

Deflection: Screening for Substance Use Disorder During Post-overdose Visits

Can a clinician on a post-overdose response team disclose to other team members that the individual is a client of their treatment provider? Can the clinician conduct a substance use disorder (SUD) screening in front of a law enforcement officer partner?

Response

If the provider that employs the clinician meets the definition of a Part 2 program under 42 Code of Federal Regulations (CFR) Part 2 (related to SUD treatment records), the clinician cannot disclose that the overdose victim is a client of the treatment provider to anyone on the post-overdose response team unless the clinician obtains the individual's written consent.

Further, clinicians cannot conduct an SUD screening or assessment in the presence of law enforcement or anyone else, including family members, without the individual's consent. Therefore, written consent should be obtained as soon as practicable upon arriving at the individual's residence. Consent must be obtained before conducting the screening or disclosing any SUD treatment information known by the clinician about the individual if law enforcement, other deflection team members, or anyone else are present.

Practice Tip: The 42 CFR entity that may be part of the post-overdose team could scan the current list of referrals for open clients and determine whether a separate course of action should be taken for those open clients, such as have the client's clinician attempt to contact the client.

Additional Discussion

An individual's SUD treatment records are protected by 42 CFR Part 2. Treatment providers that qualify as a Part 2 program cannot release any information on the program's current or former clients, including an individual's name or other identifying information, without the written consent of the individual.¹ Therefore, if a post-overdose response team's clinician is aware that the individual is a current or past client of their qualifying Part 2 treatment program, the clinician cannot disclose that information to anyone else, including another team member, without the individual's written consent. It is important to note that most SUD treatment providers qualify as Part 2 programs. This restriction applies to a deflection team of any type, not just a team involved in a post-overdose response deflection initiative.

¹ 42 CFR § 2.12 (2020) (applicability) and 42 CFR § 2.13 (2020) (confidentiality restrictions and safeguards).

Deflection: Screening for Substance Use Disorder During Post-overdose Visits

For this reason, post-overdose response initiatives should develop a standard consent form to be signed by the overdose survivor. This form should be offered by a team clinician as soon as possible as part of the team's routine initial contact procedures.

Practice Tip: The contents and requirements of a consent form to use or disclose SUD treatment information are described in 42 CFR § 2.31. There are nine required elements for a valid, written consent.

In developing a valid consent form under 42 CFR Part 2, the initiative should include the following items:

- Consent to share information with other deflection team members regarding the individual, including whether the individual is currently receiving treatment from a treatment provider
- Consent to conduct an initial assessment and other interviews in the presence of other team members, including law enforcement partner(s)
- An explanation of how the information obtained during the follow-up interview can and cannot be used by team members, including the law enforcement partner

Definitions

Deflection initiative—A collaborative intervention designed to connect law enforcement agencies and/or other first responder entities with public health/behavioral health systems to (1) create pathways to community-based treatment, recovery support services, housing, case management, or other services for individuals with SUDs, mental health disorders, or co-occurring disorders; and (2) keep these individuals out of the criminal justice system, when possible, by addressing their unmet health needs. Throughout the country, particular types of deflection initiatives are referred to by a host of names, including pre-arrest diversion, pre-booking diversion, law enforcement diversion, co-responder teams, crisis intervention teams, and mobile crisis teams.

Part 2 program [42 CFR §§ 2.11 and 2.12(b)]—An individual or entity that (1) holds itself out as providing, and actually provides, assessment, treatment, or referral to treatment for SUD and (2) receives federal assistance (as defined by regulation). Most SUD treatment providers qualify as Part 2 programs.