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DRUG OR ALCOHOL TREATMENT RECORDS

Policy on Drug or Alcohol Treatment Records of Students in programs within 42 U.S.C.S. Section 290 dd-3 and 290 ee-3, and 42 CFR Part 2

This policy only applies to a school-based drug or alcohol abuse treatment program if that program:

- (1) is federally assisted - virtually all public school programs are federally assisted because of their tax exempt status; and
- (2) holds itself out as providing and does provide drug or alcohol abuse diagnosis, treatment, or referral for treatment.

Programs which meet those two requirements are subject to federal confidentiality requirements which restrict the use and disclosure of information which was obtained for the purpose of treating alcohol or drug abuse, making a diagnosis for treatment, or making a referral for treatment. The purpose of the federal confidentiality law is to encourage treatment by protecting a patient's privacy rights.

1. Notice to Student

At the time of a student's admission into a drug and/or alcohol abuse counseling program, the program must give the student a copy of the Notice of Rights form set forth in Appendix A.

2. Parental Consent to Treatment

RSA 318-B:12-a does not list school districts as one of the entities to which a minor 12 years of age or older may voluntarily submit himself for treatment for drug dependency. Therefore, New Hampshire Law requires the school to obtain parental consent for the minor to be treated. However, even though state law requires consent to treatment, the program cannot notify the parents of a student's application for treatment unless:

- a. the student gives written consent; or
- b. the program director finds:
 - (1) That the minor lacks capacity because of extreme youth or mental or physical condition to make a rational decision on whether to consent to a disclosure to his parents; and
 - (2) The student's situation poses a substantial threat to the life or physical well-being of the student or any other individual and that threat may be reduced by communicating relevant facts to the student's parents. (The practical effect of this requirement is that the school may not be able to get parental consent to treatment. In that case, the school need not provide services to the minor.)

3. Security for Program Records

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Written program records must be maintained in a secure room, locked file cabinet, safe or other similar container when not in use. The program must also adopt written procedures on access to written records.

4. Access to Records

Access to said records shall be furnished to the following persons:

- a. Personnel within the program who have a need for the information in connection with their duties that arise out of the provision of diagnosis, treatment, or referral for treatment of alcohol or drug abuse.
- b. Personnel within entity that has direct administrative control over the alcohol or drug abuse program who have a need for the information in connection with their duties that arise out of the provision of diagnosis, treatment or referral for treatment of alcohol or drug abuse.
- c. If the program is not under the school system's direct administrative control, other school personnel cannot have access to the program's records unless the program enters into qualified service organization agreement ("QSOA") with school officials.

(1) QSOA requirements:

- (A) the official provides services to program
- (B) the official acknowledges that he will be bound by the federal confidentiality of the records
- (C) if needed, the official will fight in court to protect the confidentiality of the records
- d. Persons identified in the written consent form signed by both the student and parent (see Appendix B). Federal law requires both student and parent to sign so that it takes precedent over RSA 318B.
- e. Medical personnel to the extent necessary to meet a bona fide medical emergency.
- f. Qualified personnel for the purpose of conducting scientific research, management audits, financial audits or program evaluations.
- g. Persons listed in a court order and subpoena after a court has made a finding of good cause. (The federal regulations, 42 CFR Part 2, list in detail the procedures for court-ordered disclosure.)

5. Procedure Governing Access

- a. The program director shall respond to all requests for access to program records.
- b. In responding to a request for information, the program director cannot acknowledge that a particular student is in the program if the program deals

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only with drug and alcohol abuse. In that situation, the program director should respond to the request by giving the inquiring party a copy of the federal regulations.

- c. Access will be refused or granted depending upon the propriety and validity of the request under the federal statute and regulations.

6. Reports of Suspected Child Abuse and Neglect

The restrictions on disclosure and use of drug or alcohol treatment information do not apply to the reporting under state law of incidents of suspected child abuse and neglect. However, the restrictions do apply to the alcohol or drug abuse patient records maintained by the school program which includes the disclosure and use of the records for civil or criminal proceedings which may arise out of the report of suspected child abuse and neglect.

NOTICE OF RIGHTS

The confidentiality of alcohol and drug abuse patient records maintained by the program is protected by Federal law and regulations. Generally, the program may not say to a person outside the program that a patient attends the program, or disclose any information identifying a patient as an alcohol or drug abuser unless:

- (1) The patient consents in writing;
- (2) The disclosure is allowed by a court order; or
- (3) The disclosure is made to medical personnel in a medical emergency or to qualified personnel for research, audit, or program evaluation.

Violation of the Federal law and regulations by a program is a crime. Suspected violations may be reported to appropriate authorities in accordance with Federal regulations.

Federal law and regulations do not protect any information about a crime committed by a patient either at the program or against any person who works for the program or about any threat to commit such a crime.

Federal laws and regulations do not protect any information about suspected child abuse or neglect from being reported under State law to appropriate State or local authorities (see 42 U.S.C. 290dd-3 and 42 U.S.C. 290ee-3 for Federal laws and 42 CFR Part 2 for Federal regulations).

(Approved by the Office of Management and Budget under Control No. 0930-0099).

This information has been disclosed to you from records protected by Federal confidentiality rules (42 CFR Part 2). The Federal rules prohibit you from making any further disclosure of this information unless further disclosure is expressly permitted by the written consent of the person to whom it pertains or as otherwise permitted by 42 CFR Part 2. A general authorization for the release of medical or other information is NOT sufficient for this purpose. The Federal rules restrict any use of the information to criminally investigate or prosecute any alcohol or drug abuse patient.