 740 ILCS 110/4(a)(3), in case you need to quote this! Parents can also ask directly a question about a medical condition. For example, if you ask a provider if your teen is pregnant, the provider must provide information about this medical condition, even if the child does not consent. But, a parent must ask specifically.

For individuals 18 or older, you need consent unless you are guardian or have power of attorney. Consent/release forms usually provide permission for access for a specified period of time – like from Jan 1, 2015- Dec. 31, 2015. If a period of time is not listed, the release is good only on the day it is signed. Typically, release forms also require a witness signature.

Monahan noted that often psychiatrists don't want to complete the Physician's Report form required in order to petition the court for guardianship because they feel it would harm the therapeutic relationship. If your child's psychiatrist will not sign, Monahan suggests having another psychiatrist/physician examine your child.

Monahan urged parents and family members to stay involved in their adult child's lives despite the many challenges of mental illness.

"The people you see on the street, their family members have given up," he said.