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Executive Director
NASMHPD

January 28, 2019

Don Rucker, M.D.
National Coordinator
Office of the National Coordinator for Health Information Technology
330 C Street SW
Floor 7
Washington, DC 20201

Re: Comments on [Draft Strategy on Reducing Regulatory and Administrative Burden Relating to the Use of Health IT and EHRs](#)

Dear Dr. Rucker,

The National Association of State Mental Health Program Directors (NASMHPD)—the organization representing the state executives responsible for the \$41 billion public mental health service delivery systems serving 7.5 million people annually in 50 states, 4 territories, and the District of Columbia—appreciates the opportunity to submit comments on the Office of the National Coordinator’s Draft Strategy on Reducing Regulatory and Administrative Burden Relating to the Use of Health IT and EHRs.

NASMHPD is part of a coalition of nearly 50 national health care organizations—the 42 CFR Part 2 Partnership—that includes a range of stakeholders, including state mental health agencies, patients, clinicians, hospitals, biopharmaceutical companies, pharmacists, electronic health record (EHR) vendors, and insurance providers, that is committed to aligning 42 CFR Part 2 with the Health Insurance Portability and Accountability Act (HIPAA) for the purposes of treatment, payment, and health care operations (TPO), in order to allow appropriate access to patient information that is essential for providing whole-person care.

The law underlying the outdated 42 CFR Part 2 regulations, 42 U.S.C. § 290dd-2, sets requirements limiting the use and disclosure of patients’ substance use records from certain substance use treatment programs. Under the regulations and the underlying law, patients must submit written consent prior to the disclosure of their substance use disorder (SUD) record. Obtaining multiple consents from the patient is burdensome and creates barriers to the whole-person, integrated approaches to care, which have become the goal of our national healthcare system. Prohibiting disclosures of diagnosis, treatment, and referral for substance use disorder treatment to other health care providers or, particularly relevant to the ONC, to health information exchanges for the purposes of redisclosure to other treating providers reduces the effectiveness of clinical reports to physicians, delaying data transmission to providers, and thereby serving to stymie the integration of care so crucial to effectively treating individuals with substance use disorders who so often experience co-occurring medical conditions.

In addition, separation of a patient’s addiction record from the rest of that person’s medical record creates challenges and prevents patients from receiving safe, effective, high quality substance use disorder treatment. In situations where the patient does not give consent or cannot be located to give consent, Part 2 regulations may lead to a doctor treating a patient and writing prescriptions for an opioid pain medication without knowing the person has a substance use disorder. In the worst case scenario, a patient on a maintenance dose of an agonist pharmaceutical treatment for an addiction is put at risk of an opioid overdose if

prescribed an opioid painkiller. It also puts a recovering patient at risk for falling victim to relapse when prescribed and dispensed an addictive substance and puts the patient at risk for adverse drug interactions where different providers on the patient's care team might unknowingly prescribe conflicting drugs.

42 CFR Part 2 was created to reduce stigma associated with substance use disorders and encourage people to seek treatment without fear of prosecution by law enforcement. But with the enactment of HIPAA, a set of disclosure restrictions separate from and less restrictive than those under 42 CFR Part 2, the earlier regulations and law tend to create greater stigma by suggesting that patients suffering substance use disorders need greater protection than patients dealing with other diseases and conditions covered under HIPAA.

NASMHPD and the Partnership recognize there are valid and reasonable concerns about disclosures of diagnosis, treatment, and referral information in criminal investigations and proceedings and we would not change the protections that already exist within 42 U.S.C. § 290dd-2(c). In addition, the Partnership has language at the ready, included in [H.R. 5795](#), the Overdose Prevention and Patient Safety Act, passed in the House of Representatives Energy and Commerce Committee in 2018, that would prohibit disclosures in civil trials and administrative proceedings to protect against the use of diagnosis, treatment, and referral information in *any* adversarial proceedings.

NASMHPD strongly recommends that any new guidance issued by ONC to reduce administrative burden align 42 CFR Part 2 with HIPAA, at least with regard to electronic records, in order to allow for the transmission of substance use disorder treatment and referral records without written authorization for the purposes of treatment, payment, and health care operations. Alignment will promote integrated care and enhance patient safety by reducing patient risk. Additionally, it will provide health care professionals with one privacy standard for all of medicine, thereby reducing administrative burden for providers.

Thank you for your attention to these comments.

If you have any questions about this correspondence, please do not hesitate to contact me by [email](#) or by phone at 443-838-8456 or NASMHPD's Director of Policy and Communications, Stuart Yael Gordon, by [email](#) or at 703-682-7552.

Sincerely,

A handwritten signature in black ink that reads "Brian Hepburn". The signature is written in a cursive, flowing style.

Brian Hepburn, M.D.
Executive Director
National Association of State Mental Health Program Directors (NASMHPD)