115TH CONGRESS
2D Session

H. R. 6082

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

IN THE HOUSE OF REPRESENTATIVES

JUNE 13, 2018

Mr. MULLIN (for himself and Mr. BLUMENAUER) 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.

Be it enacted by the Senate and House of Representa-
tives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

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

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

(a) CONFORMING CHANGES RELATING TO SUB-
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 meets the standards established in section 164.514(b) of title 45, Code of Federal Regulations (or successor regulations) for creating de-identified information.”.
(d) DEFINITIONS.—Subsection (b) of section 543 of
the Public Health Service Act (42 U.S.C. 290dd–2) is
amended by adding at the end the following:

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

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

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

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

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

“(E) PAYMENT.—The term ‘payment’ has
the meaning given such term for purposes of
HIPAA privacy regulation.
“(F) Public health authority.—The term ‘public health authority’ has the meaning given such term for purposes of HIPAA privacy regulation.

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

(c) Use of Records in Criminal, Civil, or Administrative Investigations, Actions, or Proceedings.—Subsection (c) of section 543 of the Public Health Service Act (42 U.S.C. 290dd–2) is amended to read as follows:

“(c) Use of Records in Criminal, Civil, or Administrative Contexts.—Except as otherwise authorized by a court order under subsection (b)(2)(C) or by the consent of the patient, a record referred to in subsection (a) may not—

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

“(2) form part of the record for decision or otherwise be taken into account in any proceeding before a Federal agency;
“(3) be used by any Federal, State, or local agency for a law enforcement purpose or to conduct any law enforcement investigation of a patient; or

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

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

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

“(1) the reference to ‘this subsection’ in subsection (a)(2) of such section 1176 shall be treated as a reference to ‘this subsection (including as applied pursuant to section 543(f) of the Public Health Service Act)’; and

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

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

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

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

“(i) ANTIDISCRIMINATION.—

“(1) IN GENERAL.—No entity shall discriminate against an individual on the basis of information received by such entity pursuant to a disclosure made under subsection (b) in—

“(A) admission or treatment for health care;

“(B) hiring or terms of employment;

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

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

“(2) RECIPIENTS OF FEDERAL FUNDS.—No recipient of Federal funds shall discriminate against an individual on the basis of information received by such recipient pursuant to a disclosure made under subsection (b) in affording access to the services provided with such funds.”.
(h) Notification in Case of Breach.—Section 543 of the Public Health Service Act (42 U.S.C. 290dd–2), as amended by subsection (g), is further amended by adding at the end the following:

“(j) Notification in Case of Breach.—

“(1) Application of HITECH Notification of Breach Provisions.—The provisions of section 13402 of the HITECH Act (42 U.S.C. 17932) shall apply to a program or activity described in subsection (a), in case of a breach of records described in subsection (a), to the same extent and in the same manner as such provisions apply to a covered entity in the case of a breach of unsecured protected health information.

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

(i) Sense of Congress.—It is the sense of the Congress that any person treating a patient through a program or activity with respect to which the confidentiality requirements of section 543 of the Public Health Service Act (42 U.S.C. 290dd–2) apply should access the applicable State-based prescription drug monitoring program as a precaution against substance use disorder.
(j) Regulations.—

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

(2) EASILY UNDERSTANDABLE NOTICE OF PRIVACY PRACTICES.—Not later than 1 year after the date of enactment of this Act, the Secretary of Health and Human Services, in consultation with appropriate experts, shall update section 164.520 of title 45, Code of Federal Regulations, so that covered entities provide notice, written in plain language, of privacy practices regarding patient records referred to in section 543(a) of the Public Health Service Act (42 U.S.C. 290dd–2(a)), including—

(A) a statement of the patient’s rights, including self-pay patients, with respect to protected health information and a brief description of how the individual may exercise these
rights (as required by paragraph (b)(1)(iv) of such section 164.520); and

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

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

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

(A) Model programs and materials for training health care providers (including physicians, emergency medical personnel, psychiatrists, psychologists, counselors, therapists, nurse practitioners, physician assistants, behav-
ioral health facilities and clinics, care managers, and hospitals, including individuals such as general counsels or regulatory compliance staff who are responsible for establishing provider privacy policies) concerning the permitted uses and disclosures, consistent with the standards and regulations governing the privacy and security of substance use disorder patient records promulgated by the Secretary under section 543 of the Public Health Service Act (42 U.S.C. 290dd–2), as amended by this section, for the confidentiality of patient records.

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

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

(A) facilitate communication between substance use disorder treatment providers and
other health care providers to promote and pro-
vide the best possible integrated care;

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

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

(3) PERIODIC UPDATES.—The Secretary
shall—

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

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

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

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

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

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

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

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

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