National Association of State Alcohol and Drug Abuse Directors (NASADAD) Comments: Privacy and Security and Emerging Technologies

1. **Privacy and Security and Emerging Technologies**
   What privacy and security risks, concerns, and benefits arise from the current state and emerging business models of PHRs and related emerging technologies built around the collection and use of consumer health information, including mobile technologies and social networking?

National Association of State Alcohol and Drug Abuse Directors (NASADAD) appreciates the opportunity to provide comments on this important issue. For the substance abuse field a clear understanding of the issues surrounding privacy and security of traditional health records is needed. Given the stigma that surrounds substance use disorders, special protections of personal information exists for individuals receiving substance abuse treatment, which is known as 42 CFR Part 2 (titled "Confidentiality of Alcohol and Drug Abuse Records"). For State Health Insurance Exchange (HIE) and Health Information Technology (HIT) planning and implementation efforts, "Confidentiality of Alcohol and Drug Abuse Records" has sometimes been viewed as a barrier or special challenge to including substance abuse in discussions. Technologies do exist for protecting patient record privacy, confidentiality and security. As the use of electronic health records becomes more prominent and HIE are developed it is important for State Substance Abuse Directors to be involved with discussions as they can help address issues related to 42 CFR Part 2.

There is great benefit to including State Substance Abuse Directors at the front end of planning, particularly with the Patient Protection and Affordable Care Act (PPACA) putting an emphasis on integration of substance use disorders and mental health problems with primary care. Information between substance use disorder professionals and primary care would be more efficiently shared and coordination improved if an interoperable system exists between the two systems. If they are not developed together a parallel system may be built which marginalizes substance use disorder professionals, especially since federal funding is increasingly favoring funding for provider entities that have adopted electronic systems.

Furthermore, now is the time to improve capabilities of substance use disorder providers as demand for substance abuse services is likely to increase. The inclusion of substance use disorder services in the essential benefits package required to be offered at parity to medical and surgical benefits in a State HIE and the Medicaid benchmark plan under the Medicaid expansion, will make access to coverage more available. Having substance use disorder professionals connected to HIEs and using electronic health records will help to achieve the goals of the PPACA; improve the quality of care for individuals receiving substance use services; and increase provider capabilities. Including State Substance Abuse Directors in planning will help to navigate compliance with 42 CFR Part 2.

Also important to the discussion, is understanding how individuals with the criminal justice systems will be included in HIT planning and how data may be shared between the health system and criminal justice system.

2. **Consumer Expectations about Collection and Use of Health Information**
   Are there commonly understood or recognized consumer expectations and attitudes about the collection and use of their health information when they participate in PHRs and related technologies? Is there empirical data that allows us reliably to measure any such consumer expectations? What, if any, legal protections do consumers expect apply to their personal health information when they conduct online searches, respond to surveys or quizzes, seek medical advice online, participate in chat groups or health networks, or otherwise? How determinative should consumer expectations be in developing policies about privacy and security?

For consumers of addiction services it is important that they understand how privacy laws for substance use disorder records will be translated to electronic health records, particularly how information will be used and shared. In 1972, Congress passed the federal drug and alcohol confidentiality law; its implementing regulations are 42 C.F.R. Part 2 (titled "Confidentiality of Alcohol and Drug Abuse Records). The law was passed to provide strong confidentiality protections for individuals with drug and alcohol problems receiving treatment, to encourage them to seek services. Given the stigma surrounding substance use disorders the law provided assurance that information would not be disclosed to family, friends, employers, neighbors and other members in the community. Written patient consent is required for information to be shared, except in cases of a medical emergency and for treatment providers that enter into agreements with billing companies and other service providers that require patient-shared information.

As work moves forward to adopt electronic health records, the Substance Abuse and Mental Health Services Administration (SAMHSA) has taken a lead role in clarifying how the confidentiality regulations would allow for the exchange of substance abuse information as a result of HIT.

3. **Privacy and Security Requirements for Non-Covered Entities**
   What are the pros and cons of applying different privacy and security requirements to non-covered entities, including PHRs, mobile technologies, and social networking?

As new technologies emerge and non-covered entities may play more of a role in personal health records, it is important to continue the dialogue on 42 C.F.R. Part 2 and how it will be applied. Important to the discussion is input from State Substance Abuse Directors and consumers of substance abuse services.

4. **Any Other Comments on PHRs and Non-Covered Entities**
   Do you have other comments or concerns regarding PHRs and other non-covered entities?

It is important to analyze "gaps" in privacy protections, particularly as it relates to "Confidentiality of Alcohol and Drug Abuse Records" with regards to PHRs and non-covered entities. Stigma still surrounds individuals receiving substance use disorder treatment and strong privacy protection must be in place in our growing e-health environment.