

SUD CONFIDENTIALITY IN PENNSYLVANIA



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PENNSYLVANIA'S SUD CONFIDENTIALITY POLICIES *

Statute:

- **Act 63 of 1972**, The Pennsylvania Drug & Alcohol Abuse & Control Act (71 P.S. § 1690.108)
 - Applies to records of SUD history, including diagnosis and/or treatment, prepared or obtained “pursuant to this act” (Subsection (b)) or “a private practitioner, hospital, clinic, drug rehabilitation or drug treatment center” (Subsection (c))

Regulation:

- **4 Pa. Code § 255.5:** Projects & coordinating bodies: disclosure of client-oriented information
 - Limits the information and recipients of disclosure of client information by SUD projects and coordinating bodies.

Compiled state and federal laws and regulations available on DDAP's website:

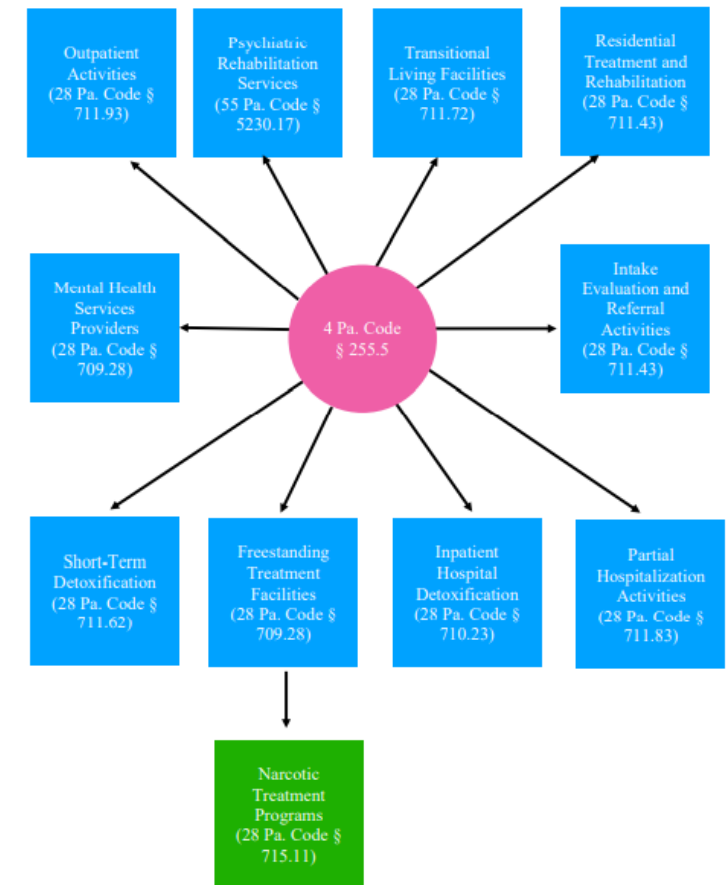
- https://www.ddap.pa.gov/Documents/Agency%20Publications/Confidentiality_Federal_State_Regulations_Guide.pdf

❖ *“Policies” used as shorthand to discuss Pennsylvania’s statutes and regulations pertaining to the confidentiality of a person’s SUD records.*

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Incorporating SUD Confidentiality Regulations by Reference

- Compliance with 4 Pa. Code § 255.5 is written into regulations of DDAP licensed SUD treatment providers as well as mental health and psychiatric treatment providers
 - *28 Pa. Code (Health and Safety)*: 28 Pa. Code § 709.28l; 28 Pa. Code § 715.11; 28 Pa. Code § 711.43, 711.53, 711.62, 711.72; 711.83, 711.93, 710.23
 - *55 PA Code (Human Services)*: 55 Pa. Code SS 5100.31 et. seq.; 55 Pa. Code § 5230.17
- Overview of this in a 2019 policy brief on Pennsylvania's SUD confidentiality policies (pages 7-9)
 - http://www.healthinfolaw.org/PA_substance_use_information_confidentiality



❖ “Policies” used as shorthand to discuss Pennsylvania’s statutes and regulations pertaining to the confidentiality of a person’s SUD records.



	Regulating Agency	Which entities must comply with these requirements?	What client information is regulated under these requirements?	Are there limits on what information may be shared with a person's consent?	Are there limits on what information may be shared <u>without</u> a person's consent?
<p>PA Act 63 of 1972; 71 P.S. § 1690.108</p>	<p>State: Various</p>	<p>Subsection (b) applies to anyone who prepares or obtains patient records pursuant to this act including private & public SUD treatment & rehabilitative facilities.</p> <p>Subsection (c) includes any provider that holds substance use treatment information & restricts disclosure of any information relating to SUD prepared or obtained by <u>any</u> private healthcare provider or facility</p>	<p>A complete medical, social, occupational, & family history shall be obtained for a person's SUD diagnosis, classification & treatment.</p> <p>Copies of all pertinent records from other agencies, practitioners, institutions, & medical facilities shall be obtained to develop a complete & permanent confidential personal history for purposes of the patient's SUD treatment.</p>	<p>With a patient's consent, SUD information may only be released for the following purposes:</p> <ul style="list-style-type: none"> ○ To medical personnel exclusively for diagnosis & treatment; ○ To government or other officials for the purpose of obtaining benefits; or ○ To the parent or legal guardian of a minor patient 	<ul style="list-style-type: none"> ● Life-threatening medical emergencies ● Good clause court order, only for providers included under subsection (b)
<p>4 Pa. Code § 255.5 28 Pa. Code § 709.28</p>	<p>State: Department of Drug & Alcohol Programs (DDAP)</p>	<p>Public or private organizations responsible for the administration & delivery of SUD services as a component of an SCA (i.e., "projects").</p> <p>Other sections of Pennsylvania's Administrative Code incorporate Section 255.5 by reference, extending its application to entities including mental health providers, freestanding SUD treatment facilities, & health care facilities that provide SUD treatment services in inpatient or outpatient settings (such as hospital-based detox). These other entities are required to comply with 255.5 as a condition of licensure or certification. (See 28 Pa. Code 711)</p> <p>Part 5 of Title 28 of the Administrative Code contains regulations for DDAP. Chapter 709 contains the standards for licensure of freestanding SUD treatment facilities. Freestanding treatment facilities are those that are not part of a health care facility. (See 28 Pa. Code 709)</p>	<p>Client oriented data which reasonably may be utilized to identify the client.</p>	<p>Written consent requires, but is not limited to, 7 elements:</p> <ul style="list-style-type: none"> ● Name of individual/organization receiving disclosure; ● Specific purpose or need for disclosure; ● Description of how much/what info will be disclosed; ● Signature of patient; ● Date of consent; ● Date, event, or condition upon which consent will expire; & ● Signature & date of witness. <p>Even with patient's consent, only 5 pieces of information may be shared with a <i>judge, probation or parole officer, insurance company, health or hospital plan, or government official.</i></p> <ul style="list-style-type: none"> ● Whether or not the patient is in treatment; ● The prognosis of the patient; ● The nature of the project; ● A brief description of the patient's progress; & ● A short statement as to whether the patient has relapsed into drug or alcohol misuse, & frequency of such relapse. <p>No limitations on information that a SUD treatment provider can provide to a person's treating <i>physicians.</i></p> <p>See 28 Pa. Code 709.28(c)</p>	<p>The non-consensual disclosures permitted under 255.5 are:</p> <ul style="list-style-type: none"> ● 255.5(a)(1), to sentencing judges when diagnosis or treatment is a condition of sentence - limited by 255.5(b) ● 255.5(a)(2), to parole or probation officers when treatment is a condition of probation or parole - limited by 255.5(b) ● 255.5(a)(3), to judges when diagnosis or treatment is a condition of presentence or conditional release including ARD, probation without verdict, or disposition in lieu or trial - NOT limited by 255.5(b) ● 255.5(a)(9), to medical authorities for the purpose of treating the client in an emergency when the life of the client is in immediate jeopardy - NOT limited by 255.5(b)

SUD CONFIDENTIALITY RESOURCES

- Additional information about SUD confidentiality in Pennsylvania on DDAP's website:
 - <https://www.ddap.pa.gov/Pages/SUD-Confidentiality.aspx>
- Anyone can take DDAP's SUD confidentiality training if you would like to learn more
 - You will need to create an account in DDAP's Training Management System to register to attend
 - <https://www.ddap.pa.gov/Training/Pages/default.aspx>
- It is strongly recommended that you seek your organization's legal counsel or designated personnel for advice when any questions regarding disclosure or confidentiality issues arise
- If there is a difference in Pennsylvania and federal regulations or laws, follow the most protective.

SUD CONFIDENTIALITY IN THE ERA OF INTEGRATED CARE

- Pennsylvania is one of three states (including OK and KS) with SUD data regulations that go above and beyond the federal 42 CFR Part 2 (or Part 2)
 - In most other states, policies regulating SUD confidentiality align with Part 2
- Assessing Pennsylvania's SUD confidentiality policies
 - Policy Briefing: *Pennsylvania Law & Policy Governing the Confidentiality of Substance Use Treatment Information: Challenges & Opportunities*
 - http://www.healthinfolaw.org/PA_substance_use_information_confidentiality
 - DDAP Stakeholder Assessment Summary Report
 - <https://www.ddap.pa.gov/Pages/SUD-Confidentiality.aspx>

THANK YOU & STAY IN TOUCH!

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