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.

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) SUBSTANCE USE DISORDER DEFINED.—

(1) DEFINITION.—Subsection (a) of section 543 of the Public Health Service Act (42 U.S.C. 290dd–2) is amended by adding at the end the following:

“For purposes of this section, the term ‘substance use disorder’ means a cluster of cognitive, behavioral, and physiological symptoms indicating that an individual continues using alcohol or a controlled substance despite significant substance-related problems (such as impaired control, social impairment, risky use, and pharmacological tolerance and withdrawal).”.
(2) CONFORMING CHANGES.—Subsections (a) and (h) of section 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) TREATMENT DISCLOSURES BY 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 by a covered entity, or to a covered entity by a program or activity described in subsection (a), for the purpose of treatment under HIPAA privacy regulation, so long as such disclosure is made in accordance with such regulation.”.

(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 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 subsection:

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

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

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

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

(e) USE OF RECORDS IN CRIMINAL, CIVIL, OR ADMINISTRATIVE INVESTIGATIONS, ACTIONS, OR PRO-
CEEDINGS.—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 INVESTIGATIONS, ACTIONS, OR PROCEEDINGS.—

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

“(2) Any record referred to in subsection (a) that has been used or disclosed to initiate or substantiate any criminal or civil charges, claims, or allegations against a patient or to conduct any investigation of a patient in violation of paragraph (1) shall be excluded from evidence in any proposed or actual actions or proceedings relating to such criminal, civil, or administrative charges, claims, allegations or investigations and absent good cause shown shall result in the automatic dismissal of any actions or proceedings for which the content of the record was offered.”.
(f) PENALTIES.—

(1) IN GENERAL.—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 section 1176 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.”.

(2) APPLICABILITY.—The amendment made by paragraph (1) applies only with respect to violations of section 543 of the Public Health Service Act (42 U.S.C. 290dd–2) occurring on or after the date of the enactment of this 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) PROHIBITIONS.—

“(A) 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—

“(i) admission or treatment for health care;
“(ii) hiring or terms of employment;
“(iii) the sale or rental of housing; or
“(iv) access to Federal, State, or local courts.

“(B) 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.

“(2) REGULATIONS.—The Secretary, in consultation with appropriate Federal agencies, shall issue regulations for implementing and enforcing paragraph (1). Such regulations shall include procedures for determining (after opportunity for a hearing if requested) if a violation of such paragraph has occurred, notification of failure to comply with such paragraph, and opportunity for a violator to comply with such paragraph.”.

(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) Development and Dissemination of Model Training Programs.—

(1) Programs and Materials.—Not later than 1 year after the date of the enactment of this Act, the Secretary of Health and Human Services,
in consultation with appropriate experts, shall identify the following model programs and materials, or (in the case that no such programs or materials exist) recognize private or public entities to develop and disseminate each of the following:

(A) Model programs and materials for training health care providers (including physicians, emergency medical personnel, psychiatrists, including child and adolescent psychiatrists, psychologists, counselors, therapists, nurse practitioners, physician assistants, behavioral 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) regarding the permitted disclosures of the content of records under section 543 of the Public Health Service Act (42 U.S.C. 290dd–2), as amended by this section.

(B) A model program and materials for training patients and their families regarding their rights to protect and obtain information under such section 543.

(2) PERIODIC UPDATES.—The Secretary of Health and Human Services shall—
(A) periodically review and update the
model programs and materials identified or de-
veloped under paragraph (1); and

(B) disseminate the updated model pro-
grams and materials to the individuals de-
scribed in paragraph (1).

(3) COORDINATION.—The Secretary of Health
and Human Services shall carry out this subsection
in coordination with the Director of the Office for
Civil Rights within the Department of Health and
Human Services, the Assistant Secretary for Mental
Health and Substance Use, the Administrator of the
Health Resources and Services Administration, and
the heads of other relevant agencies within the De-
partment of Health and Human Services.

(4) INPUT OF CERTAIN ENTITIES.—In identi-
fying, reviewing, or updating the model programs
and materials under paragraphs (1) and (2), the
Secretary of Health and Human Services shall solicit
the input of relevant national, State, and local asso-
ciations; medical societies; licensing boards; pro-
viders of mental and substance use disorder treat-
ment; organizations with expertise on domestic vio-
lence, sexual assault, elder abuse, and child abuse;
and organizations representing patients and consumers and the families of patients and consumers.