### [New SAMSHA Rule Clarifies Data Sharing For Addiction Treatment](https://www.openminds.com/market-intelligence/news/new-samsha-rule-clarifies-data-sharing-addiction-treatment/)

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On January 3, 2018, the federal Substance Abuse and Mental Health Administration (SAMHSA) released a final rule that clarifies how consumer records related to addiction treatment may be used and shared by provider organizations, health plans, and their legal representatives, contractors, and subcontractors. The rule goes into effect February 2, 2018. This final rule aligns the requirements of rules governing confidentiality for addiction treatment records more closely with privacy protections of the Health Insurance Portability and Accountability Act (HIPAA). The major provisions address the following:

* Permit additional disclosures of consumer identifying information, with consumer consent, to facilitate payment and health care operations such as claims management, quality assessment, and consumer safety activities.
* Permit additional disclosures of consumer identifying information to certain contractors, subcontractors, and legal representatives for the purpose of conducting a Medicare, Medicaid, or CHIP audit or evaluation.
* Permits use of an abbreviated notice of prohibition on re-disclosure; an abbreviated notice is more easily accommodated in electronic health record (EHR) text fields.

SAMHSA considers the following to be permissible payment and health care operations activities:

* Billing, claims management, collections activities, obtaining payment under a contract for reinsurance, claims filing and related health care data processing
* Clinical professional support services (e.g., quality assessment and improvement initiatives; utilization review and management services)
* Patient safety activities
* Activities pertaining to: the training of student trainees and health care professionals, the assessment of practitioner competencies, the assessment of provider and/or health plan performance; and training of non-health care professionals
* Accreditation, certification, licensing, or credentialing activities;
* Underwriting, enrollment, premium rating, and other activities related to the creation, renewal, or replacement of a contract of health insurance or health benefits, and ceding, securing, or placing a contract for reinsurance of risk relating to claims for health care
* Third-party liability coverage
* Activities related to addressing fraud, waste and abuse
* Conducting or arranging for medical review, legal services, and auditing functions
* Business planning and development, such as conducting cost-management and planning-related analyses related to managing and operating, including formulary development and administration, development or improvement of methods of payment or coverage policies
* Business management and general administrative activities, including management activities relating to implementation of and compliance with the requirements of this or other statutes or regulations
* Customer services, including the provision of data analyses for policy holders, plan sponsors, or other customers
* Resolution of internal grievances
* The sale, transfer, merger, consolidation, or dissolution of an organization
* Determinations of eligibility or coverage (e.g. coordination of benefit services or the determination of cost sharing amounts), and adjudication or subrogation of health benefit claims
* Risk adjusting amounts due based on enrollee health status and demographic characteristics
* Review of health care services with respect to medical necessity, coverage under a health plan, appropriateness of care, or justification of charges

The audit and evaluation provision permits additional disclosures of consumer-identifying information to certain contractors, subcontractors, and legal representatives for the purpose of conducting a Medicare, Medicaid, or CHIP audit or evaluation. The audits and evaluations may be performed on behalf of federal, state, and local governments providing financial assistance to, or regulating the activities of lawful holders, as well as Part 2 programs.

The provisions of the final rule on “Confidentiality Of Substance Use Disorder Patient Records” address regulations in Section 42 of the Code of Federal Regulations (CFR) Part 2, governing the confidentiality of substance use disorder consumer records. Part 2 protects the confidentiality of records relating to the identity, diagnosis, prognosis, or treatment of any consumer records that are maintained in connection with the performance of any federally-assisted program or activity relating to addiction disorder education, prevention, training, treatment, rehabilitation, or research.

Under Part 2, a federally-assisted addiction disorder program may only release consumer identifying information with the individual’s written consent, pursuant to a court order, or under a few limited exceptions. Part 2 and its authorizing statute are separate and distinct from HIPAA, the HITECH Act, and their implementing regulations. Part 2 provides more stringent federal protections than HIPAA and other health privacy laws; the goal is to protect individuals with addiction disorders who could be subject to discrimination and legal consequences in the event that their information is improperly used or disclosed.

This final rule builds on a rule issued on January 18, 2017 that made the first substantive changes to Part 2 in nearly 30 years. The 2017 final rule eased some the restrictions in sharing addiction treatment data by allowing treatment facilities to obtain a general disclosure consent rather than separate disclosure consent for each specified recipient. However, such data could not be shared in the same way as other consumer health data under HIPAA. A supplemental notice of proposed rulemaking (SNPRM) issued the same day as the final rule proposed additional changes. Under the new January 2018 rule to finalize the SNPRM, addiction treatment privacy protections are still more restrictive than those of HIPAA, but are more closely aligned with HIPAA protections.

In addition to making this new change to Part 2 regulations, in December 2017, the federal Office of Civil Rights (OCR), a sister agency to SAMHSA within the Department of Health and Human Services (HHS), issued guidance in two documents to treatment provider organizations and the general public about appropriate information sharing under HIPAA. The two documents, “HIPAA Privacy Rule and Sharing Information Related to Mental Health” and “Additional FAQs On Sharing Information Related To Treatment For Mental Health Or Substance Use Disorder—Including Opioid Abuse”, answer frequently asked questions about when it is appropriate for a provider organization to share the protected health information of a consumer who is being treated for a mental health condition or addiction disorder. Both documents address three core areas:

* How information related to mental health and addiction disorder is treated under HIPAA
* When information related to mental health may be shared with family and friends of an individual with mental illness or addiction disorder, including parents of minors
* The circumstances in which information related to mental health or addiction disorder may be disclosed for health and safety purposes.

The OCR guidance, “Additional FAQs On Sharing Information Related To Treatment For Mental Health Or Substance Use Disorder—Including Opioid Abuse,” specifically addresses how HIPAA interacts with Part 2 privacy regulations for addiction treatment, and which rules should be followed in an emergency. HIPAA is intended to be a set of minimum federal privacy standards. Part 2 rules are more stringent. The guidance advised health care provider organizations that provide treatment for addiction disorder, including opioid abuse, should first determine whether the organization is subject to Part 2 and whether it is a covered entity under HIPAA. If an entity is subject to both Part 2 and HIPAA, it is responsible for complying with the more protective Part 2 rules, as well as with HIPAA. The guidance provided the following clarifications:

* HIPAA permits disclosure of protected health information (PHI) for treatment purposes (including in emergencies) without patient authorization, and allows PHI to be used or disclosed to lessen a threat of serious and imminent harm to the health or safety of the individual or others (which may occur as part of a health emergency) without consumer authorization or permission.
* However, because HIPAA permits but does not require disclosures for treatment or to prevent harm, if Part 2 restricts certain disclosures during an emergency, an entity subject to both sets of requirements could comply with Part 2’s restrictions without violating HIPAA.

On January 3, 2018, the Association for Behavioral Health and Wellness (ABHW), which is part of the establishment of, and leads, the Partnership to Amend 42 CFR Part 2 (Partnership), a coalition of over 35 health care organizations, issued a statement expressing disappointment that SAMHSA’s final rule does not completely align Part 2 privacy protections with those of HIPAA for health care treatment, payment, and operations. The key differences are that the updated Part 2 regulations still do not allow for disclosures for treatment and care coordination purposes, which are allowed under HIPAA.

Rebecca Murow Klein, ABHW’s director of government relations, and chair of the partnership, said that “ABHW and its members are encouraged by SAMHSA’s efforts to address the consequences of inadequate access to a patient’s medical, including SUD, records. We will continue to actively pursue legislative changes that will allow for disclosures for treatment and care coordination purposes, as the final regulation falls short of full alignment with HIPAA.” She said separation of addiction treatment from the rest of medicine hampers the ability of both primary care provider organizations and addiction treatment programs to coordinate a consumer’s medical and addiction treatment, which leaves consumers at risk of “unsafe, uncoordinated, and uninformed care.” ABHW is a trade association for payers that manage behavioral health insurance benefits for over 175 million people.

A link to the full text of “Final Rule: Confidentiality Of Substance Use Disorder Patient Records” may be found in The OPEN MINDS Circle Library at [www.openminds.com/market-intelligence/resources/010318samshahipaa.htm](http://www.openminds.com/market-intelligence/resources/010318samshahipaa.htm).

A link to the full text of “HIPAA Privacy Rule and Sharing Information Related to Mental Health” may be found in The OPEN MINDS Circle Library at [www.openminds.com/market-intelligence/resources/121517hipaaprivacyguidance.htm](http://www.openminds.com/market-intelligence/resources/121517hipaaprivacyguidance.htm).

A link to the full text of “Additional FAQs On Sharing Information Related To Treatment For Mental Health Or Substance Use Disorder—Including Opioid Abuse” may be found in The OPEN MINDS Circle Library at [www.openminds.com/market-intelligence/resources/121917hhsocrfaqinfosharehipaamhsa.htm](http://www.openminds.com/market-intelligence/resources/121917hhsocrfaqinfosharehipaamhsa.htm).

On January 31, 2018, SAMHSA will hold a public listening session about 42 CFR Part 2. Registration at <https://www.eventbrite.com/e/samhsa-listening-session-42-cfr-part-2-tickets-41087357392> is required. During the listening session, SAMHSA seeks to solicit information concerning the Confidentiality of Substance Use Disorder Patient Records regulations, and will accept public comment on the effect of 42 CFR Part 2 on patient care, health outcomes, and patient privacy as well as potential regulatory changes and future sub-regulatory guidance.

OPEN MINDS last reported on this topic in “[SAMHSA Updates 42 CFR Rules, Addiction Treatment Records Still Regulated Under Different Standards](https://www.openminds.com/market-intelligence/news/samhsa-finalizes-updated-rules-exchange-addiction-treatment-records),” which published on January 22, 2017.

For more information, contact:

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For more information about ABHW and its position on the final rule for 42 CFR, contact: Tiffany A. Huth, Director of Communications & Public Affairs, Association for Behavioral Health and Wellness, 1325 G Street, NW, Suite 500, Washington, District of Columbia 20005; 202-552-7364; Email: [*huth@abhw.org*](mailto:huth@abhw.org); Website: [*www.abhw.org*](http://www.abhw.org/)