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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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April 11, 2018

The Honorable Lamar Alexander, Chairman  
U.S. Senate Committee on Health, Education, Labor,  
and Pensions  
455 Dirksen Senate Office Building  
Washington, DC 20510

The Honorable Patty Murray, Ranking Member  
U.S. Senate Committee on Health, Education, Labor  
and Pensions  
154 Russell Senate Office Building  
Washington, DC 20510

Dear Chairman Alexander and Ranking Member Murray,

The Partnership to Amend 42 CFR Part 2 (Partnership) thanks you for releasing draft legislation to combat the opioid crisis. We appreciate the Committee's continued leadership in working toward positive solutions for this growing 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 health care treatment, payment, and operations (TPO). We urge you to include the Protecting Jessica Grubb's Legacy Act, S. 1850, which would align Part 2 with HIPAA, in the final version of your opioid legislation.

Part 2, federal regulations that govern confidentiality of drug and alcohol treatment and prevention records, sets requirements limiting the use and disclosure of patients' substance use records from certain substance use programs. Patients are required to give multiple consents, creating a barrier for integration and coordination of health care. A lack of access to the full scope of medical information for each patient can result in the inability of providers and organizations to deliver safe, high-quality treatment and care coordination. The barriers presented by Part 2 can result in the failure to integrate services and can lead to potentially dangerous medical situations.

Alignment of Part 2 with HIPAA will allow appropriate access to patient information that is essential for providing whole-person care. The Partnership strongly believes that the modernization of privacy regulation and medical records for people with substance use disorder (SUD) will improve the ability of providers and payers to combat the opioid crisis.

In addition to aligning Part 2 with HIPAA for TPO, S. 1850 would strengthen protections around criminal proceedings by only allowing disclosure to law enforcement with a court order; prohibiting disclosure to initiate or substantiate any criminal charges against a patient or to conduct an investigation against a patient; and excluding from evidence in any proposed criminal proceedings any SUD patient record that is mistakenly, wrongfully, or intentionally used or disclosed in violation of the above and provide for automatic dismissal of any proceeding in which the content of the SUD treatment record was offered.

It is important that alignment of Part 2 includes treatment, payment, *and* health care operations. Partial alignment of Part 2 would be problematic for a number of reasons. Care coordination is not considered treatment under HIPAA. The 2018 Substance Abuse and Mental Health Services Administration (SAMHSA) final rule specifically excludes care coordination from the definition of health care operations, so if HIPAA alignment is adopted for treatment but defers to the SAMHSA definition of health care operations, care coordination will continue to be hindered.

It is impossible for a Part 2 program to obtain consents for all of its operational activities and every person that may touch its data in the completion of these activities. Therefore, most Part 2 programs have had to run at risk for years to engage in basic quality activities, achieve accreditation status, and maintain operations. Health care operations activities include conducting quality assessment and improvement activities, population-based activities relating to improving health or reducing health care

costs, case management, and care coordination. The use of patient data for operations in a health care organization is expected and often a requirement of the myriad of licensing, accreditation standards, and best practices.

Critics of aligning Part 2 with HIPAA, such as Dr. Westley Clark who recently testified before your Committee, say harmonization could result in discouraging individuals with SUD from seeking treatment. There is little evidence to suggest medical record privacy laws are a major deciding factor for people entering treatment. Opponents also suggest that alignment of Part 2 is simply for the convenience of providers and insurers, rather than for protection of the patient. One of the main concerns of the Partnership is the integration and coordination of care in order for patients to receive the best treatment possible. Lack of information in a patient's record can be dangerous for the patient, whereas integration of SUD records and a complete patient medical record can improve patient safety.

SAMHSA recently released two final rules which take some 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. We thank you for considering adding S. 1850 to the Opioid Crisis Response Act of 2018 and for your Committee's work in combating the opioid crisis.

Sincerely,



Co-Chair  
Partnership to Amend 42 CFR Part 2

Attachment