

S·BI·RT: Health Centers and Confidentiality Overview

S·BI·RT and Confidentiality: When do Health Centers Need to Comply with Alcohol and other Drug Confidentiality Regulations? ¹

Introduction

“Screening, Brief Intervention and Referral to Treatment (SBIRT) is a cluster of activities designed to identify and intervene with people who engage in risky substance use or who might meet the criteria for a formal substance use disorder. Clinical findings indicate that the overwhelming majority of individuals screened in a general medical setting do not have a substance use disorder and do not need substance use disorder treatment.

The determination whether patient information acquired when conducting SBIRT services is subject to federal alcohol and drug confidentiality regulations (**42 C.F.R. Part 2**) depends on whether the entity conducting the SBIRT activities is a federally-assisted “program” as defined in the regulations. If the entity conducting SBIRT services is not a federally-assisted program, then SBIRT services and patient records generated by such services are not covered by this federal regulation, although HIPAA and state laws may apply. However, if the entity or unit within a general medical care facility conducting SBIRT services is a federally-assisted program (as defined in Part 2 and explained below), then SBIRT-related patient records are subject to Part 2 regulations.

42 C.F.R Part 2

42 C.F.R. Part 2 (Part 2) is the federal regulation implementing the federal drug and alcohol confidentiality law (42 U.S.C. § 290dd-2). It was enacted in the 1970’s to combat the stigma of alcohol and other drug problems, and governs confidentiality of alcohol and drug treatment and prevention information. **Part 2** prohibits the disclosure of information that identifies a patient (directly or indirectly) as having a current or past drug or alcohol problem (or participating in a drug/alcohol program) unless the patient consents in writing or another exception applies. This is true even if the person seeking the information already has it, has other ways to get it, has some kind of official status, has obtained a subpoena or warrant, or is authorized by State law.

¹ 42 C.F.R. confidentiality information included in this Appendix is the synthesis of the Legal Action Center’s presentation and slides available on their website and used with their permission.

42 C.F.R. Part 2 applies only if you, your program or your facility are both a drug and alcohol treatment and prevention *program* and are *federally assisted*.

Definitions: What is a **PROGRAM** and what does **FEDERALLY ASSISTED** mean according to 42 C.F.R. Part 2?

Program

There are three definitions of a drug and alcohol treatment and prevention program:

- a. An individual or entity, other than general medical facility, that “holds itself out as providing” and does provide, drug/alcohol diagnosis, treatment, or referral for treatment is a program;
- b. An identified unit within a general medical facility that holds itself out as providing, and does provide, drug/alcohol diagnosis, treatment, or referral for treatment is a program; or
- c. Medical personnel or other staff, in a general medical care facility, whose primary function is the provision of drug/alcohol diagnosis, treatment, or referral for treatment, and who are identified as such is a program (even if it is only one person).

Key Points

For a general medical *facility* it is only the specialty unit or personnel that is the *program* and NOT the whole facility.

Although the law does not define “general medical facility,” SAMHSA² provides some examples: hospitals, trauma centers, and Federally Qualified Health Centers. Likewise, the law does not define “holds itself out” but SAMHSA provides examples: State licensing procedures, advertising, or posting notices in office, certifications in addiction medicine, listings in registries, internet statements, consultation activities for non-“programs,” information given to patients and families, any activity that would reasonably lead one to conclude those services are provided.

Federally assisted

A program is federally assisted when it receives Federal funds in any form (even if not used for drug/alcohol services), or is authorized, licensed, certified, registered by the Federal government, such as assisted by IRS by grant of tax-exempt status, has Drug Enforcement Administration (DEA) registration to dispense controlled substances to treat drug/alcohol abuse, is authorized to provide methadone treatment, and/or is certified to receive Medicaid or Medicare reimbursement.

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² <http://www.samhsa.gov/about-us/who-we-are/laws/confidentiality-regulations-faqs>

Definitions: What is DISCLOSURE and what are the EXCEPTIONS according to 42 C.F.R. Part 2?

Disclosure

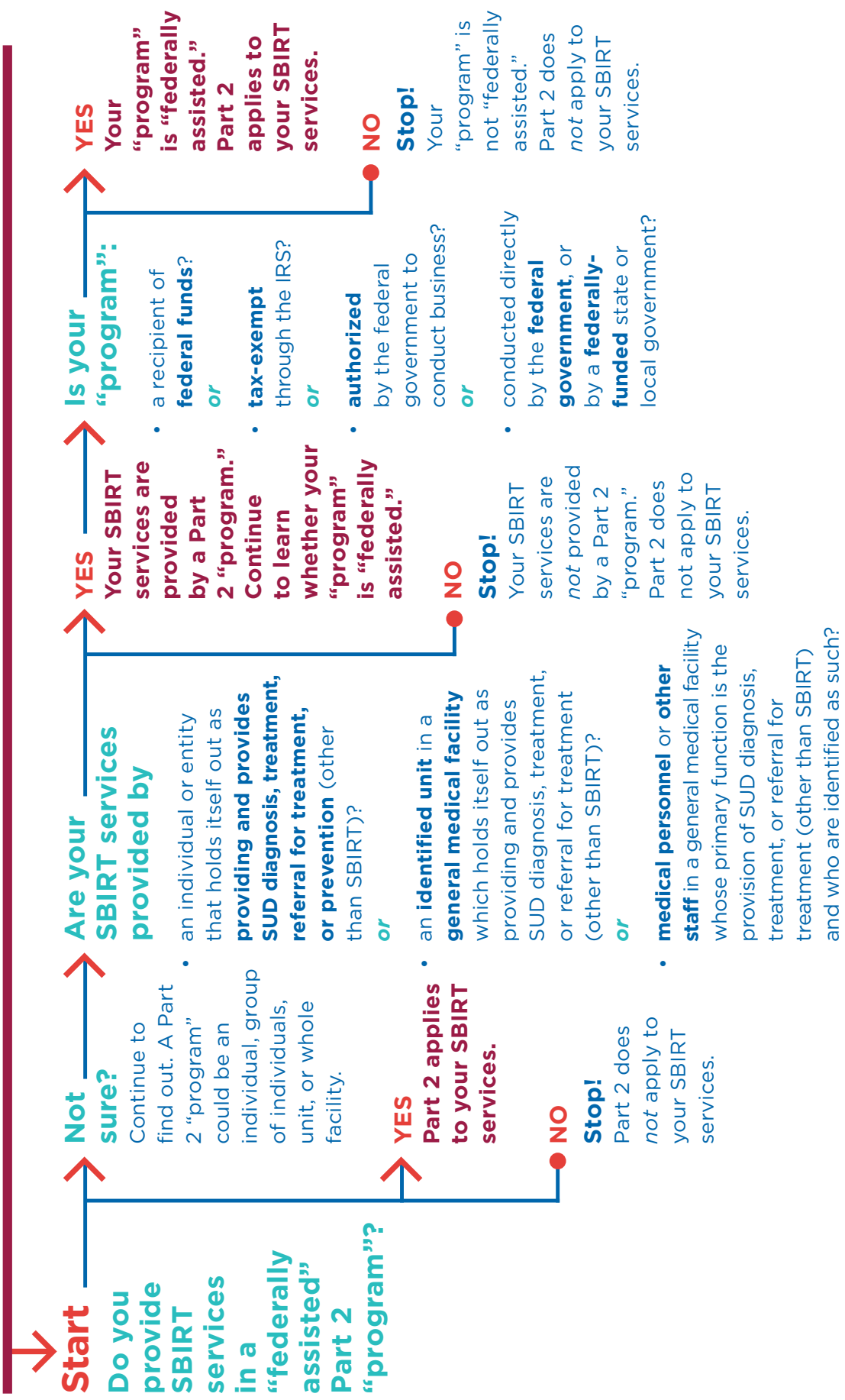
Disclosure of identifying information is communication (oral or written) of information that identifies someone as having a past or current drug/alcohol problem or being a past or current patient in a drug/alcohol program. This includes communications to people who already know the information.

Exceptions

There are ten exceptions to the general rule prohibiting disclosure:

1. Written consent;
2. Internal communications;
3. Medical emergency;
4. Qualified service organization agreement;
5. No patient-identifying information;
6. Crime on program premises/against program personnel;
7. Research;
8. Audit;
9. Court order; and
10. Reporting child abuse/neglect.

DOES 42 CFR PART 2 APPLY TO YOUR SBIRT SERVICES?



The tools in this series are useful even for SBIRT providers who are not required to follow Part 2; they may need to communicate with programs who are. Also make sure to learn about other applicable confidentiality laws, such as HIPAA and state privacy laws.

Additional information available at lac.org/confidentiality-sbirt/