

October 25, 2019

Substance Abuse and Mental Health Services Administration (SAMHSA)

U.S. Department of Health and Human Services

Submitted electronically at: <https://www.federalregister.gov/documents/2019/08/26/2019-17817/confidentiality-of-substance-use-disorder-patient-records>

Attention: Confidentiality of Substance Use Disorder Patient Records (part 2), Proposed Rule by the Health and Human Services Department released on 08/26/2019

Substance Abuse and Mental Health Services Administration:

The Minnesota e-Health Initiative (Initiative) is pleased to submit comments as a public-private collaborative focused on advancing the adoption and use of electronic health records and other health information technology, including health information exchange. A legislatively authorized 25-member Advisory Committee guides the Initiative (see Appendix A). The Minnesota Department of Health, Office of Health Information Technology, coordinates activities of the Initiative.

The Advisory Committee recognizes the need to implement changes to part 2 to support clinical best practices, better facilitate coordination of care activities, as well as improve patient experiences. In reviewing the proposed rule with our stakeholders, many representing provider organizations agreed that the proposed changes may streamline or positively impact business practices. Those representing individuals or patients stressed the highly sensitive nature of this type of health information and highlighted the need for better clarity in the proposed rule to ensure that providers and others with appropriate access to this information ensure its privacy.

Please consider the below comments and related to the Confidentiality of Substance Use Disorder Patient Records Proposed Rule in Table 1. They were developed using input from across Minnesota and work of the Initiative. Contact Karen Soderberg, Supervisor, e-Health and Health Information Exchange, Office of Health Information Technology, Minnesota Department of Health at karen.soderberg@state.mn.us with any questions.

Sincerely,



Jennifer Fritz
Director, Office of Health Information Technology
Minnesota Department of Health



Peter Schuna
Advisory Committee Co-Chair
Minnesota e-Health Advisory Committee
Chief Executive Officer
Pathway Health



Sonja Short MD, FAAP, FACP
Advisory Committee Co-Chair
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MINNESOTA E-HEALTH INITIATIVE COORDINATED RESPONSE TO
CONFIDENTIALITY OF SUBSTANCE USE DISORDER PATIENT RECORDS

Table 1. Summary of Comments

Provision	Proposed Change	Minnesota Comments
<p>Applicability and Re-Disclosure 2.12</p>	<p>Treatment records created by non-part 2 providers based on their own patient encounter(s) will not be covered by part 2, unless any SUD records previously received from a part 2 program are incorporated into such records. Segmentation or holding apart of any part 2 patient record previously received can be used to ensure that new records created by non-part 2 providers will not become subject to part 2.</p>	<p>The proposed rules need some clarification, especially related to the access of information without authorization within the same system of providers. It is not currently clear whether this is permissible and clarification around oral vs. written disclosures would be helpful.</p>
<p>Disposition of Records</p>	<p>When an SUD patient sends an incidental message to the personal device of an employee of a part 2 program, the employee will be able to fulfill the part 2 requirement for "sanitizing" the device by deleting that message.</p>	<p>"Incidental" disclosure needs to be defined in part 2.</p> <p>The provision does not adequately describe the applicable use cases.</p>
<p>Consent Requirements 2.31</p>	<p>An SUD patient may consent to disclosure of their part 2 treatment records to an entity (e.g., the Social Security Administration), without naming a specific person as the recipient for the disclosure.</p>	<p>This was received with caution amongst stakeholders; it may place a greater burden on entities when releasing information.</p> <p>Is this use case specific to government agencies?</p> <p>Stakeholders would prefer that this be an "option" rather than "preferred."</p>
<p>Disclosures Permitted with Written Consent 2.33</p>	<p>Disclosures for the purpose of "payment and health care operations" are permitted with written consent, in connection with an illustrative list of 17 example activities.</p>	<p>This change has the potential for strong negative impacts to patients who may not fully understand to what they are consenting.</p> <p>Doesn't clearly use the same terminology as HIPAA for health care operations.</p>

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<p>Disclosures to Central Registries and PDMPs 2.36</p>	<p>Non-OTP (opioid treatment program) providers will become eligible to query a central registry, in order to determine whether their patients are already receiving opioid treatment through a member program.</p> <p>OTPs will be permitted to enroll in a state prescription drug monitoring program (PDMP), and permitted to report data into the PDMP when prescribing or dispensing medications on Schedules II to V, consistent with applicable state law. (The revised central registry and PDMP provisions will help to prevent duplicative enrollments in SUD care, duplicative prescriptions for SUD treatment, and adverse drug events related to SUD treatment.)</p>	<p>There was some question as to whether current Minnesota state law would allow providers to query a central registry; state law may need to be changed to address this amendment, which could be difficult.</p>
<p>Medical Emergencies 2.51</p>	<p>Declared emergencies resulting from natural disasters (e.g., hurricanes) that disrupt treatment facilities and services will meet the definition for a "bona fide medical emergency," for the purpose of disclosing SUD records without patient consent under part 2.</p>	<p>Stakeholders support this change as it aligns with HIPAA.</p>
<p>Confidential Communications 2.63</p>	<p>The standard for court ordered disclosures of SUD records for the purpose of investigating "an extremely serious crime" will be revised, by dropping the phrase "allegedly committed by the patient."</p>	<p>There was a question as to the effect of this change (i.e., is the language a correction or a change?).</p> <p>Creates concerns for patient advocates who want to keep the restrictions/protections that currently exist.</p>
<p>Undercover Agents and Informants 2.67</p>	<p>Court-ordered placement of an undercover agent or informant within a part 2 program will be extended to a period of 12 months, and courts will be authorized to further extend the period of placement through a new court order.</p>	<p>Patient advocates strongly disagreed with this change. It creates concerns for patient advocates who want to keep the restrictions/protections that currently exist.</p>

Appendix A: Minnesota e-Health Advisory Committee 2019-2020

Members

Sonja Short, MD, *Advisory Committee Co-Chair*, Associate CMIO, M Health Fairview
Representing: Physicians

Peter Schuna, *Advisory Committee Co-Chair*, Chief Executive Officer, Pathway Health Services
Representing: Long Term Care

Alan Abramson, PhD, Senior Vice President, IS&T and Chief Information Officer, HealthPartners
Medical Group and Clinics
Representing: Health System CIOs

Sunny Ainley, Associate Dean, Center for Applied Learning, Normandale Community College
Representing: HIT Education and Training

Karl Anderson, Global Digital Health Senior Manager, Medtronic
Representing: Vendors

Laurie Beyer-Kropuenske, JD, Director, Community Services
Representing: Minnesota Department of Administration

Jennifer Fritz, MPH, Director, Office of Health Information Technology
Representing: Minnesota Department of Health

Cathy Gagne, RN, BSN, PHN, St. Paul-Ramsey Department of Public Health
Representing: Local Public Health

Steve Johnson, PhD, University of Minnesota Academic Health Center
Representing: Academics and Clinical Research

George Klauser, Executive Director, Altair-ACO, Lutheran Social Service of Minnesota
Representing: Social Services

Patricia K. Lang, Consumer Advocate
Representing: Consumers

Jennifer Lundblad, PhD, President and Chief Executive Officer, Stratis Health
Representing: Quality Improvement

MINNESOTA E-HEALTH INITIATIVE COORDINATED RESPONSE TO
CONFIDENTIALITY OF SUBSTANCE USE DISORDER PATIENT RECORDS

Bobbie McAdam, Vice President, Information Technology, Medica
Representing: Health Plans

Jeyn Monkman, MA, BSN, NE-BC, Institute of Clinical Systems Improvement
Representing: Clinical Guideline Development

Lisa Moon, PhD, RN, CEO Advocate Consulting
Representing: Nurses

Heather Petermann, Division Director, Health Care Research & Quality, Minnesota Department
of Human Services
Representing: Minnesota Department of Human Services

James Roeder, Vice President of IT, Lakewood Health System
Representing: Small and Critical Access Hospitals

Jonathan Shoemaker, Chief Information Officer, Allina Health
Representing: Large Hospitals

Steve Simenson, BPharm, FAPhA, President and Managing Partner Goodrich Pharmacy
Representing: Pharmacists

Adam Stone, Chief Privacy Officer, Secure Digital Solutions
Representing: Expert in HIT

Meyrick Vaz, Vice President - Strategic Market Partnerships, UnitedHealthcare Office of the CIO
Representing: Health Plans

Ann Warner, Program Director, Data Governance and Analytical Education, M Health Fairview
Representing: Health Care Administrators

John Whittington, Chief Information Officer, South Country Health Alliance
Representing: Health Care Purchasers and Employers

Sandy Zutz-Wiczek, Chief Operating Officer, FirstLight Health System
Representing: Community Clinics and FQHCs

Designated Alternates

Mark Jurkovich, DDS, MBA, Dentist, Gateway North Family Dental
Representing: Dentists

Maiya Kasouaher, PhD, Community Engagement Lead, Program in Health Disparities Research,
University of Minnesota
Alternate Representing: Consumers

Paul Kleeberg, MD, Medical Director, Aledade
Alternate Representing: Physicians

Justin McMartin, Senior Product Analyst, Surescripts LLC
Alternate Representing: Vendors

James Dungan-Seaver, Health Information Exchange Architect, PrimeWest Health
Alternate Representing: Expert in HIT

Charles Peterson, President and CEO, The Koble Group
Alternate Representing: Vendors

Mark Sonneborn, Vice President, Information Services, Minnesota Hospital Association
Alternate Representing: Hospitals

Susan Severson, CPEHR, CPHIT, Vice President, Health Information Technology, Stratis Health
Alternate Representing: Quality Improvement

Rui Zhang, PhD, Associate Professor, Institute for Health Informatics, University of Minnesota
Alternate Representing: Academics and Clinical Research