



February 20, 2018

The Honorable Greg Walden
Chairman
U.S. House of Representatives
Committee on Energy and Commerce
2125 Rayburn House Office Building
Washington, D.C. 20515

The Honorable Frank Pallone
Ranking Member
U.S. House of Representatives
Committee on Energy and Commerce
2125 Rayburn House Office Building
Washington, D.C. 20515

Dear Chairman Walden and Ranking Member Pallone,

The Confidentiality Coalition is writing to you to urge passage of H.R. 3545, the Overdose Prevention and Patient Safety (OPPS) Act, to enable the appropriate exchange of necessary information among medical professionals who are treating individuals with substance use disorders, including opioid abuse. While the Confidentiality Coalition commends the U.S. Substance Abuse and Mental Health Service Administration's (SAMHSA's) ruling to amend 42 C.F.R. Part 2 to better align Part 2 regulations within the Health Insurance Portability and Accountability Act (HIPAA) to integrate behavioral and physical healthcare, we believe this ruling does not go far enough to help increase access to relevant health information among patients, payers and providers while concurrently protecting patient privacy.

The Confidentiality Coalition is a broad group of organizations spanning all sectors of healthcare working to ensure that policies are implemented to appropriately balance the protection of confidential health information with the efficient and interoperable systems needed to provide high quality healthcare. Access to timely and accurate patient information leads to both improvements in quality and safety and the development of new lifesaving and life-enhancing medical interventions.

The Confidentiality Coalition is comprised of hospitals, medical teaching colleges, health plans, pharmacies, pharmaceutical companies, medical device manufacturers, vendors of electronic health records, biotech firms, employers, health product distributors, pharmacy benefit managers, health information and research organizations, clinical laboratories, and others. Through this diversity, we develop a nuanced perspective on the impact of any legislation or regulation affecting the privacy and security of health consumers.

Current federal regulations governing the confidentiality of drug and alcohol treatment and prevention records (42.C.F.R. Part 2 (Part 2)) preclude the Centers for Medicare & Medicaid Services (CMS) from disclosing medical information to healthcare providers for care coordination, including those engaged in accountable care organizations and bundled payment organizations. 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 subsequently put in place by HIPAA.

Electronic health records and value-based payment models such as Accountable Care Organizations (ACOs), Health Information Exchanges (HIEs), Medicaid Health Homes and related Medicare and Medicaid integrated care programs were designed to create a more holistic, patient-centered approach to healthcare where providers work together to coordinate across their traditional silos and in some cases are held jointly accountable for the quality, outcomes and cost of that care. Critical to making these new models work for patients is having access to the individuals' health records, including those related to substance use disorders. CMS provides participating providers of Medicare ACO and bundled payment organizations with monthly Medicare Parts A, B and D claims under data use agreements that include criminal penalties for misuse. Yet, due to outdated laws mentioned above, CMS is forced to remove *all* claims where substance use disorder is a primary or secondary diagnosis. Patient safety is also threatened with the potential pharmaceutical contraindications that could occur without access to the full medical record. Without this critical information, providers are prevented from understanding the full extent of their patients' medical needs.

We commend SAMHSA's recent rule making efforts, and understand the agency has probably gone as far as possible in regards to attempts to modernize the Part 2 Rule. To sufficiently address the need for further reform, Representatives Markwayne Mullin and Earl Blumenauer have introduced H.R. 3545 to ensure healthcare providers have access to the full medical record, including information on substance use disorders, to effectively and safely treat patients suffering from substance use disorders while guaranteeing the privacy and security of substance use medical records. In particular, H.R. 3545 would reinforce and expand existing prohibitions on the use of these records in criminal proceedings.

We urge the Committee to consider H.R. 3545 to amend 42 CFR Part 2 and align with HIPAA's treatment, healthcare operations and payment policy as one of several potential solutions Congress passes to help with the opioid crisis. Thank you for your attention to this important matter.

Sincerely,

Tina Grande

A handwritten signature in black ink that reads "Tina O. Grande". The signature is written in a cursive style with a small blue mark above the "e" in "Grande".

Tina Grande

Healthcare Leadership Council on behalf of the Confidentiality Coalition

cc: U.S. House of Representatives