



A driving force for health equity

Submitted via regulations.gov

January 31, 2023

Xavier Becerra
Secretary
U.S. Department of Health & Human Services
200 Independence Avenue, S.W.
Washington, D.C. 20201

Miriam E. Delphin-Rittmon, Ph.D
Assistant Secretary for Mental Health and Substance Use
U.S. Department of Health and Human Services
200 Independence Avenue, S.W.
Washington, D.C. 20201

Re: Proposed Rule, Confidentiality of Substance Use Disorder (SUD) Patient Records

Dear Secretary Becerra and Assistant Secretary Delphine-Rittmon,

On behalf of OCHIN, I appreciate the opportunity to offer comment on the proposed changes to Part 2 of title 42 of the Code of Federal Regulations (Part 2). OCHIN strongly supports the U.S. Department of Health and Human Services (HHS) finalizing the proposed changes to existing requirements. This would improve access to care for patients as the mental and behavioral public health crises have worsened across the nation – exacerbated by COVID-19 – particularly among youth. While extremely important steps forward have been made in this proposed rule to harmonize Part 2 data with existing Health Information Portability and Accountability Act (HIPAA) provisions and national cybersecurity requirements, there remain differences that could continue to divert scarce resources away from the delivery of direct patient care. We welcome working with you to strengthen the harmonization which will protect patient health information and save lives.

OCHIN is a [national health information technology and research network](#) that offers technology solutions, informatics, evidence-based research, and policy insights. OCHIN serves nearly 1,000 community health care sites with 21,000 providers in 45 states, reaching more than 6 million patients. In addition to federally qualified health centers (FQHCs) and other community clinics, including in rural areas, we support certified community behavioral health clinics (CCBHC), complex specialty mental health organizations, local public health agencies, corrections, school-based mental health programs, and youth authorities.

OCHIN is an expert at sharing confidential health information securely and in a manner compliant with all federal and state rules and regulations. OCHIN understands fully the realities and complexities of sharing Part 2 covered health information and PHI and the need to protect patients while ensuring care can be properly delivered. We also know first-hand how providers in rural and underserved communities do not have the resources to implement varied and complex requirements that involve additional technology, workflows, technical assistance, and staff training.

Recommendations

OCHIN strongly supports the proposed alignment of many of the differences between Part 2 data and HIPAA protections for PHI, specifically breach rules and civil monetary penalties. OCHIN is grateful HHS has advanced this proposed rule and removed many of the hurdles currently impacting patients and providers in pursuit of treating substance use disorders. Aligning Part 2 data with all other PHI is a crucial and long-awaited step in improving access to care, protecting patient privacy, and ensuring no more costly and potentially harmful mistakes are made due to providers lacking all necessary medically relevant information concerning their patients.

Our recommendations below are based on extensive experience working with providers in underserved and rural communities as they implement and manage the digital collection and exchange of all PHI. OCHIN has advocated for the harmonization of Part 2 data and HIPAA PHI requirements because of the risk of harm associated with incomplete patient medical information and the fact that data segmentation is disproportionately high in the rural and underserved communities we serve. HIPAA requirements have continued to ensure important protections are in place to prevent disclosures that stigmatize or chill patient disclosure of essential information for medical care, these same protections should be applied to Part 2 data.

OCHIN offers the following key overarching recommendations that ensures changes made simplify the care process while protecting patient information and driving improved patient health outcomes and experience of care:

- **Align Notice of Privacy Practices (NPP) with HIPAA.**

Requiring that NPPs contain a specific section detailing the treatment and consideration of Part 2 data introduces complexities and complications. Ensuring patients are aware of and understand how their PHI is handled is important but setting Part 2 data apart **runs contrary to the goal of standardizing Part 2 data with other types of PHI**. By specifically noting Part 2 data in NPPs, this regulation ensures that Part 2 data continues to retain special consideration above and beyond what is necessary for patient protection and privacy and creates additional documentation and technical requirements that add and introduces possible health and safety risks to the patient.

- **Align consent, disclosures, and disclosure with HIPAA.**

Aligning consent and disclosures, and crucially **redisclosure**, with the standards established in HIPAA is critical as it ensures one standard is applied to any and all PHI a provider or covered entity interacts with. The separation of Part 2 data results in complications which delay care, burden providers, and endanger patient health. **Allowing for the differentiation of Part 2 data in any way from standard PHI simply continues the problems we already face**. Providers need to be able to see the totality of a patient's medical history, particularly when that patient has a substance use disorder (SUD). Consent, disclosure, and redisclosure for Part 2 data should be aligned with HIPAA. Without this change, any advancement made in the treatment of SUD and mental/behavioral health could be largely obviated. Patients already hesitate to disclose information relating to SUD, requiring any level of differentiation could induce hesitation, resulting in patients experiencing adverse health impacts and not receiving lifesaving care.

Segmentation and difference in provider obligations will continue to complicate the problem regulators and policymakers are striving to fix. We urge you to treat Part 2 data the same as other protected health information.

Please contact me at stollj@ochin.org if we can provide any additional information to support your efforts to remove burdens and complications surrounding Part 2 data. Thank you for taking this important step in addressing the substance use crisis, together we can work to provide patients the complete care they deserve.

Sincerely,

A handwritten signature in blue ink, appearing to read "Jennifer Stoll".

Jennifer Stoll
Executive Vice President
External Affairs