



Drug and Alcohol Records: Confidential Treatment Under 42 C.F.R. Part 2

Presented by:

Ashley N. Osak

Plews Shadley Racher & Braun LLP

aosak@psrb.com

317-637-0700

Protected Health Information

- General health records
 - General mental health records
 - Health records pertaining to diagnosis/treatment of drug and alcohol abuse
 - Health records for minors pertaining to diagnosis/ treatment of drug and alcohol abuse
- HIPAA & HITECH
- 42 C.F. R. Part 2
- Indiana law defers to Federal law

Who is Required to Follow Part 2 Requirements?

- Applies to facilities [or portion(s) of facilities] that meet the definition of a “program” under Federal law
- Two-pronged test



An individual or entity other than a general medical facility which holds itself out as providing and provides alcohol/drug diagnosis, treatment, or referral for treatment

or

An identified unit within a general medical facility which holds itself out as providing and provides alcohol/drug diagnosis, treatment, or referral for treatment

or

Medical personnel or other staff in a general medical care facility whose primary function is the provision of alcohol/drug diagnosis, treatment, or referral for treatment and who are identified as such



“Holds itself out...” and “General Medical Facility”

- Not specified in regulations
- Guidance from SAMHSA



What is a “Disclosure”?

- Communication of records containing “patient identifying information”
- “Patient identifying information”
- Defining “patient”



Authorized Disclosure: Consent

- Programs may disclose most patient information if patient signed consent that complies with Part 2 and hasn't expired or been revoked
- Requirements for proper consent
- Re-disclosure by receiving entity

Authorized Disclosure: Qualified Service Organization Agreement

- What is a Qualified Service Organization Agreement?
- Examples
- Outside organization agrees to specific requirements
- Joint QSO/BA Agreement

Exception: Medical Emergency

- May disclose to medical personnel if:
 - Immediate threat to an individual's health
 - Requiring immediate medical intervention
- Documentation requirements



Exception: Internal Communications

- Within program itself
- To entity with administrative control
 - Needs information to provide the drug/alcohol services

Exception: Crime

- Crime committed/threatened on the program's campus or against program' personnel
- By a program patient
- No duty to warn imposed by Part 2
- Indiana duty to warn

Exception: Court Order

- Subpoena alone = not enough
- Court order alone = not enough



Exception: Child Abuse/Neglect

- Initial report to comply with state law
- Indiana law

Exception: Audit/Evaluation

- Researchers
- Auditors/evaluators may only re-disclose :
 - Back to program
 - Pursuant to court order to investigate/prosecute the program
 - To government agency overseeing Medicare/Medicaid audit/evaluation

Minors' Medical Records

- Minor controls authorization for disclosure
- Indiana law allows minors to receive medical treatment for drug/alcohol abuse without notifying or obtaining consent of parent/guardian
- *However*, Indiana law is contradictory where it allows notification to the parent/guardian *at the discretion of the facility*
- Best practice



Does my facility need to treat its drug and alcohol treatment records with Part 2 confidentiality?

It depends...



PLEWS SHADLEY
RACHER & BRAUN^{LLP}
ATTORNEYS AT LAW

Ashley N. Osak

Plews Shadley Racher & Braun LLP
Health Care & Life Sciences

aosak@psrb.com

(317) 637-0700