Chapter 4 --Legal Issues in the Screening And Assessment of Adolescents

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Staff of substance use disorder treatment programs serving adolescents need to be aware of legal issues that affect program operation. Of top concern among these issues is confidentiality: the protection of the adolescent's right to privacy.

For example, staff members of a program that assesses adolescents and tries to place them in appropriate treatment are often interested in seeking information from other sources, such as parents and schools, about the adolescents they screen. How can the program approach these sources and, at the same time, protect the adolescents' right to privacy? Can the program contact a parent or guardian without the adolescent's consent? If the adolescent tells program staff that she has been abused, can the program report it? If the adolescent is threatening harm to herself or another, can the program call the authorities? Are there special rules regarding confidentiality for programs operating in the juvenile justice system or for child welfare programs?

This chapter will attempt to answer these questions over five sections. First is an overview of the Federal law protecting a youth's right to privacy when seeking or receiving treatment services for substance use disorders. Next is a detailed discussion of the rules regarding the use of consent forms to get a youth's permission to release information about his seeking or receiving substance use disorder services. The third reviews the rules for communicating with others about various issues concerning a youth who is involved with treatment services (including rules for communicating with parents, guardians, and other sources; reporting child abuse; warning others of an adolescent's threats to harm; and special rules for use within the juvenile justice system). The next section discusses a number of exceptions to the general rules preventing disclosure of information, such as medical emergencies. The chapter ends with a few additional points concerning a youth's right to confidential services and the need for programs to obtain legal assistance.

Federal Law Protects Youths' Right to Privacy

Federal law and a set of regulations guarantee the strict confidentiality of information about

These laws and regulations are designed to protect clients' privacy rights in order to attract people into treatment. The regulations restrict communications more tightly in many instances than, for example, either the doctor--client or the attorney--client privilege. Violating the regulations is punishable by a fine of up to $500 for a first offense and up to $5,000 for each subsequent offense ($2.4).

Some may view these Federal regulations governing communication about the adolescent and protecting clients' privacy rights as an irritation or a barrier to achieving program goals. However, most of the nettlesome problems that may crop up under the regulations can easily be avoided through planning ahead. Familiarity with the regulations' requirements will assist communication. It can also reduce confidentiality-related conflicts among the program, client, and an outside agency so that they occur only in a few relatively rare situations.

What Types of Programs Are Covered by the Regulations?

Any program that specializes, in whole or in part, in providing treatment, counseling, and/or assessment and referral services for adolescents with substance use disorders must comply with the Federal confidentiality regulations (42 C.F.R. §2.12(e)). Although the Federal regulations apply only to programs that receive Federal assistance, this includes indirect forms of Federal aid such as tax-exempt status or State or local government funding coming (in whole or in part) from the Federal government.

Coverage under the Federal regulations does not depend on how a program labels its services. Calling itself a "prevention program" does not excuse a program from adhering to the confidentiality rules. It is the kind of services, not the label, that determines whether the program must comply with the Federal law.

The General Rule: Overview of Federal Confidentiality Laws

The Federal confidentiality laws and regulations protect any information about an adolescent if the adolescent has applied for or received any treatment related to her substance use disorder or referral services from a program that is covered under the laws. Services applied for or received can include assessment, diagnosis, individual counseling, group counseling, treatment, or referral for treatment. The restrictions on disclosure (the act of making information known to another) apply to any information that would identify the adolescent as having a substance use disorder either directly or by implication. The general rule applies from the time the adolescent makes an appointment, and it also applies to former clients. The rule applies whether or not the person making an inquiry already has the information, has other ways of getting it, has some form of official status, is authorized by State law, or comes armed with a subpoena or search warrant.
**When May Confidential Information Be Shared With Others?**

Information that is protected by the Federal confidentiality regulations may always be disclosed after the adolescent has signed a proper consent form. (As explained below, parental consent must also be obtained in some States.) The regulations also permit disclosure without the adolescent's consent in several situations, including medical emergencies, child abuse reports, program evaluations, and communications among staff.

The most commonly used exception to the general rules prohibiting disclosure is for a program to obtain the adolescent's consent. The regulations' requirements regarding consent are strict and somewhat unusual and must be carefully followed.

**Consent To Disclose Information**

Most disclosures are permissible if an adolescent has signed a valid consent form that has not expired or been revoked (§2.31). A proper consent form must be in writing and must contain each of the items specified in §2.31:

1. The name or general description of the program(s) making the disclosure
2. The name or title of the individual or organization that will receive the disclosure
3. The name of the client who is the subject of the disclosure
4. The purpose or need for the disclosure
5. How much and what kind of information will be disclosed
6. A statement that the client may revoke (take back) the consent at any time, except to the extent that the program has already acted on it
7. The date, event, or condition upon which the consent expires if not previously revoked
8. The signature of the client (and, in some States, his parent)
9. The date on which the consent is signed (§2.31(a))

A general medical release form, or any consent form that does not contain all of the elements listed above, is not acceptable. (See sample consent form in Figure 4-1.) A number of items on this list deserve further explanation and are discussed under the subheadings below: the purpose of the disclosure and what much and what kind of information will be disclosed, the youth's right to revoke the consent statement, expiration of the consent form, the adolescent's signature and parental consent, required notice against rereleasing information, and agency use of the consent form.

**The Purpose of the Disclosure and What Information Will Be Disclosed**

These two items are closely related. All disclosures, and especially those made pursuant to a consent form, must be limited to information that is necessary to accomplish the need or purpose for the disclosure (§2.13(a)). It would be improper to disclose everything in an adolescent's file if the recipient of the information needs only one specific piece of information.
In completing a consent form, it is important to determine the purpose or need for the communication of information. Once this has been identified, it is easier to determine how much and what kind of information will be disclosed, tailoring it to what is essential to accomplish the need or purpose that has been identified.

As an illustration, if an adolescent needs to have her participation in counseling verified in order to be excused from school early, the purpose of the disclosure would be "to verify treatment status so that the school will permit early release," and the amount and kind of information to be disclosed would be "time and dates of appointments." The disclosure would then be limited to a statement that "Susan Jones (the client) is receiving counseling at XYZ Program on Tuesday afternoons at 2 p.m."

*Youth's Right To Revoke Consent*

The adolescent may revoke consent at any time, and the consent form must include a statement to this effect. Revocation need not be in writing. If a program has already made a disclosure prior to the revocation, the program has acted in reliance on the consent—in other words, the program was relying on the consent form when it made the disclosure. Therefore, the program is not required to try to retrieve the information it has already disclosed.

The regulations state that "acting in reliance" includes the provision of services while relying on the consent form to permit disclosures to a third party payor. (Third party payors are health insurance companies, Medicaid, or any party that pays the bills other than the client's family or the treatment agency.) Thus, a program can bill the third party payor for services provided before the consent was revoked. However, a program that continues to provide services after a client has revoked a consent authorizing disclosure to a third party payor does so at its own financial risk.

*Expiration of Consent Form*

The form must also contain a date, event, or condition on which it will expire if not previously revoked. A consent must last "no longer than reasonably necessary to serve the purpose for which it is given" (§2.31(a)(9)). If the purpose of the disclosure can be expected to be accomplished in 5 or 10 days, it is better to fill in that amount of time rather than a longer period.

This is better than the practice of having all consent forms within an agency expire in 60 to 90 days. When uniform expiration dates are used, agencies can find themselves in a situation where there is a need for disclosure, but the client's consent form has expired. This means at the least that the client must come to the agency again to sign a consent form. At worst, the client has left or is unavailable, and the agency will not be able to make the disclosure.

The consent form does not have to contain a specific expiration date, but may instead specify an event or condition. For example, if an adolescent has been placed on probation at school on the condition that he attend counseling at the program, a consent form should be used that does not expire until the completion of the probation period. Or, if an adolescent is being referred to a
specialist for a single appointment, the consent form should stipulate that consent will expire after he has seen that doctor.

The Signature of the Adolescent And Parental Consent

The adolescent must always sign the consent form in order for a program to release information even to her parent or guardian. The program must get the parent's signature in addition to the adolescent's signature only if the program is required by State law to obtain parental permission before providing treatment to the adolescent (§ 2.14). ("Parent" includes parent, guardian, or other person legally responsible for the minor.)

In other words, if State law does not require the program to get parental consent in order to provide services to the adolescent, then parental consent is not required to make disclosures (§ 2.14(b)). If State law requires parental consent to provide services to the adolescent, then parental consent is required to make any disclosures. The program must always obtain the adolescent's consent for disclosures, and cannot rely on the parent's signature alone.

There is one very limited exception to this rule, which is discussed below in the section, "Communicating With Parents or Guardians."

Required Notice Against Redisclosing Information

Once the consent form has been properly completed, there remains one last formal requirement. Any disclosure made with written client consent must be accompanied by a written statement that the information disclosed is protected by Federal law and that the person receiving the information cannot make any further disclosure of such information unless permitted by the regulations (§2.32). This statement, not the consent form itself, should be delivered and explained to the recipient of the information at the time of disclosure or earlier.

The prohibition on redisclosure is clear and strict. Those who receive the notice are prohibited from rereleasing information except as permitted by the regulations. (Of course, an adolescent may sign a consent form authorizing such a redisclosure.)

Note on Agency Use of Consent Forms

The fact that an adolescent has signed a proper consent form authorizing the release of information does not force a program to make the proposed disclosure, unless the program has also received a subpoena or court order (§§2.3(b)(1); 2.61(a)(b)). The program's only obligation is to refuse to honor a consent that is expired, deficient, or otherwise known to be revoked, false, or incorrect (§2.31(c)).

In most cases, the decision whether to make a disclosure pursuant to a consent form is up to the program to decide unless State law requires or prohibits disclosure once consent is given. In general, it is best to follow this rule: Disclose only what is necessary, for only as long as is necessary, keeping in mind the purpose for requesting the desired information.
Communicating With Others About Adolescents

Now that the rules regarding consent are clear, attention can turn to the other questions introduced at the beginning of this chapter:

- How can programs seek information from collateral sources about adolescents they are screening?
- How can programs communicate with parents?
- Can programs report child abuse?
- Do programs have a duty to warn others of threats by adolescents, and if so, how do they communicate the warning?
- Are there special rules for adolescents who are involved in the juvenile justice system?

Seeking Information From Collateral Sources

Making an inquiry of schools, doctors, and other health care providers might, at first glance, seem to pose no risk to an adolescent's right to confidentiality. But it does.

When a program that screens, assesses, or treats adolescents asks a school, doctor, or parent to verify information it has obtained from the adolescent, it is making a client-identifying disclosure that the adolescent has sought its services. In other words, when program staff seek information from other sources, they are letting these sources know that the youth has asked for substance use disorder services. The Federal regulations generally prohibit this kind of disclosure unless the adolescent consents.

How then is a screening or assessment program to proceed? The easiest way is to get the adolescent's consent to contact the school or health care facility.

Another method involves the program's asking the client to sign a consent form that permits it to make a disclosure for purposes of seeking information from collateral sources to any one of a number of entities or persons listed on the consent form. Note that this combination form must still include "the name or title of the individual or name of the organization" for each collateral source the program may contact. Whichever method the program chooses, it must use the consent form required by the regulations, not a general medical release form.

Communicating With Parents or Guardians

As noted above, programs may not communicate with the parents of an adolescent unless they get the adolescent's written consent.

In getting the adolescent's consent, the program should discuss with the adolescent whether the purpose of the disclosure (which must be stated on the consent form) would be "to obtain information from Mary's parents in order to assist in the screening (or assessment) process." The kind of information to be disclosed (which must also be stated on the consent form) would be "Mary's application for services." The expiration date should be keyed to the date by which the
counselor thinks screening or assessment will have been completed.

If the program and Mary decide they want the program's counselor to be free to talk to Mary's parents or guardians over a longer period of time, the program would fill out the consent form differently. The purpose of the disclosure would be "to provide periodic reports to Mary's parents" and the kind of information to be disclosed would be "Mary's progress in treatment." The expiration of this kind of open-ended consent form might be set at the date the program and Mary foresee her counseling ending or even "when Mary's participation in the program ends." (However, Mary can revoke the consent any time she wishes to.)

**What if Mary refuses to consent?** Since the Federal confidentiality regulations forbid disclosures without Mary's consent, the program cannot confer with her parents.

One special situation deserves mention. The Federal regulations contain an exception permitting a program director to communicate with a minor's parents when the following conditions are met:

1. An adolescent has applied for services.
2. The program director believes that the adolescent, because of an extreme substance use disorder or a medical condition, does not have the capacity to decide rationally whether to consent to the notification of his guardians.
3. The program director believes the disclosure is necessary to cope with a substantial threat to the life or well-being of the adolescent or someone else.

Thus, if an adolescent applies for services in a State where parental consent is required to provide services but the adolescent applying for services refuses to consent to the program's notifying his parents or guardians, the regulations permit the program to contact a parent without his consent only if those two conditions are met. Otherwise, the program must explain to the adolescent that while he has the right to refuse to consent to any communication with a parent, the program can provide no services without such communication and parental consent (§2.14(d)).

Section 2.14(d) applies only to applicants for services. It does not apply to minors who are already clients. Thus, programs cannot contact parents of clients without consent even if the programs are concerned about the behavior of the children.

**Reporting Child Abuse and Neglect**

All 50 States and the District of Columbia have statutes requiring reporting when there is reasonable cause to believe or suspect child abuse or neglect. While many State statutes are similar, each has different rules about what kinds of conditions must be reported, who must report, and when and how reports must be made.

Most States now require not only physicians but also educators and social service workers to report child abuse. Most States require an immediate oral (spoken) report, and many now have toll-free numbers to facilitate reporting. (Half of the States require that both oral and written
reports be made.) All States extend immunity from prosecution to persons reporting child abuse and neglect. Most States provide penalties for failure to report.

Program staff will often need some form of training to review the State's child abuse and neglect laws and to clearly explain what the terms "abuse" and "neglect" really mean according to the law. A lay person's--or a professional's--idea of child neglect may differ greatly from the legal definition. For example, a child living with a parent involved in extensive alcohol or drug use, perhaps surrounded by a culture of drugs and alcohol, is often not considered to be "abused" or "neglected" unless certain additional conditions are met. Such legal definitions may go against the grain of what some staff members consider to be in the best interest of the child, but these are safeguards that have developed over time to protect the child, the parent, and the family unit.

Because of the variation in State law, programs should consult an attorney familiar with State law to ensure that their reporting practices are in compliance. Since many State statutes require that staff report instances of abuse to administrators, who are then required to make an official report, programs should establish reporting protocols to bring suspected child abuse to the attention of program administrators. Administrators, in turn, should shoulder the responsibility to make the required reports. However, some States require that an individual aware of child neglect or abuse must report the situation directly to the child protection authority. Alerting the situation to an administrator alone does not exempt the individual from making the report.

The Federal confidentiality regulations permit programs to comply with State laws that require the reporting of child abuse and neglect. However, this exception to the general rule prohibiting disclosure of any information about a client applies only to initial reports of child abuse or neglect. Programs may not respond to followup requests for information or to subpoenas for additional information, even if the records are sought for use in civil or criminal proceedings resulting from the program's initial report. The only situation in which a program may respond to requests for followup information is when the adolescent consents or the appropriate court issues an order under subpart E of the regulations.

There are clinical considerations as well. There is a need, on the one hand, to guarantee the immediate safety of the adolescent or other children in the home and to comply with the legal reporting requirements of child abuse. On the other hand, assessors need to be sensitive to the potential strain on the trust between assessor and youth that may arise from initiating a report of suspected child abuse. Assessors must handle their obligations with sensitivity.

**Duty To Warn**

For most treatment professionals, the issue of reporting a patient's threat to harm another or commit a crime is a troubling one. Many professionals believe that they have an ethical, professional, or moral obligation to prevent a crime when they are in a position to do so, particularly when the crime is a serious one.

There has been a developing trend in the law to require psychiatrists and other therapists to take "reasonable steps" to protect an intended victim when they learn that a patient presents a "serious danger of violence to another." This trend started with the case of Tarasoff v. Regents
of the University of California, 17 Cal.3d 425 (1976). In that case, the California Supreme Court held a psychologist liable for monetary damages because he failed to warn a potential victim that his patient threatened to, and then did, kill. The court ruled that if a psychologist knows that a patient poses a serious risk of violence to a particular person, the psychologist has a duty "to warn the intended victim or others likely to apprise the victim of the danger, to notify the police, or to take whatever other steps are reasonably necessary under the circumstances."

While the Tarasoff ruling, strictly speaking, applies only in California, courts and legislatures in other States have adopted Tarasoff's reasoning to hold therapists liable for monetary damages when they have failed to warn someone threatened by a patient. In most instances, liability is limited to situations where a patient threatens violence to a specific identifiable victim; liability does not usually apply where a patient makes a general threat without identifying the intended target.

If an adolescent's counselor thinks she poses a serious risk of violence to someone, there are at least two--and sometimes three--questions that need to be answered:

- Does a State statute or court decision impose a duty to warn in this particular situation?
- Even if there is no State legal requirement that the program warn an intended victim or the police, does the counselor feel a moral obligation to warn someone?

The first question can only be answered by an attorney familiar with the law in the State in which the program operates. If the answer to the first question is "no," it is advisable to discuss the second question with a knowledgeable lawyer, too.

- If the answer to question 1 or 2 is "yes," how can the program warn the victim or someone able to take preventive action without violating the Federal confidentiality regulations?

The problem is that there is a conflict between the Federal confidentiality requirements and the "duty to warn" imposed by States that have adopted the Tarasoff rule. Simply put, the Federal confidentiality law and regulations appear to prohibit the type of disclosure that the Tarasoff rule requires. Moreover, the Federal regulations make it clear that Federal law overrides any State law that conflicts with the regulations (§2.20). In the only case, as of this writing, that addresses this conflict between Federal and State law (Hansenie v. United States, 541 F. Supp. 999 (D. Md. 1982)), the court ruled that the Federal confidentiality law prohibited any report.

When an adolescent makes a threat to harm himself or another and the program is confronted with conflicting moral and legal obligations, it can proceed in one of the following ways:

- The program can go to court and request a court order authorizing the disclosure. The program must take care that the court abides by the requirements of the Federal confidentiality regulations (discussed below in detail).
- The program can make a disclosure that does not identify the adolescent who has threatened to harm another as a patient. This can be accomplished either by making an anonymous report or--for a program that is part of a larger nonsubstance use disorder
treatment facility--by making the report in the larger facility's name. For example, a counselor employed by a drug program that is part of a mental health facility could phone the police or the potential target of an attack, identify herself as "a counselor at the New City Mental Health Clinic" and explain the risk. This would convey the vital information without identifying the adolescent as someone in treatment for a substance use disorder. Counselors at free-standing alcohol or drug programs cannot give the name of the program. (The "nonpatient-identifying disclosure" exception is discussed more fully below.)

- If the adolescent has been mandated into treatment by the criminal justice system (CJS) or the juvenile justice system (JJS), the program can make a report to the mandating CJS or JJS agency, so long as it has a CJS consent form signed by the adolescent that has been worded broadly enough to allow this sort of information to be disclosed. (For a discussion of the criminal justice system consent form, see the next section.) The CJS or JJS agency can then act on the information to avert harm to the adolescent or the potential victim. However, the regulations limit what the justice agency can do with the information. Section 2.35(d) states that anyone receiving information pursuant to a criminal justice system consent "may redisclose and use it only to carry out that person's official duties with regard to the patient's conditional release or other action in connection with which the consent was given." Thus, the referring justice agency can use the disclosure to revoke the adolescent's conditional release or probation or parole. If the justice agency wants to warn the victim or notify another law enforcement agency of the threat, it must be careful that it does not mention that the source of the tip was someone at a substance use disorder treatment program or that the adolescent making the threat is in treatment for a substance use disorder. However, the disclosure most likely cannot be used to prosecute the adolescent for a separate offense (such as making the threat). The only way to prosecute an adolescent based on information obtained from a program is to obtain a special court order in accordance with §2.65 of the regulations (discussed below).

- The program can make a report to medical personnel if the threat presents a medical emergency that poses an immediate threat to the health of any individual and requires medical intervention. (See the discussion of the medical emergency exception below.)

- The program can obtain the patient's consent. This may be unlikely, unless the patient is suicidal.

If none of these options is practical, and a counselor believes there is a clear and imminent danger to an adolescent patient or another identified person, it is probably wiser to err on the side of making an effective report about the danger to the authorities or to the threatened individual.

While each case presents different questions, it is doubtful that any prosecution (or successful civil lawsuit) under the confidentiality regulations would be brought against a counselor who warned about potential violence when he believed in good faith that there was real danger to a particular individual. On the other hand, a civil lawsuit for failure to warn may well result if the threat is actually carried out. In any event, the counselor should at least try to make the warning in a manner that does not identify the individual as having a substance use disorder.
"Duty to warn" issues represent an area in which staff training, as well as a staff review process, may be helpful. For example, a troubled youth may engage in verbal threats as a way of "blowing off steam." Such threats may be the adolescent's cry for additional support services. Program training and discussions can help staff sort out what should be done in each particular situation.

Adolescents in the Juvenile Justice System

Programs screening and assessing adolescents who are involved in the JJS (such as family court or juvenile court) must also follow the confidentiality rules that generally apply to treatment programs. However, some special rules apply when an adolescent comes for screening or assessment as an official condition of probation, sentence, dismissal of charges, release from detention, or other disposition of any criminal proceeding. A consent form (or court order) is still required before any disclosure can be made about an adolescent who is the subject of JJS referral. However, the rules concerning the length of time that a consent is valid and the process for revoking the consent are different (§2.35). Specifically, the regulations require that the following factors be considered in determining how long the consent involving an adolescent who is the subject of a criminal justice system referral will remain in effect:

- The anticipated duration of treatment
- The type of criminal proceeding in which the juvenile is involved
- The need for treatment information in dealing with the proceeding
- When the final disposition will occur
- Anything else the client, program, or juvenile justice agency believes is relevant

These rules allow programs to continue to use a traditional expiration condition for a consent form that once was the only one allowed--"when there is a substantial change in the client's justice system status." This formulation appears to work well. A substantial change in status occurs whenever the adolescent moves from one phase of the JJS to the next. For example, if an adolescent is on probation, there would be a change in JJS status when the probation ends, either by successful completion or revocation. Thus, the program could provide an assessment or periodic reports to the probation officer monitoring the adolescent and could even testify at a probation revocation hearing if it so desired, since no change in criminal justice status would occur until after that hearing.

As for the revocability of the consent (the rules under which the youth can take back his consent), the regulations provide that the consent form can state that consent cannot be revoked until a certain specified date or condition occurs. The regulations permit the JJS consent form to be irrevocable so that an adolescent who has agreed to enter treatment in lieu of prosecution or punishment cannot then prevent the court probation department or other agency from monitoring her progress. Note that although a JJS consent may be made irrevocable for a specified period of time, its irrevocability must end no later than the final disposition of the criminal proceeding. Thereafter, the client may freely revoke consent.

Other Exceptions to the General Rule
Other exceptions to the Federal confidentiality rules prohibiting disclosure regarding youth seeking or receiving services for a substance use disorder are:

- Disclosures that do not reveal the fact that the client has a substance use disorder
- Disclosure authorized by court order
- Disclosures made during medical emergencies
- Disclosure of information regarding a crime on program premises or against program personnel
- Disclosures to an outside agency that provides services to the program
- Disclosures to other staff within the program
- Disclosures to researchers, auditors, and evaluators with appropriate institutional review to ensure the protection of program participants

**Communications That Do Not Disclose "Client-Identifying" Information**

Federal regulations permit programs to disclose information about an adolescent if the program reveals no client-identifying information. "Client-identifying" information is information that identifies someone as having a substance use disorder. Thus, a program may disclose information about an adolescent if that information does not identify him as having a substance use disorder or support anyone else's identification of the adolescent as such.

There are two basic ways a program may make a disclosure that does not identify a client. The first way is obvious: A program can report aggregate data about its population (summing up information that gives an overview of the clients served in the program) or some portion of its populations. Thus, for example, a program could tell a newspaper that, in the last 6 months, it screened 43 adolescent clients—10 female and 33 male.

The second way is trickier: A program can communicate information about an adolescent in a way that does not reveal the adolescent's status as a substance use disorder client (§2.12(a)(i)). For example, a program that provides services to adolescents with other problems or illnesses as well as substance use disorders may disclose information about a particular client as long as the fact that the client has a substance use disorder is not revealed. An even more specific example: A program that is part of a general hospital could have a counselor call the police about a threat an adolescent made, so long as the counselor does not disclose that the adolescent has a substance use problem or is a client of the treatment program.

Programs that provide only substance use disorder services cannot disclose information that identifies a client under this exception, since letting someone know a counselor is calling from the "XYZ Treatment Program" will automatically identify the adolescent as someone in the program. However, a freestanding program can sometimes make "anonymous" disclosures, that is, disclosures that do not mention the name of the program or otherwise reveal the adolescent's status as having a substance use disorder.

**Court-Ordered Disclosures**
A State or Federal court may issue an order that will permit a program to make a disclosure about an adolescent that would otherwise be forbidden. A court may issue one of these authorizing orders, however, only after it follows certain special procedures and makes particular determinations required by the regulations. A subpoena, search warrant, or arrest warrant, even when signed by a judge, is not sufficient, standing alone, to require or even to permit a program to disclose information (§2.61).  

Before a court can issue an order authorizing a disclosure about a youth that is otherwise forbidden, the program and any adolescents whose records are sought must be given notice of the application for the order and some opportunity to make an oral or written statement to the court. Generally, the application and any court order must use fictitious names for any known adolescent, not the real name of a particular youth. All court proceedings in connection with the application must remain confidential unless the adolescent requests otherwise (§§2.64(a), (b), 2.65, 2.66).

Before issuing an authorizing order, the court must find that there is "good cause" for the disclosure. A court can find "good cause" only if it determines that the public interest and the need for disclosure outweigh any negative effect that the disclosure will have on the client or the doctor--client or counselor--client relationship and the effectiveness of the program's treatment services. Before it may issue an order, the court must also find that other ways of obtaining the information are not available or would be ineffective (§2.64(d)). The judge may examine the records before making a decision (§2.64(c)).

There are also limits on the scope of the disclosure that a court may authorize, even when it finds good cause. The disclosure must be limited to information essential to fulfill the purpose of the order, and it must be restricted to those persons who need the information for that purpose. The court should also take any other steps that are necessary to protect the adolescent's confidentiality, including sealing court records from public scrutiny (§2.64(e)).

The court may order disclosure of "confidential communications" by an adolescent to the program only if the disclosure:

- Is necessary to protect against a threat to life or of serious bodily injury
- Is necessary to investigate or prosecute an extremely serious crime (including child abuse)
- Is in connection with a proceeding at which the adolescent has already presented evidence concerning confidential communications (for example, "I told my counselor ...") (§2.63)

Medical Emergencies

A program may make disclosures to public or private medical personnel "who have a need for information about [an adolescent] for the purpose of treating a condition which poses an immediate threat to the health" of the adolescent or any other individual. The regulations define...
"medical emergency" as a situation that poses an immediate threat to health and requires immediate medical intervention (§2.51).

The medical emergency exception permits disclosure only to medical personnel. This means that the exception cannot be used as the basis for a disclosure to the police or other nonmedical personnel, including parents.

Under this exception, however, a program could notify a private physician or school nurse about a suicidal adolescent so that medical intervention can be arranged. The physician or nurse could, in turn, notify the adolescent's parents, so long as no mention is made of the adolescent's substance use disorder. Whenever a disclosure is made to cope with a medical emergency, the program must document all of the following in the adolescent's records:

- The name and affiliation of the recipient of the information
- The name of the individual making the disclosure
- The date and time of the disclosure
- The nature of the emergency

**Crimes on Program Premises or Against Program Personnel**

When an adolescent patient has committed or threatens to commit a crime on program premises or against program personnel, the regulations permit the program to report the crime to a law enforcement agency or to seek its assistance. In such a situation, without any special authorization, the program can disclose the circumstances of the incident, including the suspect's name, address, last known whereabouts, and status as a patient at the program (§2.12(c)(5)).

*Drugs brought into the program by patients.* One crime that an adolescent might well commit on program premises is drug possession—bringing drugs into the program either on his person or (if the program is residential) in his luggage. When a program finds drugs on a patient or in a patient's personal property, what should it do? Should the program call the police? And what should it do with the drugs?

The answer to the first question has already been discussed above in the section dealing with reporting criminal activity. Generally, State law does not require programs to make such a report. As for the second question, State regulations often govern how a program may dispose of drugs, sometimes requiring that they be flushed down a toilet. Programs should check with their Single State Agency if they are unsure about State mandates.

**Qualified Service Organization Agreements (QSOAs)**

If a program routinely needs to share certain information with an outside agency that provides services to the program, it can enter into what is known as a qualified service organization agreement (QSOA).

A QSOA is a written agreement between a program and a person providing services to the
program, in which that person

1. Acknowledges that in receiving, storing, processing, or otherwise dealing with any client records from the program she is fully bound by the Federal confidentiality regulations
2. Promises that, if necessary, she will resist in judicial proceedings any efforts to obtain access to client records except as permitted by these regulations (§§2.11, 2.12(c)(4))

A sample QSOA is provided in Figure 4-2.

A QSOA should be used only when an agency or official outside the program is providing a service to the program itself. An example is when laboratory analyses or data processing are performed for the program by an outside agency.

A QSOA is not a substitute for individual consent in other situations. Disclosures under a QSOA must be limited to information that is needed by others so that the program can function effectively. A QSOA may not be used between different programs providing substance use disorder treatment and other services.

**Internal Program Communications**

The Federal regulations permit some information to be disclosed to individuals within the same program.

The restrictions on disclosure in these regulations do not apply to communications of information among personnel having a need for the information in connection with their duties that arise out of the provision of diagnosis, treatment, or referral for treatment of substance abuse if the communications are (i) within a program or (ii) between a program and an entity that has direct administrative control over that program (§2.12(c)(3)).

In other words, staff members who have access to client records because they work for or administratively direct the program--including full- or part-time employees and unpaid volunteers--may consult among themselves or otherwise share information if their substance use disorder work so requires (§2.12(c)(3)).

A question that frequently arises is whether this exception allows a program that assesses or treats adolescents and that is part of a larger entity--such as a school--to share confidential information with others who are not part of the assessment or treatment unit itself. The answer to this question is among the most complicated in this area. In brief, there are circumstances under which the assessment unit can share information with other units. However, before such an internal communication system is set up within a large institution, it is essential that an expert in the area be consulted for assistance.

**Research, Audit, or Evaluation**

The confidentiality regulations also permit programs to disclose client-identifying information to researchers, auditors, and evaluators without client consent, provided certain safeguards are met
Other Rules About Confidentiality

Client Notice and Access to Records

The Federal confidentiality regulations require programs to notify clients of their right to confidentiality and to give them a written summary of the regulations' requirements. The notice and summary should be handed to adolescents when they begin participating in the program or soon thereafter (§2.22(a)). The regulations contain a sample notice.

Programs can use their own judgment to decide when to permit adolescents to view or obtain copies of their records, unless State law allows clients or students the right of access to records. The Federal regulations do not require programs to obtain written consent from clients before permitting them to see their own records.

Security of Records

The Federal regulations require programs to keep written records in a secure room, a locked file cabinet, a safe, or other similar container. The program should establish written procedures that regulate access to and use of adolescents' records. Either the program director or a single staff person should be designated to process inquiries and requests for information (§2.16).

A Final Note

Drug abuse treatment programs should try to find a lawyer familiar with local laws affecting their problems.

As has already been mentioned, State law governs many concerns relating to screening and assessing adolescents. A practicing lawyer with an expertise in adolescent substance use and abuse concerns is the best source for advice on such issues. Moreover, when it comes to certain issues, the law is still developing. For example, programs' "duty to warn" of clients' threats to harm others is constantly changing as courts in different States consider cases brought against a variety of different kinds of care providers. Programs trying to decide how to handle such a situation need up-to-the minute advice on their legal responsibilities.