NATIONAL ASSOCIATION OF PSYCHIATRIC HEALTH SYSTEMS
ADVOCATING FOR BEHAVIORAL HEALTH
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SUBMITTED ELECTRONICALLY: www.regulations.gov

March 23, 2016

Kana Enomoto
Acting Administrator
Substance Abuse and Mental Health Services Administration
Department of Health and Human Services
Attn: SAMHSA–4162–20
5600 Fishers Lane, Room 13N02B
Rockville, Maryland 20857

RE: SAMHSA–4162–20 [RIN 0930–AA21]: SAMHSA/HHS "Confidentiality of Substance Use Disorder Patient Records"

Dear Ms. Enomoto,

As an association representing behavioral healthcare provider organizations and professionals, the National Association of Psychiatric Health Systems (NAPHS) appreciates the opportunity to provide comments on the proposed rule (SAMHSA–4162–20) titled "Confidentiality of Substance Use Disorder Patient Records" as published in the February 9, 2016, *Federal Register*.

ABOUT NAPHS

Founded in 1933, NAPHS advocates for behavioral health and represents provider systems that are committed to the delivery of responsive, accountable, and clinically effective prevention, treatment, and care for children, adolescents, adults, and older adults with mental and substance use disorders. Our members are behavioral healthcare provider organizations, including more than 800 psychiatric hospitals, addiction treatment facilities, general hospital psychiatric and addiction treatment units, residential treatment centers, youth services organizations, outpatient networks, and other providers of care. Our members deliver all levels of care, including partial hospitalization services, outpatient services, residential treatment, and inpatient care.

COMMENTS

This proposed rule (published on February 9, 2016, by the Department of Health and Human Services) states that the modifications to 42CFR part 2 are intended to modernize this rule by facilitating the electronic exchange of substance use disorder information for treatment and other legitimate healthcare purposes while ensuring appropriate confidentiality protections for records that might identify an individual (directly or indirectly) as having or having had a substance use disorder (SUD).

One of the changes in this proposed rule is to allow patients, in certain circumstances, to include a general designation in the "To Whom" section of the consent form. Currently, a patient must designate each provider or other entity with whom they agree to share their information.

Although this appears to create more flexibility in sharing patient information, the proposed regulation has many other barriers and requirements that will impede the sharing of patient information.

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SAMHSA notes that some commenters proposed aligning 42CFR Part 2 with the HIPAA regulation, but the proposed regulation then states that the Part 2 statute provides more stringent federal protections than HIPAA. This is true in only two limited points. First, Title 42, USC section 290dd-2 does require consent to share information, which HIPAA does not. Second, it does not allow any shared information to be used for prosecution. However, the current Part 2 regulations go far beyond the statutory requirements that led to the regulations. Nothing in the 42CFR statute requires an explicit description of what information can be released; nothing requires time limits on consent; and nothing prevents consent to re-disclose.

In addition, because SUD data cannot be handled as is all other healthcare data, 42CFR Part 2 creates a major barrier to better integrating SUD and mental health care with overall health care. This leads to higher healthcare costs because patients with SUD are among the highest cost utilizers in health care. The perpetuation of the 42CFR Part 2 privacy structure results in an overemphasis of social harms related to disclosure of patients' clinical information in contrast to medical harm and overdose deaths related to poor coordination of care.

In our view, in revising 42CFR Part 2, we would recommend that SAMHSA attempt to balance the need to allow for improved coordination of care with SUD and overall healthcare as well as the need to ensure the continued privacy of the patients' health information. We believe HIPAA strikes an appropriate balance between the importance of sharing health information and the keeping of sensitive health information private. In the case of psychiatric health information, HIPAA protects the confidentiality of a patients' psychotherapy notes, but allows other psychiatric information to be shared under the general, HIPAA structure.

A medical record without access to information on both mind and body is incomplete. Healthcare professionals need to access the whole record in order to treat the whole person.

We would recommend that the proposed rule be modified to align SUD privacy rules with the current HIPAA rules as much as allowed under the statute. This would lead to a more integrated and streamlined process, which would clearly be in the spirit of parity and which would address the need to better integrate SUD with other medical conditions.

CONCLUSION

Thank you for your consideration of our comments. We look forward to working with SAMHSA and the Department of Health and Human Services to ensure appropriate confidentiality regulations governing the records of individuals receiving treatment for substance use disorders.

Sincerely,

/s/

Mark Covall
President/CEO