



**Association for Behavioral  
Health and Wellness**

*Advancing benefits and services  
in mental health, substance use  
and behavior change.*

April 11, 2018

The Honorable Lamar Alexander, Chairman  
U.S. Senate Committee on Health, Education, Labor,  
and Pensions  
455 Dirksen Senate Office Building  
Washington, DC 20510

The Honorable Patty Murray, Ranking Member  
U.S. Senate Committee on Health, Education, Labor,  
and Pensions  
154 Russell Senate Office Building  
Washington, DC 20510

Dear Chairman Alexander and Ranking Member Murray:

The Association for Behavioral Health and Wellness (ABHW) is pleased to see the Senate Committee on Health, Education, Labor, and Pensions (HELP) has introduced draft legislation to address the opioid epidemic. ABHW is the leading association working to raise awareness, reduce stigma, and advance federal policy to improve mental health and addiction care. Our members include top regional and national health plans that collectively care for about 175 million people.

ABHW and its member companies are aware of the scope of the crisis, with 115 Americans dying every day from an opioid overdose. ABHW is fully committed to helping defeat the opioid epidemic and supports a continuum of evidence based, person-centered care to treat individuals with an opioid use disorder, including medication assisted treatment (MAT). Our members work to identify and prevent addiction where they can; and where they cannot, they help individuals get treatment so that they can recover and lead full, productive lives in the community.

The Opioid Crisis Response Act of 2018 contains many measures that ABHW supports, including enhanced Prescription Drug Monitoring Programs (PDMPs), increased access to medication assisted treatment (MAT), and best practices for recovery housing. Those proposals are vital in the fight to alleviate this crisis.

However, one key proposal to fighting the opioid epidemic was excluded from the draft. 42 CFR Part 2 (Part 2), the outdated 1970s federal regulations governing the confidentiality of drug and alcohol treatment and prevention records, needs to be reformed. Part 2 sets requirements limiting the use and disclosure of patients' substance use disorder (SUD) records from federally assisted entities or individuals that hold themselves out as providing, and do provide, alcohol or drug use diagnosis, treatment, or referral for treatment. This can prohibit health plans, and others, from sharing this information with the health care providers on the front line caring for patients suffering from opioid and other substance use disorders. ABHW members say Part 2 is one of the biggest – if not the biggest – barriers to fighting the opioid crisis.

Obtaining multiple consents from the patient is challenging and obstructs whole-person, integrated approaches to care, which are part of our current health care framework. Part 2 regulations may lead to a doctor treating a patient and writing prescriptions for opioid pain medication for that individual without knowing the person has an opioid use disorder. Without written consent from the patient, ABHW member

companies have had cases where the health plan cannot speak to the patient's primary care provider and other specialists about the patient's SUD, even if that provider is prescribing opioids to the patient.

For example, one health plan notes that it found over 200 members had been to emergency departments (EDs) over seven times in a six-month period. The health plan wanted to share this information through an automatic feed to the respective providers so they could take action in helping these members. However, because the information may have included whether or not a member was categorized as having a SUD, the plan was not able to provide the feed. This was especially troubling, since in reviewing the data, the health plan also found that some members were attempting to obtain opioids from several different EDs. Unfortunately, because of Part 2, the health plan was not able to inform the provider that it appeared their patient may be misusing opioids.

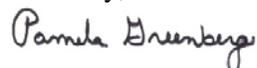
The Substance Abuse and Mental Health Services Administration (SAMHSA) released two final rules on Part 2 in the past year. Both rules take small steps to modernize Part 2, but they do not go far enough. Legislative action is also necessary in order to modify Part 2 and bring substance use records into the 21<sup>st</sup> Century. Aligning Part 2 requirements with Health Insurance Portability and Accountability Act (HIPAA) allow the use and disclosure of patient information for treatment, payment, and health care operations (TPO) and improve patient care by ensuring that providers and organizations with a direct treatment relationship with a patient have access to his or her complete medical record. Without access to a complete record, providers cannot properly treat the whole person and may, unknowingly, endanger a person's recovery and his or her life.

Harmonization of Part 2 with HIPAA would also increase care coordination and integration among treating providers and other entities in communities across the nation. We support provisions that preclude Part 2 information from being disclosed for non-treatment purposes to law enforcement, employers, landlords, divorce attorneys, or others seeking to use the information against the patient. We do not want consumers to be made vulnerable as a result of seeking treatment for a substance use disorder. However, disclosures of substance use disorder records for treatment, payment, and health care operations should be allowed. Separation of substance use from the rest of medicine increases the stigma around the disease and hinders patients from receiving safe, effective, high quality substance use treatment and integrated care.

The Protecting Jessica Grubb's Legacy Act, S. 1850, co-sponsored by Senators Shelley Moore Capito (R-WV) and Joe Manchin (D-WV), would align Part 2 with HIPAA for the purposes of TPO and strengthen protections against the use of substance use disorder records in criminal proceedings. We strongly recommend inclusion of this legislation in the final version of your opioid legislation.

Thank you for your leadership in putting forward this legislation, ABHW appreciates the opportunity to provide the Senate HELP Committee with policy considerations for addressing the opioid crisis. We look forward to continuing this dialogue and working with you to end the overdoses and deaths that are ravaging our country. Please feel free to contact me at (202) 449-7660 to discuss these issues further.

Sincerely,



Pamela Greenberg, MPP  
President and CEO