

Coronavirus Aid, Relief, and Economic Security (CARES) Act Addresses 42 CFR Part 2 and Substance Use Disorder (SUD) Records

Americans are working together to overcome the COVID-19 pandemic. Congress is taking essential action to ensure that every American continues to have the access to care they need and deserve during this challenging time. That includes ensuring that people suffering from substance use disorder (SUD) can still easily get the care and treatments they need.

As part of the CARES Act, Congress made much needed improvements to 42 CFR Part 2 (Part 2) regulations. These regulations govern the confidentiality of patient records created by federally funded programs for the treatment of SUD and require explicit patient consent each time SUD records are shared for health care purposes. Part 2 has long been criticized as a barrier to data sharing that is essential for patient care - undermining care coordination and erecting unnecessary and cumbersome administrative burdens. The recent opioid crisis has drawn further attention to the need for Part 2 revisions to facilitate better coordination of care for SUD and enhance care for opioid use disorder (OUD).

For the past several years, a diverse coalition of stakeholders spanning clinicians, facilities, health insurance providers, pharmacies, consumers, employers and others has advocated for modernization of these regulations and alignment with confidentiality rules that govern other types of medical record information under the Health Insurance Portability and Accountability Act (HIPAA).

The bipartisan CARES Act passed on March 27, 2020 included this change (based on the Legacy Act introduced by Senators Capito and Manchin) and aligns Part 2 with HIPAA, allowing patients to consent once to their SUD records being shared for purposes of treatment, payment, and health care operations, while maintaining important confidentiality protections.

This legislation ensures that 42 CFR Part 2:

- Aligns with HIPAA so that an initial patient consent can allow for a patient's SUD treatment record to be used or disclosed by a HIPAA covered entity, business associate, or program for the purposes of treatment, payment, and health care operations. The legislation specifies that disclosures should be limited to the "minimum necessary" information and allows a patient to revoke consent in writing.
- Permits SUD information to be shared with a public health authority as long as it is de-identified in accordance with HIPAA.
- Places limitations on the use of SUD records in criminal, civil, or administrative investigations or proceedings.
- Includes prohibitions on discrimination against patients suffering from SUD.

These changes will enable:

- Appropriate access to patient information that is essential for providing safe, effective, whole-person care for individuals with SUD;
- Integration of SUD, mental health, and medical/surgical health care services to produce the best patient outcomes and establish effective approaches to caring for people with complex health care needs; and
- A more robust and coordinated approach to tackling the opioid, COVID-19, and future crises, as well as improving the overall coordination of care in the U.S.

AHIP applauds these positive changes, and thanks Congress for prioritizing the behavioral health and well-being of all Americans.