

**The Relationship
Between Recovery Community Services
Program Grantees
And the Federal Drug and Alcohol Confidentiality Laws¹**

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Introduction

The Center for Substance Abuse Treatment (CSAT) is currently funding new types of service providers who are not professional clinical treatment providers through its Recovery Community Services Program (RCSP) and Access to Recovery (ATR) initiatives. Through these new initiatives, CSAT is funding programs that deliver recovery support services, including peer-to-peer services, designed to help recipients initiate and sustain their recovery from addictive disorders and enhance their overall quality of life. These recovery support services have been identified in the professional and popular literature as enhancing people's efforts to make lifestyle changes, such as cessation of abuse of alcohol and drugs.

The question has recently arisen whether the federal drug and alcohol confidentiality law, 42 U.S.C. § 290dd-2, and its implementing regulations, 42 C.F.R. Part 2 (titled "Confidentiality of Alcohol and Drug Abuse Patient Records") apply to the RCSP grantees and the recovery support services they provide.

Based on discussions with the CSAT government Project Officer for the Recovery Community Services Program, the Project Director for the RCSP Technical Assistance Project, and six RCSP grantees identified by CSAT as providing a range of typical or common RCSP services, the following categories of services have been identified as most commonly offered by RCSP grantees, which form the foundation of this analysis:

- Support Groups/Recovery Circles
- Recovery Coaching/Peer Mentoring
- Case Management and Referral
- Training and Workshops
- Family Education
- Assessment and Evaluation

42 C.F.R. Part 2: Key Provisions and Definitions

More than thirty years ago, the federal government enacted 42 U.S.C. § 290dd-2, a law designed to guarantee the strict confidentiality of information about persons receiving alcohol and drug prevention and treatment services. The U.S. Department of Health and Human Services (HHS), the agency responsible for interpreting the confidentiality law, then issued regulations designed to implement the statute. The legal citation for these regulations is 42 C.F.R. Part 2.

The intent behind providing such strict confidentiality protections in both the statute and the regulations was to encourage individuals with drug and alcohol problems to obtain treatment and prevent the stigma that often accompanies drug addiction and alcoholism by assuring individuals that their identity, the fact that they suffer from a drug or alcohol problem and the information they share with their treatment providers would be kept strictly confidential and would not be disclosed to their family, friends, employer, neighbors or other members of the community.² The hope was that by allaying the fear that people would know an individual was

² While the confidentiality protections are broad, it should be noted that there are certain limitations to

in drug or alcohol treatment – and thereby avoiding the stigma and discrimination that often accompany that knowledge – more individuals would come forward and get help in overcoming their addictions.

Who must comply with 42 C.F.R. Part 2

To be covered by 42 C.F.R. Part 2, a provider must meet the definition of “program” and be federally assisted. All RCSP grantees are federally assisted, so the pertinent question is whether a grantee is a “program” as defined by the regulations. It is important to note that the statute, 42 U.S.C. § 290dd-2, contains broad, though somewhat vague, language about what types of providers and services are covered by its requirements. It states:

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 abuse 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 . . . this section.

42 U.S.C. § 290dd-2(a).

In contrast, the regulations, 42 C.F.R. Part 2, provide much more detailed information about how and when providers can disclose protected information, but they describe who is covered by the regulations in terms that are much narrower than the statute. The regulations state that a “program” is any federally-assisted or regulated individual or organization that “holds itself out as providing, and provides, alcohol or drug abuse diagnosis, treatment or referral for treatment.” 42 C.F.R. § 2.11. This definition leaves out the “education, prevention [and] training” which is included in the statutory language. This disparity, and what it means for RCSP grantees, will be discussed in greater detail below, as will the definitions of “diagnosis,” “treatment” and “referral for treatment.”

Individuals protected by 42 C.F.R. Part 2

The regulations protect “patients” and anyone who has applied for or received drug or alcohol diagnosis, treatment or referral for treatment from a “program” covered by the law. This includes current, former and deceased patients as well as applicants. Anyone who has applied for services – including anyone who has undergone a drug or alcohol assessment – is a “patient” protected by the regulations, even if the individual does not follow through with treatment.

Information protected by 42 C.F.R. Part 2

The regulations protect the confidentiality of “patient identifying information,” which means any information that identifies an individual as having a drug or alcohol problem.³

maintaining confidentiality as outlined below.

³ The regulations define “patient identifying information” as “the name, address, social security number,

Protected information is not limited to that which is maintained in written records. Once a program is covered by the regulations, *all* information - oral, written or computerized - is protected. The following are examples of disclosures of patient identifying information:

- Handing over records which contain a patient's name, social security number, address or other identifying information;
- Confirming that someone is or was a patient;
- Sending a letter to a patient's home, or leaving a telephone message for a patient, that reveals that the communication is from a drug or alcohol program;
- Entering information about someone's drug or alcohol problem into an electronic database that is accessible to people outside the program;
- Orally disclosing information about someone's drug or alcohol problem, over the telephone or in person.

The general rule under 42 C.F.R. Part 2

Once it has been determined that a particular entity is a "program" covered by 42 C.F.R. Part 2, that program must comply with the regulations. The general rule of 42 C.F.R. Part 2 is that a program may not disclose any information that would identify a patient as someone with an alcohol or drug problem, unless the disclosure is authorized by the regulations. Also, anyone who receives information about a patient from a program may not redisclose that information unless the disclosure is authorized by 42 C.F.R. Part 2.

While this general rule is very strict, the regulations provide ways that programs can share protected information in certain circumstances. These are:

- Written Consent
- Qualified Service Organization Agreement (QSOA)
- Internal program communications
- Medical emergencies
- Court-ordered disclosures
- Patient crimes on program premises or against program personnel
- Research
- Audits and evaluations
- Child abuse and neglect reporting.

The Health Insurance Portability and Accountability Act (HIPAA)

Congress passed the Health Insurance Portability and Accountability Act (HIPAA) in 1996 and HHS released the final regulations governing the privacy of health care information, 45 C.F.R. Parts 160 and 164, in August, 2002. These regulations (referred to as the Privacy Rule), which went into effect on April 14, 2003, protect the privacy of health care information held by the vast majority of health care providers – including drug and alcohol treatment programs,

fingerprints, photograph, or similar information by which the identity of a patient can be determined with reasonable accuracy and speed either directly or by reference to other publicly available information." 42 C.F.R. § 2.11.

health plans, and health care clearinghouses. Other parts of the HIPAA regulations that set forth specific security (45 C.F.R. parts 160, 162 and 164) and transaction and code set standards (45 C.F.R. Parts 160 and 162), are beyond the scope of this discussion. The Privacy Rule addresses many of the same issues as 42 C.F.R. Part 2. Both sets of regulations establish standards for the maintenance, use, and disclosure of health information, including what must be done before a disclosure of confidential information can be made, the manner in which the information may be disclosed, and to whom it may be disclosed.

Both the Privacy Rule and 42 C.F.R. Part 2 specify what type of entities each covers. Generally speaking, the Privacy Rule covers a large portion of the health care industry, while 42 C.F.R. Part 2 applies only to drug and alcohol programs. It is possible for a program to be covered by one, both, or neither of the laws, although the vast majority of drug and alcohol treatment programs will be covered by both the Privacy Rule and 42 C.F.R. Part 2. Those alcohol and drug programs that meet the Privacy Rule's two-part definition of "covered entity" must comply with the Privacy Rule's mandatory standards. To be a covered entity a program must, first, be a "health care provider" as defined by the rule. A health care provider is any individual or entity that furnishes, bills, or is paid for health care in the normal course of business. "Health care" is broadly defined and includes preventive, diagnostic, therapeutic, counseling, and assessment services with respect to the physical or mental condition of an individual. 45 C.F.R. § 160.103. Programs that treat, diagnose, assess or refer individuals with drug and alcohol problems, as well as drug and alcohol prevention programs, are health care providers under the Privacy Rule.

However, even when a program is a "health care provider," it is covered by the Privacy Rule only if it transmits health information electronically in connection with a covered transaction. (See the transaction and code set and security standards at 45 C.F.R. Parts 160, 162 and 164). Transactions covered by the Privacy Rule include: processing claims, payment and remittance, coordination of benefits, checking claim status, enrollment or disenrollment in a health plan, health plan eligibility, health plan premium payments, referral, certification and authorization, first report of injury, health claim attachments and other transactions that HHS may prescribe. Only those programs that electronically transmit information to carry out these financial or administrative activities are required to abide by the Privacy Rule. 45 C.F.R. § 160.103.⁴ Once a program meets the definition of a covered entity, all patient identifying information transmitted or maintained by the program in *any* medium (oral, written or electronic) is protected under the Privacy Rule. 45 C.F.R. § 164.501. If a program is a "health care provider" but does not transmit health-related information electronically, then it is not bound by the Privacy Rule. However, should the program begin to transmit health-related information electronically in the future, it will at that point become a covered entity subject to the Privacy Rule and all information past, present and future will be protected.

The Privacy Rule's protection is more expansive than 42 C.F.R. Part 2 and covers all health information which identifies an individual, not just drug and alcohol related information. Health information is broadly defined and includes any information, whether oral or recorded, that is created or received by a health care provider, health plan or health care clearinghouse and

⁴ It should be noted that even if the provider is not covered by HIPAA, it may be covered by 42 C.F.R. Part 2 if it meets the definition of "program" discussed above and receives federal assistance.

which is related to the past, present or future physical or mental health of an individual, including the provision of or payment for an individual's care. 45 C.F.R. § 164.501. Health information which does not identify an individual is not protected by the Privacy Rule.

Because most if not all RCSP grantees do not bill electronically for their services, they will not be covered by the Privacy Rule even if they meet the definition of "health care provider." Even if a grantee is a health care provider who conducts one or more of the covered transactions described above and thus is covered by the Privacy Rule, the fact that the grantee is covered by HIPAA does not at all affect the analysis to determine whether the grantee is covered by 42 C.F.R. Part 2. Consequently, the rest of this discussion will focus solely on 42 C.F.R. Part 2. Grantees that are covered by the Privacy Rule should be aware that there are certain administrative requirements that they must put in place in order to comply with the Privacy Rule.

Determining Whether RCSP Services Are Covered by 42 C.F.R. Part 2

Because of the variety of services offered by RCSP grantees, there is no simple answer to the question of whether RCSP services are covered by 42 C.F.R. Part 2. As discussed below, most RCSP services are covered, but some may not be. Whether an RCSP service is covered by 42 C.F.R. Part 2 will depend on whether the RCSP grantee is part of a larger drug and alcohol treatment program and the nature of the particular services the grantee provides. Consequently, each RCSP grantee must be evaluated on an individual basis to determine whether it is a "program" covered by the regulations. Below are some guiding principles to assist in this evaluation. This discussion also includes an analysis of the advantages and disadvantages of being included or excluded from the regulations, and basic ethical and risk management issues that should be considered when making this determination.

These general, guiding principles are followed by an analysis of specific services commonly provided by grantees, including support groups/recovery circles, recovery coaching/peer mentoring, case management and referral, training and workshops, family education, and assessment and evaluation. For each service, we explain and discuss the applicable rationale for including or excluding each service under 42 C.F.R. Part 2.

Guiding Principles

A provider who holds itself out as providing, and provides diagnosis, prevention, treatment or referral for treatment of alcohol or drug problems is covered by 42 C.F.R. Part 2. A provider who provides services *within* a covered drug and alcohol program, even if those services are not drug and alcohol related and even if the provider does not specialize in drug and alcohol problems, would still be covered by the regulations because it operates within a covered program. For example, a family or marriage counselor who receives federal assistance and specializes in family or marital issues related to drug and alcohol problems, would be a covered "program." A family or marriage counselor who does not specialize in issues related to drug and alcohol problems would still be covered by the regulations if he or she operates within an alcohol or drug program.

However, a provider who operates *outside* a covered drug or alcohol program who does not specialize in drug or alcohol problems would *not* be covered by 42 C.F.R. Part 2. For

example, someone who provides family or marriage counseling outside of a program and does not specialize in family or marital issues related to drug and alcohol problems would not be covered by 42 C.F.R. Part 2, even if some of his or her patients have drug or alcohol problems.

All RCSP grantees provide services to people with current or past drug or alcohol problems. The first question to ask when determining whether an RCSP grantee is covered by 42 C.F.R. Part 2 is whether it is operating within a drug and alcohol treatment program covered by the regulations. If the answer is “yes,” the grantee is covered by the regulations. If the answer is “no,” then the next question is whether the grantee holds itself out as providing, and provides diagnosis, prevention, treatment or referral for treatment of alcohol or drug problems. It is important to understand what each of these terms means within the context of the regulations.

Diagnosis

The regulations define “diagnosis” as “any reference to an individual’s alcohol or drug abuse, or a condition which is identified as having been caused by that abuse, which is made for the purpose of treatment or referral for treatment.” 42 C.F.R. § 2.11. “Diagnosis” is not limited to the work of medical professionals. An evaluation or assessment carried out by a counselor would be a “diagnosis” covered by the regulations.

Some providers implement a "screen" or "prescreen" procedure to identify individuals who may require further assessment/evaluation to determine if they may have alcohol or drug problem before referring them to an alcohol or drug specialist for a diagnosis. Since the information gathered through the initial screening process does not constitute a diagnosis and is not gathered for "the purpose of treatment or referral for treatment," (but rather to determine whether the individual should undergo a more in-depth assessment) it is not covered by 42 C.F.R. Part 2. Thus, simply providing this screening does not bring the provider under the regulations. However, when an assessment is conducted and an individual is diagnosed as having a drug or alcohol problem and is referred for treatment, then all information pertaining to the diagnosis is covered by 42 C.F.R. Part 2.

Similarly, alcohol and drug testing that is used as a preliminary screen is not covered by 42 C.F.R. Part 2. On the other hand, drug test results that are used to diagnose or monitor compliance with treatment are protected by 42 C.F.R. Part 2.

Prevention

There has been some confusion over the years about whether prevention services are covered by 42 C.F.R. Part 2. This confusion stems from the disparity discussed above, that while the statute includes education and prevention in the list of services that trigger the confidentiality protections, 42 C.F.R. Part 2 only lists diagnosis, treatment or referral for treatment. As a general legal principle, when comparing a statute with its implementing regulations, the statute is the final authority.

The Legal Action Center and other advocates and providers around the country have found a way to give meaning to both the statute and the regulations. We believe that some prevention

programs are covered. Both the statute and the regulations only protect “patients” – meaning there must be an identified recipient of services. Thus, in our opinion, programs which provide targeted prevention services – aimed at those who in one way or another have been identified as having, or being at risk for, drug or alcohol problems – would be covered by 42 C.F.R. Part 2.

In contrast, programs that provide prevention information and services to the general public, or to a group of people regardless of whether anyone has been identified as having a drug or alcohol problem, would not be covered by the regulations. For example, a prevention program that targets the children of alcoholics or people already in recovery, would be covered by 42 C.F.R. Part 2. However, a prevention program that speaks to an entire fifth grade class, or distributes materials to the general public, would not be covered.

Relapse Prevention

The same analysis that applies to primary prevention also applies to secondary, or relapse prevention. Thus, many relapse prevention programs are covered by 42 C.F.R. Part 2. Relapse prevention is a critical component of the treatment and recovery continuum of care and includes therapeutic and other interventions that may include peer support groups and other services such as anger management and stress reduction. Relapse prevention programs address the social context of addiction, as well as biological vulnerabilities and clinical factors. Relapse prevention strategies also involve developing a healthy and protective environment that nurtures and sustains recovery. Strategies include helping people make fundamental changes such as finding satisfying jobs, safe housing, meaningful activities, abstinent friends, and networks of people who are also in recovery.

If relapse programs provide services to “patients” – meaning they provide targeted relapse prevention services aimed at those who, in one way or another, have been identified as having, or being in recovery from drug or alcohol problems – then those programs would be covered by 42 C.F.R. Part 2.

Treatment and Referral for Treatment

The regulations define “treatment” as “the management and care of a patient suffering from alcohol or drug abuse, a condition of which is identified as having been caused by that abuse, or both, in order to reduce or eliminate the adverse effects upon the patient.” 42 C.F.R. § 2.11. Thus “treatment” does not exclusively mean care provided by medical personnel or care given under a medical model. Individual or group counseling is considered “treatment” under 42 C.F.R. Part 2. However, “treatment” does have to include the “management and care” of patient suffering. As will be discussed below, not all services provided to people with alcohol and drug problems will rise to the level of “treatment.”

Similarly, simply referring someone with a drug or alcohol problem to receive services does not bring a provider under 42 C.F.R. Part 2. The referral must be for drug or alcohol treatment, after an assessment and/or diagnosis have been made. Referring an individual with a drug or alcohol problem for housing services, medical care, child care, job training or other services would not be covered by the regulations unless the referral was made by a drug and alcohol program already covered by the regulations.

Enforcement of Regulations

Once it is determined that a particular program is covered by 42 C.F.R. Part 2, it is important for the program not only to understand its responsibilities under the regulations, but also the consequences for violating the regulations.

Any violation of 42 C.F.R. Part 2 may be reported to the United States Attorney for the judicial district in which the violation occurs. 42 C.F.R. § 2.5. The regulations set out specific criminal penalties which may be imposed on persons ("persons" can be individuals or organizations) who violate any provision of the law or regulations. In the case of a first offense, the offender can receive a fine of up to \$500. A fine of up to \$5,000 may be assessed for each subsequent offense. 42 C.F.R. § 2.4.

In addition to reporting to the United States Attorney, patients may report claimed violations of 42 C.F.R. Part 2 to the agency in their state that regulates alcohol or drug programs. Most state agencies will suspend or revoke the license of the offending employee or program, or impose other sanctions.

While 42 C.F.R. Part 2 does not provide a federal right to sue, violations may be grounds for state tort actions. Many states and some federal courts have determined that a suit cannot be brought under 42 C.F.R. Part 2 directly, so a patient would have to rely on state privacy laws. The likelihood of a patient bringing a civil suit may be greater than that of the United States Attorney bringing a criminal prosecution, and private suits could lead to an award of money damages for the patient in an appropriate case.

If an RCSP grantee is not covered by 42 C.F.R. Part 2, state laws and regulations may still protect the confidentiality of its records. For example, many states impose confidentiality requirements on social workers and various types of social service agencies. Other licensed professionals may have ethical standards that require them to keep client information confidential.

Ethical and Policy Considerations

Even if there are no legal confidentiality requirements that apply to a particular RCSP grantee, it is important to keep in mind that by the nature of their services, all grantees will be obtaining and collecting the very same information that 42 C.F.R. Part 2 was intended to protect – information that identifies someone has having a drug or alcohol problem. As discussed above, the intent of 42 C.F.R. Part 2 was to encourage individuals with drug and alcohol problems to obtain treatment, and to feel comfortable being open and honest during their treatment, by assuring them that their identity, the fact that they have a drug or alcohol problem, and the information they share during treatment, will be kept strictly confidential. Remember that because the regulations protect *all* information, it does not have to be written down in a file or record. Information that is recorded mentally, such as someone's participation in a particular program or information that they share during a group or private conversation, is also protected.

Because grantees will be receiving and maintaining information about people who are in recovery, even if this information is never written down or recorded, there is a strong ethical

argument for maintaining the confidentiality of this information. Grantees want individuals to feel comfortable attending their programs, and assuring confidentiality may encourage some to participate who otherwise might fear the disclosure of their addiction history and the effects of the stigma that often follow from such a disclosure.

Therefore, grantees who are not otherwise legally obligated to do so, may still want to put in place confidentiality policies, such as including a section on confidentiality in their personnel policies and asking participants to sign agreements in which they agree not to disclose information about other participants. However, these grantees should also advise participants that they may not have legal grounds to resist requests for information about participants in the program, such as a subpoena or an investigation by law enforcement.

Advantages and Disadvantages

There are various advantages and disadvantages to being covered by 42 C.F.R. Part 2 which affect both the RCSP grantee and the service recipients.

A grantee that is not covered by 42 C.F.R. Part 2 does not have to comply with the regulations' strict confidentiality requirements and they will not have to worry about whether, when or how they can share information about participants. Even if a grantee voluntarily adopts its own confidentiality policies, it is unlikely to be held legally liable if these policies are violated. In addition, there are certain administrative requirements, such as providing written notice of patient rights and designing and implementing proper consent forms, that grantees do not have to implement if they are not covered by the regulations.

The disadvantage of not being covered by 42 C.F.R. Part 2 is that without the guarantee of confidentiality, individuals in recovery may be reluctant to participate in the grantee's services. Fearing that their drug or alcohol history may become public knowledge if they participate in recovery support services or speak openly about their history in a non-confidential forum, individuals may avoid the services altogether. If the RCSP services are not utilized, the very purpose of the program is undermined.

In contrast, knowing that the confidentiality of their drug and alcohol history will be strictly maintained and enforced may encourage more individuals in recovery to participate in recovery support services and to share their experiences openly with other participants, which in turn will increase the number of people who successfully maintain their recovery.

However, as mentioned above, being a "program" covered by the regulations carries with it many responsibilities. Covered programs have to ensure that their staff is thoroughly trained on the regulations' strict requirements. One misstep resulting in a violation, even if not intentional, can result in stiff criminal penalties and fines.

Specific RCSP Services

As stated above, most RCSP services will be covered by 42 C.F.R. Part 2, although some may not be covered depending on the specific circumstances in which they are provided. The following is a discussion about specific common RCSP services, describing both the rationale for

including the service in 42 C.F.R. Part 2's coverage and for excluding the service from coverage, as well as the ethical and risk management considerations for each service.

1. Support Groups/Recovery Circles

Many RCSP grantees organize support groups and recovery circles that are then facilitated and led not by professional counselors or treatment providers, but by people who are themselves in recovery.

Rationale for including: If the grantee provides support groups or recovery circles for individuals who have or are in recovery from drug or alcohol problems, then those programs would be covered by 42 C.F.R. Part 2 since they would be providing the type of prevention service covered by the regulations. In addition, if the groups are provided by a covered drug and alcohol treatment program, then even if they are led by peers or volunteers, the groups would be considered part of treatment and thus would be covered by 42 C.F.R. Part 2 that way, as well.

Rationale for excluding: If the grantee organizes groups that are open to the general public or a group of people regardless of whether anyone has been identified as having or having had a drug or alcohol problem, then the program would not meet the definition of a program under 42 C.F.R. Part 2.

Legal Action Center analysis: Generally, support groups and recovery circles will be covered by 42 C.F.R. Part 2 because these services are usually targeted to individuals who have or are in recovery from drug or alcohol problems and thus are the type of prevention program covered by the regulations.

2. Recovery Coaching/Peer Mentoring

One of the most popular services being provided through the RCSP is recovery coaching, also called peer mentoring. This service involves organizing, recruiting and training people who have been in recovery for some time to act as coaches/mentors for people who are newly in recovery. Relying on their own experiences, the coaches/mentors spend time with the recently recovered person and provide general support through the stresses involved in the recovery process.

Rationale for including: If the grantee provides recovery coaching or peer mentoring targeted to individuals who have or are in recovery from a drug or alcohol program, then those services would be covered by 42 C.F.R. Part 2 since they would be providing the type of prevention service covered by the regulations. In addition, individuals who are in drug or alcohol treatment often sign consent forms allowing the treatment program to provide their contact information to the coach or mentor. Information that is disclosed by a treatment program through patient consent remains protected by 42 C.F.R. Part 2 and cannot be redisclosed by the recipient except in accordance with the regulations.⁵

Rationale for excluding: It is difficult to conceive of recovery coaching being opened to individuals who may not have or have had a drug or alcohol problem, but should that scenario arise, then those services would not meet the definition of a program under 42 C.F.R. Part 2.

Legal Action Center analysis: Generally, recovery coaching or peer mentoring will be covered by 42 C.F.R. Part 2 because these services are usually targeted to individuals who have or are in recovery from drug or alcohol problems and thus are the type of prevention program covered by the regulations.

3. Case Management and Referral

Many RCSP grantees provide case management and referral services. Generally, a service recipient will identify a particular need such as housing, health care, child care, food pantries, job training, or educational programs, and grantee staff will then make appropriate referrals. Sometimes the grantee staff or volunteers will counsel the individual to determine his or her needs and then make appropriate referrals.

Rationale for including: If the grantee provides case management and referral services for individuals who have or are in recovery from drug or alcohol problems for the purpose of

⁵ Each disclosure made with the patient's consent must be accompanied by the following written statement:

This information has been disclosed to you from records protected by Federal confidentiality rules (42 C.F.R. Part 2). The Federal rules prohibit you from making any further disclosure of this information unless further disclosure is expressly permitted by the written consent of the person to whom it pertains or as otherwise permitted by 42 C.F.R. Part 2. A general authorization is NOT sufficient for this purpose. The Federal rules restrict any use of the information to criminally investigate or prosecute any alcohol or drug abuse patient.

42 C.F.R. § 2.32.

preventing relapse, then those programs would be covered by 42 C.F.R. Part 2 since they would be providing the type of prevention service covered by the regulations. In addition, if the grantee does an assessment or diagnosis of the individual's drug or alcohol problem and then refers the individual for treatment, that service would be covered by the regulations as part of treatment (see discussion on assessment and evaluation in section 6 below).

Rationale for excluding: If the grantee provides case management and referral services that are open to the general public or a group of people regardless of whether anyone has been identified as having or having had a drug or alcohol problem, or not for the purpose of relapse prevention, then the program would not meet the definition of a program under 42 C.F.R. Part 2.

Legal Action Center analysis: Generally, case management and referral services provided by RCSP grantees will be covered by 42 C.F.R. Part 2 because these services are usually targeted to individuals who have or are in recovery from drug or alcohol problems and thus are the type of prevention program covered by the regulations.

4. Trainings and Workshops

Some RCSP grantees provide trainings and workshops for people in recovery in such areas as life skills, anger management, career development, health, nutrition and spirituality, among others.

Rationale for including: If the grantee provides these trainings and workshops for individuals who have or are in recovery from drug or alcohol problems for the purpose of preventing relapse, then those programs would be covered by 42 C.F.R. Part 2 since they would be providing the type of prevention service covered by the regulations. In addition, if these workshops are being coordinated and provided by a grantee which is part of a drug and alcohol program that is covered by the regulations, then the grantee and its workshops will also be covered as part of treatment.

Rationale for excluding: If the trainings and workshops are open to the general public or a group of people regardless of whether anyone has been identified as having or having had a drug or alcohol problem, or not for the purpose of relapse prevention, then the program would not meet the definition of a program under 42 C.F.R. Part 2.

Legal Action Center analysis: Generally, these trainings and workshops provided by RCSP grantees will be covered by 42 C.F.R. Part 2 because these services are usually targeted to individuals who have or are in recovery from drug or alcohol problems and thus are the type of prevention program covered by the regulations.

5. Family Education

RCSP grantees often provide educational programs for families of people in recovery. These programs provide family members with information about the recovery process, including information about what the person experiences as he or she moves through recovery, and issues and emotions that the friend or family member may face him- or herself during this time. These types of educational programs are directed at people who have been identified as being related to

people with drug or alcohol problems, and they attempt to provide those people with information to guide them through the recovery process. These classes are also usually provided by staff who specialize in drug and alcohol problems.

Rationale for including: If the family education program not only educates family members about the recovery process, but also provides an opportunity for participants to address their own personal issues associated with the family member’s addiction – including their own use of alcohol or drugs, or stressors that put them at risk for such use – then the program would most likely be covered by 42 C.F.R. Part 2. In this situation, while the services provided may be called “family education,” they actually begin to resemble the prevention services discussed earlier. Calling itself “family education” does not insulate a program from following 42 C.F.R. Part 2. It is the kind of services – not the label the program applies to its services – that will determine whether it must comply with 42 C.F.R. Part 2.

Rationale for excluding: Like prevention discussed earlier, education is a service listed in the statute as one that triggers confidentiality protection, but it is not included in the list of services contained in the definition of “program” in the regulations. Our analysis of when prevention services are covered is also applicable to educational services. That is, in order for education to be covered there must be an identified “patient” who is receiving services for him- or herself.

If a family education program only provides general information to family members about drug and alcohol problems and the treatment and recovery process, but does not discuss the problems the participants themselves encounter as they deal with a loved one with an addiction problem, then the grantee would not be covered by 42 C.F.R. Part 2. In this situation, there is no identified “patient” whose identity and confidentiality must be protected by the regulations.

Legal Action Center analysis: Generally, family education services will not be covered because there is no identified “patient” whose identity and confidentiality must be protected by the regulations. If the service begins to resemble prevention targeted at people who are at risk for drug or alcohol problems, then it will be covered by the regulations.

6. Assessment and Evaluation

Rationale for including: An RCSP grantee that conducts an assessment or evaluation which results in a determination that an individual has a drug or alcohol problem is considered a “program” covered by 42 C.F.R. Part 2. This type of assessment falls within the definition of “diagnosis” in the regulations and therefore brings the grantee that performs the assessment under the coverage of the regulations.

Rationale for excluding: As noted above, simply conducting a “screening” or “prescreening” which does not result in a diagnosis, but rather in a referral for a more in depth assessment or evaluation, is not enough to bring the grantee under 42 C.F.R. Part 2. Since the information gathered through the initial screening process does not constitute a diagnosis and is not gathered for “the purpose of treatment or referral for treatment,” (but rather to determine

whether the individual should undergo a more in-depth assessment) it is not covered by the regulations.

Legal Action Center recommendation: An assessment or evaluation is a “diagnosis” and therefore is covered by 42 C.F.R. Part 2. A screening which does not result in a diagnosis is not covered by the regulations.

Conclusion

The Recovery Community Services Program funds many new and innovative programs designed to reach beyond traditional drug and alcohol treatment and provide comprehensive services to support individuals in recovery on many different levels and in a variety of ways. Because the RCSP grantees are so diverse in the both the services they offer and the ways in which they function, there is no simple “yes” or “no” answer to the question of whether they are covered by the federal drug and alcohol confidentiality law and regulations. Instead, each grantee must be analyzed on an individual basis to determine whether it is a “program” covered by 42 C.F.R. Part 2. We believe that the issues and principles that we have identified, together with the discussion of specific, commonly offered RCSP services, will help CSAT and RCSP grantees analyze their own situations and determine whether and when they are covered by 42 C.F.R. Part 2.

Summary of LAC Recommendations

RCSP SERVICES

LAC RECOMMENDATIONS

	Covered by 42 C.F.R. Part 2 if:	Not Covered by 42 C.F.R. Part 2 if:
1. Support Groups/Recovery Circles	<ul style="list-style-type: none"> • There is an identified patient and • The services are targeted to individuals who have or are in recovery from drug or alcohol problems 	<ul style="list-style-type: none"> • There is no identified patient and/or • The services are open to the general public
2. Recovery Coaches/Peer Mentors	<ul style="list-style-type: none"> • There is an identified patient and • The services are targeted to individuals who have or are in recovery from drug or alcohol problems 	<ul style="list-style-type: none"> • There is no identified patient and/or • The services are open to the general public
3. Case Management/Referrals	<ul style="list-style-type: none"> • There is an identified patient and • The services are targeted to individuals who have or are in recovery from drug or alcohol problems 	<ul style="list-style-type: none"> • There is no identified patient and/or • The services are open to the general public
4. Training/Workshops	<ul style="list-style-type: none"> • There is an identified patient and • The services are targeted to individuals who have or are in recovery from drug or alcohol problems 	<ul style="list-style-type: none"> • There is no identified patient and/or • The services are open to the general public
5. Family Education	<ul style="list-style-type: none"> • There is an identified patient and • The services are targeted to individuals who have an opportunity to address their own use of alcohol or drugs or stressors that put them at risk for such use. 	<ul style="list-style-type: none"> • There is no identified patient and or • The services are open to the general public
6. Assessment/Referral	<ul style="list-style-type: none"> • Diagnosis conducted 	<ul style="list-style-type: none"> • No diagnosis conducted

Individual RCSP Grantees Interviewed

Grant Name	Contact	Address	Phone and Email
Center for Community Alternatives	Jackson Davis Project Director	115 East Jefferson Street Syracuse, New York 13202	(315) 422-5638 ext. 222 JDavis@communityalternatives.org
Bucks County Council on Alcoholism and Drug Dependence, Inc.	Beverly Haberle Project Director Fred Martin Pro Act Community Liasion and Communications Coordinator	252 W. Swamp Road Doylestown, PA 18901-2444	(215) 345-6644 (215) 348-3377 bhaberle@bccadd.org
Alcohol & Drug Council of Middle Tennessee	Terri Dorsey Program Director	2612 Westwood Drive Nashville, Tennessee 37204	(615) 269-0029 ext. 121 (615) 269-0299 tdorsey@adcmt.org
The Fortune Society	Max Lindeman Associate Deputy Executive Director	53 West 23 rd Street New York, NY 10010	(212) 206-7070 (212) 366-6323 mlindeman@fortunesociety.org
Connecticut Community for Addiction Recovery	Phillip Valentine Executive Director	530 Silas Dean Highway Suite 220 Wethersfield, CT 06109	(860) 571-2985 (860) 571-2987 phillip@ccar.us
Welcome Home Ministries	Carmen Robbins Executive Director John Robbins Face-to-Face Coordinator	104 South Barnes Oceanside, CA 92054	(760) 439-1136 whministries@hotmail.com jhnhrbbns@bcglobal.net