

Lancaster County Drug & Alcohol Commission Case Management & Clinical Services Policy & Procedure Manual	CMCS # 36b Policy: Elements of a Written Valid Consent Form
Most Current Revision: 07/20/2023 Effective Date: 07/01/2021	Page: 1 of 3

I. Purpose:

To ensure that LCDAC and the LCDAC contracted service providers are utilizing a written valid consent form in accordance to the Federal Regulations Title 42 CFR Part 2 and applicable PA State licensing regulations in order to release information about an individual who currently or formerly is requesting substance use disorder services, is currently or formally been screened, assessed, diagnosed, counseled, treated and rehabilitated for substance use or a substance use disorder.

II. Procedure:

To release any client identifying information, a valid, fully executed voluntary written consent must have been acquired from the individual of which, under the **Federal regulations**, must contain all the following elements:

1. **The full name of the individual.**
2. **The specific name of the person or program permitted to disclose the information.**
3. **The specific name or names of the recipient of the information or entities to which the disclosure is being made (42 CFR 2.3 (a) (4)).**
 - a. It is strongly encouraged to include as much logistical information about the receiving party as is possible (that is: address; contact phone number; identifier)
 - b. It is permissible to list more than one recipient on a single consent form and to authorize disclosures between and among all the parties listed. When doing such multiple-party consents, however, it is important that the "information" and "purpose" and all other elements of the form be the same for all the authorized disclosures.
4. **The purpose of the disclosure (42 CFR 2.31 (a)(5)).**
 - a. The purpose should be narrowly described and should correspond with the information to be released.
 - b. Must ensure the information disclosed is limited to what is necessary to conduct the stated purpose.
 - c. The purpose should never be as broad as "for all client care."
5. **The information to be released (42 CFR 2.31 (a) (3)).**
 - a. The information should be described as exactly and narrowly as possible considering the purpose of the release.
 - b. Must specify how much and what kind of information is to be disclosed, including an explicit description of the SUD information that may be disclosed.
 - c. Releases for "any and all pertinent information" are not valid.

- 6. That the individual understands that he or she may revoke the consent at any time - orally or in writing- except to the extent that action has been taken in reliance on it.**
 - a. A statement on the consent form must be included that states the consent is subject to revocation at any time except to the extent that the lawful holder of the patient identifying information that is permitted to make the disclosure has already acted in reliance on it. Acting on reliance includes the provision of treatment service in reliance on a valid consent to disclose information to a third-party payer (42 CFR 2.31 (a)(6)).
 - b. A consent for an individual referred by the criminal justice system, however, may be made irrevocable for a specific period of time and/or condition (§ 2.35).
 - c. When an individual contacts LCDAC and/or a LCDAC contracted service provider in writing or orally to revoke a consent form, LCDAC and/or the LCDAC contracted service provider will revert to their written policy on how to document a revoked consent request.
- 7. The date, event, or condition upon which the consent expires, if it has not been revoked earlier.**
 - a. This date, event, or condition **MUST** ensure that the consent will last no longer than reasonably necessary to serve the purpose for which it is provided (42 CFR 2.31 (a)(7)).
- 8. The date the consent form is signed.**
- 9. The signature of the individual.**
- 10. A written notice prohibiting redisclosure (42 CFR 2.32)**
 - a. The written statement, which can be in the form of a separate sheet of paper or a rubber stamp on the disclosed document or a statement on the disclosed document, warns the recipient that the information disclosed is protected by Federal law and may not be redisclosed except with the individual's written consent or under other acceptable authorization; as outlined in 42 CFR Part 2.
 - b. The language in the warning must be identical to that set forth in § 2.32 of the regulations.
 - c. The prohibition on redisclosure notice must be sent to the recipient even if the disclosure was made orally.

IN ADDITION, the following TWO PA State licensing elements are REQUIRED:

- 11. Documentation that the individual was offered a copy of the consent form (28 PA CODE 709.28 (c)(5))**
 - a. This may be placed directly on the consent form.
 - b. If this information is NOT included on the consent form, it **MUST** be documented in the case note that the individual was offered a copy, who offered the copy, the date the copy was offered, the specific consent that was offered, and whether the individual accepted or rejected a copy.
 - c. The case note may be required to be provided anytime at an LCDAC site visit for verification.

All fully executed written valid signed consents must be maintained in the individual's record and must be made available upon request by LCDAC.

All fully executed written valid signed consents are considered legally binding documents and, as such, indicated that the individual was given the information necessary to make an informed decision as to

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whether it is in their best interest to sign the consent. Therefore, at the time consents are being reviewed, the federal law and regulations that protect the confidentiality of SUD records must be communicated to the individual. A written summary of the federal law and regulations is to be provided to the individual that must include the elements found in 42 CFR 2.22.

For those instances where an individual chooses not to sign a consent, a case note is expected to be completed indicating what consent the individual opted not to complete, the information provided to the individual if the consent may have dire consequences for choosing not to complete it, what examples were provided that may ensue for choosing not to sign the consent, and that the individual was reminded that a consent may be completed at any time; as well as it may be revoked at any time.

Case notes and/or miscellaneous notes documenting the release of any/all the individual's information must be maintained and must include documentation that the individual was informed and/or an attempt was made to inform the individual if/when the individual's information was released.

All related notes documenting the release of the individual's information must be made available upon request by LCDAC.

Approved By:



Rick Kastner LCDAC Executive Director

07/20/2023

Date