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January 31, 2023

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Assistant Secretary for Mental Health and Substance Use
Substance Abuse and Mental Health Services Administration
Department of Health and Human Services
5600 Fishers Lane
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Submitted electronically via www.regulations.gov

RE: RID 0945-AA16 Confidentiality of Substance Use Disorder Patient Records (HHS-OCR-0946-AA16)

Dear Director Fontest Rainer and Assistant Secretary Delphin-Rittmon:

The Healthcare Association of New York State, on behalf of our member nonprofit and public hospitals, nursing homes, home health agencies and other healthcare providers, writes in response to revisions proposed by the HHS OCR and SAMHSA to the Confidentiality of Substance Use Disorder Patient Records, 42 Code of Federal Regulations, Part 2.

HANYYS commends OCR and SAMHSA for recognizing the importance of aligning Part 2 with the Health Insurance Portability and Accountability Act. Consistent definitions, data sharing requirements and standards will help reduce or eliminate longstanding obstacles to care for patients, and remove unnecessary administrative burdens for service providers.

Nonetheless, ongoing differences between Part 2 and HIPAA requirements continue to create significant impediments to effective care coordination for individuals living with SUD. Many electronic health record systems do not have the capacity to fully sequester Part 2 data in the context of multispecialty facilities. Therefore, to ensure compliance with Part 2, providers often have to maintain two separate medical records, which creates a burden and expense but no tangible benefit.

There is clear evidence that integrated treatment yields better outcomes than siloed treatment. Therefore, full alignment of Part 2 with HIPAA is necessary to provide equitable access to care for individuals living with SUD.

Our comments on specific proposals are below.

Consent for redisclosure

HANYS strongly supports the proposal to allow a patient receiving SUD treatment to provide a single consent to disclose their Part 2 treatment records to a class of recipients, without naming a specific person or provider as the recipient for disclosure. Currently, when disclosing protected information to entities that do not have a treating provider relationship with the patient, a new consent would be required, which results in frustration for the patient and delays in receiving services.

Effective and compliance dates

HANYS recommends that OCR and SAMHSA offer flexibility as service providers establish and implement policies and practices to achieve compliance with the complex rule changes.

We also support the proposal to delay implementation of the requirement to account for disclosures, until corresponding changes are in place for HIPAA- continuing efforts to align the rules. However, as details of requirements to account for disclosures are finalized, HANYS urges OCR to consider the administrative burdens and costs of creating such reports in context of the usefulness to patients.

Thank you for the opportunity to provide feedback on potential modifications to the Part 2 regulations. If you have questions, contact me or Sarah DuVall, director, behavioral health, at (518)-431-7769 or sduvall@hanys.org.

Sincerely,



Victoria Aufiero, Esq
Vice President, insurance, managed care and behavioral health