

Provider Notice

To: **PerformCare Providers**
From: **PerformCare**
Date: **March 29, 2023**
Subject: **AD 23 107 Update on MH and SU Confidentiality Act 32 and Act 33**

On July 7, 2022 Governor Wolf signed into law Pennsylvania Act 32 of 2022 amending the confidentiality provisions of the state Mental Health Procedures Act, and Act 33 amending the corresponding provisions of the Drug and Alcohol Abuse and Control Act. These two Acts serve to update Pennsylvania's confidentiality laws pertaining to substance use disorder ("SUD") treatment records and patient privacy. These new confidentiality provisions are effective immediately.

Previously, Pennsylvania regulations codified at 4 Pa. Code § 255.5 put extremely high barriers around the specific SUD treatment information that could be shared even with patient consent. Acts 32 and 33 specifically prohibit any state agency, such as the Pennsylvania Department of Drug and Alcohol Programs ("DDAP") from promulgating or enforcing rules that are more restrictive than the federal confidentiality law of 42 CFR Part 2. Therefore, these acts have the effect of prohibiting the enforcement of 4 PA. Code § 255.5 because it is more restrictive than 42 CFR Part 2.

On November 29, 2022, DDAP released Licensing Alert 03-22 which has additional information regarding the new legislation. The document is available at <https://www.ddap.pa.gov/Licensing/Documents/Licensing%20Alerts/Alert%202022-03.pdf>

With the elimination of the enforceability of 4 Pa. Code § 255.5, Pennsylvania providers will now follow federal patient confidentiality laws codified in the Health Insurance Portability and Accountability Act of 1996 ("HIPAA") and 42 CFR Part 2. A detailed legal summary prepared by Obermayer Rebmann Maxwell & Hippel LLP is available on the PerformCare website at: <https://pa.performcare.org/providers/resources-information/policies.aspx>

The tables on the following pages provide a summary of when confidential patient records can be released both with and without patient consent.

PERMITTED DISCLOSURES WITH PATIENT AUTHORIZATION ¹

HIPAA	42 CFR Part 2
<p>No limitations on the purposes for which disclosure may occur with patient consent.</p> <p>No requirement to specify the purpose of disclosure</p>	<p>No limitations on the purposes for which disclosure may occur with patient consent. However, <i>the person/name/entity to which the disclosure is made and the purpose for disclosure must be listed in the consent.</i> § 2.31. ²</p> <p>A general consent for purposes of “payment and healthcare operations” is acceptable and should be requested from SUD patients for the purposes of sharing their healthcare information. Examples of permissible payment and healthcare operations include:</p> <ul style="list-style-type: none"> • Billing, claims management, collections • Clinical professional support services • Patient safety activities • Activities pertaining to (i) training of healthcare professionals; (ii) the assessment of practitioner competencies; (ii) assessment of health plan performance; and (iv) training of non-healthcare professionals • Accreditation, licensing or credentialing • Underwriting, enrollment, premium rating, and other activities related to the creation, renewal, or replacement of contract if health insurance/benefit • Third-party liability coverage • Fraud, waste and abuse activities • Medical review, legal services or auditing • Business planning and development • Business management and administrative activities • Customer services, including the provision of data analyses for policy holders, plan sponsors, or other customers • Resolution of internal grievances • Determination of eligibility for health benefit claims • Risk adjusting based on enrollee health status and demographic characteristics • Review of healthcare services regarding medical necessity, coverage and appropriateness of treatment • Care coordination or case management • Other payment/healthcare operations activities not expressly prohibited

¹ Source: Obermayer Rebmann Maxwell & Hippel, LLP “Act 32 and Act 33 Provider Legal Guidance ORMH LLP”

² Additional information regarding a Part 2 compliant written consent and its content is provided in DDAP Licensing Alert 03-22, Nov. 29, 2022, available at <https://www.ddap.pa.gov/Licensing/Documents/Licensing%20Alerts/Alert%202022-03.pdf>

PERMITTED DISCLOSURES WITHOUT PATIENT AUTHORIZATION ³

HIPAA	42 CFR Part 2
<ul style="list-style-type: none"> • Treatment • Payment • Healthcare Operations • Public Health Activities • Health Oversight purposes • Judicial and Administrative Proceedings • Law Enforcement Purposes • Decedents • Organ donation purposes • Research • Threat to health and safety • Government functions • Worker’s compensation • As required by law <p>IMPORTANT</p> <p>Limit any permitted use or disclosure of PHI to the minimum necessary</p> <p>Exceptions: Disclosure to patient Disclosure to another provider for treatment purposes</p>	<ul style="list-style-type: none"> • Communications with Part 2 Program for those who have need to know • Medical emergency • Report crime or threat on Part 2 premises or against Part 2 personnel to law enforcement; limit info • Report child abuse or neglect • Research • Audit or Evaluation of Part 2 program/provider by government, payer, or other lawful holder • Court order <p>IMPORTANT</p> <p>Limit disclosure to the information necessary for permitted purposes of disclosure</p>
<p>Disclosure to Business Associates (“BA”) if a BA Agreement in place</p>	<p>Disclosure to Qualified Services Organizations (“QSO”) if a QSO Agreement is in place</p>

Thank you for your ongoing collaboration and commitment to our Members. Please contact your Account Executive if you have any questions regarding this notice.

cc: Lisa Hanzel, PerformCare
 Scott Suhring, Capital Area Behavioral Health Collaborative
 Missy Reisinger, Tuscarora Managed Care Alliance
 PerformCare Account Executives

³ Source: Obermayer Rebmann Maxwell & Hippel, LLP “Act 32 and Act 33 Provider Legal Guidance ORMH LLP”