



THE PARTNERSHIP TO AMEND

42 CFR PART 2

May 6, 2021

The Honorable Xavier Becerra
Secretary
U.S. Department of Health and Human Services
Office for Civil Rights
Hubert H. Humphrey Building
200 Independence Avenue, SW
Washington, DC 20201

Re: Proposed Modifications to the HIPAA Privacy Rule to Support and Remove Barriers to Coordinated Care and Individual Engagement NPRM [RIN 0945-AA00]

Dear Nominee Becerra,

The Partnership to Amend 42 CFR Part 2 (Partnership) appreciates the opportunity to comment on the Proposed Modifications to the Health Insurance Portability and Accountability Act (HIPAA) Privacy Rule (proposed rule). Our comments are outlined below.

The Partnership is a coalition of nearly 50 organizations committed to aligning 42 CFR Part 2 (Part 2) with the disclosure requirements of the Health Insurance Portability and Accountability Act (HIPAA) for the purposes of treatment, payment, and health care operations (TPO).

Coordinated, integrated medical and behavioral healthcare improves outcomes and is cost-effective.¹ Individuals with SUDs are at a distinct disadvantage over other patients, as providers cannot deliver the informed, coordinated care that is the cornerstone of integrated delivery system models. One way to significantly allow for better coordination is to ensure that patient records flow between providers and caregivers with limited road blocks. We are therefore overall supportive of the intent of the proposed rule. Specifically, we agree that patients should have access to their records and data should flow easily between providers, plans, and patients. However, there are a number of areas where we see concerns.

¹ Croze, Colette. *Healthcare Integration in the Era of the Affordable Care Act*, Association for Behavioral Health and Wellness, July 2015. <http://box5595.temp.domains/~abhworg/sample/wp-content/uploads/2019/06/IntegrationPaper-1.pdf>, last visited December 9, 2020.

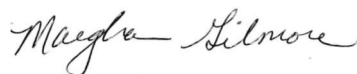
Considerations for replacing “professional judgment” with “good faith belief”. The proposed rule will allow providers to share PHI in an emergency with a “good faith belief”. We believe the intent of this change is to lessen the burden on the flow of information, a concept with which we agree. However, we also believe that there may be some unintended negative consequences, particularly in the cases of patients receiving treatment for SUDs. For example, other proposed changes allow for movement of protected health information to parties that are not governed by HIPAA. As such, we urge HHS to clearly define the parameters of “good faith belief” and clarify that patient privacy will not be impacted by this change.

The changes in the proposed rule may still conflict with state laws. We applaud the numerous provisions in the proposed rule which aim to remove barriers to data sharing for care coordination as there is a strong need for the integration of care to deliver services that treat an individual holistically. However, it is prudent to note that state level restrictions may pose as barriers to the data sharing the proposed rule hopes to achieve. This is particularly true for SUD treatment. As such, we recommend that HHS explore, in conjunction with the states and stakeholders, policy mechanisms for promoting the use of behavioral health data for care coordination purposes when state privacy laws may impose restrictions beyond both Part 2 and HIPAA.

Expediently promulgate updated Part 2 Rules as required by the CARES Act. While not directly addressed in this proposed rule, it is prudent to highlight the need for uniformity. SUD records should be shared for the purposes of TPO without unnecessary administrative burdens, to ensure patients receive the treatment they need without delays or gaps in care. Additionally, patient privacy must continue to be strongly safeguarded. Therefore, to minimize administrative burdens without sacrificing patient privacy, the Partnership advocates for HHS to promulgate rules pursuant to the CARES Act of 2020, which would more closely align Part 2 with the requirements of HIPAA.

Conclusion. Thank you for the opportunity to comment on this important proposed rule. Please feel free to contact Deepti Loharikar, Director of Regulatory Affairs, at loharikar@abhw.org or (202) 505-1834 with any questions.

Sincerely,



Maeghan Gilmore, MPH
Chairperson, Partnership to Amend 42 CFR Part 2

Members of the Partnership

Academy of Managed Care Pharmacy · Alliance of Community Health Plans · American Association on Health and Disability · American Health Information Management Association · American Hospital Association · American Psychiatric Association · American Society of Addiction Medicine · American Society of Anesthesiologists · America's Essential Hospitals · America's Health Insurance Plans · AMGA · Association for Ambulatory Behavioral Healthcare · Association for Behavioral Health and Wellness · Association for Community Affiliated Plans · Association of Clinicians for the Underserved · Blue Cross Blue Shield Association · The Catholic Health Association of the United States · Centerstone · College of Healthcare Information Management Executives · Confidentiality Coalition · Employee Assistance Professionals Association · Global Alliance for Behavioral Health and Social Justice · Hazelden Betty Ford Foundation · Healthcare Leadership Council · InfoMC · The Joint Commission · The Kennedy Forum · Medicaid Health Plans of America · Mental Health America · National Alliance on Mental Illness · National Association for Behavioral Healthcare · National Association for Rural Mental Health · National Association of ACOs · National Association of Addiction Treatment Providers · National Association of Counties · National Association of County Behavioral Health and Development Disability Directors · National Association of State Mental Health Program Directors · National Rural Health Association · Netsmart · OCHIN · Opioid Safety Alliance · Otsuka America Pharmaceutical, Inc. · Primary Care Collaborative · Pharmaceutical Care Management Association · Premier Healthcare Alliance · Population Health Alliance · Smiths Medical · Strategic Health Information Exchange Collaborative