



## Treatment Communities of America

### Priority Issue in the 116<sup>th</sup> Congress - SUD Patient Privacy Laws

TCA supports patient privacy protections for persons with substance use conditions that allow for collaborative and integrated care across medical, correctional and human service systems. It is critically important that the patient retains the right to have an active role in determining who gets their information and how the information is used to ensure that they can trust the care process that protect them from legal sanctions and discrimination.

#### Who we are

Treatment Communities of America (TCA) is a consortium of over 600 programs sites providing an array of integrated services which include primary and preventive care, outreach; education, assessment, referral and follow-up; detoxification and crisis management; residential treatment with aftercare support; outpatient services; family therapy; mental health services; vocational assistance and job placement; emergency, transitional and permanent housing with supportive services.

#### TCA on proposals to change existing patient privacy protections

We believe that the recent changes to 42 CFR Part II in 2017 and 2018 strike a balance for sharing of information across care systems in ways that include patients in determining who gets their information and how their information is used. There is a fundamental lack of understanding about these protections, where they apply, and the ease of providing collaborative care for SUD patients in federally assisted programs with patient consent.

These changes allow for broad sharing of SUD Patient information with the consent of the patient. Changes to the “to whom” section of the consent form allowing sharing with:

- An entity which has a “treating provider relationship” with the patient;
- An entity with which the patient does not have a treating provider relationship and which is not a third-party payer (such as a specific health information exchange).
- An entity with which the patient does not have a treating provider relationship and which is a third-party payer; and/or the name of an entity with which the patient does not have a treating provider relationship and which is not a third-party payer (such as a health information exchange);

Additionally, the 2018 Final Rule 2018 final rule allows “lawful holders” of SUD information to disclose information to their subcontractors, etc., if patient has initially consented to disclosure of their record for payment and health care operations purposes.

**We are deeply concerned about ongoing efforts and proposals to reduce federal protections to our patients from legal sanctions and the misuse of their information that can expose them to discrimination in areas such as housing, employment, insurance and government benefits.**

Our current privacy protections come from the standards set forth by Congress back in 1972, and support collaborative care while protecting our clients from legal sanctions and discrimination. We understand the critical role that these protections provide our patients in order that they can access care without fear of having

their information used in ways that would harm them and reduce access to care as people will be afraid to seek help out of fear of the consequences of seeking help. These protections are as relevant now as they were when first established, perhaps more so due to the ease of information sharing through digital records and how common data breaches are, which we understand currently affects one in three Americans.

As Congress considers proposals to change existing patient privacy laws, we urge you to consider just a few select concerns we have among many:

- **Information about Substance Use Conditions is different than other medical information.** Information gained to assist a person with a Substance use conditions includes highly sensitive information including the illegal use of drugs. This information must remain highly protected in order that persons feel safe seeking help with their life-threatening conditions. This information can be used to discriminate against persons with substance use conditions in areas such as housing, employment, insurance and government benefits. While there is movement towards aligning our current SUD Patient Privacy Law (42 USC290DD and related regulation 42 CFR Part II) with HIPAA it must be noted that HIPAA does not offer the same level of protection and does not have provisions protecting information related to illegal drug use, which will open up our patients to legal jeopardy and discrimination.
- **HIPAA standards are much weaker.** Persons and entities outside of the treating relationship will have access to highly sensitive information; for example, the HIPAA definition of “treatment, payment, and health care operations” allows disclosures of confidential SUD information (without the patient’s consent) to entities with collections, fundraising, consumer reporting, sale or transfer of assets, and other functions. The patient can be harmed by these disclosures, while the covered entity and the entities with that perform those functions benefit from them. We also note that there are efforts to weaken HIPAA standards as well.
- **Fewer people will seek help.** As H. Westley Clark, MD, former Director of the Center for Substance Abuse Treatment/SAMHSA has noted, “Once it becomes clear to all that substance use disorder treatment records could, under HIPAA’s health care operations exemption, be disclosed for administrative things like business planning, customer service, and training of non-health care professionals, there will be even less enthusiasm for medically oriented treatment.”

At TCA, we staunchly believe that sharing of addiction and recovery information is an individual choice to be made by the individual **who retains control over how it is used** – we think that this is fundamental to quality care and consistent with the original statutes and for these reasons, we are opposed to changing the current law while supporting expanded education to medical care and related systems on how to use the current standards to support and expand collaborative care for our patients. We look forward to working with Congress and all stakeholders with the mutual, sincere goal of providing life-saving SUD treatment while also protecting patient privacy.

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