

This resource explains the intersection between the federal confidentiality protections for substance use disorder (SUD) treatment records and the U.S. Department of Veterans Affairs (VA), including the VA Police.



What You Need to Know

Key Point

Part 2 strictly limits disclosures of patient-identifying information to law enforcement, including the VA Police. Patient-identifying information means any information that reasonably identifies an individual as seeking or receiving SUD services from a Part 2 program, including information about a patient's status in the program or current whereabouts.¹

The federal privacy protections in 42 CFR Part 2 require certain SUD treatment providers to maintain strict patient confidentiality — including during inquiries by law enforcement.² In general, law enforcement may only access Part 2-protected information pursuant to a special court order that complies with heightened procedural and substantive requirements in Part 2.³

These confidentiality protections apply to local, state, and federal law enforcement, including the Federal Bureau of Investigations, the U.S. Department of Justice, and the U.S. Drug Enforcement Administration. **There is no exception for the U.S. Department of Veterans Affairs (VA) Police.**

Part 2 and the Department of Veterans Affairs

Part 2 does not apply to SUD treatment records created or maintained by VA medical centers or clinics. Rather, a separate federal privacy law protects VA health records containing SUD treatment information.⁴

This means that Part 2 does not apply when:

- A VA medical center or clinic provides SUD treatment services.
- A VA medical center or clinic maintains records it received from an outside SUD provider at a Part 2 program.

Even though Part 2 does not apply to SUD treatment records created or maintained by the VA, there is no Part 2 exception for disclosures to the VA. Part 2 records created or maintained by Part 2 programs (non-VA providers) may only be shared with the VA if the patient signs a consent form or if one of Part 2's limited exceptions apply.

For example, if a patient receives SUD treatment services from a Part 2 program (a non-VA provider), the patient may sign a consent form authorizing the Part 2 program to share information with the patient's healthcare providers in the VA medical system. Once the records are received by the VA medical system, the information loses its Part 2 protections. If the patient does not consent to sharing information with the VA medical system, the Part 2 program is prohibited from disclosing any information to the VA unless one of Part 2's exceptions apply (for example, to meet a bona fide medical emergency when the patient's prior written consent cannot be obtained⁵).

APPLICATION TO DEPARTMENT OF VETERANS AFFAIRS POLICE

While Part 2 programs (non-VA providers) operating on VA property may fall within the VA Police's jurisdiction, the VA Police must still follow Part 2's general rules when requesting information from a Part 2 program.

In particular, the Part 2 program is prohibited from sharing any patient-identifying information with the VA Police unless one of the following applies:

- The patient signed a written consent form authorizing the disclosure.⁶
 - Even if the patient signs a written consent form authorizing the disclosure, the records may not be used against the patient in a criminal investigation or prosecution unless a judge issues a qualifying court order.⁷
- The VA Police have a Part 2-compliant court order authorizing the disclosure.⁸
- The program is reporting a crime on program premises or against program personnel.⁹

For more information about law enforcement inquiries in Part 2 programs, see our related resource:

[Arrest Warrants and Law Enforcement Inquiries in SUD Settings](#)



For More Information

Resources

This resource is one of many that are available within the Center of Excellence for Protected Health Information's resource library, which can be found at coephi.org.

Request Technical Assistance

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1. 42 CFR § 2.11. See also U.S. Dep't of Health & Human Svcs., Opinion Letter 80-14 (May 2, 1980).

2. See generally 42 USC § 290dd-2 and 42 CFR Part 2. The privacy regulations are subject to change in 2021 in order to implement the statutory changes introduced by the Coronavirus Aid, Relief, and Economic Security (CARES) Act.

3. 42 CFR §§ 2.61-2.67.

4. 38 USC § 7332; 38 CFR Part 1.

5. 42 CFR § 2.51.

6. 42 CFR § 2.31.

7. 42 CFR § 2.65.

8. 42 CFR §§ 2.61-2.67.

9. 42 CFR § 2.12(c)(5).