

JUNE 13, 2018

RULES COMMITTEE PRINT 115–75
TEXT OF H.R. 6082, OVERDOSE PREVENTION AND
PATIENT SAFETY ACT

[Showing the text of H.R. 6082, as introduced]

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

1 made in accordance with HIPAA privacy regu-
2 lation. Any redisclosure of information so dis-
3 closed may only be made in accordance with
4 this section.”.

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

10 “(E) To a public health authority, so long
11 as such content meets the standards established
12 in section 164.514(b) of title 45, Code of Fed-
13 eral Regulations (or successor regulations) for
14 creating de-identified information.”.

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

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

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

23 “(B) HEALTH CARE OPERATIONS.—The
24 term ‘health care operations’ has the meaning

1 given such term for purposes of HIPAA privacy
2 regulation.

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

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

12 “(E) PAYMENT.—The term ‘payment’ has
13 the meaning given such term for purposes of
14 HIPAA privacy regulation.

15 “(F) PUBLIC HEALTH AUTHORITY.—The
16 term ‘public health authority’ has the meaning
17 given such term for purposes of HIPAA privacy
18 regulation.

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

22 (e) USE OF RECORDS IN CRIMINAL, CIVIL, OR AD-
23 MINISTRATIVE INVESTIGATIONS, ACTIONS, OR PRO-
24 CEEDINGS.—Subsection (c) of section 543 of the Public

1 Health Service Act (42 U.S.C. 290dd–2) is amended to
2 read as follows:

3 “(c) USE OF RECORDS IN CRIMINAL, CIVIL, OR AD-
4 MINISTRATIVE CONTEXTS.—Except as otherwise author-
5 ized by a court order under subsection (b)(2)(C) or by the
6 consent of the patient, a record referred to in subsection
7 (a) may not—

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

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

14 “(3) be used by any Federal, State, or local
15 agency for a law enforcement purpose or to conduct
16 any law enforcement investigation of a patient; or

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

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

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

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

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

7 “(A) each reference to ‘a penalty imposed
8 under subsection (a)’ shall be treated as a ref-
9 erence to ‘a penalty imposed under subsection
10 (a) (including as applied pursuant to section
11 543(f) of the Public Health Service Act)’; and

12 “(B) each reference to ‘no damages ob-
13 tained under subsection (d)’ shall be treated as
14 a reference to ‘no damages obtained under sub-
15 section (d) (including as applied pursuant to
16 section 543(f) of the Public Health Service
17 Act)’.”.

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

21 “(i) ANTIDISCRIMINATION.—

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

1 “(A) admission or treatment for health
2 care;

3 “(B) hiring or terms of employment;

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

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

7 “(2) RECIPIENTS OF FEDERAL FUNDS.—No re-
8 cipient of Federal funds shall discriminate against
9 an individual on the basis of information received by
10 such recipient pursuant to a disclosure made under
11 subsection (b) in affording access to the services
12 provided with such funds.”.

13 (h) NOTIFICATION IN CASE OF BREACH.—Section
14 543 of the Public Health Service Act (42 U.S.C. 290dd-
15 2), as amended by subsection (g), is further amended by
16 adding at the end the following:

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

18 “(1) APPLICATION OF HITECH NOTIFICATION
19 OF BREACH PROVISIONS.—The provisions of section
20 13402 of the HITECH Act (42 U.S.C. 17932) shall
21 apply to a program or activity described in sub-
22 section (a), in case of a breach of records described
23 in subsection (a), to the same extent and in the
24 same manner as such provisions apply to a covered

1 entity in the case of a breach of unsecured protected
2 health information.

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

7 (i) SENSE OF CONGRESS.—It is the sense of the Con-
8 gress that any person treating a patient through a pro-
9 gram or activity with respect to which the confidentiality
10 requirements of section 543 of the Public Health Service
11 Act (42 U.S.C. 290dd–2) apply should access the applica-
12 ble State-based prescription drug monitoring program as
13 a precaution against substance use disorder.

14 (j) REGULATIONS.—

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

24 (2) EASILY UNDERSTANDABLE NOTICE OF PRI-
25 VACY PRACTICES.—Not later than 1 year after the

1 date of enactment of this Act, the Secretary of
2 Health and Human Services, in consultation with
3 appropriate experts, shall update section 164.520 of
4 title 45, Code of Federal Regulations, so that cov-
5 ered entities provide notice, written in plain lan-
6 guage, of privacy practices regarding patient records
7 referred to in section 543(a) of the Public Health
8 Service Act (42 U.S.C. 290dd–2(a)), including—

9 (A) a statement of the patient’s rights, in-
10 cluding self-pay patients, with respect to pro-
11 tected health information and a brief descrip-
12 tion of how the individual may exercise these
13 rights (as required by paragraph (b)(1)(iv) of
14 such section 164.520); and

15 (B) a description of each purpose for
16 which the covered entity is permitted or re-
17 quired to use or disclose protected health infor-
18 mation without the patient’s written authoriza-
19 tion (as required by paragraph (b)(2) of such
20 section 164.520).

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

24 (1) INITIAL PROGRAMS AND MATERIALS.—Not
25 later than 1 year after the date of the enactment of

1 this Act, the Secretary of Health and Human Serv-
2 ices (referred to in this subsection as the “Sec-
3 retary”), in consultation with appropriate experts,
4 shall identify the following model programs and ma-
5 terials (or if no such programs or materials exist,
6 recognize private or public entities to develop and
7 disseminate such programs and materials):

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

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

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

11 (A) facilitate communication between sub-
12 stance use disorder treatment providers and
13 other health care providers to promote and pro-
14 vide the best possible integrated care;

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

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

20 (3) PERIODIC UPDATES.—The Secretary
21 shall—

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

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

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

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

11 (1) a patient’s right, as described in section
12 164.522 of title 45, Code of Federal Regulations, or
13 any successor regulation, to request a restriction on
14 the use or disclosure of a record referred to in sec-
15 tion 543(a) of the Public Health Service Act (42
16 U.S.C. 290dd–2(a)) for purposes of treatment, pay-
17 ment, or health care operations; or

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

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

1 (1) patients have the right to request a restric-
2 tion on the use or disclosure of a record referred to
3 in section 543(a) of the Public Health Service Act
4 (42 U.S.C. 290dd-2(a)) for treatment, payment, or
5 health care operations; and

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

