

# MAINE STATE LEGISLATURE

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STATE OF MAINE  
SENATE  
114TH LEGISLATURE  
SECOND REGULAR SESSION

COMMITTEE AMENDMENT " A" to S.P. 807, L.D. 2070, Bill, "An Act to Assist the Department of Human Services in Conducting Chronic Disease Investigations and Evaluating the Completeness or Data Quality of its Disease Surveillance Programs"

Amend the bill by striking out everything after the title and before the statement of fact and inserting in its place the following:

**Emergency preamble.** Whereas, Acts of the Legislature do not become effective until 90 days after adjournment unless enacted as emergencies; and

**Whereas,** the Department of Human Services lacks adequate authority to investigate patterns of disease in the State; and

**Whereas,** any delay in obtaining such authority could result in unnecessary harm to citizens; and

**Whereas,** in the judgment of the Legislature, these facts create an emergency within the meaning of the Constitution of Maine and require the following legislation as immediately necessary for the preservation of the public peace, health and safety; now, therefore,

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

**Sec. 1. 22 MRSA §387,** as enacted by PL 1983, c. 579, §10, is repealed and the following enacted in its place:

**§387. Public information**

**1. Public access.** Any information, except confidential commercial information obtained from a payor or privileged medical information, and any studies or analyses that are filed with, or otherwise provided to, the commission under this chapter must be made available to any person upon request, provided that

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2 individual patients or health care practitioners are not directly  
3 identified. The commission shall adopt rules governing public  
4 access in the least restrictive means possible to information  
5 that may indirectly identify a particular patient or health care  
6 practitioner.

7 2. Notice and comment period. The commission shall adopt  
8 rules establishing criteria for determining whether information  
9 is confidential commercial information or privileged medical  
10 information and establishing procedures to afford affected payors  
11 or hospitals, as applicable, notice and opportunity to comment in  
12 response to requests for information that may be considered  
13 confidential or privileged.

14 3. Public health studies. The commission, by rule or  
15 order, may allow exceptions to the rules adopted pursuant to  
16 subsection 1 solely to the extent authorized in this subsection.

17 A. For purposes of this subsection, "identifying  
18 information" means information derived from data on file  
19 with the commission that may directly or indirectly identify  
20 patients or health care practitioners.

21 B. The commission may approve the use by the department of  
22 identifying information in a manner not otherwise permitted  
23 by the public access rules adopted under subsection 1,  
24 provided that the investigation in which the information  
25 will be used is consistent with the rules adopted by the  
26 commission under paragraph C.

27 C. The commission shall adopt rules governing the  
28 conditions under which and purposes for which the department  
29 may use identifying information in a manner that is  
30 inconsistent with subsection 1. These rules must ensure  
31 that:

32 (1) Identifying information is used only to gain  
33 access to medical records and other medical information  
34 pertaining to an investigation designed to accomplish  
35 public health research of substantial public importance;

36 (2) Medical information about any patient identified  
37 by name is not sought from any person without the  
38 consent of that patient except when the information  
39 sought pertains solely to verification or comparison  
40 of health data that the department is otherwise  
41 authorized by law to collect and the commission finds  
42 that confidentiality can be adequately protected  
43 without patient consent;

44 (3) Those persons conducting the investigation do not  
45 disclose medical information about any patient  
46 information about any patient

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2 identified by name to any other person without that  
patient's consent;

4 (4) Those persons gaining access to medical  
information about an identified patient use that  
6 information to the minimum extent necessary to  
accomplish the purposes of the investigation for which  
8 approval was granted. Information regarding patients  
identified by name may not be transferred by the  
10 investigators;

12 (5) The protocol for any investigation is designed to  
preserve the confidentiality of all medical information  
14 that can be associated with identified patients, to  
specify the manner in which contact is made with  
16 patients, and to maintain public confidence in the  
protection of confidential information; and

18 (6) An advisory body, independent of the department,  
20 is established and charged with responsibility for  
approving the protocol of the investigation, overseeing  
22 the conduct of the investigation to assure consistency  
with the protocol and the commission's rules, and  
24 assessing both the scientific validity of the  
investigation and its effects upon patients. The  
26 advisory body must include a consumer representative, a  
practicing physician and a member of the Maine Medical  
28 Records Association.

30 D. The commission may not grant approval under this  
subsection if the proposed identification of or contact with  
32 patients or health care practitioners would violate any  
state or federal law or diminish the confidentiality of  
34 medical information or the public's confidence in the  
protection of that information in a manner that outweighs  
36 the expected benefit to the public of the proposed  
investigation.

38 **Sec. 2. 22 MRSA §1692-B is enacted to read:**

40 **§1692-B. Investigations**

42 **1. Access to reports and records.** The Department of Human  
44 Services must be given access to all confidential reports and  
records filed by physicians, hospitals or other private or public  
46 sector organizations, with all departments, agencies, commissions  
or boards of the State for the purpose of conducting  
48 investigations or evaluating the completeness or quality of data  
submitted to the department's disease surveillance programs. The  
50 department shall follow the data confidentiality requirements of

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2 the departments, agencies, commissions or boards of the State  
3 providing this information.

4 Upon notification by the Department of Human Services, physicians  
5 or hospitals shall provide to the department any further  
6 information requested for the purpose of conducting  
7 investigations or evaluating the completeness or quality of data  
8 submitted to the department's disease surveillance programs.

10 2. Limited immunity. A physician, hospital, or employee of  
11 a physician or hospital is not liable for any civil damages as a  
12 result of the department's use of information gathered under this  
13 section. This immunity is limited to legitimate activities  
14 pursued in good faith under this section.

16 3. Adoption of rules. The department shall adopt rules  
17 governing the conditions under which and purposes for which the  
18 department may use identifying information under this section.  
19 The rules must ensure that:

20 A. Identifying information is used only to gain access to  
21 medical records and other medical information pertaining to  
22 an investigation designed to accomplish public health  
23 research of substantial public importance;

26 B. Medical information about an identified patient is not  
27 sought from any person without the consent of that patient  
28 except when the information sought pertains solely to  
29 verification or comparison of health data that the  
30 department is otherwise authorized by law to collect and the  
31 department finds that confidentiality can be adequately  
32 protected without patient consent;

34 C. Those persons conducting the investigation do not  
35 disclose medical information about an identified patient to  
36 any other person except a health care practitioner  
37 responsible for treating the patient;

38 D. Those persons gaining access to medical information  
39 about an identified patient use that information to the  
40 minimum extent necessary to accomplish the purposes of the  
41 investigation;

44 E. The protocol for any investigation is designed to  
45 preserve the confidentiality of all medical information that  
46 can be associated with identified patients, to specify the  
47 manner in which contact is made with patients, and to  
48 maintain public confidence in the protection of confidential  
49 information;

50 F. An advisory body, independent from the department, is  
51 established and charged with responsibility for approving  
52 investigations.

2 the protocol of the investigation, overseeing the conduct of  
3 the investigation to assure consistency with the protocol  
4 and the department's rules, and assessing both the  
5 scientific validity of the investigation and its effects  
6 upon patients;

7 G. The department does not seek information under this  
8 section if the proposed identification of or contact with  
9 patients or health care practitioners would diminish the  
10 confidentiality of medical information or the public's  
11 confidence in the protection of that information in a manner  
12 that outweighs the expected benefit to the public of the  
13 proposed investigation; and

14 H. Whenever a physician or hospital furnishes patient  
15 information requested by the department in accordance with  
16 this section, the department reimburses the physician or  
17 hospital for the reasonable costs incurred in providing the  
18 information.

19 **Emergency clause.** In view of the emergency cited in the  
20 preamble, this Act takes effect when approved.  
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24 **FISCAL NOTE**

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26 The Department of Human Services will incur unbudgeted costs  
27 as a result of reimbursing physicians and hospitals for their  
28 costs in providing requested information to the department. A  
29 General Fund appropriation will be required in an amount which  
30 can not be determined at this time and will be dependent upon the  
31 number of requests for which reimbursement will be made.'  
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33  
34 **STATEMENT OF FACT**

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36  
37 The amendment places an emergency preamble and clause on the  
38 bill.

39  
40 The amendment adds changes to the Maine Health Care Finance  
41 Commission laws to enable the Commission to provide confidential  
42 information.

43  
44 The amendment broadens the bill's limited immunity provision  
45 to include employees of physicians and hospitals and adds a  
46 requirement that the Department of Human Services adopt rules to  
47 guide its actions. The amendment requires that the rules include  
48 provisions for reimbursing physicians and hospitals for their  
49 costs incurred in providing requested information to the  
50 Department of Human Services.

51  
52 The amendment adds a fiscal note to the bill.