H. R. 11

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.

Be it enacted by the Senate and House of Representa-
tives 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 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) 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 purposes of treatment, payment, and health care operations 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) HEALTH CARE OPERATIONS.—The term ‘health care operations’ has the meaning
given such term for purposes of HIPAA privacy regulation.

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

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

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

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

“(e) USE OF RECORDS IN CRIMINAL, CIVIL, OR ADMINISTRATIVE CONTEXTS.—Except as otherwise authorized by a court order under subsection (b)(2)(C) or by the
consent of the patient, a record referred to in subsection 
(a) may not—

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

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

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

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

(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 pro-
visions 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 for Substance Use Disorder Patient Records.**—

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

(A) Model programs and materials for training health care providers (including physicians, emergency medical personnel, 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) concerning the permitted uses and disclosures, consistent with the standards and regulations governing the privacy and security of substance use disorder patient records promulgated by the Secretary under section 543 of the Public Health Service Act (42 U.S.C. 290dd–2), as amended by this section, for the confidentiality of patient records.

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

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

(A) facilitate communication between substance use disorder treatment providers and other health care providers to promote and provide the best possible integrated care;
(B) avoid inappropriate prescribing that can lead to dangerous drug interactions, overdose, or relapse; and

(C) notify and involve families and caregivers when individuals experience an overdose.

(3) Periodic Updates.—The Secretary shall—

(A) periodically review and update the model programs and materials identified or developed under paragraph (1); and

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

(4) Input of Certain Entities.—In identifying, reviewing, or updating the model programs and materials under this subsection, the Secretary shall solicit the input of relevant stakeholders.