



Substance Abuse and Mental Health  
Services Administration

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FEB 12 2019

Ms. Nancy A. Berryhill  
Acting Commissioner  
Social Security Administration  
Baltimore, MD 21235-0001

Dear Ms. Berryhill:

In accordance with 42 U.S.C. 290dd-2, the Substance Abuse and Mental Health Services Administration (SAMHSA) is responsible for establishing and overseeing regulations regarding confidentiality of substance use disorder patient records set forth in 42 C.F.R. Part 2 (Part 2 rules). The Social Security Administration (SSA) has brought to my attention a critical problem concerning disclosure of information that is required by SSA for the determination of a variety of SSA benefits. The SSA indicates that it has encountered thousands of cases in which healthcare providers/organizations have redacted necessary information concerning substance use disorders from records submitted on behalf of a potential beneficiary, or have refused to disclose records containing substance use disorder information, citing concerns about violating the Part 2 rules.

The SSA indicated that it employs the Office of Management and Budget-approved form SSA-827 to lawfully obtain healthcare information (including treatment information on substance use disorders) about an individual seeking SSA benefits. Without this information, individuals applying for SSA benefits and who have via the SSA-827 form consented to disclosure of all of their patient records or their complete medical file would not be able to receive such benefits. I understand that concerns have been raised by providers and healthcare organizations that the use of the SSA-827 may not be consistent with the current consent requirements in 42 C.F.R. 2.31. SAMHSA is exploring potential changes to the Part 2 rules, in particular the consent provision in 42 C.F.R. 2.31, which would address this issue. In the interim, however, we believe that individuals who authorize such disclosures may reasonably be expected to understand the need for SSA to review of all of their medical records, including any substance use disorder information, in order for SSA to make a determination of eligibility for benefits. SAMHSA did not intend that changes to the Part 2 consent requirements would serve to impede the efforts of individuals to receive SSA benefits to which they are entitled. Therefore, this letter serves as notification that SAMHSA will not initiate, recommend, or support enforcement action against providers that are subject to the Part 2 rules for disclosing Part 2-protected substance use disorder information to SSA pursuant to a signed and otherwise valid SSA-827 form for disability benefits determination purposes.

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I hope that this communication is helpful in facilitating prompt benefits eligibility determinations by SSA. If there are further questions, please do not hesitate to contact SAMHSA.

Sincerely,



Elinore F. McCance-Katz, M.D., Ph.D.  
Assistant Secretary for Mental Health  
and Substance Use