

UNIQUE PATIENT IDENTIFIERS IN AOD OUTCOMES MONITORING : LEGAL ISSUES

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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



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

HIPAA Privacy Protections

General Rule = Prohibiting Use and Disclosure of PHI

Confidentiality

Required Exceptions

- 1 When an Individual requests access regarding PHI about themselves.
- 2 When compelled by the Secretary for compliance and enforcement purposes.

Permitted Exceptions

Written Authorization

- 1 Certain Psychotherapy Notes
- 2 Marketing
- 3 Authorizing Uses Or Disclosures Not Otherwise Permitted

Without Authorization

- 1 To the Individual
- 2 TPO*
- 3 Incidental use/disc.
- 4 Facility Directory
- 5 Next of Kin/Caregiver*
- 6 *Business Associate*
- 7 Averting a Serious Health/Safety Threat
- 8 Health Oversight
- 9 Judicial & Admin Proc.
- 10 Law Enforcement
- 11 Public Health Activ.
- 12 Required by Law
- 13 Research
- 14 Victims of Abuse
- 15 About Decedents
- 16 Workers Comp
- 17 For Cadaveric Donation
- 18 For Specialized Gov't Functions

45 CFR § 164.502*

Subject to agreement made otherwise per individual's right to request restrictions.

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HIPAA EXPLICITLY RECOGNIZES THAT ETHICS STANDARDS CAN BE MORE STRINGENT THAN THE STATUTE ITSELF AND SHOULD BE FOLLOWED.....

(AUGUST 14, 2002, VOL 67, NO. 157, PAGE 53212,
FINAL MODIFICATIONS TO HIPAA PRIVACY RULE)

“COMMENT: Some commenters asserted that eliminating the consent requirement would be a departure from medical ethical standards that protect patient confidentiality and common law and state law remedies for breach of confidentiality that generally require or support patient consent prior to disclosing patient information for any reason.....

Another commenter also was concerned removal of the consent requirement ...will supplant professional ethical duties to obtain consent for use of protected health information.”

RESPONSE : “The Privacy Rule provides a floor of privacy protections.....In order to not interfere with such ethical standards, the rule permits covered entities to obtain consent....

Thus, professional standards that are more protective of privacy retain their vitality.”

(AUGUST 14, 2002, VOL 67, NO. 157, PAGE 53212, FINAL MODIFICATIONS TO HIPAA PRIVACY RULE)

BOTTOM-LINE...WHEN ETHICS STANDARDS AFFORD MORE “PRIVACY” THAN THE HIPAA STATUTE, THEY CANNOT BE IGNORED.





ASSOCIATION OF ADDICTION COUNSELORS CERTIFICATION BOARD OF OREGON (AACBO)

“Principle 8: Confidentiality

The NAADAC member working in the best interest of the client shall embrace, as a primary obligation, the duty of protecting client's rights under confidentiality, and **shall not disclose confidential information acquired in teaching, practice or investigation without appropriately executed consent.**”



Notice Prohibiting Redisclosure: Needs To Accompany Disclosures Made With Patient Consent

This notice accompanies a disclosure of information concerning a client in alcohol/drug abuse treatment, made to you with the consent of such client. This information has been disclosed to you from records protected by Federal confidentiality rules (42 CFR Part 2). The Federal rules prohibit you from making any further disclosure of this information unless further disclosure is expressly permitted by the written consent of the person to whom it pertains or as otherwise permitted by 42 CFR Part 2. A general authorization for the release of medical or other information is NOT sufficient for this purpose. The Federal rules restrict any use of the information to criminally investigate or prosecute any alcohol or drug abuse patient.

3. Qualified Service Organization Agreement (QSOA)

Written agreement between an AOD program and an outside Service Organization (SO):

- Disclosures of PII are permitted between the AOD program and the SO. (SO may not be a law enforcement agency or another AOD program that provides the same or similar services.)
- Permissible disclosures are limited to the extent that the PII being exchanged must be needed by the SO to provide the agreed-upon services to the program.



Required Promises in the Written QSOA

- The Service Organization (SO) must acknowledge that it is bound by Federal confidentiality regulations;
- The SO must promise not to redisclose PII to which it becomes privy; and
- The SO promises to resist unauthorized efforts to gain access to any PII that may come into its possession (especially by law enforcement authorities).

§ 2.11

5. Research Exception

PII can be disclosed to researchers conducting scientific research, if the program director determines that the researcher:

1. Is qualified to do the research;
2. Has a protocol securing the privacy and redisclosure of PII; and
3. Has a satisfactory written statement indicating that at least three others have reviewed the protocol and deemed it safe enough to protect the patient's confidentiality in light of the potential research benefits.

6. Audit and Evaluation Exception

Permits regulatory agencies, funders, third-party payers, and peer review organizations to monitor AOD programs to ensure that they are complying with regulatory mandates and are properly accounting for and disbursing all funds received.

- Time-limited disclosure
- Written agreement is necessary to protect PII
- Redisclosure requirement: PII disclosed under this section may be disclosed ONLY back to the program from which it was obtained
- Programs must have secure facilities and recordkeeping practices to protect such information when not being used.

CSAT
**Confidentiality
& Ethics**
TRAINING

