

COORDINATED CARE ORGANIZATIONS INFORMATION SHARING OF SUBSTANCE USE DISORDER TREATMENT RECORDS

New Oregon laws specifically grant Coordinated Care Organizations (CCOs) the authority to share confidential information within their provider network and with the Oregon Health Authority and Department of Human Services. These new state laws will increase the ability of CCOs to provide coordinated, whole-person care.

Under state law CCOs have a great deal of flexibility in using and disclosing the protected health information of members but federal law restricts the use and disclosure of certain drug and alcohol records (42 CFR Part 2). This document addresses important federal limitations on the use and disclosure of drug and alcohol records.

As a general matter, 42 USC § 290dd-2(b) restricts the use and disclosure of drug and alcohol records without the specific consent of the patient. There are limited circumstances under which a patient's drug and alcohol records may be disclosed without the patient's consent. Those circumstances include disclosure to medical personnel if there is a medical emergency; disclosure to qualified personnel for program research, audit or evaluation functions; and disclosure if authorized by court order.

A CCO should not assume that any patient record that contains information related to drug or alcohol use, diagnosis or treatment is subject to federal law. Federal protection for drug and alcohol records only applies to records obtained by a federally assisted drug and alcohol abuse program for the purpose of diagnosing, referring for treatment, or treating alcohol or drug abuse. Generally a program comes under this umbrella if the program receives federal assistance by any department or agency of the government of the United States (42 CFR § 2.12(a)(1)(ii)). The definition of "program" is provided in 42 USC § 2.11.

CCO's should review 42 CFR Part 2 and determine whether they are "programs". If so, 42 CFR Part 2 would apply to drug and alcohol records. Under certain circumstances a program may enter into a qualified service organization or business associate agreement (QSO/BA) with another entity permitting the sharing of drug and alcohol records between the two parties to the agreement. If 42 CFR Part 2 applies to a CCO the CCO may wish to explore whether a QSO/BA is permitted and whether it would facilitate the sharing of information.

The Substance Abuse and Mental Health Services Administration (SAMHSA) has information about 42 CFR Part 2, including frequently asked questions and links to information about releasing drug and alcohol records. Information provided by SAMHSA can be found at: <http://www.samhsa.gov/healthprivacy/>.

DISCLAIMER

This summary is not intended as legal advice and should not be used as such. OHA and DHS employees with questions about this summary should contact the OHA Privacy Office. All others should consult with their legal counsel and privacy officer about application of these laws to their organizations.

Co-occurring Disorders (COD)

Providers offering treatment for co-occurring disorders (substance use disorder and mental health treatment) should familiarize themselves with ORS 179.505 (disclosure of psychotherapy notes), ORS 192.522 (release of information), and ORS 109.675 (age of majority law for patients 14 years and older). These statutes relate to release and sharing of mental health treatment records and consent requirements of minors. See also the “CCO Information Sharing of Mental Health Treatment Records” document found at the following OHA web site:

<https://cco.health.oregon.gov/Pages/ResourcesCHA.aspx>.

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