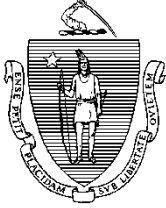


The Commonwealth of Massachusetts

Executive Office of Health and Human Services

Department of Public Health

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To: Interested Parties

From: Deirdre Calvert, Director, Bureau of Substance Addiction Services

Date: October 28, 2024

Re: Information Sheet for Law Enforcement Officials Seeking SUD Treatment Records

The Department of Public Health Bureau of Substance Addiction Services (“the Department”) has become aware of recent incidents in which law enforcement personnel have sought patient records from substance use disorder (SUD) treatment programs licensed by the Department. Based on the information provided to the Department, it appears that there is some confusion regarding the legal prohibitions that prevent programs from disclosing this type of information except in very limited circumstances. The purpose of this notice is to clarify that SUD treatment programs are prohibited by federal law from sharing SUD treatment records with law enforcement officials seeking to investigate or prosecute a patient without appropriate court orders or specific patient consent.

Federal law prohibits SUD treatment programs from disclosing patient records except in limited circumstances. On February 16, 2024, the US Department of Health and Human Services updated its privacy regulations about SUD treatment records, 42 CFR Part 2, *Confidentiality of Substance Use Disorder Patient Records*. SUD treatment records include any information, whether recorded or not, created by, or acquired by, a SUD treatment program relating to a patient. This includes records of a patient’s diagnosis, treatment and referral to treatment, billing information, emails, voice mails, and texts.

SUD treatment programs must follow this federal privacy law related to SUD treatment records. This law prohibits SUD treatment programs from disclosing patient information or records to law enforcement without the appropriate court orders or valid patient consent. SUD treatment

programs are also prohibited from allowing law enforcement into patient areas for the purpose of investigating or prosecuting a patient without court orders or patient consent. Federal privacy law further prohibits SUD treatment programs from confirming the presence of an identified patient on its property without court orders or patient consent.¹

Court Orders

Two court orders are necessary to require disclosure of PII or patient records to law enforcement officials. The first is a unique order that *authorizes* the SUD treatment program to disclose patient information or records.² The second is a subpoena or other similar legal mandate (for example, a warrant based on probable cause) that *compels* disclosure.³

Example 1: A program, including a LADC, or other holder of part 2 records receives a subpoena for patient records. The program may not disclose the records in response to the subpoena unless an appropriate court enters an authorizing order.

Example 2: An authorizing court order is issued, but the program holding the records does not want to make the disclosure. If there is no subpoena or other order mandating disclosure, that program may refuse to make the disclosure.

Patient Consent

Consent for use and disclosure of patient records in criminal proceedings must be in compliance with federal law. The consent for this type of use or disclosure must be specific and unique and cannot be combined with a consent to use or disclose a record for any other purpose.⁴

Law enforcement officials should consult 42 CFR Part 2 and their legal counsel before seeking patient records of a SUD treatment program.

¹ Restrictions on use and disclosure do not apply to communications from a SUD treatment program to law enforcement that are directly related to a patient's commission of a crime on the premises of the treatment program and that are limited. *See* 42 CFR § 2.12(c)(5).

² *See* 42 CFR § 2.65

³ 42 CFR § 2.61(a).

⁴ 42 CFR § 2.31(d).