

## How do I respond to a third-party payer or contractor who is requesting patient information that is protected by 42 CFR Part 2 (“Part 2”)?



### What You Need to Know

Providers may receive requests from third-party payers, contractors, and other private entities to access a client's Substance Use Disorder (SUD) treatment information for purposes of billing, auditing, or for other administrative reasons.

42 CFR Part 2 prohibits disclosure of clients' protected SUD treatment information to third-party payers, contractors, and other private entities without patient consent, unless a Part 2 exception applies.

It can be helpful to have a written response prepared in advance for when your organization receives a request from a third-party payer (or other similar organization) to share patient information in these circumstances.

The following sample letter is provided as an example to help substance use disorder treatment programs comply with 42 CFR Part 2 requirements while responding to requests from third-party payers, contractors, and other private entities.

The contents can be placed on your organization's letterhead and tailored to respond to the specific request.



### 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](https://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, [here](#).



### 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.

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## SAMPLE LETTER IN RESPONSE TO RECORDS REQUEST

FROM THIRD-PARTY PAYER OR CONTRACTOR

[Date]

[Address Line 1]

[Address Line 2]

[Address Line 3]

Re: Request for Part 2-protected records [Include Reference #, if applicable]

Dear [Name of entity requesting records]:

We have received your request for records regarding [initial(s) of individual(s)], dated [date].

The federal substance use disorder confidentiality law and regulations, 42 USC § 290dd-2 and 42 CFR Part 2 (referred to collectively as “Part 2”), prohibit this program from complying with your request, or even acknowledging whether or not any of the identified individual(s) is, or ever was, a patient in our program.<sup>1</sup>

**Compliance with the Health Insurance Portability and Accountability Act (HIPAA) is not sufficient** to authorize disclosure of substance use disorder patient records protected by Part 2, according to the U.S. Department of Health and Human Services’ Office of Civil Rights (OCR), which is responsible for enforcing HIPAA:

If an entity is subject to both Part 2 and HIPAA, it is responsible for complying with the more protective Part 2 rules, as well as with HIPAA. HIPAA is intended to be a set of minimum federal privacy standards, so it generally is possible to comply with HIPAA and other laws, such as 42 CFR Part 2, that are more protective of individuals’ privacy.<sup>2</sup>

**Part 2-protected records may only be disclosed with written patient consent/authorization,<sup>3</sup> or pursuant to one of Part 2’s limited exceptions.<sup>4</sup>** For example, Part 2 permits programs to share Part 2-protected records with a third-party payer or a third-party payer’s contractor for the purpose of an “audit or evaluation,” as defined in Part 2.<sup>5</sup> The entity conducting an “audit or evaluation” must be able to show that the request for Part 2-protected records meets the definition of “audit or evaluation” in Part 2, as well as sign a contract that meets the requirements in Section 2.53 of 42 CFR Part 2 prior to receiving protected records.

Since this program has not received a proper written consent/authorization from the individual(s) about whom records are sought, and since the request for information did not identify any other available exception in Part 2 permitting a disclosure without patient consent/authorization, we are compelled by federal law not to release any further information.

This decision was reached after a thorough review of the federal law and regulations governing the confidentiality of substance use disorder patient records. Please do not hesitate to reach out to [Name of contact person and contact information] if you would like to discuss further.

Sincerely,

[Name of program director or department head]

[Title]

[Program]

### References

1. 42 USC § 290dd-2(a); 42 CFR § 2.12(a)(1).
2. See, e.g., U.S. Dep’t of Health & Human Svcs., “How does HIPAA interact with the federal confidentiality rules for substance use disorder treatment information in an emergency situation – which rules should be followed?” (Jan. 3, 2018), <https://www.hhs.gov/hipaa/for-professionals/faq/3005/how-does-hipaa-interact-federal-confidentiality-rules-substance-use-disorder-treatment-information-in-emergency/index.html>.
3. 42 USC § 290dd-2(b)(1); 42 CFR §§ 2.31, 2.33.
4. 42 USC § 290dd-2; 42 CFR Part 2. For more information about Part 2 and its exceptions, visit the Center of Excellence for Protected Health Information, [www.coephi.org](http://www.coephi.org).
5. 42 USC § 290dd-2(b)(2)(B); 42 CFR § 2.53.