

**EFFECTIVE APRIL 16TH, 2024** HHS is applying the confidentiality specifications aspects of CFR Part 2 with HIPAA and HITECH. The changes shall cover the Substance Abuse and Mental Health Services Administration. The new changes include:

**Patient Consent:** Allows a single consent for all future use and disclosure of information with healthcare. Treatment, payment, and healthcare operations are part of this. Allows the records to be established following the update for all HIPAA Entities and Businesses.

**Other Uses and Disclosures:** Allows the disclosure of records without patient consent to public health authorities if the records disclosed are de-identified according to the standards in the HIPAA Privacy Rule. Restricts the use of records and testimony in civil, criminal, administrative, and legislative proceedings against patients, unless patient consent is granted or a court order.

**Penalties:** Replacing criminal penalties currently in Part 2 with civil and criminal enforcement authorities that also apply to HIPAA violations.

**Patient Notice:** Aligns both Part 2 Patient Notice with HIPAA Notice Patient Notice.

**Safe Harbor:** Establishing a cap on civil or criminal liability for investigative departments that act with carefulness, to determine if a provider is subject to Part 2 before requesting information during an investigation. The safe harbor mandates that investigative agencies follow specific procedures if they find that they have obtained Part 2 records without obtaining the necessary court order first.

## What was modified?

**Patient Consent:** Prohibits combining patient consent for the use and disclosure of records for civil, criminal, administrative, or legislative proceedings with patient consent for any other use or disclosure. SUD counseling requires a separate patient consent for the use and disclosure of notes. Each disclosure made with patient consent includes a copy of the consent.

**SUD Counseling Notes:** The clinician voluntarily maintains the notes analyzing the conversation separately from the rest of the patient's SUD treatment and medical record, and that require specific consent from an individual. It cannot be used or disclosed based on a broad TPO consent.

**Safe Harbor:** Clarifies and strengthens the reasonable steps that investigative departments must follow to be eligible for the safe harbor.

**Segregation of Part 2 Data:** Adds an express statement that dividing the old and new Part 2 records is not required.

**Complaints:** Adds a right for all, including patients, to file a complaint directly with the Part 2 program for an alleged violation of Part 2.

**Fundraising:** Create a new right for patients to opt out of receiving fundraising communications.

## PAST MODIFICATIONS

Effective as of March 25, 2013, the following sections in HIPAA have been modified: Modifications to the HIPAA Privacy, Security, Enforcement, and Breach Notification Rules under the Health Information Technology for Economic and Clinical Health Act and the Genetic Information Nondiscrimination Act; Other modifications of the HIPAA Rules. As of September 23, 2013, all covered entities and business associates must comply with the Final Rule.

## SOURCES

<https://www.federalregister.gov/d/2024-02544/p-6>  
<https://www.hhs.gov/hipaa/for-professionals/regulatory-initiatives/fact-sheet-42-cfr-part-2-final-rule/index.html>  
<https://www.hipaajournal.com/hipaa-updates-hipaa-changes/>  
<<http://www.infolawgroup.com/2013/03/articles/hipaa/hipaahitechrules/>>

