



# **SUBSTANCE USE DISORDERS CONFIDENTIALITY BOOT CAMP**

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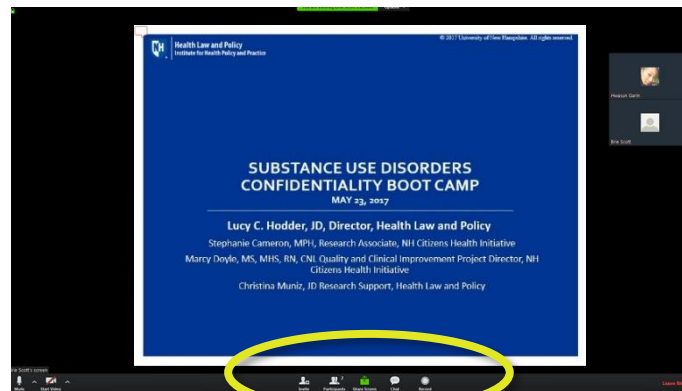
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# Zoom Reminders

- For Zoom callers:
  - Review sign-on instructions carefully to assure good audio experience.
  - **Enter audio code** when using both computer and phone for better audio quality for all.
- **Please mute** audio when not speaking
- **Please note your name**, then comment/question
- For In-Person attendees, **please speak toward the mics.**
- Use the Zoom Mute, Start/Stop Video, Chat Box if needed.



Please Enter Name  
and IDN Region in  
Chat Box



# Agenda

1. Overview of 42 CFR Part 2
2. Differences between Part 2 and HIPAA
3. Minors and the law
4. Compliance Tips
5. Managing Part 2 as an integrated behavioral health team
6. Questions



# What is Part 2?

42 CFR Part 2 are the federal Substance Use Disorder (SUD) confidentiality regulations issued by the U.S. Department of Health and Human Services Substance Abuse and Mental Health Services Administration (“SAMHSA”) protecting the confidentiality of SUD treatment records.

# Part 2 Rules Were Recently Amended

- First substantial update since 1987 to Confidentiality of Alcohol and Drug Abuse Patient Records regulations (Part 2) – designed to:
  - Encourage care integration and information exchange
  - Update consent form requirements
  - Address healthcare technology changes
  - Address prohibition against re-disclosures and accounting for disclosures
  - Address research uses of data
  - Address security of records
- Proposed amendments published on February 9, 2016; comment period ended on April 9, 2016
- Final rule published January 18, 2017; effective February 17, 2017 (delayed by Trump administration to March 2017)

# Why is Part 2 an issue now?

Essential  
Health  
Benefits

Data showing  
ROI

Integrated  
Behavioral  
Health Goals

Alternative  
Payment  
Models

Opioid Crisis

Medicaid  
Expansion

Advancing  
EHR

Integrated  
Delivery  
Systems

Health  
Information  
Exchanges

# Overview of Applicable Privacy and Confidentiality Law

Jurisdiction	Statute/Regulation	Scope
Federal	<b>HIPAA Privacy Rules</b>	Protects individually identifiable health information maintained by providers, payers and their contractors from disclosure. Heightened protections for psychotherapy notes.
	<b>42 CFR Part 2</b>	Protects the confidentiality of substance abuse patient records from disclosure without express patient consent
New Hampshire	<b>RSA 332-I:1</b>	Medical information in the medical records in the possession of any health care provider shall be deemed to be the property of the patient.
	<b>RSA 318-B:12-a</b>	Protects reports and records of treatment of minors for drug dependency as confidential.
	<b>RSA 330-A:32</b>	Protects communications between mental health practitioners and patients as privileged.
	<b>RSA 330-C:26</b>	Protects information held by a licensed alcohol or other drug use professional performing substance use counseling services unless permitted by 42 CFR Part 2.

# Purpose of 42 CFR Part 2 (Part 2)

*"Impose restrictions upon the disclosure and use of substance use disorder patient records which are maintained in connection with the performance of any Part 2 program" 2.2*

- Protect patients who seek SUD treatment from the potentially harmful consequences of bias.
- The goal is to encourage people to seek SUD treatment, rather than not, because they can do so without fear of their information being shared.
- Disclosure of SUD patient information by a Part 2 provider is NEVER allowed, UNLESS certain circumstances exist.

***Problem: Theory of heightened confidentiality in Part 2 is in conflict with theory that mind and body should be treated as one with no stigma associated with behavioral health!***



# HIPAA ≠ Part 2 – Who is Covered?

## HIPAA

1. Health care providers, both physical and behavioral health
2. Health plans
3. Health care clearinghouses
4. Business associates

## Part 2 Program (2.11)

1. An individual or entity (or a unit in a general medical care facility) that holds itself out as providing and does provide SUD treatment, diagnosis or referral; or
2. Medical personnel or staff in a general medical facility whose primary function is the provision of such services and who are identified as SUD providers; and
3. That are federally “assisted”

# Who is a Part 2 Provider/Program

(2.11)

- Medical personnel or staff:
  - Holds herself out as providing and does provide SUD treatment, diagnosis, or referral (t/d/r); or
  - In a general medical facility whose primary function is SUD t/d/r; or
  - Is a NH Licensed LADC
- An entity (other than a general medical facility) that holds itself out as providing SUD t/d/r
- An identified unit within a general medical facility that holds itself out as providing and does provide SUD t/d/r

*Example: A family practitioner screens a patient using SBIRT and refers the patient to a SUD provider for follow-up assessment. Conducting SBIRT does not make the practitioner a Part 2 program.*



# Federally assisted means (2.12(b)):

- Recipients of federal financial assistance
- Licensed, certified, registered, or authorized by the federal government to conduct business
- Tax-exempt through the IRS
- Conducted by the fed., state, or local gov. which receives fed. funds that could be used for SUD programs
- Exception: Department of Veterans Affairs (doesn't cover their records)

# HIPAA v. Part 2 – What information is covered?

## HIPAA

- All individually identifiable health information
- Psychotherapy notes documenting or analyzing a conversation during a private counseling session or group session must be maintained separately.

## Part 2 Records (2.12)

### **Information, whether or not recorded, which:**

- Would identify a patient as a SUD patient either directly or verification
- Is any SUD patient information created, received or acquired *by a Part 2 program* for the purpose of treating alcohol or drug abuse, making a diagnosis for treatment, or making a referral for that treatment.

# Who is a Part 2 Patient?

- A patient is any individual who has applied for or been given a diagnosis, treatment or referral for treatment for a SUD **at a part 2 program.**  
(2.11)
- ***Treatment*** means the care of a patient suffering from a substance use disorder, a condition which is identified as having been caused by the SUD or both, in order to reduce or eliminate the adverse effects upon the patient.

# HIPAA v. Part 2 – When are disclosures permitted?



## HIPAA

- With a patient's valid verbal or written authorization
- After a patient receives notice of the provider's privacy policy, a covered provider may disclose health information for the purposes of:
  - Treatment;
  - Payment;
  - Health care operations; and
  - Other purposes as consent authorizes

## Part 2

- **Express written consent**
- Internal admin communications if direct admin control (2.12(c)(3))
- Medical emergency
- Qualified service organization agreement
- De-identified information
- Crime on program premises
- Research
- Audit by CMS
- Court order
- Reporting child abuse/neglect

# Questions So Far



Question

- Who is a Part 2 Program?



Question

- Who is a Part 2 patient?



Question

- Are Part 2 records being disclosed or re-disclosed?



# Part 2 Requirements

- I. Notice of privacy policies that meet Part 2 requirements
- II. Compliant consent forms
- III. Non re-disclosure notices when Part 2 information disclosed
- IV. Qualified Service Organization Agreements when necessary



# Part 2 Notice Requirements

## Policies and Procedures (2.16)

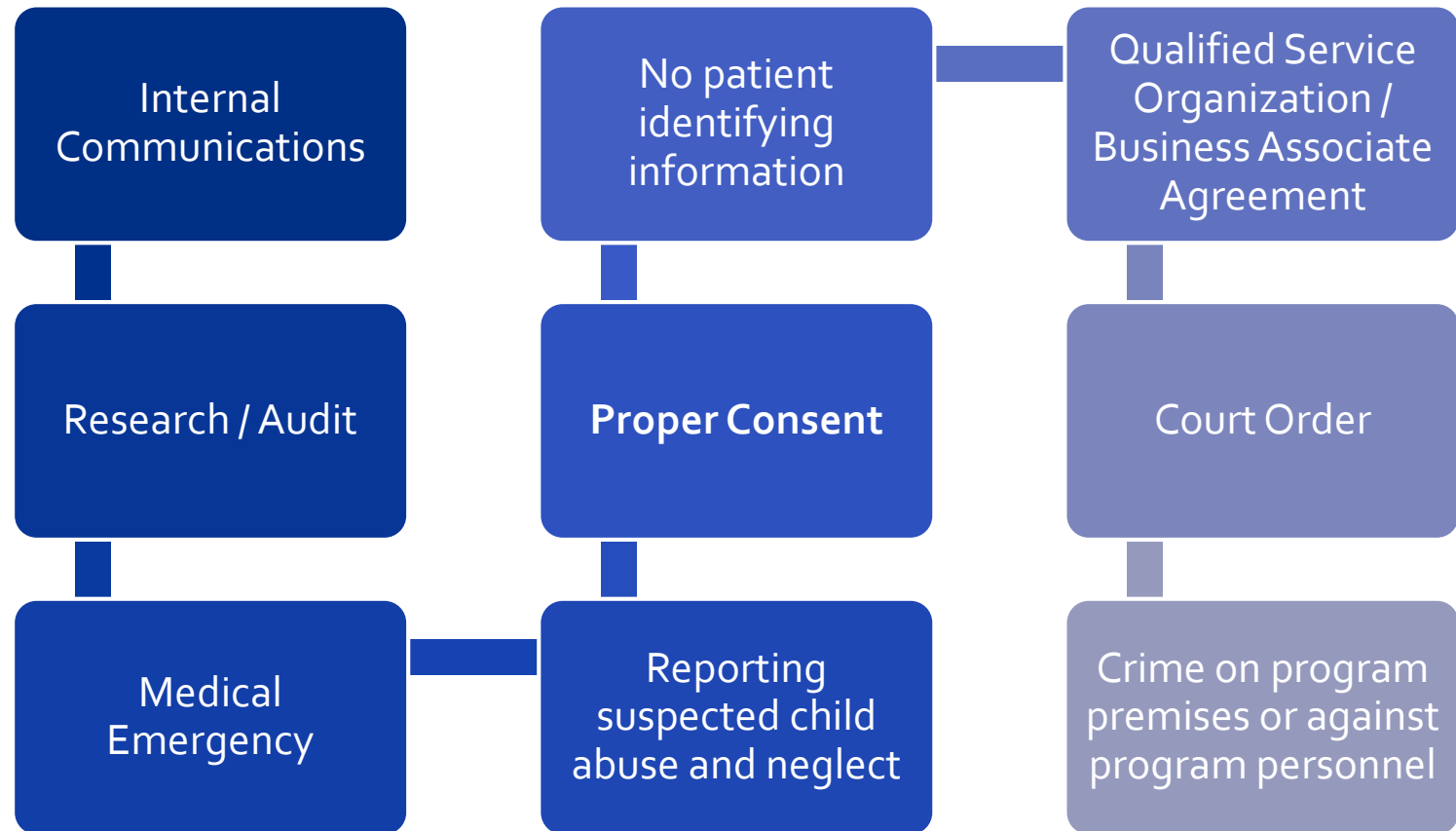
- Part 2 program or holder of Part 2 information
- Must have formal policies and procedures
- To reasonably protect against unauthorized uses and disclosures of patient identifying information
- Should be included in practices general privacy policies and procedures

## Notice to Patients of Part 2 Rights (2.22)

- Notice must be given at the time of admission to a Part 2 program (or as soon thereafter as the patient has capacity)
- Notice of the federal law and regulations protecting privacy
- A summary in writing of the federal law and regulations
- Must include the “required elements” set forth in Section 2.22
- Can include state law information

# When Can You Share? What Can You Share?

## Circumstances that allow for disclosure under Part 2



# Qualified Services Agreement Exception (2.14(c)(4))

- A QSO is like a business associate
- Provides services to a Part 2 program, such as data processing, professional services or **population health management** (2.11)
- The QSO must enter into an agreement with the Part 2 program
- The agreement must acknowledge the QSO's obligations to comply with Part 2
- Part 2 program can only share what's necessary.

*Example: A Part 2 program can enter into a QSO agreement with a locum tenens physician or community provider covering call for the practice.*

# Medical Emergency

(new 2.51)



- *Patient identifying information may be disclosed by a Part 2 program to medical personnel to the extent necessary to meet a bona fide medical emergency in which the patient's prior consent cannot be obtained.*
- *Conditions: Part 2 Program must document in the patient's record to whom and by whom the disclosure was made and why.*

*Example: A mental health center providing SUD services to a patient could inform an ER physician at the hospital whether an ER patient who is apparently overdosing is on Suboxone.*

# Part 2 Consents

- ❖ Consent form must be in writing
- ❖ Clearly explain your integrated delivery model of practice
- ❖ Identify Part 2 providers as the entity making the disclosure
- ❖ Describe how treatment records will be disclosed for the purpose of treatment and coordinated care in an integrated care setting
- ❖ Clarify “*to whom*” the disclosure will be made
- ❖ Let the patient know of his/her right to revoke
- ❖ Identify a date the consent expires – can be longer than a year!
- ❖ Be signed and dated by the patient

# To Whom? (2.31)

## Can Name [Entity]

- If disclosure is to a treating provider
- If disclosure is to treating providers through a Health Information Exchange
  - *However*, HIE must provide patient with a list of the entities to whom Part 2 records are provided if requested
- If disclosure is to a third party payer

## Must Name [Individual]

- If the recipient entity **does not** have a treating provider relationship



# Every Disclosure Must Include Special Non-Disclosure Language

“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 in this record that identifies a patient as having or having had a substance use disorder either directly, by reference to publicly available information, or through verification of such identification by another person unless further disclosure is expressly permitted by the written consent of the individual whose information is being disclosed 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 (see 2.31). The Federal rules restrict any use of the information to investigate or prosecute with regard to a crime any patient with a substance use disorder, except as provided at Sections 2.12(c)(5) and 2.65.”

## 2 - Questions So Far



Question

- Notice?
- Policies and procedures?



Question

- Consent?
- To whom?



Question

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



# Confidentiality and Minors

- ❖ Both HIPAA and 42 C.F.R. Part 2 leave the issue of who is a minor and whether a minor can obtain health care or alcohol/drug treatment without parental consent entirely to State law.
- ❖ *In New Hampshire* a minor 12 years old or older may seek and be treated for drug dependency or any problem related to the use of drugs without parental consent (RSA 318-B:12-a)

# Other issues re minors in NH

- ❖ The age of majority in NH is 18 (RSA 21-B:1)
- ❖ NH law provides that a health care provider can only perform an HIV test with the consent of the individual being tested (RSA 141-F:5)
  - ❖ Example if a 15 year old is seeking an HIV test, that 15 year old must consent to the test even if the parent does not consent
  - ❖ Results of a test may only be given to the individual tested (RSA 141-F:7, II)
  - ❖ If the individual tested is under 18 or lacks the mental capacity to understand a *positive* HIV test, the provider **may** disclose to the parent or guardian (RSA 141-F:7, III)
- ❖ A provider is not liable for failing to obtain consent when treating a patient in an emergency no matter what age (RSA 153-A:18)
- ❖ A minor who is 14 years or older may seek and be treated for a sexually transmitted disease (STD) without the consent of a parent or guardian (RSA 141-C:18)

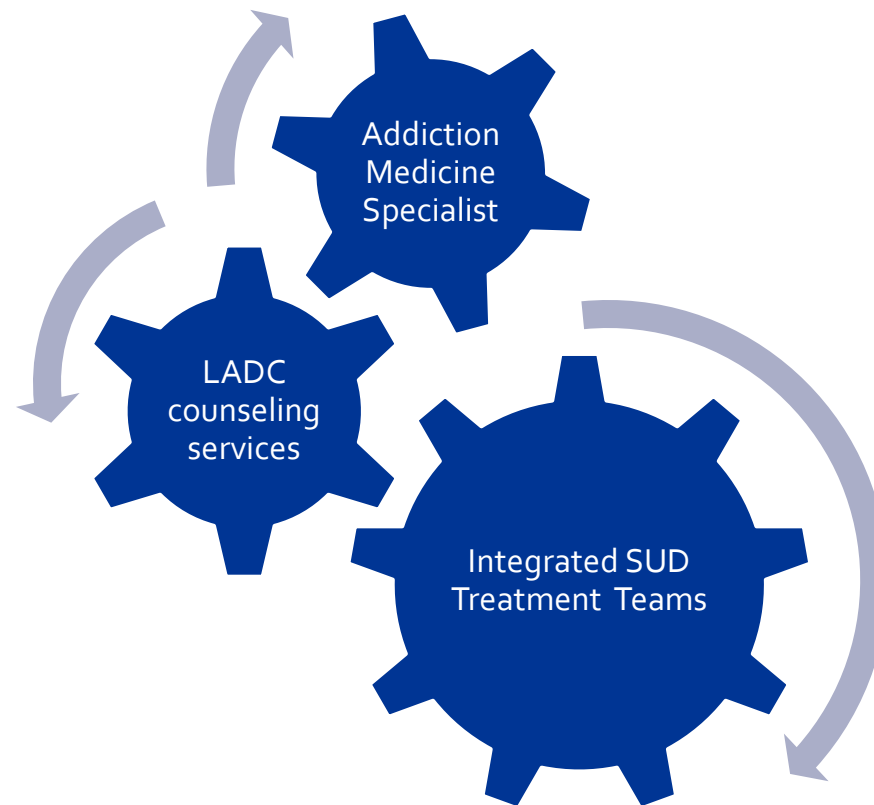
# What are your Behavioral Health Integrated Practice Needs?

- **Identify your projects!**
- **System of Care?:** Large integrated practice setting with system wide EMR; General & Behavioral Health Care integration: Patient is co-served by physical and behavioral health providers and care is coordinated; information must be available along the treatment spectrum.
- **Coordinated Care?:** Part 2 providers are coordinating care with outside practices and at patient transition points: Patient moves from one care provider to another and care teams conduct formal hand off needing information to flow in both directions.

# Compliance TIPS

- Who are your Part 2 providers or “units” who create confidential records?
- Who are your Part 2 patients who must sign Part 2 consents?
- Assess your practice patterns in order to determine “to whom” “from whom” consent needs:
  - What entities/providers do Part 2 providers share information with?
  - What behavioral health care entities/providers do providers need information from?
- Review your policies and patient consent forms and adapt to integrated care model.
- Provide patients with appropriate Notice of federal confidentiality requirements at the time of treatment if possible (2.22)
- How will you ensure non-redisclosure language provided each time Part 2 information is disclosed?
- Assess your EMR capabilities

# Identifying Part 2 Provider Teams



# Determine Part 2 Patient Flow

- Ask: *"is there a disclosure of Part 2 patient records by a Part 2 program or provider"??*
- Follow the Patient: Ask, when and why are disclosures necessary?
  - For payment?
  - For treating providers?
  - For administrative purposes?
  - For referrals and referral follow-up?



# Case Study:

Project: Expand usage of SBIRT within our IDN as well as intensive outpatient MAT.

- 1.) The patient is referred from a general primary care practice to an outpatient SUD treatment team. Does the primary care practice need to comply with Part 2?
- 2.) Records are received by primary care practice from the SUD provider with treatment notes, can the PCP share the SUD notes?



# Questions?



## Feed Back & Next Steps

IDN SUD Privacy Boot Camp Planning Committee	
1	Belanger, Mike
1	Mason, Peter
3	Craig, Michele
5	Abikoff, Jaqui
5	Silverberg, Rick
6	Irwin, Kevin
7	Bujno, Lisa
7	Frank, Nancy
7	Allin, April

**Survey Link:**  
**5/23 IDN SUD Privacy Webinar Survey**

# Resources

- **Confidentiality of Substance Use Disorder Patient Records Effective March 2017** - <https://www.gpo.gov/fdsys/pkg/FR-2017-01-18/pdf/2017-00719.pdf>
- **Understand the Federal Confidentiality Regulations (and HIPAA)** - [http://lac.org/wp-content/uploads/2014/12/Video\\_DVD\\_Training\\_Workbook\\_2014.pdf](http://lac.org/wp-content/uploads/2014/12/Video_DVD_Training_Workbook_2014.pdf)
- **SAMHSA – Substance Abuse Confidentiality Regulation FAQs** - <http://www.samhsa.gov/about-us/who-we-are/laws/confidentiality-regulations-faqs>