

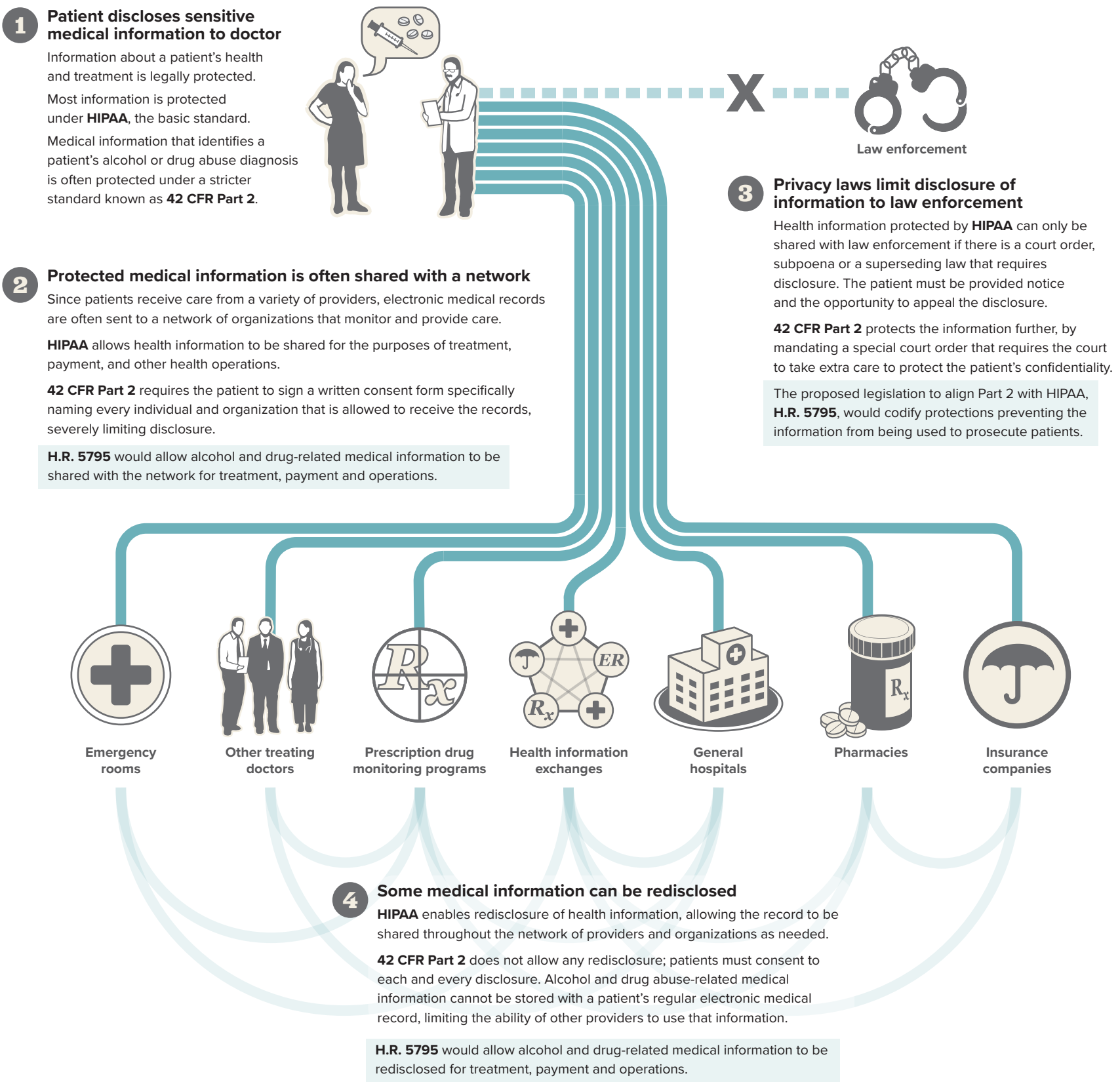
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Congress Considers Medical Privacy Overhaul to Combat the Opioid Epidemic

To protect individuals who seek medical treatment for alcohol and substance abuse problems, existing law strictly limits the sharing of alcohol and drug-related medical information under a statute known as **42 CFR Part 2**. Lawmakers are worried that these legal protections are too cumbersome and have hampered the medical community's response to the opioid overdose epidemic.

To integrate alcohol and drug-related treatment with the rest of the medical system, House lawmakers have proposed legislation, H.R. 5795, that would align 42 CFR Part 2 with **HIPAA** — a more generally applicable law governing medical information sharing — for the purposes of treatment, payment and other operations. This would be an important change: HIPAA typically assumes that patients want their medical information shared with a network of providers, unless the patient says otherwise, whereas 42 CFR Part 2 assumes that patients do not want information shared without explicit consent.

How legally protected medical information flows through a health care network



Comparison of the major features of HIPAA and 42 CFR Part 2

	HIPAA	42 CFR Part 2
General purpose	▶ HIPAA establishes the minimum requirements for the protection of individuals' protected health information.	▶ Part 2 creates stricter protections for medical records pertaining to alcohol and substance abuse, so that patients seeking treatment are not discouraged by potential legal and personal consequences.
	▶ Individuals have the right to access their records.	▶ Programs have discretion to decide whether patients can view or obtain their records, unless state law says otherwise.
Entities governed	▶ Applies to all health providers, health plans, clearing houses and any business associates that transmit any health information electronically.	▶ Applies to any federally assisted program that provides alcohol or drug abuse diagnoses, treatment, or referral for treatment. ▶ A program is " federally assisted " if it: ▶ Is federally authorized, licensed, certified or registered ▶ Receives any federal funding for any purpose ▶ Receives a grant of tax-exempt status or an allowance of tax deductions for contributions by the IRS
Authorization for treatment and payment	▶ Medical records governed by HIPAA can be disclosed without the patient's permission for treatment and payment procedures.	▶ Individuals must authorize any disclosures with a written form that specifically names the persons or organizations that the records are being shared with.
	▶ Information shared with outside entities could be redisclosed to other parties for these purposes.	▶ Information can not be redisclosed without specific authorization from the individual, except in the case of medical emergencies where the patient's life is clearly in danger.
Enforcement	▶ Violators face civil fines enforced by the HHS Office for Civil Rights and state attorneys general . ▶ Further criminal penalties can be assessed on a case-by-case basis, especially if information is accessed under false pretenses or with malicious intent.	▶ Violators are identified by the Substance Abuse and Mental Health Services Administration , and referred to the Justice Department for criminal charges.
Courts and law enforcement	▶ Records can be shared without the individual's authorization in response to a court order or subpoena. ▶ The individual must be given notice and the opportunity to resist the disclosure with a protective order.	▶ Records can not be disclosed without a special court order subject to additional confidentiality requirements under Part 2. ▶ A subpoena is not sufficient for disclosure; only a special court order under Part 2 rules can compel disclosure.
Public health reporting	▶ As needed, information can be shared with public health authorities such as state and local health departments, FDA, CDC and the Occupational Safety and Health administration.	▶ Part 2 severely restricts the ability to share protected information with public health authorities. Any information that is shared must be stripped of information that could be used to identify a patient with an alcohol or substance abuse diagnosis.

Note: This graphic does not constitute legal advice.

Sources: International Association of Privacy Professionals; Substance Abuse and Mental Health Services Administration; National Association for Addiction Professionals
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