



November 2, 2015

Honorable Gene Green
Ranking Member
Energy and Commerce Committee
Subcommittee on Health
U.S. House of Representatives
Washington, DC 20515

Dear Representative Green:

I write to express the National Women's Law Center's concerns over changes to health privacy law included in H.R. 2646, the Helping Families in Mental Health Crisis Act, which the Subcommittee is scheduled to markup on November 3. The Center appreciates the Subcommittee's interest in improving our mental health system, but improvements cannot jeopardize women's privacy rights. We are concerned that specific provisions of this legislation would reduce existing privacy protections by enabling health care providers to disclose patients' currently-protected, personal health care information to family and caregivers, thus affording these family members and caregivers access to information about a wide variety of medical conditions.

Section 401(a)(1) of H.R. 2646 provides for disclosure of information related to the patient's diagnoses, treatment plans, appointment schedules, medications, and medication-related instructions. In addition, section 401(a)(3) specifies that information can be disclosed to inform treatment "if that individual has a co-occurring acute or chronic medical illness." These provisions could give family and other caregivers broad access to a patient's medical record. For example, section 401(a)(3) effectively authorizes disclosure to family and caregivers of the patient's entire medical record – including information related to sensitive conditions such as pregnancy, HIV infection, or substance use disorder.

In addition, although the bill excludes psychotherapy notes from the medical record information that providers can release, even this information could be shared. Unless these notes are segregated from the rest of the medical record, family members and other caregivers could have access to notes when they receive the medical record under the other provisions of Section 410(a). It is uncommon for commercial electronic health records, for example, to segregate psychotherapy notes from other elements of the record.

These disclosures would override the respect for individual autonomy and control over personal health information that are at the very heart of the privacy components of the Health Insurance Portability and Accountability Act of 1996 (HIPAA). The privacy protections in HIPAA and its implementing regulations enable patients to seek treatment

With the law on your side, great things are possible.

11 Dupont Circle NW ■ Suite 800 ■ Washington, DC 20036 ■ 202.588.5180 ■ 202.588.5185 Fax ■ www.nwlc.org

knowing that their health information will only be shared as they direct it to be shared, unless they are incapacitated. These privacy protections are particularly important to women, who may need to share very personal health care information with their health care professionals, including: their reproductive health and reproductive history, such as pregnancies, miscarriages and abortion; an incident or pattern of violence or abuse; a history of sexually transmitted infections; or other aspects of their health history they do not wish to share with family members or other caregivers.

As introduced, the language in section 401(a) also appears to give family members and other caregivers the rights of a personal representative under HIPAA's implementing regulations. As a personal representative, these caregivers could exercise all of the rights of the patient with regard to health care information, including the ability to access the patient's medical records from all providers, to authorize disclosures of the patient's protected health information to third parties, and to request amendment of the patient's protected health information. These broader powers, if enacted, would compound problems related to disclosure of sensitive health information to family members and caregivers by empowering them to exert further control over this information.

Thank you for considering the Center's concerns with H.R. 2646.

Sincerely,

A handwritten signature in cursive script that reads "Karen Davenport". The signature is written in black ink and includes a long horizontal flourish extending to the right.

Karen Davenport
Director of Health Policy