



Hill Day 2016

**Importance of 42 CFR Part 2
(the Federal Drug and Alcohol Confidentiality Law)
in Today's Health Care Settings**

Legal Action Center

June 6, 2016

Who is the Legal Action Center (“LAC”)?

- Non-profit law & policy organization
- Established in 1973:
 - Anti-discrimination & privacy work
 - Substance use disorders
 - HIV/AIDS
 - Criminal records
- Nearly 4 decades’ experience advising providers, patients, etc. on alcohol/drug confidentiality law (Part 2).



1. The Purpose of 42 CFR Part 2 (“Part 2”)

Enacted in the 1970s:

- to protect the *privacy* of people receiving substance use disorder (SUD) care;
- to guard against the *negative consequences* of unauthorized release of drug/alcohol patient information:
 - arrest
 - prosecution
 - loss of child custody and parental rights,
 - loss of jobs,
 - denial of health care,
 - exclusion or eviction from public housing, and
 - the inability to obtain health, life, or disability insurance;



The Purpose of 42 CFR Part 2 (con't.)

Enacted:

- to *encourage* individuals to enter drug/alcohol treatment without fear that entering treatment would make them *more vulnerable* to negative consequences
- to guard against the *stigma and discrimination* associated with having a SUD and/or receiving treatment.

2. Why HIPAA is Insufficient to Protect Confidential SUD Patient Information

Issues	HIPAA	42 CFR Part 2
Designed to guard against SUD stigma and negative consequences of having a SUD and/or getting treatment.	No	Yes
Gives patients the ability to control the flow of confidential health information through informed consent (for disclosures and re-disclosures).	No	Yes - patients usually must consent for disclosures/re-disclosures.

Why HIPAA is Insufficient to Protect Confidential SUD Patient Information (con't.)

Issues	HIPAA	42 CFR Part 2
Safeguards against disclosures of confidential SUD information to law enforcement & courts	Some protection.	Yes – Requires special court order, with greater review standards.

Why HIPAA is Insufficient to Protect Confidential SUD Patient Information (con't.)

- While Part 2's safeguards help protect patients from negative consequences, Part 2 does allow patient info to be disclosed:
 - If patient consents;
 - In a medical emergency;
 - Among treatment program staff;
 - If a special agreement is in place between treatment program & another entity ("QSOA");
 - And more....

Why HIPAA is Insufficient to Protect Confidential SUD Patient Information (con't.)



Patients and providers want greater protection for confidential health information:

- 97% of the public believe that health care providers and insurers should not be able to share their health information without their consent. [Amer. Nat'l Standards Poll, 2012].
- 80% of outpatient mental health clinicians said (if they were a patient), they would not want health care providers to routinely access their mental health records [J. of Am. Med. Infomatics Assoc., 2010].

3. SAMHSA's 2016 Proposed Rule Balances Confidentiality Rights of SUD Patients and Supports Sharing of Health Information Among Providers

Feb. 2016: SAMHSA proposed changes to Part 2:

- Easier for health providers to share patient SUD info when patient wants info shared
- Patient can consent to disclosures to:
 - All treating providers (don't need specific name/title).
 - Past, present, & future (don't need to get new consent when new providers join network).
- Patient can specify consent does not expire until her/his death.



SAMHSA's 2016 Proposed Rule Strikes Appropriate Balance (con't.)



- Proposed Rule continues to allow disclosures *without consent* in certain situations, when *safeguards* are in place:
 - Medical emergency
 - Research
 - Among staff of SUD treatment program
 - Between SUD treatment program & individual/entity providing services to program/patients, like lab (QSOA)
 - Pursuant to court order
 - Etc.

Additional Resources

- LAC paper, the “Confidentiality of Drug and Alcohol Treatment Records in the 21st Century” - http://lac.org/wp-content/uploads/2014/12/Confidentiality_of_Alcohol_and_Drug_Records_in_the_21st_Century-1-20-10.pdf
- LAC’s comments on SAMHSA’s 2016 proposed rule - <http://lac.org/wp-content/uploads/2016/04/Final-LAC-Part-2-Comments-04-11-16.pdf>

Thank you!

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