

Federal and State Laws Impacting Data Sharing

Drug and Alcohol Use Disorders

Federal Laws

42 U.S.C. §290dd-2

42 CFR Part 2

The overall purpose of the strict Confidentiality of Substance Use Disorder Patient Records Act¹ is to remove the fear that privacy and confidentiality will be compromised by reason of the availability of the patient's records and therefore the patient does not seek treatment.² Thus, the confidentiality rules apply to records of the identity, diagnosis, prognosis, or treatment of any patient maintained in the performance or activity relating to substance abuse education, prevention, treatment, training, rehabilitation or research and in the performance of any program or activity relating to alcoholism or alcohol abuse education, training, treatment, rehabilitation, or research conducted, regulated, assisted, or funded directly or indirectly by the federal government.³ Even if the patient authorizes the release of information with a written consent, meeting the requirements listed below, it is not mandatory for the facility to comply; instead, the language is permissive in nature and not mandatory.⁴

If a patient consents in writing that information about her/his substance use disorder be shared, the federal regulations make clear what the consent must include, that being:

1. Name of Patient;
2. Specific name(s) or general designation(s) of the part 2 program(s), entity(ies), or individual(s) permitted to make disclosure;
3. How much and what kind of information is to be disclosed, including an explicit description of the substance use disorder information that may be disclosed;
4. Name(s) of the individual(s) to whom a disclosure is to be made; or entities with a treating provider relationship with patient; or entities without a treating provider relationship with patient;
5. Purpose of disclosure (with limitation that information is what is necessary to carry out the stated purpose);
6. Statement that consent is subject to revocation at any time except to the extent that the part 2 program or other lawful holder of patient identifying information that is permitted to make the disclosure has already acted in reliance on it;
7. Date, event, or condition upon which the consent will expire if not revoked before (and such is no longer than reasonably necessary to serve the purpose for which it is provided);
8. Signature of patient/person authorized to give consent (e.g. minor; incompetent; deceased);
9. Date on which consent is signed;⁵ and

¹ 42 U.S.C. §290dd-2

² 42 CFR §2.2(B)(2)

³ 42 U.S.C. §290dd-(3)(a) and §290ee-(3)(a)

⁴ 42 CFR §2.13(a)

⁵ 42 CFR §2.31(a)(1)-(9)

10. One of the following written statements:
 - a. 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 information in this record that identifies a patient as having or having had a substance use disorder either directly, by reference to publicly available information, or through verification of such identification by another person unless further disclosure is expressly permitted by the written consent of the individual whom information is being disclosed 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 investigate or prosecute with regard to a crime any patient with substance use disorder; or
 - b. 42 CFR prohibits unauthorized disclosure of these records.

Again, it must be stated that even with a written consent meeting all of the above requirements, the 42 CFR part 2 provide “may” disclose, not “shall” disclose, in accordance with the consent.⁶ With a properly written and signed consent, the substance use disorder provider may provide information to prevent multiple enrollments (with conditions)⁷ and to elements of the criminal justice system which have referred patients.⁸

The exceptions to disclosing substance use disorder information is much more limiting than in other federal legislation.

1. For medical emergencies. Immediately following disclosure, the part 2 program must document in the record the name and affiliation of the medical personnel to whom disclosure was made, name of the person making the disclosure, date and time of the disclosure, and nature of the emergency.⁹
2. Research. Patient identifying information may be disclosed for the purpose of conducting scientific research if the director or designee makes a determination that the recipient of the patient identifying information:
 - a. If a HIPAA-covered entity, has obtained and documented authorization from patient or a waiver or alteration of authorization consistent with HIPAA (45 CFR 164.508 or 164.512(i), as applicable; or
 - b. If subject to U.S. Department of Health and Human Services regulations regarding the protection of human subjects (45 CFR part 46), either provides documentation that the researcher is in compliance with the requirements of the HHS regulations (including informed consent or waiver of consent (45 CFR 46.111 and 46.116) or that research qualifies for exemption under HHS regulations (45 CFR 46.101(b)); or
 - c. If both a HIPAA-covered entity and subject to HHS regulations, it has met one or the other; and
 - d. If neither HIPAA-covered entity nor subject to HHS regulations regarding the protection of human subjects, this section does not apply.

⁶ 42 CFR §2.33(a)

⁷ 42 CFR §2.34

⁸ 42 CFR §2.35

⁹ 42 CFR §2.51

State Laws

C.G.S.A. § 17a-688

All substance abuse treatment records are confidential and privileged to the patient and may only be disclosed according to this statute and 42 CFR part 2.¹⁰ No person, hospital or treatment facility may disclose or permit the disclosure of, nor may the department disclose or permit the disclosure of, the identity, diagnosis, prognosis or treatment of any such patient that would constitute a violation of federal statutes concerning confidentiality of alcohol or drug patient records.¹¹ Substance use disorder treatment information may be used or disclosed by the Commissioner of Mental Health and Addiction Services for research, audit, or program evaluation purposes, provided that the information is not used in a way that discloses patient identity.¹² Last, disclosure is permitted by court order if a court holds a hearing and determines that there is cause for disclosure.¹³

¹⁰ C.G.S.A. § 17a-688(a) & (c)

¹¹ C.G.S.A. § 17a-688(a) & (c)

¹² C.G.S.A. § 17a-688

¹³ C.G.S.A. § 17a-688