
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.

April 23, 2018

The Honorable Greg Walden, Chairman
House Committee on Energy & Commerce
2125 Rayburn House Office Building
Washington, DC 20515

The Honorable Frank Pallone, Ranking Member
House Committee on Energy & Commerce
2322A Rayburn House Office Building
Washington, DC 20515

Dear Chairman Walden and Ranking Member Pallone:

On behalf of the Partnership to Amend 42 CFR Part 2, the undersigned organizations thank you for holding many hearings on the opioid crisis and putting forth thoughtful legislation to address this epidemic. The Committee on Energy and Commerce hearings have covered many challenges facing states and communities, patients, providers, and payors across the country.

As you mark-up your opioid package, we would like to highlight the importance of including H.R. 3545, the Overdose Protection and Patient Safety (OPPS) Act, sponsored by Representatives Markwayne Mullin and Earl Blumenauer. The OPPS Act would align 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).

Part 2 was enacted more than 20 years before HIPAA and 40 years prior to the utilization of electronic health care records. While different treatment of substance use disorder (SUD) records were important in the 1970's, Congress went on to enact HIPAA in 1996, which allows for the sharing of medical records without an authorization for TPO. Ready access to treatment and efficient payment for health care are essential to the effective operation of our health care system. Additionally, certain health care operations, such as administrative, financial, and quality improvement activities, are essential to support treatment and payment. Aligning Part 2 with HIPAA for purposes of treatment alone would not allow for care coordination, payment to providers, or fraud and abuse detection without an authorization. HIPAA applies to every single illness, including other stigmatized diseases like mental health, HIV/AIDS, and SUD. However, because HIPAA sets the "floor" or minimum protections for health information, the overly-stringent restrictions imposed under Part 2 supersede HIPAA and prevent alignment with all other health care conditions.

The members of the coalition are committed to quality care and protecting patients' privacy and believe that can be achieved by aligning Part 2 with HIPAA for the purposes of TPO. H.R. 3545 maintains all of the protections against the use of SUD records outside of TPO, including in criminal proceedings or investigations, currently in Part 2 and in fact, strengthens them. For example, it currently is not, and is not under H.R. 3545, legal to share an individual's SUD record with an employer, law enforcement, or a landlord. Further, H.R. 3545 will require the automatic dismissal of any criminal proceeding or investigation based upon a SUD record that was not properly obtained using the longstanding court order process set forth under Part 2. Additionally, under current law the penalty for misusing or sharing information covered under Part 2 is from \$500 to \$5,000. If Part 2 is aligned with HIPAA, the penalties will range from \$100 to \$1.5 million, providing a much stronger recourse if any wrongdoing occurs.

We believe changing Part 2 to align with the HIPAA standard of care for TPO is essential in order to integrate care, stop opioid prescriptions from getting into the hands of individuals with a SUD, and to ensure many of the proposals being considered by the Committee on Energy and Commerce can achieve their intended goals.

Sincerely,

Academy of Managed Care Pharmacy (AMCP)
American Association on Health and Disability
American Health Information Management Association (AHIMA)
American Hospital Association
American Psychiatric Association
American Society of Addiction Medicine
American Society of Anesthesiologists
America's Health Insurance Plans
AMGA
Association for Ambulatory Behavioral Healthcare
Association for Behavioral Health and Wellness
Association for Community Affiliated Plans
Catholic Health Association of the U.S.
Centerstone
Global Alliance for Behavioral Health and Social Justice
Hazelden Betty Ford Foundation
Health IT Now
Healthcare Leadership Council
InfoMC
Mental Health America
National Alliance on Mental Illness
National Association for Behavioral Healthcare
National Association of ACOs
National Association of State Mental Health Program Directors (NASMHPD)
Netsmart
OCHIN
Otsuka America Pharmaceutical, Inc.
Premier
The Joint Commission