The Alcohol and Other Drug (AOD) Confidentiality Rule

42 CFR Part 2

I. Regulations Apply to—

- AOD programs federally conducted, regulated, or directly or indirectly assisted in any way
- Recipients of patient identifying information from AOD programs (§2.12)

II. Protections Regarding Alcohol and Drug Abuse Patient Records

- General Rule PROHIBITS the disclosure of Patient Identifying Information (PII) (§2.12(a)(1))
- Exceptions— Permitting Limited Disclosures:
  - ~ With Written Consent**
    Patient authorizes disclosure of PII not otherwise permitted by these regulations (§ 2.33)

    ** Required Elements in a Valid Written Consent (§ 2.31)
    - ✓ Who can disclose PII
    - ✓ To whom disclosure can be made
    - ✓ Name of patient
    - ✓ Purpose of disclosure
    - ✓ What can be disclosed
    - ✓ Signature of patient
    - ✓ Date consent was signed
    - ✓ Right to revoke and exception (but a criminal justice system consent can be irrevocable)
    - ✓ Expiration date, event, or condition

  - ~ Without Written Consent
    - ➢ Internal Communications (§ 2.12(c)(3))
    - ➢ Anonymous Disclosures (§ 2.12(a)(1)(i))
    - ➢ Qualified Service Organization Agreements (QSOAs) (§ 2.12(c)(4))
    - ➢ Medical Emergencies (§ 2.51)
    - ➢ Research Activities (§ 2.52)
    - ➢ Audit and Evaluation Activities (§ 2.53)
    - ➢ Authorizing Court Order (§ 2.61–2.67)
      This is a unique kind of court order. A subpoena, search warrant, or arrest warrant (a compelling legal document), in and of itself, even if signed by a judge, is NOT sufficient to permit or require disclosure.
    - ➢ Patient Commits or Threatens to Commit a Crime on Program Premises or Against Program Personnel (§ 2.12(c)(5))
    - ➢ Reports of Suspected Child Abuse and Neglect, per State law (§ 2.12(c)(6))

III. Administrative Requirements

- Written Notice of Federal Confidentiality Requirements (§ 2.22)
- Notice Prohibiting Redisclosure—must accompany disclosures pursuant to a written consent (§ 2.32)
- Written procedures which regulate and control access to and use of AOD patient records and security of the records themselves (§ 2.16)

IV. Relationship to State Law—

State laws that prohibit disclosure otherwise permitted under these regulations remain in effect. No State law may either authorize or compel any disclosure prohibited by these regulations. (§ 2.20) Where possible, find ways to comply with all applicable Federal and State laws.

DISCLAIMER: The information herein is for reference use only and does not constitute the rendering of legal advice by CSAT/SAMHSA/HHS.

AOD Confidentiality Protections

General Rule = Prohibiting Disclosure of PII

Exceptions Permitting Limited Disclosures

Written Consent

Consenting to Disclosures Not Otherwise Permitted

Without Written Consent

1. Internal Communications
2. Anonymous Disclosures
3. Qualified Service Organization Agreements (QSOAs)
4. Medical Emergency
5. Research
6. Audit & Evaluation
7. Authorizing Court Order
8. Patient Threat/Crime on Program Premises or Against Program Personnel
9. Reporting Suspected Child Abuse and Neglect

CSAT Confidentiality & Ethics TRAINING

U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES
Substance Abuse and Mental Health Services Administration
Center for Substance Abuse Treatment
www.samhsa.gov

DISCLAIMER: The information herein is for reference use only and does not constitute the rendering of legal advice by CSAT/SAMHSA/HHS.