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Brian Hepburn, M.D.
Executive Director
NASMHPD

February 27, 2018

Dr. Elinore McCance-Katz
Assistant Secretary
Substance Abuse and Mental Health Services Administration
5600 Fishers Lane
Rockville, MD 20850

privacyregulations@samhsa.hhs.gov

Re: Confidentiality of Substance Use Disorder Patient Records

Dear Assistant Secretary McCance-Katz:

The National Association of State Mental Health Program Directors (NASMHPD)—the association representing the state executives responsible for the \$41 billion public mental health service delivery systems serving 7.5 million people annually in 50 states, 4 territories, and the District of Columbia—writes to offer comment on the final regulations implemented February 2, 2018 on the Confidentiality of Substance Use Disorder Patient Records under 42 Code of Federal Regulations Part 2. We are affording ourselves of the opportunity for additional public written comment noted at the January 31, 2018 Listening Session on the regulations.

NASMHPD, like the overwhelming majority of the witnesses at the January 31 Listening Session, appreciates the changes made by SAMHSA within the final regulations to permit disclosures furthering health care operations and payment, although we would have preferred that the non-exhaustive list of activities now being permitted be included within the text of the regulations. Absent inclusion in the regulations themselves, we worry that the agency’s intent to permit such activities could face repeated legal challenges.

Even given the broader parameters for disclosures permitted under the final regulations, NASMHPD believes there is still a great need to permit disclosures and re-disclosures of diagnosis, treatment, and referral information, without the need for specific patient consent, among the treating health care providers of an individual with a substance use disorder. NASMHPD was disappointed to see that such disclosures were not only not permitted under the final regulations, but expressly prohibited.

The reasons to permit such disclosures are self-evident and were noted repeatedly at the listening session. Prohibiting disclosures of diagnosis, treatment, and referral for substance use disorder treatment to other health care providers or to health information exchanges for the purposes of redisclosure to other treating providers stymies the integration of care so crucial to effectively treating individuals with substance use disorders who so often experience co-occurring medical conditions.

It also puts the patient at risk for adverse drug interactions where different providers on the patient's care team might unknowingly prescribe conflicting drugs, and puts a recovering patient at risk for falling victim to relapse when prescribed and dispensed an addictive substance. And, in the worst case scenario, a patient on a maintenance dose of an agonist pharmaceutical treatment for an addiction is put at risk of an opioid overdose if prescribed an opioid painkiller.

It should also be noted that a set of disclosure restrictions separate from and less restrictive than those under the Health Insurance Portability and Accountability Act (HIPAA) tends to create stigma by suggesting that patients suffering substance use disorders need greater protection than patients dealing with other diseases and conditions covered under HIPAA.

It is for these reasons that NASMHPD is one of the 40-plus members of the Partnership to Amend 42 CFR Part 2, the mission of which is to amend the statute underlying 42 CFR Part 2, 42 U.S.C. § 290dd-2, to better align that statute with HIPAA, permitting disclosures and redisclosures among treating provider team members. NASMHPD recognizes that the SAMHSA legal counsel has advised that the underlying statute gives the agency little leeway to permit wider disclosures and redisclosures among treating providers, and it is for this reason that we support the legislation introduced in Congress at the Partnership's request, [S. 1850](#) and [H.R. 3545](#), that would align the two laws.

NASMHPD and the Partnership recognize there are valid and reasonable concerns about disclosures of diagnosis, treatment, and referral information in criminal investigations and proceedings and we would not change the protections that already exist within 42 U.S.C. § 290dd-2(c). In addition, the Partnership has language at the ready that would prohibit disclosures in civil trials and administrative proceedings to protect against the use of diagnosis, treatment, and referral information in adversarial proceedings.

We hope that SAMHSA will see the necessity of enacting this legislation and amending its regulations to enhance the integration of care and patient safety for individuals with substance use disorders.

Thank you for your attention to these comments.

If you have any questions about this correspondence, please do not hesitate to contact me by [email](#) or by phone at 443-838-8456 or NASMHPD's Director of Policy and Communications, Stuart Yael Gordon, by [email](#) or at 703-682-7552.

Sincerely,

A handwritten signature in black ink that reads "Brian Hepburn". The signature is written in a cursive, slightly slanted style.

Brian Hepburn, M.D.
Executive Director
National Association of State Mental Health Program Directors (NASMHPD)