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Pallone Floor Remarks Opposing Repeal of Patient Privacy Protections

“This House should not take any action that puts at risk people seeking treatment for any substance use disorder, but particularly opioid use disorder.”

Washington, D.C. – *Energy and Commerce Ranking Member Frank Pallone, Jr. (D-NJ) delivered the following remarks on the House Floor in opposition to H.R. 6082, the Overdose Prevention and Patient Safety Act:*

Mr. Speaker – I rise in opposition to H.R. 6082, the Overdose Prevention and Patient Safety Act.

This legislation could greatly harm our efforts to combat the opioid epidemic.

If we really want to turn the tide on this crisis we must find ways to get more people into treatment for opioid use disorder.

In 2016 there were about 21 million Americans aged 12 or older in need of substance use disorder treatment, but only 4 million of those people received treatment.

That means 17 million people are going without the treatment they need. Failure to get individuals with opioid use disorder into treatment increases risks of fatal and non-fatal overdoses, as people continue to seek out illicit opioids as part of their addiction.

The increasing presence of fentanyl in our drug supply only heightens this concern.

Strategies that increase the number of people getting into and remaining in treatment are particularly important because, as these treatment statistics show, major challenges exist to getting people with substance use disorders to enter treatment in the first place.

And this House should not take any action that puts at risk people seeking treatment for any substance use disorder, but particularly opioid use disorder.

Unfortunately, this bill risks doing just that -- reducing the number of people willing to come forward and remain in treatment because they worry about the negative consequences that seeking treatment can have on their lives.

This is a very real concern.

This bill weakens privacy protections that must be in place for some people to feel comfortable about starting treatment for their substance use disorder.

Ensuring strong privacy protections is critical to maintaining an individuals' trust in the health care system and a willingness to obtain needed health services, and these protections are especially important where very sensitive information is concerned.

The information that may be included in the treatment records of a substance use disorder patient are particularly sensitive because disclosure of substance use disorder information can create tangible vulnerabilities that are not the same as other medical conditions.

For example, you are not incarcerated for having a heart attack, you cannot legally be fired for having cancer, and you are not denied visitation to your children due to sleep apnea.

According to SAMHSA, the negative consequences that can result from the disclosure of an individual's substance use disorder treatment record, can include loss of employment, loss of housing, loss of child custody, discrimination by medical professionals and insurers, arrest, prosecution, and incarceration.

These are real risks that keep people from getting treatment in the first place.

And while I understand the roll back of Part 2 privacy protections to the HIPAA standard would limit permissible disclosures without patient consent to health care organizations, this ignores the reality. It may be illegal for information to be disclosed outside these health care organizations but, information does get out.

Breaches do happen. Remember the recent large-scale Aetna breach that disclosed some of its members HIV status? But there also are small scale breaches that don't make the news but that can have devastating consequences for patients trying to recover and get treatment.

For example, a recent ProPublica investigation detailed instances where a health care organization's employee peeked at the record of a patient 61 times and posted details on Facebook while another improperly shared a patient's health information with the patient's parole officer.

Breaches such as this are very concerning, and could occur more often as the result of this legislation.

While I appreciate the sponsors' efforts to alleviate these concerns, I do not believe the potential harm that could be caused by eliminating the patient consent requirement of Part 2 for treatment, payment, and health care operations can be remedied through the measures included in this bill.

The inclusion of these provisions cannot compensate for the risk of stigma, discrimination, and negative health and life outcomes for individuals with opioid use disorder that could result from the weakening of Part 2's privacy protections.

That is why every substance use disorder patient group has come out in opposition to this measure.

According to the Campaign to Protect Patient Privacy Rights, a coalition of more than 100 organizations, "using the weaker HIPAA Privacy Rule standard of allowing disclosures of SUD information without patient consent for treatment, payment, and health care operations ... will contribute to the existing level of discrimination and harm to people living with substance use disorders."

The Campaign goes on to say, "This will only result in more people who need substance use disorder treatment, being discouraged and afraid to seek the health care they need during the nation's worst opioid crisis."

This is a risk we should simply not take, and yet the Majority is bringing this bill to the floor today despite the very real concerns of these experts.

These groups uniquely understand what's at stake from this legislation because many of their members live with or in fear of the negative consequences that result from the disclosure of their SUD diagnosis and treatment information.

In fact, the negative consequences that would result from the disclosure of someone's substance use disorder would solely affect that individual and their family.

They will bear the burden if we get this wrong. They could be at risk of potentially losing custody of their child and their freedom by the increased risk of an improper disclosure of their medical record if this bill becomes law.

And these risks may simply just keep them from seeking potentially life-saving treatment.

That's why substance use disorder treatment providers have raised concerns.

The South Carolina Association of Opioid Dependence explained, "[e]ven with the growing awareness that substance use disorders are a disease, the unfortunate truth is that persons with SUD are still actively discriminated against. . . Such as a baby being taken away from a new mother because she is on methadone for an OUD despite long-standing compliance with her treatment and abstinence from illegal drug-use."

Another provider, Raise the Bottom Addiction Treatment, one of two medical assisted treatment facilities in Idaho, explained, “our patients come from every walk of life, including professionals and executives within our community.”

“Their anonymity and privacy is of the utmost importance because their careers, families, and livelihood often depend on it.”

“Knowing that people may seek treatment without fear of backlash and/or discrimination is often a deciding factor when considering entering treatment.”

“To undo this protection will deeply affect one’s ability and willingness to seek help... Not only can the members of our community not afford to lose their right to confidentiality, but we as a nation cannot afford to move backwards in our fight to combat this opiate crisis.”

Again, these are the words of experts on the front lines fighting this epidemic.

People who suffer from a substance use disorder should be able to decide with whom to share their treatment records from Part 2 programs and for what purposes. Those rights are taken away from them under this legislation and that is wrong.

As we face a tragic national drug abuse problem – the scale of which our country has never seen -- I believe maintaining the heightened privacy protections of Part 2 remains vital to ensuring all individuals with substance use disorder can seek treatment for their substance use disorder with confidence that their right to privacy will be protected.

To do otherwise at this time is just too great a risk.

I strongly urge my colleagues to listen to the experts on this subject and to vote no to this legislation.

Thank you, I reserve the balance of my time.

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