



FSPHP Issue Brief: Effective Communication Regarding PHP Confidentiality

Issue Description:

Confidentiality is foundational to the PHP model which is designed to reduce barriers, such as stigma, shame, and fear of professional sanction that can discourage help-seeking and lead to the progression of illness to impairment. Prospective PHP participants and concerned others must be informed that PHP participation and information held by the PHP will remain in the strictest confidence. The parameters for eligibility and confidentiality should be well defined to allow participants anonymity and safe harbor when appropriate. Importantly, they must be informed of the limits of confidentiality and the circumstances under which the PHP might be required to disclose information about a participant.

This Issue Brief provides PHP recommendations to promote clear and effective communication about confidentiality. A referring entity and potential participant can benefit from being informed about the PHP confidentiality parameters prior to contacting the PHP. This information and transparency are critical to informed decision-making and consent to participate in the PHP. The recommendations in this Issue Brief are consistent with, and expand upon, relevant content in Section 2 of the FSPHP 2019 Guidelines: Physician Health Program Fundamental Principles, pages 16-18 (Confidentiality, Mandated Reporting and Safe Harbor, and Informed Consent).

FSPHP Recommends:

1. PHPs include information about its confidentiality parameters in clear, easy-to-understand language. Legal jargon and confusing language (as are often provided in rules, regulations, and statutes) should be avoided when possible. Links to applicable state and federal laws, rules, and regulations that define the PHP confidentiality parameters should be provided as supporting materials for further reference.
2. PHPs have public-facing information about its confidentiality parameters prominently featured on the program website's homepage. Other published media such as annual reports, educational materials, brochures, and other published media should complement the information provided on the publicly facing website.
 - a. **Inclusion of key confidentiality parameters with explanations for:**
 - i. The PHP's determination as to the applicability of HIPAA and the Federal Confidentiality Law 42 C.F.R., Part 2.
 - ii. Special protections afforded to PHP records and records held by the PHP. When applicable include links to state-specific rules and statutes, peer review protections, immunity, safe haven or safe harbor provisions, and/or exceptions that protect PHP records from release in legal proceedings.
 - iii. Whether the PHP can assist participants without any identifiable information being known to the state medical board.
 - iv. When program participation confidentiality begins.
 - v. The limits of confidentiality and what may prompt a PHP to disclose information or release PHP records.



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- vi. The information that PHPs provide upon request to third parties with consent for the purposes of health status verification.
 - vii. The limits of information provided to the PHP participant from the PHP's participant record.
 - viii. Any requirements for consented communication with past and current evaluators, treatment providers, and others involved in the participant's care as a condition of program participation.
3. PHPs have a consistent process for informing prospective program participants and a referring entity of the PHP's confidentiality parameters.
4. Explanation of privacy protections in place for any electronic communications utilized by the PHP such as video, email, and/or fax:

Examples of content to include from FSPHP PHP Guidelines:

- **Confidentiality preface:** One of the reasons PHPs were developed was to provide confidentiality for healthcare professionals with stigmatized health conditions. Healthcare professionals are more likely to seek assistance if they believe their information will be kept confidential. Under these circumstances, they can participate in the PHP without involvement of state medical boards, and they will not be harmed or face reputational risk as the result of their decision to seek assistance from the PHP. Strong confidentiality protections encourage early intervention in the illness process before impairment and when the prognosis for full recovery is more favorable.
- **Description of laws and statutes:** A description of the confidentiality provisions that govern the PHP (and relevant links). Include references to laws that pertain to your PHP such as peer review, 42 C.F.R., Part 2, HIPAA, as well as state laws that protect PHP records, safe haven laws, and other immunities that govern the privacy and protection of information and records held by the PHP. It may be helpful to state whether your program is or is not subject to HIPAA.
- **Limitations to confidentiality should be explained, consistent with state and local laws:** Danger to self or others, abuse of a child or vulnerable adult, and medical emergencies are common examples in which health care professionals may have a legal reporting obligation that supersedes confidentiality protections. In addition, PHPs may have reporting obligations that require the PHP to notify state medical boards when there is risk of unsafe practice or non-compliance with program requirements. PHPs should provide information about the circumstances that would trigger a mandatory reporting obligation to state medical boards and what information is released in such cases.
- **Release of PHP records:** If applicable, emphasize that a PHP record will never be released to the public and describe those protections which are in place to protect the



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record from subpoena or court order pursuant to state and local law. State whether the PHP record is available to be released to the participant or other third parties (with consent). If not, state what information about the participant is available and how they may obtain that information.

- **Anonymity of referring entity and reporting requirements:** Describe how your PHP handles documentation and communication when a referring entity requests to remain anonymous. Include legal or immunity protections and processes the PHP uses to maintain anonymity (e.g., record redaction).
- **Release of information to third parties:** Describe the amount and type of information that the PHP may exchange with third parties. This may include referral information to evaluators and treatment providers, workplace communications, or correspondence verifying health status and safety to practice.
- **References:** <https://www.ama-assn.org/system/files/issue-brief-physician-health-wellness.pdf>
- https://www.americanbar.org/groups/health_law/publications/aba_health_esource/2022-2023/september-2023/physician-burnout-and-career-fatigue-part-3/
- <https://www.ama-assn.org/health-care-advocacy/state-advocacy/ama-model-bills#:~:text=The%20model%20bill%20prohibits%20utilization,to%20all%20forms%20of%20MAT>

Examples of PHP Confidentiality Website Pages:

- <https://php.oma.org/what-we-do/privacy/>
- https://www.massmed.org/Physician_Health_Services/About/Confidentiality_at_PHS/
- <https://www.physicianhealth.com/about-us/confidentiality/>
- <https://gapfp.org/17-headlines/33-confidential>
- <https://hpfla.org/about/history-and-purpose/>