



# Client Confidentiality

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Welcome, Take a minute while we are waiting to begin.....

1. What is the first word you think of when someone mentions confidentiality?
2. What is the first word you think of when someone mentions HIPAA?



# Client Confidentiality

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## Missouri Department of Mental Health Division of Alcohol and Drug Abuse

### Treatment Team

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**I am not a Lawyer!**

**This is not legal advice!**



# Client Confidentiality

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## Goals

- ❑ Develop general understanding of federal confidentiality laws regarding alcohol and drug treatment
- ❑ Recognize components of an appropriate consent for release of information
- ❑ Become aware of exceptions
- ❑ Protect confidentiality rights of clients
- ❑ Make appropriate disclosures of information



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## Sources

- **Core Rules 9 CSR 10-7.030**

Service Delivery Process and Documentation

- Title 42, part 2, Code of federal Regulations

- SAMHSA TAP # 13

- Legal Action Center

- Health Insurance Portability and Accountability Act of 1996 (HIPAA), 45 CFR Parts 160 and 164



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## Core Rules 9 CSR 10-7.030

### Service Delivery Process and Documentation

- (11) Organized Record System. The organization has an organized record system for each individual.
  - (A) Records shall be maintained in a manner which ensures confidentiality and security.
    1. The organization shall abide by all local, state and federal laws and regulations concerning the confidentiality of records.



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## General Purposes of 42 CFR part 2

- ❑ Direct or indirect identification of consumer as ADA treatment client requires consumer consent.
- ❑ Protect consumer from discrimination based on stigma.
- ❑ Encourage consumer trust in addiction treatment.



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## Who is a client?

- Is receiving ADA Treatment
- Has received ADA Treatment
  - Even if deceased
- Has applied for ADA Treatment
  - Even if they no showed for initial appointment



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Who does this law apply to?

- Any individual or organization that provides alcohol or drug abuse diagnosis, treatment or referral for treatment.
- Federal assisted ADA treatment programs. (that means you)



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## What is Disclosure?

- Client record
- Testifying about client's treatment
- Confirming a client's presence in treatment
- Pre-printed envelope mailed to client
- Discussing client in public



# Client Confidentiality

## CONFIDENTIAL OF DRUG AND ALCOHOL PATIENT INFORMATION

(42 U.S.C. §290dd-2; 42 C.F.R. Part 2)

**THE GENERAL RULE:**  
The program may not disclose any information about any patient

### Exceptions: Conditions permitting disclosures

Internal Communications

No patient identifying information

Proper Consent

Qualified Service Organization Agreement

Medical Emergency

Research / Audit

Court Order

Reporting suspected child abuse and neglect

Crime on program premises or against program personnel

- Proper Form
1. Name of Program
  2. Name of Recipient
  3. Name of Patient
  4. Purpose/Need
  5. Extent/Nature
  6. Revocation Statement
  7. Expiration
  8. Signature of Patient
  9. Date

Written Notice of Prohibition on Redisclosure



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## Consent for Release of Information

- Must specify;
  - Name of Client
  - Name of program disclosing
  - Purpose of disclosure
  - Who is to receive the info
  - The specific info to be released
    - As exactly and narrowly as possible



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## Consent for Release of Information

- Must specify; *continued*
  - Statement that client understands their right to revoke consent (orally or written) at any time \*
  - The date or condition that consent expires
  - Date consent is signed
  - Signature of client
- \* Consent for criminal justice referrals may be made irrevocable for a period of time



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## Exceptions

- Internal program communications
- Qualified Service Organization Agreement
- Crime on premises or against program personnel
- Medical emergencies
- Mandated Reports of child abuse neglect
- Research
- Audit and Evaluation (that's us)
- Court orders
  - Not subpoena, search warrant, or arrest warrant



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**Tarasoff v. Regents of University of California**, 17 Cal. 3d 425, 551 P.2d 334, 131 Cal. Rptr. 14 (Cal. 1976)

On October 27, 1969, Prosenjit Poddar killed Tatiana Tarasoff.<sup>[\\*fn1](#)</sup> Plaintiffs, Tatiana's parents, allege that two months earlier Poddar confided his intention to kill Tatiana to Dr. Lawrence Moore, a psychologist employed by the Cowell Memorial Hospital at the University of California at Berkeley. They allege that on Moore's request, the campus police briefly detained Poddar, but released him when he appeared rational. They further claim that Dr. Harvey Powelson, Moore's superior, then directed that no further action be taken to detain Poddar. No one warned plaintiffs of Tatiana's peril.



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## Redisclosure

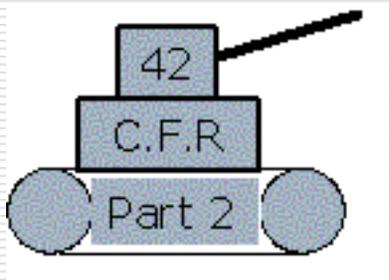
- Released info must be accompanied by written notice;
  - This info is protected by federal law and may not be redisclosed except as provided for in the regulations.
- Regulations on redisclosure same as disclosure



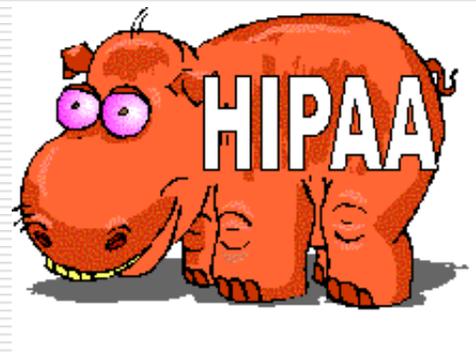
# Client Confidentiality

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## **LAW WARS**



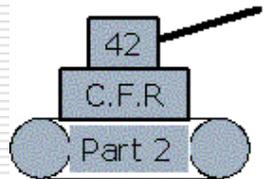
**VS**



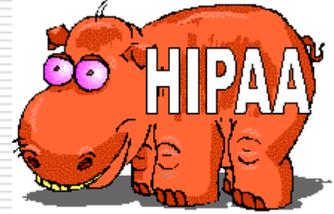


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## Rules

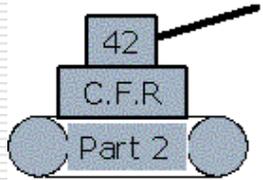


1. If two Laws regulate the same subject, give effect to both laws if at all possible.
2. Where two federal laws pose an irreconcilable conflict and therefore cannot both be given effect , usually the more recently enacted law prevails.
3. However, an earlier enacted law that deals with a more narrow, precise, or specific subject will prevail over a later enacted law that treats the subject more generally.
4. When a latter law specifically addresses an issue on which an earlier law was silent, the later, more specific language will control.



# Client Confidentiality

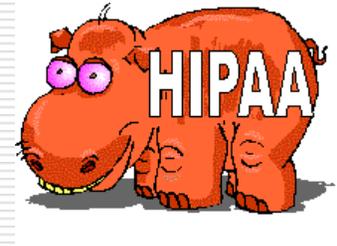
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## Confidentiality

- 42 C.F.R. Part 2: A program may not disclose information that identifies a patient as being in a drug/alcohol program or alcohol/drug patient.

## Consent



## Privacy

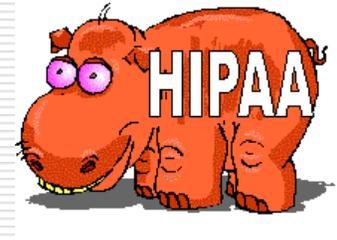
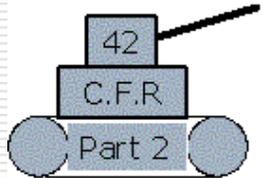
- HIPAA: A covered entity may not "use or disclose" protected health information except as permitted or required by the regulations.

## Authorization



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Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation act of 1970.

and Drug Abuse Prevention, Treatment and Rehabilitation act 1972,

Effective 1975

Revised 1987

Health Insurance Portability Accountability Act

Established 1996

Effective April 2003



# Client Confidentiality

<b><u>Action</u></b>	<b><u>HIPAA</u></b> Health Insurance Portability Accountability Act of 1996	<b><u>42 CFR Part 2</u></b> Federal Alcohol and Drug Confidentiality Law
Must grant a client access to his or her own records	HIPAA requires a program to give an individual access to his or her own records. See exceptions at 45 C.F.R. 164.524 (a)(2),(3).	42 CFR part 2 permits client access to his or her own records
Allow client the right to have records amended	HIPAA stipulates that the patient has the right to have a program amend incorrect or incomplete information in their record. 45 C.F.R. 164.526.	42 CFR part 2 is silent
All notices, consents and authorizations must be in “plain language”, and include all required components from 42 CFR part 2 and HIPAA	HIPAA requires the consumer to be notified of the organization’s privacy practices in “plain language”. 45 C.F.R. 164.520 HIPAA also requires specific language be included in the notice of privacy practices. See 45 CFR part 164.520(b) for the complete list of required language.	42 CFR part 2 also requires the program to give the client a written summary of the confidentiality law.
Client must receive copies of all authorizations they sign.	HIPAA requires that clients be given copies of all authorizations they sign. 45 C.F.R. 164.508(c)(4).	42 CFR part 2 is silent
You may not report clients’ past violent crimes.	HIPAA prohibits reporting a past violent crime based on a client’s self report during counseling or psychotherapy even if done anonymously. 45 C.F.R. 164.512(j)(2).	42 CFR part 2 is silent but anonymous report was acceptable



# Client Confidentiality

<u>Action</u>	<u>HIPAA</u> Health Insurance Portability Accountability Act of 1996	<u>42 CFR Part 2</u> Federal Alcohol and Drug Confidentiality Law
All clients have the right to revoke authorizations in writing.	Under HIPAA, all clients have the right to revoke authorizations and that revocation must be made in writing. 45 C.F.R 164.508(b)(5).	A consent for a client referred by the criminal justice system may be made irrevocable for a period of time 42 CFR part 2.35
Only the minimum necessary information may be disclosed.	HIPAA requires that only the minimum necessary information be disclosed and also stipulates minimum necessary standards apply to restricting information flow inside an organization. 45 C.F.R. 164.502(b)(1).	“Limited to that information which is necessary to carry out the purpose of the disclosure” 42 CFR 2.13(a)
The program must be able to provide a client with an accounting of disclosures.	With in 60 days of a request by the client, a program must provide an accounting of all disclosures of protected health information for the 6 years prior to the request. 45 C.F.R 164.528(c)(1). Programs are not required to include certain disclosures See exceptions at 45 CFR 164.528(a)(1)	42 CFR has no accounting of Disclosures requirement
All employees must receive privacy training.	Training on HIPAA’s privacy rules is required for each member of the program’s work force. Programs must document that the training has been provided. 45 C.F.R 164.530(b).	42 CFR part 2 is silent
A privacy officer must be designated.	Programs must appoint a privacy official who is responsible for the development and implementation of the program’s privacy policies and procedures.45 C.F.R. 164.530(a).	42 CFR part 2 is silent



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## Question / Discussion

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**LEGAL  
ACTION  
CENTER**

**The Legal Action Center**  
**153 Waverly Place**  
**NY NY 10014**  
**(212) 243-1313**  
**[lacinfo@lac.org](mailto:lacinfo@lac.org)**  
**<http://www.lac.org/>**



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**(573) 751-8133**

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**<http://www.dmh.mo.gov/ada/>**

## HIPAA: What must an ADA Provider do differently?

<u>Action</u>		
to his or her own records	HIPAA requires a program to give an individual access to his or her own records. See exceptions at 45 C.F.R. 164.524 (a)(2),(3).	42 CFR part 2 permits client access to his or her own records
have records amended	HIPAA stipulates that the patient has the right to have a program amend incorrect or incomplete information in their record.45 C.F.R. 164.526.	42 CFR part 2 is silent
authorizations must be in "plain language", and include all required components from 42 CFR part 2 and HIPAA	HIPAA requires the consumer to be notified of the organization's privacy practices in "plain language". 45 C.F.R. 164.520 HIPAA also requires specific language be included in the notice of privacy practices. See 54 CFR part 164.520(b) for the complete list of required language.	42 CFR part 2 also requires the program to give the client a written summary of the confidentiality law.
copies of all authorizations they sign.	HIPAA requires that clients be given copies of all authorizations they sign. 45 C.F.R. 164.508(c)(4).	42 CFR part 2 is silent
clients' past violent crimes.	HIPAA prohibits reporting a past violent crime based on a client's self report during counseling or psychotherapy even if done anonymously. 45 C.F.R. 164.512(j)(2).	42 CFR part 2 is silent but anonymous report was acceptable
to revoke authorizations in writing.	Under HIPAA, all clients have the right to revoke authorizations and that revocation must be made in writing. 45 C.F.R 164.508(b)(5).	A consent for a client referred by the criminal justice system may be made irrevocable for a period of time 42 CFR part 2.35
necessary information may be disclosed.	HIPAA requires that only the minimum necessary information be disclosed and also stipulates minimum necessary standards apply to restricting information flow inside an organization. 45 C.F.R. 164.502(b)(1).	"Limited to that information which is necessary to carry out the purpose of the disclosure" 42 CFR 2.13(a)
able to provide a client with an accounting of disclosures.	With in 60 days of a request by the client, a program must provide an accounting of all disclosures of protected health information for the 6 years prior to the request. 45 C.F.R 164.528(c)(1). Programs are not required to include certain disclosures See exceptions at 45 CFR 164.528(a)(1)	42 CFR has no accounting of Disclosures requirement
receive privacy training.	Training on HIPAA's privacy rules is required for each member of the program's work force. Programs must document that the training has been provided. 45 C.F.R 164.530(b).	42 CFR part 2 is silent
A privacy officer must be designated.	Programs must appoint a privacy official who is responsible for the development and implementation of the program's privacy policies and procedures.45 C.F.R. 164.530(a).	42 CFR part 2 is silent