

Title of Manual: Mid-South Substance Abuse Commission Policy and Procedures			Page 1 of 4	
			History	
Policy Number: T003	Subject/Title: Confidentiality & Protection of Client Information		Replaces:	1/2005
			Last Reviewed:	4/2009
Issued By: Executive Director	Approved By: Board of Directors Date: 4/27/2009	Scope: All Treatment Providers	Effective:	4/27/2009

1. **POLICY**

All Mid-South contracted substance use disorder (SUD) treatment providers shall comply with the Federal Drug and Alcohol Confidentiality Law (42 CFR, Part 2) and the Health Insurance Portability and Accountability Act (HIPAA) of 1996-Privacy Standards (45 CFR Parts 160 and 164).

2. **PURPOSE**

To outline the expectations for complying with Federal confidentiality and privacy laws.

3. **42 CFR PART 2 – FEDERAL DRUG and ALCOHOL CONFIDENTIALY LAW**

42 U.S.C. Section 290dd-3, 290ee-3 for Federal laws and 42 C.F.R. Part 2 for the Code of Federal Regulations protects client records and status within the context of SUD treatment. Generally, the program may not say to anyone outside the program that a client attends the program, or disclose any information identifying a client as an alcohol or drug abuser unless:

- 3.1. The client consents in writing (see examples on the Mid-South website www.mssac.com); or
- 3.2. The disclosure is allowed by a special court order; or
- 3.3. The disclosure is made to medical personnel in a medical emergency or to qualified personnel for research, audit, or program evaluation; or
- 3.4. The client commits or threatens to commit a crime either at the program or against any person who works for the program

Violation of the Federal law and regulations by a program is a crime. Suspected violations may be reported to the United States Attorney in the district where the violation occurs. Federal law 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.

4. **45 CFR PARTS 160 and 164 – HIPAA PRIVACY**

In conjunction with the protections under 42 U.S.C. and 42 CFR, all clients have all their personal health record protected under HIPAA, 45 CFR. The client record contains information that under HIPAA is called Protected Health Information or PHI.

There are nineteen (19) data elements considered PHI. They are: name, address (including street address, city, county, zip code and equivalent geocodes), name of relatives, name of employer, all dates (including birth, death, date of service, admission, discharge, etc.), telephone numbers, fax numbers, e-mail addresses, social security number, medical record number, Medicaid recipient number, health plan beneficiary number, account numbers, certificate/license number, any vehicle or other device serial number, web Universal Resource Locator (URL), Internet Protocol (IP) address number, finger or voice prints, and photographic images.

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5. PROTOCOL

- 5.1. Providers shall review and provide a written summary of the confidentiality provisions at admission for clients to review. Written acknowledgement of receipt shall be documented in the client file. In the event the client is not capable of rational communication at the time of admission as in the case of sub-acute detoxification admission, the notice and summary should be provided as soon as the client is capable of rational communication. Refer to Sample Client Notice of Confidentiality.
- 5.2. All disclosures of information must be made consistent with the Federal Drug and Alcohol Confidentiality Law and the HIPAA Privacy Rules. The client is to sign consent for the release of information meeting the requirements of 42 CFR Part 2 prior to any communication, either written or oral that does not meet the exceptions listed in Section 3.
- 5.3. Providers must have a provider Notice of Privacy Practices including client's rights under the HIPAA Privacy Standards. Their Notice of Privacy Practices must contain all elements required by 45 CFR Parts 160 and 164.
- 5.4. Provider's Notice of Privacy Practices must be provided to the client at the date of first service delivery. The provider must have available a copy of the notice for clients and it must be posted in a clear and prominent location where it is reasonable to expect the client to be able to read it. The provider must make a good faith effort to obtain the client's written acknowledgement of receipt of the notice. If acknowledgement is not obtained, the provider must document its efforts to obtain and the reason it was not able to obtain the acknowledgement.
- 5.5. If the provider maintains a website that shares information about its services or benefits, the Notice of Privacy must be posted and made available electronically through the site.
- 5.6. The provider must give clients whose SUD treatment is funded in whole or in part by Mid-South contracted funds a copy of Mid-South's HIPAA Notice of Privacy Practices at the date of first service delivery. The provider must make a good faith effort to obtain the client's written acknowledgement of receipt of the notice. If acknowledgement is not obtained, the provider must document its efforts and the reason it was not able to obtain the acknowledgement. Mid-South's Notice of Privacy Practices and Acknowledgement of Notice of Privacy Practice are located on Mid-South's website, www.mssac.com.
- 5.7. Any unauthorized disclosures of information under 45 CFR Parts 160 and 164 must be documented consistent with the provider's HIPAA Privacy Practices.
- 5.8. The provider shall appoint a Privacy Officer whose duties shall meet requirements as defined in 45 CFR Parts 160 and 164. All staff must receive and document training annually on HIPAA privacy standards and rules.

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6. DISCLOSURE

- 6.1. A program may disclose information about a client if the client specifically authorizes this process by signing a valid consent form. A single consent form may be used to authorize communications about a client among more than two parties.
- 6.2. Consents are to have the same kind and amount of information to be shared, for the same common purpose, among all those authorized to receive and/or disclose that information to one another.
- 6.3. Minors
 - 6.3.1. Minors, aged 12 -17, do not need parental consent to receive SUD treatment services. As parental consent is not required to treat the minor, parental consent is not required to make disclosures. It is necessary to have a minor's consent for disclosure of SUD information and providers may not rely on the parent's signature instead. Regardless of payment source for SUD treatment, information may not be disclosed to the parent(s). If the minor agrees to have parent(s) sign the consent giving permission for disclosure, the minor must also sign the consent.
- 6.4. Court Orders, Subpoenas, and Search/Arrest Warrants
 - 6.4.1. Although HIPAA allows ample disclosure to law enforcement agencies, these provisions are *permissive* and not mandatory, whereas 42 C.F.R. Part 2 limits when and how such disclosures are allowed. Providers are to continue to follow 42 C.F.R. Part 2's mandatory provisions when determining whether and how to make disclosures in these circumstances.
 - 6.4.2. Court Order
 - 6.4.2.1. A court is not entitled to a client's alcohol or drug treatment information merely because the court ordered the client into treatment. HIPAA allows disclosure in response to a warrant, subpoena, or other investigative demand, [45 C.F.R. § 164.512(f)(1)], *but* such disclosures are strictly prohibited under 42 C.F.R. Part 2 unless the client consents or a court has issued an appropriate/unique order under 42 C.F.R. Providers may only disclose "client-identifying" information if the court issues the unique type of order described in the federal law (42 C.F.R. §§ 2.61-2.65).
 - 6.4.3. Subpoena
 - 6.4.3.1. A subpoena by itself is not legally sufficient to authorize or compel a program to testify or turn over any client records to the requesting party [42 C.F.R. § 2.61(b)]. A subpoena, even one signed by a judge, is not the type of court order required by 42 C.F.R. Part 2. Therefore, the program may not release information in response to a subpoena even if it is signed by a judge.
 - 6.4.4. Search or Arrest Warrant
 - 6.4.4.1. Neither may providers disclose any alcohol or drug information in response to search or arrest warrants, even if signed by a judge, unless the warrants are accompanied by a court order that satisfies the unique requirements of 42 C.F.R. Part 2. While HIPAA allows disclosure to law enforcement purposes, under 42 C.F.R. Part 2,

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neither a search warrant nor an arrest warrant constitutes the type of court order that authorizes a program to disclose client-identifying information.

6.4.4.2. Programs should establish relationships with local law enforcement officials and familiarize them with the confidentiality regulations. Providers may keep a copy of the confidentiality regulations at hand so that when situations like the above arise, the provider may show the regulations to the person seeking access to the program or its records.

7. REVOCATION OF CONSENTS

Although HIPAA specifically requires revocation of consents to be written, programs that fall under 42 C.F.R. Part 2 must still continue to honor verbal revocations. Due to HIPAA (45 CFR), consents for the release of confidential information for the Criminal Justice System (CJS) referral are to be revocable. Therefore, verbal revocations are permitted and include the criminal justice system.

When a client revokes a consent, providers are to do the following:

- 7.1. Draw a line through the consent form.
- 7.2. Sign and date the request for this action with explanation if desired.
- 7.3. Write a progress note of action.
- 7.4. Provide a copy for the client.
- 7.5. Place revoked consent in the client's file.
- 7.6. Inform appropriate staff personnel.
- 7.7. You may not inform the person/provider/agency to whom you were given permission to disclose. It is recommended this is explained to the person/provider/agency when the consent is first given.

References:

Acknowledgement of Notice of Privacy Practices

HIPAA Notice of Privacy Practices – Mid-South

Sample Client Notice of Confidentiality

Authorization and Consent for Release of Confidential Information – Standard

Authorization and Consent for Release of Confidential Information – Criminal Justice

Authorization and Consent for Release of Confidential Information – Drug Court

Center for Substance Abuse Treatment (CSAT) (1997): Confidentiality of Alcohol and Other Drug Treatment Records Training Manual. New York: Legal Action Center.

Legal Action Center (LAC) (2003): Confidentiality and Communication, 5th Edition. City of New York, Inc.

Legal Action Center (March 2004): *The HIPAA; A Summary of the Privacy Standards' Relationship with the Drug and Alcohol Confidentiality Regulations (42 CFR Part 2)*.

Legal Action Center (2006): Confidentiality and Communication, 6th Edition. City of New York, Inc.