

TITLE: Release of records for SUD clients (42 CFR Part 2)	PAGE: Page 1
DEPT./SECTION BHS/Patient Rights	NUMBER: YCHC-BHS 8.06
AFFECTS: Patients and Staff/PROVIDERS	DATE CREATED: 3-22-18 DATE APPROVED: 3/26/18 DATE REVISED:

Policy:

Records of the identity, diagnosis, prognosis, or treatment of any Covered Patient relating to a substance use disorder which are maintained in connection with a Covered Program, or which are received from a Covered Program will be confidential and may be disclosed only as expressly permitted pursuant to this Policy. Notwithstanding any provision in the YCHC BHS's policies to the contrary, for records maintained by or received from a Covered Program identifying Covered Patients as having a substance use disorder, the records may only be disclosed to the extent specifically permitted pursuant to 42 CFR Part 2.

Definitions:

Covered Patient(s) means any individual who has applied for or been given Diagnosis, Treatment, or referral for Treatment for a Substance Use Disorder at a Covered Program. The term Covered Patient includes any individual who, after arrest on a criminal charge, is identified as an individual with a Substance Use Disorder in order to determine that individual's eligibility to participate in a Covered Program. This definition includes both current and former patients. The special restrictions of this Policy apply to the use and Disclosure of information identifying an individual as a Covered Patient.

Covered Program means and includes: (a) an individual or entity (other than a general medical facility) who holds itself out as providing, and provides, Substance Use Disorder Diagnosis, Treatment, or referral for Treatment; or (b) an identified unit within a general medical facility that holds itself out as providing, and provides, Substance Use Disorder Diagnosis, Treatment, or referral for Treatment; or (c) medical personnel or other staff in a general medical facility whose primary function is the provision of Substance Use Disorder Diagnosis, Treatment, or referral for Treatment and who are identified as such providers. Covered Programs include, but are not limited to, those Treatment or rehabilitation programs, employee assistance programs, programs within general hospitals, and private practitioners who hold themselves out as providing, and provide Substance Use Disorder Diagnosis, Treatment, or referral for Treatment who are treated as receiving direct or indirect federal assistance through Medicare participation, tax-exemption or other criteria as set forth in 42 CFR § 2.12.

Diagnosis means any reference to an individual's Substance Use Disorder or to a condition which is identified as having been caused by that Substance Use Disorder which is made for the purpose of Treatment or referral for Treatment.

Disclose or Disclosure means to communicate any information identifying a patient as being or having been diagnosed with a Substance Use Disorder, having or having had a Substance Use Disorder, or being or having been referred for Treatment of a Substance Use Disorder either directly, by reference to publicly available information, or through verification of such identification by another person.

Treatment means the care of a patient suffering from a Substance Use Disorder, a condition which is identified as having been caused by the Substance Use Disorder, or both, in order to reduce or eliminate the adverse effects upon the patient.

Withdrawal Management means the use of pharmacotherapies to treat or attenuate the problematic signs and symptoms arising when heavy and/or prolonged substance use is reduced or discontinued.

Maintenance Treatment means long-term pharmacotherapy for individuals with Substance Use Disorders that reduces the pathological pursuit of reward and/or relief and supports remission of Substance Use Disorder-related symptoms.

Patient Identifying Information means the name, address, social security number, fingerprints, photograph, or similar information by which the identity of a Covered Patient can be determined with reasonable accuracy either directly or by reference to other information. The term does not include a number assigned to a Covered Patient by a Covered Program, for internal use only by the Covered Program, if that number does not consist of or contain numbers (such as a social security, or driver's license number) that could be used to identify a Covered Patient with reasonable accuracy from sources external to the Covered Program.

Procedure:

- 1. Communications Within a Program or Between a Program and An Entity Having Direct Administrative Control Over That Program.** Covered Programs may Disclose Covered Information between or among personnel having a need for the information in connection with their duties that arise out of the Diagnosis, Treatment, or referral for Treatment of Substance Use Disorders, if communications are (a) within the Treatment program, or (b) between a Covered Program and an entity that has direct administrative management of the Covered Program.
- 2. Responding to Requests.** In any case where Company Affiliates or their respective departments receive a request for Disclosure of Covered Information but where this Policy does not allow Disclosure, any Disclosure must be made in a way that will not affirmatively reveal that an identified individual has been, or is being, diagnosed or treated for a Substance Use Disorder. An inquiring party may be referred to 42 CFR Part 2 and advised that the regulations restrict the Disclosure of Substance Use Disorder patient records, but may not be told affirmatively that the regulations restrict the Disclosure of the records of an identified
- 3. Crime on Premises/Against Personnel.** In the event of a crime or a threat to commit a crime on the premises of a Company Affiliate or its respective departments, or against personnel of the Covered Program, Disclosure of Covered Information to law enforcement is permitted to the extent the information: (a) is directly related to a patient's commission of a crime on the premises of the Covered Program or against personnel of the Covered Program or to a threat to commit such a crime; and (b) is 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. The Privacy Official shall be consulted prior to any Disclosure of information pursuant to this provision.
- 4. Child Abuse.** Covered Programs may report incidents of suspected child abuse and neglect as required by and in accordance with state law. To the extent that state law mandates that a Covered Program provide relevant Covered Information to state or local governmental authorities, Covered Information may be provided. However, the restrictions under 42 CFR Part 2 continue to apply to the original patient records maintained by the Covered Program including their Disclosure and use for civil or criminal proceedings which may arise out of the report of suspected child abuse and neglect. Accordingly, if, after a report is filed with relevant Covered Information, a subpoena for Covered Information is subsequently issued in connection with civil or criminal proceedings which arise from the report of suspected child abuse and neglect, the subpoena should be addressed in accordance with Section 15 of this Policy. The Privacy Official shall be consulted prior to any Disclosure of information pursuant to this provision. Questions regarding state law and the extent of Covered Information subject to Disclosure under state law relating to 2 suspected child abuse and neglect shall be referred to the Privacy Official, who may consult with the Facility's assigned Operations Counsel.

patient. Upon receipt of a request for Covered Information that is not permitted under this Policy, refer to Attachment A, Sample Notice of Confidentiality of Substance Use Disorder Patient Records, and either read or provide a copy of the Notice to the requestor.

5. **Medical Emergency.** Covered Programs may Disclose Covered Information to medical personnel to the extent necessary to meet a bona fide medical emergency in which the patient's prior informed consent cannot be obtained. Immediately following Disclosure, the Disclosure must be documented in writing in the patient's records, setting forth (a) the name of the medical personnel to whom Disclosure was made and their affiliation with any health care facility, (b) the name of the individual making the Disclosure, (c) the date and time of Disclosure, and (d) the nature of the emergency.
6. **Special Audit and Evaluation Activities/No Records Copied or Removed.** If Covered Information is neither downloaded, copied or removed from the premises of the Covered Program nor forwarded electronically to another electronic system or device, Covered Information may be Disclosed in the course of a review of records on the premises of a Covered Program to any Special A/E Personnel. Special A/E Personnel receiving the Covered Information under this provision must agree in writing not to Disclose any Covered Information to any third party, except as described in Section 14 below, and must agree to use the Covered Information only to carry out the audit or evaluation purpose or to investigate or prosecute criminal or other activities, as authorized by an appropriate court order. The Privacy Official shall be consulted prior to any Disclosure of information pursuant to this provision.
7. **Special Audit and Evaluation Activities/Copies or Records Removed.** Records containing Covered Information may be copied or removed from the premises of the Covered Program, or downloaded or forwarded to another electronic system or device from the Covered Program's electronic records by Special A/E Personnel (meeting the criteria of subsection (a) of the definition of Special A/E Personnel above) who agree in writing to:
 - (a) maintain and destroy the Patient Identifying Information a manner consistent with the policies and procedures established under 42 CFR §2.16, which policies and procedures must address: (i) paper records, including standards for: transferring and removing such records; destroying such records, including sanitizing the hard copy media associated with the paper printouts, to render the Patient Identifying Information non-retrievable; maintaining such records in a secure room, locked file cabinet, safe, or other similar container, or storage facility when not in use; using and accessing workstations, secure rooms, locked file cabinets, safes, or other similar containers, and storage facilities that use or store such information; and rendering Patient Identifying Information non-identifiable in a manner that creates a very low risk of re-identification (*e.g.*, removing direct identifiers); and (ii) electronic records, including standards for: creating, receiving, maintaining, and transmitting such records; destroying such records, including sanitizing the electronic media on which such records are stored, to render the Patient Identifying Information non-retrievable; using and accessing electronic records or other electronic media containing Patient Identifying Information; and rendering the Patient Identifying Information non-identifiable in a manner that creates a very low risk of re-identification (*e.g.*, removing direct identifiers).
 - (b) retain records in compliance with applicable federal, state and local retention laws;
 - (c) not Disclose any Covered Information to any third party except as described in Section 14 below; and
 - (d) use the Covered Information only to carry out the audit or evaluation purpose or to investigate or prosecute criminal or other activities, as authorized by an appropriate court order.

The Privacy Official shall be consulted prior to any Disclosure of information pursuant to this provision.

8. Medicare, Medicaid and CHIP Audits and Evaluations. Patient identifying information may be Disclosed to any individual or entity for the purpose of conducting a Medicare, Medicaid, or Children's Health Insurance Program (CHIP) audit or evaluation, including an audit or evaluation necessary to meet the requirements for a Centers for Medicare & Medicaid Services (CMS)-regulated accountable care organization (CMS-regulated ACO) or similar CMS-regulated organization (including a CMS- regulated Qualified Entity (QE)), if the individual or entity agrees in writing to comply with the following:

(a) Maintain and destroy the Patient Identifying Information in a manner consistent with the policies and procedures established by the recipient consistent with 42 CFR § 2.16;

(b) Retain records in compliance with applicable federal, state, and local record retention laws; and

(c) Except as provided under 42 CFR § 2.53(c), Disclose Patient Identifying Information only back to the Covered Program from which it was obtained, and use such Patient Identifying Information only to carry out an audit or evaluation purpose or to investigate or prosecute criminal or other activities, as authorized by a court order entered under 42 CFR § 2.66.

A Medicare, Medicaid, or CHIP audit or evaluation under this section includes a civil or administrative investigation of a Covered Program by any federal, state, or local government agency with oversight responsibilities for Medicare, Medicaid, or CHIP and includes administrative enforcement, against the Covered Program by the government agency, of any remedy authorized by law to be imposed as a result of the findings of the investigation.

If a Disclosure to an individual or entity is authorized under this section for a Medicare, Medicaid, or CHIP audit or evaluation, including a civil investigation or administrative remedy, then a quality improvement organization which obtains the information pursuant to Section 12 or 13 of this Policy may Disclose the information to that individual or entity but only for the purpose of conducting a Medicare, Medicaid, or CHIP audit or evaluation.

9. Court Orders. Company Affiliates or their respective departments may Disclose Covered Information if authorized by an appropriate order of a court of competent jurisdiction granted after application showing good cause therefor. Information covered by this Policy may not be Disclosed based upon a subpoena alone. Where a subpoena is received that would otherwise require Disclosure identifying an individual as a Covered Patient, the recipient will, consistent with Company policies, provide a timely written response by referring the relevant party to 42 CFR Part 2, and providing any other records that may be lawfully provided without violation of 42 CFR Part 2. As noted above, a party requesting information pursuant to a subpoena may be referred to 42 CFR Part 2, but may not be told affirmatively that the regulations restrict the Disclosure of the records of an identified patient. The Privacy Official shall be consulted prior to any Disclosure of information pursuant to this provision.

10. Third Party Payers. For information covered by this Policy, written authorization must be obtained prior to release of information to third party payers. For any period for which the Program Director determines that a patient, other than a Minor or one who has been adjudicated incompetent, suffers from a medical condition that prevents knowing or effective action on his or her own behalf, the Program Director may exercise the right of the patient to consent to a Disclosure for the sole purpose of obtaining payment for services from a third party payer. At the time of admission or as soon thereafter as possible, each Covered Program should seek to obtain written consent/authorization for Disclosures for billing and payment purposes. Disclosures to agents of Third Party Payers (which may include agents engaged by Third Party Payers for audit purposes) may be permitted where Attachment B, Consent for Disclosure of Information for Treatment and Billing/Payment, has been executed, but the Third Party Payer should provide written

documentation of the agency relationship in advance of sharing of Covered Information. Refer to Attachment B, Consent for Disclosure of Information for Treatment and Billing/Payment.

11. **Minors.** Pursuant to 42 CFR Part 2, where a Minor acting alone has the legal capacity under state law to apply for and obtain Substance Use Disorder Treatment, any written authorization for Disclosure of Covered Information may be given only by the Minor patient. This restriction includes, but is not limited to, any Disclosure of Patient Identifying Information to the parent or guardian of a Minor patient for the purpose of obtaining financial reimbursement. Where state law requires consent of a parent, guardian, or other person for a Minor to obtain Substance Use Disorder Treatment, any written consent/authorization for Disclosure of Covered Information must be given by both the Minor and his or her parent, guardian, or other person authorized under state law to act in the Minor's behalf. Where state law requires parental consent to Treatment the fact of a Minor's application for Treatment may be communicated to the Minor's parent, guardian, or other person authorized under state law to act in the Minor's behalf only if: (a) the Minor has given written consent/authorization to the Disclosure or (b) the Minor lacks the capacity to make a rational choice regarding such consent as judged by the Program Director (after consultation with the Privacy Official).

Facts relevant to reducing a substantial threat to the life or physical wellbeing of the applicant or any other individual may be Disclosed to the parent, guardian, or other person authorized under state law to act in the Minor's behalf if the Program Director (after consultation with the Privacy Official) judges that:

- (i) a Minor lacks capacity because of extreme youth or mental or physical condition to make a rational decision on whether to consent to a Disclosure to his or her parent, guardian, or other person authorized under state law to act in the Minor's behalf, and
 - (ii) the Minor's situation poses a substantial threat to the life or physical wellbeing of the Minor or any other individual which may be reduced by communicating relevant facts to the Minor's parent, guardian, or other person authorized under state law to act in the Minor's behalf.
12. Questions regarding state law standards for consent to Treatment and the authority of individuals to act on behalf of a Minor under state law should be referred to the facility's assigned Operations Counsel.
 13. **Notice to Accompany Disclosure.** Each Disclosure made with the patient's written consent must be accompanied by the following written statement:

This information has been disclosed to you from records protected by federal confidentiality rules (42 CFR part 2). The federal rules prohibit you from making any further disclosure of information in this record that identifies a patient 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 unless further disclosure is expressly permitted by the written consent of the individual whose information is being disclosed or as otherwise permitted by 42 CFR part 2. A general authorization for the release of medical or other information is NOT sufficient for this purpose (see § 2.31). The federal rules restrict any use of the information to investigate or prosecute with regard to a crime any patient with a substance use disorder, except as provided at §§ 2.12(c)(5) and 2.65.

- 14. Consent/Authorization.** Except as set forth above, Disclosures of Covered Information require appropriate written consent/authorization. A written consent/authorization to a Disclosure under this Policy may be paper or electronic and must include:
- (a) The name of the patient.
 - (b) The specific name(s) or general designation(s) of the Covered Program(s), entity (ies), or individual(s) permitted to make the Disclosure.
 - (c) How much and what kind of information is to be Disclosed, including an explicit description of the Substance Use Disorder information that may be Disclosed.
 - (d) (i) The name(s) of the individual(s) to whom a Disclosure is to be made; or
(ii) If the recipient entity has a Treating Provider Relationship with the patient whose information is being Disclosed, such as a hospital, a health care clinic, or a private practice, the consent/authorization must include the name of that entity; or

(iii) If the recipient entity does not have a Treating Provider Relationship with the patient whose information is being Disclosed and is a Third-party Payer, the consent/authorization must include the name of the entity; or

(iv) If the recipient entity does not have a Treating Provider Relationship with the patient whose information is being Disclosed and is not a Third-party Payer, such as an entity that facilitates the exchange of health information or a research institution, then the consent/authorization must include the names of the entities, and either (a) the names of individual participants; or (b) the names of entity participants that have a Treating Provider Relationship with the patient whose information is being Disclosed; or (c) a general designation of an individual or entity participants or class of participants that must be limited to a participants who have a Treating Provider Relationship with the patient whose information is being Disclosed. When using a general designation, a statement must be included on the consent form that the patient (or other individual authorized to sign in lieu of the patient), confirms their understanding that, upon their request and consistent with this part, they must be provided a list of entities to which their information has been Disclosed pursuant to the general designation. *See Section 25 below.*
 - (e) The purpose of the Disclosure (and the Disclosure must be limited to that information which is necessary to carry out the stated purpose).
 - (f) A statement that the consent/authorization is subject to revocation at any time except to the extent that the Covered Program or other lawful holder of Patient Identifying Information that is permitted to make the Disclosure has already acted in reliance on it. Acting in reliance includes the provision of Treatment services in reliance on a valid consent to Disclose information to a third- party payer.
 - (g) The date, event, or condition upon which the consent/authorization will expire if not revoked before. This date, event, or condition must ensure that the consent/authorization will last no longer than reasonably necessary to serve the purpose for which it is provided.
 - (h) The signature of the patient and, when required for a patient who is a Minor, the signature of an individual authorized to sign the consent/authorization as described above; or, when required for a patient who is incompetent or deceased, the signature of an individual authorized to sign for the

incompetent or deceased patient as described above. Electronic signatures are permitted to the extent that they are not prohibited by any applicable law.

- (i) The date on which the consent is signed.
- (j) For uses and Disclosures that require authorization under HIPAA, the consent/authorization must also meet all requirements for a valid authorization under the Company's HIPAA policies and procedures.

15. Consent for Disclosures to Healthcare Providers for Treatment. While the regulations under 42 CFR Part 2 include provisions addressing uses of Covered Information within a Covered Program and Disclosures in medical emergencies, subject to the terms and requirements above, many Disclosures of Covered Information to healthcare providers outside of the Covered Program, even for Treatment purposes, will require appropriate consent. At the time of admission or as soon thereafter as possible, each Covered Program should seek to obtain written consent/authorization for Disclosures for Treatment purposes. Refer to Attachment B, Consent for Use and Disclosure of Information for Treatment and Billing/Payment.

16. Family Members/Friends/Others Involved in Patient's Care. The regulations under 42 CFR Part 2 **do not** include any exceptions specifically for Disclosures of Covered Information to family members, close friends or others identified by the Covered Patient. Accordingly, unless otherwise expressly permitted by this Policy, Covered Information should not be Disclosed to family members, friends or others who might otherwise be considered involved in a patient's care. For example, even if a Covered Patient has provided a password or has provided verbal consent to a Disclosure to a spouse, except as otherwise expressly permitted by this Policy (*e.g.*, provisions relating to incapacitated adult patients, deceased patients, etc.), Covered Information should not be Disclosed to the spouse unless an appropriate consent/authorization meeting the standards set forth below has been executed naming the spouse. As family members, friends and/or others identified by the Covered Patient may be involved in therapy sessions and planning for post-discharge care, among other activities, at the time of admission or as soon thereafter as possible, each Covered Program should seek to obtain written consent/authorization for Disclosures to appropriate family members, friends and/or others identified by the Covered Patient who may need Covered Information in connection with care. Refer to Attachment C, Consent For Disclosure to Family/Friends.

17. List of Disclosures. Upon request, Covered Patients who have consented to Disclose their Patient Identifying Information using a general designation (as described under Section 22 of this Policy) must be provided a list of entities to which their information has been Disclosed pursuant to the general designation. Patient requests for lists of General Designation Disclosures under this Section 25: (a) must be made in writing; and (b) are limited to General Designation Disclosures made within the past two years prior to the request. If a request for a list of General Designation Disclosures is received, Covered Programs will: (i) respond in 30 or fewer days of receipt of the written request; and (ii) for each General Designation Disclosure made within the two years prior to the request, provide the name(s) of the entity(ies) to which the General Designation Disclosure was made, the date of the General Designation Disclosure, and a brief description of the Patient Identifying Information Disclosed.

Requests for lists of General Designation Disclosures pursuant to this Section 25 should be forwarded promptly to the Privacy Official. The Privacy Official will coordinate with the Health Information Management department to obtain and provide the list of General Designation Disclosures. Only General Designation Disclosures must be identified on the list under this Section 25 and other Disclosures need not be listed. The rights of a Covered Patient under this Section 25 are in addition to any rights to an accounting of Disclosures under HIPAA.

18. Security Precautions. Appropriate security will be maintained with respect to Covered Information, consistent with the security standards, policies and procedures of the Company. Security measures will reasonably protect against unauthorized uses and Disclosures of Patient Identifying Information and protect against reasonably anticipated threats or hazards to the security of Patient Identifying Information. These formal policies and procedures address:

- (a) Paper records, including:
 - (i) Transferring and removing such records;
 - (ii) Destroying such records, including sanitizing the hard copy media associated with the paper printouts, to render the Patient Identifying Information non-retrievable;
 - (iii) Maintaining such records in a secure room, locked file cabinet, safe, or other similar container, or storage facility when not in use;
 - (iv) Using and accessing workstations, secure rooms, locked file cabinets, safes, or other similar containers, and storage facilities that use or store such information; and
 - (v) Rendering Patient Identifying Information non-identifiable in a manner that creates a very low risk of re-identification (e.g., removing direct identifiers).
- (b) Electronic records, including:
 - (i) Creating, receiving, maintaining, and transmitting such records;
 - (ii) Destroying such records, including sanitizing the electronic media on which such records are stored, to render the Patient Identifying Information non-retrievable;
 - (iii) Using and accessing electronic records or other electronic media containing Patient Identifying Information; and
 - (iv) Rendering the Patient Identifying Information non-identifiable in a manner that creates a very low risk of re-identification (e.g., removing direct identifiers).

19. Disposition of Records by Discontinued Covered Programs. If a Covered Program discontinues operations, or if taken over or acquired by another Covered Program, records containing Patient Identifying Information will be managed in accordance with 42 CFR § 2.19. The Privacy Official shall be consulted prior to any disposition of record by a discontinued Covered Program.

APPROVED BY:	
Medical Director Signature, Eva Sensmeier PA-C <i>Eva Sensmeier PA-C</i>	3/26/18
Executive Health Director Signature, Rhoda Jensen <i>Rhoda Jensen</i>	3/26/18
Quality Improvement Chairperson Signature <i>Ann Snyder, QI Dir.</i>	Mar 23, 2018