

HIPAA & 42 CFR Part 2

- Health Insurance Portability and Accountability Act of 1996
 - Guidelines for health plans, health care clearinghouses and health care providers who transmit information electronically for billing and other specified transactions
- □ 42 CFR Part 2

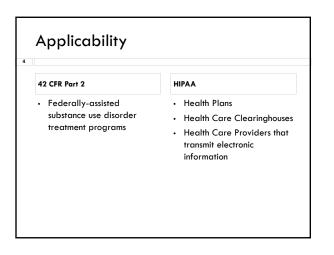
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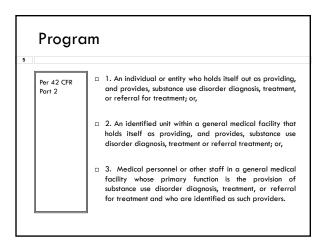
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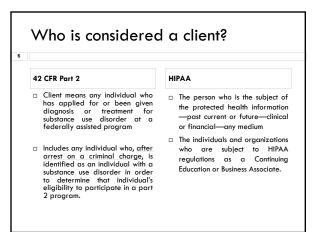
Specifically addresses confidentially of substance use disorder patient records.

The Framework of Principles

- <u>Privacy</u> is the state of being alone, or the right to keep one's personal matters and relationships secret
- <u>Confidentiality</u> has been defined by the International Organization for Standardization as "ensuring that information is accessible only to those authorized to have access"
- <u>Security</u> is measures taken to guarantee freedom of secrecy of action communication or the like.







HCCA Clinical Practice Compliance Conference

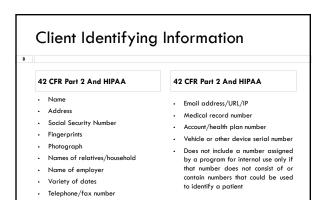
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Protected Health Information

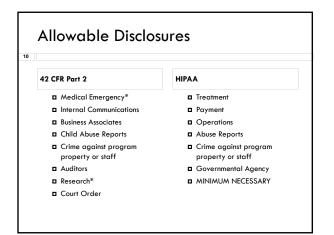
Individually Identifiable Health Information which is:

- Created or received by a health care provider, health plan, employer or health care clearinghouse
- Related to the past, present or future physical or mental health or condition of an individual
- Related to the provision of health care to an individual
- Related to the past, present or future payment for the provision of health care to an individual
- Identifies the individual or there is reasonable basis to believe that the information can be used to identify the individual
- Is transmitted by electronic media or maintained in any medium



Individuals Allowed Access (HIPAA)

- Workforce: Employees, volunteers, trainees, and other persons with access to PHI and <u>under the</u> <u>control</u> of the Covered Entity
- □ Business Associates: Separate entity working on behalf of the CE providing TPO and/or associated activities which require access and/or use of PHI from the CE



Otherwise...

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 $\hfill\square$ Under 42 CFR Part 2 a consent is required

Non-Client/Patient

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The Final Rule removes the permission granted under the existing regulations to disclose that an identified individual is not and never has been a patient.

Final rule guidance states that confirming the identity of an individual who is not and has never been a patient while remaining silent on the identity of an actual patient could, by inference, compromise patient privacy if the individual are of a small group of individuals.

| Consents | | | | |
|--|--|--|--|--|
| 42 CFR Part 2 | HIPAA | | | |
| Name of patient | Name of Patient | | | |
| From Whom | From Whom | | | |
| To Whom | To Whom | | | |
| What to disclose | What to disclose | | | |
| Purpose of disclosure | Purpose of disclosure | | | |
| Redisclosure Statement | Revocation Information | | | |
| Revocation Statement | Statement re: Conditional Treatment | | | |
| Expiration Information | Statement re: Ability to be re-disclosed 8 | | | |
| Signature of Patient | not protected | | | |
| Date of Signature | Expiration information | | | |
| Date of Signature | Expiration information Signature of patient and date | | | |

Definition

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□ Lawful Holders of PHI

■ A lawful holder of patient identifying information is an individual or entity who has received patient identifying information as the result of a part of a part 2-compliant patient consent (with a prohibition on re-disclosure note) as permitted under the Part 2 statute, regulations, or guidance. Thus, a patient who has obtained a copy of their records, or a family member who has received such information from a patient, would not be considered lawful holders.

Definition

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- Treating Provider Relationship
 - A treating provider relationship exists with another individual or entity when, "regardless of whether there has been a actual in-person encounter: 1) a patient is, agrees to, or is legally required to be diagnosed, evaluated, and/or treatment, or agrees to accept consultation, for any condition by an individual or entity; and 2) the individual or entity agrees to undertake diagnosis, evaluation, or treatment of the patient, or consultation with the patient, for any condition."

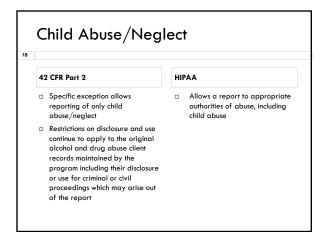
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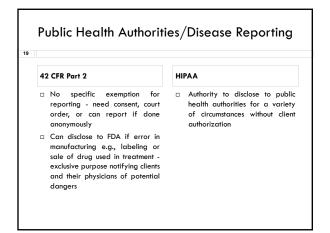
Treating Provider Relationship

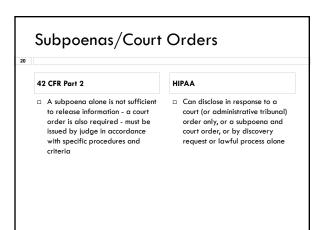
- □ SAMHSA considers an entity to have a treatment provider relationship with a patient "if the entity employs or privileges one or more individuals who have a treating provider relationship with the patient."
- Absent such a relationship, consents to disclose would have to specifically name the individuals or entities to which disclosure may be made. (see table below) SAMHSA did not include "care management relationship" to be a "treating provider relationship."

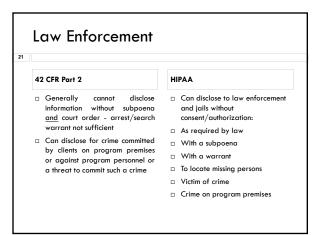
| 42 CFR 2.31 | Individual or entity to whom disclosure is to be made | Treating provider relationship with patient whose information is being disclosed | Primary designation | Required additional designation |
|--|---|--|--|---|
| (a)(4)(i) | Individual | Yes | Name of individual (eg Jane Doe MD) | None |
| (a)(4)(i) | Individual | No | Name of individual (eg Jane Doe MD) | None |
| (4)(4)(ii) | Entity | Yes | Name of entity (eg Providence Hospital) | None |
| (a)(4)(iii)(A) Third Party Payer | Entity | No | Name of entity that is a third-party payer as specified under 2.31(eg Medicaid) | None |
| (a)(4)(iii)(B) | Entity | No | Name of entity that is not covered by 2.31 (ge HE, research institution, etc.) | At least one of the following: Name of Individual participant Name of an entity with treating provider relationship with patient whose information is being disclosed "General designation" of individual or entity participant or disa of those participants limited to those participants who have a treatment provider relationship with a patient whose information is being disclosed (eg my current and future treating providers) |

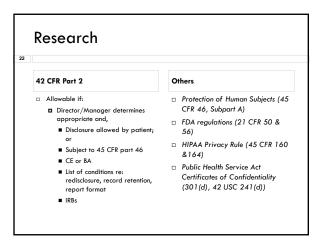


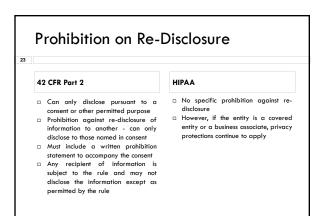












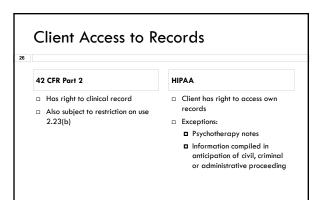
Redisclosure

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□ The Final Rule clarifies that the prohibition against re-disclosure 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, such as indicated through standard medical codes, descriptive language or both. 25

New Redisclosure Statement

- Required language on any release of Part 2 information:
 - "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 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. 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 §§2.12(c)(5) and 2.65."



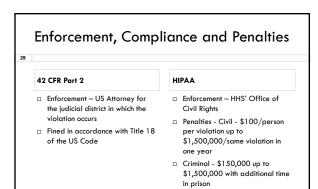
| 42 CFR Part 2 | HIPAA | | | |
|---|--|--|--|--|
| Clients must be given written summary of confidentiality provisions and notice that Federal law and regulations protect the confidentiality of alcohol and drug abuse client records. | Receive notice of covered entity's privacy practices Access own information Request corrections of erroneous/incomplete information Request restriction of uses and disclosures Request transmittal of communications in an alternative manner Obtain an accounting of disclosures | | | |

Other HIPAA Privacy Mandates

Designate a Privacy Officer

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- □ Adopt written comprehensive policies
- Train staff routinely
- $\hfill\square$ Personnel sanctions for breaches
- Establish a grievance process
- Physical safeguards
- Mitigate results of violations
- D Minimum Necessary Requirement
- Privacy Notice
- □ Accounting of Disclosures
- Correction of erroneous/incomplete information



Contact Information

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 □ <u>dpickles@akeela.org</u>
 □ (907) 433-7015

References

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- □ Title 42, Chapter 1, Subchapter A, Part 2— Confidentiality of Alcohol and Drug Abuse Patient Records
- □ Confidentiality of Alcohol and Drug Abuse Patient Records, Proposed Final Rule §2.11, Published January 18, 2017
- □ Substance Abuse and Mental Health Services Administration: <u>http://bit.ly/2nsONeN</u>