Summary of Protecting Jessica Grubb’s Legacy Act included in the CARES Act (Sec. 3221)

Enacted March 27, 2020

- **Consent:** Requires an initial, affirmative, written consent from patients before their information may be used or disclosed by a covered entity, business associate, or program subject to Part 2 for the purposes of treatment, payment, and healthcare operations as permitted by HIPAA.

- **Redisclosure:** Once initial consent is obtained; part 2 information may be redisclosed in accordance with the HIPAA Privacy Rule until the patient revokes such consent in writing.

- **Public Health:** Part 2 information may be shared with a public health authority as long as the requirements for de-identification of protected health information (PHI) are met as established under the HIPAA Privacy Rule.

- **Notice of Privacy Practices:** Requires, no later than 1 year after date of enactment of the CARES Act, the Secretary of HHS to require covered entities, business associates or part 2 programs to provide a notice of privacy practices in plain language including:
  - a statement of patient’s rights, including self-pay patients, with respect to PHI and a brief description of how the individual may exercise these rights and
  - a description of each purpose for which the covered entity is permitted or required to use or disclose PHI without the patient’s written authorization.

- **Revocation of consent:** Includes an opt-out clause to allow patients an opportunity to rescind consent if they change their minds in the future.

- **Breach notification:** Enforcement of a breach of part 2 information moves under Office for Civil Rights (OCR) in US Department of Health and Human Services (HHS) and penalties for breach will be assessed in accordance with HIPAA.

- **Proceedings:** Except when authorized by a court order or patient consent, part 2 records may not be disclosed or used in any civil, criminal, administrative, or legislative proceedings conducted by any Federal, State, or local authority including the following activities:
  - evidence in any criminal prosecution or civil action before a Federal or State court;
  - proceeding before a Federal, State, or local agency;
  - for any federal, state or local law enforcement purpose or to conduct any law enforcement investigation; and
  - any application for a warrant.

- **Anti-Discrimination:** Expands existing patient protections to prevent discriminatory behavior towards patients suffering from a substance use disorder in relation to:
  - admission, access to or treatment for healthcare;
  - hiring, firing or terms of employment;
  - receipt of worker’s compensation;
- access to Federal, state, or local courts;  
- sale, rental or continued rental of housing;  
- receipt of federal funds; and  
- social services and benefits provided by Federal, State or local governments.

- **Rule of Construction:** Nothing in this section limits a patient’s right to request a restriction on the use or disclosure of a substance use disorder record for purposes of treatment, payment or healthcare operations or a covered entity’s choice to obtain the consent of the individual to use or disclose a part 2 record to carry out treatment, payment or healthcare operations.

- **Sense of Congress:** It is the sense of Congress that:
  - any person treating a patient through a part 2 program is encouraged to access the applicable state-based prescription drug monitoring program when clinically appropriate;  
  - patients have the right to request a restriction on the use or disclosure of a part 2 record for treatment, payment or healthcare operations;  
  - covered entities should make every reasonable effort to the extent feasible to comply with a patient’s request for a restriction regarding such use or disclosure;  
  - the definition of healthcare operations shall have the meaning described in 45 CFR 164.501 but does not include business management and general administrative activities of an entity relating to the creation of de-identified health information or a limited dataset, and fundraising for the benefit of the covered entity (45 CFR 164.501(6)(v)); and  
  - part 2 programs should receive positive incentives for discussing with their patients the benefits to consenting to share such records

- **Rulemaking:** The Secretary of HHS in consultation with appropriate federal agencies shall make revisions to the Part 2 regulations as may be necessary for implementing and enforcing section 3221.

- **Effective Date:** Amendments made by section 3221 shall apply with respect to uses and disclosures of information occurring on or after 12 months after date of enactment of the CARES Act.