FAQ: HHS OCR/SAMHSA Confidentiality of Substance Use Disorder Patient Records Final Rule

Updated: February 2024

The US Department of Health and Human Services (HHS) Office for Civil Rights (OCR) and Substance Abuse and Mental Health Services Administration (SAMHSA) published their joint Confidentiality of Substance Use Disorder (SUD) Records final rule aligning 42 CFR Part 2 with the Health Insurance Portability and Accountability Act (HIPAA). AHIMA previously provided comment on the proposed rule in 2023 supporting many proposals and urging modification to others. The final rule official published in the Federal Register on February 16, 2024 with an effective date of April 16, 2024.

Key Provisions of the Final Rule Include:

✓ Allowing a single consent for all future uses and disclosures of a Part 2 record for treatment, payment, and health care operations (TPO);

✓ Allowing HIPAA covered entities and business associates to redisclose Part 2 records received under the above consent in accordance with HIPAA regulations;

• Requiring disclosures of Part 2 records with patient consent to include a copy of the consent or an explanation of the scope of that consent;

✓ Aligning Part 2 Patient Notice requirements with HIPAA Notice of Privacy Practices requirements;
  o OCR and SAMHSA note that this change only applies to patient notice requirements. Requirements related to updating the Notice of Privacy Practices will come in future rulemaking.

• Creating an SUD Counseling Note that is to be governed by the same requirements as a psychotherapy note for purposes of treatment, payment, and operations (TPO) under HIPAA;

• Permitting the disclosure of deidentified Part 2 records to public health authorities without prior patient consent; and

• Aligning Part 2 record breach requirements and penalties with HIPAA Breach Notification Rule requirements and enforcement authorities.

Please contact the AHIMA Policy and Government Affairs team at advocacy@ahima.org with any questions you may have about this final rule or its implications.