



Substance Use Disorder and HIPAA

Determining Part 2 Applicability

Protecting a patients' information secures the trust of both our clients and the patients we serve. The HIPAA Privacy Rule and Part 2 Regulations address the confidentiality of a patient's personal health information. The purpose of this article is to provide a foundational overview of when Part 2 applies.

Part 2 protects the confidentiality of a Substance Use Disorder patient's records and imposes restrictions under which their records can be disclosed by an individual or entity who has received patient identifying information. Part 2 was enacted to ensure a patient receiving Substance Use Disorder treatment (e.g. diagnosis, treatment, and/or referral for substance use disorder treatment) does not encounter adverse or harmful consequences such as:

- Loss of employment
- Health treatment discrimination
- Criminal Proceedings (Prosecutions and incarceration)
- Domestic Proceedings (Divorce and Child Custody Issues)

There are two main steps in determining whether an entity falls under Part 2 Status. The first is determining whether the entity receives federal assistance. A program receives federal assistance if it:

- Is conducted in some degree by a division of the United States;
- Is carried out pursuant to a license, certification, registration, or other authorization from a United States' department or agency (e.g., participating in the Medicare program, holding a DEA registration for dispensing controlled substances used to treat substance use disorder, being federally authorized to conduct a withdrawal management program);
- Is supported by funds from a division of the United States, or is conducted by a local government unit that receives federal funds that may be spent on substance use disorder programs (even if the funds are not used for the program/substance use disorder treatment, or
- Receives assistance from the IRS in the form of income tax deductions for contributions or the granting of tax-exempt status.¹

The second is determining whether the Part 2 program definition applies to the "Program" at the entity. The Part 2 program definition applies when an:

- individual/entity/unit provides substance use disorder treatment services
- individual/entity/unit is identified as providing substance use disorder treatment services
- individual/entity/unit makes a referral for substance use disorder treatment
- individual/entity/unit advertises as providing substance use disorder treatment

The client's we work with determine whether Part 2 applies to their organization and facility, however, it is important for us to understand when Part 2 regulations apply.

¹Chapman, Richard, JD & Webster, Litany, JD, CHC. "The Basics of 42 CFR Part 2 Following the 3017 and 2018 Revisions" Compliance Today Magazine. February 2019: Page19. Print.