February 8, 2019

The Honorable Roger Severino  
Director, Office for Civil Rights  
U.S. Department of Health and Human Services  
Hubert H. Humphrey Building, Room 509F  
200 Independence Avenue, SW  
Washington, DC 20201  
Attention: RFI, RIN 0945-AA00

Re: Request for Information on Modifying HIPAA Rules to Improve Coordinated Care

Dear Director Severino:

On behalf of the Partnership to Amend 42 CFR Part 2 (Partnership), I appreciate the opportunity to respond to your Request for Information (RFI) on Modifying HIPAA Rules to Improve Coordinated Care.

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.

We thank you for recognizing the need to improve coordinated care, particularly in regard to addressing the opioid crisis and serious mental illness. The RFI asks several questions in this area, such as, “What changes can be made to the Privacy Rule to help address the opioid epidemic?” Ultimately, modifying HIPAA is not sufficient for improving coordinated care. Part 2 is the barrier to integrating care for persons with opioid and other substance use disorders (SUDs).

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 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. While important goals, Part 2 is not compatible with the way health care is delivered in the 21st Century.

In addition to improving coordinated care within the confines of HIPAA, we urge you to initiate a separate rulemaking process for Part 2. Antiquated Part 2 regulations are not compatible with the way health care is delivered currently. In order to modernize these regulations, Part 2 needs to harmonize with HIPAA to allow for the transmission of SUD records without written consent, for treatment, payment, and health care operations. This will promote integrated care and enhance patient safety, while providing health care professionals with one federal privacy standard for all of medicine.

Initiating a rulemaking process for Part 2 will open the door for necessary reforms, allowing for better coordination, safer and more effective treatment for patients, and strong patient protections. Thank you for considering our recommendation. If you have any questions, please contact me at (202) 449-7660 or klein@abhw.org.

Sincerely,

Rebecca Murow Klein
Rebecca Murow Klein, Chair
Partnership to Amend 42 CFR Part 2

Attachment: Partnership to Amend 42 CFR Part 2
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.