



DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

42 CFR Part 2

[SAMHSA-4162-20]

RIN 0930-AA21

Confidentiality of Substance Use Disorder Patient Records; Delay of Effective Date

AGENCY: Substance Abuse and Mental Health Services Administration, HHS.

ACTION: Final rule; delay of effective date.

SUMMARY: On January 18, 2017, the Substance Abuse and Mental Health Services Administration (SAMHSA) published a final rule on Confidentiality of Substance Use Disorder Patient Records. That rule is scheduled to take effect on February 17, 2017. In accordance with the memorandum of January 20, 2017, from the Assistant to the President and Chief of Staff, entitled "Regulatory Freeze Pending Review," published in the Federal Register on January 24, 2017 (82 FR 8346), this action delays for 60 days from the date of the memorandum the effective date of the rule entitled "Confidentiality of Substance Use Disorder Patient Records" published in the Federal Register on January 18, 2017 (82 FR 6052).

DATES: The effective date of the Confidentiality of Substance Use Disorder Patient Records final rule, published in the Federal Register on January 18, 2017 (82 FR 6052) is delayed from February 17, 2017, to a new effective date of March 21, 2017.

FOR FURTHER INFORMATION CONTACT: Danielle Tarino, Telephone number: (240) 276-2857, Email address: PrivacyRegulations@samhsa.hhs.gov.

SUPPLEMENTARY INFORMATION: The Confidentiality of Substance Use Disorder Patient Records Final Rule updates and modernizes the Confidentiality of Alcohol and Drug Abuse Patient Records regulations (42 CFR Part 2) to facilitate integration of care and new health care delivery models while protecting the privacy of patients diagnosed, treated, or referred for treatment for a substance use disorder. To the extent that 5 U.S.C. 553 applies to this action to delay the rule's effective date, it is exempt from notice and comment because it constitutes a rule of procedure under 5 U.S.C. 553(b)(A). Alternatively, the Department's implementation of this rule without opportunity for public comment, effective immediately upon publication today in the Federal Register, is based on the good cause exception in 5 U.S.C. 553(b)(B) in that seeking public comment is impracticable, unnecessary and contrary to the public interest. The 60-day delay in effective date is necessary to give Department officials the opportunity for further review and consideration of new regulations, consistent with the Assistant to the President's memorandum of January 20, 2017. This memorandum instructed federal agencies to delay the effective date of rules published in the Federal Register, but which have not yet taken effect, for a period of 60-days from the date of the memorandum. Given the imminence of the effective date, seeking prior public comment on this delay would have been impractical, as well as contrary to the public interest in the orderly promulgation and implementation of regulations.

This notice does not impact the Supplemental Notice of Proposed Rulemaking (SNPRM) also entitled Confidentiality of Substance Use Disorder Patient Records and issued on January 18, 2017 (82 FR 5485). The SNPRM proposes for public comment additional provisions beyond

those in the final rule to clarify the scope of permissible disclosures to contractors, subcontractors, and legal representatives. The SNPRM comment period will remain unchanged and will close on February 17, 2017.

Dated: February 10, 2017.

Kana Enomoto,

Acting Deputy Assistant Secretary for Mental Health and Substance Use.

Approved:

Thomas E. Price, M.D.

Secretary,

Department of Health and Human Services.

[FR Doc. 2017-03185 Filed: 2/15/2017 8:45 am; Publication Date: 2/16/2017]