§ 290dd–2. Confidentiality and Addiction Patient Protection Act of 2015 (“CAPPA”)

(a) Requirement

Records of the identity, diagnosis, prognosis, or treatment of any patient which are maintained in connection with substance use 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) of this section, be confidential and be disclosed only for the purposes and under the circumstances expressly authorized under subsection (b) of this section.

(b) Permitted disclosure

(1) Consent

The content of any record referred to in subsection (a) of this section may be disclosed in accordance with the prior written authorization of the patient with respect to whom such record is maintained consistent with the written authorization elements required by the HIPAA privacy regulations, 45 CFR 164, authorized by and set forth in Section 264 of Public Law 104-191 (42 U. S. C. 1320d-2).

(2) Method for disclosure

Whether or not the patient, with respect to whom any given record referred to in subsection (a) of this section is maintained, gives written authorization, 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 individuals and entities for the purpose of conducting scientific research in accordance with human subjects protections as codified in the common rule at 45 C. F. R. 46, HIPAA and HITECH provided such reports do not disclose patient identities to individuals or entities external to the research.

(C) To business associates as defined in the HIPAA and Section 13400 of HITECH provided such entities execute a business associate agreement and such agreement requires the business associate to (1) safeguard the privacy and security of the information in accordance with HITECH, and (2) resist in judicial proceedings or any efforts to obtain information not permitted by this statute.

(D) To and among health care providers and health plans involved in the patient’s treatment for purposes of providing or coordinating health care and related services, and for payment and health care operations as defined by HIPAA.
(E) Within accountable care organizations described in 42 U. S. C. 1395jjj, health information exchanges, health homes defined in 42 U. S. C. 1396w-4(h)(3) or other integrated care arrangements (in existence before, on, or after the date of the enactment of this paragraph) involving the interchange of electronic health records defined in 42 U. S. C. 17921(5) for the purposes of attaining interoperability, improving coordination, reducing health care costs, and enhancing patient safety.

(F) 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.

(3) Minimum necessary standard

Except as authorized by a court order granted under subsection (b)(2)(F) of this section, the use, disclosure or request for the content of a record shall, to the extent practicable, be limited to the minimum necessary to accomplish the intended purpose of such, use, disclosure or request, respectively. For purposes of compliance with this provision, the “minimum necessary” shall be based upon guidance issued by the Secretary in accordance with section 13405 (b)(1)(B) of the American Recovery and Reinvestment Act of 2009.

(c) Use of records

(1) Criminal Proceedings: Except as authorized by a court order granted under subsection (b)(2)(F) of this section, no record referred to in subsection (a) of this section may be used to initiate or substantiate any criminal charges against a patient or to conduct any investigation of a patient.

(2) Civil or Administrative Proceedings: Except as authorized by written authorization or a court order granted under subsection (b)(2)(F) of this section, no record referred to in subsection (a) of this section may be used in any civil or administrative proceedings.

(3) Any record disclosed or used for purposes not permitted by this statute are subject to the penalties and exclusion from evidence as set forth in subsection (f) of this section.

(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

(1) The prohibitions of this section do not apply to any interchange of records 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.

(2) The prohibitions of this section do not apply to the reporting under State law of incidents of suspected child abuse and neglect, domestic violence or elder abuse or other mandated public health reporting to the appropriate State or local authorities.

(3) The prohibitions of this section do not apply to disclosures to law enforcement for a crime on program premises or against program personnel.

(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 HIPAA penalties contained in the HITECH Act, 42 U. S. C. 1320D and any such disclosures of information or wrongful use of information in violation of this statute shall be excluded from evidence and be deemed inadmissible for use in any administrative, civil or criminal proceeding.

(g) Regulations

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)(F) of this section, 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) Non-discrimination

(A) To encourage patients to seek treatment, the non-discrimination employment, insurance and housing provisions, protections and remedies in the Genetic Information Nondiscrimination Act of 2008 (Public Law 110-233) 42 U. S. C. 2000ff shall extend to substance use information.

(B) The nondiscrimination provisions and associated remedies in Sections 2706 and 1557 in Public Law 111-148 shall apply to persons receiving substance use treatment and to any record referred to in subsection (a) of this section.

(i) Preemption
To the extent of any conflict among the provisions in this statute and other federal or state statutes, the provisions that provide the greater protections or rights to the patient shall govern and supersede any inconsistent provisions.