

## Report on Patient Privacy Volume 20, Number 4. April 09, 2020 COVID-19 Legislative Surprises: Part 2 Rules Harmonized With HIPAA; NPPs to be Revised

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By Theresa Defino

Over the years, HHS has made slight revisions to regulations governing substance abuse, doing as much as it could, while Congress made a few adjustments but never going as far as some wanted—full alignment of so-called Part 2 regulations with HIPAA to avoid the widespread confusion that has existed for many years.

Enter the COVID-19 pandemic relief effort legislative scramble and—voila—it happened. Yet that change has nothing to do with the pandemic, stemming instead from advocacy efforts by a family whose daughter died of an overdose because a new doctor prescribed her oxycodone not knowing she had previously been addicted to heroin.

A provision tucked into the Coronavirus Aid, Relief, and Economic Security (CARES) Act<sup>[1]</sup> calls for HHS, within one year of the signing of the law (March 27, 2021), to amend the HIPAA regulations, including breach notification, to include records created by substance use disorder (SUD) programs and activities that are now governed by 42 C.F.R. § 2, known as Part 2 for short. Part 2 regulations are enforced by the Substance Abuse and Mental Health Services Administration (SAMHSA), part of HHS.

The CARES Act contains another HIPAA-related surprise: Congress is requiring HHS to revise the notice of privacy practices (NPPs) that covered entities (CEs) must distribute the first time they see patients, a task likely to be undertaken by the Office for Civil Rights (OCR). With both the Part 2 changes and the NPP requirements, Congress has stepped into areas where HHS is already deeply engaged in rulemaking and will now have to change course.

The CARES Act was crafted mainly by the Senate Finance and the Health, Education, Labor and Pensions (HELP) Committees, with contributions from other committees. Taylor Haulsee, a spokesman for Sen. Lamar Alexander, R-Tenn., HELP Committee chair, tells *RPP* the changes to Part 2 are identical to those contained in S. 3374, Protecting Jessica Grubb's Legacy Act, which was reintroduced last month by Sens. Joe Manchin, D-W.Va., and Shelley Moore Capito, R-W.Va.<sup>[2]</sup>

Grubb died four years ago at age 30.

As Manchin, a member of the HELP Committee, and Capito explained on March 3, Grubb “was sober and focusing on making a better life for herself” after seven years of “battling substance use disorder” when she suffered an injury while training for a marathon and had to have surgery.

“Her parents, David and Kate Grubb, went to Michigan for her surgery and told her doctors and hospital personnel that she was recovering from substance use disorder. However, after Jessie's surgery, the discharging doctor, who said he didn't know she was recovering from substance use disorder, sent her home with a prescription for 50 oxycodone pills,” the senators said.

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