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October 25, 2019

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

SUBJECT: SAMHSA-4162-20, Confidentiality of Substance Use Disorder Patient Records, Proposed Rule, Federal Register (Vol. 84, No. 165), August 26, 2019

Dear Assistant Secretary McCance-Katz:

On behalf of our more than 400 member hospitals and health systems, the California Hospital Association (CHA) appreciates the opportunity to submit comments on the Substance Abuse and Mental Health Services Administration's (SAMHSA) proposed changes to the Confidentiality of Substance Use Disorder (SUD) Patient Records regulations.

CHA appreciates that SAMHSA continues to review and clarify regulations at § 42 C.F.R. Part 2 (Part 2) for opportunities to remove barriers to integrated, whole-person care for patients receiving services from SUD programs. **While we support SAMHSA's proposals – detailed below – we continue to be concerned that the Part 2 regulations unnecessarily restrict sharing of SUD information, which often denies clinicians treating patients with a SUD access to their complete medical histories.** The only way to properly treat the whole person is to have all the information necessary to fully address all of their health and wellness needs. For example, knowledge of a patient's prior SUD history is essential for proper pain management after surgery. To ensure compliance with the Part 2 regulations, clinicians must maintain two separate computer systems and two separate medical records, adding significant burden and expense.

The Health Insurance Portability and Accountability Act (HIPAA) health information privacy regulations were designed thoughtfully, with considerable public input over several years, to carefully and appropriately balance the privacy rights of patients with the important goal of sharing necessary information to provide optimal patient care. The HIPAA regulations apply to protect all types of health information that patients may feel is especially sensitive, including mental health, abortion, cancer, HIV, and other sexually transmitted disease records. It is time to stop stigmatizing substance use disorder patients and treat them similarly to all other patients. **CHA strongly supports efforts to make statutory changes that would amend § 42 C.F.R. Part 2 to align with HIPAA for the purposes of treatment, payment, and health care operations.**

In the interim, CHA supports a number of proposals and clarifications outlined in the proposed rule that will help to address burden and reduce confusion. In particular, CHA appreciates that SAMHSA clarifies the incorporation of written records from a Part 2 program by a non-Part 2 entity does not — by itself — render a medical record subject to Part 2 rules, as long as the non-Part 2 entity segregates the SUD

records received from the Part 2 program. **While we continue to be concerned that segregating records is a burdensome requirement, we understand that addressing these concerns requires statutory changes.**

However, providers continue to be confused by the regulatory language that defines a Part 2 provider. The current statute defines Part 2 providers as alcohol and drug treatment programs that receive federal funds in any form — including Medicare or Medicaid funding or via their tax-exempt status — and “hold themselves out as providing” alcohol or drug abuse diagnosis, treatment, or referral for treatment. General medical facilities and medical practices are carved out from this definition only if they do not “hold themselves out” as providing SUD diagnosis, treatment, or referral for treatment and the “primary function” of their medical personnel or other staff is not the provision of, and they are not identified as providing, such services. We urge SAMHSA to provide more guidance about how providers should determine whether they “hold themselves out,” or whether the “primary function of their medical personnel or other staff is the provision of and they are identified as providing” SUD services.

In addition, CHA supports SAMHSA’s proposal to permit non-opioid treatment providers access to central registries and to permit opioid treatment programs to disclose dispensing and prescribing data to prescription drug monitoring programs, subject to patient consent. CHA also supports SAMHSA’s proposal to allow patients to consent to disclosing Part 2 treatment for a wide range of entities without having to name each individual receiving that information. We believe this is an important step to reduce administrative burden while supporting appropriate team-based care to patients treated for SUD. Similarly, we support SAMHSA’s proposal to allow disclosure of patient information to another Part 2 program or SUD treatment provider during disasters without patient consent, which will support continuity of care for patients receiving care while affected by disasters.

Finally, we appreciate that SAMHSA has provided guidance on how employees, volunteers, and trainees of Part 2 facilities should handle communications when using personal devices and accounts. Specifically, SAMHSA states that when an employee or volunteer makes contact with a patient through a personal email account or cell phone, the employee should immediately delete this information from their personal account and respond only via authorized channels provided by the Part 2 program, unless responding directly to the patient is in the patient’s best interests. This is an important clarification to the existing Part 2 security standards that require “sanitizing” all patient-identifying information to render it non-retrievable. CHA appreciates this important clarification.

CHA appreciates the opportunity to share our comments on these important issues. If you have any questions, please do not hesitate to contact me at (202) 488-4688 or akeefe@calhospital.org, or my colleagues Lois Richardson, vice president, legal counsel, at (916) 552-7611 or lrichardson@calhospital.org; or Megan Howard, senior policy analyst, at (202) 488-3742 or mhoward@calhospital.org.

Sincerely,

/s/

Alyssa Keefe

Vice President, Federal Regulatory Affairs