

THE NATIONAL LAW REVIEW

May Highlights: National Healthcare Law News

Thursday, May 24, 2018

-Earlier this month, on May 7, 2018, the Senate passed bipartisan S.B. 1732, entitled the “Improving Access to Behavioral Health Information Technology Act.” The bill, which is currently in the House of Representatives, aims to provide “incentive payments to behavioral health providers for the adoption and use of certified electronic health record technology...to improve the quality and coordination of care through the electronic documentation and exchange of health information.”

o In passing the bill, the Senate seems to be recognizing that comprehensive EHRs can help reduce costs to the entire healthcare system by maximizing productive physician-patient time while minimizing time unnecessarily spent re-conducting previously administered tests, asking previously answered patient history questions, etc.

o This incentive (if passed by the House) could benefit federally-defined psychiatric hospitals, community mental health centers, clinical psychologists, clinical social workers, and hospitals, treatment facilities, and mental health or substance use disorder providers that participate in Medicaid.

o You can read the text of the bill here: <https://www.congress.gov/bill/115th-congress/senate-bill/1732/text>.

-On Friday, May 11, 2018, President Trump announced a blueprint for lowering drug prices, called “American Patients First.” The blueprint identifies four key strategies for reform: (1) improved competition, (2) better negotiation, (3) incentives for lower list prices, and (4) lowering out-of-pocket costs. The overall theme of these blueprint strategies appears to be transparency.

o To further the aim of incentivizing lower drug prices, the blueprint provides for an FDA-conducted evaluation of requiring manufacturers to include prices in advertising. The blueprint also prioritizes making price increases and generic competition more transparent by updating Medicare’s drug-pricing dashboard as an “immediate” action.

o Several other proposed strategies of note include revisiting the safe harbor under the Anti-Kickback Statute with the goal of restricting the use of drug rebates, and considering fiduciary status for Pharmacy Benefit Managers (PBMs).

o You can read the report in full here: <https://www.hhs.gov/sites/default/files/AmericanPatientsFirst.pdf>.

- Currently before the House is H.R. 5795 (the “Overdose Prevention and Patient Safety Act”), a related bill to S.B. 1732, which seeks to amend the Public Health Service Act to protect the confidentiality of substance use disorder patient records. In its current state, the bill requires the Secretary of Health and Human Services to identify model programs and materials (and if none exist, to create them) that: (1) train health care providers concerning permitted uses and disclosures for the confidentiality of patient records, and (2) train patients and their families regarding their rights to protect and obtain information.

o These model programs and materials must address circumstances under which disclosure of substance use disorder patient records is needed to:

- Facilitate coordination of care (through communication between substance use disorder treatment



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providers and other health care providers) to promote and provide the best possible integrated care;

- Avoid inappropriate prescribing (that can potentially lead to dangerous drug interactions, overdose, or relapse); and
- Notify and involve families and care-givers when individuals experience an overdose.

o In further effort to promote health-related disclosures and more open communication between providers without causing harm to the patient, the bill includes antidiscrimination provisions applicable to all entities and to recipients of federal funds, specifically.

o H.R. 5795 provides that no entity may discriminate in admission or treatment for health care, hiring or terms of employment, the sale or rental of housing, or access to Federal, State, or local courts, against an individual on the basis of information received pursuant to HIPAA-conforming disclosures.

o The bill also specifically prohibits recipients of federal funds from discriminating against individuals on the basis of information received by the recipient pursuant to disclosures made for the purposes of treatment, payment, and health care operations, so long as the disclosures were made in accordance with HIPAA.

o You can read the most recently available text of the bill here:

<https://docs.house.gov/meetings/IF/IF14/20180517/108343/BILLS-1155795ih.pdf>.

-Keep a lookout for H.B. 5797, the text of which has yet to be released, but which purportedly seeks to “amend title XIX of the Social Security Act to allow States to provide under Medicaid services for certain individuals with opioid use disorders in institutions for mental diseases.”

o You can check in on the status of the bill here: [https://www.congress.gov/bill/115th-congress/house-](https://www.congress.gov/bill/115th-congress/house-bill/5797/text?)

[bill/5797/text?
q=%7B%22search%22%3A%5B%22%5C%22institution+for+mental+disease%5C%22%22%5D%7D&r=1](https://www.congress.gov/bill/115th-congress/house-bill/5797/text?q=%7B%22search%22%3A%5B%22%5C%22institution+for+mental+disease%5C%22%22%5D%7D&r=1).

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