Compliance Alert

Updated HIPAA Privacy Notice Required for SUD Records

PROVANT

Updated HIPAA Notice of Privacy Practices Now Available

February 13th, 2026

On Friday, February 13, HHS published a revised model HIPAA Notice of Privacy Practices (NPP) that incorporates newly required language related to Substance Use Disorder (SUD) records as required under 42 CFR Part 2 ("Part 2"). This update reflects the alignment of Part 2 with HIPAA as required by the CARES Act, and it introduces new patient rights and redisclosure limitations related to certain SUD records and that must be reflected in all compliant NPPs as of February 16, 2026.

Note: The updated model NPP does not appear to contain required language warning participants that PHI disclosed in accordance with HIPAA rules may not be protected from redisclosure once that information from the plan is given to an authorized third party.

As required under HIPAA, Covered Entities have 60 days from the date of any material change to their NPP to distribute it to all plan participants. So for example, a Plan that incorporates the new HHS language into their own NPP as of February 16, 2026, must distribute it to participants on or before April 16, 2026.

Applies To:

- Employers sponsoring a fully insured medical, dental, or vision plan that includes claims analytics drill-down data feeds or other access to Protected Health Information (PHI)
- Employers sponsoring a self-insured medical plan to include a level-funded plan, FSA, HRA, or ICHRA, as well as those sponsoring a self-funded dental or vision plan. The requirement also includes any carve-out/bolt-on benefit which is not fully insured and must be "integrated" with the employer's medical plan (telemedicine, fertility, Rx carve-out, etc.)
  (Note, only a self-insured, self-administered health plan with fewer than 50 eligible employees is exempt from HIPAA Privacy & Security rules and NPP.)

Go Deeper:

SUD health care providers are referred to in HIPAA as "Part 2" providers. When they submit claims for payment to a health plan, that is considered Part 2 data subject to stricter requirements on uses and disclosures. When the employer is responsible for distributing the

WHAT'S NEW

HHS released a revised model HIPAA Notice of Privacy Practices reflecting new protections for Substance Use Disorder (SUD) records under 42 CFR Part 2, effective February 16, 2026.

Employers sponsoring self-insured plans or fully insured plans with PHI access must update their NPP to reflect enhanced SUD privacy rights and redisclosure limits.

Covered entities have 60 days from adopting the updated NPP to distribute it to participants.

TAKEAWAY

Employers with self-insured or PHI-access plans should update their HIPAA Notice immediately and prepare for paper distribution by April 16, 2026 — including COBRA and retiree participants — to avoid standard HIPAA penalties.

NPP for a health plan receiving Part 2 SUD data, they must ensure the NPP is updated by February 16, 2026, to reflect new rights and restrictions that apply to SUD data, including the following:

- **Enhanced privacy for SUD records:** Must explain the stricter rules that apply to uses and disclosures of SUD records received from a Part 2 program, and interactions with other laws
- **Restricted access for legal proceedings:** Must require specific consent or a court order to disclose SUD records for a civil, criminal, administrative, legislative, or other legal proceeding *(SUD counseling notes are subject to the same legal restrictions that apply to psychotherapy notes)*
- **Redisclosure warning:** Must warn that properly disclosed SUD PHI may not be protected from redisclosure
- **Fundraising opt-out:** Must provide a clear and conspicuous way to opt-out of fundraising communications tied to SUD records

As stated above, the Covered Entity then has 60 days to redistribute its updated NPP to participants. For full compliance, a paper copy ideally should be furnished unless the individual has explicitly opted into receiving HIPAA notices electronically and has not subsequently revoked their authorization.

Although HIPAA Covered Entities are not required to use the exact language found in the updated notice, it does clarify what HHS deems compliant with these new notice requirements. Even those who do not wish to use the exact HHS text are encouraged to review it carefully as they craft and review their own versions.

Employers who only sponsor fully insured health, dental, and vision plans with no 'hands on' access to PHI, and who also do not sponsor self-funded dental or vision plans, should be able to rely on their insurers, which are the primary Covered Entity responsible for updating their HIPAA Notices.

Penalties for Non-Compliance:

Standard HIPAA penalties apply for failing to comply with the new requirements by the deadline, but given HHS promised employers they would provide model language, it seems reasonable that potential enforcement actions would not go straight to penalty assessment.

Practical Impact to Employers

While time is running out to update the NPP by the February 16 deadline, employers and other responsible individuals have an additional 60 days to distribute the updated version. This may also require updates to some policies and procedures and some training for those handling PHI to understand the extra rights and restrictions for SUD PHI.

HIPAA rules generally require providing the initial distribution of the NPP on paper, including an instance like this of updating the NPP to incorporate new language and therefore making a new updated notice. This can be accomplished by handing it out at work or via mailing to the participant's last known address. Don't forget to include participants enrolled in COBRA, retiree, or other continuation coverage.

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