



State of California—Health and Human Services Agency
Department of Health Care Services



GAVIN NEWSOM
GOVERNOR

DATE: December 3, 2020

Behavioral Health Information Notice No: 20-066

TO: California Alliance of Child and Family Services
California Association for Alcohol/Drug Educators
California Association of Alcohol & Drug Program Executives, Inc.
California Association of DUI Treatment Programs
California Association of Social Rehabilitation Agencies
California Consortium of Addiction Programs and Professionals
California Council of Community Behavioral Health Agencies
California Opioid Maintenance Providers
California State Association of Counties
Coalition of Alcohol and Drug Associations
County Behavioral Health Directors
County Behavioral Health Directors Association of California
County Drug & Alcohol Administrators

SUBJECT: Changes to requirements for the confidentiality of Substance Use Disorder (SUD) patient records due to 42 CFR part 2 final rule

PURPOSE: This Department of Health Care Services (DHCS) Behavioral Health Information Notice (BHIN) informs SUD treatment programs and their partners of recent amendments to federal privacy laws that protect the privacy rights of individuals who have, or have had, a SUD.

REFERENCE: Substance Abuse and Mental Health Services Administration (SAMHSA) Fact sheet¹.

BACKGROUND:

On July 15, 2020, the Substance Abuse and Mental Health Services Administration (SAMHSA) issued a final rule amending regulations set forth in 42 C.F.R. Part 2 (Part 2). These amendments became effective on August 14, 2020.

¹ The SAMHSA fact sheet can be found at <https://www.hhs.gov/about/news/2020/07/13/fact-sheet-samhsa-42-cfr-part-2-revised-rule.html>

POLICY:

SAMHSA's amendments to Part 2 include, but are not limited to, the following:

- Amended the definition of record to exclude oral information received by non-Part 2 providers from a Part 2 program with the consent of the patient and recorded in the non-Part 2 provider's patient notes.
- Eased the requirement for patient record disclosures to allow patients to designate entities as recipients as well as individuals.
- Revised the language on one of the two allowable Notices to Accompany Disclosure with patient's consent, in order to align the language with the change in the definition of record.
- Expanded the allowable bases for disclosures with written consent for payment or health care operations purposes.
- Expanded upon the circumstances in which a Part 2 program can release records without patient consent in a bona fide medical emergency.

DHCS encourages SUD treatment programs and their partners to review SAMHSA's guidance on these new amendments and discuss the amendments with their legal counsel to determine what changes are needed to comport with the new law.

RESOURCES:

Frequently Asked Questions (FAQs) and Fact Sheets regarding Substance Abuse Confidentiality Regulations: <https://www.samhsa.gov/about-us/who-we-are/laws-regulations/confidentiality-regulations-faqs>

If you have questions about this BHIN, please contact Licensing and Certification Division at LCDQuestions@dhcs.ca.gov.

Sincerely,

Original signed by

Janelle Ito-Orille, Chief
Licensing and Certification Division