April 11, 2016

Kana Enomoto
Acting Administrator
The 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: Confidentiality of Substance Use Disorder Patient Records

Dear Ms. Enomoto,

The undersigned stakeholders appreciate the Substance Abuse and Mental Health Services Administration's (SAMHSA's) efforts to modernize 42 CFR Part 2 (Part 2). We share the same goal of protecting the confidentiality of patients while improving access to advances in the delivery of health services. For people with substance use disorders (SUDs) this balance is especially important to break down the silos around SUD treatment without placing patient information at risk for non-health uses.

We support provisions that preclude Part 2 information from being disclosed for non-treatment purposes to law enforcement, employers, divorce attorneys, or others seeking to use the information against the patient. We do not want consumers to be made vulnerable as a result of seeking treatment for a SUD; however, the undersigned stakeholders, which are increasingly serving people with SUDs, believe that the changes in the proposed rule do not go far enough and will continue to hinder consumer access to safe, effective, high quality, integrated care. Many of us are submitting our own comment letters in addition to signing this letter; nevertheless, we felt it was important to highlight the breadth of stakeholders that are united in their support for the issues outlined below.

1) Part 2 requirements should be harmonized with HIPAA authorization requirements. SAMHSA should allow appropriate disclosures of substance use disorder records for treatment, payment, and healthcare operations. This would improve patient care by ensuring that providers and organizations that have a direct treatment relationship with the patient have access to the complete health care record (unless otherwise indicated in the initial disclosure). Without access to a complete record providers cannot properly treat the whole person and may, unknowingly, endanger a person's recovery and their life. For example, a medical doctor in primary care may not know that he or she is prescribing pain medication to someone with a history of addiction. Harmonization would also increase care coordination and integration among treating providers and other entities. Whole health care, care coordination and integrated care are extremely important for patients with a substance use disorder because many of these individuals also have co-occurring mental health or physical health illnesses that also need to be addressed together in a coordinated fashion. The proposed rule's lack of conformity with HIPAA does not reflect the current realities of our health care delivery system and does not achieve long sought after parity because it does not provide a uniform standard of care (i.e., as reflected in the patient record) between physical and mental health.

Should SAMHSA not adopt our first recommendation, the undersigned urge the following three amendments to the rule:

2) Recognition of population health management as an important service that a Qualified Service Organization (QSO) may provide is a positive step. We request that care coordination also be added to the list of services a QSO can provide. Once a Qualified Service Organization Agreement (QSOA) is in place, this addition would allow a Part 2 program to communicate information from a patient's records to the organization providing care management services as long as it is limited only to patient information that is needed by the QSO to provide such services. SAMHSA stated in the proposed rule, in regard to population health management, that "this revision would benefit patients' health, safety, and quality of life while maintaining the confidentiality protections that attach to the Part 2 program's patient records." We believe that including care coordination as a service offered by QSOs would result in similar benefits.

3) The rule needs to clarify the permissible length of time for which the consent is valid. SAMHSA previously issued FAQs for the existing Part 2 rule indicating that the consent could potentially be valid until a patient's death. We request that SAMHSA clarify in the final rule that a consent form can be valid until death. This would eliminate an unnecessary repetitive, administrative burden imposed on patients and providers.

4) It is important that the final rule, as suggested in the proposed rule, allows for electronic signatures, when permissible. This is a step toward easing the consent process and reducing administrative burden by recognizing the difficulty that is often encountered when trying to physically locate a patient to obtain their written consent.

Without the above changes to the proposed rule, individuals with substance use disorders will not receive fully coordinated care. As a result, patients will face increased safety risks because their treating providers may not have access to their complete health care records. In light of the opioid epidemic and the large number of people in our country who have a SUD, we cannot stress strongly enough how important these changes are to consumers' health.

Thank you for your consideration. We are eager to work with you to improve the regulatory process around SUD and Part 2, thereby increasing integrated care for individuals with substance use disorders while simultaneously continuing to protect their privacy.

Sincerely,

Alliance of Community Health Plans
American Association on Health and Disability
American Dance Therapy Association
American Orthopsychiatric Association
American Psychiatric Association
American Society of Addiction Medicine
America's Health Insurance Plans
Association for Ambulatory Behavioral Healthcare
Association for Behavioral Health and Wellness
Association for Community Affiliated Plans
Corporation for Supportive Housing (CSH)

Employee Assistance Professionals Association (EAPA)
Eric Goplerud, Ph.D.
Hazelden Betty Ford Foundation
InfoMC
Medicaid Health Plans of America (MHPA)
Mental Health America
National Alliance on Mental Illness
National Association of Psychiatric Health Systems
National Coalition for Mental Health Recovery
Netsmart
NHMH – No Health without Mental Health
Phoenix House Foundation, Inc.