

115TH CONGRESS
2D SESSION

H. R. 6082

AN ACT

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,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Overdose Prevention
3 and Patient Safety Act”.

4 **SEC. 2. CONFIDENTIALITY AND DISCLOSURE OF RECORDS**
5 **RELATING TO SUBSTANCE USE DISORDER.**

6 (a) CONFORMING CHANGES RELATING TO SUB-
7 STANCE USE DISORDER.—Subsections (a) and (h) of sec-
8 tion 543 of the Public Health Service Act (42 U.S.C.
9 290dd–2) are each amended by striking “substance
10 abuse” and inserting “substance use disorder”.

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

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

23 (c) DISCLOSURES OF DE-IDENTIFIED HEALTH IN-
24 FORMATION TO PUBLIC HEALTH AUTHORITIES.—Para-
25 graph (2) of section 543(b) of the Public Health Service

1 Act (42 U.S.C. 290dd–2(b)), as amended by subsection
 2 (b), is further amended by adding at the end the following:

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

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

11 “(3) DEFINITIONS.—For purposes of this sub-
 12 section:

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

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

20 “(C) HIPAA PRIVACY REGULATION.—The
 21 term ‘HIPAA privacy regulation’ has the mean-
 22 ing given such term under section 1180(b)(3) of
 23 the Social Security Act.

24 “(D) INDIVIDUALLY IDENTIFIABLE
 25 HEALTH INFORMATION.—The term ‘individually

1 identifiable health information’ has the meaning
2 given such term for purposes of HIPAA privacy
3 regulation.

4 “(E) PAYMENT.—The term ‘payment’ has
5 the meaning given such term for purposes of
6 HIPAA privacy regulation.

7 “(F) PUBLIC HEALTH AUTHORITY.—The
8 term ‘public health authority’ has the meaning
9 given such term for purposes of HIPAA privacy
10 regulation.

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

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

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

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

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

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

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

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

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

19 “(1) the reference to ‘this subsection’ in sub-
20 section (a)(2) of such section 1176 shall be treated
21 as a reference to ‘this subsection (including as ap-
22 plied pursuant to section 543(f) of the Public Health
23 Service Act)’; and

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

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

6 “(B) each reference to ‘no damages ob-
7 tained under subsection (d)’ shall be treated as
8 a reference to ‘no damages obtained under sub-
9 section (d) (including as applied pursuant to
10 section 543(f) of the Public Health Service
11 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 discrimi-
17 nate against an individual on the basis of informa-
18 tion received by such entity pursuant to a disclosure
19 made under subsection (b) in—

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

22 “(B) hiring or terms of employment;

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

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

1 “(2) RECIPIENTS OF FEDERAL FUNDS.—No re-
2 recipient of Federal funds shall discriminate against
3 an 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
6 provided with such funds.”.

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

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

12 “(1) APPLICATION OF HITECH NOTIFICATION
13 OF 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
17 in subsection (a), to the same extent and in the
18 same manner as such provisions apply to a covered
19 entity in the case of a breach of unsecured protected
20 health information.

21 “(2) DEFINITIONS.—In this subsection, the
22 terms ‘covered entity’ and ‘unsecured protected
23 health information’ have the meanings given to such
24 terms for 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 pro-
3 gram or activity with respect to which the confidentiality
4 requirements of section 543 of the Public Health Service
5 Act (42 U.S.C. 290dd–2) apply should access the applica-
6 ble State-based prescription drug monitoring program as
7 a precaution 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 regu-
12 lations as may be necessary for implementing and
13 enforcing the amendments made by this section,
14 such that such amendments shall apply with respect
15 to uses and disclosures of information occurring on
16 or after the date that is 12 months after the date
17 of enactment 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
21 Health and Human Services, in consultation with
22 appropriate experts, shall update section 164.520 of
23 title 45, Code of Federal Regulations, so that cov-
24 ered entities provide notice, written in plain lan-
25 guage, of privacy practices regarding patient records

1 referred to in section 543(a) of the Public Health
2 Service Act (42 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 tected health information and a brief descrip-
6 tion of how the individual may exercise these
7 rights (as required by paragraph (b)(1)(iv) of
8 such section 164.520); and

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

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

18 (1) INITIAL PROGRAMS AND MATERIALS.—Not
19 later than 1 year after the date of the enactment of
20 this Act, the Secretary of Health and Human Serv-
21 ices (referred to in this subsection as the “Sec-
22 retary”), in consultation with appropriate experts,
23 shall identify the following model programs and ma-
24 terials (or if no such programs or materials exist,

1 recognize private or public entities to develop and
2 disseminate such programs and materials):

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

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

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

6 (A) facilitate communication between sub-
7 stance use disorder treatment providers and
8 other health care providers to promote and pro-
9 vide the best possible integrated care;

10 (B) avoid inappropriate prescribing that
11 can lead to dangerous drug interactions, over-
12 dose, or relapse; and

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

15 (3) PERIODIC UPDATES.—The Secretary
16 shall—

17 (A) periodically review and update the
18 model programs and materials identified or de-
19 veloped under paragraph (1); and

20 (B) disseminate such updated programs
21 and materials to the individuals described in
22 paragraph (1)(A).

23 (4) INPUT OF CERTAIN ENTITIES.—In identi-
24 fying, reviewing, or updating the model programs

1 and materials under this subsection, the Secretary
2 shall solicit the input of relevant stakeholders.

3 (l) RULES OF CONSTRUCTION.—Nothing in this Act
4 or the amendments made by this Act shall be construed
5 to limit—

6 (1) a patient’s right, as described in section
7 164.522 of title 45, Code of Federal Regulations, or
8 any successor regulation, to request a restriction on
9 the use or disclosure of a record referred to in sec-
10 tion 543(a) of the Public Health Service Act (42
11 U.S.C. 290dd–2(a)) for purposes of treatment, pay-
12 ment, or health care operations; or

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

19 (m) SENSE OF CONGRESS.—It is the sense of the
20 Congress that—

21 (1) patients have the right to request a restric-
22 tion on the use or disclosure of a record referred to
23 in section 543(a) of the Public Health Service Act
24 (42 U.S.C. 290dd–2(a)) for treatment, payment, or
25 health care operations; and

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

Passed the House of Representatives June 20, 2018.

Attest:

Clerk.

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