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Netsmart: SAMHSA 42 CFR Part 2 Final Rule Ignores Importance of Integrated, Coordinated Care and Heightens Risk for Persons with Substance Use Disorders

Netsmart, technology and strategy partner for substance use treatment, behavioral health and other human services providers nationwide, is extremely disappointed with a key component of the "[Confidentiality of Substance Use Disorder Patient Records](#)" Final Rule, published by the Substance Abuse and Mental Health Services Administration (SAMHSA) on Jan. 3, 2018.

The Final Rule, intended to update decades-old 42 CFR Part 2 regulations, specifically excludes substance use disorder patient diagnosis, treatment, and referral for treatment from the list of permissible activities for disclosure by lawful holders of patient identifying information.

In other words, it is now easier for a person's substance use disorder-related health information to be shared by payers, health plans and other entities for billing, payment, claims management, collections and healthcare data processing – than with the person's own healthcare providers for fully-informed diagnosis and treatment, even with existing safeguards to protect patient privacy. In an interoperable world where health data is shared amongst providers, this eliminates a vital piece of the person's health history and could result in harm to the individual.

The Final Rule is also discriminatory, preventing people with a substance use disorder from benefiting from coordinated, integrated care and case management, and exacerbating the stigma often associated with substance use disorders. In contrast, people with diabetes, asthma, cancer or a history of heart attack can easily share their health information with their doctors.

The exclusion of diagnosis and treatment information is directly counter to SAMHSA's stated intent to update Part 2 regulations to reflect advances in the U.S. healthcare delivery system, including integrated healthcare models and the use of electronic exchange of patient information.

The restriction on the ability to share information with a person's treating providers also heightens the risk to patient safety from harmful drug interactions and other causes by making it more difficult and cumbersome for persons with a substance use disorder to consent to share medication history and other vital health information with clinicians/prescribers in the emergency department, urgent care and other primary care facilities.

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The Final Rule also places additional regulatory burdens on substance use disorder treatment providers not required of providers of mental health treatment or acute care services. Substance use disorder treatment providers are still bound by previous requirements for treatment disclosures; in addition, Final Rule provisions do not provide them with any additional flexibility for payment and operations disclosures because Part 2 programs are still bound by the unwieldy Qualified Service Organizations (QSO) requirements, which SAMHSA specifically stated were not modified by these rule changes.

On a positive note, the Final Rule includes the option of an abbreviated notice of the prohibition on re-disclosure. This reduces a regulatory burden and enables easier incorporation of the notice into electronic health records (EHRs).

We will make further comment at the SAMHSA stakeholder meeting required by the 21st Century Cures Act. We are also working to advance the [Overdose Prevention and Patient Safety Act](#) (H.R. 3545) in the U.S. House, co-sponsored by Rep. Markwayne Mullin (R-OK) and Rep. Earl Blumenauer (D-OR); and a bipartisan companion bill, the Protecting Jessica Grubb's Legacy Act (The Legacy Act) (S. 1850), introduced in the U.S. Senate by Sen. Joe Manchin (D-WV) and Sen. Shelley Moore Capito (R-WV). These bills more closely align 42 CFR Part 2 regulations with HIPAA, helping to ensure that all clinicians involved in a person's care get the full picture of their health. The bills also strengthen protections and prohibitions against disclosures of substance use disorder treatment information for criminal justice purposes.

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