

Kids Health First® / Client Brief

May 6, 2026

Topic: Substance Use Disorder (SUD) rules on records management and required changes to your Notice of Privacy Practice (“NPP”) verbiage

Background: On February 8, 2024, HHS announced a final rule modifying the Confidentiality of Substance Use Disorder Patient Records (the “Part 2 Final Rule”). The Part 2 Final Rule protects “[r]ecords of the identity, diagnosis, prognosis, or treatment of any patient which are maintained in connection with the performance of any program or activity relating to substance use disorder education, prevention, training, treatment, rehabilitation, or research, which is conducted, regulated, or directly or indirectly assisted by any department or agency of the United States.”¹ [“SUD Records”]

The Part 2 Final Rule impacts both: (i) **SUD Providers** – “...private practitioners who hold themselves out as providing, and provide substance use disorder diagnosis, treatment, or referral for treatment.”², and (ii) **Non-SUD Providers** who lawfully maintain SUD Records, i.e., a medical practice that obtains SUD Records from an SUD Provider with the consent of the patient or pursuant to an exception to consent requirements (henceforth, a “**Lawful Holder**”).

What you must do:

By February 16, 2026, even as a **Non-SUD Provider**, you must update your NPP by adding the following statement:

“To the extent that we have your substance use disorder patient records, subject to 42 CFR part 2, we will not share that information for investigations or legal proceedings against you without (1) your written consent or (2) a court order and a subpoena.”

The model NPP promulgated by the OCR recommends placing this statement at the end of the “Our Uses and Disclosures” section of the NPP.

The OCR also recommends adding the following verbiage to the fundraising section of your NPP:

“If we have your substance use disorder patient records, subject to 42 CFR part 2, we will give you clear and obvious notice in advance and a choice about whether to receive fundraising communications that use your Part 2 information.”

Also note, because these are arguably material changes to your NPP, you should: (i) Update the effective date on your NPP; (ii) Make the revised NPP available at check-in; (iii) Post the revised NPP on your website; (iv) Include the revised NPP in your new patient paperwork; (v) provide a copy of the revised NPP to your existing patients at their next visit; and (vi) Provide a copy of the NPP to patients upon request.

¹ 42 USC § 290dd-2(a)

² 42 CFR § 2.12 (e)(1)

Redisclosure

of SUD records:

If you are a **Lawful Holder** of SUD Records, and the records originated from a SUD provider, you generally cannot redisclose them without patient consent, even for Treatment, Payment, and Healthcare Operations (TPO), unless the patient signed a valid "single TPO consent" for all future disclosures (you will need to confer with the SUD Provider from whom you received those records). If you received the SUD Records from a Non-SUD Provider, however, who simply documented the patient's substance use within standard medical records, those records are typically governed only by HIPAA, not Part 2. Regardless, the SUD Records cannot be used in legal proceedings against the patient without specific consent or a court order (which is more stringent than the HIPAA standard and consistent with the NPP required language above). For example, you can share the SUD records in your chart with another provider for treatment purposes, but you cannot release those SUD records in response to a Request for Production of Documents to a Non-Party without specific consent from the patient or their parent(s).

Disclaimer: Nothing herein should be considered, construed, or interpreted as legal advice. Rather, this material was developed strictly as a risk management resource pursuant to your insurance broker agreement with Sterling Seacrest Pritchard. You should consult with an attorney concerning this matter and any advice, suggestions, and comments provided herein. Moreover, you should also consult with an attorney, at your own cost and expense, to assist you with your NPP and your maintenance and release of SUD records.