

(Pub. L. 108-173, title X, §1013, Dec. 8, 2003, 117 Stat. 2438.)

REFERENCES IN TEXT

The Social Security Act, referred to in subsec. (a)(1)(A), (2)(C)(i), (3)(A)(iii), (C)(i), (4)(A), (6)(A), (C), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended. Titles XVIII, XIX, and XXI of the Act are classified generally to subchapters XVIII (§1395 et seq.), XIX (§1396 et seq.), and XXI (§1397aa et seq.), respectively, of chapter 7 of this title. Parts C and D of title XVIII of the Act are classified generally to parts C (§1395w-21 et seq.) and D (§1395w-101 et seq.), respectively, of subchapter XVIII of chapter 7 of this title. For complete classification of this Act to the Code, see section 1305 of this title and Tables.

The Federal Food, Drug, and Cosmetic Act, referred to in subsec. (a)(3)(C)(ii)(I), (4)(B), is act June 25, 1938, ch. 675, 52 Stat. 1040, as amended, which is classified generally to chapter 9 (§301 et seq.) of Title 21, Food and Drugs. For complete classification of this Act to the Code, see section 301 of Title 21 and Tables.

The Public Health Service Act, referred to in subsec. (a)(3)(C)(ii)(I), (4)(A), is act July 1, 1944, ch. 373, 58 Stat. 682, as amended, which is classified generally to this chapter. Title IX of the Act is classified generally to this subchapter. For complete classification of this Act to the Code, see Short Title note set out under section 201 of this title and Tables.

CODIFICATION

Section was enacted as part of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003, and not as part of the Public Health Service Act which comprises this chapter.

DEFINITION OF “SECRETARY”

“Secretary” as meaning the Secretary of Health and Human Services, see section 1(c)(2) of Pub. L. 108-173, set out as a note under section 1301 of this title.

§ 299b-8. Omitted

CODIFICATION

Section, Pub. L. 111-5, div. A, title VIII, §804, Feb. 17, 2009, 123 Stat. 187, established the Federal Coordinating Council for Comparative Effectiveness Research.

TERMINATION OF FEDERAL COORDINATING COUNCIL FOR COMPARATIVE EFFECTIVENESS RESEARCH

Pub. L. 111-148, title VI, §6302, Mar. 23, 2010, 124 Stat. 747, provided that the Federal Coordinating Council for Comparative Effectiveness Research established under this section terminated on Mar. 23, 2010.

PART C—PATIENT SAFETY IMPROVEMENT

§ 299b-21. Definitions

In this part:

(1) HIPAA confidentiality regulations

The term “HIPAA confidentiality regulations” means regulations promulgated under section 264(c) of the Health Insurance Portability and Accountability Act of 1996 (Public Law 104-191; 110 Stat. 2033).

(2) Identifiable patient safety work product

The term “identifiable patient safety work product” means patient safety work product that—

(A) is presented in a form and manner that allows the identification of any provider that is a subject of the work product, or any providers that participate in activities that are a subject of the work product;

(B) constitutes individually identifiable health information as that term is defined in the HIPAA confidentiality regulations; or

(C) is presented in a form and manner that allows the identification of an individual who reported information in the manner specified in section 299b-22(e) of this title.

(3) Nonidentifiable patient safety work product

The term “nonidentifiable patient safety work product” means patient safety work product that is not identifiable patient safety work product (as defined in paragraph (2)).

(4) Patient safety organization

The term “patient safety organization” means a private or public entity or component thereof that is listed by the Secretary pursuant to section 299b-24(d) of this title.

(5) Patient safety activities

The term “patient safety activities” means the following activities:

(A) Efforts to improve patient safety and the quality of health care delivery.

(B) The collection and analysis of patient safety work product.

(C) The development and dissemination of information with respect to improving patient safety, such as recommendations, protocols, or information regarding best practices.

(D) The utilization of patient safety work product for the purposes of encouraging a culture of safety and of providing feedback and assistance to effectively minimize patient risk.

(E) The maintenance of procedures to preserve confidentiality with respect to patient safety work product.

(F) The provision of appropriate security measures with respect to patient safety work product.

(G) The utilization of qualified staff.

(H) Activities related to the operation of a patient safety evaluation system and to the provision of feedback to participants in a patient safety evaluation system.

(6) Patient safety evaluation system

The term “patient safety evaluation system” means the collection, management, or analysis of information for reporting to or by a patient safety organization.

(7) Patient safety work product

(A) In general

Except as provided in subparagraph (B), the term “patient safety work product” means any data, reports, records, memoranda, analyses (such as root cause analyses), or written or oral statements—

(i) which—

(I) are assembled or developed by a provider for reporting to a patient safety organization and are reported to a patient safety organization; or

(II) are developed by a patient safety organization for the conduct of patient safety activities;

and which could result in improved patient safety, health care quality, or health care outcomes; or

(ii) which identify or constitute the deliberations or analysis of, or identify the fact of reporting pursuant to, a patient safety evaluation system.

(B) Clarification

(i) Information described in subparagraph (A) does not include a patient's medical record, billing and discharge information, or any other original patient or provider record.

(ii) Information described in subparagraph (A) does not include information that is collected, maintained, or developed separately, or exists separately, from a patient safety evaluation system. Such separate information or a copy thereof reported to a patient safety organization shall not by reason of its reporting be considered patient safety work product.

(iii) Nothing in this part shall be construed to limit—

(I) the discovery of or admissibility of information described in this subparagraph in a criminal, civil, or administrative proceeding;

(II) the reporting of information described in this subparagraph to a Federal, State, or local governmental agency for public health surveillance, investigation, or other public health purposes or health oversight purposes; or

(III) a provider's recordkeeping obligation with respect to information described in this subparagraph under Federal, State, or local law.

(8) Provider

The term "provider" means—

(A) an individual or entity licensed or otherwise authorized under State law to provide health care services, including—

(i) a hospital, nursing facility, comprehensive outpatient rehabilitation facility, home health agency, hospice program, renal dialysis facility, ambulatory surgical center, pharmacy, physician or health care practitioner's office, long term care facility, behavior health residential treatment facility, clinical laboratory, or health center; or

(ii) a physician, physician assistant, nurse practitioner, clinical nurse specialist, certified registered nurse anesthetist, certified nurse midwife, psychologist, certified social worker, registered dietitian or nutrition professional, physical or occupational therapist, pharmacist, or other individual health care practitioner; or

(B) any other individual or entity specified in regulations promulgated by the Secretary.

(July 1, 1944, ch. 373, title IX, § 921, as added Pub. L. 109-41, § 2(a)(5), July 29, 2005, 119 Stat. 424.)

REFERENCES IN TEXT

Section 264(c) of the Health Insurance Portability and Accountability Act of 1996, referred to in par. (1), is section 264(c) of Pub. L. 104-191, which is set out as a note under section 1320d-2 of this title.

PRIOR PROVISIONS

A prior section 921 of act July 1, 1944, was renumbered section 941 and is classified to section 299c of this title.

Another prior section 921 of act July 1, 1944, was classified to section 299c of this title prior to the general amendment of this subchapter by Pub. L. 106-129.

§ 299b-22. Privilege and confidentiality protections

(a) Privilege

Notwithstanding any other provision of Federal, State, or local law, and subject to subsection (c) of this section, patient safety work product shall be privileged and shall not be—

(1) subject to a Federal, State, or local civil, criminal, or administrative subpoena or order, including in a Federal, State, or local civil or administrative disciplinary proceeding against a provider;

(2) subject to discovery in connection with a Federal, State, or local civil, criminal, or administrative proceeding, including in a Federal, State, or local civil or administrative disciplinary proceeding against a provider;

(3) subject to disclosure pursuant to section 552 of title 5 (commonly known as the Freedom of Information Act) or any other similar Federal, State, or local law;

(4) admitted as evidence in any Federal, State, or local governmental civil proceeding, criminal proceeding, administrative rule-making proceeding, or administrative adjudicatory proceeding, including any such proceeding against a provider; or

(5) admitted in a professional disciplinary proceeding of a professional disciplinary body established or specifically authorized under State law.

(b) Confidentiality of patient safety work product

Notwithstanding any other provision of Federal, State, or local law, and subject to subsection (c) of this section, patient safety work product shall be confidential and shall not be disclosed.

(c) Exceptions

Except as provided in subsection (g)(3) of this section—

(1) Exceptions from privilege and confidentiality

Subsections (a) and (b) of this section shall not apply to (and shall not be construed to prohibit) one or more of the following disclosures:

(A) Disclosure of relevant patient safety work product for use in a criminal proceeding, but only after a court makes an in camera determination that such patient safety work product contains evidence of a criminal act and that such patient safety work product is material to the proceeding and not reasonably available from any other source.

(B) Disclosure of patient safety work product to the extent required to carry out subsection (f)(4)(A) of this section.

(C) Disclosure of identifiable patient safety work product if authorized by each provider identified in such work product.

(2) Exceptions from confidentiality

Subsection (b) of this section shall not apply to (and shall not be construed to prohibit) one or more of the following disclosures: