

MAINE STATE LEGISLATURE

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L.D. 1653

DATE: 4-26-99

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**MINORITY
HEALTH AND HUMAN SERVICES**

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

COMMITTEE AMENDMENT "B" 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 the title and substituting the following:

'An Act to Repeal the Laws Regarding the Confidentiality of Health Care Information'

Further amend the bill by striking out everything after the title and before the summary and inserting in its place the following:

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

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

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

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

COMMITTEE AMENDMENT

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

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

14 **Sec. 1. 5 MRSA §19203, sub-§2**, as amended by PL 1997, c. 793,
16 Pt. B, §1 and affected by §6 and as affected by PL 1999, c. 3,
18 §§4 and 5, is further amended to read:

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

26 **Sec. 2. 5 MRSA §19203, sub-§9**, as amended by PL 1997, c. 793,
28 Pt. B, §2 and affected by §6 and as affected by PL 1999, c. 3,
§§4 and 5, is further amended to read:

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

36 **Sec. 3. 5 MRSA §19203, last ¶**, as amended by PL 1997, c. 793,
38 Pt. B, §3 and affected by §6 and as affected by PL 1999, c. 3,
§§4 and 5, is further amended to read:

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

44 **Sec. 4. 5 MRSA §19203-D**, as repealed by PL 1997, c. 793, Pt.
46 B, §4 and affected by §6 and as affected by PL 1999, c. 3, §§4
48 and 5, is reenacted to read:

§19203-D. Records

50 When a medical record entry is made concerning information
of a person's HIV infection status, including the results of an

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2 HIV test, the following apply to the release of that information
3 as a part of the medical record.

4 1. Authorized release. The person who is the subject of an
5 HIV test, at or near the time the entry is made in the medical
6 record, shall elect, in writing, whether to authorize the release
7 of that portion of the medical record containing the HIV
8 infection status information when that person's medical record
9 has been requested. A new election may be made when a change in
10 the person's HIV infection status occurs or whenever the person
11 makes a new election. The release form must clearly state
12 whether or not the person has authorized the release of that
13 information. The person must be advised of the potential
14 implications of authorizing the release of that information.

16 A. When release has been authorized, the custodian of the
17 medical record may release, upon request, the person's
18 medical record, including any HIV infection status
19 information contained in the medical record. Release of HIV
20 infection status information pursuant to this paragraph is
21 not a violation of any of the confidentiality provisions of
22 this chapter.

24 B. When release has not been authorized, the custodian of
25 the medical record may, upon request, release that portion
26 of the medical record that does not contain the HIV
27 infection status information. Except as otherwise provided
28 in this section, HIV infection status information may be
29 released only if the person has specifically authorized a
30 separate release of that information. A general release
31 form is insufficient.

32 2. Authorized disclosure. A medical record containing
33 results of an HIV test may not be disclosed, discoverable or
34 compelled to be produced in any civil, criminal, administrative
35 or other proceedings without the consent of the person who is the
36 subject of an HIV test, except in the following cases:

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

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

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

48 D. Proceedings held pursuant to the mental health laws,
49 Title 34-B, chapter 3, subchapter IV, article III; and
50

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

6 3. Utilization review; research. Nothing in this section
7 may be interpreted to prohibit reviews of medical records for
8 utilization review purposes by duly authorized utilization review
9 committees or peer review organizations. Qualified personnel
10 conducting scientific research, management audits, financial
11 audits or program evaluation with the use of medical records may
12 not identify, directly or indirectly, any individual patient in
13 any report of such research, audit, evaluation or otherwise
14 disclose the identities of persons tested in any manner.

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

20 5. Confidentiality policy. Health care providers and
21 others with access to medical records containing HIV infection
22 status information shall have a written policy providing for
23 confidentiality of all patient information consistent with this
24 chapter. That policy must require, at a minimum, action
25 consistent with disciplinary procedures for violations of the
26 confidentiality policy.

28 **Sec. 5. 22 MRSA §1711, as amended by PL 1997, c. 793, Pt. A,**
30 **§1 and affected by §10 and as affected by PL 1999, c. 3, §§3 and**
31 **5, is further amended to read:**

32 **§1711. Patient access to hospital medical records**

34
36 If a patient of an institution licensed as a hospital by the
37 State, after discharge from such institution, makes written
38 request for copies of the patient's medical records, the copies
39 must, if available, be made available ~~to the patient~~ within a
40 reasonable time unless, in the opinion of the hospital, it would
41 be detrimental to the health of the patient to obtain the
42 records. If the hospital is of the opinion that release of the
43 records to the patient would be detrimental to the health of the
44 patient, the hospital shall advise the patient that copies of the
45 records will be made available to the patient's authorized
46 representative upon presentation of a proper authorization signed
47 by the patient. ~~The hospital may exclude from the copies of~~
48 ~~medical records released any information related to a clinical~~
49 ~~trial sponsored, authorized or regulated by the federal Food and~~
50 ~~Drug Administration.~~

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

8 ~~A written request or authorization for release of medical
records under this section satisfies the requirements of section
10 1711-G, subsection 3.~~

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

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

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

26 **Sec. 6. 22 MRSA §1711-A**, as amended by PL 1997, c. 793, Pt.
A, §2 and affected by §10 and as affected by PL 1999, c. 3, §§3
28 and 5, is further amended to read:

30 **§1711-A. Fees charged for records**

32 Whenever a health care practitioner defined in section
1711-B furnishes requested copies of a patient's ~~treatment~~
34 ~~medical~~ record or a medical report ~~or an addition to a treatment~~
~~record or medical report~~ to the patient, the charge for the
36 copies or the report may not exceed the reasonable costs incurred
by the health care practitioner in making and providing the
38 copies or the report.

40 **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 and as affected by PL
42 1999, c. 3, §§3 and 5, are further amended to read:

44 A. "Health care practitioner" has the same meaning as in
Title 24, section 1711-G, subsection 1, paragraph F 2502,
46 subsection 1-A. "Health care practitioner" also includes
"licensed clinical social worker" as defined in Title 32,
48 section 7001-A, subsection 6 and "marriage and family
therapist" and "professional counselor" as defined in Title
50 32, section 13851.

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

6 **Sec. 8. 22 MRSA §1711-B, sub-§2**, as amended by PL 1997, c.
793, Pt. A, §4 and affected by §10 and as affected by PL 1999, c.
8 3, §§3 and 5, is further amended to read:

10 **2. Access.** Upon written authorization ~~--executed--in~~
~~accordance--with--section--1711-C,--subsection--3~~ consent of the
12 person to whom copies of records must be released pursuant to
this section, a health care practitioner shall release copies of
14 all treatment records of a patient or a narrative containing all
relevant information in the treatment records ~~to--the--patient~~.
16 The health care practitioner may exclude from the copies of
treatment records released any personal notes that are not
18 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
20 copies or narrative must be released to the designated person
within a reasonable time.

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

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

36 **Sec. 9. 22 MRSA §1711-B, sub-§3, ¶¶B and C**, as amended by PL
38 1997, c. 793, Pt. A, §5 and affected by §10 and as affected by PL
1999, c. 3, §§3 and 5, are further amended to read:

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

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

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2 collection of filing fees and fines may decrease General Fund
revenue by minor amounts.

4 The Department of Professional and Financial Regulation will
6 realize some minor savings from eliminating the reporting
requirement.'

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SUMMARY

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12 This amendment is the minority report of the Joint Standing
Committee on Health and Human Services. It amends the laws
14 regarding the confidentiality of health care information by
repealing the provisions of Public Law 1997, chapter 793, which
was enacted by the Second Special Session of the 118th
16 Legislature. The amendment makes the bill an emergency. It also
adds a fiscal note.