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# Sharing Behavioral Health Information Between Providers

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ROBERT FERGUSON, MPH, CHIEF POLICY OFFICER, PRHI

*This is for awareness and informational purposes only.*

# PA Act 33 of 2022

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- Makes Pennsylvania's SUD confidentiality requirements consistent with federal law (42 CFR Part 2 and HIPAA)
- Effective as of July 7, 2022
- Resources
  - Training
    - [https://www.ddap.pa.gov/Training/Documents/Confidentiality\\_OnlineModule\\_Announcement\\_Sept2022.pdf](https://www.ddap.pa.gov/Training/Documents/Confidentiality_OnlineModule_Announcement_Sept2022.pdf)
  - PA DDAP Informational Bulletin 02-2022 (8/24/22)
    - <https://www.ddap.pa.gov/Documents/Information%20Bulletins/IB%2002-22.pdf>
  - Center of Excellence for Protected Health Information: <https://coephi.org/>

# Federal 42 CFR Part 2

## Applies to Part 2 Programs

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➤ Federally-assisted

**AND**

➤ Individual or entity that holds itself out as providing and provides SUD diagnosis, treatment, or referral for treatment

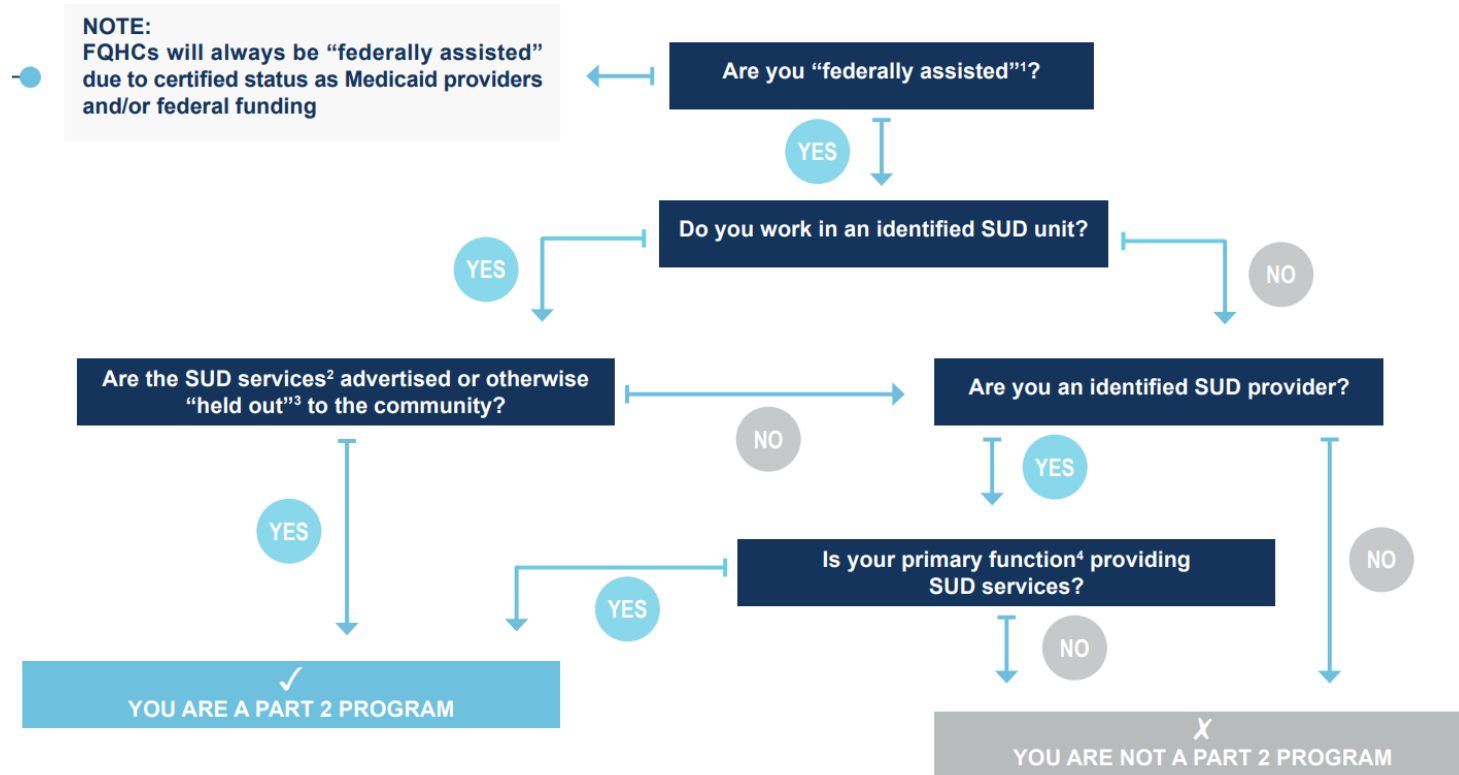
➤ Inclusion of general medical facilities:

➤ Identified SUD treatment units that hold itself out as providing, and provides, alcohol or drug abuse diagnosis, treatment or referral for treatment

➤ Medical personnel or staff whose primary function is SUD diagnosis, treatment or referral for treatment and who are identified as SUD treatment providers

# I Provide SUD Services in an FQHC: Does Part 2 Apply to Me?

Use the flowchart below to determine if Part 2 applies to you; See the next page for key terms.



<https://coephi.org/resource/i-provide-sud-services-in-an-fqhc-does-part-2-apply-to-me-2/>

# Federal 42 CFR Part 2 Consent Forms

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- Patient Name
- Name or designation of the program or person permitted to make the disclosure
- Name or title of the individual or organization name to which disclosure is to be made
- Discussion Purpose
- Amount and Kind of Information to be Disclosed (specific)
- Statement that the Consent is Subject to Revocation
- The Date, Event, or Condition that the Consent will Expire
- Patient Signature
- Signature Date

Drug and Alcohol Services  
123 Main Street  
Anywhere, PA  
717-555-1234

## General Release of Confidential Drug and Alcohol Information

Patient Name: John Doe

I, John Doe, do hereby grant Drug and Alcohol Services permission to release the following information:

- Prognosis/Diagnosis of the Patient
- Whether the Patient is in treatment
- All documents pertaining to the Patient's demographics, intake, screening, and assessment

To: ABC Treatment Centers

For the purpose of: Referring the client for treatment services

[https://www.ddap.pa.gov/Training/Documents/Confidentiality\\_OnlineModule\\_Annoucement\\_Sept2022.pdf](https://www.ddap.pa.gov/Training/Documents/Confidentiality_OnlineModule_Annoucement_Sept2022.pdf)

I understand that this consent is subject to revocation at any time except to the extent that Drug and Alcohol Services has already acted in reliance upon it. I may revoke my consent either verbally or in writing.

This consent will expire: 30 days after the client is discharged from services at Drug and Alcohol Services

Patient Signature: \_\_\_\_\_ Date: \_\_\_\_\_

42 CFR Part 2 prohibits unauthorized disclosure of these records.

[https://www.ddap.pa.gov/Training/Documents/Confidentiality\\_OnlineModule\\_Announcement\\_Sept2022.pdf](https://www.ddap.pa.gov/Training/Documents/Confidentiality_OnlineModule_Announcement_Sept2022.pdf)

# Federal 42 CFR Part 2

## Disclosures without Consent

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Medical Emergency

Research, Audit, and Evaluation

Suspected Child Abuse and Neglect

Qualified Service Organization Agreement

Crime on Premises

Good Cause Court Order

Internal Program Communication

Non-Patient Identifying Information



# PA Act 33 of 2022

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**Providers not covered by 42 CFR Part 2** are prohibited from disclosing client records without consent, except:

- to medical personnel for purposes of diagnosis and treatment;
- to government officials for purposes of obtaining benefits due to the client on the basis SUD;
- in emergency medical situations; or
- to a covered entity or business associate in accordance with HIPAA

<https://www.ddap.pa.gov/Documents/Information%20Bulletins/IB%2002-22.pdf>

## Pa. Code § 255.5(b)

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**Licensed alcohol and other drug providers** may disclose certain information with client consent to an insurance company, health, or hospital plan, which has contracted with the client to provide medical, hospital, disability, or similar benefits...

➤ This is for the purpose of determining the advisability of continuing the client with the assigned project, and is limited to the following:

1. Whether the client is or is not in treatment
2. Prognosis of the client
3. Nature of the project
4. Brief description of the client's progress
5. Statement re: whether client relapsed into drug or alcohol abuse and the frequency

**Update:** "DDAP will not cite any licensed SUD providers for regulatory violations if they disclose information as permitted by 42 CFR Part 2, even if the disclosure would be prohibited under State regulations such as 4 Pa. Code § 255.5."

<https://www.ddap.pa.gov/Documents/Information%20Bulletins/IB%2002-22.pdf>

# Federal HIPAA Privacy Rule: Sharing Information Related to Mental Health

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- Permits nonconsensual sharing of mental health information, **but not Psychotherapy notes**, for treatment, payment, or healthcare operations
- Psychotherapy notes pertain to a conversation during a counseling session, and are recorded by a mental health professional
- Psychotherapy notes do not include:
  - medication prescription and monitoring
  - counseling session start and stop times
  - modalities and frequencies of treatment
  - results of clinical tests
  - summaries of diagnosis, functional status, treatment plan, symptoms, prognosis, and progress to date
  - information that is maintained in a patient's medical record

# 055 PA Code § 5100.32 Nonconsensual Release of Mental Health Information

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- Treatment records are kept confidential and are not released without consent, except the relevant portions may be released for certain purposes.
  - This includes to those actively engaged in treating the individual, or to persons at other facilities when the person is being referred to that facility and a summary or portion of the record is necessary to provide treatment
- Information made available is limited to relevant and necessary information

# Consent for Sharing Mental Health Information is Needed for Purposes Other Than:

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**Continuity of Treatment  
(limited to relevant portions or  
summaries)**

**Court of Mental Health Review  
Officer**

**Payers  
(only certain info)**

**Appropriate Departmental  
Personnel**

**Reviewers and Inspectors**

**Medical Emergencies  
(only certain info)**

**Professional Standards Review Org.  
(PSRO) or Utilization Reviews**

**Parents/Guardians to  
Obtain Consent**

**Administrator**

**Attorneys Representing Subject of a  
Commitment Hearing**

# 055 PA Code § 5100.34

## Consent Form Mental Health

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1. A time limit (starting and ending dates)
2. Agency or person to whom the records are to be released
3. Statement of specific purposes
4. Statement identifying the specific relevant and timely information
5. Signature of the patient or parent or guardian and the date (following a statement that the person understands the nature of the release)
6. Signature of a staff person obtaining the consent and the date
7. Place to record a verbal consent to release of information given by a person physically unable to provide a signature, and a place for the signatures of two witnesses
8. Indication that the consent is revocable

# Act 32 of 2022

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- Amends Mental Health Procedures Act – Confidentiality of Records
- Effective as of July 7, 2022
- PA DHS regulations due 180 days after July 7, 2022

# Act 32 of 2022

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“All documents concerning persons in treatment shall be kept confidential and, without the person's written consent, may not be released or their contents disclosed to anyone except:

- (1) those engaged in providing treatment for the person;
- (2) the county administrator, pursuant to section 110;
- (3) a court in the course of legal proceedings authorized by this act; [and]
- (4) pursuant to Federal rules, statutes and regulations governing disclosure of patient information where treatment is undertaken in a Federal agency[.]; **and**

 (5) **a covered entity or a covered entity's business associate that makes the use, disclosure or request for disclosure in accordance with 45 CFR Pt. 164 Subpt. E (relating to privacy of individually identifiable health information).”**



# HIV § 7607 Confidentiality of Records

## *Disclosure of HIV Records Limited to:*

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- Person designated in a written consent**
- The subject
- The physician who ordered the test
- Provider's agent, employee or medical staff member involved in the subject's treatment
- Individual health care providers if knowledge of the condition or test result is necessary to provide emergency care or treatment appropriate to the individual**
- A peer review organization, a nationally recognized accrediting agency, or Federal or State government agency with oversight responsibilities over health care providers
- An insurer for reimbursement/payment
- Vital statistics department
- The department and local boards and departments of health
- A person allowed access to the information by a court order issued
- Funeral director responsible for the preparation of the deceased subject
- Employees of county agencies who are authorized to receive medical information, ensure that the subject receives appropriate health care, and have a need to know

<http://www.aidslawpa.org/wp-content/uploads/2020/01/Act-148-as-amended-2.pdf>

# HIV § 7607 Confidentiality of Records

## Required Elements of Written Consent

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- (1) The specific name or general designation of the person permitted to make the disclosure
- (2) The name or title of the individual, or the name of the organization to which the disclosure is to be made
- (3) The name of the subject
- (4) The purpose of the disclosure
- (5) How much and what kind of information is to be disclosed
- (6) The signature of the subject
- (7) The date on which the consent is signed
- (8) A statement that the consent is subject to revocation
- (9) The date, event or condition upon which the consent will expire

<http://www.aidslawpa.org/wp-content/uploads/2020/01/Act-148-as-amended-2.pdf>