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(Original Signature of Member)

115TH CONGRESS  
2D SESSION

**H. R.**

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

IN THE HOUSE OF REPRESENTATIVES

Mr. MULLIN (for himself and [see ATTACHED LIST of cosponsors]) introduced the following bill; which was referred to the Committee on

**A BILL**

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,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Overdose Prevention  
5 and Patient Safety Act”.

6 **SEC. 2. CONFIDENTIALITY AND DISCLOSURE OF RECORDS**

7 **RELATING TO SUBSTANCE USE DISORDER.**

8 (a) SUBSTANCE USE DISORDER DEFINED.—

1           (1) DEFINITION.—Subsection (a) of section 543  
2           of the Public Health Service Act (42 U.S.C. 290dd–  
3           2) is amended by adding at the end the following:  
4           “For purposes of this section, the term ‘substance  
5           use disorder’ means a cluster of cognitive, behav-  
6           ioral, and physiological symptoms indicating that an  
7           individual continues using alcohol or a controlled  
8           substance despite significant substance-related prob-  
9           lems (such as impaired control, social impairment,  
10          risky use, and pharmacological tolerance and with-  
11          drawal).”.

12          (2) CONFORMING CHANGES.—Subsections (a)  
13          and (h) of section 543 of the Public Health Service  
14          Act (42 U.S.C. 290dd–2) are each amended by  
15          striking “substance abuse” and inserting “substance  
16          use disorder”.

17          (b) DISCLOSURES BY COVERED ENTITIES CON-  
18          SISTENT WITH HIPAA.—Paragraph (2) of section 543(b)  
19          of the Public Health Service Act (42 U.S.C. 290dd–2(b))  
20          is amended by adding at the end the following:

21                 “(D) To a covered entity by a covered enti-  
22                 ty, or to a covered entity by a program or activ-  
23                 ity described in subsection (a), for purposes of  
24                 treatment, payment, and health care operations  
25                 under HIPAA privacy regulation, so long as

1           such disclosure is made in accordance with such  
2           regulation.”.

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

8                   “(E) To a public health authority, so long  
9                   as such content does not include any individ-  
10                   ually identifiable health information and meets  
11                   the standards established in section 164.514 of  
12                   title 45, Code of Federal Regulations (or suc-  
13                   cessor regulations) for creating de-identified in-  
14                   formation.”.

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) TREATMENT.—The term ‘treatment’  
16 has the meaning given such term for purposes  
17 of HIPAA privacy regulation.”.

18 (e) USE OF RECORDS IN CRIMINAL, CIVIL, OR AD-  
19 MINISTRATIVE INVESTIGATIONS, ACTIONS, OR PRO-  
20 CEEDINGS.—Subsection (c) of section 543 of the Public  
21 Health Service Act (42 U.S.C. 290dd-2) is amended to  
22 read as follows:

23 “(c) USE OF RECORDS IN CRIMINAL, CIVIL, OR AD-  
24 MINISTRATIVE CONTEXTS.—Except as otherwise author-  
25 ized by a court order under subsection (b)(2)(C) or by the

1 consent of the patient, a record referred to in subsection

2 (a) may not—

3 “(1) be entered into evidence in any criminal  
4 prosecution or civil action before a Federal or State  
5 court;

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

9 “(3) be used to conduct any investigation of a  
10 plaintiff; or

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

12 (f) PENALTIES.—

13 (1) IN GENERAL.—Subsection (f) of section 543  
14 of the Public Health Service Act (42 U.S.C. 290dd–  
15 2) is amended to read as follows:

16 “(f) PENALTIES.—The provisions of section 1176 of  
17 the Social Security Act shall apply to a violation of this  
18 section to the extent and in the same manner as such pro-  
19 visions apply to a violation of part C of title XI of such  
20 Act.”.

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

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

4 “(i) ANTIDISCRIMINATION.—

5 “(1) PROHIBITIONS.—

6 “(A) IN GENERAL.—No entity shall dis-  
7 criminate against an individual on the basis of  
8 information received by such entity pursuant to  
9 a disclosure made under subsection (b) in—

10 “(i) admission or treatment for health  
11 care;

12 “(ii) hiring or terms of employment;

13 “(iii) the sale or rental of housing; or

14 “(iv) access to Federal, State, or local  
15 courts.

16 “(B) RECIPIENTS OF FEDERAL FUNDS.—

17 No recipient of Federal funds shall discriminate  
18 against an individual on the basis of informa-  
19 tion received by such recipient pursuant to a  
20 disclosure made under subsection (b) in afford-  
21 ing access to the services provided with such  
22 funds.

23 “(2) REGULATIONS.—The Secretary, in con-  
24 sultation with appropriate Federal agencies, shall  
25 issue regulations for implementing and enforcing

1 paragraph (1). Such regulations shall include proce-  
2 dures for determining (after opportunity for a hear-  
3 ing if requested) if a violation of such paragraph has  
4 occurred, notification of failure to comply with such  
5 paragraph, and opportunity for a violator to comply  
6 with such paragraph.”.

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) DEVELOPMENT AND DISSEMINATION OF MODEL  
9 TRAINING PROGRAMS FOR SUBSTANCE USE DISORDER  
10 PATIENT RECORDS.—

11 (1) INITIAL PROGRAMS AND MATERIALS.—Not  
12 later than 1 year after the date of the enactment of  
13 this Act, the Secretary of Health and Human Serv-  
14 ices (referred to in this subsection as the “Sec-  
15 retary”), in consultation with appropriate experts,  
16 shall identify the following model programs and ma-  
17 terials (or if no such programs or materials exist,  
18 recognize private or public entities to develop and  
19 disseminate such programs and materials):

20 (A) Model programs and materials for  
21 training health care providers (including physi-  
22 cians, emergency medical personnel, psychia-  
23 trists, psychologists, counselors, therapists,  
24 nurse practitioners, physician assistants, behav-  
25 ioral health facilities and clinics, care managers,



1 and hospitals, including individuals such as gen-  
2 eral counsels or regulatory compliance staff who  
3 are responsible for establishing provider privacy  
4 policies) concerning the permitted uses and dis-  
5 closures, consistent with the standards and reg-  
6 ulations governing the privacy and security of  
7 substance use disorder patient records promul-  
8 gated by the Secretary under section 543 of the  
9 Public Health Service Act (42 U.S.C. 290dd-  
10 2), as amended by this section, for the con-  
11 fidentiality of patient records.

12 (B) Model programs and materials for  
13 training patients and their families regarding  
14 their rights to protect and obtain information  
15 under the standards and regulations described  
16 in subparagraph (A).

17 (2) REQUIREMENTS.—The model programs and  
18 materials described in subparagraphs (A) and (B) of  
19 paragraph (1) shall address circumstances under  
20 which disclosure of substance use disorder patient  
21 records is needed to—

22 (A) facilitate communication between sub-  
23 stance use disorder treatment providers and  
24 other health care providers to promote and pro-  
25 vide the best possible integrated care;

1 (B) avoid inappropriate prescribing that  
2 can lead to dangerous drug interactions, over-  
3 dose, or relapse; and

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

6 (3) PERIODIC UPDATES.—The Secretary  
7 shall—

8 (A) periodically review and update the  
9 model programs and materials identified or de-  
10 veloped under paragraph (1); and

11 (B) disseminate such updated programs  
12 and materials to the individuals described in  
13 paragraph (1)(A).

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