

## Compliance Today – August 2022 Behavioral healthcare compliance programs: Current and future state

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According to the Substance Abuse and Mental Health Services Administration, behavioral health is “the promotion of mental health, resilience and wellbeing; the treatment of mental and substance use disorders; and the support of those who experience and/or are in recovery from these conditions, along with their families and communities.”<sup>[1]</sup>

Confidentiality rules help promote access to substance use and other behavioral health services because fear of the consequences of release of records related to diagnosis, treatment, or referral may deter an individual from seeking care. Confidentiality is critical to protecting and maintaining trust within the patient/healthcare practitioner relationship. Confidentiality rules serve to ensure that the individual seeking treatment obtains services and does not suffer negative consequences as a result. The individual’s family and their community benefit from an individual receiving necessary behavioral health services.

Compliance risks for behavioral health providers and providers of substance use disorder (SUD) treatment are unique and must be clearly understood in order to adequately support these programs. Federal confidentiality regulations for SUD programs that receive any form of federal subsidy,<sup>[2]</sup> and their interaction with HIPAA Privacy, Security, and Breach Notification rules and other state laws pertaining to mental health and sensitive diagnoses such as HIV, are a critical component in behavioral healthcare compliance program implementation. Court documents and communication with criminal justice system referral sources must be viewed in light of the many confidentiality, privacy, and security laws and regulations on a daily basis. Therefore, the compliance officer or privacy officer responsible should be aware of the multifaceted consequences of releasing records— from money penalties to the negative impact on the patient if program information is incorrectly released. Strong policies and direct oversight over the release of records and information are essential to the behavioral healthcare compliance office. Additionally, the intersection of justice involvement with behavioral healthcare, specifically the role SUD treatment providers play in partnership with pre- and post-sentencing diversion programs, which are now advocated for in many drug-related charges, is a unique factor that compliance offices should be aware of when working within such healthcare programs.

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