



## SHARING PATIENT SUBSTANCE USE TREATMENT RECORDS IN HOSPITALS AND LARGE HEALTHCARE NETWORKS

Patient confidentiality protections may frequently be misinterpreted to prohibit disclosures that are in fact permitted. This in turn can result in limited provider access to patient information that is essential to patient care and additional work for patients who need to sign multiple record releases.

This following list of Frequently Asked Questions (FAQs) explains how a hospital or other integrated healthcare system can receive and re-disclose information protected by the federal confidentiality protections for substance use disorder patient records, 42 CFR Part 2 (Part 2).<sup>1</sup>

Click on each question to learn more.

1. [How can healthcare providers access patients' substance use disorder treatment records, and re-disclose them for treatment purposes?](#)
2. [How can patients self-disclose their SUD treatment records?](#)
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<sup>1</sup> See also 42 U.S.C. 290dd-2 (the authorizing statute for the regulations at 42 CFR Part 2). For more information about whether the patient's records are protected by the federal SUD confidentiality law, visit the [Center of Excellence for Protected Health Information](#).



## 1. How can healthcare providers access patients' substance use disorder treatment records, and re-disclose them for treatment purposes?

Providers may access and re-disclose records as directed by the patient. Unlike the Health Insurance Portability and Accountability Act (HIPAA) Privacy Rule, which does not require patient authorization to make disclosures for the purposes of “treatment,” **Part 2 does require prior written consent for disclosures to other healthcare providers**, except in the case of a medical emergency.<sup>2</sup>

Part 2's privacy protections recognize that patients may have different priorities and preferences for sharing substance use-related information, and permit patients to decide how much and what type of information to share. Individuals with substance use disorder (SUD) treatment records protected by Part 2 may wish to authorize disclosure of these records to all their healthcare providers; other individuals may wish to selectively authorize disclosure to only certain individual providers, or maintain even stricter confidentiality of their treatment records.

**Part 2-protected SUD treatment records may be disclosed to other healthcare providers by a patient's self-disclosure, or with the patient's written consent.** For more information about both of these options, please keep reading below.

## 2. How can patients self-disclose their SUD treatment records?

**Patients may self-disclose their SUD treatment records without restriction.**

Patients can self-disclose by:

1. **Showing providers records** - Part 2 permits patients to self-disclose their SUD treatment records to their healthcare providers, or any other recipient, without restriction.<sup>3</sup> For example, if a patient wishes to share his SUD medications with his primary care practice, the patient may simply bring the SUD medication records to his primary care provider – a **self-disclosure**.
2. **Using the patient portal** - The patient may also self-disclose patient records through a “[patient portal](#)” by uploading his SUD treatment records directly to the patient portal managed by his primary care practice.
3. **Verbally sharing information** - Patients may also verbally self-disclose information that would otherwise be protected by Part 2; for example, a patient may self-disclose information such as a past diagnosis of SUD, or current plan of medication-assisted treatment at an opioid treatment center.

<sup>2</sup> HIPAA permits disclosures without patient consent for the purpose of “treatment, payment, and healthcare operations.” See 45 CFR §§ 164.501, 164.506. Part 2 requires prior written consent for most treatment-related disclosures, except in the event of a medical emergency. See 42 CFR §§ 2.33, 2.51.

<sup>3</sup> See 42 CFR §§ 2.13 (Confidentiality restrictions and safeguards apply to “Part 2 programs” and “lawful holders,”), 2.23 (Patient access and restriction on use).



### 3. Are self-disclosed SUD treatment records protected by Part 2?

Self-disclosed SUD treatment records are **not protected by Part 2**,<sup>4</sup> and not subject to the restrictions on re-disclosure.<sup>5</sup> For example, if a patient self-discloses his SUD medication records to his primary care doctor, the records would still be covered by HIPAA, but not Part 2.<sup>6</sup> This means the primary care doctor may re-disclose the records without patient consent for the purposes of treatment, payment, and healthcare operations, as permitted by HIPAA.<sup>7</sup>

### 4. How can patients authorize disclosure of SUD treatment records to all their current and future treating providers within a healthcare system?

Patients may authorize disclosure of SUD treatment records **through written consent** to all their current and future treating providers within a healthcare system.

In order for SUD treatment records to be disclosed directly from the Part 2 program to another healthcare provider (*not* a self-disclosure), the patient must sign a written consent authorizing the disclosure.<sup>8</sup>



#### CASE STUDY

For example, if a patient at a Part 2 program – *Christina* – wishes to permit ongoing communication between her SUD treatment provider and the medical system where she receives most of her health care, she may sign a consent form as follows:



I authorize disclosure of all my SUD treatment information to and within Big City Health and Hospital System, for the purposes of treatment, coordinating care, and healthcare operations.<sup>9</sup>

<sup>4</sup> Unless the recipient of the records is also a “Part 2 program.” See 42 CFR §§ 2.11, 2.12 for definition of “Part 2 program.” For more information about the definition of a “Part 2 program,” visit the [Center of Excellence for Protected Health Information](#).

<sup>5</sup> The records may, however, still be subject to the restriction on use, which prohibits the use of SUD treatment records from Part 2 programs in a criminal investigation or prosecution of a patient, subject to very limited exceptions. See 42 CFR § 2.23.

<sup>6</sup> This factsheet assumes that the primary care doctor, as a healthcare provider, is a “covered entity,” under HIPAA. See 45 CFR § 160.103. The doctor may also have a professional obligation to maintain confidentiality.

<sup>7</sup> See note 2, *supra*.

<sup>8</sup> The only exception is in the event of medical emergencies. 42 CFR § 2.51. For more information, visit the [Center of Excellence for Protected Health Information](#).

<sup>9</sup> A valid consent form needs to contain all the required elements in 42 CFR § 2.31; not all elements are reflected in this excerpt.

## 5. Does each provider and support staff need to be named on the consent form?

While the Part 2 regulations do not specify how information disclosed to an entity with a treating provider relationship<sup>10</sup> – like the Big City Health and Hospital System – may be shared *within* the entity to individual providers, the regulatory language suggests that patients may authorize disclosures to both current and future treating providers in the entity. Therefore, **it is not necessary to name each provider and support staff on the consent form, so long as the individuals who receive the Part 2-protected records are affiliated with the entity named on the consent form, and need the information in connection with their official duties and consistent with the consent form’s stated purpose.**



### CASE STUDY

In one consent form Christina’s signature authorizes disclosure to the Big City Health and Hospital System, and re-disclosures within the Big City Health and Hospital System, including:



*All current treating providers at the time she signed consent,* including Christina’s:

- Primary care practitioner and medical assistants
- Women’s health LPN
- Dermatologist
- Podiatrist
- Support staff, technicians, etc., as needed



*All future treating providers, including the following circumstances:*

- Six months after Christina signed the consent form, her primary care practitioner wants to refer Christina to a gastroenterologist at another location within the Big City Health and Hospital System;
- Eight months later, a new primary care doctor joins the Big City Health and Hospital System at a different location, and Christina wants to switch primary care doctors; and
- Two years later, Big City Health and Hospital System acquires a network of Urgent Care clinics, and Christina visits one day to seek treatment for a sprained ankle.

<sup>10</sup> See 42 CFR §§ 2.11 (definition of “treating provider relationship”), 2.31(a)(4)(ii) (permitting consent forms to designate an entity authorized to receive Part 2-protected information, so long as the entity has a “treating provider relationship” with the patient).

In each of these instances, Christina has authorized communication between her SUD treatment program and her other healthcare providers in the Big City Health and Hospital System,<sup>11</sup> even healthcare providers she did not know at the time she signed the consent form. The consent form must still be in effect at the time of the future disclosure,<sup>12</sup> the disclosure must still be limited to the minimum amount necessary for the purpose designated on the consent form (“treatment”),<sup>13</sup> and may only be used for that purpose.<sup>14</sup>

Moreover, Christina’s confidentiality is still protected by Part 2 if someone outside the Big City Health and Hospital System requests her SUD treatment information. For example, if Christina’s ex-spouse sends a subpoena and a Qualified Protective Order to the hospital seeking all her health records, the hospital may be able to turn over records protected only by HIPAA<sup>15</sup> but would not be able to turn over the Part 2-protected records unless another Part 2 exception also applied (e.g., court order, or patient consent).<sup>16</sup>

## 6. How can a patient disclose SUD treatment records through written consent to all their current and future treating providers that participate in a Health Information Exchange?

Health Information Exchanges (HIEs) permit healthcare providers from many different systems to appropriately access and securely share an individual’s health information. **With one signed consent form, a patient may authorize disclosure to all current and future treating providers through an identified HIE**, as explained in the 2018 guidance document, “[How Do I Exchange Part 2 Data?](#),” by the Office of the National Coordinator for Health Information Technology (ONC) and the Substance Abuse and Mental Hygiene Services Administration (SAMHSA).

<sup>11</sup> If a healthcare provider in the Big City Health and Hospital System needs to re-disclose the Part 2 records it obtained from a Part 2 program to an insurance company or third-party payer, this re-disclosure may be communicated with the patient’s written consent. In most cases, however, the healthcare provider will not need to re-disclose Part 2-protected records in order to receive reimbursement for non-SUD treatment.

<sup>12</sup> Consent forms must include a date, event, or condition upon which the form will expire, and expire no later than reasonably necessary to serve the purpose of the consent form. 42 CFR § 2.31(a)(7).

<sup>13</sup> The “minimum necessary” standard in Part 2 is similar to HIPAA’s “minimum necessary” standard. See 42 CFR § 2.31(a)(5) and 45 CFR §§ 164.502(b), 164.514(d).

<sup>14</sup> 42 CFR § 2.31(a)(5).

<sup>15</sup> See 45 CFR § 164.512(e).

<sup>16</sup> See 42 CFR §§ 2.33 (disclosures permitted with written patient consent), 2.61-2.67 (disclosures permitted with court orders).



## 7. How can healthcare providers re-disclose SUD treatment records to their Business Associates, including contractors, subcontractors, and legal representatives?

Healthcare providers that receive Part 2-protected information pursuant to written consent may re-disclose the records to a contractor, subcontractor, or legal representative for **payment and healthcare operations purposes**, so long as the re-disclosure is consistent with the purpose of the consent form.



### CASE STUDY

Returning to Christina – a patient receiving SUD treatment at a Part 2 program – may sign a consent form as follows:



I authorize disclosure of all my SUD treatment information to and within the Big City Health and Hospital System, for the purposes of treatment, coordinating care, and healthcare operations<sup>17</sup>

Such a consent form authorizes disclosure to the Big City Health and Hospital System, and – to the extent necessary to fulfill the “healthcare operations” purpose of the disclosure – re-disclosures to the Big City Health and Hospital System’s contractors, subcontractors, and legal representatives.<sup>18</sup> For example, Big City may re-disclose Part 2-protected records to the following Business Associates, for the purpose of conducting healthcare operations:

- A consultant who performs utilization reviews for the hospital;<sup>19</sup>
- A contractor who manages the Information Technology (IT) systems and provides support services through various subcontractors;<sup>20</sup> and
- A law firm that provides legal advice and litigation services.<sup>21</sup>

### Additional Resources

For more information about the federal privacy protections for substance use disorder treatment records and mental health treatment records, visit the [Center of Excellence for Protected Health Information](#). To sign up for email updates about new resources, proposed and final changes to the federal privacy laws for protected health information, and upcoming training opportunities, [subscribe here](#) for the Center of Excellence for Protected Health Information’s newsletter.

*Published: 12/20/201*

<sup>17</sup> See note 9, *supra*.

<sup>18</sup> 42 CFR § 2.33(b). This permission to re-disclose was added to Part 2 in the 2018 amendments by SAMHSA. For more information about the 2018 amendments, including SAMHSA’s commentary on the changes and an illustrative list of “payment and healthcare operations activities,” see Confidentiality of Substance Use Disorder Patient Records, 83 Fed. Reg. 239 (Jan. 3, 2018).

<sup>19</sup> See Confidentiality of Substance Use Disorder Patient Records, 83 Fed. Reg. 239, 243 (Jan. 3, 2018).

<sup>20</sup> *Id.*

<sup>21</sup> *Id.*