

Q&A from DDAP's Confidentiality Webinar Series

- 1. Can a client choose to disclose 'future records' that are not yet present in the chart. For example, can a patient consent to 'release future progress notes to share with my PCP' for coordination of care purposes?**
 - Yes, a client can consent to the release of records and progress notes that will be created in the future by identifying them in the consent form.
 - A release form must state the specific information to be disclosed.
 - A release form must state the date, event, or condition upon which the consent will expire.
 - If the specific information to be released states progress notes, then all progress notes may be released until the release form expires.

- 2. Can a release of information be valid for more than 1 year?**
 - Yes, state and federal regulations require a date, event or condition upon which the consent will expire.

- 3. Can you list multiple like entities on one consent...ex: all residential treatment programs contracted by an SCA in order to facilitate expedited bed placement and referral?**
 - Yes, one consent form can identify multiple recipients. Newly published federal regulations confirm that a consent form must include “the name(s) of the person(s), or class of persons, to which a disclosure is to be made.” 42 CFR 2.31(a)(2). See 89 FR 12472, 12626 (Feb. 16, 2024), 2024-02544.pdf (govinfo.gov). DDAP anticipates providing more detailed guidance on this topic in the near future.

- 4. What information are we permitted to release to medical providers, such as: PCP's, Specialists, Hospital, Inpatient, etc.? Are we permitted to send the same information when requested to any medical providers?**
 - You can release any information identified by the client in a valid consent form.
 - It is the treatment facility's responsibility to ensure any information released to the medical provider(s) is limited to what is necessary to carry out the purpose for releasing the information.

- 5. What information are we permitted to release to Mental Health providers?**
 - You can release information identified by the client in a valid consent form.
 - It is the treatment facility's responsibility to ensure any information released to the mental health provider is limited to what is necessary to carry out the purpose for releasing the information.

- 6. If a client discharges, relocates 5 hours away, and then calls requesting a copy of their records be sent to them whether via mail, fax, etc., how do we know it's the client calling and not someone claiming to be the client?**
- State and federal regulations allow clients to access their treatment records.
 - It is the treatment facility's responsibility to develop policies and procedures to address how they will verify the identity of a discharged client.
 - DOB, SSN, Phone number, address, etc.
- 7. If a current client enters Inpatient Detox/Rehab without notice and the facility contacts us requesting information, does a release signed by the client and witnessed by a staff member at that facility cover us?**
- Yes, with a valid informed consent, it does not matter where the consent to release is generated, as long as it is appropriately completed.
 - A facility should only release information to another facility if they have a valid consent to release information form on file.
 - A facility may not confirm an individual has received treatment until they have a valid consent form signed by the client.
 - A facility is able to accept a consent to release information from another facility as long as it is completed appropriately.
- 8. In the Record Transfer (Section C), what specific forms would fall into the "Treatment/Discharge" forms category? Can you please provide examples? Case notes, Tx plans, Evals, etc.**
- "Treatment/Discharge Forms" is vague and not specific.
 - The client information to be released must be specific and stated on the release form.
 - Case notes, treatment plans, evaluations, etc., can be released if they are listed on the release form, and are appropriate to the purpose.
 - 709.28(c)(2) - Specific Information Disclosed
 - 42 CFR 2.31(a)(3) - 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.
 - DC summary aftercare plan.
- 9. Are there any circumstances in which a blank release should be sent, filled out elsewhere by the client and returned to us prior to us releasing information?**
- A blank consent to release form should never be sent directly to a client to complete.

- Informed Consent - Prior to the client signing a release, the facility should be discussing the release form with the client, including:
 - Who is receiving the information
 - The specific information to be disclosed
 - The purpose for the releasing the information
 - Expiration of the consent
- A blank consent to release can be sent to another entity, completed and reviewed with the client in its entirety, signed and dated by the client, and returned.

10. Can we review the 11 criteria which a release of information must contain?

- 42 CFR Part 2, [§2.32](#) Consent requirements include the following:
 - (1) The name of the patient.
 - (2) The specific name(s) or general designation(s) of the part 2 program(s), entity(ies), or individual(s) permitted to make the disclosure.
 - (3) 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.
 - (4)(i) General requirement for designating recipients. The name(s) of the individual(s) or the name(s) of the entity(-ies) to which a disclosure is to be made.
 - (4)(ii) ***Special instructions for entities that facilitate the exchange of health information and research institutions.*** Notwithstanding [paragraph \(a\)\(4\)\(i\)](#) of this section, if the recipient entity facilitates the exchange of health information or is a research institution, a written consent must include the name(s) of the entity(-ies) and
 - (A) The name(s) of individual or entity participant(s); or
 - (B) A general designation of an individual or entity participant(s) or class of participants that must be limited to a participant(s) who has 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 [§ 2.13\(d\)](#)).
 - (5) The purpose of the disclosure. In accordance with [§ 2.13\(a\)](#), the disclosure must be limited to that information which is necessary to carry out the stated purpose.
 - (6) A statement that the consent is subject to revocation at any time except to the extent that the part 2 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.

- (7) The date, event, or condition upon which the consent will expire if not revoked before. This date, event, or condition must ensure that the consent will last no longer than reasonably necessary to serve the purpose for which it is provided.
- (8) The signature of the patient and, when required for a patient who is a minor, the signature of an individual authorized to give consent under [§ 2.14](#); or, when required for a patient who is incompetent or deceased, the signature of an individual authorized to sign under [§ 2.15](#). Electronic signatures are permitted to the extent that they are not prohibited by any applicable law.
- (9) The date on which the consent is signed.

11. Since ACT 33 took effect, are we no longer required to have a release in place prior to sending information to Social Security?

- Act 33 does not remove the need for a signed consent to release form.
- A treatment facility still needs a signed consent prior to releasing any client information.

12. Can you provide some examples of different scenarios which could possibly take place and explain how to handle the ROI in those instances?

- A SUD treatment facility may contact a patient’s medical provider to request the last physical exam. The client must provide written consent to release information to the medical provider. Consent requirements include:
Name of SUD treatment facility: ABC Treatment
Name of the medical provider (recipient): Dr. Who
Specific information to be released: Presence in SUD treatment
Purpose for releasing the information: Coordination of care
Consent expiration: 1 year after discharge
Patient Name: John Doe
Dated signature of client
Revocation Statement
- A mental health provider may contact a SUD treatment facility to coordinate all behavioral health services. The client must provide written consent to release the information to the mental health provider. Consent requirements include:
Name of SUD treatment facility: ABC Treatment
Name of the mental health provider (recipient): XYZ Treatment
Specific information to be released: Treatment Summary, Treatment Progress
Purpose for releasing the information: Coordination of care
Consent expiration: 1 year after discharge
Patient Name: John Doe
Dated signature of client
Revocation Statement
- A SUD treatment facility will submit a claim to the client’s insurance company to bill for services and the insurance company may contact a SUD treatment facility to verify services

rendered. The client must provide written consent to release the information to the insurance company. Consent requirements include:

Name of SUD treatment facility: ABC Treatment

Name of the Insurance Company (recipient): Insurance Company A

Specific information to be released: Diagnosis; Treatment Summary/Progress, services rendered, dates of service.

Purpose for releasing the information: Prior Authorization; Reimbursement

Consent expiration: 1 year after discharge

Patient Name: John Doe

Dated signature of client

Revocation Statement

- A client's mother calls the SUD treatment facility to see if the client has been attending treatment sessions. The client must provide written consent before the facility can release the information to the mother. Consent requirements include:

Name of SUD treatment facility: ABC Treatment

Name of mother (recipient): Betsy Ross

Specific information to be released: Presence in treatment services, treatment progress

Purpose for releasing the information: emergency contact, provide treatment updates

Consent expiration: 1 year after discharge

Patient Name: John Doe

Dated signature of client

Revocation Statement

13. Is a witness signature still required? 42 CFR does not require a signature?

- 42 CFR does not require a witness signature. If policies state a witness signature is documented, then DDAP will look for it on a consent. If you no longer want to require this, it will be necessary to change your policy.

14. How is the state/DDAP aligning with HIPPA to allow a TPO to cover releasing information to a payor? (Paul Cannon)

- Proposed federal regulations would allow a consent form to name or identify a class of recipients, without naming each individual or entity, for some disclosures. These regulations would permit identification of a class of recipients when the purpose of the disclosure is for treatment, payment, or health care operations. DDAP anticipates providing more detailed guidance on this topic in the near future.

15. Who determines "minimum necessary" for a payor? Some payors request/require much more information than others to authorize treatment? (Paul Cannon)

- The information necessary to carry out the purpose of a disclosure will depend on the facts and circumstances in each case. Treatment providers should consider the purpose specified in the consent form, the recipient's need for and use of information to meet that purpose, and the risks and benefits based to the particular client.

16. Is it still accurate to say that confidentiality around drug and alcohol treatment is among the strictest? This is very comforting to clients.

- This is still accurate. Confidentiality of SUD treatment information remains more strict than for other health care information, especially regarding client consent and control over disclosure of their information.