

# Confidentiality of Alcohol & Drug Abuse Patient Records

## WHAT IS 42 CFR PART 2

42 CFR Part 2 imposes regulations on the disclosure and use of alcohol and drug abuse patient records which are maintained with any federally assisted alcohol and drug abuse program. These regulations are intended to insure that an alcohol or drug abuse patient is not made more vulnerable by reason of the availability of his or her patient record than an individual who has an alcohol or drug problem and who does not seek treatment.

## MEDICAL RECORD DISCLOSURE

Records which include the identity, diagnosis, prognosis, or treatment of any patient in connection with any program or activity relating to alcoholism or alcohol abuse education, training, treatment, rehabilitation, or research, which is conducted, regulated, or assisted by any department or agency of the US must be confidential and disclosed as follows:

- With a written consent of the patient
- With or without a written consent to:
  - Medical personnel to the extent necessary to meet a medical emergency
  - To qualified personnel for the purpose of conducting scientific research, management audits, financial audits, or program evaluation. Such personnel may not identify any individual patient in any report in any manner
- If authorized by an appropriate court order
  - Except as authorized by a court order, no record may be used to initiate or substantiate any criminal charges against a patient or to conduct any investigation of a patient
- The presence of an identified patient may be acknowledged only if the patient's written consent is obtained or if an authorizing court order is entered.

Restrictions on disclosure do not apply to communications between a program and a qualified service organization of information needed by the organization to provide services to the program.

Restrictions on disclosure do not apply to communication from program personnel to law enforcement officers which are directly related to a patient's commission of a crime on the premises of the program or against program personnel or to a threat to commit such a crime and are limited to the circumstances of the incident.

Disclosure prohibitions do not apply within the Armed Forces or within the Veterans' Administration furnishing healthcare to veterans, or between such components and the Armed Forces.

Disclosure prohibitions do not apply to the reporting under State law of incidents of suspected child abuse and neglect to the appropriate State or local authorities.

Any answer to a request for disclosure of patient records not permissible under these regulations must be made in a way that will not affirmatively reveal that an individual has been or is being diagnosed or treated for alcohol or drug abuse.

Any disclosure identifying a deceased patient as an alcohol or drug abuser is subject to these regulations. If a written consent is required, it may be given by a representative appointed under State law, if there is no appointment, it may be given by the patient's spouse or any responsible family member.

Disclosures may be made to other programs to prevent multiple enrollments in detoxification and maintenance treatment programs.

Unconditional compliance is required. Restrictions on disclosure apply whether the holder of the information believes the person seeking the information already has it, has other means of obtaining it, is a law enforcement official, has obtained a subpoena, or asserts any other justification for a disclosure or use which is not permitted by these regulations.

Source: 42 CFR Part 2. Electronic Code of Regulations, <https://www.ecfr.gov/cgi-bin/text-idx?rgn=div5;node=42%3A1.0.1.1.2>

Patients can not be prohibited access to their records.

## HEALTHCARE FACILITIES & PARTIES AFFECTED

An alcohol abuse or drug abuse program is considered to be federally assisted if:

- It is conducted in whole or in part by any department or agency of the US
- It is being carried out under a license, certification, registration, or other authorization granted by any department or agency of the US, including but not limited to:
  - Certification of provider status under the Medicare program
  - Authorization to conduct methadone maintenance treatment
  - Registration to dispense a substance under the Controlled Substances Act to the extent the controlled substance is used in the treatment of alcohol or drug abuse
- It is supported by funds provided by any department or agency of the US by being a recipient of federal financial assistance of any form, or conducted by a State or local government unit
- It is assisted by the IRS of the Department of Treasury through the allowance of income tax deductions for contributions to the program or through the granting of tax exempt status to the program

Restrictions on disclosures of these regulations also apply to:

- Third party payers with records disclosed to them by federally assisted alcohol or drug abuse programs
- Entities having direct administrative control over programs with regard to information communicated to them by the program
- Persons who receive patient records directly from a federally assisted alcohol or drug abuse program and who are notified of the restrictions on disclosure of the records

No program may employ or enroll as a patient any undercover agent or informant.

No program may require any patient to carry on them while away from the program any card or object which identifies the patient as an alcohol or drug abuser.

Written records must be maintained in a secure room, locked file cabinet, safe or other similar means when not in use. Each program shall adopt written procedures which regulate and control access to and use of written records.

## MINORS

If the State does not require parental consent to treatment, any written consent for disclosure may be given only by the minor patient. This includes restrictions on disclosure to the parent or guardian of a minor for the purpose of obtaining financial reimbursement.

If the State law requires consent of a parent or guardian for a minor to obtain treatment, any written consent for disclosure must be given by both the minor and the parent or guardian.

Facts relevant to reducing a threat to the life or well being of the applicant or other individual may be disclosed to the parent or guardian if the minor lacks capacity because of extreme youth or mental or physical condition to make a rational decision and the applicants situation poses a substantial threat to the life or physical well being of the applicant or other individual.

If the patient is incompetent to manage their own affairs, any consent required may be given by the parent or guardian. The program director may exercise the right of the patient to consent to a disclosure for the sole purpose of obtaining payment for services from a third party payer.

Source: 42 CFR Part 2. Electronic Code of Regulations, <https://www.ecfr.gov/cgi-bin/text-idx?rgn=div5;node=42%3A1.0.1.1.2>

## NOTICE

At the time of admission or when a patient is capable of rational communication, the program must communicate that federal law protects confidentiality of alcohol and drug abuse patient records and give the patient a summary in writing, including:

- General description of limited circumstances which a program may acknowledge an individual is present at a facility
- Statement that violation of the regulations is a crime
- Statement that information related to a patient's commission of a crime on the premises of the program is not protected
- Statement that reports of suspected child abuse and neglect are not protected
- Citation to the federal law and regulations

## WRITTEN CONSENT

A written consent authorizing disclosure must include:

- Name of program or person permitted to make the disclosure
- Name or title or organization name to which disclosure can be made
- Patient name
- Purpose of disclosure
- How much and what kind of information is to be disclosed
- Signature of patient and guardian/patient for minor when required
- Date of signed consent
- Statement that consent is subject to revocation at any time
- Date, event, or condition upon which the consent will expire
- Statement of prohibition on re-disclosure

A disclosure may not be made if the written consent has expired, fails to meet the above requirements, has been revoked, or is materially false.

## VIOLATIONS

Any person who violates any provision shall be fined not more than \$500 for the first offense, and not more than \$5,000 in the case of each subsequent offense.

Reports of any violations may be directed to the US Attorney for the judicial district in which the violation occurs. The report of any violation of these regulations by a methadone program may be directed to the Regional Offices of the Food and Drug Administration.