



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.