



Welcome to :

**Overview of Alcohol/Drug
Confidentiality Regulations –
42 C.F.R. Part 2**

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Four-Part Webinar Series on...

Confidentiality, Substance Use Treatment, and Health Information Technology (HIT)

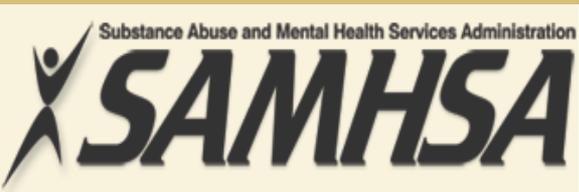
First 3 Webinars Presented by the Legal
Action Center

4th Webinar Presented by SAMHSA

Before we get started, we will have introductions from:

- ▶ Dr. H. Westley Clark M.D., J.D., M.P.H., CAS, FASAM, Director of the Center for Substance Abuse Treatment at SAMHSA
- ▶ Shannon Taitt, Project Officer, SAMHSA's Partners for Recovery

Today's presenter is Anita Marton, Esq., Legal Action Center

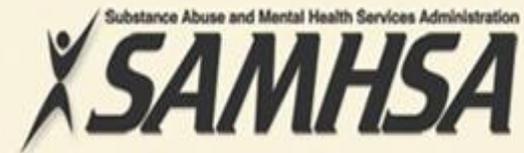


Partners for Recovery (PFR)

Shannon B. Taitt, MPA
Partners for Recovery Coordinator
SAMHSA
May 4, 2012



PARTNERS *for* RECOVERY



PFR Project Overview

The Partners for Recovery (PFR) Initiative is a SAMHSA funded policy formulation initiative that supports SAMHSA's mission to reduce the impact of substance abuse and mental illness.

To support SAMHSA's mission, PFR promotes behavioral health system reform using a public health approach.

Public Health Approach

PFR applies a public health approach by

- emphasizing prevention,
- focusing on systems,
- supporting the use of data and evidence-based practices,
- promoting social inclusion, and
- focusing on individual and community health.

Systems Reform

PFR addresses systems reform by engaging in behavioral health efforts that encompass:

- Recovery
- Workforce/Leadership development
- Social inclusion
- Health care reform

Confidentiality, Substance Abuse Treatment, and HIT

PFR worked with LAC to develop

- The second set of FAQs on Confidentiality, Substance Abuse Treatment, and HIT and
- This webinar series on Confidentiality, Substance Abuse Treatment, and HIT includes 4 separate webinars
 - an overview of 42 CFR Part 2
 - an understanding of SAMHSA's FAQs
 - an update on SAMHSA investment to support HIT adoption

Who is the Legal Action Center?

- ▶ National law & policy non-profit organization
- ▶ Policy and legal work on anti-discrimination & privacy issues affecting people with
 - Substance Use Disorders
 - Criminal records or
 - HIV/AIDS

Have a Question During this Presentation?



- ▶ Use the “Question(s)” feature on the upper right-hand corner of your screens to type in your question(s).
- ▶ Will stop for Q&A about every 20 minutes.

Today's Materials

- ▶ This PowerPoint presentation
- ▶ FAQs by SAMHSA & ONC: Applying the Substance Abuse Confidentiality Regulations to Health Information Exchange (HIE) (2010)
<http://www.samhsa.gov/healthPrivacy/docs/EHR-FAQs.pdf>
- ▶ Applying the Substance Abuse Confidentiality Regulations 42 C.F.R. Part 2 (REVISED) 12.14.11
http://www.samhsa.gov/about/laws/SAMHSA_42CFRPART2FAQII_Revised.pdf
- ▶ 42 C.F.R. Part 2 – the regulations

Today's Materials

- ▶ Download them on:
 - www.lac.org – click on “Free Webinars”
 - www.pfr.samhsa.gov



Recording of this webinar

- will be available soon at www.lac.org and www.pfr.samhsa.gov

Who's today's audience?

This training is for . . .

- ▶ State Government agencies overseeing/providing treatment for substance use and mental health disorders
- ▶ SAMHSA representatives who oversee drug/alcohol treatment and mental health programs
- ▶ Providers treating people with substance use/mental health disorders

This series is about . . .

- ▶ How to apply the Federal alcohol/drug confidentiality regulations – 42 C.F.R. Part 2 – to Health Information Technology (HIT)
- ▶ Understanding the 2 sets of FAQs issued by SAMSHA

This series is about . . .

Why now?

- ▶ Use of HIT is growing rapidly across U.S. – due to technological advances, incentives through the Health Information Technology for Economic and Clinical Health Act (HITECH) enacted as part of American Recovery and Reinvestment Act of 2009.
- ▶ In 2010 and 2011, SAMHSA released 2 sets of FAQs addressing how alcohol/drug treatment records can be incorporated into HIT environment without violating federal alcohol/drug confidentiality regulations.

This series is about . . .

Why now? (cont.)

- ▶ Even after the release of the FAQs, many have questions about how to integrate alcohol/drug treatment records into HIT systems.
- ▶ Goal of these webinars is to advance understanding of how to do this.

Today's training

Topic: Overview of 42 C.F.R. Part 2



Objectives

1. Understand who has to follow 42 C.F.R. Part 2 and what information it protects.
2. Learn what types of disclosures of information are generally prohibited by 42 C.F.R. Part 2.
3. Get baseline understanding of the key exceptions that permit the flow of information in HIT environment.

Save the Date!



Upcoming Webinars:

- ▶ Understanding SAMHSA's FAQs about HIT & 42 C.F.R. Part 2 – Part one – May 11, 2012
- ▶ Understanding SAMHSA's FAQs about HIT & 42 C.F.R. Part 2 – Part 2 – May 18, 2012
- ▶ SAMHSA's Investment to Support HIT Adoption – May 25, 2012

Let's Get Started



What is 42 C.F.R. Part 2?

How Does it Relate to Other Laws?

What is 42 C.F.R. Part 2?

- ▶ Regulations governing confidentiality of alcohol/drug treatment and prevention records
- ▶ Statute is 42 U.S.C. § 290dd-2

Purpose of 42 C.F.R. Part 2

- ▶ Enacted in 1970s. Congress recognized that due to stigma of addiction, heightened privacy protections to encourage people to get treatment were needed.
- ▶ Because of 42 C.F.R. Part 2's strict protections, some question how alcohol/drug treatment records can be successfully incorporated into electronic health records and systems.

more...

Purpose of 42 C.F.R. Part 2

- ▶ Purpose of webinar series – explain how alcohol/drug treatment information *can* be incorporated into electronic health record [EHR] systems without violating 42 C.F.R. Part 2 (Part 2) – **though there are important limitations.**
- ▶ Most often, will need patient consent.

Purpose of 42 C.F.R. Part 2

- ▶ Basic definitions:
- ▶ **“HIT”** (Health Information Technology) = the use of computers and computer programs to store, protect, retrieve, and transfer clinical, administrative, and financial information electronically within health care settings.
- ▶ **“HIE”** (Health Information Exchange) = various methods and mechanisms through which information can be exchanged electronically via a computer network between/among health care providers and other health care stakeholders.
- ▶ **“HIO”** (Health Information Organization) = an organization that oversees and governs the exchange of health-related information among organizations

Purpose of 42 C.F.R. Part 2

- ▶ 2nd and 3rd webinars in series will elaborate –
 - different HIO patient choice models adapted for HIE
 - various ways to include alcohol/drug treatment information without violating 42 C.F.R. Part 2 – most often, with patient consent.

What about HIPAA?



- HIPAA sets *minimum* privacy protections for *all* health information held by:
 - Health care providers who transmit health information electronically in connection with “covered” transactions (such as billing, administration). Includes most alcohol/drug programs.
 - Health plans
 - Health care clearinghouses

Which law applies?

- ▶ Most alcohol/drug programs must comply with HIPAA as well as 42 C.F.R. Part 2.
- ▶ What to do if 42 C.F.R. Part 2 and HIPAA impose different requirements?

Which law applies?

- ▶ Follow both laws, if possible.
- ▶ HIPAA often is more permissive than 42 C.F.R. Part 2:
 - allows many disclosures prohibited by 42 C.F.R. Part 2.
- ▶ If 42 C.F.R. Part 2 is more restrictive, then its provisions apply.

Which law applies?

- ▶ **Examples**
- ▶ HIPAA permits disclosures of health information (including alcohol/drug treatment) – without consent – for treatment, payment and health care operations.
- ▶ 42 C.F.R. Part 2 prohibits these disclosures without consent or other specific authorization. So follow 42 C.F.R. Part 2.

Relationship between 42 C.F.R. Part 2 and State laws

- ▶ States may not require disclosures prohibited by 42 C.F.R. Part 2 **but**
- ▶ States may impose **additional confidentiality** protections.

Relationship between 42 C.F.R. Part 2 and State laws

- ▶ **Case scenario/poll**
- ▶ Law in State X requires compliance with subpoena
- ▶ But 42 C.F.R. Part 2 does *not* permit disclosure of information in response to a subpoena for alcohol/drug records unless patient consents or court issues specific order per 42 C.F.R. Part 2 (more on court orders, later).
- **May a Part 2 alcohol/drug program comply with subpoena for patient records even though it doesn't have patient consent or special court order issued under 42 C.F.R. Part 2?**

Relationship between 42 C.F.R. Part 2 and state laws

- ▶ **Possible answers:**

1. Yes

2. No

Relationship between 42 C.F.R. Part 2 and state laws

- ▶ **Correct answer:**

2. **No** – because no State law may authorize or compel a disclosure that's prohibited by 42 C.F.R. Part 2.

HAVE QUESTIONS?

Now for your questions...



42 C.F.R. Part 2: General Rule

Who must comply...What information and
who is protected...

42 C.F.R. Part 2: General Rule

- ▶ A program covered by Part 2 –
 - may not **disclose** information
 - that **identifies** a **patient** directly or indirectly as having a current or past **drug/alcohol** problem, or as a participant in a Part 2 program
 - unless the patient **consents** in writing or another **exception** applies.

FAQ I (3)

Who must follow 42 C.F.R. Part 2?

»» Defining a “program”



Who must follow 42 C.F.R Part 2?

- ▶ To be covered by Part 2, a provider must meet the definition of “program” and be federally assisted.
- ▶ Definition of a program:
 1. individual/entity *other* than general medical facility which holds itself out as providing and provides alcohol/drug diagnosis, treatment, or referral for treatment; **or**

more...

Who must follow 42 C.F.R Part 2?

- ▶ Definition of a program continued:
 2. an identified unit within a general medical facility which holds itself out as providing and provides alcohol/drug diagnosis, treatment, or referral for treatment; or
 3. Medical personnel or other staff in a general medical care facility whose primary function is the provision of alcohol/drug diagnosis, treatment, or referral for treatment and who are identified as such.

Who must follow 42 C.F.R Part 2?

Under the first definition, a program is

1. individual/entity *other* than general medical facility which provides alcohol/drug diagnosis, treatment, or referral for treatment *and* holds itself out as providing such services.

Examples:

- ▶ freestanding drug/alcohol treatment program

more...

Who must follow 42 C.F.R Part 2?

Examples of the first definition continued (not in general medical facility):

- student assistance program in a school
- primary care providers whose provision of these services is their principal practice

FAQ II (10)

Who must follow 42 C.F.R Part 2?

“Holds itself out” as providing alcohol/drug related services:

Regulations do not specify, but per SAMHSA, indications of “holds itself out” could be:

- State licensing procedures
- advertising or posting notices in office
- certifications in addiction medicine
- listings in registries

more...

Who must follow 42 C.F.R Part 2?

“Holds itself out” (cont.):

- internet statements
- consultation activities for non- Part 2 “program” practitioners
- information given to patients/families
- any activity that would lead one to reasonably conclude – provides these services

FAQ II (10)

Who must follow 42 C.F.R Part 2?

2. In general medical facilities – applies to –

- **Identified unit that holds itself out** as providing and does provide alcohol/drug diagnosis, treatment, or referral for treatment, e.g., detox unit or outpatient or inpatient alcohol/drug program; *or*
- Medical personnel or other staff whose **primary function** is provision of alcohol/drug abuse diagnosis, treatment, or referral for treatment.

Who must follow 42 C.F.R Part 2?

Case scenario/poll

- Dr. Jones works in a hospital E.R.
- Let's assume hospital gets federal assistance (will discuss more later)
- Patient comes in after accident, inebriated.
- Dr. Jones calls specialized alcohol/drug treatment unit to come to E.R. and assess client for alcoholism
- Patient leaves before assessment

Is Dr. Jones a “program” under 42 C.F.R. Part 2?

Who must follow 42 C.F.R Part 2?

Possible answers

1. Yes
2. No
3. Don't have enough information

Who must follow 42 C.F.R Part 2?

Correct answer

2. No

- Dr. Jones works in a general medical facility – but not an identified unit that provides & holds itself out as providing alcohol/drug abuse diagnosis, treatment, referral for treatment.
- Dr. Jones would only be “program” if “primary function” was provision of alcohol/drug related services. It’s not.

more...

Who must follow 42 C.F.R Part 2?

Correct answer (cont.)

42 C.F.R. Part 2 *would have* applied if:

- client stayed and received assessment by staff of identified alcohol/drug unit; *or*
- client otherwise received diagnosis or treatment from E.R. employee whose **primary function** was diagnosis and referral for alcohol/drug treatment.

Who must follow 42 C.F.R Part 2?

What is a “general medical facility”?

- ▶ Not defined in 42 C.F.R. Part 2, but per FAQ 1 (11):
 - Hospitals, trauma centers, or federally qualified health centers generally are “general medical care” facilities.
 - Practice comprised only of primary care providers *could be* a “general medical facility.”
 - **BUT** even in a general medical facility, provider is only Part 2 “program” if works in identified unit that provides & holds itself out as providing alcohol/drug related services *or* personnel/staff has “primary function” of provision of alcohol/drug related services.

Who must follow 42 C.F.R Part 2?

- ▶ Also must be “federally assisted”

- Gets federal funding – even if not for alcohol/drug abuse services;
- Conducted by the Federal government;
- Tax exempt by the I.R.S.
- Receives Medicaid or Medicare reimbursement

more...

Who must follow 42 C.F.R Part 2?

- ▶ “Federally assisted” (cont.):

- Authorized, licensed, certified, or registered by Federal government
- Authorized to do business by federal government. e.g. –
 - Certified as Medicare provider

more...

Who must follow 42 C.F.R Part 2?

- ▶ **“Federally assisted”** (cont.):

- Registered with DEA to dispense controlled substance for treatment of substance use disorder.

- Includes clinicians with DEA registration/license who use controlled substance like benzodiazepines, methadone or buprenorphine for detoxification or maintenance treatment.

Who must follow 42 C.F.R Part 2?

- ▶ **Case scenario/poll**
- ▶ Dr. Smith is a primary care provider who prescribes buprenorphine for opiate addiction.
 - Is Dr. Smith a “program” under 42 C.F.R. Part 2?

Who must follow 42 C.F.R Part 2?

▶ Possible answers:

1. Yes because Dr. Smith's DEA licensure constitutes "federal assistance."
2. No.
3. Not enough information to decide.

Who must follow 42 C.F.R Part 2?

- ▶ **Correct answer: 3** – Not enough information to decide.

Dr. Smith is “federally assisted.” But we don’t know this vital information:

- Does Dr. Smith practice in a “**general medical facility?**”
- If yes, Dr. Smith is only a “program” if
 - she practices in an “**identified unit**” that provides alcohol/drug abuse diagnosis, treatment, or referral for treatment *and* the unit “holds itself out” as providing those services; *or*
 - Dr. Smith’s “**primary function**” is the provision of these alcohol/drug related services.

more...

Who must follow 42 C.F.R Part 2?

- ▶ **Correct answer (cont.):** not enough information to decide.

If Dr. Smith does *not* practice within a general medical facility:

- Dr. Smith is only a Part 2 “program” if her “**principal practice**” consists of providing alcohol/drug abuse diagnosis, treatment, or referral for treatment and she “holds herself out” as providing those services.

What's a "Disclosure?"



What's a "disclosure?"

▶ Disclosure is –

- Communication of **records** containing **"patient-identifying information"** (will define shortly)
 - **"Records"** – includes any information, whether in writing, orally, electronically, or by other means
- **"Disclosure"** even if person receiving the information already has it ("I dropped off my wife earlier today. Is she finished with treatment today?")

FAQ I (3)

What's “patient-identifying information?”

- ▶ Identifies someone as:
 - Having past or current **alcohol/drug problem**.
 - Being a past or current **patient** in alcohol/drug program.

What's "patient-identifying information?"

Patient

- ▶ anyone who now or *ever* received – or even *applied* for – services from a Part 2 alcohol/drug program.

Example:

- John made appointment but didn't show up. He's a "patient."

What's “patient-identifying information”?

- ▶ Includes name, address, social security number, fingerprints, photographs or other information by which patient's identity can be determined with reasonable accuracy/speed.
- ▶ Does not include **demographic data** that doesn't reveal – directly or indirectly – that someone has/had alcohol/drug problem or is/was patient

FAQ I (16)

What's “patient-identifying information”?

- ▶ Does not include **aggregate data**

FAQ I (35)

- ▶ Does not include information that someone receives/received services from **mixed use facility** – e.g., general medical facility, community mental health center that provides alcohol/drug treatment as well as other health services

FAQ I (17)

HAVE QUESTIONS?

Now for your questions...



Exceptions to Confidentiality Rule

- » Circumstances in which 42 C.F.R. Part 2 permits disclosures

Exceptions generally

- ▶ Last section – reviewed general rule that *prohibits* programs from disclosing patient-identifying information
- ▶ This section – will review “exceptions” – provisions – that permit disclosures, focusing on those most relevant to HIT.

Exceptions generally

- ▶ Exceptions most relevant to HIT:
 - Consent
 - Internal communications
 - Qualified Service Organization Agreement
 - Medical emergency
- ▶ Other exceptions:
 - Audit/evaluation
 - Crime at program/against personnel
 - Child abuse/neglect reporting
 - Court order

Consent

»» 1st exception



Consent

- ▶ Programs may disclose most patient information if patient signed consent that complies with 42 C.F.R. Part 2 and hasn't expired or been revoked.
 - Includes disclosures to HIO FAQ I (7)
 - But no information obtained from program (even per consent) may be used to criminally investigate or prosecute patient.

Consent

Key requirements:

- Proper form – all required elements.
- Redisclosure notice required.
- HIPAA only: may not condition treatment on signing consent.
- Permits disclosure, but does not require it.

Consent

Proper form:

Must be in writing (no oral consent) and contain:

1. name or general designation of program(s) making the disclosure;
2. name or title of individual(s) or name of organization(s) permitted to receive the disclosure (recipient)
3. name of patient whose information is being disclosed

FAQ I (11), (13), (14)

more...

Consent

Proper form (cont.)

4. purpose of disclosure;
5. how much and what kind of information to be disclosed;
6. signature of patient and/or other authorized person (will discuss minors in Webinar #2); and

more...

Consent

Proper form (cont.):

7. date consent is signed.
8. statement of patient's right to revoke the consent except if program relied on it;
9. date, event or condition of expiration if not previously revoked – no longer than necessary to serve stated purpose;

Consent

Proper form (cont.):

HIPAA's additional requirements:

1. program's ability to condition treatment, payment, enrollment or eligibility of benefits on patient signing the consent, by stating that the program may not condition these services on consent, *or* the consequences for refusal to consent;
2. Plain English.

Sample consent forms on LAC's website:

www.lac.org/index.php/lac/alcohol_drug_publications

Consent

Proper form (cont.):

- Use of a single Part 2 consent form for disclosures to different recipients for different purposes is permitted:
 - if the form makes clear what information may be given to which recipients for which purpose.
- A single consent form can authorize the disclosure of Part 2 information and as well as authorize the redisclosure of that information to other identified recipients.

FAQ I (13), (14), FAQ II (4)

Uses of consent forms will be discussed in more detail in Webinar 2.

Consent

Proper form (cont.):

- Program making the disclosure does *not* need the original copy of the consent form.
 - copies, faxes, scans – OK. Don't need “wet” signature.
 - program should act with reasonable caution.
 - electronic signature OK if acceptable under state law

FAQ I (15)

Consent

Redisclosure notice

- For all disclosures pursuant to consent:
 - disclosing party must send recipient – **notice** that may not redisclose patient information “unless further disclosure is expressly permitted by the written consent of the person to whom it pertains or as otherwise permitted by 42 C.F.R. Part 2.”
 - applies whether disclosure was written, oral or electronic

FAQ II (6)

Sample consent forms on LAC’s website:
www.lac.org/index.php/lac/alcohol_drug_publications

Consent

Case scenario/poll – redisclosure notice

- Program gets a client’s written 42 C.F.R. Part 2–compliant consent to disclose patient–identifying information to HIO.

Does program need to send the HIO the notice prohibiting redisclosure?

Consent

Possible answers:

1. **Yes** because the notice prohibiting redisclosure must accompany a disclosure made pursuant to consent.
2. **No** because the HIO is a computer system, not a person.

Consent

Correct answer:

1. **Yes** because the notice prohibiting redisclosure must accompany a disclosure made pursuant to consent.

Join Webinar #2 for more information about consent & notice prohibiting redisclosure in HIT context.

Qualified Service Organization Agreement

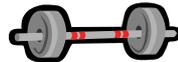
➤➤ 2nd exception



Qualified Service Organization Agreement – QSOA

What is a QSOA?

- Two-way written agreement that allows programs to disclose information *without patient consent* to outside organization that provides services to the program.



Examples

- data processing
- dosage preparation
- lab analysis
- medical and health care

Qualified Service Organization Agreement – QSOA

What is a QSOA?

- Outside organization (“qualified service organization” or “QSO”) agrees:
 - Not to redisclose patient-identifying information except as permitted by 42 C.F.R. Part 2
 - To resist in judicial proceedings, if necessary, any effort to obtain the protected information except as permitted by 42 C.F.R. Part 2.

FAQ I (6)

Qualified Service Organization Agreement – QSOA

What is a QSOA?

- Programs may enter into a QSOA with a HIO
 - Services the HIO may provide to the program might include –
 - holding and storing patient data,
 - receiving/reviewing requests for disclosure from third parties;
 - facilitating electronic exchange of patient information.
- FAQ I (6)
- Webinar 3 provides in-depth look at use of QSOAs in HIE.

Qualified Service Organization Agreement – QSOA

Relationship to Business Associate Agreement–HIPAA

- HIPAA has similar vehicle – “business associate agreement”
- HIPAA has additional requirements
- May create joint “Qualified Service/Business Associate Agreement” – QSO/BA

Qualified Service Organization Agreement – QSOA

Case scenario/poll

- New Life alcohol/drug treatment program has QSOA with nearby HIO to provide data aggregation services and to respond to requests by third parties.
- Per QSOA, New Life discloses patient-identifying information about Sam to HIO.
- Sam's doctor wants to access Sam's alcohol/drug treatment information from the HIO.

Does the QSOA permit the HIO to redisclose Sam's alcohol/drug treatment information to Sam's doctor?

Qualified Service Organization Agreement – QSOA

Possible answers:

1. Yes

2. No

3. Need more information

Qualified Service Organization Agreement – QSOA

Correct answer:

2. No

- QSOAs only permit sharing alcohol/drug patient identifying information between the program and the organization providing the service (QSO). No redisclosure by the QSO (HIO) is permitted without consent or other authorization under 42 C.F.R. Part 2.
- Webinars 2 and 3 will discuss other vehicles under 42 C.F.R. Part 2 that permit redisclosures to HIO-affiliated members.

Medical Emergency

»» 3rd exception



Medical emergency

What if patient of alcohol/drug program collapses on program floor in an apparent heart attack.

May the program call 911?

Medical emergency

Yes. Part 2 programs may disclose patient-identifying information without consent to –

- Medical personnel if:
 - immediate threat to an individual's health,
 - requiring immediate medical intervention.

Medical emergency

- Disclosure is permitted to medical personnel only – not family members.
- But medical personnel *may* redisclose patient-identifying information without need of consent.

Medical emergency

- Any health care provider who is treating a patient for a medical emergency, not just the Part 2 program, is allowed to make the determination that a medical emergency exists.

FAQ I (24)

Medical emergency

Documentation required

- Immediately after disclosure, must document it:
 - name of medical personnel to whom disclosure was made & affiliation with health care facility;
 - name of individual making disclosure;
 - date/time of disclosure; *and*
 - nature of emergency.

Webinar 3 – will discuss how applies in HIT context.

Internal Communications

»» 4th exception



Internal communications

- ▶ Part 2 programs may disclose patient-identifying information without consent –
 - Within a program *or*
 - To entity with administrative control over the program
 - if recipient needs the information
 - to provide alcohol/drug services.

Examples:

- Counselor may consult supervisor about how to address a client's need.
- Program staff may submit patient information to billing department so program can get paid.

Internal communications

- ▶ **Disclosure to entity with “administrative control”**
 - If Part 2 program is component of larger multi-service entity (e.g., behavioral health or general health program), patient-identifying information may be shared with administrative personnel (i.e., records or billing department of larger entity) who need it in connection with duties.
 - **But** may not share with all programs/personnel under umbrella of the multi-service agency who do not need it in connection with duties without specific authorization under 42 C.F.R. Part 2 (e.g., consent, QSOA).

Other exceptions that permit disclosure without consent ...



Other exceptions

- ▶ Crime on program premises / against program personnel
- ▶ Court order
- ▶ Research / audit–evaluation
- ▶ Child abuse / neglect reporting

Crime on program premises /against program personnel

- ▶ If patient in Part 2 program assaults another patient in the program waiting room, may program contact law enforcement?
- ▶ Yes. 42 C.F.R. Part 2 permits programs to:
 - Report crimes committed or threatened
 - on program premises *or*
 - against program personnel.
- ▶ May only disclose:
 - Suspect's name, address, last known whereabouts
 - Status a patient of the Part 2 program.

Crime on program premises /against program personnel

▶ Duty to warn

- 42 C.F.R. Part 2 does not impose a duty to warn – or a duty to disclose any information. It only governs when disclosures *may* be made, not when they *must* be made.
- If there's a duty to warn – it would be found in state law.
- There are various ways that a warning can be made without violating 42 C.F.R. Part 2. This will be discussed in more detail in Webinar 3.

Court order

- ▶ 42 C.F.R. Part 2 has special provisions for issuance of court order authorizing disclosure of alcohol/drug treatment records.
- ▶ Will not discuss details here.
- ▶ **But note:** subpoena alone – even if court-ordered – does not satisfy requirements of 42 C.F.R. Part 2.

FAQ II (5)

Child abuse/neglect reports

- ▶ All States have laws requiring reporting of child abuse and neglect.
- ▶ 42 C.F.R. Part 2 permits program to comply with these laws' requirements to:
 - Make an initial report *and* provide written confirmation of the report.
- ▶ **But** 42 C.F.R. Part 2 does not permit programs to disclose records for ongoing investigation – including confidential communications – without court order per 42 C.F.R. Part 2.

FAQ II (5)

Research & audit–evaluation

- ▶ Part 2 programs may disclose patient–identifying information without a 42 C.F.R. Part 2 compliant consent form to:
 - **Researchers** – but they are prohibited from using it for any other purpose or redisclosing it except back to the program (any report issued may not identify patient identities), and
 - **Persons or organizations authorized to do an audit or evaluation.**

more...

Research & audit–evaluation

▶ Audit and evaluation (cont.)

- Auditor/evaluator:
 - may only use the information for audit/evaluation and
 - redisclose only –
 - back to program,
 - pursuant to court order to investigate/prosecute the program (not a patient) *or*
 - Government agency overseeing Medicare or Medicaid audit/evaluation.

FAQ II (6)

HAVE QUESTIONS?

Now for your questions...



Your feedback



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Thank you

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