



LICENSING ALERT 03-22

Ellen DiDomenico
Deputy Secretary
Department of Drug and Alcohol Programs

A handwritten signature in black ink that reads "Ellen DiDomenico".

November 29, 2022

Effective: Immediately

Subject: Act 33 of 2022 – Confidentiality of Substance Use Disorder (SUD) Requirements

Purpose: To provide guidance on how the Department of Drug and Alcohol Programs (DDAP) will measure and enforce compliance under [Act 33 of 2022](#) (Act 33) with regulatory licensing requirements for confidentiality related to 28 Pa. Code Chapters 709, 710, 711, 715 and 4 Pa. Code § 255.5.

Background: Act 33 took effect immediately when Governor Wolf signed it on July 7, 2022. Act 33 amends the definitions, 71 P.S. § 1690.102, and the confidentiality provisions, 71 P.S. § 1690.108, of Act 63 of 1972, the Pennsylvania Drug and Alcohol Abuse Control Act.

Act 33 makes Pennsylvania's SUD confidentiality requirements consistent with federal law. Act 33 also prohibits DDAP from issuing or enforcing regulations that restrict disclosure of records or information that are permitted by federal law, such as 4 Pa. Code § 255.5. Federal regulations for confidentiality applicable to federally-assisted SUD treatment providers can be found at [42 CFR Part 2](#). A significant majority of licensed SUD treatment providers meet the criteria to be considered federally-assisted under [42 CFR 2.12\(b\)](#). DDAP will continue to monitor compliance with licensing regulations in 28 Pa. Code Chapters 709, 710, 711, and 715 but will only cite violations if the disclosure does not comply with 42 CFR Part 2.

Procedures: DDAP will review client/patient records to verify compliance with 42 CFR Part 2 and applicable licensing regulations. The licensed SUD treatment facility:

- Must obtain an informed and voluntary consent for disclosure of information located in the client record. The consent must be in writing and include all the requirements addressed in [42 CFR 2.31](#) Consent Requirements.
- Must identify the name or names of the persons or entities to which the disclosure is made (42 CFR 2.31(a)(4)).
- Must specify how much and what kind of information is to be disclosed, including an explicit description of the SUD information that may be disclosed (42 CFR 2.31(a)(3)).
- Must ensure the information disclosed is limited to what is necessary to carry out the stated purpose (42 CFR 2.31(a)(5)).
 - Examples of such situations may include:

If disclosing information to:	...The purpose should be:
a physician	related to a medical service or insurance information.
a probation officer	related to legal proceedings or compliance with legal requirements.
an emergency contact of the client	related to an emergency.
Family member/individual who will be engaged in the client's treatment	for family/individual engagement in treatment or for historical information.
an employer of the client	to provide a timeframe for the client to return to work.

- Is no longer required to have a dated signature of a witness on the informed and voluntary consent for disclosure form (28 Pa. Code § 709.28(c)(5)).
- Must continue to ensure a copy of a client consent is offered to the client and a copy maintained in the client record (28 Pa. Code § 709.28 (d)).
- Must ensure all consent for disclosure forms include a statement that the consent is subject to revocation at any time except to the extent that the part 2 program or other lawful holder of patient identifying information that is permitted to make the disclosure has already acted in reliance on it. Acting in reliance includes the provision of treatment services in reliance on a valid consent to disclose information to a third-party payer (42 CFR 2.31(a)(6)).
- Must continue to ensure the date, event, or condition upon which the consent will expire if not revoked before. This date, event, or condition must ensure that the consent will last no longer than reasonably necessary to serve the purpose for which it is provided. (42 CFR 2.31(a)(7)).

Please note that federally-assisted SUD treatment facilities can be subject to penalties other than citations for regulatory licensing violations by DDAP and are separately and independently responsible to follow 42 CFR Part 2 in its entirety. See [42 CFR 2.3](#).

Licensed SUD treatment providers that are not federally assisted: Under Act 33, treatment providers that do not meet the criteria to be considered federally-assisted SUD treatment providers under 42 CFR 2.12(b) are subject to the requirements of the Health Information Privacy and Portability Act (HIPAA). If DDAP determines that a licensed SUD treatment provider has made a disclosure under HIPAA that is not permitted by 42 CFR Part 2, DDAP will request the provider to demonstrate that it does not receive federal assistance and is therefore not subject to 42 CFR Part 2.

Please submit all questions regarding this Licensing Alert and exception requests to the Bureau of Program Licensure at RA-licensuredivision@pa.gov.