



October 25, 2019

Elinore F. McCance-Katz, M.D., Ph.D.  
Assistant Secretary for Mental Health and Substance Use  
Substance Abuse and Mental Health Services Administration  
5600 Fishers Lane  
Rockville, MD 20857

Dear Assistant Secretary McCance-Katz,

On behalf of the nation's Medicaid Directors, NAMD generally supports the Substance Abuse and Mental Health Services Administration (SAMHSA)'s proposed revisions to rules governing patient substance use disorder (SUD) records at 42 CFR Part 2 [SAMHSA 4162-20], which continue to modernize its interpretation of statutory privacy protections. It is helpful that SAMHSA has proposed to permit individuals to identify parties to whom information can permissibly be disclosed, and that it has memorialized a nonexclusive list of health care operations activities. However, NAMD is concerned that SAMHSA has continued to exclude diagnosis; treatment; and referral to treatment, care coordination and case management; from the proposed rule's definition of health care operations. This is inconsistent with best practice around integrated medical and behavioral health care, and has the consequence of impeding effective care for individuals with SUD. We therefore strongly urge SAMHSA to further revise the rule to include these critical activities in its definition of health care operations. This will help to ensure that individuals with SUD receive effective, evidence-based treatment and integrated care coordination.

The National Association of Medicaid Directors (NAMD) is a bipartisan, nonprofit, professional organization representing leaders of state Medicaid agencies across the country. Our members drive major innovations in health care while overseeing Medicaid, which provides a vital health care safety net for more than 72 million Americans. The Medicaid program is one of the primary payers of behavioral health services in the nation and a significant tool in state strategies to address the ongoing opioid epidemic.

As NAMD has previously commented, the Part 2 statute is outdated and does not reflect current SUD treatment best practices, clinical understanding of addiction, or contemporary health care practice. Recognizing that more extensive changes would require that Congress amend the statute, we appreciate SAMHSA's ongoing efforts to modernize its regulatory interpretation of the statute and believe that it is well within SAMHSA's regulatory authority to make this further change to the rule.



NAMD appreciates and supports the proposed change to consent requirements at §2.31(a)(4)(i), which would allow patients to designate specific individuals or entities to which a disclosure could permissibly be made. This will help to streamline the consent process and support access to nonmedical benefits and services.

Further, NAMD supports the changes to §2.33(b), which memorialize the nonexclusive list of health care operations activities that SAMHSA included in its 2018 final rule. We support this change, as it appropriately acknowledges the modern health care landscape and the role of third-party entities, such as managed care organizations, in facilitating access to SUD treatment services.

However, reprising the 2018 rule, SAMHSA reinforces that the definition of health care operations does not include care coordination or case management, and that disclosures to contractors and subcontractors for those purposes are not permitted. As noted above, we strongly recommend that SAMHSA revisit this interpretation to more closely align Part 2 rules with rules under the Health Insurance Portability and Accountability Act (HIPAA) that govern other sensitive, non-SUD health information.

Part 2 restrictions can inhibit vulnerable individuals who are seeking SUD treatment from receiving the most effective possible evidence-based treatments and integrated care coordination. Further, Part 2 impedes parity among people seeking support for SUD services with those seeking support for physical health conditions. Finally, Part 2 is inhibiting progress by medical providers who are involved in enhanced care coordination initiatives that are associated with value-based payment. Simply put, those practices do not have the information they need to comprehensively address the needs of, and improve outcomes for, individuals with multifaceted healthcare needs.

While NAMD is not taking a specific position on SAMHSA's proposed changes regarding disclosure to prescription drug monitoring programs (PDMPs), NAMD acknowledges that disclosure of data to, and appropriate utilization of PDMP information, can play an important role in ensuring that individuals are not being prescribed opioids and other substances by multiple sources.

Thank you for your consideration of state perspectives on this proposed rule. NAMD and our members look forward to continuing to work with SAMHSA to ensure that individuals with SUD receive appropriate, integrated, evidence-based care.



Sincerely,

A handwritten signature in black ink, appearing to read "Kate McEvoy". The signature is fluid and cursive, with a prominent loop at the end.

Kate McEvoy  
State Medicaid Director  
State of Connecticut  
President, NAMD

A handwritten signature in black ink, appearing to read "Beth Kidder". The signature is cursive and somewhat stylized, with a long, sweeping underline.

Beth Kidder  
Deputy Secretary for Medicaid  
State of Florida  
President-Elect, NAMD