HAWAII HEALTH SYSTEMS CORPORATION *Quality Healthcare for All* **POLICY**	**Department:** **Compliance**	**Policy No.** **CMP 0061A** **Supersedes Policy No.**
Subject: **42 CFR Part 2 – Part 2 Program Records**	**Approved By:** *Brenda S. Ho* HHSC Board of Directors By: Brenda Ho Its: Secretary/Treasurer	**Approved Date:** February 16, 2026 **Last Reviewed:** February 16, 2026

I. PURPOSE:

This policy establishes standards for the protection, use, and disclosure of substance use disorder (SUD) patient records in compliance with 42 Code of Federal Regulations ("CFR") Part 2, HIPAA, and applicable Hawaii state law. It applies to all employees, Medical staff, contractors, business associates, and affiliated entities that create, receive, maintain or transmit Part 2 Records in any format.

II. DEFINITIONS:

"42 CFR Part 2 ("Part 2")" means federal regulations that govern the confidentiality of SUD patient records created, maintained, or received by federally assisted programs providing SUD diagnosis, treatment, or referral for treatment.

"Authorized Personnel" means individuals whose job duties require access to Part 2 Records and who have completed required training.

"Consent" means a written authorization from a patient that permits the disclosure of their Part 2 Records and meets applicable legal requirements.

"Federally assisted" - For purposes of this procedure, "federally assisted" means:

- Conducted by contract on behalf of a federal department or agency;
- Being carried out pursuant to licensure, certification, registration or funding from a federal department or agency, including Medicare program participation, authorization to conduct maintenance treatment or withdrawal management, or controlled substance registration to the extent the controlled substance is used in the treatment of SUD;
- Supported by federal financial assistance; or
- Able to accept tax-deductible contributions and/or exempt from federal taxes.

"HIPAA" means the broad set of federal laws contained in the Health Insurance Portability and Accountability Act of 1996, the HITECH Act of 2009, and the subsequent Privacy and Security Rules located in 45 CFR Parts 160, 162, and 164.

"Part 2 Notice of Privacy Practices" means a document informing patients of an HHSC Part 2 Program how HHSC may use and disclose their Part 2 records and information, the patient's rights and HHSC's legal duties with respect to the Part 2 records and information.

"Part 2 Program" means any federally assisted person, program or entity that holds itself out as providing, and provides, SUD diagnosis, treatment or referral for treatment. Examples include: inpatient/residential rehab, outpatient counseling, methadone clinics.

"Part 2 Records" means any records or information:

- created by a Part 2 program or entity;
- that would identify a patient as having or having had a SUD, either directly or by reference to publicly available information, or through verification of such identification by another person; and
- that relate to the diagnosis, treatment or referral for treatment of a SUD.

Part 2 records may include clinical notes, assessments, treatment plans, billing information, and other documentation related to SUD diagnosis or treatment.

"Substance Use Disorder (SUD)" means a cluster of cognitive, behavioral, and physiological symptoms indicating that the individual continues using the substance despite significant substance-related problems such as impaired control, social impairment, risky use, and pharmacological tolerance and withdrawal. SUD does not include tobacco or caffeine use.

"Workforce Members" means all employees, medical staff, contractors, volunteers, students, or other persons whose conduct, in the performance of work for the Part 2 program, is under the direct control of the Part 2 program, whether or not they are paid by the Part 2 Program.

III. POLICY:

A. **RESTRICTED USE AND DISCLOSURE**. Part 2 confidentiality protections help address concerns that discrimination and fear of prosecution deter people from entering treatment for SUD.

1. Part 2 Records are restricted from use and disclosure to initiate or substantiate criminal charges against a patient or to conduct a criminal investigation of a patient or to use in any civil, criminal, administrative, or legislative proceedings against a patient. This restriction includes a bar on:
   a. Introduction into evidence of a record or testimony in any criminal prosecution or civil action before court; or
   b. Reliance on the record or testimony to inform any decision or proceeding before a government agency; or
   c. The use of record or testimony for law enforcement purposes or to conduct any law enforcement investigation; or
   d. The use of record or testimony in application for a warrant.

2. HHSC will only use or disclose Part 2 Records as stated in the attached Procedures.

3. HHSC will not otherwise use or disclose Part 2 Records in any civil, criminal, administrative, or legislative proceedings conducted by any Federal, state, or local authority unless the law permits it.

4. These restrictions on use and disclosure of Part 2 Records apply whether or not it is believed that the person seeking the information already has it, has other means of obtaining it, is a law enforcement agency or official or other government official, has obtained a subpoena, or asserts any other justification for a use or disclosure that is not permitted or laid out in the attached Procedures.

B. **APPLICABILITY AND RELATIONSHIP TO RELATED PROCEDURES**

This policy applies to all employees, Medical Staff, contractors, business associates, and affiliated entities that create, receive, maintain or transmit Part 2 Records in any format.

1. **Part 2 Programs**- When HHSC or any of its facilities, including any unit, Workforce Member, or program thereof, is acting as a Part 2 program or entity (i.e., providing and holding themselves out as providing SUD diagnosis, treatment, or referral for treatment), Workforce Members must comply with this policy and Procedure *CMP 0061B HHSC Part 2 Programs- Handling Part 2 Records and CMP 0028A Notice of Privacy Practices (HIPAA and 42 CFR Part 2)***.**

2. **Non-Part 2 Program**- When HHSC and its facilities are *not* acting as a Part 2 program, but receive Part 2 Records from an external Part 2 program and act solely as a Lawful Holder of those records, Workforce Members with access to such records must comply with Procedure *CMP 0062B, Non-Part 2 Programs-Handling Part 2 Records Received from External Sources.*

C. **SECURITY OF PART 2 RECORDS**

1. All Part 2 records must be protected with administrative, technical, and physical safeguards, including encryption of electronic records in line with the requirements of HIPAA. (*See* CMP 0058A - HIPAA Policy and related security and confidentiality procedures)

2. Access must be limited to authorized personnel with a need to know, only.

3. Part 2 does not require that Part 2 Records be segregated, but HHSC facilities must have a method to implement the additional restrictions that apply to Part 2 Records as laid out in the attached procedures.

D. **PATIENT ACCESS TO RECORDS.** Nothing in this policy or the attached procedures prohibits an HHSC Part 2 Program from giving a patient access to the patient's own Part 2 Records. The patient's written Consent is not required for this purpose.

E. **BREACH.** Any Breach of Part 2 Records must be addressed as required in CMP 0014A HIPAA Breach Notification.

F. **COMPLAINTS**

1. All persons have the right to file complaints of noncompliance with Part 2 requirements with the respective HHSC Facility Privacy Officer.

2. HHSC Part 2 Programs must designate someone to handle complaints of noncompliance with Part 2 requirements within the Part 2 Program.

3. HHSC Part 2 Programs will not require patients to waive their rights to file complaints of noncompliance with Part 2 requirements as a condition of treatment, payment, enrollment or eligibility for any Part 2 program.

4. All persons also have a right to file a complaint with the Secretary of Health and Human Services for violation of Part 2 requirements.

5. HHSC Part 2 Program and Workforce Members will not intimidate, threaten, coerce, discriminate against or take any other retaliatory action against any person for exercising their right to file a complaint.

G. **TRAINING**

1. All Workforce Members with access to Part 2 Records will receive initial and annual training on 42 CFR Part 2, Hawaii confidentiality requirements, this Policy and these Procedures.

2. Training records will be documented and retained.

H. **SANCTIONS**

1. Workforce members who violate this Policy or attached Procedures, including making improper disclosures of Part 2 Records, are subject to disciplinary action, up to and including termination, in accordance with CMP 0059B – Workforce Sanctions as well as potential civil and criminal penalties under Federal law.

2. Suspected violations should be reported to the Corporate Compliance and Privacy Officer, Regional Compliance Officer or anonymously via the HHSC hotline at 808-733-4189.

3. Retaliation against good-faith reporters is prohibited.

IV. AUTHORITY:

- 42 CFR Part 2 – Confidentiality of Substance Use Disorder Patient Records
- 42 United States Code §290dd-2: Confidentiality of records
- HIPAA Privacy Rule – 45 CFR Parts 160 and 164
- Hawaii Revised Statutes (HRS) § 334-5, § 334-15
- HRS §577-26 (Alcohol or drug abuse relating to minors)
- SAMHSA Confidentiality Regulations and Guidance

V. RELATED POLICIES AND PROCEDURE(S):

- CMP 0028A - Notice of Privacy Practices
- CMP 0058A - HIPAA Privacy Policy
- CMP 0061B - HHSC PART 2 PROGRAMS - Handling Part 2 Records
- CMP 0062B - NON-PART 2 PROGRAM - Handling Part 2 Records from External Sources

VI. REFERENCE(S):

- 42 Code of Federal Regulations Part 2
- SAMHSA FAQs on disclosure of Part 2 Records
- HHS HIPAA Privacy Rule Summary