

**SANTA CRUZ COUNTY
Behavioral Health Services**

POLICIES AND PROCEDURE MANUAL

**Subject: Confidentiality of
Substance Use Disorder Records**

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**Responsible for Updating:
Quality Improvement**

Approval: 
Behavioral Health Director

6.1.18
Date

POLICY:

All Behavioral Health (BH) employees and contractors shall comply with all applicable federal, state and local confidentiality statutes and regulations that pertain to the exchange, release or acquisition of information about clients receiving Substance Use Disorder Services (SUDS). In cases where statutes or regulations differ, the most restrictive protections shall be followed.

PURPOSES:

To ensure that any release of confidential client information conforms to statutory restrictions, including those contained in the federal law governing Confidentiality of Substance Use Disorder Patient Records (42 CFR Part 2) and the federal Health Insurance Portability and Accountability Act (HIPAA – 45 CFR Parts 160, 162 and 164).

DEFINITIONS:

1. Federally Assisted Program:

Any person or organization that, in whole or in part, provides substance use disorder diagnosis, treatment, referral for treatment or prevention, *and* receives federal funds in any form, even if the funds do not pay for the substance use disorder services. Often referred to as "Part 2 Program".

2. Health Care Provider:

A health care provider is an individual or entity that furnishes, bills, or is paid for health care in the normal course of business *and* transmits health information electronically in connection with a covered transaction.

3. Protected Information:

Any information that would identify a client as a recipient of substance use disorder services, either directly or indirectly, including information, whether oral or written, that would directly or indirectly reveal a person's status as a current or former substance use disorder services client. This includes information on referral and intake about clients receiving diagnosis, treatment, or referral for treatment for a substance use disorder created by a part 2 program.

4. Personal Identifying Information:

The name, address, social security number, photograph, or similar information by which the identity of a client, as defined in this section, can be determined with reasonable accuracy either directly or by reference to other information. The term does not include a number assigned to a client by a part 2 program, for internal use only by the part 2 program, if that number does not consist of or contain numbers (such as a social security, or driver's license number) that could be used to identify a client with reasonable accuracy from sources external to the part 2 program.

5. Client:

Any person who has applied for, participated in, or received an interview, counseling, or any other service from a Federally Assisted Program. Confidentiality applies whether or not the client is admitted to the program and includes an individual who, following an arrest on criminal charges, is identified as a substance use disorder services client during an evaluation for eligibility for treatment. This definition includes both current and former clients.

6. Record:

Any information relation to a client received, created or acquired by a Part 2 Program, regardless of whether it is recorded or not.

7. Disclosure:

Any communication of information about an individual that would identify that person as a client or as a substance user, including verification of information that is already known by the person making the inquiry. Implicit and explicit disclosures are prohibited; i.e., disclosing without consent that an individual is attending a program that is publicly identified as a place where substance use services are provided.

8. Treating Provider Relationship:

Regardless of whether there has been an actual in-person encounter, an individual agrees to be diagnosed, evaluated and/or treated or agrees to accept consultation for any condition by a provider or agency and the provider/agency agrees to undertake the diagnosis, evaluation and/or treatment of the individual or consultation with the individual for any condition.

PROCEDURES:

1. Allowable Limited Disclosures:

While the general rule prohibits disclosure of identifying information, there are specific exceptions or circumstances permitting limited disclosures, some with and some without client consent. These circumstances are described below:

- a) **Medical Emergencies** - Information may be disclosed to medical personnel to the extent necessary to meet a bona fide medical emergency in which the client's prior informed consent cannot be obtained.
- b) **Notifications to Law Enforcement** - Law enforcement agencies can be notified if an immediate threat to the health or safety of an individual exists due to a crime on program premises or against program personnel. A Part 2 program is permitted to report the crime or attempted crime to a law enforcement agency or to seek its assistance. Part 2 permits a program to disclose information regarding the circumstances of such incident, including the suspect's name, address, last known whereabouts, and status as a client in the program.
- c) **Reports of Child Abuse and Neglect** - The restrictions on disclosure do not apply to the reporting under State law of incidents of suspected child abuse and neglect to the appropriate State or local authorities. However, Part 2 restrictions continue to apply to the original substance use service client records maintained by the program including their disclosure and use for civil or criminal proceedings which may arise out of the report of suspected child abuse and neglect. Also, a court order under Part 2 may authorize disclosure of confidential communications made by a client to a program in the course of diagnosis, treatment, or referral for treatment if, among other reasons, the disclosure is necessary to protect against an existing threat of life or of serious bodily injury, including circumstances which constitute suspected child abuse and neglect.
- d) **Court Ordered Disclosures** - Under the regulations, Part 2 programs or "any person having a legally recognized interest in the disclosure which is sought" may apply to a court for an order authorizing disclosure of protected client information. Thus, if there is an existing threat to life or serious bodily injury, a Part 2 program or "any person having a legally recognized interest in the disclosure which is sought" can apply for a court order to disclose information.
- e) **Research** – Part 2 data may be disclosed to qualified personnel for the purpose of conducting scientific research by Part 2 program or other lawful holder of Part 2 data if the researcher provided documentation of meeting certain requirements for existing protections for human subjects research (HIPAA and/or HHS Common Rule). Part 2 information must be rendered non-identifiable in research reports.
- f) **Audit and Evaluation** – Part 2 data may also be disclosed, without client consent, for on-site audits or evaluations. Disclosures may be made to government agencies that help to fund or regulate the Part 2 program, private entities that help

fund the program or provide third-party payments which are conducting quality control reviews, or others who are conducting an audit or evaluation of the program. Generally, entities must agree in writing to protect SUD client records whether paper or electronic.

2. Disclosures with Client Consent:

A Part 2 program may disclose client information if the client has given valid written consent. For Part 2, consent is **ONLY** valid if it is in writing. A valid written consent form **must** include the following elements:

From Whom: Identify the Part 2 program as the entity making the disclosure.

- **What Kind:** Describe “how much” and “what kind” of treatment records will be disclosed.
- **Purpose:** Describe the purpose of the disclosure.
- **To Whom:** Clarify “to whom” the disclosure will be made (see details below).
- **Right to Revoke:** Let the client know of his/her right to revoke.
- **Expiration:** Identify a date the consent expires.
- **Signature:** Be signed and dated by the client.

To Whom: Identifying “to whom” the disclosures will be made is an important part for Part 2 confidentiality compliance. The consent form must provide information about “to whom” the client information will be disclosed. The form can name the entity/agency:

- If disclosure is to a treating provider
- If disclosure is to treating providers through an intermediary or a Health Information Exchange (HIE)
- However, the intermediary or HIE must provide the client with a list of the entities to whom Part 2 records are provided if requested.
- The form **MUST** name the individual, if disclosure is to a third-party payer or the recipient entity **does not** have a treating provider relationship with the client.

Right to Revoke: The client must be informed that they have a right to revoke their consent.

Expiration Date: The consent form must have a date, event, or condition which will trigger the expiration of the consent if it has not already been revoked. It must specify an event, condition, or date.

Signature: The consent form must be signed by the client and electronic signatures are acceptable.

Prohibition Against Re-Disclosure: Consent may use long version of warning:

“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 client 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 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 client with a substance use disorder, except as provided at sections 2.12(c)(5) and 2.65.”

Or shorter version:

“42 CFR Part 2 prohibits unauthorized disclosure of these records.”

3. Violations of 42 CFR Part 2

Violations of the federal law and regulations by a program covered by 42 CFR part 2 regulations is a crime and suspected violations may be reported to appropriate authorities.

PRIOR VERSIONS: 12/22/2005

REFERENCES: 42 C.F.R Part 2; 45 C.F.R. parts 160,162 and 164 (known as HIPAA)

FORMS/ATTACHMENTS: