

1991—Pub. L. 102-40, § 401(a)(4)(A), renumbered section 4131 of this title as this section.

Pub. L. 102-40, § 403(a)(1), substituted "Secretary" for "Administrator".

Pub. L. 102-40, § 402(d)(1), substituted "7334" for "4134".

EFFECTIVE DATE

Subchapter effective Oct. 21, 1976, see section 211 of Pub. L. 94-581, set out as an Effective Date of 1976 Amendment note under section 111 of this title.

§ 7332. Confidentiality of certain medical records

(a)(1) Records of the identity, diagnosis, prognosis, or treatment of any patient or subject which are maintained in connection with the performance of any program or activity (including education, training, treatment, rehabilitation, or research) relating to drug abuse, alcoholism or alcohol abuse, infection with the human immunodeficiency virus, or sickle cell anemia which is carried out by or for the Department under this title shall, except as provided in subsections (e) and (f), be confidential, and (section 5701 of this title to the contrary notwithstanding) such records may be disclosed only for the purposes and under the circumstances expressly authorized under subsection (b).

(2) Paragraph (1) prohibits the disclosure to any person or entity other than the patient or subject concerned of the fact that a special written consent is required in order for such records to be disclosed.

(b)(1) The content of any record referred to in subsection (a) may be disclosed by the Secretary in accordance with the prior written consent of the patient or subject with respect to whom such record is maintained, but only to such extent, under such circumstances, and for such purposes as may be allowed in regulations prescribed by the Secretary.

(2) Whether or not any patient or subject, with respect to whom any given record referred to in subsection (a) is maintained, gives written consent, the content of such record may be disclosed by the Secretary as follows:

(A) To medical personnel to the extent necessary to meet a bona fide medical emergency.

(B) To qualified personnel for the purpose of conducting scientific research, management audits, financial audits, or program evaluation, but such personnel may not identify, directly or indirectly, any individual patient or subject in any report of such research, audit, or evaluation, or otherwise disclose patient or subject identities in any manner.

(C)(i) In the case of any record which is maintained in connection with the performance of any program or activity relating to infection with the human immunodeficiency virus, to a Federal, State, or local public-health authority charged under Federal or State law with the protection of the public health, and to which Federal or State law requires disclosure of such record, if a qualified representative of such authority has made a written request that such record be provided as required pursuant to such law for a purpose authorized by such law.

(ii) A person to whom a record is disclosed under this paragraph may not redisclose or use

such record for a purpose other than that for which the disclosure was made.

(D) If authorized by an appropriate order of a court of competent jurisdiction granted after application showing good cause therefor. In assessing good cause the court shall weigh the public interest and the need for disclosure against the injury to the patient or subject, to the physician-patient relationship, and to the treatment services. Upon the granting of such order, the court, in determining the extent to which any disclosure of all or any part of any record is necessary, shall impose appropriate safeguards against unauthorized disclosure.

(E) To an entity described in paragraph (1)(B) of section 5701(k) of this title, but only to the extent authorized by such section.

(F)(i) To a representative of a patient who lacks decision-making capacity, when a practitioner deems the content of the given record necessary for that representative to make an informed decision regarding the patient's treatment.

(ii) In this subparagraph, the term "representative" means an individual, organization, or other body authorized under section 7331 of this title and its implementing regulations to give informed consent on behalf of a patient who lacks decision-making capacity.

(G) To a State controlled substance monitoring program, including a program approved by the Secretary of Health and Human Services under section 3990 of the Public Health Service Act (42 U.S.C. 280g-3), to the extent necessary to prevent misuse and diversion of prescription medicines.

(3) In the event that the patient or subject who is the subject of any record referred to in subsection (a) is deceased, the content of any such record may be disclosed by the Secretary only upon the prior written request of the next of kin, executor, administrator, or other personal representative of such patient or subject and only if the Secretary determines that such disclosure is necessary for such survivor to obtain benefits to which such survivor may be entitled, including the pursuit of legal action, but then only to the extent, under such circumstances, and for such purposes as may be allowed in regulations prescribed pursuant to section 7334 of this title.

(c) Except as authorized by a court order granted under subsection (b)(2)(D), no record referred to in subsection (a) may be used to initiate or substantiate any criminal charges against, or to conduct any investigation of, a patient or subject.

(d) The prohibitions of this section shall continue to apply to records concerning any person who has been a patient or subject, irrespective of whether or when such person ceases to be a patient.

(e) The prohibitions of this section shall not prevent any interchange of records—

(1) within and among those components of the Department furnishing health care to veterans, or determining eligibility for benefits under this title; or

(2) between such components furnishing health care to veterans and the Armed Forces.

(f)(1) Notwithstanding subsection (a) but subject to paragraph (2), a physician or a profes-

sional counselor may disclose information or records indicating that a patient or subject is infected with the human immunodeficiency virus if the disclosure is made to (A) the spouse of the patient or subject, or (B) to an individual whom the patient or subject has, during the process of professional counseling or of testing to determine whether the patient or subject is infected with such virus, identified as being a sexual partner of such patient or subject.

(2)(A) A disclosure under paragraph (1) may be made only if the physician or counselor, after making reasonable efforts to counsel and encourage the patient or subject to provide the information to the spouse or sexual partner, reasonably believes that the patient or subject will not provide the information to the spouse or sexual partner and that the disclosure is necessary to protect the health of the spouse or sexual partner.

(B) A disclosure under such paragraph may be made by a physician or counselor other than the physician or counselor referred to in subparagraph (A) if such physician or counselor is unavailable by reason of absence or termination of employment to make the disclosure.

(g) Any person who violates any provision of this section or any regulation issued pursuant to this section shall be fined, in the case of a first offense, up to the maximum amount provided under section 5701(f) of this title for a first offense under that section and, in the case of a subsequent offense, up to the maximum amount provided under section 5701(f) of this title for a subsequent offense under that section.

(Added Pub. L. 94-581, title I, §111(a)(1), Oct. 21, 1976, 90 Stat. 2849, §4132; amended Pub. L. 100-322, title I, §121, May 20, 1988, 102 Stat. 502; renumbered §7332 and amended Pub. L. 102-40, title IV, §§401(a)(4)(A), 402(d)(1), 403(a)(1), (2), (4), (5), May 7, 1991, 105 Stat. 221, 239; Pub. L. 109-461, title II, §204(b), Dec. 22, 2006, 120 Stat. 3411; Pub. L. 111-163, title V, §504, May 5, 2010, 124 Stat. 1157; Pub. L. 112-74, div. H, title II, §230(b), Dec. 23, 2011, 125 Stat. 1159.)

AMENDMENTS

2011—Subsec. (b)(2)(G). Pub. L. 112-74 added subpar. (G).

2010—Subsec. (b)(2)(F). Pub. L. 111-163 added subpar. (F).

2006—Subsec. (b)(2)(E). Pub. L. 109-461 added subpar. (E).

1991—Pub. L. 102-40, §401(a)(4)(A), renumbered section 4132 of this title as this section.

Subsec. (a)(1). Pub. L. 102-40, §403(a)(4), struck out “of this section” after “subsections (e) and (f)” and after “subsection (b)”.

Pub. L. 102-40, §403(a)(2), substituted “Department” for “Veterans’ Administration”.

Pub. L. 102-40, §402(d)(1), substituted “5701” for “3301”.

Subsec. (a)(2). Pub. L. 102-40, §403(a)(4), struck out “of this subsection” after “Paragraph (1)”.

Subsec. (b)(1). Pub. L. 102-40, §403(a)(4), struck out “of this section” after “subsection (a)”.

Pub. L. 102-40, §403(a)(1), substituted “Secretary” for “Administrator” in two places.

Subsec. (b)(2). Pub. L. 102-40, §403(a)(4), struck out “of this section” after “subsection (a)” in introductory provisions.

Pub. L. 102-40, §403(a)(1), substituted “Secretary” for “Administrator” in introductory provisions.

Subsec. (b)(3). Pub. L. 102-40, §403(a)(4), struck out “of this section” after “subsection (a)”.

Pub. L. 102-40, §403(a)(1), substituted “Secretary” for “Administrator” in two places.

Pub. L. 102-40, §402(d)(1), substituted “7334” for “4134”.

Subsec. (c). Pub. L. 102-40, §403(a)(4), struck out “of this section” after “subsection (b)(2)(D)” and after “subsection (a)”.

Subsec. (e)(1). Pub. L. 102-40, §403(a)(2), substituted “Department” for “Veterans’ Administration”.

Subsec. (f)(1). Pub. L. 102-40, §403(a)(4), struck out “of this section” after “subsection (a)” and “of this subsection” after “paragraph (2)”.

Subsec. (f)(2)(A). Pub. L. 102-40, §403(a)(4), struck out “of this subsection” after “paragraph (1)”.

Subsec. (f)(2)(B). Pub. L. 102-40, §403(a)(5), struck out “of this paragraph” after “subparagraph (A)”.

Subsec. (g). Pub. L. 102-40, §402(d)(1), substituted “5701(f)” for “3301(f)” in two places.

1988—Subsec. (a). Pub. L. 100-322, §121(a), (e)(1), designated existing provisions as par. (1), inserted “infection with the human immunodeficiency virus,” after “alcohol abuse,” substituted “subsections (e) and (f)” for “subsection (e)”, and added par. (2).

Subsec. (b)(1). Pub. L. 100-322, §121(b)(1), struck out “pursuant to section 4134 of this title” before period at end.

Subsec. (b)(2)(C), (D). Pub. L. 100-322, §121(b)(2), added subpar. (C) and redesignated former subpar. (C) as (D).

Subsec. (c). Pub. L. 100-322, §121(e)(2), substituted “subsection (b)(2)(D)” for “subsection (b)(2)(C)”.

Subsec. (f). Pub. L. 100-322, §121(c)(2), added subsec. (f). Former subsec. (f) redesignated (g).

Subsec. (g). Pub. L. 100-322, §121(c)(1), (d), redesignated subsec. (f) as (g) and substituted “shall be fined, in the case of a first offense, up to the maximum amount provided under section 3301(f) of this title for a first offense under that section and, in the case of a subsequent offense, up to the maximum amount provided under section 3301(f) of this title for a subsequent offense under that section.” for “shall be fined not more than \$500 in the case of a first offense, and not more than \$5,000 in the case of each subsequent offense”.

§ 7333. Nondiscrimination against alcohol and drug abusers and persons infected with the human immunodeficiency virus

(a) Veterans eligible for treatment under chapter 17 of this title who are alcohol or drug abusers or who are infected with the human immunodeficiency virus shall not be discriminated against in admission or treatment by any Department health-care facility solely because of their alcohol or drug abuse or dependency or because of their viral infection.

(b) The Secretary shall prescribe regulations for the enforcement of this section. Such regulations, with respect to the admission and treatment of such veterans who are alcohol or drug abusers, shall be prescribed in accordance with section 7334 of this title.

(Added Pub. L. 94-581, title I, §111(a)(1), Oct. 21, 1976, 90 Stat. 2850, §4133; amended Pub. L. 100-322, title I, §122(a), May 20, 1988, 102 Stat. 503; renumbered §7333 and amended Pub. L. 102-40, title IV, §§401(a)(4)(A), 402(d)(1), 403(a)(1), (2), May 7, 1991, 105 Stat. 221, 239.)

AMENDMENTS

1991—Pub. L. 102-40, §401(a)(4)(A), renumbered section 4133 of this title as this section.

Subsec. (a). Pub. L. 102-40, §403(a)(2), substituted “Department” for “Veterans’ Administration”.

Subsec. (b). Pub. L. 102-40, §§402(d)(1), 403(a)(1), substituted “Secretary” for “Administrator” and “7334” for “4134”.