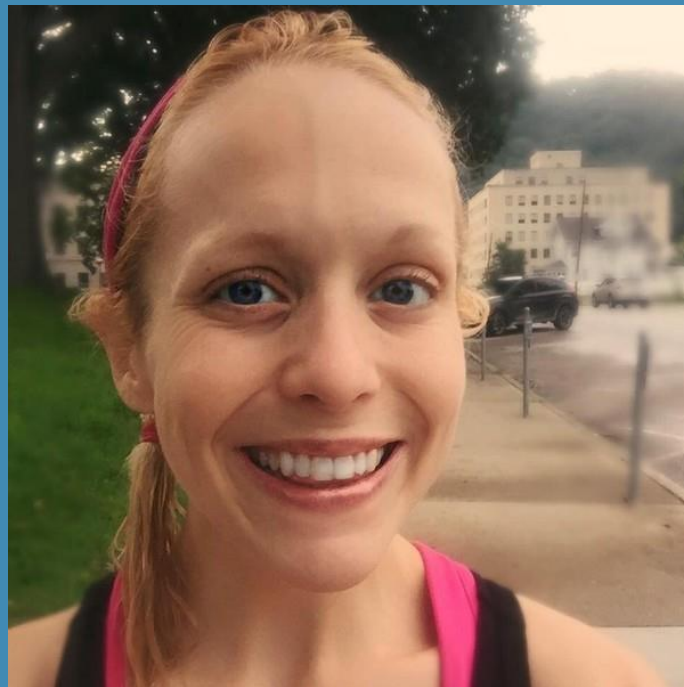


# JESSIE'S LAW & 42 CFR PART 2

Dana Richter

Senator Shelley Moore Capito

JESSICA GRUBB  
1986 - 2016



**JESSICA GRUBB**  
**1986 - 2016**

In early 2016, Jessica Grubb developed a bacterial infection because of a running injury. She had surgery Feb. 24 at St. Joseph Mercy Hospital and went home March 1<sup>st</sup>

Jessie and her family told hospital staff repeatedly she was a recovering heroin addict.

**JESSICA GRUBB**  
**1986 - 2016**

Yet, when she was discharged from the hospital, Grubb was prescribed oxycodone, by the discharging physician

Authorities believe Grubb crushed up the oxycodone pills, mixed them with liquid and injected them into an IV port, causing a fatal overdose

## JESSIE'S LAW

As a result of this, my boss and Senator Manchin asked why there couldn't be a warning in a patient's file that they had an addiction history – the same way there would be a warning if a patient was allergic to penicillin or another medication?

That's when we learned about 42 CFR Part 2

# JESSIE'S LAW

## What is 42 Code of Federal Regulations Part 2?

Passed in 1975, the Confidentiality of Substance Use Disorder Patient Records, 42 Code of Federal Regulations Part 2 protects the confidentiality of records relating to the identity, diagnosis, prognosis, or treatment of any patient records that are maintained in connection with the performance of any federally assisted program or activity relating to substance use disorder education, prevention, training, treatment, rehabilitation, or research.

Under Part 2, a federally assisted substance use disorder program may only release patient identifying information with the individual's written consent, pursuant to a court order, or under a few limited exceptions.

# JESSIE'S LAW

Why was 42 Code of Federal Regulations Part 2 needed?

42 Code of Federal Regulations Part 2 was written, prior to the passage of Health Insurance Portability and Accountability Act of 1996 (HIPAA), out of concern that data of patients with substance use disorders could be used against individuals, causing them to avoid seeking needed treatment.

## JESSIE'S LAW

In January 2017, the first major, substantive revisions to Part 2 in nearly 30 years were made.

In a final rule, SAMHSA updated 42 CFR Part 2 rules by allowing patients to provide a general disclosure for substance abuse information, rather than limiting authorization to a specific provider.

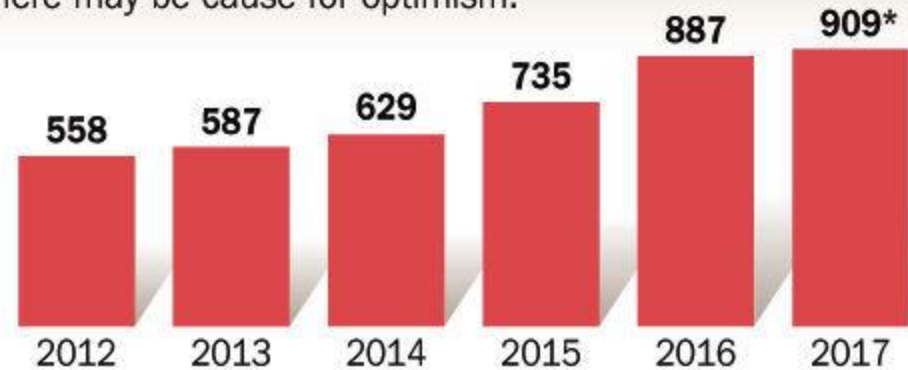
In January 2018, SAMSHA finalized further proposed changes which will permit healthcare providers, with patients' consent, to more easily conduct such activities as quality improvement, claims management, patient safety, training, and program integrity efforts



# JESSIE'S LAW

## W.Va. drug overdose deaths

West Virginia's drug overdose deaths set another new record last year, but state health officials believe there may be cause for optimism:



\*Some December 2017 overdoses have yet to be counted.

Source: West Virginia Health Statistics Center

Gazette-Mail

# JESSIE'S LAW

April 2016 - *Jessie's Law* (S. 2866/H.R. 5142) introduced by Senators Manchin/Capito and Representatives Walberg/Dingell. As introduced it would:

Permit disclosure of patient records relating to substance abuse with the patient's oral consent or the consent of the patient's parent, legal guardian, or spouse. (Currently, disclosure is permitted only with the patient's written consent.)

Allow interchange of such records within accountable care organizations, health information exchanges, and integrated care arrangements for purposes of attaining interoperability, improving care coordination, reducing health care costs, and securing or providing patient safety.

Require the Department of Health and Human Services to develop and disseminate standards for hospitals and physicians regarding displaying a patient's history of opioid addiction in the patient's medical records with the patient's consent.

## JESSIE'S LAW

A revised version was reintroduced by the same Members of Congress in 115<sup>th</sup> Congress as S. 581/H.R. 1554. It would now:

Require the Department of Health and Human Services to develop and disseminate standards for hospitals and physicians regarding displaying the history of opioid addiction in the medical records of patients who have provided information about their addiction to a health care provider.

## JESSIE'S LAW

A version similar to this was passed in the Senate on August 3, 2017.

It attempted to balance the need to ensure physicians are better informed about the medical histories of recovering addicts, while preserving the privacy of patients.

## JESSIE'S LAW NEXT STEPS

In September 2017, Senators Manchin and Capito introduced the *Protecting Jessica Grubb's Legacy Act (Legacy Act)* (S.1850 ); very similar legislation, the *Overdose Prevention and Patient Safety (OPPS) Act* (HR 3545) was introduced by Reps. Murphy (Mullin) and Blumenauer.

These bills intend to align 42 Code of Federal Regulations Part 2 with HIPAA rules and ensure doctors have access to their patients' complete medical histories, including details of addiction treatment.

## JESSIE'S LAW NEXT STEPS

Specifically, S. 1850/HR 3545 would:

Allow broader sharing of patients' substance use records with the goal of ensuring provider accessibility to a patient's full medical history to provide the most appropriate care.

Prohibit a patient's substance use records from being used as evidence or as a basis with which to press charges in criminal cases.

In a letter to my boss and Senator Manchin, Assistant Secretary of SAMHSA Elinore McCance-Katz stated that "SAMHSA is encouraged to see Congress examine the benefits of aligning Part 2 with HIPPA."

## JESSIE'S LAW NEXT STEPS

My boss and Senator Manchin attempted to have the Legacy Act included in the *Opioid Crisis Response Act (S. 2680)* which was recently introduced and passed by the Senate HELP Committee.

However, strong opinions on the extent to which patients' substance use records should be shared and under what conditions has ignited passionate responses both in support of and in opposition to legislation such as the Legacy Act.

# JESSIE'S LAW NEXT STEPS

While we were unsuccessful so far in our efforts, the following provisions related to 42 CFR Part 2 were included in the Opioid Crisis Response Act (OCRA):

**Jessie's Law** (OCRA Section 508)

To make it easier for doctors to know if a patient has a history of opioid abuse, require HHS to develop best practices for prominently displaying this information in electronic health records, when requested by the patient.

**Confidentiality of Substance Use Disorder Records** (OCRA Section 509)

To identify model training programs on how to protect and appropriately disclose confidential substance use disorder medical records for health care providers, patients, and their families.

**Communication with Families During Emergencies** (OCRA Section 510)

To clarify that doctors are allowed to share certain health information with families and caregivers during an emergency such as an overdose, this requires the Secretary to notify providers annually of permitted disclosures during an emergency.



# JESSIE'S LAW NEXT STEPS

## HOUSE ACTIONS

Jesse's Law, reintroduced as passed by the Senate as H.R. 5009, was advanced by the Health Subcommittee of House Energy and Commerce Committee to the full House Energy and Commerce Committee on April 25<sup>th</sup>.

Q & A