

Primer on Part 2 & Final Rule Updates: Lawful Holders

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Primer on Part 2 & Final Rule Updates: SAPC Stakeholders

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Ineligible companies are companies whose primary business is producing, marketing, selling, re-selling, or distributing healthcare products used by or on patients.

Agenda



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Deeper Dive Into Key Concepts of Part 2

Learning Objectives

At the conclusion of the training, participants will be able to:

1. Describe the scope and purpose of 42 C.F.R. Part 2 and the 2024 Final Rule.
2. Differentiate the requirements for patient consent under Part 2 and HIPAA, including permitted disclosures once patient consent is obtained and requirements for redisclosures.
3. Recognize key exceptions to the consent requirement, such as medical emergencies, audits, public health, and research activities.
4. Practice applying key concepts through use cases and examples.



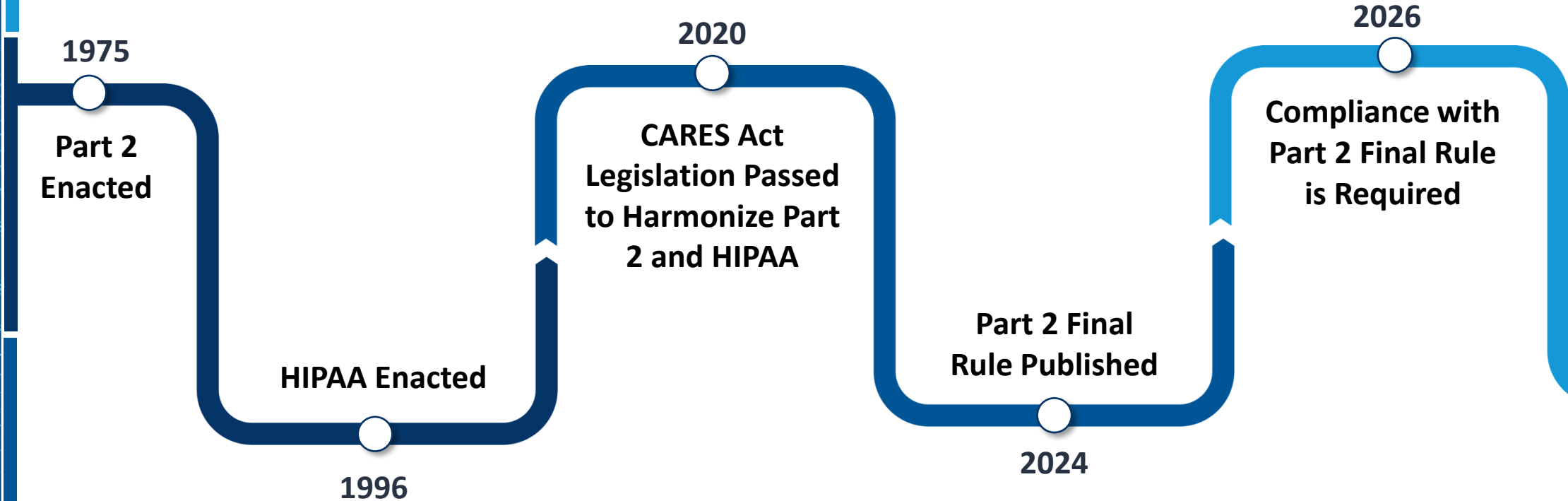
1. Part 2 Background

What is Part 2?

- Federal authority that imposes restrictions on the use and disclosure of substance use disorder (“SUD”) records maintained by a federally assisted Part 2 Program. 42 C.F.R. Part 2
- Separate from HIPAA and California law.
- Known for strict standards and rigidity.



Regulatory Timeline



Legislative Intent of 42 C.F.R. Part 2

**Grant patients
control over
SUD Records**

**Protect patients
from
discrimination**

**Alleviate
barriers to
accessing SUD
treatment**

**Reduce fear
around criminal
prosecution**

**Remove stigma
around
obtaining SUD
treatment**

2. Old vs. New Part 2 – What's Changing?

2024 Final Rule – Overhauling Part 2

- In 2024, HHS released a Final Rule to revise Part 2.
 - The Final Rule becomes effective February 16, 2026.
- Because Part 2 regulations were implemented in 1975, providers have historically struggled to comply with both laws.
- Providers subject to HIPAA were also required to comply with Part 2 for SUD Records, which forced providers to comply with inconsistent standards for different types of health information.
- Competing standards caused confusion, increased administrative burdens, and obstructed provider access to patient information.



What's Changing?

Provision	Old Part 2	New Part 2
Treatment, Payment Healthcare Operations (“TPO”) Consent	Part 2 Programs were required to seek a new consent each time they disclosed records for TPO	A patient may provide a single written consent for all future disclosures for TPO as permitted under HIPAA
TPO Redisclosures	Redisclosure was prohibited without patient’s specific consent or an exception	HIPAA-regulated entities may redisclose records pursuant to TPO consent as consistent with HIPAA
SUD Counseling Notes	Not defined or treated differently from SUD Records	Defined as personal notes created by a practitioner separate from patient’s medical record. Generally, more protected than SUD Records
Disclosure to Public Health Authorities	Not included in permitted disclosures without patient consent	De-identified records may be disclosed to public health authorities without patient consent

What's Changing?

Provision	Old Part 2	New Part 2
Breach Notification	Part 2 Programs were not covered by HIPAA and had no breach notification obligation	HIPAA Breach Notification Rule extended to Part 2 Programs with respect to breaches of unsecured records
Penalties	Violators were subject to criminal penalties and DOJ enforcement	Violators are subject to civil and criminal enforcement under HIPAA rules

3. Part 2 Standards Under Final Rule

What is an SUD Record?

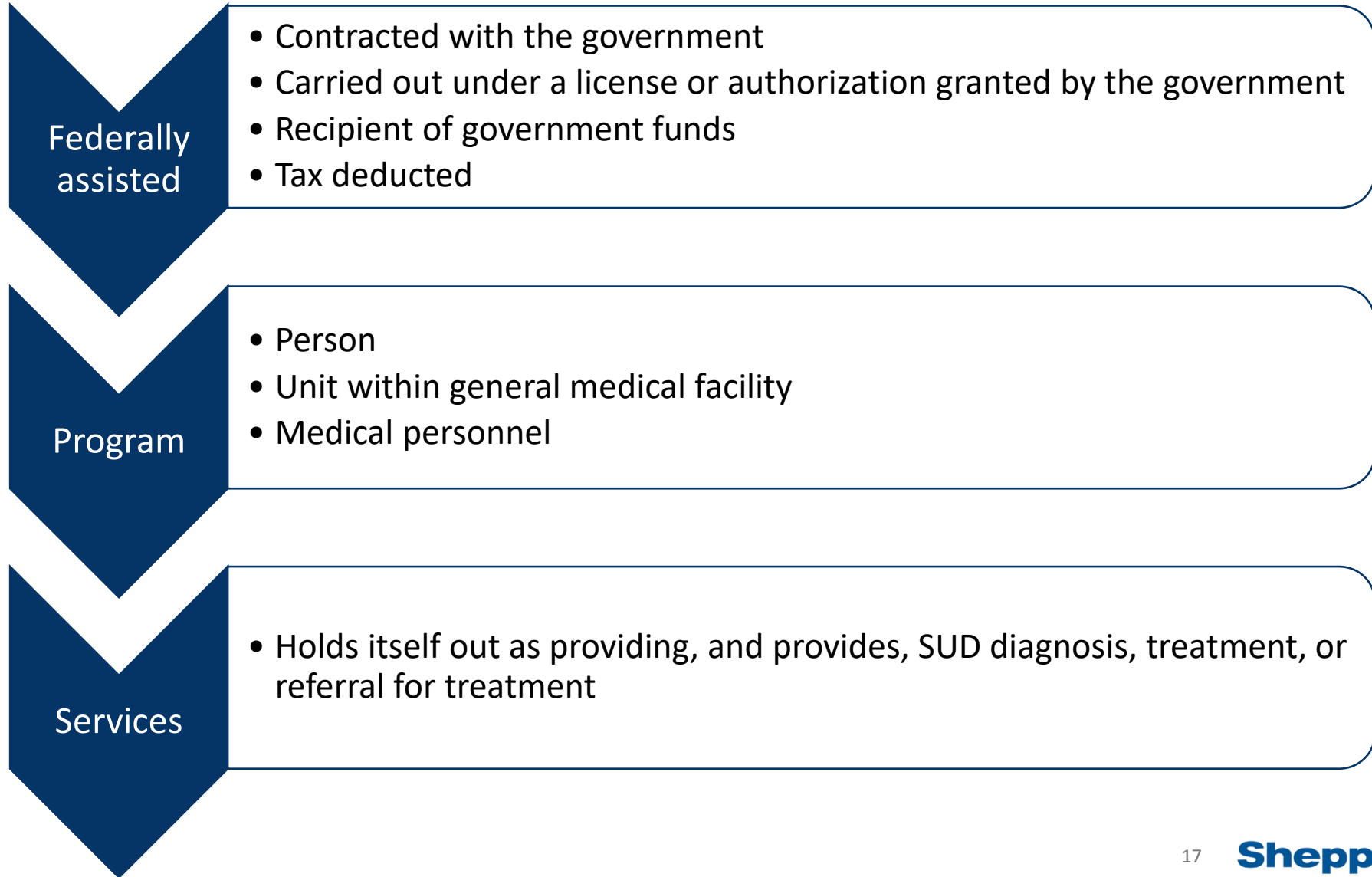
Legal Definition: “[a]ny information, whether recorded or not, created by, received, or acquired by a part 2 program relating to a patient (e.g., diagnosis, treatment and referral for treatment information, billing information, emails, voice mails, and texts), and including patient identifying information . . .”

Note: Excludes information conveyed orally by a Part 2 Program to a non-Part 2 Provider for treatment purposes with patient consent.

See [42 C.F.R. § 2.11](#).



What is a Part 2 Program?



What is a “Lawful Holder”?

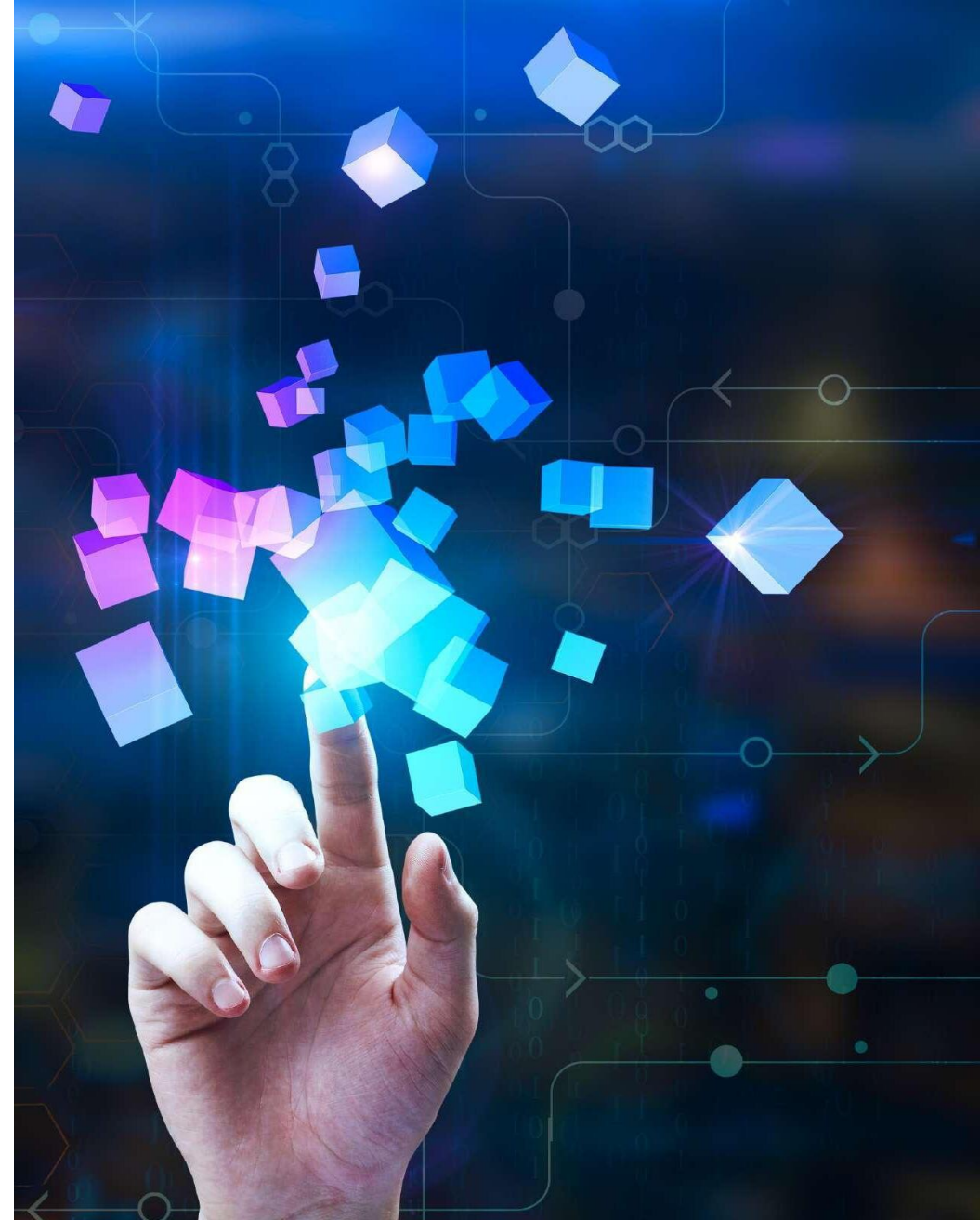
A person who has received Part 2 records as the result of:

- Written consent in compliance with Part 2 requirements, including an accompanying notice of disclosure; or
- An exception to the consent requirements:
 - Medical emergencies
 - FDA-regulated product danger
 - Research activities
 - Audits
 - Public health purposes
 - Pursuant to appropriate court order

Key Concept #1: Permitted Disclosures with Consent

General Rule

- Part 2 generally requires written patient consent or a court order before making a disclosure of SUD Records with limited exceptions. [42 C.F.R. § 2.31](#)
- When in doubt, default to consent!



What is Patient Consent?

1. Written (Not Oral)
2. Name of Patient
3. Party Authorized to Use/Disclose SUD Records
4. Description of SUD Records Covered
5. Party Authorized to Receive SUD Records
 - *My Treating Providers, Health Plans, Third-Party Payors, and People Helping to Operate This Program*
6. Purpose of Authorized Disclosure
7. Patient's Right to Revoke Consent
8. Expiration Date or Event
9. Signature and Date

See [42 C.F.R. § 2.31\(a\)](#)



Why TPO Matters

- Old Part 2 required that Part 2 Programs obtain patient consent prior to each disclosure of an SUD Record, even for **treatment, payment, or healthcare operations (TPO)** purposes.
- New Part 2 allows Part 2 Programs to obtain a single patient consent for all future TPO-related disclosures of an SUD Record.
 - *Adopts HIPAA's standards for using and disclosing SUD Records for TPO purposes as long as the appropriate patient consent is in place.*
 - *A single TPO consent can give providers broad flexibility to use and disclose SUD Records.*
- Consent for TPO **must**:
 - *Include a statement regarding possible redisclosure by the recipient and loss of Part 2 protection; and*
 - *Describe the consequences to the patient of a refusal to sign the consent.*
- Consent for TPO **should** identify a broad category of potential recipients, such as “my treating providers, health plans, third-party payers, and people helping to operate this program.”

[See 42 C.F.R. § 2.33\(a\)\(2\)](#)



Treatment

Rule: HIPAA permits use/disclosure of information for treatment activities.

- *TPO Consents allow providers to follow HIPAA's more flexible standards on disclosure of SUD Records for treatment purposes.*

Definition: “Treatment” means the provision, coordination, or management of health care and related services by one or more health care providers, including the coordination or management of health care by a health care provider with a third party; consultation between health care providers relating to a patient; or the referral of a patient for health care from one health care provider to another.

Examples: Referring patients, completing an SUD assessment, submitting specimens to laboratories, etc.

See [45 C.F.R. §§ 164.501, 164.502](#)



Healthcare Operations

Rule: HIPAA permits use/disclosure of information for healthcare operations.

- *TPO Consents allow providers to follow HIPAA's more flexible standards on disclosure of SUD Records for healthcare operations purposes.*

Definition: “Health care operations” includes a range of activities:

- Conducting quality assessment activities;
- Evaluating competence or qualifications providers;
- Conducting education/training programs;
- Conducting/arranging for legal or auditing services, including fraud and abuse detection and compliance programs; and
- Business management and general administrative activities, including, but not limited to, customer service, grievance resolution, and business transactions.

Includes “back office” activities, and not treatment-related activities.

See [45 C.F.R. §§ 164.501, 164.502](#)



Disclosure to Elements of Criminal Justice System

- Part 2 permits disclosure to certain elements of the Criminal Justice System where participation in a Program is a condition of the disposition of a criminal proceeding against the patient, who has consented to disclosure.
 - **Example:** SUD treatment as a condition of probation or parole
- Disclosure must be limited to persons within the System who have a need for the information.
- The consent must address additional requirements:
 - Clear expiration
 - Revocable after specified period of time

See [42 C.F.R. § 2.35](#)



Restrictions: Proceedings & Investigations

- Part 2 prohibits use/disclosure of SUD Records to initiate or substantiate criminal charges against a patient or to conduct any criminal investigation of a patient.
- Part 2 prohibits use/disclosure of SUD Records for use in any civil, criminal, administrative, or legislative proceeding against a patient.
- Restriction applies to Part 2 Programs and any person who obtains SUD Records from a Part 2 Program.

[See 42 C.F.R. § 2.12\(a\)\(1\)](#)



Restriction: Responses to Requests for Information

- If a request for patient records cannot be disclosed under Part 2, the response must not confirm that the individual has received or is receiving SUD treatment.
- Recommended Response: “An inquiring party may be provided a copy of the regulations in this part and advised that they restrict the disclosure of substance use disorder patient records, but may not be told affirmatively that the regulations restrict the disclosure of the records of an identified patient.”

See [42 C.F.R. § 2.13](#)



Restrictions: Acknowledging Patient Presence

- Part 2 restricts acknowledgment of a patient's presence in a facility or component of a facility that is publicly identified as a place where only SUD diagnosis/treatment/referral is provided.
- The presence of an identified patient may be acknowledged only if the patient's written consent is obtained or if a court order is entered.

See [42 C.F.R. § 2.13](#)



Notice to Accompany Disclosures

- Each permissible disclosure of SUD Records made with the patient's consent must be accompanied by a written notice of the receiving party's Part 2 obligations.
- Notice must:
 - State that Part 2 prohibits use/disclosure of SUD Records in any civil, criminal, administrative, or legislative proceeding unless authorized by the patient or a court.
 - State that further uses/disclosures of SUD Records is prohibited unless certain exceptions apply, such as that the patient consents, etc.
- Part 2 prescribes specific language that must be used!

See [42 C.F.R. § 2.32](#)



Key Concept #2: Permitted Disclosures Without Consent

Uses and Disclosures Without Consent

- **Bona Fide Medical Emergencies**
 - Disclosure to medical personnel is permitted when the patient's written consent cannot be obtained.
 - Where emergency relates to an FDA-related product, disclosure to FDA personnel is permitted if improper manufacturing, labeling, or sale of product poses potential health hazards.
 - Documentation of the disclosure is required.

[See 42 C.F.R. § 2.51](#)



Uses and Disclosures Without Consent

- **Management Audits, Financial Audits, and Program Evaluations** ([42 C.F.R. § 2.53](#))
 - Only to certain organizations under strict privacy safeguards and written agreements.
 - Limited to minimum necessary information. Cannot remove information!
- **Public Health** ([42 C.F.R. § 2.54](#))
 - A Part 2 Program may disclose de-identified SUD Records to a public health authority for public health purposes.
- **Scientific Research** ([42 C.F.R. § 2.52](#))



Uses and Disclosures Without Consent

- **Qualified Service Organizations (“QSOs”)**
 - QSOs are parties that provide support services on behalf of a Part 2 Program.
 - *Examples of QSOs:* management company, billing support vendor, electronic health records vendor
 - Similar to a Business Associate under HIPAA.
 - Communications between a Part 2 Program and a QSO are exempt from Part 2’s general consent requirement.
 - See [42 C.F.R. §§ 2.11, 2.12\(c\)\(4\)](#)



Key Concept #3: Redisclosures

Redisclosures

- Old Part 2 required that patient consent be obtained for each disclosure of SUD Records.
- New Part 2 allows parties covered by HIPAA that receive SUD Records from a Part 2 Program to redisclose SUD Records (in accordance with HIPAA) on the basis of a single TPO Consent.
 - *The consent must be broad and cover all future treatment, payment, and healthcare operations.*
 - *Recipients **covered** by HIPAA are also able to redisclose the SUD Records in accordance with HIPAA except for disclosures for civil, criminal, administrative, or legislative proceedings.*
 - *Part 2 Programs **not covered by HIPAA** that receive SUD Records are limited to disclosing the SUD Records in accordance with the consent. They cannot rely on HIPAA!*

See [42 C.F.R. §§ 2.12\(d\)\(2\), 2.33\(b\)](#)



Redisclosure by Lawful Holders

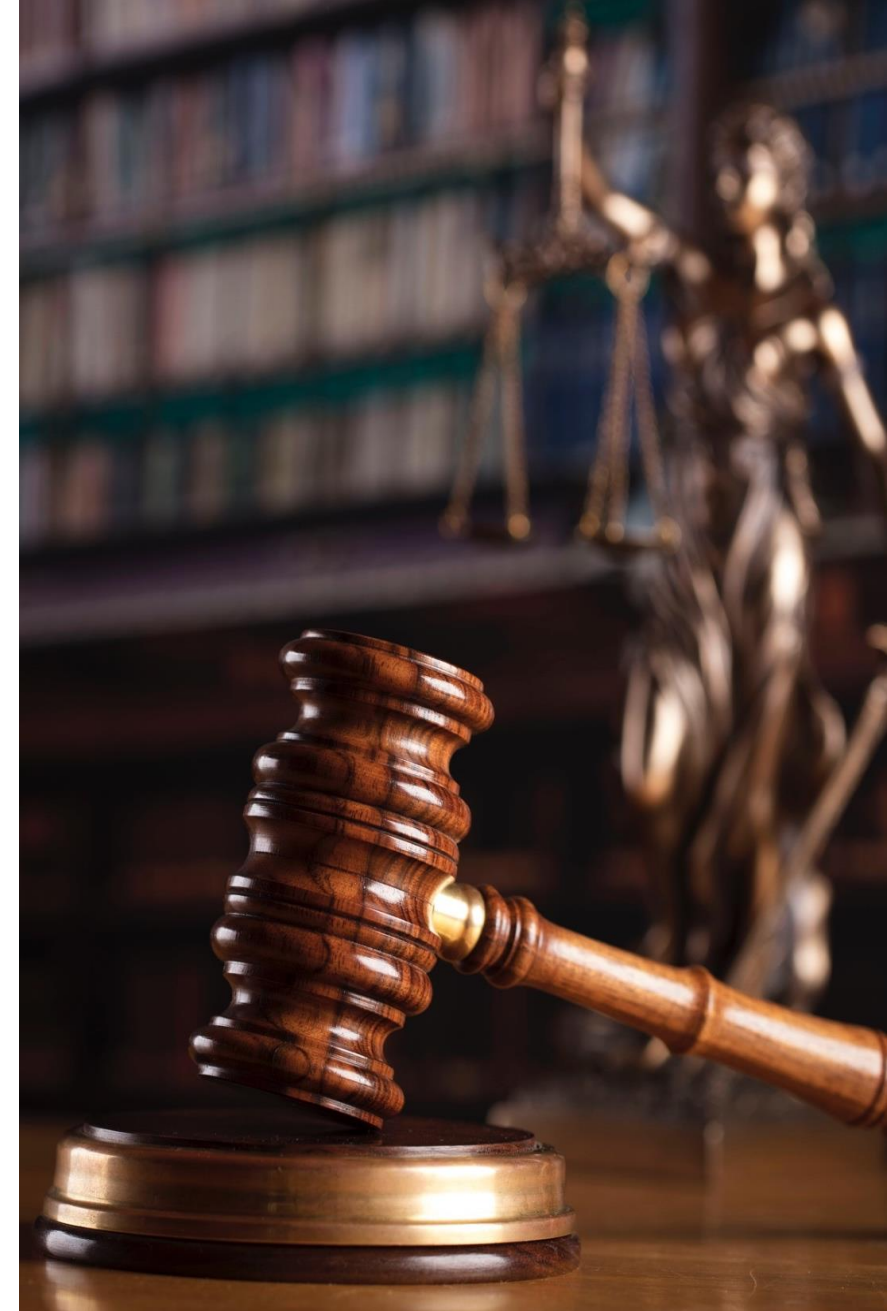
- Lawful holders (*other than HIPAA covered entities or business associates*) may redisclose patient identifying information for payment or healthcare operations to a **contractor, subcontractor, or voluntary legal representative so long as they execute a written contract or similar legal agreement placing certain restrictions on the redisclosure.**
 - The contract must state that the recipient is bound by Part 2.
 - The contract must require the recipient to implement appropriate safeguards to protect unauthorized uses and disclosures and to report any such uses, disclosures, or breaches to the lawful holder.
 - Recipients may only share the information with their own contract agents who are directly helping to provide contract services. **These agents may only share the information back to the contractor or the original lawful holder.**
- Additional requirements for redisclosure:
 - Only when necessary for the recipient to perform their duties under the contract with the lawful holder.
 - Accompanied by notice of Part 2 protection.

Key Concept #4: Court Orders

Legal Effect of Court Order

- **General rule:** a court order **authorizes, but Part 2 does not compel** a use or disclosure that is otherwise prohibited by Part 2.
- Therefore, an order alone, without a subpoena or similar legal mandate, is not sufficient to compel use or disclosure of SUD Records.
- However, if a person holding protected SUD Records receives a subpoena or other mandate compelling use or disclosure, the records may not be used or disclosed without an “order” under Part 2.

See [42 C.F.R. § 2.61](#)



Court Orders & Subpoenas

- **Court Order** – A formal directive issued by a judge (usually in writing) or a court that requires a party to do, or refrain from doing, a specific act.
- **Subpoena** – A formal legal document issued by a court, attorney, or other authorized party that commands an individual to:
 1. *Produce documents, records, or other information; or*
 2. *Appear at a legal proceeding.*
- **Note:**
 - *Both are legally binding and enforceable.*
 - *Failure to comply can result in penalties, such as fines, sanctions, or contempt of court.*



Confidential Communications

A court order may authorize disclosure of confidential communications only under specific conditions:

- Protection against threat to life or serious injury
 - Includes suspected child abuse/neglect, or threats against third parties
- Investigation or prosecution of extremely serious crimes
 - Examples: homicide, rape, kidnapping, armed robbery, assault with deadly weapon, and child abuse/neglect
- Legal proceedings where patient provides related evidence
 - Applies if patient testifies or presents evidence about the confidential communications

See [42 C.F.R. § 2.63](#)



Key Concept #5: Minor Patients

Minor Patients

- Part 2 establishes different standards depending on whether state law requires parental consent for SUD treatment.
- If parental/guardian consent is not required for SUD treatment (by state law):
 - *Only the minor can give written consent for sharing their records.*
 - *Part 2 Program may refuse treatment if minor won't consent to needed payment disclosures, unless state/local law says treatment must be provided regardless of ability to pay.*
 - *California permits minor consent at age 12 for many treatments (including drug and alcohol related treatments).*
- If parental/guardian consent is required for SUD treatment (by state law):
 - *Both the minor and parent/guardian must consent in writing for record sharing.*
 - *Minor's application for treatment can only be shared with parent/guardian if:*
 - *Minor consents in writing, or*
 - *Minor cannot make a rational consent decision, as determined by Part 2 Program director.*

See [42 C.F.R. § 2.14](#)

Minor Patients

- If the minor cannot make a rational decision about sharing their treatment information with a parent/guardian, and there is a serious safety risk:
 - *The program director may share needed treatment info with a parent/guardian (or other authorized person) if it could help reduce the danger.*
- A program director is:
 - *In the case of a Part 2 program that is a natural person, that person.*
 - *In the case of a Part 2 program that is an entity, the person designated as director or managing director, or person with authority to act as chief executive officer of the part 2 program.*

See [42 C.F.R. §§ 2.11, 2.14](#)

4. HIPAA Standards

HIPAA Overview

- Federal privacy law which requires the protection of protected health information (“PHI”), including restrictions around access and use.
- Three primary parts:
 1. Privacy Rule
 2. Security Rule
 3. Breach Notification Rule



Why HIPAA Matters?

- Under Old Part 2, a party regulated by HIPAA that received SUD Records from a Part 2 Program would be required to obtain a new patient consent for each and every redisclose of the SUD Records.
- Under New Part 2, a party regulated by HIPAA that receives SUD Records may use and disclose those records as permitted by HIPAA as long as the patient signed the appropriate initial consent.
 - The new standard is much more flexible and far less burdensome!
- HIPAA effectively takes over where a provider is redisclosing SUD Records with the appropriate initial consent.



5. California Privacy Law Standards

California Law

- California Health & Safety Code § 11845.5
 - *Regulates substance use disorder programs*
 - *Program that provides care, treatment, rehabilitation, counseling, or other support.*
 - *For detoxification and treatment, and other services intended to alleviate problems of substance use or misuse.*



California Health and Safety Code Section 11845.5

- Protects the “identity and records of the diagnosis, prognosis, or treatment of any patient,” which are “maintained in connection with the performance of any alcohol or other drug treatment or prevention effort or function.”
- Generally, this information may only be disclosed with patient consent, as under Part 2. Exceptions include:
 1. Bona Fide Medical Emergencies
 2. Research & Audits
 3. Court Order

See [Cal. Health & Safety Code § 11845.5](#)





42 CFR Part 2 Data Sharing in a Landscape of HIEs, QHINs, & Universal Release of Information Forms

A summary of considerations to balance the known risks and benefits of Part 2 data sharing

SAPC | Substance Abuse
Prevention and Control



COUNTY OF LOS ANGELES
Public Health

Gary Tsai, MD
gtsai@ph.lacounty.gov

Director, Substance Abuse Prevention and Control
Los Angeles County Department of Public Health

SUD Data Sharing in Los Angeles County

- The Substance Abuse Prevention and Control (SAPC) in LA County oversees the specialty SUD system and supports appropriate SUD data sharing.
- **SAPC's work to facilitate SUD data sharing:**
 - Transitioned LA's entire specialty SUD system into electronic systems by providing an EHR for its provider network in 2017, as many provider agencies were paper-based prior to that. This was a strategic and foundational investment to support data integrity and data sharing.
 - First county in the state to have a publicly available interactive provider directory known as the Service & Bed Availability Tool (SBAT) since 2017 that allows users to filter through all levels of care and service types to narrow down their search, inclusive of real-time bed availability information
 - Working with other County partners to operationalize Los Angeles County's Universal Release of Information (UROI) form, while tracking DHCS' ASCMI form efforts
 - Exploring sharing Part 2 data via the largest HIE in LA County

SUD Data Sharing

- 42 CFR Part 2 (Part 2) is the federal confidentiality regulation that governs the sharing of substance use disorder (SUD) data involving “Part 2 Programs.”
 - Part 2 programs receive federal funding and hold themselves out as SUD service providers
 - Not every entity that delivers SUD services is a Part 2 program, as general acute hospitals generally don’t hold themselves out as SUD service providers
- HIPAA also applies to Part 2 Programs, but Part 2 requirements are more restrictive than HIPAA when it comes to sharing SUD data.
- When it comes to openness to sharing Part 2 data, the pendulum is swinging and there is a growing desire to share Part 2 data across sectors (health, social services, justice, etc).
 - Unlike previously, legal counsels are more open to things such as Universal Release of Information (UROI) forms and even the concept of sharing Part 2 data
- There is growing interest and various efforts are in-process to implement UROI forms as well as exploring the use of Health Information Exchanges (HIE) and Qualified Health Information Networks (QHIN) to share Part 2 data.

SUD Data Sharing (cont'd)

- **Summary of substantive changes to recent Part 2 Final Rules changes**
 - Broadly the Final Rule better aligns Part 2 with HIPAA
 - After initial client authorization, redisclosure of Part 2 data is allowable without additional specific client authorization
 - Does not require data segregation of Part 2 and HIPAA data, although data must still be marked to differentiate between Part 2 data and non-Part 2 data given other requirements
 - Better opens the door for use of UROI forms



Challenging Fundamental Assumptions

- **Fundamental Assumption #1 – Systems and staff are familiar with both HIPAA and 42 CFR Part 2**

- Most front-line practitioners are unfamiliar with 42 CFR Part 2, and even more are unfamiliar with the details of Part 2



Why this is important - Implementing UROI forms that include sharing Part 2 data while ensuring truly informed consent from clients is extraordinarily difficult when the majority of front-line practitioners (who are the ones consenting clients to share their data) are unfamiliar with the details (allowances, restrictions, etc) of Part 2. People accessing Part 2 data need to know what they are accessing and what they can/cannot do with that information. These Part 2 considerations are not common knowledge.

- **Fundamental Assumption #2 – Sharing SUD data is benign**

- People with SUD routinely lose kids, jobs, and their access to services may be adversely impacted when their substance use is disclosed



Why this is important – While stigma and discrimination toward people with SUD has improved, it is still by far the most stigmatized health condition with very real and concrete negative consequences for clients living with SUD conditions

Challenging Fundamental Assumptions (cont'd)

- **Fundamental Assumption #3 – Sharing data will help and improve care**
 - This is generally a reasonable assumption. However, the benefits of data sharing are less clear when the condition that is being shared is commonly associated with bias, stigma, and discrimination, and when the individuals that would be sharing this information are not always familiar with or sensitive to these concerns, which creates a barrier with respect to providing SUD clients with truly informed consent around the sharing of their data.
 - In addition to the loss of kids and jobs, examples of adverse service access impacts for people with SUD include health providers requiring clients to address their SUD before they can be served, losing access to certain types of treatments that may still be medically necessary (e.g., pain meds), etc.



Why this is important – The benefits of data sharing when it comes to Part 2 data need to be considered through the lens of informed consent and the benefits and drawbacks of sharing that SUD data. Sharing SUD data is not entirely benign and there are scenarios where people with these conditions will be adversely impacted or harmed, suggesting that thoughtful approaches to data sharing that take into account potential drawbacks is needed to prevent harm

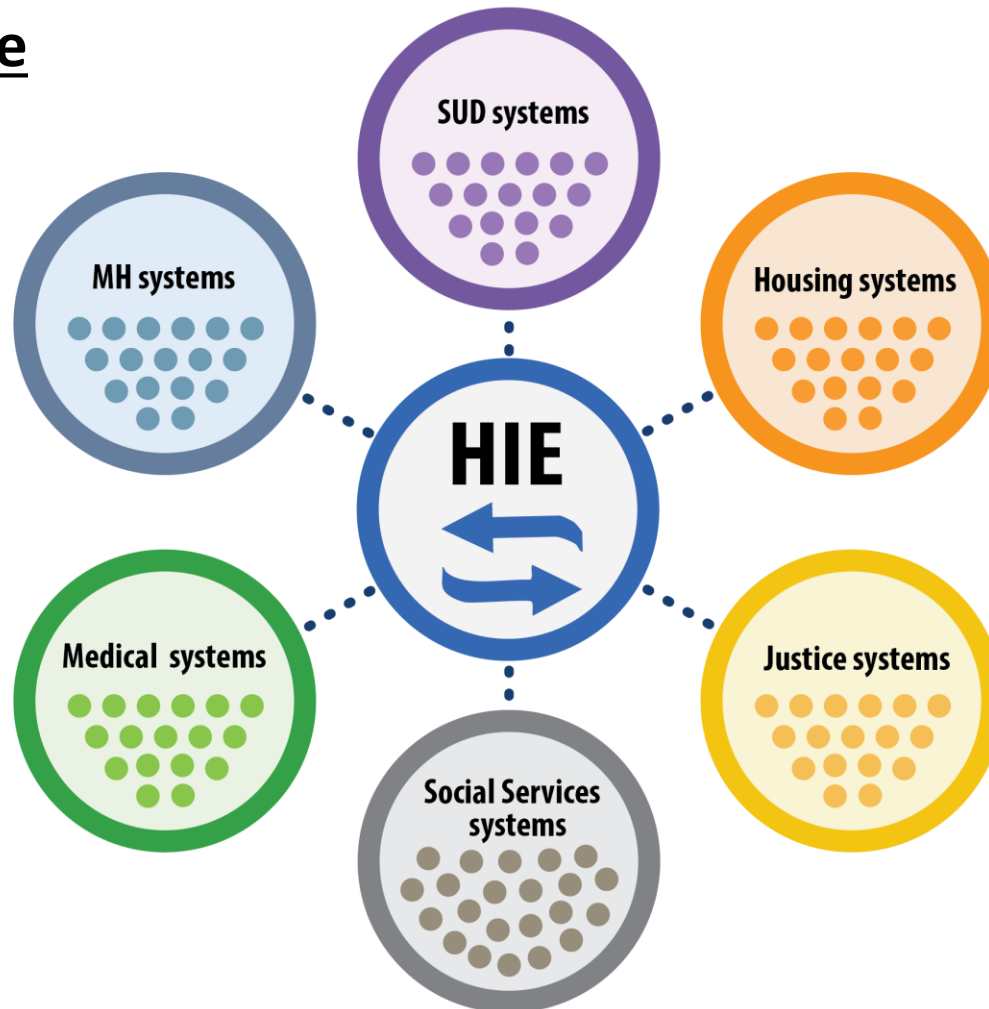
HIEs, QHINs, and Part 2 Data in the Age of UROI Forms

- **Current State**

- HIEs and QHINs largely work with HIPAA entities and not Part 2 programs; even when HIEs and QHINs work with programs that have a Part 2 component, they generally don't share Part 2 data via the HIE or QHIN
 - No HIEs in California and potentially nationally are meaningfully sharing Part 2 data, as far as SAPC has been able to determine.
- HIEs and QHINs do not have consent management systems embedded within the HIE platform and instead rely on the senders of data to ensure they are compliant with HIPAA, Part 2, and applicable confidentiality rules and regulations.
- **With respect to Part 2 data, the largest HIEs in California that SAPC has spoken to and that are considering ingesting Part 2 data plan to rely on the senders of data to attest to Part 2 compliance, as opposed to the HIE itself having a consent management system that verifies Part 2 compliance.**
 - **These HIEs/QHINs work based on trust rather than verification.**
 - **The additional security measure they are generally planning on implementing is a way for the consumer of the Part 2 data to acknowledge that their usage of the data will comply with the 42 CFR Part 2 → This is an inadequate safeguard**
- UROI forms help to allow better coordination as long as proper safeguards in place.

HIEs and Part 2 Data in the Age of UROI Forms (cont'd)

- Future State



Data sharing governed by UROI forms, where someone could be consented to share data in any of these systems and that consent would allow SUD redisclosures

Challenges

- **If HIEs/QHINs do not have consent management systems built into them, they are effectively assuming that the system transferring data into their HIE/QHIN:**
 - Are familiar with Part 2
 - Have considered the nuanced consequences of sharing Part 2 data
 - Are providing clients with truly informed consent, which should include all needed considerations of benefits, risks, alternatives, etc. to obtain fully informed consent from them to share their Part 2 data with an HIE/QHIN and with the HIE/QHIN's subscribers, when applicable
 - Have systems to ensure Part 2 compliance prior to sending Part 2 data into the HIE or QHIN
- **KEY TAKEAWAY – These assumptions are a practical impossibility at the beginning of Part 2 data sharing in HIEs using UROI forms, and if feasible, would take years to execute well and consistently**
- **Other areas of uncertainty**
 - Revocation processes
 - Components of the Part 2 Final Rules still imply the need to identify Part 2 data, even while removing the data segmentation requirements... At a practical level, it is unclear how meaningful the removal of segmentation requirement is because of this, as Part 2 data retains limitations on use for redisclosure (e.g., cannot redisclose for legal/administrative hearings against the patient).

A Balanced Approach to Part 2 Data Sharing via HIEs and UROI Forms

- Considering the known risks from sharing Part 2 data and the level of preparedness of most systems when it comes to Part 2 familiarity, a more conservative approach to Part 2 data sharing is warranted, at least in the first 3 – 5 years of implementation

SAPC's Approach

- Do not only focus on what is legally allowable. To adequately balance the risks and benefits of SUD data sharing, we need to also focus on what is advisable, which includes considerations related to what is realistic from an operational perspective and where systems and staff are in terms of their Part 2 familiarity.

Multi-Sector Trainings

- Training on Part 2 requirements is essential, from leadership, to HIPAA and Compliance Officers, to legal counsel, to all levels of front-line staff.
- What informed consent means and looks like is essential in an environment where Part 2 data sharing and UROI forms are a norm.

Technical Design

- The current design approach HIEs are taking around Part 2 data is inadequate.
 - HIEs need to not just require the senders of data to attest to their compliance with Part 2 and HIPAA, but need to actually incorporate consent management systems within their products to ensure Part 2 compliance and more meaningfully support systems that may be less familiar with Part 2.
 - Technological solutions to manage consent revocations are a necessity.



Thank You!

6. Deeper Dive Into Key Concepts of Part 2

Key Concept #1: Permitted Disclosures with Consent

With proper patient consent, Part 2 programs may use and disclose Part 2 Records to designated persons, with additional requirements for disclosures to central registries and in connection with criminal justice referrals.

A general consent covering treatment, payment, and healthcare operations permits HIPAA-authorized disclosures until the patient withdraws consent.

Use Case

Q: A client signs one TPO consent allowing a SAPC-contracted provider, a Part 2 program, to share her records for all future “treatment, payment, and health care operations” and notes that disclosure is permitted to “my treating providers, health plans, third-party payers, and people helping to operate this program.” The Program shares the records with the client’s Mental Health Provider for treatment purposes. Can the Mental Health Provider further disclose the records?

A: Yes. A single consent for all future treatment, payment, and health care operations allows the Mental Health Provider (and any covered entities or business associates) to use and disclose records consistent with HIPAA, until the patient revokes their consent in writing.



Use Case

Q: A Medi-Cal Managed Care Plan, who is a lawful holder of SUD records received from a Part 2 Program, wants to disclose the patient's records to another entity to request reimbursement for treatment services already provided. The patient completed and signed a consent form authorizing disclosure, but the expiration date on the form was left blank. Can the insurer disclose the SUD records to seek reimbursement?

A: No. Part 2 provides that where an expiration date is not identified, the consent is not valid and cannot be relied upon to disclose SUD Records.



Use Case

Q: A prosecuting attorney requests information from Ms. Brown, a licensed clinical social worker at a Child and Family Services organization, that is a lawful holder of SUD records after receiving them from a Part 2 Program. The attorney states that they are considering whether to begin the reunification process contingent on successful completion of SUD treatment. The patient has not signed a consent authorizing disclosure of SUD records to the prosecuting attorney. Can Ms. Brown disclose the records?

A: No. Part 2 prohibits disclosure of SUD Records to members of the criminal justice system without the patient's written consent.



Use Case

Q: SAPC has received SUD records from a Part 2 Program and is therefore a lawful holder of those records. SAPC is contacted by an emotionally distressed individual who claims to be the spouse of a patient. The individual demands to know whether their spouse is currently receiving treatment for a substance use disorder. While the patient signed a TPO consent with the Part 2 program, they have not signed another consent authorizing SAPC to disclose any SUD information to the spouse. Can SAPC confirm whether the spouse is a patient or receiving treatment?

A: No. A lawful holder may not disclose any information concerning the patient without the patient's consent, even to their purported spouse. Here, a separate consent distinct from the TPO consent is required.



Key Concept #2: Permitted Disclosures without Consent

Disclosure without consent is permitted for:

- Medical emergencies
- FDA-regulated product safety
- Federally compliant research
- Authorized audits and program reviews
- Public health purposes
- To Qualified Service Organizations

Each scenario requires strict adherence to legal, privacy, and documentation standards.

Use Case

Q: Jamie is a patient of a PCP located in San Gabriel Valley and has a history of SUD-related conditions. Jamie is on vacation in northern California when he experiences chest pain and shortness of breath, causing Jamie to call for emergency services. Jamie suddenly becomes unresponsive. The emergency department in northern California believes that Jamie received services from the PCP based on an appointment card found in Jamie's wallet. If the emergency department calls the PCP to request information about Jamie's condition, can they expect to receive any information?

A: Yes, as this appears to be a bona fide medical emergency. Part 2 permits disclosure of information for this purpose.



Key Concept #3: Redisdisclosure

Part 2 allows parties covered by HIPAA that receive SUD Records from a Part 2 Program to redisdisclose SUD Records (in accordance with HIPAA) on the basis of a single patient consent.

- *The consent must be broad and cover all future treatment, payment, and healthcare operations.*
- *Downstream recipients that are regulated by HIPAA are also able to redisdisclose the SUD Records in accordance with HIPAA except for disclosures for civil, criminal, administrative, or legislative proceedings.*
- *Part 2 Programs that are not covered by HIPAA that receive SUD Records are limited to disclosing the SUD Records in accordance with the consent. They cannot rely on HIPAA!*

Use Case

Q: A patient receiving care from a Part 2 Program signs a valid consent allowing her treatment records to be shared with her primary care physician (or PCP who is a HIPAA-covered entity). May the PCP further disclose the records to a consulting cardiologist involved in the patient's care?

A: Yes, the physician may redisclose the records to the cardiologist, as long as the patient signed a TPO consent.



Key Concept #4: Court Orders

A court order under Part 2 is necessary for any disclosure in legal proceedings, but its legal effect is only to authorize, not to compel, disclosure.

Part 2 mandates different procedures for disclosure of records in noncriminal and criminal proceedings.

Use Case

Q: Law enforcement personnel call SAPC (a lawful holder of SUD records originally received from a Part 2 Program) and demand that SAPC provide information concerning a patient receiving treatment for an SUD. The law enforcement personnel do not present a court order or a subpoena, nor has the patient signed a consent authorizing disclosure of information to law enforcement personnel. Can SAPC disclose any information to the law enforcement personnel?

A: No, SAPC may not disclose any information without the patient's consent or a valid court order.



Key Concept #5: Records Concerning Minors

If state law lets minors consent to substance use disorder treatment, only the minor can authorize disclosure.

If parental consent is required for treatment, both the minor and parent/guardian must authorize disclosure. However, a minor's treatment application may only be shared with a parent/guardian if the minor consents or cannot make a rational decision, as determined by the program director.

Use Case

Q: A high school teacher in Pomona (where minors can consent alone to SUD treatment) finds marijuana in a 17-year-old student's locker and learns the student is in SUD treatment. The guidance counselor calls SAPC to confirm enrollment. Can SAPC confirm the student is a patient?

A: No. Without the minor's written consent, no lawful holder of SUD records may disclose the student's status.



PowerPoint will be emailed later today
Certificates will be sent within 4 weeks, if you need them sooner email sapc.cst@ph.lacounty.gov

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Post Test Link/QR Code

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Continuing Medical Education (CME) for MD/DO

Please fill out the Attendee Evaluation
Link OR scan the QR code

- <https://forms.office.com/g/Z84YGdSDqU>

Primer on Part 2 & Final Rule
Updates: SAPC Stakeholders
3/5/26 (SAPC26-L1)



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Additional Slides

Use Case

Q: A primary care provider (PCP), who is a lawful holder of SUD records received from a Part 2 Program, wishes to disclose the patient's SUD records to the patient's housing provider for purposes such as care coordination or seeking reimbursement for treatment services previously provided. The patient completed all required information on the consent form but did not sign it. Can the PCP disclose the SUD records?

A: No. Part 2 requires that all consents be signed by the patient to be valid.



Use Case

Q: Dr. Jones, a provider in Los Angeles who received SUD records from Dr. Smith (a Part 2 Program provider in Santa Clara), is now a lawful holder of those SUD records. The patient had completed a consent form allowing Dr. Smith to send records, but the consent specifically named Dr. Oakley in Monterey as the recipient, not Dr. Jones in Los Angeles. Now, Dr. Jones wishes to further disclose the SUD records to another provider involved in the patient's care. May Dr. Jones disclose the records?

A: No. a lawful holder such as Dr. Jones may only disclose SUD records with a valid patient consent specifying the correct recipient. Because the only consent identifies Dr. Oakley in Monterey, not Dr. Jones or their intended recipient, the consent does not authorize Dr. Jones's further disclosure.

Note: Please note that the result may change where the patient signed a TPO consent!

