

## **Consent Requirements for Disclosure of Substance Abuse Records**

42 CFR Part 2 are federal regulations prohibiting most disclosures of patient information that could identify a patient as a drug and/or alcohol abuser by a federally assisted substance abuse program. The primary way in which patient substance abuse information may be disclosed is with a patient's written consent. Almost all substance abuse programs are considered federally assisted; for example, a program is federally assisted if it is a Medicare provider, has a DEA number, or is licensed to provide methadone maintenance treatment.

### **Written Consent Form**

Substance abuse programs and providers must give patients a written summary of the federal laws and regulations that protect the confidentiality of patient substance abuse records and a description of the circumstances when the patient's information may be disclosed without his/her consent. For all other disclosures, consent must be obtained using a written consent form. A single consent form may authorize disclosure to multiple parties or for multiple purposes. In all cases, a consent form must contain the following elements:

- The name or general description of the program or person permitted to make the disclosure
- The name or title of the individual or organization to which disclosure is to be made
- The intended purpose of the disclosure
- The patient's name
- How much and what kind of information to be disclosed
- A statement that the consent may be revoked at any time, except to the extent that the disclosing entity has already relied on the consent to make a disclosure
- The date on which the consent is signed
- The patient's signature
- The date, event, or condition when the consent will expire if not revoked\*

\* Consent may last no longer than is reasonably necessary to accomplish the intended purpose of the disclosure

Disclosures to central registries and to elements of the criminal justice system that have referred patients for treatment must meet additional consent requirements.

### **Special Circumstances – minors, incompetents, and the deceased**

*Minor patients:* If state law requires the consent of a parent, guardian, or other person for a minor to obtain substance abuse treatment, both the minor and his/her representative must give written consent for disclosures.

*Incompetent patients:* If a patient is legally incompetent (for a reason other than age), the person authorized under state law to act on the patient's behalf may give consent.

*Deceased patients:* If a patient is deceased, a representative appointed under state law may give consent for disclosure. Absent such appointment, the spouse or, if none, any responsible family member, may give consent.

### **Re-Disclosures**

Each disclosure made with the patient's written consent must include a written statement prohibiting the receiving entity from further disclosing the information without the express written consent of the patient or unless otherwise permitted by the Part 2 regulations.

For more information on state and federal laws related to privacy, see [www.healthinfo.org/topics/63](http://www.healthinfo.org/topics/63). For more information about Part 2, see [www.healthinfo.org/federal-law/Part2](http://www.healthinfo.org/federal-law/Part2). Follow us on Twitter at [@HealthInfoLaw](https://twitter.com/HealthInfoLaw)

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