



April 11, 2016

VIA ELECTRONIC SUBMISSION

Kana Enomoto  
Acting Administrator  
Substance Abuse and Mental Health Services Administration  
U.S. Department of Health and Human Services  
5600 Fishers Lane, Room 13N02B  
Rockville, Maryland 20857

**Attention: SAMHSA 4162-20**

**Confidentiality of Substance Use Disorder Patient Records**

Dear Ms. Enomoto:

On behalf of the National Association of Counties (NACo) and the 3,069 counties we serve, we respectfully submit comments on the Confidentiality of Substance Use Disorder Patient Records. We appreciate the efforts of the Substance Abuse and Mental Health Services Administration (SAMHSA) to update and modernize 42 CFR (Part 2) and share SAMHSA's goals of protecting the confidentiality of patients while improving the integration and coordination of health services.

Founded in 1935, NACo is the only national organization that represents county governments in the United States and assists them in pursuing excellence in public service to produce healthy, vibrant, safe and resilient communities. Nationally, counties invest \$83 billion annually in community health systems and support 750 behavioral health authorities, 976 hospitals, 714 long-term care facilities and 1,592 public health departments. County-based behavioral health systems exist in 23 states that represent approximately 75 percent of the U.S. population. Counties also help finance Medicaid, the largest source of behavioral health services in the U.S. In fact, in Fiscal Year 2012, counties contributed the majority of the \$28 billion in local government contributions to the non-federal share of Medicaid.

Counties serve as the local safety net, and their health systems are the not the only intervention point for people with substance disorders. Counties invest more than \$143 billion annually in human services, administering wrap-around social supports such as education and job training, housing and transportation. Counties are also the entry point to the criminal justice system, in which they invest almost \$93 billion annually. Approximately 11.4 million individuals cycle in and out of 3,000 local jails each year, and counties are responsible for the entire cost of health services—including substance abuse treatment—for these individuals, even when they are held pre-trial and presumed innocent. It is estimated that 64 percent of this population has a mental illness, and many have co-occurring substance abuse disorders.

**While this proposal is an improvement over existing rules that govern 42 CFR, NACo urges SAMHSA to fully align Part 2 requirements with the Health Insurance Portability and Accountability Act (HIPAA).**

Across counties' health, human services and justice systems, there is a need to support the development of protocols and systems that provide coordinated assistance to "high utilizers." These individuals manifest obvious signs of a behavioral health condition (mental illness and/or substance abuse disorder) or have been diagnosed by a qualified behavioral health professional, and they consume a significantly disproportionate quantity of public resources, such as emergency, housing, judicial, corrections and law enforcement services. Harmonization of 42 CFR Part 2 with HIPAA would allow counties to develop and support multidisciplinary teams that coordinate, implement and administer community-based crisis responses and long-term care plans for such high utilizers.

Under 42 CFR, when a person is identified as having a substance abuse disorder, no information, even confirmation that the person is being treated, may be released without a written authorization by the client or guardian. The HIPAA privacy rule, on the other hand, is balanced, permitting the disclosure of health information needed for patient care and other important purposes (i.e., coordination of care, consultation between providers and referrals). Continued lack of congruence between the two standards would lead to continued confusion over what can be shared and by whom. Moreover, patients are likely to face increased safety risks when providers are not able to access their complete records.

Health information technology (HIT) is critical to helping ensure patients with behavioral health conditions benefit from new models of integrative care. However, behavioral health providers were excluded from the Health Information Technology for Economic and Clinical Health (HITECH) Act, which provided financial incentives to physicians and hospitals for HIT. This coupled with existing outdated rules governing 42 CFR Part 2 has led to slow progress in the behavioral health sector towards HIT adoption.

Without additional changes to the proposed rule that fully align 42 CFR Part 2 with HIPAA, counties will not be able to fully provide coordinated, quality systems of care for people with substance abuse disorders while making the best use of local taxpayer dollars. In light of the opioid painkiller and heroin epidemic spreading across our country, NACo urges you to further harmonize privacy provisions to protect individuals with substance abuse disorders.

NACo is committed to working with you to advance the behavioral health of the nation and reduce the impact of substance abuse and mental illness on our counties. We appreciate SAMHSA for allowing us to provide comments on this proposed rule, and look forward to working closely with you on this critical set of issues. If you have any questions, please feel free to contact Brian Bowden, NACo Associate Legislative Director, at [bbowden@naco.org](mailto:bbowden@naco.org) or at 202.942.4275.

Sincerely,



Matthew D. Chase  
Executive Director  
National Association of Counties