



National Association of State Mental Health Program Directors

66 Canal Center Plaza, Suite 302, Alexandria, VA 22314 (703) 739-9333 Fax (703) 548-9517

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NASMHPD

April 6, 2018

The Honorable Greg Walden
Chairman
House Energy and Commerce
104 Hart 2185 Rayburn HOB
Washington, DC 20515

The Honorable Frank Pallone
Ranking Member
House Energy and Commerce
237 Cannon HOB
Washington, DC 20515

Dear Chairman Walden and Ranking Member Pallone:

The National Association of State Mental Health Program Directors writes to seek your support for the inclusion, within the Energy and Commerce package of legislation designed to fight the U.S. opioid epidemic, of legislation that would align the statute underlying the 42 CFR Part 2 regulations with the disclosure provisions of the Health Insurance Portability and Accountability Act (HIPAA).

NASMHPD is the organization representing the state executives responsible for the \$41 billion public mental health service delivery systems serving 7.5 million people annually in 50 states, 4 territories, and the District of Columbia.

Information-sharing among health care providers treating a patient being treated for substance use disorders is limited under current law because of the restrictions outlined under 42 CFR Part 2 and its underlying statute, 42 U.S.C. § 290dd-2 against the disclosure of records containing diagnosis, treatment, and referral information without specific patient consent.

That statute, enacted in the 1970s, well before HIPAA, and its regulations prohibit the sharing of treatment information—including pharmaceutical treatment involving the use of opioids or opioid antagonists—among treating providers absent specific patient consent. The inability of a patient's other treating providers to access that information automatically, if the substance use disorder patient has not thought or agreed to bring his or her other providers into the treatment loop, raises the risk of adverse prescription reactions, addiction regression, and even opioid overdose. It also prevents the integration of care so crucial for patients who so often have co-occurring substance use, mental, and medical disorders and conditions.

While the Substance Abuse and Mental Health Services Administration (SAMHSA) recently relaxed 42 CFR Part 2 to permit sharing for purposes of operations and payment, the agency specifically prohibited sharing among providers. The agency's legal counsel advises that current law does not permit it to relax restrictions on disclosures among providers. The conduits of any sharing that might be permitted, the Health Information Exchanges, remain reluctant to share substance use diagnosis, treatment, and referral information on their networks, even for the limited purposes permitted, because of ambiguity in what the relaxed regulations mean, the potential legal liability for mistaken disclosures, and the expense and technological difficulty in redacting substance use disorder information from patient information.

H.R. 3545, [as originally introduced](#) by former Representative Tim Murphy and now sponsored by Representative Markwayne Mullin, would have maintained the existing statutory prohibition against the use of the subject records to initiate or

substantiate any criminal charges against a patient or to conduct any investigation of a patient, except under court order. Use of those records in criminal proceedings have to be excluded from evidence, and proceedings automatically dismissed where the records were offered into evidence.

In response to concerns expressed by some attorney advocates for individuals with substance use disorders, the [amended version of H.R. 3545](#) offered by Representative Mullin in the Energy and Commerce Health Subcommittee would significantly expand the existing prohibition against use in criminal proceedings to also ban the use of substance use disorder patient treatment information without a court order to initiate or substantiate any civil or administrative charges, claims, or allegations against a patient, or to conduct any investigation of a patient.

The amended bill also requires the exclusion from evidence of any substance use disorder treatment record in any proposed or actual actions or proceedings relating to such criminal, civil, or administrative charges, claims, allegations or investigations that has been used or disclosed to initiate or substantiate any criminal or civil charges, claims, or allegations against a patient or to conduct any investigation of a patient. In addition, absent good cause shown, the use of those records would result in the automatic dismissal of any actions or proceedings for which the content of the record was offered.

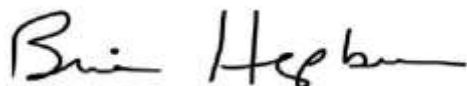
The legislation also responds to the expressed fears of the same attorney advocates by specifically restating the prohibitions against discrimination already prohibited under the existing Americans with Disabilities Act to protect individuals in treatment for substance use disorders – prohibiting discrimination in (i) admission or treatment for health care; (ii) hiring or terms of employment; (iii) the sale or rental of housing; or (iv) access to Federal, State, or local courts.

In summary, the amended bill would facilitate the integration of care and patient safety for individuals treated for substance use disorders, while also increasing the protections against stigma, discrimination, and prosecution, and the use of those records in criminal, civil, and administrative actions. Enabling treating providers to share substance use disorder treatment records would not only help to integrate care for individuals most likely to have co-occurring medical, mental, and substance use conditions and disorders, but would also serve to avoid adverse prescription reactions and substance use and opioid overdoses.

As such, H.R. 3545 constitutes a critically necessary tool in any Congressional toolkit to combat the U.S. opioid crisis. We urge strongly that it be included in the final Energy and Commerce legislative package.

Please feel free to reach out to [me](#) by email or by phone at 703-682-5181 or to NASMHPD's Director of Policy and Communications, [Stuart Yael Gordon](#), by email or by phone at 703-682-7552 with any questions regarding this letter.

Sincerely,



Brian Hepburn, M.D.

Executive Director

National Association of State Mental Health Program Directors (NASMHPD)

cc: Kristen Shatynski
Waverly Gordon
Pamela Greenberg