

MAINE STATE LEGISLATURE

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114th MAINE LEGISLATURE

FIRST REGULAR SESSION - 1989

Legislative Document

No. 749

H.P. 552

House of Representatives, March 9, 1989

Reference to the Committee on Human Resources suggested and ordered printed.

A handwritten signature in cursive script that reads "Ed Pert".

EDWIN H. PERT, Clerk

Presented by Representative HEPBURN of Skowhegan.

Cosponsored by Senator WEYMOUTH of Kennebec and Senator CLARK of Cumberland.

STATE OF MAINE

IN THE YEAR OF OUR LORD
NINETEEN HUNDRED AND EIGHTY-NINE

**An Act to Protect the Identity of Complainants Concerning Health
Care Facilities and Providers and Certain Financial Information for
the Maine Managed Care Insurance Plan Demonstration.**



1 **Be it enacted by the People of the State of Maine as follows:**

3 **Sec. 1. 5 MRSA §9057, sub-§6**, as enacted by PL 1987, c. 714,
5 §1, is amended to read:

7 **6. Confidential information.** Information may be disclosed
9 which is confidential pursuant to Title 22, chapters 958-A and
11 1071 and ~~section~~ sections 7703 and 1828; and Title 34-A, except
13 for information, the disclosure of which is absolutely prohibited
15 under Title 34-A, section 3003. Disclosure may be only for the
17 determination of issues involving unemployment compensation
19 proceedings relating to a state employee, state agency personnel
21 actions and professional or occupational board licensure,
23 certification or registration.

25 A. For the purpose of this subsection, "hearing officer"
27 means presiding officer, judge, board chairman, arbitrator
29 or any other person deemed responsible for conducting a
31 proceeding or hearing subject to this subsection. In the
33 case of the Civil Service Appeals Board, the presiding
35 officer shall be the entire board. "Employees of the
37 agency" means employees of a state agency or department or
39 members, agents or employees of a board who are directly
41 related to and whose official duties involve the matter at
43 issue.

45 B. The confidential information disclosed pursuant to this
47 subsection is subject to the following limitations:

49 (1) The hearing officer determines that introduction
51 of the confidential information is necessary for the
53 determination of an issue before the hearing officer;

55 (2) During the introduction of confidential
57 information, the proceeding is open only to the hearing
59 officer, employees of the agency, parties, parties'
61 representatives, counsel of record and the witness
63 testifying regarding the information, and access to the
65 information is limited to these people. Disclosure is
67 limited to information directly related to the matter
69 at issue;

71 (3) Witnesses shall be sequestered during the
73 introduction of confidential information, except when
75 offering testimony at the proceeding;

77 (4) The names or identities of reporters of
79 confidential information or of other persons shall not
81 be disclosed, except when disclosure is deemed
83 necessary and relevant by the hearing officer; and

85

1 (5) After hearing, the confidential information is
3 sealed within the record and shall not be further
disclosed, except upon order of court.

5 Sec. 2. 22 MRSA §1828 is enacted to read:

7 §1828. Records; disclosure

9 1. Records. Any records that are made, acquired or
11 retained by the Bureau of Medical Services or the Department of
12 Audit, or any successor bureaus or departments, in connection
13 with any of their responsibilities, are subject to subsection 2
and Title 1, chapter 13, subchapter I.

15 2. Confidential information. Except as provided in
16 subsections 3 and 4, confidential information may not be released
17 without a court order or a written release from the person whose
18 privacy interest is protected by this section. Within the
19 department, confidential information shall be available to
20 appropriate departmental personnel and legal counsel for the
21 department in carrying out their official functions. The
22 following information is confidential:

23 A. Any information that directly or indirectly identifies
24 any person who makes a complaint to the department;

25 B. Any information that directly or indirectly identifies:

26 (1) A resident or a recipient of services of any
27 facility or provider licensed or certified by the
28 department; or

29 (2) Any recipient of a public welfare program; and

30 C. Any medical or personal information concerning the
31 individuals listed in paragraph B.

32 3. Optional disclosure. The department may disclose
33 relevant confidential information to the extent allowed by
34 federal law and regulation to the following persons or agencies:

35 A. Professional and occupational licensing boards pursuant
36 to Part 1-B, chapter 857;

37 B. An agency or person investigating a report of abuse or
38 neglect when the investigation is authorized by law or by an
39 agreement with the department;

40 C. A physician treating an individual whom the physician
41 reasonably suspects may have been abused or neglected; or

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1 D. A person who is the guardian or parent of an individual
3 who is named in the record.

5 4. Mandatory disclosure. The department shall disclose
7 relevant confidential information to the extent allowed by
9 federal law and regulations to the following:

11 A. A law enforcement agency investigating a report of abuse
13 or neglect or the commission of a crime by an owner,
15 operator or employee of a facility or provider; or

17 B. Appropriate state or federal agencies when disclosure is
19 necessary to the administration of the Medicaid program.

21 5. Further disclosure. Information released pursuant to
23 subsections 3 and 4 shall be used solely for the purpose for
25 which it was provided and shall not be further disseminated.

27 Sec. 3. 22 MRSA §3188, sub-§4 is enacted to read:

29 4. Confidentiality of records. The following medical or
31 financial information concerning applicants to the Maine Managed
33 Care Insurance Plan Demonstration shall be considered
35 confidential as follows.

37 A. All department records that contain information
39 regarding the identity, medical status or financial
41 resources of particular individuals applying for health
43 insurance coverage under the Maine Managed Care Insurance
45 Plan Demonstration are confidential and subject to release
47 only with the written authorization of the applicant.

49 B. All department records that contain information
51 regarding the identity or financial resources of a business
53 or business owner applying for enrollment in the Maine
55 Managed Care Insurance Plan Demonstration are confidential
57 and subject to release only with written authorization of an
59 authorized representative of the applicant's business.

61 Sec. 4. 22 MRSA §3291, as enacted by PL 1987, c. 714, §2, is
63 amended to read:

65 §3291. Definitions

67 As used in this chapter, unless the context indicates
69 otherwise, the following terms have the following meanings.

71 1. Bureau. "Bureau" means the Bureau of Social Services
73 with respect to chapters 958-A and 1071, and the Bureau of Social
75 Services or the Bureau of Medical Services with respect to
77 section 7703 and the Bureau of Medical Services with respect to
79 section 1828.

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2. Confidential information. "Confidential information" means information deemed confidential by chapters 958-A and 1071, and sections 7703 and 1828.

3. Department. "Department" means the Department of Human Services.

4. Director. "Director" means the Director of the Bureau of Social Services with respect to confidential information derived from chapters 958-A and 1071, and the Director of the Bureau of Medical Services or the Director of the Bureau of Social Services with respect to confidential information derived from section 7703 and the Director of the Bureau of Medical Services with respect to confidential information derived from section 1828.

5. Hearing officer. "Hearing officer" means presiding officer, judge, board chairman, arbitrator or any other person deemed responsible for conducting a proceeding or hearing subject to this chapter.

6. Licensing board. "Licensing board" means a professional or occupational licensing board that licenses, certifies or registers a person in a profession or occupation which is included in the list of professional and occupational licensing boards in Title 5, section 12004, subsection 1, paragraph A, 12004-A.

Sec. 5. 22 MRSA §3292, first ¶, as enacted by PL 1987, c. 714, §2, is amended to read:

Any information derived by the department ~~from the implementation of chapters~~ in the course of carrying out its functions and deemed confidential by chapters chapter 958-A and or 1071 and or section 7703 deemed confidential by these chapters and relating or 1828, which relates to a state employee or a person licensed, certified or registered by a licensing board as defined in section 3291 who is alleged to have engaged in any unlawful activity or professional misconduct, or in conduct in violation of laws or rules relating to a licensing board, may be disclosed to and used by the appropriate state agencies and licensing boards only in accordance with this chapter. The department, other state agencies and licensing boards shall comply with the following.

STATEMENT OF FACT

The Department of Human Services licenses health care facilities and providers. In ensuring compliance with state

1 licensing and federal Medicaid and Medicare regulations, the
2 department investigates hundreds of complaints each year, many of
3 which are from patients or employees of these facilities. The
4 department also receives complaints of a financial nature. The
5 names and identities of these complainants are not currently
6 protected by state laws, thus putting the complainants at risk of
7 retaliation and deterring the registering of complaints with
8 state licensing and auditing agencies. The department and Bureau
9 of Medical Services have encountered occurrences in which the
10 identity of the complainants was sought by media or employers of
11 health care facilities. Release of this information increases
12 the risk of retaliation against persons reporting legitimate
13 complaints about inadequate care and financial mismanagement.
14 Thus, this information should be disclosed only if the public
15 interest demands it.

17 In addition, in the course of ensuring compliance with
18 licensing and certification standards, the Bureau of Medical
19 Services is privy to privileged medical information concerning
20 residents of these licensed facilities. There is no legitimate
21 public interest in this kind of information or in the residents'
22 identity, except in narrowly defined circumstances.

23 The Department of Human Services also administers the Maine
24 Managed Care Insurance Plan Demonstration designed to provide
25 access to health benefits to those for whom financial barriers
26 preclude the purchase of coverage. In order to administer
27 effectively the health plan developed under the demonstration,
28 certain medical information and information regarding the
29 financial resources of individuals applying for enrollment and
30 premium subsidies will be submitted to the department.
31 Additionally, businesses applying for premium subsidies for
32 coverage under the demonstration will be required to submit to
33 the department information about the financial resources of the
34 businesses as well as about the personal financial resources of
35 their owners. The authority to keep such information
36 confidential should enable the department to elicit full
37 disclosure from applicants without provoking undue fear that
38 sensitive personal or business information might be revealed.
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