

Publications

Health Care Alert: Proposed Updates to Federal Confidentiality of Alcohol and Drug Abuse Patient Records Regulations

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On Tuesday, the U.S. Substance Abuse and Mental Health Services Administration (SAMHSA) published a proposed rule which would amend the Confidentiality of Alcohol and Drug Abuse Patient Records regulations, found in 42 C.F.R. Part 2. The confidentiality provisions were promulgated in 1975, and last amended substantively in 1987, prior to new models of integrated care built upon a foundation of information sharing, the development of an electronic infrastructure for managing and exchanging patient information, and a new focus on performance measurement within the health care system. SAMHSA's long awaited proposed rule seeks to modernize the confidentiality provisions to better reflect the current treatment system, particularly with respect to ease of transferring records and patient information, while still maintaining privacy protections for those receiving substance use treatment.

The current regulations protect patient records and information relating to substance use treatment received at a federally assisted substance use program. Generally, any disclosure of identifiable data reflecting substance use treatment without express written consent from the individual is prohibited. In its proposed rule, SAMHSA states that while privacy concerns have not lessened, it believes that changes to the regulations are necessary to "better align them with advances in the U.S. health care delivery system," and ensure that patients receiving treatment for substance use disorders are able to participate and benefit from new integrated care models which promote health care quality and reduce costs. SAMHSA also notes that improvements in health care technology would allow providers to separate portions of a patient's record to reflect consent preferences for substance use treatment information within the electronic health records or health information exchanges allowing for easier information sharing while still maintaining compliance with 42 C.F.R. Part 2.

In addition to revisions to certain definitions so as to make the regulations "more understandable and less burdensome," SAMHSA's most significant proposed change addresses the consent section of the regulations. Currently, the regulations require that a consent form

include the name or title of the individual or the name of the organization to which disclosure is to be made as part of the patient's written consent to the disclosure. In response to stakeholder concern that the current requirements for sharing patient records covered by Part 2 deter patients from participating in HIEs, ACOs, and other similar organizations, SAMHSA proposes that the "to whom" section of the consent disclosure form could include a more generalized description of entities that would be permitted to receive patient information. The proposed rule would also require that patients receive and sign a statement indicating that they understand the terms of their consent and to whom their information may be released.

Comments on the rule will be accepted through April 11. These changes will take effect beginning 180 days after the publication of the final rule, unless otherwise noted. HHS's press release may be accessed [here](#) and the full text of the proposed rule may be accessed [here](#).

If providers have questions regarding the proposed rule, please contact your Vorys attorney.