

EAST STATE

MIND

THE MERRILL WOLFE MENTAL HEALTH POLICY INSTITUTE

# Question 1:

Two officers responding to a call find a person threatening to commit suicide or harm his mother. One officer calls the local mental health center and asks if the person is currently a patient at the Center.

Can the Center can give the officer this information

Under federal law? T or F

Under state law? T or F

## Question 2

Treatment staff from the jail call the local hospital to ask for the name of the medication a recently booked person is taking.

Can the hospital can provide this information

Under federal law? T or F

Under state law? T or F

## Question 3

Your client appears to lack the capacity to make a decision about treatment and a family member is asking you to provide her with detail about the client's current medication.

Can you provide this information?

Under federal law? T or F

Under state law? T or F

# Today



**Life without acronyms is hardly worth living...**

# Definitional issues...

- Privacy Act: “personally identifiable information”
- HIPAA: “protected health information”
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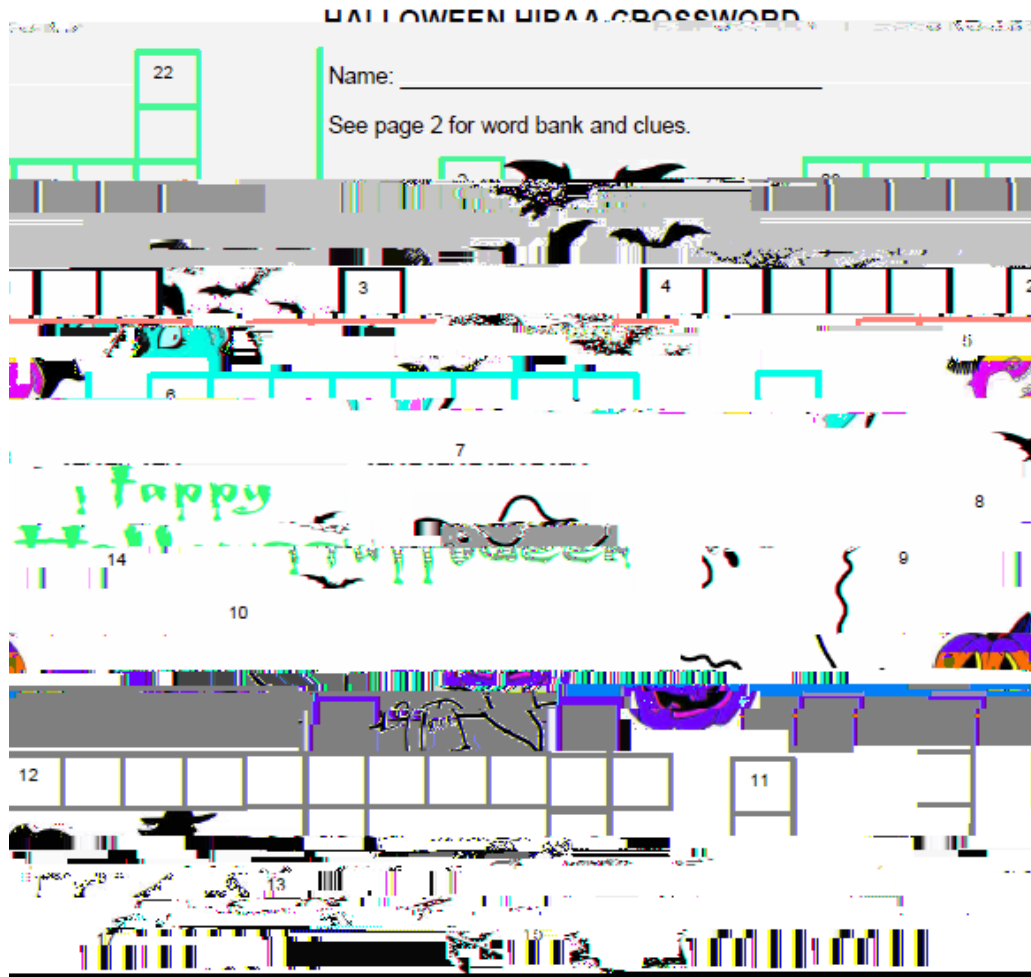




# HIPAA: What and Why?

- Federal regulation effective 2003
- National standard for privacy and security of protected health information
- Sets a floor and states can have stricter laws
- A couple of big issues:
- Misunderstanding of the law
- Confusion over when law applies
- Misplaced fear of liability

# How To Figure It All Out...



# Does “the law” let me disclose? It depends...Creating a framework

- Why do you want to share information?
- What type of information do you want to share?
- Who do you want to share it with?
- Who decides if you will share it?

# In thinking about these issues...

- Does the law **require** a particular disclosure or **prohibit** a particular disclosure?
- May I disclose something?
- Should I make the disclosure?

# *Why* Do You Want to Share

# A Cincinnati Example

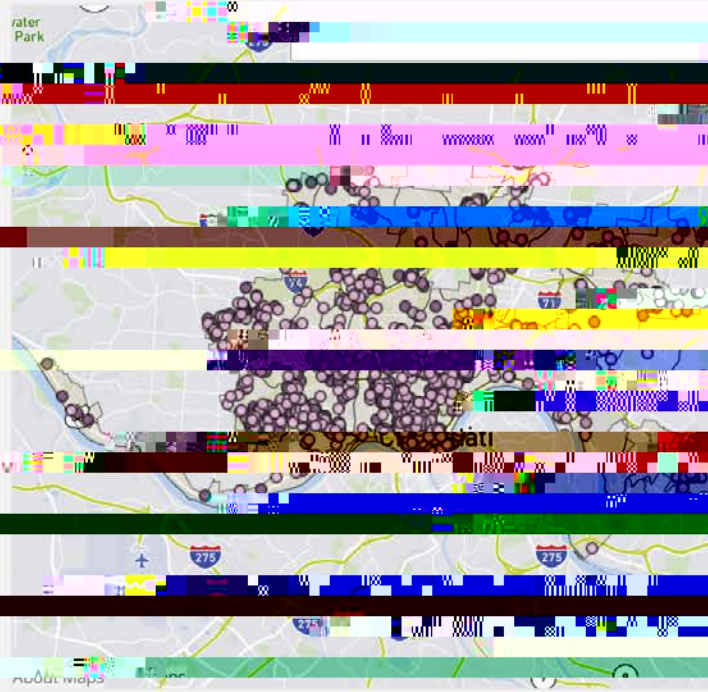
## Heroin Overdoses

Total Heroin Overdoses:

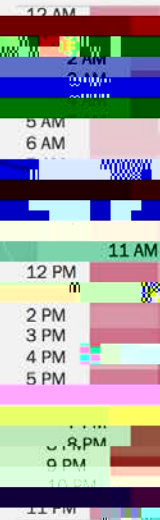
1,063

Number of Incidents per Neighborhood

AVONDALE	41
BOND HILL	11
CAMERON SHINGTON	37
CARTHAGE	28
CLIFTON	17
COLLEGE HILL	13
CORRYVILLE	13
CUF	25
DOWNTOWN	99
EAST END	11
EAST PRICE HILL	86
EAST WINDMILL HILLS	5
ENGLISH WOODS	1
EVANSTON	9
HARTWELL	1
HYDE PARK	6
KENNEDY HEIGHTS	2

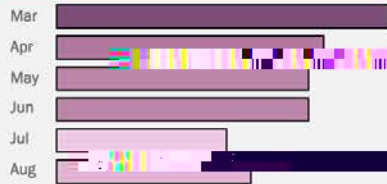


Number of Incidents During the Day (by Hour)



Number of Incidents by Month

Number of Incidents by Day



# What *types* of information?

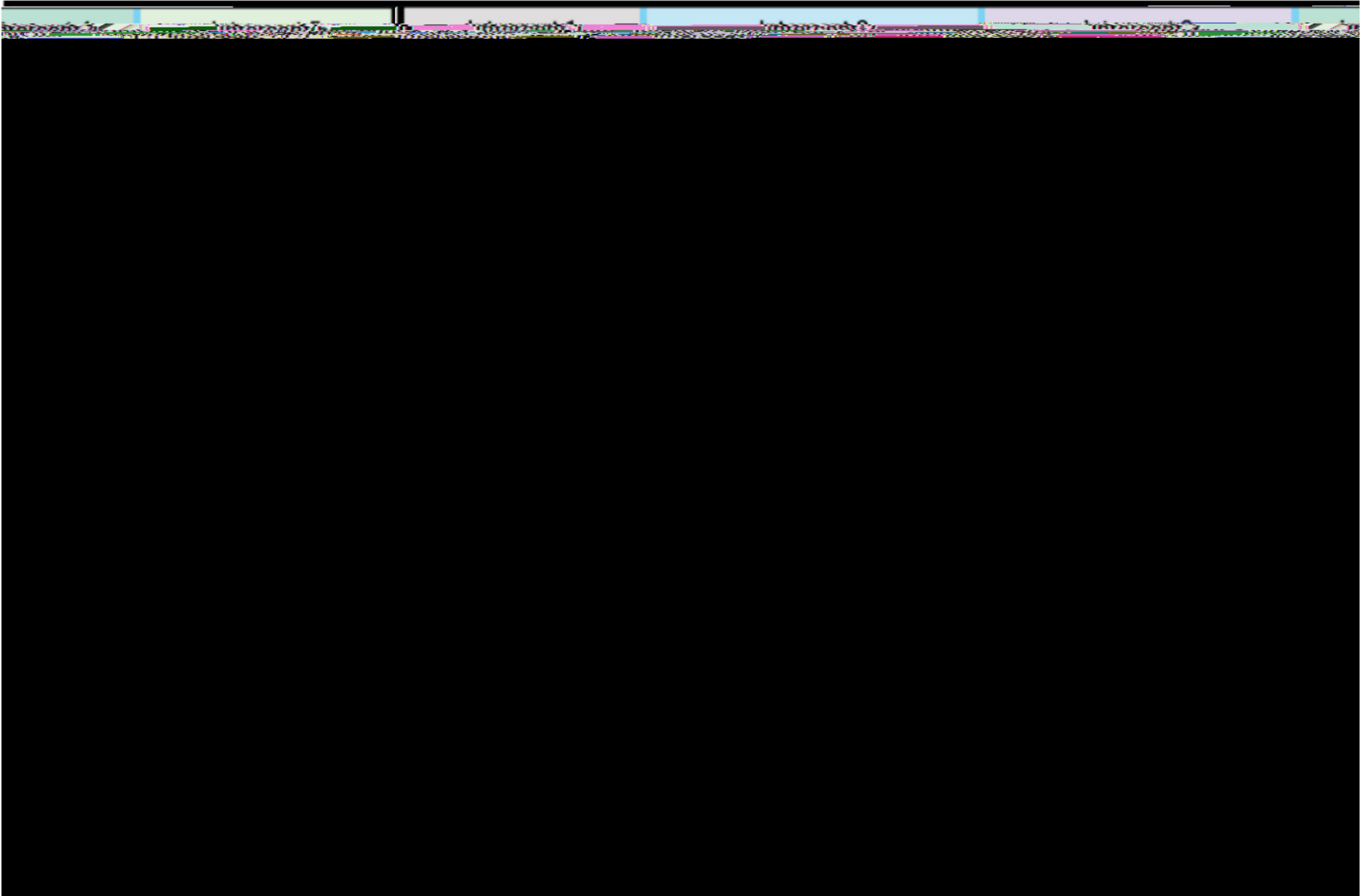
- Information that does not

# *Who Do You Want to Share it With?*

- Law enforcement on the street?
- The jail?
- Probation officers?
- A community treatment provider?
- A hospital emergency department?
- A researcher?



# Sequential Intercept Model and Data Sharing



# Under HIPAA, Covered Entities May Disclose PHI Without Consent

## A Health Care Provider

This includes providers such as:

- Doctors
- Clinics
- Psychologists
- Dentists
- Chiropractors
- Nursing Homes
- Pharmacies

...but only if they transmit any information in an electronic form in connection with a transaction for which HHS has adopted a standard.

## A Health Plan

This includes:

- Health insurance companies
- HMOs
- Company health plans
- Government programs that pay for health care, such as Medicare, Medicaid, and the military and veterans health care programs

## A Health Care Clearinghouse

This includes entities that process nonstandard health information they receive from another entity into a standard (i.e., standard electronic format or data content), or

# Preemption





# Under Florida Law

Consent is not required when a facility administrator “deems release to...an aftercare treatment provider...is necessary for treatment of the patient...(or) aftercare planning (394.4615)

Disclosure may be made without consent to “...attending physicians, or other health care practitioners and providers currently involved in the care or treatment of the patient...” (395.3025(4))

Confidentiality may be waived “when there is a clear and immediate probability of physical harm to the

# Some Recent 42 CFR Developments

- Disclosure for research expanded
- Patient can now consent to disclosure to providers in general
- Patient may request list of entities to whom disclosure made
- Attempting to clarify access for program audit purposes etc.
- <https://www.samhsa.gov/newsroom/press-announcements/201701131200>

# Florida Law Confidentiality SA Records

Appropriate disclosure may be made without consent

1. To medical personnel in a medical emergency.
2. To service provider personnel if such personnel need to know the information in order to carry out duties relating to the provision of services to an individual.

(397.501 (7)(a)(1)(2))

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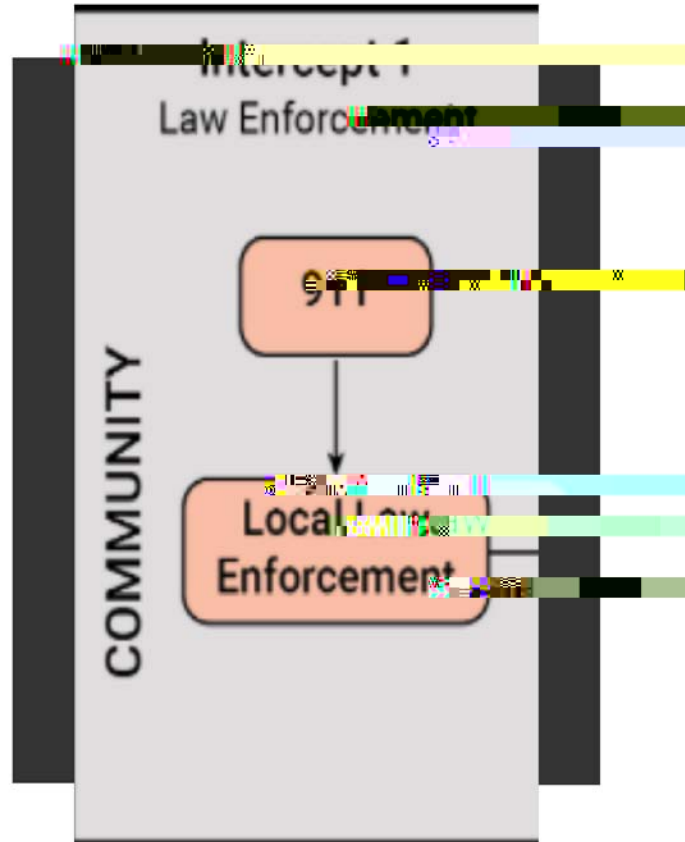
Can the Center can give the officer this information

Under federal law? T or F

Under state law? T or F



# Intercept 1: At Point of Intervention



-Officer without MHP present

**HIPAA:** Yes, "to prevent or lessen a serious and imminent threat to health or safety" or under "care and control" of the officer

-Officer with MHP present

Yes, the MHP is a covered entity

**FL Law:** Yes, to prevent harm (officer only)/continuity of care (if MHP present)

## Question 2

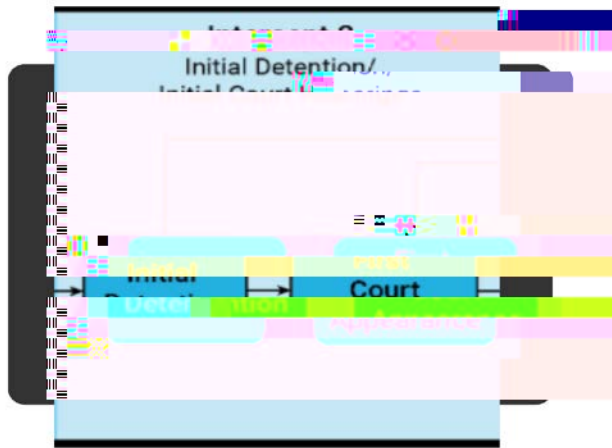
Treatment staff from the jail call the local hospital to ask for the name of the medication a recently booked person is taking.

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Under federal law? T or F

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# Intercept 2: In the Jail: May Treatment Provider Share PHI?



HIPAA, yes if for 1 of 4 purposes:

- Provide healthcare
- Ensure health and safety of inmates and others
- Protect transporting officer
- Promote law enforcement on premises
- For safety and security of correctional facility
- **Florida Law:** Yes, continuity of care

# Sharing Information with Families:

## Question 3

Your client appears to lack the capacity to make a decision about treatment and a family

# Florida Law (394.4615(9))

Nothing in this section is intended to prohibit the parent or next of kin...from requesting and receiving information limited to a summary of that person's treatment plan and current physical and mental condition.

Release...shall be in accordance with the code of ethics of the profession involved.



# Specifically...

“A psychiatrist may discuss the drugs a patient needs to take with the patient’s sister who is present with the patient at a mental health care appointment”

Sharing Information Related to Mental Health (HHS.gov, 3/22/2017)

# HIPAA and Disclosure: Families (and Payment)

- May share information with family members or others involved in care or for payment if

$\frac{3}{4}$  Patient does not object

$\frac{3}{4}$  Patient lacks ability to object but clinician believes is in patient's best interest

$\frac{3}{4}$  It is an emergency



# What May Be Disclosed? Examples...

- Drugs a patient needs to take
- Warning signs that may signal a developing emergency
- But note:
  -



# The HIPAA Security Risk Analysis Standard

*§164.308(a)(1): Security Management Process §164.308(a)(1)(ii)(A) –*

Conduct an accurate and thorough assessment of the potential risks and vulnerabilities to the confidentiality, integrity, and availability of electronic protected health information held by the covered entity.

# Risk Analysis

Scope: Potential risks and vulnerabilities to confidentiality, availability and integrity of all e-PHI that you create, receive, maintain or transmit

Identify and document potential threats and vulnerabilities

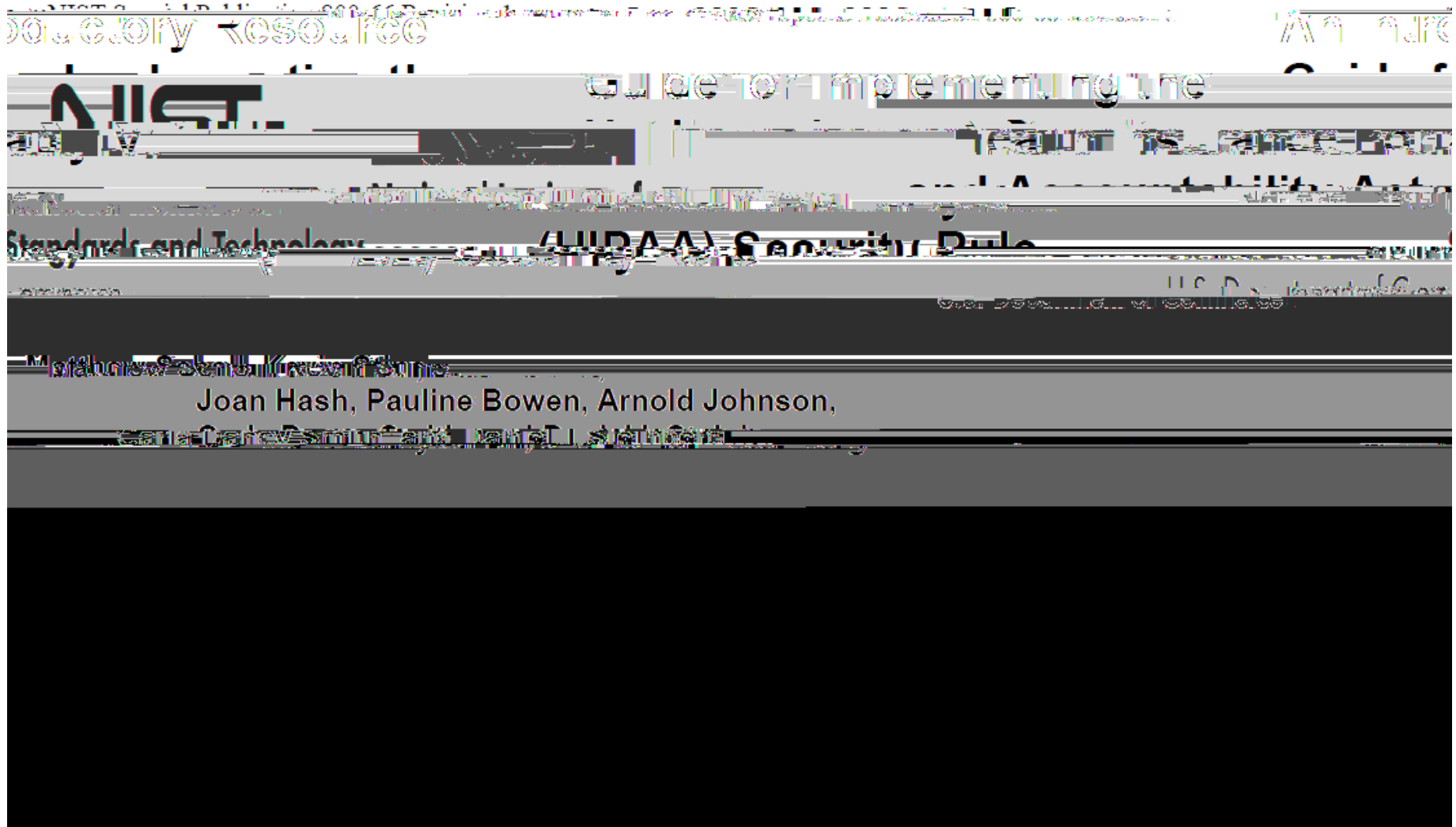
Assess current security measures

Determine likelihood and potential impact of threat occurrence as well as level of risk

Document all of this

<http://www.onlinetech.com/resources/references/tips-for-passing-a-hipaa-audit>

<http://www.hhs.gov/ocr/privacy/hipaa/administrative/securityrule/nist80066.pdf>





# True or False....

A police officer comes to your facility and asks whether Tex Smith, who is wanted for murder, has ever been a patient. You may disclose this information to the law enforcement officer:

True

F





# Permitted Disclosure: Law Enforcement

For identification and location of suspect, fugitive, missing person or material witness

Name and address

Date/place of birth

Social security number

ABO blood type

Type of injury

Date and time of treatment

Date and time of death (if applicable)

Distinguishing physical characteristics

DNA, dental bodily fluids **not** covered

<http://www.hhs.gov/hipaafaq/permitted/law/505.html>

# Florida Law

A hospital can provide identification and location information to a law enforcement official about an individual listed in the facility's directory, if the official asks for the individual by name and the individual has not opted out of the directory.

*Source:* HIPAA Requirements and Florida Law: Disclosures of PHI for Law Enforcement Purposes. Florida Hospital Association (2016)

# Family Educational Rights and

# Expanding the Use of Educational Records

- These final regulations allow FERPA-permitted entities to disclose PII from education records without consent to authorized representatives, which may include other state agencies, or to house data in a common state data system, such as a data warehouse administered by a central state authority for the purposes of conducting audits or evaluations of federal- or state-supported education programs

# The Marjory Stoneman Douglas High School Public Safety Act

- Creates a “Risk Protection Order Act” (790.401)
- Creates authorization for a “mobile suspicious activity reporting tool” (943.082) and threat assess96 -0 0 7T611-3 (C5 (e)0.7 (at)15a (e)0.7 s()2(

# Reporting/Confidentiality

- **All** care providers for students experiencing or at risk of SED or mental illness may share information to ensure service access or safety
- **Any** response to immediate crisis is to be

# Oh Lord, It's the Lawyers...



**You just violated HIPAA...Now What?**



# No Private Cause of Action...

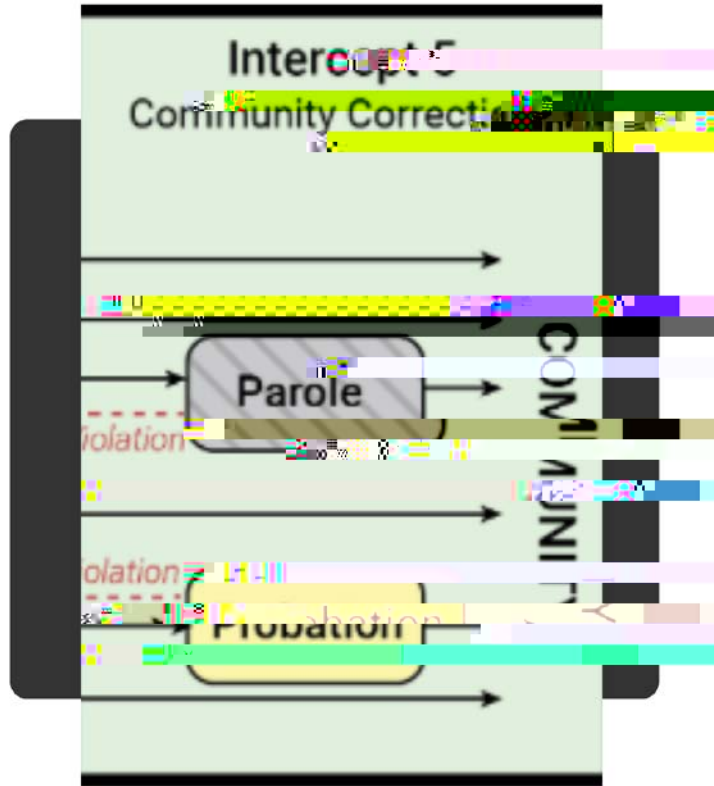
Under HIPAA (the courts are unanimous)

Florida law: Any facility or private mental health practitioner who acts in good faith in releasing



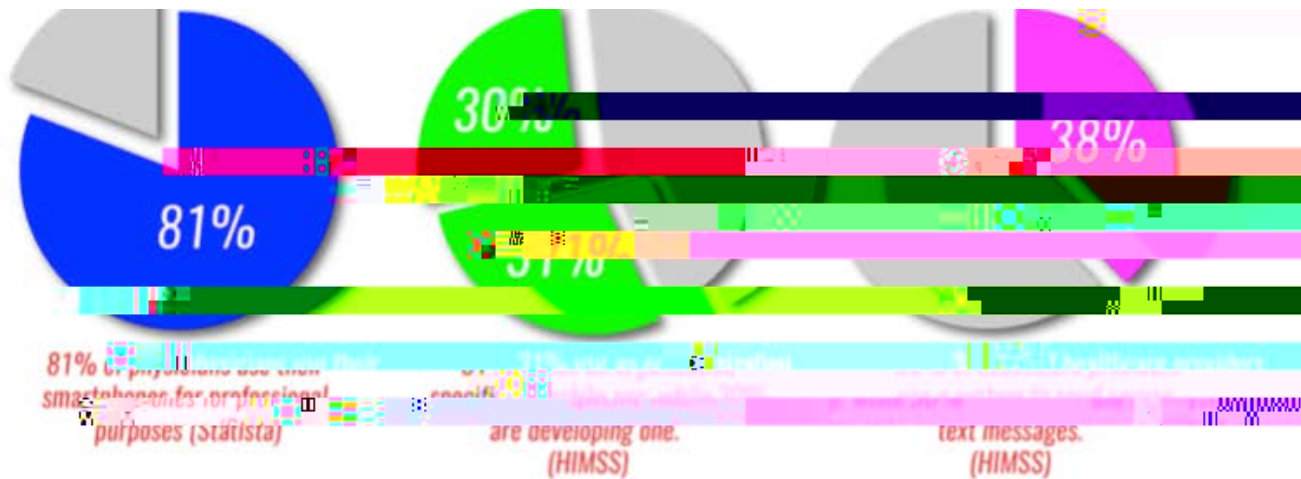
# The Problem of Mental Illness: In Dallas County

- Law enforcement calls with behavioral health identifier went from 10,319 in 2012 to 12,141 in 2015 (18% increase)
- 17% of inmates on a given day have severe behavioral health needs
- Over half of *these* individuals



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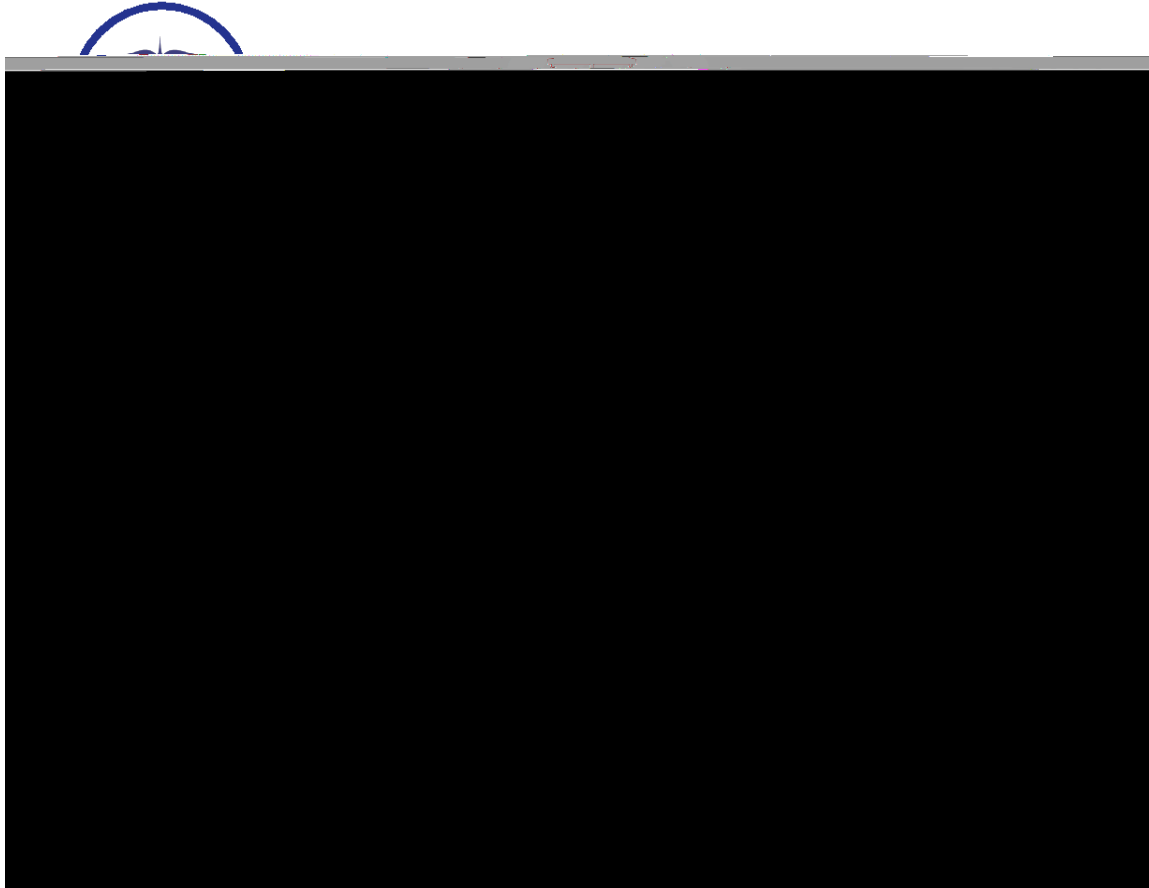
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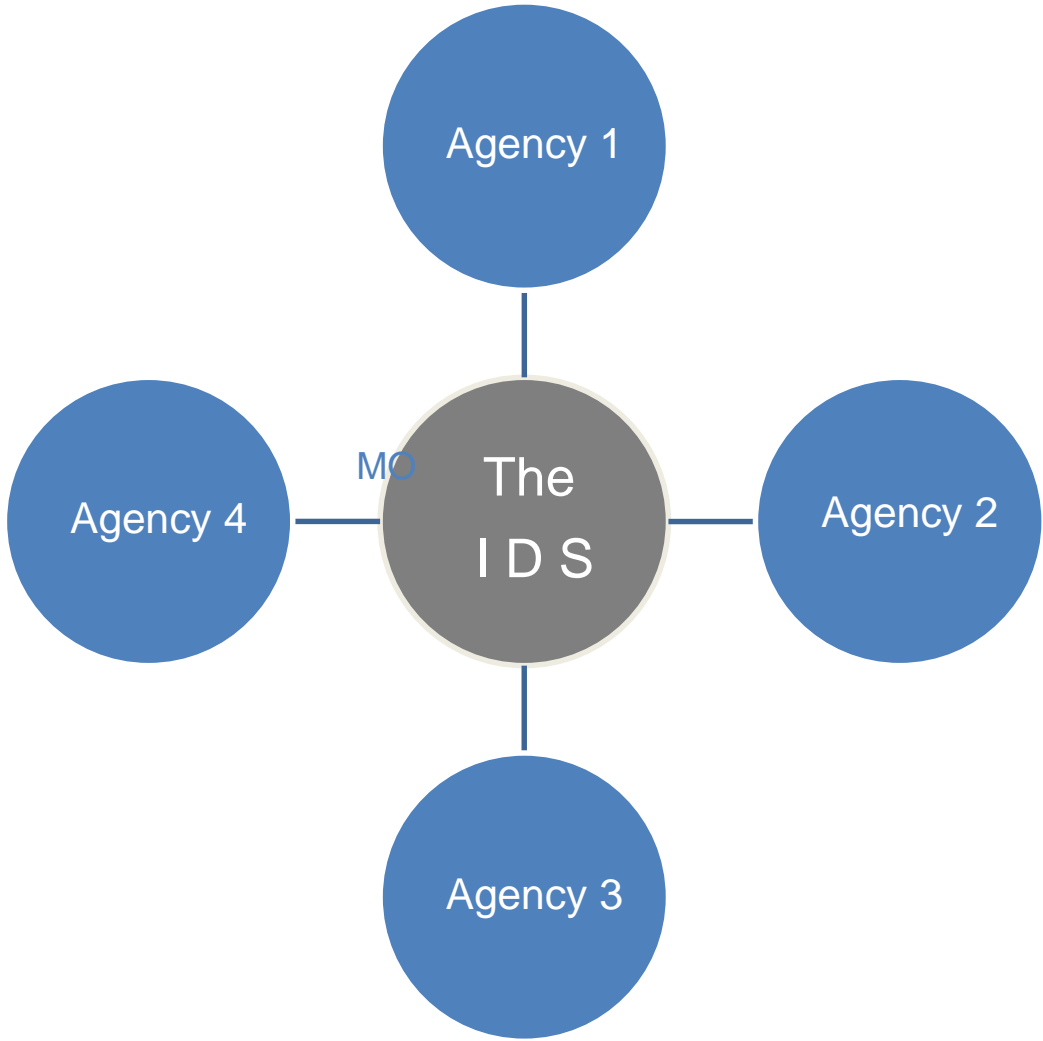


### Healthcare Data Breaches Between January 1st & July 31st, 2013



# Governance: When Creating An MOU..





# Some Links for Reference

- <https://www.hhs.gov/hipaa/for-professionals/faq> (good resource for questions on HIPAA maintained by HHS/Office of Civil Rights)
- <https://www.hhs.gov/hipaa/for-professionals/faq/disclosures-for-law-enforcement-purposes> (HIPAA and law enforcement)
- [https://www.bja.gov/Publications/CSG\\_CJMH\\_Info\\_Sharing.pdf](https://www.bja.gov/Publications/CSG_CJMH_Info_Sharing.pdf) (article by John Petrila and Hallie Fader–Towe on laws governing information sharing in CJ/MH collaborations)
- Florida Hospital Association: HIPAA Requirements and Florida Law: Disclosures of PHI for Law Enforcement Purposes
- <https://www.hhs.gov/sites/default/files/hipaa-privacy-rule-and-sharing-info-related-to-mental-health.pdf> (guidance on sharing mental health information with families and friends under HIPAA)
- <http://laws.flrules.org/2018/3> (text of the Marjory Stoneham Douglas High School Public Safety Act)
- <https://www.aisp.upenn.edu/resources/legal-agreements-and-other-supporting-documents/> (toolkits for data sharing agreements)



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