

**HB 484 CONFIDENTIALITY ISSUES  
RE: DRUG AND ALCOHOL SERVICES AND CHILD WELFARE**

**FREQUENTLY ASKED QUESTIONS**

**Q1. How can PCSAs assure alcohol or drug treatment services status/progress of caregivers is provided back to the Juvenile Court?**

A1. The original court order ordering the person into treatment should compel the client to sign consent for the release of information. *The consent form should comply with 42 CFR Part II which includes the following elements: to whom the information may be shared, the description of the information to be shared, the purpose/need, the time limit, the name of the program, the name of the patient, a revocation statement, signature of patient and a date.*

If a juvenile is participating in treatment, and progress is to be provided to the court, both the juvenile and parent must sign a consent form. If either refuses, you must petition the court in an alternate way.

If substance abuse treatment and progress updates are a clear part of a journalized court ordered case plan, information can be provided to the court, assuming the client has completed the required consent form.

**Q2: If an AoD Treatment provider is serving a caregiver, when the child is at "imminent risk", that has not been referred by the PCSA, how can the provider utilize the HB 484 funds?**

A2: As a mandated reporter, the treatment provider is required to report any suspected abuse or neglect of a child to the PCSA. It is suggested the PCSA, in turn, refer the caregiver for assessment / treatment. You may want to discuss locally, how to manage this exchange of information. Based on experience in some communities, you may want to always have the PCSA make direct referrals for their clients to local ODADAS-certified AOD providers for assessment and treatment:

- Some PCSAs have told clients that they will need to undergo AOD assessment/treatment as part of their case plan expecting that the clients will contact a provider and self-identify as involved in the child welfare system. Compliance is inconsistent. Often AOD providers are unaware of the child welfare link, thus limiting opportunities for joint treatment planning and utilization of 484 funds;
- Some PCSAs allow the client to choose providers, including those who are non-ODADAS certified (e.g., ministers) resulting in questionable practice/treatment outcomes and non-utilization of 484 funds;
- AOD-providers are able to inform PCSA staff when a client does not attend an initial session ONLY IF the PCSA system makes the referral under federal confidentiality laws. (Note: If the client makes the referral or once the client appears at the provider site, s/he becomes a patient & is protected under the confidentiality laws; ergo: any discussion regarding the case requires a specific release of information).

**Q3: Can a PCSA be a “Qualified Service Provider”, which has an exception to the rigid confidentiality provisions, as established under federal CFR 42, Part II?**

A3: Possibly, ODADAS is researching. We will provide information as soon as possible.

**Q4: Can the PCSA share AoD Assessment / Treatment information with a child's Court Appointed Special Advocate or Guardian ad Litem?**

A4. Yes, if the CASA/GAL is specifically identified as a recipient of the information on a consent form that meets the requirements of 42 CFR Part II.

**Q5: Family Team Meetings bring together a variety of significant stakeholders in the life of a child and family. How is confidentiality around AoD Treatment services handled in this setting?**

A5. Clients need to know up front if there will be others participating in the meeting. The client's program or counselor has no right to disclose information unless the client has signed a consent form to allow for that type of disclosure.

In order for these meetings to happen, a consent form must be completed that conforms to the requirements of 42 CFR Part II. You should also have a non re-disclosure statement signed by the participants that is time limited to the meeting itself.

It is also important to state in the consent form, the intended use of disclosed information. Once disclosed, workers would not be able to incorporate this information into future case plans, court reviews, etc. unless specifically addressed within the consent form. To do so requires that the intent is clearly stated in the release, in order to be permitted in court afterward.

**Q6. Does 42 CFR Part II apply to a person or agency that has information or knows information surrounding AoD issues?**

A6. Yes. There is no right to re-disclose information without specific consent to do so.

**Q7. Can consent be revoked?**

A7. Yes, anytime, orally or in writing, except to the extent that action has been taken in reliance upon the consent. In criminal proceedings, the consent may be made irrevocable by Court order, but only through the duration of the court proceedings.

**Q8. What are the penalties for violating 42 CFR Part II?**

A8. A violation of 42 CFR Part II is a federal criminal offense. The US Attorney prosecutes those cases. There is a \$500 fine for the first offense, \$5000 fine for each subsequent offense. The AoD program may lose accreditation or certification. Staff that violate 42 CFR Part II jeopardize their license and/or credentials.

Holders of information are held to the same standards as providers/AOD agencies. For example, PCSA caseworkers who are LSWs/LISWs/LPCs/LPCCs are subject to lose their licenses if they re-disclose information without proper consent, or violate other elements of the federal AOD laws.

**Q9: How will HIPAA (Health Insurance Portability and Accountability Act) affect our practice?**

A9: As long as community providers are practicing in accordance with 42 CFR, Part II, HIPAA is not expected to significantly impact the sharing of substance abuse assessment and treatment information.