



October 24, 2019

Elinore F. McCance-Katz, M.D., Ph.D.
Assistant Secretary for Mental Health and Substance Use
U.S. Department of Health and Human Services
Substance Abuse and Mental Health Services Administration
5600 Fishers Lane, Room 17E41
Rockville, MD 20857

Submitted Electronically via Regulations.Gov

RE: SAMHSA 4162-20

Dear Dr. McCance-Katz,

I am writing on behalf of the National Association of Health Underwriters (NAHU), a professional association representing more than 100,000 licensed health insurance agents, brokers, general agents, consultants and employee benefit specialists. We are pleased to have the opportunity to provide comments in response to the proposed changes to the Confidentiality of Substance Use Disorder Patient Records regulations published in Volume 84, Number 165 of the *Federal Register* on August 26, 2019.

The members of NAHU are primarily state-licensed health insurance producers who work daily to help millions of individuals and employers purchase, administer and utilize health insurance coverage. Virtually all of our members, as well as their businesses or employers, qualify as either covered entities or business associates subject to the HIPAA privacy regulations and the related Health Information Technology for Economic and Clinical Health Act (HITECH) data security rules. Furthermore, many of our members' employer clients are operators of self-funded group health insurance plans so they qualify as covered entities under these rules, and they rely on NAHU members for HIPAA and HITECH compliance assistance. Finally, NAHU agents and brokers work directly with individual purchasers of health insurance and routinely help individual beneficiaries with health insurance claims and payment issues and, during those interactions, concerns related to the confidentiality of substance use disorder patient records requirements codified in 42 CFR part two sometimes arise.

Based on our members' real-world exposure to all of these rules, NAHU would like to commend the Trump Administration, the Department of Health and Human Services and the Substance Abuse and Mental Health Services Administration for offering this proposed change. All of our nation's health-privacy and data-security protections are currently out of date. In recent years, healthcare and health insurance options have changed dramatically, new market-based payment strategies designed to reduce costs and improve patient care have been employed, and there have been significant public health changes, particularly regarding the need for more effective substance abuse and mental healthcare diagnoses, treatment and care coordination. Beyond that, rapid technological and data-sharing advances mean that current privacy and data-security rules likely are insufficient when it comes to not only allowing for the best means of treating patients and financing their care but also in terms of adequately protecting the privacy of health information, so NAHU believes that your proposal is quite timely.



NAHU urges caution with regard to the provisions that allow for substance abuse disorder patients to consent to the disclosure of their medical records to “a wide range of entities.” These entities do not need to be specifically identified and do not need to have a treating provider relationship with the patient. NAHU members have apprehension about potential disclosures to any entity that is not covered by the scope of HIPAA privacy rules. We believe that permitting such disclosures in limited circumstance but never requiring them should be the regulatory standard. While specific exceptions might be developed if necessary for emergency patient care, in general our association believes that there are significant risks and consumer-protection and administrative concerns that may arise if there were required and routine disclosures to non-covered entities.

Beyond these proposed modifications, the NAHU membership would like to encourage HHS and the Trump Administration to expand on this work and take a comprehensive look at how all of the current patient-privacy rules are working. The goals of such a review should be decreasing the regulatory burden on covered entities and business associates, facilitating information sharing, actually protecting patients from current privacy threats and making sure that people have access to the best quality care. The struggles with the existing privacy rules make true healthcare transformation difficult so, in addition to broadly reviewing the current requirements to see if they make sense for today’s patients, payers and providers, our organization encourages HHS to carefully consider how any changes to be made will be communicated and enforced. In our view, a comprehensive educational campaign for covered entities and business associates, coupled with extensive and easy-to-use compliance resources and sensible and consistent safe harbors and enforcement practices, is essential to the success of any measure to protect patient privacy. Furthermore, when HHS ultimately moves to the implementation phase of any future privacy rulemaking, we request the dedication of substantial resources to public information and education, as well as compliance resources and transitional good-faith compliance protections for all affected entities.

NAHU sincerely appreciates the opportunity to provide information on this critical and timely topic. If you have any questions or need additional information, please do not hesitate to contact me at either (202) 595-0787 or jtrautwein@nahu.org.

Sincerely,

A handwritten signature in black ink, reading "Janet Trautwein". The signature is written in a cursive style with a large, looped initial "J".

Janet Stokes Trautwein
Executive Vice President and CEO
National Association of Health Underwriters