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*These frequently asked questions (FAQs) are intended to provide general guidance regarding [42 C.F.R. Part 2](#) and other health information privacy laws. They are not intended to be legal advice and should not be relied upon as such. Organizations needing legal advice regarding these laws should consult with their attorneys.*

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- 1. Does a Community Service Board ("CSB") have to share information with a managed care organization ("MCO") care coordinator who is looking to provide care coordination for a member who is being treated for a SUD?**

No, assuming the CSB is subject to 42 C.F.R. Part 2 ("Part 2"), which generally means they receive financial assistance from a federal agency (e.g., Medicaid/Medicare) and hold themselves out as a SUD treatment provider (they advertise their SUD services or have a specialty SUD license). If the CSB is subject to Part 2, then they would need to obtain patient consent before sharing Part 2 information with an MCO.

- 2. If an organization provides SUD treatment services as well as other services, can that organization share information that does not identify that client as participating in SUD services? Does a diagnosis by itself count? If a client is only receiving mental health services but has a diagnosis that identifies them as having a SUD issue, can that information be shared?**

It depends on whether the organization is subject to Part 2. If the organization is not subject to Part 2, then the organization can share SUD information for treatment or care coordination purposes in compliance with HIPAA and Virginia law, even if the patient has not consented to such a disclosure.

If the organization is subject to Part 2 and the patient has not consented to disclosure, then generally the organization cannot share the patient's SUD diagnosis except in rare circumstances, for example, if the diagnosis is needed to provide treatment in a medical emergency. The organization, however, could disclose information that does not relate to a SUD diagnosis or SUD care so long as the information could not be used to identify the person as having a SUD through reference to publicly available information (e.g., the provider's website). For example, if the information solely indicated the person had bipolar disorder and received psychotherapy, the information could be shared since it does not relate to a SUD diagnosis or SUD care to the extent allowed under HIPAA and Virginia law.

- 3. Is an MCO entitled to receive drug test results if it needs those results to authorize inpatient SUD treatment?**

It depends on whether the source of the drug tests is subject to Part 2. Many laboratories are not subject to Part 2. If a laboratory is not subject to Part 2, then under HIPAA and Virginia law it may

disclose a test result to an MCO in order for the MCO to authorize a service, even if the test result indicates that an enrollee has a SUD.

However, if the drug test result is obtained by a provider that is subject to Part 2, then that provider typically will need the patient's consent in order to disclose the result to the MCO.

**4. If a parent/guardian is financially responsible for the minor's treatment, can Part 2 records be released to the parent?**

Generally, the minor's consent would be needed to disclose the record to the parent/guardian, if the record would identify the minor as having a SUD or having received a SUD service. This would be the case even if the parent is legally responsible for covering some of the cost, for example, in the instance where a copayment is owed in relation to the service.

No consent would be needed if the bill does not reveal that the minor received a SUD service or had a SUD diagnosis, or would otherwise lead the parent/guardian to conclude that the minor has a SUD. For example, if the bill just referred to the minor receiving "psychotherapy," no SUD diagnosis is included in the bill, and there was nothing in the name of the provider that appears on the bill that would suggest to the parent/guardian that the service related to SUD care, then the bill could be provided to the parent/guardian.

**5. When are disclosures of Part 2 information permitted to Child Protective Services (CPS) and Adult Protective Services (APS)?**

If the patient has not consented to disclose their Part 2 information to CPS or APS, then Part 2 information may only be disclosed to CPS if the information relates to suspected child abuse or neglect and the disclosing party follows Virginia law in the manner by which they disclose the information. However, there is no equivalent Part 2 exception for disclosures regarding elder abuse, so the holder of Part 2 information may need a court order prior to disclosing Part 2 information to APS.

Further, the child abuse exception only permits disclosure to authorities like CPS that investigate child abuse; the exception does not allow disclosure for use in civil or criminal proceedings, which also may require a court order.

**6. Does a Part 2 program need the patient's consent to bill for services?**

Yes, if the bill would indicate that the patient received SUD services or had a SUD diagnosis. There is no exception in the Part 2 regulations that permits disclosures to health plans for payment purposes.

**7. Does an Assignment of Benefits form signed by a patient which authorizes the Part 2 provider to discuss all SUD treatments with an MCO suffice as "consent" for purposes of Part 2?**

Yes, if the Assignment of Benefits contains all elements of a Part 2 compliant consent, which are listed at [42 C.F.R. 2.31](#). For example, the form would need to have an expiration date or event, and it would need to state it is subject to revocation at any time. If the Assignment of Benefits form included all of the elements of a Part 2 authorization, then it could be used as a basis to disclose information to the MCO.

**8. Are verbal releases accepted during COVID-19 restrictions that covers Part 2?**

No. The Substance Abuse and Mental Health Services Administration (SAMHSA) has not waived any Part 2 regulations in response to the COVID-19 pandemic. Therefore, if patient consent is required under Part 2, that consent still must be in written form. Consent, however, can be obtained in electronic form. For example, a patient could email a signed consent form or electronically sign a document on their computer or smartphone.

**9. If multiple providers are listed on one release, how do you handle it if the patient wants to revoke one provider on that release form?**

The patient could sign a new release form that omits the name of the provider the patient does not want receiving the information. In this scenario, the provider who is subject to the revocation should be notified that the consent form no longer applies to them (if such provider is not already aware of the revocation).