

/* 38 USC 7332 follows which provides significant protections to Veterans seeking care for HIV. The section does permit some disclosures, including disclosure of the HIV status of a person to their sexual partners. Regulations which are required to be instituted are under under consideration. The proposed regulations are contained in this program. */

Section 7332. Confidentiality of certain medical records

(a) (1) Records of the identity, diagnosis, prognosis, or treatment of any patient or subject which are maintained in connection with the performance of any program or activity (including education, training, treatment, rehabilitation, or research) relating to drug abuse, alcoholism or alcohol abuse, infection with the human immunodeficiency virus, or sickle cell anemia which is carried out by or for the Department under this title shall, except as provided in subsections (e) and (f), be confidential, and (section 5701 of this title to the contrary notwithstanding) such records may be disclosed only for the purposes and under the circumstances expressly authorized under subsection (b).

(2) Paragraph (1) prohibits the disclosure to any person or entity other than the patient or subject concerned of the fact that a special written consent is required in order for such records to be disclosed.

(b) (1) The content of any record referred to in subsection (a) may be disclosed by the Secretary in accordance with the prior written consent of the patient or subject with respect to whom such record is maintained, but only to such extent, under such circumstances, and for such purposes as may be allowed in regulations prescribed by the Secretary.

(2) Whether or not any patient or subject, with respect to whom any given record referred to in subsection (a) is maintained, gives written consent, the content of such record may be disclosed by the Secretary as follows:

(A) To medical personnel to the extent necessary to meet a bona fide medical emergency.

(B) To qualified personnel for the purpose of conducting scientific research, management audits, financial audits, or program evaluation, but such personnel may not identify, directly or indirectly, any individual patient or subject in any report of such research, audit, or evaluation, or otherwise disclose patient or subject identities in any manner.

(C) (i) In the case of any record which is maintained in connection with the performance of any program or activity relating to infection with the human immunodeficiency virus, to a Federal, State, or local public-health authority, charged under Federal or State law with the protection of the public health, and to which Federal or State law requires disclosure of such record, if a qualified representative of such authority has made a written request that such record be provided as required pursuant to such law for a purpose authorized by such law.

(ii) A person to whom a record is disclosed under this paragraph may not redisclose or use such record for a purpose other than that for which the disclosure was made.

(D) If authorized by an appropriate order of a court of competent jurisdiction granted after application showing good cause therefor. In assessing good cause the court shall weigh the public interest and the need for disclosure against the injury to the patient or subject, to the physician-patient relationship, and to the treatment services. Upon the granting of such order, the court, in determining the extent to which any disclosure of all or any part of any record is necessary, shall impose appropriate safeguards against unauthorized disclosure.

(3) In the event that the patient or subject who is the subject of any record referred to in subsection (a) is deceased, the content of any such record may be disclosed by the Secretary only upon the prior written request of the next of kin, executor, administrator, or other personal representative of such patient or subject and only if the Secretary determines that such disclosure is necessary for such survivor to obtain benefits to which such survivor may be entitled, including the pursuit of legal action, but then only to the extent, under such circumstances, and for such purposes as may be allowed in regulations prescribed pursuant to section 7334 of this title.

(c) Except as authorized by a court order granted under subsection (b) (2) (D), no record referred to in subsection (a) of this section may be used to initiate or substantiate any criminal charges against, or to conduct any investigation of, a patient or subject.

(d) The prohibitions of this section shall continue to apply to records concerning any person who has been a patient or subject, irrespective of whether or when such person ceases to be a patient.

(e) The prohibitions of this section shall not prevent any interchange of records:

(1) within and among those components of the Department furnishing health care to veterans, or determining eligibility for benefits under this title; or

(2) between such components furnishing health care to veterans and the Armed Forces.

/* One of the exceptions is a partner disclosure. */

(f) (1) Notwithstanding subsection (a) but subject to paragraph (2), a physician or a professional counselor may disclose information or records indicating that a patient or subject is infected with the human immunodeficiency virus if the disclosure is made to (A) the spouse of the patient or subject, or (B) to an individual whom the patient or subject has, during the process of professional counseling or of testing to determine whether the patient or subject is infected with such virus, identified as being a sexual partner of such patient or subject.

(2) (A) A disclosure under paragraph (1) may be made only if the physician or counselor, after making reasonable efforts to counsel and encourage the patient or subject to provide the information to the spouse or sexual partner, reasonably believes that the patient or subject will not provide the information to the spouse or sexual partner and that the disclosure is necessary to protect the health of the spouse or sexual partner.

(B) A disclosure under such paragraph may be made by a physician or counselor other than the physician or counselor referred to in subparagraph (A) if such physician or counselor is unavailable by reason of absence or termination of employment to make the disclosure.

(g) Any person who violates any provision of this section or any regulation issued pursuant to this section shall be fined, in the case of a first offense, up to the maximum amount provided under section 5701(f) of this title for a first offense under that section and, in the case of a subsequent offense, up to the maximum amount provided under section 5701(f) of this title for a subsequent offense under that section.

(Added Oct. 21, 1976, P. L. 94-581, Title I, 111(a)(1), 90 Stat. 2849; May 20, 1988, P. L. 100-322, Title I, Part C, 121, 102 Stat. 502; May 7, 1991, P. L. 102-40, Title IV, 401(a)(4)(A), 402(d)(1), 403(a)(1), (2), (4), (5), 105 Stat. 221, 239.)

Section 7333. Nondiscrimination against alcohol and drug abusers and persons infected with the human immunodeficiency virus

(a) Veterans eligible for treatment under chapter 17 of this title [38 USC 1701 et seq.] who are alcohol or drug abusers or who are infected with the human immunodeficiency virus shall not be discriminated against in admission or treatment by any Department health-care facility solely because of their alcohol or drug abuse or dependency or because of their viral infection.

(b) The Secretary shall prescribe regulations for the enforcement of this section. Such regulations, with respect to the admission and treatment of such veterans who are alcohol or drug abusers, shall be prescribed in accordance with section 7334 of this title.

/* These proposed regulations are reproduced in this program. The final regulations will be added to the next update. */

(Added Oct. 21, 1976, P. L. 94-581, Title I, 111(a)(1), 90 Stat. 2850; May 20, 1988, P. L. 100-322, Title I, Part C, 122(a), 102 Stat. 503; May 7, 1991, P. L. 102-40, Title IV, 401(a)(4)(A), 402(d)(1), 403(a)(1), (2), 105 Stat. 221, 239.)

Section 7334. Regulations

(a) Regulations prescribed by the Secretary under section 7331 of this title, section 7332 of this title with respect to the confidentiality of alcohol and drug abuse medical records, and section 7333 of this title with respect to alcohol or drug abusers shall, to the maximum extent feasible consistent with other provisions of this title, make applicable the regulations described in subsection (b) to the conduct of research and to the provision of hospital care, nursing home care, domiciliary care, and medical services under this title.

(b) The regulations referred to in subsection (a) are:

(1) regulations governing human experimentation and informed consent prescribed by the Secretary of Health and Human Services, based on the recommendations of the National Commission for the Protection of Human Subjects of Biomedical and Behavioral Research, established by section 201 of the National Research Act (Public Law 93-348; 88 Stat. 348); and

(2) regulations governing (A) the confidentiality of drug and alcohol abuse medical records, and (B) the admission of drug and alcohol abusers to private and public hospitals, prescribed pursuant to the Comprehensive Alcohol Abuse and Alcoholism

Prevention, Treatment, and Rehabilitation Act of 1970 (42 U.S.C. 4551 et seq.) and the Drug Abuse Office and Treatment Act of 1972 (21 U.S.C. 1101 et seq.).

(c) Regulations prescribed by the Secretary under sections 7331, 7332, and 7333 of this title may contain such definitions, and may provide for such safeguards and procedures (including procedures and criteria for the issuance and scope of court orders under section 7332(b)(2)(C) of this title), as are necessary to prevent circumvention or evasion of such regulations or to facilitate compliance with such regulations.

(d) In prescribing and implementing such regulations, the Secretary shall, from time to time, consult with the Secretary of Health and Human Services and, as appropriate, with the President (or the delegate of the President) in order to achieve the maximum possible coordination of the regulations, and the implementation of the regulations, which they and the Secretary prescribe.

(Added Oct. 21, 1976, P. L. 94-581, Title I, 111(a)(1), 90 Stat. 2851; Oct. 12, 1982, P. L. 97-295, 4(87), 96 Stat. 1312; May 20, 1988, P. L. 100-322, Title I, Part C, 122(a), 102 Stat. 504; May 7, 1991, P. L. 102-40, Title IV, 401(A)(4)(A), 402(d)(1), 403(a)(1), (4), 105 Stat. 221, 239.)