

# PROVIDER BULLETIN

## PROVIDER INFORMATION



December 2, 2019

### **Compliance with SAMSHA Part 2 Regulations and Identifying Claims Subject to Federal Confidentiality of Substance Use Disorder Regulations**

#### **Background**

Several federal and state privacy laws and regulations exist to protect patients' personal health information. Among these are regulations enacted by the Substance Abuse and Mental Health Services Administration (SAMHSA) to address confidentiality of health records for people seeking treatment for substance use disorders from federally assisted programs – “Part 2 Programs” or “Part 2 Providers.” The SAMHSA “Part 2” regulations are in addition to, and separate from, privacy rules enacted pursuant to the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and any state privacy laws and regulations. Notably, unlike HIPAA violations, violations of the Part 2 regulations may result in criminal penalties pursuant to the Federal Code.

Generally, the regulations apply to the use and disclosure of patient identifiable information for patients receiving, diagnosis, treatment or referral for treatment for a substance use disorder that is created by a Part 2 program. The regulations - 42 CFR Part 2 (Confidentiality of Substance Use Disorder Patient Records) – govern how certain patient identifiable information may be used, disclosed and re-disclosed. Specifically, the regulations require that information subject to Part 2, including patient identifiable information from Part 2 Program Providers, may only be used or disclosed for payment and/or healthcare operations purposes subject to (1) a valid patient consent and (2) a notice that prohibits re-disclosure of the information that is subject to the regulations. Absent the application of a specific exception, Part 2 Providers must obtain consent from patients to disclose covered information, including for disclosures to payers for payment. Further, outside of the context of disclosing information to contractors and subcontractors for limited set of appropriate healthcare operations purposes, re-disclosure of covered information to third parties must be done pursuant to separate, very specific consent.

The final rule requires HIPAA covered entities to amend their business associate agreements to underscore the importance of business associates' compliance with the Part 2 provisions. Accordingly, the business associate requirements in the Provider Policy and Procedure Manual are amended to include the following provision:

“Provider shall comply with all applicable federal laws, including, but not limited to 42 CFR Part 2, governing confidentiality for people seeking treatment for substance abuse disorders from federally assisted programs, as well as all state laws not preempted pursuant to 45 CFR Part 160, Subpart B.”

#### **Part 2 Program Provider Claim Identification**

Providers should submit the Part 2 disclaimer on Part 2 claims. In the 837 Professional, this disclaimer is reported in the Loop 2300 Claim Note NTE and in the 837 Institutional in Loop 2300 Billing Note NTE.

#### **Questions?**

If you have questions, please contact provider services at **(651) 662-5200** or **1-800-262-0820**.