

(2) Application

This subsection shall not apply to employment in—

- (A) the Central Intelligence Agency;
- (B) the Federal Bureau of Investigation;
- (C) the National Security Agency;
- (D) any other department or agency of the Federal Government designated for purposes of national security by the President; or
- (E) in any position in any department or agency of the Federal Government, not referred to in subparagraphs (A) through (D), which position is determined pursuant to regulations prescribed by the head of such agency or department to be a sensitive position.

(3) Rehabilitation Act

The inapplicability of the prohibition described in paragraph (1) to the employment described in paragraph (2) shall not be construed to reflect on the applicability of the Rehabilitation Act of 1973 [29 U.S.C. 701 et seq.] or other anti-discrimination laws to such employment.

(c) Construction

This section shall not be construed to prohibit the dismissal from employment of a Federal civilian employee who cannot properly function in his employment.

(July 1, 1944, ch. 373, title V, §541, formerly Pub. L. 91-616, title III, §301, Dec. 31, 1970, 84 Stat. 1849, as amended Pub. L. 92-554, Oct. 25, 1972, 86 Stat. 1167; Pub. L. 93-282, title I, §105(a), May 14, 1974, 88 Stat. 127; Pub. L. 94-371, §3(a), July 26, 1976, 90 Stat. 1035; Pub. L. 96-180, §7, Jan. 2, 1980, 93 Stat. 1303; Pub. L. 97-35, title IX, §962(a), Aug. 13, 1981, 95 Stat. 592; renumbered §520 of act July 1, 1944, and amended Pub. L. 98-24, §2(b)(13), Apr. 26, 1983, 97 Stat. 181; Pub. L. 98-509, title III, §301(c)(2), Oct. 19, 1984, 98 Stat. 2364; renumbered §541, Pub. L. 100-77, title VI, §611(2), July 22, 1987, 101 Stat. 516; Pub. L. 100-607, title VIII, §813(2), Nov. 4, 1988, 102 Stat. 3170; Pub. L. 100-628, title VI, §613(2), Nov. 7, 1988, 102 Stat. 3243; Pub. L. 101-93, §5(t)(1), Aug. 16, 1989, 103 Stat. 615; Pub. L. 102-321, title I, §131, July 10, 1992, 106 Stat. 366; Pub. L. 114-255, div. B, title VI, §6001(c)(1), Dec. 13, 2016, 130 Stat. 1203.)

Editorial Notes

REFERENCES IN TEXT

The Rehabilitation Act of 1973, referred to in subsec. (b)(3), is Pub. L. 93-112, Sept. 26, 1973, 87 Stat. 355, which is classified principally to chapter 16 (§701 et seq.) of Title 29, Labor. For complete classification of this Act to the Code, see Short Title note set out under section 701 of Title 29 and Tables.

CODIFICATION

Section was formerly classified to section 4571 of this title prior to renumbering by Pub. L. 98-24.

AMENDMENTS

2016—Subsec. (a). Pub. L. 114-255 substituted “Assistant Secretary for Mental Health and Substance Use” for “Administrator of the Substance Abuse and Mental Health Services Administration” wherever appearing.

1992—Pub. L. 102-321 amended section generally, substituting provisions relating to substance abuse among

government and other employees for provisions relating to technical assistance to States relative to alcohol abuse and alcoholism programs.

1989—Subsec. (a)(4). Pub. L. 101-93 directed that subsec. (a)(4) of this section as similarly amended by title VIII of Pub. L. 100-607 and title VI of Pub. L. 100-628 be amended to read as if the amendments made by title VI of Pub. L. 100-628 had not been enacted. See 1988 Amendment note below.

1988—Subsec. (a)(4). Pub. L. 100-607 and Pub. L. 100-628 made identical technical amendments to reference to section 290dd-2 of this title to reflect renumbering of corresponding section of original act.

1984—Pub. L. 98-509 amended directory language of Pub. L. 98-24, §2(b)(13). See 1983 Amendment note below.

1983—Pub. L. 98-24, §2(b)(13), as amended by Pub. L. 98-509, renumbered section 4571 of this title as this section.

Subsec. (a). Pub. L. 98-24, §2(b)(13)(A)(i), substituted “the National Institute on Alcohol Abuse and Alcoholism” for “the Institute”.

Subsec. (a)(4). Pub. L. 98-24, §2(b)(13)(A)(ii), substituted “section 290dd-2 of this title” for “section 4581 of this title”.

Subsec. (b). Pub. L. 98-24, §2(b)(13)(A)(iii), substituted “this subchapter” for references to “this chapter”, meaning chapter 60 (§4541 et seq.) of this title, and the Drug Abuse Prevention, Treatment, and Rehabilitation Act [21 U.S.C. 1101 et seq.].

1981—Pub. L. 97-35 restructured provisions and substituted provisions relating to technical assistance for enumerated activities, and improvement of coordination with Drug Abuse Prevention, Treatment, and Rehabilitation Act, for provisions authorizing appropriations through fiscal year ending Sept. 30, 1981, for covered activities.

1980—Pub. L. 96-180 authorized appropriation of \$60,000,000 and \$65,000,000 for fiscal years ending Sept. 30, 1980, and 1981.

1976—Pub. L. 94-371 struck out “and” after “1975” and inserted provisions authorizing \$70,000,000 to be appropriated for fiscal year ending Sept. 30, 1977, \$77,000,000 to be appropriated for fiscal year ending Sept. 30, 1978, and \$85,000,000 to be appropriated for fiscal year ending Sept. 30, 1979.

1974—Pub. L. 93-282 authorized appropriation of \$80,000,000 for fiscal years ending June 30, 1975 and June 30, 1976.

1972—Pub. L. 92-554 substituted “for each of the next two fiscal years” for “for the fiscal year ending June 30, 1973”.

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102-321 effective Oct. 1, 1992, with provision for programs providing financial assistance, see section 801(c), (d) of Pub. L. 102-321, set out as a note under section 236 of this title.

EFFECTIVE DATE OF 1988 AMENDMENTS

Amendment by Pub. L. 100-628 effective Nov. 7, 1988, see section 631 of Pub. L. 100-628, set out as a note under section 254e of this title.

Amendment by Pub. L. 100-607 effective Nov. 4, 1988, see section 831 of Pub. L. 100-607, set out as a note under section 254e of this title.

§ 290dd-1. Admission of substance abusers to private and public hospitals and outpatient facilities**(a) Nondiscrimination**

Substance abusers who are suffering from medical conditions shall not be discriminated against in admission or treatment, solely because of their substance abuse, by any private or

public general hospital, or outpatient facility (as defined in section 300s-3(4) of this title) which receives support in any form from any program supported in whole or in part by funds appropriated to any Federal department or agency.

(b) Regulations

(1) In general

The Secretary shall issue regulations for the enforcement of the policy of subsection (a) with respect to the admission and treatment of substance abusers in hospitals and outpatient facilities which receive support of any kind from any program administered by the Secretary. Such regulations shall include procedures for determining (after opportunity for a hearing if requested) if a violation of subsection (a) has occurred, notification of failure to comply with such subsection, and opportunity for a violator to comply with such subsection. If the Secretary determines that a hospital or outpatient facility subject to such regulations has violated subsection (a) and such violation continues after an opportunity has been afforded for compliance, the Secretary may suspend or revoke, after opportunity for a hearing, all or part of any support of any kind received by such hospital from any program administered by the Secretary. The Secretary may consult with the officials responsible for the administration of any other Federal program from which such hospital or outpatient facility receives support of any kind, with respect to the suspension or revocation of such other Federal support for such hospital or outpatient facility.

(2) Department of Veterans Affairs

The Secretary of Veterans Affairs, acting through the Under Secretary for Health, shall, to the maximum feasible extent consistent with their responsibilities under title 38, prescribe regulations making applicable the regulations prescribed by the Secretary under paragraph (1) to the provision of hospital care, nursing home care, domiciliary care, and medical services under such title 38 to veterans suffering from substance abuse. In prescribing and implementing regulations pursuant to this paragraph, the Secretary shall, from time to time, consult with the Secretary of Health and Human Services in order to achieve the maximum possible coordination of the regulations, and the implementation thereof, which they each prescribe.

(July 1, 1944, ch. 373, title V, §542, formerly Pub. L. 91-616, title II, §201, Dec. 31, 1970, 84 Stat. 1849, as amended Pub. L. 96-180, §6(a), (b)(1), (2)(B), Jan. 2, 1980, 93 Stat. 1302, 1303; Pub. L. 97-35, title IX, §§961, 966(d), (e), Aug. 13, 1981, 95 Stat. 592, 595; renumbered §521 of act July 1, 1944, and amended Pub. L. 98-24, §2(b)(13), Apr. 26, 1983, 97 Stat. 181; Pub. L. 98-509, title III, §301(c)(2), Oct. 19, 1984, 98 Stat. 2364; Pub. L. 99-570, title VI, §6002(b)(1), Oct. 27, 1986, 100 Stat. 3207-158; renumbered §542, Pub. L. 100-77, title VI, §611(2), July 22, 1987, 101 Stat. 516; Pub. L. 102-321, title I, §131, July 10, 1992, 106 Stat. 368; Pub. L. 103-446, title XII, §1203(a)(2), Nov. 2, 1994, 108 Stat. 4689.)

Editorial Notes

CODIFICATION

Section was formerly classified to section 4561 of this title prior to renumbering by Pub. L. 98-24.

AMENDMENTS

1994—Subsec. (b)(2). Pub. L. 103-446 substituted “Under Secretary for Health” for “Chief Medical Director”.

1992—Pub. L. 102-321 amended section generally, substituting provisions relating to admission of substance abusers to private and public hospitals and outpatient facilities for provisions relating to programs for government and other employees.

1986—Subsec. (a). Pub. L. 99-570, §6002(b)(1), redesignated subsec. (b) as (a), struck out “similar” after “fostering and encouraging” in par. (1), and struck out former subsec. (a) which read as follows: “The Office of Personnel Management shall be responsible for developing and maintaining, in cooperation with the Secretary and with other Federal agencies and departments, and in accordance with the provisions of subpart F of part III of title 5, appropriate prevention, treatment, and rehabilitation programs and services for alcohol abuse and alcoholism among Federal civilian employees, consistent with the purposes of this chapter. Such agencies and departments are encouraged to extend, to the extent feasible, these programs and services to the families of alcoholic employees and to employees who have family members who are alcoholics. Such policies and services shall make optimal use of existing governmental facilities, services, and skills.”

Subsecs. (b) to (d). Pub. L. 99-570, §6002(b)(1)(C), redesignated subsecs. (c) and (d) as (b) and (c), respectively. Former subsec. (b) redesignated (a).

1984—Pub. L. 98-509 amended directory language of Pub. L. 98-24, §2(b)(13). See 1983 Amendment note below.

1983—Pub. L. 98-24, §2(b)(13), as amended by Pub. L. 98-509, renumbered section 4561 of this title as this section.

Subsec. (b)(4). Pub. L. 98-24, §2(b)(13)(B)(i), substituted “section 290ee-1 of this title” for “section 1180(b) of title 21”.

Subsec. (d). Pub. L. 98-24, §2(b)(13)(B)(ii), substituted “this section” for “this subchapter”, meaning subchapter II (§4561 et seq.) of chapter 60 of this title.

1981—Subsec. (b). Pub. L. 97-35, §§961, 966(d), made changes in nomenclature, and substituted provisions relating to responsible State administrative agencies, for provisions relating to single State agencies designated pursuant to section 4573 of this title.

1980—Pub. L. 96-180, §6(b)(2)(A), amended section catchline.

Subsec. (a). Pub. L. 96-180, §6(a), substituted “Office of Personnel Management” for “Civil Service Commission” and inserted provisions that require compliance with provisions of subpart F of part III of title 5 and encourage agencies and departments to extend the programs and services to the families of alcoholic employees and to employees who have family members who are alcoholics.

Subsec. (b). Pub. L. 96-180, §6(b)(1), designated existing provisions as par. (1), made the Secretary responsible for encouragement of programs and services, required the programs and services to be designed for application to families of employees and to employees who have family members who are alcoholics, and added pars. (2) to (4).

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102-321 effective Oct. 1, 1992, with provision for programs providing financial assistance, see section 801(c), (d) of Pub. L. 102-321, set out as a note under section 236 of this title.

§ 290dd-2. Confidentiality of records**(a) Requirement**

Records of the identity, diagnosis, prognosis, or treatment of any patient which are maintained in connection with the performance of any program or activity relating to substance use disorder education, prevention, training, treatment, rehabilitation, or research, which is conducted, regulated, or directly or indirectly assisted by any department or agency of the United States shall, except as provided in subsection (e), be confidential and be disclosed only for the purposes and under the circumstances expressly authorized under subsection (b).

(b) Permitted disclosure**(1) Consent**

The following shall apply with respect to the contents of any record referred to in subsection (a):

(A) Such contents may be used or disclosed in accordance with the prior written consent of the patient with respect to whom such record is maintained.

(B) Once prior written consent of the patient has been obtained, such contents may be used or disclosed by a covered entity, business associate, or a program subject to this section for purposes of treatment, payment, and health care operations as permitted by the HIPAA regulations. Any information so disclosed may then be redisclosed in accordance with the HIPAA regulations. Section 17935(c) of this title shall apply to all disclosures pursuant to subsection (b)(1) of this section.

(C) It shall be permissible for a patient's prior written consent to be given once for all such future uses or disclosures for purposes of treatment, payment, and health care operations, until such time as the patient revokes such consent in writing.

(D) Section 17935(a) of this title shall apply to all disclosures pursuant to subsection (b)(1) of this section.

(2) Method for disclosure

Whether or not the patient, 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 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 in any report of such research, audit, or evaluation, or otherwise disclose patient identities in any manner.

(C) If authorized by an appropriate order of a court of competent jurisdiction granted after application showing good cause therefor, including the need to avert a substantial risk of death or serious bodily harm. In assessing good cause the court shall weigh the public interest and the need for disclosure

against the injury to the patient, 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.

(D) To a public health authority, so long as such content meets the standards established in section 164.514(b) of title 45, Code of Federal Regulations (or successor regulations) for creating de-identified information.

(c) 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), or testimony relaying the information contained therein, may not be disclosed or used in any civil, criminal, administrative, or legislative proceedings conducted by any Federal, State, or local authority, against a patient, including with respect to the following activities:

(1) Such record or testimony shall not be entered into evidence in any criminal prosecution or civil action before a Federal or State court.

(2) Such record or testimony shall not form part of the record for decision or otherwise be taken into account in any proceeding before a Federal, State, or local agency.

(3) Such record or testimony shall not be used by any Federal, State, or local agency for a law enforcement purpose or to conduct any law enforcement investigation.

(4) Such record or testimony shall not be used in any application for a warrant.

(d) Application

The prohibitions of this section continue to apply to records concerning any individual who has been a patient, irrespective of whether or when such individual ceases to be a patient.

(e) Nonapplicability

The prohibitions of this section do not apply to any interchange of records—

(1) within the Uniformed Services or within those components of the Department of Veterans Affairs furnishing health care to veterans; or

(2) between such components and the Uniformed Services.

The prohibitions of this section do not apply to the reporting under State law of incidents of suspected child abuse and neglect to the appropriate State or local authorities.

(f) Penalties

The provisions of sections 1176 and 1177 of the Social Security Act [42 U.S.C. 1320d-5, 1320d-6] shall apply to a violation of this section to the extent and in the same manner as such provisions apply to a violation of part C of title XI of such Act [42 U.S.C. 1320d et seq.]. In applying the previous sentence—

(1) the reference to “this subsection” in subsection (a)(2) of such section 1176 shall be treated as a reference to “this subsection (in-