

**COMMENTS ON 19-S 139A,
RELATING TO COMPREHENSIVE DISCHARGE PLANNING
February 6, 2019**

The ACLU appreciates the goal of this bill and the latest Sub A version of it, but we continue to believe that it raises important policy and legal concerns.

Although the bill's language is not so limited, it is our understanding that a major goal of S-139A in allowing physicians to notify the emergency contacts and recovery coaches of patients in the hospital is for situations when the patient has experienced an opioid overdose and refuses or is unable to provide consent for such notification. It is our further understanding that the bill is particularly aimed at addressing situations involving patients who have suffered multiple overdose incidents, since those are, obviously, the circumstances inviting special concern about the person's well-being.

However, as the U.S. Department of Health and Human Services guidance on "How HIPAA Allows Doctors to Respond to the Opioid Crisis" specifically notes, federal law contains "more stringent protections" for disclosure of medical information relating to substance use disorders than for other medical records. Our reading of those "more stringent protections" is that they do not authorize breaching confidentiality in this type of situation. At best, it is certainly open to debate whether 42 CFR Part 2 authorizes such a disclosure where SUD records are implicated.

The legislation thus puts physicians in a very difficult position, since the only guidance it provides is to allow breaches of confidentiality "to the extent permitted by... applicable law." It's unclear how medical personnel are supposed to know whether and when the disclosure of a patient's substance use status to third parties is "permitted by applicable law." The bill thus creates real opportunities for unintentional and unauthorized violations of confidentiality.

Leaving this legal concern aside, we continue to believe that patient confidentiality should not be breached where the overdose patient is competent to decide whether they wish this private information disclosed to others. We applaud the bill's goal of trying to get help for individuals with serious substance use disorder issues, but the bill's broad exemption may create situations that only imperil and undermine, rather than promote, positive family dynamics. After all, a patient's listing of an emergency contact for an appendectomy procedure done five years earlier is not necessarily the person the patient experiencing an opioid overdose would like to see contacted. Further, once this exemption is popularized and known to be used, it could discourage some individuals from going to the emergency room for fear of having their medical situation disclosed to people that they do not want to know about it.

In order to address these policy and legal concerns, and looking particularly to the problem of multiple overdose patients, we instead encourage the committee to consider the alternative language we have pasted below. We thank you for considering our views.

DRAFT AMENDMENT TO 19-S 139A

Repeal the amended revisions on Page 1 and 2 of the bill and instead add the following language on Page 4, immediately following line 15:

“(vii) That, prior to discharge from a hospital or freestanding, emergency-care facility for treatment for an opioid overdose, each patient shall be asked to provide consent to notify specific person(s) listed as the patient’s emergency contact and/or recovery coach in the event the patient experiences another overdose and is unable to consent to any such contact at the time due to his or her incapacity. The names of any persons for whom such advance consent has been given or the patient’s refusal to provide consent for such contact shall be noted in the patient’s medical record.”