NEW YORK STATE | Office of Alcoholism and Substance Abuse Services

NYS Substance Use Disorder Symposium
Confidentiality of Patient Information

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42 CFR Part 2

- Confidentiality of Substance Use Disorder Patient Records regulations (42 CFR Part 2) implements federal drug and alcohol confidentiality law (42 U.S.C. §290dd-2).

- The law and regulations are the result of concerns about the potential use of SUD information against an individual.

Legal Protections

- A patient receiving SUD treatment in a Part 2 program is not made more vulnerable than an individual who does not seek treatment.

- Breach of the confidentiality can still lead to civil and criminal consequences. Loss of employment, housing, child custody, discrimination by medical professionals and insurers; arrest, prosecution and incarceration.

Legal Protections

- **Protected Individuals:**

  Protects patients who applied for, participated in, or received an interview, counseling or any other service from a substance use program;

- **Uses and Disclosures:**

  42 CFR Part 2 defines “disclosure” as any communication of information about an identified patient or information that would identify someone as a patient including verification of information that is already known by the person making the inquiry.

Limited Exceptions for Disclosure Without Consent

- Communications with a qualified service organization (QSO) of information needed by the organization to provide services to the program;
- Scientific research;
- Audits and evaluations;
- Child abuse reporting;
- Medical emergencies;
- Crimes on program premises or against program personnel;
- Court order

Recent Revisions

- Revised rule is intended to modernize the Part 2 rules by facilitating the electronic exchange of SUD information for treatment and other legitimate health care purposes while ensuring appropriate confidentiality protections for records that might identify an individual, directly or indirectly, related to their SUD treatment.

Revised Consent Requirements

- Previously the name or title of an individual or the name of the organization to which the disclosure could be made was listed in the “to whom” section.

- The Rule now makes a distinction between those with and without a “treating provider relationship” with the patient.

- Under the final rule there are more options to filling out the “to whom” section.

Revised Consent Requirements

- Any of the following can now be listed in the “to whom” section:

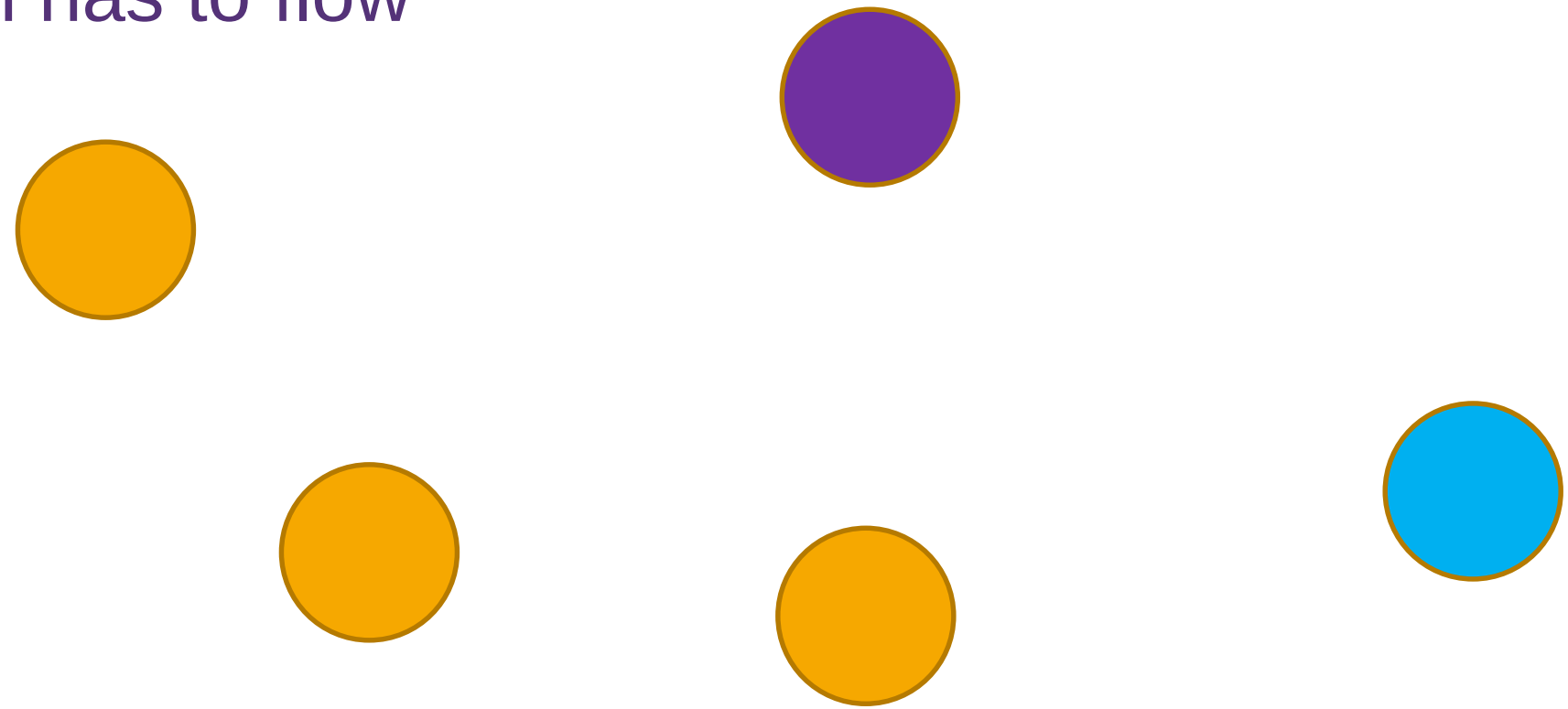
- The name of an individual;
- The name of an entity which has a “treating provider relationship” with the patient;
- The name of an entity which the patient does not have a treating provider relationship and which is not a third-party payer (such as a health information exchange), plus either:
  - The name(s) of specific individual participant(s), or
  - The name(s) of an entity participant(s) with which the patient has a treating provider relationship, or
  - A general designation of participants with which the patient has a treating provider relationship (e.g., “all my treating providers”).

Revised Consent Requirements

- Patients who have included a general designation on their consent form must be provided a list of entities to whom their information has been disclosed pursuant to a general designation (List of Disclosures) during the previous two years.

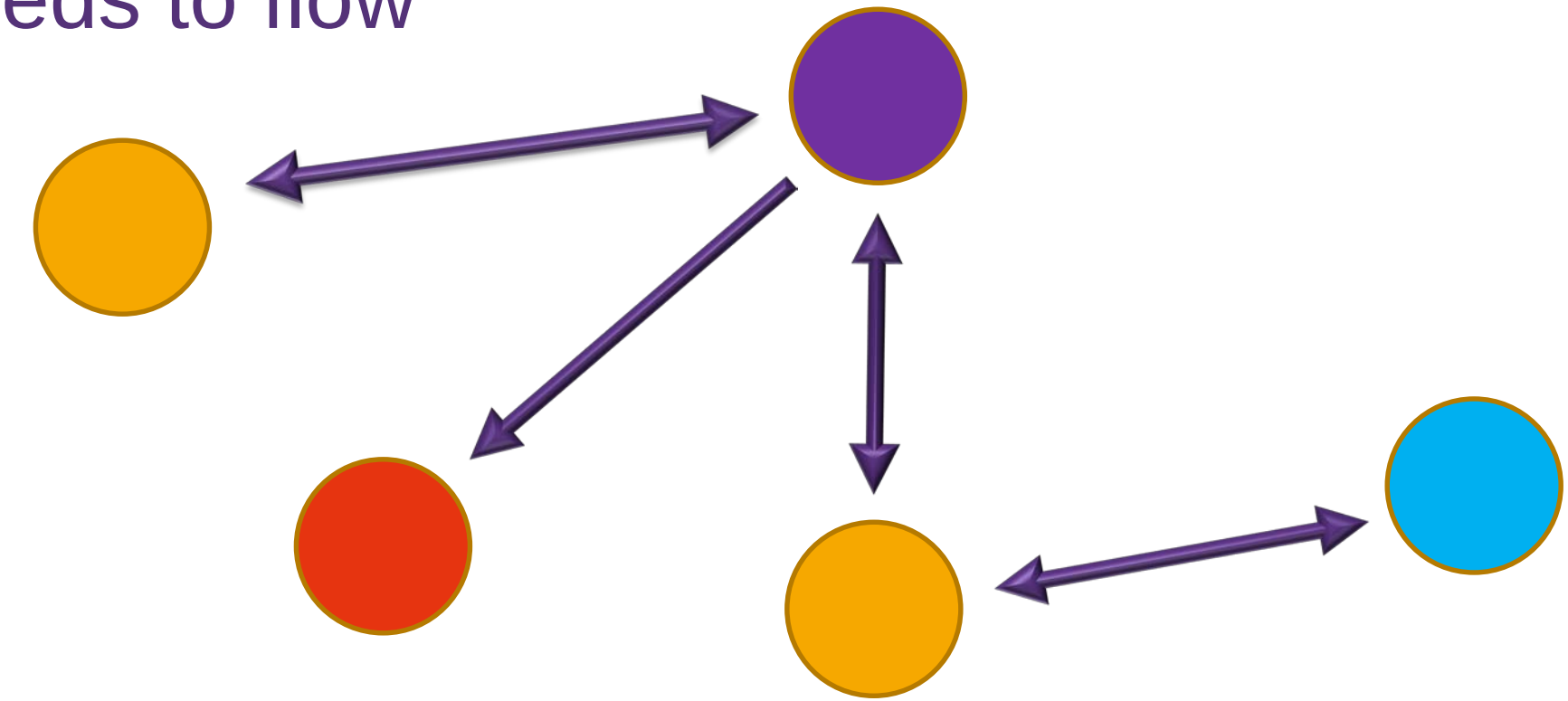
Consent is Key

- Determine the relevant participants and how the information has to flow



Consent is Key

- Determine what information is necessary and
- how it needs to flow



Consent is Key

- Consent should be obtained as early as possible in the process

- Multiple party/Multiple use consents are legally permissible

Contact Information

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