Key Questions to Pose Before You Disclose

# Substance Use Disorder Treatment Records

Legal Disclaimer:

CalOHII does not provide advisory opinions or legal advice to private individuals.

This document is intended to offer help to providers to know when an authorization for release of information is required before disclosing substance use disorder treatment records.

The Information Practices Act (IPA) Civil Code §§ 1798-1798.78 applies to state agencies.
Staff should check with their legal office regarding permissive uses and disclosures under the IPA.

Please note that there may be other permitted or required disclosure under the law. Contact your attorney for advice.

## When is a patient authorization NOT required?

### Who must comply?

| **Organization** | **Scenario** |
| --- | --- |
| Program | * Emergency
* Research
* Court Order
* Internal Communications by professionals for treatment, service, or prevention
* Qualified Service Organization Communication
* Required by Law
* Crime on Premises
 |
| Community Mental Health Provider  | * Court Order
* Required by Law
* Emergency
* Child Abuse
* Elder Abuse
* Internal Communications by professionals for treatment, service, or prevention
 |
| General Medical Facility | * Court Order
* Required by Law
* Emergency
* Child Abuse
* Elder Abuse
* Internal Communications by professionals for treatment, service, or prevention
 |

### Disclose what?

Substance abuse treatment records – Substance use disorder records, patient records, or discrete portions thereof, specifically relating to evaluation and treatment of substance use disorder; any information, whether in writing, orally, electronically, or by other means.

Disclosure – A communication of records containing patient identifying information (PII).

PII – Includes name, address, social security number, fingerprints, photographs or other information by which patient’s identity can be determined with reasonable accuracy/speed identifying someone as having a past/current substance use disorder and/or being a past or current patient in a substance use disorder program.

### What are important terms to know?

| **Term** | **Definition** |
| --- | --- |
| Program | Substance use disorder program receiving state or indirect federal assistance is defined as: (a) An individual or entity (other than a general medical care facility) who holds itself out as providing, and provides, substance use disorder diagnosis, treatment or referral for treatment; or (b) An identified unit within a general medical facility which holds itself out as providing, and provides, substance use disorder diagnosis, treatment or referral for treatment; or (c) Medical personnel or other staff in a general medical care facility whose primary function is the provision of substance use disorder diagnosis, treatment or referral for treatment and who are identified as such providers. Refer to 42 C.F.R. § 2.12(e)(1) for examples.  |
| Community Mental Health Provider | Community mental health service provider as defined by Welfare and Institution Code §§ 5328-5328.9 is a state hospital; a general acute hospital, an acute psychiatric hospital, a mental health rehabilitation center, a skilled nursing facility with a special treatment program for individuals with mental illness. |
| General Medical Facility | Per 42 C.F.R. Part 2 FAQ 1 (2011) - hospitals, trauma centers, or federally qualified health centers generally are “general medical care” facilities. A practice comprised only of primary care providers could be a “general medical facility.” But even in a general medical facility, a provider is only a Part 2 “program” if the provider works in an identified unit that provides and holds itself out as providing substance use disorder related services or personnel/staff has “primary function” of provision of substance use disorder related services. |
| Federal Assistance | For this purpose, an substance use disorder program is considered to be federally assisted if it receives any federal funds, whether they are related to these services or not, is licensed, certified, registered or otherwise authorized by the federal government, receives IRS assistance through tax exemption or deductions for contributions, or is conducted directly by the federal government or by a state or local government that receives federal funds which could be (but are not necessarily) spent for substance use disorder programs. Go to [CalOHII’s website](http://www.ohii.ca.gov/calohi/Home.aspx) for more tools and information. |

### In all cases:

* Limit the disclosure to what is described in the authorization
* Validate the identity and authority of the individual requesting the information
* Account for the disclosure within the patients record as required by the HIPAA Privacy Rule
* Develop internal written procedures and train employees on the requirements
* Designate individual(s) to process disclosure requests