NAADAC
NAADAC.ORG
THE ASSOCIATION FOR ADDICTION PROFESSIONALS

44 Canal Center Plaza, Suite 301, Alexandria, VA 22314
Ph: 703.741.7686 • 800.548.0497 Fax: 703.741.7698

NAADAC Position Statement on the Protection of Client Confidentiality & Right to Privacy and 42 CFR Part 2

History

The federal regulations governing patient record confidentiality, known of as C.F.R. Part 2, were initially promulgated in 1975 to protect clients seeking and receiving treatment for alcoholism. The lack of understanding of the disease of alcoholism and the societal stigma surrounding the disease of addiction served as the primary catalyst for the law's enactment. At the time, potential clients risked exposure to stigma simply by seeking information about the disease, let alone actively seeking treatment. Upon enactment, record-sharing required only initial patient consent. Subsequent regulatory improvements, however, increased privacy by adding necessary layers of consent. The changes better protected the rights of the client and provided clarity about what records were being requested, under what circumstances they could be shared, and with whom they could be shared.

Debating 42 CFR Part 2 Reform

Reforming 42 CFR Part 2 has been a hot topic in recent years across substance use disorder stakeholders, including SAMHSA, the insurance industry, legal disciplines, and state welfare departments. Some argue that Part 2 should be dismantled and, instead, aligned with HIPAA. Professionals in the addiction and substance use disorder discipline understand these regulations and are well versed in explaining the law and in counselling clients on the release of information. Addiction professionals recognize the importance of Part 2 protections and understand the significant long-term consequences to someone's recovery, employment, advancement and stability associated with releasing too much information.

NAADAC urges caution regarding efforts to ease the sharing of information. There remains a great lack of education and training among medical and legal professionals about the disease of addiction, and an even greater lack of education and training regarding the protocols for sharing such sensitive information. Addiction is a bio-psycho-social-spiritual disease. Client behavior can turn destructive and result in negative consequences due to action or inaction by the legal and welfare systems. Prematurely releasing information or releasing information that should remain confidential are great concerns and cause irreparable harm to a client and their family members.

The issue of stigma is still alive and well – just ask anyone living with a substance use disorder today. NAADAC maintains deep reservations over allowing those with little or no knowledge of addictive diseases to be at the center of making recommendations about reforming these protections. According to SAMHSA, only 10% of those needing treatment seek treatment. Relaxing requirements around confidentiality and the re-release of information can only serve to disincentivize individuals with SUD even further.

NAADAC consistently hears from addiction professionals, advocates, and others who work with persons with substance use disorder and their families that relaxing confidentiality requirements will have a cooling effect on people seeking treatment.

In less populated areas of the country, anonymity can be hard come by in the community. Sensitive information can be easily leaked and accidently shared with sharp consequences for a client. Efforts to simplify the requirement of obtaining a release for each person, agency, clinic, hospital, legal system, welfare department, probation department, or other entity holding the information leaves individuals with

substance use disorders at risk for information sharing that they do not intend or for which they do not consent. While NAADAC appreciates reformers' interest in creating a more seamless system, we cannot support watering down the protections that our clients hold so dear. Additionally, NAADAC fears the consequences of Part 2 protected information being used to discriminate against individuals seeking insurance coverage.

NAADAC stands by the privacy rights and protections currently afforded to individuals with substance use disorder and urges those seeking to change 42 CFR Part 2 to consider the following recommendations when considering any broader reform effort:

NAADAC's Recommendations

- That any confidentiality laws that are enacted require affirmative consent from the clients/patients for their records to be shared with any other doctor, provider, facility, or entity for treatment, payment, insurance, or health-care operations. This consent must include the specific information to be shared, with whom the information is to be shared, and the time constraints of the release of information.
- That any confidentiality laws that are enacted require consent from clients/patients with substance use disorders each time their record is shared with a care provider outside the health system that originally treated them for substance use.
- That training be available and required regarding the use of 42 CFR Releases of Information.
- Using the "Qualified Service Organization Agreements" (QSOA) as a mechanism to reduce the perceived barriers to information exchange and training medical, legal, and welfare organizations how to use QSOA and regarding study implementation methods that will continue to protect the client and their family members.
- That networks serve as built in communities between the medical, addiction, legal and child welfare departments to increase communication, services of care, accessibility of a continuum of treatments and connections to community resources to envelope each client and their family members in the care that is specific to their needs and professional communications that support their life in recovery.

NAADAC's Code of Ethics, not unsimilar to other medical professions, is to "do no harm." We are concerned that the consequences of reducing privacy barriers could very well spark a resistance to treatment by the very persons we are desiring to treat.