

February 6, 2026

U.S. Department of Health and Human Services (HHS)
Office of the Secretary
Office for Civil Rights (OCR)
Substance Abuse and Mental Health Services Administration (SAMHSA)

Re: Need for Clarification that Existing, Single TPO Consent under 42 CFR Part 2 Satisfies Requirements for OBBBA SUD Community Engagement Exemptions

Dear Secretary Kennedy, Director Stannard, and Principal Deputy Assistant Secretary Carroll:

On behalf of the undersigned organizations, we write to share our concerns and recommendations regarding the implementation of the One Big Beautiful Bill Act (OBBBA) substance use disorder (SUD) community engagement exemptions. Our organizations are committed to supporting the sharing of appropriate data for SUD information in accordance with 42 U.S.C. § 290dd-2 and its implementing regulations at 42 CFR Part 2 (Part 2). We have firsthand experience with the operational and compliance challenges associated with Part 2.

To promote consistent interpretation and reduce administrative burden, we respectfully urge the U.S. Department of Health and Human Services (HHS), including the Office for Civil Rights (OCR) and the Substance Abuse and Mental Health Services Administration (SAMHSA), to work with the Centers for Medicare & Medicaid Services (CMS) to provide written clarification that:

- 1) Eligibility determinations for Medicaid community engagement exemptions based on an individual's SUD diagnosis or treatment in Part 2 records are subject to Part 2 protections and require patient consent; and
- 2) A patient's Part 2 consent for "payment" purposes satisfies the consent requirements for the Medicaid exemption eligibility determinations.

Confirming that an existing, single consent for treatment, payment and health care operations (TPO) can be used to satisfy the SUD exemptions for the community engagement requirements will promote clarity, protect patient privacy, and ensure these exemptions are implemented without unnecessary barriers or delays.

Eligibility determinations for the OBBBA medically frail exemptions from Medicaid community engagement requirements for individuals with SUD frequently rely on diagnosis and treatment records protected under Part 2.

Part 2 generally requires patient consent before SUD records can be used or disclosed for administrative purposes. However, the Part 2 rule, finalized in February 2024, permits patients to provide a single consent for future uses and disclosures for TPO, and explicitly defines "payment" to include eligibility determinations. **Accordingly, a Part**

2 consent for TPO should reasonably permit the use of Part 2 records to determine eligibility for exemptions from Medicaid community engagement requirements.

We welcome the opportunity to discuss this further and share examples from the field that illustrate the need for clear written clarification.

Sincerely,

Alliance of Community Health Plans
American Association on Health and Disability
American Academy of Addiction Psychiatry
American Association of Psychiatric Pharmacists
American Health Information Management Association
American Psychiatric Association
American Society of Addiction Medicine
Association for Behavioral Health and Wellness
Association for Community Affiliated Plans
Blue Cross Blue Shield Association
Centerstone
College of Healthcare Information Management Executives (CHIME)
Hazelden Betty Ford Foundation
Healthcare Trust Institute
Illinois Association for Behavioral Health
Inseparable
Lakeshore Foundation
Meadows Mental Health Policy Institute
Medicaid Health Plans of America
Mental Health America
National Association for Behavioral Healthcare
National Association for Rural Mental Health
National Association of County Behavioral Health and Developmental Disability
Directors
Netsmart
The Catholic Health Association of the United States