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Technical Assistance Session Highlights

Navigating Privacy in Deflection: HIPAA & 42 CFR Part 2

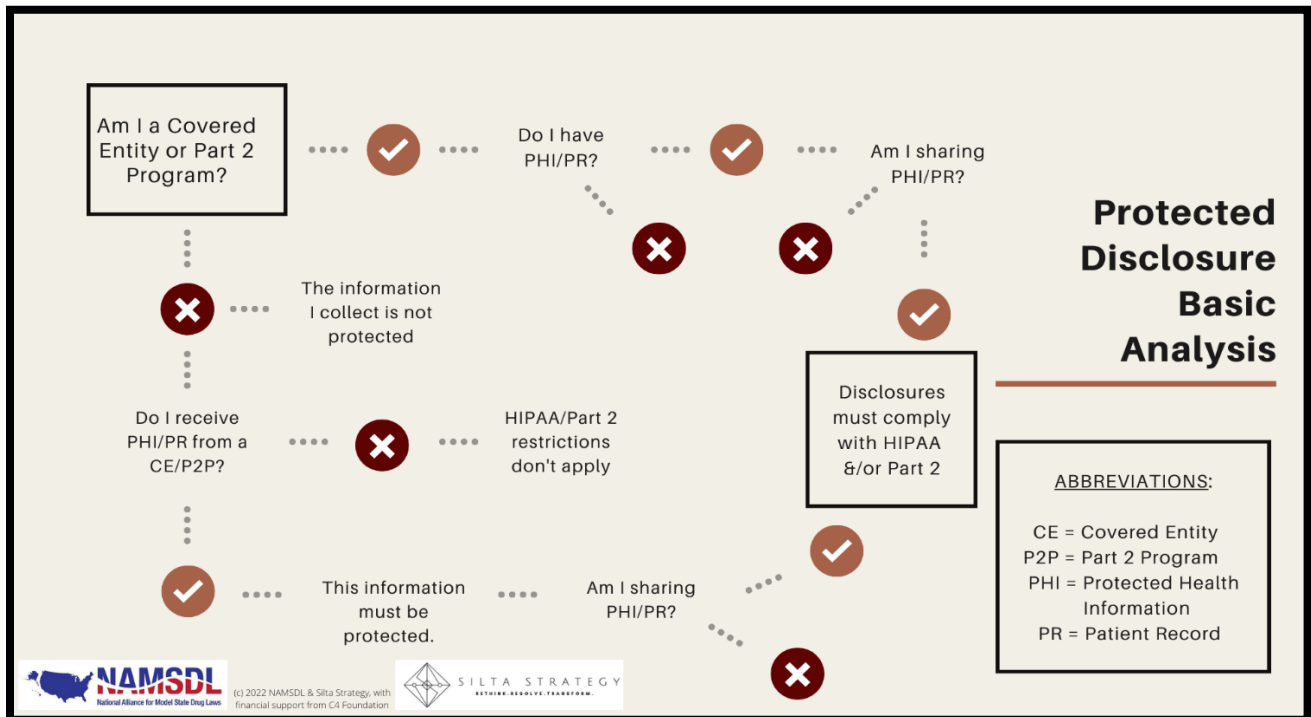
Video Link: [HIPAA & 42 CFR Part 2.](#)

Key Takeaways

- HIPAA protects *Protected Health Information (PHI)* shared by covered entities and their business associates. It generally allows disclosures for treatment, payment, and operations without written patient authorization.
- 42 CFR Part 2 protects patient records regarding the diagnosis, treatment, and referrals related to their *Substance Use Disorder (SUD)* shared by Part 2 programs and their qualified service organizations. It generally requires written patient authorization prior to disclosure.
- Deflection teams operate within mixed systems — some partners may be covered entities or Part 2 programs, while others are not. Clarifying these roles determines what information can be shared.
- HIPAA applies to healthcare providers, plans, or clearinghouses that transmit health information electronically in covered transactions.
- Part 2 applies to individuals and programs that hold themselves out as providing SUD diagnosis, treatment, or referral for those services, and receive federal assistance.
- The 2024 Final Rule for Part 2 (compliance required by February 2026) brings key updates:
 - Single written consent to a covered entity can now cover its future uses and disclosures for treatment, payment, and healthcare operations (TPO).
 - Patient record disclosures must be accompanied by a copy of the consent or details of its contents.
 - Patient rights include the ability to restrict disclosures, access one's own record, and request an accounting of disclosures from the past three years.
 - Part 2 programs must comply with breach notification requirements.
 - The Office of Civil Rights is now authorized to enforce violations of Part 2, which can result in criminal and civil monetary penalties.
- Privacy compliance depends on clear documentation and consistent practices.
 - Maintain a Notice of Privacy Practices and obtain written acknowledgment.
 - Secure written consent/authorization for information sharing (individual or group) that complies with federal law and provide a copy of the consent or its contents with any disclosure.



- Track and log disclosures and redisclosures.
- Keep formal policies and procedures for protecting and transmitting records.



Action Steps for Teams and Systems

1. **Map Your Data Flows:** Identify who shares what information, under which authority, and for what purpose.
2. **Clarify Roles:** Determine whether each partner is a Covered Entity, Business Associate, Part 2 Program, Lawful Holder, or Qualified Service Organization (QSO).
3. **Develop or Update MOUs/Agreements:** Formalize expectations around referral, documentation, and data sharing.
4. **Use Complaint Consent Forms:** Make sure your consent forms are easy to understand, include all legally required language and elements, and explain who information can be shared with and why.
5. **Train Staff Regularly:** Include deflection-specific examples and review updates leading up to the 2026 compliance deadline.
6. **Audit and Document Practices:** Maintain records of disclosures, breach protocols, and privacy procedures, and ensure documentation is consistent across partners



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7. **Set a routine review cycle:** Establish a regular privacy review and complete a comprehensive check before February 16, 2026 Part 2 enforcement date and whenever there are material changes (partners, workflows, policies, or systems)

Presenter Information

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Session Q&A

1. *Are there minimum requirements for what has to be in the written consent to make it valid or can they be agency/program specific?*
 - a. Part 2 outlines the exact requirements and elements required for a valid consent. While agencies can include their own branding or limited personalization (such as checkboxes or pre-filled fields), the core content as specified in Part 2 must be present. Agency-created consent forms that omit or alter this required language would not meet the legal standards under Part 2.
2. *When is a written Release of Information (ROI) required? For example, if law enforcement makes a referral to a deflection team, and the deflection team then refers the individual to treatment, does the deflection team need a written ROI to make that referral?*
 - a. Release of Information (ROI) is a general term that can indicate permission to share one or more categories of information. It must be completed before the referenced/protected information is shared or disclosed.
 - b. To comply with HIPAA, the exact requirements for a valid patient authorization must be used. Likewise, compliance with 42 CFR Part 2 requires specific language and contents for a valid patient consent. This may necessitate securing signatures on a set of forms, which can include a general ROI in addition to the HIPAA authorization and/or Part 2 consent.
 - c. Privacy laws may apply as early as when the first referral is made, even if the information is only shared verbally. This depends on the parties involved.
 - i. For instance, if a community volunteer who is not affiliated with or funded by any agency subject to HIPAA or Part 2 speaks directly with the client and offers a referral based solely on that interaction, the volunteer may make referrals without a HIPAA authorization or Part 2 consent.
 - ii. However, if the information used by a deflection team to make a referral comes from members or partners bound by HIPAA or Part 2, those laws must be followed before make disclosure (including a referral).
 - iii. Mapping program structure, partnerships, and processes is critical to identifying where HIPAA and Part 2 requirements apply, as this will vary



- across teams. Under HIPAA, information can generally be shared without written authorization for purposes of treatment, payment, or operations. Under Part 2, a written consent is required.
- iv. The key step is to identify the earliest point in the process where HIPAA and/or Part 2 apply, and ensure that the required written authorizations or consents are obtained prior to moving beyond that point.
 - v. Ideally, the Part 2 consent should be structured to permit both the initial referral and any subsequent referrals/services under the same form.
3. *If a program receives funding from a federal grant, does that mean it falls under 42 CFR Part 2?*
 - a. If that program conducts diagnosis, treatment, or referral for those services AND receives direct or indirect federal funding, it could be considered a Part 2 program and should consult the laws for further guidance.
 4. *What happens when a well-designed consent allows information sharing among all intended partners, but a hospital or other formal institution declines to accept that form?*
 - a. The consent process developed for a deflection team can exist *in addition to* the processes used by individual providers or partner organizations. It is common to encounter partners who say they cannot use a team's form to exchange information. In those cases, additional partner forms should also be completed. Partners can be invited to provide input on the team's group consent. Deflection team collaboration can be strengthened when it is made clear that the intent is not to replace a partner's compliance requirements but to provide for the team's privacy compliance needs and coordination activities further upstream.
 5. *Is there a template Release of Information (ROI) that multidisciplinary teams, including law enforcement, outreach teams, and treatment agencies, can use?*
 - a. HIPAA requires an "authorization" that includes the exact requirements written into the law, while Part 2 requires a "consent" with its own statutory language and requirements. Some of those components include who will receive the information, what type of information may be shared, for what purpose, and any additional restrictions requested by the individual. It is best to carefully read and follow each of the applicable laws.
 6. *Is a law enforcement agency that receives COSSUP funding to operate a deflection program always considered a Part 2 program?*
 - a. Given the diverse composition and functions within COSSUP teams, whether such an agency is a Part 2 program will always require further analysis. A conservative starting point would be to assume that it likely is, subject to further review regarding what definitions, exceptions, or exclusions apply based on the team's structure and the law enforcement agency's roles and activities. Part 2 programs provide SUD



diagnosis, treatment, or referral for those activities. If the law enforcement agency engages in any covered activity *and* receives federal funding, the initial assumption would be that the program is covered under Part 2, subject to a more detailed legal analysis.

7. *Do EMS, law enforcement, or other first responders need a signed consent to make a referral to a deflection team?*
 - a. EMS providers are covered under HIPAA, which generally permits PHI disclosure for treatment, payment, and operations without a written authorization. This could be read to authorize a referral to a treatment provider but might not allow a referral to law enforcement.
 - b. Ohio Revised Code section 3715.505 (former R.C. 4765.44) provides for limited EMS disclosures to law enforcement. Language from the statute is reproduced in part, below.
 - i. “Upon request of a law enforcement agency as described in division (B)(2) of this section, emergency medical service personnel and any firefighter or volunteer firefighter acting within the course of the firefighting profession shall disclose the name and address, if known, of an individual to whom the emergency medical service personnel, firefighter, or volunteer firefighter administered an overdose reversal drug due to an actual or suspected drug overdose, unless the emergency medical service personnel, firefighter, or volunteer firefighter reasonably believes that the law enforcement agency making the request does not have jurisdiction over the place where the overdose reversal drug was administered.”
 - ii. “A law enforcement agency may request a name and address of an individual under division (B)(1) of this section for the purposes of investigation or treatment referral and may use a name and address received under that division for either or both of those purposes.”
 - c. Law enforcement agencies are generally not covered by HIPAA or Part 2, however they must follow other privacy laws that govern what information can be shared related to their law enforcement activities.
 - d. We have encountered law enforcement agencies with federal funding that concluded they must comply with Part 2 as a result of social workers in its department that conduct diagnosis, treatment, and referrals, but this is not common.
 - e. The answer will differ for each team member or referring entity, which is why the first step is always to determine that entity/person’s relationship to HIPAA and Part 2. Once that is established, those resulting legal obligations dictate what information can be shared and under what conditions.

8. *Do prevention providers who offer one-on-one skill-building and substance use education with teens need to comply with Part 2?*



- a. If the activities do not involve diagnosis, treatment, or referral for diagnosis or treatment, then these prevention providers would not appear to trigger Part 2 requirements, even if the program receives federal funding. However, it is still important to take a closer look at the specific activities and context to confirm that none of those conditions are met.
9. *It was noted that Part 2 covers the entire patient record. If additional services such as mental health or primary care are provided, are those services also covered under Part 2? Can both HIPAA and Part 2 language be included in a single document?*
- a. That organization will need to perform a legal analysis to determine the applicability of Part 2 and HIPAA.
 - i. For instance, if the provider is only a Part 2 program (and not a HIPAA covered entity), all its services would be contained in the Part 2 patient record.
 - ii. If the provider is organized into separate units with distinct services and segregated records, each of those units would determine whether it must comply with Part 2 and/or HIPAA. Units that provide SUD diagnosis, treatment, and referrals would likely be covered under Part 2. Other units that only provide mental health or primary care services would generally fall under HIPAA.
 - iii. Hybrid organizations require a more detailed analysis beyond what can be addressed in this general discussion.
 - b. Note: Mental health counseling notes and SUD counseling notes must be segregated from the general patient record and are subject to special protection under HIPAA and Part 2, respectively.
 - c. As mentioned before, HIPAA and Part 2 each specify their own unique authorization and consent requirements.
10. *When working with minors who are using substances, are there circumstances where information can be disclosed to parents without the minor's consent? For example, when substance use is escalating and safety is a concern, but there is not an imminent medical emergency.*
- a. This is beyond the scope of our presentation.
11. *Can you define referral? Does directing or requiring a participant to complete a substance use disorder (SUD) assessment qualify as a referral?*
- a. Part 2 does not define the term referral. On its face, this example would appear to qualify as a referral.
12. *To my knowledge LE has always operated with the belief that HIPAA does not apply when a felony drug violation is being investigated. Has that changed?*



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- a. There are at least three bodies of privacy law implicated in this question, as it relates to investigation of a federal crime, protection of PHI under HIPAA, and protection of patient records under Part 2.
 - b. Within each of these bodies of law, LE should determine under what circumstances a valid, written permission from the patient and/or court order releasing information is required.
 - c. For instance, Part 2 does not permit the use and disclosure of a patient record to “initiate or substantiate criminal charges against a patient or to conduct any criminal investigation of a patient, or to use in any civil, criminal, administrative, or legislative proceedings against a patient” without an authorizing court order or separate patient consent provided specifically for that purpose.
13. *Do most organizations maintain two separate documents—one to satisfy HIPAA requirements and another to meet 42 CFR Part 2 requirements?*
- a. It is not uncommon for an organization to take that approach.