

**When law enforcement officials arrive at your SUD treatment program with a warrant to arrest a patient, how can you respond without violating federal privacy laws?**



## What You Need to Know

Some of the clients we provide substance use disorder treatment and support services to have the potential, have been, or are currently involved in the criminal justice system. This means that our jobs may be complicated by inquiries from law enforcement that bring up important questions about our ability to continue to protect patient privacy.

HIPAA permits covered entities to disclose protected health information (PHI) to law enforcement in certain circumstances. (see 45 CFR § 164.512(f)). However, 42 CFR Part 2 (“Part 2”) generally does not permit covered SUD treatment programs to disclose protected SUD information to law enforcement without a valid Court Order issued in accordance with the regulation (see 42 CFR § 2.65).

### HHS GUIDANCE

The U.S. Dept. of Health and Human Services (HHS) has issued several official guidance letters indicating how SUD treatment programs should respond when presented with an arrest warrant. They are summarized below.

- **Do not acknowledge SUD patient status.**  
SUD treatment program personnel may not acknowledge to law enforcement that an individual is a current or former patient because that would be a disclosure under Part 2. (42 CFR § 2.13.) HHS emphasized this point in Opinion Letter 76-24 (May 10, 1976): “[T]he regulations do not authorize you to assist a law enforcement officer by identifying, either directly or indirectly, any individual who is or has ever been a patient in the program.”

- **Do not assist with the search.**

If law enforcement officials attempt to enter your premises to search for a patient, program personnel are not permitted to assist with the search or to provide any information about a patient “including information about the patient’s presence or absence on program premises, or other whereabouts, to law enforcement officials.” Opinion Letter 80-14 (May 2, 1980).

However, if law enforcement are in “hot pursuit” of a patient, “program personnel may assist with locating the individual, but may not identify them as a patient.” Opinion Letter 81-10 (July 17, 1981).

**Hot pursuit** is when law enforcement officers follow the fleeing individual into the program.

- **Do not forcibly restrict entry.**

HHS has repeatedly clarified that it is not necessary for SUD programs to forcibly restrict entry to law enforcement. “The confidentiality regulations do not prohibit, or require treatment program personnel to prohibit, a law enforcement official from locating an individual for purposes of serving an arrest warrant.” Opinion Letter 81-10 (July 17, 1981) and “regulations do not require that the personnel of a treatment program forcibly restrain or otherwise take action to prevent a law enforcement official from serving an arrest warrant.” Opinion Letter 77-29 (December 8, 1977).



## Different Rules for Crimes on Premises or Against Program Personnel.

When a crime occurs on a program's premises or against program personnel, Part 2 permits limited disclosures to law enforcement. 42 CFR § 2.12(5). Therefore, it may be permissible to identify a patient when presented with an arrest warrant under the following circumstances:

- When a treatment program reports a crime on program premises or against program personnel and the arrest warrant has been issued due to this report, or
- In states where evading arrest is considered a crime, identifying a patient to law enforcement could be considered a report of a crime occurring on program premises.



## Meet with Law Enforcement

It is good practice for SUD treatment programs to develop positive working relationships with local law enforcement before a situation arises. Through relationship building activities providers can ensure law enforcement have knowledge about, and an understanding of, your program's obligations to patients associated with Part 2 and the procedures for obtaining a Court Order under 42 CFR § 2.65(e).



## For More Information

### Resources

This resource is one of many that are available within the Center of Excellence for Protected Health Information's resource library which can be found at [coephi.org](https://coephi.org).

### Request Technical Assistance

You can request brief, individualized technical assistance and join our mailing list for updates, including news about the publication of new resources and training opportunities, [here](#).



## Disclaimer

Resources, training, technical assistance, and any other information provided through the Center of Excellence for Protected Health Information do not constitute legal advice. For legal advice, including legal advice on other applicable state and federal laws, please seek out local counsel.

Funding for the Center of Excellence for Protected Health Information was made possible by grant no. 1H79TI081743-01 from SAMHSA. The views expressed herein do not necessarily reflect the official policies of the Department of Health and Human Services; nor does mention of trade names, commercial practices, organizations imply endorsement by the U.S. Government.