

MYTH: 42 C.F.R. Part 2 applies to records of all substance abuse treatment facilities.**FACT: Only certain substance abuse treatment facilities are subject to the regulations outlined in 42 C.F.R. Part 2.**

The federal regulations found at 42 C.F.R. Part 2, commonly referred to as the Part 2 regulations, protect the confidentiality of substance abuse treatment records, and describes when these records can be used or disclosed with and without the patient's consent. It should be noted, however, that only federally-assisted programs that hold themselves out as providing and actually do provide substance abuse diagnosis, treatment, or referral for treatment, are subject to the Part 2 regulations. The regulations specifically define a substance abuse program as follows:

- An identified unit within a general medical facility that holds itself out as providing and provides substance abuse diagnosis, treatment, or referrals for treatment;¹
- Medical personnel or staff within a general medical facility whose primary function is provide substance abuse diagnosis, treatment, or referral for treatment;²
- An entity other than a general medical facility that holds itself out as providing substance abuse diagnosis, treatment or referral, such as a treatment or rehabilitation program, employee assistance program, school based program, or private practitioners.³

¹ 42 C.F.R. § 2.11(b).

² 42 C.F.R. § 2.11(c).

³ 42 C.F.R. § 2.11(a).

The regulations also specify that the substance abuse program must be federally-assisted to be subject to Part 2. This means that the substance abuse program:

- Is conducted in whole or part (directly or by contract) by any U.S. government department or agency;⁴
- Is carried out through a certification or license by any U.S. government department or agency such as a Medicare certified provider, authorized methadone treatment providers, or entities with a Drug Enforcement Agency (DEA) number;
- Is supported or assisted by any federal funds;⁵
- Is a state or local program that receives federal funds that could be used for substance abuse treatment;⁶
- Receives a tax deduction or tax-exempt status.⁷

In sum, while the majority of substance abuse treatment programs do fall within the purview of Part 2, there are some programs that the Part 2 privacy protections do not apply to because they do not hold themselves out as providing substance abuse diagnosis, treatment or referrals or are not federally assisted. For example, for-profit

⁴ 42 C.F.R. § 2.12(b)(1).

⁵ 42 C.F.R. § 2.12(b)(2).

⁶ 42 C.F.R. § 2.12(b)(3).

⁷ 42 C.F.R. § 2.12(b)(4).

programs or private practitioners may not be federally assisted, and may only see patients with private insurance or who self-pay. However, states may enact licensing laws for these providers to comply with Part 2. Alternatively, these private practitioners may prescribe controlled substances, such as methadone, requiring them to comply with Part 2 because they are required to have a DEA number. A physician who does not use controlled substances for treatment, and does not meet the definition of the law, would not be subject to Part 2.⁸

For More Information:

- [See](#) our resources on Part 2, including a detailed summary of the entire regulatory text.
- [Learn](#) about SAMHSA's Listening Session on Part 2.
- [Explore](#) state and federal laws related to Part 2's consent requirements.

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⁸ SAMHSA EHR FAQs, Available at:
<http://www.samhsa.gov/healthprivacy/docs/ehr-faqs.pdf>

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