

H.E.A.T. Institute - HEAL Trafficking - Levitt Center Human Trafficking Response Protocols Health Systems Pilot Project Alameda County, California Final Status Report June 30, 2019

(Excerpt on Electronic Health Records)

Electronic Health Records and Human Trafficking ICD-10 Codes for Trafficking

On June 1, 2018, the National Center for Health Statistics (NCHS) at the Centers for Disease Control and Prevention (CDC) added new data collection fields for human trafficking. These ICD-10-CM codes went live October 1, 2018 and are available to document patient encounters and discharges occurring from October 1, 2018 through September 30, 2019. They include codes for suspected or confirmed “child sexual exploitation,” “adult forced sexual exploitation,” “child forced labor exploitation,” “adult forced labor exploitation,” and others. [See attached American Hospital Association Fact Sheet for more information.] Each individual institution has their own processes and time frames for uploading these new codes into their systems; no mandate for their use exists.

Per the U.S. Department of Health and Human Services Office of Trafficking in Persons, “the Office on Trafficking in Persons and the HHS Office on Women’s Health consulted with the CDC and health care provider stakeholders (e.g. American Hospital Association, HEAL Trafficking, International Center for Missing and Exploited Children) on strengthening data collection on human trafficking within health care settings. The new ICD-10 codes allow health care providers and hospitals to adequately differentiate victims of human trafficking from other abuse victims.”

The creation of these codes also allows, for the first time, data collection at the national level on the prevalence of human trafficking victims and survivors in health care settings, and health issues they experience. However, because not all hospitals or health care providers will use the codes, and because providers as well as billers and coders require training on human trafficking in order to understand use of the codes, any data collected will underestimate the prevalence of people who present to health care with indicators that they may be a human trafficking victim. In addition, research studies demonstrate that many victims are unable to access health services due to the control of their trafficker.

ICD-10 codes for human trafficking make it possible to track health outcomes for patients impacted by human trafficking. The codes also potentially allow for continuity of care in addressing the issue, because once a diagnosis is entered in a patient’s electronic health

record (EHR) other health care personnel seeing the patient within that EHR system will also see the diagnosis in the patient's problem list and in notes from prior encounters. Health care providers and staff need a mechanism through which they can document their concerns that a patient may be trafficked, particularly for patients who cannot or will not disclose their exploitation. Victims may visit emergency departments, urgent care, obstetricians-gynecologists, family planning clinics, and other health care settings multiple times,^{1,2} so one provider's concerns can be subsequently addressed by another if there is a safe and confidential process to use to communicate one's concerns. Use of the diagnostic code could be particularly helpful for emergency departments (EDs), which share data through the Emergency Department Information Exchange (EDIE), a software tool for proactively notifying EDs when high-utilization or special needs patients register. The information includes those patients' prior ED visit history, primary care provider information, and associated care plans.³

Other Mechanisms to Document Suspicion of Human Trafficking

However, more subtle documentation may be safer and less stigmatizing to the patient than utilization of ICD-10 codes, particularly in the absence of mandatory reporting requirements.*The *HEAL Trafficking Protocol Toolkit for Developing a Response to Human Trafficking Victims in Health Care Settings* (HEAL Toolkit) suggests that documentation of resources provided to the patient can serve as an indicator to other providers that there are concerns that the patient could be a victim of trafficking. For example, providers can write, "Gave patient National HT Hotline number" or "Referred to community agency X, shown HT brochure." Should a subsequent provider read the note of a colleague to learn about the patient's last visit, they will acquire this information, and can document the presence of continued concern if indicated. ICD-10 codes, on the other hand, become permanently embedded in the chart and may follow the patient indefinitely. This also becomes a problem when patient is labeled as an exploited or trafficked person but does not identify that way. Some will resent being labeled at all; many will recover from their situation and become "survivor thrivers" who are not in jeopardy. These patients are now burdened with a stigmatizing diagnosis that can bring negativity and frustration to encounters with health care providers, who may dwell on that issue rather than the patients' current identities, needs, and desires.

Thus, while there are benefits to the new codes, they also pose a risk, given the stigma, privacy, and potential legal issues they create. Use of the codes requires an understanding of their potential harms as well as consistent use of best practices in trauma-informed, patient-centered care. This includes considering the implications of suspected or confirmed trafficking codes placed on after-visit or discharge summaries. *Health systems should consider preventing sensitive diagnoses from appearing on discharge summaries.* Similarly, if a patient logs into a patient portal (such as MyChart with Epic), sensitive diagnoses should not be displayed.

In addition, any disclosure of medical records to a third party should limit the disclosure of human trafficking codes, unless the patient has given explicit permission to share this diagnosis. While a provider who is caring for a minor impacted by human trafficking may

think it will benefit a patient and their care team to list a human trafficking related ICD-10 diagnosis, use of the code could also put the patient in jeopardy. The parent or guardian of the minor, or someone posing as such, may request their records. If the code or its associated diagnosis is not removed from the records for its sensitivity, the victim may experience punishment, including physical violence, for having spoken to a health care provider about their exploitation—even if they did not. It is important to remember that intrafamilial human trafficking is frequently reported by survivors.

As noted in the HEAL Toolkit, because of the complexity of medical-legal issues around trafficking cases and great variation in state and local laws, guidelines for optimal documentation practices with potential victims should be developed in consultation with local prosecutors, defense attorneys, and advocates. Depending on the legal climate, entering more or less information in the patient's chart can either be harmful or helpful. Unfortunately, many EHR systems do not incorporate refined mechanisms to determine which confidential information gets shared when records are requested. Information in the medical record can potentially be harmful to the patient when their case goes to trial (e.g., if a sex trafficking victim contracts HIV, in some states they could be criminalized for the transmission of HIV). In many jurisdictions, crimes committed by trafficking victims while under the control of their trafficker will be prosecuted (e.g. a patient coerced to sell sex or use or sell drugs may still be charged with these crimes); therefore, health care providers should avoid entering information about potential criminal activity in the medical record.

The HEAL Toolkit also mentions that inclusion of survivor quotes in the medical record is often advised in cases of injury or sexual assault, but that such details about a human trafficking survivor's story may not be helpful. Because of their histories of trauma and complex trauma, which greatly impact memory, and because they are trained by their exploiters to lie, the accounts trafficking victims relay to health care providers may differ from what they share later, with other providers, or with law enforcement, case managers and attorneys. Should such inconsistencies ever come to light in a court case, the survivor's credibility would be jeopardized. Importantly, sensitive information in the medical record may or may not be redacted during a court hearing or trial depending on whether the state in which the crime occurred has a rape shield law, and if that state has determined that the rape shield law applies to trafficking victims. (A rape shield law is a law that limits a defendant's ability to introduce evidence or cross-examine rape complainants about their past sexual behavior.)

EHR Reforms at UCSF Benioff Children's Hospital Oakland

At UBCHO, to maximize the delivery of trauma-informed care, a multi-disciplinary antitrafficking working group, comprised of health care providers (physicians, nurses), social work, and mental health providers collaborated with the health information management and privacy team, Epic EHR analysts, risk management, and survivors to develop an HER tool called the Epic SafetyNet tool (Figure 1, below). Epic is the name of the electronic health record system used at the hospital, and the SafetyNet tool is built using Epic's Smart Form, a clinical decision support system that enables writing a multi-problem visit note while capturing coded information and providing sophisticated decision support

in the form of tailored recommendations for care.⁴ UBCHO's SafetyNet tool is 'internal facing' so even if medical records are requested, the information in SafetyNet is not subject to release. The system provides the capability for members of the health care team to turn on (and turn off) an alert banner that says SafetyNet, which has links to best practices. It collects demographic information and has built in screening/identification support for providers (currently the medical CSE-IT, a shortened version of West Coast Children's Clinic's Commercial Sexual Exploitation – Identification Tool; in the future it will also incorporate a labor trafficking-related tool). Social work consults and facilitated referrals to youth support services are built in to the system, including the community based agencies West Coast Children's Clinic (a mental health service provider); Bay Area Women Against Rape (BAWAR), a rape crisis center that provides services, counseling, and advocacy on a 24/7 basis; and Motivating, Inspiring, and Supporting and Serving Sexually Exploited Youth (MISSEY). The system faxes referral using a common referral form that WestCoast Children's Clinic, MISSEY and BAWAR developed with UBCHO during the protocol development process. This referral form is also the basis for the referral form created by Ruby's Place and Progressive Transitions. SafetyNet also incorporates a confidential care coordination section and has the ability to provide data reports, a feature lacking in some EHR systems. Currently, the SafetyNet tool can only be used on site at UBCHO.

Dr. Lela Bachrach, HEAL Trafficking's consultant for UBCHO as well as its internal hospital champion, notes that more work needs to be done to develop best practices for information sharing between institutions. The Epic SafetyNet tool does not show up via CareEverywhere, Epic's inter-institutional information sharing mechanism. However, providers can include a generic ICD-10 code on the patient's problem list, such as 'psychosocial stressors,' that could potentially trigger social work support at another institution where the patient presents, without compromising their privacy or stigmatizing them with a label.

Two other hospital systems involved in the pilot project, Highland Hospital and Kaiser Oakland, are initiating use of Epic EHR. Dr. Bachrach; Dr. Suzanne Lippert, a pilot project champion at Kaiser; and Hillary Larkin, PA, domestic violence and sexual assault response expert at Highland, met to discuss strategies for balancing the sharing of information through Epic with maintaining confidentiality of sensitive patient information. Dr. Nia Stallworth, a resident physician at Highland, is working with Dr. Bachrach to convene focus groups of survivor patients and clients to evaluate their experiences with the UBCHO SafetyNet system. The focus group process is expected to be completed in June 2019; this work will inform future data sharing among the hospitals. Meanwhile, Dr. Lippert is meeting with the Chief of Information Technology about designing an Epic Smart Form to flag factors and track patient care through the Kaiser Permanente system of northern California region. At Highland, Ms. Larkin has led use of the Domestic Violence Reporting and Referral tool, a novel tablet-based application, in conjunction with the Alameda County Family Justice Center. The tool is designed to fulfill California providers' mandatory reporting duty while simultaneously uploading reports to law enforcement, prosecutors and advocates. Ms. Larkin notes that as Highland prepares for implementation of

Epic, there is an increased focus on managing all the necessary reporting including to law enforcement, Alameda County Department of Children and Family Services, and the state of California.

Dr. Bachrach also highlights that some regions have developed MOUs to allow sharing of information between medical and non-medical providers involved in the care of commercially sexually exploited youth through multidisciplinary teams. For example, in Alameda County, the SafetyNet meeting involves collaboration between criminal justice, child welfare, education, and health care agencies and providers. Dr. Bachrach hopes that in the future, systems can be developed to share information, with the patient's permission, regarding which supports they are currently accessing, and to facilitate and streamline referrals.

Highland Hospital – Using EHR to Protect Survivors

Highland Hospital prides itself in the precautions it takes to keep information about survivors of sexual assault, domestic violence, and sex trafficking protected. Through the work of Kio Pak, Program Coordinator of Highland's Sexual Assault Response and Recovery Team (SARRT), the program has obtained funding to provide a secure, confidential EHR that is separate from the hospital's mainstream EHR, which protects data stored there from being subpoenaed. This system allows extremely vulnerable patients, who may otherwise face criminalization and other legal issues, to feel safe to confide in staff. The SARRT advocates are then able to better support survivors of violence as they move towards making changes in their lives to improve medically, mentally, emotionally, and as a whole. This system is also how the team is able to conduct their data collection and analysis of the program.

*Currently, in California human trafficking mandatory reporting requirements only explicitly exist for child sex trafficking and commercial sexual exploitation of children; suspected trafficking of an adult does not require reporting unless the clinician provides medical services to a patient whom they suspect is suffering from sexual assault or a physical injury due to a firearm or assaultive or abusive conduct. Child labor trafficking is reportable as child abuse, but most child protective services agencies have not been trained to respond to child labor trafficking victims.

Page 50

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