

DCCMIS User Confidentiality Agreement¹

This Confidentiality Agreement applies to **[name of problem-solving court program]**'s employees, members of the **[name of problem-solving court program]** team, and all other professionals working with the **[name of problem-solving court program]** hereinafter referred to as "users", who have direct access to the Drug Court Case Management Information System (DCCMIS).

User understands and agrees:

- All network passwords are confidential and shall not be disclosed to any third party including other authorized users of the DCCMIS.
- The **[name of problem-solving court program]** DCCMIS administrator shall provide user with the network password necessary to gain access to the DCCMIS network.
- In the event that user reasonably suspects or becomes aware of any unauthorized use or disclosure of user's network password or other confidential user identification, user shall immediately change the password, and shall immediately report the unauthorized use or disclosure to **[name of problem-solving court program]**'s DCCMIS administrator.
- **[Name of problem-solving court program]**'s DCCMIS administrator, The State Court Administrative Office (SCAO), and Advanced Computer Technologies (ACT) shall have the right to suspend or revoke user's network access without notice in the event of any breach or suspected breach of confidentiality.
- To be accountable for all entries of client information, orders and data entered by user into DCCMIS under user's password.
- To access client information and/or records only for the following purposes in accordance with applicable state and federal laws and regulations:
 - coordinating services with ancillary and other treatment service providers;
 - reviewing client's progress in program areas as needed per user's role on the team;
 - conducting statistical research, or audits;
 - conducting quality assurance, or review activities; and,
 - For DCCMIS administrators requirements involving verification and other operational purposes.
- To not disclose or re-disclose any client information and/or records to any other entity or individual without the prior written authorization of the participant or the participant's authorized representative.
- SCAO and ACT may conduct unannounced audits of user's access to its information systems, software applications, network and data on a periodic basis to monitor appropriate use of and compliance with the obligations stated above.
- Any violation of participant confidentiality may result in termination of access to DCCMIS.
- Information may be disclosed in summary, statistical, or other form, which does not directly or indirectly identify particular program participants or related parties.

¹This model document is provided by SCAO as a resource and for informational purposes only to assist courts with operating a problem-solving court and to comply with the problem-solving court statute. This model document is not intended (and cannot be construed) as legal advice.

I understand that alcohol and/or drug treatment records and mental health records are protected under the Federal regulations governing Confidentiality and Drug Abuse Patient Records, 42 CFR Part 2, and the Health Insurance Portability and Accountability Act of 1996 (HIPAA), 45 CFR Parts 160 & 164, and cannot be disclosed without the written consent of the **[name of program]** participant or a person legally authorized to represent the participant unless otherwise provided for by the regulations.

Signature of DCCMIS user

Date

Printed name of DCCMIS user

Attached: Penalties under 42 CFR Part 2 and Penalties under HIPAA

Penalties under 42 CFR Part 2

§2.3 Purpose and effect.

(a) *Purpose.* Under the statutory provisions quoted in §§2.1 and 2.2, these regulations impose restrictions upon the disclosure and use of alcohol and drug abuse patient records which are maintained in connection with the performance of any federally assisted alcohol and drug abuse program. The regulations specify:

- (1) Definitions, applicability, and general restrictions in subpart B (definitions applicable to §2.34 only appear in that section);
- (2) Disclosures which may be made with written patient consent and the form of the written consent in subpart C;
- (3) Disclosures which may be made without written patient consent or an authorizing court order in subpart D; and
- (4) Disclosures and uses of patient records which may be made with an authorizing court order and the procedures and criteria for the entry and scope of those orders in subpart E.

(b) *Effect.* (1) These regulations prohibit the disclosure and use of patient records unless certain circumstances exist. If any circumstances exists under which disclosure is permitted, that circumstance acts to remove the prohibition on disclosure but it does not compel disclosure. Thus, the regulations do not require disclosure under any circumstances.

(2) These regulations are not intended to direct the manner in which substantive functions such as research, treatment, and evaluation are carried out. They are intended to insure that an alcohol or drug abuse patient in a federally assisted alcohol or drug abuse program is not made more vulnerable by reason of the availability of his or her patient record than an individual who has an alcohol or drug problem and who does not seek treatment.

(3) Because there is a criminal penalty (a fine—see 42 U.S.C. 290dd-2, and 42 CFR 2.4) for violating the regulations, they are to be construed strictly in favor of the potential violator in the same manner as a criminal statute (see *M. Kraus & Brothers v. United States*, 327 U.S. 614, 621–22, 66 S. Ct. 705, 707–08 (1946)).

§2.4 Criminal penalty for violation.

Under 42 U.S.C. [42 U.S.C. 290dd–2](#), any person who violates any provision of those statutes or these regulations shall be fined not more than \$500 in the case of a first offense, and not more than \$5,000 in the case of each subsequent offense.

§2.5 Reports of violations.

(a) The report of any violation of these regulations may be directed to the United States Attorney for the judicial district in which the violation occurs.

(b) The report of any violation of these regulations by a methadone program may be directed to the Regional Offices of the Food and Drug Administration.

Penalties under HIPAA

42USC1320d-5 General penalty for failure to comply with requirements and standards

(a) General penalty

(1) In general

Except as provided in subsection (b), the Secretary shall impose on any person who violates a provision of this part a penalty of not more than \$100 for each such violation, except that the total amount imposed on the person for all violations of an identical requirement or prohibition during a calendar year may not exceed \$25,000.

42USC1320d-6 Wrongful disclosure of individually identifiable health information

(a) Offense

A person who knowingly and in violation of this part-

- (1) uses or causes to be used a unique health identifier;
- (2) obtains individually identifiable health information relating to an individual; or
- (3) discloses individually identifiable health information to another person,

shall be punished as provided in subsection (b).

(b) Penalties

A person described in subsection (a) shall-

- (1) be fined not more than \$50,000, imprisoned not more than 1 year, or both;
- (2) if the offense is committed under false pretenses, be fined not more than \$100,000, imprisoned not more than 5 years, or both; and
- (3) if the offense is committed with intent to sell, transfer, or use individually identifiable health information for commercial advantage, personal gain, or malicious harm, be fined not more than \$250,000, imprisoned not more than 10 years, or both.