

# Confidentiality: The Intersection Between the Addiction Treatment and Criminal Justice Systems

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# Act 33: Pennsylvania's "New" SUD Confidentiality Law

- In July 2022, Act 33 was signed, aligning Pennsylvania's rules regarding the confidentiality of SUD records with the federal regulations at 42 CFR Part 2.
- As a result, 4 Pa. Code § 255.5 – the commonwealth's former SUD confidentiality law – is no longer enforceable.
- These changes have affected the sharing of SUD treatment information between providers, government, law enforcement, judges and court staff, probation and parole officers, insurance companies, and health plans.

# Pennsylvania Pre-Act 33

4 Pa. Code § 255.5 allowed for disclosures to government, law enforcement, and court staff **without consent or a court order, but only five points of information could be released, even if the client consented in writing to the disclosure:**

- Whether the client is or is not in treatment;
- The prognosis of the client;
- The nature of the project;
- A brief description of the progress of the client;
- A short statement as to whether the client has relapsed into drug or alcohol use and the frequency of such relapse.

# Pennsylvania Post-Act 33

Today, under Act 33 and aligned with 42 CFR Part 2, Pennsylvania providers may disclose information **to the extent the client authorizes such disclosure in writing** or to the extent a court order issued under **Part 2** directs a provider to release information.

# What Can Be Disclosed?

## General rule

All patient records are confidential. Nothing gets released without proper consent unless it falls into one of the following exceptions:

<b>With Valid Consent</b>	<b>Suspected Child Abuse and Neglect</b>
<b>Medical Emergency</b>	<b>Non-Patient Identifying Information</b>
<b>Research, Audit and Evaluation</b>	<b>Crime on Premises</b>
<b>Internal Program Communication</b>	<b>Qualified Service Organization Agreement</b>
<b>Good Cause Court Order</b>	

# Implications for SUD Treatment and Criminal Justice Systems

- Under 42 CFR Part 2, providers now must focus on whether written consent or a court order is present and valid and to what extent the written consent or court order authorizes disclosure.
- 42 CFR Part 2 expressly includes that neither a subpoena nor warrant under state law permit a provider to confirm or deny any patient information without written consent or the Part 2 good cause court order.

# Upcoming Changes to 42 CFR Part 2

- There will be changes (i.e., the final rule) that take effect on April 16, 2024. Providers have until Feb. 16, 2026, to comply. Changes include but are not limited to:
  - **Patient Consent**
    - Allows a single consent for all future uses and disclosures for treatment, payment, and health care operations.
    - Allows HIPAA covered entities and business associates that receive records under this consent to redisclose the records in accordance with the HIPAA regulations.
  - **Other Uses and Disclosures**
    - Permits disclosure of records without patient consent to public health authorities, provided that the records disclosed are de-identified according to the standards established in the HIPAA Privacy Rule.
    - Restricts the use of records and testimony in civil, criminal, administrative, and legislative proceedings against patients, absent patient consent or a court order.

# Upcoming Changes to 42 CFR Part 2

- As has always been the case under Part 2, patients' SUD treatment records cannot be used to investigate or prosecute the patient without written patient consent or a court order.
- Records obtained in an audit or evaluation of a Part 2 program cannot be used to investigate or prosecute patients, absent written consent of the patients or a court order that meets Part 2 requirements.



# Effective Implementation of Act 33

Providers **and** law enforcement must:

- **Fully** understand 42 CFR Part 2; and
- Collaborate where limitations imposed by 42 CFR Part 2 can be overcome lawfully in order to obtain protected information when it is required for legitimate reasons.

# Act 33 Resources

- George Washington University: Pennsylvania Law and Policy Governing the Confidentiality of Substance Use Treatment Information: Challenges and Opportunities  
([http://www.healthinfolaw.org/PA\\_substance\\_use\\_information\\_confidentiality](http://www.healthinfolaw.org/PA_substance_use_information_confidentiality))
- DDAP Stakeholder Assessment of Pennsylvania's Substance Use Disorder Confidentiality Policies  
(<https://www.ddap.pa.gov/Documents/Agency%20Reports/DDAP-SUDConfidentialityReport-FINAL.pdf>)
- DDAP Information Bulletin: Act 33 of 2022 – Confidentiality of Substance Use Disorder Records  
(<https://www.ddap.pa.gov/Documents/Information%20Bulletins/IB%2002-22.pdf>)
- DDAP Updated SUD Confidentiality Training  
([https://www.ddap.pa.gov/Training/Documents/Confidentiality\\_OnlineModule\\_Annoucement\\_Sept2022.pdf](https://www.ddap.pa.gov/Training/Documents/Confidentiality_OnlineModule_Annoucement_Sept2022.pdf))

# Presenters

**John Adams**  
District Attorney  
Berks County  
[JAdams@berkspa.gov](mailto:JAdams@berkspa.gov)

**Paul Cannon**  
Director, Clinical Care Services  
UPMC Western Behavioral Health at  
Twin Lakes Center  
[cannonpv@upmc.edu](mailto:cannonpv@upmc.edu)

**Gary Klimowicz**  
Parole Agent  
Pennsylvania Department of Corrections  
[gklimowicz@pa.gov](mailto:gklimowicz@pa.gov)

**David Pertile**  
Executive Vice President and General Counsel  
Pyramid Healthcare, Inc.  
[dpertile@pyramidhc.com](mailto:dpertile@pyramidhc.com)

**Jason Snyder**  
SUD Treatment Services Policy Director  
Rehabilitation and Community Providers  
Association (RCPA)  
[jsnyder@paproviders.org](mailto:jsnyder@paproviders.org)