

MAINE STATE LEGISLATURE

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STATE OF MAINE
HOUSE OF REPRESENTATIVES
115TH LEGISLATURE
FIRST REGULAR SESSION

COMMITTEE AMENDMENT "A" to H.P. 298, L.D. 419, Bill, "An Act Concerning Requests for Medical Records"

Amend the bill by striking out all of the title and substituting the following:

'An Act Concerning Requests for Treatment Records'

Further amend the bill by striking out everything after the enacting clause and before the statement of fact and inserting in its place the following:

'Sec. 1. 22 MRSA §1711-A, as enacted by PL 1989, c. 666, is amended to read:

§1711-A. Fees charged for records

Whenever a health care practitioner defined in ~~Title--24, section--2502,--subsection-1-A~~ section 1711-B furnishes requested copies of a patient's medical record or a medical report to the patient, the charge for the copies or the report may not exceed the reasonable costs incurred by the health care practitioner in making and providing the copies or the report.

Sec. 2. 22 MRSA §1711-B is enacted to read:

§1711-B. Patient access to treatment records; health care practitioners

1. Definitions. As used in this section, unless the context otherwise indicates, the following terms have the following meanings.

2 A. "Health care practitioner" has the same meaning as in
3 Title 24, section 2502. "Health care practitioner" also
4 includes "licensed clinical social workers" as defined in
5 Title 32, chapter 83 and "marriage and family therapists"
6 and "professional counselors" as defined in Title 32,
7 chapter 119.

8 B. "Treatment records" means all records relating to a
9 patient's diagnosis and treatment, including x rays,
10 performed by a health care practitioner.

12 2. Access. Upon written consent of the person to whom
13 copies of records must be released pursuant to this section, a
14 health care practitioner shall release copies of all treatment
15 records of a patient or a narrative containing all relevant
16 information in the treatment records. The health care
17 practitioner may exclude from the copies of treatment records
18 released any personal notes that are not directly related to the
19 patient's past or future treatment. The copies or narrative must
20 be released to the designated person within a reasonable time.

22 If the practitioner believes that release of the records is
23 detrimental to the health of the patient, the practitioner shall
24 advise the patient that copies of the treatment records or a
25 narrative containing all relevant information in the treatment
26 records will be made available to the patient's authorized
27 representative upon presentation of a written authorization
28 signed by the patient. The copies or narrative must be released
29 to the authorized representative within a reasonable time.

30 3. Person receiving the records. Except as otherwise
31 provided in this section, the copies or narrative specified in
32 subsection 2 must be released to:

34 A. The person who is the subject of the treatment record,
35 if that person is 18 years of age or older and mentally
36 competent;

38 B. The parent, guardian ad litem or legal guardian of the
39 person who is the subject of the record if the person is a
40 minor, or the legal guardian if the person who is the
41 subject of the record is mentally incompetent; or

42 C. The designee of a durable medical power of attorney, if
43 the person who is the subject of the record is incompetent
44 and executed such an instrument.

46 4. Minors. This section does not affect the right of
47 minors to have their treatment records treated confidentially
48 pursuant to the provisions of Title 19, chapter 18.
49

2 5. HIV test. Release of information regarding the HIV
infection status of a patient is governed by Title 5, section
4 19203-D.

6 6. Hospital records. Release of treatment records in a
hospital is governed by the provisions of Title 22, section 1711.

8 7. Retention of records. This section does not alter the
existing law or ethical obligations of a health care practitioner
10 with respect to retaining treatment records.

12 8. Violation. A person who willfully violates this section
commits a civil violation for which a forfeiture of not more than
14 \$25 may be adjudged. Each day that the treatment records or
narrative is not released after the reasonable time specified in
16 subsection 2 constitutes a separate violation, up to a maximum
forfeiture of \$100.

18
20 **FISCAL NOTE**

22 This bill establishes a new civil violation and forfeiture.
24 There may be a minimal number of cases filed in District Court as
26 a result of this violation. The additional work load and
28 administrative costs associated with these cases will be absorbed
within the budgeted resources of the Judicial Department. There
may also be a minimal increase in revenue to the General Fund
from fines collected.'

30
32 **STATEMENT OF FACT**

34 This amendment makes the following changes.

36 1. The amendment changes the term "medical records" to
38 "treatment records" because the bill applies to practitioners who
provide services other than medical treatment.

40 2. The amendment allows the practitioner the option of
42 providing a narrative in lieu of copies of the record in order to
44 protect 3rd parties who may be referenced in the practitioner's
46 notes and to allow for a therapeutic exception when appropriate.
This change permits the practitioner to exclude information that
is not directly related to the patient's treatment and might
identify an individual who provided information in confidence or
cause danger to the life or safety of a person.

48 3. The amendment provides that the holder of a durable
50 medical power of attorney may receive the copies or narrative
52 when the person who was the subject of the treatment has executed
such a power of attorney and is now incompetent.

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2 4. The amendment cross-references the existing laws
3 permitting minors to consent to medical care in certain
4 situations in order to clarify that there is no intent to change
5 existing law with regard to the release of treatment records of
6 minors.

7 5. The amendment cross-references the law governing
8 disclosure of HIV test results to clarify that there is no intent
9 to change existing law with regard to release of those treatment
10 records.

11 6. The amendment clarifies that release of treatment
12 records located in hospitals are governed by the provisions of
13 existing law.

14 7. The amendment changes the forfeiture for violation to
15 \$25 and sets a maximum forfeiture of \$100.

16 8. The amendment adds a fiscal note to the bill.
17

Reported by the Committee on Human Resources
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House

(4/19/91)

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