Sharing Confidential Mental Health and Addiction Information in Ohio

Mental Health and Addiction Providers and Law Enforcement

Revised May 2019

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We would like to thank the Ohio CIT Coordinators, CIT Officers and many community partners who brought forward the questions, challenges, and scenarios that formed the basis for this written guide.

We would also like to acknowledge the following individuals for their contributions to this manual:

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Funding was made possible (in Part) by grant number 3B09SM010041-18S2 from SAMHSA and awarded through the Ohio Department of Mental Health and Addiction Services. The views expressed in written materials or publications and by speakers and moderators do not necessarily reflect the official policies of the Department of Health and Human Services; nor does mention of trade names, commercial practices, or organizations imply endorsement by the U.S. Government.

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INTRODUCTION

The goals of this manual are to promote a common understanding of the application of the confidentiality laws to mental health and addiction information and to provide tools and resources to assist in ensuring that necessary information can be shared between law enforcement and mental health and addiction providers.

A myriad of complex state and federal confidentiality laws apply to persons receiving mental health and addiction services. The information needed to achieve an effective cross-system approach is not always shared amongst the community partners, either because of real or perceived barriers to the sharing of that information.

Collaboration between law enforcement officials and providers of mental health and addiction services is an example of cross-system communication that is necessary to assist persons with mental health and addiction needs. The sharing of information between law enforcement and providers is vital to assisting a person experiencing a crisis, connecting a person to needed services and protecting the safety and security of all involved in a situation.

OVERVIEW OF THE CONFIDENTIALITY LAWS

Introduction to HIPAA and 42 CFR Part 2

This section provides an overview of the two federal confidentiality laws that apply to the identifying information of persons receiving behavioral health services – the Health Insurance Portability and Privacy Act of 1996 and the Confidentiality of Substance Use Disorder Patient Records Law.

Health Insurance Portability and Privacy Act of 1996 (HIPAA)

HIPAA was signed into law in 1996 and its implementing regulations became effective in 2003. Although there are various sections, or titles, under HIPAA, the focus of this manual is HIPAA's Privacy Rule, which contains the requirements for safeguarding protected health information. Protected health information, or PHI, generally refers to "any information held by a HIPAA-covered entity which concerns health status, the provision of healthcare, or payment for healthcare, that can be linked to an individual".

Confidentiality of Substance Use Disorder Patient Records Law (42 CFR Part 2)

This federal confidentiality law, commonly referred to by its location in the Code of Federal Regulations, 42 CFR Part 2 or even just "Part 2", was enacted in the 1970s to encourage persons with substance use disorders (SUDs) to seek and remain in treatment. Very minor changes have been made to the regulations Part 2 since they became effective.

The Relationship between HIPAA and 42 CFR Part 2

HIPAA has much broader protections since it applies to many types of protected health information and not just information related to SUDs. Part 2 is generally much more restrictive in regards to the disclosures it permits however and when both laws apply to a disclosure of information, the law that is the most protective of the information is the one that requires compliance This can be challenging for SUD providers who are permitted to disclose information under HIPAA but not under Part 2. Various efforts have been made to bring this law into line with HIPAA but to date, those efforts have been unsuccessful.

The remainder of this section provides a more in-depth look at these two laws, including who and what they apply to and how they protect the information of persons receiving mental health and substance use disorder services.

Overview of the
Health Insurance Portability and Accountability Act of 1996 (HIPAA)

The Health Insurance Portability and Accountability Act of 1996 (HIPAA) is a federal law that protects the privacy and security of health-related information. HIPAA's Privacy Rule (45 CFR 164) contains the regulations that govern the use and disclosure of that information.

Who is required to comply with the Privacy Rule?

Covered Entities

Health Care Providers

- Individual providers and provider organizations, including mental health and addiction providers
- Most (but not all) health care providers meet the definition of a "covered entity"

Health Plans

- Private insurance companies
- Public payers of health care services such as Alcohol, Drug Addiction and Mental Health (ADAMH) Boards and the Ohio Department of Mental Health and Addiction Services (OhioMHAS)

Health Care Clearinghouses

- Businesses that process electronic transactions for covered providers and health plans

Business Associates

"Business Associates" of covered entities are also required to comply with the Privacy Rule. A Business Associate is a person or organization that provide services to a HIPAA-covered entity for which the person or organization requires access to protected health information.

Examples of Business Associates:

- An attorney providing legal services
- A consultant assisting with claims processing
- Electronic Health Record (EHR)vendors
- Medical transcription companies
- Data entry, conversion and analysis providers
- Answering services

What information is protected by the Privacy Rule?

Information protected by HIPAA is called "Protected Health Information" or "PHI". PHI is information that meets all the following criteria:

- Relates to the provision of health care to an individual, the payment for the individual's health care, or the individual's physical or mental health or condition;
- Is held or transmitted by a HIPAA-Covered Entity or a Business Associate of a Covered Entity; **and**
- Identifies or can be used to identify the individual.

General Rule for Disclosure of Protected Health Information:
In general, the Privacy Rule requires that written authorization be obtained for the disclosure of a person's PHI unless an exception to the authorization requirement applies to the disclosure. Many of the disclosures of PHI commonly made by health care providers and payers are permitted to be made without the authorization of the person such as disclosures related to treatment, payment and health care operation activities.

Important Considerations:

- HIPAA provides an exception to the authorization requirement in regard to disclosures that are required to be made by state and other federal laws. For example, if Ohio law requires a disclosure of PHI to be made by a covered entity (e.g. felony reporting laws), HIPAA permits that disclosure to be made without the authorization of the person.
- If more than one confidentiality law applies to a disclosure of information, each of the applicable laws must provide an exception to the disclosure requirement in regard to that information in order to make the disclosure without the person's written authorization.
    - *Example: Both federal confidentiality laws (HIPAA and 42 CFR Part 2) apply to the information to be disclosed. HIPAA permits disclosure of the information to law enforcement without the person's written authorization. 42 CFR Part 2 does not permit the disclosure of the information to law enforcement without the person's written authorization. Since one of the applicable laws require it, the person's authorization must be obtained prior to making the disclosure.*
- OhioMHAS requirements for the protection of mental health records permits disclosures that are authorized by other state and federal laws, i.e., if HIPAA permits a disclosure of information to be made without authorization, that disclosure is also permitted under OhioMHAS rules (in regard to mental health records).
- When a written authorization is required, the Privacy Rule has specific requirements for what the written authorization must contain.

- Persons and organizations that do not meet the definition of a “covered entity” or a “business associate” are not governed by HIPAA. As examples, none of the following are required to comply with the Privacy Rule’s disclosure requirements:
    - Law Enforcement
    - Probation/Parole Officers
    - Court Personnel
    - Schools
    - Family Members/Friends
    - Any person/organization that does not provide health care or pay for the cost of health care services

Overview of the
Federal Drug and Alcohol Confidentiality Law
(42 CFR Part 2)

The Federal Drug and Alcohol Confidentiality Law and its implementing regulations, 42 CFR Part 2, govern the confidentiality of records of substance use disorder treatment.

Who is required to comply with the disclosure requirements of 42 CFR Part 2?

- Covered Programs
  Most providers of drug and alcohol services, including all of Ohio's community addiction treatment and prevention service providers. *See detailed discussion of what is a Part 2-covered program under "Important Considerations" below.*
- Third Party Payers
  Payers that receive records/information from Part 2 programs.
- Administrative Entities
  Entities that have received records/information from Part 2 programs that they have direct administrative control over.
- "Lawful Holders" of Part 2-Protected Information
  Part 2's disclosure requirements were extended to apply to all "lawful holders" of Part 2-protected information in March 2017. "Lawful holders" under Part 2 are individuals or organizations that receive Part 2-protected information pursuant to the written authorization of an individual (accompanied by the required prohibition on re-disclosure notice) or because of one of Part 2's exceptions to the authorization requirements.

What information is protected by 42 CFR Part 2?

42 CFR Part 2 protects information that:

- Is created or obtained by a Covered Program in regards to a person's SUD treatment, referral for treatment or diagnosis (made for the purpose of treatment or referral for treatment)

AND

- Identifies an individual as a recipient of substance use disorder services or as having or having had a substance use disorder (either directly, by reference to publicly available information or through verification of such identification by another person).

The following is from the language of 42 CFR Part 2 and is a good explanation of what information is covered by the regulations:

These regulations cover any information (including information on referral and intake) about patients receiving diagnosis, treatment, or referral for treatment for a substance use disorder created by a part 2 program. Coverage includes, but is not limited to, those treatment or rehabilitation programs, employee assistance programs, programs within general hospitals, school-based programs, and private practitioners who hold themselves out as providing, and provide substance use disorder diagnosis, treatment, or referral for treatment. However, the regulations in this part would not apply, for example, to emergency room personnel who refer a patient to the intensive care unit for an apparent overdose, unless the primary function of such personnel is the provision of substance use disorder diagnosis, treatment, or referral for treatment and they are identified as providing such services or the emergency room has promoted itself to the community as a provider of such services.

General Rule for disclosures of Part 2-protected information:
Part 2 requires written authorization to be obtained for the disclosure of a person's protected information unless an exception to the authorization requirement applies to the disclosure.

Important Considerations:

- The exceptions to 42 CFR Part 2's authorization requirement are much more limited than HIPAA's exceptions.
- Unlike HIPAA, 42 CFR Part 2 overrides other laws in regard to disclosures of PHI. This means that Part 2-protected disclosures that are authorized or required to be made by state or other federal law can only be made without authorization if they are also permitted to be made by 42 CFR Part 2 without authorization.
    - Example: Ohio law requires the reporting of felonies, but Part 2 does not contain an exception to the authorization requirement for this purpose. Therefore, Part 2 programs are only permitted to report felonies in compliance with state law if the information reported does not contain any Part 2-protected information. In other words, it does not identify an individual as being a recipient of substance use disorder services or as having or having had a substance use disorder.
- If 42 CFR Part 2 requires authorization for a particular disclosure but HIPAA does not, an authorization must be obtained unless the disclosure would not identify the person as receiving addiction services or as having an alcohol or drug problem.
- OhioMHAS requirements for the protection of addiction services records mirror the requirements of 42 CFR Part 2.
- When a written authorization is required, 42 CFR Part 2 has specific requirements for what the written authorization must contain.

- 42 CFR Part 2 prohibits recipients of Part 2-protected information from re-disclosing the information to other persons/organizations unless the regulations permit the disclosure or the written authorization of the person that is the subject of the information is obtained. Part 2 programs are required to inform recipients of protected information about the prohibition on re-disclosure.
- A 42 CFR Part 2-covered program is a person or organization that holds itself out as providing alcohol or drug abuse diagnosis, treatment, referral for treatment, or prevention services, and that provides those services, as a stand-alone entity or as part of larger organization (such as a unit of a general medical facility). An organization providing mental health services does not become a Part 2-covered program simply by discussing a client's drug or alcohol use or addiction or including that information in the client's record. It must represent itself to the community and to clients as providing alcohol/drug services covered by Part 2 (e.g. certified to provide the services, publicly advertises the services, information presented to clients, etc.) and then provide those services. The services being offered and provided should be considered more than the type of facility/organization when determining if an entity is Part 2-covered program.

  Examples:

  - A provider is certified to provide SUD services. During the course of mental health treatment, the person shares information about past substance use. The substance use information in the client's record is not Part 2-protected because it was not received by the provider for the purpose of SUD treatment or referral for treatment.
  - If the person receives a substance use diagnosis and then begins receiving SUD counseling, however, that diagnosis is Part 2-protected because it was created for the purpose of SUD treatment or referral for treatment.
  - If a mental health residential site also offers substance use counseling groups if clients have an SUD in addition to their mental health diagnosis, Part 2 applies to the information that identifies the client as receiving SUD counselling services because the information was created by an SUD service provider.

EXCHANGE OF INFORMATION WITH LAW ENFORCEMENT

HIPAA-Permitted Disclosures to Law Enforcement

HIPAA-covered entities are permitted to make disclosures of PHI to law enforcement officials, without client authorization, for the following purposes:

- In compliance with a HIPAA-compliant authorization. 164.502(a)(1)(iv)
- To provide facility directory information (i.e. name, location in the facility and general health condition) to callers and visitors unless the person has chosen to restrict the disclosure of such information or opt out of being included in the directory. 164.510(a)
- To report information about an individual whom the covered entity reasonably believes to be a victim of abuse, neglect, or domestic violence (in accordance with specific conditions). 45 CFR 164.512(c)(1)
- As required by law (e.g. reporting required by Ohio law). 45 CFR 164.512(f)(1)(i)
- To comply with court order or court-ordered warrant, a subpoena or summons issued by a judicial officer, or a grand jury subpoena. 45 CFR 164.512(f)(1)(ii)(A) and (B)
- To respond to an administrative request (e.g. administrative subpoena, investigative demand) or other written request from law enforcement official containing certain statements. 45 CFR 164.512(f)(1)(ii)(C)
- In response to a request for PHI for purposes of identifying or locating a suspect, fugitive, material witness or missing person. 45 CFR 164.512(f)(2)
- To respond to a request for PHI about a victim of a crime (if victim unable to agree to disclosure and law enforcement asserts that law enforcement activity requires disclosure). 45 CFR 164.512(f)(3)
- To alert law enforcement of a death if the covered entity suspects the death resulted from criminal conduct. 45 CFR 164.512(f)(4)
- If criminal conduct occurred on the premises of the covered entity. 45 CFR 164.512(f)(5)
- To alert law enforcement to the commission and nature of a crime, location of victims and information about the perpetrator when the covered health care provider is providing emergency health care in response to a medical emergency. 45 CFR 164.512(f)(6)
- To avert a serious threat to health or safety if the covered entity believes in good faith that the use or disclosure is necessary to prevent or lessen a serious and imminent threat to the health or safety of the client, another person or the public. 45 CFR 164.512(j)(1)(i)(A)
- To identify or apprehend an individual who has admitted participation in a violent crime. 45 CFR 164.512(j)(1)(ii)(A)
- Upon request for PHI by a correctional institution or law enforcement official having lawful custody of an inmate or other person if PHI needed to provide healthcare to the

person, for health or safety of the person, officers, employees, or other persons and the administration and maintenance of, or law enforcement at, a correction institution. 45 CFR 164.512(k)(5)(i)

Important Considerations:

- HIPAA defines **Law Enforcement Official** as an officer or employee of any agency or authority of the United States, a State, a territory, a political subdivision of a State or territory, or an Indian tribe, who is empowered by law to: (1) Investigate or conduct an official inquiry into a potential violation of law; or (2) Prosecute or otherwise conduct a criminal, civil, or administrative proceeding arising from an alleged violation of law.
    - Examples of Ohio's Law Enforcement Officials include: a sheriff, municipal police officer, state highway patrol trooper, probation officer, prosecuting attorney, and members of special police forces employed by a state, county, municipal agency or other political subdivision.
    - Private police forces and officers, that are not employed or appointed by a governmental entity, are not "law enforcement officials" for the purposes of HIPAA.
- There are specific conditions and requirements for most of these disclosures such as what information can be disclosed, documentation requirements, etc. See the applicable regulation to understand the additional requirements prior to making such disclosures.
- HIPAA generally permits disclosures of information in response to subpoenas. However, Ohio's privileged communications statute, R.C. 2317.02, prohibits physicians and certain mental health professionals from testifying or producing documentation pertaining to a patient/client to be used as evidence in a court proceeding. This prohibition overrides HIPAA's requirements for responding to subpoenas because this privilege is more protective of the person's information. As a result:
    - If the information requested by a subpoena or other demand for testimony or information is privileged under Ohio law, and no waiver or exception to the privilege applies (e.g. mandatory reporting statutes, public health interest, etc.), disclosure of the information is not permitted without the person's authorization or a court order. If an authorization or court order is not obtained, the professional must take action to object to or quash the subpoena.
    - If the communication is not privileged, a professional is permitted to disclose information in response to a subpoena signed by a judicial officer.

- If the communication is not privileged, a professional is permitted to disclose information in response to a subpoena signed by someone other than a judicial officer (e.g. an attorney or clerk of courts) if one of the following has been obtained:
    - Court order
    - Written authorization
    - Satisfactory assurances of notice to the person
    - Qualified protective order

  See the ***Overview of HIPAA Subpoena Requirements*** for guidance on the requirements for satisfactory assurances and qualified protective orders.

42 CFR Part 2-Permitted Disclosures to Law Enforcement

42 CFR Part 2 permits disclosures of protected information to be made to law enforcement without client authorization for the following purposes:

- Reporting suspected child abuse and neglect. 42 CFR 2.12 (c)(6)
- Regarding client's commission of a crime, or threat to commit a crime, on program premises or against program personnel. 42 CFR 2.12 (c)(5)
- In accordance with a court order that has been issued in accordance with the requirements of 42 CFR Part 2.61-67. (*Note: Purposes for which a court order for Part 2-protected information may be issued are limited and specific procedures must be followed by the issuing court. A subpoena alone is not sufficient to authorize disclosure unless accompanied by a court order.)*

Important Considerations:

- Disclosures that do not directly or indirectly identify the person as receiving addiction services or as having an alcohol or drug problem and the disclosure is permitted under HIPAA. 42 CFR 2.12 (a)(1)
- There are specific conditions and requirements for most of these disclosures such as what information can be disclosed, who must be informed, etc. See the applicable regulation to understand the additional requirements prior to making such disclosures.
- A subpoena that is not accompanied by a court order does not authorize the disclosure of Part 2-protected information. A court order issued in accordance with the requirements of 42 CFR Part 2.61-67 does authorize disclosure but does not compel a person/organization to make the disclosure if they do not want to disclose for any reason. A subpoena issued to accompany the court order will compel the person to disclose the records authorized by the court order.

Information that is NOT Protected

In considering how information can be exchanged between Law Enforcement and Mental Health and Addiction Providers, it is important to keep in mind the information that is NOT protected by the confidentiality laws that could be beneficial to exchange in regard to persons with mental health and addiction issues.

- Law enforcement officers can disclose information about a person TO mental health and addiction services providers since they are not covered entities under HIPAA or covered programs under Part 2.

- Police officers that receive protected information can share that information with other law enforcement within their organization (e.g. partner, superior, off duty ride-along, etc.) in the performance of their official duties.

- Court journal and court docket entries are not protected information under HIPAA or Part 2.

- Mental health and addiction providers can always share the following information with law enforcement:
    - General information about how to best handle an interaction with someone experiencing mental health/substance use issues in an emergency (e.g. person experiencing mental health crisis, over-dosing person, person under influence, making threats, etc.).
    - General advice for interactions with mental health/addiction clients that could assist law enforcement in a non-emergency situation.
    - General knowledge or information about a person known in the community if the person has never been a client or sought services from the mental health and/or addiction provider.

Recommendations

A community approach to addressing the emergent needs of individuals living with mental illness and/or substance use disorders is vital to the successful treatment and recovery of those individuals. Numerous public and private agencies and organizations must work together to best support and improve the quality of life of Ohio residents dealing with mental health and addiction issues. A necessary part of the collaboration that must occur is the sharing of information between community partners that play a role in addressing those needs.

In order to share information that can be critical in law enforcement interactions with persons experiencing mental illness or substance use disorders, it is vital for law enforcement and mental health and addiction providers to be proactive and to discuss their mutual and respective needs and considerations in regards to information sharing. The following recommendations and considerations will facilitate such discussions:

- Local mental health and addiction providers and law enforcement should meet and collaborate:
    - Law enforcement explain information needs and requirements.
    - Providers explain confidentiality requirements.
    - Achieve common understanding of what can be shared and what cannot
    - It can be helpful to memorialize in writing (e.g. memorandum of understanding) the mutual understanding of local law enforcement and mental health and addiction providers in regard to what information can be shared and under what circumstances.
- Since the Privacy Rule contains a “Required by law” exception to the authorization requirement, Law Enforcement should be prepared to point to provisions of the Ohio Revised Code that require information to be disclosed by mental health providers (e.g. felony reporting laws).
    - Keep in mind that Part 2-covered Programs are not authorized to disclose protected substance use disorder information under federal law even if state law requires the disclosure.
- The written authorization of the person can be obtained by either law enforcement officers or the mental health and addiction provider.
    - Obtaining the person’s authorization can be a good way to address the needs of persons that are high utilizers of law enforcement and to conduct outreach activities.
    - Care plans/case plans can even be developed between law enforcement and mental health and addiction providers if the person’s authorization is obtained for this purpose.

    - The authorization must be HIPAA and/or 42 CFR Part 2-compliant in order for mental health and addiction providers to disclose the information. ***See Authorization Forms section.***
- A multi-party release that lists all organizations in the local system can also be obtained at whichever point the individual encounters the system (e.g. court, law enforcement, provider, probation, etc.).
- Mental health and addiction providers are not permitted to REQUIRE a person to sign an authorization form for most disclosures but non-covered entities, such as courts, are not prohibited from requiring persons to sign authorizations for the disclosure of their protected information.

  Examples:
    - A judge can require that a person sign an authorization as part of probation or another mandatory program.
    - A judge can require that a person sign a release of information, as part of the person's requirements for Assisted Outpatient Treatment, authorizing the treating agency to notify CIT officers that the person is on AOT and to request that the treating agency be notified if CIT officers believe that the person is starting to decompensate in the community.

FREQUENTLY ASKED QUESTIONS AND SCENARIOS

Frequently Asked Questions
Information-Sharing Between Law Enforcement and Mental Health Providers

1. A police officer is called to respond to a person threatening suicide. The police officer calls a local mental health provider for assistance in dealing with the person. What information can the mental health provider disclose?
    - *HIPAA permits the mental health provider to disclose information about the person and the person's treatment if the information could be used to de-escalate the situation or link the individual to services (i.e. lessen the threat to the health or safety of the person).*
    - *A mental health provider can also provide general (not person-specific) information to assist the officer in de-escalating this type of situation.*

2. A person has been "pink-slipped" and is being transported for emergency hospitalization by a sheriff. The sheriff calls a local mental health provider because of concerns for the safety of the transporting officers. What information can the mental health provider disclose?
    - *The mental health provider can disclose information, in response to an officer's request, for the health and safety of the transporting/custodial officers.*

3. A sheriff contacts a local mental health provider to request information about an armed person making threats to others to assist in de-escalating the situation. What information can the mental health provider disclose?
    - *HIPAA permits the mental health provider to disclose information about a client that may avert a serious threat to the health or safety of another person or the public.*
    - *The mental health provider can also provide general (not person-specific) information to assist the officer in de-escalating this type of situation.*

4. A police officer on patrol encounters an individual with obvious mental health issues but it is not an emergency. What information can the mental health provider disclose to help the officer determine the best course of immediate action?
    - *The mental health provider is not permitted to disclose PHI to the officer, including whether or not the person is already connected to services. Some options for addressing this situation are:*
        - *The officer can provide information to the mental health provider about the person to facilitate client outreach after the incident.*
        - *If the person is not a client of the mental health provider, the officer can provide information about the person for the provider to contact other providers for purposes of client outreach and treatment.*

- *The mental health provider can offer general (not person-specific) information and recommendations to assist the officer in determining the best course of action.*

5. Police respond to a call from a mental health provider stating that a client just smashed the front window of the provider's building. What information can the mental health provider disclose?
    - *The mental health provider can provide information about the client, including his/her location, and other information, as necessary for investigation of the crime and any follow-up proceedings, since a crime occurred on the provider's premises.*

6. A police officer that previously transported a pink-slipped person to the hospital calls the hospital to follow-up on the status of the person. What information can the hospital disclose?
    - *The hospital can provide facility directory information (name, location in the facility and general health condition) unless the person has opted-out of or restricted his/her information in the facility directory.*
    - *If the written authorization of the person has previously been obtained to permit the hospital to disclose information to the officer's law enforcement agency (i.e. such as when a person has frequent interactions with law enforcement and/or frequent hospitalizations and authorization has been proactively obtained to assist communication during future interactions), the hospital can disclose information in accordance with what has been previously authorized.*

7. A sheriff calls the local hospital to request information about the discharge of a person arrested and brought to the hospital for care. What information can the hospital disclose?
    - *The hospital is permitted to disclose basic demographic and health information about the suspect in a crime, including expected and actual discharge date/time, to requesting law enforcement.*

8. A police officer presents an arrest warrant for a person suspected of a violent crime that is believed to be at a local mental health facility. What information can the facility disclose?
    - *The facility is permitted to disclose information that could:*
        - *prevent or lessen a serious and imminent threat to the health or safety of an individual or the public; AND*
        - *assist law enforcement in the identifying or locating of a suspect, upon request of the officer for such information. This information must be limited to basic demographic and health information about the person, location and discharge information.*

9. A police officer requests information about a victim of a crime from the hospital where the victim has been admitted. What information can the hospital disclose?

- *The hospital can disclose PHI regarding the suspected victim of crime if one of the following apply:*
    - *The person agrees to the disclosure; OR*
    - *If the patient is unable to agree to disclosure because of incapacity or other emergency circumstances, all of the following conditions are met:*
        - *The law enforcement official represents that the information is needed to determine whether the violation has occurred and that the information is not intended to be used against the victim;*
        - *The law enforcement official represents that immediate law enforcement activity that depends upon the disclosure would be materially and adversely affected by waiting until the individual is able to agree to the disclosure; and*
        - *The patient's provider determines in the exercise of his or her professional judgment that the disclosure is in the best interests of the patient.*

10. A law enforcement officer provides a written administrative request to a mental health provider for information about a client. What information can the facility provider disclose?
    - *The mental health provider may disclose information in response to a law enforcement officer's administrative request, such as an administrative subpoena or investigative demand or other written request from a law enforcement official if the administrative request includes or is accompanied by a written statement that the information requested is relevant and material to a legitimate law enforcement inquiry, specific and limited in scope, and de-identified information cannot be used for the purpose it is needed.*
    - *A "legitimate law enforcement inquiry", as used in this context, is an investigation or official proceeding inquiring into a potential violation of, or failure to comply with, the law).*
    - *The* ***Law Enforcement Administrative Request for Information*** *template included in the Forms section of this manual can be utilized for this purpose.*

11. A mental health provider becomes concerned that a client is going to inflict serious harm on another person based on a specific threat made by the client. What information is the mental health provider permitted to report?
    - *Ohio's duty to protect statute requires mental health professionals and mental health organizations to predict, warn of, and take precautions to provide protection from the violent behavior of a mental health client or patient when both of the following apply:*
        - *the client or patient or a knowledgeable person has communicated to the professional or organization an explicit threat of inflicting*

imminent and serious physical harm to or causing the death of one or more clearly identifiable potential victims; AND
    - *the professional or organization has reason to believe that the client or patient has the intent and ability to carry out the threat*
- *The statute requires mental health professionals and organizations to take one or more of four actions when both of the above apply. One of the options is communicating information about the threat to a law enforcement agency.*
- *See the **Ohio Duty to Protect Summary** in the Resources section for more information.*
- *Since Ohio law authorizes disclosures to law enforcement in regard to complying with the Duty to Protect Statute, the Privacy Rule permits the disclosure under the Required by Law exception.*

12. A person is not complying with the requirements of his Assisted Outpatient Treatment (AOT) and the local probate court has issued a pick-up order to have the person evaluated. What information can the AOT provider disclose to the officer to help ensure a successful pick-up, the safety of the person, the officer and others, and a safe and successful pick-up and transport.
    - *The mental health provider is permitted to disclose, in response to an officer's request, information that is necessary for the health and safety of the person and the health and safety of the transporting/custodial officers.*
    - *For example, information about the person's access to weapons, stressors, history of violence, etc. is permitted to be disclosed if the information could protect the person and the officers from harm.*

13. A Crisis Intervention Team (CIT) Officer identifies a person who appears to be eligible and could benefit from Assisted Outpatient Treatment (AOT). The officer would like to provide information to the local AOT team to assist them in obtaining the information necessary to show that AOT services are needed and to locate the person.
    - *The CIT officer is permitted to disclose information to the mental health provider for the provider to determine whether the person would benefit from AOT since the CIT officer is not a covered entity under HIPAA.*
    - *If the mental health provider determines that the person is eligible for AOT, the provider has made a determination that treatment is needed in order to avoid a substantial risk of serious harm to the person or others. The mental health provider is therefore permitted to disclose information to law enforcement if the disclosure could assist law enforcement in preventing or lessening a serious and imminent threat to the health or safety of the person or others.*

14. What information can be shared within a co-response team when a mental health professional from a mental health provider agency rides in a cruiser with a police officer.

- *If the role of the mental health professional is the provision of mental health services, the professional cannot disclose information obtained as a result of the provision of those services (or services previously provided) to the person unless one of the previously discussed exceptions apply to the disclosure or written authorization has been obtained.*
- *Information that was learned outside of the provision of services, however, such as information obtained during an encounter where the professional is not providing clinical services, or information that is self-disclosed by the person to law enforcement, is not protected by HIPAA.*

15. A mental health provider receives a subpoena signed by an attorney to produce records about a client for use in a court case against the client. Is the provider permitted to disclose the information in response to the subpoena?
    - *The provider must first determine if the requested information is privileged under R.C. 2305.51 and whether a waiver or exception to the privilege applies.*
        - *If it is a privileged communication and no waiver or exception applies, the only way that the information can be disclosed is if the written authorization of the person or a court order for the disclosure of the information is obtained.*
        - *If it is not a privileged communication, or a waiver or exception to the privilege applies, the information may be disclosed, absent the person's written authorization, if the satisfactory assurances of notice to the person or a qualified protective order required by HIPAA is obtained. See the* ***Overview of HIPAA Subpoena Requirements*** *for guidance on obtaining the required satisfactory assurances or qualified protective order.*
    - *It is important to note that a provider must always be responsive to a subpoena. If the information is prohibited from being disclosed, the provider should contact the requesting attorney and attempt to have the subpoena rescinded or work with its legal counsel to object to or quash the subpoena.*

16. A police officer contacts the local Mobile Crisis Response Team to assist with a person in a crisis state. How can information be shared between the officer and the Team in order to address the current situation and to create a plan to keep the person and the community safe?
    - *The officer can provide information to the Team about the person, the current situation and any prior interactions with police officers.*
    - *The Team and the officer can discuss how to address the current situation.*
    - *The Team and the officer can develop a plan and discuss strategies to assist the officer in determining the best course of action in any future interactions with the person.*
    - *The person may choose to self-disclose information to the officer.*

- *The Team or the officer can ask the person to sign an authorization form permitting the police officer and the Team to share information about the person, including in regards to any future situations that may arise.* ***See Authorization Forms section.***
- *Note: The Team cannot disclose PHI to the officer that was obtained in the course of providing prior or current services to the person before obtaining written authorization for such disclosures.*

17. Staff at the state hospital are aware that a client is continually seeking voluntary admission in order to avoid being picked up by law enforcement for active warrants. Can the staff of the hospital notify the police of the client's location?
    - *A mental health provider is permitted to disclose PHI in response to a law enforcement officer's <u>request</u> for the purpose of locating a suspect (even if the request was previously made).*
    - *The provider can only initiate the disclosure, however, if the person has made a statement admitting participation in a violent crime that the provider reasonably believes may have caused serious physical harm to the victim.*

Law Enforcement and Addiction Services Providers

18. A police officer contacts an addiction services provider to request information about a suspect they are attempting to locate. What information can the addiction services provider disclose?
    - *The addiction services provider is unable to disclose any information to the police officer without the person's authorization, including whether or not the person is receiving services, unless the police officer obtains a court order issued in accordance with the requirements of 42 CFR 2.65.*

19. A police officer contacts a provider that provides BOTH mental health and addiction services to request information about a suspect they are attempting to locate. The client only receives addiction services from the provider. What information can the provider disclose?
    - *The provider can disclose information permitted to be made under HIPAA in regard to law enforcement attempts to locate a suspect IF the provider does not disclose that the person is receiving substance use disorder services or has a substance use disorder.*
    - *The reason this answer is different from the previous FAQ is because in the first example, the provider only provided addiction services, so any information disclosed by the provider would inform law enforcement that the person is receiving addiction services, which is protected information under Part 2. In this FAQ, the provider also provides mental health services, so if the provider does not disclose any information pertaining to the person's addiction services or substance use, Part 2-protected information is not being disclosed.*

20. Law enforcement responds to a call from an addiction services provider about a large amount of drugs found on the premises of the provider agency. What information can the addiction services provider disclose to law enforcement?
    - *Because a crime has been committed on the premises of the provider, the Part 2 permits disclosure of information regarding the circumstances of the incident, including the suspect's name, address, last known whereabouts, and status as a client of the provider.*

21. An addiction services provider becomes aware that a felony has been committed by a client at the local grocery store. Ohio has a felony reporting statute that requires persons with knowledge of a felony to report that information to law enforcement. What information can the addiction services provider disclose to law enforcement?
    - *Since the crime did not occur against staff of the provider or on the premises of the provider, Part 2 prohibits the disclosure of any information that would identify the person as receiving substance use disorder services or as having a substance use disorder. Therefore, the felony can only be reported in the following ways:*

- *The provider can make the report anonymously so as not to identify the person as a recipient of addiction services or as having a substance use disorder.*
- *If the provider also provides mental health services or is part of larger organization/medical facility and the information disclosed does not identify the person as a recipient of addiction services or as having a substance use disorder.*
- *The provider can seek a court order issued in accordance with the requirements of 42 CFR 2.65.*

22. A sheriff responds to a call about an attack on a staff member of an addiction services provider that occurred at an off-site AA meeting. What information can the addiction services provider disclose to the sheriff?
    - *Since the crime was committed against staff of the addiction services provider, the provider is permitted to disclose information regarding the circumstances of the incident, including the suspect's name, address, last known whereabouts, and status as a client of the provider.*

23. A person is experiencing an overdose at an addiction facility. Police officers and emergency medical professionals arrive at the facility. What information can the addiction facility disclose to the police officers and to the emergency medical professionals?
    - *The provider cannot share any information with the police officer but is permitted to disclose information to emergency medical professionals to the extent necessary to treat the person.*
    - *Note: If a crime occurred on the premises or against program personnel and the overdose is related to or a circumstance of the crime, information about the overdose that is associated with the crime can be disclosed to law enforcement.*

24. What if a person is experiencing an overdose at an addiction facility but a police officer with Narcan arrives prior to emergency medical professionals?
    - Part 2 permits disclosure of protected information to medical personnel to the extent necessary to meet a bona fide medical emergency in which the person's prior informed consent cannot be obtained but does not define "medical personnel".
    - In light of police officer's regularly carrying lifesaving Narcan and therefore being able to treat a "bona fide medical emergency" it appears to be reasonable to define an officer as "medical personnel" in that situation so that the Part 2 program can disclose to the officer that the person is experiencing an overdose. Part 2 Providers wishing to utilize that definition should include it in their policies under the disclosures permitted to be made for medical emergency purposes.

25. A local Quick Response Team (QRT) comprised of a member of local law enforcement, a social worker, and a nurse go out in to the community to follow-

up on persons that have been the subject of recent overdose calls from a police department list of overdoses to try to engage the individuals into service. The social worker and the nurse are staff from a local addiction services provider. What information can be disclosed to the police officer by the nurse and social worker?

- *If the person is a client of the addiction services provider or has sought services from the addiction services provider, information obtained in the course of that treatment or seeking of services cannot be disclosed to the police officer without authorization. Likewise, to disclose information obtained after the person becomes a client of the provider as a result of the QRT's efforts, the person's authorization must be obtained to make further disclosures to the QRT police officer.*
- *If the person has never been a client of, and has never sought services from the addiction services provider, the nurse and social worker can freely discuss information known about the person with the police officer. If the person later becomes a client of the addiction services provider, the person's authorization must be obtained to make further disclosures to the QRT police officer.*
- *Note: If the QRT is organized as its own community program and the nurse and social worker are not acting on behalf of the addiction services provider with which they are employed, the QRT is not covered by Part 2 and information obtained while carrying out QRT activities is not protected by Part 2 or HIPAA.*
    - *An example of this would be if the QRT is not a program of, or otherwise connected to the addiction services provider, the QRT does not provide its own Part 2-covered services, and the nurse and social worker are QRT volunteers or funded through a non-Part 2 program for their work on the QRT.*
    - *It is important to note that the nurse and social worker would have to ensure they do not disclose to the QRT any information that was obtained by the Part 2 program with which they are employed in the provision of services to the person.*
- *All of the above would also apply to an overdose list generated by a hospital ED or other non-Part 2 protected program.*

26. An addiction services provider becomes concerned that a client is going to inflict serious harm on another person based on a specific threat made by the client. What information is the addiction services provider <u>required</u> to report to law enforcement? What information is the addiction services provider <u>permitted</u> to report?
    - *Ohio's duty to protect statute only applies to mental health professionals, not addiction professionals.*
    - *If the addiction services provider wants to report the information to law enforcement or another duty to disclose or protect exists, the disclosure can be made in the following ways:*

- *The provider can make the report anonymously so as not to identify the person as a recipient of addiction services or as having a substance use disorder.*
- *If the provider agency also provides mental health services or is part of larger organization/medical facility and the information disclosed does not identify the person as a recipient of addiction services or as having a substance use disorder.*
- *The provider can seek a court order issued in accordance with the requirements of 42 CFR 2.65.*

27. Police officer arrives at a SUD residential facility with an arrest warrant. Can the facility affirm the presence of the person?
    - No, the provider is not authorized to disclose any information without the person's authorization or a court order is issued in accordance with the requirements of 42 CFR 2.65.
    - Staff could ask the police officer to wait in the reception area and then ask the client to self-disclose his/her presence to the officer. If the client declines, however, staff will have to tell the officer that they cannot confirm nor deny the client's presence as a result of the Part 2 protections provided to clients of that type of facility.

Law Enforcement
References, Sample Forms and Checklists

- **HIPAA Requirements for Disclosures to Law Enforcement**
- **42 CFR Part 2 Requirements for Disclosures to Law Enforcement**
- **42 CFR Part 2 Requirements for Court Orders Authorizing Disclosure and Use**
- **Sample Law Enforcement Officer's Administrative Request for PHI**
- **HIPAA Subpoena Requirements**
- **Ohio Duty to Protect Requirements**
- **Authorization Forms**
  - **Overview**
  - **Sample Authorization Form (multi-party exchange)**
  - **Ohio's Standard Authorization Form - Instructions**
  - **Ohio's Standard Authorization Form A**
  - **Ohio's Standard Authorization Form B**

HIPAA Privacy Rule Requirements for Disclosures to Law Enforcement

Law enforcement official means an officer or employee of any agency or authority of the United States, a State, a territory, a political subdivision of a State or territory, or an Indian tribe, who is empowered by law to: (1) Investigate or conduct an official inquiry into a potential violation of law; or (2) Prosecute or otherwise conduct a criminal, civil, or administrative proceeding arising from an alleged violation of law.

§ 164.512 Uses and disclosures for which an authorization or opportunity to agree or object is not required.

(c) STANDARD: DISCLOSURES ABOUT VICTIMS OF ABUSE, NEGLECT OR DOMESTIC VIOLENCE

(1) Permitted disclosures.
Except for reports of child abuse or neglect permitted by paragraph (b)(1)(ii) of this section, a covered entity may disclose protected health information about an individual whom the covered entity reasonably believes to be a victim of abuse, neglect, or domestic violence to a government authority, including a social service or protective services agency, authorized by law to receive reports of such abuse, neglect, or domestic violence:

(i) To the extent the disclosure is required by law and the disclosure complies with and is limited to the relevant requirements of such law;

(ii) If the individual agrees to the disclosure; or

(iii) To the extent the disclosure is expressly authorized by statute or regulation and:
(A) The covered entity, in the exercise of professional judgment, believes the disclosure is necessary to prevent serious harm to the individual or other potential victims; or
(B) If the individual is unable to agree because of incapacity, a law enforcement or other public official authorized to receive the report represents that the protected health information for which disclosure is sought is not intended to be used against the individual and that an immediate enforcement activity that depends upon the disclosure would be materially and adversely affected by waiting until the individual is able to agree to the disclosure.

(2) Informing the individual. A covered entity that makes a disclosure permitted by paragraph (c)(1) of this section must promptly inform the individual that such a report has been or will be made, except if:

(i) The covered entity, in the exercise of professional judgment, believes informing the individual would place the individual at risk of serious harm; or

(ii) The covered entity would be informing a personal representative, and the covered entity reasonably believes the personal representative is responsible for the abuse, neglect, or other injury, and that informing such person would not be in the best interests of the individual as determined by the covered entity, in the exercise of professional judgment.

(f) STANDARD: DISCLOSURES FOR LAW ENFORCEMENT PURPOSES. A covered entity may disclose protected health information for a law enforcement purpose to a law enforcement official if the conditions in paragraphs (f)(1) through (f)(6) of this section are met, as applicable.

(1) ***Permitted disclosures: Pursuant to process and as otherwise required by law.***
A covered entity may disclose protected health information:

(i) As required by law including laws that require the reporting of certain types of wounds or other physical injuries, except for laws subject to paragraph (b)(1)(ii) or (c)(1)(i) of this section; or

(ii) In compliance with and as limited by the relevant requirements of:
(A) A court order or court-ordered warrant, or a subpoena or summons issued by a judicial officer;
(B) A grand jury subpoena; or
(C) An administrative request, including an administrative subpoena or summons, a civil or an authorized investigative demand, or similar process authorized under law, provided that:
(*1*) The information sought is relevant and material to a legitimate law enforcement inquiry;
(*2*) The request is specific and limited in scope to the extent reasonably practicable in light of the purpose for which the information is sought; and
(*3*) De-identified information could not reasonably be used.

(2) ***Permitted disclosures: Limited information for identification and location purposes.***
Except for disclosures required by law as permitted by paragraph (f)(1) of this section, a covered entity may disclose protected health information in response to a law enforcement official's request for such information for the purpose of identifying or locating a suspect, fugitive, material witness, or missing person, provided that:

(i) The covered entity may disclose only the following information: (A) Name and address; (B) Date and place of birth; (C) Social security number; (D) ABO blood type and rh factor; (E) Type of injury; (F) Date and time of treatment; (G) Date and time of death, if applicable; and (H) A description of distinguishing physical characteristics, including height, weight, gender, race, hair and eye color, presence or absence of facial hair (beard or moustache), scars, and tattoos.

(ii) Except as permitted by paragraph (f)(2)(i) of this section, the covered

entity may not disclose for the purposes of identification or location under paragraph (f)(2) of this section any protected health information related to the individual's DNA or DNA analysis, dental records, or typing, samples or analysis of body fluids or tissue.

(3) ***Permitted disclosure: Victims of a crime.***
Except for disclosures required by law as permitted by paragraph (f)(1) of this section, a covered entity may disclose protected health information in response to a law enforcement official's request for such information about an individual who is or is suspected to be a victim of a crime, other than disclosures that are subject to paragraph (b) or (c) of this section, if:

(i) The individual agrees to the disclosure; or

(ii) The covered entity is unable to obtain the individual's agreement because of incapacity or other emergency circumstance, provided that:
(A) The law enforcement official represents that such information is needed to determine whether a violation of law by a person other than the victim has occurred, and such information is not intended to be used against the victim;
(B) The law enforcement official represents that immediate law enforcement activity that depends upon the disclosure would be materially and adversely affected by waiting until the individual is able to agree to the disclosure; and
(C) The disclosure is in the best interests of the individual as determined by the covered entity, in the exercise of professional judgment.

(4) ***Permitted disclosure: Decedents.*** A covered entity may disclose protected health information about an individual who has died to a law enforcement official for the purpose of alerting law enforcement of the death of the individual if the covered entity has a suspicion that such death may have resulted from criminal conduct.

(5) ***Permitted disclosure: Crime on premises.***
A covered entity may disclose to a law enforcement official protected health information that the covered entity believes in good faith constitutes evidence of criminal conduct that occurred on the premises of the covered entity.

(6) ***Permitted disclosure: Reporting crime in emergencies.***

(i) A covered health care provider providing emergency health care in response to a medical emergency, other than such emergency on the premises of the covered health care provider, may disclose protected health information to a law enforcement official if such disclosure appears necessary to alert law enforcement to:
(A) The commission and nature of a crime;
(B) The location of such crime or of the victim(s) of such crime; and
(C) The identity, description, and location of the perpetrator of such crime.

(ii) If a covered health care provider believes that the medical emergency described in paragraph (f)(6)(i) of this section is the result of abuse, neglect, or domestic violence of the individual in need of emergency health care, paragraph (f)(6)(i) of this section does not apply and any disclosure to a law enforcement official for law enforcement purposes is subject to paragraph (c) of this section.

(j) STANDARD: USES AND DISCLOSURES TO AVERT A SERIOUS THREAT TO HEALTH OR SAFETY

(1) Permitted disclosures. A covered entity may, consistent with applicable law and standards of ethical conduct, use or disclose protected health information, if the covered entity, in good faith, believes the use or disclosure:

(i)(A) Is necessary to prevent or lessen a serious and imminent threat to the health or safety of a person or the public; and
(B) Is to a person or persons reasonably able to prevent or lessen the threat, including the target of the threat; or

(ii) Is necessary for law enforcement authorities to identify or apprehend an individual:
(A) Because of a statement by an individual admitting participation in a violent crime that the covered entity reasonably believes may have caused serious physical harm to the victim; or
(B) Where it appears from all the circumstances that the individual has escaped from a correctional institution or from lawful custody, as those terms are defined in § 164.501.

(2) Use or disclosure not permitted. A use or disclosure pursuant to paragraph (j)(1)(ii)(A) of this section may not be made if the information described in paragraph (j)(1)(ii)(A) of this section is learned by the covered entity:

(i) In the course of treatment to affect the propensity to commit the criminal conduct that is the basis for the disclosure under paragraph (j)(1)(ii)(A) of this section, or counseling or therapy; or

(ii) Through a request by the individual to initiate or to be referred for the treatment, counseling, or therapy described in paragraph (j)(2)(i) of this section.

(3) Limit on information that may be disclosed. A disclosure made pursuant to paragraph (j)(1)(ii)(A) of this section shall contain only the statement described in paragraph (j)(1)(ii)(A) of this section and the protected health information described in paragraph (f)(2)(i) of this section.

(4) Presumption of good faith belief. A covered entity that uses or discloses protected health information pursuant to paragraph (j)(1) of this section is presumed to have acted in good faith with regard to a belief described in paragraph (j)(1)(i) or (ii) of this section, if the belief is based upon the covered entity's actual knowledge or in reliance on a credible representation by a person with apparent knowledge or authority.

(k)(5) CORRECTIONAL INSTITUTIONS AND OTHER LAW ENFORCEMENT CUSTODIAL SITUATIONS.

(i) Permitted disclosures. A covered entity may disclose to a correctional institution or a law enforcement official

having lawful custody of an inmate or other individual protected health information about such inmate or individual, if the correctional institution or such law enforcement official represents that such protected health information is necessary for:

(A) The provision of health care to such individuals;
(B) The health and safety of such individual or other inmates;
(C) The health and safety of the officers or employees of or others at the correctional institution;
(D) The health and safety of such individuals and officers or other persons responsible for the transporting of inmates or their transfer from one institution, facility, or setting to another;
(E) Law enforcement on the premises of the correctional institution; or
(F) The administration and maintenance of of the correctional institution.

(iii) No application after release. For the purposes of this provision, an individual is no longer an inmate when released on parole, probation, supervised release, or otherwise is no longer in lawful custody.

42 CFR Part 2 Requirements for Disclosures to Law Enforcement (other than pursuant to court orders)

42 CFR 2.12 (c) Exceptions

(5) ***Crimes on part 2 program premises or against part 2 program personnel.*** The restrictions on disclosure and use in the regulations in this part do not apply to communications from part 2 program personnel to law enforcement agencies or officials which:

(i) Are directly related to a patient's commission of a crime on the premises of the part 2 program or against part 2 program personnel or to a threat to commit such a crime; and

(ii) Are limited to the circumstances of the incident, including the patient status of the individual committing or threatening to commit the crime, that individual's name and address, and that individual's last known whereabouts.

(6) ***Reports of suspected child abuse and neglect.*** The restrictions on disclosure and use in the regulations in this part do not apply to the reporting under state law of incidents of suspected child abuse and neglect to the appropriate state or local authorities. However, the restrictions continue to apply to the original substance use disorder patient records maintained by the part 2 program including their disclosure and use for civil or criminal proceedings which may arise out of the report of suspected child abuse and neglect.

42 CFR Part 2 Requirements for Court Orders Authorizing Disclosure and Use

§2.61 Legal effect of order.

(a) *Effect.* An order of a court of competent jurisdiction entered under this subpart is a unique kind of court order. Its only purpose is to authorize a disclosure or use of patient information which would otherwise be prohibited by 42 U.S.C. 290dd-2 and the regulations in this part. Such an order does not compel disclosure. A subpoena or a similar legal mandate must be issued in order to compel disclosure. This mandate may be entered at the same time as and accompany an authorizing court order entered under the regulations in this part.

(b) *Examples.* (1) A person holding records subject to the regulations in this part receives a subpoena for those records. The person may not disclose the records in response to the subpoena unless a court of competent jurisdiction enters an authorizing order under the regulations in this part.

(2) An authorizing court order is entered under the regulations in this part, but the person holding the records does not want to make the disclosure. If there is no subpoena or other compulsory process or a subpoena for the records has expired or been quashed, that person may refuse to make the disclosure. Upon the entry of a valid subpoena or other compulsory process the person holding the records must disclose, unless there is a valid legal defense to the process other than the confidentiality restrictions of the regulations in this part.

§2.62 Order not applicable to records disclosed without consent to researchers, auditors and evaluators.

A court order under the regulations in this part may not authorize qualified personnel, who have received patient identifying information without consent for the purpose of conducting research, audit or evaluation, to disclose that information or use it to conduct any criminal investigation or prosecution of a patient. However, a court order under §2.66 may authorize disclosure and use of records to investigate or prosecute qualified personnel holding the records.

§2.63 Confidential communications.

(a) A court order under the regulations in this part may authorize disclosure of confidential communications made by a patient to a part 2 program in the course of diagnosis, treatment, or referral for treatment only if:

(1) The disclosure is necessary to protect against an existing threat to life or of serious bodily injury, including circumstances which constitute suspected child abuse and neglect and verbal threats against third parties;

(2) The disclosure is necessary in connection with investigation or prosecution of an extremely serious crime allegedly committed by the patient, such as one which directly threatens loss of life or serious bodily injury, including homicide, rape, kidnapping, armed robbery, assault with a deadly weapon, or child abuse and neglect; or

(3) The disclosure is in connection with litigation or an administrative proceeding in which the patient offers testimony or other evidence pertaining to the content of the confidential communications.

§2.64 Procedures and criteria for orders authorizing disclosures for noncriminal purposes.

(a) *Application.* An order authorizing the disclosure of patient records for purposes other than criminal investigation or prosecution may be applied for by any person having a legally recognized interest in the disclosure which is sought. The application may be filed separately or as part of a pending civil action in which the applicant asserts that the patient records are needed to provide evidence. An application must use a fictitious name, such as John Doe, to refer to any patient and may not contain or otherwise disclose any patient identifying information unless the patient is the applicant or has given written consent (meeting the requirements of the regulations in this part) to disclosure or the court has ordered the record of the proceeding sealed from public scrutiny.

(b) *Notice.* The patient and the person holding the records from whom disclosure is sought must be provided:

(1) Adequate notice in a manner which does not disclose patient identifying information to other persons; and

(2) An opportunity to file a written response to the application, or to appear in person, for the limited purpose of providing evidence on the statutory and regulatory criteria for the issuance of the court order as described in *§2.64(d).*

(c) *Review of evidence: Conduct of hearing.* Any oral argument, review of evidence, or hearing on the application must be held in the judge's chambers or in some manner which ensures that patient identifying information is not disclosed to anyone other than a party to the proceeding, the patient, or the person holding the record, unless the patient requests an open hearing in a manner which meets the written consent requirements of the regulations in this part. The proceeding may include an examination by the judge of the patient records referred to in the application.

(d) *Criteria for entry of order.* An order under this section may be entered only if the court determines that good cause exists. To make this determination the court must find that:

(1) Other ways of obtaining the information are not available or would not be effective; and

(2) The public interest and need for the disclosure outweigh the potential injury to the patient, the physician-patient relationship and the treatment services.

(e) *Content of order.* An order authorizing a disclosure must:

(1) Limit disclosure to those parts of the patient's record which are essential to fulfill the objective of the order;

(2) Limit disclosure to those persons whose need for information is the basis for the order; and

(3) Include such other measures as are necessary to limit disclosure for the protection of the patient, the physician-patient relationship and the treatment services; for example, sealing from public scrutiny the record of any proceeding for which disclosure of a patient's record has been ordered.

§2.65 Procedures and criteria for orders authorizing disclosure and use of records to criminally investigate or prosecute patients.

(a) *Application.* An order authorizing the disclosure or use of patient records to investigate or prosecute a patient in connection with a criminal proceeding may be applied for by the person holding the records or by any law enforcement or prosecutorial officials who are responsible for conducting investigative or prosecutorial activities with respect to the enforcement of criminal laws. The application may be filed separately, as part of an application for a subpoena or other compulsory process, or in a pending criminal action. An application must use a fictitious name such as John Doe, to refer to any patient and may not contain or otherwise disclose patient identifying information unless the court has ordered the record of the proceeding sealed from public scrutiny.

(b) *Notice and hearing.* Unless an order under §2.66 is sought in addition to an order under this section, the person holding the records must be provided:

(1) Adequate notice (in a manner which will not disclose patient identifying information to other persons) of an application by a law enforcement agency or official;

(2) An opportunity to appear and be heard for the limited purpose of providing evidence on the statutory and regulatory criteria for the issuance of the court order as described in §2.65(d); and

(3) An opportunity to be represented by counsel independent of counsel for an applicant who is a law enforcement agency or official.

(c) *Review of evidence: Conduct of hearings.* Any oral argument, review of evidence, or hearing on the application shall be held in the judge's chambers or in some other manner which ensures that patient identifying information is not disclosed to anyone other than a party to the proceedings, the patient, or the person holding the records. The proceeding may include an examination by the judge of the patient records referred to in the application.

(d) *Criteria.* A court may authorize the disclosure and use of patient records for the purpose of conducting a criminal investigation or prosecution of a patient only if the court finds that all of the following criteria are met:

(1) The crime involved is extremely serious, such as one which causes or directly threatens loss of life or serious bodily injury including homicide, rape, kidnapping, armed robbery, assault with a deadly weapon, and child abuse and neglect.

(2) There is a reasonable likelihood that the records will disclose information of substantial value in the investigation or prosecution.

(3) Other ways of obtaining the information are not available or would not be effective.

(4) The potential injury to the patient, to the physician-patient relationship and to the ability of the part 2 program to provide services to other patients is outweighed by the public interest and the need for the disclosure.

(5) If the applicant is a law enforcement agency or official, that:

(i) The person holding the records has been afforded the opportunity to be represented by independent counsel; and

(ii) Any person holding the records which is an entity within federal, state, or local government has in fact been represented by counsel independent of the applicant.

(e) *Content of order.* Any order authorizing a disclosure or use of patient records under this section must:

(1) Limit disclosure and use to those parts of the patient's record which are essential to fulfill the objective of the order;

(2) Limit disclosure to those law enforcement and prosecutorial officials who are responsible for, or are conducting, the investigation or prosecution, and limit their use of the records to investigation and prosecution of the extremely serious crime or suspected crime specified in the application; and

(3) Include such other measures as are necessary to limit disclosure and use to the fulfillment of only that public interest and need found by the court.

§2.66 Procedures and criteria for orders authorizing disclosure and use of records to investigate or prosecute a part 2 program or the person holding the records.

(a) *Application.* (1) An order authorizing the disclosure or use of patient records to investigate or prosecute a part 2 program or the person holding the records (or employees or agents of that part 2 program or person holding the records) in connection with a criminal or administrative matter may be applied for by any administrative, regulatory, supervisory, investigative, law enforcement, or prosecutorial agency having jurisdiction over the program's or person's activities.

(2) The application may be filed separately or as part of a pending civil or criminal action against a part 2 program or the person holding the records (or agents or employees of the part 2 program or person holding the records) in which the applicant asserts that the patient records are needed to provide material evidence. The application must use a fictitious name, such as John Doe, to refer to any patient and may not contain or otherwise disclose any patient identifying information unless the court has ordered the record of the proceeding sealed from public scrutiny or the patient has provided written consent (meeting the requirements of §2.31) to that disclosure.

(b) *Notice not required.* An application under this section may, in the discretion of the court, be granted without notice. Although no express notice is required to the part 2 program, to the person holding the records, or to any patient whose records are to be disclosed, upon implementation of an order so granted any of the above persons must be afforded an opportunity to seek revocation or amendment of that order, limited to the presentation of evidence on the statutory and regulatory criteria for the issuance of the court order in accordance with *§2.66(c).*

(c) *Requirements for order.* An order under this section must be entered in accordance with, and comply with the requirements of, paragraphs (d) and (e) of §2.64.

(d) *Limitations on disclosure and use of patient identifying information.* (1) An order entered under this section must require the deletion of patient identifying information from any documents made available to the public.

(2) No information obtained under this section may be used to conduct any investigation or prosecution of a patient in connection with a criminal matter, or be used as the basis for an application for an order under §2.65.

§2.67 Orders authorizing the use of undercover agents and informants to investigate employees or agents of a part 2 program in connection with a criminal matter.

(a) *Application.* A court order authorizing the placement of an undercover agent or informant in a part 2 program as an employee or patient may be applied for by any law enforcement or prosecutorial agency which has reason to believe that employees or agents of the part 2 program are engaged in criminal misconduct.

(b) *Notice.* The part 2 program director must be given adequate notice of the application and an opportunity to appear and be heard (for the limited purpose of providing evidence on the statutory and regulatory criteria for the issuance of the court order in accordance with §2.67(c)), unless the application asserts that:

(1) The part 2 program director is involved in the suspected criminal activities to be investigated by the undercover agent or informant; or

(2) The part 2 program director will intentionally or unintentionally disclose the proposed placement of an undercover agent or informant to the employees or agents of the program who are suspected of criminal activities.

(c) *Criteria.* An order under this section may be entered only if the court determines that good cause exists. To make this determination the court must find all of the following:

(1) There is reason to believe that an employee or agent of the part 2 program is engaged in criminal activity;

(2) Other ways of obtaining evidence of the suspected criminal activity are not available or would not be effective; and

(3) The public interest and need for the placement of an undercover agent or informant in the part 2 program outweigh the potential injury to patients of the part 2 program, physician-patient relationships and the treatment services.

(d) *Content of order.* An order authorizing the placement of an undercover agent or informant in a part 2 program must:

(1) Specifically authorize the placement of an undercover agent or an informant;

(2) Limit the total period of the placement to six months;

(3) Prohibit the undercover agent or informant from disclosing any patient identifying information obtained from the placement except as necessary to investigate or prosecute employees or agents of the part 2 program in connection with the suspected criminal activity; and

(4) Include any other measures which are appropriate to limit any potential disruption of the part 2 program by the placement and any potential for a real or apparent breach of patient confidentiality; for example, sealing from public scrutiny the record of any proceeding for which disclosure of a patient's record has been ordered.

(e) *Limitation on use of information.* No information obtained by an undercover agent or informant placed in a part 2 program under this section may be used to investigate or prosecute any patient in connection with a criminal matter or as the basis for an application for an order under §2.6

Law Enforcement Official's
Administrative Request for Protected Health Information

Note: This request is not sufficient for a 42 C.F.R. Part 2 covered agency to be permitted to disclose information that identifies a person as receiving addiction services or as having a drug or alcohol problem

To: _____ Date of Request: _____

I am a law enforcement official, as defined by the Health Insurance Portability and Accountability Act (HIPAA), with the following law enforcement agency: _____

This administrative request has been issued, in accordance with the requirements of HIPAA, so that I may receive the protected health information of:

_____	_____	_____
Name	Date of Birth (if known)	SSN (if known)

In accordance with 42 C.F.R. 164.512(f), I attest that:

- The information sought under this request is relevant and material to a legitimate law enforcement inquiry;
- The request is specific and limited in scope to the extent reasonably practicable in light of the purpose for which the information is sought; and
- De-identified information could not reasonably be used.

Note: 45 CFR 512(f) states that a covered entity may disclose PHI to a law enforcement official "in compliance with and as limited by the relevant requirements of: An administrative request, including an administrative subpoena or summons, a civil or an authorized investigative demand, or similar process authorized under law, provided that" the written request contains the above statements.

Therefore, I am requesting the following protected health information of the person named above:

INITIAL APPLICABLE INFORMATION:

_____ Estimated future discharge date/time of the above-named individual.

_____ Other potential location(s) of individual, if known.

_____ The following patient identifiers, if available (birth date, physical characteristics, etc):

_____

_____

_____	_____	_____
Signature of Requesting Officer	Printed Name	Badge Number

_____	_____
Officer's Law Enforcement Agency/Precinct	Contact Number

Overview of HIPAA Subpoena Requirements
(non-judicial subpoenas)

PHI is permitted to be disclosed in response to a subpoena signed by someone other than a judge, if:

A. The covered entity receives satisfactory assurance from the party seeking the information that reasonable efforts have been made by the requesting party to ensure that the individual who is the subject of the PHI has been given notice of the request.

Satisfactory assurance requires a written statement and accompanying documentation from the requesting party demonstrating that:

1. A good faith attempt was made to provide written notice to the individual (or, if the individual's location is unknown, to mail a notice to the individual's last known address); **and**
2. The notice included sufficient information about the litigation or proceeding for which the PHI is requested to permit the individual to raise an objection to the court or administrative tribunal; **and**
3. The time for the individual to raise objections to the court or administrative tribunal has elapsed, **and:**
   (a) No objections were filed; **or**
   (b) All objections filed by the individual have been resolved by the court or the administrative tribunal and the disclosures being sought are consistent with such resolution.

OR

B. The covered entity receives satisfactory assurance from the party seeking the information that reasonable efforts have been made by the requesting party to secure a qualified protective order.

Satisfactory assurance requires a written statement and accompanying documentation from the requesting party demonstrating that:

1. The parties to the dispute giving rise to the request for information have agreed to a qualified protective order and have presented it to the court or administrative tribunal with jurisdiction over the dispute; **or**
2. The party seeking the PHI has requested a qualified protective order from the court or administrative tribunal.

A qualified protective order *means an order of a court or of an administrative tribunal or a stipulation by the parties to the litigation or administrative proceeding that:*

- *Prohibits the parties from using or disclosing the requested PHI for any purpose other than the litigation or proceeding for which the information was requested;* ***and***
- *Requires the return to the covered entity or destruction of PHI (including all copies made) at the end of the litigation or proceeding.*

OR

C. The covered entity itself makes reasonable efforts to provide notice to the individual sufficient to meet the requirements of section A above **OR** to seek a qualified protective order sufficient to meet the requirements of section B above.

Note: If Ohio's privileged communications statute, R.C. 2317.02, applies to the information requested by a subpoena, disclosure of the information is not permitted without the person's authorization or a court order. Consult with legal counsel to determine how to proceed.

Ohio Duty to Protect
Summary of Ohio Revised Code Chapter 2305.51

Ohio law requires mental health professionals and mental health organizations to predict, warn of, and take precautions to provide protection from the violent behavior of a mental health client or patient when both of the following apply:

- the client or patient or a knowledgeable person has communicated to the professional or organization an explicit threat of inflicting imminent and serious physical harm to or causing the death of one or more clearly identifiable potential victims; **AND**
- the professional or organization has reason to believe that the client or patient has the intent and ability to carry out the threat

Required Action(s):

When both of the above apply, the professional or organization is required to take ***one or more*** of the following actions in a timely manner:

1. Exercise any authority the professional or organization possesses to ***hospitalize the client or patient on an emergency basis*** pursuant to section 5122.10 of the Revised Code;
2. Exercise any authority the professional or organization possesses to ***have the client or patient involuntarily or voluntarily hospitalized*** under Chapter 5122. of the Revised Code;
3. ***Establish and undertake a documented treatment plan*** that is reasonably calculated, according to appropriate standards of professional practice, ***to eliminate the possibility that the client or patient will carry out the threat, and,*** concurrent with establishing and undertaking the treatment plan, ***initiate arrangements for a second opinion risk assessment through a management consultation*** about the treatment plan with, in the case of a mental health organization, the clinical director of the organization, or, in the case of a mental health professional who is not acting as part of a mental health organization, any mental health professional who is licensed to engage in independent practice;
4. ***Communicate to a law enforcement agency*** with jurisdiction in the area where each potential victim resides, where a structure threatened by a mental health client or patient is located, or where the mental health client or patient resides, and if feasible, communicate to each potential victim or a potential victim's parent or guardian if the potential victim is a minor or has been adjudicated incompetent, all of the following information:
   - The nature of the threat;
   - The identity of the mental health client or patient making the threat;
   - The identity of each potential victim of the threat.

Additional Considerations:

When taking one or more of these actions, the mental health professional or organization:

- ***Must*** consider each of the alternatives and document the reasons for choosing or rejecting each alternative
- ***May*** give special consideration to those alternatives which, consistent with public safety, would least abridge the rights of the mental health client or patient established under the Revised Code, including the rights specified in sections 5122.27 to 5122.31 of the Revised Code.
- ***Is not required*** to take an action that, in the exercise of reasonable professional judgment, would physically endanger the professional or organization, increase the danger to a potential victim, or increase the danger to the mental health client or patient.
- ***Is not liable*** in damages in a civil action and shall not be made subject to disciplinary action by any entity with licensing or other regulatory authority over the professional or organization, for disclosing any confidential information about a mental health client or patient that is disclosed for the purpose of taking any of the actions.

******See O.R.C. 2305.51 for the full text of the statute and consult Legal Counsel with specific questions and situations******

AUTHORIZATION FORMS

AUTHORIZATION FORMS OVERVIEW

This section contains the following:

1. **Ohio's Standard Authorization Form Instructions, Form A and Form B**

- The General Assembly charged the Director of the Ohio Department of Medicaid (ODM) with the responsibility of developing a standard form for the use and disclosure of protected health information.
- The purpose of the form is to improve care coordination for a patient across multiple providers by making it easier to share protected health information in a secure manner.
- The form complies with all current HIPAA privacy rule requirements and all requirements contained in 42 CFR Part 2, which cover certain substance use disorder treatment information.
- The Standard Authorization Form contains two separate forms. Form A is an authorization for release of information from covered entities under HIPAA. Form B is a consent for release of substance use disorder information from a "Part 2" program. A "Part 2" program includes practitioners or provider organizations that hold themselves out as providing, and provide, substance use disorder diagnosis, treatment or treatment referral. For more information see 42 CFR 2.11.
- The form is not required to be used, but a properly executed form must be accepted by the receiving entity. The requirement to accept a properly executed form is applicable within 30 days of January 3, 2019, the effective date of the rule.
- The standard form is authorized under section 3798.10 of the Ohio Revised Code and promulgated under rule 5160-1-32.1 of the Ohio Administrative Code, Standard Authorization Form.
- The form and instructions can be accessed through the following direct links:
    - Standard Authorization Form at: *https://medicaid.ohio.gov/Portals/0/Resources/Publications/Forms/ODM10221fillx.pdf*
    - Standard Authorization Form Instructions at: *https://medicaid.ohio.gov/Portals/0/Resources/Publications/Forms/ODM10221i.pdf*
- Questions about the Standard Authorization Form may be directed to StandardAuthForm@medicaid.ohio.gov

****Important Information for Ohio's Criminal Justice System about the use of Standard Authorization form****

- Some providers from the Criminal Justice system have noted that Form B does not address Part 2's additional requirement for the disclosure of information to the Criminal Justice system about a person that is required to participate in a treatment program as a condition of the disposition of criminal proceedings or of parole or other release from custody. Part 2 requires that authorization forms used for such purposes include a statement that the form is not revocable until a certain time or event related to the final disposition of the proceeding or release.
- ODM has agreed to include language to address this requirement in the next version of the form but in the meantime, providers can continue to use their current forms containing this language or they can add the following language to Form B to make it compliant with the Part 2 requirement.
    - Add the following to the revocation statement in Section IV: "See exception note below".
    - In the fillable box titled Expiration Date or Event enter the following sentence: If authorizing disclosure of information to the criminal justice system about the individual's court-mandated treatment, it may not be revoked until the final disposition of the criminal proceeding and/or the individual's release from custody or supervision.
- The addition of this language to Form B has been approved by ODM.
- Providers should contact legal counsel with questions about this language and the use of Ohio's Standard Authorization Form.

2. Authorization for the Exchange of Confidential Information (Template)

- The template form offers an alternative to Ohio's Standard Authorization Form. It can be useful when more than two parties are engaged in the exchange of confidential information or for multi-directional sharing of information between two parties (instead of just a one-way disclosure of information).

- The template form complies with the current authorization requirements of HIPAA, 42 CFR Part 2 and OhioMHAS rules.

- Additional lines can be added (or current lines removed) depending on the number of parties involved in the exchange of information.

Instructions for Completing ODM 10221
STANDARD AUTHORIZATION FORM

This standard authorization form should be used by an individual or their personal representative to give consent to the release of personal health information. This form is not a patient access request under 45 CFR 164.524.

Which form do you use? If you are a Part 2 program (Substance Use Disorder (SUD) provider), or you are releasing records obtained from a Part 2 program, use FORM B. In all other cases, use FORM A. Form A does not need to be used when the exchange of information is for the purposes of treatment, payment and healthcare operations under HIPAA.

- **Part 2 programs** are federally assisted individuals or entities that hold themselves out as providing, and provide, substance use disorder diagnosis, treatment or treatment referral. For more information, see 42 CFR 2.11.

Section I (both FORM A and FORM B)

- Enter the requested information for the individual whose health information is to be released.
- Individuals are not required to provide a Social Security Number (SSN). If the SSN or additional identifying information is missing, an entity may not be able to identify the individual in order to respond to the request. An option is to provide the last 4 digits of the SSN.

Section II (Form A)

- "Disclosing Entity (Name of Covered Entity)" is the health plan/insurer or provider who has the individual's PHI which will be released. Enter the name of the Covered Entity as well as the contact information.
- "Recipient (Person or Entity)" - list the person or organization who should receive the PHI. Enter the contact information (phone number, email address, fax number, mailing address, etc.).

Section II (Form B)

- "Disclosing Entity (Name of Holder of Part 2 Program Information)" is the person or entity who has the individual's substance use disorder information to be released. Enter the name of the Holder of Part 2 Program information as well as the contact information. You may use a general description such as "any drug or alcohol treatment program that has provided services to the individual." More than one person or entity may be named.
- "The information is to be provided to the following" - list the person or organization who should receive the substance use disorder information. This can be an individual, a provider, a third party payer (health plan/insurer), or a non-treating entity, such as a health information exchange, a parole office, or a drug court program. More than one person or entity may be named.
- Use a separate FORM B for each person or organization that will be disclosing information.
- **If "Named Non-Treatment Provider (such as an intermediary or research entity)" is selected then a, b, and/or c must be completed too.** *The form is not complete if this box is checked and no additional information is provided in a, b, and/or c.*
    - A treatment provider relationship exists where an individual has agreed to or is required to be diagnosed, evaluated, or treated by, or to accept consultation from, an individual or entity who provides or agrees to provide the service. For more information, see 42 CFR 2.11.
- Enter the contact information (phone number, email address, fax number, mailing address, etc.).

Section III (both FORM A and FORM B):

- "Reason for Disclosure" must tell why the individual's information is being released.
- "Health Information to be disclosed" - must give a complete description of the information to be released. For Form B, please clearly specify the substance use disorder information that may be released.
- "Specify Time Period, if desired" is to be used, if necessary, to indicate a specific date range for the information to be disclosed (e.g. 7/1/2017 to 1/1/2018).

Section IV (both FORM A and FORM B)

- "Expiration Date or Event" is the specific date or event upon which the consent will expire. Event may be defined as the reason for the authorization or consent (e.g. insurance claim). If no date or event is provided, the authorization or consent will expire in one year.
- The individual whose information is being released should sign and date the form. If the individual is not able to sign the form, the personal representative should sign and date it. If a personal representative signs the form, indicate the relationship of the personal representative by selecting the appropriate box. Disclosing entity may require proof of authority of the representative.

STANDARD AUTHORIZATION FORM

Fields marked with an asterisk (*) are required to be completed. Failure to provide additional identifying information in Section I may result in the inability to respond to this request. This form is not a patient access request under 45 CFR 164.524. *Records released pursuant to this authorization may include information concerning testing, diagnosis or treatment of HIV/AIDS, psychiatric and/or drug/alcohol treatment, and/or sexual assault.*

FORM A – AUTHORIZATION FOR RELEASE OF INFORMATION FROM COVERED ENTITIES (OTHER THAN PART 2 PROGRAMS)

Section I				
First Name*	**M.I.**	**Last Name***	**Date of Birth***	**Social Security Number**
Address		**City**	**State**	**Zip Code**
I hereby authorize the disclosure of health information about the above individual as follows.				
Section II				
Disclosing Entity* *(Covered Entity such as a health plan/insurer or provider)*				
Address			**Telephone Number**	
City		**State**	**Zip Code**	
Recipient (Person or Entity) *				
Contact Information *(e.g. telephone number, email address, fax number, street address, etc.)*				
Section III				
Reason for Disclosure*				
Health information to be disclosed*				
Specify time period, if desired: Release only information from the period _____ *(mm/dd/yyyy)* to _____ *(mm/dd/yyyy)*				
Section IV				
This authorization will remain in effect until revoked or shall expire on date or event specified below. I understand that I may revoke or cancel this authorization at any time by submitting written revocation in the manner specified by the disclosing entity, except to the extent that action has been taken in reliance on this authorization. If this authorization has not been revoked, it will expire on the date or completion of the event stated below. If no date or event is specified below, this authorization will expire in one year.				
Expiration Date or Event _____ *(mm/dd/yyyy)*				
• I understand that I may not be denied treatment, payment, and enrollment in the health plan, or eligibility for benefits for refusing to authorize disclosure unless such denial is permitted under state and federal law. • I understand that information disclosed by this authorization, except as prohibited by 42 CFR Part 2 or other applicable law, may be subject to re-disclosure by the recipient and may no longer be protected by the Health Insurance Portability and Accountability Act Privacy Rule [45 CFR Part 164].				
Signature of Individual*			**Date*** *(mm/dd/yyyy)*	
Signature of Personal Representative (if applicable)* *(identify relationship to individual below)*			**Date*** *(mm/dd/yyyy)*	
Relationship of Personal Representative to Individual *(Personal representative shall submit proof of authority to the disclosing entity)* ☐ Parent ☐ Legal Guardian ☐ Healthcare Power of Attorney ☐ Executor/Administrator ☐ Other ☐ N/A				

For administrative use only:

Method of Delivery (e.g. paper, fax, electronic,)	**Date Released**

FORM B – CONSENT FOR RELEASE OF PART 2 PROGRAM (SUBSTANCE USE DISORDER PROVIDER) INFORMATION

A Part 2 Program is a federally assisted: (i) individual or entity other than a general medical facility who holds itself out as providing, and provides, substance use disorder (SUD) diagnosis, treatment, or referral for treatment; (ii) an identified unit within a general medical facility that holds itself out as providing, and provides, SUD diagnosis, treatment, or referral for treatment; or, (iii) medical personnel or staff in a general medical facility whose primary function is provision of SUD diagnosis, treatment, or referral for treatment, and who are identified as such providers.

Section I

First Name*	M.I.	Last Name*	Date of Birth*	Social Security Number	
Address			City	State	Zip Code

I hereby authorize the disclosure of health information about the above individual as follows.

Section II

Disclosing Entity* *(Name of Holder of Part 2 Program Information)*		Telephone Number	
Address	City	State	Zip Code

The information is to be provided to the following*:

☐ Named Individual:

☐ Named Third Party Payer:

☐ Named Treatment Provider Entity:

☐ Named Non-Treatment Provider (such as an intermediary or research entity)+

+If non-treatment provider is selected complete a, b and/or c below.

a. Named Individual Participant(s): _____

b. Named Treatment Provider Entity Participant(s): _____

c. Description of Group or Class of Treatment Provider Entity Participant(s): _____

Contact Information (e.g. telephone number, email address, fax number, street address, etc.)

Section III

Reason for Disclosure*	Health information to be disclosed*:

Specify time period, if desired:

Release only information from the period _____ *(mm/dd/yyyy)* to _____ *(mm/dd/yyyy)*

Section IV

This authorization will remain in effect until revoked or shall expire on date or event specified below. I understand that I may revoke or cancel this authorization at any time by submitting written revocation in the manner specified by the disclosing entity, except to the extent that action has been taken in reliance on this authorization. If this authorization has not been revoked, it will expire on the date or completion of the event stated below. If no date or event is specified below, this authorization will expire in one year.

Expiration Date or Event _____ *(mm/dd/yyyy)*

- Substance use disorder records of Part 2 programs disclosed pursuant to this Consent are protected by federal regulations and cannot be re-disclosed without my written consent unless otherwise provided for in the regulations. Any information disclosed pursuant to this Consent other than substance use disorder records or records protected under another state law may be subject to re-disclosure by the recipient.
- I might be denied services if I refuse to authorize disclosure of information for purposes of assessment, treatment, or payment relating to substance use disorder if refusal is permitted by state law. My refusal to authorize disclosure of information for other purposes will not affect my ability to obtain treatment or services.
- If I have authorized disclosure to a generally described group or class of participants in an entity which is not my treatment provider, upon my written request, I must be provided a list of entities to which my information has been disclosed pursuant to that general designation.

Signature of Individual*	Date* *(mm/dd/yyyy)*
Signature of Personal Representative (if applicable)* *(identify relationship to individual below)*	Date* *(mm/dd/yyyy)*

Relationship of Personal Representative to Individual *(Personal representative shall submit proof of authority to the disclosing entity)*

☐ Parent ☐ Legal Guardian ☐ Healthcare Power of Attorney ☐ Executor/Administrator ☐ Other ☐ N/A

For administrative use only:

Method of Delivery (e.g. paper, fax, electronic)	Date Released

AUTHORIZATION FOR THE EXCHANGE OF CONFIDENTIAL INFORMATION

I, _____, authorize
Last Name First Name M.I.
_____ AND

_____ AND

_____
(provider name or organization, payer name or organization or name of other recipient)

To communicate with and disclose to one another the following information about me:

_____My treatment history, including mental health and/or addiction services
_____My name, contact information and other personal identifying information
_____Treatment Dates
_____Discharge Summary/Continuing Care Plan
_____Initial and subsequent evaluations of my service needs
_____Billing information
_____Recommendations/Prognosis
_____Other: _____

The purpose of this exchange of information is:

_____Evaluate my need for services and coordinate and provide those services to me
_____ Family Involvement
_____ Payment for my services
_____ Report my attendance and compliance with treatment to the Court
_____ Satisfy legal requirements
_____ Coordinate and plan for any crisis events I may experience
_____ Other: _____

I understand that my alcohol and/or drug treatment records receive special protection under federal law (42 C.F.R. Part 2) and can only be re-disclosed as permitted by the federal regulations. I understand that my physical and mental health treatment records are protected by HIPAA but may be subject to re-disclosure if the recipient of my information is not subject to HIPAA.

I understand that I may revoke this authorization at any time, except to the extent that the entity(ies) authorized to make the disclosure have taken action in reliance on it. Unless revoked earlier, this authorization will expire
on this date: _____ OR this event: _____

This is a free and voluntary act by me. I understand that I may refuse to sign this authorization, if it is for purposes other than alcohol and/or drug treatment and payment for that treatment, and that my refusal to sign it for other purposes will not otherwise affect my ability to obtain treatment, my eligibility for benefits, or the payment provided for those services. I understand that refusing to sign this form does not prohibit disclosure of my health information that is otherwise permitted by law without my specific authorization or permission.

_____ _____ _____
Date Signature of Client/Legal Representative Client Date of Birth

_____ _____
Printed name and authority of Legal Representative Signature of Parent/Legal Guardian (if required and not already provided above)

NOTICE TO RECIPIENTS OF ALCOHOL AND/OR DRUG TREATMENT INFORMATION: 42 CFR Part 2 prohibits unauthorized disclosure of these records.