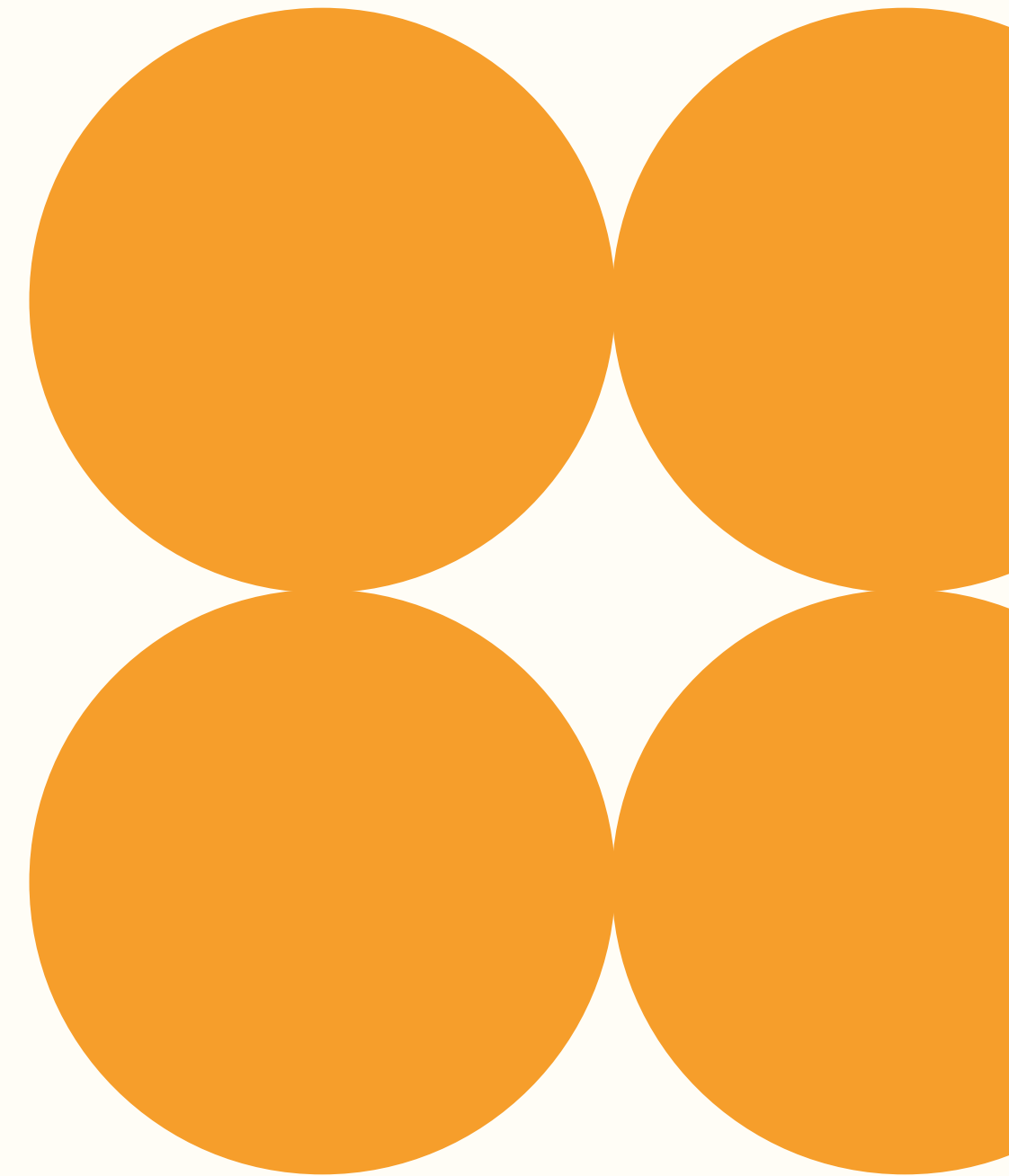


MLP Fundamentals Group Coaching Sessions:

Information-Sharing and Privacy Essentials

Session 1



March 14 at 2 PM ET / 11 AM PT

National Center for Medical  Legal Partnership

AT THE GEORGE WASHINGTON UNIVERSITY

Today's Moderator



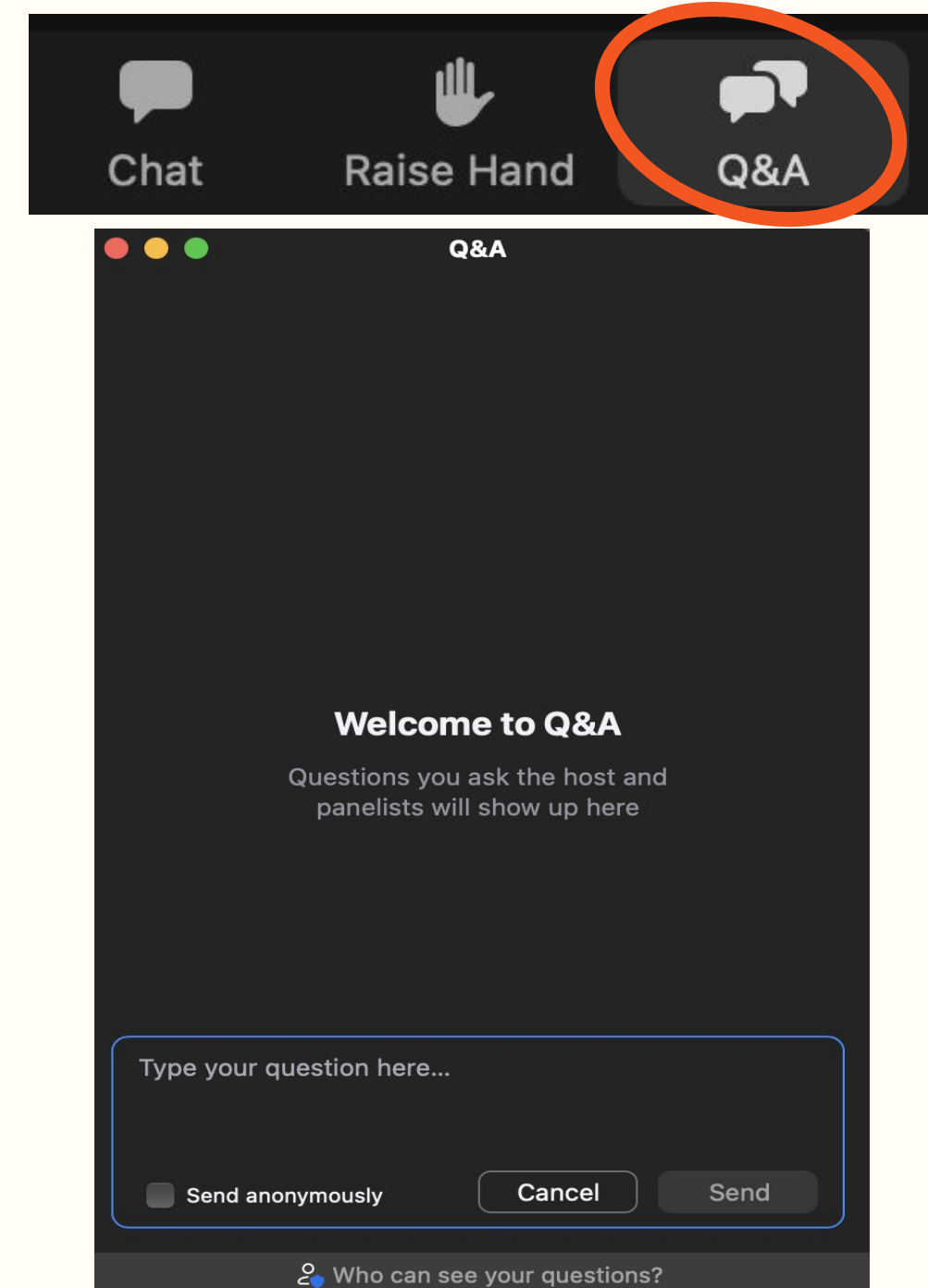
Bethany Hamilton, JD
Director
National Center for
Medical-Legal Partnership
(NCMLP)

National Center for Medical  Legal Partnership

AT THE GEORGE WASHINGTON UNIVERSITY

Housekeeping

- Attendees are muted throughout the session.
- Type questions into **Chat or Q&A** pane.
- Send a chat to the **Hosts & Panelists** for help.
- To activate captions, select “**Live Transcript**” and “**Show Subtitle.**”
- This webinar will be recorded and shared at medical-legalpartnership.org/resources/





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Audience Poll

Poll Question: Let's find out who is in the audience today.



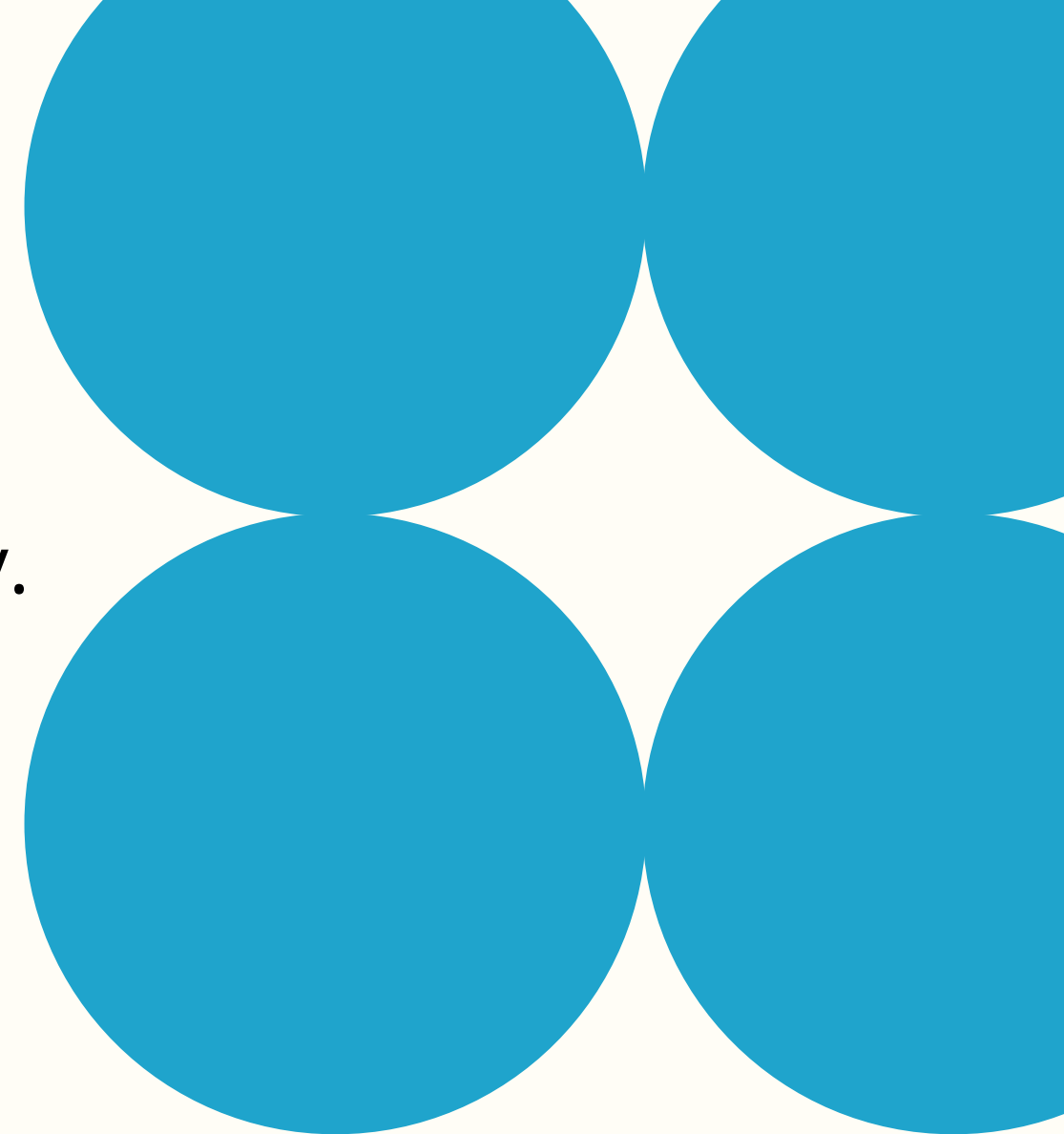
What type of organization are you from?

- Health care
- Legal services
- Academia
- Other



Does your organization have an MLP?

- Yes
- No
- I don't know



Attendees will identify the concepts of information sharing in a MLP Setting

Attendees will gain a basic understanding of the principles of Protected Health Information and health related confidentiality principles

Attendees will gain a basic understanding of the tenets of legal confidentiality and how to apply those in a clinical setting through a MLP

Learning Objectives

National Center for Medical  Legal Partnership

AT THE GEORGE WASHINGTON UNIVERSITY

Today's Speakers



Jay Sicklick, JD

Visiting Assistant Clinical Professor
of Law, UCONN LAW
Director, Health Equity Clinic,
Hartford Hospital-UCONN Law MLP



**Lara Cartwright-Smith, JD,
MPH**

Associate Professor;
Program Director, MPH in Health Policy
Department of Health Policy and
Management
The George Washington University School
of Public Health



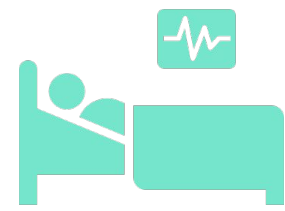
Keegan Warren, JD, LLM

Executive Director,
Institute for Healthcare Access at
Texas A&M Health

Define MLP

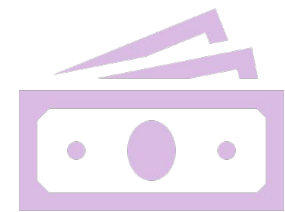
- + Medical-legal partnerships integrate the unique expertise of lawyers into health care settings to help health care providers and systems address the root causes of poor health outcomes.
- + MLPs address “health-harming legal needs” for individuals and systems by partnering with healthcare providers through interdisciplinary collaboration.

Quality Aims of MLP



Improving Patient Outcomes

- MLP addresses non-medical drivers of health that contribute to avoidably poor health outcomes for individuals and populations.



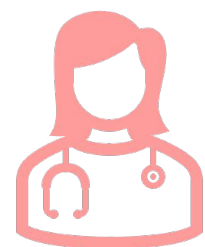
Reducing Costs

- MLP reduces avoidable admissions and emergency department visits for patients with diverse care needs.



Improving the Patient Experience

- In addition to reducing stress, MLP makes patients more comfortable with whole-person care and enhances accuracy and depth of the social history that impacts treatment.



Improving the Provider Experience

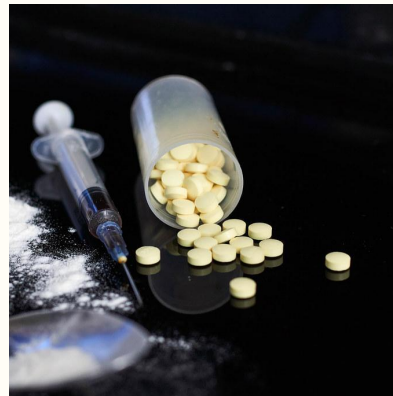
- MLP reduces burnout borne of feelings of helplessness around offering meaningful options for health-related social needs.

Many Relevant Laws and Regulations



HIPAA

HIPAA ensures the protection of health information and mandates privacy standards for healthcare providers, plans, clearinghouses, and business associates.



Part 2

The regulations in this part impose restrictions upon the use and disclosure of substance use disorder patient records.



FERPA

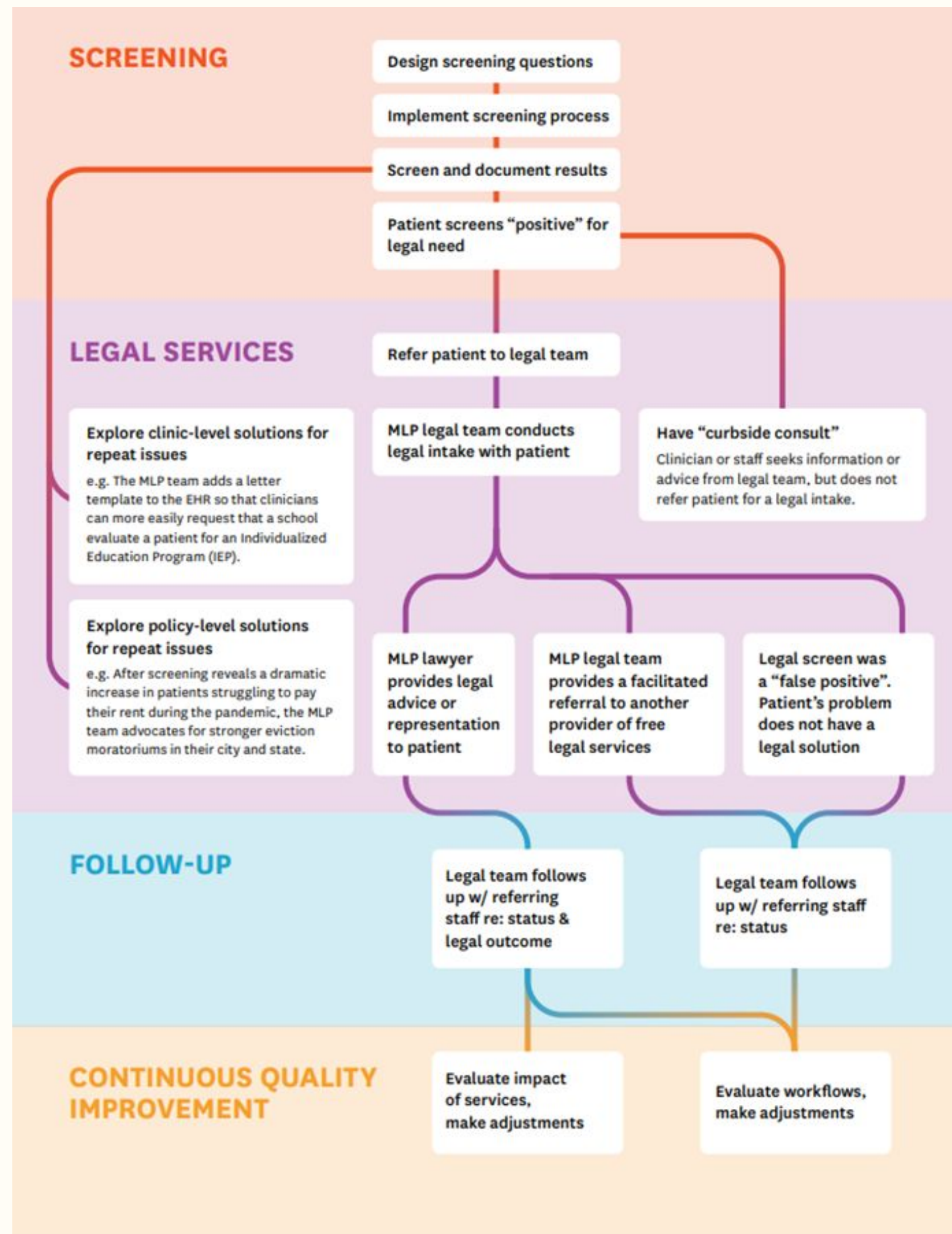
FERPA protects the privacy of student education records and provides rights to students and parents regarding their information.



State Laws

Understanding and complying with other statutes and regulations is crucial for organizations to avoid legal penalties and ensure privacy.

Screening & Service Delivery Flowchart



Tip: Map Incidents of Information Use and Disclosure



Key Stakeholders in Ethical Information-Sharing in MLPs



Clinicians

Clinicians are essential stakeholders who ensure that patients receive comprehensive care, including legal expertise when needed.

Legal Professionals

Attorneys, paralegals, legal assistants, and law students play a vital role in MLPs by providing legal care and integrating their expertise throughout the continuum of care.

Social Care Workers

Social care workers assist patients in navigating healthcare and legal systems, ensuring that they receive appropriate support.

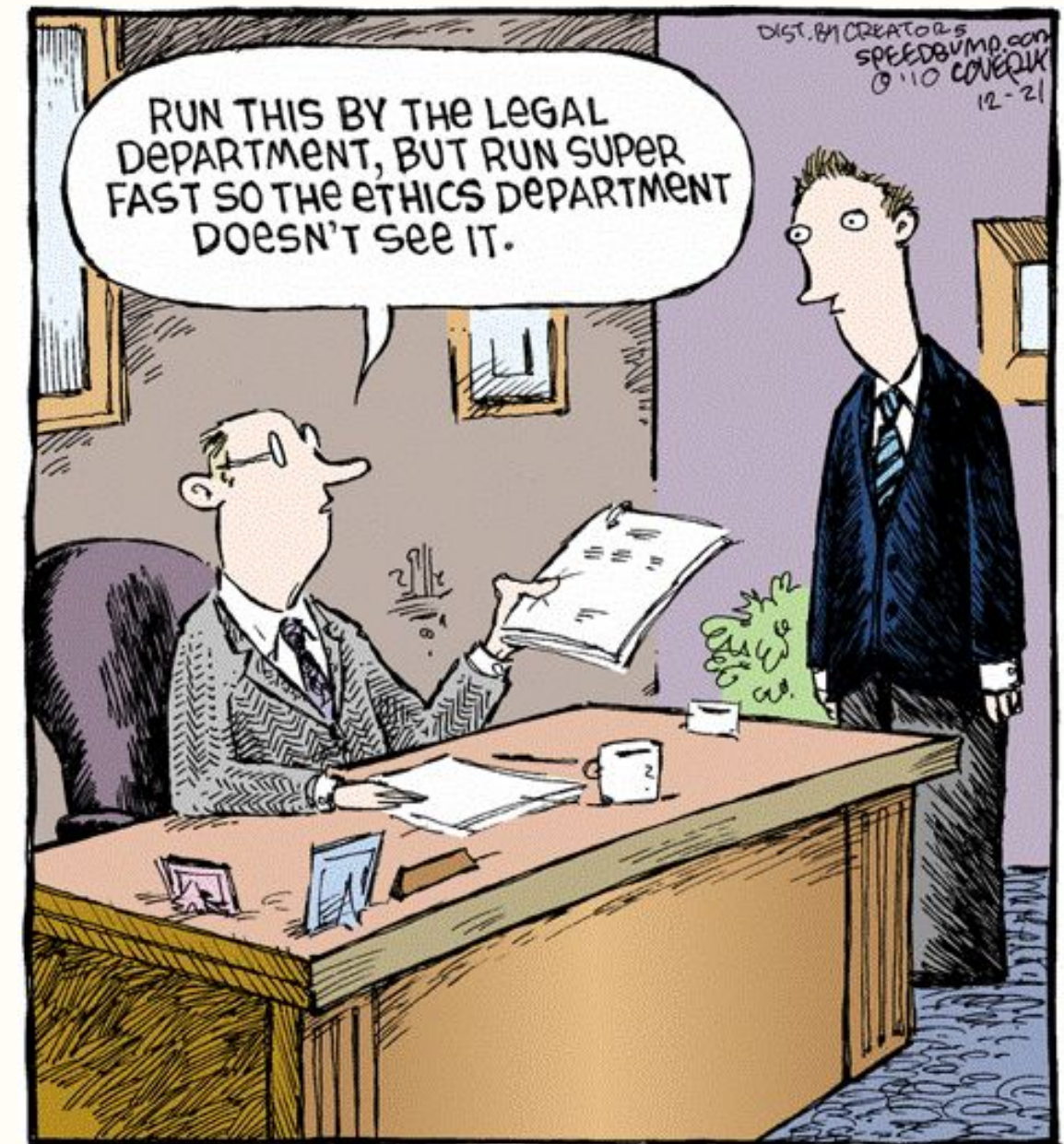
Patients

Patients are central to MLPs, as their needs and rights drive the integration of healthcare and legal care.

Authorization: A Common Professional Value

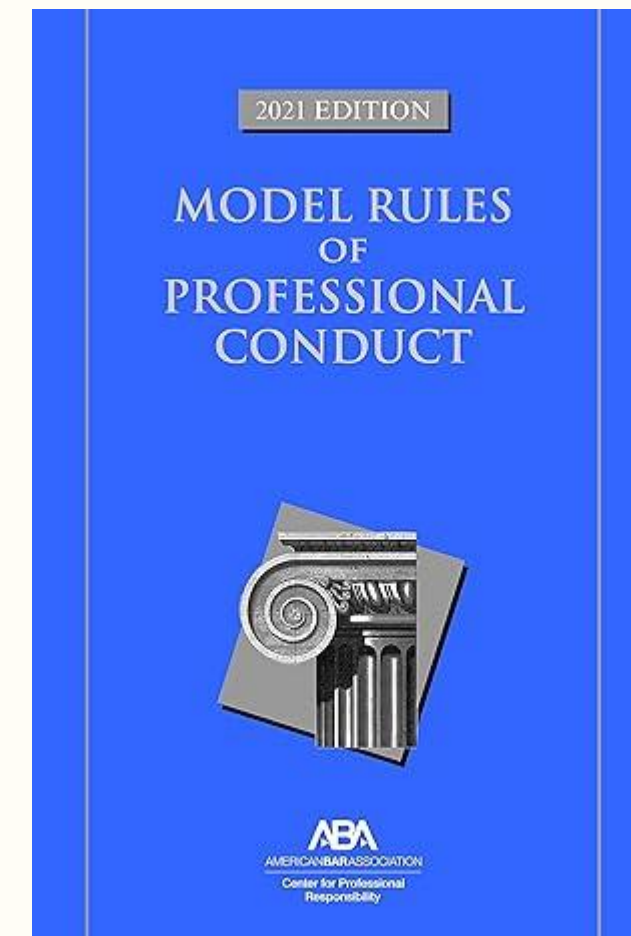


Legal Ethics Professional Responsibility



Rule 1.6: Confidentiality of Information

- (a) A lawyer shall not reveal information relating to the representation of a client unless
- the client gives informed consent,
 - the disclosure is impliedly authorized in order to carry out the representation,
 - or the disclosure is permitted by paragraph (b).



Rule 1.6: Confidentiality of Information

- (a) A lawyer shall not reveal **information relating to the representation** of a client unless
- the client gives informed consent,
 - the disclosure is impliedly authorized in order to carry out the representation,
 - or the disclosure is permitted by paragraph (b).

- applies not only to matters communicated in confidence by the client, but also to all information relating to the representation, whatever its source¹
- broader than attorney-client privilege
- in many states, may include the fact of representation (i.e., the client's identity)

¹ Model Rules of Prof'l Conduct R. 1.6 cmt. [3]

Rule 1.6: Confidentiality & Informed Consent

- (a) A lawyer shall not reveal information relating to the representation of a client unless
- the client gives informed consent,
 - the disclosure is impliedly authorized in order to carry out the representation,
 - or the disclosure is permitted by paragraph (b).

□ Rule 1.0(e): “Informed consent” denotes the **agreement** by a person to a proposed course of conduct **after the lawyer** has communicated **adequate information** and explanation about the **material risks** of and **reasonably available alternatives** to the proposed course of conduct.

Rule 1.6: Confidentiality & Implied Auth.

- (a) A lawyer shall not reveal information relating to the representation of a client unless
- the client gives informed consent,
 - the disclosure is impliedly authorized in order to carry out the representation,
 - or the disclosure is permitted by paragraph (b).

- Usually discretionary, implied authorization applies when disclosure is appropriate to accomplish the objectives of the representation agreed to between the lawyer and the client.
- In some states, “foreseeability” is the test.
- Attorneys generally may speak with other legal team members without specific consent, unless a client has directed otherwise.

Rule 1.6: Implied Auth. & Office-sharing

- (a) A lawyer shall not reveal information relating to the representation of a client unless
- the client gives informed consent,
 - the disclosure is impliedly authorized in order to carry out the representation,
 - or the disclosure is permitted by paragraph (b).

- Office-sharing amongst legal teams is generally permissible.
- Office-sharing with non-lawyers is permitted in some states but requires careful adherence to confidentiality, security, and conflicts rules.
 - Legal teams must be careful to accurately represent their affiliations.¹

¹ See ABA Formal Opinion 507 (July 2023).

Rule 1.6: Confidentiality & Harm Exceptions

- (a) A lawyer shall not reveal information relating to the representation of a client unless
- the client gives informed consent,
 - the disclosure is impliedly authorized in order to carry out the representation,
 - or the disclosure is permitted by paragraph (b).

- 7 circumstances concerning disclosures adverse to the client that are broadly about harm prevention

Rule 1.6: Confidentiality Varies by State

- (a) A lawyer shall not reveal information relating to the representation of a client unless
- the client gives informed consent,
 - the disclosure is impliedly authorized in order to carry out the representation,
 - or the disclosure is permitted by paragraph (b).

□ **Resource:** American Bar Association, CPR Policy Implementation Committee, Variations of the ABA Model Rules of Professional Conduct (March 2023), https://www.americanbar.org/content/dam/aba/administrative/professional_responsibility/mrpc-1-6.pdf.

Rule 1.1: Competence

A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.

- includes understanding relevant technologies used to share information with medical partners¹
- includes security best practices²
- includes staying informed about developments in privacy laws (e.g., HIPAA) that affect MLP information-sharing

¹ See Cmt. 8. See also ABA Formal Opinion 512 (July 29, 2024) (addressing the use of generative AI).

² E.g., Press Release, Dep't. of Justice, Manhattan U.S. Attorney Announces Arrest Of Macau Resident And Unsealing Of Charges Against Three Individuals For Insider Trading Based On Information Hacked From Prominent U.S. Law Firms (Dec. 27, 2016) (admonishing law firms view U.S. v. Hong as "a wake-up call" because of the valuable information law firms hold), available at

<https://www.justice.gov/usao-sdny/pr/manhattan-us-attorney-announces-arrest-macau-resident-and-unsealing-charges-against>.

Rule 1.18: Duties to Prospective Client

(a) A person who consults with a lawyer about the possibility of forming a client-lawyer relationship with respect to a matter is a prospective client.

(b) Even when no client-lawyer relationship ensues, a lawyer who has learned information from a prospective client shall not use or reveal that information, except as Rule 1.9 would permit with respect to information of a former client.

□ Important note in Rule Comment: “A person becomes a prospective client by consulting with a lawyer about the possibility of forming a client-lawyer relationship with respect to a matter. Whether communications, including written, oral, or electronic communications, constitute a consultation depends on the circumstances.”

Privacy and Confidentiality of Protected Health Information (PHI)



The HIPAA Rules (Privacy, Security, Enforcement, Breach Notification) are federal regulations that govern protected health information (PHI) held by covered entities and their business associates.

Core concepts:

- Covered entities = healthcare providers, health plans, and healthcare clearinghouses.
- Business associates = entities that provide services on behalf of a covered entity that require them to receive PHI.
- PHI = health information about an individual that identifies the individual and was created or has been obtained by a healthcare provider, health insurer, healthcare clearinghouse, or employer.
- Identifiable = includes any of eighteen specific identifiers about the individual or if there is a reason to believe that the information could be used to identify the individual.

Privacy and Confidentiality of PHI (cont.)



Outside the scope of HIPAA:

- Information that is not PHI.
- Information that has been de-identified.
- Information that is not held by a covered entity or business associate.

Once information has been disclosed to a third party at the direction of a patient, with their authorization, or without authorization (as permitted by law), it is no longer protected by HIPAA.

Privacy and Confidentiality of PHI (cont.)



HIPAA requires patients have access to their health information and to direct that it be given to a specified third party.

HIPAA allows, but does not require, other disclosures of PHI for certain purposes, such as treatment, payment, healthcare operations, public health reporting, compliance with state law requirements, etc. Organizations may have internal policies and procedures governing these “permissive” disclosures.

Privacy and Confidentiality of PHI (cont.)



State Laws: HIPAA Preempts less protective state laws. State laws that provide patients with stronger rights of access to their information or stronger privacy protections are not preempted by HIPAA.

States can prohibit disclosure that HIPAA would otherwise allow.

- E.g., Texas Medical Privacy Act.
 - Requires providers to obtain patient authorization for disclosures other than treatment, payment, healthcare operations, certain insurance functions, or as required by law.
 - Applies beyond covered entity to include any person engaged “in the practice of assembling, collecting, analyzing, using, evaluating, storing, or transmitting protected health information.”
 - Other states have enacted [consumer privacy laws](#) that govern health information held by non-CEs.
 - Requires the use of a specific form for patient authorization.

States cannot restrict a patient’s right to access their own information.

Privacy and Confidentiality of PHI (cont.)

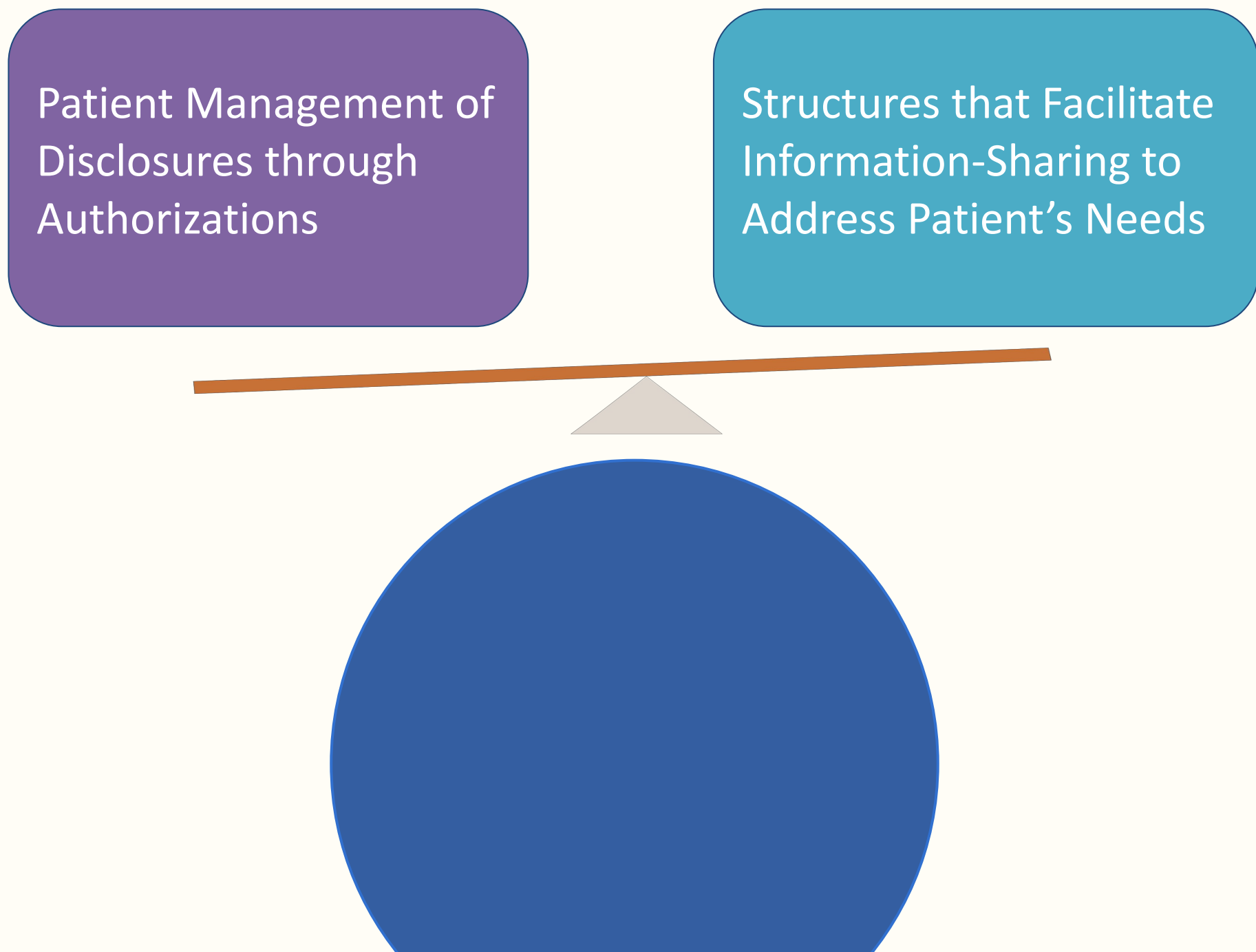
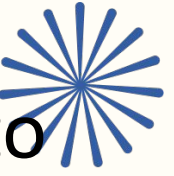


Treatment: broad discretion to disclose for treatment without patient's authorization; no minimum necessary standard. Defined as “the provision, coordination, or management of health care **and related services.**”

HHS OCR has issued [guidance](#) addressing disclosures to social service providers to provide services that support health and health care:

- “A health care provider may disclose a patient’s PHI for treatment purposes without having to obtain the authorization of the individual. Treatment includes the coordination or management of health care by a health care provider with a third party. Health care means care, services, or supplies related to the health of an individual. Thus, health care providers who believe that disclosures to certain social service entities are a necessary component of, or may help further, the individual’s health or mental health care may disclose the minimum necessary PHI to such entities without the individual’s authorization. For example, a provider may disclose PHI about a patient needing mental health care supportive housing to a service agency that arranges such services for individuals.”
- In the same guidance, OCR noted that a patient could authorize disclosures to a broad class of service providers: “[P]roviders could in one authorization identify a broad range of social services entities that may receive the PHI if the individual agrees.”

Privacy and Confidentiality: Balancing Needs



Although providers may have more discretion to disclose information to support patient's health than they typically exercise, ethical principles require that patients direct how their information is shared (with whom, for what purpose, and what information).

Patients should be at the center of information sharing decisions. In addition to respecting patient autonomy, this supports trust between provider and patient, and between lawyer and client. Patients also have the ultimate control over their information under HIPAA. What is the right balance between self-determination, protection of privacy, and administrative processes that may become barriers?

MLP Information Sharing Examples and Considerations



CASE EXAMPLES

Case Example #1

MLP attorney in a healthcare setting receives a referral from a physician partner who asks the MLP attorney to “address the legal problem,” which revolves around a housing conditions issue.

- A. If the MLP attorney “resides” in the healthcare setting (e.g. has office in the clinic where clinicians practice and patients are seen), may the physician share protected health information with the MLP attorney? If not, what prevents the sharing? If so, what prerequisites, if any, must occur for the physician to do so?
- B. If the MLP attorney receives the referral and conducts an intake with the patient/prospective client, may the attorney share information learned from the patient/prospective client back to the physician and the physician’s colleagues? *At the very least, can the MLP attorney inform the physician that the intake has taken place and the case is being evaluated?*

MLP Information Sharing Examples and Considerations (cont.)



CASE EXAMPLES

CASE EXAMPLE #2

- A. In case example #1, MLP attorney assesses a case referred by MLP physician and agrees to represent the client in the housing conditions matter. During the course of representation, MLP attorney receives confidential information about client that may be considered adverse or detrimental to client's relationship to medical providers (e.g., client admits to substance use contrary to information provided by physician in the referral). May the MLP attorney share this information with the physician? What caveats should be considered before/while sharing this information ?
- B. MLP Attorney decides to file an action in court seeking injunctive relief and a rent abatement as per the state's statutory scheme. May the attorney share this information with physician in the clinic?

MLP Information Sharing Examples and Considerations (cont.)



CASE EXAMPLES - Points to Consider When Evaluating Information Sharing

A. Attorney Confidentiality - Case Example #1

- a. Governed by Model Rule (or state specific) 1.6: *(a) A lawyer shall not reveal information relating to the representation of a client unless the client gives informed consent, **the disclosure is impliedly authorized in order to carry out the representation** or the disclosure is permitted by paragraph (b).*
- b. Do you have explicit authorization to share information from the prospective client/patient (a good idea) vs. implicit? In writing? Information generally known (or already known by the clinicians)?
- c. Bilateral release of information vs. one-way HIPAA compliant Release

MLP Information Sharing Examples and Considerations (cont.)



CASE EXAMPLES - Points to Consider When Evaluating Information Sharing

A. Attorney Confidentiality - Case Example #2: Guess What I Learned Today?

- a. What is your guide for information sharing?
 - i. Rule 1.6
 - ii. Explicit consent from the client
 - iii. Implicit Authorization (also Rule 1.6)
 - iv. Information known to the public (filing a Complaint or publicly accessible document)
 - v. Exceptions to Rule 1.6 (rare but possible - client's actions prompt a response per Rule 1.6(b) (i.e. death/substantial bodily harm/harm to property or financial interests))

Questions?

**Please use the chat or Q&A function
to post questions!**

MLP Fundamentals Group Coaching Sessions: Information-Sharing and Privacy Essentials

Upcoming Sessions



Session 2 - March 28 at 2PM ET



Session 3 - April 4 at 2PM ET

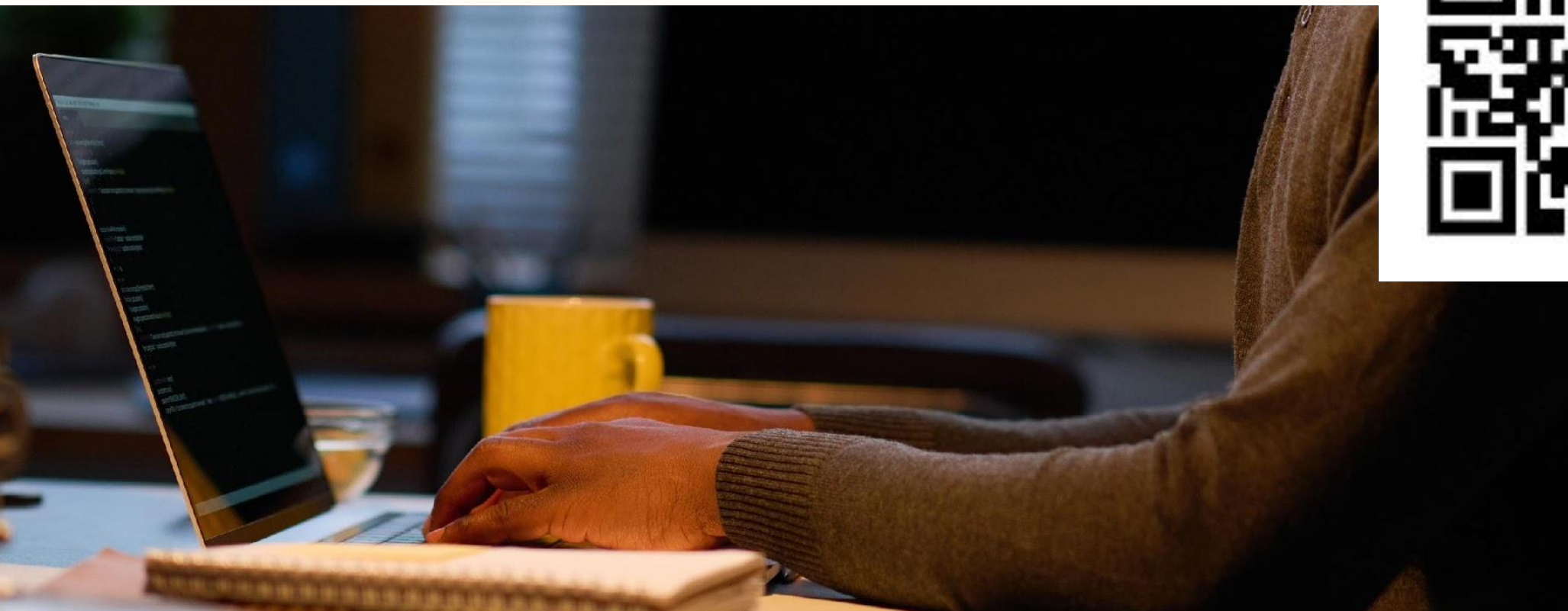


Session 4 - April 11 at 2PM ET



Register Now!

<http://tiny.cc/rn8d001>

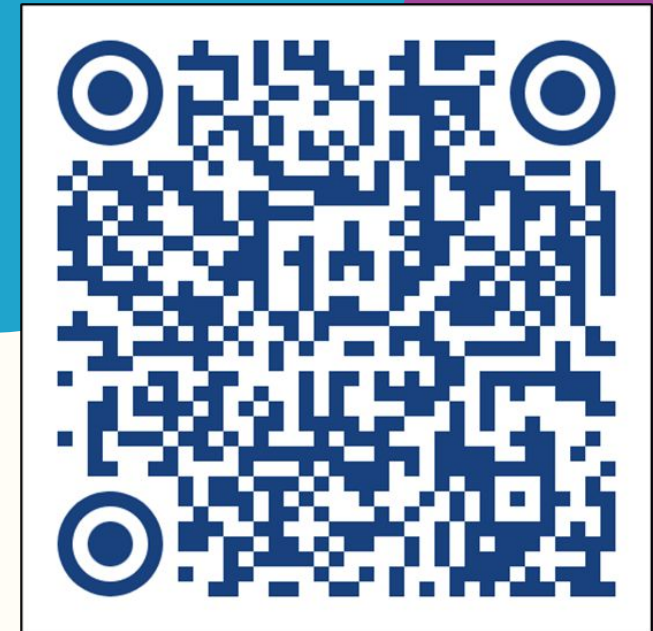


Other Training Webinars

+ **Improving Maternal Health Access and Outcomes Through Medical-Legal Partnership** – March 20, 2025, at 2 PM ET

+ **MLP in Action Webinar Series (Part 1): Understanding and Addressing the Health-Related Legal Needs of Older Adults and their Families** -
March 26, 2025, at 2.30 PM ET

+ **Getting the Funding You Need: Building Effective Relationships & Pitches** – Sessions will be held weekly on Wednesdays from April 2, 2025 through April 23, 2025 (11 a.m. – 12:30 p.m. PT / 2 p.m. – 3:30 p.m. ET)



Thank You

Please take a moment to complete our post-session evaluation survey!

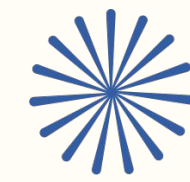
<https://www.surveymonkey.com/r/P57C6YY>

A link to the survey is also in the chat.



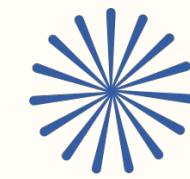
Contact us for assistance

For more information,
contact us at
ncmlp@gwu.edu



Upcoming Trainings

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