

Onslaught against 42 CFR Part 2 continues in Congress

With the opposition of the American Medical Association (AMA) last fall, any moves in Congress and the federal government to weaken the patient consent provisions of 42 CFR Part 2, the regulation protecting the confidentiality of substance use disorder (SUD) treatment records, were stopped in their tracks — and in the nick of time (see *ADAW*, Oct. 1, 2018; Oct. 15, 2018). But the groups promoting the complete abandonment of 42 CFR Part 2, replacing it with the Health Insurance Portability and Accountability Act, which itself is targeted for at least partial destruction (see *ADAW*, Jan. 21, Jan. 28, Feb. 25), are back. There's a new push to try to overhaul 42 CFR Part 2.

The same voices are there: Rep. Markwayne Mullin (R-Oklahoma), who shamelessly bullied 42 CFR Part 2 advocate H. Westley Clark, M.D., in a diatribe revealing Mullin's ignorance of the issues last year (see *ADAW*, May 14, 2018) and Rep. Earl Blumenauer (D-Oregon) in the House, with Sen. Joe Manchin (D-West Virginia) and Sen. Shelley Moore Capito (R-West Virginia) in the Senate. Rep. Frank Pallone (D-New Jersey), who now heads the House Energy and Commerce Committee, opposed the changes proposed last year.

The Overdose Prevention and Patient Safety (OPPS) Act was introduced by Blumenauer and Mullin, and the Protecting Jessica Grubb's Legacy Act was introduced by Capito and Manchin.

The Senate version of the bill working its way through Congress now “would effectively end any expectation of privacy for persons who have ever had treatment and seek employment, housing, or other benefits,” in addition to eliminating privacy about SUD treatment in numerous other ways, said Bill Stauffer, executive director of the Pennsylvania Recovery Organizations Alliance (PRO-A). This is of

great concern for people with SUD in their records, including treatment, because the “records will be used in ways that are discriminatory, placing them in situations where they cannot get jobs, housing or other benefits and creating a situation in which people would be afraid to get help,” Stauffer told *ADAW*. “It is unconscionable. If you are asked to sign a release to be considered for a job, for housing or to get life insurance — you really don't have an option not to sign your information over!”

Along with the AMA, Faces and Voices of Recovery, the Legal Action

“It is unconscionable. If you are asked to sign a release to be considered for a job, for housing or to get life insurance — you really don't have an option not to sign your information over!”

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Center, the American Association for the Treatment of Opioid Dependence (AATOD), TCA and NAADAC, PRO-A is fighting to keep 42 CFR Part 2 as it is.

The insurance and electronic health record (EHR) industry, along with the American Society of Addiction Medicine, the National Association of Addiction Treatment Providers, the National Association for Behavioral Healthcare, Hazelden Betty Ford, the Kennedy Forum, the National Association of State Mental Health Program Directors, the Joint Commission, the National Association of Counties and others are vociferously opposing keeping 42 CFR Part 2 as it is.

How will treatment providers attract patients if they can't guarantee confidentiality? And where will their legal defense come from after patients start losing custody of their children, losing their jobs and losing their freedom because of SUD treatment records release?

From the Legacy Act section of the bill:

- (e) USE OF RECORDS IN CRIMINAL, CIVIL, OR ADMINISTRATIVE INVESTIGATIONS, ACTIONS, OR PROCEEDINGS.—Subsection (c) of section 543 of the Public Health Service Act (42 U.S.C. 290dd–2) is amended to read as follows:
- “(c) USE OF RECORDS IN CRIMINAL, CIVIL, OR ADMINISTRATIVE CONTEXTS.—Except as otherwise authorized by a court order under subsection (b)(2)(C) or by the consent of the patient, a record referred to in subsection (a) may not—
- ‘(1) be entered into evidence in any criminal prosecution or civil action before a Federal or State court;
- ‘(2) form part of the record for decision or otherwise be taken into account in any proceeding before a Federal agency;
- ‘(3) be used by any Federal, State, or local agency for a law enforcement purpose or to conduct any law enforcement investigation of a patient; or
- ‘(4) be used in any application for a warrant.”

The Partnership to Amend 42 CFR Part 2 is supporting the OPPS Act and the Legacy Act. Why would any patient want health insurance sold by a company that supports allowing patient records for SUDs to be released as a requirement of having a job?

Nevertheless, Association for Behavioral Health and Wellness

President and CEO Pamela Greenberg, who is also chair of the Coalition to Amend 42 CFR Part 2, calls 42 CFR Part 2 “one of the biggest — if not the biggest — barrier to fighting the opioid crisis.”

Consider that 42 CFR Part 2 was created to keep police from going into methadone clinics to find people wanted for arrest. Currently, those methadone clinics (OTPs) are a refuge for patients wanting privacy. AATOD knows this. Yet access

to those methadone patient records — placing them in EHRs in particular — is viewed as a gem to be pried from the jaws of the patients’ clinicians. If that happens, will people still go to OTPs? How does getting rid of confidentiality help the opioid epidemic?

The last time insurance interfered in a major way with SUD treatment was in the 1980s. Managed care destroyed treatment. Shortly afterward, Mayor Rudolph

Giuliani tried to do the same in New York City to OTPs. Yes, we’ve come a long way. But not that far. The commercial interests of EHRs and insurance companies are one thing. For any treatment provider to say that stigma is gone, and nobody will mind having their SUD treatment information shared, strains logic and belief. •



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