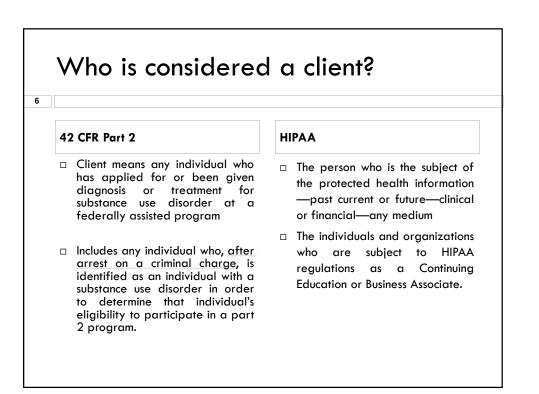


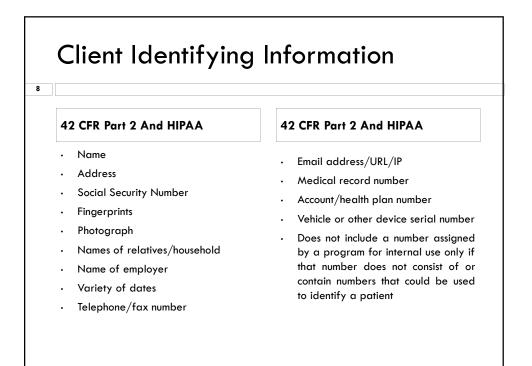
5	Program					
	Per 42 CFR Part 2	 1. An individual or entity who holds itself out as providing, and provides, substance use disorder diagnosis, treatment, or referral for treatment; or, 				
		 2. An identified unit within a general medical facility that holds itself as providing, and provides, substance use disorder diagnosis, treatment or referral treatment; or, 				
		3. Medical personnel or other staff in a general medical facility whose primary function is the provision of substance use disorder diagnosis, treatment, or referral for treatment and who are identified as such providers.				

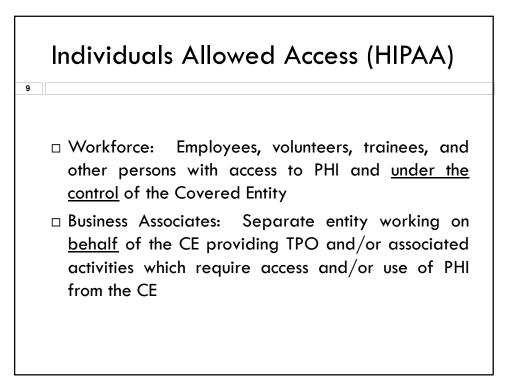


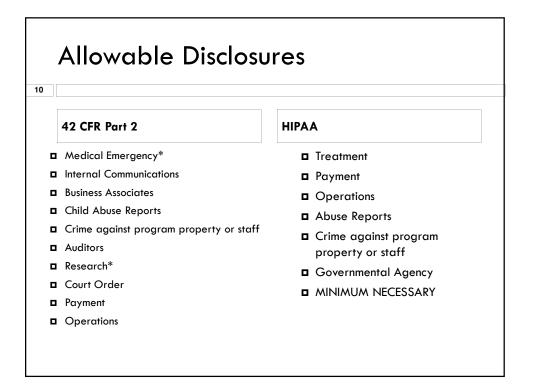
Protected Health Information

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







Otherwise...

11

12

□ Under 42 CFR Part 2 a consent is required

Non-Client/Patient

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

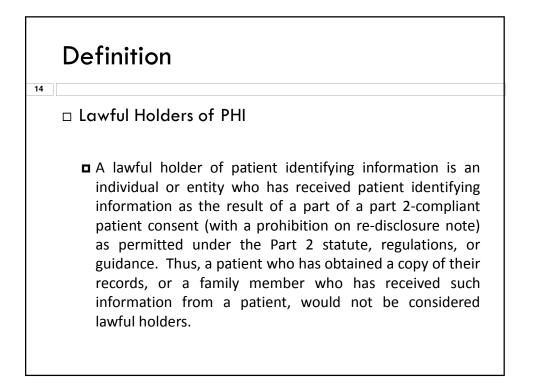
13

42 CFR Part 2

- Name of patient
- □ From Whom
- □ To Whom
- $\hfill\square$ What to disclose
- Purpose of disclosure
- Redisclosure Statement
- Revocation Statement
- Expiration Information
- Signature of Patient
- Date of Signature

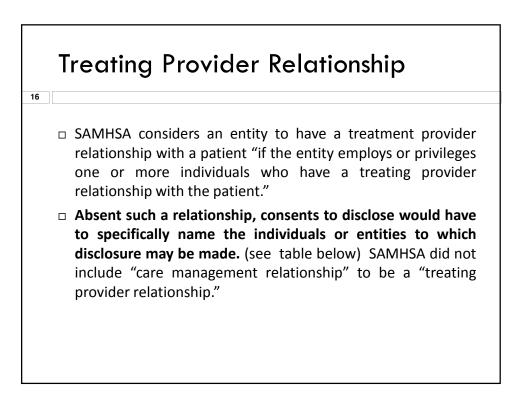
HIPAA

- Name of Patient
- □ From Whom
- □ To Whom
- What to disclose
- Purpose of disclosure
- Revocation Information
- Statement re: Conditional Treatment
- Statement re: Ability to be re-disclosed & not protected
- Expiration information
- Signature of patient and date

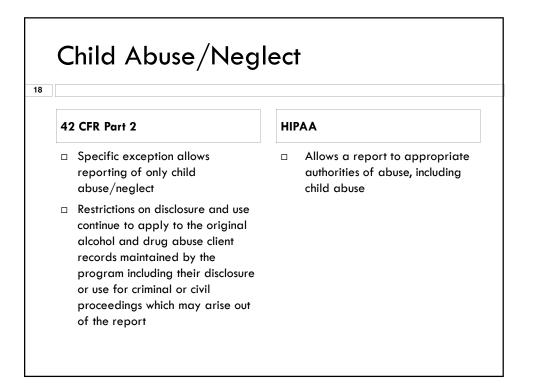


Definition

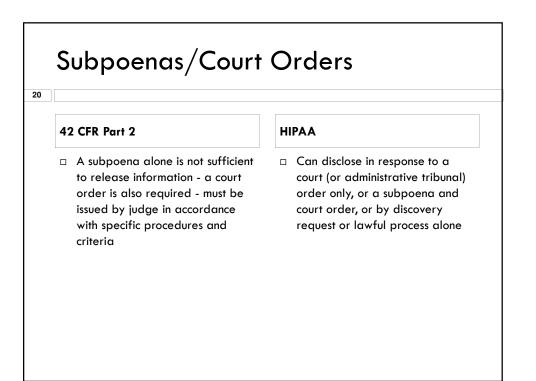
- □ Treating Provider Relationship
 - A treating provider relationship exists with another individual or entity when, "regardless of whether there has been a actual in-person encounter: 1) a patient is, agrees to, or is legally required to be diagnosed, evaluated, and/or treatment, or agrees to accept 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."



	to be made	information is being disclosed		
(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)(B)	Entity	No	Name of entity that is not covered by 2.31 (eg HIE, 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 class 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)



Public Health Authorities/Disease Reporting 19 42 CFR Part 2 **HIPAA** □ No specific exemption for Authority to disclose to public reporting - need consent, court health authorities for a variety order, or can report if done of circumstances without client anonymously authorization □ Can disclose to FDA if error in manufacturing e.g., labeling or sale of drug used in treatment exclusive purpose notifying clients and their physicians of potential dangers



Law Enforcement

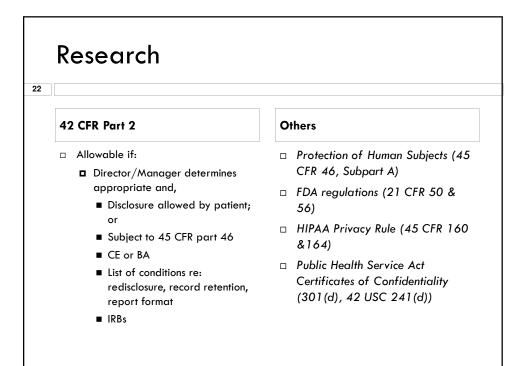
42 CFR Part 2

21

- Generally cannot disclose information without subpoena and court order - arrest/search warrant not sufficient
- Can disclose for crime committed by clients on program premises or against program personnel or a threat to commit such a crime

HIPAA

- Can disclose to law enforcement and jails without consent/authorization:
- $\hfill\square$ As required by law
- With a subpoena
- With a warrant
- $\hfill\square$ To locate missing persons
- □ Victim of crime
- □ Crime on program premises



Prohibition on Re-Disclosure

42 CFR Part 2

23

- □ Can only disclose pursuant to a consent or other permitted purpose
- Prohibition against re-disclosure of information to another - can only disclose to those named in consent
- Must include a written prohibition statement to accompany the consent
- Any recipient of information is subject to the rule and may not disclose the information except as permitted by the rule

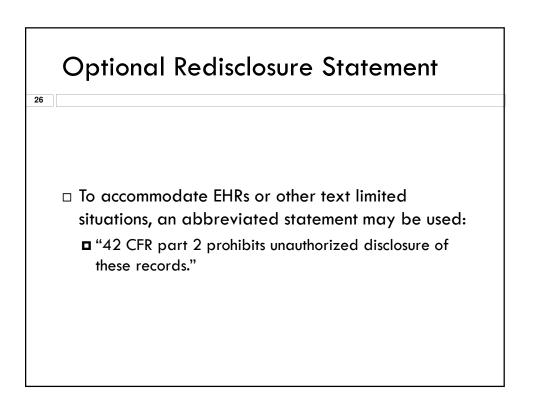
HIPAA

- No specific prohibition against redisclosure
- However, if the entity is a covered entity or a business associate, privacy protections continue to apply

P4 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.



- □ 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."



Client Access to Records

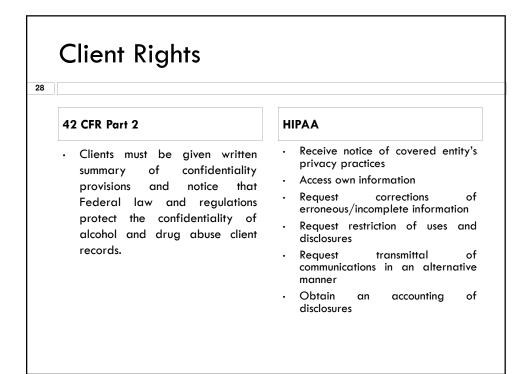
42 CFR Part 2

27

- Has right to clinical record
- Also subject to restriction on use 2.23(b)

HIPAA

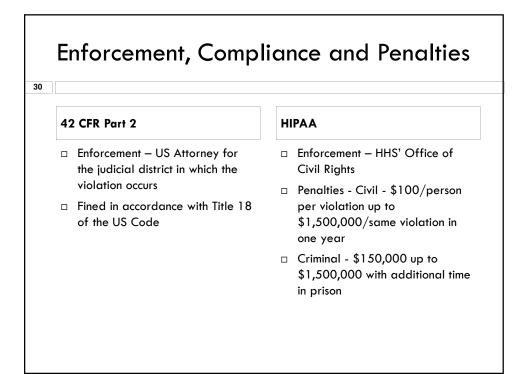
- Client has right to access own records
- □ Exceptions:
 - Psychotherapy notes
 - Information compiled in anticipation of civil, criminal or administrative proceeding



Other HIPAA Privacy Mandates

- Designate a Privacy Officer
- □ Adopt written comprehensive policies
- □ Train staff routinely

- Personnel sanctions for breaches
- □ Establish a grievance process
- Physical safeguards
- D Mitigate results of violations
- D Minimum Necessary Requirement
- Privacy Notice
- □ Accounting of Disclosures
- Correction of erroneous/incomplete information



Contact Information

31

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

References ³² 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 Confidentiality of Alcohol and Drug Abuse Patient Records, Proposed Final Rule §2.11, Published January 3, 2018 Substance Abuse and Mental Health Services Administration: <u>http://bit.ly/2nsONeN</u>