

**“NAVIGATING A MENTAL HEALTH  
CRISIS: ISSUES AROUND HIPAA,  
HOSPITALIZATION,  
INCARCERATION AND FINDING  
CARE,”**

**Mike Lozito, Director, Office of Criminal  
Justice, Policy, Planning and Programs, Bexar  
County: Moderator**

**John Petрила, JD, Senior Vice President of  
Policy, Meadows Mental Health Policy Institute**

**Luis Santos, LCSW Manager, Behavioral Care -  
University Health Care System**

**JOHN PETRILA, JD  
SENIOR VICE PRESIDENT OF POLICY,  
MEADOWS MENTAL HEALTH POLICY  
INSTITUTE**



THE MEADOWS MENTAL HEALTH POLICY INSTITUTE

---

**Navigating Issues Around HIPPA, Hospitalization, Incarceration, and Finding Care**

John Petrilu, JD, LLM, Executive Vice President of Policy

---

# I'd Like Some Information...



# Information Sharing Goals

1. Provide continuity of care to individuals
2. Understand what happens to individuals and groups of people across systems and over time
3. Evaluate the success (or failure) of programs
4. Reduce unwarranted costs
5. Provide better decisions at the point of earliest encounter

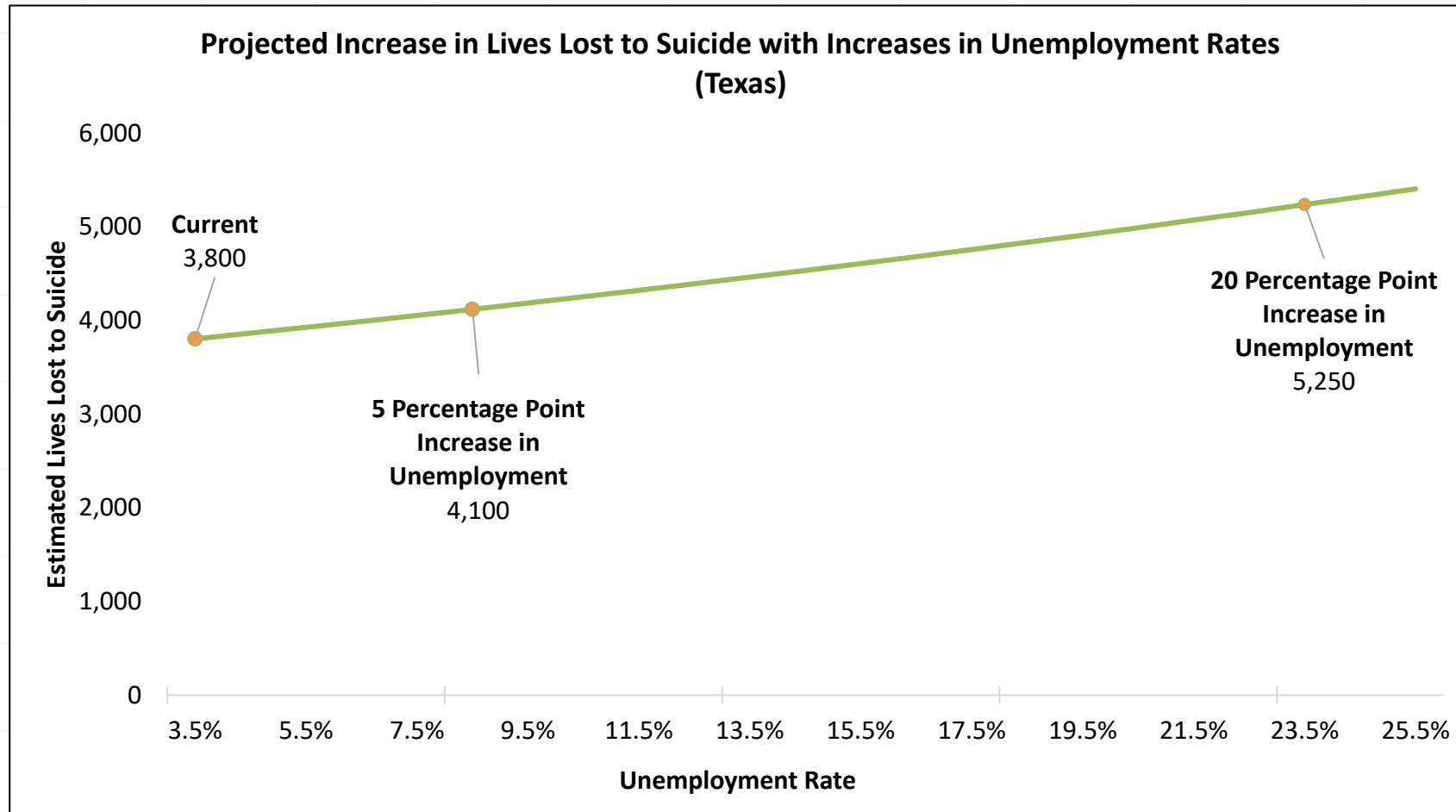
# Four Major Points

1. Technology is not the issue but data security is essential
2. Privacy is an important value but not absolute either legally or ethically
3. Risk management and risk aversiveness are not the same thing
4. The costs of *not* using information for these goals is very high

# The Impact of COVID and Police Reform

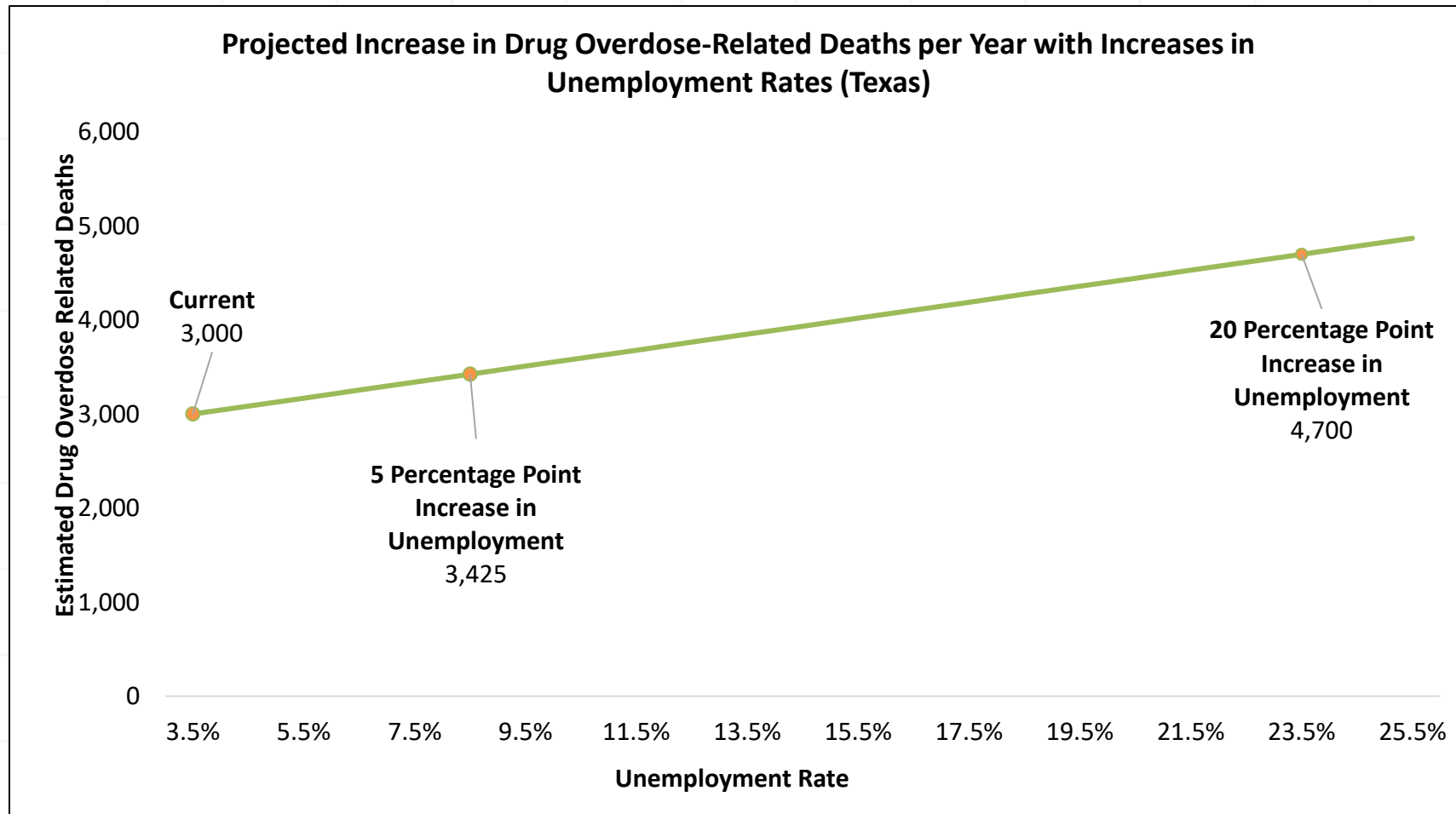
1. Anticipated increases in suicide and substance use deaths
2. COVID disproportionately impacts communities of color
3. Infection rates in congregate living spaces
4. Reducing unnecessary police contacts
5. Anticipated erosion of treatment capacity/uptick in tele-treatment

# Projected Increases in Suicide due to Rising Unemployment (Texas)





# Projected Increases in Drug Overdose Deaths due to Rising Unemployment (Texas)



# HIPAA and COVID-19

Name and other identifying information of individual infected with or exposed to COVID-19 can be shared without authorization, with:

Law enforcement

Paramedics

Other first responders

# Reasons for Sharing

- When needed for treatment (EMS)
- When required by law (PH for infectious disease purposes)
- Prevent or control spread of disease
- When first responders may be at risk of infection
- When necessary to prevent or lessen a threat to health and safety
- When requested by correctional facility

# Federal Response to Opioid Crisis: 42 CFR Part 2: CARES Act

Once a patient gives prior written consent, the contents of a record “may be used or disclosed by a covered entity, business associate, or a [Part 2 program] for purposes of treatment, payment, and health care operations as permitted by the HIPAA regulations”

More closely aligns 42 CFR Part 2 with HIPAA

# Federal Response: Telehealth

A covered health care provider that wants to use audio or video communication technology to provide telehealth to patients during the COVID-19 nationwide public health emergency can use any non-public facing remote communication product that is available to communicate with patients

# Texas Law Also Is Permissive

1. Texas law permits information sharing in every critical situation you will face
2. HIPAA does not block information sharing in those situations
3. This is not just my opinion

# But Let's Leave HIPAA Aside...

- Texas law is basically the same as HIPAA (Texas Medical Privacy Act, S.B. 11, 2001)
- AND, Texas law not only *permits* information exchange for mental health treatment but in fact *requires* it in many important situations

# Key Texas Statutory Provisions

- Texas Medical Privacy Act (Health & Safety Code, chapter 181)
- Mental Health Records (Health & Safety Code, Sec. 611.001 et seq)
- Exchange of Information (Health & Safety Code, Sec. 614.017)

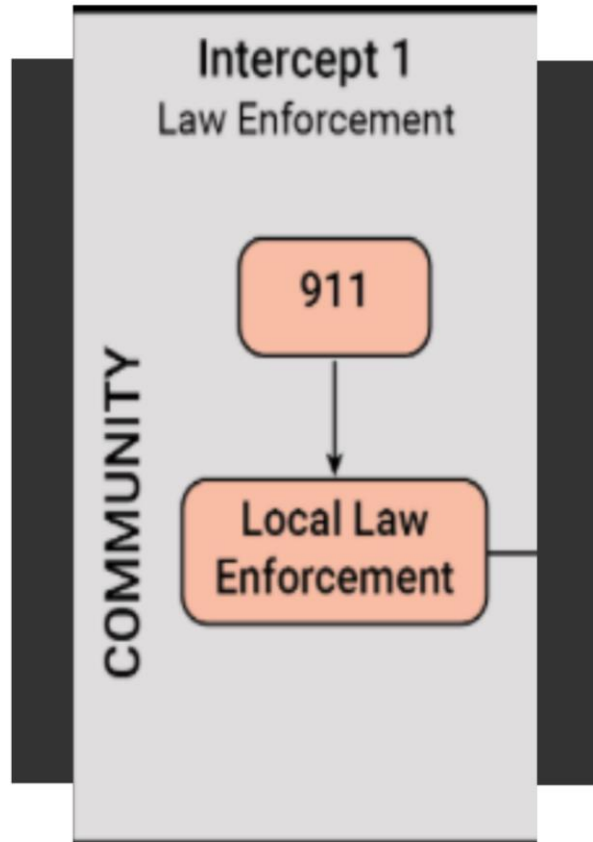


# Mental Health Records (611.004)

Permitted disclosures without consent include:

- Governmental agency if required or permitted
- Medical or law enforcement in emergency
- For audits and payments
- For treatment purposes
- To correctional personnel for care or treatment

# Intercept 1: At Point of Intervention



-Texas Health & Safety Code  
611.004(2): To law enforcement if  
there is a risk of imminent physical  
or emotional harm

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

## Intercept 2: Initial Detention

- Texas law permits disclosure “to designated persons or personnel of a correctional facility in which a person is detained if the disclosure is for the sole purpose of providing treatment and health care to the person in custody”
- HIPAA permits this as well

# Exchange of Information (614.017)

An agency “shall accept any information relating to a special needs offender or a juvenile with a mental impairment...to serve the purposes of continuity of care and services regardless of whether other state law makes that information confidential”

Special needs offender includes an individual with pending charges or who is in custody or any form of criminal justice supervision

Criminal Justice	Criminal Justice, cont	Health and Other	Health and Other
Texas Department of Criminal Justice	Community supervision and local juvenile probation	Hospital district	Local health department
Board of Pardons and Paroles	Personal bond pretrial offices	Assistive and Rehab Services	HHSC and DFPS
Texas Juvenile Justice	Local jails	Texas Ed Agency	Public Safety
Commission on Jail Standards	Criminal/juvenile judge	School for Blind and Visually Impaired	

# What Do Others Think?

“To summarize, HHSC requires mental health providers regulated by or under contract with HHSC to exchange information in accordance with the provisions of HSC 614.017”

April 24, 2018 letter from HHSC

# Some Other Considerations

- Substance use information is different (42 CFR Part 2) when a “federally assisted program holding itself out...” is involved
- The *security* of information is the source of most vulnerabilities
- Autonomy is still an important value
- But Texas law and HIPAA both place a high value on continuity of care

# A Last Thought

Just because someone says “HIPAA won’t let you do that” does not mean that person actually knows what HIPAA says



# 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)
- <http://www.statutes.legis.state.tx.us/Docs/HS/htm/HS.611.htm> (Texas mental health record law)
- <http://www.statutes.legis.state.tx.us/Docs/HS/htm/HS.181.htm> (Texas version of HIPAA)
- <https://www.texasattorneygeneral.gov/cpd/state-and-federal-health-privacy-laws> (Texas Attorney General site on health privacy)
- <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)

TEXAS STATE  
— of —  
MIND

THE MEADOWS MENTAL HEALTH POLICY INSTITUTE

---



*The truth is: mental illness affects more people than you may think, and we need to talk about it. It's Okay to say..."* [okaytosay.org](http://okaytosay.org)

---

# **NAVIGATING CARE DURING A PSYCHIATRIC CRISIS: HIPAA AND FAMILY INVOLVEMENT**

**Luis Santos, LCSW  
Behavioral Healthcare  
University Health Systems**

# **WHAT IS AN EMERGENCY OR CRISIS?**

**That moment when a person's safety is at risk due to a psychiatric condition.**

**How do you communicate "risk?"**

**What do you tell law-enforcement when you feel your life is at risk?**

# **THE EMERGENCY ROOM VISIT**

**Voluntarily, “It’s my decision and I want the help.”**

**When it’s not my decision to be at the emergency department, we call that “Involuntary”**

**The emergency detention 48-hour period where only a physician can determine if more mental health care is necessary to determine safety**

## **ER VISIT**

**During the ER visit, for safety reasons, belongings (including cell phones) are stored away.**

**This will limit contact with family**

***TIP: extract natural support contact phone numbers***

**HIPAA allows sharing of medical information with family, encouraging family involvement in the ER, but the Texas Administrative Code is more exclusive.**

# **ARBITRARY NATURE OF HEALTH CARE**

**Sometimes you get admitted, sometimes you're sent home.**

**<https://www.cnn.com/2019/01/03/health/er-mental-health-patients-eprise/index.html>**

# HIPAA

## Code of Federal Regulations (45 CFR 164.510(b))

**“permits covered entities to share information that is directly relevant to the involvement of a spouse, family members, friends, or other persons identified by a patient, in the patient’s care or payment for health care.”**

**“Even when the patient is not present or it is impracticable because of emergency circumstances or the patient’s incapacity for the covered entity to ask the patient about discussing her care or payment with a family member or other person, a covered entity may share this information with the person when, in exercising professional judgment, it determines that doing so would be in the best interest of the patient. See 45 CFR 164.510(b).”**

**Health and Human Services website: <https://www.hhs.gov/hipaa/for-professionals/faq/disclosures-to-family-and-friends/index.html>**



# **IN TEXAS**

**Mental Health Safety Code, Title 7, Subtitle E, Chapter 611**

**“(4) to a person who has the written consent of the patient, or a parent if the patient is a minor, or a guardian if the patient has been adjudicated as incompetent to manage the patient's personal affairs;”**

# REQUEST

**Hospital workers may not be able to share information, but they can receive alllllll the information you want to provide.**

**Once a patient, request to sign a release of information authorization form**



AUTHORIZATION TO DISCLOSE PROTECTED HEALTH INFORMATION

Developed for Texas Health & Safety Code § 181.154(d) effective June 2013

Please read this entire form before signing and complete all the sections that apply to your decisions relating to the disclosure of protected health information.

NAME OF PATIENT OR INDIVIDUAL
Last First Middle
OTHER NAME(S) USED
DATE OF BIRTH Month Day Year
ADDRESS
CITY STATE ZIP
PHONE ( ) ALT. PHONE ( )
EMAIL ADDRESS (Optional):

I AUTHORIZE THE FOLLOWING TO DISCLOSE THE INDIVIDUAL'S PROTECTED HEALTH INFORMATION:

Person/Organization Name
Address
City State Zip Code
Phone ( ) Fax ( )

WHO CAN RECEIVE AND USE THE HEALTH INFORMATION?

Person/Organization Name
Address
City State Zip Code
Phone ( ) Fax ( )

REASON FOR DISCLOSURE (Choose only one option below)

- Treatment/Continuing Medical Care
Personal Use
Billing or Claims
Insurance
Legal Purposes
Disability Determination
School
Employment
Other

WHAT INFORMATION CAN BE DISCLOSED? Complete the following by indicating those items that you want disclosed. The signature of a minor patient is required for the release of some of these items. If all health information is to be released, then check only the first box.

- All health information
Physician's Orders
Progress Notes
Pathology Reports
History/Physical Exam
Patient Allergies
Discharge Summary
Billing Information
Past/Present Medications
Operation Reports
Diagnostic Test Reports
Radiology Reports & Images
Lab Results
Consultation Reports
EKG/Cardiology Reports
Other

Your initials are required to release the following information:

Mental Health Records (excluding psychotherapy notes)
Drug, Alcohol, or Substance Abuse Records
Genetic Information (including Genetic Test Results)
HIV/AIDS Test Results/Treatment

EFFECTIVE TIME PERIOD. This authorization is valid until the earlier of the occurrence of the death of the individual; the individual reaching the age of majority; or permission is withdrawn; or the following specific date (optional): Month Day Year

RIGHT TO REVOKE: I understand that I can withdraw my permission at any time by giving written notice stating my intent to revoke this authorization to the person or organization named under "WHO CAN RECEIVE AND USE THE HEALTH INFORMATION."

SIGNATURE AUTHORIZATION: I have read this form and agree to the uses and disclosures of the information as described. I understand that refusing to sign this form does not stop disclosure of health information that has occurred prior to revocation or that is otherwise permitted by law without my specific authorization or permission, including disclosures to covered entities as provided by Texas Health & Safety Code § 181.154(c) and/or 45 C.F.R. § 164.502(a)(1).

SIGNATURE X Signature of Individual or Individual's Legally Authorized Representative DATE

Printed Name of Legally Authorized Representative (if applicable):
If representative, specify relationship to the individual: Parent of minor Guardian Other

A minor individual's signature is required for the release of certain types of information, including for example, the release of information related to certain types of reproductive care, sexually transmitted diseases, and drug, alcohol or substance abuse, and mental health treatment (See, e.g., Tex. Fam. Code § 32.003).

SIGNATURE X Signature of Minor Individual DATE

**WHAT IF AN ROI IS NOT SIGNED?**

**Always honor my  
right to identity,  
right to autonomy,  
right to self-determination**

## **WHAT IF...**

**What if this decision for self-determination is part of the healing process?**

**What if it's a good point to address in therapy?**

**What if its not all or nothing?**

## **WHEN THERE IS A LACK OF CAPACITY**

**Even in Texas, when a physician determines there is a lack of capacity to understand the Release of Information form, the treatment team can, in the patient's best interest, reach out to family (natural supports) and involve them in treatment.**

# **CRISIS STABILIZATION LEVELS OF CARE**

**Nearest Emergency Department (Emergency Room)**

**Psychiatric Emergency Services**

**Inpatient admission**

**Step-down or Transitional Units**

**Those first 7 days after the hospitalization are so important to follow up care.**

**What happened at the last crisis that needs attention, to not repeat another crisis?**

# **SAFETY PLANNING**

**What events led to the last crisis (missed medication, relapse, medical conditions, life)**

**What were the warning signs (isolation, sleep pattern changes, arguments, work attendance)**

**Internal resources, insight and self awareness**

**External resources, helpful distractions, reality bases, "my people"**

**Social supports: case manager, counselor, psychiatrist**

**Crisis Hotline (800) 273-TALK (8255)**



## RESOURCES

<https://statutes.capitol.texas.gov/Docs/HS/htm/HS.611.htm>

<https://www.cnn.com/2019/01/03/health/er-mental-health-patients-eprise/index.html>

<https://www.hhs.gov/hipaa/for-professionals/faq/488/does-hipaa-permit-a-doctor-to-discuss-a-patients-health-status-with-the-patients-family-and-friends/index.html>