

Technical Assistance Series

Substance Use Disorder Confidentiality

Disclaimers

- Nothing in this webinar should be construed as legal advice. Topics discussed are merely meant to inform you of relevant regulations and common citations.
- It is strongly recommended that you consult your employer's legal counsel or designated personnel for advice if your agency's policy contradicts regulation.
- This webinar is not intended to justify the law, but to bring attention to it.
- This webinar does not replace required education described in DDAP's Case Management and Clinical Services manual.

Reminders

- This call is being recorded. Please exit now if you do not want to be recorded. You will be able to review the video in its entirety on the DDAP webpage following this event.
- Questions regarding SUD confidentiality should be submitted to ra-licensedivision@pa.gov.

Today's Presenters

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Learning Objectives

- Recap 10/2 Confidentiality Webinar
- Address Stakeholder Questions
- Discuss SUD Confidentiality Myths and Facts

Recap – October 2nd Confidentiality Webinar

- Impact of Act 33
 - Information no longer restricted to probation, parole, funders, judges, etc.
 - Information released no longer limited to 5 areas
 - Requires an informed and voluntary consent signed and dated by the client
 - Information released is consistent with the purpose
- Elements of a Valid Consent
- Most common confidentiality citations identified during licensing inspections

Difference between Regulation and Internal Policy

- DDAP regulations set minimum requirements for compliance. Your policies are typically based on best practices. And you may also have other regulatory bodies that dictate your policies.
- If your policies are more strict than the regulations, they must be followed.
- DDAP Licensing will cite facilities if they violate their own policies even if their actions would otherwise comply with regulations.
- So facilities should review and revise their policies and forms based on the changes in Federal and State confidentiality requirements.

What information are we permitted to release to Mental Health providers?

- You can release information identified by the client in a valid consent form.
- It is the treatment facility's responsibility to ensure any information released to the mental health provider is limited to what is necessary to carry out the purpose for releasing the information.

If a current client enters Inpatient Detox/Rehab without notice and the facility contacts us requesting information, does a release signed by the client and witnessed by a staff member at that facility cover us?

- Yes, with a valid informed consent, it does not matter where the consent to release is generated, as long as it is appropriately completed.
- A facility should only release information to another facility if they have a valid consent to release information form on file.
- A facility may not confirm an individual has received treatment until they have a valid consent form signed by the client.
- A facility is able to accept a consent to release information from another facility as long as it is completed appropriately.

What information are we permitted to release to medical providers, such as: PCP, Specialists, Hospitals, Inpatient, etc.? Are we permitted to send the same information when requested to any medical provider?

- You can release any information identified by the client in a valid consent form.
- It is the treatment facility's responsibility to ensure any information released to the medical provider(s) is limited to what is necessary to carry out the purpose for releasing the information.

If a client discharges, relocates 5 hours away, and then calls requesting a copy of their records be sent to them whether via mail, fax, etc., how do we know it's the client calling and not someone claiming to be the client?

- State and federal regulations allow clients to access their treatment records.
- It is the treatment facility's responsibility to develop policies and procedures to address how they will verify the identity of a discharged client.
 - DOB, SSN, Phone number, address, etc.

In the Record Transfer (Section C), what specific forms would fall into the “Treatment/Discharge” forms category? Can you please provide examples? Case notes, Tx plans, Evals, etc.?

- **"Treatment/Discharge Forms" is vague and not specific.**
- The client information to be released must be specific and stated on the release form.
 - Case notes, treatment plans, evaluations, etc., can be released if they are listed on the release form, and are appropriate to the purpose.
 - 709.28(c)(2) - Specific Information Disclosed
 - 42 CFR 2.31(a)(3) - How much and what kind of information is to be disclosed, including an explicit description of the substance use disorder information that may be disclosed.

DC summary aftercare plan.

Since ACT 33 took effect, are we no longer required to have a release in place prior to sending information to Social Security?

- Act 33 does not remove the need for a signed consent to release form.
- A treatment facility still needs a signed consent prior to releasing any client information.

Are there any circumstances in which a blank release should be sent, filled out elsewhere by the client and returned to us prior to us releasing information?

- A blank consent to release form should never be sent directly to a client to complete.
- Informed Consent - Prior to the client signing a release, the facility should be discussing the release form with the client, including:
 - Who is receiving the information
 - The specific information to be disclosed
 - The purpose for the releasing the information
 - Expiration of the consent
- A blank consent to release can be sent to another entity, completed and reviewed with the client in its entirety, signed and dated by the client, and returned.

Can you provide...

...some examples of different scenarios which could possibly take place and explain how to handle the Release of Information in those instances?

A SUD treatment facility may contact a patient's medical provider to request the last physical exam. The client must provide written consent to release information to the medical provider. Consent requirements include:

Name of SUD treatment facility:

ABC Treatment

Consent expiration:

1 year after discharge

Name of the medical provider (recipient):

Dr. Who

Patient Name:

John Doe

Specific information to be released:

Presence in SUD treatment

Dated signature of client

Revocation Statement

Purpose for releasing the information:

Coordination of care

A mental health provider may contact a SUD treatment facility to coordinate all behavioral health services. The client must provide written consent to release the information to the mental health provider. Consent requirements include:

Name of SUD treatment facility:

ABC Treatment

Consent expiration:

1 year after discharge

Name of the mental health provider (recipient):

XYZ Treatment

Patient Name:

John Doe

Specific information to be released:

Treatment Summary, Treatment Progress

Dated signature of client

Revocation Statement

Purpose for releasing the information:

Coordination of care

A SUD treatment facility will submit a claim to the client's insurance company to bill for services and the insurance company may contact a SUD treatment facility to verify services rendered. The client must provide written consent to release the information to the insurance company. Consent requirements include:

Name of SUD treatment facility:

ABC Treatment

Consent expiration:

1 year after discharge

Name of the Insurance Company (recipient):

Insurance Company A

Patient Name:

John Doe

Specific information to be released:

Diagnosis; Treatment Summary/Progress, services rendered, dates of service.

Dated signature of client

Revocation Statement

Purpose for releasing the information:

Prior Authorization; Reimbursement

A client's mother calls the SUD treatment facility to see if the client has been attending treatment sessions. The client must provide written consent before the facility can release the information to the mother. Consent requirements include:

Name of SUD treatment facility:

ABC Treatment

Consent expiration:

1 year after discharge

Name of mother (recipient):

Betsy Ross

Patient Name:

John Doe

Specific information to be released:

Presence in treatment services, treatment progress

Dated signature of client

Revocation Statement

Purpose for releasing the information:

emergency contact, provide treatment updates

Can a release of information be valid for more than 1 year?

Yes, state and federal regulations require a date, event or condition upon which the consent will expire.

Can a client choose to disclose 'future records' that are not yet present in the chart? For example, client consents to 'release future progress notes to share with my PCP' for coordination of care purposes.

- Yes, a client can consent to the release of records and progress notes that will be created in the future by identifying them in the consent form.
- A release form must state the specific information to be disclosed.
- A release form must state the date, event, or condition upon which the consent will expire.
- If the specific information to be released states progress notes, then all progress notes may be released until the release form expires.

Myth: Information released to other SUD and MH treatment providers and Physicians is limited

FACTS

- SUD Treatment Facilities, MH Treatment Providers, and Physicians were never restricted to the type of information they could receive
- Information to be released must be:
 - Consistent with the purpose
 - Based on what the client consents to release
 - Included on an informed and voluntary consent to release information form signed and dated by the client

Myth: A consent to release information form should only include the 5 areas of 255.5 as the specific information to be released.

FACTS

- A consent to release form can include more than the 5 areas of 255.5.
- Prior to Act 33, PA code 255.5 limited what could be released to certain entities. Act 33 eliminates the previous restrictions of 255.5.
- Since Act 33, the client now controls what can be disclosed.

Closing Remarks

- Update policy and procedures to reflect current confidentiality regulations
- Remove old consent to release information forms
- Consent needs to be informed and voluntary
- Utilize the resources available and complete the Online SUD Confidentiality Training: [Click HERE for More Info!](#)

THANK YOU!

Contact us info – ra-licensedivision@pa.gov