

Congress of the United States
House of Representatives
Washington, DC 20515-3602

March 1, 2018

The Honorable Elinore McCance-Katz, M.D., Ph.D.
Assistant Secretary
Substance Abuse and Mental Health Services Agency
5600 Fishers Lane
Rockville, MD 20857

Dear Assistant Secretary McCance-Katz:

Current federal regulations governing the confidentiality of drug and alcohol treatment and prevention records (42.C.F.R. Part 2 (Part 2)) preclude the Centers for Medicare & Medicaid Services (CMS) from disclosing medical information to healthcare providers for care coordination, including those engaged in accountable care organizations and bundled payment organizations. These regulations currently require complex and multiple patient consents for the use and disclosure of patients' substance use records that go beyond the sufficiently strong patient confidentiality protections that were subsequently put in place by the Health Insurance Portability and Accountability Act (HIPAA).

Electronic health records and value based payment models such as Accountable Care Organizations (ACOs), Health Information Exchanges (HIEs), Medicaid Health Homes and related Medicare and Medicaid integrated care programs were designed to create a more holistic, patient-centered approach to healthcare where providers work together to coordinate across their traditional silos and in some cases are held jointly accountable for the quality, outcomes and cost of that care. Critical to making these new models work for patients is having access to the individuals' health records, including those related to substance use disorders. CMS provides participating providers of Medicare ACO and bundled payment organizations with monthly Medicare Parts A, B and D claims under data use agreements that include criminal penalties for misuse. Yet, due to outdated laws mentioned above, CMS is forced to remove *all* claims where substance use disorder is a primary or secondary diagnosis. Patient safety is also threatened with the potential pharmaceutical contraindications without access to the full medical record providers are prevented from understanding the full extent of their patients' medical needs.

We commend SAMHSA's recent rule making efforts, and understand that your agency has probably gone as far as possible in regards to attempts to modernize the Part 2 Rule. Representative Blumenauer and I introduced HR 3545 to ensure healthcare providers have access to the full medical record, including information on substance use disorders, to effectively and safely treat patients suffering from substance use disorder while guaranteeing the privacy and security of substance use medical records. In particular, our bill would reinforce and expand existing prohibitions on the use of these records in criminal proceedings.

We are seeking your input and thoughts on our legislation to amend 42 CFR Part 2 and align with HIPAA's treatment, healthcare operations and payment policy as one of several potential solutions to help with the opioid crisis. Thank you for your attention to this important matter.

Sincerely,


Markwayne Mullin
Member of Congress


Earl Blumenauer
Member of Congress