

Tool #1 Fact Sheet

DO FEDERAL ALCOHOL & DRUG CONFIDENTIALITY RULES APPLY TO YOUR SBIRT SERVICES?

First in a series about SBIRT and confidentiality

Introduction

This tool is the first in a series about how the federal confidentiality regulations governing substance use disorder (SUD) records relate to “SBIRT” (Screening, Brief Intervention and Referral to Treatment) services for youth. The purpose of these regulations – known as “42 CFR Part 2” or just “Part 2” – is to encourage people to seek prevention and treatment services without fear of stigma and discrimination. This first tool can help SBIRT providers determine whether they must follow Part 2.

Who must follow Part 2?

Part 2 applies to SUD prevention and treatment providers that meet Part 2’s definition of a “program” and are “federally assisted.” Both terms are explained below.

Who is a Part 2 “program?”

A Part 2 “program” is any of:

- 1. An individual or entity (other than a general medical care facility) that holds itself out as providing, and provides, substance use disorder diagnosis, treatment or referral for treatment.**

Explanation

“General medical care facility”

Examples include hospitals, trauma centers, and federally qualified health centers.

“Holds itself out”

Examples include State licensing procedures, advertising or posting notices in offices, certifications in addiction medicine, listings in registries, internet statements, consultation activities for non-“program” practitioners, information presented to patients or their families, or any activity that would lead one to reasonably conclude that the entity provides SUD diagnosis, treatment, or referral for treatment.

Examples of this type of Part 2 “program”

- A facility dedicated solely to providing SUD services
- A primary care provider whose *principal practice* is providing SUD services.

or

2. An identified unit within a general medical facility which holds itself out as providing, and provides, substance use disorder diagnosis, treatment or referral for treatment.

Explanation

“General medical facility”

Same as “general medical care facility”— see above.

“Holds itself out”

See above.

Examples of this type of Part 2 “program”

- A team of SUD counselors and doctors, known for treating SUD patients, in a federally qualified health center (FQHC). Note: the SUD team – not the entire FQHC – would be the Part 2 “program.”
- A detoxification unit in a medical center. Note: the detoxification unit – not the entire medical center – would be the Part 2 “program.”

or

3. Medical personnel or other staff in a general medical care facility whose primary function is the provision of substance use disorder diagnosis, treatment or referral for treatment and who are identified as such providers.

Explanation

“General medical care facility”

See above.

Examples of this type of Part 2 “program”

- A clinical SUD counselor at a federally qualified health center (FQHC) whose primary function is providing SUD services. The counselor is the “program” because the counselor’s “primary function” is the provision of SUD services (diagnosis, treatment, or referral for treatment). The

entire FQHC is not a Part 2 program because its overall purpose is not the provision of SUD services.

What is “federally assisted?”

A “program” is “federally assisted” if it:

- receives federal funds in any form;
- has federal tax exempt status;
- is authorized to conduct business by the federal government (e.g., Drug Enforcement Administration-licensed to provide controlled substances such as methadone, benzodiazepines, or buprenorphine; certified as a Medicare provider); or
- is conducted directly by the federal government.

What does this mean for SBIRT providers?

SBIRT providers are only subject to Part 2 if they conduct SBIRT services within a federally-assisted Part 2 “program,” as described above. The [Decision Tree \(“Do Federal Alcohol & Drug Confidentiality Rules Apply to Your SBIRT Services?”\)](#) can help SBIRT providers determine whether they are operating within a Part 2 program. Even those SBIRT providers who are not subject to Part 2, however, need a basic understanding of Part 2’s requirements if they communicate with Part 2 programs.

Note: SBIRT providers who are not subject to Part 2 still may need to comply with HIPAA and state confidentiality laws.

Where can SBIRT providers learn more about Part 2?

SBIRT providers can read the other tools in this series, including the [Decision Tree](#) noted above, at lac.org/resources/substance-use-resources.