SAMHSA Listening Session: 42 CFR Part 2
Oral Comments on Behalf of the Association for Behavioral Health and Wellness (ABHW)
and the Partnership to Amend 42 CFR Part 2
January 31, 2018

Thank you for the opportunity to speak today on the important topic of 42 CFR Part 2. I am Rebecca Klein, the Director of Government Affairs for the Association for Behavioral Health and Wellness, ABHW, and the Chair of the Partnership to Amend 42 CFR Part 2. ABHW is the national voice for payers that manage behavioral health insurance benefits for over 175 million people. Reforming Part 2 is a top priority for ABHW and its member companies, and ABHW created the Partnership to bring together 40 likeminded health care stakeholder organizations that are committed to aligning Part 2 with HIPAA, while maintaining patient protections that currently exist, in order to provide safe; effective; and coordinated care.

I would first like to speak specifically on behalf of ABHW and thank SAMHSA for taking some steps in the right direction to reform Part 2 in its recent final rule. While we still believe this rule does not go far enough to align Part 2 with HIPAA for treatment, payment, *and* health care operations, we were glad to see it included a list of 17 operations activities for which disclosures would now be allowed by lawful holders of the information, and appreciate that the list was included in the preamble as a way of providing examples. Of course, while this piece is beneficial to the payment and operations sides of our member companies, better alignment of treatment activities with HIPAA is necessary to truly ensure the coordinated care patients deserve. Additionally, ABHW member companies need the ability to disclose a minor's substance use disorder information to his or her parents who are fully involved with paying for, and trying to arrange for, their children's substance use disorder treatment.

ABHW and the Partnership believe Part 2 still needs many more improvements. Overall, it remains an antiquated regulation that severely constrains the health care community's efforts to coordinate care for persons with substance use disorders. This can prohibit payers and providers from sharing important information with the health care practitioners caring for patients suffering from opioid and other substance use disorders. Furthermore, persons with substance use disorders are the only subset of health care patients whose records are treated separately, and as a result, may not receive coordinated care. Certainly, this aspect alone creates an increased stigma around addiction, as it shows this population it is being treated differently. ABHW and Partnership members stress that Part 2 is one of the biggest – if not *the* biggest – barriers to fighting the opioid crisis.

Part 2 and the final regulations SAMHSA published in the past year all rely on the receipt of patient consent, which can often be impossible or difficult to attain; and in those instances, the care cannot be coordinated, even though that would be in the consumer's best interest. Individuals with a substance use disorder might not sign a consent form because they do not want others to know about their illness, they may incorrectly assume their addiction record is already being shared in the same manner their medical record is being shared, a patient might be incapacitated due to intoxication and unable to provide consent, or a doctor might not know to ask for the patient's consent. All of these instances would prevent safe, effective, integrated treatment.

In the recent final rule, SAMHSA wrote that it continues to review issues related to aligning Part 2 with HIPAA, plans to explore additional alignment with HIPAA, and may consider additional rulemaking for 42 CFR Part 2. We strongly urge you to further examine the detrimental impact this regulation can have on

persons with substance use disorders and their families. When substance use programs are prevented from sharing information about patients' substance use and medications prescribed to treat their substance use with primary care or emergency care providers, dangerous drug-drug interactions can occur and the risks of accidental death from overdose or fatal drug-drug interactions can be grave.

We welcome the Administration's efforts to modernize Part 2, as we share the same goal of protecting the confidentiality of patients while improving access to advances in the delivery of health services. We appreciate the time to share our thoughts today and will be submitting written comments with more detail.