

116TH CONGRESS
1ST SESSION

S. 1012

To amend the Public Health Service Act to protect the confidentiality of
substance use disorder patient records.

IN THE SENATE OF THE UNITED STATES

APRIL 3, 2019

Mr. MANCHIN (for himself, Mrs. CAPITO, Mr. WHITEHOUSE, Ms. HARRIS, Ms. KLOBUCHAR, Mrs. FEINSTEIN, Mr. KING, Mr. TILLIS, Ms. COLLINS, Mr. CASSIDY, and Mr. CRAMER) introduced the following bill; which was read twice and referred to the Committee on Health, Education, Labor, and Pensions

A BILL

To amend the Public Health Service Act to protect the
confidentiality of substance use disorder patient records.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Protecting Jessica
5 Grubb’s Legacy Act”.

6 **SEC. 2. CONFIDENTIALITY AND DISCLOSURE OF RECORDS**

7 **RELATING TO SUBSTANCE USE DISORDER.**

8 (a) CONFORMING CHANGES RELATING TO SUB-
9 STANCE USE DISORDER.—Subsections (a) and (h) of sec-

tion 543 of the Public Health Service Act (42 U.S.C. 290dd-2) are each amended by striking “substance abuse” and inserting “substance use disorder”.

(b) DISCLOSURES TO COVERED ENTITIES CONSISTENT WITH HIPAA.—Paragraph (2) of section 543(b) of the Public Health Service Act (42 U.S.C. 290dd-2(b)) is amended by adding at the end the following:

“(D) To a covered entity or to a program or activity described in subsection (a), for the purposes of treatment, payment, and health care operations, so long as such disclosure is made in accordance with HIPAA privacy regulation. Any redisclosure of information so disclosed may only be made in accordance with this section.”.

(c) DISCLOSURES OF DE-IDENTIFIED HEALTH INFORMATION TO PUBLIC HEALTH AUTHORITIES.—Paragraph (2) of section 543(b) of the Public Health Service Act (42 U.S.C. 290dd-2(b)), as amended by subsection (b), is further amended by adding at the end the following:

“(E) To a public health authority, so long as such content meets the standards established in section 164.514(b) of title 45, Code of Federal Regulations (or successor regulations) for creating de-identified information.”.

1 (d) DEFINITIONS.—Subsection (b) of section 543 of
 2 the Public Health Service Act (42 U.S.C. 290dd-2) is
 3 amended by adding at the end the following:

4 “(3) DEFINITIONS.—For purposes of this sub-
 5 section:

6 “(A) COVERED ENTITY.—The term ‘cov-
 7 ered entity’ has the meaning given such term
 8 for purposes of HIPAA privacy regulation.

9 “(B) HEALTH CARE OPERATIONS.—The
 10 term ‘health care operations’ has the meaning
 11 given such term for purposes of HIPAA privacy
 12 regulation.

13 “(C) HIPAA PRIVACY REGULATION.—The
 14 term ‘HIPAA privacy regulation’ has the mean-
 15 ing given such term under section 1180(b)(3) of
 16 the Social Security Act.

17 “(D) INDIVIDUALLY IDENTIFIABLE
 18 HEALTH INFORMATION.—The term ‘individually
 19 identifiable health information’ has the meaning
 20 given such term for purposes of HIPAA privacy
 21 regulation.

22 “(E) PAYMENT.—The term ‘payment’ has
 23 the meaning given such term for purposes of
 24 HIPAA privacy regulation.

1 “(F) PUBLIC HEALTH AUTHORITY.—The
 2 term ‘public health authority’ has the meaning
 3 given such term for purposes of HIPAA privacy
 4 regulation.

5 “(G) TREATMENT.—The term ‘treatment’
 6 has the meaning given such term for purposes
 7 of HIPAA privacy regulation.”.

8 (e) USE OF RECORDS IN CRIMINAL, CIVIL, OR AD-
 9 MINISTRATIVE INVESTIGATIONS, ACTIONS, OR PRO-
 10 CEEDINGS.—Subsection (c) of section 543 of the Public
 11 Health Service Act (42 U.S.C. 290dd–2) is amended to
 12 read as follows:

13 “(c) USE OF RECORDS IN CRIMINAL, CIVIL, OR AD-
 14 MINISTRATIVE CONTEXTS.—Except as otherwise author-
 15 ized by a court order under subsection (b)(2)(C) or by the
 16 consent of the patient, a record referred to in subsection
 17 (a) may not—

18 “(1) be entered into evidence in any criminal
 19 prosecution or civil action before a Federal or State
 20 court;

21 “(2) form part of the record for decision or oth-
 22 erwise be taken into account in any proceeding be-
 23 fore a Federal agency;

1 “(3) be used by any Federal, State, or local
 2 agency for a law enforcement purpose or to conduct
 3 any law enforcement investigation of a patient; or

4 “(4) be used in any application for a warrant.”.

5 (f) PENALTIES.—Subsection (f) of section 543 of the
 6 Public Health Service Act (42 U.S.C. 290dd–2) is amend-
 7 ed to read as follows:

8 “(f) PENALTIES.—The provisions of sections 1176
 9 and 1177 of the Social Security Act shall apply to a viola-
 10 tion of this section to the extent and in the same manner
 11 as such provisions apply to a violation of part C of title
 12 XI of such Act. In applying the previous sentence—

13 “(1) the reference to ‘this subsection’ in sub-
 14 section (a)(2) of such section 1176 shall be treated
 15 as a reference to ‘this subsection (including as ap-
 16 plied pursuant to section 543(f) of the Public Health
 17 Service Act)’; and

18 “(2) in subsection (b) of such section 1176—

19 “(A) each reference to ‘a penalty imposed
 20 under subsection (a)’ shall be treated as a ref-
 21 erence to ‘a penalty imposed under subsection
 22 (a) (including as applied pursuant to section
 23 543(f) of the Public Health Service Act)’; and

24 “(B) each reference to ‘no damages ob-
 25 tained under subsection (d)’ shall be treated as

1 a reference to ‘no damages obtained under sub-
 2 section (d) (including as applied pursuant to
 3 section 543(f) of the Public Health Service
 4 Act)’.”.

5 (g) ANTIDISCRIMINATION.—Section 543 of the Public
 6 Health Service Act (42 U.S.C. 290dd–2) is amended by
 7 adding at the end the following:

8 “(i) ANTIDISCRIMINATION.—

9 “(1) IN GENERAL.—No entity shall discrimi-
 10 nate against an individual on the basis of informa-
 11 tion received by such entity pursuant to a disclosure
 12 made under subsection (b) in—

13 “(A) admission or treatment for health
 14 care;

15 “(B) hiring or terms of employment;

16 “(C) the sale or rental of housing; or

17 “(D) access to Federal, State, or local
 18 courts.

19 “(2) RECIPIENTS OF FEDERAL FUNDS.—No re-
 20 cipient of Federal funds shall discriminate against
 21 an individual on the basis of information received by
 22 such recipient pursuant to a disclosure made under
 23 subsection (b) in affording access to the services
 24 provided with such funds.”.

1 (h) NOTIFICATION IN CASE OF BREACH.—Section
 2 543 of the Public Health Service Act (42 U.S.C. 290dd–
 3 2), as amended by subsection (g), is further amended by
 4 adding at the end the following:

5 “(j) NOTIFICATION IN CASE OF BREACH.—

6 “(1) APPLICATION OF HITECH NOTIFICATION
 7 OF BREACH PROVISIONS.—The provisions of section
 8 13402 of the HITECH Act (42 U.S.C. 17932) shall
 9 apply to a program or activity described in sub-
 10 section (a), in case of a breach of records described
 11 in subsection (a), to the same extent and in the
 12 same manner as such provisions apply to a covered
 13 entity in the case of a breach of unsecured protected
 14 health information.

15 “(2) DEFINITIONS.—In this subsection, the
 16 terms ‘covered entity’ and ‘unsecured protected
 17 health information’ have the meanings given to such
 18 terms for purposes of such section 13402.”.

19 (i) SENSE OF CONGRESS.—It is the sense of the Con-
 20 gress that any person treating a patient through a pro-
 21 gram or activity with respect to which the confidentiality
 22 requirements of section 543 of the Public Health Service
 23 Act (42 U.S.C. 290dd–2) apply should access the applica-
 24 ble State-based prescription drug monitoring program as
 25 a precaution against substance use disorder.

1 (j) REGULATIONS.—

2 (1) IN GENERAL.—The Secretary of Health and
3 Human Services, in consultation with appropriate
4 Federal agencies, shall make such revisions to regu-
5 lations as may be necessary for implementing and
6 enforcing the amendments made by this section,
7 such that such amendments shall apply with respect
8 to uses and disclosures of information occurring on
9 or after the date that is 12 months after the date
10 of enactment of this Act.

11 (2) EASILY UNDERSTANDABLE NOTICE OF PRI-
12 VACY PRACTICES.—Not later than 1 year after the
13 date of enactment of this Act, the Secretary of
14 Health and Human Services, in consultation with
15 appropriate experts, shall update section 164.520 of
16 title 45, Code of Federal Regulations, so that cov-
17 ered entities provide notice, written in plain lan-
18 guage, of privacy practices regarding patient records
19 referred to in section 543(a) of the Public Health
20 Service Act (42 U.S.C. 290dd–2(a)), including—

21 (A) a statement of the patient’s rights, in-
22 cluding self-pay patients, with respect to pro-
23 tected health information and a brief descrip-
24 tion of how the individual may exercise these

rights (as required by paragraph (b)(1)(iv) of such section 164.520); and

(B) a description of each purpose for which the covered entity is permitted or required to use or disclose protected health information without the patient's written authorization (as required by paragraph (b)(2) of such section 164.520).

(k) DEVELOPMENT AND DISSEMINATION OF MODEL TRAINING PROGRAMS FOR SUBSTANCE USE DISORDER PATIENT RECORDS.—

(1) INITIAL PROGRAMS AND MATERIALS.—Not later than 1 year after the date of the enactment of this Act, the Secretary of Health and Human Services (referred to in this subsection as the “Secretary”), in consultation with appropriate experts, shall identify the following model programs and materials (or if no such programs or materials exist, recognize private or public entities to develop and disseminate such programs and materials):

(A) Model programs and materials for training health care providers (including physicians, emergency medical personnel, psychiatrists, psychologists, counselors, therapists, nurse practitioners, physician assistants, behav-

1 ioral health facilities and clinics, care managers,
2 and hospitals, including individuals such as gen-
3 eral counsels or regulatory compliance staff who
4 are responsible for establishing provider privacy
5 policies) concerning the permitted uses and dis-
6 closures, consistent with the standards and reg-
7 ulations governing the privacy and security of
8 substance use disorder patient records promul-
9 gated by the Secretary under section 543 of the
10 Public Health Service Act (42 U.S.C. 290dd-
11 2), as amended by this section, for the con-
12 fidentiality of patient records.

13 (B) Model programs and materials for
14 training patients and their families regarding
15 their rights to protect and obtain information
16 under the standards and regulations described
17 in subparagraph (A).

18 (2) REQUIREMENTS.—The model programs and
19 materials described in subparagraphs (A) and (B) of
20 paragraph (1) shall address circumstances under
21 which disclosure of substance use disorder patient
22 records is needed to—

23 (A) facilitate communication between sub-
24 stance use disorder treatment providers and

1 other health care providers to promote and pro-
2 vide the best possible integrated care;

3 (B) avoid inappropriate prescribing that
4 can lead to dangerous drug interactions, over-
5 dose, or relapse; and

6 (C) notify and involve families and care-
7 givers when individuals experience an overdose.

8 (3) PERIODIC UPDATES.—The Secretary
9 shall—

10 (A) periodically review and update the
11 model programs and materials identified or de-
12 veloped under paragraph (1); and

13 (B) disseminate such updated programs
14 and materials to the individuals described in
15 paragraph (1)(A).

16 (4) INPUT OF CERTAIN ENTITIES.—In identi-
17 fying, reviewing, or updating the model programs
18 and materials under this subsection, the Secretary
19 shall solicit the input of relevant stakeholders.

20 (l) RULES OF CONSTRUCTION.—Nothing in this Act
21 or the amendments made by this Act shall be construed
22 to limit—

23 (1) a patient’s right, as described in section
24 164.522 of title 45, Code of Federal Regulations, or
25 any successor regulation, to request a restriction on

1 the use or disclosure of a record referred to in sec-
2 tion 543(a) of the Public Health Service Act (42
3 U.S.C. 290dd-2(a)) for purposes of treatment, pay-
4 ment, or health care operations; or

5 (2) a covered entity's choice, as described in
6 section 164.506 of title 45, Code of Federal Regula-
7 tions, or any successor regulation, to obtain the con-
8 sent of the individual to use or disclose a record re-
9 ferred to in such section 543(a) to carry out treat-
10 ment, payment, or health care operation.

11 (m) SENSE OF CONGRESS.—It is the sense of the
12 Congress that—

13 (1) patients have the right to request a restric-
14 tion on the use or disclosure of a record referred to
15 in section 543(a) of the Public Health Service Act
16 (42 U.S.C. 290dd-2(a)) for treatment, payment, or
17 health care operations; and

18 (2) covered entities should make every reason-
19 able effort to the extent feasible to comply with a
20 patient's request for a restriction regarding such use
21 or disclosure.

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