

Focus:PHI

The Center of Excellence for Protected Health Information



Privacy in Data Sharing



**LEGAL
ACTION
CENTER**

Presentation to the NASHP SUD Policy Institute

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Introduction

WELCOME TO THE COE-PHI



Presenters

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Learning Objectives

Describe how to access resources, training, and technical assistance provided by the CoE-PHI

Identify basic requirements of 42 CFR Part 2 when providing SUD services to patients

Examine how 42 CFR Part 2 applies as it relates to sharing information about the SUD treatment services provided to patients



Center of Excellence for Protected Health Information

Funded by SAMHSA, the CoE-PHI develops and disseminates resources, training, and TA for states, healthcare providers, school administrators and individuals and families to improve understanding and application of federal privacy laws and regulations, including FERPA, HIPAA, and 42 CFR Part 2, when providing and receiving treatment for SUD and mental illness.

Resources, training, technical assistance, and any other information provided through the CoE-PHI do not constitute legal advice.



CoE-PHI Team: LAC & CAI



CAI

Cicatelli Associates Inc. (CAI)

Nationally recognized leadership and workforce development capacity building organization

Barbara Cicatelli, President and Founder



Legal Action Center (LAC)

Nationally recognized non-profit law office with long history and extensive knowledge in interpreting federal privacy laws and regulations

Paul Samuels, Director and President



What we do....

-  **Expert Training**
-  **Individualized Technical Assistance**
-  **Resources and tools**
 - eLearning
 - Implementation Guides
 - Fact Sheets



How does federal law protect patient records?

HEALTH PRIVACY OVERVIEW



Overview: Main Points

- Health records may contain sensitive information
 - Especially true for SUD treatment information
(due to legal consequences and stigma)
 - **Privacy is key to recovery!**
- Federal law provides:
 - Privacy protections for general health information (HIPAA)
 - Heightened privacy for certain SUD treatment information (42 CFR Part 2)



HIPAA

Applies to covered entities (most healthcare providers, health plans, healthcare clearinghouses) and BAs

- Protects privacy and security of general health information, gives patients certain rights

Purpose: to protect health data integrity, confidentiality, and accessibility

Permits disclosures without patient consent for treatment, payment, and healthcare operations

42 CFR Part 2

Applies to Part 2 programs (federally-assisted SUD “programs”) and most recipients of Part 2 records

- Protects privacy and security of records identifying individual as seeking/receiving SUD treatment

Purpose: to encourage people to enter and remain in SUD treatment by guaranteeing confidentiality

Requires patient consent for treatment, payment, and healthcare operations, with limited exceptions

Potential Changes to Part 2

2019 NPRMs:

- Do not propose any changes to the basic framework of Part 2
- Propose changes to better support coordinated care among SUD treatment providers while maintaining privacy safeguards for patients

Until final rules issued, these proposals are not in effect!

- We will flag areas subject to change throughout the presentation



What Information is Protected?

Both HIPAA and Part 2 protect privacy of:

- ✓ Current patients
- ✓ Former patients
- ✓ Individuals who have applied for services
 - *HIPAA also protects privacy of patients **referred for services**; Part 2 does not*
- ✓ Deceased patients



How is Information Protected?

Both HIPAA and Part 2:

- Establish privacy and security requirements for using, sharing, and storing protected records
- Permit certain disclosures without patient consent/authorization

**HIPAA permits more disclosures without consent than Part 2*



FAQ: If both laws apply, which one should be followed?

ANSWER:

Follow the law that is **most protective** of patient privacy.

- In most cases, Part 2 is more protective than HIPAA, so focus today will be on Part 2's applicability to SUD services in FQHCs



PART 2 BASICS



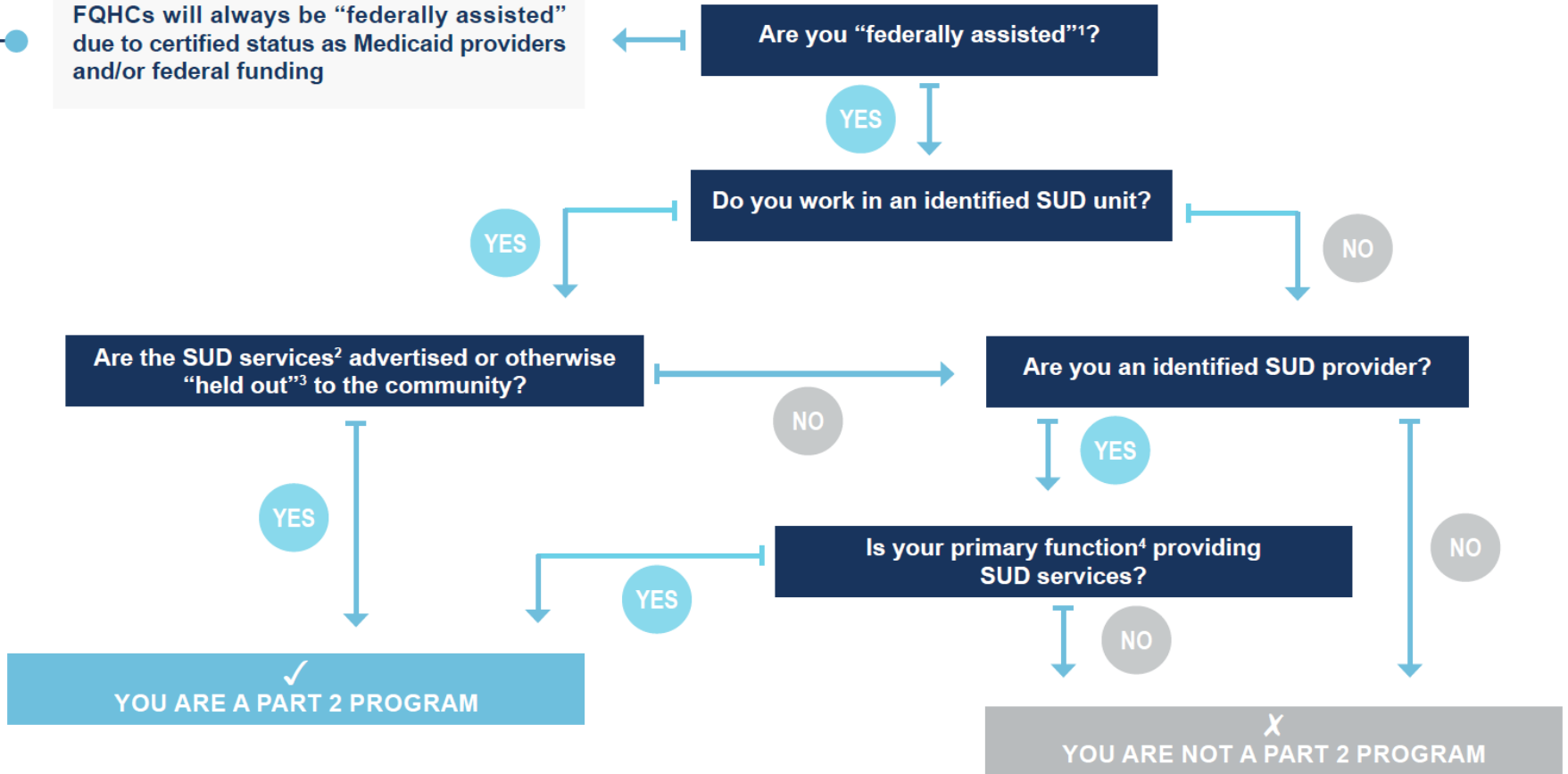
When does Part 2 apply?

- **General principle:** if provider is in a Part 2 program, then Part 2 applies to the SUD records
 - Determining whether a Part 2 program exists can be tricky, **especially in integrated settings!**
 - In an FQHC/CHC setting, refer to our **decision tree** (next slide)
- **Note:** Part 2 also applies to people who receive records from Part 2 programs

I Provide SUD Services in an FQHC: Does Part 2 Apply to Me?

Use the flowchart below to determine if Part 2 applies to you

NOTE:
FQHCs will always be “federally assisted” due to certified status as Medicaid providers and/or federal funding



For more information & resources, or to request technical assistance, please visit coephi.org.

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Communicating internally, externally, with HIEs, and PDMPs

SHARING PART 2 RECORDS



Internal Communications

- Part 2 program staff can share information *within the program*
 - No consent required
 - Disclosure must be related to SUD services



Internal Communications (2)

Part 2 programs within larger entities (e.g.; FQHCs) can share information for billing and administrative purposes

- Awaiting guidance from SAMHSA about whether this means Part 2 programs can share for *treatment* purposes with another provider in the FQHC who may be providing services related to SUD care



External Communications

- Part 2 *generally* requires written consent for disclosures outside the program
 - Unlike HIPAA, this includes most disclosures for treatment, payment, and healthcare operations
- Limited exceptions apply (see next slide)



Disclosures of Part 2 records *without patient consent*

De-identified
data

Internal
communications

Medical
emergency

Qualified service
organization

Audit/evaluation

Research

Mandated child
abuse/neglect
reporting

Reporting crime
on program
premises

Court order



Disclosures With Consent

- Consent forms must be *written* and meet all (updated) requirements in Part 2
 - You can use and adapt the sample consent forms on CoE-PHI website
- Disclosures must be accompanied by a Notice of Prohibition on Re-Disclosure



Working with Consent

Key practical considerations:

- Identify information-sharing needs *as early as possible*
- Implement consent as part of *workflow*
- Train appropriate staff *how* to fill out consent form (especially “to whom” section)
- Develop best practices for:
 - Making disclosures consistent with the terms of the consent
 - Obtaining new consent forms when needed



Identifying When You Need Consent

Part 2 programs need patient consent to share information with:

- Treatment providers in other healthcare systems
- Insurance companies
- Family and friends, social workers, advocates
- Health homes, ACOs, and MCOs
- Health information exchanges



Sharing with HIEs

Generally, patient consent required for a Part 2 program to share information with an HIE

- Consent form should identify the HIE and the participants in the HIE who are authorized to access Part 2 records
 - **Example 1: “to State HIE and the following participants: General Hospital and Local FQHC”**
 - **Example 2: “to State HIE and the following participants: all my past, current, and future treating providers”**
- If using Example 2, patients have right to request list of disclosures



Sharing with HIEs: List of Disclosures

If authorizing disclosure to a general designation of treating providers in an HIE...

- Consent must include a statement alerting patient of their right to receive list of disclosures
 - The HIE is responsible for providing the list – not the Part 2 program!
- HIE must be able to control disclosures, keep track of disclosures, and provide list in response to patient request



Sharing with HIEs: Contracts

- In some cases, Part 2 programs contract with HIEs to provide services to the program:
 - Holding and storing patient data
 - Receiving and reviewing requests for disclosures to third parties
- In this case, no consent needed
 - Part 2 program and HIE can communicate pursuant to a Qualified Service Organization Agreement
 - QSOA requires HIE to apply Part 2 privacy and security requirements to data, and prohibits re-disclosures of the data to anyone other than program



Prescription Drug Monitoring Programs (PDMPs)

Current SAMHSA guidance (2011):

- OTPs should check PDMPs before prescribing methadone or buprenorphine
- OTPs **should not** enter MOUD information in PDMPs
 - OTPs use patient consent to check State Central Registries (SCRs)
 - SCRs check to see if patient is receiving MOUD elsewhere and prevent multiple enrollments

★ *This is subject to change in 2020*



Activity: Where Do We Experience the Biggest Challenges?

BREAK-OUT GROUPS

Break-out Groups

Your worksheet summarizes areas we just covered

- Before you get started, please select someone to record highlights from your discussion on the worksheet and someone to report out.
- Work together to come to consensus on top 3 areas where you feel there are challenges to supporting implementation.
- Be prepared to share your top 3 with the larger group.



Group Report-out



Discussion

What would be helpful to you for addressing the areas where questions remain?



How we can help...

ACCESSING THE COE-PHI



Accessing the CoE-PHI

Request TA

coephi.org/technical-assistance

Resource Library

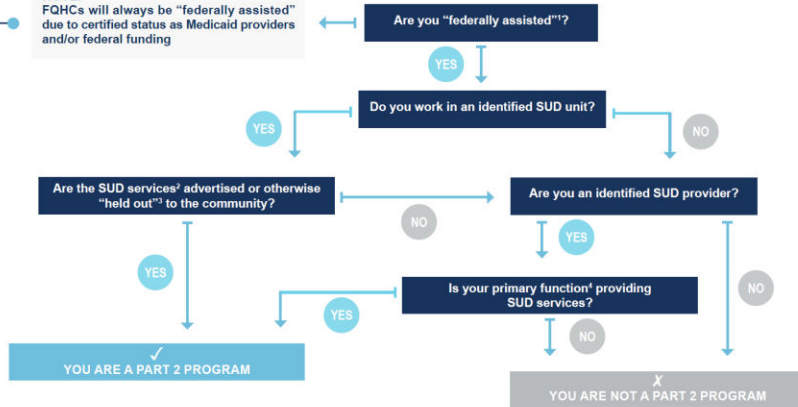
coephi.org/resource-center

The screenshot shows the Focus:PHI website interface. At the top, the Focus:PHI logo and tagline are displayed. Below the logo is a navigation menu with the following items: PROJECT OVERVIEW, WHO IS INVOLVED IN THE INITIATIVE?, CORE PROJECT STAFF, NATIONAL ADVISORY GROUP MEMBERS, HOW WILL WE KNOW WE ARE SUCCESSFUL?, REQUEST TA, RESOURCE CENTER, and CONTACT US. A prominent blue button labeled 'Join Our Mailing List' with a 'click here' link is also visible. The main content area features the 'REQUEST TA' form, which includes a text box for 'Name', a text box for 'Role/Job Title', a text box for 'Organization Name', a dropdown menu for 'Organization Type', a dropdown menu for 'Affiliation', a dropdown menu for 'State/Territory', a text box for 'Zip Code', a text box for 'Contact Phone Number', a text box for 'Email', and a large text area for 'Your Question'. At the bottom of the form, there are radio buttons for 'Is your question urgent?' with options 'No' and 'Yes'. A 'DISCLAIMER' section is located at the bottom left of the form area, stating that resources provided do not constitute legal advice.

I Provide SUD Services in an FQHC: Does Part 2 Apply to Me?

Use the flowchart below to determine if Part 2 applies to you; See the next page for key terms.

NOTE:
FQHCs will always be "federally assisted" due to certified status as Medicaid providers and/or federal funding



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Focus:PHI

The Center of Excellence for Protected Health Information



QUICK LINKS

- PROJECT OVERVIEW
- WHO IS INVOLVED IN THE INITIATIVE?
- CORE PROJECT STAFF
- NATIONAL ADVISORY GROUP MEMBERS
- HOW WILL WE KNOW WE ARE SUCCESSFUL?
- REQUEST TA
- RESOURCE CENTER
- CONTACT US

On Demand Webinar Available

Maintaining Patient Confidentiality When Providing Medication for Opioid Use Disorder Treatment in Community Health Centers

1.5 Continuing Education Credits

To access [sign-in](#) to our on demand webinar platform

Helpful Resources



Evaluation

We value your opinion - please take the time to complete our evaluation form!



THANK YOU!