



2023 Privacy Update

Federal Laws, Regulations, and Trends for Substance Use Disorder and Mental Health Treatment Data

The federal health privacy laws and regulations for substance use disorder (SUD) and mental health (MH) treatment have recently changed, and more changes are forthcoming.

This resource provides information about the changes and links to resources where you can learn more and find the most up-to-date information.

42 CFR Part 2

Statutory changes

In December 2022, the Office for Civil Rights (OCR) and the Substance Abuse and Mental Health Services Administration (SAMHSA), divisions of the Department of Health and Human Services (HHS), issued a joint notice of proposed rule making (NPRM) to implement the CARES Act changes to 42 USC 290dd-2 (the statute underlying 42 CFR Part 2).

Public comments were accepted through January 31, 2023. These changes are not yet in effect and will require new regulations amending 42 CFR Part 2. There is no official word on when a final rule will be published.

Regulatory changes

The federal privacy regulations for SUD treatment records, 42 CFR Part 2, were amended in July and December 2020. These changes are currently in effect and will change again when the CARES Act regulatory changes are finalized. [Read the summary](#) and [watch the webinar](#) outlining the transitional changes.

HIPAA

Pending regulatory changes: In January 2021, OCR issued an NPRM to amend certain provisions of the HIPAA Privacy Rule related to care coordination. Public comments were accepted through May 2021. In April 2023, OCR proposed additional changes to the HIPAA Privacy Rule to strengthen reproductive health care privacy. These changes are not currently in effect, and there is no official word on when they will be finalized. For more information, [read the 2021 NPRM](#) and the [2023 NPRM](#).

End of enforcement discretion for telehealth during public health emergency: OCR's enforcement discretion for good-faith use of telehealth during the COVID-19 pandemic [expired upon the expiration of the federal public health emergency](#) on May 11, 2023. HIPAA-covered entities have a 90-day transition period (ending August 9, 2023) to come into full compliance with HIPAA when using telehealth, including non-public-facing applications that allow for video chat.

Audio-only telehealth guidance: In 2022, OCR issued [guidance on the use of audio-only technology for telehealth](#). This guidance remains in effect after the expiration of the public health emergency.

Tracking technology guidance: In 2022, OCR also released [guidance on the use of online tracking technologies](#) by HIPAA-covered entities and business associates. The guidance defines "tracking technology" and specifies that regulated entities may not use the technology in a way that impermissibly discloses users' protected health information.

21 Century Cures Act

Final rule on information blocking: A [final rule implementing the information blocking provisions of the 21st Century Cures Act](#) was issued in the fall of 2020. This rule is currently in effect.

Additional guidance: The Office of the National Coordinator for Health Information Technology (ONC) issued [guidance on the exceptions to the information blocking rule](#), including the privacy and infeasibility exceptions and the intersection with 42 CFR Part 2. Read the [CoE-PHI Information Blocking Rule Requirements for Part 2 Data in Patient Portals resource](#) for more information.

For More Information

Resources

This resource is one of many that are available within the [CoE-PHI's resource library](#).

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](#).

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