

115TH CONGRESS
1ST SESSION

S. 1850

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

IN THE SENATE OF THE UNITED STATES

SEPTEMBER 25, 2017

Mr. MANCHIN (for himself, Mrs. CAPITO, Mrs. FEINSTEIN, Mr. KING, Ms. HARRIS, and Ms. KLOBUCHAR) introduced the following bill; which was read twice and referred to the Committee on Health, Education, Labor, and Pensions

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 “Protecting Jessica
5 Grubb’s Legacy Act”.

6 **SEC. 2. CONFIDENTIALITY OF SUBSTANCE USE DISORDER**
7 **PATIENT RECORDS.**

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

1 (1) in the section heading, by inserting “**SUB-**
 2 **STANCE USE DISORDER PATIENT**” before
 3 “**RECORDS**”;

4 (2) by redesignating subsections (a) through (h)
 5 as subsection (b) through (i), respectively;

6 (3) by inserting before subsection (b), as so re-
 7 designated, the following:

8 “(a) PURPOSE.—It is the purpose of this section to
 9 protect the confidentiality of substance use disorder pa-
 10 tient records. Except as provided in subsection (f), such
 11 records shall be confidential and may be disclosed only for
 12 the purposes and under the circumstances expressly au-
 13 thorized under subsection (c), consistent with the allow-
 14 able uses and disclosures to carry out treatment, payment,
 15 or health care operations as defined in regulations promul-
 16 gated under section 264(c) of the Health Insurance Port-
 17 ability and Accountability Act of 1996.”;

18 (4) in subsection (b), as so redesignated—

19 (A) in the subsection heading, by striking
 20 “REQUIREMENT” and inserting “DEFINITION”;

21 (B) by striking “Records” and inserting
 22 “For purposes of this section, the term ‘sub-
 23 stance use disorder patient record’ means any
 24 record”;

1 (C) by striking “which are” and inserting
 2 “that is”; and

3 (D) by striking “shall, except” and all that
 4 follows through “subsection (b)”;
 5 (5) in subsection (c), as so redesignated—

6 (A) in the subsection heading, by inserting
 7 “OF SUBSTANCE USE DISORDER PATIENT
 8 RECORDS ” after “DISCLOSURE”;

9 (B) in paragraph (1)—

10 (i) by striking “The content” and in-
 11 serting “Except as described in paragraph
 12 (2), the content”;

13 (ii) by striking “record referred to in
 14 subsection (a)” and inserting “substance
 15 use disorder patient record”; and

16 (iii) by striking “subsection (g)” and
 17 inserting “subsection (h)”;

18 (C) by amending paragraph (2) to read as
 19 follows:

20 “(2) PERMITTED DISCLOSURE.—Whether or
 21 not the patient with respect to whom any substance
 22 use disorder patient record referred is maintained
 23 gives written consent, the content of such record
 24 may be used or disclosed as follows:

1 “(A) In connection with the provision of
2 medical services or health care to substance use
3 disorder patients consistent with the allowable
4 uses and disclosures to carry out treatment,
5 payment, or health care operations as described
6 in section 164.506 of title 45, Code of Federal
7 Regulations, or any successor regulation.

8 “(B) To qualified personnel for the pur-
9 pose of conducting scientific research, manage-
10 ment audits, financial audits, or program eval-
11 uation, but such personnel may not identify, di-
12 rectly or indirectly, any individual patient in
13 any report of such research, audit, or evalua-
14 tion, or otherwise disclose patient identities in
15 any manner.”;

16 (6) in subsection (d), as so redesignated—

17 (A) by striking “Except as authorized”
18 and all that follows through “may be used” and
19 inserting the following:

20 “(1) IN GENERAL.—Except as authorized by an
21 appropriate order of a court of competent jurisdic-
22 tion granted after application showing good cause
23 therefor, including the need to avert a substantial
24 risk of death or serious bodily harm:

1 “(A) No substance use disorder patient
2 record may be used or disclosed to a law en-
3 forcement official”; and

4 (B) by adding at the end the following:

5 “(B) In the case of a use or disclosure of
6 the content of a substance use disorder patient
7 record for purposes of treatment, payment, or
8 health care operations as provided for under
9 subsection (c), no further disclosure or re-dis-
10 closure of such record is allowed to initiate or
11 substantiate any criminal charges against a pa-
12 tient or to conduct any investigation of a pa-
13 tient.

14 “(2) EXCLUSIONARY EFFECT AND DIS-
15 MISSAL.—Any content of a substance use disorder
16 patient record that has been mistakenly, wrongfully,
17 or intentionally used or disclosed to initiate or sub-
18 stantiate any criminal charges against a patient or
19 to conduct any investigation of a patient in violation
20 of paragraph (1)—

21 “(A) shall be excluded from evidence in
22 any proposed or actual proceedings relating to
23 such criminal charges or investigation; and

24 “(B) absent good cause shown, shall result
25 in the automatic dismissal of any proceedings

1 for which the content of the record was of-
2 fered.”;

3 (7) in subsection (h), as so redesignated—

4 (A) by striking “subsection (h)” and in-
5 serting “subsection (i)”; and

6 (B) by striking “, including procedures and
7 criteria for the issuance and scope of orders
8 under subsection (b)(2)(C),”; and

9 (8) in subsection (i), as so redesignated, by
10 striking “subsection (g)” and inserting “subsection
11 (h)”.

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