

## Information Bulletin 02-2022

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**Effective:** Immediately

**Subject:** Act 33 of 2022 – Confidentiality of Substance Use Disorder Records

Act 33 of 2022 ([Act 33](#)) took effect immediately when Gov. Wolf signed it on July 7, 2022. Act 33 makes significant changes to the confidentiality provisions for substance use disorder (SUD) treatment records under Pennsylvania law, and DDAP's enforcement of those provisions. 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. Federally-assisted programs for the diagnosis, referral, or treatment for SUD are covered by the federal regulations at 42 CFR Part 2 ([eCFR :: 42 CFR Part 2 -- Confidentiality of Substance Use Disorder Patient Records](#)). Under Act 33, federal confidentiality provisions apply to those programs and disclosures shall be made as permitted by federal law. Act 33 prohibits DDAP from issuing or enforcing a regulation that restricts disclosure of information permitted by Act 33.

### **Records of Federally-Assisted SUD Programs**

Under 42 CFR 2.11, a SUD program is defined as an individual or entity, other than a general medical facility, that holds itself out as providing and provides SUD diagnosis, treatment, or referral for treatment. It includes identified SUD treatment units within general medical facilities and medical personnel or staff within general medical facilities whose primary function is SUD treatment and who are identified as SUD treatment providers.

The scope of federal assistance as defined under 42 CFR 2.12(b) is broad and includes SUD programs that

- are operated by or under contract with a federal agency;
- have a license, certification, registration, or authorization granted by a federal agency;
- participate in Medicare;
- are accredited by the Substance Abuse and Mental Health Services Administration (SAMHSA) and registered with the Drug Enforcement Agency (DEA) as an Opioid Treatment Program to dispense or administer controlled substances to treat opioid use disorder;
- receive federal financial assistance in any form such as Medicaid or grant funds; or
- are organized as non-profit entities that have tax-exempt status or that can receive tax-deductible contributions.

Based on the information that is available to DDAP, most of the licensed capacity for SUD treatment and case management in Pennsylvania meets one or more of the criteria of federal assistance. The records of those programs are subject only to the confidentiality and disclosure requirements of 42 CFR Part 2 and any other applicable federal law.

### **Records of Other SUD Providers**

Under Act 33, other SUD providers that are not covered by 42 CFR Part 2, such as general medical facilities or practices, or SUD diagnosis, treatment, or referral programs that do not receive any form of federal assistance, are governed by the Health Information Portability and Accountability Act (HIPAA) privacy regulations at 45 CFR Subtitle A, Subchapter C ([eCFR :: 45 CFR Subtitle A Subchapter C -- Administrative Data Standards and Related Requirements](#)). Act 33 prohibits those providers from disclosing client records without consent except:

- to medical personnel for purposes of diagnosis and treatment;
- to government officials for purposes of obtaining benefits due to the client on the basis of SUD;
- in emergency medical situations; or
- to a covered entity or business associate in accordance with HIPAA.

### **Enforcement of Existing Regulations**

DDAP, in its role as the State agency that licenses SUD treatment providers, collects some but not all of the information that determines whether a program receives federal assistance. The information available to DDAP shows that the majority of SUD treatment records will be covered by 42 CFR Part 2. In addition, DDAP does not intend under Act 33 to create or expand any disparities between privately-funded and publicly-funded SUD treatment. Furthermore, as stated above, DDAP is prohibited from issuing or enforcing a regulation that restricts disclosure of information permitted by Act 33.

Therefore, DDAP will not cite any licensed SUD providers for regulatory violations if they disclose information as permitted by 42 CFR Part 2, even if the disclosure would be prohibited under State regulations such as 4 Pa. Code § 255.5. Licensed SUD providers should carefully review 42 CFR Part 2 and take particular note of the required elements for the content of a written consent at 42 CFR 2.31; permitted disclosures with consent, 42 CFR 2.32-2.36; disclosures without consent for medical emergencies, research, and audit and evaluation, 42 CFR 2.51-2.53; and court orders that authorize disclosure, 42 CFR 2.61-2.67.

SUD providers that are licensed by DDAP but do not receive federal assistance in any form should also take note that HIPAA authorizes some non-consensual disclosures that are not permitted by 42 CFR Part 2. If DDAP determines that a licensed provider has made a disclosure under HIPAA that is not permitted by 42 CFR Part 2, DDAP will request the provider to verify that it does not receive federal assistance and is therefore not subject to 42 CFR Part 2.