



SUBSTANCE USE DISORDERS CONFIDENTIALITY BOOT CAMP #3 *FORM DEVELOPMENT EXERCISES*

JULY 17, 2017

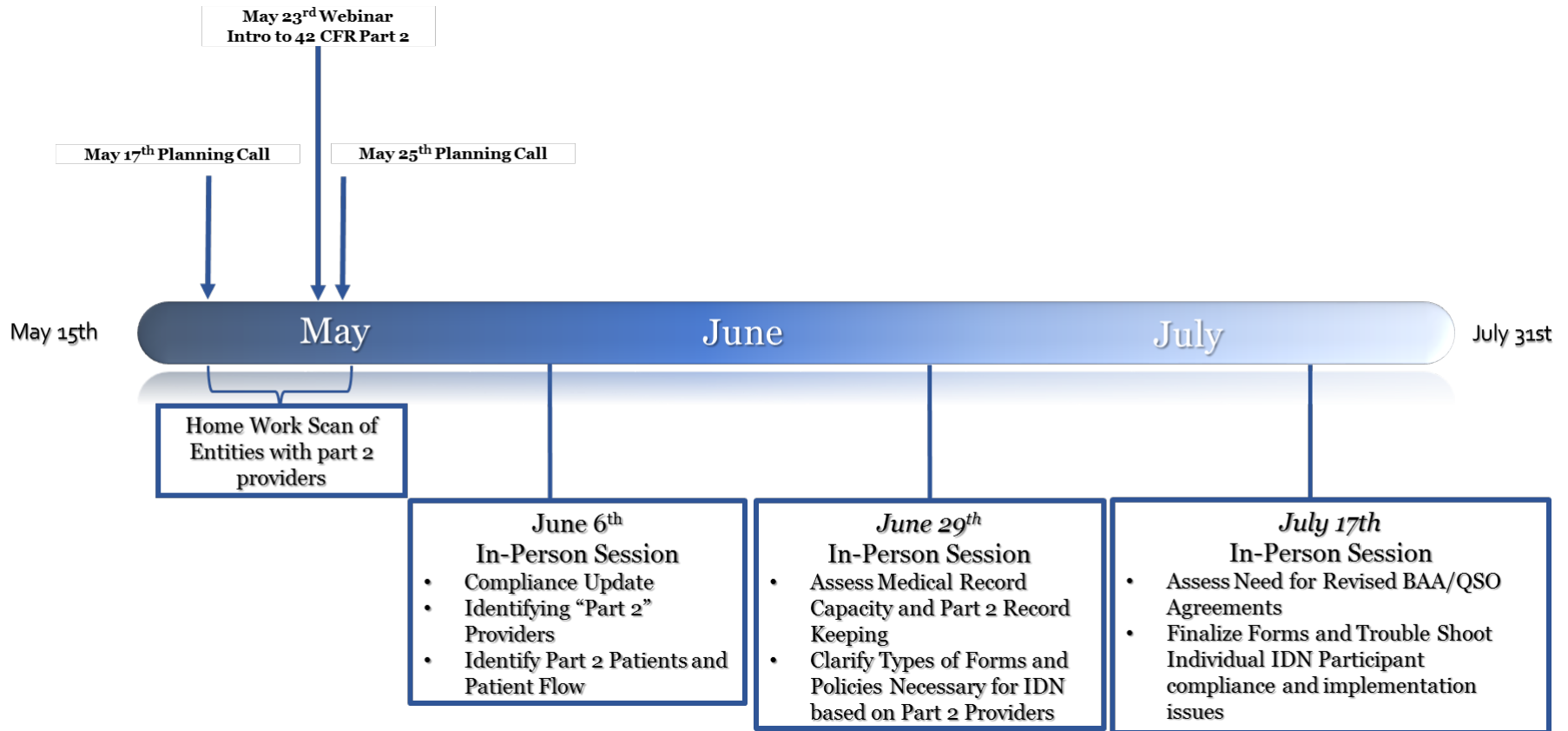
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Agenda

- Classifying Your IDNs Support and Assessing the Need for Revised Agreements:
 - QSO? Treating Provider? Community Care Entity?
 - Technology Supports: *Mark Belanger*
 - Classifying Activity: *Mark and Lucy*
- Developing Your Forms: Consents, Notices and More
 - Brief Review: *Lucy*
 - Consent Development and Trouble Shooting Exercise: *Lucy and Rick*
 - Facilitated Form Development & Troubleshooting: Consents, Notice of Privacy, Non-Rdisclosure
- Debrief & Next Steps



General Discussion of Progress

- Introductions
- Homework



CLASSIFYING YOUR IDN'S SUPPORT

QSO? Treating Provider? Community Care?



Qualified Services Organization: Why Does it Matter?

The restrictions on disclosure do *not* apply to communications between a part 2 program and a QSO of information *needed by* the QSO to provide *services to* the program. (2.12(b)(4))

1. If a QSO, include Part 2 language in agreement and articulate need for disclosure
2. If not a QSO, secure authorization for disclosure through patient consent or
3. Don't disclose



QSO: How to identify?

- A QSO provides services named in regulations to a Part 2 organization such as:
 - data processing
 - bill collecting
 - dosage prep
 - lab analyses, or
 - professional services including
 - legal
 - accounting
 - *population health management*
 - medical staffing
 - or services to prevent child abuse.



Additional QSO Details

- 'A QSO can NOT be used to provide information without consent to other treating providers such as PCPs, care managers, medication management providers (must use consent instead)'
- 'A QSO can be used to share information with offices or units or individuals responsible for population health management in an organization (not the entire organization or its participants)'



Classifying: Who is being “disclosed” to?

- Is the individual/entity part of the Part 2 Program?
- If a treating provider, are the providers or care coordinators providing services as part of the Part 2 program or are they employed by a separate entity?
- Is the individual or entity providing staffing or other services to the Part 2 Program?
- Is the individual/entity providing the type of services to the Part 2 program listed in the rules?
- Does the individual/entity need to see Part 2 information?
- Is the disclosure of Part 2 information by a Part 2 program to the individual protected because:
 - QSO?
 - Consent?
 - Other exception?



Sample Language (Draft Form D)

- Prohibited from accessing confidential patient SUD records/identify need for disclosure
- acknowledges that in receiving, transmitting, transporting, storing, processing, or otherwise dealing with any information received from [insert program name] identifying or otherwise relating to the patients in the [insert program name] ('protected information'), it is fully bound by the provision of the federal regulations governing the Confidentiality of Alcohol and Drug Abuse Patient Records, 42 C.F.R. Part 2; and the Health Insurance Portability and Accountability Act (HIPAA), 45 C.F.R. Parts 142, 160, 162 and 164;
- agrees to resist any efforts in judicial proceedings to obtain access to the protected information except as expressly provided for in the regulations governing the Confidentiality of Alcohol and Drug Abuse Patient Records, 42 C.F.R. Part 2, as amended;



TECHNOLOGY SUPPORTS

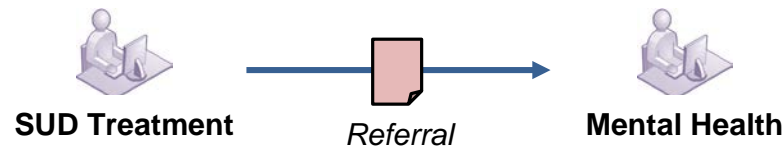
Mark Belanger, Region 1



Privacy & Technology Framework for SUD Bootcamp Discussion

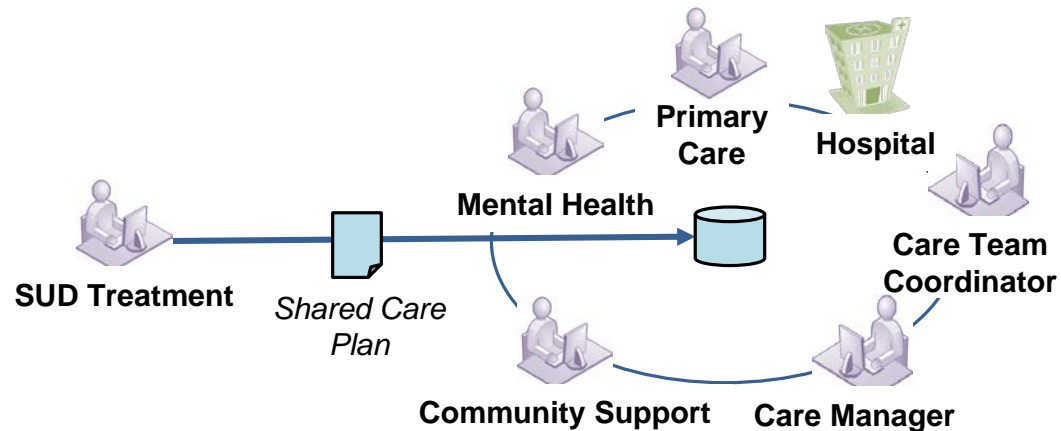
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Direct Secure Messaging (Multiple Vendors)



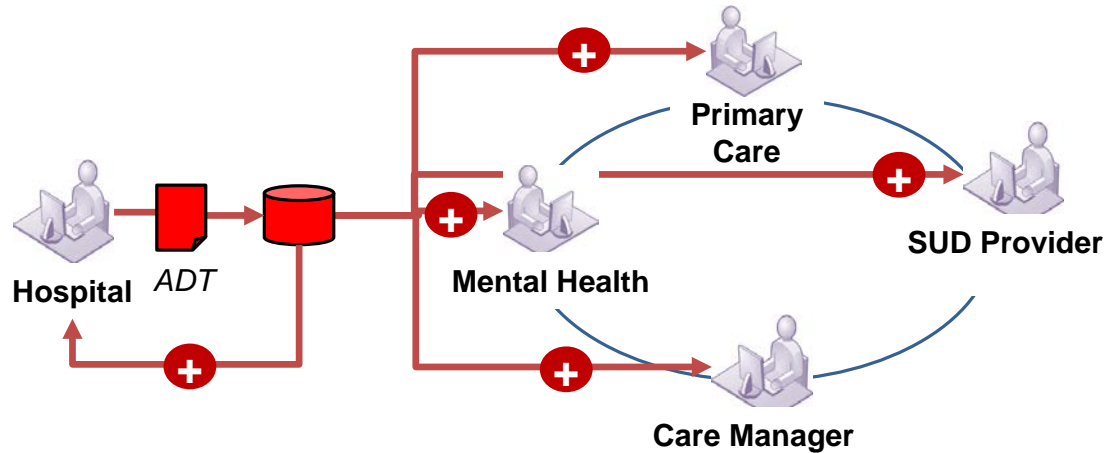
From Whom	To Whom	Data Persisted	Special Considerations
SUD Provider	Treating Provider(s) <ul style="list-style-type: none"> • MH Provider • PCP • Hospital/ED • Care Manager • Care Team Coordinator • Community Support 	Locally	<ol style="list-style-type: none"> 1. DSM addressees are typically organizations but may be department or individuals (EHR/HISP dependent) 2. No good place for re-disclosure language 3. NHHIO Opt-Out required if NHHIO HISP is used for Transmission (Through Dec 2017) 4. Fax / Mail litmus test

Shared Care Plan (Vendor is CMT)



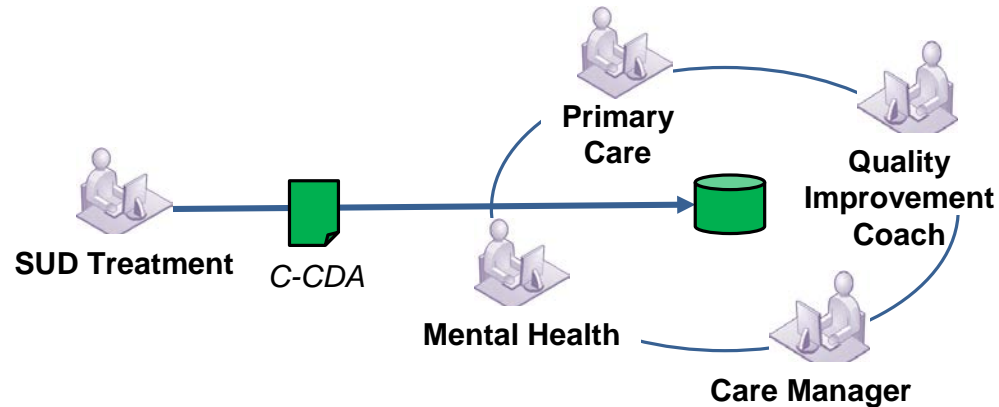
From Whom	To Whom	Data Persisted	Special Considerations
SUD Provider	Treating Providers <ul style="list-style-type: none"> MH Provider PCP Hospital/ED Care Manager Care Team Coordinator Community Support 	Centrally	<ol style="list-style-type: none"> Shared Care Plan housed in Clinical Data Repository with Access limited to Treatment Team – fits Part 2 definition of an HIE CMT has some ability to restrict access to some fields so that they are only accessed by “Integrated Health Core Team.” – Requires further testing For ED Admit – CMT “pushes” parts of the Shared Care Plan to the ED Tracking Board – This is considered a bona fide emergency under part 2

Event Notification Service (Vendor is also CMT)



From Whom	To Whom	Data Persisted	Special Considerations
Hospital/ED	Treating Providers	Centrally	<ol style="list-style-type: none"> 1. Access is limited to those providers with a Treatment relationship with the Member 2. Alert may be configured to disclose minimal information – Balance of disclosure with value of data (e.g., Choice to include “Chief complaint”) 3. Hospital/ED providers are/are not Part 2? 4. Are we comfortable defining a hospital admit, discharge, or transfer as a “bona fide emergency?”

Data Aggregation for Quality Reporting/Pop Health Management (Vendor is not yet determined)



From Whom	To Whom	Data Persisted	Special Considerations
SUD Provider	MH Provider PCP Care Manager Care Team Coordinator	Centrally	<ol style="list-style-type: none"> 1. Primary uses of the data is for quality reporting and population health management 2. Quality reports to outside entities will contain no PHI and are fully de-identified

Decisions to Resolve Soon!

Decisions:

1. Determine if part 2 will constrain how we set up Direct addresses (org level, department level, individual level)
2. Determine how to handle re-disclosure language with Direct Secure Message
3. Determine recommended language we use for NHHIO Opt-Out requirement and when this requirement will phase out
4. Determine which services fall under HIE definition in the 42 CFR part 2 final rule (Shared Care Plan, Event Notification Service, Quality Data Repository) and what that means for “To Whom” in the disclosures
5. Determine if/how Community Organizations have direct access to the Shared Care Plan
6. Determine whether ER providers are or are not Part 2 and what is included under definition of bona fide emergency
7. As a fallback option, determine if SUD providers should just be a consumer of (rather than a contributor to) the Shared Care Plan or Quality Reporting service
8. Determine intra-organizational disclosure requirements for SUD treatment departments that are nested in a general health organization
9. Verify that we can operationalize any options we give Medicaid Members in our Authorization forms
10. Others from today’s discussion?

Appendix

What Data May Be in the Shared Care Plan?

Common Clinical Data Set elements available from most certified EHR systems (CCDA)

Patient Demographics
Health Insurance Provider
Problem/Condition
Allergy/Drug Sensitivity
Medication
Immunizations
Vital Signs
Results
Encounter
Procedure
Social History

CCDS elements Required in 2015 Edition Certification to support MU Stage 3 and MIPS

Care Team Members
Assessment and Plan of Treatment
Goals
Health Concerns

Not Required for EHR Certification, No Standards Available

Other Data Elements For Discussion

- Care Coordination Instructions
- Social Determinants of Health:
 - Food security
 - Housing security
 - Domestic violence
 - Transportation
- Pain Management / Contract
- Other elements?



CLASSIFYING YOUR IDN'S SUPPORT ACTIVITY

<https://unh.box.com/s/m76x6od5tcb39he73apd5aiuqxzmbcdq>



BREAK



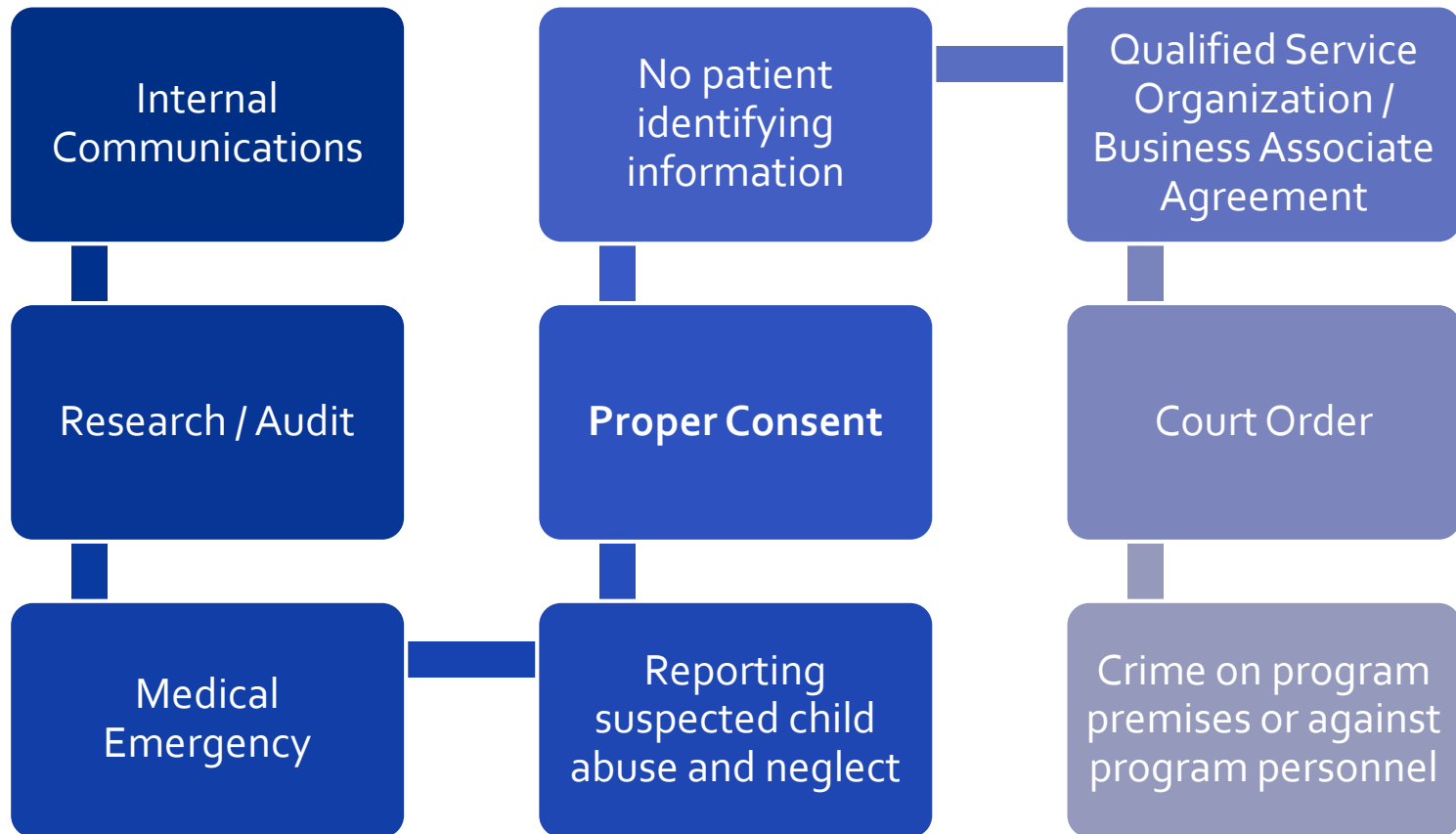
Form Development Exercise

1. *Formal Policies and Procedures to secure Part 2 information (2.16)*
2. *Notice of Privacy Rights (adapted and updated from Legal Action Center form published pre-2017) (draft form A attached)*
3. *Consent/Authorization to Disclose (draft form B attached)*
4. *Prohibition against Re-disclosure language – to be attached to Part 2 information that is disclosed pursuant to a consent (adapted from 42 CFR Part 2)(draft form C attached)*
5. *Qualified Services Organization template language (draft form D attached, adapted and updated from Legal Action Center forms published under rules pre-2017)*



When Can You Share? What Can You Share?

Circumstances that allow for disclosure under Part 2



Requirements- Securing Consent



Question

- Notice?
- Policies and procedures?



Question

- Consent?
- To whom?

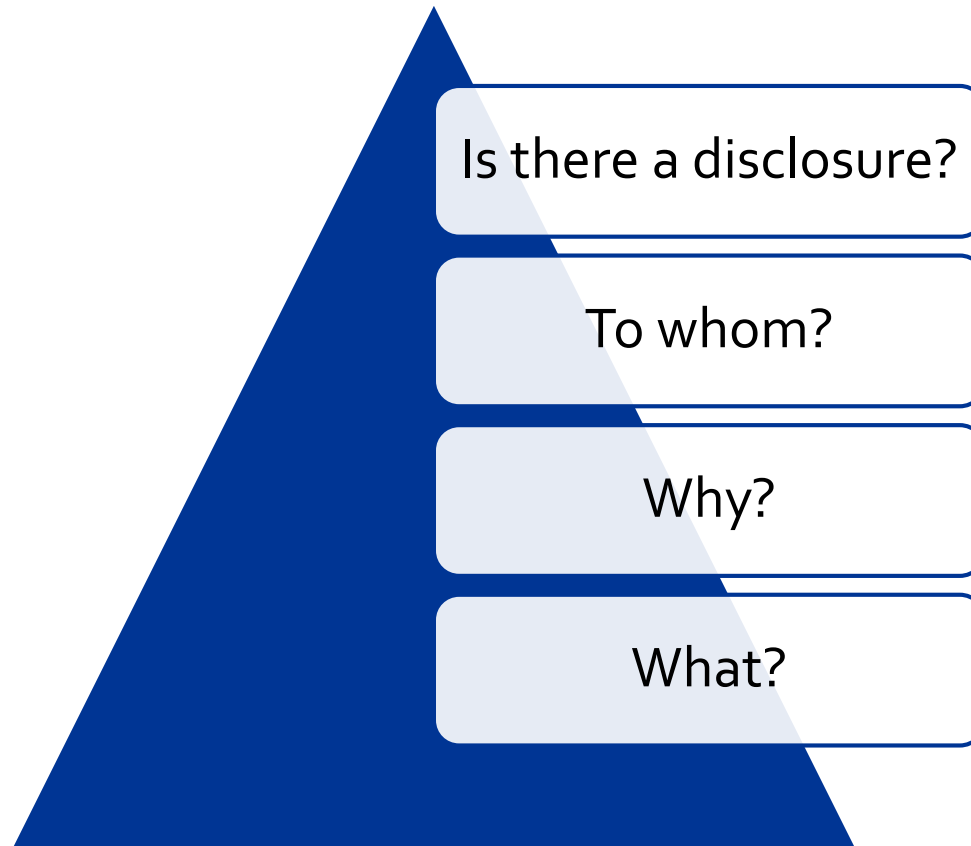


Question

- Notice of non-re-disclosed language with every disclosure?



Key Questions





Part 2 Written Consents

- ❖ Name of patient
- ❖ Introduction explaining your care delivery goals
- ❖ Name of Part 2 program making the disclosure(s)
- ❖ “*to whom*” will the disclosure be made?
- ❖ **What** will be disclosed?
- ❖ Identify **the purpose** of the disclosure
- ❖ Let the patient know of his/her right to revoke
- ❖ Identify a date the consent expires – can be longer than a year!
- ❖ Reminder of 42 CFR Part 2 rights in general
- ❖ Signed and dated by the patient (can be signed electronically)



Notice of Privacy Rights

- See Draft Form A



Re-Disclosure Prohibition (Draft Form C)

Part 2/SUD information disclosed pursuant to a patient consent must include prohibition on redisclosure language!

- Re-disclosure permitted through written consent.
 - Must ensure the consent form authorizes each party to disclose to the other parties the information and purpose specified.
- The required statement prohibiting re-disclosure should accompany the information disclosed through consent along with a copy of the part 2 compliant consent form so each subsequent recipient of that information is notified of the prohibition of re-disclosure.



Prohibition on Redisclosure “comments”

- Individuals and entities that are not covered by part 2 that possess substance use disorder data that did not originate in a part 2-covered provider are not subject to the part 2 program requirements. However, if those individuals and entities received that information that is subject to part 2 via patient consent or through any other means under the part 2 program, they would be required to comply with part 2.
- Regarding the re-disclosure of information related to co-occurring disorders, only the substance use disorder information is covered by part 2. The mental health information in a patient record is not subject to part 2.
- 82 FR 6089-6093 (January 18, 2017)



Prohibition on Redisclosure Details Re. Health v. SUD Records

- The Part 2 prohibition on re-disclosure does not apply to **health records**, which remain subject to HIPAA.
 - Only applies to information that would identify, directly or indirectly, an individual as having been diagnosed, treated, or referred for treatment for a substance use disorder and allows other health-related information shared by the part 2 program to be re-disclosed.
 - Health-related information may include standard medical codes, descriptive language, or both.
 - Health information can include part 2 information concerning a patient's prescription for a medication typically used for medication-assisted treatment or a disease or condition frequently associated with substance use disorders.
- Part 2 permits the disclosure of information without patient consent relative to a medication that is used for both substance use disorder and non-substance use disorder purposes, even when it is being prescribed for the purpose of substance use disorder treatment. The information must not identify the provider as being affiliated with a part 2 program or prescribing the substance use disorder medication for substance use disorder treatment.



Consent Development Exercise (Draft Form B)

Region 5 Adaption

<https://unh.box.com/s/1i7k3pgajtbk1egspmkm06ervvha8zy4>

Region 5 Adaption with Pt example

<https://unh.box.com/s/idzvo1idkjin6n8alrgof2g9gfng7el4q>



Group Work

Facilitated Form Development &
Trouble Shooting:
Consents, Notice of Privacy, Non-
Redisclosure
Assigned Facilitators



DEBRIEF & NEXT STEPS



Farewell and Thank you

Evaluations