

115TH CONGRESS  
2D SESSION

# H. R. 5795

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

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## 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

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## 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”.

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 does not include any individually identifiable health information and meets the standards established in section 164.514 of title 45, Code of Federal Regulations (or suc-

1           cessor regulations) for creating de-identified in-  
2           formation.”.

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

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

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

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

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

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

21           “(1) be entered into evidence in any criminal  
22           prosecution or civil action before a Federal or State  
23           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 of a patient; 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 section 1176 of  
12 the Social Security Act shall apply to a violation of this  
13 section to the extent and in the same manner as such pro-  
14 visions apply to a violation of part C of title XI of such  
15 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.—The Secretary of Health and  
5 Human Services, in consultation with appropriate Federal  
6 agencies, shall make such revisions to regulations as may  
7 be necessary for implementing and enforcing the amend-  
8 ments made by this section, such that such amendments  
9 shall apply with respect to uses and disclosures of informa-  
10 tion occurring on or after the date that is 12 months after  
11 the date of enactment of this Act.

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

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

24 (A) Model programs and materials for  
25 training health care providers (including physi-



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

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

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

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

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

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

10 (3) PERIODIC UPDATES.—The Secretary  
11 shall—

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

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

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

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