



## Privacy Law and Pre-Arrest Diversion

*The purpose of this resource is to promote discussion around privacy law as it relates to the emerging field of pre-arrest diversion. This resource is not meant to comment on the current legal landscape, but rather provide direct access to federal and state privacy laws. This content is not intended to be comprehensive and is for informational purposes only. Contact your attorney to obtain advice with respect to any privacy issues.*

Coordinating systems of care between the criminal justice system, treatment providers, and first responders is more important than ever in light of the growing popularity of pre-arrest diversion to rehabilitative services in lieu of arrest and incarceration.

While laws such as HIPAA, 42 CFR Part 2, and state privacy laws protect sensitive health information and privacy, each system of care has its own nuanced regulations. This poses challenges to inter-agency coordination that is vital to rapidly linking individuals to care without delay or gaps in communication.

Prior to developing information-sharing policies, waivers, memoranda of understanding, consents, releases of information, and business associate/qualified service organization agreements, organizations must ensure that all local, state, and federal laws and ethical considerations are observed. Some additional considerations include: federal, state, and local licensure requirements; institutional policies; professional codes of ethics; the needs of those who receive services; first responders; treatment providers; and all other pre-arrest diversion partners.

Various jurisdictions, municipalities, and communities across the country are taking action and have formulated a means to share information across agencies in ways that help provide quick and effective linkages to services while still taking into consideration the need to protect confidential health information and privacy.

### **Health Insurance Portability and Accountability Act (HIPAA):**

- [HIPAA Combined Regulation Text](#) (45 CFR Part 160, Part 162, and Part 164)
- [Summary of the HIPAA Privacy Rule](#)
- [A more extensive summary](#) of the HIPAA Privacy Rule
- [HIPAA Guidance Materials](#) (Help on Applying the Law)
- [HIPAA and Mental Health and Opioid Overdose](#)

### **42 CFR Part 2 (Confidentiality of Substance Use Disorder Patient Records):**

- [42 CFR Part 2 Regulation Text](#)
- [42 CFR Part 2 Federal Register](#)
- 42 CFR Part 2 [Resources](#)
- [FAQs and Fact Sheets](#) for Substance Abuse Confidentiality Regulations
- [American Society of Addiction Medicine: Confidentiality](#) (42 CFR Part 2)