

Union Calendar No. 559

115TH CONGRESS
2^D SESSION

H. R. 5795

[Report No. 115-724]

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

IN THE HOUSE OF REPRESENTATIVES

MAY 15, 2018

Mr. BLUMENAUER (for himself, Mr. MULLIN, Mr. MOULTON, Mr. BARR, Mr. HULTGREN, Mr. JOHNSON of Ohio, and Mr. KELLY of Pennsylvania) introduced the following bill; which was referred to the Committee on Energy and Commerce

JUNE 12, 2018

Additional sponsors: Mr. RENACCI, Ms. BONAMICI, Mrs. BROOKS of Indiana, Mr. BILIRAKIS, Mr. POLIQUIN, Mr. BURGESS, Mr. WALDEN, Mrs. COMSTOCK, Mr. TURNER, Mr. CRAMER, Mr. BISHOP of Georgia, Mr. BERA, Ms. DELBENE, Mr. ROKITA, Mr. LEWIS of Georgia, Mr. DEFazio, Mr. GONZALEZ of Texas, Mr. MAST, Mrs. NOEM, Ms. ROSEN, Mr. CRIST, Mr. KIND, Ms. JENKINS of Kansas, Mr. DUNN, and Mr. KILMER

JUNE 12, 2018

Reported with an amendment, committed to the Committee of the Whole House on the State of the Union, and ordered to be printed

[Strike out all after the enacting clause and insert the part printed in *italic*]

[For text of introduced bill, see copy of bill as introduced on May 15, 2018]

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 “Overdose Prevention and*
5 *Patient Safety Act”.*

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

7 **RELATING TO SUBSTANCE USE DISORDER.**

8 *(a) CONFORMING CHANGES RELATING TO SUBSTANCE*
9 *USE DISORDER.—Subsections (a) and (h) of section 543*
10 *of the Public Health Service Act (42 U.S.C. 290dd–2) are*
11 *each amended by striking “substance abuse” and inserting*
12 *“substance use disorder”.*

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

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

24 *(c) DISCLOSURES OF DE-IDENTIFIED HEALTH INFOR-*
25 *MATION TO PUBLIC HEALTH AUTHORITIES.—Paragraph*

1 (2) of section 543(b) of the Public Health Service Act (42
2 U.S.C. 290dd-2(b)), as amended by subsection (b), is fur-
3 ther amended by adding at the end the following:

4 “(E) To a public health authority, so long
5 as such content does not include any individ-
6 ually identifiable health information and meets
7 the standards established in section 164.514 of
8 title 45, Code of Federal Regulations (or suc-
9 cessor regulations) for creating de-identified in-
10 formation.”.

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

14 “(3) DEFINITIONS.—For purposes of this sub-
15 section:

16 “(A) COVERED ENTITY.—The term ‘covered
17 entity’ has the meaning given such term for pur-
18 poses of HIPAA privacy regulation.

19 “(B) HEALTH CARE OPERATIONS.—The
20 term ‘health care operations’ has the meaning
21 given such term for purposes of HIPAA privacy
22 regulation.

23 “(C) HIPAA PRIVACY REGULATION.—The
24 term ‘HIPAA privacy regulation’ has the mean-

1 *ing given such term under section 1180(b)(3) of*
2 *the Social Security Act.*

3 “(D) *INDIVIDUALLY IDENTIFIABLE HEALTH*
4 *INFORMATION.—The term ‘individually identifi-*
5 *able health information’ has the meaning given*
6 *such term for purposes of HIPAA privacy regu-*
7 *lation.*

8 “(E) *PAYMENT.—The term ‘payment’ has*
9 *the meaning given such term for purposes of*
10 *HIPAA privacy regulation.*

11 “(F) *PUBLIC HEALTH AUTHORITY.—The*
12 *term ‘public health authority’ has the meaning*
13 *given such term for purposes of HIPAA privacy*
14 *regulation.*

15 “(G) *TREATMENT.—The term ‘treatment’*
16 *has the meaning given such term for purposes of*
17 *HIPAA privacy regulation.”.*

18 *(e) USE OF RECORDS IN CRIMINAL, CIVIL, OR ADMIN-*
19 *ISTRATIVE INVESTIGATIONS, ACTIONS, OR PROCEEDINGS.—*
20 *Subsection (c) of section 543 of the Public Health Service*
21 *Act (42 U.S.C. 290dd–2) is amended to read as follows:*

22 “(c) *USE OF RECORDS IN CRIMINAL, CIVIL, OR ADMIN-*
23 *ISTRATIVE CONTEXTS.—Except as otherwise authorized by*
24 *a court order under subsection (b)(2)(C) or by the consent*

1 of the patient, a record referred to in subsection (a) may
2 not—

3 “(1) be entered into evidence in any criminal
4 prosecution or civil action before a Federal or State
5 court;

6 “(2) form part of the record for decision or other-
7 wise be taken into account in any proceeding before
8 a Federal agency;

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

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

13 (f) *PENALTIES*.—Subsection (f) of section 543 of the
14 Public Health Service Act (42 U.S.C. 290dd-2) is amended
15 to read as follows:

16 “(f) *PENALTIES*.—The provisions of sections 1176 and
17 1177 of the Social Security Act shall apply to a violation
18 of this section to the extent and in the same manner as
19 such provisions apply to a violation of part C of title XI
20 of such Act. In applying the previous sentence—

21 “(1) the reference to ‘this subsection’ in sub-
22 section (a)(2) of such section 1176 shall be treated as
23 a reference to ‘this subsection (including as applied
24 pursuant to section 543(f) of the Public Health Serv-
25 ice Act)’; and

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

2 “(A) each reference to ‘a penalty imposed
3 under subsection (a)’ shall be treated as a ref-
4 erence to ‘a penalty imposed under subsection
5 (a) (including as applied pursuant to section
6 543(f) of the Public Health Service Act)’; and

7 “(B) each reference to ‘no damages obtained
8 under subsection (d)’ shall be treated as a ref-
9 erence to ‘no damages obtained under subsection
10 (d) (including as applied pursuant to section
11 543(f) of the Public Health Service Act)’.”.

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

15 “(i) *ANTIDISCRIMINATION.*—

16 “(1) *IN GENERAL.*—No entity shall discriminate
17 against an individual on the basis of information re-
18 ceived by such entity pursuant to a disclosure made
19 under subsection (b) in—

20 “(A) admission or treatment for health care;

21 “(B) hiring or terms of employment;

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

23 “(D) access to Federal, State, or local
24 courts.

1 “(2) *RECIPIENTS OF FEDERAL FUNDS.*—No re-
2 *recipient of Federal funds shall discriminate against an*
3 *individual on the basis of information received by*
4 *such recipient pursuant to a disclosure made under*
5 *subsection (b) in affording access to the services pro-*
6 *vided with such funds.”.*

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

11 “(j) *NOTIFICATION IN CASE OF BREACH.*—

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

21 “(2) *DEFINITIONS.*—*In this subsection, the terms*
22 *‘covered entity’ and ‘unsecured protected health infor-*
23 *mation’ have the meanings given to such terms for*
24 *purposes of such section 13402.”.*

1 (i) *SENSE OF CONGRESS.*—*It is the sense of the Con-*
2 *gress that any person treating a patient through a program*
3 *or activity with respect to which the confidentiality require-*
4 *ments of section 543 of the Public Health Service Act (42*
5 *U.S.C. 290dd-2) apply should access the applicable State-*
6 *based prescription drug monitoring program as a pre-*
7 *caution against substance use disorder.*

8 (j) *REGULATIONS.*—

9 (1) *IN GENERAL.*—*The Secretary of Health and*
10 *Human Services, in consultation with appropriate*
11 *Federal agencies, shall make such revisions to regula-*
12 *tions as may be necessary for implementing and en-*
13 *forcing the amendments made by this section, such*
14 *that such amendments shall apply with respect to*
15 *uses and disclosures of information occurring on or*
16 *after the date that is 12 months after the date of en-*
17 *actment of this Act.*

18 (2) *EASILY UNDERSTANDABLE NOTICE OF PRI-*
19 *VACY PRACTICES.*—*Not later than 1 year after the*
20 *date of enactment of this Act, the Secretary of Health*
21 *and Human Services, in consultation with appro-*
22 *priate experts, shall update section 164.520 of title*
23 *45, Code of Federal Regulations, so that covered enti-*
24 *ties provide notice, written in plain language, of pri-*
25 *vacv practices regarding patient records referred to in*

1 *section 543(a) of the Public Health Service Act (42*
2 *U.S.C. 290dd-2(a)), including—*

3 *(A) a statement of the patient’s rights, in-*
4 *cluding self-pay patients, with respect to pro-*
5 *ected health information and a brief description*
6 *of how the individual may exercise these rights*
7 *(as required by paragraph (b)(1)(iv) of such sec-*
8 *tion 164.520); and*

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

14 *(k) DEVELOPMENT AND DISSEMINATION OF MODEL*
15 *TRAINING PROGRAMS FOR SUBSTANCE USE DISORDER PA-*
16 *TIENT RECORDS.—*

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

1 (A) *Model programs and materials for*
2 *training health care providers (including physi-*
3 *cians, emergency medical personnel, psychia-*
4 *trists, psychologists, counselors, therapists, nurse*
5 *practitioners, physician assistants, behavioral*
6 *health facilities and clinics, care managers, and*
7 *hospitals, including individuals such as general*
8 *counsels or regulatory compliance staff who are*
9 *responsible for establishing provider privacy*
10 *policies) concerning the permitted uses and dis-*
11 *closures, consistent with the standards and regu-*
12 *lations governing the privacy and security of*
13 *substance use disorder patient records promul-*
14 *gated by the Secretary under section 543 of the*
15 *Public Health Service Act (42 U.S.C. 290dd–2),*
16 *as amended by this section, for the confiden-*
17 *tiality of patient records.*

18 (B) *Model programs and materials for*
19 *training patients and their families regarding*
20 *their rights to protect and obtain information*
21 *under the standards and regulations described in*
22 *subparagraph (A).*

23 (2) *REQUIREMENTS.—The model programs and*
24 *materials described in subparagraphs (A) and (B) of*
25 *paragraph (1) shall address circumstances under*

1 *which disclosure of substance use disorder patient*
2 *records is needed to—*

3 *(A) facilitate communication between sub-*
4 *stance use disorder treatment providers and*
5 *other health care providers to promote and pro-*
6 *vide the best possible integrated care;*

7 *(B) avoid inappropriate prescribing that*
8 *can lead to dangerous drug interactions, over-*
9 *dose, or relapse; and*

10 *(C) notify and involve families and care-*
11 *givers when individuals experience an overdose.*

12 (3) *PERIODIC UPDATES.—The Secretary shall—*

13 *(A) periodically review and update the*
14 *model programs and materials identified or de-*
15 *veloped under paragraph (1); and*

16 *(B) disseminate such updated programs and*
17 *materials to the individuals described in para-*
18 *graph (1)(A).*

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

23 (l) *RULES OF CONSTRUCTION.—Nothing in this Act or*
24 *the amendments made by this Act shall be construed to*
25 *limit—*

1 (1) *a patient’s right, as described in section*
2 *164.522 of title 45, Code of Federal Regulations, or*
3 *any successor regulation, to request a restriction on*
4 *the use or disclosure of a record referred to in section*
5 *543(a) of the Public Health Service Act (42 U.S.C.*
6 *290dd–2(a)) for purposes of treatment, payment, or*
7 *health care operations; or*

8 (2) *a covered entity’s choice, as described in sec-*
9 *tion 164.506 of title 45, Code of Federal Regulations,*
10 *or any successor regulation, to obtain the consent of*
11 *the individual to use or disclose a record referred to*
12 *in such section 543(a) to carry out treatment, pay-*
13 *ment, or health care operation.*

14 (m) *SENSE OF CONGRESS.—It is the sense of the Con-*
15 *gress that—*

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

21 (2) *covered entities should make every reasonable*
22 *effort to the extent feasible to comply with a patient’s*
23 *request for a restriction regarding such use or disclo-*
24 *sure.*

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