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June 6, 2011

Pamela Hyde, Administrator
Substance Abuse and Mental Health Services Administration
1 Choke Cherry Road
Rockville, MD 20857

Dear Ms. Hyde:

State and federal initiatives promoting electronic interoperability of health information affect behavioral health care as well as physical health care. This is especially true for addiction treatment providers where privacy and confidentiality for covered programs is regulated by 42 CFR Part 2. Various state laws also require more strict controls on disclosure of mental health records.

We believe the confidentiality provisions and the restrictions on sharing patient data articulated in these laws are critical to ensuring that behavioral health consumers seek help. We also believe that a number of behavioral health consumers will find electronic sharing of the records controlled by state laws and 42 CFR Part 2 with other health providers to be important to improving their health care and that it is therefore critical to demonstrate a fully legally compliant methodology for making these records interoperable.

The creation of electronic health information exchanges (HIE) such as regional health information organizations (RHIO) is designed to improve the quality of patient care and reduce costs of the health care system. It would be a mistake for this momentous evolution of health care to proceed in a manner that did not address the needs of the addicted patients receiving care or more importantly proceed in a manner that deterred those seeking help for substance use and mental health issues from pursuing services. Until these conditions are no longer stigmatized, few behavioral health consumers would seek treatment without the confidence of privacy and confidentiality provided by state laws and 42 CFR Part 2. This would result in devastating national consequences.

Addressing 42 CFR Part 2 requirements with HIE dictates an integrated electronic mechanism running on health information networks that communicates required consents and notices and manages the disclosure limitations of 42 CFR Part 2. This would result in electronic HIE fully compliant with 42 CFR Part 2 as well as other focused confidentiality regulations such as many state laws protecting the privacy of other sensitive information. Such mechanisms would not only protect behavioral health consumers' privacy and confidentiality but these mechanisms could also fully enable immediate "break the glass" access to health information in emergency circumstances.

The Mental Health Corporations of America, Inc. (MHCA) supports the principles of 42 CFR Part 2 and the protections it affords current and future chemically dependent patients. MHCA also supports the participation of the mental health and chemical dependency treatment field in the emerging national system of electronic health information exchange. MHCA believes that both results are achievable. An example of how both results can be achieved has been provided by The Software and Technology Vendors Association (SATVA). The SATVA initiative partly consists of developing a standardized electronic consent directive. When implemented this electronic consent mechanism will function within the framework intended for electronic HIE without additional burdens. Fully implemented it will have the ability to comply with not only 42CFR Part 2 but with many other state or federal regulations applicable to privacy or confidentiality. The success of this initiative depends on national acceptance of a standardized consent directive that can be communicated electronically. *Together with SATVA, MHCA supports the adoption of an interoperable standardized consent directive.*

Sincerely,

Don Hevey
President/CEO

cc: Westley Clark, M.D., Director CSAT, Bob Mayer, Special Expert, William R. Connors, MSW – Sequest Technologies, Inc. and Michael Morris, Anasazi Software, Inc.