



March 29, 2018

Penny Thompson, MPA
Medicaid and CHIP Payment and Access Commission
MACPAC
1800 M St. NW Suite 650 South
Washington, D.C. 20036

Dear Ms. Thompson:

The Healthcare Leadership Council (HLC) is writing to express our support for the MACPAC recommendations for Substance Use Disorder Confidentiality Regulations and Care Integration in Medicaid. HLC believes these recommendations will help the U.S. Department of Health and Human Services (HHS) clarify key components, and coordinate education and technical assistance within 42 CFR Part 2 (Part 2) across relevant agencies. HLC agrees with the commission's finding that Part 2 in its current form remains a barrier to integrating behavioral healthcare, and the need to enable the appropriate exchange of necessary information among medical professionals who are treating individuals with substance use disorders, including opioid abuse, is crucial.

We commend the U.S. Substance Abuse and Mental Health Service Administration's (SAMHSA's) recent letter to Representatives Mullin (R-OK) and Blumenauer (D-OR) stating they agree that a patient's full medical record should be shared with all healthcare providers for the purposes of treatment. This letter highlights SAMHSA's interest but regulatory limits to amend and align Part 2 with the Health Insurance Portability and Accountability Act (HIPAA) to integrate behavioral and physical healthcare, which would 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 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 put in place by HIPAA after the implementation of Part 2.

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 outdated 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.

Once again, we commend MACPAC's recent recommendations that the Secretary of HHS direct salient agencies to issue regulatory guidance to clarify Part 2 provisions and provide educational and technical assistance on Part 2. We understand SAMHSA has done as much as possible under its regulatory authority in regards to attempts to modernize the Part 2 Rule.

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 black ink, appearing to read "Mary R. Grealy". The signature is fluid and cursive, with the first name "Mary" being the most prominent.

Mary R. Grealy
President