



When a single corporate entity has several different substance use disorder (SUD) treatment programs, do the federal confidentiality regulations regarding SUD treatment information (42 CFR Part 2) permit internal communications of Part 2-protected records between staff at different programs?



### What You Need to Know

To improve treatment outcomes and promote continuity of care, it may be essential for staff at different programs within the same corporate entity to share client information about treatment for substance use disorder.

In this case, federal law permits disclosures of Part 2-protected information among staff at multiple programs under direct administrative control of a single umbrella entity, in connection with duties arising out of diagnosis, treatment and referral.

Programs may disclose information only to those personnel who **need to know** the information in furtherance of their duties.<sup>1</sup>



### Additional Background Information

The federal confidentiality law for substance use disorder patient records, 42 CFR Part 2 (“Part 2”), generally prohibits substance use disorder treatment programs<sup>2</sup> and certain recipients of information from disclosing patient records or patient-identifying information except in certain circumstances.<sup>3</sup>

One such exception is for internal communications. Part 2 permits program personnel to share patient-identifying information with one another or with an entity that has direct administrative control over the program on a need-to-know basis.<sup>4</sup> The need for the information must be connected with duties “arising out of” the diagnosis, treatment, or referral for treatment of patients with substance use disorder.<sup>5</sup>

When a single entity has separate substance use disorder treatment facilities, including facilities that operate with separate licenses, the internal communications exception permits communications between facilities, according to guidance from the U.S. Department of Health and Human Services (HHS).

Shortly after Part 2 was first implemented, HHS issued several official sub-regulatory guidance letters indicating that multiple programs under one corporate entity constitute a single “program” for purposes of the internal communication exception:



### Internal Communications within a Program

- "...[A]n umbrella agency and separate organizational units under it may be considered within the same 'program' so long as the individual units are under the umbrella agency's direct administrative control."<sup>6</sup> Opinion Letter 82-14, Letter to Dallas County MHMR Center (April 12, 1982).
- "We agree that since the [San Francisco Bureau of Alcoholism] has direct administrative control over the civil service units providing the services, the Bureau and those units are one program .... Therefore, communications of information between or among personnel in the Bureau and in the civil service units having a need for such information in connection with their duties would not ... constitute a disclosure of records."<sup>7</sup> Opinion Letter 77-13, Letter to San Francisco Department of Public Health (June 7, 1977).

The regulatory definition of "program" has been amended since these letters were issued, but not in a way that impacts the rationale of these HHS guidance letters.

Federal law therefore permits disclosures of Part 2-protected information among staff at multiple programs under direct administrative control of a single umbrella entity, in connection with duties arising out of diagnosis, treatment and referral. Programs may disclose information only to those personnel who need to know the information in furtherance of their duties.



### 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

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### References

- 1 42 CFR 2.12(c)(3).
- 2 A "Part 2 program" is an individual or entity receiving "federal assistance," defined at 42 CFR § 2.12(b), that meets the definition of a "program." 42 CFR § 2.11. A "program," defined at 42 CFR § 2.11, is an individual, entity (other than a general medical facility), or an identified unit in a general medical facility that holds itself out as providing, and provides, diagnosis, treatment, or referral for treatment for a substance use disorder. Individuals in a general medical facility whose primary function is to provide diagnosis, treatment, or referral for treatment for a substance use disorder are also "programs," if they are identified as providing such services. For more information, see "Disclosure of Substance Use Disorder Patient Records: Does Part 2 Apply to Me?" (SAMHSA & ONC, 2018), <https://www.samhsa.gov/sites/default/files/does-part2-apply.pdf>.
- 3 See 42 USC 290dd-2 and 42 CFR Part 2 (referred to collectively as "Part 2").
- 4 42 CFR 2.12(c)(3).
- 5 Id.
- 6 Opinion Letter 82-14, Letter to Dallas County MHMR Center (April 12, 1982). The guidance letter goes on to distinguish this scenario from one where an entity contracts with another entity, without administrative control.
- 7 Opinion Letter 77-13, Letter to San Francisco Department of Public Health (June 7, 1977).