



## **SAMHSA Confidentiality Law for Substance Abuse Records (42 CFR Part 2)**

**Brian L Tuttle,** CPHIT, CHA, CHP, CBRA, CISSP, CCNA, Net+

[www.hipaa-consulting.com](http://www.hipaa-consulting.com)

## What exactly is SAMHSA?





SAMHSA is an acronym for:

Substance Abuse and Mental Health Services  
Administration

*The Substance Abuse and Mental Health Services Administration (SAMHSA) is the agency within the U.S. Department of Health and Human Services that leads public health efforts to advance the behavioral health of the nation. SAMHSA's mission is to reduce the impact of substance abuse and mental illness on America's communities*



- *Congress established the Substance Abuse and Mental Health Services Administration (SAMHSA) in 1992 to make substance use and mental disorder information, services, and research more accessible.*
- *Prevention, treatment, and recovery support services for behavioral health are important parts of the health service systems for the community*
- *The services work to improve health and minimize costs to individuals, families, businesses, and governments. However, people suffering from either substance use and mental disorders, or both, because of their illness are often excluded from the current health care system and instead have to rely on "public safety net" programs*



## 2022

- Last year alone, close to 20 million people in need of substance abuse treatment did not receive it.
- The gap in service to this population unnecessarily jeopardizes the health and wellness of people and causes a ripple effect in costs to American communities.





## **Patient Record Confidentiality (CFR Title 42: Part 2)**

Federal regulations which specify restrictions concerning the disclosure and use of patient records pertaining to substance abuse treatment that federal programs maintain.

Confidentiality of Alcohol and Drug Abuse Patient Records  
(CFR Title 42: Part 2)



**DOES 42 CFR Part 2 APPLY TO MY PRACTICE?**





## **DOES 42 CFR Part 2 APPLY TO MY PRACTICE?**

**MUST BE FEDERALLY ASSISTED AND PROVIDE SUD TREATMENT OR  
REFERRAL FOR TREATMENT**

Part 2 Programs are prohibited from disclosing any information that would identify a person as having or having had a SUD unless that person provides written consent.

Part 2 specifies a set of requirements for consent forms, including but not limited to the name of the patient, the names of individuals/entities that are permitted to disclose or receive patient identifying information, the amount and kind of the information being disclosed, and the purpose of the disclosure.

## **FEDERAL ASSISTANCE CHECKLIST:**

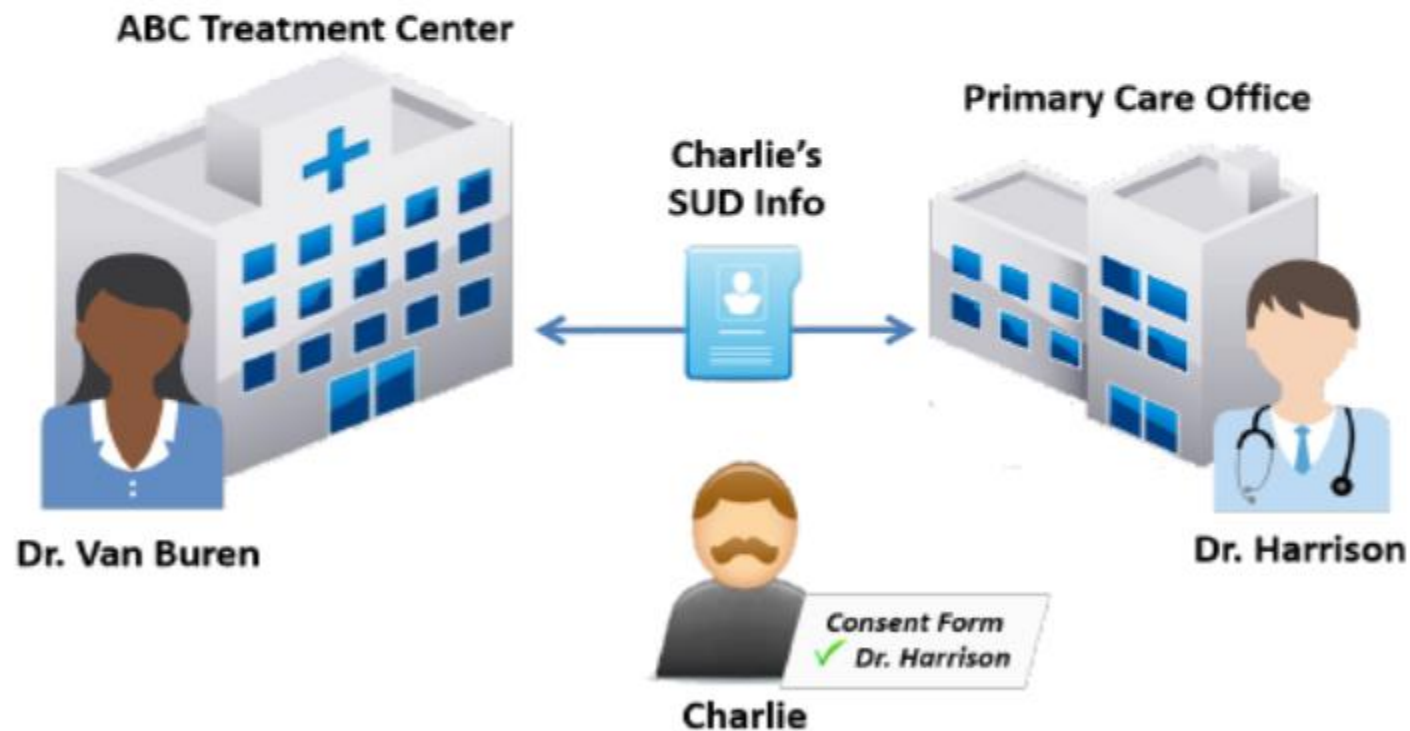
Is your Organization Currently: **(YES or NO)**

1. Authorized, certified, licensed, or registered by the Federal Government?
2. Receiving federal funds in any form, including funds that do not directly pay for SUD services? Granted tax-exempt status by the IRS?
3. Allowed tax deductions for contributions by the IRS?
4. Authorized to conduct business by the federal government, including programs?
5. Certified as a Medicare provider?
6. Authorized to conduct methadone maintenance treatment?
7. Registered with the DEA, and use such license to the extent of treating SUD
8. Conducting business directly with the federal government?



## DOES 42 CFR Part 2 APPLY TO MY PRACTICE?

### SCENARIO 1: OPIOID TREATMENT PROGRAM





## **DOES 42 CFR Part 2 APPLY TO MY PRACTICE?**

### **Scenario 1 (Opioid Treatment Program)**

- ✓ ABC Treatment Center (ABC) is a SAMHSA-certified Opioid Treatment Program that provides Medication-Assisted Treatment (MAT) for persons diagnosed with an opioid use disorder (OUD).
- ✓ ABC is accredited by a SAMHSA-approved accrediting body to dispense opioid treatment medications.
- ✓ Dr. Van Buren works at ABC and is registered with the Drug Enforcement Administration (DEA) to prescribe controlled substances for the treatment of OUD.



## **DOES 42 CFR Part 2 APPLY TO MY PRACTICE?**

### **Scenario 1 (Opioid Treatment Program)**

- ✓ Charlie is a 33-year-old who hurt his back at work. He went to his primary care provider, Dr. Harrison, and was prescribed an opioid painkiller to manage his pain.
- ✓ Charlie became dependent on the painkiller and began illegally obtaining and using opioids after his prescription ran out.
- ✓ Charlie sought help from ABC and is now receiving methadone treatment for an OUD.



## **DOES 42 CFR Part 2 APPLY TO MY PRACTICE?**

### **Scenario 1 (Opioid Treatment Program)**

- ✓ Charlie is seeing Dr. Harrison in two weeks to follow up about his back injury.
- ✓ Dr. Van Buren asked Charlie if he wanted his treatment information sent to his primary care provider, Dr. Harrison.
- ✓ Charlie agreed in a written consent to let Dr. Van Buren share his OUD treatment information with Dr. Harrison.



## **DOES 42 CFR Part 2 APPLY TO MY PRACTICE?**

### **Scenario 1 (Opioid Treatment Program)**

#### **DOES PART 2 APPLY TO ABC?**

Yes. ABC meets the definition of a program because it is an entity (other than a general medical facility) that holds itself out (e.g. through advertisements) as providing and provides SUD treatment services.

Additionally, ABC is federally assisted because it has been certified by SAMHSA as an Opioid Treatment Program. Therefore, ABC meets the definition of a Part 2 Program.



## **DOES 42 CFR Part 2 APPLY TO MY PRACTICE?**

### **Scenario 1 (Opioid Treatment Program)**

#### **CAN ABC DISCLOSE CHARLIES SUD INFO?**

Yes. As a Part 2 Program, ABC can disclose patient-identifying information if it obtains written patient consent.

Because ABC Treatment Center holds itself out as a facility that provides SUD diagnosis, treatment, or referral for treatment, any patient information coming from ABC could identify the patient as having or having had a SUD.



## **DOES 42 CFR Part 2 APPLY TO MY PRACTICE?**

### **Scenario 1 (Opioid Treatment Program)**

#### **HOW CAN ABC DISCLOSE?**

To share Charlie's record with his primary care provider, Dr. Van Buren would need to obtain written consent from Charlie. The consent form would need to comply with all of the requirements specified by Part 2, including identifying the SUD information in the "Amount and Kind" section and stating the purpose of the disclosure.

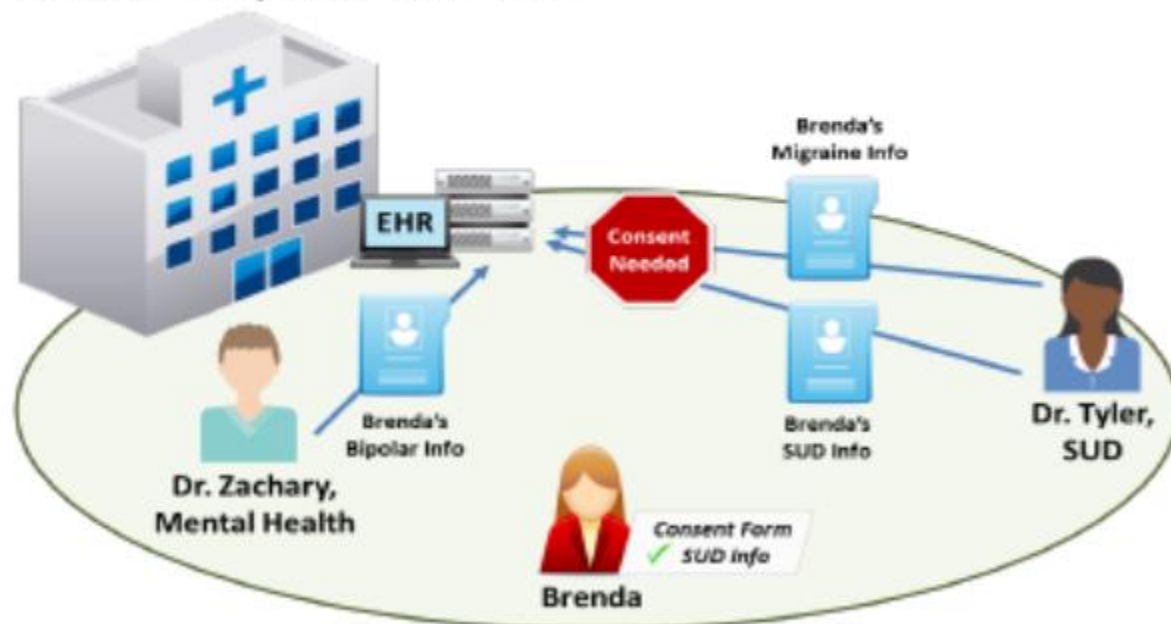
Charlie's information would also need to be accompanied by a notice of prohibition on redisclosure so that Dr. Harrison recognizes the information as Part 2 and does not further disclose the information without Charlie's consent.



## DOES 42 CFR Part 2 APPLY TO MY PRACTICE?

### SCENARIO 2: MIXED-USE FACILITY

Acme Community Mental Health Center





## **DOES 42 CFR Part 2 APPLY TO MY PRACTICE?**

### **Scenario 2 (Mixed Use Facility)**

Acme Community Mental Health Center (Acme) provides both SUD treatment services and mental health services.

Acme recently installed an Electronic Health Record (EHR) system for the entire health center.



## **DOES 42 CFR Part 2 APPLY TO MY PRACTICE?**

### **Scenario 2 (Mixed Use Facility)**

- ✓ Dr. Tyler, an addiction specialist at Acme, only treats patients with SUDs. Typically, Dr. Tyler uses controlled substances for detoxification or maintenance treatment of a patient's SUD.
- ✓ Dr. Zachary, a psychiatrist at Acme, specializes in treating patients with mental disorders. Dr. Zachary does not treat patients for SUD.
- ✓ Brenda has bipolar disorder and a SUD. She's been going to Acme for the five years and sees Dr. Zachary for treatment of her bipolar disorder and Dr. Tyler for treatment of her SUD.
- ✓ At Brenda's most recent visit, Dr. Tyler added to Brenda's record that Brenda was suffering from migraines and had relapsed in her recovery from her SUD.