

## CliniSync cares about your patient's privacy.

### Sensitive Sensitive

- Often, physicians and clinicians have **questions** about when they can exchange patient records for treatment of alcohol and drug, mental health, HIV or other sensitive diagnoses.
- The laws that provide special protections to certain patient records can be so complex, some providers have elected *not* to share specially protected information with other treating providers. But the information may be **critical to a patient's care and safety**.

### Guidance Guidance

- CliniSync and its stakeholders developed a **policy and this guidance document** to help providers in understanding these special protections so you can make the right decision for your patients.
- Specially protected health information may only be exchanged **directly** -- from provider to provider. Providers will not be able to query or search for this information.
- This guidance document attempts to answer common questions, but does not constitute legal advice. You will need to assess how these laws apply to your organization by reviewing the information with your **Privacy Officer and legal counsel**.

### Laws Laws

- Both federal and state laws determine how specially protected records may be shared.
- A **new Ohio law** on the exchange of electronic health records passed in June 2012 now aligns some former state laws with federal HIPAA patient consent requirements, **allowing the exchange of mental health and HIV records** through CliniSync. ([ORC 3798.01-3798.16](#))
- Federal laws still apply to the exchange of **drug and alcohol records**. It is important to understand these laws apply differently to different types of providers, such as hospitals, primary care and behavioral health providers. ([42 CFR Part 2](#))
- Federal laws restrict disclosure of **psychotherapy notes**. They **may not** be exchanged through CliniSync, but should not be confused with mental health records that are part of the patient's health record, such as progress notes. **Mental health records can be exchanged** through CliniSync. ([45 CFR 164.508\(a\)\(2\)](#))
- If an individual is paying you **out-of-pocket** for services and asks you *not* to disclose the information to their health plan (insurance company), you cannot disclose it to the plan. However, you may share that information with another treating provider if you have patient consent. ([42 USC 17935](#))
- If you treat **minors** over the age of 14, they may have the right to consent to treatment without parental consent in certain cases (e.g. HIV testing, STD testing, certain mental health treatment, etc.). If you want to disclose information about treatment consented to by a minor, you must get the minor's consent. ([45 CFR 164.502\(g\)\(3\)](#)) and ([ORC 3798.07](#))



## Guidance for Exchanging Drug and Alcohol Information

(42 CFR Part 2)

Federally-assisted drug and alcohol programs or providers who are certified by the Ohio Department of Alcohol and Drug Addiction Services must obtain express written consent to disclose or re-disclose drug and alcohol information and include specific re-disclosure language unless it is a documented medical emergency.

Federally-Assisted Drug & Alcohol Programs Include	Federally-Assisted Drug & Alcohol Programs Do Not Include
<ul style="list-style-type: none"> <li>• An individual provider or entity that holds itself out as providing alcohol or drug diagnosis or treatment,</li> <li>• Entities that are dually-certified to provide alcohol or drug diagnosis, treatment and mental health services or</li> <li>• A specialized inpatient or outpatient program of a facility that holds itself out as providing alcohol or drug diagnosis treatment, or</li> <li>• Medical personnel or staff at a facility whose primary function is the provision of alcohol or drug abuse diagnosis or treatment.</li> </ul>	<ul style="list-style-type: none"> <li>• A primary care provider who does not hold themselves out as providing alcohol or drug diagnosis or treatment</li> <li>• A hospital emergency room unless the emergency room offers a specialized program for drug and alcohol treatment</li> </ul>

# All Providers All Providers

# Hospitals Hospitals

If you receive drug and alcohol records from a specialized drug and alcohol program, unit or staff that is federally assisted, you may not re-disclose the information without express written consent from your patient.

To check if a program is federally-assisted, go to this SAMHSA site:

<http://findtreatment.samhsa.gov/>

- If you have a specialized drug and alcohol program, unit or staff that is federally-assisted or certified by the Ohio Department of Alcohol and Drug Addiction Services, related drug and alcohol records may only be auto-delivered through CliniSync in a medical emergency and if you have the ability to electronically tag the information so other providers cannot search for and access the information through the patient's future longitudinal, community health record. If you cannot electronically tag the information, it must be excluded from your interface to CliniSync.
- There may be instances where an organization's privacy policies are more restrictive. An example would be if your hospital has privacy policies that do not allow you to disclose information about a VIP.



## Guidance for Psychotherapy Notes

(42 CFR 164.508 (a)(2))

Psychotherapy notes cannot be exchanged through CliniSync. Psychotherapy notes are not part of the medical record. They are “process notes” that capture the therapist’s impressions of the patient and may contain details of conversations in a private or group setting.



These are not considered psychotherapy notes:

- Medication prescription and monitoring
- Counseling session start and stop times
- Modalities and frequencies of treatment furnished
- Results of clinical tests
- Diagnosis summary
- Functional status summary
- Treatment plan summary
- Symptoms and prognosis summary
- Progress to date

Psychotherapy notes should not be confused with mental health records that are part of the patient’s health record, such as progress notes. Mental health records *can be* exchanged through CliniSync.

# Behavioral Health Homes Behavioral Health Homes

Primary care providers working with behavioral health homes should review these and other specially protected record guidelines with their health home team.



[www.CliniSync.org](http://www.CliniSync.org)

### CLINISYNC CAN HELP YOU.

Our CliniSync Implementation Team will engage your Privacy Officer and technical teams to assess the applicability of these restrictions to your hospital and tailor your CliniSync implementation plan to facilitate compliance.

This memorandum attempts to assist providers with frequently asked questions. This guidance does not constitute and should not be relied on as legal advice. Providers are responsible for determining whether/how these laws apply to them. Any questions that providers may have should be directed to their legal counsel for final determination.