



January 31, 2023

The Honorable Xavier Becerra
Secretary
U.S. Department of Health and Human Services
200 Independence Avenue SW
Washington, D.C. 20001

Dear Secretary Becerra,

On behalf of the nation's Medicaid Directors, NAMD is pleased to offer comments on the proposed rule [Confidentiality of Substance Use Disorder \(SUD\) Patient Records](#) [HHS–OCR–0945– AA16]. NAMD is supportive of the proposed changes, which would advance Medicaid agencies' efforts to provide coordinated care, advance behavioral health integration, reduce stigma, and effectively serve members with SUD.

NAMD is a bipartisan, nonprofit, professional organization representing leaders of all Medicaid agencies across the country. NAMD represents, elevates, and supports state and territorial Medicaid leaders to deliver high value services to the millions of people served by Medicaid and CHIP so they can achieve their best health and thrive in their communities.

NAMD is supportive of the proposed changes that would:

- Align 42 CFR Part 2 with the HIPAA Privacy Rule by only requiring patients to provide consent once for future uses and disclosures of Part 2 records for treatment, payment, and health care operations.
- Permit redisclosure of Part 2 records in any manner permitted by HIPAA, with certain exceptions.
- Allow patients to obtain an accounting of disclosures of Part 2 records and to request restrictions on certain disclosures, as also granted by HIPAA.

As discussed in our [October 2019 comments to SAMHSA](#), Part 2 restrictions can prevent individuals seeking SUD treatment from receiving the most effective care. Many states and territories [have taken steps](#) to provide whole-person care by advancing behavioral health integration and care coordination, but report that existing Part 2 rules are a barrier to these efforts. Notably, [Medicaid agencies report](#) that Part 2 restrictions have also prevented providers from participating in value-based payment arrangements that aim to incentivize care coordination. Providers need information to comprehensively address their patients' needs, including needs related to substance use, and the proposed changes would support this move towards integrated, whole-person care.

The proposed changes would also help address [longstanding technical challenges](#) with building electronic health records (EHRs) and Health Information Exchanges (HIEs) that are compliant with 42 CFR Part 2. These technical challenges have served as [a barrier](#)

[to behavioral health integration](#), and segmented systems may lead to [increased administrative burden](#) for providers who serve individuals with SUD.

This rule may also help address the stigma associated with SUD. Under the current regulatory framework, SUD data is treated differently than data related to other diseases, which may perpetuate the idea that SUD is more “shameful” than other diseases. By aligning 42 CFR Part 2 and HIPAA, the rule may help address the high levels of stigma that prevent many individuals living with SUD from seeking care.

While NAMD and its members are broadly supportive of the proposed rule, we have two recommendations to maximize its impact.

First, Medicaid agencies report some concerns about the compliance timeline for the provision related to the accounting of disclosures. The proposed rule would establish a patient’s right to receive, upon request, an accounting of Part 2 records made with written consent for up to three years after such disclosures are made. HHS should ensure a sufficient timeframe for state compliance and provide technical assistance to Medicaid agencies.

Second, if HHS finalizes these proposed changes, it will be important to educate stakeholders on the new regulations. As noted in our [August 2022 letter](#) to your office, Medicaid agencies report that providers are often confused by Part 2 and anxious over inadvertently making inappropriate disclosures, which serves as a barrier to allowable data sharing. Aligning 42 CFR Part 2 with HIPAA will help address this challenge, but HHS should also consider technical assistance strategies. These could include provider education, clarification of the new rules, and examples of acceptable data sharing.

Thank you for the opportunity to provide comments on this proposed rule. NAMD looks forward to continuing to work with HHS to ensure that individuals with SUD receive integrated, whole-person, evidence-based care.

Sincerely,



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Director of Medicaid
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Services Administration



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