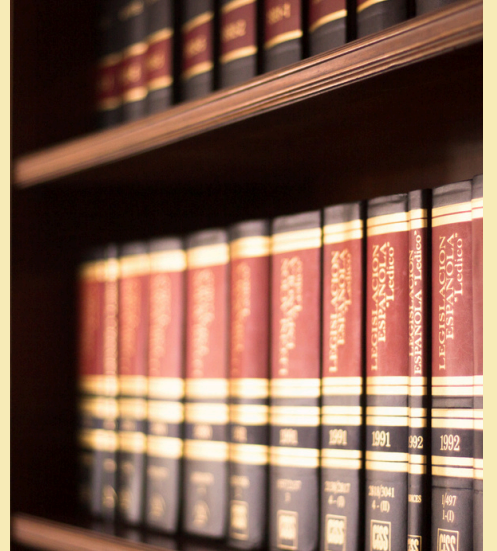


# RECOVERY

*The official newsletter of the RCORP Rural Center of Excellence on SUD Recovery at the Fletcher Group*



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## CONFIDENTIALITY AND THE LAW

*by Founder and Chief Medical Officer Dr. Ernie Fletcher*

The right to privacy is essential to human dignity, safety, and self-determination. It includes the ability to decide for one's self when, how, and for what purpose personal information can be shared.

Confidentiality is especially important in sober living homes where trust and peace of mind play a crucial role in recovery.

Healthcare providers and law enforcement, however, have an equally important need for the information they require to ensure public safety. The legal complexities resulting from that conflict can create extraordinary challenges for recovery home operators, particularly in an emergency.

Though in no way intended as legal advice, the information and downloads in this newsletter are designed to help you meet that challenge and will be especially useful in rural areas where direct access to such information may be difficult, if not impossible, to come by.

# FIRST STEPS TO LEGAL COMPLIANCE

The first step in protecting confidentiality is a public pledge to do so (often referred to as a Notice of Privacy Practices\*) and the day-one signing by new residents of a detailed release form authorizing what information and in what circumstances their private information may be shared. (A sample HIPAA-compliant release form can be downloaded using the link below.)

Other steps to ensure that you're fully prepared and transparent include:

- Adopting clear and fully documented policies and procedures that identify protected information

- Controlling physical and electronic access to records that contain Personal Health Information (often referred to with the acronym "PHI")
- Training staff, including volunteers, to understand your privacy policies and procedures with signed documents attesting to the training
- Immediately reporting and correcting any accidental disclosures (called "breaches")
- Conducting and documenting annual reviews of your policies and procedures
- Designating a staff member to serve as a "Security Officer" to ensure facility-wide compliance with your policies and procedures

These simple steps, which are tantamount to a best practice checklist, can help prevent the risk of a data breach, thereby preventing sensitive information from falling into the wrong hands and endangering the residents you serve.

*Make sure  
release forms  
are never lost  
or misplaced*



## HIPAA Release Form

Please complete all sections of this HIPAA release form. If any sections are left blank, this form will be invalid and it will not be possible for your health information to be shared as requested.

### Section I

I, \_\_\_\_\_, give my permission for \_\_\_\_\_ to share the information listed in Section II of this document with the person(s) or organization(s) I have specified in Section IV of this document.

### Section II – Health Information

I would like to give the above healthcare organization permission to:

Tick as appropriate

Disclose my complete health record including, but not limited to, diagnoses, lab test results, treatment, and billing records for all conditions.

Or

Disclose my complete health record except for the following information

- Mental health records
- Communicable diseases including, but not limited to, HIV and AIDS
- Alcohol/drug abuse treatment records
- Genetic information
- Other (Specify)

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Form of Disclosure:

Electronic copy or access via a web-based portal

Hard copy

### Section III – Reason for Disclosure

Please detail the reasons why information is being shared. If you are initiating the request for sharing information and do not wish to list the reasons for sharing, write 'at my request'.

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\*Several attractive and useful samples can be found by googling "HHS NPP models."



# KNOW THE LAW (THERE'S MORE THAN ONE)

The Health Insurance Portability and Accountability Act (HIPAA) protects the health information of patients receiving treatment for drug or alcohol abuse by prohibiting the sharing of patient information without their consent. It also gives patients the right to access and request amendments to their records.

A separate federal law called "42 CFR Part 2" limits the disclosure of identifiable information about Substance Use Disorder (SUD) patients by requiring that patient records be stored in a secure manner and that electronic media containing patient information be encrypted and sanitized when treatment ends.

## But Do They Apply to You?

Although it's often assumed that any organization dealing with addiction and recovery is subject to HIPAA, that's not actually the case. Most recovery homes are not considered "covered entities" and therefore are not subject to HIPAA.

For the record, a person, business, or agency is a "covered entity" only if they: 1) Furnish, bill or receive payment for healthcare in the normal course of business and/or 2) Send "covered transactions" electronically.

That means that if your sober living home is only billing for room and board—things that are not usually classified as "healthcare"—then your recovery home is likely not subject to HIPAA. HIPAA may come into play, however, if your home coordinates care with another healthcare provider or bills public or private health insurance providers for services.

## Use HIPAA Anyway?

Even if HIPAA doesn't apply, familiarity with its basic principles can be extremely helpful in establishing your own policies and procedures.

To that end, a more comprehensive understanding of HIPAA and its history can be gained from the 31-slide pdf accessible on this page, titled "HIPAA and 42 CFR Part 2: What Does It Have to Do with You?"

In PowerPoint style, it uses concise and easy-to-understand language to answer many of the questions you may have regarding key concepts; administrative, physical, and technical obligations; and the relationship between HIPAA, state laws, and 42 CFR Part 2.



### HIPAA and 42 CFR Part 2: Degrees of Confidentiality

HIPAA is usually the minimum for confidentiality, and 42 CFR Part 2 is usually the maximum.

Least Strict                      Most Strict

# YOUR OBLIGATIONS—AND HOW TO MEET THEM

The for-profit *HIPAA Journal* claims to provide "the most comprehensive coverage of HIPAA news anywhere online." In addition to a lengthy overview of all things PHI, it offers a free HIPAA Compliance Checklist, a free HIPAA Compliance Assessment, and up to 2.6 CEUs through paid-for training, all of which can quickly be spotted and accessed using the link below.

The HIPAA Journal claims that its multiple-choice online assessment takes just five minutes to deliver "a quick snapshot of where your organization stands." Your compliance score appears immediately with a detailed

report arriving within minutes by email. The report includes a brief "Gap Analysis" identifying specific areas where your organization may be falling short and recommendations to enhance compliance.

To protect your privacy, your name and organization don't appear on the report and the email address you provide to receive the report is not copied or stored.\*

Whether you take advantage of the freebies or not, the extensive information appearing on the site can benefit anyone seeking a more detailed and nuanced understanding of the what, why, and how of HIPAA compliance.

“  
*It is important to remember that PHI records are only covered by HIPAA when they are in the possession of a covered entity or business associate.*”

**CLICK HERE!** TO DOWNLOAD

**THE HIPAA JOURNAL**  
READER OFFER

**Take Our FREE  
HIPAA Compliance  
Assessment**

Get Your Organization's HIPAA  
Compliance Score In 5-Minutes

Receive a detailed, confidential  
report with actionable insights

Work Email \*

**Start Assessment**

By clicking "start assessment" you will be taken to the start page to learn more.

Your Privacy Respected  
HIPAA Journal Privacy Policy

\* If you only take the free assessment, the HIPAA Journal will likely send you a re-engagement email. If unwanted, simply click "unsubscribe."

# ATTORNEY EXPERTISE

In the Fletcher Group's November 7 webinar, healthcare attorneys Daphne Kackloudis and Jordan Burdick of the Brennan Manna and Diamond law firm in Columbus, Ohio, explained the obligation recovery home operators have to maintain the confidentiality of resident records. Their discussion covered federal and state laws regarding SUD records and Protected Health Information (PHI) as well as what information should be disclosed when requested by residents, law enforcement, or a court of law. Other topics included HIPAA exceptions, how 42 CFR Part 2 differs from HIPAA, recent Part 2 changes, and where to look for local legal advice. (Their recommendation: Your state's NARR affiliate and the local chapter of the National Behavioral Health Association of Providers.)

Kackloudis and Burdick also spent considerable time discussing subpoenas. "Since your primary obligation is to reveal as little personal information as possible, take the time to analyze each request individually and don't be afraid to question it," said Burdick. "There's nothing wrong with calling and saying, 'Do you really need all this information?' Many times you can get the subpoena diminished or thrown out just by talking with them."

Kackloudis also stressed the importance of storing "therapy notes"—the private records therapists use to remember patient encounters—separately from "progress notes"—information about a patient's



**WATCH THE VIDEO**  
of our November 7 webinar with health-care attorneys Daphne Kackloudis and Jordan Burdick.

[CLICK HERE](#)

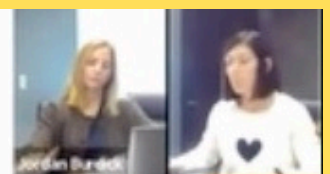


treatment and response. A HIPAA exception gives "therapy notes" additional protections from disclosure, but only if they're stored in a separate location from the medical records where "progress notes" are usually kept. "Many providers don't make the distinction," said Kackloudis, "and forfeit the additional protection by storing everything together."



## ANSWERING SUBPOENAS

- Do not ignore the subpoena.
- Immediately upon receipt of a subpoena, inform all necessary employees of the need to retain the records requested.
- Answer the subpoena promptly (most require a response within 14 days).
- Remember, a subpoena does not relieve you of your obligations to protect confidential information.
- Contact the client/patient, let them know that you have received a subpoena, and ask if they are willing to provide written authorization for the information to be released. If not, seek a subpoena + protective order or court order (required under Part 2)





# HIPAA FREQUENTLY ASKED QUESTIONS

Rather than having a single, universal application across all scenarios, the interpretation of a HIPAA regulation often depends on the specific details of each case. Fortunately, the FAQ found at the U.S. Department of Health and Human Resources website answers just about every question you might have.

Over 200 frequently asked questions are sorted by category in the left sidebar. Answers can also be searched using questions or keywords. A short answer pops up when you click on a question, but if you want to drill down for greater detail to address a more specific situation, simply click "Read the Full Answer."



**Note:** To access the FAQ for a recovery residence, be sure to click on the blue box in the Top Menu titled, "HIPAA for Professionals."



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## HIPAA FAQs for Professionals

Search frequently asked questions about HIPAA by category, number, or keyword.

Please note that some older FAQs have been sent to archive. This content is searchable using the search term 'HIPAA FAQs' at <https://archive-it.org/collections/4657>.

### FAQs by Category

Select a Category

**Search HIPAA FAQs by questions or keywords:**

# 42 CFR PART 2 FAQ

While HIPAA applies to all medically-related information, 42 CFR Part 2 applies to “federally assisted” programs that: 1) Are authorized, licensed, certified, or registered by the federal government; or 2) Receive federal funds in any form, even if the funds do not directly pay for the alcohol or drug abuse services; or 3) Are assisted by the IRS through a grant of tax exempt status or allowance of tax deductions for contributions; or 4) Is authorized to conduct business.

Under Part 2, such programs, including rehab centers, are prohibited from disclosing any individual information that identifies or indicates that the patient has dealt with addiction.

The goal is to prevent people in recovery from being discriminated against while mitigating the fear of prosecution that might deter people from entering treatment. The information it protects includes “the



identity, diagnosis, prognosis, or treatment of any patient which are maintained in connection with the performance of any program or activity relating to substance abuse education prevention, training, treatment, rehabilitation, or research.”



The screenshot shows the SAMHSA website interface. At the top, there is a navigation bar with links for Home, Site Map, and Contact Us, and a search bar. Below the navigation bar, there is a main header with the SAMHSA logo and the text 'Substance Abuse and Mental Health Services Administration'. The main content area is titled 'Substance Use Confidentiality Regulations' and includes a section for 'Applying the Substance Use Confidentiality Regulations' and a 'Frequently Asked Questions' section. The FAQ section lists five questions related to consent and disclosure of patient information.