

January 27, 2023

The Honorable Xavier Becerra
Secretary
Department of Health and Human Services
Hubert H. Humphrey Building, Room 509F
200 Independence Avenue SW
Washington, DC 20201

Submitted electronically to www.regulations.gov

Re: Confidentiality of Substance Use Disorder (SUD) Patient Records [RIN 0945-AA16]

Dear Secretary Becerra:

The American Nurses Association (ANA) appreciates the opportunity to provide comment on the proposed update to the Confidentiality of Substance Use Disorder (SUD) Patient Records under 42 CFR part 2 (“Part 2”). We appreciate the agency’s efforts through this rulemaking to implement provisions of the of Section 3221 of the Coronavirus Aid, Relief, and Economic Security Act (CARES Act), mainly aligning Part 2 with existing Health Insurance Portability and Accountability Act of 1996 (HIPAA) Privacy, Breach Notification, and Enforcement Rules. ANA has long held that protection of privacy and confidentiality is essential to maintaining the trusting relationship between health care providers and patients and integral to professional practice and quality care.¹ ANA applauds and supports the agency’s efforts to bring Part 2 into greater alignment with existing requirements and allow clinicians to better ensure timely and coordinated care for patients with SUDs and comorbidities.

The balance between safeguarding personal health information (PHI) and providing timely care coordination requires special consideration. Part 2 was designed to protect patient records created by federally assisted programs for the treatment of SUD from the stigma associated with substance misuse that deters patients from entering treatment. ANA members have been integral to addressing the opioid crisis and know firsthand the importance of privacy, coordinated care, and access to treatment. ANA supports the proposed update to Part 2 provisions, especially given the goals of value-based, person-centered, integrated care and the decrease of burden on patients and providers.

ANA encourages the agency to adopt the proposed revisions, while providing more education to all providers, patients, and covered entities on Part 2 and other privacy regulations, to ensure that unintended barriers are not occurring to delay or prevent information from being

¹ American Nurses Association. Position Statement on Privacy and Confidentiality. June 2015. <https://www.nursingworld.org/~4ad4a8/globalassets/docs/ana/position-statement-privacy-and-confidentiality.pdf>. Accessed January 2023.

shared while caring for individuals with SUD. Specifically, our nurses understand the heightened concerns around stigma that SUD patients face, which includes fear of criminal prosecution. ANA has long held that SUDs are diseases that require treatment, not incarceration.² The privacy concerns mixed with the threat of potential criminal prosecution can undermine the nurse's ability to provide care and can prevent patients from seeking the care they need. As such, it is vital that all clinicians are educated around stigma, privacy, and legal concerns and that protections remain in place and are applied when information is shared to facilitate coordinated treatment.

ANA supports the update to Part 2 regulations in order to allow for timely coordinated care that puts the patient's privacy and quality of care at the forefront. ANA also urges the agency to ensure clarity and education is provided to all clinicians that care for patients with SUDs.

ANA is the premier organization representing the interests of the nation's over 4.4 million registered nurses (RNs), through its state and constituent member associations, organizational affiliates, and individual members. ANA advances the nursing profession by fostering high standards of nursing practice, promoting a safe and ethical work environment, bolstering the health and wellness of nurses, and advocating on health care issues that affect nurses and the public. ANA members also include the four APRN roles: nurse practitioners (NPs), clinical nurse specialists (CNSs), certified nurse-midwives (CNMs), and certified registered nurse anesthetists (CRNAs). RNs serve in multiple direct care, care coordination, and administration leadership roles, across the full spectrum of health care settings. RNs provide and coordinate patient care, educate patients and the public about various health conditions including essential self-care, and provide advice and emotional support to patients and their family members.

ANA appreciates the opportunity to submit these comments and looks forward to continued engagement with HHS. Please contact Tim Nanof, Vice President, Policy and Government Affairs, at (301) 628-5166 or Tim.Nanof@ana.org, with any questions.

Sincerely,



Debbie Hatmaker, PhD, RN, FAAN
Chief Nursing Officer / EVP

cc: Jennifer Mensik Kennedy, PhD, RN, NEA-BC, FAAN, ANA President
Loessa Cole, DNP, MBA, RN, NEA-BC, FAAN, ANA Chief Executive Officer

² American Nurses Association. Non-punitive Treatment for Pregnant and Breast-feeding Women with Substance Use Disorders. Position Statement. March 2017. [Non-Punitive Treatment for Pregnant and Breast-Feeding Women with Substance Use Disorders \(nursingworld.org\)](https://www.nursingworld.org). Accessed January 2023.