

United States Senate  
WASHINGTON, DC 20510

July 30, 2020

The Honorable Alex Azar  
Secretary  
United States Department of Health and Human Services  
200 Independence Avenue, SW  
Washington, D.C. 20201

The Honorable Elinore G. McCance-Katz, M.D., Ph.D.  
Assistant Secretary for Mental Health and Substance Use  
Substance Abuse and Mental Health Services Administration  
5600 Fishers Ln.  
Rockville, MD 20852

Dear Secretary Azar and Assistant Secretary McCance-Katz,

We write today regarding implementation of the Coronavirus Aid, Relief, and Economic Security Act (CARES Act), in particular Section 3221, Confidentiality and Disclosure of Records Relating to Substance Use Disorder. We appreciate the Department of Health and Human Services (HHS) and Substance Abuse and Mental Health Services Administration (SAMHSA) continued commitment to improve care coordination for those with substance use disorders, and implementation of this provision would ensure full parity and equity for those dealing with substance use disorders while strengthening privacy protections.

The Protecting Jessica Grubb's Legacy Act (S.3774), as passed in the CARES Act, is named after a young woman who we lost because a hospital physician sent her home with a prescription for 50 oxycodone following a surgery despite the fact that both Jessie and her parents had made it clear that she was in recovery. We lost Jessie because that physician says he simply did not know that she had been addicted to opioids, and that this prescription would be too tempting for her, as it would be for so many people in recovery.

SAMHSA recently finalized the revised rule regarding the 42 CFR Part 2 (Part 2) regulations to further facilitate better coordination of care in response to the opioid epidemic. This rule made several important changes to treatment of records created by non-Part 2 providers, disclosure of Part 2 treatment records to an entity, such as the Social Security Administration, without naming a specific person, and other important changes.

However, the passage of the Protecting Jessica Grubb's Legacy Act in the CARES Act provides far greater flexibility for patients and health care provider to share substance use disorder records than previously allowed under Part 2, with written consent by the patient. Specifically the legislation works to align Part 2 with the Health Insurance Portability and Accountability Act (HIPAA). While we understand the final rule is aimed at providing interim rules until this law

can be carried out, we'd like to receive an update on timing on implementation of the law. Specifically, we would ask you to provide a proposed timeline for further rulemaking to implement Section 3221 of the CARES Act which will update 42 CFR Part 2 to further align Part 2 with HIPAA.

As our nation continues to fight the opioid epidemic and the COVID-19 pandemic, mental illness has reached epidemic levels. A recent report from the Well Being Trust projects that 75,000 people are at risk of overdose death or suicide. Additionally, emergency departments and the criminal justice system do not have the capacity—with existing resources and healthcare professional shortages—to address the needs of the rapidly growing number of individuals with behavioral health conditions. Granting greater access to substance use treatment records, which can mean life or death to millions of Americans and can help save the U.S. healthcare system an estimated \$11.3 billion annually.

We look forward to working with you to ensure that healthcare providers have access to the information that they need to provide medically appropriate care and save lives, and we request regular updates on the status of this work.

Jessie's death was tragic and preventable. Let's work together to make sure that never happens again. We look forward to working with you as you implement the Protecting Jessica Grubb's Legacy Act.

Sincerely,



Joe Manchin III  
United States Senator



Shelley Moore Capito  
United States Senator