

# MAINE STATE LEGISLATURE

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# 119th MAINE LEGISLATURE

## FIRST REGULAR SESSION-1999

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Legislative Document

No. 207

H.P. 145

House of Representatives, January 11, 1999

**An Act to Clarify the Confidentiality of Health Care Information.**

(EMERGENCY)

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

A handwritten signature in black ink that reads "Joseph W. Mayo".

JOSEPH W. MAYO, Clerk

Presented by Representative BROOKS of Winterport.  
Cosponsored by Senator FERGUSON of Oxford.

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

4  
6           **Whereas,** the current law regarding confidentiality of health  
care information is confusing and complex; and

8           **Whereas,** this situation has led to complications in the  
ability of health care facilities to disclose patient information  
10 to significant persons in a patient's life who need that  
information and to rely on those significant persons to make  
12 decisions about disclosure when the patient is not in a position  
to do so; and

14  
16           **Whereas,** the current health care information confidentiality  
law must be clarified as soon as possible in the interest of  
health care facilities, patients and those who care for them; and

18  
20           **Whereas,** in the judgment of the Legislature, these facts  
create an emergency within the meaning of the Constitution of  
Maine and require the following legislation as immediately  
22 necessary for the preservation of the public peace, health and  
safety; now, therefore,

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

26           **Sec. 1. 5 MRSA §19203, sub-§2,** as amended by PL 1997, c. 793,  
28 Pt. B, §1 and as affected by §6, is further amended to read:

30           **2. Designated health care provider.** To a health care  
provider designated by the subject of the test in writing  
32 pursuant ~~to Title 22, section 1711-G.~~ When a patient has  
authorized disclosure of HIV test results to a person or  
34 organization providing health care, the patient's health care  
provider may make these results available only to other health  
36 care providers working directly with the patient and only for the  
purpose of providing direct medical or dental patient care. Any  
38 health care provider who discloses HIV test results in good faith  
pursuant to this subsection is immune from any criminal or civil  
40 liability for the act of disclosing HIV test results to other  
health care providers;

42           **Sec. 2. 5 MRSA §19203, sub-§9,** as amended by PL 1997, c. 793,  
44 Pt. B, §2 and affected by §6, is further amended to read:

46           **9. Medical records.** As part of a medical record when  
release or disclosure of that record is authorized pursuant to  
48 ~~Title 22, section 1711, 1711-B, subsection 1 or section 1711-G,~~  
~~subsection 3, 6 or 11~~ section 19203-D; or

50

2           **Sec. 3. 5 MRSA §19203, last ¶**, as amended by PL 1997, c. 793,  
Pt. B, §3 and affected by §6, is further amended to read:

4           Nothing in this section may be construed as prohibiting the  
entry of an HIV test result on the patient's medical record in  
6           accordance with this chapter.

8           **Sec. 4. 5 MRSA §19203-D**, as repealed by PL 1997, c. 793, Pt.  
B, §4 and affected by §6, is reenacted to read:

10           **§19203-D. Records**

12           When a medical record entry is made concerning information  
14           of a person's HIV infection status, including the results of an  
HIV test, the following apply to the release of that information  
16           as a part of the medical record.

18           1. Authorized release. The person who is the subject of an  
HIV test, at or near the time the entry is made in the medical  
20           record, shall elect, in writing, whether to authorize the release  
of that portion of the medical record containing the HIV  
22           infection status information when that person's medical record  
has been requested. A new election may be made when a change in  
24           the person's HIV infection status occurs or whenever the person  
makes a new election. The release form must clearly state  
26           whether or not the person has authorized the release of that  
information. The person must be advised of the potential  
28           implications of authorizing the release of that information.

30           A. When release has been authorized, the custodian of the  
medical record may release, upon request, the person's  
32           medical record, including any HIV infection status  
information contained in the medical record. Release of HIV  
34           infection status information pursuant to this paragraph is  
not a violation of any of the confidentiality provisions of  
36           this chapter.

38           B. When release has not been authorized, the custodian of  
the medical record may, upon request, release that portion  
40           of the medical record that does not contain the HIV  
infection status information. Except as otherwise provided  
42           in this section, HIV infection status information may be  
released only if the person has specifically authorized a  
44           separate release of that information. A general release  
form is insufficient.

46           2. Authorized disclosure. A medical record containing  
48           results of an HIV test may not be disclosed, discoverable or  
compelled to be produced in any civil, criminal, administrative

2 or other proceedings without the consent of the person who is the  
3 subject of an HIV test, except in the following cases:

4 A. Proceedings held pursuant to the communicable disease  
5 laws, Title 22, chapter 251;

6 B. Proceedings held pursuant to the Adult Protective  
7 Services Act, Title 22, chapter 958-A;

10 C. Proceedings held pursuant to the child protection laws,  
11 Title 22, chapter 1071;

12 D. Proceedings held pursuant to the mental health laws,  
13 Title 34-B, chapter 3, subchapter IV, article III; and

16 E. Pursuant to a court order upon a showing of good cause,  
17 provided that the court order limits the use and disclosure  
18 of records and provides sanctions for misuse of records or  
19 sets forth other methods for ensuring confidentiality.

20 3. Utilization review; research. Nothing in this section  
21 may be interpreted to prohibit reviews of medical records for  
22 utilization review purposes by duly authorized utilization review  
23 committees or peer review organizations. Qualified personnel  
24 conducting scientific research, management audits, financial  
25 audits or program evaluation with the use of medical records may  
26 not identify, directly or indirectly, any individual patient in  
27 any report of such research, audit, evaluation or otherwise  
28 disclose the identities of persons tested in any manner.

30 4. Access by health care providers. Nothing in this  
31 section may prohibit access to medical records by the designated  
32 health care provider of the person who is the subject of an HIV  
33 test in accordance with section 19203, subsection 2.

36 5. Confidentiality policy. Health care providers and  
37 others with access to medical records containing HIV infection  
38 status information shall have a written policy providing for  
39 confidentiality of all patient information consistent with this  
40 chapter. That policy must require, at a minimum, action  
41 consistent with disciplinary procedures for violations of the  
42 confidentiality policy.

44 **Sec. 5. 22 MRS §1711, as amended by PL 1997, c. 793, Pt. A,**  
45 **§1 and affected by §10, is further amended to read:**

46 **§1711. Patient access to hospital medical records**

48 If a patient of an institution licensed as a hospital by the  
50 State, after discharge from such institution, makes written

2 request for copies of the patient's medical records, the copies  
must, if available, be made available ~~to the patient~~ within a  
4 reasonable time unless, in the opinion of the hospital, it would  
be detrimental to the health of the patient to obtain the  
6 records. If the hospital is of the opinion that release of the  
records to the patient would be detrimental to the health of the  
8 patient, the hospital shall advise the patient that copies of the  
records will be made available to the patient's authorized  
10 representative upon presentation of a proper authorization signed  
by the patient. ~~The hospital may exclude from the copies of  
12 medical records released any information related to a clinical  
trial sponsored, authorized or regulated by the federal Food and  
Drug Administration.~~

14  
16 If an authorized representative for a patient requests, in  
writing, that a hospital provide the authorized representative  
18 with a copy of the patient's medical records and presents a  
proper authorization from the patient for the release of the  
20 information, copies must be provided to the authorized  
representative within a reasonable time.

22 ~~A written request or authorization for release of medical  
records under this section satisfies the requirements of section  
24 1711-G, subsection 3.~~

26 ~~A patient may submit to a hospital an addition to the  
patient's medical records, which must be retained with the  
28 medical record by the hospital. If the hospital adds to the  
medical record a statement in response to the submitted addition,  
30 the hospital shall provide a copy to the patient.~~

32 Reasonable costs incurred by the hospital in making and  
providing copies of medical records and ~~additions to medical  
34 records~~, must be borne by the requesting person, and the hospital  
may require payment prior to responding to the request.

36  
38 ~~Release of a patient's medical records to a person other  
than the patient is governed by section 1711-G.~~

40 **Sec. 6. 22 MRSA §1711-A**, as amended by PL 1997, c. 793, Pt.  
A, §2 and affected by §10, is further amended to read;

42 **§1711-A. Fees charged for records**

44  
46 Whenever a health care practitioner defined in section  
1711-B furnishes requested copies of a patient's treatment  
48 medical record or a medical report ~~or an addition to a treatment  
record or medical report~~ to the patient, the charge for the  
copies or the report may not exceed the reasonable costs incurred

2 by the health care practitioner in making and providing the  
copies or the report.

4 **Sec. 7. 22 MRSA §1711-B, sub-§1, ¶¶A and B**, as amended by PL  
1997, c. 793, Pt. A, §3 and affected by §10, are further amended  
6 to read:

8 A. "Health care practitioner" has the same meaning as in  
10 Title 24, section 1711-G,--subsection-1,--paragraph-F 2502.  
12 "Health care practitioner" also includes "licensed clinical  
social worker" as defined in Title 32, chapter 83 and  
"marriage and family therapist" and "professional counselor"  
as defined in Title 32, chapter 119.

14 B. "Treatment records" means all records relating to a  
16 patient's diagnosis, and treatment ~~and--care~~, including x  
18 rays, performed by a health care practitioner.

20 **Sec. 8. 22 MRSA §1711-B, sub-§2**, as amended by PL 1997, c.  
793, Pt. A, §4 and affected by §10, is further amended to read:

22 **2. Access.** Upon written authorization ~~--executed--in~~  
~~asserdance--with--section--1711-C,--subsection--3~~ consent of the  
24 person to whom copies of records must be released pursuant to  
this section, a health care practitioner shall release copies of  
26 all treatment records of a patient or a narrative containing all  
relevant information in the treatment records ~~to--the--patient~~.  
28 The health care practitioner may exclude from the copies of  
treatment records released any personal notes that are not  
30 directly related to the patient's past or future treatment and  
~~any--information--related--to--a--clinical--trial--sponsored,--authorized~~  
~~or--regulated--by--the--federal--Food--and--Drug--Administration.~~ The  
32 copies or narrative must be released to the designated person  
34 within a reasonable time.

36 If the practitioner believes that release of the records ~~to--the~~  
~~patient~~ is detrimental to the health of the patient, the  
38 practitioner shall advise the patient that copies of the  
treatment records or a narrative containing all relevant  
40 information in the treatment records will be made available to  
the patient's authorized representative upon presentation of a  
42 written authorization signed by the patient. The copies or  
narrative must be released to the authorized representative  
44 within a reasonable time.

46 ~~Except--as--provided--in--subsection--3,--release--of--a--patient's~~  
~~treatment--records--to--a--person--other--than--the--patient--is--governed~~  
48 ~~by--section--1711-G.~~

2                   **Sec. 9. 22 MRSA §1711-B, sub-§3, ¶¶B and C**, as amended by PL  
amended to read:

4  
6                   B. The parent, guardian ad litem or legal guardian of the  
subject of the record if the person is a  
8                   minor, or the legal guardian if the person who is the  
subject of the record is mentally incompetent; or

10                   C. The designee of a durable health-care medical power of  
~~attorney executed by the person who is the subject of the~~  
12 ~~record, at such time as the power of attorney is in effect,~~  
~~or~~ if the person who is the subject of the record is  
14 incompetent and executed such an instrument.

16                   **Sec. 10. 22 MRSA §1711-B, sub-§3, ¶D**, as enacted by PL 1997,  
c. 793, Pt. A, §6 and affected by §10, is repealed.

18                   **Sec. 11. 22 MRSA §1711-B, sub-§3-A**, as enacted by PL 1997, c.  
20 793, Pt. A, §7 and affected by §10, is repealed.

22                   **Sec. 12. 22 MRSA §1711-B, sub-§5**, as amended by PL 1997, c.  
24 793, Pt. B, §5 and affected by §6, is further amended to read:

26                   **5. HIV test.** Release of information regarding the HIV  
infection status of a patient is governed by Title 5, section  
28 1711-G 19203-D.

30                   **Sec. 13. 22 MRSA §1711-C**, as corrected by RR 1997, c. 2, §44,  
is repealed.

32                   **Sec. 14. PL 1997, c. 793, Pt. A, §§9 and 10** are repealed.

34                   **Sec. 15. PL 1997, c. 793, Pt. B, §6** is repealed.

36                   **Emergency clause.** In view of the emergency cited in the  
preamble, this Act takes effect when approved.

## 40                   SUMMARY

42                   This bill amends the laws regarding the confidentiality of  
health care information by removing the changes made in Public  
44 Law 1997, chapter 793 by the Second Special Session of the 118th  
Legislature.