

## New Medicaid Work Reporting Requirements & 42 CFR Part 2

In July 2025, Congress passed a law requiring states to implement a **new work reporting requirement** for many people on Medicaid.<sup>i</sup> Beginning January 2027, individuals ages 19-64 who gained or are seeking to enroll in coverage through their state's Medicaid expansion program<sup>ii</sup> will have to complete 80 hours of work or related activities per month or seek an exemption.<sup>iii</sup>

When determining whether an individual is exempt from the work reporting requirement, including people with a substance use disorder (SUD) or people participating in certain types of SUD treatment, state Medicaid agencies must use **reliable information available to the state** – including Medicaid claims – without, when possible, requiring individuals to submit additional documentation.

For more information on these exemptions and how states can help individuals maintain their Medicaid coverage, see [Legal Action Center \(LAC\)'s report](#).

### What about HIPAA & 42 CFR Part 2?

Medicaid claims for SUD treatment and related services are protected by two federal health privacy laws: the Health Insurance Portability and Accountability Act (HIPAA) and, in some cases, the federal confidentiality protections for SUD treatment records at 42 USC § 290dd-2 and 42 CFR part 2 (commonly referred to as “Part 2”). State privacy laws may also apply.

**HIPAA permits state Medicaid agencies to use their claims data for the purpose of determining eligibility for the SUD-related exemptions; in many cases, Part 2 may also permit such use.** In fact, some states that have Alternative Benefit Plans (ABPs) already use Medicaid claims data to identify individuals receiving SUD treatment and services that exempt them from otherwise mandatory enrollment in these plans.

### Implications of 42 CFR Part 2 on the SUD exemptions

In general, Part 2 does not present a barrier to state Medicaid agencies using claims data to identify people eligible for the SUD-related exemptions:

#### **Part 2 does not apply to much of state Medicaid data, even SUD-related data.**

- Part 2 only applies to SUD-related data from “Part 2 programs.”<sup>iv</sup> Not all SUD treatment providers meet the definition of a Part 2 program.<sup>v</sup> Many primary care providers and integrated healthcare settings do not fall under Part 2, even when prescribing buprenorphine for opioid use disorder or providing SUD diagnoses or treatment.<sup>vi</sup> Part 2, therefore, does not apply to such providers' records or data shared with the state Medicaid agency.

#### **When Part 2 *does* apply to state Medicaid data, Part 2 potentially permits the use of such data – without additional consent – to determine an individual's eligibility for the SUD-related exemptions.**

- State Medicaid agencies already have Part 2 records that they receive with patients' consent for *payment* purposes. This consent allows an agency to use the data for payment-related activities, which may encompass Medicaid eligibility determinations.<sup>vii</sup> Moving forward, these consent forms may be updated to explicitly authorize state Medicaid agencies' use of Part 2 records for the purposes of payment *and* determining eligibility for exemptions (e.g., “for payment, eligibility determination, and enrollment,” or something similar).
- Following recent amendments to Part 2, state Medicaid agencies may start receiving Part 2 records pursuant to a *new* type of consent: a single consent for all future uses and disclosures for treatment, payment, and healthcare operations purposes.<sup>viii</sup> This consent permits a state Medicaid agency – a HIPAA covered entity – to use the records for *healthcare operations*,<sup>ix</sup> which includes activities related to enrollment and disenrollment.<sup>x</sup>
- Depending on the state and the details in the forthcoming regulations implementing the work reporting requirements, Part 2 may permit state Medicaid agencies to use data pursuant to other provisions as well.

#### **In cases where existing data is not sufficient and additional patient consent is required, template consent forms should be readily available and integrated into Medicaid processes.**

- Some cases or circumstances will require additional documentation to verify an individual's eligibility for an SUD-related exemption, in which case HIPAA may require patient authorization<sup>xi</sup> and Part 2 may require patient consent.<sup>xii</sup> Sample authorization/consent forms should be readily available and integrated into applications, notices, and other processes. States should also consider privacy-protective options, like accessing the least amount of information necessary for certifying eligibility for an exemption, as [recommended by LAC](#).

For over 40 years, the Legal Action Center has worked to defend and advance strong confidentiality protections for SUD treatment records, including 42 CFR Part 2. For more information about Legal Action Center’s privacy resources, including our book – [\*Confidentiality and Communication\*](#) – sign up for our [health privacy mailing list](#).

<sup>i</sup> Pub. L. No. 119-21 § 71119(a), 139 Stat. 306-14 (to be codified at 42 U.S.C. § 1396a(xx)).

<sup>ii</sup> Kaiser Family Foundation, “Status of State Medicaid Expansion Decisions,” (Feb. 9, 2026), <https://www.kff.org/medicaid/status-of-state-medicaid-expansion-decisions/>.

<sup>iii</sup> *Id.* See generally “Medicaid & SNAP Work Requirements Comparison – H.R. 1,” Legal Action Center (Aug. 2025), <https://www.lac.org/assets/files/Medicaid-SNAP-WR-Comparison.pdf>.

<sup>iv</sup> 42 CFR § 2.12(a).

<sup>v</sup> See 42 CFR § 2.11 (defining “Part 2 program”); see generally Center of Excellence for Protected Health Information’s resources on Part 2 applicability, available at <https://coephi.org/topic/part-2-applicability/>.

<sup>vi</sup> See, e.g., SAMHSA, Frequently Asked Questions about Waiver Elimination (MAT Act), “Are records that discuss an individual’s opioid use disorder or the prescription of buprenorphine protected under 42 CFR Part 2?,” available at <https://www.samhsa.gov/substance-use/treatment/resources/mat-act>.

<sup>vii</sup> See 45 CFR § 164.501 (defining “payment”) (HIPAA’s definition of “payment” is incorporated by reference in 42 USC § 290dd-2(k)(6) and 42 CFR § 2.11).

<sup>viii</sup> See Confidentiality of Substance Use Disorder (SUD) Patient Records, 89 FR 12472 (Feb. 16, 2024) (amending 42 CFR Part 2).

<sup>ix</sup> 42 CFR § 2.33(a)(2).

<sup>x</sup> See 45 CFR § 164.501 (defining “health care operations”) (HIPAA’s definition of “health care operations” is incorporated by reference in 42 USC § 290dd-2(k)(4) and 42 CFR § 2.11).

<sup>xi</sup> HIPAA requires patient authorization when disclosing information for some healthcare operations purposes. See 45 CFR § 164.506(c)(4). A HIPAA authorization must contain certain required elements. 45 CFR § 164.508.

<sup>xii</sup> See 42 CFR § 2.31 (consent requirements).