
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 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:

On behalf of the Partnership to Amend 42 CFR Part 2, a coalition of stakeholder organizations committed to aligning Part 2 with the Health Insurance Portability and Accountability Act (HIPAA) to allow appropriate access to patient information that is essential for providing whole-person care, we would like to thank you for holding many hearings on the opioid crisis and putting forth legislation to address this epidemic.

As you mark-up your opioid package, the undersigned organizations strongly urge you to add the Protecting Jessica Grubb's Legacy Act, S. 1850, co-sponsored by Senators Shelley Moore Capito (R-WV) and Joe Manchin (D-WV), to S. 2680, The Opioid Crisis Response Act of 2018. S. 1850 would align Part 2 with HIPAA for the purposes of health care treatment, payment, and operations (TPO) and strengthen protections against the use of substance use disorder records in criminal proceedings. If S. 1850 is not added to S. 2680 we are missing an opportunity to ensure coordinated care for individuals with a substance use disorder (SUD) and to save lives. Without the changes envisioned by S. 1850 treating providers may not see the entire medical record of an individual with an addiction. This means that the individual may be prescribed an opioid to treat their pain without the provider knowing that the individual has a history of addiction; the end result could be relapse or worse yet, death.

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 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. 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. S. 1850 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 S. 1850, legal to share an individual's SUD record with an employer, law enforcement, or a landlord. Further, S. 1850 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 Health, Education, Labor, and Pensions 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