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# PARTNERSHIP TO AMEND 42 CFR PART 2

*A COALITION OF OVER 40 HEALTH CARE STAKEHOLDERS COMMITTED TO ALIGNING 42 CFR PART 2 (PART 2) WITH HIPAA TO ALLOW APPROPRIATE ACCESS TO PATIENT INFORMATION THAT IS ESSENTIAL FOR PROVIDING WHOLE-PERSON CARE.*

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February 16, 2018

The Honorable Orrin Hatch, Chairman  
U.S. Senate Committee on Finance  
219 Dirksen Senate Office Building  
Washington, DC 20510

The Honorable Ron Wyden, Ranking Member  
U.S. Senate Committee on Finance  
219 Dirksen Senate Office Building  
Washington, DC 20510

Dear Chairman Hatch and Ranking Member Wyden:

On behalf of the Partnership to Amend 42 CFR Part 2 (Partnership), I appreciate the opportunity to respond to your request for feedback on the opioid epidemic. The Partnership strongly urges you to modernize outdated substance use disorder privacy regulations as you consider bipartisan legislation to combat the opioid crisis.

The Partnership is a coalition of over 40 health care stakeholders committed to aligning 42 CFR Part 2 (Part 2) with the Health Insurance Portability and Accountability Act (HIPAA) for the purposes of treatment, payment, and health care operations (TPO) to allow appropriate access to patient information that is essential for providing whole-person care. We fully support maintaining patient privacy protections that currently exist.

Part 2, the federal regulations governing the confidentiality of drug and alcohol treatment and prevention records, sets requirements limiting the use and disclosure of patients' substance use records from federally assisted entities or individuals that hold themselves out as providing, and do provide, alcohol or drug use diagnosis, treatment, or referral for treatment. Question 6 in your letter asks about improving data sharing and coordination between Medicare, Medicaid, and state initiatives; amending Part 2 is one way to improve the sharing of information to improve patient care and safety.

Obtaining multiple consents from the patient is challenging and creates barriers to whole-person, integrated approaches to care, which are part of our current health care framework. Part 2 regulations may lead to a doctor treating a patient and writing prescriptions for opioid pain medication for that individual without knowing the person has an opioid use disorder. Separation of substance use from the rest of medicine increases the stigma around the disease and hinders patients from receiving safe, effective, high quality substance use treatment and integrated care.

Electronic health records and value-based payment models such as Accountable Care Organizations (ACOs), Health Information Exchanges (HIEs), Medicaid Health Homes, and related Medicare and Medicaid integrated care programs were designed to create a more holistic, patient-centered approach to health care where providers work together to coordinate across their traditional silos. In some cases,

these providers are held jointly accountable for the quality, outcomes, and cost of that care. Critical to making these new models work for patients is having access to the individuals' entire health records, including their addiction record. CMS provides participating providers of Medicare ACO and bundled payment organizations with monthly Medicare Parts A, B, and D claims under data use agreements that include criminal penalties for misuse. Yet, due to antiquated substance use disorder regulations, CMS is required to remove all claims where substance use disorder is a primary or secondary diagnosis.

The Substance Abuse and Mental Health Services Administration (SAMHSA) released two final rules on Part 2 in the past year. Both rules take small steps to modernize Part 2, but they do not go far enough. Legislative action is also necessary in order to modify Part 2 and bring substance use records into the 21<sup>st</sup> Century. Aligning Part 2 requirements with those in HIPAA regulation that allow the use and disclosure of patient information for TPO would improve patient care by ensuring that providers and organizations with a direct treatment relationship with a patient have access to his or her complete medical record. Without access to a complete record, providers cannot properly treat the whole person and may, unknowingly, endanger a person's recovery and his or her life.

Harmonization of Part 2 with HIPAA would also increase care coordination and integration among treating providers and other entities in communities across the nation. We support provisions that preclude Part 2 information from being disclosed for non-treatment purposes to law enforcement, employers, landlords, divorce attorneys, or others seeking to use the information against the patient. We do not want consumers to be made vulnerable as a result of seeking treatment for a substance use disorder. However, disclosures of substance use disorder records for treatment, payment, and health care operations must be allowed.

The Protecting Jessica Grubb's Legacy Act, S. 1850, co-sponsored by Senators Shelley Moore Capito (R-WV) and Joe Manchin (D-WV), would align Part 2 with HIPAA for the purposes of TPO and strengthen protections against the use of substance use disorder records in criminal proceedings. We recommend inclusion of this legislation in any opioid package your Committee considers.

Additionally, Part 2 undermines the intent of the PDMPs to aggregate information and make it available in a timely manner to inform clinical decision making. For example, a pharmacy that receives an e-prescription from a Part 2 program must attain patient consent to send that information to a PDMP. Patient consent is also required for the PDMP to redisclose that information to others with access to the PDMP.

Thank you again for seeking input on this important issue. We look forward to working with you and your staff to address the opioid crisis. Attached, you will find a document about the Partnership, which includes the list of the coalition's member organizations. If you have any questions or would like to discuss this issue further, please contact me at (202) 449-7660 or [klein@abhw.org](mailto:klein@abhw.org).

Sincerely,



Rebecca Murow Klein, Chair  
Partnership to Amend 42 CFR Part 2

Attachment: Partnership to Amend 42 CFR Part 2