



April 11, 2018

The Honorable Greg Walden
Chairman
House Committee on Energy and Commerce
2125 Rayburn House Office Building
Washington, DC 20515

The Honorable Frank Pallone, Jr.
Ranking Member
House Committee on Energy and Commerce
2322A Rayburn House Office Building
Washington, DC 20515

Dear Chairman Walden and Ranking Member Pallone:

Mental Health America (MHA) applauds the House Energy & Commerce Committee for its attention to the nation's opioid epidemic, and writes to urge the inclusion of H.R. 3545, the Overdose Prevention and Patient Safety Act, in any final package passed by the Committee.

MHA – founded in 1909 – is the nation's leading community-based nonprofit dedicated to addressing the needs of those living with mental illness and to promoting the overall mental health of all Americans. Our work is driven by our commitment to promote mental health as a critical part of overall wellness, including prevention services for all, early identification and intervention for those at risk, integrated care, services, and supports for those who need it, with recovery as the goal.

Based on over a century of experience, MHA believes that individuals have a right to control the disclosure and dissemination of their protected health information (PHI). We also believe strongly that separate authorizations perpetuate stigma and lead, perhaps unintentionally, to discrimination and lack of parity in care without giving the individual any more control over their information. They also constitute a significant barrier to integrating treatment. H.R. 3545, the Overdose Prevention and Patient Safety Act would allow for a single authorization for sharing integrated health information while enhancing protections against discrimination as a result of improper disclosures.

The Health Insurance Portability and Accountability Act (HIPAA) requires an individual to sign a form allowing their health care provider to disclose their health information to others, such as other providers or family members. For substance use information, 42 CFR Pt II, an archaic regulation dating back to 1970, requires an individual to sign a separate form in addition to the HIPAA form to allow disclosure of their substance use information. Federal law does not say explicitly that a separate authorization is required for mental health information, but providers often interpret the law regarding substance use to include all other behavioral health information as well. In the absence of statutory clarity, SAMHSA has been unable to conform the two rules.

Separate authorizations contribute to discrimination in care. When an individual goes in for substance use treatment and receives a special authorization form, it implies that they should be wary of disclosure and that they might be doing something others could view negatively. Separate authorizations also complicate the coordination and integration of treatment, because often the behavioral health information does not get transmitted along with other health information. Providers understand that you cannot treat a whole

person with half a health record, and overwhelmingly support action to address this deficiency. We agree. When a special authorization is required for behavioral health information, a provider receiving a record with no behavioral health information in it cannot know whether the person has no behavioral health records, whether they have declined to share them, or whether they were never even asked. This at best contributes to confusion and at worst to poor quality or even dangerous care.

On the other side, MHA has found no evidence that additional formalities actually accomplish the privacy goals of legal advocacy organizations, or guarantee protections beyond those that are inherent in the Americans with Disabilities Act, also enacted after 42 CFR Pt. 2. H.R. 3545 would allow for a single authorization to be used, giving individuals full control over their health information, while promising better integrated care. Individuals will still decide when and to whom to disclose their own PHI, with additional protections from H.R. 3545 for wrongful disclosures.

MHA thanks the House Energy & Commerce Committee's consideration of including H.R. 3545 in the final package, and looks forward to continuing to work with the Committee to address addiction and overdose. Please do not hesitate to contact Nathaniel Z. Counts, J.D., Senior Policy Director of MHA, at ncounts@mentalhealthamerica.net for follow-up or questions.

Sincerely,

A handwritten signature in black ink, appearing to read "Paul Gionfriddo". The signature is fluid and cursive, with a long horizontal stroke at the end.

Paul Gionfriddo
President and CEO