

Legal Alert

January 26, 2018

SAMHSA ISSUES FINAL CONFIDENTIALITY RULE

Susan L. Watchman
swatchman@gbllaw.com
602-256-4478

On January 3, 2018, the Substance Abuse and Mental Health Services Administration issued the final rule on “Confidentiality of Substance Use Disorder Patient Records” in January 2017. At the time the final rule was issued, SAMHSA concurrently issued a supplemental notice of proposed rulemaking with comment period; these changes are the result of that supplemental notice.

Changes include the following:

1. Under § 2.32, “Prohibition on Re-Disclosure,” paragraph (a)(2) permits an abbreviated notice to address the character limitations in standard free-text fields of electronic systems. The permitted abbreviated notice is “Federal law/42 C.F.R. part 2 prohibits unauthorized disclosure of these records.”
2. Under revised § 2.33(b), “Disclosures Permitted with Written Consent,” if the patient has consented to disclosure for payment or health care operations, the Part 2 Program may disclose to its payment and health care operations subcontractors if the contract between the Program and its contractor addresses compliance with Part 2. Requirements for complaint contract language are described in §2.33(c). The preamble also contains a description of payment and health care operations covered by these changes. Note that, unlike HIPAA, disclosure to treatment subcontractors for treatment is not included and still requires express consent.
3. In § 2.53, the changes clarify access to records by federal, state, and local government and their subcontractors or legal representatives for audit and evaluation or quality improvement activities, including such activities under Medicare, Medicaid (AHCCCS) or CHIP (KIDSCARE).

The changes to the final rule can be found at 83 Federal Register 239 (January 3, 2018). The final rule can be found at 82 Federal Register 6052 (January 18, 2017).

If you would like any additional information on these revisions to the Part 2 regulations, or need assistance revising your contracts, please reach out to Susan Watchman.