

PURPOSE OF DISCLOSURE	PROVISION OF LAW			Notes re: Application of PA Law			
	HIPAA	Part 2	PA Law				
PAYMENT/ INSURANCE	Disclosure of PHI for payment purposes to: (1) any entity for its own payment activities; (2) a covered entity for the receiving entity's payment activities; (3) a health care provider for the receiving provider's payment activities	Consent required to disclose patient records to any entity for payment purposes (other than for program's payment purposes) - no limitation on what can be disclosed with patient consent or to whom	71 P.S. § 1690.108	SUD provider records may disclosed with consent to government "or other officials" for the purposes of obtaining benefits.	Records could not be disclosed to a private insurer for any purpose (obtaining benefits or otherwise).		
			4 Pa. Code § 255.5	Drug and alcohol treatment project staff may disclose client oriented data with the client's consent to: (A) an insurance company; (B) a health or hospital plan; and (C) governmental official(s), for purposes of obtaining governmental benefits. Information disclosed to these parties is restricted to the following: (1) Whether the client is or is not in treatment; (2) The prognosis of the client; (3) The nature of the project; (4) A brief description of the progress of the client; (5) A short statement as to whether the client has relapsed into drug, or alcohol abuse and the frequency of such relapse. An insurance company that does not find these 5 pieces of information to be satisfactory may, with client consent, appeal to the Executive Director requesting additional information.	Records could not be disclosed for any payment function other than obtaining benefits, even to a government payer.		
					If a client sees another physician (for example, a psychiatrist) who needs information about the client's past or concurrent drug/ alcohol treatment/ history/ diagnoses to support coverage of additional care, there is no mechanism by which a program can share that information directly with the physician (even with consent). Sharing limited information for payment under PA regulation is limited to sharing directly with the insurance company or a government official, versus sharing with a provider who is seeking payment from a third party.		
					Many insurance functions related to obtaining benefits (benefit administration, coverage determination, pre-authorization, appeals, etc.) cannot be accomplished with the limited information that may be disclosed.		
				Many insurance functions relate to individual coverage (care coordination/care management; premium/rate setting) or to improving the healthcare system generally (e.g., activities related to ACOs, population health management, quality/performance improvement, alternative payment models, etc.), but not to the purpose of "obtaining benefits;" thus, patient information cannot be disclosed for these purposes.			
PHI can be disclosed without patient authorization to entities legally authorized to receive such information for purposes of providing benefits for work-related injuries or illnesses.	Patient records can be disclosed to a government entity (federal, state, or local) without patient consent for audit and evaluation purposes; can only be disclosed to an employer with patient consent.	71 P.S. § 1690.108	SUD provider records may disclosed with consent to government "or other officials" for the purposes of obtaining benefits.		If a patient is privately employed, information about the patient cannot be disclosed to the employer directly to respond to a request for FMLA, worker's compensation, or disability coverage		
				4 Pa. Code § 255.5	Drug and alcohol treatment project staff may provide information about whether a client has or is receiving treatment to employers or prospective employers.		If a patient is employed and needs to take FMLA (part- or full-time) in order to obtain treatment, the employer may not be able to access underlying justification for FMLA in order to approve leave (an employer may only receive information regarding whether a client has or is receiving treatment).
							If an individual with an immediate family member who is enrolled in treatment wishes to take FMLA to support and/or care for the patient pre- and/or post-treatment, the individual's employer cannot access underlying justification for FMLA in order to approve leave (only the patient's employer can receive any such information).
PHI can be disclosed without patient authorization to an employer (own employer or that of a family member and/or caregiver) only with authorization; no limitation on the information that can be disclosed.	Patient records can be disclosed to an employer (own employer or that of a family member and/or caregiver) only with patient consent; no limitation on the information that can be disclosed.				If a patient is or was employed and wants to submit a claim for worker's compensation, the employer may not be able to access relevant information about drug/alcohol treatment necessary to respond appropriately to the claim.		

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TREATMENT	Disclosure of PHI for treatment purposes to: (1) any entity for its own treatment activities; (2) To any entity for another provider's treatment activities	Patient records can be disclosed for treatment purposes to any provider with consent	4 Pa. Code § 255.5	Drug and alcohol treatment project staff may disclose client oriented data to proper medical authorities without the client's consent, solely for purposes of providing treatment to the client when the client's life is in immediate jeopardy. There is no limit on the type of information that may be disclosed in these circumstances.	If a client sees another physician (for example, an OB/GYN) during or post drug/alcohol treatment, there is no mechanism by which the program is permitted to share the client's records with the physician directly, nor (depending on how strictly that 28 Pa. Code 709.30 is applied) even give the client a copy to share with the physician.
		Patient records can be disclosed without consent or treatment purposes between providers who work for the same Part 2 program or from a Part 2 program to an entity with administrative control over the program			
		Patient records can be disclosed without consent for treatment purposes in a "bona fide" medical emergency in which prior informed consent could not be obtained.			
			71 P.S. § 1690.108	Patient information may be disclosed with consent to medical personnel exclusively for diagnosing and treating the patient. Patient information may be disclosed without consent only in emergency medical situations where patient's life is in jeopardy for purpose of providing medical treatment, to proper medical authorities.	If a client is experiencing an emergency that is not life-threatening, but that would result in impairment to the function or structure of any part of him/herself (e.g., loss of a limb), this regulation prohibits disclosure of information without patient consent (which may not be able to be obtained if the client is unconscious but is not experiencing a life-threatening emergency).
			28 Pa. Code § 715.20*	A narcotic treatment program must have written transfer policies and procedures requiring that the program transfer a patient to another narcotic treatment program for continued maintenance, detox, or other treatment activity within 7 days of the patient making such request; the transferring program must transfer patient files with patient consent	

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JUDICIAL SYSTEM	Disclosure permitted in response to: (1) a court order or administrative tribunal order; (2) a subpoena, discovery request, or other lawful process not accompanied by a court or administrative tribunal order	Part 2 programs may disclose patient information with consent to individuals within the criminal justice system who have made the patient's participation in the Part 2 program a condition of the disposition of any criminal proceedings against the patient.	4 Pa. Code § 255.5	Drug and alcohol treatment project staff may disclose client oriented data with client consent to a judge to help the judge determine whether to release the client to a conditional release program who have imposed a sentence on the client that is conditioned upon the client entering a project. Information disclosed is restricted to the following: (1) Whether the client is or is not in treatment; (2) The prognosis of the client; (3) The nature of the project; (4) A brief description of the progress of the client; (5) A short statement as to whether the client has relapsed into drug, or alcohol abuse and the frequency of such relapse.	No provision allowing patient records to be released upon court order in relation to child abuse, neglect, or child welfare concerns; divorce, separation, spousal support, child custody, child support; protective orders; domestic violence; elder abuse; animal abuse.
				Drug and alcohol treatment project staff may disclose client oriented data without client consent to a judge who has imposed a sentence on the client that is conditioned upon the client entering a project OR to a judge who pre-sentenced a client to a conditional release program. Information disclosed is restricted to the following: (1) Whether the client is or is not in treatment; (2) The prognosis of the client; (3) The nature of the project; (4) A brief description of the progress of the client; (5) A short statement as to whether the client has relapsed into drug, or alcohol abuse and the frequency of such relapse.	
		Disclosure permitted without patient consent to prosecute a patient if the crime is extremely serious (homicide, rape, kidnapping, armed robbery, assault with a deadly weapon, and child abuse/neglect) - other procedural/technical criteria to protect confidentiality must be met	42 Pa.C.S.A. § 6352.1	Authorizes the release of SUD treatment and "related" information regarding a dependent or delinquent child, or the parent of such child, to a court with the child or the child's parent's consent, or upon an order of the court	No access to information about child specifically provided to parent or guardian. Disclosures about adults who are not parents, adults who are parents of non-delinquent or dependent children, and/or about children who are not dependent or delinquent is not covered by this exception.
			71 P.S. § 1690.108	Disclosure of SUD provider patient records where disclosure is unrelated to treatment or benefits may be made only upon court order, but never to initiate or substantiate criminal charges against a patient under any circumstances	No disclosure of information to prosecute a client for a serious crime

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PUBLIC WELFARE	To a health oversight agency for legally authorized oversight activities	Disclosure permitted without patient consent to prevent multiple enrollments	28 Pa. Code § 715.23*	Requires narcotic treatment programs (detox, MAT) that keep patient information in multiple locations or files to provide, upon request, the entire patient record to authorized persons conducting narcotic treatment program approval activities at the narcotic treatment program.	No disclosure of information to prevent multiple enrollments in treatment programs that are not narcotic treatment programs (e.g., multiple outpatient rehabilitation programs or providers)
		Disclosure permitted without patient consent for audit and evaluation functions to a governmental entity that provides financial support to the Part 2 program or is otherwise permitted by law to regulate the Part 2 program.			No disclosure of information to support audit/evaluation of treatment programs that are not narcotic treatment programs
	Disclosure permitted to an authorized government entity to report child abuse or neglect.	Disclosure may be made without patient consent pursuant to a court order authorizing disclosure of patient information where disclosure is necessary to protect against an existing threat to life or serious bodily injury, including suspected child abuse and neglect, and to investigate suspected child abuse and neglect.	42 Pa.C.S.A. § 6352.1; 28 Pa. Code § 709.43 - intake, evaluation, and referral activities at a freestanding treatment facility**; 28 Pa. Code § 711.42 - intake, evaluation, and referral activities in a health care facility**	Authorizes the release of SUD treatment and "related" information regarding a dependent or delinquent child, or the parent of such child, to a county agency with the child or the child's parent's consent, or upon an order of the court; 28 Pa. Code §§ 709.43, 711.42: Projects must have written policies and procedures for communication with law-enforcement authorities, local or State health or welfare authorities, as appropriate, regarding clients whose condition or its cause is reportable; for example, child abuse under the Child Protective Services Law (11 P. S. § 2201—222	Disclosures for health system oversight purposes about adults who are not parents, adults who are parents of non-delinquent or dependent children, and/or about children who are not dependent or delinquent is not covered by this exception.
					Disclosures for reporting child abuse/neglect that relates to adults who are not parents, adults who are parents of non-delinquent or dependent children, and/or about children who are not dependent or delinquent is not covered by 42 Pa.C.S.A. § 6352.1
	To a public health authority that is legally authorized to collect the PHI to control or prevent disease, injury, or disability	Disclosure may be made without patient consent pursuant to a court order to protect against an existing threat to life or serious bodily injury	28 Pa. Code § 709.34 - freestanding treatment facilities; 28 Pa. Code § 709.43 - intake, evaluation, and referral activities at a freestanding treatment facility; 28 Pa. Code § 711.42 - intake, evaluation, and referral activities in a health care facility**	§ 709.34: Programs must develop and implement policies and procedures to respond to: an outbreak of a contagious disease requiring CDC notification. The policies and procedures must include a reporting mechanism to ensure that reporting of such an incident to an entity is in compliance with State and Federal confidentiality laws §§ 709.43, 711.42: Projects must have written policies and procedures to address special issues regarding treatment of clients, to include policies and procedures regarding individuals with communicable diseases and must have written policies and procedures for communication with law-enforcement authorities, local or State health or welfare authorities, as appropriate, regarding clients whose condition or its cause is reportable; for example, persons having contagious diseases	If a client has a reportable disease or injury that is not communicable, such as XXX, or that is communicable but not required to be reported to the CDC, there is no provision through which the program could report that information, even if reporting is required by the state or other federal agency or would notify another person of their risk of contracting disease (HIV status, sexually transmitted disease)
	Disclosure permitted to a person who may have been exposed to or be at risk of contracting or spreading a communicable disease	Information may be disclosed to medical personnel at the FDA for purposes of notifying patients or their physicians of potential health dangers threatened by an error in manufacturing, labeling, or sale of an FDA-regulated product (as asserted by FDA medical personnel)			If a client has an adverse reaction to a medication or device that is approved and monitored by the FDA, there is no mechanism by which the program can report that adverse event to the FDA's monitoring programs
	Disclosure permitted to an FDA-regulated entity about an FDA-regulated product or activity for quality, safety, or effectiveness activities	Disclosure may be made without patient consent pursuant to a court order authorizing disclosure of patient information where disclosure is necessary to protect against an existing threat to life or serious bodily injury, including verbal threats against a third party			NO PA LAW ADDRESSING THESE PROVISIONS

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PUBLIC WELFARE	To a law enforcement official where the PHI constitutes what the covered entity in good faith believes to be evidence of criminal conduct that occurred on the premises	Disclosure may be made without patient consent pursuant to a court order authorizing disclosure of patient information where such information is pertinent to investigation of an "extremely serious" crime allegedly committed by a patient, such as one that directly threatens loss of life or serious bodily injury (e.g., homicide, rape, kidnapping, armed robbery, assault with a deadly weapon)	<p><b>28 Pa. Code § 709.34 - freestanding treatment facilities; 28 Pa. Code § 715.28 - narcotic treatment programs; § 709.43 - intake, evaluation, and referral activities at a freestanding treatment facility; §711.42 - intake, evaluation, and referral activities in a health care facility *</b></p>	<p>§ 709.34 Programs must develop and implement policies and procedures to respond to: (1) physical or sexual assault by staff or client; (2) Theft, burglary, break-in or similar incident at facility; (3) death or serious injury due to trauma, medication error, or unusual circumstances while in residential treatment - OR, when known by facility, for ambulatory services; (4) sale or use of illicit drugs on the premises. These policies and procedures must include a reporting mechanism to ensure that reporting of such an unusual incident to an entity is in compliance with state and federal confidentiality laws. § 715.28: narcotic treatment programs must develop and implement policies and procedures to respond to: (1) physical assault by a patient; (2) inappropriate behavior by a patient causing disruption to the program; (3) selling of drugs on premises; (4) complaints of patient abuse (physical, verbal, sexual, and emotional); (5) death or serious injury due to trauma, suicide, medication error, or unusual circumstances; (6) Incident with potential for negative community reaction or which the facility director believes may lead to community concern; (7) Theft, burglary, break-in or similar incident at the facility; (8) Drug related hospitalization of a patient §§ 709.43, 711.42 The intake project shall have written policies and procedures for communication with law-enforcement authorities, local or State health or welfare authorities, as appropriate, regarding clients whose condition or its cause is reportable; for example, victims of suspected criminal acts, such as rape or gunshot wounds, 18 Pa.C.S. § 5106 (relating to failure to report injuries by firearm or criminal act)</p>	No disclosure permitted to investigate or prosecute a crime committed off premises and/or against a victim other than a client or staff member.	
	To a law enforcement official where disclosure is about an individual who is or is suspected to be a victim of a crime but the individual is unable to consent to disclosure because of incapacity or emergency circumstances, and the official represents that: (1) such information is needed to determine whether a violation of law by a person other than the victim has occurred and is not intended to be used against the victim; (2) an immediate law enforcement activity that depends				<p>No disclosure of information to a law enforcement officer in a medical emergency unless reporting a crime that occurred on facility premises</p>	
	When a covered entity is providing health care in response to a medical emergency (other than an emergency on premises), disclosure of PHI is permitted if such disclosure appears necessary to alert law enforcement to: (A) the commission and nature of a crime; (B) the location of such crime or of the victim(s) of such crime; and/or (C) the identity, description, and location of the perpetrator of such crime					
	To a law enforcement official where disclosure is for the purposes of identifying or locating a suspect, fugitive, material witness, or missing person and the PHI disclosed is limited to certain information					No disclosure to identify or locate a suspect, fugitive, etc. unless the crime occurred on the facility premises
	To alert law enforcement of the death of an individual where the covered entity has a suspicion that the death may have been the result of criminal conduct					No disclosure to law enforcement regarding a death that may have been the result of criminal conduct unless the crime occurred on the facility premises.

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To a law enforcement official where disclosure required by law	Disclosures may be made without patient consent pursuant to a court order and made compulsory under law by a subpoena, if the disclosure is limited to purposes otherwise permitted in other law enforcement and/or judicial system exceptions.	28 Pa. Code § 709.34*	Programs must have procedures for compliance with State and Federal confidentiality laws	Provision conflicts with requirement to comply with 28 Pa. Code § 255.5 confidentiality requirements				
				To a correctional institution or law enforcement officer about an inmate or an individual in lawful custody	Disclosure without consent is permitted to those within the criminal justice system with a duty to monitor the patient's progress in the court-ordered participation in the Part 2 program (e.g., probation and parole officers)	4 Pa. Code § 255.5	Drug and alcohol treatment project staff may disclose client oriented data to parole or probation officers (with or without consent). Information disclosed is restricted to the following: (1) Whether the client is or is not in treatment; (2) The prognosis of the client; (3) The nature of the project; (4) A brief description of the progress of the client; (5) A short statement as to whether the client has relapsed into drug, or alcohol abuse and the frequency of such relapse.	Only limited information may be disclosed to a probation or parole officer about an adult in lawful custody and only with patient consent; there are numerous law enforcement functions with respect to an individual in custody that could not be accomplished with the few pieces of information that can be disclosed; further, requiring patient consent to release these limited pieces of information further hampers law enforcement functions as those in custody cannot be compelled to give consent.
						42 Pa.C.S.A. § 6352.1	Authorizes the release of SUD treatment information regarding a dependent or delinquent child to a county agency, court, or juvenile probation officer.	
HEALTHCARE OPERATIONS	For healthcare operations activities to: (1) any entity for its own healthcare operations activities; and (2) a covered entity for certain of that entity's healthcare operations purposes, if both the disclosing and receiving parties have/had a relationship with the patient and the PHI pertains to that relationship	Part 2 programs may disclose patient information without consent to a Qualified Service Organization (QSO) for administrative purposes (billing, legal services, etc.)	NO PA LAW ADDRESSING THESE PROVISIONS	Even with patient consent, a program may not disclose information for use in conducting quality assessment and improvement activities (e.g., outcomes evaluation; developing clinical guidelines); patient safety activities; or population health activities (e.g., improving health, reducing health care costs); developing protocols; case management; or care coordination.				
				Even with patient consent, a program may not disclose information for use in reviewing health care professional competence or qualifications; evaluating practitioner performance; evaluating health plan performance; conducting health care provider training programs; training non-health care professionals; accreditation, certification, licensing, credentialing activities; business planning and development; management activities (resolving internal grievances, data analyses for policy holders, plan sponsors, or other customers, management activities related to compliance with HIPAA and/or Part 2 or other requirements, sale/transfer/merger/consolidation of all/part of program with another entity, fundraising)				
				Even with patient consent, a program may not disclose information for use in reviewing health care professional competence or qualifications; evaluating practitioner performance; evaluating health plan performance; or accreditation, certification, licensing, credentialing activities				
				Even with patient consent, a program may not disclose information for use in conducting health care provider training programs or training non-health care professionals				
				Even with patient consent, a program may not disclose information for use in business planning and development (e.g., cost management and planning-related analyses related to managing and operating the program)				
				Even with patient consent, a program may not disclose information for use in business management and administrative activities (e.g., resolving internal grievances; data analyses for policy holders, plan sponsors, or other customers; activities related to compliance with Part 2 or other requirements; sale/ transfer/ merger /consolidation of all/part of program with another entity; fundraising)				
				Part 2 programs may disclose patient records for operations purposes with the patient's written consent and may disclose patient records without consent for audits and evaluations to: (1) a governmental agency that financially assists the Part 2 program; (2) a governmental agency that is authorized by law to regulate the activities of the program; (3) a third-party payer covering patients in the program; (4) a quality improvement organization (or its contractors, subcontractors, or legal representatives) performing a utilization or quality control review; or (5) any individual or entity for a Medicare, Medicaid, or CHIP audit or evaluation, including an audit or evaluation necessary to meet requirements for a CMS-regulated ACO or similar CMS-regulated organization (including a QE). Part 2 programs may permit these entities and any other entity qualified to conduct an audit or evaluation of the program to review patient records on site				

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HEALTH/OVERSIGHT FUNCTIONS	Covered entities are required to give access to PHI to the Secretary of HHS (or his/her designee(s)) for purposes of assessing compliance with HIPAA requirements.	the program to review patient records on site without patient consent.			Even with patient consent, a program may not disclose information for activities related to compliance with HIPAA, Part 2, or other federal, state, or local requirements
PATIENT ACCESS	Covered entities are required to give access to PHI to the patient and/or his/her designated representative upon request. Access means inspection and/or a physical or electronic copy of all or part of the record	Part 2 programs may disclose patient records to the patient with appropriate written consent. As a result of permissive nature of this "exception" to confidentiality requirements, HIPAA's required disclosure provision would control and compel Part 2 programs to disclose to patient.	28 Pa. Code § 709.30 - freestanding treatment facilities; 28 Pa. Code § 711.43 - intake evaluation and referral activities in health care facility; 711.53 - inpatient nonhospital activities (residential treatment and rehabilitation); 711.62 - inpatient nonhospital short-term detox; 711.72 - inpatient nonhospital transitional living facilities; 711.83 - partial hospitalization activities; 711.93 - outpatient activities*	Client has the right to inspect their own records; portions of record may be removed by director upon determination that information contained therein may be detrimental to client if presented. Clients have right to appeal decision limiting access to records.	No right to obtain a copy or direct that records be sent to a designated third party under PA law. Patients may access records but there is no explicit provision granting them the right to obtain a physical or electronic copy or remove any information from the facility.
RESEARCH	Disclosure of PHI for research permitted if consent waiver is approved by IRB/Privacy Board and/or if PHI will only be used for purposes preparatory to research	Disclosure for research permitted if research complies with HIPAA and/or Common Rule requirements.	4 Pa. Code § 255.4	Tasks the Council with approving researcher access to the [client, financial, project management facets of the] Uniform Data Collection System data base; prohibits the inclusion of client names or client-identifying information on lists or in data processing systems unless required by law. Requires the use of randomly assigned numbers instead.	Complicates and/or prohibits longitudinal research (no provision that would allow for linkages across data sets) Does not allow for research subject outreach (i.e., identifying potential subjects for future research)
	Disclosure of PHI to any entity for purposes of creating a limited data set or de-identifying patient information		NO PA LAW ADDRESSING THESE PROVISIONS		Prohibits the use of multiple data sets (cannot match other data sets, such as insurance claims records or hospital records, to de-identified client records)  if a program wants to disclose de-identified information for purposes of research, this would theoretically be permissible; however, if the program does not have the skills or capacity to de-identify the data itself, it cannot use a third party service to properly de-identify the data.
EXCEPTION PROCESS			28 Pa. Code § 709.11	SCAs and projects may submit a written request to DDAP for an exception to a provision of Part V (28 Pa. Code §§ 701.1-715.30). The Secretary may grant an exception upon application or on his/her own initiative when it has determined that, under the circumstances, granting the exception meets program or policy-related criteria.	DDAP has broad authority to grant exceptions where it meets program or policy-related criteria.  * = provisions that may be waived under this authority