AMENDMENT IN THE NATURE OF A SUBSTITUTE

TO H.R. 3545

OFFERED BY MR. MULLIN OF OKLAHOMA

Strike all after the enacting clause and insert the following:

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) SUBSTANCE USE DISORDER DEFINED.—

7 (1) DEFINITION.—Subsection (a) of section 543

8 of the Public Health Service Act (42 U.S.C. 290dd–

9 2) is amended by adding at the end the following:

10 "For purposes of this section, the term 'substance

11 use disorder' means a cluster of cognitive, behav-

12 ioral, and physiological symptoms indicating that an

13 individual continues using alcohol or a controlled

14 substance despite significant substance-related prob-

15 lems (such as impaired control, social impairment,

16 risky use, and pharmacological tolerance and with-

17 drawal).".

1   (2) CONFORMING CHANGES.—Subsections (a)

2 and (h) of section 543 of the Public Health Service

3 Act (42 U.S.C. 290dd–2) are each amended by

4 striking "substance abuse" and inserting "substance

5 use disorder".

6   (b) TREATMENT DISCLOSURES BY COVERED ENTI-

7 TIES CONSISTENT WITH HIPAA.—Paragraph (2) of sec-

8 tion 543(b) of the Public Health Service Act (42 U.S.C.

9 290dd–2(b)) is amended by adding at the end the fol-

10 lowing:

11   "(D) To a covered entity by a covered enti-

12   ty, or to a covered entity by a program or activ-

13   ity described in subsection (a), for the purpose

14   of treatment under HIPAA privacy regulation,

15   so long as such disclosure is made in accord-

16   ance with such regulation.".

17   (c) DISCLOSURES OF DE-IDENTIFIED HEALTH IN-

18 FORMATION TO PUBLIC HEALTH AUTHORITIES.—Para-

19 graph (2) of section 543(b) of the Public Health Service

20 Act (42 U.S.C. 290dd–2(b)), as amended by subsection

21 (b), is further amended by adding at the end the following:

22   "(E) To a public health authority, so long

23   as such content does not include any individ-

24   ually identifiable health information and meets

25   the standards established in section 164.514 of

1   title 45, Code of Federal Regulations (or suc-

2   cessor regulations) for creating de-identified in-

3   formation.''.

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) HIPAA PRIVACY REGULATION.—The

13   term 'HIPAA privacy regulation' has the mean-

14   ing given such term under section 1180(b)(3) of

15   the Social Security Act.

16   ''(C) INDIVIDUALLY IDENTIFIABLE

17   HEALTH INFORMATION.—The term 'individually

18   identifiable health information' has the meaning

19   given such term for purposes of HIPAA privacy

20   regulation.

21   ''(D) TREATMENT.—The term 'treatment'

22   has the meaning given such term for purposes

23   of HIPAA privacy regulation.''.

24   (e) USE OF RECORDS IN CRIMINAL, CIVIL, OR AD-

25 MINISTRATIVE INVESTIGATIONS, ACTIONS, OR PRO-

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

4 "(c) USE OF RECORDS IN CRIMINAL, CIVIL, OR AD-
5 MINISTRATIVE INVESTIGATIONS, ACTIONS, OR PRO-
6 CEEDINGS.—

7 "(1) Except as authorized by a court order
8 granted under subsection (b)(2)(C) of this section,
9 no record referred to in subsection (a) of this section
10 may be used to initiate or substantiate any criminal,
11 civil, or administrative charges, claims, or allegations
12 against a patient or to conduct any investigation of
13 a patient.

14 "(2) Any record referred to in subsection (a)
15 that has been used or disclosed to initiate or sub-
16 stantiate any criminal or civil charges, claims, or al-
17 legations against a patient or to conduct any inves-
18 tigation of a patient in violation of paragraph (1)
19 shall be excluded from evidence in any proposed or
20 actual actions or proceedings relating to such crimi-
21 nal, civil, or administrative charges, claims, allega-
22 tions or investigations and absent good cause shown
23 shall result in the automatic dismissal of any actions
24 or proceedings for which the content of the record
25 was offered.".

5

1 (f) PENALTIES.—

2   (1) IN GENERAL.—Subsection (f) of section 543

3 of the Public Health Service Act (42 U.S.C. 290dd–

4 2) is amended to read as follows:

5 "(f) PENALTIES.—The provisions of section 1176 of

6 the Social Security Act shall apply to a violation of this

7 section to the extent and in the same manner as such pro-

8 visions apply to a violation of part C of title XI of such

9 Act.".

10   (2) APPLICABILITY.—The amendment made by

11 paragraph (1) applies only with respect to violations

12 of section 543 of the Public Health Service Act (42

13 U.S.C. 290dd–2) occurring on or after the date of

14 the enactment of this Act.

15 (g) ANTIDISCRIMINATION.—Section 543 of the Public

16 Health Service Act (42 U.S.C. 290dd–2) is amended by

17 adding at the end the following:

18 "(i) ANTIDISCRIMINATION.—

19   "(1) PROHIBITIONS.—

20   "(A) IN GENERAL.—No entity shall dis-

21 criminate against an individual on the basis of

22 information received by such entity pursuant to

23 a disclosure made under subsection (b) in—

24   "(i) admission or treatment for health

25 care;

1 ''(ii) hiring or terms of employment;

2 ''(iii) the sale or rental of housing; or

3 ''(iv) access to Federal, State, or local

4 courts.

5 ''(B) RECIPIENTS OF FEDERAL FUNDS.—

6 No recipient of Federal funds shall discriminate

7 against an individual on the basis of informa-

8 tion received by such recipient pursuant to a

9 disclosure made under subsection (b) in afford-

10 ing access to the services provided with such

11 funds.

12 ''(2) REGULATIONS.—The Secretary, in con-

13 sultation with appropriate Federal agencies, shall

14 issue regulations for implementing and enforcing

15 paragraph (1). Such regulations shall include proce-

16 dures for determining (after opportunity for a hear-

17 ing if requested) if a violation of such paragraph has

18 occurred, notification of failure to comply with such

19 paragraph, and opportunity for a violator to comply

20 with such paragraph.''.

21 (h) NOTIFICATION IN CASE OF BREACH.—Section

22 543 of the Public Health Service Act (42 U.S.C. 290dd–

23 2), as amended by subsection (g), is further amended by

24 adding at the end the following:

25 ''(j) NOTIFICATION IN CASE OF BREACH.—

1   ''(1) APPLICATION OF HITECH NOTIFICATION

2   OF BREACH PROVISIONS.—The provisions of section

3   13402 of the HITECH Act (42 U.S.C. 17932) shall

4   apply to a program or activity described in sub-

5   section (a), in case of a breach of records described

6   in subsection (a), to the same extent and in the

7   same manner as such provisions apply to a covered

8   entity in the case of a breach of unsecured protected

9   health information.

10   ''(2) DEFINITIONS.—In this subsection, the

11   terms 'covered entity' and 'unsecured protected

12   health information' have the meanings given to such

13   terms for purposes of such section 13402.''.

14   (i) SENSE OF CONGRESS.—It is the sense of the Con-

15 gress that any person treating a patient through a pro-

16 gram or activity with respect to which the confidentiality

17 requirements of section 543 of the Public Health Service

18 Act (42 U.S.C. 290dd–2) apply should access the applica-

19 ble State-based prescription drug monitoring program as

20 a precaution against substance use disorder.

21   (j) DEVELOPMENT AND DISSEMINATION OF MODEL

22 TRAINING PROGRAMS.—

23   (1) PROGRAMS AND MATERIALS.—Not later

24   than 1 year after the date of the enactment of this

25   Act, the Secretary of Health and Human Services,

1   in consultation with appropriate experts, shall iden-

2   tify the following model programs and materials, or

3   (in the case that no such programs or materials

4   exist) recognize private or public entities to develop

5   and disseminate each of the following:

6   (A) Model programs and materials for

7   training health care providers (including physi-

8   cians, emergency medical personnel, psychia-

9   trists, including child and adolescent psychia-

10   trists, psychologists, counselors, therapists,

11   nurse practitioners, physician assistants, behav-

12   ioral health facilities and clinics, care managers,

13   and hospitals, including individuals such as gen-

14   eral counsels or regulatory compliance staff who

15   are responsible for establishing provider privacy

16   policies) regarding the permitted disclosures of

17   the content of records under section 543 of the

18   Public Health Service Act (42 U.S.C. 290dd–

19   2), as amended by this section.

20   (B) A model program and materials for

21   training patients and their families regarding

22   their rights to protect and obtain information

23   under such section 543.

24   (2) PERIODIC UPDATES.—The Secretary of

25   Health and Human Services shall—

1   (A) periodically review and update the

2   model programs and materials identified or de-

3   veloped under paragraph (1); and

4   (B) disseminate the updated model pro-

5   grams and materials to the individuals de-

6   scribed in paragraph (1).

7   (3) COORDINATION.—The Secretary of Health

8 and Human Services shall carry out this subsection

9 in coordination with the Director of the Office for

10 Civil Rights within the Department of Health and

11 Human Services, the Assistant Secretary for Mental

12 Health and Substance Use, the Administrator of the

13 Health Resources and Services Administration, and

14 the heads of other relevant agencies within the De-

15 partment of Health and Human Services.

16   (4) INPUT OF CERTAIN ENTITIES.—In identi-

17 fying, reviewing, or updating the model programs

18 and materials under paragraphs (1) and (2), the

19 Secretary of Health and Human Services shall solicit

20 the input of relevant national, State, and local asso-

21 ciations; medical societies; licensing boards; pro-

22 viders of mental and substance use disorder treat-

23 ment; organizations with expertise on domestic vio-

24 lence, sexual assault, elder abuse, and child abuse;

1   and organizations representing patients and con-

2   sumers and the families of patients and consumers.

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