

Report on Medicare Compliance Volume 28, Number 31. September 09, 2019 In Face of Opioid Crisis, HHS Proposes Part 2 Regulation Changes

By Nina Youngstrom

Physicians and other clinicians who are bound by the Confidentiality of Substance Use Disorder Patient Records regulation (42 C.F.R. § 2) would have slightly more freedom to share substance use treatment information with non-Part 2 providers, according to proposed changes to the HHS regulation, which was published in the Aug. 26 *Federal Register*. If the substance use disorder (SUD) patient records from Part 2 providers are “segregated” in the medical records, providers who don’t fall under Part 2 have more leeway to use information in their diagnosis and treatment of SUDs and other conditions as long as they comply with HIPAA.

That’s one of several revisions to the SUD patient records confidentiality regulations proposed by HHS’s Substance Abuse and Mental Health Services Administration (SAMHSA). They follow changes SAMHSA made in a 2017 regulation and in 2018, when it finalized a supplemental notice of proposed rulemaking. In the new proposal, SAMHSA said its changes “better align with the needs of individuals with SUD and of those who treat these patients in need, and help facilitate the provision of well-coordinated care...while ensuring appropriate confidentiality protection for persons in treatment through part 2 programs.”

There are some helpful adjustments here, says attorney Claire Marblestone, with Foley & Lardner in Los Angeles. “In some ways, they seek to make Part 2 data similar to protected health information under HIPAA without going all the way,” she notes. Some providers would like to see more harmony between Part 2 and HIPAA, but SAMHSA apparently has gone as far as it can go without legislation, says Maeghan Gilmore, director of government affairs at the Association for Behavioral Health and Wellness in Washington, D.C. Bills pending in Congress would fully align the two privacy regulations, but their fate is uncertain.

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