

116TH CONGRESS
2D SESSION

S. 3374

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

IN THE SENATE OF THE UNITED STATES

MARCH 3, 2020

Mr. MANCHIN (for himself, Mrs. CAPITO, Mr. WHITEHOUSE, Mr. CRAMER, Mrs. FEINSTEIN, Mr. JONES, Mr. MURPHY, Mr. TILLIS, Ms. COLLINS, Ms. HARRIS, Mr. CASSIDY, Ms. KLOBUCHAR, Mr. MERKLEY, and Mr. KING) 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-

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

4 (b) DISCLOSURES TO COVERED ENTITIES CON-
5 SISTENT WITH HIPAA.—Paragraph (1) of section 543(b)
6 of the Public Health Service Act (42 U.S.C. 290dd–2(b))
7 is amended to read as follows:

8 “(1) CONSENT.—The following shall apply with
9 respect to the contents of any record referred to in
10 subsection (a):

11 “(A) Such contents may be used or dis-
12 closed in accordance with the prior written con-
13 sent of the patient with respect to whom such
14 record is maintained.

15 “(B) Once prior written consent of the pa-
16 tient has been obtained, such contents may be
17 used or disclosed by a covered entity, business
18 associate, or a program subject to this section
19 for purposes of treatment, payment, and health
20 care operations as permitted by the HIPAA
21 regulations. Any information so disclosed may
22 then be redisclosed in accordance with the
23 HIPAA regulations. Section 13405(e) of the
24 Health Information Technology and Clinical
25 Health Act (42 U.S.C. 17935(e)) shall apply to

1 all disclosures pursuant to subsection (b)(1) of
2 this section.

3 “(C) It shall be permissible for a patient’s
4 prior written consent to be given once for all
5 such future uses or disclosures for purposes of
6 treatment, payment, and health care operations,
7 until such time as the patient revokes such con-
8 sent in writing.

9 “(D) Section 13405(a) of the Health In-
10 formation Technology and Clinical Health Act
11 (42 U.S.C. 17935(a)) shall apply to all disclo-
12 sures pursuant to subsection (b)(1) of this sec-
13 tion.”.

14 (c) DISCLOSURES OF DE-IDENTIFIED HEALTH IN-
15 FORMATION TO PUBLIC HEALTH AUTHORITIES.—Para-
16 graph (2) of section 543(b) of the Public Health Service
17 Act (42 U.S.C. 290dd–2(b)), is amended by adding at the
18 end the following:

19 “(D) To a public health authority, so long
20 as such content meets the standards established
21 in section 164.514(b) of title 45, Code of Fed-
22 eral Regulations (or successor regulations) for
23 creating de-identified information.”.

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

4 “(k) DEFINITIONS.—For purposes of this section:

5 “(1) BREACH.—The term ‘breach’ has the
6 meaning given such term for purposes of the HIPAA
7 regulations.

8 “(2) BUSINESS ASSOCIATE.—The term ‘busi-
9 ness associate’ has the meaning given such term for
10 purposes of the HIPAA regulations.

11 “(3) COVERED ENTITY.—The term ‘covered en-
12 tity’ has the meaning given such term for purposes
13 of the HIPAA regulations.

14 “(4) HEALTH CARE OPERATIONS.—The term
15 ‘health care operations’ has the meaning given such
16 term for purposes of the HIPAA regulations.

17 “(5) HIPAA REGULATIONS.—The term
18 ‘HIPAA regulations’ has the meaning given such
19 term for purposes of parts 160 and 164 of title 45,
20 Code of Federal Regulations.

21 “(6) PAYMENT.—The term ‘payment’ has the
22 meaning given such term for purposes of the HIPAA
23 regulations.

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

4 “(8) TREATMENT.—The term ‘treatment’ has
5 the meaning given such term for purposes of the
6 HIPAA regulations.

7 “(9) UNSECURED PROTECTED HEALTH INFOR-
8 MATION.—The term ‘unprotected health information’
9 has the meaning given such term for purposes of the
10 HIPAA regulations.”.

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

16 “(c) USE OF RECORDS IN CRIMINAL, CIVIL, OR AD-
17 MINISTRATIVE CONTEXTS.—Except as otherwise author-
18 ized by a court order under subsection (b)(2)(C) or by the
19 consent of the patient, a record referred to in subsection
20 (a), or testimony relaying the information contained there-
21 in, may not be disclosed or used in any civil, criminal, ad-
22 ministrative, or legislative proceedings conducted by any
23 Federal, State, or local authority, including with respect
24 to the following activities:

1 “(1) Such record or testimony shall not be en-
2 tered into evidence in any criminal prosecution or
3 civil action before a Federal or State court.

4 “(2) Such record or testimony shall not form
5 part of the record for decision or otherwise be taken
6 into account in any proceeding before a Federal,
7 State, or local agency.

8 “(3) Such record or testimony shall not be used
9 by any Federal, State, or local agency for a law en-
10 forcement purpose or to conduct any law enforce-
11 ment investigation.

12 “(4) Such record or testimony shall not be used
13 in any application for a warrant.”.

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

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

22 “(1) the reference to ‘this subsection’ in sub-
23 section (a)(2) of such section 1176 shall be treated
24 as a reference to ‘this subsection (including as ap-

1 plied pursuant to section 543(f) of the Public Health
2 Service Act)’; and

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

4 “(A) each reference to ‘a penalty imposed
5 under subsection (a)’ shall be treated as a ref-
6 erence to ‘a penalty imposed under subsection
7 (a) (including as applied pursuant to section
8 543(f) of the Public Health Service Act)’; and

9 “(B) each reference to ‘no damages ob-
10 tained under subsection (d)’ shall be treated as
11 a reference to ‘no damages obtained under sub-
12 section (d) (including as applied pursuant to
13 section 543(f) of the Public Health Service
14 Act)’.”.

15 (g) ANTIDISCRIMINATION.—Section 543 of the Public
16 Health Service Act (42 U.S.C. 290dd-2) is amended by
17 inserting after subsection (h) the following:

18 “(i) ANTIDISCRIMINATION.—

19 “(1) IN GENERAL.—No entity shall discrimi-
20 nate against an individual on the basis of informa-
21 tion received by such entity pursuant to an inad-
22 vertent or intentional disclosure of records, or infor-
23 mation contained in records, described in subsection
24 (a) in—

1 “(A) admission, access to, or treatment for
2 health care;

3 “(B) hiring, firing, or terms of employ-
4 ment, or receipt of worker’s compensation;

5 “(C) the sale, rental, or continued rental of
6 housing;

7 “(D) access to Federal, State, or local
8 courts; or

9 “(E) access to, approval of, or mainte-
10 nance of social services and benefits provided or
11 funded by Federal, State, or local governments.

12 “(2) RECIPIENTS OF FEDERAL FUNDS.—No re-
13 cipient of Federal funds shall discriminate against
14 an individual on the basis of information received by
15 such recipient pursuant to an intentional or inad-
16 vertent disclosure of such records or information
17 contained in records described in subsection (a) in
18 affording access to the services provided with such
19 funds.”.

20 (h) NOTIFICATION IN CASE OF BREACH.—Section
21 543 of the Public Health Service Act (42 U.S.C. 290dd–
22 2), as amended by subsection (g), is further amended by
23 inserting after subsection (i) the following:

24 “(j) NOTIFICATION IN CASE OF BREACH.—The pro-
25 visions of section 13402 of the HITECH Act (42 U.S.C.

1 17932) shall apply to a program or activity described in
2 subsection (a), in case of a breach of records described
3 in subsection (a), to the same extent and in the same man-
4 ner as such provisions apply to a covered entity in the
5 case of a breach of unsecured protected health informa-
6 tion.”.

7 (i) REGULATIONS.—

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

17 (2) EASILY UNDERSTANDABLE NOTICE OF PRI-
18 VACY PRACTICES.—Not later than 1 year after the
19 date of enactment of this Act, the Secretary of
20 Health and Human Services, in consultation with
21 appropriate legal, clinical, privacy, and civil rights
22 experts, shall update section 164.520 of title 45,
23 Code of Federal Regulations, so that covered entities
24 and entities creating or maintaining the records de-
25 scribed in subsection (a) provide notice, written in

1 plain language, of privacy practices regarding pa-
2 tient records referred to in section 543(a) of the
3 Public Health Service Act (42 U.S.C. 290dd–2(a)),
4 including—

5 (A) a statement of the patient’s rights, in-
6 cluding self-pay patients, with respect to pro-
7 tected health information and a brief descrip-
8 tion of how the individual may exercise these
9 rights (as required by subsection (b)(1)(iv) of
10 such section 164.520); and

11 (B) a description of each purpose for
12 which the covered entity is permitted or re-
13 quired to use or disclose protected health infor-
14 mation without the patient’s written authoriza-
15 tion (as required by subsection (b)(2) of such
16 section 164.520).

17 (j) RULES OF CONSTRUCTION.—Nothing in this Act
18 or the amendments made by this Act shall be construed
19 to limit—

20 (1) a patient’s right, as described in section
21 164.522 of title 45, Code of Federal Regulations, or
22 any successor regulation, to request a restriction on
23 the use or disclosure of a record referred to in sec-
24 tion 543(a) of the Public Health Service Act (42

1 U.S.C. 290dd–2(a)) for purposes of treatment, pay-
2 ment, or health care operations; or

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

9 (k) SENSE OF CONGRESS.—It is the sense of the
10 Congress that—

11 (1) any person treating a patient through a
12 program or activity with respect to which the con-
13 fidentiality requirements of section 543 of the Public
14 Health Service Act (42 U.S.C. 290dd–2) apply is en-
15 couraged to access the applicable State-based pre-
16 scription drug monitoring program when clinically
17 appropriate;

18 (2) patients have the right to request a restric-
19 tion on the use or disclosure of a record referred to
20 in section 543(a) of the Public Health Service Act
21 (42 U.S.C. 290dd–2(a)) for treatment, payment, or
22 health care operations;

23 (3) covered entities should make every reason-
24 able effort to the extent feasible to comply with a

1 patient's request for a restriction regarding such use
2 or disclosure;

3 (4) for purposes of applying section 164.501 of
4 title 45, Code of Federal Regulations, the definition
5 of health care operations shall have the meaning
6 given such term in such section, except that clause
7 (v) of paragraph (6) shall not apply; and

8 (5) programs creating records referred to in
9 section 543(a) of the Public Health Service Act (42
10 U.S.C. 290dd-2(a)) should receive positive incen-
11 tives for discussing with their patients the benefits
12 to consenting to share such records.

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