NAMD
National Association of Medicaid Directors

April 11, 2018

The Honorable Lamar Alexander
Chairman
Committee on Health, Education,
Labor, and Pensions
U.S. Senate
Washington, DC 20510

The Honorable Patty Murray
Ranking Member
Committee on Health, Education,
Labor, and Pensions
U.S. Senate
Washington, DC 20510

The Honorable Greg Walden
Chairman
Energy and Commerce Committee
U.S. House of Representatives
Washington, DC 20510

The Honorable Frank Pallone
Ranking Member
Energy and Commerce Committee
U.S. House of Representatives
Washington, DC 20510

Dear Chairman Hatch, Ranking Member Wyden, Chairman Walden, and Ranking Member Pallone:

On behalf of the nation's Medicaid Directors, we are writing to request your consideration of statutory modifications to the rules governing the disclosure of substance use disorder (SUD) patient history and information. Specifically, Medicaid Directors seek alignment of 42 CFR Part 2 rules with the privacy protections under the Health Insurance Portability and Accountability Act (HIPAA), and believe this alignment will support the care coordination and integration activities that are critical to addressing the ongoing opioid crisis.

The National Association of Medicaid Directors (NAMD) is a bipartisan, nonprofit, professional organization representing leaders of state Medicaid agencies across the country. Our members drive major innovations in health care while overseeing Medicaid, which provides a vital health care safety net for more than 72 million Americans. The Medicaid program is one of the primary payers of behavioral health services in the nation.

The Part 2 statute is outdated and does not reflect current SUD treatment best practices, clinical understanding of addiction, or contemporary healthcare operations. While the Substance Abuse

and Mental Health Services Administration (SAMHSA), the agency responsible for administering Part 2, has worked to modernize Part 2 regulations – and in doing so has acknowledged Medicaid auditing authority and the role of managed care entities in today's healthcare landscape – we continue to view Part 2 as creating serious barriers to effective SUD treatment. These barriers ultimately derive from the statutory misalignment between Part 2 and HIPAA.

Part 2 statute and SAMHSA regulations create more stringent privacy protections for patient SUD data than for other sensitive health data protected by modern HIPAA rules. Specifically, Part 2 requires patient consent each time a new provider would need access to the patient's SUD medical records, rather than HIPAA's generalized consent.

The lack of alignment between Part 2 and HIPAA creates challenges across the healthcare system, from state Medicaid agencies to managed care plans and down to individual provider practices. SAMHSA's most recent rulemaking earlier this year still explicitly prohibits disclosure of Part 2 data for purposes of diagnosing, treating, or referring patients to SUD treatment (including care coordination and case management) without patient consent. This prohibition inhibits the integration of SUD care into primary care and other care models, places unnecessary administrative costs on states, plans, and providers, and can result in patient harm or death due to lack of full access to relevant SUD data.

Additionally, evidence shows significant comorbidities for individuals with SUD. For example, in FY 2011, 51% of Medicaid beneficiaries with SUD also had a mental health condition, nearly 13% had asthma, and over 10% had diabetes.[1] As this data predates the option for states to expand Medicaid to 138% of the federal poverty level, these figures are likely higher today, further emphasizing the need for integrating SUD services into the full continuum of physical and behavioral health care.

We recognize the serious consequences that stem from illegal and unauthorized disclosure of SUD data. NAMD supports the prohibition on using SUD data to initiate or substantiate criminal, civil, or administrative proceedings against individuals with SUD. Statutory changes should facilitate appropriate data sharing across integrated care teams to support effective treatment and continue to assure patients that they will not face adverse action for seeking treatment. We believe the HIPAA construct, which protects other sensitive health information, is an appropriate vehicle for achieving these goals.

[1] Government Accountability Office, "Medicaid: A Small Share of Enrollees Consistently Accounted for a Large Share of Expenditures." May 2015. https://www.gao.gov/assets/680/670112.pdf.

Thank you for your consideration of these comments. Please do not hesitate to reach out to NAMD for additional information on these requests.

Sincerely,

Judy Mohr Peterson
Med-QUEST Division Administrator
State of Hawaii
President, NAMD

Kate McEvoy
State Medicaid Director
State of Connecticut
Vice President, NAMD