

## 42 CFR, Part 2 Summary

### **Overview**

42 CFR Part 2 (commonly referred to as "Part 2") are the federal regulations governing the confidentiality of drug and alcohol abuse treatment and prevention records. The regulations set forth requirements applicable to certain federally assisted substance abuse treatment programs limiting the use and disclosure of substance abuse patient records and identifying information. These regulations were enacted in 1987 by the Secretary of the US Department of Health and Human Services (HHS) as authorized by both the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment, and Rehabilitation Act of 1970 and the Drug Abuse Prevention, Treatment, and Rehabilitation Act of 1972. These Acts and the Part 2 regulations provide comprehensive privacy protections in an effort to encourage people to seek treatment for substance abuse problems.

Part 2 sets forth the limited circumstances in which substance abuse patient information may be used or disclosed, and no uses or disclosures other than those detailed in the regulations are permitted.

Generally, written patient consent is required to disclose the patient's records. A written consent must contain certain elements and be narrowly tailored to limit disclosure to the specific parameters in the consent.

### **There are exceptions to the consent requirement, which permit programs to disclose or use substance abuse patient information:**

- In the course of internal program communications;
- In a communication with a Qualified Service Organization (an outside organization that provides services to the program, such as dosage preparation or lab analysis);
- In medical emergencies;
- In response to a crime against program personnel or on program premises (or threats to commit such a crime);
- For research activities;
- For audit and evaluation activities;
- To report suspected child abuse or neglect;
- In circumstances involving certain minors or incompetent patients; and
- In response to a valid court order.

All of these exceptions have very specific requirements and are limited in scope.

### **What Programs Are Covered by Federal Confidentiality Laws?**

42 CFR Part 2 applies to any program that:

- 1) Involves substance abuse education, treatment, or prevention; and
- 2) Is regulated or assisted by the federal government (42 U.S.C. § 290dd-2; 42 C.F.R. § 2.11- 2.12).

### **What Information Is Protected?**

42 CFR Part 2 applies to all records relating to the identity, diagnosis, prognosis, or treatment of any patient in a substance abuse program that is conducted, regulated, or directly or indirectly assisted by any department or agency of the United States.

### **How Can Protected Information Be Shared?**

Information can be shared if written consent is obtained through a Release of Information Form (ROI). A written consent form requires ten elements (42 C.F.R. § 2.31(a); 45 C.F.R. § 164.508(c)):

- 1) The names or general designations of the programs making the disclosure;
- 2) The name of the individual or organization that will receive the disclosure;
- 3) The name of the patient who is the subject of the disclosure;
- 4) The specific purpose or need for the disclosure;
- 5) A description of how much and what kind of information will be disclosed;
- 6) The patient's right to revoke the consent in writing and the exceptions to the right to revoke or, if the exceptions are included in the program's notice, a reference to the notice;
- 7) The program's ability to condition treatment, payment, enrollment, or eligibility of benefits on the patient agreeing to sign the consent, by stating: a. The program may not condition these services on the patient signing the consent; or b. The consequences for the patient refusing to sign the consent.
- 8) The date, event, or condition upon which the consent expires if not previously revoked;
- 9) The signature of the patient (and/or other authorized person); and
- 10) The date on which the consent is assigned.

### **The consent form must also include the language:**

This information has been disclosed to you from records protected by Federal confidentiality rules (42 CFR part 2). The Federal rules prohibit you from making any further disclosure of this information unless further disclosure is expressly permitted by the written consent of the person to whom it pertains or as otherwise permitted by 42 CFR part 2. A general authorization for the release of medical or other information is NOT sufficient for this purpose. The Federal rules restrict any use of the information to criminally investigate or prosecute any alcohol or drug abuse patient.