


**LOUISIANA STATE UNIVERSITY
HEALTH CARE SERVICES DIVISION
BATON ROUGE, LA**

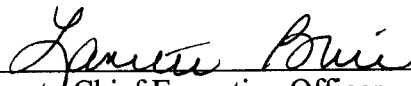
POLICY NUMBER: 7528-11
CATEGORY: HIPAA
CONTENT: Confidentiality of Detoxification Unit Medical Records
EFFECTIVE DATE: November 30, 2011
INQUIRIES TO: Lanette Buie, Deputy CEO, LSU HCSD
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Interim Chief Executive Officer
LSU Health Care Services Division

12.9.11

Date



Deputy Chief Executive Officer
LSU Health Care Services Division

12/6/11

Date

I. Background

42 CFR Part 2 protects the patient identifier record information noting identity, diagnosis, prognosis, treatment in connection with the performance of any drug abuse prevention function; program, activity related to alcoholism, alcohol abuse education, training, treatment rehabilitation, research conducted, regulated directly or indirectly assisted by the Federal Government.

This regulation does not require disclosure under any circumstances. The restrictions on use and disclosure in 42 CFR Part 2 apply whether the holder of the information believes the person seeking the information already has it, has other means of obtaining it, is a law enforcement officer or other official, has obtained a subpoena, or asserts any other justification for a disclosure or use which is not permitted by regulation.

The intent of 42 CFR Part 2 is to ensure an alcohol or drug abuse patient is not made to be more vulnerable by reason of the existence of records related to his or her treatment than an individual who has an alcohol or drug problem and/or who does not seek treatment.

II. Definitions

Patient identifying information – the name, address, social security number, fingerprints, photograph, or similar information by which the identity of a patient can be determined with reasonable accuracy and speed either directly or by reference to other publicly available information. The term does not include a number assigned to a patient by a program, if that number does not consist of, or contain numbers (such as a social security or drivers license number) which could be used to identify a patient with reasonable accuracy and speed from sources external to the program.

Program – (a.) An individual or entity (other than a general medical care facility) who holds itself out as providing and provides alcohol, drug abuse diagnosis, treatment, referral for treatment; (b.) an identified unit within a general medical facility which holds itself out as providing, provides alcohol, drug abuse diagnosis, treatment or referral for treatment; or (c.) medical personnel, other staff in a general medical care facility whose primary function is the provision of alcohol, drug abuse diagnosis treatment, referral for treatment and who are identified as such providers.

Program Director – (a.) In the case of a program which is an individual, that individual; (b.) In the case of a program which is an organization, the individual designated as director, managing director, or otherwise vested with authority to act as chief executive of the organization.

Records – any information whether recorded or not, relating to a patient received or acquired by a federally assisted alcohol or drug program.

III. Policy and Procedure

A. The Detoxification Units (Detox Unit) of several of LSU HCSD hospitals are federally assisted and therefore must comply with this regulation.

B. The presence of a patient on the Detox Unit will not be acknowledged without the patient's written consent or an authorizing court order is entered in accordance with C.5. of this policy. Any request for disclosure of a patient's record or presence must be answered in a way that does not reveal a patient is or has been diagnosed or treated for alcohol or drug abuse.

C. Employees will **only** disclose records in accordance with the following.

1. Upon written consent of the patient (Louisiana Department of Health and Hospitals HIPAA 402P Form) See Attachment A.

2. Medical personnel to the extent necessary for medical emergency –

- a. May disclose to medical personnel for the purpose of treating a medical condition which poses an immediate threat to the health of any individual and requires immediate medical intervention.
- b. Immediately following disclosure, will document the following in the patient's medical record:
 - i. The name of the medical personnel to whom disclosure was made and their affiliation with any healthcare facility;
 - ii. The name of the individual making the disclosure;
 - iii. The date and time of the disclosure; and
 - iv. The nature of the emergency (or error if the report was to FDA)
- c. This documentation must appear in the record when a patient is in need of medical attention and has to be moved to a medicine unit within the same facility.

3. Qualified personnel for the purpose of conducting scientific research –

- a. The program director will make a determination the recipient of the patient identifying information:
 - i. Is qualified to conduct the research;
 - ii. Has a research protocol under which the patient identifying information will be maintained in accordance with security requirements in the rule and will not be re-disclosed except as permitted in the rule
 - iii. Has provided a satisfactory written statement that a group of three or more individuals who are independent of the research project have reviewed the protocol and determined
 1. the rights and welfare of patients will be adequately protected; and
 2. the risks in disclosing patient identifying information are outweighed by the potential benefits of the research.
- b. A person conducting research will only disclose information back to the program from which it was obtained and will not identify any individual in any report of that research or otherwise disclose patient identities.

4. Audit and Evaluation activities –

- a. If records are not copied or removed, audit or evaluation can be performed by persons indicated below **only** if the respective person agrees in writing to limitations outlined in c. below.
 - i. Any federal, state, or local governmental agency that provides financial assistance to the program or is authorized by law to regulate its activities; or
 - ii. Any private person who provides financial assistance to the program (such as third party payor or quality improvement organization) or
 - iii. Person determined by the program director to be qualified to conduct the audit or evaluation activities
- b. Records can be copied or removed by any person performing the audit on behalf of any federal, state or local governmental agency that provides financial assistance to the program or is regulated by law to regulate the program; or any private person providing financial assistance (such as third party payor); or quality improvement organization as long as agency or individual agrees in writing to:
 - i. Maintain the patient identifying information in accordance with the security requirements outlined in section F of this policy;
 - ii. Destroy all patient identifying information upon completion of audit or evaluation; and
 - iii. Comply with the limitations on the disclosure outlined in c below.
- c. Limitations on disclosure and use:

A person conducting audit and evaluation will;

 - i. only disclose information back to the program from which it was obtained; and
 - ii. use only to carry out an audit, evaluation, investigation or prosecute criminal or other activities, as authorized by a court order.

5. If authorized by an appropriate order of a court of competent jurisdiction granted after application showing good cause AND a subpoena or a similar legal mandate must be issued in order to compel disclosure. (section 2.61 of regulation)

- a. Orders authorizing disclosure or use of record for noncriminal purposes must:
 - i. Limit disclosure to those parts of the patient's record which are essential to fulfill the objective of the order;
 - ii. Limit disclosure to those persons whose need for information is the basis for the order; and
 - iii. Include such other measures as are necessary to limit disclosure for the protection of the patient, the physician-patient relationship and the treatment services.
- b. Orders authorizing disclosure or use of record(s) to criminally investigate or prosecute patients must
 - i. Limit disclosure and use to those parts of the patient's record which are essential to fulfill the objective of the order;

- ii. Limit disclosure to those law enforcement and prosecutorial officials who are responsible for, or are conducting the investigation or prosecution, and limit their use of the records to investigation and prosecution of extremely serious crimes or suspected crimes specified in the application; and
- iii. Include such other measures as are necessary to limit disclosure and use to the fulfillment of only that public interest and need found by the court.

All records disclosed will be accompanied with the following statement:

This information has been disclosed to you from records protected by Federal confidentiality rules (42 CFR part 2). The Federal rules prohibit you from making any further disclosure of this information unless further disclosure is expressly permitted by the written consent of the person to whom it pertains or as otherwise permitted by 42 CFR part 2. A general authorization for the release of medical or other information is not sufficient for this purpose. The Federal rules restrict any use of the information to criminally investigate or prosecute any alcohol or drug abuse patient.

D. Criminal Charges or Investigations

No record may be used to initiate or substantiate any criminal charges against a patient or to conduct any investigation of a patient without a court order outlined in C.5. However, this restriction does not apply to communications from employees to law enforcement officers that:

1. Are directly related to a patient's commission of a crime on the premises of the program or against an employee of the program or to a threat to commit such a crime, and;
2. Are limited to the circumstances of the incident, including patient name and address, and patient last known whereabouts.
3. Reports of child abuse and neglect to the appropriate State or local authorities.

Please refer the checklist in Attachment B for procedure to follow when law enforcement appears at the respective facility.

F. Security of Record

Written records shall be maintained in a secure room, locked file cabinet, safe, or other similar container when not in use. Access to these records is restricted to employees who need this information to perform a job. The HIM department will develop written procedures to regulate and control access to and use of written records.

G. All patients admitted to the Detox Unit will receive a written summary of the federal law and regulations (see Attachment C) along with a verbal explanation that federal law and regulations protect the confidentiality of alcohol and drug abuse patient records.

ATTACHMENT B

Law Enforcement Disclosure Checklist

Should a law enforcement official present to the respective facility requesting a patient on the Detox unit:

1. Alert administration and direct official(s) to administration
2. Administration will ask official(s) if they have a court order and subpoena/warrant/other legal mandate.
3. Administration will alert the Program Director, the Compliance Liaison/Privacy Officer and Legal Council to the presence and expectations of official(s). As well as to whether or not officials have court order and other legal mandate.

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4. If official(s) does not have court order and other legal mandate, the Program Director will contact physician and attempt to obtain consent from the patient.

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If official(s) does have court order and other legal mandate, documents will be faxed to Legal Council for review and Program Director will alert physician.

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5. If patient will not give consent or physician believes a patient will be harmed if patient leaves the unit, the Program Director or Compliance Liaison/Privacy Officer will provide a copy of 42 CFR Part 2 to official(s) and explain that facility personnel cannot confirm the presence of any patient on the Detox Unit without a court order and other legal mandate.

If documents are appropriate, patient will be discharged and released to official(s).

ATTACHMENT C

CONFIDENTIALITY OF ALCOHOL AND DRUG ABUSE PATIENT RECORDS

The confidentiality of alcohol and drug abuse patient records maintained by the program is protected by Federal law and regulations. Generally, the program may not say to a person outside the program a patient attends the program or disclose any information identifying a patient as an alcohol or drug abuser *unless*:

- 1.) The patient consents in writing;
- 2.) The disclosure is allowed by a court order; or
- 3.) The disclosure is made to medical personnel in a medical emergency or to qualified personnel for research, audit, or program evaluation.

Violation of the Federal law and regulations by a program is a crime. Suspected violations may be reported to appropriate authorities in accordance with Federal regulations.

Federal law and regulations do not protect any information about a crime committed by a patient either at the program or against any person who works for the program or about any threat to commit such a crime.

Federal laws and regulations do not protect any information about suspected child abuse or neglect from being reported under State law to appropriate State or local authorities.

(See 42 U.S.C. 290dd-3 and 42 U.S.C. 290ee-3 for Federal laws and 42 CFR part 2 for Federal Regulations.)

Louisiana Department of Health and Hospitals

**Authorization to Release or Obtain Health Information
(including paper, oral and electronic information)**

Name: _____	Request Date: _____
Mailing Address: _____	Date of Birth: _____
City/State/Zip: _____	Medicaid # or Social Security #: _____

I authorize:

Name: _____

Mailing Address: _____

City, State, Zip Code: _____

Relationship: _____ Telephone Number: _____

RELEASE Information TO or **OBTAIN Information FROM**
(Place an "X" in the box that indicates if the information is being released OR requested.)

Name: _____

Mailing Address: _____

City, State, Zip Code: _____

Relationship: _____ Telephone Number: _____

The **Purpose of this Authorization** is indicated in the box(es) below. *(Place an "X" in the box(es) that apply.)*

- | | | |
|---|---|--|
| <input type="checkbox"/> Further Medical Care | <input type="checkbox"/> Personal | <input type="checkbox"/> Legal Investigation or Action |
| <input type="checkbox"/> Changing Physicians | <input type="checkbox"/> Research related treatment | |
| <input type="checkbox"/> Creating health information for disclosure to a third party. | | |
| <input type="checkbox"/> Other: (Specify) _____ | | |

I authorize the release of the following protected health information.

(Place an "X" in the box(es) that apply to the information you want released or you want to obtain.)

- | | | | |
|---|--|---|---|
| <input type="checkbox"/> Entire Record | <input type="checkbox"/> Medical History, Examination, Reports | <input type="checkbox"/> Surgical Reports | <input type="checkbox"/> Treatment or Tests |
| <input type="checkbox"/> Prescriptions | <input type="checkbox"/> Immunizations | <input type="checkbox"/> Hospital Records including Reports | <input type="checkbox"/> Laboratory Reports |
| <input type="checkbox"/> X-ray Reports <input type="checkbox"/> MR/DD Records <input type="checkbox"/> Other: _____ | | | |

In compliance with state and/or federal laws which require special permission to release otherwise privileged information, please release the following records.

- | | | | | |
|--|-------------------------------------|--|--|-------------------------------------|
| <input type="checkbox"/> Alcoholism | <input type="checkbox"/> Drug Abuse | <input type="checkbox"/> Mental Health | <input type="checkbox"/> Vocational Rehabilitation | <input type="checkbox"/> HIV (AIDS) |
| <input type="checkbox"/> Sexually Transmitted Diseases | <input type="checkbox"/> Genetics | <input type="checkbox"/> Psychotherapy Notes | | |
| <input type="checkbox"/> Other _____ | | | | |

This authorization shall expire on _____ (date or event) and is needed for the period beginning _____ and ending _____.

I understand that if I do not specify an expiration date, this authorization will expire six (6) months from the date on which it was signed. I acknowledge that I have read both pages 1 and 2 of this form. I authorize a copy (including electronic or faxed copy) of this form for the disclosure of the information described above.

Signature of Individual or Personal Representative authorized by law _____ Date _____

Please submit medical information to:

Agency Representative

Title

Date

Telephone

Fax

Email

Important Information about Authorization

We may need your authorization to use, disclose or obtain your health information for some of our services.

You do not have to sign this form. If you agree to sign this authorization to release or obtain information you will be given a copy of the signed form, upon request

A separate signed authorization form is required for the use and disclosure of health information for:

- ✓ Psychotherapy notes
- ✓ Employment-related determinations by an employer
- ✓ Research purposes unrelated to your treatment

When required by law or policy, DHH may only obtain, use and disclose your health information if the required written authorization includes all the required elements of a valid authorization.

- ✓ An authorization is voluntary. You will not be required to sign an authorization as a condition of receiving treatment services or payment for health care services. If your authorization is required by law or policy, DHH will use and disclose your health information as you have authorized on the signed authorization form.
- ✓ You may be required to sign an authorization before receiving research-related treatment.
- ✓ You may be required to sign an authorization form for the purpose of creating protected health information for disclosure to a third party. *Example:* In a juvenile court proceeding where a parent is required to obtain a psychological evaluation on their minor child by DHH, the parent may be required to sign an authorization to release the evaluation report (but not the psychotherapy notes) to DHH.
- ✓ You may cancel an authorization in writing at any time. DHH can not take back any uses or disclosures already made before an authorization was cancelled.
- ✓ Information used or disclosed by this authorization may be re-disclosed by the recipient and will no longer be protected by DHH privacy policies.

Your right to file a privacy complaint

You may contact the Privacy Office listed below if you want to file a complaint or to report a problem about how DHH has used or disclosed information about you. Your benefits will not be affected by any complaints you make. DHH cannot punish or retaliate against you for filing a complaint, cooperating in any investigation, or refusing to agree to something that you believe to be unlawful. Your Privacy office contact is: State of Louisiana, Department of Health and Hospitals, Office of Secretary, *Privacy Office*, P.O. Box 629, Baton Rouge, LA 70821-0629. Phone: 1-877-559-9664. E-mail: privacy-bhsf@la.gov