

# Leveraging Privacy to Advance Harm Reduction: *Focus on 42 CFR Part 2*

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The Legal Action Center uses legal and policy strategies to fight discrimination, build health equity, and restore opportunity for people with arrest and conviction records, people who use(d) drugs, and people living with HIV/AIDS.

## Why health privacy matters for PWUD (people who use(d) drugs)

- Encourages **access** to treatment and healthcare services
- Improves **quality** of treatment and treatment outcomes
- **Protects** against stigma, discrimination, or criminalization on account of health records

# 1,284,000+

Individuals nationally with a substance use disorder who wanted but did not receive treatment at a specialty facility

Source: U.S Department of Health and Human Services, SAMHSA, “Key substance use and mental health indicators in the United States: Results from the 2021 National Survey on Drug Use and Health” (2022), <https://www.samhsa.gov/data/report/2021-nsduh-annual-national-report>.

## Reasons for not receiving treatment

Source: 2022 NSDUH (see previous slide), Table 5.36B, excerpt

**35.8%**

Worried information would not  
be kept private

**17.8%**

Thought their family, friends, or  
religious group would not like it

**37.1%**

Worried bad things would  
happen if people knew, like  
losing job, home, or children

**45.3%**

Worried about what people  
would think or say

## Overview: 42 CFR Part 2

### CONFIDENTIALITY OF SUBSTANCE USE DISORDER PATIENT RECORDS

- **Part 2 applies to records from Part 2 programs**
  - “*Federally assisted*” + “*program*”
- **Generally stricter than HIPAA**
  - Requires written consent for many uses and disclosures, including for **treatment, payment, healthcare operations**
  - Confidentiality protections follow the records
  - Limited exceptions when sharing information with law enforcement or child welfare/family regulation system
- **New enforcement authority: HHS Office for Civil Rights**



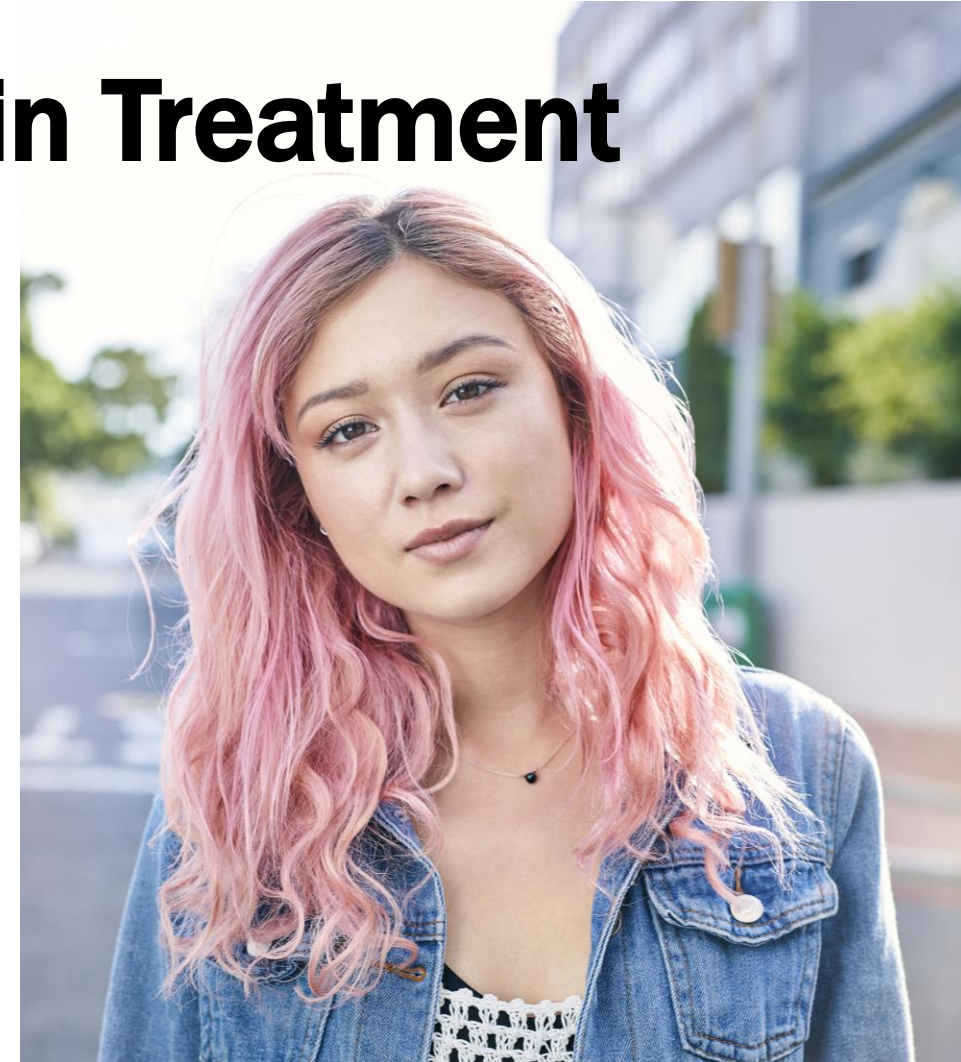
**“The purpose of the part 2 regulations is to ensure that a patient is not made more vulnerable by reason of the availability of their patient record than an individual with a substance use disorder who does not seek treatment.”**

U.S. Department of Health and Human Services, SAMHSA, 83 FR 239, 242 (Jan. 3, 2018).



# Case Study: Confidentiality in Treatment

- Green Lake Recovery is a community-based outpatient treatment program that has adopted a harm reduction-informed approach.
- May is considering seeking help at Green Lake Recovery, but is nervous about what information will be shared about her recent drug use.
  - May is currently under community supervision (parole) and has an open case with CPS.

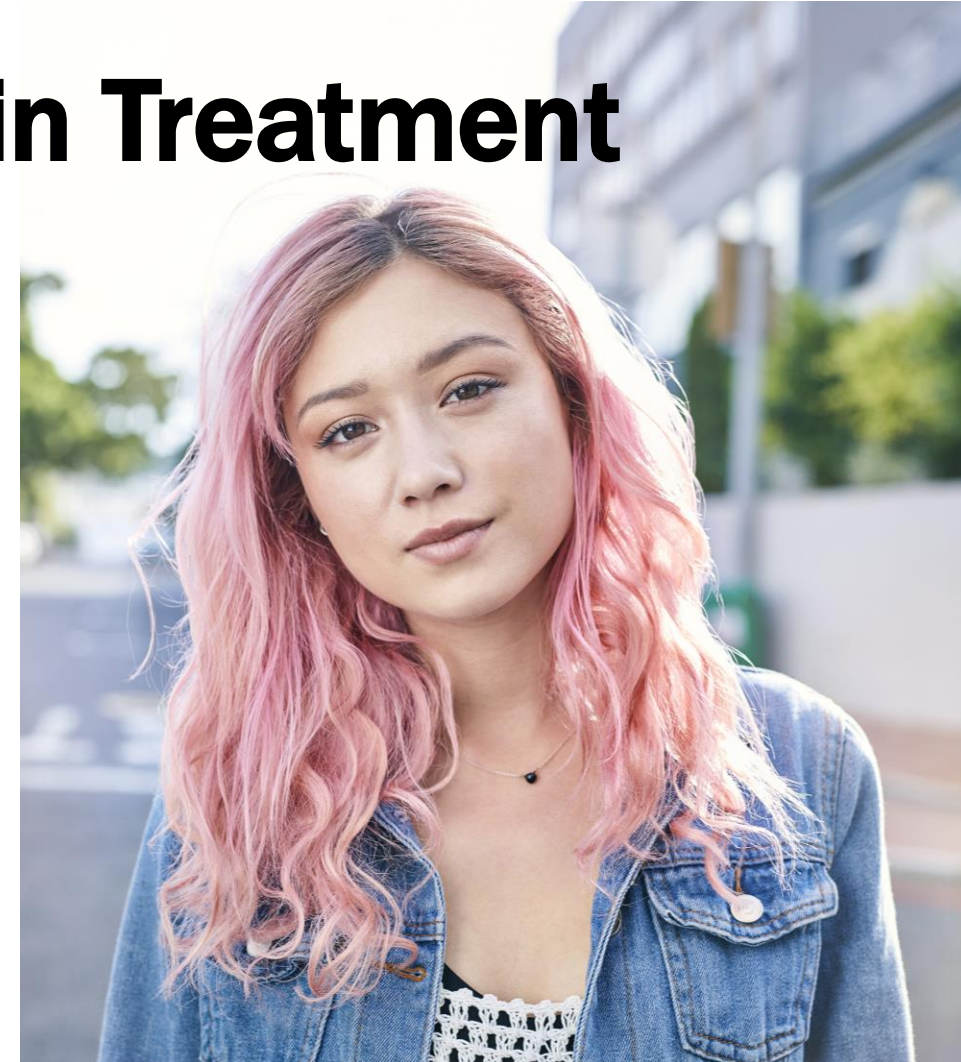




# Case Study: Confidentiality in Treatment

## Discussion questions

- What disclosures would you be worried about if you were May?
- What would you tell May to alleviate her concerns about Part 2 if you were her counselor?
- How does Part 2 support Green Lake Recovery's harm reduction-informed approach to treatment?

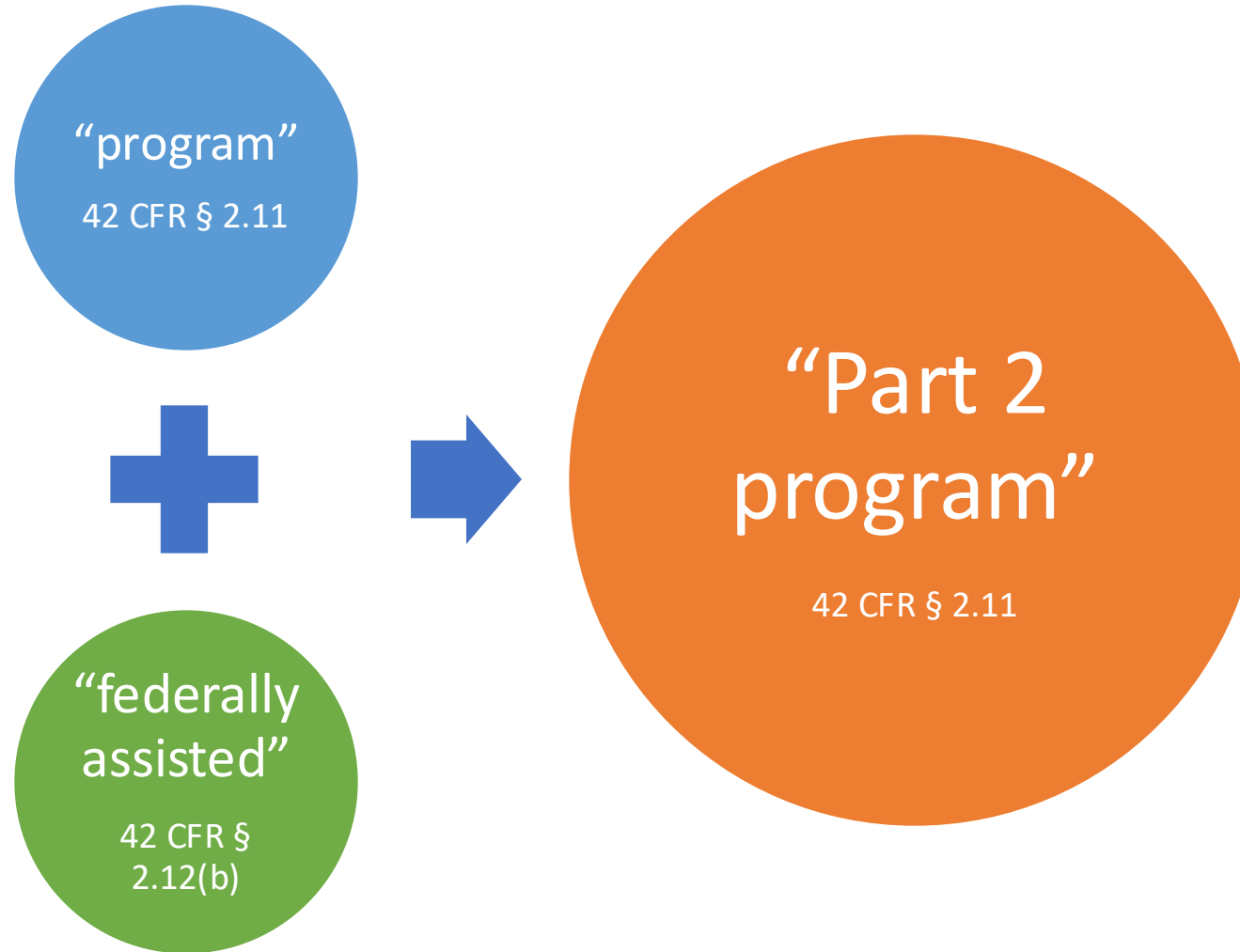


# 42 CFR Part 2 Law enforcement

## CONFIDENTIALITY OF SUBSTANCE USE DISORDER PATIENT RECORDS

- **When responding to inquiries – prohibits identifying a patient or even confirming whether an individual is a patient**, without a Part 2 court order or patient consent, [42 CFR § 2.13](#)
- **Prohibits use of records against a patient** in criminal, civil, administrative, or legislative proceeding unless patient signs written consent or judge issues special court order, [42 CFR § 2.12](#)
- **Strictly limits placement of undercover officers or informants**, prohibits use of data/records against patients, and requires judicial oversight, [42 CFR § 2.17](#)

# Part 2 Applicability





# Case Study: Part 2 in harm reduction

## Blue Mountain Haven

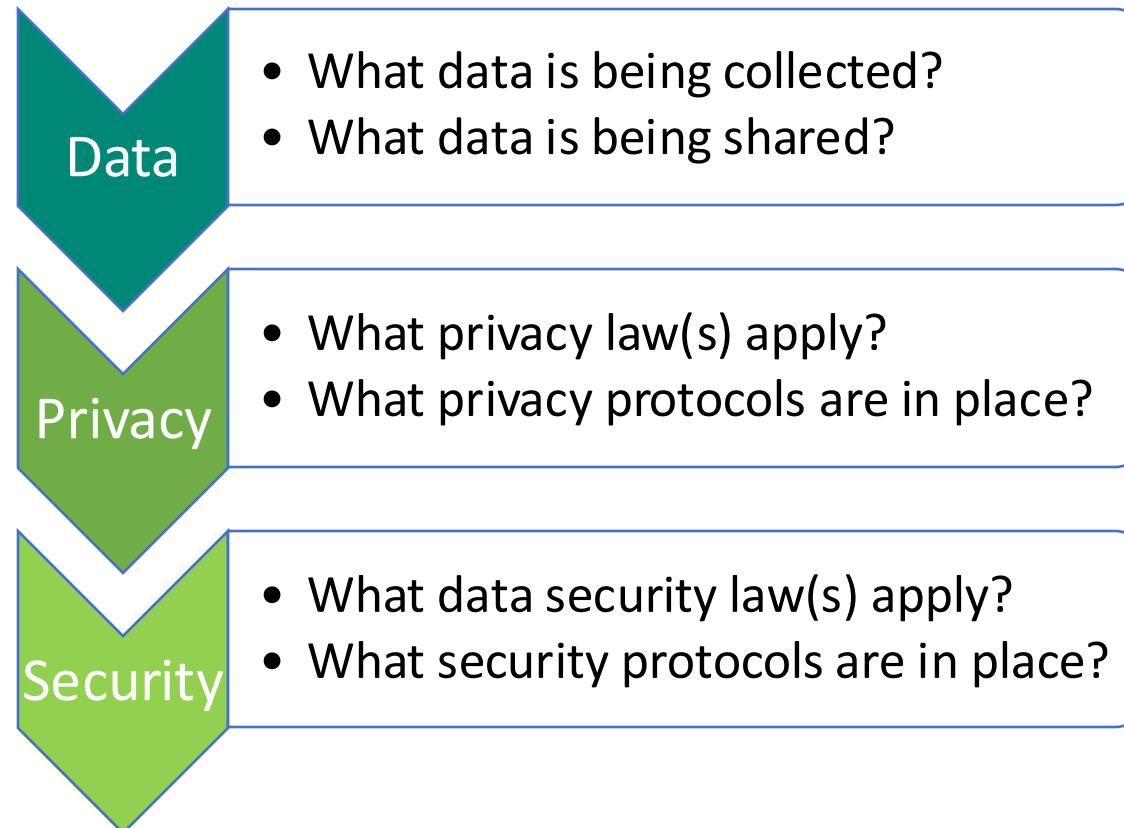
- Started as “needle exchange” in 2001
- Now offers safe supplies *plus*:
  - Hep C testing and treatment, HIV testing and preventive care (PEP, PrEP)
  - Wound care
  - Mental health counseling
  - General health assessments
  - Referral to SUD treatment, primary care, and specialists
  - Considering hiring provider to prescribe buprenorphine to treat OUD



Walter Siegmund / CC [link](#)

# Case Study: Part 2 in harm reduction

## Discussion questions





# 42 CFR Part 2 in Practice: Resources

- Letter to law enforcement officials requesting patient records
- Guidance for preparing for immigration enforcement
- Memorandum: mandated reports of child abuse and neglect
- *Forthcoming: privacy analysis and confidentiality tools for SSPs and OPCs and local, state government partners*
- Sign up for health privacy updates at [www.lac.org](http://www.lac.org)
- *See also: Center of Excellence for Protected Health Information, [www.coephi.org](http://www.coephi.org)*

# KEY POINTS

- Confidentiality matters for people who use drugs – and for public health
- Federal regs (42 CFR part 2) protect confidentiality at *Part 2 programs*
- Part 2 can support harm reduction-informed SUD treatment and programs
- More 42 CFR Part 2 resources

THANK YOU!

# Appendix: 42 CFR Part 2 Applicability

## Part 2 Applicability: Statute, Regulations

### Statute: 42 USC § 290dd-2(a)

- Records 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 shall . . . be confidential and be disclosed only for the purposes and under the circumstances expressly authorized under subsection (b).

### Regulations: 42 CFR Part 2

- . . . the regulations in this part impose restrictions upon the use and disclosure of substance use disorder patient records (“records,” as defined in this part) which are maintained in connection with the performance of any Part 2 program. § 2.2(a)
- “Part 2 program” means a federally assisted program (federally assisted as defined in § 2.12(b) and program as defined in this section). § 2.11



# Part 2 Applicability

## Step 1

### “Program” (42 CFR § 2.11)

(1) A person (other than a general medical facility) that holds itself out as providing, and provides, substance use disorder diagnosis, treatment, or referral for treatment; or

(2) An identified unit within a general medical facility that holds itself out as providing, and provides, substance use disorder diagnosis, treatment, or referral for treatment; or

(3) Medical personnel or other staff in a general medical facility whose primary function is the provision of substance use disorder diagnosis, treatment, or referral for treatment and who are identified as such providers.

# Part 2 Applicability Step 2

## “Federally assisted” (42 CFR § 2.12(b))

Conducted by federal agency (except the VA, Armed Forces); or

Carried out under federal license, certification, registration, or other authorization

- Medicare provider
- Authorization to conduct maintenance treatment or withdrawal management
- DEA registration to dispense controlled substance; or

Supported by federal funds; or

Tax exempt status