

## COMPARATIVE PRINT

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## PUBLIC HEALTH SERVICE ACT

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## TITLE V—SUBSTANCE ABUSE AND MENTAL HEALTH SERVICES ADMINISTRATION

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## PART D—MISCELLANEOUS PROVISIONS RELATING TO SUBSTANCE ABUSE AND MENTAL HEALTH

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## SEC. 543. 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 abuse** *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 content of any record referred to in subsection (a) may be disclosed in accordance with the prior written consent of the patient with respect to whom such record is maintained, but only to such extent, under such circumstances, and for such purposes as may be allowed under regulations prescribed pursuant to subsection (g).

(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 covered entity or to a program or activity described in subsection (a), for the purposes of treatment, payment, and health care operations, so long as such disclosure is made in accordance with HIPAA privacy regulation. Any redisclosure of information so disclosed may only be made in accordance with this section.*

(E) 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.

(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) PUBLIC HEALTH AUTHORITY.—The term “public health authority” has the meaning given such term for purposes of HIPAA privacy regulation.

(G) TREATMENT.—The term “treatment” has the meaning given such term for purposes of HIPAA privacy regulation.

[(c) USE OF RECORDS IN CRIMINAL PROCEEDINGS.—Except as authorized by a court order granted under subsection (b)(2)(C), no record referred to in subsection (a) may be used to initiate or substantiate any criminal charges against a patient or to conduct any investigation of a patient.]

(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) 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 otherwise be taken into account in any proceeding before a Federal agency;

(3) be used by any Federal, State, or local agency for a law enforcement purpose or to conduct any law enforcement investigation of a patient; or

(4) 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.—Any person who violates any provision of this section or any regulation issued pursuant to this section shall be fined in accordance with title 18, United States Code.]

(f) PENALTIES.—The provisions of sections 1176 and 1177 of the Social Security Act 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. 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 (including as applied pursuant to section 543(f) of the Public Health Service Act)”; and

(2) in subsection (b) of such section 1176—

(A) each reference to “a penalty imposed under subsection (a)” shall be treated as a reference to “a penalty imposed under subsection (a) (including as applied pursuant to section 543(f) of the Public Health Service Act)”; and

(B) each reference to “no damages obtained under subsection (d)” shall be treated as a reference to “no damages obtained under subsection (d) (including as applied pursuant to section 543(f) of the Public Health Service Act)”.

(g) REGULATIONS.—Except as provided in subsection (h), the Secretary shall prescribe regulations to carry out the purposes of this section. Such regulations may contain such definitions, and

may provide for such safeguards and procedures, including procedures and criteria for the issuance and scope of orders under subsection (b)(2)(C), as in the judgment of the Secretary are necessary or proper to effectuate the purposes of this section, to prevent circumvention or evasion thereof, or to facilitate compliance therewith.

(h) APPLICATION TO DEPARTMENT OF VETERANS AFFAIRS.—The Secretary of Veterans Affairs, acting through the Chief Medical Director, shall, to the maximum feasible extent consistent with their responsibilities under title 38, United States Code, prescribe regulations making applicable the regulations prescribed by the Secretary of Health and Human Services under subsection (g) of this section to records maintained in connection with the provision of hospital care, nursing home care, domiciliary care, and medical services under such title 38 to veterans suffering from **[substance abuse]** *substance use disorder*. In prescribing and implementing regulations pursuant to this subsection, the Secretary of Veterans Affairs 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.

(i) ANTIDISCRIMINATION.—

(1) 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—

- (A) admission or treatment for health care;
- (B) hiring or terms of employment;
- (C) the sale or rental of housing; or
- (D) access to Federal, State, or local courts.

(2) 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.

(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.

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