

to support the judgment of the physician to prescribe certain alternate medications in order to avoid possible drug interactions in view of the patient's enrollment and treatment in a non-VA methadone maintenance program. The patient states that continued treatment and follow-up will be obtained from private physicians and VA treatment for the drug abuse is not sought by the patient nor provided or offered by the staff.

(iv) A patient is admitted to the emergency room suffering from a possible drug overdose. The patient is treated and released; a history and diagnosis of drug abuse may be documented in the hospital summary. The patient is not offered treatment for the underlying conditions of drug abuse, nor is treatment sought by the patient for that condition.

Third party payer. The term "third party payer" means a person who pays, or agrees to pay, for diagnosis or treatment furnished to a patient on the basis of a contractual relationship with the patient or a member of his or her family or on the basis of the patient's eligibility for Federal, State, or local governmental benefits.

Treatment. The term "treatment" means the management and care of a patient for drug abuse, alcoholism or alcohol abuse, infection with the human immunodeficiency virus, or sickle cell anemia, or a condition which is identified as having been caused by one or more of these conditions, in order to reduce or eliminate the adverse effects upon the patient. The term includes testing for the human immunodeficiency virus or sickle cell anemia.

Undercover agent. The term "undercover agent" means an officer of any Federal, State, or local law enforcement agency who becomes a patient or employee for the purpose of investigating a suspected violation of law or who pursues that purpose after becoming a patient or becoming employed for other purposes.

(Authority: 38 U.S.C. 7334)

§ 1.461 Applicability.

(a) General.

(1) **Restrictions on disclosure.** The restrictions on disclosure in these regulations apply to any information whether or not recorded, which:

(i) Would identify a patient as an alcohol or drug abuser, an individual tested for or infected with the human immunodeficiency virus (HIV), hereafter referred to as HIV, or an individual with sickle cell anemia, either directly, by reference to other publicly available information, or through verification of

such an identification by another person; and

(ii) Is provided or obtained for the purpose of treating alcohol or drug abuse, infection with the HIV, or sickle cell anemia, making a diagnosis for that treatment, or making a referral for that treatment as well as for education, training, evaluation, rehabilitation and research program or activity purposes.

(2) **Restriction on use.** The restriction on use of information to initiate or substantiate any criminal charges against a patient or to conduct any criminal investigation of a patient applies to any information, whether or not recorded, which is maintained for the purpose of treating drug abuse, alcoholism or alcohol abuse, infection with the HIV, or sickle cell anemia, making a diagnosis for that treatment, or making a referral for that treatment as well as for education, training, evaluation, rehabilitation, and research program or activity purposes.

(b) **Period covered as affecting applicability.** The provisions of §§ 1.460 through 1.499 of this part apply to records of identity, diagnosis, prognosis, or treatment pertaining to any given individual maintained over any period of time which, irrespective of when it begins, does not end before March 21, 1972, in the case of diagnosis or treatment for drug abuse; or before May 14, 1974, in the case of diagnosis or treatment for alcoholism or alcohol abuse; or before September 1, 1973, in the case of testing, diagnosis or treatment of sickle cell anemia; or before May 20, 1988, in the case of testing, diagnosis or treatment for an infection with the HIV.

(c) Exceptions.

(1) **Department of Veterans Affairs and Armed Forces.** The restrictions on disclosure in §§ 1.460 through 1.499 of this part do not apply to communications of information between or among those components of VA who have a need for the information in connection with their duties in the provision of health care, adjudication of benefits, or in carrying out administrative responsibilities related to those functions, including personnel of the Office of the Inspector General who are conducting audits, evaluations, healthcare inspections, or non-patient investigations, or between such components and the Armed Forces, of information pertaining to a person relating to a period when such person is or was subject to the Uniform Code of Military Justice. Information obtained by VA components under these circumstances may be disclosed outside of VA to prosecute or investigate a non-patient only in accordance with § 1.495

of this part. Similarly, the restrictions on disclosure in §§ 1.460 through 1.499 of this part do not apply to communications of information to the Department of Justice or U.S. Attorneys who are providing support in civil litigation or possible litigation involving VA.

(2) **Contractor.** The restrictions on disclosure in §§ 1.460 through 1.499 of this part do not apply to communications between VA and a contractor of information needed by the contractor to provide his or her services.

(3) **Crimes on VA premises or against VA personnel.** The restrictions on disclosure and use in §§ 1.460 through 1.499 of this part do not apply to communications from VA personnel to law enforcement officers which:

(i) Are directly related to a patient's commission of a crime on the premises of the facility or against personnel of VA or to a threat to commit such a crime; and

(ii) Are limited to the circumstances of the incident, including the patient status of the individual committing or threatening to commit the crime, that individual's name and address to the extent authorized by 38 U.S.C. 5701(f)(2), and that individual's last known whereabouts.

(4) Undercover agents and informants.

(i) Except as specifically authorized by a court order granted under § 1.495 of this part, VA may not knowingly employ, or admit as a patient, any undercover agent or informant in any VA drug abuse, alcoholism or alcohol abuse, HIV infection, or sickle cell anemia treatment program.

(ii) No information obtained by an undercover agent or informant, whether or not that undercover agent or informant is placed in a VA drug abuse, alcoholism or alcohol abuse, HIV infection, or sickle cell anemia treatment program pursuant to an authorizing court order, may be used to criminally investigate or prosecute any patient unless authorized pursuant to the provisions of § 1.494 of this part.

(iii) The enrollment of an undercover agent or informant in a treatment unit shall not be deemed a violation of this section if the enrollment is solely for the purpose of enabling the individual to obtain treatment for drug or alcohol abuse, HIV infection, or sickle cell anemia.

(d) Applicability to recipients of information.

(1) **Restriction on use of information.** In the absence of a proper § 1.494 court order, the restriction on the use of any information subject to §§ 1.460 through 1.499 of this part to initiate or