

116TH CONGRESS
1ST SESSION

H. R. 2062

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

IN THE HOUSE OF REPRESENTATIVES

APRIL 3, 2019

Mr. BLUMENAUER (for himself, Mr. MULLIN, Ms. DELBENE, Mr. WALDEN, Mr. PETERS, Mr. CARTER of Georgia, Ms. BONAMICI, Mr. KELLY of Pennsylvania, Mr. MOULTON, Mr. JOYCE of Pennsylvania, Mr. ROUDA, Mr. WRIGHT, Mr. SUOZZI, Mr. HOLDING, Mr. PANETTA, Mr. CRENSHAW, Mr. LARSEN of Washington, Mr. JOHNSON of Ohio, Mr. EVANS, Mr. BILIRAKIS, and Ms. SEWELL of Alabama) introduced the following bill; which was referred to the Committee on Energy and Commerce

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
5 and Patient Safety Act”.

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

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

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

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

20 (c) DISCLOSURES OF DE-IDENTIFIED HEALTH IN-
21 FORMATION TO PUBLIC HEALTH AUTHORITIES.—Para-
22 graph (2) of section 543(b) of the Public Health Service
23 Act (42 U.S.C. 290dd–2(b)), as amended by subsection
24 (b), is further amended by adding at the end the following:

25 “(E) To a public health authority, so long
26 as such content meets the standards established

1 in section 164.514(b) of title 45, Code of Fed-
2 eral Regulations (or successor regulations) for
3 creating de-identified information.”.

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

7 “(3) DEFINITIONS.—For purposes of this sub-
8 section:

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

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

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

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

1 “(E) PAYMENT.—The term ‘payment’ has
2 the meaning given such term for purposes of
3 HIPAA privacy regulation.

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

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

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) is amended to
15 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) may not, in connection with any investigation of, or
21 criminal, civil, or administrative proceeding against, a pa-
22 tient—

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

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

4 “(3) be used by any Federal, State, or local
5 agency for a law enforcement purpose or to conduct
6 any law enforcement investigation; or

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

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

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

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

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

22 “(A) each reference to ‘a penalty imposed
23 under subsection (a)’ shall be treated as a ref-
24 erence to ‘a penalty imposed under subsection

1 (a) (including as applied pursuant to section
2 543(f) of the Public Health Service Act)'; and

3 “(B) each reference to ‘no damages ob-
4 tained under subsection (d)’ shall be treated as
5 a reference to ‘no damages obtained under sub-
6 section (d) (including as applied pursuant to
7 section 543(f) of the Public Health Service
8 Act)’.”.

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

12 “(i) ANTIDISCRIMINATION.—

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

17 “(A) admission or treatment for health
18 care;

19 “(B) hiring or terms of employment;

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

21 “(D) access to Federal, State, or local
22 courts.

23 “(2) RECIPIENTS OF FEDERAL FUNDS.—No re-
24 cipient of Federal funds shall discriminate against
25 an individual on the basis of information received by

1 such recipient pursuant to a disclosure made under
2 subsection (b) in affording access to the services
3 provided with such funds.”.

4 (h) NOTIFICATION IN CASE OF BREACH.—Section
5 543 of the Public Health Service Act (42 U.S.C. 290dd–
6 2), as amended by subsection (g), is further amended by
7 adding at the end the following:

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

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

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

22 (i) SENSE OF CONGRESS.—It is the sense of the Con-
23 gress that any person treating a patient through a pro-
24 gram or activity with respect to which the confidentiality
25 requirements of section 543 of the Public Health Service

1 Act (42 U.S.C. 290dd–2) apply should access the applica-
2 ble State-based prescription drug monitoring program as
3 a precaution against substance use disorder.

4 (j) REGULATIONS.—

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

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

24 (A) a statement of the patient’s rights, in-
25 cluding self-pay patients, with respect to pro-

1 tected health information and a brief descrip-
2 tion of how the individual may exercise these
3 rights (as required by paragraph (b)(1)(iv) of
4 such section 164.520); and

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

11 (k) RULES OF CONSTRUCTION.—Nothing in this Act
12 or the amendments made by this Act shall be construed
13 to limit—

14 (1) a patient’s right, as described in section
15 164.522 of title 45, Code of Federal Regulations, or
16 any successor regulation, to request a restriction on
17 the use or disclosure of a record referred to in sec-
18 tion 543(a) of the Public Health Service Act (42
19 U.S.C. 290dd–2(a)) for purposes of treatment, pay-
20 ment, or health care operations; or

21 (2) a covered entity’s choice, as described in
22 section 164.506 of title 45, Code of Federal Regula-
23 tions, or any successor regulation, to obtain the con-
24 sent of the individual to use or disclose a record re-

1 ferred to in such section 543(a) to carry out treat-
2 ment, payment, or health care operation.

3 (1) SENSE OF CONGRESS.—It is the sense of the Con-
4 gress that—

5 (1) patients have the right to request a restric-
6 tion on the use or disclosure of a record referred to
7 in section 543(a) of the Public Health Service Act
8 (42 U.S.C. 290dd–2(a)) for treatment, payment, or
9 health care operations; and

10 (2) covered entities should make every reason-
11 able effort to the extent feasible to comply with a
12 patient’s request for a restriction regarding such use
13 or disclosure.

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