



SAMSHA Proposes Revisions to Part 2 Requirements Governing Confidentiality of Patient Records Related to Alcohol and Drug Use

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Patient records related to alcohol and drug use have historically been afforded heightened confidentiality protections under 42 C.F.R. Part 2 (“Part 2”). On February 9, 2016, the U.S. Substance Abuse and Mental Health Services Administration (“SAMHSA”) published proposed revisions to Part 2, noting the need to “update and modernize” the regulations and with the goal of increasing “opportunities for individuals with substance use disorders to participate in new and emerging health care models and health information technology.” SAMHSA’s proposed changes to Part 2 include revisions to consent form requirements, certain defined terms, and disclosure of information for research purposes.

Through the proposed rule, SAMHSA seeks to make a substantial change in the existing Part 2 rules by allowing (in certain circumstances) a patient to include a general designation in the “To Whom” section of the consent form. At the same time, the consent form would need to include an explicit description of the amount and kind of substance use disorder treatment information that may be disclosed. SAMHSA also proposes adding a requirement that patients who have included a general designation in the “To Whom” section on their consent form must be provided, upon request, a list of entities to which their information has been disclosed pursuant to the general regulations. The “From Whom” section of the consent form would be required to specifically name the Part 2 program or other lawful holder of the patient identifying information permitted to make the disclosure. This proposed revision would only apply to disclosing individuals or entities that have a treating provider relationship (as defined under the proposed rule) with the patient whose information is being disclosed.

The proposed rule also seeks to revise, clarify, add or replace several key definitions. The following are some of the terms that will be modified: “Central registry,” “disclosure,” “maintenance treatment,” “member program,” “patient,” “patient identifying information,” “person,” “program,” “qualified service organization,” “records,” and “treatment.” SAMHSA also proposes the addition of definitions for the following essential terms: “Part 2 program,” “Part 2 program director,” “substance use disorder,” “treating provider relationship,” and “withdrawal management.”

As part of its proposed revisions to the rules for Part 2, SAMHSA seeks to (1) clarify the prohibition on re-disclosure of patient information; (2) revise the medical emergency exception to make it consistent with statutory language and give providers more discretion in determining when a “bona fide medical emergency” exists; (3) revise the research exception to permit certain disclosures; and (4) modernize certain requirements to include provisions for electronic information and electronic patient records. These changes appear to be responding



to clinical integration activities by behavioral health, addiction services, and general health system providers. The proposed revisions will improve aspects of Part 2 in the future, but they also shed light on certain current questions and coverage boundaries for the Part 2 rules.

The proposed rule can be found in its entirety here: [81 Fed. Reg. 6988 \(Feb. 9, 2016\), Department of Health and Human Services, Confidentiality of Substance Use Disorder Patient Records; Proposed Rule](#). Comments on the proposed rule are being accepted through 5:00 pm on April 11, 2016. Providers and the public are encouraged to submit comments on the proposed revisions for SAMHSA's consideration in preparing the final rule. The attorneys at Plews Shadley Racher & Braun anticipate working with behavioral health care providers to evaluate and provide comments on these proposed rules. Additional information about Plews Shadley Racher & Braun LLP and its health care practice is available at www.psrb.com.