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September 25, 2019

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Substance Abuse and Mental Health Services Administration

Attention: Mitchell Berger
5600 Fishers Lane, Room 18E89C
Rockville, MD 20857

RE: Confidentiality of Substance Use Disorder Patient Records (Regulatory Information Number 0930-AA30)

On behalf of the American Psychiatric Association (APA), the national medical specialty society representing more than 38,500 physicians specializing in psychiatry including addiction psychiatry, we are writing in response to the Department of Health and Human Services' (HHS or the Agency) proposal to delete the phrase "allegedly committed by the patient" from the Confidentiality of Substance Use Disorder Patient Records regulations under section 2.63(a)(2).

This change would clarify that a court may authorize disclosure is necessary in connection with an investigation or prosecution of an extremely serious crime, even if the serious crime was not allegedly committed by the patient. HHS states that the language was erroneously included in the 2017 final regulations (82 FR 6052). However, we are concerned the proposed change broadens the scope of law enforcement's ability to investigate Part 2 programs while criminalizing treatment. We urge you to keep the regulation as finalized in 2017 and hold discussions with stakeholders about potential implications of the language.

We are working to address the opioid crisis as a public health issue and educate the public that substance use disorders are a chronic brain disease which needs to be treated like any other health condition. The language used in the proposal continues to criminalize substance use disorders, as well as perpetuates stigma against those seeking treatment. The current rule reads: "serious crime allegedly committed by the patient, such as one which directly threatens loss of life or serious bodily injury, including homicide, rape, kidnapping, armed robbery, assault with a deadly weapon, or child abuse and neglect..." The Agency's rationale for the change is that the language "may hinder federal enforcement efforts targeted at rogue doctors and pill mills that have contributed to the opioid crisis". Thus, it seems the intent of the change is to broaden the focus of prosecuting for allegedly committing serious crimes beyond what may have been allowed prior to 2017.

Such a change could deter clinicians from becoming a Part 2 program for fear of law enforcement overreach as a result of a broader interpretation of Part 2 beyond the

scope of previous interpretations. This is especially a concern when viewed in conjunction with a separate proposal recently released by the Agency to extend the time a court order may permit an undercover agent or informant to be placed in a Part 2 program from the previous 6 month to 12 months. We urge you to reconsider the deletion of the language to better align with the medical model of substance use disorder treatment.

Thank you again for the opportunity to submit comments. We commend HHS for taken many important steps to address the opioid crisis and reduce the stigma and discrimination against patients seeking treatment for substance use disorders. We urge you to continue to build on those efforts by framing and addressing the opioid crisis as a public health issue that requires improved access to more effective, evidence-based treatments.

Sincerely,

A handwritten signature in black ink that reads "Saul Levin, MD, MPA". The signature is written in a cursive, flowing style.

Saul Levin, MD, MPA, FRCP-E
CEO and Medical Director