Table 3: Illustrative Verbal Responses from Open-Ended Items and Informal Interviews

Actions Already Being Taken
"We have made some slight changes in our patient consent to treat document …"
"Reviewed and modified language on the redisclosure policy."
Actions Contemplated
"Consents and changes with collaboration with PCPs and HIE."
"With our compliance department and our up folks, we have had general discussions about changes that are coming."
"We're probably going to continue doing what we do. It's already built into our system."
"Because we are a comprehensive agency, a lot of things are already in place that we don't need to change, and even though it's kind of loosening up in our favor, we aren't necessarily going to change anything. We're just going to rest a little easier."
Barriers
"Inconsistencies with how the regulations are interpreted and implemented,"
"There have been either gray areas, or areas difficult to understand when it comes to what the law states."
"We're kind of small, and we don't really have an IT department. So maybe we haven't set things up quite right with our EHR to be able to do what it's supposed to do … [The HIE is] figuring it out … by the time we get set up with the new electronic health record, hopefully they'll have more of the glitches worked out…. You're trying to take the lead from the higher ups and hopefully they'll figure it out before we need it."
"[With HIPAA] people already know that you can't do this...they call you first instead of just dropping a subpoena on you or showing up with a search warrant."
"It doesn't seem to stick with our own staff even. It's almost like people are so confused they just sort of check out and they're like ok whatever."
"But now you have all sorts of Part 2 information about that member kind of littered throughout your record. But it's not the necessary primary reason for treatment, although it may show up and staff documentation. And so I think the big question that everyone gets stuck on is, 'is that

considered Part 2?' and how do you then educate staff and clients around where that information falls and how do you protect it and release it."

"But it still doesn't go all the way. I mean, actually, honestly, what a lot of people would advocate for and what frankly I would support would be just completely to default to [HIPAA] at this point. Unfortunately, that's not a realistic option there are still advocacy interests. Like the Legal Action Center and such that think this is there but you know one reaction I get from a lot of outside stakeholders typically who've never heard of part two, because that's the other big problem with it is it's not publicized the public isn't aware of it. Everyone, whether you're in healthcare, not has heard of HIPAA. You know no one's heard of part two, unless you're deep in this even other healthcare providers have no idea what it is. If they're not in that space. But what you get is a lot of well this doesn't make any sense because most of the time people are using the fact that they're in treatment."

"But now you have all sorts of Part 2 information about that member kind of littered throughout your record. But it's not the necessary primary reason for treatment, although it may show up in staff documentation. And so I think the big question that everyone gets stuck on is, is that considered Part 2, and how do you then educate staff and clients around where that information falls and how do you protect it and release it when able. And it's those gray areas and that designated record set. I think that continue even with these changes, continue to be a little bit confusing."

Help / Resources

"Step-by-step guide of the changes and recommendations of correct implementation … would be useful."

"Lots of webinars for the provider community so we are on the same page. More clarification around the designated record set and when non-Part 2 agencies have a Part 2 program operating within—unable to segregate the records."

"A big reason why HIPAA has been so effective is because it is so widely known by people outside the healthcare space. A public information campaign targeted at these third parties would be beneficial …"

"So we figured we would hopefully get to see some good examples of templates for Part two organizations that reflect the changes that the Cures and the CARES act did make …"

"… there're no concrete tools or examples in terms of what language needs to be there and what doesn't. And so I'm hoping somebody will take the lead. Give that to us."

Tension Between Need for Confidentiality (Part 2) and

Disclosure to Facilitate Coordination of Care (Sec. 3221)

"… Our opioid treatment program is embedded within a larger whole-service behavioral health agency—we're a large behavioral health agency—so we have [an organization] medical records team. And so we follow their directive within the various departments and team … [They are] not anticipating a lot of changes … [see] it as very positive."

"… It's very clear, in fact, the CARES Act just reinforced [Part 2] that [SUD] treatment is not supposed to be used in criminal cases … it's getting treatment instead of incarceration, so they are trying to help coordinate the clients getting what they need. But at the same time they are law enforcement. So is it really coordination of care, and should they really be part of our team meetings and be getting updates regularly, and does the consent really cover that …?"

"Yeah, I think we'd want to leave that extra layer of protection" [regarding moving toward CARES Act rather than Part 2]

"We see it as a good change, and of course a challenging one …"

"So I would only want to provide it to other providers with patient's consent. I don't like the blanket. Reason being is can cause problems with employment, it could cause problems with housing, could cause problems with public services, you know, food stamps or welfare, whatever. I think it really infringes on their rights."

"Interwoven in the CARES act with the restriction lifting of some of the restrictions about redisclosure and being able to disclose information for specific...they aligned with HIPAA."

"It's hard for us as the professionals to be able to advocate for our clients and access the services that they need. Because it is so restrictive."

"You want a treatment team around the person and you want to be able to do the care coordination and to have, you know, very restrictive things that say, no, you can't talk to anybody about that."

"There's a release sign saying it's okay that we can do this coordination of care. But is it really coordination of care when it's, you know, you're not really caring we your this care because it's getting treatment instead of Incarceration, you know, so they are trying to help coordinate the clients getting what they need."

"And I certainly think that's important civil rights, you know, but I also think that some people don't have much health literacy."

"Force the HIPAA, you know that broad consent, and I'm like, I don't like this one iota."

"You know, reporting methadone—it's never been done before, it's like the sacred rule you know if there's any substance abuse information, that's private it's the facts and evidence, it's

like a whole other level on top of CFR 42 and you know it's not written in … it's not something we're rushing to do."

"You know, we've got one right now where the client was she has got PTSD and had horrible trauma issues and she hoards food and linens and things like that. No, she was never going to leave our property with that stuff because we knew she was doing it. And when it was time for her to discharge, we would know you can't take all those sheets and towels and whatever with you. But it got reported to the probation officer thing that was an ongoing issue with having to come and take things out of her room that she'd hoarded in different places. So they charged her with theft, and then they subpoenaed our staff to testify against her as witnesses to, you know, having found the extra linens in the back of her closet and it's like, Ah! So those are kind of situations and that's unique that's typically we don't have that kind of adversarial situation, but at the same time it's really not clear when. I would love to have more clarity on how The CARES act and 42 CFR part two, how it all works when you've got a contractual relationship with law enforcement. You're treating clients with substance use issues."

Granular Information Sharing as a Possible Solution

"I believe that the person should have control over the records and who should see the records and I certainly …"

"I think that's [generally] okay that people are allowed to parse out who they want the consent to go to or information to go to."

"We want people to feel like they have as much control as possible. And so that's a good thing."

"But there's still be if you got a lot of these requests and they started getting real finite about this provider, but not this one, this one, but not that one. Then the whole reason for TPO consent would be undermined and you'd also have real technological challenges implement …"

"Whenever there's any requests for records of any kind, we try to reach out to the client."