

Campaign to Protect Patient Privacy Rights ~Consensus Principles~

We, the undersigned national, state, and local organizations, support maintaining the core protections of the federal substance use disorder patient confidentiality law (42 U.S.C. § 290dd-2) and regulations (42 C.F.R. Part 2), referred to collectively as “Part 2,” to effectively protect the confidentiality of patients’ records, for the following reasons:

1. **The heightened privacy protections in 42 C.F.R. Part 2 (“Part 2”) are as critical today** as they were when they were enacted more than 40 years ago, and must be preserved.ⁱ
2. **In the midst of the worst opioid epidemic in our nation’s history, we must do everything possible to increase – not decrease – the number of people who seek treatment.** The most recent national survey in 2015 found that an estimated 21.7 million people ages 12 or older (1 in 12 people) needed substance use disorder (“SUD”) treatment,ⁱⁱ but *only* 2.3 million of them received it in the past year.ⁱⁱⁱ Our nation must do everything possible to increase the number of people entering treatment, not take actions such as eliminating confidentiality protections that will reduce the number of people willing to come forward for care.
3. **SUD is unique among medical conditions because of its criminal consequences and the rampant discrimination people face.** For most forms of SUD, the illness itself involves behavior that is criminalized. SUD patients are therefore vulnerable to arrest, prosecution, and incarceration, while patients with other chronic illnesses generally are not. Unlike individuals with any other illnesses or disabilities, many people with SUD are not protected by federal or state civil rights that protect people with disabilities from employment, housing and other types of discrimination.^{iv} Unlike other types of health care information, disclosure of SUD patient records can not only discourage patients from seeking treatment, it subjects them to the risk of experiencing severe negative consequences and discrimination,^v such as:
 - criminal investigation, arrest, and/or prosecution by law enforcement;
 - denials of disability, life, and other types of insurance;
 - loss of child custody; and
 - re-disclosures of SUD information that can cause loss of employment and other harm.
4. **With so much at stake, patients in SUD treatment should retain the right to consent when and to whom their records are disclosed.** Unlike HIPAA, consent should continue to be required for disclosures for treatment, payment, and health care operation purposes. Since some health care providers and payers continue to discriminate against patients living with substance use disorder, and HIPAA allows providers and payers to re-disclose records they receive to many others, patients should maintain the right to determine who can obtain their SUD information.

5. **Effective integration of SUD treatment with the rest of the health care system is critically important, and information exchange in accordance with confidentiality law and current technology is now possible.** To facilitate that process, SAMHSA recently amended the Part 2 regulations to further promote the integration of confidential SUD information into general health records. Now patients can easily share their SUD information with some or all of their treating providers (including non-SUD providers) with the patients' consent -- but without having to name every provider in the consent form -- in a variety of health care settings, health information exchanges, health homes, accountable care organizations, and coordinated care organizations.^{vi} SAMHSA can also issue additional guidance if any unnecessary obstacles to communication between SUD and other health providers remain, but jettisoning all of Part 2's privacy protections -- including those unrelated to disclosures within the health care system -- would have devastating consequences for patients and the entire SUD treatment system.
- Software applications (e.g., "Consent2Share") allow patients to share their health data and permit the integration of existing electronic health record ("EHR") and health information exchange systems to support federal confidentiality requirements (including Part 2 and HIPAA). HIPAA requires that electronic health record systems comply not just with Part 2, but also with heightened state confidentiality protections governing mental health, HIV/AIDS, reproductive health, domestic violence and other sensitive health information.^{vii} Hence, EHRs would need to have this functionality even if Part 2 did not exist.

Part 2 provides safeguards for patients against disastrous results. HIPAA does not. Unlike HIPAA, without patient consent, a special order, or other specific authorization, Part 2 prevents any covered health care provider who has patient-identifying SUD information, or anyone who receives it through patient consent or other Part 2 requirements, from disclosing this information to anyone else. Replacing Part 2's confidentiality requirements with HIPAA's looser standards would not sufficiently protect people seeking and receiving SUD treatment. Instead, many patients' lives would be severely harmed, and as a result, countless individuals needing SUD health treatment would be afraid to enter treatment.

The federal SUD confidentiality rules must be maintained to protect patient privacy and to encourage those with opioid and other substance use disorders to enter treatment.

A New PATH

Addiction Haven

Addictions Resource Center, Waukesha, WI (ARC, Inc.)

Advocates for Recovery Colorado

AIDS United

Alano Club of Portland

Alcohol & Addictions Resource Center, South Bend, IN

American Association for the Treatment of Opioid Dependence (AATOD)

American Group Psychotherapy Association

Arthur Schut Consulting LLC

Atlantic Prevention Resources

The Bridge Foundation

California Consortium of Addiction Programs & Professionals (CCAPP)

Capital Area Project Vox – Lansing (MI)'s Voice of Recovery

Center for Recovery and Wellness Resources

Chicago Recovering Communities Coalition

Colorado Behavioral Healthcare Council

Community Catalyst

Connecticut Community for Addiction Recovery (CCAR)

Council on Addiction Recovery Services (CAREs)- Orlean, NY

DarJune Recovery Support Services & Café

Davis Direction Foundation - The Zone

Daystar Center

Delphi Behavioral Health Group – Maryland House Detox

Detroit Recovery Project

The DOOR - DeKalb Open Opportunity for Recovery

Drug and Alcohol Service Providers Organization of Pennsylvania

Faces and Voices of Recovery

Faces and Voices of Recovery (FAVOR) - Grand Stand - SC
Faces and Voices of Recovery (FAVOR) – Greenville, SC
Faces and Voices of Recovery (FAVOR) - Low Country: Charleston, SC
Faces and Voices of Recovery (FAVOR) - Mississippi Recovery Advocacy Project
Faces and Voices of Recovery (FAVOR) - Pee Dee, SC
Faces and Voices of Recovery (FAVOR) - Tri-County: Rock Hill, SC
Facing Addiction
Fellowship Foundation Recovery Community Organization
Foundation for Recovery
Friends of Recovery - New York
Georgia Council on Substance Abuse
Greater Macomb Project Vox
Harm Reduction Coalition
Home of New Vision
HOPE for New Hampshire Recovery
Jackson Area Recovery Community- Jackson, MI
Latah Recovery Center
Legal Action Center
Lifehouse Recovery Connection
Long Island Recovery Association (LIRA)
Maine Alliance for Addiction Recovery
Massachusetts Organization for Addiction Recovery
Message Carriers of Pennsylvania
The McShin Foundation
Mid-Michigan Recovery Services (NCADD Mid-Michigan Affiliate)
Minnesota Recovery Connection
Missouri Recovery Network
National Advocates for Pregnant Women

National Alliance for Medication Assisted Recovery (NAMA Recovery)
National Association for Children of Addiction (NACoA)
National Association of County Behavioral Health and Developmental Disability Directors (NACBHDD)
National Association for Rural Mental Health (NARMH)
National Center on Domestic Violence, Trauma & Mental Health
National Council on Alcoholism and Drug Dependence, Inc. (NCADD)
National Council on Alcoholism and Drug Dependence – Central Mississippi Area, Inc.
National Council on Alcoholism and Drug Dependence – Maryland
National Council on Alcoholism and Drug Dependence – Phoenix
National Council on Alcoholism and Drug Dependence – San Fernando Valley
Navigating Recovery of the Lakes Region
New Jersey Association of Mental Health and Addiction Agencies
Northern Ohio Recovery Association
The Ohana Center for Recovery
Oklahoma Citizen Advocates for Recovery and Transformation Association (OCARTA)
Overcoming Addiction Radio, Inc.
Parent/Professional Advocacy League
Peer Coach Academy Colorado
Pennsylvania Recovery Organizations – Alliance (PRO-A)
People Advocating Recovery (PAR)
Phoenix Multisport – Boston
Pennsylvania Recovery Organization – Achieving Community Together (PRO-ACT)
Public Justice Center
The RASE Project
REAL- Michigan (Recovery, Education, Advocacy & Leadership)
Recover Project/Western MA Training
Recover Wyoming
Recovery Alliance of Austin

Recovery Allies of West Michigan

Recovery Cafe

The Recovery Channel

Recovery Communities of North Carolina

Recovery Community of Durham

Recovery Consultants of Atlanta

Recovery Epicenter Foundation, Inc.

Recovery is Happening

Recovery Resource Council

Rhode Island Cares About Recovery (RICARES)

ROCovery Fitness

Safe Harbor Recovery Center

SMART Recovery (Self-Management and Recovery Training)

S.O.S. Recovery Community Organization

SpiritWorks Foundation

Springs Recovery Connection

STEP Industries

Tennessee Association of Alcohol, Drug & other Addiction Services (TAADAS)

Tia Hart Community Recovery Program

Together Our Recovery Center Heals (T.O.R.C.H.) Inc.

Treatment Trends, Inc.

Trilogy Recovery Community

Utah Support Advocates for Recovery Awareness (USARA)

Vermont Recovery Network

Voices of Hope for Cecil County, MD

Voices of Recovery San Mateo County, CA

WAI-IAM, Inc. and RISE Recovery Community

Wisconsin Voices for Recovery

Young People in Recovery

ⁱ See amended federal code sections 21 U.S.C. §1175 (drug abuse, 1972 & 1974); 42 U.S.C. §4582 (alcohol abuse, 1974) and the federal confidentiality rules passed to implement the changes at 42 C.F.R. Part 2 (published at 40 Fed. Reg. 27802, (July 1, 1975); effective on Aug. 1, 1975).

ⁱⁱ U.S. Dep't of Health & Human Services, Substance Abuse & Mental Health Services Admin., *Key Substance Use and Mental Health Indicators in the United States: Results from the 2015 National Survey on Drug Use and Health 25* (Sept. 2016), available at <https://www.samhsa.gov/data/sites/default/files/NSDUH-FFR1-2015/NSDUH-FFR1-2015/NSDUH-FFR1-2015.pdf>.

ⁱⁱⁱ *Id.* at 26-27.

^{iv} For example, the Americans with Disabilities Act, Fair Housing Act and other laws explicitly exclude people engaged in “current illegal drug use.” This means that people addicted to opioids or illegal drugs, or misusing prescription medications, who come forward for treatment would have no protection from losing their jobs if, for example, their treatment records were disclosed by a payer to their employer.

^v See generally Legal Action Center, *Discrimination Against Patients With Substance Use Disorders Remains Prevalent and Harmful: The Case for 42 CFR Part 2* (Apr. 13, 2017), available at <http://healthaffairs.org/blog/2017/04/13/discrimination-against-patients-with-substance-use-disorders-remains-prevalent-and-harmful-the-case-for-42-cfr-part-2/>.

^{vi} 42 C.F.R. § 2.31.

^{vii} FEi Systems, *Consent2Share*, available at <http://www.feisystems.com/what-we-do/health-it-application-development/consent2share/>. See also Prince George’s County, Maryland, *Consent2Share*, available at <http://www.princegeorgescountymd.gov/1709/Consent2Share>.