



## NAVIGATING CONFIDENTIALITY IN FIRST RESPONDER DEFLECTION

### WHAT YOU NEED TO KNOW

First responders often gain access to sensitive information about people's substance use disorders (SUD) and treatment. Protecting the privacy of this information is key to these individuals' recovery. It also is required by law. This resource explains the limited circumstances under which two federal privacy laws apply to SUD information obtained by first responders. It also describes how these laws permit first responders to share protected information.

### **A CLOSER LOOK:**

**Two federal laws protect the privacy of SUD information:**

- The Health Insurance Portability and Accountability Act (HIPAA) – which protects health information generally, and
- The federal confidentiality law for SUD records, 42 CFR Part 2 (“Part 2”).

### **When do these laws apply to first responders?**

**HIPAA:** First responders only are required to follow HIPAA if they are a “covered entity.” To be a covered entity, they need to provide healthcare and transmit health information electronically for certain transactions, such as billing.

[Click here for HIPAA transactions rule.](#) Many first responders do not meet this definition and do not need to follow HIPAA.

### **Example:**

The Greenville Fire Station has one ambulance and three emergency medical technicians (EMTs). They provide emergency medical services to individuals and share information with local hospital staff. The ambulance service is fully funded by the government and never bills individuals for services.

**Is Greenville Fire Station a covered entity under HIPAA?** No. It is *not* a covered entity because even though it provides health services, it does not bill individuals or transmit information electronically in connection with other qualifying transactions.

**Part 2:** Part 2 only applies to “Part 2 programs” and “lawful holders.” First responders will rarely be a Part 2 program, which generally is a program that primarily provides SUD treatment. But first responders who receive patient records from a Part 2 program will become a “lawful holder.” As a lawful holder, they must follow Part 2’s privacy and security restrictions for that information.

### Example:

A Greenville Fire Station first responder connects Jane to a Part 2 program following an overdose. One month later, the Part 2 program obtains Jane’s written consent to tell the first responder that Jane is doing well in her treatment.

**Is the first responder a lawful holder?** Yes. The first responder is a lawful holder of the information received from the Part 2 program and must protect its confidentiality.

Note that Part 2 does not apply to information that the patient self-discloses to a first responder.

### Example:

The first responder from the last example runs into Jane on the street. Jane thanks them for helping her and says she is finally in recovery from a ten-year struggle with cocaine and opioid use disorders.

**Is the information Jane disclosed about herself protected by Part 2?** No. Part 2 does not protect information that Jane self-disclosed.

## How can first responders legally share protected information?

When HIPAA or Part 2 applies to first responders (and as noted above, they will not always apply!), they can share protected information through the laws’ “exceptions.” The most applicable exceptions are:

- **Patient consent/authorization**

Written patient consent is an excellent way to facilitate information sharing because it centers the individual in the decision-making process. HIPAA and Part 2 have slightly different requirements for written consent.

[Click here for a sample consent form that meets the requirements of both.](#)

- **For treatment purposes**

- **HIPAA:** First responders who are subject to HIPAA may share protected health information without the individual’s written consent when necessary for treatment. This includes providing healthcare to the individual, care coordination, and referrals to other healthcare providers.
- **Part 2:** A lawful holder of Part 2-protected information needs written patient consent for treatment-related disclosures except to medical personnel for a bona fide medical emergency.

## Example:

A first responder that is subject to HIPAA responds to a 911 call about an overdose. The first responder administers naloxone, followed by oxygen, and the individual declines further care on the spot. The first responder wants to inform an outreach unit at a different agency about what happened so they can offer the individual follow-up care.

**Can the first responder share that information without patient consent?** Yes, because HIPAA permits sharing health information without consent for treatment purposes.

- **De-identified information:**

Information that does not reasonably identify an individual can be shared under both HIPAA and Part 2.

[Click here for OCR's guidance](#) about de-identifying information under HIPAA.

## Example:

Green Leaf SUD program tracks the number of referrals received from first responders, number of individuals currently engaged in treatment, and how many individuals remained engaged for 60 or more days Green Leaf can share this aggregate information if it does not identify any individuals.



## 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.

*This resource was supported by SAMHSA of the U.S. Department of Health and Human Services (HHS) as part of a financial assistance award totaling \$5,000,000 with 100 percent funded by SAMHSA/HHS. The contents are those of the author(s) and do not necessarily represent the official views of, nor an endorsement, by SAMHSA/HHS, or the U.S. Government.*