

Healthcare Law Alert: Changes to Confidential Communications Under Part 2 Chemical Dependency Treatment Records

On December 14, 2020, the Substance Abuse and Mental Health Services Administration (“SAMHSA”) published a final rule further revising 42 CFR Part 2 (“Part 2”), the federal regulations governing the confidentiality of Substance Use Disorder (“SUD”) patient records (the “Final Rule”). Unlike the final rule SAMHSA published in July of 2020 that revised several sections of Part 2, this Final Rule only revises the regulations relating to confidential communications subject to a court order (42 CFR § 2.63). The changes are effective as of January 13, 2021.

Specifically, SAMHSA has removed the phrase “allegedly committed by the patient” from § 2.63(a)(2), which was originally added to the regulation in 2017. With the removal of this qualifying language, a court may now permit a Part 2 program to disclose information necessary to investigate or prosecute extremely serious crimes, including crimes that directly threaten loss of life or serious bodily injury, regardless of whether the crimes were committed by the patient whose records are sought to be disclosed.

In the narrative accompanying the Final Rule, SAMHSA asserts that the phrase was erroneously added in 2017, explaining that without this correction, the regulation “would hamper law enforcement efforts, in situations where an individual other than the patient committed an extremely serious crime.”

SAMHSA provides as an example a situation where drugs are being trafficked through an SUD treatment clinic in a way that directly threatens loss of life or serious bodily injury. Even with this change, SAMHSA cautions that the Final Rule does not change or affect how disclosures are made pursuant to Part 2, and that any disclosure per § 2.63 continues to be subject to the review of a court via a proper Part 2 court order.

As mentioned in our earlier [alert](#) on the Part 2 2020 final rule, it is expected that SAMHSA will soon publish a new proposed rule that further amends Part 2 to include changes required by the CARES Act. This most recent Final Rule does not include those changes, nor does it give any indication of when SAMSHA is expected to publish them. We will continue to monitor any subsequent rulemaking and changes to the Part 2 regulations as they are published.