

Privacy: What Does It All Mean?

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Disclaimer

This presentation is intended for informational purposes only and should not be considered as legal advice.

Presentation Objectives

1. Identify the federal laws that govern the privacy of health information.
2. Describe how current federal laws governing health information work in tandem.
3. Describe various scenarios relating to the privacy of health information and determine which federal law should be applied.
4. Discuss available resources to provide information on the federal laws that govern the privacy of health information.



What comes to mind when you think
of Privacy?



corporate insurance act
compliance wealth HIPAA private work legislation data
help protect provider plans card hospitals law
employer patient examine secure medical security USA covered
accountability care legal simple portability term doctor information standards rules
healthcare regulations health business privacy

What federal laws govern the privacy of health information?

- * Title 42 of the Code of Federal Regulations (CFR 42 Part 2)
- * Health Insurance Portability and Accountability Act (HIPAA)



Title 42 of the Code of Federal Regulations (CFR 42 Part 2)

- * Established in 1975
- * First broad privacy and security standard for health information
- * Overseen by the Substance Abuse and Mental Health Administration (SAMHSA) in the U.S. Department of Health and Human Services (HHS)



Health Insurance Portability and Accountability Act (HIPAA)

- * Passed in 1996
- * Composed of 4 Parts:
- * Privacy Rule 2003
- * Security Rule 2005
- * Health Information Technology for Economic and Clinical Health (HITECH) Act 2009
- * Omnibus Final Rule 2013



Health Insurance Portability and Accountability Act (HIPAA)

- * Does not distinguish between mental health information and physical health information
- * Exception for psychotherapy notes

How do both laws work together?

CFR 42 Part 2

HIPAA

How do both laws work together?



How do both laws work together?

Part 2 regulations (1975) and HIPAA have not been coordinated and sometimes conflict, causing confusion. The HHS website advises providers that if they comply with HIPAA and another, more restrictive privacy rule, they must follow the most restrictive one.

CFR 42 Part 2 vs HIPAA

What's the difference?

CFR 42 Part 2

- * Written consent required for ANY disclosure of treatment records
- * Requires a specific court order for the disclosure of information in response to a subpoena, search warrant, or law enforcement request.

HIPAA

- * Health care provider can use or disclose protected health information when the purpose is for treatment, payment, or healthcare operations

Penalties – CFR 42 Part 2

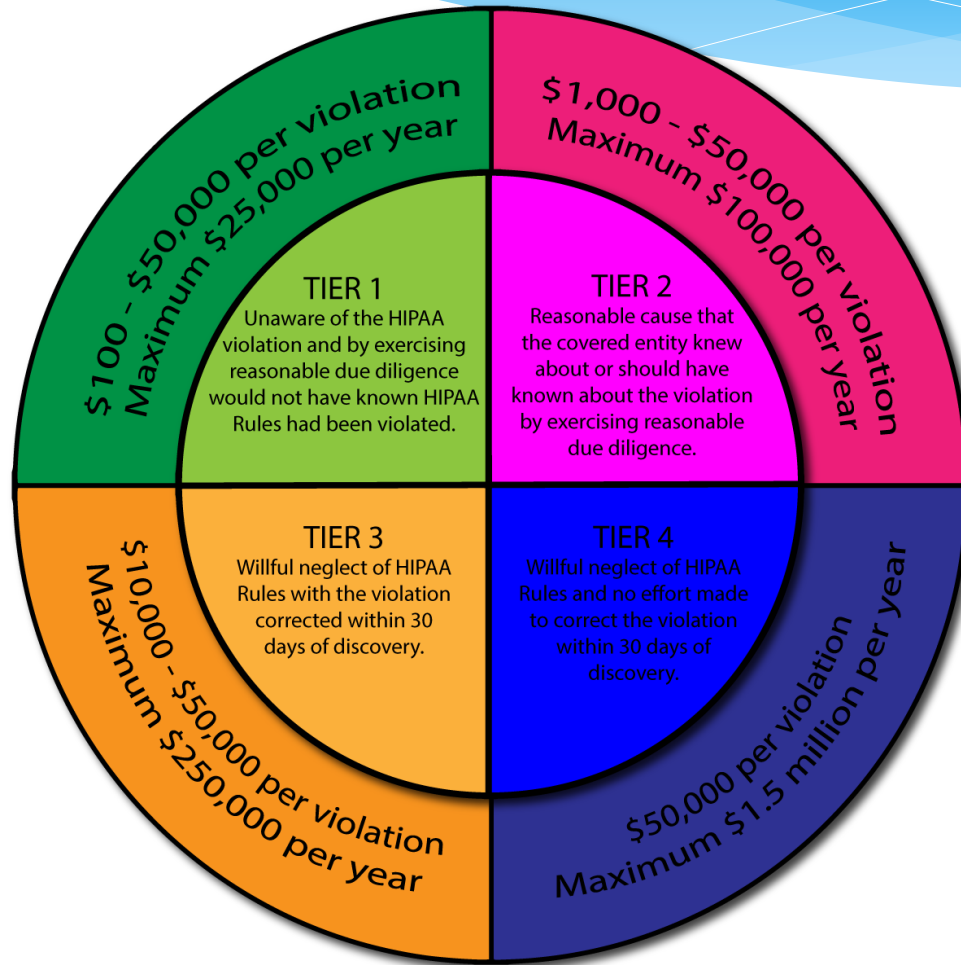
Any person who violates any provision of this **section** or any regulation issued pursuant to this **section** shall be **fined** not more than \$500 in the case of a first offense, and not more than \$5,000 in the case of each sub-sequent offense.

§ 2.4 Criminal **penalty for violation**,
Under **42 U.S.C.**

Penalties - HIPAA

- * **Tier 1:** A violation that the covered entity was unaware of and could not have realistically avoided, had a reasonable amount of care had been taken to abide by HIPAA Rules
- * **Tier 2:** A violation that the covered entity should have been aware of but could not have avoided even with a reasonable amount of care. (but falling short of willful neglect of HIPAA Rules)
- * **Tier 3:** A violation suffered as a direct result of “willful neglect” of HIPAA Rules, in cases where an attempt has been made to correct the violation
- * **Tier 4:** A violation of HIPAA Rules constituting willful neglect, where no attempt has been made to correct the violation

Penalties - HIPAA



What next?

Determine which federal regulation(s) govern your agency?

- a. If CFR 42 Part 2, you must obtain written consent for **ANY DISCLOSURE**, including treatment from another provider, payment, or healthcare operations.
- b. If HIPAA, disclosure for the purpose of treatment, payment, or healthcare operations is **NOT REQUIRED**.



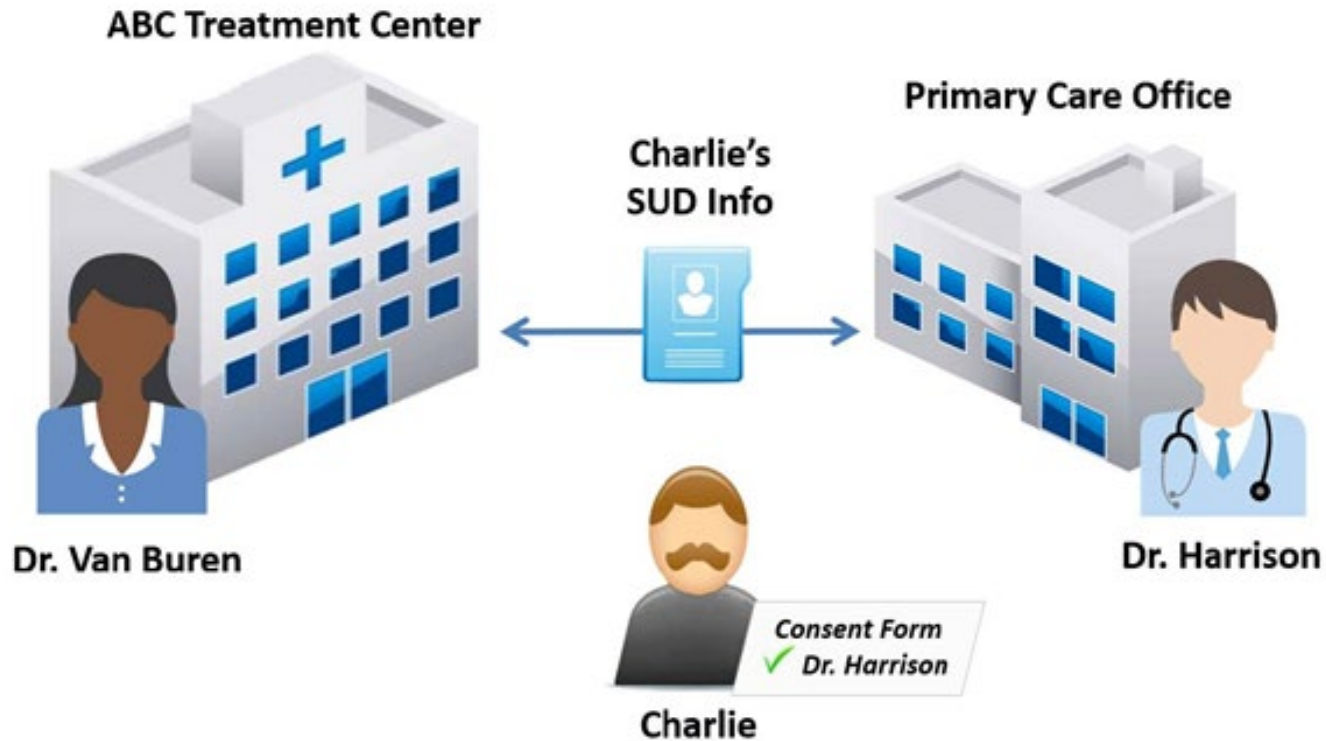
How do I know where my agency falls?

- * CFR 42 Part 2
 - * Federally Assisted Program that would lead one to reasonably conclude that the individual or entity provides substance use disorder diagnosis, treatment.
- * HIPAA
 - * Health Care Provider
 - * Health Plan
 - * Health Care Clearing House

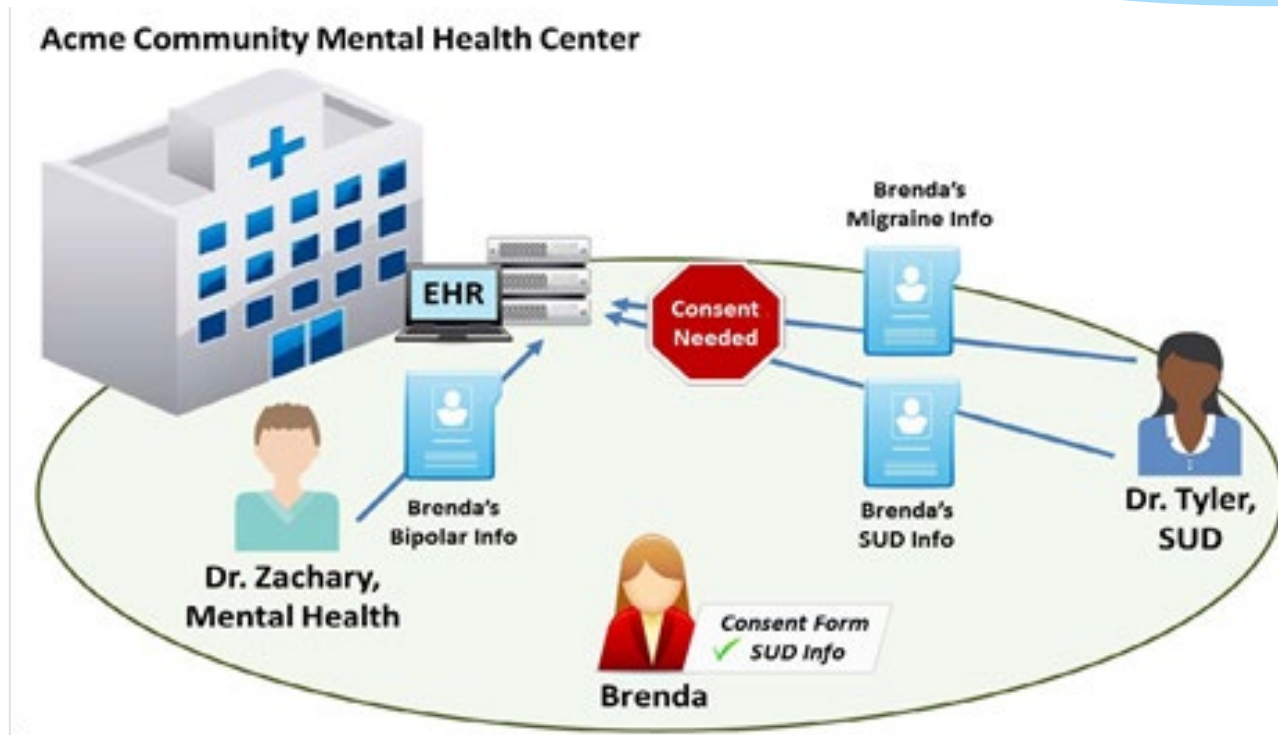


Scenarios

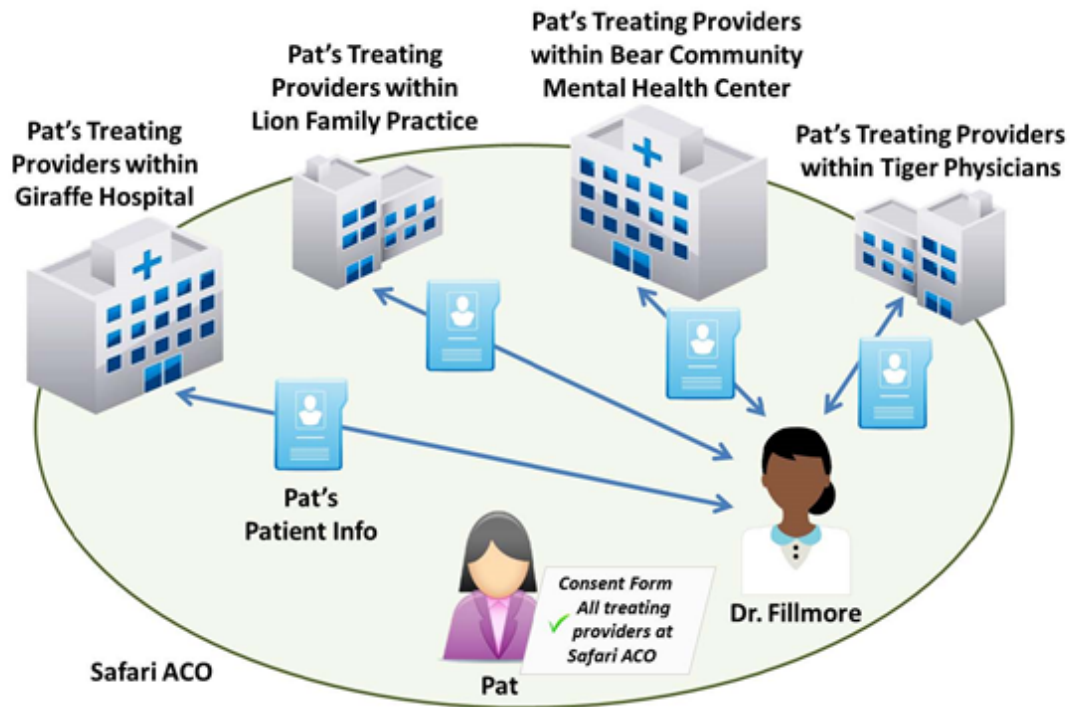
Scenario 1: Opioid Treatment Program



Scenario 2: Mixed-Use Facility



Scenario 3: Accountable Care Organization (ACO)



Scenario 4: Integrated Care Setting



Resource: <https://www.samhsa.gov/sites/default/files/does-part2-apply.pdf>



The Future....

- * Allows a non-Part 2 provider to **maintain SUD information** in the individual's medical record, provided the information was willingly given by the patient (currently Part 2 requires SUD information to be segregated).
- * Declared **emergencies** resulting from natural disasters (e.g., hurricanes) that disrupt treatment facilities and services will meet the definition for a “bona fide medical emergency,” for the purpose of disclosing SUD records without patient consent.

The Future..

- * Permits providers who do not provide opioid treatments to access a **central registry** of patients who have enrolled in treatment programs. This is intended to help prevent accidental overdoses. Enrollment in an opioid treatment program would include consent to have treatment information shared with the central registry
- * Disclosures for the **purpose of “payment and health care operations”** are permitted with **written consent**

The Future...

- * Disclosure of substance abuse patient records may be made without the patient's consent under the following circumstances:
 - * To medical personnel as needed in a medical emergency
 - * To qualified personnel for scientific research, financial audits or program evaluation so long as patient identities are not disclosed in reports resulting from these activities.
 - * Pursuant to court order which contains all of the required information described in the regulations and after the court determines that there is cause for the release.

Resources

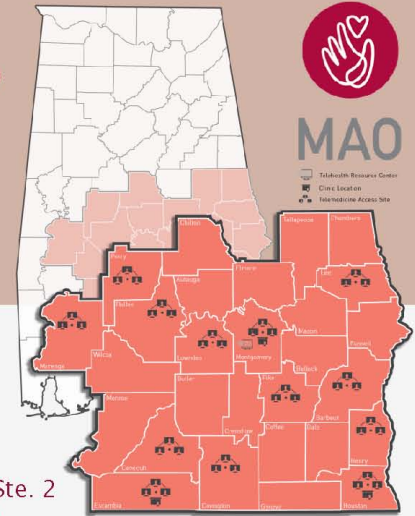
- * Substance Abuse Confidentiality Regulations:
<https://www.samhsa.gov/about-us/who-we-are/laws-regulations/confidentiality-regulations-faqs>
- * Disclosure of Substance Use Disorder Patient Records:
<https://www.samhsa.gov/sites/default/files/does-part2-apply.pdf>
- * Health Information Privacy:
<https://www.hhs.gov/hipaa/index.html>



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MAOI.ORG



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Copeland Care Clinic

2900 McGehee Rd.
Montgomery, AL 36111
(334) 280-3349


Copeland Care Pharmacy

2900 McGehee Rd.
Montgomery, AL 36111
(334) 239-9692

MAO Dental Clinic

3050 McGehee Rd.
Montgomery, AL 36111
(334) 239-9704

MAO Learning Center

 **AETC** AIDS Education & Training Center Program
2530 Fisk Rd.
Montgomery, AL 36111
(334) 288-8091

MAO Wellness Center

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Montgomery, AL 36111
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MAO - Dothan

Clinic
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Dothan, AL 36305
(334) 673-0494

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Dothan, AL 36305
(334) 673-0494

ATMORE

MAO - Atmore

1321 S. Main St., Ste. 2
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Bridge the Gap in Rural Care! Get connected with the MAO Telehealth Resource Center

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Montgomery, AL 36106

(334) 386-3839



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