



March 8, 2018

The Honorable Lamar Alexander
Chairman
U.S. Senate Committee on
Health, Education, Labor & Pensions
428 Dirksen Senate Office Building
Washington, D.C. 20510

The Honorable Patty Murray
Ranking Member
U.S. Senate Committee on
Health, Education, Labor & Pensions
428 Dirksen Senate Office Building
Washington, D.C. 20510

Dear Chairman Alexander and Ranking Member Murray:

The Healthcare Leadership Council (HLC) is writing to you to urge passage of S. 1850, "Protecting Jessica Grubb's Legacy Act", to enable the appropriate exchange of necessary information among medical professionals who are treating individuals with substance use disorders, including opioid abuse. While HLC commends the U.S. Substance Abuse and Mental Health Service Administration's (SAMHSA's) ruling to amend 42 C.F.R. Part 2 to better align Part 2 regulations within the Health Insurance Portability and Accountability Act (HIPAA) to integrate behavioral and physical healthcare, we believe this ruling does not go far enough to help increase access to relevant health information among patients, payers and providers while concurrently protecting patient privacy.

HLC is a coalition of chief executives from all disciplines within American healthcare. It is the exclusive forum for the nation's healthcare leaders to jointly develop policies, plans, and programs to achieve their vision of a 21st century health system that makes affordable, high-quality care accessible to all Americans. Members of HLC – hospitals, academic health centers, health plans, pharmaceutical companies, medical device manufacturers, laboratories, biotech firms, health product distributors, pharmacies, post-acute care providers, and information technology companies – advocate for measures to increase the quality and efficiency of healthcare through a patient-centered approach. Through this diversity, we develop a nuanced perspective on the impact of any legislation or regulation affecting the privacy and security of health consumers. We believe access to timely and accurate patient information leads to both improvements in quality and safety and the development of new lifesaving and life-enhancing medical interventions.

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 and 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 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 the outdated Part 2 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 that could occur without access to the full medical record. Without this critical information, providers are prevented from understanding the full extent of their patients' medical needs.

We commend SAMHSA's recent rulemaking efforts, and understand the agency has probably gone as far as possible in regards to attempts to modernize the Part 2 Rule. Senator Joe Manchin (D-WV) and Senator Shelley Moore Capito (R-WV) introduced S. 1850 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 disorders while guaranteeing the privacy and security of substance use medical records. In particular, this legislation would reinforce and expand existing prohibitions on the use of these records in criminal proceedings.

We urge the Committee to consider S. 1850 to amend 42 CFR Part 2 and align with HIPAA's treatment, healthcare operations, and payment policy as one of several potential solutions Congress passes to help with the opioid crisis. Thank you for your attention to this important matter. Should you have any questions, please contact Tina Grande at 202.449.3433 or tgrande@hlc.org.

Sincerely,

A handwritten signature in cursive script, appearing to read "Mary R. Greal".

Mary R. Greal
President

cc: U.S. Senate