

Summary of the Rule (Title 42 CFR Part 2 - Confidentiality of Alcohol and Drug Abuse Patient Records)

Generally, a program may disclose any information about a patient if the patient authorizes the disclosure by signing a valid consent form (§ 2.31, 2.33). A consent form under the Federal regulations is much more detailed than a general medical release. It must contain all of the following nine elements. If the form is missing even one of these elements, it is not valid:

1. The name of the patient.
2. The name or general designation of the program making the disclosure.
3. The recipient of the information.
 - Although the recipient should not be as general as an entire agency or department, it need not be as specific as the name of an individual. Instead, the consent form may describe the recipient's job title and/or job functions
 - It is permissible to list more than one recipient on a single consent form and to authorize disclosures between and among all the parties listed. When doing such multiple-party consents, however, it is important that the "information" and "purpose" and all other elements of the form (see below) be the same for all of the authorized disclosures.
4. The purpose of the disclosure. The purpose should be narrowly described and should correspond with the information to be released. The purpose should never be as broad as "for all client care."
5. The information to be released. The information should be described as exactly and narrowly as possible in light of the purpose of the release. Releases for "any and all pertinent information" are not valid.
6. That the patient understands that he or she may revoke the consent at any time - orally or in writing- except to the extent that action has been taken in reliance on it.
 - A consent for a patient referred by the criminal justice system, however, may be made irrevocable for a period of time (§ 2.35). (But note that some State statutes and regulations provide for the automatic expiration of such consents after 60 or 90 days.)
 - When a patient revokes a consent form, the program is advised to note the date of the revocation clearly on the consent form and to draw an X through the form.
7. The date or condition upon which the consent expires, if it has not been revoked earlier. Although the Federal regulations do not provide for any time limit on the validity of a consent form, some State laws provide for the automatic expiration of consents after a certain period of time.
8. The date the consent form is signed.

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9. The signature of the patient.
 - If the patient has died, the executor or administrator of the estate, or if there is none, the spouse or, if none, then any responsible member of the patient's family may sign (§ 2.15(b)(2))
 - No consent is needed to disclose information relating to the cause of death to such agencies which are empowered to collect vital statistics or inquire into causes of death (§ 2.15(b)(1))
 - If the patient is an adjudicated incompetent, a guardian or other person authorized by State law to act on the patient's behalf may sign (§ 2.15(a)(1))
 - If the patient is a minor, the patient generally must sign the consent form - even if the disclosure is to the minor's parent.

For example, if State law requires a program to obtain a parent's consent in order to treat a minor, the minor must sign a consent form authorizing the disclosure to the parent (§ 2.14(b)-(c)). The only exception is for minors who are applying for alcohol and other drug services and yet lack the capacity to make a rational decision about whether to sign a consent form authorizing a disclosure that the program director determines is necessary to reduce a threat to the life or physical well-being of the applicant or anyone else (§ 2.14(d)).

In addition to the minor's signature, the parent's or other legal guardian's signature is only required if State law requires parental authorization for treating a minor. If the State permits the minor to be treated without the legal guardian's authorization, the minor's signature alone may authorize a disclosure (§ 2.14(b)-(c)).

- A client should never sign or be requested to sign a consent form before all of the blanks have been filled in.
- If any changes are made to a consent form after a client signs it, the client should initial the changes when they are made to indicate that the patient understands and agrees to the changes.

Whenever a disclosure is made pursuant to a consent, it must be accompanied by a written notice prohibiting redisclosure (§ 2.32). The written statement, which can be in the form of a separate sheet of paper or a rubber stamp on the disclosed document, warns the recipient that the information disclosed is protected by Federal law and may not be redisclosed except with the patient's consent or under other authorization. The language in the warning must be identical to that set forth in § 2.32 of the regulations. The prohibition on redisclosure notice must be sent to the recipient even if the disclosure was made orally.

Copies of all consent forms should be kept in the patient's file.

Sample informed consent forms for the disclosure of program participant confidential

information:

Sample consent forms #1 and #2 can be utilized as a guide for grantee programs to either request program participant confidential information from other sources (i.e., other treatment facilities) or release program participant confidential information to other sources.

Sample Form #1

PATIENT CONSENT FOR THE RELEASE OF CONFIDENTIAL INFORMATION

I, Jane Doe, authorize
(NAME OF PATIENT)

ABC Treatment Program
(NAME OR GENERAL DESIGNATION OF PROGRAM MAKING DISCLOSURE)

to disclose to: Mary Roe or another TANIIF counselor
(NAME OF PERSON OR ORGANIZATION TO WHICH DISCLOSURE IS TO BE MADE)

the following information:
my attendance and compliance in substance abuse treatment
(NATURE OF THE INFORMATION, AS LIMITED AS POSSIBLE)

The purpose of the disclosure authorized herein is to:
Assist the Hill Co. Dept of Welfare to determine my eligibility for benefits and/or to evaluate my readiness/ability to participate in a training program.
(PURPOSE OF DISCLOSURE, AS SPECIFIC AS POSSIBLE)

I understand that my records are protected under the Federal regulations governing Confidentiality of Alcohol and Drug Abuse Patient Records, 42 CFR Part 2, and cannot be disclosed without my written consent unless otherwise provided for in the regulations. I also understand that I may revoke this consent at any time except to the extent that action has been taken in reliance on it, and that in any event this consent expires automatically as follows:

XX/XX/2003 or upon program discharge
(SPECIFICATION OF THE DATE, EVENT, OR CONDITION UPON WHICH THIS CONSENT EXPIRES)

(Date) (Print Name) (Signature of Participant)

(Date) (Print Name) (Signature of Parent, Guardian or Authorized Rep. when required)

Sample Form #2

MULTIPARTY CONSENT FORM FOR THE RELEASE OF CONFIDENTIAL INFORMATION

I, Jane Doe, authorize
(NAME OF PATIENT)

ABC Treatment Program
(NAME OR GENERAL DESIGNATION OF PROGRAM MAKING DISCLOSURE)

to disclose to:

- 1.
- 2.
3. _____
(NAME OF PERSONS OR ORGANIZATIONS TO WHICH DISCLOSURE IS TO BE MADE)

the following information:

my attendance and compliance in substance abuse treatment
(NATURE OF THE INFORMATION, AS LIMITED AS POSSIBLE)

The purpose of the disclosure authorized herein is to:

Assist the Hill Co. Dept of Welfare to determine my eligibility for benefits and/or to evaluate my readiness/ability to participate in a training program
(PURPOSE OF DISCLOSURE, AS SPECIFIC AS POSSIBLE)

I understand that my records are protected under the Federal regulations governing Confidentiality of Alcohol and Drug Abuse Patient Records, 42 CFR Part 2, and cannot be disclosed without my written consent unless otherwise provided for in the regulations. I also understand that I may revoke this consent at any time except to the extent that action has been taken in reliance on it, and that in any event this consent expires automatically as follows:

XX/XX/2003 or upon program discharge
(SPECIFICATION OF THE DATE, EVENT, OR CONDITION UPON WHICH THIS CONSENT EXPIRES)

(Date) (Print Name) (Signature of Participant)

(Date) (Print Name) (Signature of Parent, Guardian or Authorized Rep. when required)

Notice to accompany release of confidential information consent form. Each disclosure made with the patient's written consent must be accompanied by the following written 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.