

# MAINE STATE LEGISLATURE

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# 118th MAINE LEGISLATURE

## FIRST SPECIAL SESSION-1997

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Legislative Document

No. 1779

S.P. 600

In Senate, April 10, 1997

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### **An Act Regarding Access to Medical Information.**

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

A handwritten signature in cursive script that reads "Joy J. O'Brien".

JOY J. O'BRIEN  
Secretary of the Senate

Presented by Senator PINGREE of Knox.  
Cosponsored by Representative WATSON of Farmingdale and  
Senators: KILKELLY of Lincoln, PARADIS of Aroostook, RAND of Cumberland,  
Representatives: BRENNAN of Portland, GREEN of Monmouth, LOVETT of Scarborough,  
MAYO of Bath, MITCHELL of Portland.

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

2  
4           **Sec. 1. 5 MRSA §200-E, sub-§§2 and 4**, as enacted by PL 1985, c.  
422, is amended to read:

6           **2. Medical examination; criminal proceeding or**  
8 **investigation.** In any criminal proceeding or investigation,  
10 ~~where when medical examination or treatment has been provided to~~  
12 ~~a victim, upon written request of the Attorney General or any of~~  
14 ~~his deputies or assistants whom he designates in writing, or the~~  
16 ~~district attorney or his deputy or assistants whom he designates~~  
18 ~~in writing upon receipt of a subpoena, warrant or court order as~~  
20 ~~provided in Title 22, section 1730-J of the Medical Privacy Act~~  
22 ~~of 1997, any individual, partnership, association, corporation,~~  
24 ~~institution or governmental entity which that has rendered the~~  
26 ~~examination or treatment shall immediately provide the authorized~~  
28 ~~person with all medical records pertaining to the medical~~  
30 ~~examination or treatment that are requested by the authorized~~  
32 ~~person. Where When the authorized person knows of circumstances~~  
34 ~~or factors which would that require production of fewer than all~~  
36 ~~medical records, he shall attempt to the authorized person may~~  
38 ~~request the specific medical records believed to be pertinent.~~

24           A. Unless otherwise provided by state or federal law, this  
26 section on the furnishing of confidential medical records  
governs.

28           **4. Medical records confidential.** Medical records obtained  
30 by the authorized person pursuant to this section are  
32 confidential and shall may not be disseminated to any person  
34 other than by order of court or ~~to a member of the staff of the~~  
36 ~~authorized person, a law enforcement officer specially assigned~~  
38 ~~to the criminal proceeding or investigation, or other person who,~~  
40 ~~by virtue of special knowledge or training, is designated by the~~  
42 ~~authorized person to assist him in the performance of his duty in~~  
44 ~~the criminal proceeding or investigation in a manner consistent~~  
46 ~~with Title 22, chapter 401-A.~~

40           **Sec. 2. 5 MRSA §4572, sub-§2, ¶C**, as enacted by PL 1995, c.  
393, §13, is amended to read:

42           C. A covered entity may require a medical examination after  
44 an offer of employment has been made to a job applicant and  
46 prior to the commencement of the employment duties of the  
applicant and may condition an offer of employment on the  
results of the examination, if:

48           (1) All entering employees are subjected to the same  
50 examination regardless of disability;

52           (2) Information obtained regarding the medical  
condition or history of the applicant is collected and

2 maintained on separate forms and in separate medical  
files and is treated as a confidential medical record,  
4 except that:

6 (a) Supervisors and managers may be informed  
regarding necessary restrictions on the work or  
8 duties of the employee and necessary  
accommodations;

10 (b) First aid and safety personnel may be  
informed, when appropriate, if the disability  
12 might require emergency treatment; and

14 (c) Government officials investigating compliance  
with this Act are provided relevant information on  
16 request; and

18 (3) The results of the examination are used only in  
accordance with this Act.

20 The dissemination of information in medical records obtained  
22 or maintained pursuant to this paragraph must be consistent  
24 with the Medical Privacy Act of 1997.

26 **Sec. 3. 5 MRSA §17057, sub-§1**, as repealed and replaced by PL  
1991, c. 824, Pt. A, §7, is amended to read:

28 **1. Medical information.** Medical information of any kind in  
the possession of the retirement system, including information  
30 pertaining to diagnosis or treatment of mental or emotional  
disorders, is confidential and not open to public inspection and  
32 does not constitute "public records" as defined in Title 1,  
section 402, subsection 3. Records containing medical  
34 information may be examined by the employee to whom they relate  
or by the State or participating local district employer of the  
36 employee for any purposes related to any claim for workers'  
compensation or any other benefit. The employee must be advised  
38 in writing by the retirement system of any request by the  
employer to examine the employee's medical records. Medical  
40 information obtained pursuant to this section remains  
confidential, except as otherwise provided by law, and except  
42 when involved in proceedings resulting from an appeal pursuant to  
section 17451 or proceedings regarding claims for other  
44 retirement benefits. Use or dissemination of medical information  
46 in the possession of the retirement system must be consistent  
with the Medical Privacy Act of 1997.

48 **Sec. 4. 22 MRSA §42, sub-§2**, as repealed and replaced by PL  
1973, c. 521, §1, is amended to read:

50 **2. Department records.** The department shall make and

2 enforce reasonable rules and regulations consistent with chapter  
3 401-A governing the custody, use and preservation of the records,  
4 papers, files and communications of the department, and  
5 especially those which that pertain to the granting of public  
6 assistance. The use of such the records, papers, files and  
7 communications by any other agency or department of government to  
8 which they may be furnished shall be is limited to the purposes  
9 for which they are furnished and by the law under which they may  
10 be furnished. It shall be is unlawful for any person, except for  
11 purposes directly connected with the administration of the public  
12 assistance and in accordance with the rules and regulations of  
13 the department, to solicit, disclose, receive, make use of or  
14 authorize, knowingly permit, participate in or acquiesce in the  
15 use of, any list of or names of, or any information concerning,  
16 persons applying for or receiving such that assistance, directly  
17 or indirectly, derived from the records, papers, files or  
18 communications of the State or subdivisions or agencies thereof  
19 of the State, or acquired in the course of the performance of  
20 official duties. Any person violating any provision of this  
21 subsection shall must be punished by a fine of not more than \$500  
22 or by imprisonment for not more than 11 months, or by both.

23 **Sec. 5. 22 MRSA §815, sub-§1**, as enacted by PL 1989, c. 487,  
24 §11, is amended to read:

25 **1. Privileges abrogated.** Subject to the limitations  
26 imposed by United States Code, Title 42, Sections 290dd-3 and  
27 290ee-3, the physician-patient and psychotherapist-patient  
28 privileges under the Maine Rules of Evidence and those  
29 confidential communications described under chapter 401-A, Title  
30 5, section 19203, ~~Title 24-A, section 4224~~ Title 32, section 7005  
31 and Title 34-B, section 1207, are abrogated to the extent  
32 necessary to permit reporting to the Bureau of Health any  
33 incidents of notifiable disease; cooperating with the Bureau of  
34 Health or an intervention team appointed by the Bureau of Health  
35 in investigating a case of a notifiable disease or suspected  
36 epidemic, or taking preventive action in such a case; or giving  
37 evidence in a proceeding pursuant to this chapter. Information  
38 released to the bureau pursuant to this section shall be kept  
39 confidential and may not be disclosed by the bureau except as  
40 provided in section 824 and Title 5, section 19203, subsection 8.

41 **Sec. 6. 22 MRSA §1402**, as amended by PL 1995, c. 292, §1, is  
42 further amended by adding a new paragraph at the end to read:

43 The department may not release any information obtained  
44 under this section in any way that personally identifies the  
45 person diagnosed with a malignant tumor.

46 **Sec. 7. 22 MRSA §1692-B, sub§1**, as enacted by PL 1989, c. 844,  
47 §2, is amended to read:



2 A. In which all identifying information has been replaced  
4 by a unique identifier and where neither the remaining  
information nor the unique identifier, on its face,  
identifies an individual;

6 B. That can not easily be used or manipulated in a manner  
8 that reveals the identity of an individual; and

10 C. That can only be linked or matched to other information  
12 in a manner that reveals the identity of an individual by a  
person authorized to carry out those functions under section  
1730-A.

14 **3. Disclose.** "Disclose," when used with respect to  
16 protected health information that is held by a health information  
trustee, means to release, transfer, provide access to or  
18 otherwise divulge the information to any person other than an  
individual who is the subject of the information. "Disclose"  
20 includes the placement of protected health information into a  
computerized data base, network computer system or any other  
22 electronic or magnetic data system that more than one person may  
access by any means. "Disclose" does not include oral  
24 communication between an individual who is the subject of  
protected health information and a health care provider  
26 delivering health care to such an individual.

28 **4. Electronic.** "Electronic," when used with reference to  
information, means:

30 A. In electronic or magnetic form;

32 B. In an optical storage form;

34 C. Computer-based;

36 D. Computer-associated; or

38 E. In some other form that:

40 (1) Is appropriate for nonpaper-based information  
42 processing or storage; and

44 (2) Exists on the date of the enactment of this Act or  
is developed subsequent to that date.

46 **5. Health care.** "Health care" means:

48 A. Any sale or dispensing of a drug, device, equipment or  
50 other item to an individual or for the use of an individual,  
pursuant to a prescription; or

2 B. Any preventive, predictive, diagnostic, therapeutic,  
rehabilitative, maintenance or palliative care, counseling,  
4 service or procedure:

6 (1) With respect to the physical or mental condition  
of an individual; or

8 (2) Affecting the structure or function of the human  
10 body or any part of the human body, including  
individual cells and their components.

12 6. Health care provider. "Health care provider" means a  
14 person who, with respect to a specific item of protected health  
information, receives, creates, uses, maintains or discloses the  
16 information while acting in whole or in part in the capacity of:

18 A. A person who is licensed, certified, registered or  
otherwise authorized by law to provide an item or service  
20 that constitutes health care in the ordinary course of  
business or practice of a profession; or

22 B. A federal or state program that directly provides items  
24 or services that constitute health care to beneficiaries.

26 7. Health information trustee. "Health information  
trustee" means:

28 A. A person who is a health care provider, health plan,  
30 health oversight agency, public health authority, health  
researcher, employer, insurer, school, institution of higher  
32 education, or insurance support organization, insofar as the  
person creates, receives, obtains, maintains, uses or  
34 transmits protected health information; or

36 B. Any employee, agent or contractor of a person described  
in paragraph A, insofar as the employee, agent or contractor  
38 creates, receives, obtains, maintains, uses or transmits  
protected health information.

40 8. Health oversight agency. "Health oversight agency"  
42 means a person who:

44 A. Performs or oversees the performance of an assessment,  
investigation or prosecution relating to:

46 (1) Compliance with legal or fiscal standards  
48 pertinent to health care fraud, including fraudulent  
claims regarding health care, health services or  
50 equipment or related activities and items; or

52 (2) The protection of individuals from harm, abuse,  
neglect or exploitation; and



2           B. Is a public agency acting on behalf of a public agency,  
4           acting pursuant to a requirement of a public agency or  
6           carrying out activities under a federal or state law  
              governing an assessment, investigation or prosecution  
              described in paragraph A.

8           9. Health plan. "Health plan" means any health insurance  
10          plan, including any hospital or medical service plan, dental or  
12          other health service plan or health maintenance organization plan  
              or other program providing payment for health care, whether or  
              not funded through the purchase of insurance.

14          10. Health researcher. "Health researcher" means a person  
16          who conducts, using protected health information, a systematic  
18          investigation or research development, testing or evaluation to  
              develop or contribute to scientific or medical knowledge.

20          11. Individual representative. "Individual representative"  
22          means any individual legally empowered to make decisions  
24          concerning the provision of health care to an individual when the  
              individual lacks the legal capacity under state law to make those  
              decisions or the administrator or executor of the estate of a  
              deceased individual.

26          12. Insurance support organization. "Insurance support  
28          organization" means any person who regularly engages, in whole or  
30          in part, in the practice of assembling and providing information  
              about individuals to an insurer or health plan for insurance  
              transactions, including:

32            A. The furnishing of consumer reports or investigative  
34            consumer reports to an insurer or health plan for use in  
              connection with an insurance transaction; or

36            B. The collection of personal information from insurers,  
38            health plans or other insurance support organizations for  
40            the purpose of detecting or preventing fraud or material  
              misrepresentation in connection with insurance underwriting  
              or insurance claim activity.

42          "Insurance support organization" does not include a person who is  
44          treated as a health information trustee under any other provision  
              of this Act.

46          13. Law enforcement inquiry. "Law enforcement inquiry"  
48          means an official law enforcement investigation or proceeding  
              inquiring into a violation of, or failure to comply with, any law.

50          14. Nonidentifiable health information. "Nonidentifiable  
52          health information" means information that would be protected  
              health information, except that:

- 2           A. It is impossible to ascertain, based on the information  
4           or on any codes or identifiers related to the information,  
            the identity of an individual whose health or condition is  
6           the subject of the information; and
- 8           B. It can not be linked or matched by a foreseeable method  
            to any other information that pertains to that individual.
- 10          15. Person. "Person" means any of the following:
- 12           A. An individual;
- 14           B. A government;
- 16           C. A governmental subdivision, agency or authority;
- 18           D. A corporation;
- 20           E. A company;
- 22           F. An association;
- 24           G. A firm;
- 26           H. A partnership;
- 28           I. A society;
- 30           J. An estate;
- 32           K. A trust;
- 34           L. A joint venture;
- 36           M. An individual representative; or
- 38           N. Any other legal entity.
- 40          16. Protected health information. "Protected health  
42          information" means any information, including information derived  
44          from a biological sample from the human body and demographic  
            information about an individual, whether oral or recorded in any  
            form or medium, that:
- 46           A. Is created or received by a health information trustee  
            or an accrediting body;
- 48           B. Relates to:
- 50

2           (1) The past, present or future physical or mental  
4           health, predisposition or condition of an individual,  
6           or any individual related by blood to that individual;

8           (2) The provision of health care to an individual; or

10           (3) The past, present or future payment for the  
12           provision of health care to an individual; and

14           C. Identifies the individual:

16           (1) When there is a reasonable basis to believe that  
18           the information can be used to identify the individual;  
20           or

22           (2) When the individual could be linked or matched by  
24           a foreseeable method to any other information which  
26           pertains to that individual.

28           17. Protected health information subfile. "Protected  
30           health information subfile" means protected health information  
32           that is segregated pursuant to section 1728, subsection 3.

34           18. Public health authority. "Public health authority"  
36           means an authority or instrumentality of the United States, this  
38           State, another state or a political subdivision of a state that:

40           A. Is charged by statute with responsibility for public  
42           health matters; and

44           B. Is engaged in such activities as injury reporting,  
46           public health surveillance and public health investigation  
48           or intervention.

50           19. Writing. "Writing" means writing in either a  
52           paper-based or electronic form.

54           §1722. Inspection and copying of protected health information

56           1. Inspection and copying permitted. Except as provided in  
58           subsections 2 and 8, a health information trustee shall permit an  
60           individual who is the subject of protected health information, or  
62           the individual's designee, to inspect and copy protected health  
64           information concerning the individual, including records created  
66           under section 1723 that the health information trustee  
68           maintains. A health information trustee may require an  
70           individual to reimburse the trustee for the reasonable cost of  
72           that inspection and copying.

74           2. Exception. The inspection and copying permitted by  
76           subsection 1 does not apply in the following circumstances.

2 A. A health care provider who is delivering or has  
4 delivered health care to an individual who is the subject of  
6 protected health information relating to that health care is  
8 not required by this section to permit inspection or copying  
10 of the information, when that inspection or copying  
12 reasonably could be expected to endanger the life or  
14 physical or mental safety of an individual or when  
16 disclosure to that individual is prohibited by Title 5,  
18 section 19507.

20 B. In any case when a health care provider determines that  
22 the provider, pursuant to paragraph A, will not permit an  
24 individual to inspect or copy protected health information,  
26 the provider may permit inspection or copying by the  
28 individual's designee.

30 3. Denial of a request for inspection or copying. If a  
32 health information trustee denies a request for inspection or  
34 copying under subsection 2, the health inspection trustee shall  
36 inform the individual in writing of:

38 A. The reasons for the denial of the request;

40 B. Any procedure for further review of the denial; and

42 C. The individual's right to file with the health  
44 inspection trustee a statement setting forth the request for  
46 inspection or copying.

48 4. Statement regarding request. If an individual has filed  
50 a statement under subsection 3, paragraph C setting forth the  
52 request, the health information trustee in any subsequent  
54 disclosure of the portion of the information requested shall  
56 include:

58 A. A copy of the individual's statement; and

60 B. A concise statement of the reasons for denying the  
62 request for inspection or copying.

64 5. Rule of construction. This section may not be construed  
66 to require a health information trustee to conduct a formal,  
68 informal or other hearing or proceeding concerning a request for  
70 inspection or copying of protected health information.

72 6. Inspection and copying of portion. A health information  
74 trustee shall permit inspection and copying under subsection 1 of  
76 any reasonable portion of a record after deletion of any portion  
78 that is exempt under subsection 2.

80 7. Deadline. A health information trustee shall comply  
82 with or deny, in accordance with subsection 3, a request for

2 inspection or copying of protected health information under this  
3 section within a 30-day period beginning on the date on which the  
4 health information trustee receives the request.

6 8. Agents and contractors. A person acting in the capacity  
7 of an agent or contractor of a health care provider, health plan,  
8 health oversight agency, public health authority, health  
9 researcher, employer, insurer, school, institution of higher  
10 education or insurance support organization:

12 A. Is not responsible for providing for the inspection or  
13 copying of protected health information under this section,  
14 except when the agent or contractor has been notified by  
15 their principal that a request for inspection or copying has  
16 been made to the principal under subsection 1 and has not  
17 been denied under subsection 2.

18 B. If requested to provide for the inspection or copying of  
19 coded health information under this section, shall inform  
20 the individual making the request that the individual shall  
21 contact a person authorized under section 1730-A to link or  
22 match the coded health information to reveal the identity of  
23 the individual who is the subject of the information.

24 **§1723. Correction or amendment of protected health information**

26 1. Health information trustee; correction or amendment.  
27 Unless proceeding under subsection 2, and except as provided in  
28 subsection 6, a health information trustee, within a 45-day  
29 period beginning on the date on which the health information  
30 trustee receives from an individual a written request to correct  
31 or amend protected health information about the individual shall:  
32

34 A. Make the correction or amendment requested from an  
35 individual;

36 B. Inform the individual of the correction or amendment  
37 that has been made; and

38 C. Make reasonable efforts to inform any person who is  
39 identified by the individual, and to whom the uncorrected or  
40 unamended portion of the information was previously  
41 disclosed, of the correction or amendment that has been made.  
42

44 2. Refusal to correct or amend. If the health information  
45 trustee refuses to make the correction or amendment, the health  
46 information trustee shall inform the individual, within a 45-day  
47 period beginning on the date on which the trustee receives the  
48 individual's request of:  
49

2           A. The reasons for the refusal to make the correction or  
3           amendment;

4           B. Any procedure for further review of the refusal; and

6           C. The individual's right to file with the health  
7           information trustee a concise statement setting forth the  
8           requested correction or amendment and the individual's  
9           reasons for disagreeing with the refusal.

10           3. Statement of disagreement. If an individual has filed a  
11           statement of disagreement under subsection 2, paragraph C the  
12           health information trustee in a subsequent disclosure of the  
13           disputed portion of the information shall include:

16           A. A copy of the individual's statement; and

18           B. A statement of the reasons for not making the requested  
19           correction or amendment.

20           4. Rule of construction. This section may not be construed  
21           to require a health information trustee to conduct a formal,  
22           informal or other hearing or proceeding concerning a request for  
23           a correction or amendment to protected health information.

26           5. Correction. For purposes of subsection 1, a correction  
27           is deemed to have been made to protected health information when  
28           information that has been disputed by an individual has been  
29           corrected, clearly marked as incorrect or supplemented by correct  
30           information.

32           6. Rules governing agents and contractors. A person acting  
33           in the capacity of an agent or contractor of a health care  
34           provider, health plan, health oversight agency, public health  
35           authority, health researcher, employer, insurer, school,  
36           institution of higher education or insurance support organization  
37           is not authorized to make corrections or amendments to protected  
38           health information received from their principal, except when the  
39           agent or contractor has been asked by the principal to fulfill  
40           the principal's obligations under this section.

42           §1724. Notice of information practices

44           1. Preparation of written notice. A health information  
45           trustee shall prepare and provide, in accordance with subsection  
46           2, a written notice containing the following:

48           A. A description of the following rights of an individual  
49           who is a subject of protected health information maintained  
50           by the health information trustee:

2           (1) The right of the individual to request segregation  
4           of protected health information, and to restrict the  
6           use of that information by employees, agents and  
8           contractors of the health information trustee, under  
10           section 1728, subsection 3;

12           (2) The right of the individual to inspect, copy,  
14           amend and correct the protected health information  
16           under sections 1722 and 1723;

18           (3) The right of the individual to object to the  
20           disclosure of the information to next of kin or in  
22           directory information under section 1730-B;

24           (4) The circumstances under which the information may  
26           be used or disclosed without an authorization executed  
28           by the individual;

30           (5) The right of the individual not to have employment  
32           or the receipt of services conditioned upon the  
34           execution by the individual of an authorization for  
36           disclosure or use for any purpose other than treatment  
38           or payment; and

40           (6) The procedures the individual must follow in order  
42           to exercise the rights under this section; and

44           B. A description of the health information trustee's health  
46           information practices, including the safeguards and  
48           practices used to protect the information.

50           2. Availability of notice to subjects. A health  
52           information trustee shall provide a copy of a notice, prepared  
54           under this section to an individual who is a subject of protected  
56           health information;

58           A. Along with any request for authorization to use or  
60           disclose the information created pursuant to section 1729 or  
62           1730 and presented by the health information trustee to the  
64           individual for execution;

66           B. At the first practicable opportunity after the health  
68           information trustee uses or discloses the information  
70           without an authorization by the individual;

72           C. At the first practicable opportunity after a health  
74           information trustee commences the collection of the  
76           information; or

78           D. When the individual requests to inspect, copy, correct  
80           or amend the individual's protected health information  
82           pursuant to sections 1722 and 1723.

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§1725. Establishment of safeguards

1. Health information trustee; safeguards. A health information trustee shall establish and maintain appropriate administrative, technical and physical safeguards to ensure the confidentiality, security, accuracy and integrity of protected health information created, received, obtained, maintained, used or transmitted by the health information trustee.

2. Safeguards; electronic information. The commissioner shall develop, and by rule, impose on health information trustees, requirements for the electronic maintenance, use and disclosure of protected health information. The requirements must include the following.

A. A health information trustee shall implement controls with respect to access to electronic protected health information. The trustee may grant a request by any person for access to that information for use by the health information trustee or for disclosure to another health information trustee, only after verifying that:

(1) The person making the request can prove the person's identity; and

(2) The proposed use of the protected health information or the requested disclosure is authorized under this Act.

B. A health information trustee shall use a method of verification to verify the identity of persons requesting access to electronic protected health information. A health information trustee who issues a device that verifies the identity of a person making a request for information for purposes of this paragraph shall instruct the person in the proper care and use of the device and require the person to protect the device from misuse. A system used by a health information trustee to maintain verification information collected under this paragraph must prevent the disclosure of the verification information to any person other than a person who is specifically authorized to receive that information.

C. A health information trustee shall limit the persons who may use protected health information created or maintained by the health information trustee in electronic form to persons specifically authorized by the health information trustee to use that information.

D. A health information trustee who requests using electronic means to receive protected health information or



2 who responds using electronic means to such a request shall  
3 implement procedures to prevent the interception of that  
4 request or response by persons who are not authorized to  
5 intercept it.

6 A health information trustee who receives, using electronic  
7 means, a request for protected health information from  
8 another health information trustee may not provide that  
9 information in response to the request unless the request  
10 contains sufficient details to identify the one individual  
11 who is the subject of the request.

12 E. A health information trustee shall maintain an  
13 electronic record concerning each attempt that is made by  
14 the health information trustee, whether authorized or  
15 unauthorized, successful or unsuccessful, to access  
16 protected health information that is maintained by any other  
17 health information trustee in electronic form. The  
18 electronic record must include the identity of the  
19 individual attempting to gain access and sufficient  
20 information to identify the information sought.

21 A health information trustee shall maintain an electronic  
22 record concerning each attempt that is made by the health  
23 information trustee or by any other person, whether  
24 authorized or unauthorized, successful or unsuccessful, to  
25 access protected health information maintained by the health  
26 information trustee in electronic form. The electronic  
27 record must include the identity of the individual  
28 attempting to gain access and sufficient information to  
29 identify the information sought.

30 This subsection applies only to protected health information that  
31 is electronic. Nothing in this Act may be construed to require  
32 that protected health information be created, received,  
33 maintained, used or disclosed in electronic form.

34 3. Review of requirements. The commissioner from time to  
35 time shall review the requirements developed and imposed under  
36 subsection 2 to determine whether technological advances or other  
37 factors require changes. If the commissioner determines that  
38 changes are necessary, the commissioner shall implement those  
39 changes.

40 **§1726. Disclosures**

41 1. Persons not acting as agents or contractors. Except as  
42 provided in subsection 2, a health information trustee shall  
43 create and maintain, with respect to any protected health  
44 information disclosure made by the health information trustee  
45 that is not related to treatment, a record of the disclosure in  
46 accordance with rules adopted by the commissioner.

2           2. Agents and contractors. A person acting in the capacity  
4 of an agent or contractor of a health care provider, health plan,  
health oversight agency, public health authority, health  
6 researcher, employer, insurer, school, institution of higher  
education or insurance support organization shall create and  
8 maintain, with respect to any protected health information  
disclosure made by the person that is authorized under sections  
10 1729 to 1730-A and sections 1730-C to 1730-J, a record of the  
disclosure in accordance with rules adopted by the commissioner.

12           3. Record of disclosure. A record created and maintained  
14 under subsection 1 must be maintained as protected health  
information for not less than 7 years.

16           **§1727. Prohibition against retaliation**

18           A health information trustee may not adversely affect  
20 another person, directly or indirectly, because that person has  
exercised a right under this Act, disclosed information relating  
22 to a possible violation of this Act, or associated with or  
assisted a person in the exercise of a right in this chapter.

24           **§1728. General rules regarding use and disclosure**

26           A health information trustee may not use or disclose  
28 protected health information except as authorized in this chapter.

30           1. Scope of use and disclosure. A health information  
trustee may not use or disclose to any person protected health  
32 information unless the use or disclosure is compatible with and  
directly related to:

34           A. The purposes for which the information was obtained by  
the health information trustee; and

36           B. When an individual has executed an authorization for the  
38 specific purpose authorized by the individual.

40           Every use and disclosure of protected health information by a  
42 health information trustee must be limited to the minimum amount  
of information necessary to accomplish the purpose for which the  
information is used or disclosed.

44           A health information trustee shall use and disclose  
46 nonidentifiable health information, in lieu of protected health  
information, to the maximum extent possible and consistent with  
48 the purpose for the use or disclosure.

50           A health information trustee shall use and disclose coded health  
information, in lieu of any other protected health information,

2 to the maximum extent possible and consistent with the purpose  
3 for the use or disclosure.

4 A health information trustee may not collect, create or request  
5 the disclosure of more protected health information than is  
6 necessary to accomplish the purpose for which the information is  
7 collected, created or requested.

8  
9 **2. Special rules; protected health information subfiles.** A  
10 health information trustee shall, upon creating or obtaining  
11 protected health information, comply with the following requests  
12 by the subject of the information:

13  
14 A. To segregate the amount or type of protected health  
15 information; and

16  
17 B. To maintain the protected health information as one or  
18 more protected health information subfiles.

19  
20 Subject to paragraph B, a person, other than a health care  
21 provider who is otherwise authorized to access or use protected  
22 health information contained in a protected health information  
23 subfile for purposes of delivering health care to the individual,  
24 may not use or disclose any information that is in the subfile  
25 except as authorized under sections 1729 to 1730-A and 1730-C.

26  
27 A health information trustee, pursuant to paragraph A, shall  
28 limit use of the subfile to those employees, contractors or  
29 agents of the health information trustee, described by name or  
30 job title who are authorized, pursuant to section 1729 or 1730,  
31 to use or obtain that information.

32  
33 A health information trustee may not disclose information about  
34 the existence of a health information subfile to any person who  
35 is not authorized to obtain, access or use the subfile.

36  
37 **3. No general requirement to disclose.** Nothing in this  
38 chapter that permits a disclosure of protected health information  
39 may be construed to require such a disclosure.

40  
41 **4. Limitations on disclosure and use.** A health information  
42 trustee may not condition delivery of health care or payment for  
43 service on the receipt of an authorization described in section  
44 1729 or 1730 that authorizes the disclosure of protected health  
45 information to any employee, agent or contractor who does not  
46 perform a legitimate and necessary function for which the  
47 information was obtained or created.

48  
49 A health information trustee may not condition employment on the  
50 receipt of an authorization described in section 1729 or 1730  
51 that authorizes the disclosure of protected health information to  
52 any employee, agent or contractor who does not perform a

legitimate and necessary function for which the information was  
obtained or created.

**5. Identification of disclosed information as protected information.** Except as provided in this chapter, a health information trustee may not disclose protected health information unless that information is clearly identified as protected health information.

**6. Information identifying providers.** The commissioner shall adopt rules protecting information identifying health care providers in order to promote the availability of health care services.

**7. Use of social security number.** A social security number, a derivative of a social security number or a routine identifier may not be used by a health information trustee for any purpose relating to protected health information or the use or disclosure of that information except in accordance with this Act.

**8. Multiple records.** A person may not aggregate, compile, link or match protected health information held by 2 or more health information trustees or 2 or more protected health information subfiles pertaining to an individual without obtaining specific authorization under section 1729 or 1730.

**9. No effect of agency on duty or liability of principal.** An agreement or relationship between a health information trustee and a health oversight agent or a contractor does not relieve a health information trustee of any duty or liability under this Act.

**§1729. Authorization for disclosure of protected health information for treatment or payment**

**1. Written authorization.** A health information trustee may disclose protected health information for purposes of treatment or payment pursuant to an authorization executed by an individual who is the subject of the information or a person acting for the individual pursuant to state law, if all of the following requirements are met:

A. The authorization is in written or electronic form, signed or electronically authenticated by the individual, and dated;

B. Separate forms authorizing disclosures for treatment and separate forms authorizing disclosures for payment processes are provided to the individual;

2           C. The information to be disclosed is specified in the  
3           authorization;

4           D. The health information trustee who is authorized to  
5           disclose the information is specifically identified in the  
6           authorization;

7           E. The person to whom the information is to be disclosed is  
8           specifically identified in the authorization;

9           F. The authorization contains an acknowledgement that the  
10           individual who is executing the authorization has the right  
11           to revoke or amend the authorization under subsection 2;

12           G. The authorization describes in detail the purpose for  
13           which the information will be used;

14           H. The authorization contains an acknowledgement that the  
15           individual who is executing the authorization has read a  
16           statement of any disclosures of the protected health  
17           information that the health information trustee intends to  
18           make;

19           I. The authorization includes a statement that the  
20           information will be used and disclosed solely for one or  
21           more of the purposes specified in the authorization; and

22           J. The authorization specifies a date or event upon which  
23           the authorization expires that may not be later than one  
24           year after the date on which the authorization is executed.

25           2. Revocation or amendment of authorization. A written  
26           authorization under subsection 1 is subject to revocation or  
27           amendment at any time by the individual who executed the  
28           authorization, except that:

29           A. The revocation or amendment must be in writing; and

30           B. An authorization executed for the purpose of validation  
31           of expenditures for health care that the individual has  
32           authorized may not be revoked.

33           3. Notice of revocation. A health information trustee who  
34           discloses protected health information pursuant to the written  
35           authorization in subsection 1 that has been revoked is not  
36           subject to any liability or penalty under this Act if the health  
37           information trustee has no notice of the revocation at the time  
38           that the health information trustee makes the disclosure.

39           4. Model authorizations. The department, after providing  
40           notice and opportunity for public comment, shall develop and  
41           disseminate model written authorizations of the type described in

2 subsection 1 and model statements of intended disclosures of the  
3 type described in subsection 1, paragraph G.

4 5. Copy. A health information trustee who discloses  
5 protected health information pursuant to a written authorization  
6 under this section shall maintain a copy of that authorization  
7 for not less than 7 years.

8  
9 **§1730. Authorization for disclosure of protected health**  
10 **information for purposes other than treatment or payment**

11 1. Written authorization. A health information trustee may  
12 disclose protected health information for a purpose other than  
13 treatment or payment pursuant to an authorization executed by an  
14 individual who is the subject of the information, or a person  
15 acting for that individual, if each of the following requirements  
16 are met:

17 A. The requirements of section 1729, subsection 1,  
18 paragraphs A to G;

19 B. The statement of intended disclosure must be in writing  
20 and received by the individual authorizing the disclosure on  
21 or before the date the authorization is executed; and

22 C. The authorization specifies a date or an event upon  
23 which the authorization expires that may not be more than  
24 one year from the date of the execution of the authorization.

25 2. Limitation on requests for authorization. A health  
26 information trustee may not condition delivery of treatment or  
27 payment of services on the receipt of a written authorization  
28 under subsection 1.

29 A health information trustee may not adversely affect or  
30 condition the employment of an individual based on the agreement  
31 or refusal of the individual to execute or provide a written  
32 authorization under subsection 1.

33 3. Revocation or amendment of authorization. An individual  
34 may, in writing, revoke or amend a written authorization  
35 described in subsection 1.

36 A health information trustee who discloses protected health  
37 information pursuant to an authorization described in subsection  
38 1 that has been revoked is not subject to any liability or  
39 penalty under this Act if the health information trustee has no  
40 actual notice of revocation at the time the health information  
41 trustee makes the disclosure.

42 4. Model authorizations. The department, after notice and  
43 opportunity for public comment, shall develop and disseminate

2 model written authorizations of the type described in subsection  
3 1 and model statements of the intended disclosures of the type  
4 described in subsection 1, paragraph B.

6 **§1730-A. Creation of nonidentifiable and coded information**

8 1. Creation of nonidentifiable information. A health  
9 information trustee may disclose protected health information  
10 concerning an individual to an employee, agent or contractor for  
11 the purpose of creating nonidentifiable health information if:

12 A. The individual is informed of the purpose for the  
13 creation of the nonidentifiable information;

14 B. The individual is given the option to prohibit any  
15 specific uses of the nonidentifiable information, such as  
16 use of the information for marketing purposes; and

17 C. The health information trustee does not condition the  
18 delivery of health care, payment for services or employment  
19 on the granting by the individual of permission to create  
20 the nonidentifiable information.

21 2. Creation of coded health information. A health care  
22 provider may create coded health information or disclose  
23 protected health information concerning an individual to an  
24 employee, agent or contractor for the purpose of creating coded  
25 health information if:

26 A. The individual is informed of the purpose for the  
27 creation of the coded information;

28 B. The individual is informed of those persons who have the  
29 authority to link or match the coded health information to  
30 reveal the identity of the individual;

31 C. The individual gives written authorization for a  
32 disclosure for the purpose in subsection 1, paragraphs A to  
33 C and section 1730;

34 D. The health care provider does not condition the delivery  
35 of health care, payment for services, employment or the  
36 terms of employment on the granting by the individual of  
37 permission to create the coded health information; and

38 E. Agents and contractors who receive protected health  
39 information for the purpose of creating coded health  
40 information use the information exclusively for creating  
41 coded health information.

42 **§1730-B. Next of kin and directory information**

2 1. Next of kin. Except as provided in subsection 3, a  
3 health care provider or a person who receives protected health  
4 information under section 1730-C, may disclose protected health  
5 information regarding an individual who is an inpatient in a  
6 health care facility to the individual's next of kin, to a  
7 representative of the individual or to an individual with whom  
8 the individual has a significant personal relationship if:

9 A. The individual who is the subject of the information:

10 (1) Has been notified of the individual's right to  
11 object at the time of admission to a health care  
12 facility and the individual has not objected to the  
13 disclosure; or

14 (2) Is in a physical or mental condition such that it  
15 is not possible to notify the individual of the right  
16 to object and there are no prior indications that the  
17 individual would object; and

18 B. The information relates to health care currently being  
19 provided to the individual at the time of the disclosure.

20 2. Directory information. Except as provided in subsection  
21 3, a health information trustee may disclose protected health  
22 information concerning an individual to any person if:

23 A. The individual who is the subject of the information:

24 (1) Has been notified of the individual's right to  
25 object and has not objected to the disclosure; or

26 (2) Is in a physical or mental condition such that it  
27 is not possible to notify the individual of the right  
28 to object and there are no prior indications that the  
29 individual would object; and

30 B. The information referred to in paragraph A is any one or  
31 more of the following:

32 (1) The name of the individual who is the subject of  
33 the information;

34 (2) The general health status of the individual,  
35 described as critical, poor, fair, stable or  
36 satisfactory or in terms denoting similar conditions; or

37 (3) The location of the individual if on a premises  
38 controlled by a health care provider.



2           3. Exception. A health care provider may not disclose  
3           protected health information without written authorization  
4           pursuant to section 1730 if:

5           A. In the case of a disclosure under subsection 2,  
6           disclosure of the location of the individual reveals  
7           specific information about the physical or mental condition  
8           of the individual; or

9           B. In the case of a disclosure under subsection 1 or 2, the  
10           health care provider has reason to believe that the  
11           disclosure could lead to physical, mental or emotional harm  
12           to the individual.

13           4. Deceased individual. A health information trustee may  
14           disclose protected health information if necessary to assist in  
15           the identification of a deceased individual.

16           The commissioner shall establish, by rule, a procedure for  
17           obtaining protected health information relating to a deceased  
18           individual when there is no individual representative for that  
19           individual.

20           **§1730-C. Emergency circumstances**

21           1. Disclosure when subject of information is in danger. A  
22           health information trustee who receives protected health  
23           information under this chapter may disclose that protected health  
24           information to a health care provider or emergency medical  
25           personnel or use that information in emergency medical  
26           circumstances to the extent necessary to protect the health or  
27           safety of an individual who is a subject of that information from  
28           serious imminent harm.

29           2. Disclosure when another individual is in danger. a  
30           health information trustee may disclose protected health  
31           information when the health information trustee determines that:

32           A. There is an identifiable threat of serious injury or  
33           death to an identifiable individual or group of individuals;  
34           and

35           B. The disclosure of the information to the person is  
36           necessary to prevent or significantly reduce the possibility  
37           of such a threat.

38           **§1730-D. Oversight**

39           1. Disclosure; protected health information A health  
40           information trustee, other than a public health authority or a  
41           health researcher, may disclose protected health information to:

2           A. A health oversight agency for any function of that  
3           agency authorized by law, if:

4                   (1) There is probable cause to believe fraud has been  
5                   committed;

6                   (2) The health oversight agency is investigating the  
7                   fraud;

8                   (3) The health oversight agency has obtained a  
9                   subpoena for purposes of obtaining the protected health  
10                   information;

11                   (4) A subject of the information is believed to have  
12                   committed fraud; or

13                   (5) The protected health information is necessary to  
14                   permit the health oversight agency to investigate the  
15                   fraud; or

16           B. A health oversight agency charged by law to protect  
17           individuals from harm, abuse, neglect or exploitation, if  
18           the information is necessary to investigate whether abuse,  
19           neglect or exploitation of an individual has occurred.

20           2. Use of coded health information. The health oversight  
21           agency must receive coded health information under subsection 1  
22           when the purpose of the health oversight agency may be  
23           accomplished only by using the coded health information.

24           3. Notice to individual. In any case when an individual  
25           who is a subject of protected health information disclosed under  
26           subsection 1 is believed to have committed fraud, the individual  
27           must be notified as soon as possible:

28                   A. That an investigation under subsection 1 is being  
29                   conducted;

30                   B. Of the reason why disclosure of the coded health  
31                   information is necessary; and

32                   C. Of all intended subsequent disclosures of the coded  
33                   health information that the health oversight agency intends  
34                   to make.

35           4. Use in action against individual. Protected health  
36           information concerning an individual that is disclosed under this  
37           section may not be used in, or disclosed to any person for use  
38           in, an administrative, civil or criminal action or investigation  
39           directed against the individual, unless the action or  
40           investigation arises out of and is directly related to the

2 purpose for which the disclosure was authorized under subsection  
3 1.

4 A health oversight agency may not disclose protected health  
5 information received by the health oversight agency under  
6 subsection 1, paragraph B for any purpose other than protecting  
7 individuals from harm, abuse, neglect or exploitation.

8  
9  
10 5. **Public health authority and health researcher.** A public  
11 health authority may disclose protected health information to a  
12 health oversight agency only if that protected health information  
13 is necessary for use in an investigation to determine whether the  
14 public health authority has committed fraud. A health researcher  
15 may disclose protected health information to a health oversight  
16 agency only if that protected health information is necessary for  
17 use in an investigation to determine whether the health  
18 researcher has committed fraud.

19 **§1730-E. Accreditation**

20  
21  
22 1. **Disclose information; accrediting purposes.** A health  
23 information trustee may disclose protected health information to  
24 an accrediting body for the exclusive purpose of permitting the  
25 accrediting body to carry out accreditation, licensing or  
26 credentialing activities.

27  
28 2. **Use of coded health information.** The accrediting body  
29 may receive coded health information under subsection 1 when the  
30 purpose of the accrediting body may be accomplished only by using  
31 that coded information.

32 3. **Restriction on use and disclosure.** An accrediting body  
33 to whom protected health information is disclosed under  
34 subsection 1 may not use or disclose the protected health  
35 information for any purpose other than the purpose for which the  
36 protected health information was disclosed to the accrediting  
37 body.

38 **§1730-F. Public health**

39  
40  
41  
42 1. **Disclosures by providers.** A health care provider may  
43 disclose protected health information concerning an individual to  
44 a public health authority when:

45  
46 A. The protected health information is disclosed for the  
47 purpose of permitting the public health authority to  
48 ascertain the identity of an individual;

49  
50 B. There is a specific link between an individual's  
51 identity and a threat of injury or death to any individual;  
52 and

2 C. Knowledge of an individual's identity would allow the  
4 public health authority to prevent or significantly reduce  
the possibility of injury or death to any individual.

6 2. Limitation on liability. A health information trustee  
8 is not liable to any person for a disclosure of protected health  
10 information under this section that is made based upon a good  
12 faith belief by the health information trustee of a  
14 representation made by a public health authority that the  
16 disclosure satisfies the requirements of subsection 1.

18 3. Limitation on use and disclosure by public health  
20 authority. A public health authority may not use or disclose  
22 protected health information for any purpose other than for  
24 public health reporting, surveillance, protection, investigation  
26 or intervention.

28 **§1730-G. Health research**

30 1. Disclose information; health research. A health  
32 information trustee may disclose protected health information,  
34 other than coded health information, to a health researcher for  
36 use in a research project engaged in by the health researcher, if  
38 an institutional review board, using standards and procedures  
40 that are generally consistent with rules adopted by the  
42 commissioner concerning research that involves human subjects,  
44 determines that the research project:

46 A. Requires use of the protected health information for the  
48 effectiveness of the research project and can not be carried  
50 out with either coded or nonidentifiable health information;  
52 and

B. Has obtained an authorization for the disclosure  
executed by an individual who is a subject of the protected  
health information that:

(1) Is consistent with the requirements of section  
1730; and

(2) In a case when the health researcher foresees  
using or disclosing the information for any purpose  
subsequent to the conclusion of the project,  
specifically states:

(a) That the individual who is a subject of the  
information knows of the researcher's intent; and

(b) That the individual has the right to limit  
such subsequent uses or disclosures consistent  
with this Act.

2 2. Use of coded or nonidentifiable health information. A  
3 health information trustee may disclose coded health information  
4 that is not contained in a protected health information subfile  
5 or nonidentifiable health information to a health researcher for  
6 use in a research project engaged in by the health researcher  
7 upon approval of the research project by an institutional review  
8 board, regardless of whether the health researcher has obtained  
9 an authorization for the disclosure consistent with the  
10 requirements of section 1730.

11 3. Anonymity; biological samples. The commissioner may  
12 adopt rules for the use of biological samples derived from a  
13 human body that were collected before the effective date of this  
14 Act. Those rules must address the requirements pertinent to a  
15 health researcher who wishes to use stored biological samples  
16 derived from a human body in nonidentifiable or coded form. For  
17 the purpose of facilitating future health research, those rules  
18 may authorize a health researcher:

19 A. To convert protected health information into  
20 nonidentifiable information or coded health information, if  
21 such a conversion is permitted in a written authorization; or

22 B. If no such authorization exists, to make such a  
23 conversion after publishing notice of the health  
24 researcher's intent and providing to individuals the  
25 opportunity to prohibit the use of their biological samples  
26 for research purposes.

27 4. Obligations of recipient. A person who receives  
28 protected health information pursuant to subsection 1 shall:

29 A. Remove or destroy, at the earliest opportunity  
30 consistent with the purposes of the research project,  
31 protected health information that would enable an individual  
32 to be identified, unless:

33 (1) An institutional review board has determined that  
34 there is a health or research justification for  
35 retention of those identifiers; and

36 (2) There is an adequate plan to protect the  
37 identifiers from disclosure that is consistent with  
38 this section; and

39 B. Use the protected health information solely for the  
40 purpose of the health research project for which disclosure  
41 was authorized by an institutional review board under  
42 subsection 1.

43 §1730-H. Judicial and administrative purposes

2 A health care provider, health plan, health oversight  
3 agency, employer, school, institution of higher education,  
4 insurer, court or a person who receives protected health  
5 information pursuant to section 1730-C may disclose protected  
6 health information:

7 A. Pursuant to the requirements governing subpoenas,  
8 warrants and court orders under sections 1730-I and 1730-J,  
9 when that protected health information has been determined  
10 to be discoverable by a court under applicable rules of  
11 civil or criminal procedure;

12 B. To a court and to any other ordered by the court, if the  
13 protected health information is developed in response to a  
14 court-ordered physical or mental examination;

15 C. When the subject of that protected health information  
16 has brought a claim for medical malpractice against a health  
17 care provider and the protected health information is  
18 necessary for the defense of the claim; and

19 D. To legal counsel for the person making the disclosure,  
20 when the disclosure is necessary to ensure compliance with  
21 this Act or any other legal requirement.

22 **§1730-I. General requirements governing subpoenas**

23 **1. Disclose information; subpoena** A health care provider,  
24 health plan, health oversight agency, employer, school,  
25 institution of higher education, insurer, court or a person who  
26 receives protected health information pursuant to section 1730-C  
27 may disclose protected health information to any person, other  
28 than a law enforcement authority, under section 1730-H, paragraph  
29 A if the disclosure is pursuant to a subpoena issued on behalf of  
30 a party to a lawsuit or other judicial or administrative  
31 proceeding that has complied with subsections 2 to 4.

32 **2. Request for access by counsel to review protected health**  
33 **information.** A person may have access to protected health  
34 information under subsection 1 by a review of the information by  
35 the person's counsel, acting in the capacity of an officer of the  
36 court, and on the premises of, and under the control of the court  
37 if:

38 A. The person has included in a subpoena a proffer of  
39 evidence specifying with reasonable specificity the  
40 information to which access is sought and the precise  
41 grounds for seeking that access for review;

42 B. A copy of the subpoena for access to review, together  
43 with a notice of the individual's right to challenge the

2           subpoena under subsection 4, has been served upon the  
3           individual on or before the date of return of the subpoena;

4           C. Fifteen days have passed since the date of service on  
5           the individual and within that period the individual has not  
6           initiated a challenge in accordance with subsection 4; or

7           D. Access to protected health information is ordered by the  
8           court and counsel agrees not to copy, remove from the court  
9           premises or disclose the protected health information to any  
10           person other than the person permitted access under this  
11           subsection.

12           3. Request for introduction in court. A person may obtain  
13           protected health information concerning an individual pursuant to  
14           a subpoena for purpose of introducing the protected health  
15           information as evidence in a court, only if:

16           A. Counsel for the person has obtained access to the  
17           protected health information under subsection 2;

18           B. A copy of the subpoena to obtain the protected health  
19           information for introduction in court, specifying the  
20           precise protected health information sought and the grounds  
21           for seeking introduction of the protected health information  
22           as evidence in court, together with a notice of the  
23           individual's right to challenge the subpoena under  
24           subsection 4, has been served upon the individual on or  
25           before the date of return of the subpoena;

26           C. Fifteen days have passed since the date of service on  
27           the individual and within that time period the individual  
28           has not indicated a challenge in accordance with subsection  
29           4; or

30           D. The protected health information is ordered to be  
31           provided to the court.

32           A person who obtains protected health information under this  
33           subsection may use and disclose that protected health information  
34           only for the purpose of prosecuting or defending a lawsuit or  
35           other judicial or administrative proceeding under subsection 1.

36           4. Challenge procedures. The procedure for challenging a  
37           subpoena seeking access to protected health information is as  
38           follows.

39           A. After being served a copy of a subpoena seeking access  
40           for review by counsel of, or access to, protected health  
41           information under subsection 2 or a subpoena seeking to  
42           obtain protected health information for introduction as  
43           evidence in court under subsection 3, an individual who is a

2 subject of protected health information may file in a court  
3 of competent jurisdiction a motion to quash the subpoena.

4 B. The court shall review a motion to quash the subpoena in  
5 accordance with the following.

6  
7 (1) The court shall grant a motion under paragraph A  
8 unless the respondent demonstrates clear and convincing  
9 evidence that the protected health information is  
10 necessary in relation to the lawsuit or other judicial  
11 or administrative proceeding with respect to which the  
12 protected health information is sought, including:

13  
14 (a) A demonstration that use or disclosure of  
15 solely nonidentifiable protected health  
16 information is insufficient to accomplish the  
17 purpose for which the protected health information  
18 is sought;

19  
20 (b) If protected health information that is not  
21 coded health information is sought, a  
22 demonstration that use or disclosure of coded  
23 health information is insufficient to accomplish  
24 the purpose for which the information is sought;  
25 and

26  
27 (c) A demonstration of the need of the respondent  
28 for the protected health information outweighs the  
29 privacy interest of the individual;

30  
31 (2) In determining whether the need of the respondent  
32 for the protected health information outweighs the  
33 privacy interest of the individual, the court shall  
34 consider:

35  
36 (a) The particular purpose for which the  
37 protected health information was collected;

38  
39 (b) The invasion of the individual's privacy  
40 caused by the disclosure of the protected health  
41 information;

42  
43 (c) The degree to which disclosure of the  
44 protected health information would embarrass,  
45 injure or further invade the privacy of the  
46 individual;

47  
48 (d) The effect of the disclosure of the protected  
49 health information on the individual's future  
50 health care;



2                   (e) The importance of the protected health  
information to the lawsuit or proceeding; and

4                   (f) Any other relevant factor; and

6                   (3) In the case of a motion brought under paragraph A  
in which the individual who brought the motion has  
8                   prevailed in whole or in part, the court may assess  
against the respondent a reasonable attorney's fee and  
10                   other litigation costs and expenses, including expert  
12                   fees, reasonably incurred.

14                   5. Sealing of information. Any portion of a record of a  
16                   court that contains protected health information disclosed under  
this section must be kept under seal by the court and used or  
disclosed pursuant only to an order of the court under this  
18                   section.

20                   §1730-J. Additional requirements; law enforcement access

22                   1. Law enforcement subpoenas and warrants in general. A  
24                   health care provider, health plan, health oversight agency,  
employer, school, institution of higher education, insurer, court  
or a person who receives protected health information pursuant to  
26                   section 1730-C may disclose protected health information to a law  
enforcement authority under section 1730-H, if:

28                   A. The disclosure is made pursuant to a subpoena for review  
under section 1730-I, subsection 2, a subpoena for purposes  
30                   of introducing evidence in a court under section 1730-I,  
subsection 3, or both, issued under the authority of a grand  
32                   jury or a court; and

34                   B. The requirements of subsections 2 and 3, section 1730-I,  
and subsections 2 to 5 are satisfied;

36                   C. The disclosure is made pursuant to a judicial warrant  
for search and seizure and the requirements of subsection 4  
38                   are satisfied;

40                   D. The disclosure is made pursuant to a subpoena for  
purpose of introducing evidence in a court under section  
42                   1730-I issued under the authority of a grand jury or a court  
following the execution of a judicial warrant for search and  
44                   seizure under subsection 4; and

46                   E. The requirements of subsections 2 and 3 and section  
1730-I, subsections 3 to 5, other than subsection 3,  
48                   paragraph A, subparagraph (1) are satisfied.  
50

2           2. Clear and convincing requirement. A law enforcement  
3 authority may not obtain protected health information concerning  
4 an individual under subsection 1 unless the protected health  
5 authority demonstrates by clear and convincing evidence that the  
6 protected health information is necessary to a legitimate law  
7 enforcement inquiry into a particular violation of criminal law  
8 being conducted by the law enforcement authority.

9           3. Limitation on use and disclosure; law enforcement  
10 inquiries. Protected health information concerning an individual  
11 that is disclosed under this section may not be used in, or  
12 disclosed to any person for use in, any administrative, civil or  
13 criminal action or investigation directed against the individual  
14 unless the action or investigation arises out of, or is directly  
15 related to, the law enforcement inquiry for which the protected  
16 health information was obtained.

17           4. Requirements for warrants; search and seizure. A  
18 warrant for search and seizure may be issued in accordance with  
19 this subsection.

20           A. A health care provider, health plan, health oversight  
21 agency, employer, school, institution of higher education,  
22 insurer or a person who receives protected health  
23 information pursuant to section 1730-C may disclosure  
24 protected health information to a law enforcement authority  
25 pursuant to a warrant for search and seizure, issued by a  
26 court, for the exclusive purpose of permitting the law  
27 enforcement authority to secure the protected health  
28 information described in the warrant for delivery to the  
29 court.

30           B. In executing a warrant under paragraph A, a law  
31 enforcement authority shall engage in a minimal examination  
32 of protected health information that is necessary in order  
33 to determine whether the protected health information is  
34 within the scope of the warrant. The law enforcement  
35 authority immediately shall place any such protected health  
36 information that the authority determines is within the  
37 scope of the warrant under seal and deliver the sealed  
38 protected health information, without any further  
39 examination or other use or disclosure, to the court. The  
40 law enforcement authority may not use or disclose for any  
41 purpose protected health information that the law  
42 enforcement authority determines is not within the scope of  
43 the warrant, but that is obtained or discovered by the law  
44 enforcement authority directly or indirectly through  
45 execution of the warrant.

46           C. A law enforcement authority that obtains protected  
47 health information concerning an individual pursuant to the  
48 execution of a warrant under paragraph B shall, not later  
49 than 30 days after the date of the execution of the warrant,  
50 provide a copy of the protected health information to the  
51 individual or the individual's representative, unless the law  
52 enforcement authority determines that such disclosure is  
53 not in the best interests of the individual or the individual's  
54 representative.

2 than 30 days after the date of the execution of a warrant,  
3 serve the individual with, or mail to the last known address  
4 of the individual, a notice that protected health  
5 information concerning the individual was obtained, together  
6 with a notice of the individual's right to challenge the  
7 warrant under subsection 5.

8 **5. Challenge procedures for warrant.** A warrant may be  
9 challenged in accordance with the following.

10 **A.** Within 15 days after the date of service of a notice of  
11 execution of a warrant of a law enforcement authority  
12 seeking protected health information concerning an  
13 individual under subsection 4, the individual, or any other  
14 person who was in possession of the information and against  
15 whom the warrant was executed, may file in a court of  
16 competent jurisdiction a motion to quash the warrant.

17 **B.** The court shall grant a motion under paragraph A unless  
18 the law enforcement authority demonstrates by clear and  
19 convincing evidence that the protected health information is  
20 necessary to a legitimate law enforcement inquiry being  
21 conducted by the law enforcement authority and the law  
22 enforcement authority's need for the information outweighs  
23 the privacy interest of the individual.

24 **C.** In the case of a motion brought under paragraph A in  
25 which the individual has prevailed, in whole or in part, the  
26 court may assess against the law enforcement authority  
27 reasonable attorney's fees and other litigation costs,  
28 including expert fees, reasonably incurred.

29 **6. Action in court on information delivered.** Upon  
30 termination of the period described in subsection 5, paragraph A,  
31 if a motion to quash is not filed, or upon the denial of a motion  
32 to quash under such paragraph, the law enforcement authority may  
33 obtain protected health information delivered to the court under  
34 this subsection solely through a disclosure under subsection 1,  
35 paragraph C.

36 **7. Sealing of information.** Any protected health  
37 information that is delivered to a court under this section must  
38 be kept under seal by the court and used or disclosed pursuant  
39 only to an order of the court under this section.

40 **§1730-K. Civil penalty**

41 Any person who the Attorney General determines has  
42 materially failed to comply with this Act is subject, in addition  
43 to any other penalties prescribed by law, to a civil penalty of  
44 not more than \$10,000 for each violation, but not to exceed  
45 \$150,000 for multiple violations in any one year.

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**§1730-L. Civil action**

1. Civil action. An individual who is aggrieved by conduct in violation of this Act may bring a civil action to recover such preliminary and equitable relief as the court determines appropriate including:

A. The greater of:

- (1) Actual damages; or
- (2) Liquidated damages of:

- (a) \$25,000, in the case of a material violation;  
or
- (b) \$50,000, in the case of a violation that was willful or resulted in profit or monetary gain; and

B. Punitive damages.

2. Attorney's fees. In the case of a civil action brought under subsection 1 in which the individual has substantially prevailed, the court may assess against the respondent a reasonable attorney's fee and other litigation costs and expenses, including expert fees, reasonably incurred.

3. Limitation. An action may not be commenced under this section by an individual more than 3 years after the date on which a violation of this Act was or should reasonably have been discovered by the individual.

**§1730-M. Rules**

1. Consultation with advisory group. When adopting rules under this chapter, the commissioner shall appoint and consult an advisory group of knowledgeable individuals.

2. Membership. The advisory group consists of at least 7 but no more than 12 individuals, including representatives of:

- A. Health care providers;
- B. Health care consumers;
- C. Health plans;
- D. Privacy advocates; and
- E. Electronic security experts.

2       3. Responsibilities. The advisory group shall review all  
3 proposed rules and submit recommendations to the commissioner.  
4 The advisory group shall also assist the commissioner in  
5 establishing the standards for compliance with rules and any  
6 recommendations for modifications to this Act in order to ensure  
7 efficient and confidential electronic interchange of protected  
8 health information.

9       Rules adopted by the commissioner under this Act are routine  
10 technical rules pursuant to Title 5, chapter 375, subchapter II-A.

11       The advisory group shall review chapter 1683, Maine Health Data  
12 Organization and make recommendations to the commissioner to  
13 bring chapter 1683 in compliance with this Act.

14       §1730-N. Relationship to other laws

15       1. Preemption. Nothing in this chapter may be construed to  
16 preempt any other provision of state law or any privilege,  
17 whether derived from statute or common law, that:

18       A. More completely protects the confidentiality or privacy  
19 of an individual with respect to protected health  
20 information concerning the individual than does this Act; or

21       B. Provides a greater right of access to protected health  
22 information to an individual who is a subject of the  
23 information than does this Act.

24       2. Privileges. This chapter does not preempt or modify  
25 state law to the extent that those laws concern a privilege of a  
26 witness or person in a court of the State. This Act does not  
27 supersede or modify federal common or statutory law to the extent  
28 that those laws concern a privilege of a witness or person in a  
29 court of the United States and more completely protects the  
30 confidentiality or privacy of an individual with respect to  
31 protected health information concerning the individual than does  
32 this Act. The execution of an authorization pursuant to sections  
33 1729 and 1730 may not be construed as a waiver of any such  
34 privilege.

35       3. Certain duties under state or federal law. This Act  
36 does not preempt, supersede or modify the operation of any of the  
37 following:

38       A. A law that provides for the reporting of vital  
39 statistics such as birth or death information;

40       B. A state law relating to the reporting of, or health  
41 information relative to, abuse or neglect of any individual  
42 that prevents or restricts disclosure of protected health  
43 information permitted under this Act;

2 C. A state law relating to public or mental health that  
prevents or restricts disclosure of protected health  
4 information permitted under this Act;

6 D. A federal law or regulation governing confidentiality of  
alcohol and drug patient records;

8 E. The Americans With Disabilities Act of 1990;

10 F. A federal or state law that establishes a privilege for  
12 records used in health professional peer review activities;

14 G. A state law relating to HIV test status or treatment  
records that prevents or restricts disclosure of protected  
16 health information permitted under this Act;

18 H. A state law regarding the authority of a minor and the  
rights and obligations of a parent or guardian with respect  
20 to health care provided to or protected health information  
related to minors.

22 I. A law relating to a medical examiner case; or

24 J. A state law relating to health information about a  
26 client of the Department of Mental Health, Mental  
Retardation and Substance Abuse Services that prevents or  
28 restrict disclosure of protected health information  
permitted under this Act.

30 **§1730-O. Applicability**

32 1. Protected health information. Except as provided in  
34 subsection 2, the provisions of this chapter apply to any  
protected health information that is received, created, used,  
36 maintained or disclosed by a health information trustee on or  
after the effective date of this chapter, regardless of whether  
38 the information existed or was disclosed before that date.

40 **Sec. 12. 22 MRSA §4015, first¶,** as amended by PL 1985, c. 495,  
§21, is further amended to read:

42 The husband-wife and physician and psychotherapist-patient  
44 privileges under the Maine Rules of Evidence and the confidential  
quality of communication under chapter 401-A, Title 20-A,  
46 sections 4008 and 6001, to the extent allowed by applicable  
federal law; ~~Title-24 A,--section-4224;~~ Title 32, sections 1092-A  
48 and 7005; and Title 34-B, section 1207, are abrogated in relation  
to required reporting, cooperating with the department or a  
50 guardian ad litem in an investigation or other child protective  
activity or giving evidence in a child protection proceeding.  
Information released to the department pursuant to this section

2 shall be kept confidential and may not be disclosed by the  
department except as provided in section 4008 and chapter 401-A.

4 **Sec. 13. 24-A MRSA §4224,** as repealed and replaced by PL  
1991, c. 709, §7, is repealed.

6  
8 **Sec. 14. 29-A MRSA §2405, sub-§3,** as enacted by PL 1993, c.  
683, Pt. A, §2 and affected by Pt. B, §5, is amended to read:

10 **3. Privileged or confidential communications.** The  
12 physician-patient privileges under the Maine Rules of Evidence  
and the confidential quality of communication under Title 24-A,  
14 ~~section-4224 22, chapter 401-A~~ and Title 32, section 1092-A are  
abrogated in relation to required reporting or other proceeding.

16 **Sec. 15. 39-A MRSA §208, sub-§2, ¶B,** as enacted by PL 1991, c.  
18 885, Pt. A, §8 and affected by §§9 to 11, is amended to read:

20 B. If ongoing medical treatment is being provided, every 30  
22 days the employee's health care provider shall forward to  
the employer and the employee a diagnostic medical report on  
24 forms prescribed by the board. An employer may request, at  
any time, medical information concerning the condition of  
26 the employee for which compensation is sought. The health  
care provider shall respond within 10 business days from  
receipt of the request.

28 Only medical information specifically concerning the  
30 condition of the employee for which compensation is being  
sought may be forwarded to the employer.

32 **Sec. 16. Rulemaking.** The Department of Human Services shall  
34 adopt rules implementing this Act no later than 12 months after  
the effective date of this Act.

## 36 SUMMARY

38 This bill creates the Medical Privacy Act of 1997 that  
40 establishes a right to privacy with respect to health  
information, including genetic information and requires that this  
42 right be protected. It helps to ensure the confidentiality of  
computerized or electronically transferred health information and  
44 restricts the gathering of aggregate health information for  
financial gain or other purposes without an individual's  
46 knowledge or consent. The bill also provides individuals with  
access to health information of which they are the subject, and  
48 the power to challenge the accuracy and completeness of, amend or  
correct records containing that information.

50 The bill further provides that an individual's interest in  
52 the privacy of health information may not be overridden without  
meaningful notice and informed consent, except in limited

2 circumstances when there is a compelling public interest. These  
3 circumstances include disclosure, when the subject of information  
4 is in danger, or another individual is in danger; disclosure to a  
5 health oversight agency in cases concerning fraud, protection of  
6 individuals from harm, abuse, neglect, or exploitation; public  
7 health risks; and disclosure to health researchers within certain  
8 parameters.

9  
10 This bill also provides for disclosure of health information  
11 for judicial, law enforcement and administrative purposes  
12 pursuant to requirements governing subpoenas, warrants, court  
13 orders, and in certain other cases involving legal claims. The  
14 bill establishes civil penalties for failure to comply with the  
15 provision of the Medical Privacy Act of 1997, and a private right  
16 of action of individuals aggrieved by conduct in violation of the  
17 Medical Privacy Act of 1997.

18 The bill requires that an advisory group be appointed by the  
19 department to review all proposed rules and assist the department  
20 in establishing the standards for compliance with the rules. The  
21 group is also directed to review further modifications to the  
22 Medical Privacy Act of 1997 to ensure efficient and confidential  
23 electronic exchange of protected health information and to make  
24 recommendations to bring certain existing laws into compliance  
25 with this Act.

26  
27 The bill addresses the relationship of the Medical Privacy  
28 Act of 1997 to other laws in 2 ways. First, it provides that the  
29 Medical Privacy Act of 1997 does not preempt, supersede or modify  
30 the operation of certain existing state laws. Second, it amends  
31 certain other existing laws concerning the collection, use and  
32 dissemination of health information to render them consistent  
33 with the Medical Privacy Act of 1997, and repeals other laws that  
34 are inconsistent.