

 <p>HAWAII HEALTH SYSTEMS CORPORATION <i>Quality Healthcare for All</i></p> <p>PROCEDURE</p>	<p>Department:</p> <p>Compliance</p>	<p>Policy No.</p> <p>CMP 0062B</p>
		<p>Supersedes Policy No.</p>
<p>Subject:</p> <p>NON-PART 2 PROGRAM- Handling Part 2 Records from External Sources</p>	<p>Approved By:</p>  <p>By: Edward N. Chu Its: HHSC President & CEO</p>	<p>Approved Date:</p> <p>February 16, 2026</p> <p>Last Reviewed:</p> <p>February 16, 2026</p>

I. PURPOSE:

To establish a standardized process for identifying, safeguarding, and managing substance use disorder (SUD) records received from external entities and not created by Hawaii Health Systems Corporation (HHSC), in compliance with 42 CFR Part 2 and HIPAA, to ensure confidentiality and prevent unauthorized use or redisclosure. **This procedure applies when an HHSC Facility is NOT a Part 2 Program, but is acting as a Lawful Holder of Part 2 Records received from an external Part 2 Program.**

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.

“Court Order” means a legal directive issued by a judge that authorizes the disclosure of Part 2 Records under specific conditions outlined in 42 CFR Part 2 and Hawaii state law.

“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.

“Lawful Holder” means persons who are bound by Part 2 because they have received Part 2 Records as a result of a Part 2 written consent or one of the exceptions to the written consent requirements.

“Medical Emergency” means a bona fide medical emergency where the patient’s prior written consent to disclosure cannot be obtained, thereby permitting disclosure of Part 2 Records to medical personnel solely for the purpose of treating the medical emergency.

“Minimum Necessary Standard” means the HIPAA principle requiring that uses and disclosures of protected health information be limited to the minimum necessary to accomplish the intended purpose. This standard does not expand or replace the disclosure limitations imposed by 42 CFR Part 2.

“Part 2 Records Consent” means a consent to use and disclose Part 2 Records that meets all of the requirements laid out in this Procedure.

“Part 2 Personal Representative” means a person who has authority under applicable law to act on behalf of an adult or an emancipated minor in making health care decisions.

“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.

“Redisclosure” means any sharing or re-release of Part 2 records with someone else. These records may not be shared without the patient’s written consent, unless the law specifically allows it.

“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 federally assisted SUD program or entity, is under the direct control of the program or entity, whether or not they are paid by the program.

III. PROCEDURES:

A. Identification and Verification of Part 2 Records Upon Receipt

1. Upon receipt of patient records from an external source, Workforce Members must determine whether the records constitute or contain Part 2 records. They must determine whether the records:
 - a. Identify an individual as having or having had a substance use disorder; and
 - b. Were created by, received from, or otherwise originate from a Part 2 Program
2. Key indicators to look for may include:
 - a. A Part 2 prohibition or redisclosure notice accompanying the records; or
 - b. Documentation or correspondence indicating the records are protected under 42 CFR Part 2; or

- c. References to substance use disorder treatment counseling, detoxification, medication-assisted treatment, or referral for treatment.
3. When the source or status of the records is unclear, Workforce Members must make and document reasonable efforts to verify whether the information is subject to Part 2 protections. Reasonable efforts may include:
 - a. Reviewing accompanying cover sheets, disclosures, or consent forms;
 - b. Contacting the sending entity to confirm whether it is a Part 2 Program or whether the records are Part 2 Records;
 - c. Consulting the Compliance Officer, Privacy Officer, or other individual designated with Part 2 oversight authority.

When uncertainty remains after reasonable efforts, the records must be treated as Part 2 Records unless and until determined otherwise,

4. Records confirmed or reasonably believed to be Part 2 Records must be flagged or labeled as "42 CFR Part 2 Protected Records."

B. Security and Access Control

1. All of HHSC policies and procedures relating to HIPAA security of patient records, including electronic security of patient records, apply to Part 2 Records to the extent that they do not conflict with this procedure.
2. Part 2 Records must be maintained in a secure, access-controlled environment.
3. Access must be limited to authorized Workforce Members with a demonstrated need to know in order to perform their job duties.
4. Electronic systems must utilize role-based access controls or equivalent safeguards to prevent unauthorized access, use or disclosure of Part 2 Records.

C. Restriction on Use and Disclosure of Part 2 Records. The use and disclosure of Part 2 Records is strictly prohibited unless the circumstances below apply.

D. Part 2 Records Received Under a Blanket Patient Consent for Treatment, Payment, and Healthcare Operations.

1. If an HHSC facility receives Part 2 Records with a blanket unconditional consent for treatment, payment and healthcare operations, the HHSC facility is allowed to redisclose the Part 2 Records in accordance with HIPAA **except that an HHSC facility is NOT ALLOWED to use or redisclose Part 2 Records for civil, criminal, administrative, and legislative proceedings against the patient, including providing testimony that speaks to what is in Part 2 Records, unless the elements of Section F "Legal Proceedings" of this Procedure are met.** This means that:
 - a. For any HIPAA disclosure that requires a written authorization, the HHSC Facility may use their standard HIPAA authorization form so long as it specifically identifies "Part 2 Records" or "SUD treatment records"; and
 - b. Redisclosure under this section does not require any notice or consent to be attached.

E. Part 2 Records Received Under a Limited Patient Consent

1. If an HHSC facility receives Part 2 Records with a limited patient consent, (for example, consent for only treatment, or consent for only treatment, payment or operations by a single provider), Part 2 protections and processes attach to those records and they may not be redisclosed unless meeting the requirements of Part 2.
2. HHSC staff should label the Part 2 Records as required in this Procedure; and

3. HHSC staff should contact HHSC Corporate Compliance Officer or HHSC Legal Counsel for further instructions regarding how to handle these Part 2 Records.

F. Legal Proceedings. Disclosure or use of Part 2 Records to initiate or substantiate criminal charges against a patient or to conduct any criminal investigation of a patient, or to use in any civil criminal administrative or legislative proceedings against a patient, including testimony, is strictly prohibited unless one of the following requirements are met:

1. Court Orders

- a. A court of competent jurisdiction may enter a Court Order authorizing the use and disclosure of Part 2 information which would otherwise be prohibited. However, that Court Order alone does not compel use or disclosure, unless accompanied by a subpoena or similar legal mandate that compels the use or disclosure.
- b. Due to the numerous types of court orders and associated requirements, Workforce Members must work with HHSC Legal Counsel before releasing any Part 2 Records pursuant to a court order, in order to determine whether the court order they received meets the legal requirements to compel the use or disclosure of Part 2 Records.

2. Patient Consent

- a. Part 2 Records may be disclosed in legal proceedings against a patient if the patient provides consent for the use and disclosure of Part 2 Records. The consent provided by the patient for this purpose cannot be combined with a consent to use and disclose a record for any other purpose. Contact HHSC Corporate Compliance Officer or HHSC Legal Counsel for assistance.

G. Complaints of Non-Compliance

1. All persons have the right to file complaints of noncompliance with Part 2 requirements with the respective HHSC Facility Privacy Officer.
2. A person is also allowed to file a complaint with the Secretary of Health and Human Services for violation of Part 2 requirements.
3. HHSC Workforce Members will not intimidate, threaten, coerce, discriminate against or take any other retaliatory action against any patient for the exercise of their right to complain.

H. Sanctions. Workforce members who violate this procedure 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.

IV. AUTHORITY:

- 42 CFR Part 2: Confidentiality of Substance Use Disorder Patient Records
- 42 U.S.C. §290dd-2: Confidentiality of Records.
- HIPAA Privacy and Security Rules as modified by HITECH (42 C.F.R. Parts 160, 162 and 164).
- Hawaii Revised Statutes (HRS) § 334-5 Confidentiality of Records

V. RELATED POLICIES AND PROCEDURES:

- CMP 0014A HIPAA Breach Notification
- CMP 0028B Notice of Privacy Practices
- CMP 0059B Workforce Sanctions
- CMP 0058A HIPAA Policy and all related Procedures
- CMP 0061A 42 CFR Part 2 Substance Use Disorder Policy
- CMP 0061B HHSC Part 2 Programs- Handling Part 2 Records

VI. ATTACHMENT(S): None.