



CMHPSM Provider Network Informational Bulletin



Date: April 15, 2020

Topic: Consent to Share SUD Information

Information:

In the ongoing challenges of the COVID-19 pandemic, and the amount of information that is available, the CMHPSM is clarifying a few matters with the Substance Use Disorder (SUD) provider network in general in relation to confidentiality and the exchange of information.

While HIPAA has allowed for expanded use of telehealth services in related to behavioral health, and HIPAA has allowed for verbal consents during the pandemic with mental health services, the federal government has not made the same waivers for 42 CFR Part 2 in the sharing information related to SUD assessments, referrals, or treatment without a release.

What the guidance does say about 42 CFR Part 2 in relationship to: the COVID-19 pandemic; the written patient consent for disclosure of substance use disorder records, the reality that treatment provider offices may be closed, or people aren't able to present for treatment services in person, and the increased need to provide telehealth and/or telephonic services is this:

"...In such instances, providers may not be able to obtain written patient consent for disclosure of substance use disorder records. The prohibitions on use and disclosure of patient identifying information under 42 C.F.R. Part 2 would not apply in these situations to the extent that, as determined by the provider(s), a medical emergency exists.

Under 42 U.S.C. §290dd-2(b)(2)(A) and 42 C.F.R. §2.51, patient identifying information may be disclosed by a part 2 program or other lawful holder to medical personnel, without patient consent, to the extent necessary to meet a bona fide medical emergency in which the patient's prior informed consent cannot be obtained. Information disclosed to the medical personnel who are treating such a medical emergency may be re-disclosed by such personnel for treatment purposes as needed...

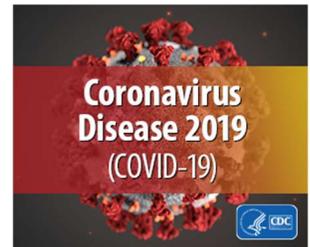
...We note that Part 2 requires programs to document certain information in their records after a disclosure is made pursuant to the medical emergency exception. We emphasize that, under the medical emergency exception, providers make their own determinations whether a bona fide medical emergency exists for purposes of providing needed treatment to patients."

For the full guidance please see this link: <https://www.samhsa.gov/sites/default/files/covid-19-42-cfr-part-2-guidance-03192020.pdf>

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What this means for SUD providers:

- Providers will need to make their own decisions if there is such a medical emergency that they feel would allow for the disclosure and re-disclosure of SUD information without a written consent. This medical emergency for a client could be related to COVID-19, or a client's other medical status that would be considered a medical emergency either within the context of COVID-19, or matters independent of COVID-19 such as co-morbidity, severity/risk of use, and withdrawal risks. (these are examples and not an all-inclusive list)
- When this determination is made, providers must clearly document in the record what information was disclosed, to whom, the medical emergency that was met, and how and when they ensured the person receiving treatment was informed of the disclosure (recognizing this may not be an immediate notification). Also, wherever and whenever possible, written consent that meets 42 CFR Part 2 requirements should be ascertained as soon as possible.
- This is an allowance, not a requirement. Providers are not required to disclose information without written consent, and can decline to share information, in cases where they feel a medical emergency cannot be justified.