

Act 33

SUD Confidentiality

Nov. 16, 2022

Act 33: SUD Confidentiality

Agenda

1. What is Act 33 and what does it do?
2. Who must comply?
3. Rationale for the change: brief description of how we got to Act 33 from 4 Pa. Code § 255.5
4. What can be released with and without consent per 42 CFR Part 2?
5. Department of Drug and Alcohol Programs guidance on Act 33
6. Practical applications

Act 33: SUD Confidentiality

- Act 33, signed in July 2022, amends Act 63 of 1972 and aligns Pennsylvania's SUD confidentiality requirements with federal law (i.e., 42 CFR Part 2).
- It essentially nullifies 4 Pa. Code § 255.5, which had been the standard for decades.
- Act 33 prohibits DDAP from issuing or enforcing a regulation that restricts disclosure of information permitted by Act 33.

Act 33: SUD Confidentiality

Who Must Comply?

- An SUD program defined by federal regulations as an individual or entity, other than a general medical facility, that holds itself out as providing and provides SUD diagnosis, treatment, or referral for treatment.
- SUD programs that receive federal assistance.
- The scope of federal assistance as defined under 42 CFR Part 2 is broad. [See 42 CFR 2.12\(b\)](#).

Act 33: SUD Confidentiality

Rationale for the Change

- The commonwealth's previous regulations were developed in the 1970s when the SUD and healthcare landscapes looked very different.
- The previous approach limited access to information, even in cases where a client consented to sharing it.
- Alignment with 42 CFR Part 2 allows clients to more freely determine which entities may have access to their records.
- Access to SUD records may help protect people living with SUD from future overdoses and other poor health outcomes.
- This change allows for the expansion of person-centered care in a landscape of services for people living with SUD that is increasingly more integrated and collaborative.

Act 33: SUD Confidentiality

Prior to Act 33, under 4 Pa. Code § 255.5, even with patient consent, information that could be released was limited to:

1. Whether the client is or is not in treatment.
2. The prognosis of the client.
3. The nature of the project.
4. A brief description of the progress of the client.
5. A short statement as to whether the client has relapsed into drug, or alcohol abuse and the frequency of such relapse.

Act 33: SUD Confidentiality

What can be disclosed?

General rule

All patient records are confidential. Nothing gets released without proper consent unless it falls into one of the following exceptions:

With Valid Consent	Suspected Child Abuse and Neglect
Medical Emergency	Non-Patient Identifying Information
Research, Audit and Evaluation	Crime on Premises
Internal Program Communication	Qualified Service Organization Agreement
Good Cause Court Order	

Act 33: SUD Confidentiality

DDAP's Guidance

- DDAP does not interpret or advise on federal regulation.
- DDAP audits will not include assessment of compliance with Act 33 or 42 CFR Part 2, only with 28 Pa Code § 709.28.
- Consult legal counsel for questions regarding disclosure or confidentiality.

Act 33: SUD Confidentiality

Practical Application

- Referral process/working with other providers
- EHR/consent form considerations
- Organizational policy development

DRAFT

Act 33: SUD Confidentiality

Questions or discussion?

jsnyder@paproviders.org

717-963-3612

DRAFT