



January 31, 2023

Submitted via Regulations.gov

U.S. Department of Health and Human Services
Office for Civil Rights
Attn.: SUD Patient Records
Hubert H. Humphrey Building, Room 509F
200 Independence Avenue SW
Washington, DC 20201

RE: Unite Us Comments to NPRM on Confidentiality of Substance Use Disorder Patient Records, Docket No. HHS-OCR-0945-AA16

Dear Secretary Becerra:

I write on behalf of Unite Us, a technology company that works to address social determinants of health by building coordinated care networks of health and social service providers.¹ Thank you for the opportunity to respond to the Notice of Proposed Rulemaking on Confidentiality of Substance Use Disorder (“SUD”) Patient Records (“NPRM”), 87 Fed. Reg. 74,216 (Dec. 2, 2022), issued by the Office for Civil Rights (“OCR”) and Substance Abuse and Mental Health Services Administration (“SAMHSA”) within the U.S. Department of Health and Human Services (“HHS”).

Unite Us supports HHS’s efforts to “increase[] coordination among providers in treatment for substance use challenges,” while remaining sensitive to patient privacy concerns “to avoid discrimination in treatment.”² Integrated whole person care—which is critical for an individual’s health and well being—requires that providers be able to share clinical information about a client’s treatment and their healthcare conditions. We submit this comment to express our support for the proposed rule and respond to several of HHS’s specific requests for comment.

Background on Unite Us

Founded in 2013, Unite Us powers data-driven care coordination to eliminate silos between health and social care teams, reduce the burden placed on individuals seeking care, and improve health outcomes. Originally created to serve veterans and military families, Unite Us has grown into a national movement to connect anyone seeking health or social care with the services they need. Unite Us’ intuitive platform enables health and social service organizations to coordinate and

¹ Unite Us is joined in these comments by numerous partners, including Accessible Pharmacy Services for the Blind, ChristianaCare, EveryMind, La Clinica, Pinetree Institute, and Public Health Solutions.

² HHS Proposes New Protections to Increase Care Coordination and Confidentiality for Patients With Substance Use Challenges (Nov. 28, 2022), <https://www.hhs.gov/about/news/2022/11/28/hhs-proposes-new-protections-increase-care-coordination-confidentiality-patients-substance-use-challenges.html>.

manage services for their clients, track referrals and outcomes together, and securely share information to facilitate care coordination. Our goal is to ensure every individual, no matter who they are or where they live, can access the critical services they need to live happy and healthy lives.

Unite Us is more than just a technology company—we are an active partner to the communities we serve, building comprehensive care networks and change management processes in order to increase access to services and empower the community to improve health outcomes. Over the past decade, Unite Us has grown nationally to power coordinated care networks in 44 states. We have facilitated over 10.4 million connections to care and enabled access to over 700,000 types of services, including housing, mental and behavioral health, transportation, education, employment, legal, food, and benefits assistance. The growth of care coordination between health and social care organizations since the pandemic has been exponential, illustrating the need to continue supporting this integrated work.

Trust and transparency are the cornerstones of the Unite Us Platform. We have implemented a robust, client-centered, and health equity–driven process that requires each person seeking services to consent to share their information before any referrals can be sent on their behalf via our platform. Unite Us also adheres to strict data privacy standards and is HITRUST and SOC-2 certified. In addition to strict user and organization-level permissions to protect data access, Unite Us provides heightened protections for sensitive data, including data subject to 42 CFR Part 2 and other data subject to additional federal and state protections. We take pride in our culture of compliance, which combines cross-team collaboration and training with industry-leading security practices and certifications.

General Comments

Unite Us applauds HHS’s efforts to facilitate greater integration of SUD treatment information within other PHI in order to “improve communication and care coordination between providers and others in the health care system,” thus enhancing their “ability to comprehensively diagnose and treat the whole patient.” 87 Fed. Reg. at 74,242. As the national leader in deploying community-wide coordinated care networks of health and social services, we believe our perspective and experience will benefit HHS as it considers these potential needs.

Unite Us also strongly believes in the importance of individual privacy. If individuals do not trust that their information will be kept confidential, they may choose not to seek SUD treatment. We believe that the proposed rule appropriately balances these important privacy concerns with the value of

information sharing,³ including by expanding prohibitions on the use and disclosure of Part 2 records in civil, criminal, administrative, and legislative proceedings. See, e.g., 87 Fed. Reg. at 74,232. Unite Us also acknowledges that HHS is currently developing a CARES Act antidiscrimination rule, *id.* at 74,217, and strongly supports enactment of the antidiscrimination rule.

As to the benefits of the proposed rule, Unite Us agrees with the nearly 50 organizations in the Partnership to Amend 42 CFR Part 2 that aligning Part 2 with the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”) helps ameliorate “the confusing requirements of Part 2, how Part 2 hinders access to medication-assisted treatment, and the stigma of SUDs.”⁴ Individuals with SUDs deserve equal access to coordinated networks of care to improve their health and well being, which HHS’s proposed modifications to Part 2 would help provide.

In an article cited by HHS,⁵ the medical director of one health system’s Division of Substance Abuse explains in concrete terms the harms Part 2 in its current form imposes. Because Part 2 “prevents programs and doctors who treat patients with substance use disorders from sharing any information about that treatment without explicit permission from the patient,” many doctors and other care team members “are treating patients with opioid and other substance use disorders without knowing about this diagnosis.”⁶ This means that individuals with opioid use disorder could be prescribed medications that negatively interact with those substances, or inadvertently placed in situations that put them at risk of relapse. Further, “[h]iding addiction disorders like this sends the message that they are somehow different from other brain diseases and inadvertently supports the stigma that surrounds them.”⁷

Similarly, in a 2014 public comment, Oregon’s largest coordinated care organization (“CCO”) explains that Part 2 prevents the behavioral health systems under its umbrella from coordinating care for patients with SUDs who see providers in multiple counties or across private health care

³ In a public comment, an organization that provides addiction treatment services in Illinois explains that while they “strongly support confidentiality protections for patients,” having “separate health information privacy requirements for substance abuse treatment patients does more harm to the patient, harm to their families and harm to their communities by necessitating a separate and unequal health data sharing environment that prevents the full inclusion of substance abuse treatment patients into integrated health settings and systems.” Published Comments - Request for Public Comment on the Confidentiality of Alcohol and Drug Abuse Patient Records, 79 Fed. Reg. 26,929 (May 2014), at PDF p.22, https://www.samhsa.gov/sites/default/files/about_us/who_we_are/comments-100-120.pdf (cited at 87 Fed. Reg. at 74,217 n.10).

⁴ Ltr. from Partnership to Amend 42 CFR Part 2 to Secretary Becerra (Jan. 8, 2021), https://aahd.us/wp-content/uploads/2021/01/PartnershipRecommendationsforNextPart2-uleLtrtoNomineeBecerra_01082021.pdf (cited at 87 Fed. Reg. at 74,217 n.9).

⁵ “Privacy Laws Are Hurting the Care of Patients with Addiction” (July 2018), <https://www.statnews.com/2018/07/13/privacy-laws-patients-addiction/> (cited at 87 Fed. Reg. at 74,217 n.10).

⁶ *Id.*

⁷ *Id.*

systems.⁸ Specifically, the CCO explains, providers' inability to share information about diagnoses impedes the integration of behavioral health with primary care. These barriers to care coordination imposed by Part 2 affect the 20% of the CCO's adult population that have SUDs, thus "undermining the State's ability to achieve the health transformation in which our state and federal governments have invested so heavily."⁹

The proposed modifications to Part 2 would help remedy these harms. The rule provides more flexibility for how Part 2 information may be shared after consent is obtained, and does not require that all potential recipients be listed in the consent, requiring instead a description of the classes of recipients who might receive the information. In these ways, the proposed rule helps align Part 2 with HIPAA and prevent unnecessary siloing of SUD information.¹⁰

Specific Comments

- 1. HHS requests comment on "the benefits and burdens of creating ... additional privacy protection for SUD counseling notes that are maintained primarily for use by the originator of the notes, similar to psychotherapy notes as defined in the Privacy Rule." 87 Fed. Reg. at 74,230.**

Unite Us understands the importance of maintaining the confidentiality of counseling sessions and supports maintaining strict protections for counseling session notes. We note that the Unite Us Platform's functionality enables providers to maintain these notes as strictly confidential, and we would defer to the experts who provide direct services to individuals with SUDs on the appropriate

⁸ Published Comments, *supra* n.3, at PDF p.20.

⁹ *Id.*

¹⁰ Some analysts have noted that "the proposed rule leaves in place the requirement that Part 2 programs ... generally must obtain patient consent prior to disclosing Part 2 information for [TPO] purposes." *HHS Proposes New Rule to Align "Part 2" SUD Provider Confidentiality with HIPAA Privacy Standards*, Manatt Health (Jan. 3, 2023), <https://www.manatt.com/insights/newsletters/health-highlights/hhs-proposes-new-rule-to-align-part-2-sud-provider>. In this manner, the rule departs from HIPAA, which does not require authorization when information is shared for TPO purposes. See, e.g., HHS HIPAA Guidance #3008, <https://www.hhs.gov/hipaa/for-professionals/faq/3008/does-hipaa-permit-health-care-providers-share-phi-individual-mental-illness-third-party-not-health-care-provider-continuity-care-purposes/index.html> ("[H]ealth care providers who believe that disclosures to certain social service entities are a necessary component of, or may help further, the individual's health or mental health care may disclose the minimum necessary PHI to such entities without the individual's authorization.")

Unite Us's standard consent model—which requires client consent before any information may be shared—is consistent with the proposed rule. We note that providers updating their processes and forms may face challenges in connection with the proposed rule's inclusion of a one-time consent specific to Part 2 information. Although the rule aims to bring Part 2 in alignment with HIPAA, it maintains this difference between HIPAA and Part 2—which may cause confusion for organizations accustomed to the standard TPO exceptions, which do not require authorization prior to disclosing information.

treatment of SUD counseling session notes. When using our product, providers can coordinate care and exchange information about a shared patient within a care team while maintaining private notes that are not disclosed to any other providers within the care team.

2. HHS requests comment on “[w]ays to make the proposed notices more easily understandable.” 87 Fed. Reg. at 74,248.

As part of our commitment to health equity, Unite Us has standardized and streamlined an intake process for health and social care providers that includes a consent form that is accessible to the average person. To be more easily understandable, our consent form does not use any specialized language, and is as short as possible while still conveying all the necessary information. Our consent form can be shared in multiple formats (e.g., via secure text, email, print, via in-person display, and other methods) and is translated into over forty-five languages (with additional translations available upon request). A social worker at a West Virginia community service provider explains how the Unite Us intake process works for her:

Unite Us has successfully and easily linked families with whom I work and resources specific for their needs. I recently had a family with a variety of needs. The mother and her two children were living in a car but were able to get a home through a community program. Unfortunately, they did not have any furniture, lighting, clothing, or household goods. The mother was also interested in assistance in obtaining childcare and a job. The mother agreed to me entering her information into the Unite Us Platform. It took about five minutes or so. **The mother was sent a text message from the program, where she had to give electronic permission for Unite Us to disseminate her information to the resources I had chosen. Within 24 hours, she was linked to a potential employer, financial resources, and community resources to meet their concrete needs.** The mother has been so grateful for the resources and assistance.

We designed our intake process to protect client privacy, while simultaneously removing barriers individuals face when seeking services and alleviating the challenges faced by health and social service providers when coordinating care. As the above example makes clear, the ease and accessibility of this process helps providers connect their clients to the services they need.

Conclusion

Unite Us sincerely appreciates the opportunity to comment on this NPRM and share our perspective on the importance of care coordination between health and social care entities, which is vastly improved by greater integration of SUD treatment info within other PHI. We look forward to

working with you to address this important issue. If you have any questions or if there is any additional information Unite Us can provide, feel free to contact me.

Sincerely,

Esther Farkas

Esther Farkas
Chief Strategy Officer
[Unite Us](#)