

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 who with opioid and other substance use disorders to enter treatment.

Addictions Resource Center, Waukesha, WI (ARC, Inc.)
Advocates for Recovery Colorado
Alano Club of Portland
Alcohol & Addictions Resource Center, South Bend, IN
American Association for the Treatment of Opioid Dependence (AATOD)
Arthur Schut Consulting LLC
Atlantic Prevention Resources
The Bridge Foundation
California Consortium of Addiction Programs and 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
Connecticut Community for Addiction Recovery (CCAR)
DarJune Recovery Support Services & Café
Davis Direction Foundation - The Zone
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 (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 Center on Domestic Violence, Trauma & Mental Health

The National Council on Alcoholism and Drug Dependence, Inc. (NCADD)

National Council on Alcoholism & 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, Inc.

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)

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

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.

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

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>.