

MAINE STATE LEGISLATURE

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L.D. 1653

DATE: 4-26-99

(Filing No. H-280)

MAJORITY
HEALTH AND HUMAN SERVICES

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STATE OF MAINE
HOUSE OF REPRESENTATIVES
119TH LEGISLATURE
FIRST REGULAR SESSION

COMMITTEE AMENDMENT "A" to H.P. 1156, L.D. 1653, Bill, "An Act to Amend the Law Governing the Confidentiality of Health Care Information"

Amend the bill by striking out everything after the enacting clause and before the summary and inserting in its place the following:

Sec. 1. 22 MRSA §1711, 4th ¶, as enacted by PL 1997, c. 793, Pt. A, §1 and affected by §10 and as affected by PL 1999, c. 3, §§3 and 5, is amended to read:

A patient or, if the patient is a minor who has not consented to health care treatment in accordance with the laws of this State, the minor's parent, legal guardian or guardian ad litem may submit to a hospital an--addition--to--the--patient's medical--records health care information that corrects or clarifies the patient's treatment record, which must be retained with the medical record by the hospital. If the hospital adds to the medical record a statement in response to the submitted addition correction or clarification, the hospital shall provide a copy to the patient or, if the patient is a minor who has not consented to health care treatment in accordance with the laws of this State, the minor's parent, legal guardian or guardian ad litem.

Sec. 2. 22 MRSA §1711, last ¶, as enacted by PL 1997, c. 793, Pt. A, §1 and affected by §10 and as affected by PL 1999, c. 3, §§3 and 5, is amended to read:

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2 Release of a patient's medical records to a person other
3 than the patient or, if the patient is a minor who has not
4 consented to health care treatment in accordance with the laws of
5 this State, the minor's parent, legal guardian or guardian ad
6 litem is governed by section 1711-C.

7 **Sec. 3. 22 MRSA §1711-B, sub-§3-A**, as enacted by PL 1997, c.
8 793, Pt. A, §7 and affected by §10 and as affected by PL 1999, c.
9 3, §§3 and 5, is amended to read:

10 **3-A. Corrections and clarifications of treatment records.**
11 A patient or, if the patient is a minor who has not consented to
12 health care treatment in accordance with the laws of this State,
13 the minor's parent, legal guardian or guardian ad litem may
14 submit to a health care practitioner ~~an addition to the patient's~~
15 ~~treatment--records~~ health care information that corrects or
16 clarifies the patient's treatment record, which must be retained
17 with the treatment record by the health care practitioner. If
18 the health care practitioner adds to the treatment record a
19 statement in response to the submitted ~~addition~~ correction or
20 clarification, the health care practitioner shall provide a copy
21 to the patient or, if the patient is a minor who has not
22 consented to health care treatment in accordance with the laws of
23 this State, the minor's parent, legal guardian or guardian ad
24 litem.

25 **Sec. 4. 22 MRSA §1711-C**, as amended by PL 1999, c. 3, §§1 and
26 2 and affected by §5, is further amended to read:

27 **§1711-C. Confidentiality of health care information**

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

31 **A. "Authorized representative of an individual" or**
32 **"authorized representative"** means an individual's legal
33 guardian; agent pursuant to Title 18-A, section 5-802;
34 attorney-in-fact pursuant to Title 18-A, section 5-506; or
35 other authorized representative or, after death, that
36 person's personal representative or a person identified in
37 subsection 3-B. For a minor who has not consented to health
38 care treatment in accordance with the provisions of state
39 law, "authorized representative" means the minor's parent,
40 legal guardian or guardian ad litem.

41 **A-1. "Authorization to disclose"** means authorization to
42 disclose health care information in accordance with
43 subsection 3, 3-A or 3-B.

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- 2 B. "Disclosure" means the release, transfer of or provision
3 of access to health care information in any manner obtained
4 as a result of a professional health care relationship
5 between the individual and the health care practitioner or
6 facility to a person or entity other than the individual.

- 8 C. "Health care" means preventative, diagnostic,
9 therapeutic, rehabilitative, maintenance or palliative care,
10 services, treatment, procedures or counseling, including
11 appropriate assistance with disease or symptom management
12 and maintenance, that affects an individual's physical,
13 mental or behavioral condition, including individual cells
14 or their components or genetic information, or the structure
15 or function of the human body or any part of the human
16 body. Health care includes prescribing, dispensing or
17 furnishing to an individual drugs, biologicals, medical
18 devices or health care equipment and supplies; providing
19 hospice services to an individual; and the banking of blood,
20 sperm, organs or any other tissue.

- 22 D. "Health care facility" or "facility" means a facility,
23 institution or entity licensed pursuant to this Title that
24 offers health care to persons in this State, including a
25 home health care provider, hospice program and a pharmacy
26 licensed pursuant to Title 32. For the purposes of this
27 section, "health care facility" does not include a state
28 mental health institute, the Elizabeth Levinson Center, the
29 Aroostook Residential Center or Freeport Towne Square.

- 30 E. "Health care information" means information that
31 directly identifies the individual and that relates to an
32 individual's physical, mental or behavioral condition,
33 personal or family medical history or medical treatment or
34 the health care provided to that individual. "Health care
35 information" does not include information that protects the
36 anonymity of the individual by means of encryption or
37 encoding of individual identifiers or information pertaining
38 to or derived from federally sponsored, authorized or
39 regulated research governed by 21 Code of Federal
40 Regulations, Parts 50 and 56 and 45 Code of Federal
41 Regulations, Part 46, to the extent that such information is
42 used in a manner that protects the identification of
43 individuals. The Board of Directors of the Maine Health
44 Data Organization shall adopt rules to define health care
45 information that directly identifies an individual. Rules
46 adopted pursuant to this paragraph are ~~major~~--substantive
47 routine technical rules as defined in Title 5, chapter 375,
48 subchapter II-A.

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2 "Health care information" does not include information that
3 is created or received by a member of the clergy or other
4 person using spiritual means alone for healing as provided
5 in Title 32, sections 2103 and 3270.

6 F. "Health care practitioner" means a person licensed by
7 this State to provide or otherwise lawfully provide
8 providing health care or a partnership or corporation made
9 up of those persons or an officer, employee, agent or
10 contractor of that person acting in the course and scope of
11 employment, agency or contract related to or supportive of
12 the provision of health care to ~~an individual~~ individuals.

14 G. "Individual" means a natural person who is the subject
15 of the health care information under consideration and, in
16 the context of disclosure of health care information,
17 includes the individual's authorized representative.

18 H. "Third party" or "3rd party" means a person other than
19 the individual to whom the health care information relates.

22 **2. Confidentiality of health information; disclosure.** An
23 individual's health care information is confidential and may not
24 be disclosed other than to the individual by the health care
25 practitioner or facility except as provided in subsection 3, 3-A,
26 3-B, 6 or 11. Nothing in this section prohibits a health care
27 practitioner or health care facility from adhering to applicable
28 ethical or professional standards provided that these standards
29 do not decrease the protection of confidentiality granted by this
30 section. ~~Health care information disclosed pursuant to~~
31 ~~subsection 3, 6 or 11 retains its confidential nature after such~~
32 ~~disclosure and may be subsequently disclosed only if the written~~
33 ~~authorization to disclose allows future disclosures or if the~~
34 ~~disclosure is made pursuant to a separate written authorization~~
35 ~~to disclose or under circumstances stated in subsection 6 or 11.~~

36 **3. Written authorization to disclose.** A health care
37 practitioner or facility may disclose health care information
38 pursuant to a written authorization signed by an individual for
39 the specific purpose stated in the authorization. An A written
40 authorization to disclose health care information must be
41 retained with the individual's health care information. An A
42 written authorization to disclose is valid if it is in writing,
43 whether as it is in an original, facsimile or electronic form.
44 An A written authorization to disclose must contain the following
45 elements:

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48 A. The name and signature of the individual and the date of
49 signature. If the authorization is in electronic form, a
50 unique identifier of the individual and the date the

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2 individual authenticated the electronic authorization must
be stated in place of the individual's signature and date of
signature;

4 B. The types of persons authorized to disclose health care
6 information and the nature of the health care information to
be disclosed;

8 C. The identity or description of the 3rd party to whom the
10 information is to be disclosed;

12 D. The specific purpose or purposes of the disclosure and
whether any subsequent disclosures may be made pursuant to
14 the same authorization. An authorization to disclose health
care information related to substance abuse treatment or
16 care subject to the requirements of 42 United States Code,
Section 290ee-3 290dd-2 (Supplement 1997 1998) is governed
18 by the provisions of that law;

20 E. The duration of the authorization;

22 F. A statement that the individual may refuse authorization
to disclose all or some health care information but that
24 refusal may result in improper diagnosis or treatment,
denial of coverage or a claim for health benefits or other
26 insurance or other adverse consequences;

28 G. A statement that the authorization may be revoked at any
time by the individual by executing a written revocation,
30 subject to the right of any person who acted in reliance on
the authorization prior to receiving notice of revocation,
32 instructions on how to revoke an authorization and a
statement that revocation may be the basis for denial of
34 health benefits or other insurance coverage or benefits; and

36 H. A statement that the individual is entitled to a copy of
the authorization form.

38 **3-A. Oral authorization to disclose.** When it is not
40 practical to obtain written authorization under subsection 3 from
an individual or person acting pursuant to subsection 3-B or when
42 a person chooses to give oral authorization to disclose, a health
care practitioner or facility may disclose health care
44 information pursuant to oral authorization. A health care
practitioner or facility shall record with the individual's
46 health care information receipt of oral authorization to
disclose, including the name of the authorizing person, the date,
48 the information and purposes for which disclosure is authorized
and the identity or description of the 3rd party to whom the
50 information is to be disclosed.

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3-B. Authorization to disclose provided by a 3rd party.
When an individual or an authorized representative is unable to provide authorization to disclose under subsection 3 or 3-A, a health care practitioner or facility may disclose health care information pursuant to authorization to disclose that meets the requirements of subsection 3 or 3-A given by a 3rd party listed in this subsection. A health care practitioner or facility may determine not to obtain authorization from a person listed in this subsection when the practitioner or facility determines it would not be in the best interest of the individual to do so. In making this decision, the health care practitioner or facility shall respect the safety of the individual and shall consider any indicators, suspicion or substantiation of abuse. Persons who may authorize disclosure under this subsection include:

- A. The spouse of the individual;
- B. A parent of the individual;
- C. An adult who is a child, grandchild or sibling of the individual;
- D. An adult who is an aunt, uncle, niece or nephew of the individual, related by blood or adoption;
- E. An adult related to the individual, by blood or adoption, who is familiar with the individual's personal values; and
- F. An adult who has exhibited special concern for the individual and who is familiar with the individual's personal values.

4. Duration of authorization to disclose. ~~A-written~~ An authorization to disclose may not extend longer than 30 months, except that the duration of an authorization for the purposes of insurance coverage under Title 24, 24-A or 39-A is governed by the provisions of Title 24, 24-A or 39-A, respectively.

5. Revocation of authorization to disclose. ~~An-individual~~ A person who may authorize disclosure may revoke a--written authorization to disclose at any time, subject to the rights of any person who acted in reliance on the authorization prior to receiving notice of revocation. A written revocation of authorization ~~must be in writing and~~ must be signed and dated by the--individual. If the revocation is in electronic form, a unique identifier of the individual and the date the individual authenticated the electronic authorization must be stated in

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2 place of the individual's signature and date of signature. A
3 health care practitioner or facility shall record receipt of oral
4 revocation of authorization, including the name of the person
5 revoking authorization and the date. A revocation of
6 authorization must be retained with the individual's
7 authorization and the individual's health care information.

8 **6. Disclosure without authorization to disclose.** A health
9 care practitioner or facility may disclose, or when required by
10 law must disclose, health care information without written
11 authorization to disclose under the circumstances stated in this
12 subsection or as provided in subsection 11. ~~The circumstances in~~
13 ~~which disclosure~~ Disclosure may be made without written
14 authorization ~~to disclose include the following:~~

15 A. To another health care practitioner or facility for
16 diagnosis, treatment or care of ~~the individual as follows:~~
17 individuals or to complete the responsibilities of a health
18 care practitioner or facility that provided diagnosis,
19 treatment or care of individuals, as provided in this
20 paragraph.

21 ~~(1) In emergency circumstances, or~~
22
23 (1) For a disclosure within the office, practice or
24 organizational affiliate of the health care
25 practitioner or facility, no authorization is required.

26 ~~(2) In nonemergency circumstances:~~
27
28 ~~(a) For a disclosure within the office, practice~~
29 ~~or organization of the health care practitioner or~~
30 ~~facility, when the disclosure is made for a~~
31 ~~purpose related to the provision of health care to~~
32 ~~the individual, or~~
33

34 ~~(b) For a disclosure outside of the office,~~
35 ~~practice or organization of the health care~~
36 ~~practitioner or facility, when authorization is~~
37 ~~given orally by the individual or may be inferred~~
38 ~~from the individual's conduct, Health care~~
39 ~~information related to an HIV test, HIV infection~~
40 ~~or HIV infection status, as defined in Title 5,~~
41 ~~section 19201, subsections 3, 4 A and 5, may not~~
42 ~~be disclosed in reliance on an authorization~~
43 ~~inferred from an individual's conduct, Health~~
44 ~~care information derived from mental health~~
45 ~~services provided by any of the following~~
46 ~~individuals may not be disclosed by any such~~
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~~individual-in-reliance-on-an-authorization-IMPLIED
from-an-individual's-conduct;~~

~~(i)---A--clinical--nurse--specialist--licensed
under-the-provisions-of-Title-32,-chapter-31;~~

~~(ii)---A--psychologist--licensed--under--the
provisions-of-Title-32,-chapter-56;~~

~~(iii)---A--social--worker--licensed--under--the
provisions-of-Title-32,-chapter-83;~~

~~(iv)---A--counseling--professional---licensed
under--the--provisions--of--Title--32,--chapter
119;-and~~

~~(v)---A--physician--specializing--in--psychiatry
licensed--under--the--provisions--of--Title--32,
chapter-36-or-48.~~

~~A--physician--specializing--in--psychiatry--may
disclose--any--such--information--to--a--licensed
pharmacist--but--solely--for--purposes--related--to
prescribing,---dispensing---or---furnishing
medication--to--a--patient;~~

(2) For a disclosure outside of the office, practice
or organizational affiliate of the health care
practitioner or facility, authorization is not
required, except that in nonemergency circumstances
authorization is required for:

(a) Health care information related to an HIV
test, HIV infection or HIV infection status, as
defined in Title 5, section 19201, subsections 3,
4-A and 5; and

(b) Health care information derived from mental
health services provided by:

(i) A clinical nurse specialist licensed
under the provisions of Title 32, chapter 31;

(ii) A psychologist licensed under the
provisions of Title 32, chapter 56;

(iii) A social worker licensed under the
provisions of Title 32, chapter 83;

2 (iv) A counseling professional licensed
4 under the provisions of Title 32, chapter
 119; or

6 (v) A physician specializing in psychiatry
8 licensed under the provisions of Title 32,
 chapter 36 or 48.

10 This subparagraph does not prohibit the disclosure
12 of health care information between a licensed
14 pharmacist and a health care practitioner or
 facility providing mental health services for the
 purpose of dispensing medication to an individual;

16 B. To an agent, employee, independent contractor or a
18 successor in interest of the health care practitioner or
 facility or to a member of a quality assurance, utilization
20 review or peer review team to the extent necessary to carry
 out the usual and customary activities relating to the
22 delivery of health care and for the practitioner's or
 facility's lawful purposes in diagnosing, treating or caring
24 for the--individual individuals, including billing and
 collection, risk management, quality assurance, utilization
26 review and peer review. Disclosure for a purpose listed in
 this paragraph is not a disclosure for the purpose of
 marketing or sales;

28 C. To a family or household member ~~when-an-individual-is~~
30 ~~receiving-diagnosis,-treatment-or-care-in-an-emergency-care~~
 ~~facility-or-health-care-facility.-A-disclosure-made-pursuant~~
32 ~~to-this-paragraph-may-include-only-the-presence-and-general~~
 ~~health--condition--of--the--individual~~ unless expressly
34 prohibited by the individual or a person acting pursuant to
 subsection 3-B;

36 D. When To appropriate persons when a health care
38 practitioner or facility that is providing or has provided
40 diagnosis, treatment or care to the individual has
 determined, based on reasonable professional judgment, that
42 the individual poses a direct threat of imminent harm to the
 health or safety of any individual. A disclosure pursuant
44 to this paragraph must protect the confidentiality of the
 health care information consistent with sound professional
 judgment;

46 E. To federal, state or local governmental entities in
48 order to protect the public health and welfare when
 reporting is required or authorized by law or to report a

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suspected crime against the health care practitioner or facility;

~~F. --- To --- federal, --- state --- or --- local --- governmental --- entities pursuant to statute, subpoena or court order for use in an investigation relating to the individual, a health care practitioner or facility, a health, life, disability insurance or health care benefits entity required to be licensed pursuant to Title 24 or 24-A, a 3rd party, or pursuant to a subpoena or court order in a civil proceeding filed in a court. The requesting governmental entity must specify the nature and type of health care information to be disclosed. For the purposes of this section, "governmental entity" includes a licensing board for a health care practitioner;~~

F-1. As directed by order of a court; as authorized or required by statute; or as directed by subpoena issued on behalf of a governmental entity for the purpose of an investigation or prosecution. The subpoena must specify the nature and type of health care information to be disclosed. For the purposes of this paragraph, "governmental entity" includes a licensing board for a health care practitioner;

G. When To a person when necessary to conduct scientific research approved by an institutional review board or by the board of a nonprofit health research organization or when necessary for a clinical trial sponsored, authorized or regulated by the federal Food and Drug Administration. A person conducting research or a clinical trial may not identify any individual patient in any report arising from the research or clinical trial. For the purposes of this paragraph, "institutional review board" means any board, committee or other group formally designated by a health care facility and authorized under federal law to review, approve or conduct periodic review of research programs. Health care information disclosed pursuant to this paragraph that identifies an individual must be returned to the health care practitioner or facility from which it was obtained or must be destroyed when it is no longer required for the research or clinical trial. Disclosure for a purpose listed in this paragraph is not a disclosure for the purpose of marketing or sales;

2 H. To a person engaged in the assessment, evaluation or
3 investigation of the provision of or payment for health care
4 or the practices of a health care practitioner or facility
5 or to an agent, employee or contractor of such a person,
6 pursuant to statutory or professional standards or
7 requirements. Disclosure for a purpose listed in this
8 paragraph is not a disclosure for the purpose of marketing
9 or sales;

10 I. To a person engaged in the regulation, accreditation,
11 licensure or certification of a health care practitioner or
12 facility or to an agent, employee or contractor of such a
13 person, pursuant to standards or requirements for
14 regulation, accreditation, licensure or certification;

15 J. To a person engaged in the review of the provision of
16 health care by a health care practitioner or facility or
17 payment for such health care under Title 24, 24-A or 39-A
18 or under a public program for the payment of health care or
19 professional liability insurance for a health care
20 practitioner or facility or to an agent, employee or
21 contractor of such a person; or

22 K. To attorneys for a the health care practitioner or
23 facility that is disclosing the health care information or
24 to a person as required in the context of legal proceedings
25 or in disclosure to a court or governmental entity, as
26 determined by the practitioner or facility to be required
27 for adequate, the practitioner's or facility's own legal
28 representation;

29 L. To a person outside the office of the health care
30 practitioner or facility engaged in payment activities,
31 including but not limited to submission to payors for the
32 purposes of billing, payment, claims management, medical
33 data processing, determination of coverage or adjudication
34 of health benefit or subrogation claims, review of health
35 care services with respect to coverage or justification of
36 charges or other administrative services. Payment
37 activities also include but are not limited to:

38 (1) Activities necessary to determine responsibility
39 for coverage;

40 (2) Activities undertaken to obtain payment for health
41 care provided to an individual; and

42 (3) Quality assessment and utilization review
43 activities, including precertification and

2 preauthorization of services and operations or services
3 audits relating to diagnosis, treatment or care
4 rendered to individuals by the health care practitioner
5 or facility and covered by a health plan or other payor;

6 M. Of Information regarding immunization of an individual,
7 to schools, educational institutions, camps, corrections
8 facilities, health care practitioners and facilities,
9 providers of emergency services or a branch of federal or
10 state military forces;

12 N. To a person when disclosure is needed to set or confirm
13 the date and time of an appointment or test or to make
14 arrangements for the individual to receive those services;

16 O. To a person when disclosure is needed to obtain or
17 convey information about prescription medication or supplies
18 or to provide medication or supplies under a prescription;

20 P. To a person representing emergency services, health care
21 and relief agencies, corrections facilities or a branch of
22 federal or state military forces, of brief confirmation of
23 general health status;

24 Q. To a member of the clergy, of information about the
25 presence of an individual in a health care facility,
26 including the person's room number, place of residence and
27 religious affiliation unless expressly prohibited by the
28 individual or a person acting pursuant to subsection 3-B;

30 R. To a member of the media who asks a health care facility
31 about an individual by name, of brief confirmation of
32 general health status unless expressly prohibited by the
33 individual or a person acting pursuant to subsection 3-B; and

34 S. To a member of the public who asks a health care
35 facility about an individual by name, of the room number of
36 the individual and brief confirmation of general health
37 status unless expressly prohibited by the individual or a
38 person acting pursuant to subsection 3-B.

42 **7. Confidentiality policies.** A health care practitioner or
43 facility shall develop and implement policies, standards and
44 procedures to protect the confidentiality, security and integrity
45 of health care information to ensure that information is not
46 negligently, inappropriately or unlawfully disclosed. The
47 ~~policies, standards and procedures must state that information~~
48 ~~disclosed remains confidential and that the person to whom the~~
49 ~~information is disclosed must protect the confidentiality of the~~
50 ~~information.~~

2 **8. Prohibited disclosure.** A health care practitioner or
4 facility may not disclose health care information for the purpose
6 of marketing or sales without written or oral authorization for
 the disclosure.

8 **9. Disclosures of corrections or clarifications to health**
10 **care information.** A health care practitioner or facility shall
 provide to a 3rd party a copy of an addition submitted by an
 individual to the individual's health care information if:

12 A. The health care practitioner or facility provided a copy
14 of the original health care record to the 3rd party on or
 after October 1, 1999;

16 B. The ~~addition~~ correction or clarification was submitted
18 by the individual pursuant to section 1711 or 1711-B and
 relates to diagnosis, treatment or care;

20 C. The individual requests that a copy be sent to the 3rd
22 party and provides an authorization that meets the
 requirements of subsection 3, 3-A or 3-B; and

24 D. If requested by the health care practitioner or
26 facility, the individual pays to the health care
 practitioner or facility all reasonable costs requested by
 that practitioner or facility.

28 **10. Requirements for disclosures.** Except as otherwise
30 provided by law, disclosures of health care information pursuant
32 to this section are subject to the professional judgment of the
 health care practitioner and to the following requirements.

34 A. A health care practitioner or facility that discloses
36 health care information pursuant to subsection 3, 3-A or 3-B
 may not disclose information in excess of the information
 requested in the authorization.

38 B. A health care practitioner or facility that discloses
40 health care information pursuant to subsections 3 and, 3-A,
42 3-B or 6 may not disclose information in excess of the
 information reasonably required for the purpose for which it
 is disclosed.

44 C. If a health care practitioner or facility believes that
46 release of health care information to the individual would
 be detrimental to the health of the individual, the health
48 care practitioner or facility shall advise the individual
 and make copies of the records available to the individual's

authorized representative upon receipt of a written authorization.

D. If a health care practitioner or facility discloses partial or incomplete health care information, as compared to the request or directive to disclose under subsection 3, 3-A, 3-B or 6, the disclosure must expressly indicate that the information disclosed is partial or incomplete.

11. Health care information subject to other laws, rules and regulations. ~~An authorization to disclose or a disclosure of health~~ Health care information that is subject to the provisions of 42 United States Code, Section ~~290ee-3~~ 290dd-2 (Supplement 1997 1998); chapters 710 and 711; Title 5, section 200-E; Title 24 or 24-A; Title 34-B, section 1207; Title 39-A; or other provisions of state or federal law, rule or regulation is governed solely by those provisions.

12. Minors. If a minor has consented to health care in accordance with the laws of this State, authorization to disclose health care information pursuant to this section must be given by the minor unless otherwise provided by law.

13. Enforcement. This section may be enforced within 2 years of the date a disclosure in violation of this section was or should reasonably have been discovered.

A. When the Attorney General has reason to believe that a person has intentionally violated a provision of this section, the Attorney General may bring an action to enjoin unlawful disclosure of health care information.

B. An individual who is aggrieved by conduct in violation of this section may bring a civil action against a person who has intentionally unlawfully disclosed health care information in the Superior Court in the county in which the individual resides or the disclosure occurred. The action may seek to enjoin unlawful disclosure and may seek costs and a forfeiture or penalty under paragraph C. An applicant for injunctive relief under this paragraph may not be required to give security as a condition of the issuance of the injunction.

~~C. A person who violates this section commits a civil violation for which a forfeiture not to exceed \$1,000, payable to the State, may be adjudged for a negligent violation, plus costs.~~ A person who intentionally violates this section is subject to a civil penalty not to exceed \$5,000, payable to the State, ~~for an intentional violation,~~ plus costs. If a court finds that intentional violations of

2 this section have occurred after due notice of the violating
conduct with sufficient frequency to constitute a general
4 business practice, the person is subject to a civil penalty
not to exceed \$10,000 for health care practitioners and
6 \$50,000 for health care facilities, payable to the State. A
civil penalty under this subsection is recoverable in a
civil action.

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10 **14. Waiver prohibited.** Any agreement to waive the
provisions of this section is against public policy and void.

12 **15. Immunity.** A cause of action in the nature of
defamation, invasion of privacy or negligence does not arise
14 against any person for disclosing health care information in
accordance with this section. This section provides no immunity
16 for disclosing false information with malice or willful intent to
injure any person.

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20 **16. Application.** This section applies to all requests and
directives ~~to disclose health care information issued or received~~
~~on or after October 1, 1999~~ and ~~to all~~ authorizations to disclose
22 health care information executed on or after October 1, 1999. An
authorization to disclose health care information executed prior
24 to October 1, 1999 that does not meet the standards of this
section is deemed to comply with the requirements of this section
26 until the next health care encounter between the individual and
the health care practitioner or facility.

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30 **Sec. 5. Effective date.** This Act takes effect October 1, 1999.'

32 Further amend the bill by inserting at the end before the
summary the following:

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36 **FISCAL NOTE**

38 The Maine Health Data Organization will incur some minor
additional costs to adopt rules. These costs can be absorbed
40 within the Maine Health Data Organization's existing budgeted
resources.

42 This bill may decrease the number of civil violations filed
in the court system. The Judicial Department may realize some
44 minor savings from reductions of workload and administrative
costs associated with the minimal number of cases that will no
46 longer be filed. Reductions in the collection of fines may
decrease General Fund revenue by minor amounts.'

A 4 C

SUMMARY

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This amendment is the report of the majority of the Joint Standing Committee on Health and Human Services. It replaces the bill.

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1. It clarifies that, if the patient is a minor who has not consented to health care treatment in accordance with the laws of this State, the minor's parent, legal guardian or guardian ad litem may submit health care information that corrects or clarifies the patient's treatment record and obtain copies.

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2. Within the provisions of the Maine Revised Statutes, Title 22, section 1711-C, it:

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A. Defines authorization to disclose and clarifies that disclosures that are subject to the law are disclosures of health care information obtained as a result of a professional health care relationship between the individual and the health care practitioner or facility to a person or entity other than the individual. It clarifies that "health care information" does not include information that is created or received by a member of the clergy or other person using spiritual means alone for healing and that "health care" includes treatment;

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B. Repeals unnecessary provisions relating to confidentiality after health care information is disclosed;

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C. Provides for oral authorization to disclose and for authorization to disclose provided by a 3rd party;

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D. Clarifies the provisions for revocation of authorization to disclose;

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E. Provides that disclosures to another health care practitioner or facility may take place within the office, practice or organizational entity without authorization and outside of it without authorization, except that HIV and mental health information require authorization in nonemergency circumstances;

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F. Allows disclosure without authorization to family or household members unless expressly prohibited;

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G. Allows disclosure without authorization for billing and insurance purposes to schools, camps, emergency services, corrections facilities and a branch of the federal or state military forces, for the purposes of making and confirming appointments or tests and for the purposes of obtaining prescription medications and supplies;

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COMMITTEE AMENDMENT "A" to H.P. 1156, L.D. 1653

- 2 H. Allows disclosure without authorization to confirm
admission to a health care facility and brief confirmation
4 of general health status to the media when inquiring by
name, unless expressly prohibited;
- 6 I. Allows disclosure without authorization to the clergy
8 unless expressly prohibited;
- 10 J. Allows disclosure without authorization to members of
the public inquiring by name unless expressly prohibited;
- 12 K. Clarifies that disclosure under the law is subject to
14 the professional judgment of the health care practitioner;
- 16 L. Adds cross-references regarding authorizations to
disclose;
- 18 M. Imposes penalties for intentional violations and repeals
20 penalties for negligent violations;
- 22 N. Clarifies that other laws, rules and regulations
pertaining to health care information govern that
24 information and those entities subject to those laws, rules
and regulations; and
- 26 O. Clarifies application of the provisions, making them
28 applicable to requests, directives and authorizations
executed on or after October 1, 1999, and provides a
30 transition period for authorizations executed prior to that
date until the date of the next health care encounter
32 between the individual and the health care practitioner or
facility.
- 34 3. It adds an effective date of October 1, 1999.
- 36 4. It adds a fiscal note to the bill.