Changes to Confidentiality Rules for Substance Use Disorder Patient Records Require Treatment Programs to Update Policies and Forms

Recent federal changes to regulations on confidentiality of substance use disorder patient records at 42 C.F.R. Part 2 will substantially impact recordkeeping and the sharing of some information by treatment programs. Community Service Boards, hospitals with substance abuse units, and programs that provide substance use disorder diagnosis, treatment, or referrals for treatment that receive federal assistance ("Part 2 Programs") need to immediately ensure compliance with the new requirements, which became effective March 21, 2017.

The Final Rule was issued Jan. 18, 2017 by the Department of Health and Human Services (HHS), Substance Abuse and Mental Health Services Administration (SAMHSA). While the updated regulation does include general revisions, such as updating definitions and language, there are significant substantive regulatory changes as well. A few are highlighted below, but please note this is not intended as an exhaustive list. Affected providers and entities should review the regulations in their entirety and contact legal counsel with specific questions. The Final Rule can be accessed here.

Applies to Additional Parties

In addition to Part 2 Programs, third-party payers and administrative entities that receive patient records must comply with the revised restrictions on disclosures. These restrictions include protection of any paper or electronic information that would identify a patient as having, or having had, a substance use disorder.

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Consent to Disclosure Form Change

Consent forms may now allow patients to use a general designation in the section in which they designate to whom their records may be disclosed for health care delivery purposes. With the intention of increasing access to benefit integrated health care delivery models, this general designation allows for patients to indicate a designation such as "all of my treating providers." Importantly, if this general designation is used on the consent form, the form must also include a statement describing a patient's right to receive a list of the entities to which the patient's information has been disclosed. HHS cautions that entities must have the ability to provide the list of disclosures prior to allowing for a general designation on the consent form. General designation for consent forms is not permitted where the party to receive the records does not have a "treating provider relationship," a more specific designation must be made on the consent form.

Release for Research

In an attempt to further scientific research concerning substance use disorders, the new language sets forth a process to disclose information to programs conducting scientific research as well as other qualified individuals or entities conducting such research. Researchers may also link to other datasets if requirements in the new rules are followed.

Record Security Policies

Much like HIPAA security requirements, Part 2 Programs and other lawful holders of patient-identifying information must institute formal policies and procedures that describe security measures in place to protect the confidentiality of substance use disorder patient records in both paper and electronic form. These policies and procedures must address the maintenance, transfer, destruction, and redaction of paper records as well as the creation, maintenance, transmission, destruction, use, access and redaction of electronic records.

Confidentiality Notice to Patients

The required summary of federal law applicable to confidentiality requirements may now be provided to patients in either a paper or electronic format. HHS also requires the notice provide contact information for the reporting of violations of 42 C.F.R. Part 2.

Confidentiality regulations on substance use disorder patient records exist to protect the unique confidentiality concerns faced by patients seeking treatment for alcohol and substance abuse. The regulations, which had not been substantively updated since 1987, now account for integrated health care models as well as technological advancements, especially in regard to recordkeeping. To ensure compliance with 42 C.F.R., a careful review of current consent forms, patient notices, paperwork, policies and procedures is needed. Contact legal counsel with any questions.

A redline, or comparison document that highlights added and deleted text between the previous and current version of 42 C.F.R. Part 2, can be accessed here.

For additional information, contact:

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