

SUNY DOWNSTATE MEDICAL CENTER
UNIVERSITY HOSPITAL OF BROOKLYN
POLICY AND PROCEDURE

No. HIPAA-2

Subject: **ALCOHOL AND SUBSTANCE
ABUSE INFORMATION**

Page 1 of 11

Prepared by: Shoshana Milstein

Original Issue Date 12/02

Reviewed by: HIPAA Policy & Procedure Team
Renee Poncet

Supersedes: 12/02

Effective Date: 12/07

Approved by: Anny Yeung, RN, MPA

The JC Standards:

Margaret Jackson, MA, RN

David Conley, MBA

Stanley Fisher, M.D.

Michael Lucchesi, M.D.

Debra D. Carey, MS

Ivan M. Lisnitzer

Issued by: **Regulatory Affairs**

I. PURPOSE

To ensure that SUNY Downstate complies with both New York State laws and the Health Insurance Portability and Accountability Act of 1996 (HIPAA) regulations in regard to protecting alcohol and substance abuse information.

II. POLICY

This policy applies to all federally funded specialized programs or personnel that provide alcohol or drug abuse treatment, diagnosis or referral for treatment.

III. DEFINITION

Alcohol & Substance Abuse Treatment Program- Any inpatient or outpatient program which provides diagnosis, treatment or referral of treatment for alcohol abuse, substance abuse or chemical dependency.

IV. RESPONSIBILITY

A. General Requirements for Disclosure of Alcohol and Substance Abuse Treatment Records

1. Disclosures with HIPAA Patient Authorization- In order to disclose alcohol and substance abuse treatment information, a HIPAA Patient Authorization (which complies with the NY authorization, known as a “release”) and a Public Health Service Act (PHSA) consent form must be obtained.
 - a. See policy on Uses & Disclosures Requiring Patient Authorization for additional guidelines on authorizations.
 - b. If psychotherapy notes are being requested, in addition to the alcohol and substance abuse information, an Authorization for the Use & Disclosure of Psychotherapy Notes, as well as a HIPAA Patient Authorization must be obtained.
2. Disclosures to Hospital Employees and Administration
 - a. Employees must limit their communication of alcohol and substance abuse treatment information between and among personnel with a need for the information in connection with their duties related to the diagnosis, treatment or referral for treatment of alcohol or drug abuse.
 - b. Employees must also limit their communications and use of information to the minimum amount of patient information necessary to accomplish their duties.
3. Disclosures to Contractors
 - a. A Business Associate Agreement (BAA) is required from all contracted personnel unless they are designated members of SUNY Downstate’s workforce or organized healthcare arrangement (OHCA) or they are healthcare providers receiving the information for treatment purposes.
 - b. If a BAA is required, the agreement should incorporate the “Qualified Service Organization Agreement” (QSOA) provisions.
 - c. If a BAA is not required, programs must continue to obtain the QSOA agreement.
4. Disclosures Outside the Program in Medical Emergency
 - a. Disclosures to medical personnel outside the program who need the information in order to treat a condition which poses an immediate threat to the health of any individual (ie. The patient or a third party) and which requires immediate medical intervention are permitted without a HIPAA Patient Authorization. The following information must be recorded:
 - i. The date and time of the disclosure;
 - ii. The name of the alcohol or substance abuse treatment program staff member making the disclosure;
 - iii. The name(s) of the medical personnel to whom disclosure was made and that personnel’s affiliation with any healthcare facility (including the name of any authorized official at the FDA to whom the disclosure was made); and
 - iv. A description of the nature of the emergency.
 - b. Disclosures to the FDA when the agency asserts that it has reason to believe that the health of any individual may be threatened by a product defect or labeling error and that the information disclosed will be used to notify patients and their physicians of potential errors are permitted without a HIPAA Patient

Authorization. The following must be recorded in addition to the information delineated in Section III.A.4.a.:

- i. The address of the agency official receiving the information (if known);
- ii. A brief description of the patient information disclosed (with dates of treatment when possible); and
- iii. A copy of any written request made by the agency official to whom disclosure was made or a brief statement explaining why the disclosure is permitted under SUNY Downstate's policies.

5. Disclosures to Entities Outside the Hospital for Audit or Evaluation

- a. A BAA is not required for disclosures made to a government official for an audit or evaluation as part of the government's health oversight activities. However, PHSA and NY Alcohol & Substance Abuse (NY A&S) Confidentiality Laws require the following assurances:
 - i. The person conducting the audit or evaluation must agree in writing to be bound by the PHSA and to not re-disclose the information to anyone other than the alcohol or substance abuse treatment program from it was obtained.
 - ii. Any outside group performing quality assurance or utilization review activities must agree not to remove patient records from an alcohol abuse program's premises or to remove them only under very limited circumstances from a substance abuse treatment program's premises.
- b. BAA should be obtained from any privately operated organization outside SUNY Downstate that performs audits or evaluations of alcohol or substance abuse treatment programs within SUNY Downstate. The BAA should incorporate the assurances required under the PHSA and NY A&S Confidentiality Laws.

6. Disclosures to Report Crime by Patient on Program Premises or Against Program Personnel

- a. One of the HIPAA exceptions below must be met before disclosing patient information to law enforcement officers to report a patient's crime, or threat to commit a crime, on the program's premises or against program personnel.
 - i. Disclosure Required by Law- If disclosure is necessary in order to comply with a mandatory reporting requirement under law.
 - ii. Disclosure to Report a Crime on Premises- An alcohol or substance abuse treatment program may disclose to law enforcement officers patient information that the program believes in good faith constitutes evidence of criminal conduct that occurred on the premises of the program.
 - iii. Disclosure to Avert a Serious and Imminent Threat to Health and Safety- An alcohol and substance abuse treatment program is permitted to disclose patient information to law enforcement officers to avert a serious threat to the health or safety of the patient or another person. This exception may apply if the program is disclosing information to report a patient's threat to commit a future crime on the premises (if it involves a threat to the health or safety of the patient or another person) or to report a patient's threat to commit a future crime against program personnel (either on or off the premises).
- b. The information disclosed must be limited to the circumstances of the incident, including the:
 - i. Patient status of the individual committing or threatening to commit the crime;

- ii. Patient's name and address; and
 - iii. Patient's last known whereabouts.
- 7. Disclosures for Research Purposes- Disclosures of patient information for research purposes is permitted only if one of the following conditions has been met:
 - a. The patient's Research Authorization has been obtained;
 - b. A PHSA-consent has been obtained and one of the HIPAA research exemptions below have been met:
 - i. The researcher has obtained an IRB/ Privacy Board waiver of authorization;
 - ii. The information is disclosed for research on the patient information of decedents;
 - iii. The information is disclosed for a review preparatory to research;
 - iv. The researcher would receive only a limited data set and has signed a valid Data Use Agreement to protect the privacy of such limited data set, in accordance with the policy on Uses of Limited Data Sets.
 - c. One of the above HIPAA research exemptions have been met and one of the PHSA exemptions below have been met:
 - i. The recipient is qualified to conduct research;
 - ii. There is a research protocol under which the patient information will be maintained in a secure room, locked file cabinet, safe or other similar container when not in use;
 - iii. There is a research protocol under which the patient information will not be re-disclosed to anyone other than SUNY Downstate and under which patient information will not be revealed in any report generated by the researcher; and
 - iv. The recipient has provided a satisfactory written statement that a group of three or more individuals who are independent of the research project has reviewed the protocol and determined that the rights and welfare of patients will be adequately protected and the risks of disclosing patient information are outweighed by the potential benefits of the research.
 - d. An authorizing court order has been obtained.
- 8. Disclosures to Probation/ Parole Officer- Alcohol and substance abuse treatment programs are permitted to disclose patient information to persons within the criminal justice system who have a responsibility to monitor the patient's progress as a condition of the patient's criminal punishment if the following is obtained:
 - a. A PHSA- consent form authorizing the disclosure. The expiration date must be reasonable and take into account the following factors:
 - i. The anticipated length of treatment;
 - ii. The type of criminal proceeding involved;
 - iii. The need for information to complete the criminal proceeding;
 - iv. The expected date when the criminal proceeding will be complete; and
 - v. Any other pertinent factors.
 - b. In addition, a court order compelling disclosure must be obtained.
- 9. Disclosures with Authorizing Court Order- If the authorizing court order compels disclosure, the disclosure would be permitted. However, if the authorizing court order only permits disclosure, the disclosure would be permitted only if one of the following circumstances have been met:

- a. A single court order meeting the requirements of an authorizing court order issued under the PHSA and a mandatory court order compelling disclosure (for HIPAA) is obtained; or
- b. An authorizing court order under the PHSA is obtained and SUNY Downstate staff have confirmed that the requirements of the HIPAA policies and procedures have been met (under which the permission required from the patient depends on what information is disclosed, who is receiving the information and why the information is being disclosed)

B. Disclosures of Confidential HIV- Related Information Concerning Patients in Alcohol and Substance Abuse Treatment Programs

1. Disclosures Pursuant to NY HIV-Release- The patient's PHSA-consent and HIPAA Patient Authorization (which includes the HIV-release) must be obtained.
 - a. Treatment cannot be conditioned upon signing the HIPAA Patient Authorization.
 - b. Authorization for psychotherapy notes must be obtained on a separate form using the Authorization for Use & Disclosure of Psychotherapy Notes.
2. Disclosures to Agents or Employees
 - a. Confidential HIV-related information may be shared with SUNY Downstate employees who need the information in connection with their duties related to the diagnosis, treatment or referral for treatment of alcohol or drug abuse (including billing or reimbursement).
 - b. A BAA is required unless the agent is a member of SUNY Downstate's workforce, included within the applicable OHCA or is a healthcare provider receiving health information for treatment purposes. The QSOA assurances must be included in the BAA.
 - c. If a BAA is not required, the QSOA assurances from the agent must continue to be obtained.
3. Disclosures to Organizations Collecting Human Body Parts- Disclosures of confidential HIV-related information to healthcare facilities or providers collecting human body parts for the following purposes are permitted only with the following documentation:
 - a. Disclosure for transplantation (and therapy, to the extent included in transplantation) would require the patient's PHSA-consent or an authorizing court order under the PHSA.
 - b. Disclosure for Research
 - i. Obtain HIPAA Patient Authorization or meet any of the HIPAA research exemptions to an authorization (See policy on Uses & Disclosures for Research); and
 - ii. Obtain the patient's PHSA-consent or an authorizing court order or meet the requirements for research without a PHSA-consent (See Section III.A.7. of this policy).
 - c. Disclosure for Medical Education Purposes of Another Facility or Provider- The patient's PHSA-consent or an authorizing court order must be obtained and:
 - i. Obtain HIPAA Patient Authorization; or
 - ii. Disclose only a limited data set, pursuant to the policy on Use of Limited Data Sets; or
 - iii. The recipient must be a covered entity under HIPAA and the information must be related to a relationship that the patient has or has had with the recipient.

4. Disclosures to Accreditation or Oversight Organizations
 - a. The following written assurances must be obtained from any external accreditation or oversight organization:
 - i. It will not re-disclose the information except back to the program, to carry out the monitoring, evaluation or service review for which it was obtained or to a federal, state or local agency on behalf of which the accreditation or oversight organization is performing a Medicare or Medicaid audit or evaluation of the program.
 - ii. It must agree not to remove patient records from an alcohol program's premises.
 - iii. It must agree not to remove them only under very limited circumstances from a substance abuse treatment program's premises.
 - b. In addition, a BAA must be obtained from any external private organization performing accreditation activities on behalf of the program of SUNY Downstate.
 - i. The BAA should incorporate the above assurances.
 - ii. A BAA is not required from a government official performing health oversight functions.
5. Disclosures to Adoption and Foster Care Agencies
 - a. A HIPAA Patient Authorization must be obtained from the appropriate legal representative of the child before disclosing the child's confidential HIV-related information to an adoption or foster care agency that does not have the authority under applicable law to make healthcare decisions on behalf of the child.
 - i. A PHSA-consent from the child should be obtained;
 - ii. An authorizing court order should be obtained; or
 - iii. The adoption or foster care agency's consent to treatment is required under state law and the program director determines that the child lacks the capacity to make a rational choice about whether to consent to the disclosure.
 - b. When disclosing confidential HIV-related information about the child's parent to the adoption or foster care agency in connection with the adoption or placement, a PHSA-consent or an authorizing court order must be obtained, in addition to a HIPAA Patient Authorization unless the disclosure is required by law.
6. Disclosures to insurance institutions for non-payment purposes would require a PHSA-consent, in addition to a HIPAA Patient Authorization.
 - a. A HIPAA Patient Authorization need not be obtained for disclosures to insurance institutions for certain healthcare operations, provided that:
 - i. The information is related to a relationship the insurance institution has or has had with the patient; and
 - ii. The insurance institution is an covered entity under HIPAA.
7. Disclosures to Division of Parole, Division of Probation and Correctional Alternatives or Commission of Correction- Before making any disclosures to probation or parole officers, the patient's PHSA-consent and a court order compelling disclosure must be obtained.
8. Disclosure to a Medical Director of a Correctional Facility
 - a. To fulfill the PHSA requirements, one of the following circumstances must be met:
 - i. The patient's PHSA-consent must be obtained;
 - ii. An authorizing court order under the PHSA must be obtained; or

- iii. The disclosure must be to medical personnel in a medical emergency.
 - b. In addition, a HIPAA Patient Authorization must be obtained, unless it is determined that:
 - i. The disclosure is required by law;
 - ii. The disclosure is being made to the medical director so that the medical director or the correctional institution's medical staff may provide treatment to the inmate;
 - iii. The disclosure is necessary to avert a serious threat to the health or safety of a patient or others;
 - iv. The medical director has certified that the disclosure is necessary to protect the health and safety of the inmate who is the subject of the information, other inmates or other individuals at the correctional facility.
- 9. Disclosure for Child and Adult Protective Services- Disclosures to comply with reporting requirements are permitted to child protective services when authorized or required by law and to adult protective services when required by law. When a disclosure to adult protective services is not required under NYS law, the program must:
 - a. Obtain the patient's PHSA-consent or an authorizing court order; and
 - b. Obtain a HIPAA Patient Authorization, unless one of the following exceptions apply:
 - i. Patient's verbal permission is obtained; or
 - ii. Disclosure is authorized by law and is necessary to prevent serious harm to the patient or other potential victims; or
 - iii. Disclosure is authorized by law, the patient is unable to agree to the disclosure because of incapacity and a law enforcement officer has represented that the information will not be used against the patient and an immediate law enforcement activity would be materially and adversely affected by waiting until the patient is able to agree to the disclosure.
- 10. Required Documentation of Disclosures
 - a. All disclosures of confidential HIV-related information must be recorded, in accordance with the policy on Accounting of Disclosures. The following includes, but is not limited to, disclosures that do not have to be documented:
 - i. Authorized employees of SUNY Downstate;
 - ii. Authorized agents of SUNY Downstate who are designated as workforce members;
 - iii. Authorized agents of SUNY Downstate's organized healthcare arrangement if the disclosure is for treatment, payment or healthcare operations;
 - iv. Individuals engaged in quality assurance, program monitoring or evaluation; and
 - v. Governmental payment agents acting pursuant to contract or law.
 - b. For guidelines on the information that must be recorded for each disclosure, see policy on Accounting of Disclosures.
 - c. If disclosures are made on a repeat basis to insurance institutions, the following must be recorded:
 - i. Complete information for the first disclosure; and
 - ii. Frequency of any subsequent disclosures to the same recipient for non-payment purposes.

11. Obtaining Assurances from Contractors

- a. Under NY A&S Confidentiality Laws, alcohol and substance abuse treatment programs must ensure that contractors:
 - i. Are notified of the confidentiality required for confidential HIV-related information under NY A&S Confidentiality Laws;
 - ii. Will only be authorized access to confidential HIV-related information in accordance with the policies and procedures of the program;
 - iii. Will provide prior confidentiality training to any staff member who may have access to confidential HIV-related information in the course of providing services; and
 - iv. Agree in writing through a QSOA that it will be subject to the PHSA and that it will agree to resist any efforts by third parties to obtain patient records for a judicial proceeding in violation of the PHSA.
- b. Under HIPAA, a BAA is also required from such contractors, unless they are:
 - i. Eligible to be designated as members of SUNY Downstate's workforce or OHCA; or
 - ii. Healthcare providers receiving health information for treatment purposes. If the BAA must be obtained, it should incorporate the NYS assurances listed above.

C. Patient Rights

1. Notice of Confidentiality and Privacy Practices
 - a. All patients must receive a general Notice of Privacy Practices.
 - b. Patients with alcohol and substance abuse information should also be provided with a separate notice regarding SUNY Downstate's confidentiality practices. See attached Notice of Privacy- Confidentiality of Alcohol and Substance Abuse Information.
2. Privacy Rights of Incompetent and Deceased Patients
 - a. A PHSA-consent must be obtained from the personal representatives specified under the PHSA.
 - b. Where the program director needs to disclose information about an incompetent patient to collect payment for services and no other personal representative is available, the director is permitted to make the disclosure without the HIPAA Patient Authorization and without the patient's PHSA-consent.
3. Right to Request Access to Alcohol & Substance Abuse Treatment Information- The guidelines delineated in the policy on Patient Requests for Access should be followed with the following modifications:
 - a. The subject of the information must be notified when a committee for the incompetent or a guardian of a mentally retarded or developmentally disabled patient requests access to the incompetent or disabled patient's alcohol or substance abuse information.
 - b. The denial of access to records prepared in anticipation of litigation that may be contained in the patient's alcohol and substance abuse records is permitted.
 - c. The patient's PHSA-consent must be obtained before disclosing alcohol and substance abuse treatment records to the Medical Records Committee.
4. Right to Request Amendment of Alcohol and Substance Abuse Treatment Information- The guidelines delineated in the policy on Patient Requests for Amendment should be followed.

5. Right to Request an Accounting of Disclosures of Alcohol and Substance Abuse Treatment Information- The guidelines delineated in the policy on Accounting of Disclosures should be followed.
6. Right to Request Additional Privacy Protections- The guidelines delineated in the policy on Patient Requests for Additional Privacy Protections should be followed.

D. General Administrative Requirements

1. Termination of Program
 - a. If the alcohol or substance abuse treatment program is terminated or taken over by another program external to SUNY Downstate and the patient does not consent to the transfer of the records to the new owner, SUNY should retain any documentation required by HIPAA which cannot be de-identified sealed in envelopes or other containers labeled as follows: "Records of [insert name of program] required to be maintained under [insert citation to the Privacy Rule provision requiring that records be kept] until a date not later than [insert appropriate date under the Privacy Rule]".
 - b. These records should be kept by a responsible individual of the program until the retention period specified on the label of the envelope has passed and then destroy them.
2. Staff Training & Orientation- SUNY Downstate must provide training and orientation to all new employees regarding the confidentiality of alcohol and substance abuse treatment records, confidential HIV-related information and HIPAA privacy laws.

E. PHSA Provisions & NY A&S Confidentiality Laws Not Affected by HIPAA- The following PHSA and NYS laws regarding the confidentiality of alcohol and substance abuse treatment information should continue to be followed without modification by HIPAA:

1. PHSA regulations requiring a statement prohibiting the recipient from re-disclosing the information, except as permitted under PHSA and NY A&S Confidentiality Laws. [14 NYCRR 309.5(g); 14 NYCRR 1072.4(g); 42 C.F.R. 2.32]
2. PHSA regulations prohibiting the employment or enrollment of any undercover agent or informant. [42 C.F.R. 2.17]
3. PHSA regulations prohibiting the disclosure of a patient's presence in the hospital unless acknowledgment does not reveal that the patient is an alcohol or drug abuser. [42 C.F.R. 2.13]
4. PHSA regulations requiring the patient's PHSA-consent before disclosing patient information to third-party payers for payment purposes. [42 C.F.R. Part 2]
5. PHSA regulations permitting disclosure of patient information to a central registry, or to any detoxification or maintenance treatment program not more than 200 miles away, in order to determine that the patient is not already enrolled in another alcohol or substance abuse treatment program. [42 C.F.R. 2.34]
6. PHSA regulations restricting the use of patient identification cards. [42 C.F.R. 2.18]

7. PHSA regulations restricting the use of information obtained through patient access procedures by third parties to conduct a criminal investigation against the patient. [42 C.F.R. 2.23]
8. PHSA regulations permitting disclosure of patient information when necessary to report child abuse or neglect. [42 C.F.R. 2.12; Social Services Law 413; 10 NYCRR 405.9(d)]
9. PHSA regulations governing disclosure of alcohol and substance abuse treatment information about a minor patient to a parent or guardian. [42 C.F.R. 2.14; NY Mental Hygiene Law 22.11]
10. New York A&S Confidentiality Laws permitting disclosure to a health care provider or health facility when knowledge of the confidential HIV-related information is necessary to provide appropriate care or treatment to the protected individual or a child of the individual. [14 NYCRR 309.5(h)(4); 14 NYCRR 1072.4(b); NY Public Health Law 2782(1)(d)]
11. New York A&S Confidentiality Laws permit (but do not require) alcohol and substance abuse treatment programs to disclose confidential HIV-related information without a patient's HIV-release to third-party payers for payment purposes, provided that where necessary an "otherwise appropriate authorization for such disclosure" has been secured by the program. [14 NYCRR 309.5(h)(9); 14 NYCRR 1072.4(b); NY Public Health Law 2782(1)(i)]
12. New York A&S Confidentiality Laws requiring post-HIV-test counseling in alcohol abuse programs. [14 NYCRR 309.4]
13. New York A&S Confidentiality Laws requiring that requests for disclosure of confidential HIV-related information be handled by qualified professional staff. [14 NYCRR 309.5(e)]
14. New York A&S Confidentiality Laws providing that alcohol or substance abuse treatment information, or confidential HIV-related information, may be disclosed to the individual who is the subject of the information. [14 NYCRR. 309.5; 14 NYCRR 1072.4(b); NY Public Health Law 2782(1)(a)]
15. New York A&S Confidentiality Laws permitting disclosure of confidential HIV-related information when required by law or court order. [14 NYCRR 309.5(h)(7), 309.5(h)(11); 14 NYCRR 1072.4(b); NY Public Health Law 2782(1)(g), 2782(1)(k)]
16. New York A&S Confidentiality Laws permitting disclosure of confidential HIV-related information for contact notification. [14 NYCRR 309.5(i), 309.7; 14 NYCRR 1072.4(b); NY Public Health Law 2782(4)(a)]
17. New York A&S Confidentiality Laws permitting disclosure of confidential HIV-related information about a minor to a state, county or local health officer for the purpose of determining the child's fitness to attend school. [14 NYCRR 309.5(j); 14 NYCRR 1072.4(b); NY Public Health Law 2782(4)(d)]

18. New York A&S Confidentiality Laws permitting disclosure of confidential HIV-related information to a government agency when necessary for supervision, monitoring, administration or provision of services. [14 NYCRR 309.5(k); 14 NYCRR 14 NYCRR 1072.6; 14 NYCRR 1072.4(b); NY Public Health Law 2782(6)]
19. New York A&S Confidentiality Laws prohibiting disclosure of confidential HIV-related information for the sole purpose of infection control. [14 NYCRR 309.5(m)]
20. New York A&S Confidentiality Laws prohibiting disclosure of confidential HIV-related information pursuant to an attorney-issued subpoena. [14 NYCRR 309.5(n)]
21. New York A&S Confidentiality Laws permitting physicians to disclose confidential HIV-related information to a person who is authorized to consent to health care on behalf of the protected patient when the physician believes that disclosure is medically necessary and, after appropriate counseling, the protected patient refuses to inform the personal representative of the confidential HIV-related information. [14 NYCRR 1072.4(b); NY Public Health Law 2782(4)(e)]
22. New York A&S Confidentiality Laws requiring that confidential HIV-related information be disclosed upon the request of a "health care worker HIV/HBC advisory panel" to the panel or its designee when reasonably necessary for the evaluation of a health care worker with HIV or HBV who has voluntarily sought the panel's review of the risk of HIV/HBV transmission to others through his or her workplace practice. [14 NYCRR 1072.4(b); NY Public Health Law 2782(9)]

VI. ATTACHMENTS

Notice of Privacy Practices- Confidentiality of Alcohol & Substance Abuse Information

VII. REFERENCES

Standards for Privacy of Individually Identifiable Health Information, 45 CFR; Public Health Service Act (PHSA), New York Alcohol & Substance Abuse Confidentiality Laws

	Revision	Required	Responsible Staff Name and Title
	Yes	No	Adeola O. Dabiri, Director of Regulatory Affairs
	Yes	No	
	Yes	No	
	Yes	No	