PRO·A
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July 18, 2018

The Honorable Senator Lamar Alexander
Chairman, Senate Committee on Health, Education, Labor, and Pensions
455 Dirksen Senate Office Building
Washington, DC 20510

RE: **Ten Reasons we are opposed to the Overdose Prevention and Patient Safety Act (HR 6082)**

Dear Senator Alexander,

I am writing you as the Executive Director of the Pennsylvania Recovery Organizations – Alliance (PRO-A), the statewide recovery community organization of Pennsylvania founded in 1998. We represent thousands of recovering persons across the state of Pennsylvania. We are dedicated to ending stigma, providing public education about addiction, providing recovery opportunities and to expand access to drug and alcohol services. We are deeply concerned about the potential impact of HR 6082, the Overdose Prevention and Patient Safety Act would have on our community. We are already hearing of cases in which people are leaving or avoiding treatment as news of this Bill gets out.

We wanted you to be aware of the ten reasons we are opposed to the Bill:

1. **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. Neither the HIPAA provisions nor additional legal protections under HR 6082 provide the critically necessary and lifesaving protections that 42 CFR Part II currently provides.
2. **It is Unnecessary** – It does not take into account recent revisions to 42 CFR PART Part 2 to integrate confidential SUD information with overall health information, these revisions allow patients to share their SUD information with some or all of their past, current, and/or future treating providers, without having to name the provider(s).
3. **Fewer people will seek help** - As H. Westley Clark, MD, Executive Professor of Public Health at Santa Clara University, noted recently, “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.”
4. **42 CFR PART 2 is not a barrier to care** -The assertion that 42 CFR Part 2 is a barrier to care is patently false - 42 CFR Part 2 simply requires that a patient decides if they want to share their personal information with another party. That's all it does. It is not a barrier, because it includes the patient in determining what risk the patient is willing to assume when their personal information is being shared with others.
5. **The Bill eliminates shared decision making with the patient –** Whole person care requires the participation of the patient. The Bill removes patient involvement in who gets their personal information and how it is used. It is the antithesis of patient centered care.

6. **HIPAA standards are much weaker, persons and entities outside of the treating relationship will have access to highly sensitive information** - 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.
7. **The Bill seems to be for EHR, insurance and provider entity convenience -** Proponents for the Bill are willing to ignore potential harms that could result from inappropriate disclosure simply because it is inconvenient to press EHR vendors and others to modernize their information sharing. The issue isn't patient unwillingness to share; it is that these providers do not want to be inconvenienced.
8. **Clients will be left with few options once their information has been used to harm them -** HR 6082 broadens the category of individuals who can get substance use disorder records, clients will have less of an opportunity to know where the violation occurred and just who got the information and under what circumstances. Then it will be left up to the government to determine whether there is sufficient harm to the patient to warrant a fine or other sanctions.
9. **Providers will still need to tag protected information** - The bill proposes to align Part 2 with HIPAA by allowing un-consented to disclosures for treatment, payment, and health care operations, but retains heightened protections for disclosures to the criminal justice system. Health care providers and others will still need to have a mechanism for tagging Part 2 protected information so that they know not to disclose it pursuant to a subpoena, etc.
10. **The elimination of our rights is no substitute for conducting routine assessments and referral for persons at risk for substance use conditions –** Proponents for the Bill assert that that the changes are needed to include information about persons with substance use conditions in the medical record. The reality is that most people with substance use conditions have never been in treatment so will not be identified even with the elimination of these protections. Only 1 in 10 people with SUD receive treatment. The answer is not the elimination of patient protections but more routine assessments and referral to appropriate treatment and recovery support services from our healthcare systems.

The current protections come from the standards set forth by Congress back in 1972, which we believe are at least as relevant now. Perhaps more so due to the ease of information sharing through digital records and how common data breeches are, which we understand currently effects one in three Americans. What Congress said was:

> *"The conferees wish to stress their conviction that the strictest adherence to the provisions of this section is absolutely essential to the success of all drug abuse prevention programs. Every patient and former patient must be assured that his right to privacy will be protected. Without that assurance, fear of public disclosure of drug abuse or of records that will discourage thousands from seeking the treatment they must have if this tragic national problem is to be overcome."*

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 HR 6082.

Respectfully Submitted,

William Stauffer, LSW, CCS, CADC
Executive Director