

October 26, 2020

Elinore McCance-Katz, M.D., Ph.D.
Assistant Secretary for Mental Health and Substance Use
Substance Abuse and Mental Health Services Administration
5600 Fishers Lane
Rockville, MD 20857

The Honorable Seema Verma
Administrator
Centers for Medicare & Medicaid Services
US Department of Health & Human Services
Hubert H. Humphrey Building
200 Independence Avenue, SW
Washington, DC 20201

Re: Access to substance use disorder claims data

Dear Assistant Secretary McCance-Katz and Administrator Verma:

The undersigned organizations write to express our appreciation for your work to improve the care and treatment of patients with substance use disorder (SUD). Actions such as recent rulemaking from the Substance Abuse and Mental Health Services Administration (SAMHSA) and the Centers for Medicare & Medicaid Services' (CMS) [Roadmap to fight the epidemic](#) shows you're committed to addressing this issue. Despite a drop in overdose deaths in 2018, the number of [drug overdoses increased](#) during the COVID-19 pandemic, and we know that our work addressing this issue is far from over.

We believe the recent passage of the Coronavirus Aid, Relief, and Economic Security (CARES) Act will greatly help. Section 3221 of the CARES Act modernizes the privacy of treatment records for SUD by creating parity between 42 CFR Part 2, which governs SUD privacy, and the Health Insurance Portability and Accountability Act of 1996 (HIPAA).

As the Department of Health and Human Services (HHS) works to implement the CARES Act, we urge you to address the important issue of claims and data access for providers practicing in alternative payment models (APMs). Accountable care organizations (ACOs), for example, are provided claims data at least monthly, and sometimes weekly, through Claim and Claim Line Feed (CCLF) files. But these data lack SUD-related information because of the limits of Part 2 law. Without access to such claims data, ACOs and other APM participants risk treating the whole patient with only part of their data, potentially harming patient care and outcomes. By aligning Part 2 with HIPAA, the CARES Act allows sharing of this important data after initial consent, which will allow CMS to deliver this critical information to providers. We look forward to learning more during the rulemaking process on how this will be operationalized.

Given the clear intent of Congress to move in the direction of further transparency to providers to better treat their patients, we believe this opens the door in the interim for ACOs to make use of

the Audit and Evaluation provision in [current regulation](#). While it doesn't give providers full transparency and allow for patient identifying information to be given to providers for treatment purposes, **the current regulation does allow for ACOs participating in Medicare APMs the opportunity to receive this unredacted claims data to evaluate their performance when using the appropriate safeguards. We urge HHS to start providing this information to ACOs now to help support their work with population health management.**

Allowing ACOs access to a full, unredacted claims set would allow them to evaluate how they are treating addiction, identify hotspots in communities, and more effectively manage overall population health. SAMHSA stated in a [July 15 final rule](#) that the agency "does not have the statutory authority to require patient records to be disclosed to auditors or evaluators." At the same time, SAMHSA acknowledges that it intends to implement the CARES Act in separate, future rulemaking. **The CARES Act and congressional intent to expedite SUD data sharing should resolve any lingering doubt that sharing of this data is allowed.**

Our members have committed to population-health management, including addressing public health crises like the opioid epidemic. Unfortunately, ACOs lack access to the full suite of necessary information that allows them to achieve the goals of well-coordinated patient care, improved quality, and preventive care that will realize HHS's goals of limiting the spread of opioid overdose deaths. We urge HHS take the appropriate next steps to provide ACOs with the information they need to achieve our collective goals. We also welcome an opportunity to work collaboratively with CMS and SAMHSA provide feedback on implementation and can be reached by contacting David Pittman, Health Policy and Communications Advisor, at dpittman@naacos.com. Thank you for your consideration of these comments.

Sincerely,

AMGA
National Association of ACOs