

COVID-19 CONTACT TRACING FOR INDIVIDUALS IN SUBSTANCE USE DISORDER TREATMENT

Maintaining patient confidentiality is not just the law, it is also an important element of quality treatment. Individuals receiving substance use disorder (SUD) services rely on strict privacy protections in order to feel safe entering treatment and sharing sensitive, stigmatized, and criminalized health information with their providers. Understanding these heightened privacy protections can facilitate better COVID-19 contact tracing.

This resource explains how contact tracers and SUD treatment providers in New York can facilitate contact tracing while protecting patient privacy during the COVID-19 pandemic.

Key Takeaway: For SUD treatment programs to provide contact tracers with a patient's name, patient status, or contact information, they generally need the patient's written consent.

[See our sample consent for COVID-19 contact tracing.](#)

Overview

The federal privacy law for SUD treatment records, known as “Part 2,”¹ protects the privacy and security of SUD treatment records from certain SUD providers known as Part 2 programs.² Part 2 generally requires the patient's written consent in order to share any information that would identify the patient as receiving or applying for SUD treatment services.³ For more information about the SUD privacy law, **[see our Part 2 resources here.](#)**

Part 2 programs may only share information with COVID-19 contact tracers as permitted by Part 2 (and any other applicable privacy law).⁴ There is no specific exception for public health authorities or contact tracing, but ***Part 2 programs can still participate in COVID-19 contact tracing.***

How NYS COVID-19 contact tracing works in Part 2 programs

Step 1: Contact tracers receive positive COVID-19 test results

Contact tracers receive information about individuals with positive COVID-19 test results from laboratories performing COVID-19 diagnostic or serology testing.⁵ Even though this information might identify someone as receiving services from a Part 2 program – for example, because their address is a residential SUD treatment program – this information is not protected by Part 2. Part 2 does not apply to SUD treatment information that is self-disclosed by individuals to non-Part 2 programs, and the laboratories are not Part 2 programs.

Step 2: Contact tracers reach out to Part 2 programs for a patient interview

Contact tracers may reach out to a Part 2 program in order to (1) conduct an interview with an individual with a positive COVID-19 test result, or (2) notify individuals that they are potential contacts of someone with a positive COVID-19 test result. Part 2 protects the information about whether an individual currently or previously resided in the program, or current/previously received services from the program. ***The Part 2 program needs a patient's written consent to confirm their status in the program when communicating with the contact tracers.***

Part 2 programs should ask patients to sign a written consent authorizing limited disclosures to the local contact tracing entity ([see our sample consent for COVID-19 contact tracing](#)). This allows the program to share Part 2-protected information like the patient's name, status in the program, and contact information.

Once this consent form is signed, the Part 2 program can respond to contact tracing inquiries and confirm the patient is present in the program, share the patient's preferred contact information, or help set up the contact tracing interview with the patient. The program should only share the *minimum information necessary* in order to facilitate the contact tracing and should *never* share information that is beyond the scope of the patients' written consent form.

Step 3: Contact tracers conduct patient interview at the Part 2 program

Contact tracers will interview individuals in order to prevent future transmissions and trace past exposures. Even if an individual discloses information about their SUD treatment information during the interview, this information is not protected by Part 2. Remember: Part 2 does not apply to SUD treatment information that is self-disclosed by individuals to non-Part 2 programs, and the contact tracer is not a Part 2 program.

Additional privacy considerations

Information shared pursuant to patient consent continues to be protected by Part 2 and can only be used for the purpose identified on the consent form – i.e., contact tracing.⁶ Disclosures should be accompanied by the [notice prohibiting re-disclosure](#).⁷ After a verbal disclosure, the program should send the notice by email, fax, or letter, with a brief reference to the conversation – for example, “Re: our January 1, 2021 phone call about patient A.B., please see attached notice prohibiting re-disclosure.”

More questions about SUD privacy and COVID-19? Contact Legal Action Center at privacyta@lac.org.

¹ 42 USC § 290dd-2 and 42 CFR Part 2.

² See 42 CFR § 2.11 for the definition of a “Part 2 program.” Not all SUD treatment providers are Part 2 programs. *Id.*

³ 42 CFR §§ 2.11 (definition of “patient identifying information”), 2.12.

⁴ 42 CFR § 2.20 (“[N]o state law may either authorize or compel any disclosure prohibited by the regulations in this part.”).

⁵ “All laboratories performing SARS-CoV-2 diagnostic or serology testing, including those using SARS-CoV-2 Point-of-Care tests, are required to report test results to the Commissioner of Health through the Electronic Clinical Laboratory Reporting System (ECLRS) immediately (within 3 hours). Required reporting includes all positive, negative, and indeterminate results, as well as test type, specimen source, and several demographic details of the individual tested.” NEW YORK STATE DEPARTMENT OF HEALTH, “Coronavirus Testing Guidance,” (accessed December 3, 2020), <https://www.wadsworth.org/covid-19>.

⁶ 42 CFR § 2.33.

⁷ 42 CFR § 2.32.