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# PARTNERSHIP TO AMEND 42 CFR PART 2

*A COALITION OF NEARLY 50 HEALTH CARE STAKEHOLDERS COMMITTED TO ALIGNING 42 CFR PART 2 (PART 2) WITH HIPAA FOR TREATMENT, PAYMENT, AND HEALTH CARE OPERATIONS (TPO) TO ALLOW APPROPRIATE ACCESS TO PATIENT INFORMATION THAT IS ESSENTIAL FOR PROVIDING WHOLE-PERSON CARE.*

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February 8, 2019

The Honorable Roger Severino  
Director, Office for Civil Rights  
U.S. Department of Health and Human Services  
Hubert H. Humphrey Building, Room 509F  
200 Independence Avenue, SW  
Washington, DC 20201  
Attention: RFI, RIN 0945-AA00

Re: Request for Information on Modifying HIPAA Rules to Improve Coordinated Care

Dear Director Severino:

On behalf of the Partnership to Amend 42 CFR Part 2 (Partnership), I appreciate the opportunity to respond to your Request for Information (RFI) on Modifying HIPAA Rules to Improve Coordinated Care.

The Partnership is a coalition of nearly 50 national health care organizations representing a range of stakeholders, including patients, clinicians, hospitals, biopharmaceutical companies, pharmacists, electronic health record (EHR) vendors, and insurance providers. The Partnership is 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 while protecting patient privacy. See attached position paper for more information and a full list of Partnership members.

We thank you for recognizing the need to improve coordinated care, particularly in regard to addressing the opioid crisis and serious mental illness. The RFI asks several questions in this area, such as, "What changes can be made to the Privacy Rule to help address the opioid epidemic?" Ultimately, modifying HIPAA is not sufficient for improving coordinated care. Part 2 is the barrier to integrating care for persons with opioid and other substance use disorders (SUDs).

Part 2, Federal Confidentiality of Substance Use Disorder Patient Records, sets requirements limiting the use and disclosure of patients' substance use records from certain substance use treatment programs. Patients must submit written consent prior to the disclosure of their SUD record. 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. In situations where the patient does not give consent, 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 a SUD. Separation of a patient's addiction record from the rest of that person's medical

record creates obstacles and prevents patients from receiving safe, effective, high quality substance use treatment and coordinated care.

Part 2 was created to reduce stigma associated with SUDs and encourage people to seek treatment without fear of prosecution by law enforcement. While important goals, Part 2 is not compatible with the way health care is delivered in the 21<sup>st</sup> Century.

In addition to improving coordinated care within the confines of HIPAA, we urge you to initiate a separate rulemaking process for Part 2. Antiquated Part 2 regulations are not compatible with the way health care is delivered currently. In order to modernize these regulations, Part 2 needs to harmonize with HIPAA to allow for the transmission of SUD records without written consent, for treatment, payment, and health care operations. This will promote integrated care and enhance patient safety, while providing health care professionals with one federal privacy standard for all of medicine.

Initiating a rulemaking process for Part 2 will open the door for necessary reforms, allowing for better coordination, safer and more effective treatment for patients, and strong patient protections. Thank you for considering our recommendation. If you have any questions, please contact me at (202) 449-7660 or [klein@abhw.org](mailto:klein@abhw.org).

Sincerely,

A handwritten signature in black ink that reads "Rebecca Murow Klein". The signature is written in a cursive, flowing style.

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

Attachment: Partnership to Amend 42 CFR Part 2

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The undersigned organizations agree on the following:

- Part 2 provisions are not compatible with the way health care is delivered currently.
- Access to a patient's entire medical record, including addiction records, ensures that health care professionals have all the information necessary for safe, effective, high quality treatment and care coordination that addresses all of a patient's health needs.
- Failure to integrate services and supports can lead to risks and dangers to individual patients, such as contraindicated prescription medicines and problems related to medication adherence.
- Obtaining multiple consents from a patient is challenging and creates barriers to whole-person, integrated approaches to care that have proven to produce the best outcomes for our patients.
- Part 2 requirements should be aligned fully with the HIPAA requirements that allow the use and disclosure of patient information for **treatment, payment, and health care operations (TPO)**.
- Health care professionals, insurers, and others who receive basic health information through a health information exchange or a shared electronic health record should not use this information to discriminate against patients regarding quality of care, payment of covered services, or access to care.
- Part 2 information should not be disclosed for non-treatment purposes to law enforcement, employers, divorce attorneys, or others seeking to use the information against the patient, which the HIPAA privacy framework already easily accommodates. Existing penalties for unauthorized release and use of confidential medical information should apply.
- In the 115<sup>th</sup> Congress, we supported H.R. 6082, the Overdose Prevention and Patient Safety Act (OPPS Act), which passed the House of Representatives by a bipartisan vote of 357-57. H.R. 6082 would align Part 2 with HIPAA for the purposes of TPO, while strengthening protections against the use of addiction records in criminal proceedings.

Academy of Managed Care Pharmacy · Alliance of Community Health Plans · American Association on Health and Disability · American Dance Therapy Association · 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 · Corporation for Supportive Housing · Employee Assistance Professionals Association · Global Alliance for Behavioral Health and Social Justice · Hazelden Betty Ford Foundation · Health IT Now · 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 of Addiction Treatment Providers · National Association for Behavioral Healthcare · National  
Association for Rural Mental Health · National Association of ACOs · 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 · Otsuka America Pharmaceutical, Inc. · Patient-Centered  
Primary Care Collaborative · Pharmaceutical Care Management Association · Premier Healthcare Alliance · Smiths Medical ·  
Strategic Health Information Exchange Collaborative