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Health Care Alert: House Bill Aims to Align Privacy Rules for Substance Abuse Records with HIPAA

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Congressmen Earl Blumenauer (D-OR) and Tim Murphy (R-PA) recently introduced the **Overdose Prevention and Patient Safety Act**, a measure that would align the Confidentiality of Alcohol and Drug Abuse Patient Records regulations (42 C.F.R. Part 2) with the Health Insurance Portability and Accountability Act of 1996, as amended (HIPAA).

The goal of the bill is to ensure that health care providers have access to a patient's entire medical record prior to making any treatment decisions. Specifically, it is a response to current 42 C.F.R. Part 2 regulations that often prohibit physicians and other treatment providers from knowing a patient's addiction treatment history prior to prescribing controlled substances, such as opioids. In order to address this particular obstacle, the bill would apply the more lenient HIPAA standards regarding the disclosure of medical records for purposes of treatment, payment, and operations to substance use treatment records. In addition, the bill would modify applicable law by specifying that when the use or disclosure of a substance use record was for purposes of treatment, payment, or operations, no further disclosure or re-disclosure of the records is allowed to initiate or substantiate any criminal charges against a patient or to conduct any investigation of a patient except as authorized by a valid court order.

The Partnership to Amend 42 C.F.R. Part 2, a coalition of dozens of health care stakeholders (including the American Hospital Association, American Health Insurance Plans, and The Joint Commission, among others), has expressed support for the bill, saying that the measure would "help to ensure persons with opioid use disorder and other substance use disorders receive the safe, effective care they need." Those following the history of 42 C.F.R. Part 2 will note that a lengthy debate concluded late last year culminating in newly effective final rules in 2017 regarding the confidentiality of substance use disorder records – the effect of which continued to provide strict protections of substance use disorder records and the disclosure and re-disclosure of same. With the nationwide opioid crisis looming, it will be interesting to follow this legislation to see if the overriding public policy will shift away from protecting the confidentiality of substance use disorder records

and toward more disclosures in limited circumstances. Vorys will continue to follow this legislation and will provide updates on its status.