

MAINE STATE LEGISLATURE

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118th MAINE LEGISLATURE

FIRST SPECIAL SESSION-1997

Legislative Document


No. 1737

H.P. 1225

House of Representatives, April 2, 1997

An Act to Provide for Confidentiality of Health Care Information.

Reference to the Committee on Health and Human Services suggested and ordered printed.


JOSEPH W. MAYO, Clerk

Presented by Representative FULLER of Manchester.
Cosponsored by Representatives: LOVETT of Scarborough, PIEH of Bremen, TOWNSEND of Portland, Senators: LaFOUNTAIN of York, LONGLEY of Waldo, MITCHELL of Penobscot.

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

PART A

Sec. A-1. 22 MRSA §1711-C is enacted to read:

§1711-C. Confidentiality of treatment records

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

A. "Authorized representative" means an agent, guardian, surrogate, family member or any other person legally authorized to act on behalf of an individual.

B. "Custodian" means any health care facility or carrier, as defined in Title 24-A, section 4301, that creates, controls or retains health care information or any person who obtains health care information for lawful purposes. "Custodian" includes natural persons only when acting in the course of their employment or agency.

C. "Disclosure" means the release or transfer of health care information in any manner.

D. "Health care" means acts of diagnosis, treatment, evaluation or advice or other acts as may be permissible under the health care licensing laws of this State.

E. "Health care facility" means any facility or institution, whether public or private, proprietary or not-for-profit, that offers health care diagnosis, treatment, inpatient or ambulatory care.

F. "Health care information" means information relating to a person's health care history, a person's family health care history, diagnosis, condition, treatment or evaluation that directly identifies the individual or can reasonably identify the individual by reference to publicly available information.

G. "Health care practitioner" means any person, partnership or corporation, licensed by this State to provide or otherwise lawfully providing health care services, or an officer, employee or agent of that provider acting in the course and scope of employment or agency related to or supportive of health care services.

2 H. "Health insurer" means an insurance company that offers
4 health insurance to the public, a nonprofit hospital and
6 medical service corporation or a health maintenance
8 organization and, to the extent permitted under federal law,
10 any administrator of an insured, self-insured or publicly
12 funded health care benefit plan offered by a public or
14 private entity.

16 I. "Individual" means a natural person, alive or dead, who
18 is the subject of health care information and includes the
20 individual's attorney, legal guardian, executor,
22 administrator or other authorized representative.

24 J. "Law enforcement investigation" means a lawful
26 investigation or official proceeding inquiring into a
28 violation of, or failure to comply with, any criminal, civil
30 or administrative law.

32 K. "Treatment record" means a health care practitioner's
34 notes made in treating a patient, including any diagnosis,
36 treatment provided or prognosis regarding the patient and
38 any tests or examinations performed or observations made,
40 including treatment records received by a health care
42 practitioner that the health care practitioner did not
44 create unless those records are explicitly designated as not
46 for release.

48 L. "Third party" means a person or entity other than the
person to whom the health care information relates.

2. Record amendments. Pursuant to sections 1711-A and
32 1711-B, a patient has a right to receive a copy or narrative
34 summary of that patient's medical records. An individual who is
36 the subject of health information may submit in writing a
38 proposed correction, amendment or addition to that individual's
40 health care information. The health care practitioner shall
42 place a copy of the writing in the individual's treatment
44 record. If the health care practitioner disagrees with the
46 proposed correction, amendment or addition, the health care
48 practitioner may also include a statement explaining the basis
for the objection.

3. Confidentiality of health information. Except as
44 provided in sections 1711 to 1711-B, health care information is
46 confidential and may not be disclosed by the health care
48 practitioner or any custodian except as provided in this section
or as permitted or required by law or court order. A disclosure
of health care information by any person is limited to:

2 A. Persons who require the information for a lawful purpose
as permitted by this section; and

4 B. The minimum amount of information necessary to
accomplish that lawful purpose.

6
8 No person to whom health care information is disclosed may use
the information for any purpose other than the lawful purpose for
10 which it was disclosed. No provision of this section affects any
other state or federal laws that expressly permit or require the
12 disclosure of health care information.

14 4. Authorization. A health care practitioner or a
custodian may disclose health care information only pursuant to a
16 valid authorization by the individual who is the subject of the
information, except as permitted or required by law or court
18 order. An authorization to disclose health care information must
be retained in the individual's treatment record. An
20 authorization is valid if it is in writing, whether as an
original or a facsimile, or electronic form and includes the
22 following:

24 A. The identity of the individual subject of the
information;

26 B. A description of the health care information to be
disclosed;

28 C. The identity or description of the person to whom the
30 information is to be disclosed;

32 D. The purpose of the disclosure and the scope of any
further disclosures that may be made in carrying out the
34 lawful purpose for which the disclosure is requested,
provided those disclosures are not otherwise prohibited by
36 law;

38 E. The signature of the individual and the date signed or,
if in electronic form, a unique identifier of the individual
40 and the date the individual authenticated the electronic
authorization; and

42 F. A statement that the individual may revoke the
44 authorization at any time, subject to the rights of any
person who acted in reliance on the authorization prior to
46 revocation.

48 5. Length of authorization. An authorization obtained
under subsection 4 may specify the length of time the
50 authorization remains valid, which in no event may be for more

2 than 12 months, except an authorization signed for one of the
following purposes:

4 A. To support payment of benefits under a health insurance
6 policy, in which event the authorization remains valid
during the entire term of coverage of the policy;

8 B. To support claims for benefits or compensation, in which
10 event the authorization remains valid during the pendency of
the claim; or

12 C. To support an application for a health, disability or
14 life insurance policy, reinstatement of a policy or any
16 change in benefits under an existing policy, in which case
the authorization expires in 12 months or whenever the
policy is denied, whichever occurs first.

18 An individual may revoke an authorization at any time, subject to
20 the rights of any person who acted in reliance on the
authorization prior to revocation. A revocation of an
22 authorization is valid if it is in writing, whether as an
original or a facsimile, or in electronic form and is dated and
24 authenticated in accordance with the procedures in subsection 4,
paragraph E. A revocation of an authorization must be retained
in the individual's treatment record.

26 Except as provided in this section, an authorization to disclose
28 the health care information under this section or a production of
health care information pursuant to a court order may not be
30 construed to be or to operate as a waiver of any other
32 confidentiality right provided by other federal or state laws,
common law or rules of evidence.

34 **6. Disclosure without authorization.** A health care
36 practitioner may, but is not required to, disclose health care
information without the authorization of the individual if the
health care information is disclosed:

38 A. To another health care provider for diagnosis or
40 treatment of the individual in a medical or dental emergency;

42 B. To one or more physicians directly engaged in providing
44 health care to the individual;

46 C. To one or more physicians with whom the treating
physician has consulted or to whom the treating physician
48 has referred the individual who is the subject of the health
care information and that individual has agreed to the
consultation or referral;

2 D. To one or more health care practitioners who are not
3 physicians directly engaged in providing health care to the
4 patient and the information disclosed is limited to the
5 scope of that health care practitioner's practice;

6
7 E. To one or more health care practitioners who are not
8 physicians with whom the treating health care practitioner
9 has consulted or to whom the treating health care
10 practitioner has referred the individual who is the subject
11 of the health care information and that individual has
12 agreed to the consultation or referral as long as the
13 information disclosed is limited to the health care
14 practitioner's scope of practice;

15 F. To an agent, employee or independent contractor of the
16 health care practitioner to the extent necessary to carry
17 out the health care practitioner's lawful health care
18 related purposes, including risk management, quality
19 assurance, utilization review, peer review and billing
20 activities. For the purposes of this paragraph, "lawful
21 purposes" do not include the marketing of services or
22 goods. The agent, employee or independent contractor may
23 not use the health care information for any purpose other
24 than the lawful purpose for which the information was
25 obtained. The agent, employee or independent contractor is
26 required to keep that information confidential;

27
28 G. To a successor in interest to a health care
29 practitioner or health care facility that maintained the
30 health care information if the person who maintains the
31 information has given the individual who is the subject of
32 the health care information reasonable notice of the
33 proposed disclosure and an opportunity to designate a
34 different health care practitioner or facility to maintain
35 the information. For the purposes of this paragraph, a
36 "successor in interest" means another health care
37 practitioner or facility or the estate of a deceased health
38 care practitioner;

39
40 H. When the individual who is the subject of health care
41 information transfers the treating relationship to another
42 health care practitioner, to the health care practitioner
43 pursuant to a valid authorization;

44
45 I. To an authorized representative when the individual
46 lacks the capacity to consent and the disclosure is made in
47 accordance with professional standards, the disclosure is
48 necessary to provide appropriate health care to the
49 individual and the disclosure has not been limited or
50 prohibited by the individual; or

2 J. To an authorized representative and the disclosure is
4 limited to directory information, unless the individual has
6 restricted that disclosure or the disclosure is otherwise
8 prohibited by law. For purposes of this paragraph,
10 "directory information" means information about the presence
12 or general health condition of a particular individual who
 is an inpatient or is receiving emergency health care in a
 health care facility. "General health condition" means the
 individual's general health condition or status described as
 "critical," "poor," "fair," "good," "excellent" or in other
 terms that denote similar conditions.

14 **7. Other lawful disclosure.** This section does not prohibit
16 disclosure of health care information when permitted or required
 by law, including the following circumstances:

18 A. When a health care practitioner who is currently
20 providing treatment to the subject of the information has
22 determined, based on reasonable professional judgment, that
24 the subject of the information poses a direct threat of
26 imminent harm to the health or safety of any individual, the
 custodian shall disclose only the minimum amount of health
 care information to the minimum number of persons necessary
 and in as confidential a manner as possible in order to
 avoid or minimize the harm;

28 B. When the health care practitioner is required by law to
30 report specific health care information to federal, state or
32 local governmental authorities in order to protect the
 public health and welfare;

34 C. When the disclosure is based on a reasonable belief that
 the information is needed for one of the following purposes:

36 (1) To identify a deceased individual;

38 (2) To determine the cause and manner of death by a
40 chief medical examiner or the medical examiner's
 designee; or

42 (3) To provide necessary health care information about
44 a deceased individual who is a donor of an anatomical
 gift for the purpose of that donation; or

46 D. When the disclosure is to federal, state or local
48 governmental authorities pursuant to a duly authorized
50 subpoena for use only in a law enforcement investigation
 relating to the provision of health care or the payment for
 health care. Information disclosed under this paragraph may

2 not be used in any administrative, civil or criminal action
3 or investigation directed against the individual who is the
4 subject of the information, unless the law enforcement
5 investigation involves the individual subject and arises
6 from the provision of health care or payment for health
7 care. The governmental authority may obtain the health care
8 information if there is probable cause to believe that the
9 information is relevant to a law enforcement investigation
10 of a violation of laws relating to the provision of health
11 care or the payment for health care and the authority's need
12 for information outweighs the privacy interest of the
13 individual. The particular health care information required
14 for the law enforcement investigation must be specified and
15 the appropriate court shall hold the information in camera.

16 The release or transfer of health care information pursuant to
17 this subsection may not be the basis for any legal liability,
18 civil or criminal, or considered a violation of this section.

20 **8. Custodians. A custodian:**

22 A. May not collect or require the disclosure of any more
23 protected information than is necessary to accomplish the
24 specific purpose for which the individual who is the subject
25 of the information has provided consent;

26 B. May not compel, require or otherwise induce health care
27 practitioners to collect, create or require a patient to
28 disclose any more protected information than is necessary
29 for the purpose of delivering health care to the individual
30 who is the subject of the information;

31 C. May not compel or require or otherwise induce health
32 care practitioners to disclose health care information
33 without a valid authorization from the individual who is the
34 subject of the information. Any contractual provision that
35 requires disclosure to the commercial user without a valid
36 authorization is void as a matter of policy;

37 D. Who is a carrier as defined by Title 24-A, chapter 56-A
38 or a health maintenance organization as defined by Title
39 24-A, chapter 56 may not, as a condition of coverage,
40 require an insured person, enrollee or prospective enrollee
41 to consent to the release of health care information that is
42 broader than necessary to appropriately underwrite the risk,
43 conduct appropriate utilization review or quality assurance
44 activities or for claims processing;

48

2 E. After obtaining health care information, may disclose
3 the information to its agents, employees an independent
4 contractors to the extent necessary to carry out the
5 custodian's lawful activities, including risk management,
6 quality assurance, utilization review, peer review and
7 billing activities. For the purposes of this paragraph,
8 "lawful purposes" do not include the marketing of services
9 or goods. The agent, employee or independent contractor may
10 not use the health care information for any purpose other
11 than the specific purpose for which the information was
12 obtained. The agent, employee or independent contractor is
13 required to keep that information confidential.

14 9. Disclosure for research or evaluation. A health care
15 practitioner or custodian may, but is not required to, disclose
16 health care information without the authorization of the
17 individual who is the subject of the information if the health
18 care information is disclosed:

19 A. To conduct a scientific research project that has been
20 approved by an institutional review board or by the board of
21 a nonprofit health research organization, as long as all
22 personally identifiable information has been removed from
23 the health care information. If all personally identifiable
24 information can not be removed, health care information may
25 not be released without the individual's consent, unless the
26 institutional review board or the board of the nonprofit
27 health research organization determines that the research
28 project engaged in by the health researcher requires use of
29 the health care information for the effectiveness of the
30 project and is of sufficient importance to outweigh the
31 intrusion into the privacy of the individual. A person may
32 not identify, directly or indirectly, any individual patient
33 in any report arising from a research project. For the
34 purposes of this paragraph "institutional review board"
35 means any board, committee or other group formally
36 designated by a health care facility and authorized under
37 federal law to review, approve or conduct periodic review of
38 research programs; or

39 B. To a person engaged in the assessment, evaluation or
40 investigation of the quality of health care provided by a
41 health care practitioner or carrier, as defined in Title
42 24-A, section 4301, pursuant to statutory, regulatory or
43 private accreditation standards or the requirements of a
44 private or public program for the payment of health care as
45 long as the person so engaged is subject to a
46 confidentiality agreement.
47
48

2 The release or transfer of health care information pursuant to
3 this subsection may not be the basis for any legal liability,
4 civil or criminal, or considered a violation of this section.

6 10. Confidentiality policies. A health care practitioner
7 or custodian shall develop and implement policies, standards and
8 procedures to protect the confidentiality, security and integrity
9 of health care information to ensure that the information is not
10 negligently, inappropriately or unlawfully disclosed.

12 11. Penalties. The penalties for violating a provision of
13 this section are as follows.

14 A. Whenever the Attorney General has reason to believe that
15 a person has knowingly and willfully violated a provision of
16 this section and that an action under this section is in the
17 public interest, the Attorney General may bring an action to
18 enjoin the violations of this section.

20 B. Any person violating this section is liable to the
21 individual who is the subject of the health care information
22 for actual damages and costs plus a civil penalty of up to
23 \$1,000 for a negligent violation and up to \$5,000 for a
24 willful and intentional violation. If a court finds that
25 willful and intentional violations of this section have
26 occurred with sufficient frequency to constitute a general
27 business practice after due notice, the court may assess a
28 civil penalty of not more than \$50,000 for custodians and
29 not more than \$10,000 for health care practitioners.

30 C. A person may bring an action for injunctive relief for a
31 violation of this section in addition to or instead of the
32 penalties provided in this section. The applicant for
33 injunctive relief under this section may not be required to
34 give security as a condition upon the issuance of the
35 injunction.

38 12. Good faith. An individual may not maintain an action
39 against a person who disclosed health care information in good
40 faith reliance on the individual's authorization whether or not
41 the authorization meets the requirements of subsection 4.

44 13. Minors. To the extent a minor has the right under the
45 laws of this State to obtain health care services without the
46 consent of a parent or guardian, a minor has all rights under
47 this section relating to health care information regarding health
48 care services, subject to the requirements of chapter 260 and
Title 19, chapter 18.

2 A. "Health care practitioner" has the same meaning as in
Title-24, section 2502 1711-C, subsection 1. "Health-care
4 praetitioner"---also---includes---"licensed---clinical---social
workers"---as---defined---in---Title-32,---chapter-83---and---"marriage
6 and---family---therapists"---and---"professional---counselors"---as
defined-in-Title-32,---chapter-119.

8 B. "Treatment records" means--all--records--relating--to--a
patient's--diagnosis--and--treatment,--including--x--rays,
10 performed-by-a-health-care-practitioner has the same meaning
as in section 1711-C, subsection 1.

12 **Sec. B-6. 22 MRSA §1711-B, sub-§5**, as enacted by PL 1991, c.
14 142, §2, is amended to read:

16 **5. HIV test.** Release of information regarding the HIV
infection status of a patient is governed by Title-5, section
18 19203-D 1711-C.

20 **Sec. B-7. Effective date.** Part B of this Act takes effect
January 1, 1998.

24 SUMMARY

26 This bill establishes safeguards for maintaining the
confidentiality, security and integrity of health care
28 information. It establishes requirements for confidentiality and
authorization by patients for disclosure of their health care
30 information and exceptions to the requirement of authorization.
It removes the requirement that HIV information be treated
32 differently from other health information and at the same time
enhances the confidentiality of the medical record.