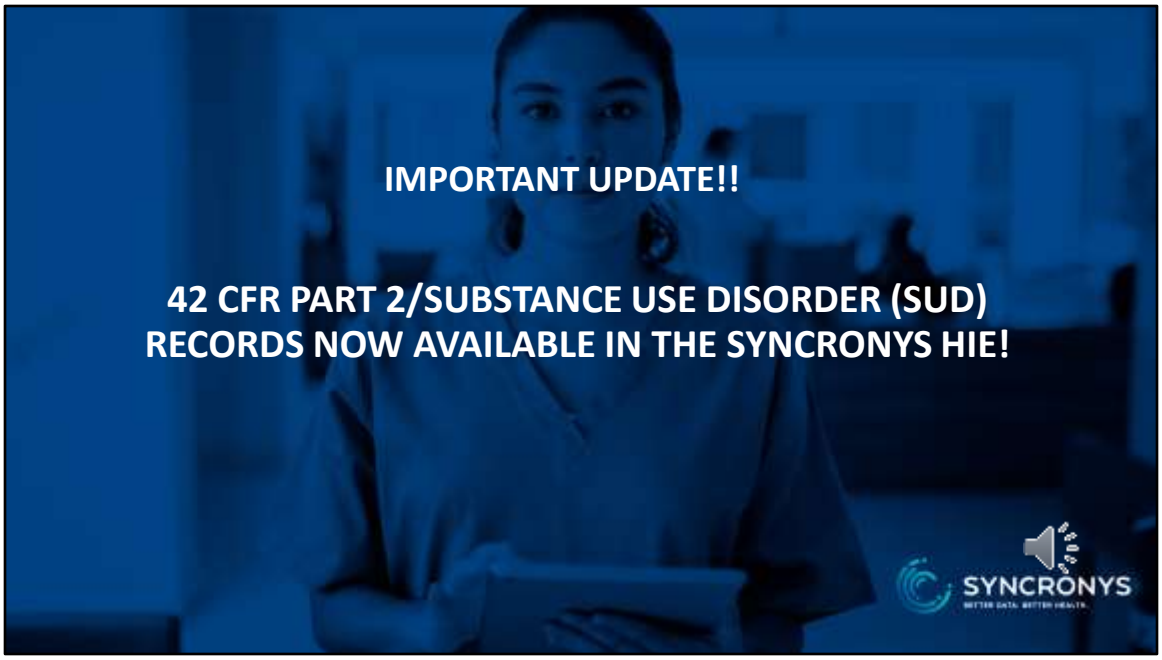



This is module number four in the privacy officer's training series. The information in this module will help you answer questions about how federally protected substance use disorder treatment information may be seen in the HIE if consent is given by the patient at the source of that information.

# 42 CFR PART 2 OVERVIEW

- Substance Use Disorder (SUD) records are covered by the Confidentiality of Substance Use Disorder Patient Records 2 USC 290dd-2 and 42 CFR Part 2 (known as "Part 2") regulations.
- 42 CFR Part 2 protects the privacy and security of records identifying individuals as seeking or receiving SUD treatment from a "Part 2 program." The purpose is to encourage people to enter and remain in SUD treatment by safeguarding confidentiality.
- The regulation requires patient consent for most disclosures, including for treatment, payment, and health care operations (TPO), with limited exceptions.

For more information:

– https://www.ecfr.gov/current/title-42/chapter-I/subchapter-A/part-2

Substance Use Disorder (SUD) records are covered by the federal regulations we refer to as "42 CFR Part 2." For this module, we'll simply refer to them as "Part 2".

Part 2 protects the privacy and security of records identifying individuals as seeking or receiving SUD treatment from a "Part 2 program." The purpose is to encourage people to enter and remain in SUD treatment by safeguarding confidentiality. Not all providers of such treatment qualify as a Part 2 program.

On February 8, 2024, the U.S. Department of Health & Human Services (HHS) through the Substance Abuse and Mental Health Services Administration (SAMHSA) and the Office for Civil Rights (OCR) announced a final rule modifying Part 2.

These changes attempted to align certain aspects of the regulations with the Health Insurance Portability and Accountability Act of 1996 Rules (HIPAA) and the Health Information Technology for Economic and Clinical Health Act (known as HITECH).

This change allowed SYNCRONYS to begin sharing information we receive from Part 2 organizations if the individual patient has consented to sharing their information for treatment, payment, or operations purposes as defined by HIPAA. This consent is managed by the Part 2 organization.

## MAJOR CHANGES IN THE NEW 42 CFR PART 2 FINAL RULE – FAST FACTS

- Allows a single consent for all future uses and disclosures for treatment, payment, and health care operations (TPO).
- Allows HIPAA covered entities and business associates that receive records under this consent to redisclose the records in accordance with the HIPAA regulations.[1]
- Prohibits combining patient consent for the use and disclosure of records for civil, criminal, administrative, or legislative proceedings with patient consent for any other use or disclosure.
- Requires a separate patient consent for the use and disclosure of SUD counseling notes. (Similar to HIPAA protected psychotherapy notes)
- Requires that each disclosure made with patient consent include a copy of the consent or **a clear explanation of the scope of the consent**.

[1] However, these records cannot be used in legal proceedings against the patient without specific consent or a court order, which is more stringent than the HIPAA standard.


If you would like more information, this slide shares additional details about the regulations that may help you understand the changes we have made to the HIE clinical portal.

## CONSENT FOR HIPAA TPO AND OPT-IN/OUT, WHAT'S THE DIFFERENCE?

- Consent management applies only to data sharing organizations (DSOs) designated as 42 CFR Part 2.
- If a Part 2 patient provides consent for TPO, their 42 CFR Part 2 data will be available within the HIE upon acknowledgement by the viewer.
- Such consent can be revoked by the patient at the 42 CFR Part 2-designated clinic/agency.
- If a patient opts out of the HIE, no information, not even demographics, would be found in our portal.


**Privacy Officer content – not general clinical view users.**

Consent management applies only to data sharing organizations (DSOs) designated as 42 CFR Part 2. Again, not every treatment provider is designated as a Part 2 program.

If a Part 2 patient provides consent for TPO, their 42 CFR Part 2 data will be available within the HIE upon acknowledgement by the viewer that their access complies with HIPA TPO.
Such consent can be revoked by the patient at the 42 CFR Part 2-designated clinic/agency, and the data from that provider will be blocked. Other information not coming from a Part 2 provider would be unaffected.

However, if a patient opts out of the HIE entirely, no information, not even demographics, would be found in our portal.

## FUTURE USES AND DISCLOSURES FOR TPO

- Future disclosures made with patient consent must be accompanied by a statement notifying the recipient that redisclosure is prohibited, unless the purpose of the further disclosure is expressly permitted by the written consent of the person to whom it pertains or as otherwise permitted by Part 2.
- Limited redisclosures without obtaining the patient's consent are permitted, such as medical emergencies , child abuse reporting, crimes on program premises or against program personnel, and court ordered disclosures when procedures and criteria are met.

The regulations require that when we disclose the covered information to users, we need to show a statement about the scope of the consent.

## WHAT END-USERS WILL SEE


- Authorized HIE users may encounter patient records that have specially protected information, such as 42 CFR Part 2 substance use disorder (SUD).


- In these cases, **the patient has provided consent at the source of that data**, allowing SYNCRONYS to share this information with HIE users for **Treatment, Payment, or Healthcare Operations** (TPO) purposes only.

Authorized HIE users may encounter patient records that have specially protected information, such as (42 CFR Part 2) substance use treatment.

In this case, HIE users will see an alert as an indication that the patient has provided consent at the source of that data. An example is shown on the next slide. The patient's consent for part 2 data allows SYNCRONYS to share this information with HIE users for **Treatment, Payment, or Healthcare Operations** (TPO) purposes only.

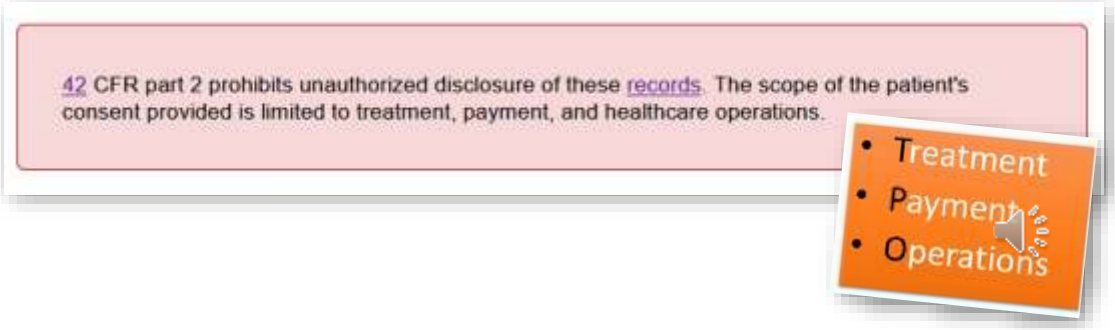
# ACCEPTING RESPONSIBILITY


By clicking on this acknowledgement, the user is attesting that they have a TPO relationship with the patient whose record they are about to view will reveal. By clicking the 'Acknowledge' button, sealed information will be displayed in the Patient Summary immediately.

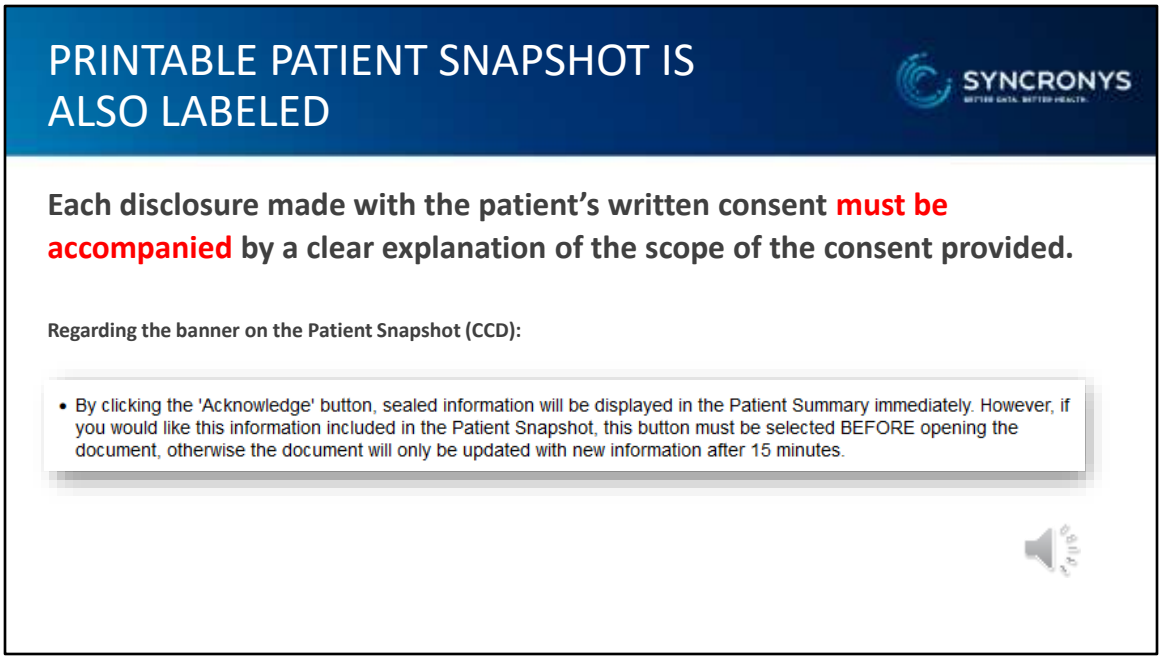
## SCOPE OF THE CONSENT

**Each disclosure made with the patient's written consent must be accompanied by a clear explanation of the scope of the consent provided.**

**How it looks in the HIE Portal:**




The regulations require that when we disclose the covered information to users, we need to show a statement about the scope of the consent. So, when the user acknowledges the statement shown in the previous slide, they will see this banner that restates that use of the information is limited to the purpose of treatment, payment, or healthcare operations. It also has some helpful links to explain the specifics of 42 CFR Part 2 and a definition of Records used in those regulations.




Users viewing a patient record in the HIE may want to generate a continuity of care document, known as a patient snapshot. If you would like Part 2 information included in document, make sure you click the acknowledgement button BEFORE generating the patient snapshot. If you click the acknowledgement button after generating the patient snapshot, you would need to wait about 15 minutes to print an updated document that includes the SUD information. In other words, if you intend to print or download a CCD of this record, click the Acknowledge button before generating a patient snapshot so it will also include the restricted items.

# FOR MORE INFORMATION ABOUT 42 CFR PART 2!

**PART 2 - CONFIDENTIALITY OF SUBSTANCE USE DISORDER PATIENT RECORDS**
https://www.ecfr.gov/current/title-42/chapter-I/subchapter-A/part-2

**Fact Sheet: SAMHSA 42 CFR Part 2 Revised Rule**
https://www.hhs.gov/hipaa/for-professionals/regulatory-initiatives/fact-sheet-42-cfr-part-2-final-rule/index.html#ftn1

**Disclosure of Substance Use Disorder Patient Records: Does Part 2 Apply to Me**
https://www.samhsa.gov/sites/default/files/does-part2-apply.pdf

**Disclosure of Substance Use Disorder Patient Records: How Do I Exchange Part 2 Data?**
https://www.samhsa.gov/sites/default/files/how-do-i-exchange-part2.pdf

The links on this slide are provided for your convenience.

## WHAT'S THE ASK?

- Run a list of your current clinical view users (NMHIC Level 1, 2, or 3 users).
- Direct them to our training library for a brief new module on 42 CFR Part 2 information.
- Schedule time with your Customer Relationship Manager if you want to schedule additional training or to get clarification.
- Notify us if you have any problems or concerns regarding the new safeguards in our portal.

SYNCRONYS is requesting help from all privacy officers to spread this information to your clinical view users.

- Run a list of your current clinical view users (NMHIC Level 1, 2, or 3 users).
- Direct them to our training library for a brief new module on 42 CFR Part 2 information.
- Schedule time with your Customer Relationship Manager if you want to schedule additional training or to get clarification.
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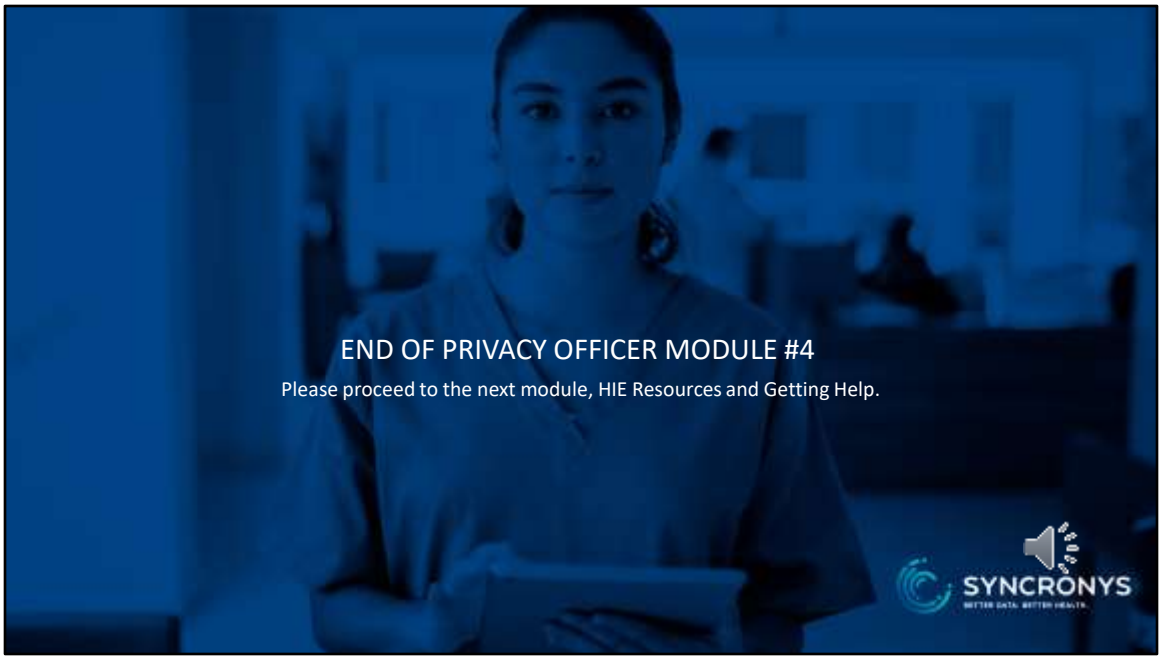


This is the end of the fourth privacy officer module. Please proceed to the fifth module, which points you to additional resources, including information on how to contact the SYNCRONYS Help Desk.