



Behavioral Health Sensitive Data Policy
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Sensitive Data & Your Obligations

The NC HIEA recognizes the importance of all health care providers having access to mental health and substance use treatment records in their daily health care practice. However, federal laws and regulations prevent the NC HIEA from receiving and/or managing certain types of mental health or substance use treatment data without patient consent related to disclosures of such data.

Pursuant to the HIPAA Privacy Rule, HIPAA covered entities are prohibited from sharing a patient's psychotherapy notes unless the covered entity receives explicit authorization from the patient to do so (See 42 C.F.R. 164.508).

Similarly, 42 C.F.R. Part 2 prohibits certain health care providers from disclosing data that would identify a patient as having a substance use disorder ("SUD") data, unless the patient consents to the disclosure or the disclosure is permitted under Part 2. Providers who are considered "Part 2 programs" meet the following criteria:

- (i) The facility or provider holds themselves out as providers of substance use disorder ("SUD") treatment, diagnosis, or referrals for SUD treatment;
- (ii) The facility or provider *actually* provides SUD disorder treatment, diagnosis, or referrals; and
- (iii) The facility or provider receives **any** type of federal assistance. Federal assistance does not just include financial assistance from the federal government. Federal assistance includes participation in the Medicare program, certification to operate a methadone clinic or withdrawal treatment clinic, receipt of income tax deductions for contributions to your facility, receipt tax exempt status from the IRS, and so forth (See C.F.R. 2.12(b) and consult with your legal counsel to determine if you are covered by this regulation).

In January 2017, the federal Substance Abuse and Mental Health Services Administration (SAMHSA) finalized changes to 42 CFR Part 2 to allow patients with substance use disorder to generally designate HIEs as recipients of their Part 2 data. However, for now the NC HIEA will maintain the current policy to prohibit Part 2 programs from submitting Part 2 data to the NC HealthConnex data repository due to the inability to track and manage patient consent or to prohibit further disclosure to unauthorized recipients in the HIE.

In light of these federal regulations and the NC HIEA Privacy and Security Policy, participants are prohibited from submitting psychotherapy notes or SUD data covered by 42 C.F.R. Part 2. **Please note: Each version of the NC HIEA Participation Agreement requires that participants comply with applicable law when participating in NC HealthConnex. Compliance with the law would include not submitting data to NC HealthConnex that would be a violation of federal law.**

Although participants cannot submit Part 2 data or psychotherapy notes to the NC HealthConnex data repository, participants are permitted to share these types of information via direct secure messaging with other participants through NC HealthConnex. The provider sending the message must comply with applicable law and obtain the required consent or authorization from the patient before disclosing the data.