National Association
of Attorneys General

PRESIDENT
Jeff Landry
Louisiana Attorney General

PRESIDENT-ELECT
Tim Fox
Montana Attorney General

VICE PRESIDENT
Karl A. Racine
District of Columbia Attorney General

IMMEDIATE PAST PRESIDENT
Derek Schmidt
Kansas Attorney General

EXECUTIVE DIRECTOR
Chris Toth

1850 M Street, NW
Twelfth Floor
Washington, DC 20036
Phone: (202) 326-6000
http://www.naag.org/

August 5, 2019

The Honorable Nancy Pelosi
Speaker of the House
U.S. House of Representatives
H-232, The Capitol
Washington, DC 20515

The Honorable Kevin McCarthy
Minority Leader
U.S. House of Representatives
H-204, The Capitol
Washington, DC 20515

The Honorable Mitch McConnell
Majority Leader
U.S. Senate
S-230, The Capitol
Washington, DC 20510

The Honorable Charles Schumer
Minority Leader
U.S. Senate
S-221, The Capitol
Washington, DC 20510

Dear Speaker Pelosi, Minority Leader McCarthy, Majority Leader McConnell, and Minority Leader Schumer,

The undersigned attorneys general share your concern about the impact of the opioid epidemic on our country. As President Trump has recognized in the National Drug Control Strategy he released earlier this year, the opioid crisis has resulted in more American deaths in just two years than in the course of the entire Vietnam War. In 2017, there were more than 70,200 drug overdose deaths in the United States. More than 47,500 of these deaths involved an opioid, and more than half of these deaths involved a synthetic opioid such as illicit fentanyl or one of its analogues.

The impact of the epidemic has been so pervasive and so severe that life expectancy in the United States has declined for three years in a row for the first time since the influenza pandemic of 1918. The epidemic has contributed to a rise in Hepatitis C and heart valve infections (endocarditis), a rise in the number and rate of hospitalizations associated with drug withdrawal in newborns, and other significant and costly health impacts.

This loss of life and these major health consequences are matched by significant and continuing costs imposed on our criminal justice and social service systems. And the economic cost of the opioid crisis exceeded $500 billion in 2015 – equal to 2.8 percent of the U.S. Gross Domestic Product (GDP) that year – according to the White House Council of Economic Advisers.

We all understand that effective treatment is key to saving lives and helping to stop this epidemic. In particular, research shows that Medication-Assisted Treatment (MAT) – the use of medications, in combination with counseling and behavioral therapies – is a highly effective approach to the treatment of opioid use disorders.

Unfortunately, there are three significant barriers to treating opioid use disorder that we cannot change at the state level and that must be tackled at the federal level. We share these barriers below in the hope that we can work together to remove them and allow more providers to offer treatment for opioid use disorder and other substance use disorders.

1. **Replace the cumbersome, out-of-date, privacy rules contained in 42 CFR Part 2 with the effective and more familiar privacy rules contained in the Health Insurance Portability and Accountability Act (HIPAA).**

42 CFR Part 2 sets forth strict requirements for the use and disclosure of patients' substance use disorder treatment records. The complexities of complying with 42 CFR Part 2 often prevent general practice providers from even attempting to treat patients with substance use disorders through the use of medication-assisted treatment (MAT), because – while providers are familiar with how to comply with the privacy requirements of HIPAA – they may be intimidated by the requirements of 42 CFR Part 2.

This regulatory scheme also sets up a strange situation in which office-based MAT providers do not have to follow the specialized requirements of 42 CFR Part 2 unless they advertise to the public that they provide MAT. So, in an era when we are trying to promote access to MAT, we are encouraging office-based MAT providers to keep secret the fact that they provide this life-saving service so they can avoid the cumbersome 42 CFR Part 2 rules.

These privacy rules were created more than 40 years ago in a time of intense stigma surrounding substance use disorder treatment. They were created to assure patients that they would not face adverse legal or civil consequences when seeking treatment by protecting confidentiality of substance use disorder patient records. Unfortunately, they now serve to perpetuate that stigma, as the principle underlying these rules is that substance use disorder treatment is shameful and records of it should be withheld from other treatment providers in ways that we do not withhold records of treatment of other chronic diseases. While maintaining confidentiality is imperative to encouraging individuals to seek and obtain treatment, the inability to share records among providers can burden coordination of care, potentially resulting in harm to the patient.

To be effective in fighting the opioid epidemic, we must treat substance use disorder as the chronic disease that it is—and that means aligning the rules regarding disclosure of substance use disorder treatment records with the protections against unwanted disclosure of patient records already contained in HIPAA, particularly as it relates to disclosure of substance abuse treatment information to authorized providers.

In seeking needed changes in 42 CFR Part 2, we are joined by Democratic and Republican lawmakers in both houses of Congress. In the House, the Overdose Prevention and Patient Safety Act (OPPS Act) (H.R. 2062) was introduced by Reps. Markwayne Mullin (R-OK) and Earl Blumenauer (D-OR); and in the Senate, the Protecting Jessica Grubb's Legacy Act (Legacy Act) (S. 1012) was introduced by Sens. Joe Manchin (D-WV) and Shelley Moore Capito (R-WV). Both bills will align Part 2 with HIPAA for the purposes of health care treatment, and both are supported by the Partnership to Amend 42 CFR Part 2, a growing coalition of more than

40 national health care organizations that includes the American Hospital Association, the American Psychiatric Association, and the American Society of Addiction Medicine.

2. **Pass H.R. 2482, the Mainstreaming Addiction Treatment (MAT) Act, and eliminate unnecessary burdens on buprenorphine prescribing imposed by the Drug Addiction Treatment Act of 2000 (DATA 2000).**

DATA 2000 was a step forward in substance use disorder treatment because it allowed the treatment of opioid use disorder in an office-based setting. However, it created a cumbersome bureaucratic system whereby providers who wish to prescribe buprenorphine in an office-based setting must prove to the Substance Abuse and Mental Health Services Administration (SAMHSA) that they have taken special trainings and then apply to the Drug Enforcement Administration (DEA) for a special DEA "X" number to indicate when buprenorphine is being prescribed to treat substance use disorder.

This is the only drug on the market for which prescribers have to prove they have received specialized training in order to prescribe the drug. This requirement was put in place well before the rapid rise in opioid use disorder and opioid overdose deaths that have become a national crisis. Just as opioid use disorder and opioid overdose deaths have risen dramatically in recent years, so the need for MAT with buprenorphine has risen just as dramatically. Because the need for MAT is far out-pacing the availability of such treatment, it is time to reconsider the DATA 2000 regulatory framework and other barriers that stand in the way of expanded use of buprenorphine to treat opioid use disorder and help prevent opioid overdose deaths.

The fact is that, as a partial agonist, buprenorphine is a safer drug than opioid agonists such as oxycodone and fentanyl that are readily prescribed without any requirements for training or specialized DEA numbers. So, doctors need not prove any special training to prescribe more addictive opioid pain killers but must follow complicated bureaucratic steps to prescribe a less addictive opioid (buprenorphine) for substance use disorder treatment.

Buprenorphine should not be singled out from all other drugs because it is a treatment for substance use disorder. Providers should be trained to prescribe buprenorphine the same way they are trained to prescribe other drugs – in medical schools, nurse practitioner schools, medical residencies, and continuing medical education. The stigma-based policy is endangering lives by suppressing access to treatment and should be changed.

In our effort to eliminate this antiquated policy that restricts a healthcare provider's ability to prescribe buprenorphine, we are joined by a coalition of 22 states, led by the New York State Department of Health, seeking exactly this change.

H.R. 2482, the Mainstreaming Addiction Treatment (MAT) Act, would address this issue by eliminating the redundant and outdated requirement that practitioners apply for a separate waiver through the DEA to prescribe buprenorphine for the treatment of substance use disorder. We urge Congress to pass – and President Trump to sign – the MAT Act or similar legislation as expeditiously as possible.

3. **Fully repeal the Medicaid Institutions for Mental Diseases (IMD) exclusion.**

The Institutions for Mental Diseases (IMD) exclusion generally prohibits state Medicaid programs from receiving federal reimbursement for adults between 21 and 65 receiving mental health or substance use disorder treatment in a residential treatment facility with more than 16 beds.

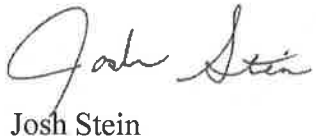
This arcane federal policy, while well intentioned at its inception to encourage treatment in community-based settings, has proven to detrimentally limit states' ability to provide the full continuum of clinically appropriate care for Medicaid enrollees with a substance use disorder. We join the National Governor's Association and a wide range of health care and public health groups in calling on the Administration to continue working with states to expedite approval of IMD waivers, while also recognizing the need for a permanent, statutory solution to resolve this issue for all states.

The recently-enacted Substance Use Disorder Prevention that Promotes Opioid Recovery and Treatment (SUPPORT) Act took a step in the right direction, but it did not go far enough. The SUPPORT Act partly eliminates the IMD exclusion for a five-year period by allowing states to cover IMD services to people with at least one substance use disorder for up to 30 days over a 12-month period under certain circumstances. Congress needs to go further, by fully repealing the IMD exclusion.

We applaud the federal government for its recent constructive steps to address the opioid epidemic through both legislative and executive action, but we all know that there is more work to be done. By making the changes recommended, Congress would make effective treatment for opioid use disorders more widely and readily available so that we can save more lives and help turn the tide on this crisis.

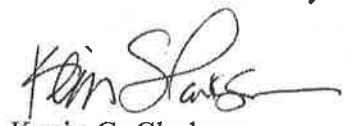
Thank you for your consideration.

Sincerely,

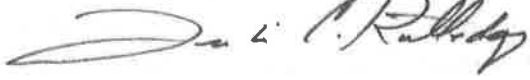


Josh Stein
North Carolina Attorney General

Mike Hunter
Oklahoma Attorney General



Kevin G. Clarkson
Alaska Attorney General



Leslie Rutledge
Arkansas Attorney General

Xavier Becerra
California Attorney General

Phil Weiser
Colorado Attorney General

Hector Balderas
New Mexico Attorney General

Wayne Stenehjem
North Dakota Attorney General

Ellen F. Rosenblum
Oregon Attorney General

Peter F. Neronha
Rhode Island Attorney General

Herbert H. Slatery III
Tennessee Attorney General

T.J. Donovan
Vermont Attorney General

Robert W. Ferguson
Washington Attorney General

Joshua L. Kaul
Wisconsin Attorney General

Letitia James
New York Attorney General

Dave Yost
Ohio Attorney General

Josh Shapiro
Pennsylvania Attorney General

Jason R. Ravnsborg
South Dakota Attorney General

Sean Reyes
Utah Attorney General

Mark R. Herring
Virginia Attorney General

Patrick Morrisey
West Virginia Attorney General

William Tong
Connecticut Attorney General

Kathleen Jennings
Delaware Attorney General

Karl A. Racine
District of Columbia Attorney General

Ashley Moody
Florida Attorney General

Clare E. Connors
Hawaii Attorney General

Lawrence Wasden
Idaho Attorney General

Kwame Raoul
Illinois Attorney General

Tom Miller
Iowa Attorney General

Jeff Landry
Louisiana Attorney General

Aaron M. Frey
Maine Attorney General

Maura Healey
Massachusetts Attorney General

Dana Nessel
Michigan Attorney General

Keith Ellison
Minnesota Attorney General

Jim Hood
Mississippi Attorney General

Tim Fox
Montana Attorney General

Douglas Peterson
Nebraska Attorney General

Aaron D. Ford
Nevada Attorney General

Gordon MacDonald
New Hampshire Attorney General