



Federal Privacy Protections for Patients Receiving SUD Treatment Services in Integrated Settings

Understanding 42 CFR Part 2 in Community Mental Health Centers and Certified Community Behavioral Health Centers

Many patients receive substance use disorder (SUD) treatment and related services at integrated healthcare facilities such as community mental health centers (CMHCs) or certified community behavioral health centers (CCBHCs).¹ Some SUD providers at CMHCs or CCBHCs may be subject to the federal law and regulations for substance use disorder treatment records, 42 USC § 290dd-2 and 42 CFR Part 2, referred to collectively as “Part 2.” Part 2 protects the privacy and security of records created by certain federally assisted programs for SUD treatment and sets strict standards that covered providers must follow.² This resource describes key privacy considerations for patients’ SUD treatment records that originate from a Part 2 program or provider within a CMHC.

Key Point

Part 2 may apply to individual provider(s) or unit(s) within the CMHC or CCBHC, but not the entire entity.

Part 2 only protects information that identifies an individual as seeking or receiving SUD treatment or diagnosis from a “Part 2 program.”³ When a CMHC offers SUD treatment services, Part 2 only applies if there is an identified provider or an identified unit within the CMHC that meets the definition of a “program.”⁴

Example 1

Dr. Sara is an addiction specialist at Big Tree CMHC. Their primary function is to provide substance use disorder services, including diagnosis and treatment, and they are identified as an addiction specialist. Dr. Sara is a Part 2 program within the CMHC.⁵

Example 2

Broadleaf CCBHC has a specialized unit for patients with co-occurring serious mental illness and substance use disorders. The CCBHC's specialized unit is licensed by the state's opioid treatment authority and listed in local and national registries for substance use disorder services. The specialized unit is a Part 2 program within the CCBHC.⁶

Key Point

Part 2 only applies to information that identifies someone as seeking or receiving services from a Part 2 program within the CMHC or CCBHC.

When a patient receives services from various providers at an integrated facility, Part 2 only applies to information that identifies the patient as receiving services from the Part 2 program – the identified provider or the identified unit from Key Point 1, above. Even if a patient self-discloses their substance use disorder diagnosis, treatment, or medication to another provider at the integrated facility, Part 2 does not apply to that information unless the provider is a Part 2 program or works within a unit that is a Part 2 program.⁷

Example 3

Zelda receives SUD treatment and counseling from Dr. Sara at Big Tree CMHC; Dr. Sara is a Part 2 program (see Example 1 above). Zelda also receives mental health counseling from a psychologist, Dr. Arnold, who is not covered by Part 2. All of Dr. Sara's records regarding Zelda are protected by Part 2, but the psychologist's records are not – even if Zelda discloses information about her substance use disorder to the psychologist. The psychologist, Dr. Arnold, is not a Part 2 program, and therefore Part 2 does not apply, even if Dr. Arnold's records contain information about Zelda's substance use disorder.

Example 4

Jackson receives SUD treatment and treatment for a serious mental illness at Broadleaf CCBHC's specialized unit (see Example 2 above). Part 2 protects any information that identifies Jackson as receiving services from the specialized unit, since patients need a substance use disorder diagnosis to receive services in the specialized unit. This means that if law enforcement subpoenas the specialized unit for Jackson's records, Part 2 would prohibit the disclosure without a Part 2-compliant court order.⁸ Even if the subpoena is for information about Jackson's mental health treatment or dates of treatment, and not specific to Jackson's substance use disorder, Part 2 would prohibit this disclosure without a Part 2-compliant court order.

Example 5

Beto receives counseling from Lindsay, a mental health practitioner at Broadleaf CCBHC. Lindsay is not an identified SUD provider and does not work in an identified SUD unit; therefore she is not covered by Part 2. Beto shares information with Lindsay about his struggles with alcohol, including a past diagnosis of alcohol use disorder, and Lindsay documents the information in Broadleaf CCBHC's electronic health record. Even though the records include information about a substance use disorder, Part 2 does not apply because Lindsay is not a Part 2 program.

Key Point 3

In order for the Part 2 program to share information with other providers in the CMHC or CCBHC, written patient consent is generally required.

Part 2 generally requires written patient consent before a Part 2 program can share protected records with other providers, even for treatment purposes.⁹ There are very limited exceptions for medical emergencies.¹⁰ If the patient wishes to authorize their providers to share information within the CMHC or CCBHC, they should sign a consent form that authorizes their providers to communicate.

Example 6

Zelda receives services from Dr. Sara, an addiction specialist and Part 2 program, as well as a psychologist, Dr. Arnold, who is not covered by Part 2 (see Example 3 above). Dr. Arnold wishes to consult with Dr. Sara before prescribing Zelda a new medication. Zelda and her providers can work together to craft a consent form that reflects Zelda's choice about how her Part 2-protected records are shared internally. Zelda may choose to sign a limited consent form, authorizing Dr. Sara and Dr. Arnold to share information relating to her prescription medications. Or Zelda may opt to sign a broad consent form, authorizing "all my providers at Big Tree CMHC to share information about my substance use disorder treatment, medication, and diagnosis, with other providers at Big Tree CMCH, in order to provide treatment."

Conclusion

It is important to determine whether and how Part 2 applies to SUD services at integrated healthcare facilities, in order to facilitate communication between providers and appropriately protect patients' confidentiality under federal law. Even if Part 2 does not apply, other federal health privacy laws and regulations may apply, like the HIPAA Privacy Rule. State laws and professional ethical duties of confidentiality may also apply.

For More Information

Resources

This resource is one of many that are available within the CoE-PHI's resource library, which can be found at coephi.org.

Request Technical Assistance

You can request brief, individualized technical assistance and join our mailing list for updates, including news about the publication of new resources and training opportunities [on our website](#).

Disclaimer

Resources, training, technical assistance, and any other information provided through the Center of Excellence for Protected Health Information do not constitute legal advice. For legal advice, including legal advice on other applicable state and federal laws, please seek out local counsel. This resource was supported by SAMHSA of the U.S. Department of Health and Human Services (HHS) as part of a financial assistance award totaling \$5,000,000 with 100 percent funded by SAMHSA/HHS. The contents are those of the author(s) and do not necessarily represent the official views of, nor an endorsement, by SAMHSA/HHS, or the U.S. Government

References

1. UAMHSA, "Certified Community Behavioral Health Clinics," (accessed Aug. 7, 2023), <https://www.samhsa.gov/certified-community-behavioral-health-clinics>.
2. For more general information about the Part 2 privacy protections for SUD treatment records, see SAMHSA's guidance document, "Disclosure of SUD Patient Records: How Do I Exchange Part 2 Data?" at <https://coephi.org/resource/disclosure-of-substance-use-disorder-patient-records-how-do-i-exchange-part-2-data/>.
3. 42 CFR § 2.11. See also SAMHSA's guidance document, "Disclosure of SUD Patient Records: Does Part 2 Apply to Me?" at <https://coephi.org/resource/disclosure-of-substance-use-disorder-patient-records-does-part-2-apply-to-me/>.
4. See Scenario 2 in SAMHSA's guidance document, "Disclosure of SUD Patient Records: Does Part 2 Apply to Me?" at <https://coephi.org/resource/disclosure-of-substance-use-disorder-patient-records-does-part-2-apply-to-me/>.
5. See 42 CFR § 2.11 (definition of "provider," subsection (3)).
6. See 42 CFR § 2.11 (definition of "provider," subsection (2)).
7. Even if Part 2 does not apply, other federal privacy laws like HIPAA may apply. State privacy laws and ethical duties of confidentiality may also apply. For more information about HIPAA, see "HIPAA FAQs for Professionals," at <https://www.hhs.gov/hipaa/for-professionals/faq/index.html>.
8. For more information about Part 2's privacy protections and responding to requests from law enforcement, see the Center of Excellence for Protected Health Information's resource, "Arrest warrants and law enforcement inquiries in SUD settings," at <https://coephi.org/resource/arrest-warrants-law-enforcement-inquiries-in-sud-settings/>.
9. See 42 CFR 2.31.
10. See 42 CFR 2.51.