

New Privacy Forms Requirement as of 02/16/2026.

To begin: I am not an attorney and am not providing legal advice. I will say right here that you should contact an attorney, at the very least your malpractice insurance carrier, about whether or not this applies to you and the details of how to apply it, if it does. This article provides guidelines but should absolutely NOT be treated as the definitive word about this subject.

Some clinicians may have to update the language of their Notice of Privacy Practices (NPP) to include information about Substance Use Disorder (SUD), depending on whether they “hold themselves out” as treating patients with substance use disorders. What does this mean and how does it affect you. This has to do with the update to [42 CFR Part 2](#), sometimes just referred to as “Part 2,” that was enacted in 2024 and went into effect 02/16/2026. The change is required according to [The Center of Excellence for Protected Health Information](#) because, “Part 2 offers strict privacy protections to treatment records in order to encourage individuals to seek and remain in treatment....Unlike HIPAA, which often permits the sharing of certain health information without patient authorization, Part 2 generally requires patients’ written consent to disclose any patient-identifying information.”

First, it only affects HIPAA covered entities. You are a HIPAA Covered Entity if you bill insurance online, exchange any client information online with a plan, or if a biller or clearinghouse does this for you. If you are private pay-only and don’t send electronic claims, you generally are not considered a Covered Entity. If you aren’t sure if you are a HIPAA Covered Entity you can check using this link: <https://www.cms.gov/regulations-and-guidance/administrative-simplification/hipaa-aca/downloads/coveredentitieschart20160617.pdf>

Second, it applies if you are a HIPAA Covered Entity (as described above) who takes any government money, including Medicare and/or Medicaid Payments
AND

You “hold yourself out” as treating clients with substance abuse disorders. This second criteria seems to be open to interpretation. According to the American Psychological Association, the update is only needed for substance abuse disorder specialists. If you are in general practice treating various presenting conditions who happens to see SUD patients it wouldn’t apply to you. **HOWEVER:** Barbara Griswold, LMFT*, private practice coach and the author of *Navigating the Insurance Maze: The Therapist’s Complete Guide to Working with Insurance — And Whether You Should*, 10th edition, said that

“...many online sources and two attorneys I spoke with said because of the lack of clarity of what “hold yourself out” means, the most risk-averse path would be for all therapists who meet criteria #1 and see ANY clients (or might see any clients) with substance abuse to update the form. You may want to contact your malpractice carrier to get their reading on this law.”

The additional wording would need to be added to your NPP if you exchange information or documentation with Part 2 clinicians. You can either add wording to your existing NPP or create a second Part 2 NPP.

In addition, just as there are “psychotherapy notes” under HIPAA, there are “SUD Counseling Notes” that are established under Part 2 and are not kept with the medical record.

There is specific language that would have to be added to your Notice of Privacy Practices (NPP.) [Therapy Notes](#) says the 2 paragraphs that need to be added are:

“Use and Disclosure of Substance Use Disorder Records Subject to 42 CFR Part 2: If applicable, your substance use disorder (“SUD”) records are protected by federal law under 42 C.F.R. Part 2 (“Part 2”). This law provides extra confidentiality protections and requires a separate patient consent for the use and disclosure of SUD counseling notes. Each disclosure made with patient consent must include a copy of the consent or a clear explanation of the scope of the consent. It must also be accompanied by a written notice containing the language in 42 CFR Part 2.32(a). Disclosure of these records requires your explicit written consent, except in limited circumstances such as: (a) Medical Emergencies: to the extent necessary to treat you, (b) Reporting Crimes on Program Premises, (c) Child Abuse Reporting: In connection with incidents of suspected child abuse or neglect to appropriate state or local authorities, and (d) Fundraising: We will provide you with an opportunity to decline to receive any fundraising communications prior to making such communications. You may revoke this consent at any time.

Prohibitions on Use and Disclosure of Part 2 Records: SUD records received from programs subject to Part 2, or testimony relaying the content of such records, shall not be used or disclosed in civil, criminal, administrative, or legislative proceedings against you unless based on your written consent, or a court order after notice and an opportunity to be heard is provided to you or the holder of the record, as provided in Part 2. A court order authorizing use or disclosure must be accompanied by a subpoena or other legal requirement compelling disclosure before the requested SUD record is used or disclosed. If SUD records are disclosed to us or our business associates pursuant to your written consent for treatment, payment, and healthcare operations, we or our business associates may further use and disclose such health information without your written consent to the extent that the HIPAA regulations permit such uses and disclosures, consistent with the other provisions in this Notice regarding PHI.”

Please consult your malpractice insurance carrier and/or your attorney for more exact details and if you are required to change the NPP.

For more information please see:

- The federal government website: [Click here](#)
- Center of Excellence for Protected Health Information: [Click here](#) and their article — [Click here](#)
- The law: [42 CFR Part 2](#)

- The APA article – [Click here](#)
- Barbara Griswold, LMFT's article on the subject - <https://theinsurancemaze.com/NPPupdate/>

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- Barbara Griswold, LMFT, private practice coach and the author of *Navigating the Insurance Maze: The Therapist's Complete Guide to Working With Insurance — And Whether You Should*, 10th edition has presented workshops for the ACE Foundation about writing treatment plans and session notes. She also has a useful newsletter about practice management and insurance issues available at <https://theinsurancemaze.com/>. This does not constitute an endorsement of any of the products she sells on her website by either me or the NYSSCSW nor do I or the NYSSCSW receive any compensation from or for this.