

115TH CONGRESS  
2D SESSION

# H. R. 6082

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IN THE SENATE OF THE UNITED STATES

JUNE 21, 2018

Received; read twice and referred to the Committee on Health, Education,  
Labor, and Pensions

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## 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:                           KAREN L. HAAS,  
*Clerk.*