

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1563 Session of 2021

INTRODUCED BY CUTLER, SCHLOSSBERG, FARRY, PICKETT, SAPPEY, N. NELSON, McNEILL, HANBIDGE, THOMAS, RYAN, WHEELAND, BURGOS, HOHENSTEIN, T. DAVIS, DELLOSO, R. BROWN, MILLARD, ROZZI, OWLETT, SANCHEZ, SCHLEGEL CULVER, A. DAVIS, PASHINSKI, O'MARA, WARNER, MADDEN, NEILSON, CIRESI, JOZWIAK, POLINCHOCK, C. WILLIAMS AND WHITE, JUNE 7, 2021

AS REPORTED FROM COMMITTEE ON HUMAN SERVICES, HOUSE OF REPRESENTATIVES, AS AMENDED, OCTOBER 26, 2021

AN ACT

1 Amending the act of April 14, 1972 (P.L.221, No.63), entitled
2 "An act establishing the Pennsylvania Advisory Council on
3 Drug and Alcohol Abuse; imposing duties on the Department of
4 Health to develop and coordinate the implementation of a
5 comprehensive health, education and rehabilitation program
6 for the prevention and treatment of drug and alcohol abuse
7 and drug and alcohol dependence; providing for emergency
8 medical treatment; providing for treatment and rehabilitation
9 alternatives to the criminal process for drug and alcohol
10 dependence; and making repeals," further providing for
11 definitions and for confidentiality of records.

12 The General Assembly of the Commonwealth of Pennsylvania
13 hereby enacts as follows:

14 Section 1. Section 2(b) of the act of April 14, 1972
15 (P.L.221, No.63), known as the Pennsylvania Drug and Alcohol
16 Abuse Control Act, is amended by adding definitions to read:

17 Section 2. Definitions:

18 \* \* \*

19 (b) As used in this act:

20 "Business associate" means "business associate" as defined in

1 45 CFR 160.103 (relating to definitions).

2 \* \* \*

3 "Covered entity" means "covered entity" as defined in 45 CFR  
4 160.103.

5 \* \* \*

6 "Disclosure" means "disclosure" as defined in 45 CFR 160.103  
7 and includes redisclosures and rereleases of information.

8 \* \* \*

9 "FEDERALLY ASSISTED" MEANS RECEIVING FEDERAL ASSISTANCE AS <--  
10 PROVIDED IN 42 CFR 2.12(B) (RELATING TO APPLICABILITY).

11 \* \* \*

12 "Health care operations" means "health care operations" as  
13 defined in 45 CFR 164.501 (relating to definitions).

14 \* \* \*

15 "Payment" means "payment" as defined in 45 CFR 164.501.

16 \* \* \*

17 "PROGRAM" MEANS "PROGRAM" AS DEFINED IN 42 CFR 2.11 (RELATING <--  
18 TO DEFINITIONS).

19 \* \* \*

20 "Treatment" means "treatment" as defined in 45 CFR 164.501.

21 "Use" means "use" as defined in 45 CFR 160.103.

22 \* \* \*

23 Section 2. Section 8(b) and (c)(1) and (2) of the act are  
24 amended AND THE SECTION IS AMENDED BY ADDING A SUBSECTION to <--  
25 read:

26 Section 8. Confidentiality of Records.--\* \* \*

27 (b) ~~(1)~~ **[All patient]** (1) PATIENT records (including all <--  
28 records relating to any commitment proceeding), EXCEPT PATIENT <--  
29 RECORDS SUBJECT TO SUBSECTION (D), prepared or obtained pursuant  
30 to this act, and all information contained therein, **[shall**

1 remain confidential, and may be disclosed only with the  
2 patient's consent and only] may not be disclosed without the  
3 patient's consent, except:

4 (i) to medical personnel exclusively for purposes of  
5 diagnosis and treatment of the patient [or];

6 (ii) to government or other officials exclusively for the  
7 purpose of obtaining benefits due the patient as a result of his  
8 drug or alcohol abuse or drug or alcohol dependence except that  
9 in emergency medical situations where the patient's life is in  
10 immediate jeopardy, patient records may be released without the  
11 patient's consent to proper medical authorities solely for the  
12 purpose of providing medical treatment to the patient[.]; or

13 (iii) to a covered entity or a covered entity's business  
14 associate that: <--

15 ~~(A) makes the use, disclosure or request for disclosure in~~  
16 ~~accordance with 45 CFR Pt. 164, Subpt. E (relating to privacy~~ <--  
17 ~~of individually identifiable health information); and~~ <--

18 ~~(B) makes the use, disclosure or request for disclosure for~~  
19 ~~the purpose of treatment, payment or health care operations.~~

20 (2) Disclosure may be made for purposes unrelated to such  
21 treatment or benefits only upon an order of a court of common  
22 pleas after application showing good cause therefor. In  
23 determining whether there is good cause for disclosure, the  
24 court shall weigh the need for the information sought to be  
25 disclosed against the possible harm of disclosure to the person  
26 to whom such information pertains, the physician-patient  
27 relationship, and to the treatment services, and may condition  
28 disclosure of the information upon any appropriate safeguards.  
29 No such records or information may be used to initiate or  
30 substantiate criminal charges against a patient under any

1 circumstances.

2 (c) (1) Except as provided under SUBSECTION (D) AND section <--  
3 12(b), patient records and all information contained therein  
4 relating to drug or alcohol abuse or drug or alcohol dependence  
5 prepared or obtained by a private practitioner, hospital,  
6 clinic, drug rehabilitation or drug treatment center shall  
7 remain confidential and may [be disclosed only] not be disclosed  
8 WITHOUT A PATIENT'S CONSENT except: <--

9 (i) when the patient is of the age of majority [and consents  
10 to the disclosure]; or

11 (ii) if the patient is a minor, the patient consents to  
12 treatment under section 12(a) [and consents to the disclosure].  
13 A minor patient who does not consent to medical treatment or  
14 counseling under section 12(a) may consent to the disclosure of  
15 records and information.

16 (2) Records and information subject to disclosure in  
17 accordance with paragraph (1) shall only be disclosed:

18 (i) to medical personnel exclusively for purposes of  
19 diagnosis and treatment of the patient;

20 (ii) to the parent or legal guardian of a minor or any other  
21 designee for which the patient has provided consent; [or]

22 (iii) to government or other officials exclusively for the  
23 purpose of obtaining benefits due the patient as a result of his  
24 drug or alcohol abuse or drug or alcohol dependence[.]; or

25 (iv) to a covered entity or a covered entity's business  
26 associate that: <--

27 (A) makes the use, disclosure or request for disclosure in  
28 accordance with 45 CFR Pt. 164, Subpt. E; and <--

29 (B) makes the use, disclosure or request for disclosure for  
30 the purpose of treatment, payment or health care operations. E. <--

1 \* \* \*

2 (D) NOTWITHSTANDING ANY OTHER PROVISION OF LAW, PATIENT  
3 RECORDS OF A FEDERALLY ASSISTED PROGRAM SUBJECT TO 42 CFR PT. 2  
4 (RELATING TO CONFIDENTIALITY OF SUBSTANCE USE DISORDER PATIENT  
5 RECORDS) AND ALL INFORMATION CONTAINED IN SUCH PATIENT RECORDS  
6 SHALL REMAIN CONFIDENTIAL AND MAY BE DISCLOSED ONLY AS PERMITTED  
7 BY 42 CFR PT. 2 AND OTHER APPLICABLE FEDERAL LAW.

8 \* \* \*

<--

9 Section 3. ~~For the purpose of implementing the amendment of~~ <--  
10 ~~section 8(b) and (c)(1) and (2) of the act regarding access to~~  
11 ~~confidential patient records for a covered entity or a covered~~  
12 ~~entity's business associate, the Secretary of Health shall~~  
13 ~~promulgate regulations in accordance the act of July 31, 1968~~  
14 ~~(P.L.769, No.240), referred to as the Commonwealth Documents~~  
15 ~~Law, no later than 180 days after the effective date of this~~  
16 ~~section.~~ THE DEPARTMENT OF DRUG AND ALCOHOL PROGRAMS SHALL NOT <--  
17 HAVE THE AUTHORITY TO PROMULGATE OR ENFORCE A REGULATION THAT  
18 RESTRICTS ANY DISCLOSURE OF RECORDS OR INFORMATION THAT IS  
19 PERMITTED BY THIS ACT.

20 Section 4. This act shall take effect immediately.