

## **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.<sup>i</sup>
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,<sup>ii</sup> but *only* 2.3 million of them received it in the past year.<sup>iii</sup> 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.<sup>iv</sup> 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,<sup>v</sup> 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.<sup>vi</sup> 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.<sup>vii</sup> 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.**

CAMPAIGN TO PROTECT PATIENT PRIVACY RIGHTS:

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  
Apricity  
Arthur Schut Consulting LLC  
Association of Persons Affected by Addiction  
Atlantic Prevention Resources  
California Consortium of Addiction Programs & Professionals (CCAPP)  
Capital Area Project Vox–Lansing (MI)’s Voice of Recovery  
Center for Recovery and Wellness Resources  
CFC Loud N Clear Foundation  
Chicago Recovering Communities Coalition  
Colorado Behavioral Healthcare Council  
Communities for Recovery  
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  
El Paso Alliance  
Faces & Voices of Recovery  
Faces and Voices of Recovery (FAVOR)-Grand Strand-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)  
Lotus Peer Recovery  
Maine Alliance for Addiction Recovery  
Massachusetts Organization for Addiction Recovery  
Message Carriers of Pennsylvania  
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  
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)  
Pennsylvania Recovery Organization–Achieving Community Together (PRO-ACT)  
Portland Recovery Community Center  
Public Justice Center  
REAL-Michigan (Recovery, Education, Advocacy & Leadership)  
Recover Project/Western MA Training  
Recover Wyoming  
RecoveryATX  
Recovery Alliance of Austin  
Recovery Allies of West Michigan  
Recovery Cafe  
Recovery Communities of North Carolina  
Recovery Community of Durham  
Recovery Consultants of Atlanta  
Recovery Epicenter Foundation, Inc.  
Recovery Force of Atlantic County

Health Privacy Principles  
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Recovery is Happening

Recovery Resource Council

Recovery Organization of Support Specialist

Revive Recovery, Inc.

Rhode Island Cares About Recovery (RICARES)

Rochester Community Recovery Center

ROcovery Fitness

Safe Harbor Recovery Center

SMART Recovery (Self-Management and Recovery Training)

S.O.S. Recovery Community Organization

SpiritWorks Foundation

Springs Recovery Connection

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

The Bridge Foundation

The Courage Center

The McShin Foundation

The Ohana Center for Recovery

The Serenity House of Flint

The Phoenix

The RASE Project

The Recovery Channel

Tia Hart Community Recovery Program

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

Treatment Trends, Inc.

Trilogy Recovery Community

U MARC (United Mental Health and Addictions Recovery Coalition)

Utah Support Advocates for Recovery Awareness (USARA)

Vermont Recovery Network

Voices of Hope for Cecil County, MD

Voices of Hope Lexington

Voices of Recovery San Mateo County, CA

WAI-IAM, Inc. and RISE Recovery Community

Wisconsin Voices for Recovery

Young People in Recovery

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<sup>i</sup> 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).

<sup>ii</sup> 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>.

<sup>iii</sup> *Id.* at 26-27.

<sup>iv</sup> 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.

<sup>v</sup> 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/>.

<sup>vi</sup> 42 C.F.R. § 2.31.

<sup>vii</sup> 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>.