



## Behavioral Health

## 42 CFR Part 2 Updates - Supplemental Guidance

### What You Need to Know

#### What is 42 Code of Federal Regulations (CFR) Part 2?

42 CFR Part 2 is a federal regulation that safeguards the privacy of those seeking treatment for substance use disorders (SUD). It restricts the disclosure and use of client records to ensure individuals are not deterred from seeking treatment due to fear of discrimination or prosecution. On February 8, 2024, the U.S. Department of Health & Human Services (HHS) through the Substance Abuse and Mental Health Services Administration (SAMHSA) and the Office for Civil Rights, announced a final rule modifying the Confidentiality of SUD records. These modifications were made in an effort to align disclosure of Part 2 records with HIPAA requirements and must be implemented by April 16, 2026.

#### What Changes Were Made to 42 CFR Part 2?

The Final Rule includes the following modifications to Part 2 protections:

- **Client Consent**

Previous regulation required an Authorization to Release Information (ROI) ([COM001](#)) (aka Consent) for each use and disclosure of Part 2 records for individuals seeking SUD services. The **new** regulation allows for a **single ROI** for future uses and disclosures **for purposes of treatment, payment, and health care operations (TPO)** without the need to obtain a new consent for each entity and/or each purpose. All other uses require a separate ROI.

#### Example

**Client consent for purposes of TPO:** A billing department requests records to bill for treatment services rendered and/or a request to share information with another Part 2 treatment provider. In this circumstance only a single ROI would be required for future disclosures.

- **Copy of Consent with Disclosures**

A copy of the client's written consent (ROI) for TPO must accompany each disclosure of a Part 2 record for this purpose. Redisclosures are allowed in accordance with HIPAA rules.

- **Client Notice**

Aligns the Part 2 Client Notice requirements with the HIPAA Notice of Privacy Practices. The Notice of Privacy Practices (COM004) outlines safeguards that ensures a client's rights are protected as mandated under 42 CFR Part 2.



## 42 CFR Part 2 Updates - Supplemental Guidance

### Behavioral Health

#### What You Need to Know

- **Other Uses and Disclosures**

The Final Rule created a new provision which allows disclosure of Part 2 SUD records to Public Health Authorities (PHAs) without a client's consent, as long as the records have been de-identified in accordance with the HIPAA Privacy Rule.

The use/disclosure of records and testimony in legal proceedings against clients is prohibited without a separate client consent or a court order.

#### Example

To support public health efforts related to an opioid epidemic, Substance Use Disorder and Recovery Services (SUDRS) provides de-identified data to San Bernardino Public Health Authorities (PHAs). Giving PHAs access to de-identified data may enable them to support harm reduction efforts, combat opioid crisis, or increase access to SUD treatment programs.

- **Breach Notification**

Applies the HIPAA Breach Notification Rule to Part 2. The rule requires HIPAA covered entities and their business associates to report to DHCS and provide client notification following a breach of unsecured protected health information. Potential breaches of Part 2 information, for example, must be reported to the Office of Compliance within 24-hours of discovery.

- **Accounting of Disclosures.**

The Final Rule adds the right for clients to obtain an accounting of medical record disclosures. Whereas HIPAA requires the accounting to include disclosures made during the previous six (6) years, Part 2 disclosures are **only** required for the previous three (3) years. Disclosures made for TPO purposes must be included in the accounting *if* they were made through an electronic health record.

- **Right to Request Restriction**

Aligns with HIPAA rule providing clients the right to request restrictions on what medical information is shared from their medical record.

- **Complaints, penalties, and enforcement**

Aligns Part 2 penalties with HIPAA by replacing criminal penalties with the same civil and criminal enforcement authorities applicable to HIPAA violations. Adds the right to file a complaint directly with the U.S. Department of Health and Human Services (HHS) Secretary for an alleged violation of Part 2 provisions.



## Behavioral Health

## 42 CFR Part 2 Updates - Supplemental Guidance

### What You Need to Know

- **Segregation of Part 2 Data**

Segregating and segmenting Part 2 records is **not** required when a Part 2 provider or covered entity receives Part 2 records (either written or verbal) as a result of a client authorization/consent.

- **Safe Harbor**

Creates a limit on civil or criminal liability for investigative agencies that act with reasonable diligence to determine whether a provider is subject to Part 2 before making a demand for records in the course of an investigation. The safe harbor requires investigative agencies to take certain steps in the event they discover they received Part 2 records without having first obtained the requisite court order.

### Related Update:

AB2995 titled, "Public Health: Alcohol and Drug Programs," was passed on September 28, 2024, and went into effect January 1, 2025. It modernizes the terminology used to describe an individual with an SUD as follows:

- "Alcohol abuser" to "person with an alcohol disorder"
- "Drug abuser" to "person with a substance use disorder"
- "Abuse of alcohol and other drugs" to "misuse or inappropriate use"

### Informational Resources:

- Authorization to Release Protected Health Information ([COM001](#))
- Notice of Privacy Practices ([COM004](#))
- Confidentiality of Protected Health Information (PHI) ([COM0905](#))
- Authorization to Release PHI Policy ([COM0912](#))
- Authorization to Release PHI Procedure ([COM0912-1](#))
- [42 CFR Part 2 Regulation](#)