BlueCross BlueShield Association

An Association of Independent Blue Cross and Blue Shield Plans

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April 23, 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

RE: Passage of H.R. 3545, the "Overdose Prevention and Patient Safety (OPPS) Act" to Amend 42 C.F.R. Part 2 and align the Federal Privacy Regulation of Protected Health Information

Dear Chairman Walden and Ranking Member Pallone:

The Blue Cross and Blue Shield Association (BCBSA) is writing to you in support of the passage of H.R. 3545, the "Overdose Prevention and Patient Safety (OPPS) Act." This important legislation would enable the appropriate exchange of information necessary to ensure those suffering opioid use disorders (OUD) and substance use disorders (SUD) obtain safe and effective treatment, gain their most applicable financing and receive their deserved assistance in the form of care management and other healthcare operations.

BCBSA is a national federation of 36 independent, community-based and locally operated Blue Cross and Blue Shield Plans that collectively provide healthcare coverage for one in three Americans. For more than 80 years, Blue Cross and Blue Shield companies have offered quality health insurance coverage in all markets across America – serving those who purchase coverage on their own as well as those who obtain coverage through an employer, Medicare, and Medicaid. Today, Blue Plans are also working with qualified 42 C.F.R. Part 2 treatment programs to ensure that their members with OUD and SUD are provided the care and support to achieve successful health outcomes.

BCBSA commends the efforts of the Substance Abuse and Mental Health Services Administration (SAMHSA) to better align the regulations governing the confidentiality of drug and alcohol treatment and prevention records (42.C.F.R. Part 2 (Part 2)) with the Health Insurance Portability and Accountability Act's (HIPAA) Privacy Regulations. However, SAMHSA's efforts do not go far enough to enable the needed access to relevant health information among patients, payers and providers and balance the protection of individual privacy with individuals' expectations of care.

Current Part 2 federal regulations preclude the disclosure of medical information to healthcare providers for care coordination, including those engaged in alternative payment models. These regulations currently require complex and multiple patient consents for the use and disclosure of patients' substance use records that go beyond the sufficiently strong patient confidentiality protections that were put in place by HIPAA. For example, a health plan or provider should be

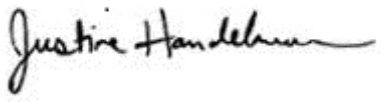
permitted to inform a treatment facility that the individual being admitted was recently released from a different treatment entity's care – information vital to patient safety and quality outcomes.

We are aware that aligning the Part 2 regulations with HIPAA for the purpose of treatment *only* is under consideration. But treatment purposes cannot be separated from payment and health care operations. For payers, treatment, payment, and operations all are interrelated—and the following examples help illustrate future challenges if the alignment is for treatment only:

- Medicaid requires whole-person care management. Payers could not participate in certain prescription monitoring activities without the potential to share information for treatment, payment, and operations. For example, health plans that want to be active in identifying members who are engaging in drug-seeking behavior or providers who are inappropriately prescribing addictive drugs would not be able to send warning letters to the members' primary care physicians and other providers to alert them to the inappropriate prescription activity.
- Health plans might be prevented from partaking in normal customer service activities, like parents calling in about their minor children's authorizations and claims, or family members or friends helping a patient with the financial end of things (claims issues, appeals, questions about coverage).
- Health plans may be blocked from offering significant support to providers in their networks to assist and to help the providers coordinate the patient's entire care. Health plan case management programs, and longer-term data collection, are important pieces of a person's OUD/SUD history and support for them and their family when they are not directly engaged in a program. Most of the time, a patient is at home, with family and friends, and health plans' case management programs offer the supports necessary to assist and to help the providers coordinate all the patient's care.

SAMHSA has acknowledged that the agency has done as much as it can though regulatory efforts under the limitation of the current statutes. Legislative action is necessary in order to modify Part 2 and bring OUD and SUD access regulations to a configuration that supports the 21st Century healthcare approaches and stem the current plague of substance use disorders. BCBSA urges the Committee to include H.R. 3545 to amend 42 CFR Part 2 and align SAMHSA's OUD and SUD regulations with HIPAA's treatment, healthcare operations, and payment policy as Congress passes legislation addressing the opioid crisis.

Sincerely,



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