

## Long-Term Care Survey Alert

### What Do You Think?: Does a Nursing Facility Have to Treat Psych or Substance Abuse Records Differently Under HIPAA or Other Laws?

Question: Are we required to handle medical records requested from a psychiatric or substance abuse provider differently than other medical records? Also, should we treat our own medical records involving mental health interventions provided in the facility differently -- for example, behavioral care planning and interventions, etc.?

Answer: "Generally, records relating to mental health care provided in the facility do not need to be treated differently than other records, particularly if it is just behavioral care plans, etc. But this is an area where state law would control," says attorney **Heather Berchem**, partner, with Murtha Cullina LLP, in New Haven, Conn.

"The question regarding records obtained from a substance abuse treatment facility is somewhat complicated. Records generated by a 'federally assisted alcohol or drug abuse program' are protected under federal law," says Berchem. (Editor's note: To review the definition of such a program, go to [www.samhsa.gov/healthprivacy/docs/EHR-FAQs.pdf](http://www.samhsa.gov/healthprivacy/docs/EHR-FAQs.pdf).)

"All records sent out from a federally assisted alcohol or drug abuse program," says Berchem, "must include a notice stating that the information is protected by federal confidentiality rules, which prohibit the recipient from making any further disclosure of the information without the express written consent of the person to whom it pertains except under very limited exceptions."

Key: "A general authorization for the release of medical information is NOT sufficient," Berchem stresses. "Therefore, if a nursing home receives records from an entity which meets the definition of a federally assisted drug or alcohol abuse program, it should identify those documents separately to ensure that they are not released without specific authorization from the patient."