June 24th, 2014

Pamela S. Hyde, JD
Administrator
Substance Abuse and Mental Health Services Administration
1 Choke Cherry Road
Rockville, MD 20857

Dear Administrator Hyde,

The American Psychiatric Association, the national medical specialty representing over 35,000 psychiatric physicians and their patients, is pleased to have the opportunity to comment on the recently convened Substance Abuse and Mental Health Services Administration (SAMHSA) listening session on proposed changes to Title 42 of the Code of Federal Regulations (CFR) Part 2 regarding the confidentiality of certain substance use disorder records. We appreciate that SAMHSA has given stakeholders an opportunity to comment and engage in this dialogue before expected proposed rulemaking.

APA is fully aware of the difficulties in updating Part 2 regulations to comport with the Department of Health and Human Services’ efforts to move to electronic health records, as well as with existing privacy standards. As mentioned in the listening session notice, Part 2 standards have not been updated since 1987 and there have been enormous changes to the healthcare landscape in that time. Most notably, the enactment of the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and the subsequent HITECH legislation have provided baseline national privacy standards for patients and providers. Further, the shift towards integrated models of care delivery systems and the widespread use of electronic health records have made guidance on Part 2 details and consideration of wider Part 2 reform critical.

APA appreciates that SAMHSA is studying Part 2 closely and taking these challenges seriously, but cautions that any reforms under consideration should be made to promote integrated care and not be a barrier to care for specific patient populations in the future. 42 CFR Part 2 currently covers “federally funded individuals or entities that ‘hold themselves out as providing, and provide, alcohol or drug abuse diagnosis, treatment or treatment referral’ including units within a general medical facility that hold themselves out as providing diagnosis, treatment or treatment referral.” One of the changes that SAMHSA has proposed includes extending Part 2 to cover the information, as opposed to the entities or individuals providing the treatment. APA understands the concerns SAMHSA has regarding the difficulties in identifying who is a covered provider and how that may change over time, however, we believe that this change would be a significant expansion of
the regulation and would result in a chilling effect on the provision of SUD treatment by clinicians who provide these services as a minority of their practice and are currently not covered by Part 2. SAMHSA released two rounds of subregulatory guidance on 42 CFR Part 2 several years ago. The first created an open question regarding Part 2 applicability to general psychiatrists that are federally supported but provide SUD treatment as a minority of their practice. This was very concerning to general psychiatrists in addition to the SBIRT and OBOT advocacy community. At that time, APA commented on the similar effects this expansion could have on the number of providers who might cease to offer SUD treatment services due to the administrative burden and financial costs of managing multiple privacy regimes that may not even be supported by the latest technology. SAMHSA clarified in the second FAQ that Part 2 covered entities consist of those whose principal practice consists of providing alcohol or drug abuse diagnosis, treatment or referral for treatment. Given the potential unintended consequences of expanding Part 2 applicability, APA urges SAMHSA to reconsider its proposed broadening of Part 2 applicability to general psychiatrists and other potentially affected physicians and allied professionals that provide “specialty substance abuse treatment services”.

In the ongoing movement to merge necessary privacy protections with the expansion of electronic health records, APA recommends that all relevant HHS agencies including SAMHSA redouble their efforts to promote granular privacy control capabilities within electronic medical records and health information exchanges for all potentially sensitive health condition data. APA strongly believes that this type of built-in functionality has the potential to alleviate concern over mass electronic records sharing in the 21st century health delivery model while allowing for appropriate consensual record sharing between providers and across larger healthcare systems. The importance of these types of granular privacy standards were recognized by Congress in the HITECH Act, and their promise must be translated into reality.

Once again, APA thanks you for your interest in studying this important topic and we look forward to reviewing SAMHSA’s proposals as they progress through your agency’s processes. APA is happy to be a resource on SUDs and we appreciate your review of our initial feedback regarding proposed reforms to 42 CFR Part 2.

Sincerely,

Saul Levin, M.D., M.P.A.
CEO and Medical Director