

COVID-19 RESOURCES



DRUG AND ALCOHOL TREATMENT PROVIDERS

42 CFR CLARIFICATION

On Thursday, March 19, 2020, [SAMHSA released guidance on 42 CFR Part 2](#) in response to the COVID-19 public health emergency. Given the increased need for telehealth technology, SAMHSA recognizes that providers may not be able to obtain written patient consent for disclosure of substance use disorder records. According to this guidance, prohibitions on use and disclosure of patient-identifying information do not apply to the extent that a provider has determined that a medical emergency exists under 42 USC §290dd-2(b)(2)(A) and 42 CFR §2.51.

DDAP has been receiving questions regarding how this guidance on 42 CFR Part 2 impacts Pennsylvania's substance use disorder confidentiality requirements.

According to Pennsylvania statute, "Notwithstanding any other provisions of this section, in emergency medical situations where the patient's life is in immediate jeopardy, patient records may be released without the patient's consent to proper medical authorities solely for the purpose of providing medical treatment to the patient." 71 P.S. § 1690.108(c)(3).

According to DDAP regulation, "In emergency medical situations where the life of the client is in immediate jeopardy, projects may release client records without the consent of the client to proper medical authorities solely for the purpose of providing medical treatment to the client." 4 Pa. Code § 255.5(a)(9)

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42 CFR CLARIFICATION CONTINUED

DDAP is interpreting and implementing the emergency release provisions at 71 P.S. 1690.108(c)(3) and 4 Pa. Code § 255.5(a)(9) in the same way that SAMHSA is interpreting 42 CFR 2.51. SAMHSA has advised DDAP that the COVID-19 pandemic can constitute an emergency that allows providers to release information to medical personnel without consent if necessary.

Therefore, under both federal and state law, Pennsylvania's providers do not need to obtain consent for release of information in emergency situations.