THE PARTNERSHIP TO AMEND 42 CFR PART 2

June 5, 2019

The Honorable Lamar Alexander, Chairman
Senate Committee on Health, Education, Labor, and Pensions
428 Dirksen Senate Office Building
Washington, DC 20510

Dear Chairman Alexander:

On behalf of the Partnership to Amend 42 CFR Part 2 (Partnership), I appreciate the opportunity to respond to your discussion draft legislation, the Lower Health Care Costs Act of 2019.

The Partnership is a coalition of nearly 50 national health care organizations representing a range of stakeholders, including patients, clinicians, hospitals, biopharmaceutical companies, pharmacists, electronic health record (EHR) vendors, and insurance providers. The Partnership is committed to aligning 42 CFR Part 2 (Part 2) with the Health Insurance Portability and Accountability Act (HIPAA) for the purposes of treatment, payment, and health care operations (TPO) to allow appropriate access to patient information that is essential for providing whole-person care while protecting patient privacy. See attached position paper for more information and a full list of Partnership members.

As you prepare to markup the Lower Health Care Costs Act of 2019, we have identified an addition to the legislation that would improve the exchange of health information, while protecting an individual's personal health information resulting in quality, coordinated care. Modernizing Part 2 – by aligning it with HIPAA for TPO – will reduce barriers to innovation and coordinated care, thereby contributing to decreased health care costs, particularly for substance use disorders (SUD). Senators Shelley Moore Capito (R-WV) and Joe Manchin (D-WV) have championed this issue and have introduced S. 1012, the Protecting Jessica Grubb's Legacy Act. This bill would align Part 2 with HIPAA for TPO, and strengthen protections against the use of addiction records in criminal, civil, or administrative proceedings. In addition, the bill further amplifies patient protections by incorporating antidiscrimination language, significantly enhanced penalties for any breach of a person's substance use record, and breach notification requirements. We believe this language fits squarely within Title V of your legislation and would result in quality, integrated and coordinated care. As you look to improve the exchange of health information, we urge you to include S. 1012 in the Lower Health Care Costs Act of 2019.

Part 2, Federal Confidentiality of Substance Use Disorder Patient Records, sets requirements limiting the use and disclosure of patients' substance use records from certain substance use treatment programs. Patients must submit written consent prior to the disclosure of their SUD record. Obtaining multiple consents from the patient is challenging and creates barriers to whole-person, integrated approaches to care, which are part of our current health care framework. In situations where the patient does not give consent, Part 2 regulations may lead to a doctor treating a patient and writing prescriptions for opioid pain medication for that individual without

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knowing the person has a SUD. Separation of a patient's addiction record from the rest of that person's medical record creates obstacles and prevents patients from receiving safe, effective, high quality substance use treatment and coordinated care.

Part 2 was created to reduce stigma associated with SUDs and encourage people to seek treatment without fear of prosecution by law enforcement. These important goals can still be addressed while modernizing the regulations. Part 2 is not compatible with the way health care is currently delivered; and in order to bring the regulations in line with 21st Century health care, Part 2 needs to harmonize with HIPAA to allow for the transmission of SUD records without written consent for TPO. This will promote integrated care and enhance patient safety, protect against prosecution by law enforcement, and provide health care professionals with one federal privacy standard for all of medicine.

Part 2 presents enormous barriers to patient safety and coordinated care, and it creates a clinical burden for physicians. When a patient's written consent is not available to a provider, a great administrative burden exists when trying to physically locate a patient to obtain that consent. If a provider does not ultimately receive written consent from the patient to access his or her addiction record, the inability to see a patient's entire medical record hinders patient safety. This inhibits the electronic exchange of health information, reducing the effectiveness of clinical reports to physicians, and delaying data transmission to providers. SUDs can have complicated ripple effects on a patient's health that need to be carefully identified and coordinated. The current outdated rule poses a serious safety threat to persons with SUDs due to risks from multiple drug interactions and co-existing medical problems.

Health care is constantly evolving, and our coalition members are able to use technology and data to improve care delivery and outcomes and reduce costs for the toughest chronic diseases, with the exception of SUDs. The ability to share patients' entire medical records by aligning Part 2 with HIPAA for TPO will lead to better health care, reduced costs, and improved safety.

Thank you for considering our recommendation. If you have any questions, please contact me at (202) 449-7660 or gilmore@abhw.org.

Sincerely,

Maeghan Gilmore
Chair, Partnership to Amend 42 CFR Part 2

Attachment: Partnership to Amend 42 CFR Part 2 One-Pager

The undersigned organizations agree on the following:

- Part 2 provisions are not compatible with the way health care is delivered currently.
- Access to a patient's entire medical record, including addiction records, ensures that health care professionals have all the information necessary for safe, effective, high quality treatment and care coordination that addresses all of a patient's health needs.
- Failure to integrate services and supports can lead to risks and dangers to individual patients, such as contraindicated prescription medicines and problems related to medication adherence.
- Obtaining multiple consents from a patient is challenging and creates barriers to whole-person, integrated approaches to care that have proven to produce the best outcomes for our patients.
- Part 2 requirements should be aligned fully with the HIPAA requirements that allow the use and disclosure of patient information for **treatment, payment, and health care operations (TPO)**.
- Health care professionals, insurers, and others who receive basic health information through a health information exchange or a shared electronic health record should not use this information to discriminate against patients regarding quality of care, payment of covered services, or access to care.
- Part 2 information should not be disclosed for non-treatment purposes to law enforcement, employers, divorce attorneys, or others seeking to use the information against the patient, which the HIPAA privacy framework already easily accommodates. Existing penalties for unauthorized release and use of confidential medical information should apply.
- In the 115th Congress, we supported H.R. 6082, the Overdose Prevention and Patient Safety Act (OPPS Act), which passed the House of Representatives by a bipartisan vote of 357-57. H.R. 6082 would align Part 2 with HIPAA for the purposes of TPO, while strengthening protections against the use of addiction records in criminal proceedings.

Academy of Managed Care Pharmacy · Alliance of Community Health Plans · American Association on Health and Disability · American Dance Therapy Association · American Health Information Management Association · American Hospital Association · American Psychiatric Association · American Society of Addiction Medicine · American Society of Anesthesiologists · America's Essential Hospitals · America's Health Insurance Plans · AMGA · Association for Ambulatory Behavioral Healthcare · Association for Behavioral Health and Wellness · Association for Community Affiliated Plans · Association of Clinicians for the Underserved · Blue Cross Blue Shield Association · The Catholic Health Association of the United States · Centerstone · College of Healthcare Information Management Executives · Confidentiality Coalition · Corporation for Supportive Housing · Employee Assistance Professionals Association · Global Alliance for Behavioral Health and Social Justice · Hazelden Betty Ford Foundation · Health Innovation Alliance · Healthcare Leadership Council · InfoMC · The Joint Commission · The Kennedy Forum · Medicaid Health Plans of America · Mental Health America · National Alliance on

Mental Illness · National Association for Behavioral Healthcare · National Association for Rural Mental Health · National Association of ACOs · National Association of Addiction Treatment Providers · National Association of Counties · National Association of County Behavioral Health and Development Disability Directors · National Association of State Mental Health Program Directors · National Rural Health Association · Netsmart · OCHIN · Otsuka America Pharmaceutical, Inc. · Patient-Centered Primary Care Collaborative · Pharmaceutical Care Management Association · Premier Healthcare Alliance · Smiths Medical · Strategic Health Information Exchange Collaborative

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