



INFORMATION NOTICE 18-02

Date October 1, 2020 (REVISED)

To Department of Behavioral Health (DBH) and Contract Agencies

From Veronica Kelley, DSW, LCSW, Director 

Subject Updated Authorization to Release Protected Health Information (PHI) Policy, Procedure and Form (REVISED)

Introduction The purpose of this Information Notice is to inform DBH staff, contract agencies, and Fee-for-Service providers of the updates to the below listed documents in response to Code of Federal Regulations (CFR), Title 42, Part 2, Final Rule ([42 CFR Part2](#)) originally issued on January 18, 2017, and later revised (January 3, 2018; August 14, 2020). It is imperative that the workforce review thoroughly and be familiar with the following documents as substantial revisions have been made:

- [Authorization for Release of PHI \(COM001\)](#)
- [Authorization to Release PHI Policy \(COM0912\)](#)
- [Authorization to Release PHI Procedure \(COM0912-1\)](#)

Background The updating of 42 CFR Part 2 is in response to changes in the health care environment, including electronic health records, health information exchanges and integrated care. The intent is to facilitate information exchange within these new health care models, while addressing the legitimate privacy concerns of clients seeking substance use disorder (SUD) treatment. This is achieved in part by:

- Requiring an explicit description of the amount and kind of information to be disclosed.
- Giving clients the right, under certain conditions, to receive a list of entities to which their information has been disclosed.
- Extending security requirements to include both paper and electronic records and requiring formal policies and procedures to protect against unauthorized use or disclosure of Part 2 information, and threats and hazards to the security of electronic Part 2 information.
- Requiring that the client must be provided, at time of admission to SUD treatment, a written summary of the federal law and regulations protecting the confidentiality of SUD records, including contact information for reporting suspected violations of 42 CFR Part 2.

Continued on next page

INFORMATION NOTICE 18-02, Continued

Regulations

Pursuant to federal and state laws, workforce members, including DBH staff and contractor staff, are required to ensure the integrity and confidentiality of PHI in the course of their duties and must obtain appropriate-valid authorizations for release of client PHI, as required by law. This includes safeguarding clients' identity or any information that may identify an individual as being a recipient of behavioral health services.

The federal and state laws that govern the privacy, security and disclosure of PHI, are as follows:

- California Welfare and Institutions Code (WIC) Section 5328 governs the allowed disclosure of *only* mental health client records (inpatient and outpatient).
- CFR, Title 45, Section 160 and 164, (Health Insurance Portability and Accountability Act or HIPAA) governs the confidentiality, safeguarding and breach reporting requirements of *both* mental health and SUD client records.
- 42 CFR Part 2 governs the confidentiality and disclosure of *only* SUD client records.

Authorization Guidelines

The table below provides brief guidance to determine if an Authorization (also referred to as Consent in 42 CFR Part 2) is required:

If...	Then...
A DBH SUD program needs to disclose a client's PHI to an internal or external mental health program (e.g. a referral to treatment)	Authorization is needed

The following circumstances **do not require** an authorization form.

If...	Then...
A DBH mental health program needs to disclose a client's PHI for payment or health care operations, as defined in HIPAA (45 CFR §164.501) and WIC 5328 (3)(5)(9)(22)(25).	No Authorization is needed
A DBH mental health program needs to disclose a client's PHI for the purpose of treatment (including to a DBH SUD program)	No Authorization is needed if disclosure is made between two qualified professionals or multidisciplinary team personnel during management and treatment of a child abuse or elder/dependent adult abuse case.

Continued on next page

INFORMATION NOTICE 18-02, Continued

Authorization Guidelines, continued

Note: Exceptions may apply that allow disclosure per applicable regulations, as referenced in the Policy. If there is uncertainty, obtain the client's written Authorization or guidance from your direct supervisor or DBH Compliance.

Designating the Recipient of PHI

An Authorization to release for both MH and SUD PHI must identify the name, entity other specific identification of the person(s), or class of persons, to whom the covered entity may make the requested use or disclosure.

Policy, Procedure and Form

The revised policy, procedure and form incorporate applicable changes according to 42 CFR Part 2. Please review the Policy ([COM0912](#)) and Procedure ([COM0912-1](#)) for further guidance regarding utilization of the Authorization form ([COM001](#)).

Note: DBH Compliance will provide Workforce technical assistance and guidance on an ongoing basis. Authorization training is available on Relias and is required upon hire and annually.

Helpful Resources

- [SAMHSA - 42 CFR Part 2 Confidentiality of Substance Use Disorder Patient Records](#)
 - [Legal Action Center - Alcohol & Drug Confidentiality Regulations and Health Information Technology](#)
 - [California Office of Health Information Integrity - State Health Information Guidance](#)
-

References

- [California WIC, Section 5328](#)
 - [CFR, Title 42 Part 2 Final Rule](#)
 - [CFR, Title 45, Sections 160 and 164](#)
 - [United States Code, Title 42, Sections 290dd-2](#)
-

Questions

For questions regarding this Information Notice, please contact the **Office of Compliance** at Compliance_Questions@dbh.sbcounty.gov, (909) 388-0879.
