

## Technical Assistance Series

# Substance Use Disorder Confidentiality

# Reminders

- This call is being recorded. Please exit now if you do not want to be recorded. You will be able to review the video in its entirety on the DDAP webpage following this event.
- Questions regarding SUD confidentiality should be submitted to [ra-licensuredivision@pa.gov](mailto:ra-licensuredivision@pa.gov).

# Disclaimers

- Nothing in this webinar should be construed as legal advice. Topics discussed are merely meant to inform you of relevant regulations and common citations.
- It is strongly recommended that you consult your employer's legal counsel or designated personnel for advice if your agency's policy contradicts regulation.
- This webinar is not intended to justify the law, but to bring attention to it.
- This webinar does not replace required education described in DDAP's Case Management and Clinical Services manual.

# Today's Presenters

Tim Rader, Training Section

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# Learning Objectives

- Review Impact of ACT 33
- Understand Elements of a Valid Consent
- Understand Common Consent Errors

# Before ACT 33

## Restricted Groups

Criminal Justice Entities

Payors

Government Officials

Employers

## Restricted Information

Whether Patient is in Treatment

Patient Diagnosis and Prognosis

Nature of the Project

Brief Description of Patient's Treatment Progress

Brief Statement of Patient's Re-occurrence of Use

# Passage of ACT 33

ACT 33 adopts Federal regulations for disclosure of SUD treatment information and no longer restricts disclosure to certain types of recipients.

**AS LONG AS...**

Patient consents to disclosure

The information is consistent to the purpose of the release

# Elements of a Valid Consent

Drug and Alcohol Services  
123 Main Street  
Anywhere, PA  
717-555-1234

## General Release of Confidential Drug and Alcohol Information

Patient Name: John Doe

I, John Doe, do hereby grant Drug and Alcohol Services permission to release the following information:

- Prognosis/Diagnosis of the Patient
- Whether the Patient is in treatment
- All documents pertaining to the Patient's demographics, intake, screening, and assessment

To: ABC Treatment Centers

For the purpose of: Referring the client for treatment services



# Elements of a Valid Consent

*(Continued)*

I understand that this consent is subject to revocation at any time except to the extent that Drug and Alcohol Services has already acted in reliance upon it. I may revoke my consent either verbally or in writing.

This consent will expire: 30 days after the client is discharged from services at Drug and Alcohol Services

Patient Signature: \_\_\_\_\_ Date: \_\_\_\_\_

42 CFR Part 2 prohibits unauthorized disclosure of these records.

# Common Confidentiality Citations

Based on renewal, follow-up, and complaint surveys

# CHAPTER 709, SUBCHAPTER C,

## GENERAL STANDARDS FOR FREESTANDING TREATMENT ACTIVITIES

**§ 709.28. Confidentiality.**

**(c) The project shall obtain an informed and voluntary consent from the client for the disclosure of information contained in the client record. The consent must be in writing and include, but not be limited to:**

Evidence of disclosures without an informed and voluntary consent to release form include:

- Lab work completed without a consent to release form or QSOA.
- Authorizations for funding sources without a consent to release form
- Treatment sessions with family members without a consent to release form

**§ 709.28. Confidentiality.**

**(c) The project shall obtain an informed and voluntary consent from the client for the disclosure of information contained in the client record. The consent must be in writing and include, but not be limited to: (2) Specific information disclosed**

Examples of information documented to being released will include:

- Treatment plan
- Progress notes
- Discharge summary
- Physical exam
- Psychosocial summary
- If the client is in treatment
- Lab reports
- Medical Records/Medications

**Cannot say 'Entire Record'**

## § 709.28. Confidentiality

(c) (3) The project shall obtain an informed and voluntary consent from the client for the disclosure of information contained in the client record. The consent must be in writing and include, but not be limited to: Purpose of disclosure

Examples of the purpose for information being released will include:

- Funding
- Case management
- Coordination with health care providers
- Family sessions
- Communication with legal entities
- Authorizations for care

**Purpose is often left blank or check boxes left unchecked**

**§ 709.28. Confidentiality.**

**(c) (4) The project shall obtain an informed and voluntary consent from the client for the disclosure of information contained in the client record. The consent must be in writing and include, but not be limited to: Dated signature of client or guardian as provided for under 42 CFR 2.14(a) and (b) and 2.15 (relating to minor patients; and incompetent and deceased patients).**

Common citation – Upon inspection a completed form is found in the record and there is evidence of disclosure, however the consent form is missing a dated client signature.

**§ 709.28. Confidentiality.**

(d) A copy of a client consent shall be offered to the client and a copy maintained in the client record.

- Informed and voluntary consent to release forms must be offered to the client and kept in client record.
- May be documented on the release form
- Can be acknowledged in a progress note or case management note



## § 709.28. Confidentiality

(c) (1) The project shall obtain an informed and voluntary consent from the client for the disclosure of information contained in the client record. The consent must in writing and include, but not be limited to: Name of the person, agency or organization to whom disclosure is made.

- Probation/parole (County Or Federal)
- Insurance company (Specific name of insurance company)
- Friend or family member (Specific name)
- Primary care physician (Specific name or group)
- Attorney (Specific name or group)
- Lab (Specific name of laboratory)
- Other treatment facility (Specific name of facility or contact person)

**§ 709.28. Confidentiality**

**(c) (5) The project shall obtain an informed and voluntary consent from the client for the disclosure of information contained in the client record. The consent must be in writing and include, but not be limited to: Dated signature of witness**

- Must obtain a signed consent to disclose information
- Signature of witness is no longer required by 42 CFR
- (if policy and procedure manual indicates dated signature of witness is required, this will be cited based on the policy)

**§ 709.28. Confidentiality**

**(c)(6) The project shall obtain an informed and voluntary consent from the client for the disclosure of information contained in the client record. The consent must be in writing and include, but not be limited to: Date, event or condition upon which the consent will expire.**

The date, event or condition upon which the consent will expire must be indicated on the release form and can include “at discharge”, a specific date, or a specific number of days from date of release.

This is often left blank

THANK YOU!

Next TA Call = November 6th

Topic = Confidentiality

Contact us info – [ra-licensuredivision@pa.gov](mailto:ra-licensuredivision@pa.gov)

