Presenter

Christine Khaikin, JD
LAC Health Privacy Associate
Center of Excellence for Protected Health Information
Agenda

- **Section 1:** Introduction to CoE-PHI
- **Section 2:** General Overview of Part 2 and HIPAA
- **Section 3:** Proposed Changes to 42 CFR Part 2

Objectives

- Introduce the Center of Excellence for Protected Health Information
- Describe the federal health care confidentiality laws
- Summarize the proposed changes to 42 CFR Part 2
Introduction

THE CENTER OF EXCELLENCE FOR PROTECTED HEALTH INFORMATION
Center of Excellence for Protected Health Information

Funded by SAMHSA, the CoE-PHI develops and disseminates resources, training, and TA for states, healthcare providers, school administrators and individuals and families to improve understanding and application of federal privacy laws and regulations, including FERPA, HIPAA, and 42 CFR Part 2, when providing and receiving treatment for SUD and mental illness.

*Resources, training, technical assistance, and any other information provided through the CoE-PHI do not constitute legal advice.*
CoE-PHI Team: LAC & CAI

Cicatelli Associates Inc. (CAI)
Nationally recognized leadership and workforce development capacity building organization
Barbara Cicatelli, President and Founder

Legal Action Center (LAC)
Nationally recognized non-profit law office with long history and extensive knowledge in interpreting federal privacy laws and regulations
Paul Samuels, Director and President
Target Audiences

Healthcare practitioners

School administrators and educators

State Agencies

Consumers, families, and communities
What we do....

Expert Training
- Webinars
- Face to Face
- eLearning

Individualized Technical Assistance

Useful resources and tools:
- FAQs
- Fact Sheets
- Implementation Guides
OVERVIEW

42 CFR PART 2 AND HIPAA
HIPAA

**Applies to** covered entities (healthcare providers, health plans, healthcare clearinghouses) and BAs
- Protects privacy and security of general health information

**Purpose:** to protect health data integrity, confidentiality, and accessibility

**Permits** disclosures without patient consent for treatment, payment, and healthcare operations

42 CFR Part 2

**Applies to** SUD patient records from federally-assisted “Part 2 programs”
- Protects privacy and security of records identifying individual as seeking/receiving SUD treatment

**Purpose:** to encourage people to enter and remain in SUD treatment by guaranteeing confidentiality

**Requires** patient consent for treatment, payment, and healthcare operations, with limited exceptions
Which Law Applies?

Most SUD programs must comply with both HIPAA and Part 2.

What does it mean to comply with both laws?

• Ask yourself: Which law is more protective of patient privacy?
  • The more protective law applies
## Comparing HIPAA and Part 2

<table>
<thead>
<tr>
<th>Provision</th>
<th>Part 2</th>
<th>HIPAA</th>
<th>Which law applies?</th>
</tr>
</thead>
<tbody>
<tr>
<td>Disclosure for Treatment, Payment, Healthcare Operations</td>
<td>• Consent needed</td>
<td>• Consent not needed</td>
<td>Part 2</td>
</tr>
<tr>
<td>Patient Access to Records</td>
<td>• Permitted</td>
<td>• Required</td>
<td>HIPAA</td>
</tr>
</tbody>
</table>
What is 42 CFR Part 2 ("Part 2")?

Confidentiality law for SUD treatment records

Generally requires written patient consent to disclose records, subject to limited exceptions
When Does Part 2 Apply?

Applies to substance use disorder (SUD) treatment records from “Part 2 programs,” i.e. federally-assisted SUD programs

Not all providers who offer SUD services are “Part 2 programs!”
I provide SUD services in an FQHC:

**Does Part 2 apply to me?**

Note: FQHCs will always be "federally assisted" due to certified status as Medicaid providers and/or federal funding.

- **Are you “federally assisted”?**
  - YES: **Do you work in an identified SUD unit?**
    - YES: **Are the SUD services advertised, or otherwise “held out” to the community?**
      - YES: **Are you an identified SUD provider?**
        - YES: **Is your primary function providing SUD services?**
          - YES: You ARE a Part 2 Program
          - NO: You ARE a Part 2 Program
        - NO: You ARE a Part 2 Program
    - NO: You ARE a Part 2 Program
  - NO: You ARE a Part 2 Program

You are NOT a Part 2 Program

---

**CAI**

Funded by Substance Abuse and Mental Health Services Administration
WHAT’S NEXT?

PROPOSED CHANGES TO 42 CFR PART 2
Notice of Proposed Rulemaking

- On August 26, SAMHSA released two Notices of Proposed Rulemaking (NPRM)
- The NPRMs contain *proposed* changes to 42 CFR Part 2
- These *proposed* changes must go through a *comment period* before they will be finalized
Notice and Comment Process

• When proposing changes to regulations, federal law requires SAMHSA to give notice of the proposed changes, and opportunity for the public to comment.

• After the public comment period closes, SAMHSA will review the comments received and then issue a final rule.

• The current regulations remain in effect until publication of the final rule.
NPRM #1

Court-Ordered Disclosures

- **Proposed Change** - Proposal to change the standard for court-ordered disclosures of SUD records for the purpose of investigating “an extremely serious crime” by dropping the phrase “allegedly committed by the patient”

- **SAMHSA rationale** - this phrase was inadvertently included in the 2017 amendments without the appropriate notice and comment process

- **Comment period** - 30 days (now closed)
NPRM #2

Framework of 42 CFR Part 2

• Proposed Change - Modifies several sections of 42 CFR Part 2
• SAMHSA rationale – to support coordinated care among providers that treat SUD while maintaining privacy safeguards for patients
• Comment period - 60 days (closes 10/25/19)
NPRM #2

Framework of 42 CFR Part 2

• Does not propose changes to the basic framework of 42 CFR Part 2. Part 2 will continue to…
  o Restrict the disclosure of patient treatment records without written patient consent unless exceptions apply
  o Prohibit law enforcement use of SUD patient records in criminal prosecution against the patient
# NPRM #2 - Highlights

<table>
<thead>
<tr>
<th>Part 2 Provision</th>
<th>Proposed Revision</th>
<th>Why?</th>
</tr>
</thead>
<tbody>
<tr>
<td>Applicability &amp;</td>
<td>Treatment records created by non-part 2 providers based on their own patient encounters will not be covered by part 2... Segmentation of previously received part 2 records can ensure new records created by non-part 2 providers will not become subject to part 2.</td>
<td>To facilitate coordination of care activities by non-part 2 providers.</td>
</tr>
<tr>
<td>Re-disclosure</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
# NPRM #2 - Highlights

<table>
<thead>
<tr>
<th>Part 2 Provision</th>
<th>Proposed Revision</th>
<th>Why?</th>
</tr>
</thead>
<tbody>
<tr>
<td>Consent Requirements</td>
<td>An SUD patient may consent to disclosure of his part 2 treatment records to an entity (e.g., Social Security Administration), without naming a specific person as the recipient for the disclosure</td>
<td>To allow patients to apply for benefits and resources more easily, (e.g., when using online applications that do not identify a specific person as the recipient for a disclosure of part 2 records).</td>
</tr>
</tbody>
</table>
## NPRM #2 - Highlights

<table>
<thead>
<tr>
<th>Part 2 Provision</th>
<th>Proposed Revision</th>
<th>Why?</th>
</tr>
</thead>
<tbody>
<tr>
<td>Disclosures to Central Registries and PDMPs</td>
<td>Non-OTP providers will become eligible to query a central registry to determine if patients are receiving opioid treatment through a member program. OTPs will be permitted to enroll in a state PDMP and to report data when prescribing and dispensing medications, consistent with state law.</td>
<td>Revised central registry and PDMP provisions will help to prevent duplicative enrollment in SUD care, duplicative prescriptions for SUD treatment and adverse drug events related to SUD treatment.</td>
</tr>
</tbody>
</table>
NPRM Notice and Comment

• Public comments on the shorter NPRM have closed.

• Public comments on SAMHSA’s longer proposed changes to Part 2 must be submitted by **October 25, 2019**.

For more information, go to SAMHSA.gov
QUESTIONS?
Resource Library

coephi.org/resource-center

RESOURCE CENTER

The resources within this section are provided to promote awareness and strengthen knowledge and skills for professionals who are seeking to understand and apply Protected Health Information (PHI) privacy laws and regulations on the job and for individuals and families when accessing services.

Resources are presented by categories for Substance Use Disorder (SUD) Treatment Providers, Mental Health (MH) Treatment Providers, Healthcare Providers, for professionals working in Educational Institutions, and for Patients and Families.

Resources included in each category address PHI Law and Regulations, Official Guidance, Tips for Implementing PHI, and Sample Templates and Forms and many are available in downloadable format.

- SUBSTANCE USE DISORDER (SUD) TREATMENT PROVIDERS
- MENTAL HEALTH OMD TREATMENT PROVIDERS
- OTHER HEALTHCARE PROVIDERS
- PROFESSIONALS WORKING IN EDUCATIONAL INSTITUTIONS
- PATIENTS & FAMILIES
Contact Us!

Request Technical Assistance

coephi.org/technical-assistance

Contact: Michael.Graziano@coephi.org
Visit Us!

Booth #109 in the NAADAC Conference Exhibit Area
THANK YOU!