

42 C.F.R. Part 2: Quick Tips

For Lawful Holders (or Non Part 2 Programs)

This 42 C.F.R. Part 2 Quick Tips Sheet is intended to provide readily available information on the key provisions of Part 2 that impact stakeholders, partners, and other Non-Part 2 Programs.

Tip 1: Part 2 Protects SUD Information

- SUD information includes information about the identity, diagnosis, prognosis, or treatment of a client relating to a substance use disorder (SUD), that is maintained in connection with a Part 2 Program.
- Part 2 Programs (and related providers and health plans) are generally prohibited from disclosing records containing SUD information unless the client provides written consent. **When in doubt, default to consent!**
- A lawful holder is a party that receives SUD information as a result of either: (1) written consent from the patient permitting disclosure of the SUD information; or (2) one of the exceptions discussed under Tip 4 below.

Tip 2: Disclosure of SUD Information With Client Consent

- **Client Consent:** Part 2 permits disclosure of SUD information when the client has specifically consented to the disclosure in question. Check the consent to see what the client authorized!
- **Treatment:** Part 2 permits disclosure of SUD information with the client's consent to facilitate the client's treatment, which includes the provision, coordination, or management of health care and related services by one or more providers.

Examples: coordination or management of health care; consultation between providers relating to a client; referral of a client for health care from one provider to another; and submitting specimens to a lab.

- **Payment:** Part 2 permits disclosure of SUD information with the client’s consent to facilitate the client’s payment for treatment, which includes: (1) a health plan obtaining premiums or determining/fulfilling its responsibility for coverage and provision of benefits under a plan; or (2) a provider or health plan obtaining or providing reimbursement for care.

Examples: billing; claims submission; collections activities; determinations of eligibility or coverage; utilization management; and prior authorization.

- **Healthcare Operations:** Part 2 permits disclosure of SUD information with the client’s consent to facilitate a provider’s or health plan’s operations, which includes support activities that help providers and health plans operate. Note that a consent for disclosure of SUD information for healthcare operations would not allow disclosure of SUD information for legal proceedings such as investigations or lawsuits concerning a patient. Disclosures of SUD information for legal proceedings must be authorized by the patient’s written consent that specifically mentions disclosures of SUD information for legal proceedings.

Examples: case management and care coordination; quality assessment; technology support; vendors for electronic health records and cloud storage; legal and auditing services; customer service; and business planning.

Tip 3: Redisclosures of SUD Information

- If the patient has signed a consent that broadly permits disclosure of SUD information for treatment, payment, or healthcare operations purposes, Part 2 allows:
 - Lawful holders that are subject to HIPAA to redisclose that SUD information in accordance with HIPAA. This exception would not permit disclosures for civil, criminal, administrative, or legal proceedings.
 - Lawful holders that are not subject to HIPAA to redisclose that SUD information only as permitted by the written consent.
- Redisclosed SUD information must be accompanied by a notice to the recipient that the information is protected by Part 2.

Tip 4: Disclosure of SUD Information Without Client Consent

- **Court Orders:** A court order authorizes, but does not compel, disclosure of SUD information or testimony relaying the information contained in SUD information. An order along with a subpoena/similar legal mandate are required to compel disclosure of SUD information.
- **Bona Fide Medical Emergencies:** Disclosure of SUD information to medical personnel is permitted when the client's written consent cannot be obtained due to a medical emergency, provided that the Part 2 Program documents the disclosure in the client's medical record.
- **Management Audits, Financial Audits, and Program Evaluations:** Disclosure is permitted during an audit on behalf of a federal, state, or local governmental agency that provides financial assistance to a Part 2 Program or that is otherwise authorized by law to regulate the activities of the Program.
- **Public Health:** Disclosure is permitted for certain public health purposes, as long as: (1) the disclosure is to a public health authority; and (2) the content of the information being disclosed has been de-identified and there is no reasonable basis to identify the client.
- **Research:** Disclosure of certain information is permitted for scientific research. Scientific research is limited to activities that benefit generalizable knowledge and does not include private quality assessment or improvement activities.

Note: Prior to disclosing any SUD information based on one of the above exceptions to Part 2's general consent requirement, consult with Legal counsel.