

April 20, 2018

The Honorable Greg Walden  
Chairman  
House Energy & Commerce Committee  
2125 Rayburn HOB  
Washington, DC 20515

The Honorable Frank Pallone, Jr.  
Ranking Member  
House Energy & Commerce Committee  
2322A Rayburn HOB  
Washington, DC 20515

Dear Chairman Walden and Ranking Member Pallone:

On behalf of the 3,900 hospitals, hundreds of thousands of clinicians and 150,000 other provider organizations in the Premier healthcare alliance, we thank you for your leadership in finding solutions to address the opioid crisis that is plaguing our communities. We believe critical steps are needed to equip patients, healthcare providers, payers and others in our communities to better deal with the challenges that this epidemic presents and the Committee's role has been instrumental in developing legislation to accomplish this.

As you mark-up your opioid package, we would like to highlight why it is important to include H.R. 3545, the Overdose Protection and Patient Safety Act, introduced by Representatives Markwayne Mullin and Earl Blumenauer, which would align 42 CFR Part 2 (Part 2) with HIPAA's treatment, payment and operation protections. Part 2 was enacted more than 20 years before HIPAA and 40 years prior to the utilization of electronic health care records. When Part 2 was first enacted it played an intricate role in protecting the paper medical record from improper use or seizure by law enforcement for those suffering from substance use disorder.

While these protections were important in the 1970's, Congress went on to enact HIPAA in 1996, which provides strong protections for every medical condition (i.e. mental health, HIV/AIDs, STD's, Hep. C) with the exception of conditions related to substance use covered by Part 2. The enactment of the 21<sup>st</sup> Century Cures Act then put in motion the transition from paper medical records to interoperable electronic medical records with the aim of connecting our siloed health care system to allow true integrated delivery models that could improve patient safety, quality and outcomes and reduce costs to ensure the longevity of Medicare and Medicaid. Today, many integrated health care providers, such as accountable care organizations, are using electronic health records to better coordinate care for patients among all participating health care providers, including for the purpose of medication reconciliation at the time of diagnosis and treatment.

Premier believes changing Part 2 to align with the HIPAA standard of care for treatment, payment and healthcare operations is essential to ensuring many of the proposals being considered by the

Energy & Commerce Committee can achieve their intended goals. The opponents of H.R. 3545 cannot provide specific examples how H.R. 3545 would legally allow employers or landlords to access an individual's medical record, as they claim could occur. The bill's co-sponsors have heard them loud and clear and have added protections for substance use data to the bill that go beyond HIPAA's current robust protections. That said, they continue to argue that data breaches happen, but this can be said of any industry in the country, not just healthcare.

The Premier healthcare alliance is committed to helping healthcare providers with their ongoing efforts to reduce adverse drug events, dependence and addiction. Our members are always driving toward continuous improvement and toward finding solutions to this national problem. We are at a point in which the opioid / heroin / fentanyl crisis is moving in the wrong direction, evidenced by the latest CDC reports that show emergency department visits are up 30 percent for overdoses. We are committed to protecting patients' privacy and believe that can be achieved by aligning Part 2 with HIPAA protections. Under current law the penalty for misusing or sharing information covered under Part 2 is \$50 (some argue this may have expired) and only enforceable by the Department of Justice. If Part 2 is aligned with HIPAA, the penalties would range from \$150,000 to \$1.5 million, providing a much stronger recourse if any wrong doing occurs.

First, if we are to effectively care for Medicaid beneficiaries suffering from substance use disorders, wouldn't it be prudent to allow the states to receive much needed public health data to ensure they can identify problem areas in their state and allocate the proper resources to address them? Last year, Virginia's Secretary of Homeland Security and Public Health Brian Moran's written testimony highlighted the need to amend and align Part 2 with HIPAA. He also clearly noted the state of Virginia was flying blind on how to address the deadly opioid crisis.

Second, effective utilization of state prescription drug monitoring programs will require making changes to Part 2. Currently, patients covered under Part 2 will not have their prescriptions reported into the state Prescription Drug Monitoring Program (PDMP). This presents many challenges, especially in regards to preventing patients from doctor shopping for prescriptions, or identifying bad actors in the medical community.

Finally, if we are to expand access to medication assisted treatments for more individuals, shouldn't we ensure that the healthcare community has access to the full medical record? Do we really think it is safe to say that every Part 2 patient is openly and willingly sharing their full medical record with all of their health care providers? As you know, buprenorphine and drugs similar in nature contraindicate with many other drugs patients may be taking. In order to prevent unnecessary adverse events and ensure the best care is being delivered and medications are being safely prescribed, shouldn't the medical community be able to fully reconcile a patient's drug history?

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We would welcome the opportunity to share more information about our work to address the opioids epidemic and explore ways in which we can help tackle the problem within the Medicare program.

Sincerely,



Blair Childs  
Senior vice president, Public Affairs  
Premier healthcare alliance