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BUREAU OF BEHAVIORAL HEALTH WELLNESS AND PREVENTION

Management Oversight Team

Management Memorandum 17-003

**DATE:** February 16, 2017  
**TO:** Current and Eligible Subrecipients, Contractors and State Agencies  
**FROM:** Kyle Devine, Bureau Chief   
**SUBJECT:** Federal Requirements Involved With Intravenous (IV) Drug Users

The Bureau of Behavioral Health Wellness and Prevention would like to remind all treatment providers of the federal requirements involved with IVDU Services. Below are a few of the federal policies under 45 CFR, Title 45, Subtitle A, Subchapter A, Part 96, Subpart L. Please ensure full compliance with all federal guidelines involved with IVDU populations.

**§ 96.126 Capacity of treatment for intravenous substance abusers.**

(e) The State shall require that any entity that receives funding for treatment services for intravenous drug abuse carry out activities to encourage individuals in need of such treatment to undergo such treatment. The States shall **require such entities to use outreach models that are scientifically sound, or if no such models are available which are applicable to the local situation, to use an approach which reasonably can be expected to be an effective outreach method. The model shall require that outreach efforts include the following:**

- (1) Selecting, training and supervising outreach workers;

**(2) Contacting, communicating and following-up with high risk substance abusers, their associates, and neighborhood residents, within the constraints of Federal and State confidentiality requirements, including 42 CFR part 2;**

**§ 2.12 Applicability.**

**(a) General -**

**(1) Restrictions on disclosure.** The restrictions on disclosure in these regulations apply to any information, whether or not recorded, which:

**(i)** Would identify a patient as an alcohol or drug abuser either directly, by reference to other publicly available information, or through verification of such an identification by another person; and

**(ii)** Is drug abuse information obtained by a federally assisted drug abuse program after March 20, 1972, or is alcohol abuse information obtained by a federally assisted alcohol abuse program after May 13, 1974 (or if obtained before the pertinent date, is maintained by a federally assisted alcohol or drug abuse program after that date as part of an ongoing treatment episode which extends past that date) for the purpose of treating alcohol or drug abuse, making a diagnosis for that treatment, or making a referral for that treatment.

**(2) Restriction on use.** The restriction on use of information to initiate or substantiate any criminal charges against a patient or to conduct any criminal investigation of a patient (42 U.S.C. 290ee-3(c), 42 U.S.C. 290dd-3(c)) applies to any information, whether or not recorded which is drug abuse information obtained by a federally assisted drug abuse program after March 20, 1972, or is alcohol abuse information obtained by a federally assisted alcohol abuse program after May 13, 1974 (or if obtained before the pertinent date, is maintained by a federally assisted alcohol or drug abuse program after that date as part of an ongoing treatment episode which extends past that date), for the purpose of treating alcohol or drug abuse, making a diagnosis for the treatment, or making a referral for the treatment.

**(b) Federal assistance.** An alcohol abuse or drug abuse program is considered to be federally assisted if:

**(1)** It is conducted in whole or in part, whether directly or by contract or otherwise by any department or agency of the United States (but see paragraphs (c)(1) and (c)(2) of this

section relating to the Veterans' Administration and the Armed Forces);

(2) It is being carried out under a license, certification, registration, or other authorization granted by any department or agency of the United States including but not limited to:

(i) Certification of provider status under the Medicare [program](#);

(ii) Authorization to conduct methadone [maintenance treatment](#) (see [21 CFR 291.505](#)); or

(iii) Registration to dispense a substance under the Controlled Substances [Act](#) to the extent the controlled substance is used in the [treatment](#) of alcohol or [drug abuse](#);

(3) It is supported by funds provided by any department or agency of the United States by being:

(i) A recipient of Federal financial assistance in any form, including financial assistance which does not directly pay for the alcohol or [drug abuse diagnosis, treatment](#), or referral activities; or

(ii) Conducted by a State or local government unit which, through general or special revenue sharing or other forms of assistance, receives Federal funds which could be (but are not necessarily) spent for the alcohol or [drug abuse program](#); or

(4) It is assisted by the Internal Revenue [Service](#) of the Department of the Treasury through the allowance of income tax deductions for contributions to the [program](#) or through the granting of tax exempt status to the [program](#).

#### **42 CFR Part 2 - CONFIDENTIALITY OF ALCOHOL AND DRUG ABUSE PATIENT RECORDS**

**(c) Acknowledging the presence of patients: Responding to requests.**

(1) The presence of an identified [patient](#) in a facility or component of a facility which is publicly identified as a place where only alcohol or [drug abuse diagnosis, treatment](#), or referral is provided may be acknowledged only if the [patient](#)'s written consent is obtained in accordance with subpart C of these regulations or if an authorizing court order is entered in accordance with subpart E of these regulations.

The regulations permit acknowledgement of the presence of an identified patient in a facility or part of a facility if the facility is not publicly identified as only an alcohol or drug abuse diagnosis, treatment or referral facility, and if the acknowledgement does not reveal that the patient is an alcohol or drug abuser.

(2) Any answer to a request for a disclosure of patient records which is not permissible under these regulations must be made in a way that will not affirmatively reveal that an identified individual has been, or is being diagnosed or treated for alcohol or drug abuse. An inquiring party may be given a copy of these regulations and advised that they restrict the disclosure of alcohol or drug abuse patient records, but may not be told affirmatively that the regulations restrict the disclosure of the records of an identified patient. The regulations do not restrict a disclosure that an identified individual is not and never has been a patient.

**(3) Promoting awareness among injecting drug abusers about the relationship between injecting drug abuse and communicable diseases such as HIV;**

**(4) Recommend steps that can be taken to ensure that HIV transmission does not occur; and**

**(5) Encouraging entry into treatment.**

(f) The State shall develop effective strategies for monitoring programs compliance with this section. States shall report under the requirements of § 96.122(g) on the specific strategies to be used to identify compliance problems and corrective actions to be taken to address those problems.

This and other management memos are located on the Management Oversight Team webpage at <http://dpbh.nv.gov/Programs/ClinicalSAPTA/dta/Partners/MOT/> .