




LICENSING ALERT 04-2024

Identification of Recipients of Information in Consent to Release Information Forms for Treatment, Payment or Healthcare Options

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Purpose: To clarify the identification of recipients of confidential substance use disorder (SUD) information for treatment, payment or healthcare operations for compliance with 28 Pa. Code § 709.28(c)(1), relating to confidentiality. See [28 Pa. Code § 709.28. Confidentiality. \(pacodeandbulletin.gov\)](#).

Background: State and Federal laws governing the use and disclosure of confidential SUD information have undergone significant changes recently.

At the State level, Act 33 of 2022 amended the Pennsylvania Drug and Alcohol Abuse Control Act, 71 P.S. § 1690.105, relating to confidentiality of records, to make Pennsylvania confidentiality provisions consistent with Federal law. See [Alert 2022-03.pdf \(pa.gov\)](#).

At the Federal level, the Coronavirus Aid, Relief and Economic Stimulus (CARES) Act of 2020, Section 3221, amended Federal law on confidentiality of SUD information to allow disclosure of identifying information with client consent for purposes of treatment, payment and healthcare operations as permitted by regulations under the Health Insurance Portability and Accountability Act (HIPAA). See [42 U.S.C. 290dd-2](#). HIPAA regulations require that written consent contain, among other things, the name or specific identification of persons or class of persons, to whom information may be disclosed. 45 CFR 164.508(c)(1)(iii). See [eCFR :: 45 CFR 164.508 -- Uses and disclosures for which an authorization is required](#). HIPAA regulations do not require a consent form to name each person or entity.

The CARES Act also directed the U.S. Department of Health and Human Services (DHHS) to revise its regulations as necessary in order to implement the amendment. The U.S. DHHS, Substance Abuse and Mental Health Services Administration (SAMHSA) has issued its final regulations in accordance with the CARES Act. See 89 FR 12472, (Feb. 16, 2024), [2024-02544.pdf \(govinfo.gov\)](#).

The new Federal regulations require a consent form to 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 \(govinfo.gov\)](#). The name of each person or entity is not required.

The newly published Federal regulations also allow use of a single consent form for all future disclosures for treatment, payment or health care operations purposes and give the example to describe a recipient as “my treating providers, health plans, third-party payers and people helping to operate this program’ or a similar statement.” 42 CFR 2.31(a)(4)(i). A treatment provider must obtain a separate consent to disclose of SUD counseling notes that document or analyze the contents of a conversation during a counseling session, are not generally available to anyone other than the treating clinician and are kept separate from the rest of a client’s record. 42 CFR 2.31(b). In addition, a consent for disclosure or use of records for use in civil, criminal, administrative or legislative proceedings may not be combined with a consent for any other purpose. 42 CFR 2.31(d).

Procedures:

When Department of Drug and Alcohol Programs (DDAP) staff review consent to release information forms during licensing inspections and complaint investigations, they will continue to ensure that treatment providers release confidential information only in accordance with the consent provided by the client in writing. Clients maintain the right to provide or withhold consent to disclose specific information to specific persons or entities, except as otherwise provided by law. Neither this Licensing Alert nor any amendments to State or Federal statute or regulation have the effect of changing a consent form that a client has completed.

Consistent with the Federal regulations described above, DDAP will consider a consent to release information form to be compliant with 28 Pa. Code § 709.28(c)(1) as long as the form identifies the name or names of the persons or entities or a class of persons or entities, to whom the client consents to disclosure of information. DDAP will also accept a consent form for treatment, payment or healthcare operation purposes that contains the example in the proposed Federal regulations stated above regarding treatment providers, health plans, payers and people operating the program or something similar, to be compliant with 28 Pa. Code § 709.28(c)(1).

Treatment providers must be aware that Federal regulations still require a consent form to contain a description that identifies the information to be disclosed in a specific and meaningful fashion; the purpose for the disclosure, which can be “at the request of the patient” or “for treatment, payment or health care operations;” a statement that the consent is subject to revocation at any time except to the extent that the program or information holder has taken action in reliance on it; the date, condition or event upon which the consent will expire if it has not been revoked; and the dated signature of the client. Any disclosure of information must be limited to the information that is necessary to carry out the stated purpose.

DDAP encourages treatment providers to review their policy and procedure manuals and to update their forms and templates for consent to release information as permitted under current law. As part of that process, treatment providers should consider this Licensing Alert, as well as the statutes and regulations identified above and other applicable State and Federal authorities.

Please submit all questions regarding this Licensing Alert to the Bureau of Program Licensure at RA-licensuredivision@pa.gov.