



## **FAQ: Confidentiality of Substance Use Disorder (SUD) Records Proposed Rule**

Updated: December 2022

The US Department of Health and Human Services (HHS) Office for Civil Rights (OCR) and Substance Abuse and Mental Health Services Administration (SAMHSA) published their long awaited [proposed rule](#) to align 42 CFR Part 2 which governs Substance Use Disorder (SUD) Patient Records with the HIPAA Rules. The proposed rule was officially published on Friday, December 2, 2022 with a 60-day public comment period. Should the proposed rulemaking be finalized providers will need to be prepared to comply with the updated requirements 22 months after the rule's effective date.

This proposed rule is a culmination of multiple years of work in Congress on Jesse's Law to simplify the process in which patients give consent to providers to release SUD information while ensuring patient privacy is protected.

At this time, it is not known when a final rule should be expected or when a provider will be expected to comply with these proposals.

### **Key Provisions Within the Proposed Rule Include:**

- Aligning the rules for Part 2 covered information consent with HIPAA, requiring patients to only provide consent once for an SUD record to be disclosed by a covered entity for treatment, payment, and operations (TPO) purposes and other purposes permitted under HIPAA;
- Outlining that consent can be revoked at any time by a patient for the sharing of their Part 2 covered information to specific entities or all entities;
- Requiring Part 2 programs to follow HIPAA privacy and security Breach Notification requirements;
- Implementing updated Notice of Privacy Practices (NPP) requirements to account for the new Part 2 covered information consent, disclosure, and revocation requirements;
- Details on how and when law enforcement are able to access a patient's SUD Part 2 records, how those records are to be handled, and how proceedings continue if a patient's records are inadvertently accessed;
- Clarifications on when and how a patient's SUD data can be shared in a de-identified format; and
- Information on how Part 2 SUD data can be shared for public health activities.

### **Key Requests for Information in the Proposed Rule Include:**

- How the HIPAA Security Rule may/or can interact with Part 2 SUD requirements;
- How health information exchanges (HIEs) should handle data after consent is revoked by a patient;
- Estimated compliance burden for Part 2 programs that are not covered entities; and
- How psychotherapy notes should be disclosed with consent related to SUD treatment data;

### **AHIMA Contact for Work Group Participation**

If you are interested in participating in AHIMA work groups formulating the comment response to this rule please contact the AHIMA Advocacy and Policy Team at [advocacy@ahima.org](mailto:advocacy@ahima.org).