

1 **§ 290dd–2. Confidentiality and Addiction Patient Protection Act of 2015 (“CAPPA”)**

2 **(a) Requirement**

3 Records of the identity, diagnosis, prognosis, or treatment of any patient which are
4 maintained in connection with substance use treatment, rehabilitation, or research, which
5 is conducted, regulated, or directly or indirectly assisted by any department or agency of
6 the United States shall, except as provided in subsection (e) of this section, be confidential
7 and be disclosed only for the purposes and under the circumstances expressly authorized
8 under subsection (b) of this section.

9 **(b) Permitted disclosure**

10 (1) Consent

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

16 (2) Method for disclosure

17 Whether or not the patient, with respect to whom any given record referred to in
18 subsection (a) of this section is maintained, gives written authorization, the content of such
19 record may be disclosed as follows:

20 (A) To medical personnel to the extent necessary to meet a bona fide medical emergency.

21 (B) To individuals and entities for the purpose of conducting scientific research in
22 accordance with human subjects protections as codified in the common rule at 45 C. F. R.
23 46, HIPAA and HITECH provided such reports do not disclose patient identities to individuals
24 or entities external to the research.

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

30 (D) To and among health care providers and health plans involved in the patient’s treatment
31 for purposes of providing or coordinating health care and related services, and for payment
32 and health care operations as defined by HIPAA.

33 (E) Within accountable care organizations described in 42 U. S. C. 1395jjj, health information
34 exchanges, health homes defined in 42 U. S. C. 1396w-4(h)(3) or other integrated care
35 arrangements (in existence before, on, or after the date of the enactment of this paragraph)
36 involving the interchange of electronic health records defined in 42 U. S. C. 17921(5) for the
37 purposes of attaining interoperability, improving coordination, reducing health care costs,
38 and enhancing patient safety.

39 (F) If authorized by an appropriate order of a court of competent jurisdiction granted after
40 application showing good cause therefor, including the need to avert a substantial risk of
41 death or serious bodily harm. In assessing good cause the court shall weigh the public
42 interest and the need for disclosure against the injury to the patient, to the physician-
43 patient relationship, and to the treatment services. Upon the granting of such order, the
44 court, in determining the extent to which any disclosure of all or any part of any record is
45 necessary, shall impose appropriate safeguards against unauthorized disclosure.

46 (3) Minimum necessary standard

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

53 (c) Use of records

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

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

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

63 (d) Application

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

66 **(e) Nonapplicability**

67 (1) The prohibitions of this section do not apply to any interchange of records within the
68 Uniformed Services or within those components of the Department of Veterans Affairs
69 furnishing health care to veterans; or (2) between such components and the Uniformed
70 Services.

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

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

76 **(f) Penalties**

77 Any person who violates any provision of this section or any regulation issued pursuant to
78 this section shall be fined in accordance with HIPAA penalties contained in the HITECH Act,
79 42 U. S. C. 1320D and any such disclosures of information or wrongful use of information in
80 violation of this statute shall be excluded from evidence and be deemed inadmissible for
81 use in any administrative, civil or criminal proceeding.

82 **(g) Regulations**

83 The Secretary shall prescribe regulations to carry out the purposes of this section. Such
84 regulations may contain such definitions, and may provide for such safeguards and
85 procedures, including procedures and criteria for the issuance and scope of orders under
86 subsection (b)(2)(F) of this section, as in the judgment of the Secretary are necessary or
87 proper to effectuate the purposes of this section, to prevent circumvention or evasion
88 thereof, or to facilitate compliance therewith.

89 **(h) Non-discrimination**

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

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

97 **(i) Preemption**

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

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