Substance Abuse and Mental Health Services Administration
SAMHSA
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MAR 19 2018

The Honorable Markwayne Mullin
1113 Longworth House Office Building
Washington, DC 20515

Dear Representative Mullin:

Thank you for your correspondence about the revised Confidentiality of Substance Use Disorder Patient Records Final Rule (42 CFR Part 2 or Part 2) and its impact on data-sharing by Medicare and Medicaid programs. Your letter states that the "Centers for Medicare and Medicaid Services (CMS) is forced to remove *all* claims where substance use disorder is a primary or secondary diagnosis," from data shared with ACOs, bundled payment organizations, and others. You also indicate that sharing of information in electronic health records (EHRs) is critical to the success of these new payment models. You suggest that Part 2 is inconsistent with the Health Insurance Portability and Accountability Act (HIPAA) requirements.

The Substance Abuse and Mental Health Services Administration (SAMHSA) is encouraged to see Congress examine the benefits of aligning Part 2 with HIPAA. Patient privacy is, of course, critical but so too is patient access to safe, effective, and coordinated treatment. To facilitate this most efficiently, healthcare providers must have secure access to patient information, including substance use disorder information, in order to provide integrated and effective care. The practice of requiring substance use disorder information to be any more private than information regarding other chronic illnesses such as cancer or heart disease may in itself be stigmatizing. Patients with substance use disorders seeking treatment for any condition have a right to healthcare providers who are fully equipped with the information needed to provide the highest quality care available.

As you note, SAMHSA has taken the steps within our purview to address some of these concerns; however, Congressional action is needed to fully address the issue. The steps SAMHSA has taken include the following:

- SAMHSA's revisions in January 2018 (83 FR 239) permit additional sharing by lawful holders, including Medicare and Medicaid entities, with contractors, subcontractors, and legal representatives for payment and health care operational purposes consistent with those listed in HIPAA's Privacy Rule, as long as initial patient consent is obtained.

- SAMHSA's 2017 final rule (82 FR 6052) notes that entities may ask patients to consent to use of a general designation to share their Part 2 records with all of their current or future treating providers. The preamble to the rule specifically states that "an ACO, pursuant to a [patient's use of the] general designation, may disclose information

> described in the "Amount and Kind" section of a consent form [...] to "all my entity treating providers." The final rule also makes it clear that ACOs may share information in accordance with Part 2 to carry out audit and evaluation activities (§2.53).

Additionally, SAMHSA recently held listening sessions related to Part 2, as required by the 21st Century Cures Act (Section 11002). The vast majority of those who spoke at the listening session expressed their support for further aligning Part 2 and HIPAA and acknowledged that to achieve many of their goals, Congress would need to take action on bills such as yours.

HHS and SAMHSA appreciate your attention to this issue and stand ready to provide any technical assistance you may request on this very significant matter. If you or your staff have any questions, please feel free to contact Brian Altman, Acting Legislative Director, at (240) 276-2009. This response has also been sent to Representative Blumenauer.

Sincerely,

Elinore F. McCance-Katz, M.D., Ph.D.
Assistant Secretary for Mental Health and Substance Use