



SUBSTANCE USE DISORDERS CONFIDENTIALITY BOOT CAMP

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Agenda

1. Welcome back and report from IDN groups' progress
2. Overview of compliance requirements
 1. Security policy
 2. Consent
 3. Notice of privacy policy
 4. Nondisclosure
3. Case Discussion
4. Group Work
5. Debrief & Next Steps



Homework Report Out



Part 2 Requirements

- I. Security policy for patient records
- II. Notice of privacy policy
- II. Compliant consent forms
- III. Nondisclosure Notice



Remember – No disclosure without consent *unless...*

- No consent needed for communications *within* a Part 2 program to those who are diagnosing, treating or referring a patient.
- No consent needed for disclosures to an entity with direct administrative control over program
- No consent in an emergency
- No consent if pursuant to a QSO



Part 2 – Who is Covered?

1. An individual or entity (or a unit in a general medical 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

Remember that buprenorphine providers are not categorically included in the definition of a Part 2 program

Remember that a health provider does not become a Part 2 program simply because they provide SBIRT.



What is Part 2 Information?

Information, whether or not recorded, which:

- Would **identify** a patient as a SUD patient either directly or by 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.



Security Policy (2.16)

- The part 2 program or other lawful holder of patient identifying information must have in place formal policies and procedures to reasonably protect against unauthorized uses and disclosures of patient identifying information and to protect against reasonably anticipated threats or hazards to the security of patient identifying information.



Security Policy (2.16)- Paper records

- The policies and procedures must address the following information :
 - Transferring and removing such records
 - Destroying such records, including sanitizing the hard copy media associated with the patient printouts, to render the patient identifying information non-retrievable
 - Maintaining such records in a secure room, locked file cabinet, safe, or other similar container, or storage facility when not in use
 - Using and accessing workstations, secure rooms, locked file cabinets, safes, or other similar containers, and storage facilities that use or store such information
 - Rendering patient identifying information non-identifiable in a manner that creates a very low risk of re-identification



Security Policy (2.16)- Electronic records

- The policies and procedures must address the following information :
 - Creating, receiving, maintaining, and transmitting such records
 - Destroying such records, including sanitizing the electronic media on which such records are stored, to render the patient identifying information non-retrievable
 - Using and accessing electronic records or other electronic media containing patient identifying information
 - Rendering the patient identifying information non-identifiable in a manner that creates a very low risk of re-identification



Notice to Patients of Part 2 Rights (2.22)

Prompt Notice to Patient: Notice must be given at the time of admission to a Part 2 program (or as soon thereafter as the patient has capacity for “rational communication”)

- 1) Communicate that federal law protect the confidentiality of SUD records
- 2) Give the patient a summary in writing of the federal law



Notice: Required Elements

- 1) A general description of the limited circumstances under which a Part 2 program may acknowledge that an individual is present or disclose outside the program information identifying a patient as having or having had a SUD.
- 2) A statement that violation of Part 2 is a crime and suspected violations may be reported
- 3) A statement that information related to patient's commission of a crime on the premises or against personnel is not protected
- 4) A statement that reports of suspected child abuse and neglect are not protected.
- 5) A citation to the federal law and regulations.
- 6) *May include summary of state law and additional consistent policies.*

Patient Consent -





Part 2 Consents (2.31)

- ❖ In writing (paper or electronic)
- ❖ Name of the patient
- ❖ Name of the entities of individuals making the disclosure (either because they are a Part 2 provider or because they have SUD/Part 2 records)
- ❖ Description of **how much** and **what kind** of information is to be disclosed
- ❖ “*to whom*” the disclosure will be made (name or general designation)
- ❖ Right to list of general designation entities
- ❖ Purpose of the disclosure
- ❖ Patient right to revoke unless consent already acted upon
- ❖ Expiration date
- ❖ Patient signature (electronic signature allowed)



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 = e.g., John Doe Parole Officer

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



What happens when Part 2 records are shared through an intermediary, like an HIE, pursuant to a general designation of “treating providers”?

A large, solid blue arrow pointing downwards, centered on the slide. Inside the arrow, the text “to my treating providers” is written in white.

“to my
treating
providers”



Right to List of Disclosures 2.13

- The intermediary or “Health Information Exchange” is responsible for giving the patient a list of providers to whom it disclosed Part 2 records.
 - Upon request
 - List of providers
 - Description of what was disclosed
 - Within 30 days of request
 - Dating back 2 years



Right to Disclosure List – Intermediaries *What Notice Must be In Consent?*

"When using a general designation, a statement must be included on the consent form that the patient confirms their understanding that, upon their request, the patient must be provided a list of entities to which their information has been disclosed pursuant to the general designation."

2.31



Who is a “treating provider”?

- **Begins when.....:** “A treating provider relationship begins when an individual seeks or receives health-related assistance from an individual or entity who may provide assistance.”
- **Is established when...** “when the individual or entity agrees to undertake diagnosis, evaluation and/or treatment of the patient, or consultation with the patient and the patient agrees to be treated.”
- The treating provider relationship does NOT need to be in-person.



Expiration?

- Consent must list date or event upon which consent expires if not otherwise revoked.
- “It is permissible for a consent form to specify the even tor condition that will result in revocation, such as having its expiration date be “upon my death.””



NOTE:

- Consents may authorize disclosures “among and between” the parties designated in the “To Whom” and “From Whom” sections of the consent form
- Will allow for bi-lateral communications when necessary
- BUT remember disclosure must be limited to information that is necessary



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.”

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.*

Medical Emergency (new 2.51)

- Immediately following disclosure, the Part 2 Program must document in the patient's record:
 - ❖ The name of the medical personnel to whom disclosure was made and their affiliation with any health care facility;
 - ❖ The name of the individual making the disclosure;
 - ❖ The date and time of the disclosure; and
 - ❖ The nature of the emergency.



Requirements



Question

- Notice?
- Policies and procedures?



Question

- Consent?
- To whom?

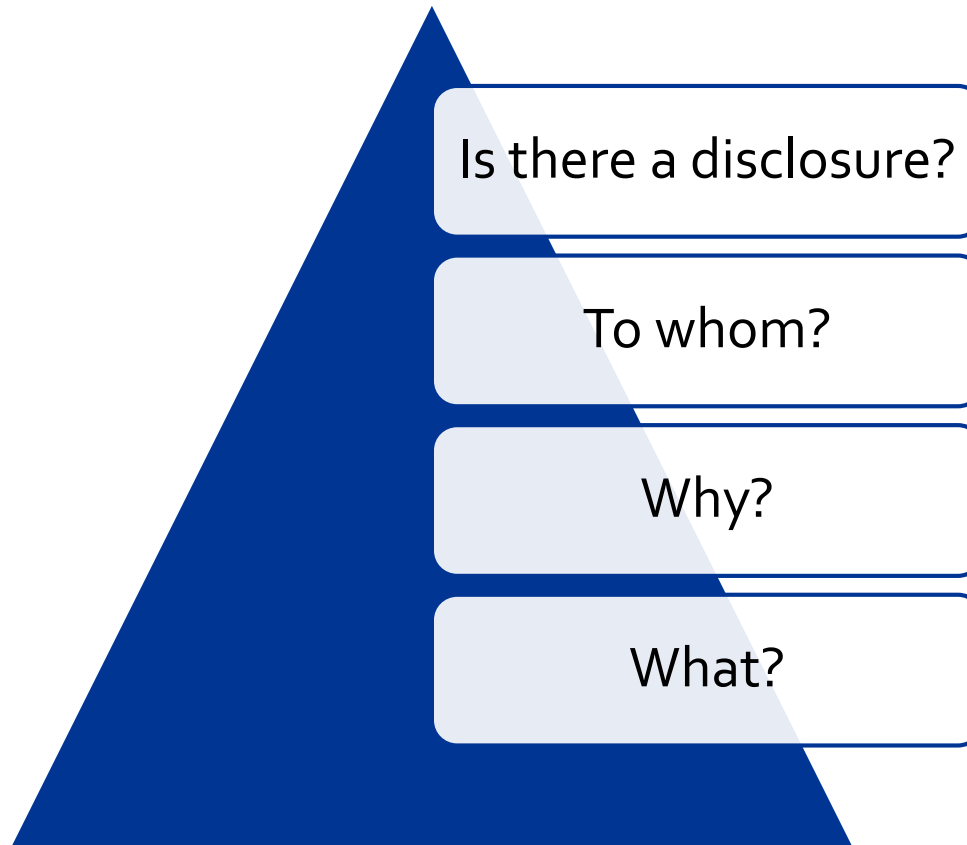


Question

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



Key Questions





Qualified Services Organization

- Part 2 providers may disclose SUD information to Qualified Services Organizations to the extent the information is needed to provide the services (2.12(b)(4))
- A QSO provides services 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.
- A QSO can NOT be used to provide information 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).



Key Question

- Are we using an intermediary?
- Who are our Qualified Services Organizations?



Questions?



Case Discussion

- Disclosures and “To Whom” with Region 7s B1 Project



Break



Group Work Instructions

- Within your region, work through answering worksheet questions using B1 scenarios.
- Facilitators will have materials
- Larger group check in half way through
- Floating support



Debrief



Next Steps

- Next Session July 17th 12:00 pm – 4:00pm,
Rich Rm UNH School of Law
- Homework
- Resources on Box