

Statement for the Record

Submitted by

The Premier healthcare alliance

A Public Health Emergency: State Efforts to Curb the Opioid Crisis

House Energy and Commerce Oversight and Investigations Subcommittee

January 14, 2020

The Premier healthcare alliance appreciates the opportunity to provide a statement for the record on the House Energy and Commerce Oversight and Investigations Subcommittee hearing, titled “A Public Health Emergency: State Efforts to Curb the Opioid Crisis.” Premier is a leading healthcare improvement company, uniting an alliance of approximately 4,000 U.S. hospitals and health systems and approximately 175,000 other providers and organizations to transform healthcare. With integrated data and analytics, collaboratives, supply chain solutions, and consulting and other services, Premier enables better care and outcomes at a lower cost. Premier plays a critical role in the rapidly evolving healthcare industry, collaborating with members to co-develop long-term innovations that reinvent and improve the way care is delivered to patients nationwide.

We applaud the leadership of Chairwoman DeGette, Ranking Member Guthrie and members of the Subcommittee for holding this important hearing today to address this devastating epidemic that is hitting so many of our communities and the patients that our Premier alliance members serve.

Premier and its members are continuing to take [significant steps](#) to improve pain management efforts, and reduce addiction, overuse and misuse of opioids by spreading and scaling resources, tools and practices focused on improving healthcare quality and patient safety.

Among the problems exacerbating the opioids epidemic and getting in the way of these and other healthcare providers’ efforts is one that has received little attention, yet addressing it is absolutely critical to stemming the tide of addiction. Incredible as it seems, a 40-year old law, 42 CFR Part 2 (Part 2), currently bars healthcare providers from accessing their patients’ medical history on substance use without complex and multiple patient consents. This forces providers to play Russian roulette with every prescription, often learning of problems only after an adverse event or an overdose.

In answer to this problem, the *President’s Commission on Combating Drug Addiction and the Opioid Crisis* urges rapid adoption of legislation that will greatly improve caregivers’ ability to provide whole-person, coordinated care, prevent adverse events and enhance treatment for patients struggling with substance use and addiction. Premier has joined with a [coalition](#) of patient, provider, clinician and addiction treatment organizations committed to helping end the opioids crisis to call on Congress to pass the Overdose Prevention and Patient Safety Act ([H.R. 2062](#)) and the Protecting Jessica Grubb’s Legacy Act ([S. 1012](#)). [More than 100 patient,](#)

[provider, physician, addiction treatment and other healthcare organizations](#) joined with the nation's governors supporting legislation to modernize Part 2.

Part 2 is outdated and does not reflect the robust HIPAA protections now in place or the way care is delivered today

Part 2 was implemented during the Nixon Administration before electronic records and during the early days of the “war on drugs.” It was designed to ensure a safe path for seeking treatment and to protect patients from being discriminated against by law enforcement, housing authorities and employers. This was long before the robust patient privacy protections required by the Health Insurance Portability and Accountability Act (HIPAA) were put in place and before new models of accountable care when providers were put at risk for outcomes, making access to information even more important.

Most patients assume caregivers have an awareness of any addictions or prior substance use that may need to be factored into treatment and prescribing. And why wouldn't they?

Even if substance use contributes to co-morbid or complicating factors, providers have no ability to learn this history and tailor care plans, leading to gaps and missed opportunities for addiction treatment. This outdated law even forces the Centers for Medicare & Medicaid Services to remove claims where substance use disorder is a primary or secondary diagnosis before sending data to providers who are part of ACOs, bundled payment and other alternative payment models. Removing this data translates to providers missing roughly 4.5 percent of inpatient Medicare claims and 8 percent of Medicaid claims¹.

This poses a serious safety threat to patients with substance use disorders considering the potential for drug contraindications and co-existing medical problems. Without full and complete information on patients' substance use, we have effectively set up a two-tiered system – one where those struggling with addiction receive uncoordinated, incomplete care that can exacerbate their condition, lead to unnecessary emergency department visits and even result in overdose.

Congress can remove this information barrier that is costing lives and preventing informed, coordinated care for patients struggling with substance use and addiction

Congress continues to look at ways to address the opioid crisis, funding and new graduate medical education residency slots for addiction medicine, but without changes to Part 2 costs, quality and parity of care will continue to be a problem.

Without full and complete information on patients' substance use, we have effectively set up a discriminatory, two-tiered system - one where those struggling with addiction receive uncoordinated, incomplete care that can exacerbate their condition, lead to unnecessary emergency department visits and even result in overdose.

A simple change would amend Part 2 to align with HIPAA's treatment, payment and operation protections, which will allow sharing of medical records among providers for those with addictions, just like we have done for every other disease and condition since 1996.

The legislation in no way compromises the existing privacy protections in Part 2 that protect an individual from having their information disclosed to the courts in civil proceedings, or to life and

disability insurance companies, employers and landlords/housing agencies. In fact, the legislation puts in place even more robust privacy protections against misuse of medical information than is currently provided in the 1970s 42 CFR Part 2 law or in HIAA, including:

- Antidiscrimination language;
- Breach notification;
- Protections against use of information in criminal prosecution and civil case proceedings;
- Protections against sharing information with employers and landlords; and
- Application of HIPAA penalties for violations, replacing current Part 2 penalties, which are miniscule and rarely--if ever--enforced by the Department of Justice.

If enacted, the legislation would have an immediate impact in the fight against opioid misuse, at virtually no cost to the taxpayer.

Premier strongly encourages Congress to pass this legislation swiftly in order to improve outcomes and remove this information barrier to responsible care. This is a commonsense, bipartisan-backed solution that will have a real impact on patient lives.

We thank the Subcommittee again for holding this critical hearing today. If you have any questions or comments, please contact Duanne Pearson, Vice President, Federal and Affairs, at duanne_pearson@premierinc.com or 202.879.8008.

ⁱ Austin B. Frakt, Ph.D., and Nicholas Bagley, J.D. N Engl J Med 2015; 372:1879-1881 May 14, 2015. <http://www.nejm.org/doi/full/10.1056/NEJMp1501362>