

Practical Application of 42 CFR Part 2: Supporting SUD Providers to do Their Jobs with Confidence



The 29th National HIPAA Summit
March 4th, 2020 2PM



Introduction

WELCOME TO THE COE-PHI



Presenters

Jacqueline Seitz, JD

CoE-PHI Health Privacy Lead

Jennifer Lohse, JD

VP and General Counsel, Hazelden Betty Ford Foundation

Michael Graziano, MPA

CoE-PHI Project Director



Learning Objectives

**Describe when Part 2 requires
consent for disclosures**

**Identify requirements for
Part 2 consent forms**

**Discuss workflow solutions
for obtaining consent**



Center of Excellence for Protected Health Information

Funded by SAMHSA, the CoE-PHI develops and disseminates resources, training, and TA for states, healthcare providers, school administrators and individuals and families to improve understanding and application of federal privacy laws and regulations, [including FERPA, HIPAA, and 42 CFR Part 2](#), when providing and receiving treatment for SUD and mental illness.

Resources, training, technical assistance, and any other information provided through the CoE-PHI do not constitute legal advice.



CoE-PHI Team: LAC & CAI



CAI

Cicatelli Associates Inc. (CAI)

Nationally recognized leadership and workforce development capacity building organization

Barbara Cicatelli, President and Founder



Legal Action Center (LAC)

Nationally recognized non-profit law office with long history and extensive knowledge in interpreting federal privacy laws and regulations

Paul Samuels, Director and President



What we do....

-  **Expert Training**
-  **Individualized Technical Assistance**
-  **Resources and Tools**
 - eLearning
 - Implementation Guides
 - Fact Sheets



OVERVIEW OF CONSENT



HIPAA

Applies to covered entities (most healthcare providers, health plans, healthcare clearinghouses) and BAs

- Protects privacy and security of general health information, gives patients certain rights

Purpose: to protect health data integrity, confidentiality, and accessibility

Permits disclosures without patient consent for treatment, payment, and healthcare operations

42 CFR Part 2

Applies to Part 2 programs (federally-assisted SUD “programs”) and most recipients of Part 2 records

- Protects privacy and security of records identifying individual as seeking/receiving SUD treatment

Purpose: to encourage people to enter and remain in SUD treatment by guaranteeing confidentiality

Requires patient consent for treatment, payment, and healthcare operations, with limited exceptions



When do you need patient consent?

- Part 2 generally requires written consent for disclosures
 - *Including most disclosures for treatment, payment, and healthcare operations (note distinction from HIPAA)*
- Limited exceptions apply (next slide)
- Disclosures must be accompanied by Notice of Prohibition on Re-Disclosure (§ 2.32)



Disclosures of Part 2 records *without patient consent*

De-identified data	Internal communications	Medical emergency
Qualified service organization	Audit/evaluation	Research
Mandated child abuse/neglect reporting	Reporting crime on program premises	Court order



Part 2 Consent Form Requirements (§ 2.31)

- 2017 amendments changed several major components:
 - *Recipient of the information*
 - *Amount and kind of information*
- Recent NPRM (Aug. 2019) proposed largely returning to the pre-2017 requirements for identifying the recipient of the information

LEGAL ACTION CENTER

SAMPLE CONSENT TO: INDIVIDUAL
AUTHORIZING DISCLOSURE OF CONFIDENTIAL SUD PATIENT RECORDS

REMEMBER: Records disclosed pursuant to patient consent must be accompanied by the notice prohibiting redisclosure.

I, _____,
[patient's name]

authorize _____
[name or general designation of individual or entity making the disclosure]

to disclose _____
[describe how much and what kind of information may be disclosed, including an explicit description of any substance use disorder information to be disclosed; should be as limited as possible]

to _____
[name of individual(s) who will receive the information]

for the purpose of _____
[describe the purpose of the disclosure; should be as specific as possible]

I understand that my substance use disorder records are protected under federal law, including the federal regulations governing the confidentiality of substance use disorder patient records, 42 C.F.R. Part 2, and the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), 45 C.F.R. Parts 160 and 164, and cannot be disclosed without my written consent unless otherwise provided for by the regulations.

I understand that I may revoke this authorization at any time except to the extent that action has been taken in reliance on it. Unless I revoke my consent earlier, this consent will expire automatically as follows:

[date, event, or condition upon which consent will expire, which must be no longer than reasonably necessary to serve the purpose of this consent]



Common Issues and Workflow Solutions

- Identifying recipient of information
- Working with irrevocable consents (for mandated patients)
- Confusion about multi-party consents
- Forgetting to send the Notice of Prohibition on Re-Disclosure
- More...



Q & A





How we can help....

ACCESSING THE COE-PHI



Accessing the CoE-PHI

Request TA

coephi.org/technical-assistance

Resource Library

coephi.org/resource-center



Focus:PHI
The Center of Excellence for Protected Health Information

QUICK LINKS

- PROJECT OVERVIEW
- WHO IS INVOLVED IN THE INITIATIVE? ▾
 - CORE PROJECT STAFF
 - NATIONAL ADVISORY GROUP MEMBERS
- HOW WILL WE KNOW WE ARE SUCCESSFUL?
- REQUEST TA
- RESOURCE CENTER
- CONTACT US

Join Our Mailing List
click here

DISCLAIMER

Resources, training, technical assistance, and any other information provided through the CoE for PHI do not constitute legal advice. For legal advice, including legal advice on other applicable state and federal laws, please seek out local counsel.

REQUEST TA

Please use the form to request Technical Assistance.

Name

Role/Job Title

Organization Name

Organization Type
- Select a value - ▾

Affiliation
- None - ▾

State/Territory
- None - ▾

Zip Code

Contact Phone Number

Email *

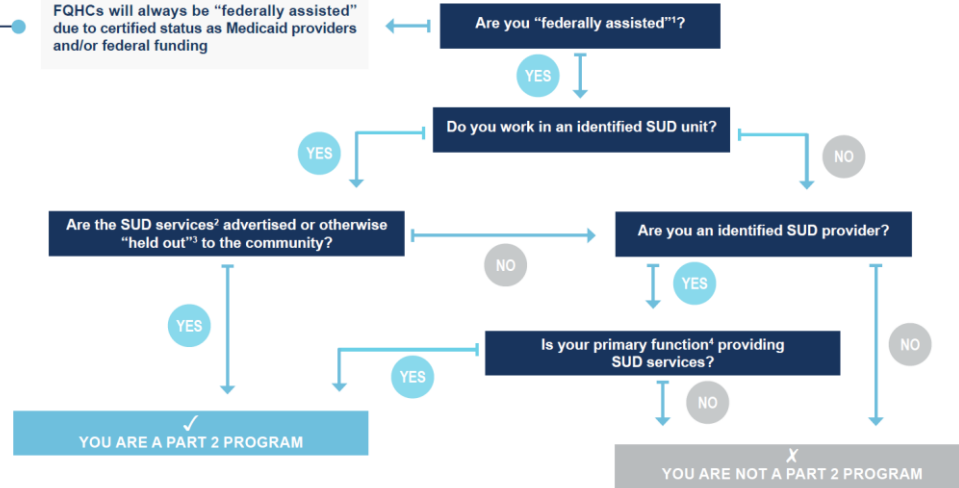
Your Question

Is your question urgent? *
☐ No
☐ Yes

I Provide SUD Services in an FQHC: Does Part 2 Apply to Me?

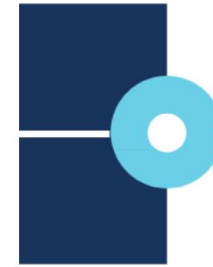
Use the flowchart below to determine if Part 2 applies to you; See the next page for key terms.

NOTE:
FQHCs will always be "federally assisted"
due to certified status as Medicaid providers
and/or federal funding



For more information & resources, or to request technical assistance, please visit coephi.org.

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.



Focus:PHI

The Center of Excellence for Protected Health Information

QUICK LINKS

[PROJECT OVERVIEW](#)

[WHO IS INVOLVED IN THE INITIATIVE?](#)

[CORE PROJECT STAFF](#)

[NATIONAL ADVISORY GROUP MEMBERS](#)

[HOW WILL WE KNOW WE ARE SUCCESSFUL?](#)

[REQUEST TA](#)

[RESOURCE CENTER](#)

[CONTACT US](#)

On Demand Webinar Available

Maintaining Patient Confidentiality When Providing Medication for Opioid Use Disorder Treatment in Community Health Centers

1.5 Continuing Education Credits

To access [sign-in](#) to our on demand webinar platform

Helpful Resources



Evaluation

*We value your opinion- please take the time
to complete our evaluation form!*



THANK YOU!