



April 11, 2016

Kana Enomoto, MA  
Acting Administrator  
Substance Abuse and Mental Health Services Administration  
Department of Health and Human Services  
Attention: SAMHSA-4162-20  
5600 Fishers Lane, Room 13N02B  
Rockville, MD 20857

**Re: Confidentiality of Substance Use Disorder Patient Records Proposed Rule [SAMHSA-4162-20]**

Dear Acting Administrator Enomoto:

The American College of Physicians (ACP) appreciates the opportunity to provide comments on the proposed revisions (SAMHSA 4162-20) to the “Confidentiality of Alcohol and Drug Abuse Patient Records” regulations. The College is the largest medical specialty organization and the second-largest physician group in the United States. ACP members include 143,000 internal medicine physicians (internists), related subspecialists, and medical students. Internal medicine physicians are specialists who apply scientific knowledge and clinical expertise to the diagnosis, treatment, and compassionate care of adults across the spectrum from health to complex illness.

The College supports the effort by the Substance Abuse and Mental Health Services Administration (SAMHSA) to update and modernize the regulations pertaining to the confidentiality of records of patients receiving treatment for substance abuse disorders within a “Part 2” program. The proposed changes preserve the current confidentiality rights of substance use disorder patients within these settings while also removing barriers caused by the current outdated regulations that:

- Impede participation by these patients in new and emerging healthcare models (Accountable Care Organizations, Coordinated Care Organizations); and
- Restrict the use of improvements in health information technologies (e.g., electronic health records (EHRs), Health Information Exchanges (HIEs)) that allow for the more efficient communication of vital healthcare information.

The College specifically commends SAMHSA for the improved definitional clarity offered throughout the proposed rule. ACP supports the proposal to allow, in certain circumstances, a

patient to include a general designation in the “To Whom” portion of the consent form while balancing this change with the addition of a new confidentiality safeguard. This safeguard requires that patients be provided a list of entities to which their information was disclosed pursuant to such a general designation upon request. The College also supports the proposed changes in the language used within the medical emergency exception, which has the effect of providing healthcare personnel with more discretion to determine when a “bona fide medical emergency” exists and, if so, to more rapidly provide potentially life-saving clinical information.

Despite these improvements, ACP continues to have significant concerns regarding the issue of the confidentiality of records of patients undergoing treatment within Part 2 programs. These concerns are:

- The inability, based on currently available health information standards and technology, to adequately protect (segment) confidential information delivered to an entity in a manner consistent with these regulations. This issue is most problematic within large patient settings in which information is electronically received and distributed throughout different sections of their EHR system, such as placing medications in the medication list and laboratory results in the results list. The College believes that it is difficult, if not impossible, to ensure that restricted Part 2 data can be protected from those who are not granted access under the provisions of these regulations. Further, it will be nearly impossible to prevent redistribution of sensitive data collected in this way to third parties who may not have been granted permission to receive them.
- The harmful effects of continuing to treat substance use disorder information from Part 2 programs differently from other forms of protected health information (PHI) included under the provisions of the Health Insurance Portability and Accountability Act (HIPAA). The College believes that physicians and other healthcare professionals can only provide effective “whole person” care if they have access to all of their patients’ treatment history and current medications.<sup>1</sup> The ability of patients under the Part 2 confidentiality rules to restrict vital information from those personnel within a “treating provider” relationship only serves to impair the delivery of quality care. While we are aware of and sensitive to the history of discrimination and harm to reputations resulting from the inappropriate disclosure of patient substance use disorder treatment information, we feel that these issues are more appropriately addressed through strengthening and enforcing state and federal nondiscrimination laws and expanding educational efforts to reduce the stigmatizing of individuals with behavioral disorders<sup>2</sup> rather than by

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<sup>1</sup> American College of Physicians. Health Information Technology and Privacy. Philadelphia: American College of Physicians; 2011: Position Paper. Accessed at: [http://www.acponline.org/system/files/documents/advocacy/current\\_policy\\_papers/assets/hit\\_privacy.pdf](http://www.acponline.org/system/files/documents/advocacy/current_policy_papers/assets/hit_privacy.pdf) on April 8, 2016.

<sup>2</sup> Crowley RA, Kirschner N, for the Health and Public Policy Committee of the American College of Physicians. The Integration of Care for Mental Health, Substance Abuse, and Other Behavioral Health Conditions into Primary Care: Executive Summary of an American College of Physicians Position Paper. *Ann Intern Med.* 2015;163:298-299. doi:10.7326/M15-0510

restricting the availability of important Part 2 clinical information to the treating clinician.

Please contact Neil Kirschner Ph.D. on our staff at [nkirschner@acponline.org](mailto:nkirschner@acponline.org) or 202-261-4535 if you have any questions regarding these comments.

Respectfully,

A handwritten signature in black ink, appearing to read "Robert McLean MD", with the letters "M.A.", "M.H.I.", and "MD" written in smaller script to the right of the main signature.

Robert McLean, MD, FACP, FACR  
Chair, Medical Practice and Quality Committee  
American College of Physicians