H. R. 3545

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

IN THE HOUSE OF REPRESENTATIVES

JULY 28, 2017

Mr. Murphy of Pennsylvania (for himself, Mr. Meehan, Mr. Blumenauer, Mr. Carter of Georgia, Mr. Renacci, and Mr. Mullin) 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 Representatives 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 OF RECORDS.

Section 543 of the Public Health Service Act (42 U.S.C. 290dd–2) is amended—

(1) in subsection (b)—
(A) in paragraph (1), by striking “The content” and inserting “Subject to paragraph (3), the content”; 

(B) in paragraph (2), by striking “Whether” and inserting “Subject to paragraph (3), whether”; and 

(C) by adding at the end the following: 

“(3) EXCEPTION.— 

“(A) IN GENERAL.—In the case of a use or disclosure of the content of a record referred to in subsection (a) for purposes of treatment, payment, or health care operations, paragraphs (1) and (2), as applicable, and regulations issued under subsection (g), including any such regulations pertaining to redisclosure limitations, shall not apply, and the provisions of section 164.506 of title 45, Code of Federal Regulations, or any successor regulation, shall apply with respect to such use or disclosure of such content by an entity in the same manner and to the same extent as such provisions apply with respect to the use or disclosure of protected health information by a covered entity.

“(B) DEFINITIONS.—For purposes of this paragraph, the terms ‘treatment’, ‘payment’, 

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‘health care operations’, and ‘protected health
information’ have the meaning given such terms
in section 164.501 of title 45, Code of Federal
Regulations, or any successor regulation, and
the term ‘covered entity’ has the meaning given
such term in section 160.103 of title 45, Code
of Federal Regulations, or any successor regula-
tion.”; and
(2) by amending subsection (c) to read as fol-
lows:

“(c) USE OF RECORDS IN CRIMINAL PRO-
CEEDINGS.—

“(1) IN GENERAL.—Except as authorized by a
court order granted under subsection (b)(2)(C), no
record referred to in subsection (a) may be used to
initiate or substantiate any criminal charges against
a patient or to conduct any investigation of a pa-
tient.

“(2) ADDITIONAL PROTECTIONS.—In the case
of a use or disclosure of a record referred to in sub-
section (a) for purposes of treatment, payment, or
health care operations as provided for under sub-
section (b), no further disclosure or redisclosure of
such record is allowed to initiate or substantiate any
criminal charges against a patient or to conduct any
investigation of a patient except as authorized by a
court order granted under subsection (b)(2)(C) of
this section.

“(3) EXCLUSIONARY EFFECT AND DIS-
MISSAL.—Any record referred to in subsection (a)
that has been used or disclosed to initiate or sub-
stantiate any criminal charges against a patient or
to conduct any investigation of a patient in violation
of paragraph (1) or (2), shall be excluded from evi-
dence in any proposed or actual proceedings relating
to such criminal charges or investigation and absent
good cause shown shall result in the automatic dis-
missal of any proceedings for which the content of
the record was offered.”.