



LEGAL ADVICE FOR HEALTH PLANS

Required Terms for Agreement with Contractor Permitting Use of Patient Identifying Information on Behalf of Third Party Payer

Confidentiality of Substance Use Disorder Patient Records Rule (42 C.F.R. Part 2)

The Confidentiality of Substance Use Disorder Patient Records Rule (42 C.F.R. Part 2) permits a Third Party Payer to re-disclose an individual's Patient Identifying Information to a contractor or subcontractor, provided that (i) the individual signs a consent allowing the Third Party Payer to use the information for payment and health care operations activities and (ii) the Third-Party Payer subjects the contractor or subcontractor to specific contractual provisions. 42 C.F.R. § 2.33(b).

The Third-Party Payer must engage any contractor (which must, in turn, engage any subcontractor) in "a written contract or comparable legal instrument" that contains the following provisions that require the contractor (or subcontractor) to:

- Fully comply with 42 C.F.R. Part 2 upon receipt of Patient Identifying Information;
- Implement appropriate safeguards to prevent unauthorized uses or disclosures of Patient Identifying Information;
- Report to the Third Party Payer (or, in the case of a subcontractor, report to the contractor) any unauthorized use, disclosure, or breach of Patient Identifying Information;
- Not re-disclose the Patient Identifying Information to any third-party, other than (i) a subcontractor subject to a written agreement containing these terms, or (ii) the Third Party Payer (or, in the case of a subcontractor, the contractor from which it received the information). 42 C.F.R. § 2.33(c).

The Third Party Payer "may only disclose information . . . that is necessary for the contractor or subcontractor . . . to perform its duties under the contract" and must include a notice that the information being disclosed is subject to Part 2. 42 C.F.R. § 2.33(c).

Third Party Payers are not required to have these terms in place with their contractors and subcontractors until February 2, 2020. 83 Fed. Reg. 239, 239 (Jan. 18, 2018).

The checklist should not be construed as legal advice or a legal opinion with respect to any specific agreement or specific set of facts and circumstances. The checklist is intended solely for general purposes. You should consult an attorney concerning any specific agreement or legal questions you may have.

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