



April 8, 2016

Kana Enomoto, Acting Administrator
Substance Abuse and Mental Health Services Administration
Department of Health and Human Services
Attn: SAMHSA-4162-20
5600 Fishers Lane, Room 13N02B
Rockville, Maryland 20857

Dear Acting Administrator Enomoto:

On behalf of the American Academy of Family Physicians (AAFP), which represents 120,900 family physicians and medical students across the country, I am responding to the [proposed rule](#) titled, “Confidentiality of Substance Use Disorder Patient Records” as published by the Substance Abuse and Mental Health Services Administration (SAMHSA) in the February 9, 2016 *Federal Register*.

The AAFP applauds SAMHSA for issuing this proposed rule which updates the “Confidentiality of Alcohol and Drug Abuse Patient Records” regulations. We fully agree that over the last 25 years significant changes have occurred within the U.S. health care system not envisioned previously, including new models of integrated care built on a foundation of information sharing to help coordinate patient care, the development of an electronic infrastructure for managing and exchanging patient information, and a new focus on performance measurement within the health care system.

The AAFP fully shares SAMHSA’s goal to ensure that patients with substance use disorders have the ability to participate in, and benefit from new integrated health care models without fear of putting themselves at risk of adverse consequences. It is the AAFP’s policy on [substance abuse and addiction](#) to promote a society which is free of alcohol, drug and substance abuse. The AAFP strongly urges its members to be involved in the diagnosis, treatment and prevention of substance abuse and addictive disorders as well as the secondary diseases related to these disorders.

We wholeheartedly agree with SAMHSA’s goal to facilitate exchange of information while addressing the legitimate privacy concerns of patients seeking treatment for a substance use disorder. The AAFP policy on [electronic health records](#) urges every family physician to use health information technology, which includes electronic health records and related technologies

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needed to support the patient-centered medical home (PCMH). These capabilities can enable better care coordination, continuity and patient centeredness, resulting in safe, high-quality care and the optimal health of patients, families, and communities.

The AAFP policy on [patient/physician confidentiality](#) recognizes that a confidential relationship between physician and patient is essential for the free flow of information necessary for sound medical care. Only in a setting of trust can a patient share the private feelings and personal history that enable the physician to comprehend fully, to diagnose logically, and to treat properly. We believe that patient confidentiality must be protected though we recognize that data sharing between treating physicians, though difficult with current health record technology, is essential. Any disclosure of medical record information should be limited to information necessary to accomplish the purpose for which disclosure is made. Physicians should be particularly careful to release only necessary and pertinent information.

We also believe that electronic health information communication systems must be equipped with appropriate safeguards (e.g., encryption; message authentication, user verification, tagging of sensitive or privileged information) to protect physician and patient privacy and confidentiality. Individuals with access to electronic systems should continue to be subject to clear, explicit, mandatory policies and procedures regarding the entry, management, storage, transmission and distribution of patient and physician information.

The SAMHSA proposals will require patient consent forms used in substance abuse treatment teams or programs to be updated to include additional patient permission information such as what can be released, when it can be released, and to whom and from whom this sensitive information can be released. Though the AAFP knows this will increase the administrative burden that these medical facilities and programs experience, we recognize these changes remove uncertainty regarding a patient's wishes and that less uncertainty results in less risk within these programs. The AAFP, therefore, supports these proposals.

We note that unless the family physician is part of the core substance abuse treatment team or program and designates himself or herself as such, the family physician is exempt from these requirements. While all physicians should focus on their patient's care when considering the release of records that detail substance abuse, these releases are governed under the privacy rule of the *Health Insurance Portability and Accountability Act* and not under the "Confidentiality of Alcohol and Drug Abuse Patient Records" regulations.

SAMHSA proposes to revise the consent requirements to permit, in certain circumstances, a more general description of the individuals or entities to which a disclosure is made, but only if the individuals or entities have a "treating provider relationship" with the patient whose information is being disclosed. This proposal creates a need to define a treating provider relationship. A treating provider relationship means that, whether or not there has been an actual in-person encounter:

- A patient agrees to be diagnosed, evaluated or treated for any condition by an individual or entity, and
- The individual or entity agrees to undertake diagnosis, evaluation or treatment of the patient, or consultation with the patient, for any condition.

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The AAFP supports this definition since it allows for communication from a program to a family physician regarding a patient's treatment for substance abuse since it may affect other conditions being treated by the family physician.

We appreciate the opportunity to comment on this proposed rule and make ourselves available for any questions you might have. Please contact Robert Bennett, Federal Regulatory Manager, at 202-232-9033 or rbennett@afp.org.

Sincerely,

A handwritten signature in black ink that reads "Robert L. Wergin MD". The signature is written in a cursive style with a large initial "R" and "W".

Robert L. Wergin, MD, FAAFP
Board Chair

CC: Kate Tipping