

MAINE STATE LEGISLATURE

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L.D. 1653

DATE: 5-27-99

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MAJORITY
HEALTH AND HUMAN SERVICES

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

COMMITTEE AMENDMENT "C" 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:

PART A

Sec. A-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. A-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.

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

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

28 **Sec. A-4. 22 MRSA §1711-B, sub-§5**, as amended by PL 1997, c.
29 793, Pt. B, §5 and affected by §6 and as affected by PL 1999, c.
30 3, §§4 and 5, is further amended to read:

32 **5. HIV test.** Release of information regarding the HIV
33 infection status of a patient is governed by Title 5, section
34 1711-C 19203-D.

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

38 **§1711-C. Confidentiality of health care information**

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

44 A. "Authorized representative of an individual" or
45 "authorized representative" means an individual's legal
46 guardian; agent pursuant to Title 18-A, section 5-802;
47 attorney-in-fact pursuant to Title 18-A, section 5-506; or
48 other authorized representative or, after death, that
49 person's personal representative or a person identified in
50 subsection 3-B. For a minor who has not consented to health

care treatment in accordance with the provisions of state law, "authorized representative" means the minor's parent, legal guardian or guardian ad litem.

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

B. "Disclosure" means the release, transfer of or provision of access to health care information in any manner 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.

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

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

E. "Health care information" means information that directly identifies the individual and that relates to an individual's physical, mental or behavioral condition, personal or family medical history or medical treatment or the health care provided to that individual. "Health care information" does not include information that protects the anonymity of the individual by means of encryption or encoding of individual identifiers or information pertaining to or derived from federally sponsored, authorized or regulated research governed by 21 Code of Federal Regulations, Parts 50 and 56 and 45 Code of Federal Regulations, Part 46, to the extent that such information is used in a manner that protects the identification of

2 individuals. The Board of Directors of the Maine Health
3 Data Organization shall adopt rules to define health care
4 information that directly identifies an individual. Rules
5 adopted pursuant to this paragraph are ~~major--substantive~~
6 routine technical rules as defined in Title 5, chapter 375,
7 subchapter II-A.

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

12
13 F. "Health care practitioner" means a person licensed by
14 this State to provide or otherwise lawfully ~~provide~~
15 providing health care or a partnership or corporation made
16 up of those persons or an officer, employee, agent or
17 contractor of that person acting in the course and scope of
18 employment, agency or contract related to or supportive of
19 the provision of health care to ~~an-individual~~ individuals.

20
21 G. "Individual" means a natural person who is the subject
22 of the health care information under consideration and, in
23 the context of disclosure of health care information,
24 includes the individual's authorized representative.

25
26 H. "Third party" or "3rd party" means a person other than
27 the individual to whom the health care information relates.

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

43
44 **3. Written authorization to disclose.** A health care
45 practitioner or facility may disclose health care information
46 pursuant to a written authorization signed by an individual for
47 the specific purpose stated in the authorization. An A written
48 authorization to disclose health care information must be
retained with the individual's health care information. An A

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2 written authorization to disclose is valid ~~if-it-is-in-writing,~~
whether as it is in an original, facsimile or electronic form.
4 An A written authorization to disclose must contain the following
elements:

6 A. The name and signature of the individual and the date of
signature. If the authorization is in electronic form, a
8 unique identifier of the individual and the date the
individual authenticated the electronic authorization must
10 be stated in place of the individual's signature and date of
signature;

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

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

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

28 E. The duration of the authorization;

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

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

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

46 3-A. Oral authorization to disclose. When it is not
48 practical to obtain written authorization under subsection 3 from
an individual or person acting pursuant to subsection 3-B or when
50 a person chooses to give oral authorization to disclose, a health

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2 care practitioner or facility may disclose health care
3 information pursuant to oral authorization. A health care
4 practitioner or facility shall record with the individual's
5 health care information receipt of oral authorization to
6 disclose, including the name of the authorizing person, the date,
7 the information and purposes for which disclosure is authorized
8 and the identity or description of the 3rd party to whom the
9 information is to be disclosed.

10 3-B. Authorization to disclose provided by a 3rd party.
11 When an individual or an authorized representative is unable to
12 provide authorization to disclose under subsection 3 or 3-A, a
13 health care practitioner or facility may disclose health care
14 information pursuant to authorization to disclose that meets the
15 requirements of subsection 3 or 3-A given by a 3rd party listed
16 in this subsection. A health care practitioner or facility may
17 determine not to obtain authorization from a person listed in
18 this subsection when the practitioner or facility determines it
19 would not be in the best interest of the individual to do so. In
20 making this decision, the health care practitioner or facility
21 shall respect the safety of the individual and shall consider any
22 indicators, suspicion or substantiation of abuse. Persons who
23 may authorize disclosure under this subsection include:

- 24 A. The spouse of the individual;
- 25
- 26 B. A parent of the individual;
- 27
- 28 C. An adult who is a child, grandchild or sibling of the
- 29 individual;
- 30
- 31 D. An adult who is an aunt, uncle, niece or nephew of the
- 32 individual, related by blood or adoption;
- 33
- 34 E. An adult related to the individual, by blood or
- 35 adoption, who is familiar with the individual's personal
- 36 values; and
- 37
- 38 F. An adult who has exhibited special concern for the
- 39 individual and who is familiar with the individual's
- 40 personal values.

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

46 5. Revocation of authorization to disclose. An-individual
47 A person who may authorize disclosure may revoke a-written
48 authorization to disclose.

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2 authorization to disclose at any time, subject to the rights of
3 any person who acted in reliance on the authorization prior to
4 receiving notice of revocation. A written revocation of
5 authorization ~~must be in writing and~~ must be signed and dated by
6 ~~the individual.~~ If the revocation is in electronic form, a
7 unique identifier of the individual and the date the individual
8 authenticated the electronic authorization must be stated in
9 place of the individual's signature and date of signature. A
10 health care practitioner or facility shall record receipt of oral
11 revocation of authorization, including the name of the person
12 revoking authorization and the date. A revocation of
13 authorization must be retained with the individual's
14 authorization and the individual's health care information.

15
16 **6. Disclosure without authorization to disclose.** A health
17 care practitioner or facility may disclose, or when required by
18 law must disclose, health care information without written
19 authorization to disclose under the circumstances stated in this
20 subsection or as provided in subsection 11. ~~The circumstances in~~
21 ~~which disclosure~~ Disclosure may be made without written
22 authorization ~~to disclose include the following as follows:~~

23
24 A. To another health care practitioner or facility for
25 diagnosis, treatment or care of ~~the individual as follows+~~
26 individuals or to complete the responsibilities of a health
27 care practitioner or facility that provided diagnosis,
28 treatment or care of individuals, as provided in this
29 paragraph.

30 ~~(1) In emergency circumstances, or~~

31
32 (1) For a disclosure within the office, practice or
33 organizational affiliate of the health care
34 practitioner or facility, no authorization is required.

35 ~~(2) In nonemergency circumstances,~~

36
37 ~~(a) For a disclosure within the office, practice~~
38 ~~or organization of the health care practitioner or~~
39 ~~facility, when the disclosure is made for a~~
40 ~~purpose related to the provision of health care to~~
41 ~~the individual, or~~

42
43 ~~(b) For a disclosure outside of the office,~~
44 ~~practice or organization of the health care~~
45 ~~practitioner or facility, when authorization is~~
46 ~~given orally by the individual or may be inferred~~
47 ~~from the individual's conduct, Health care~~
48 ~~information related to an HIV test, HIV infection~~
49 ~~or HIV infection status, as defined in Title 5,~~
50

2 section 19201, subsections 3, 4 A and 5, may not
be disclosed in reliance on an authorization
4 inferred from an individual's conduct. Health
care information derived from mental health
6 services provided by any of the following
individuals may not be disclosed by any such
8 individual in reliance on an authorization implied
from an individual's conduct:

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

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

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

20 (iv) A counseling professional licensed
under the provisions of Title 32, chapter
22 119; and

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

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

34 (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 health care information
derived from mental health services provided by:

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

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

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

46 (d) A counseling professional licensed under the
provisions of Title 32, chapter 119; or
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(e) A physician specializing in psychiatry licensed under the provisions of Title 32, chapter 36 or 48.

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

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

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

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

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

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2 investigation--relating--to--the--individual;--a--health--care
3 practitioner--or--facility;--a--health,--life,--disability
4 insurance--or--health--care--benefits--entity--required--to--be
5 licensed--pursuant--to--Title--24--or--24-A;--a--3rd--party;--or
6 pursuant--to--a--subpoena--or--court--order--in--a--civil--proceeding
7 filed--in--a--court;--The--requesting--governmental--entity--must
8 specify--the--nature--and--type--of--health--care--information--to--be
9 disclosed;--For--the--purposes--of--this--section,--"governmental
10 entity"--includes--a--licensing--board--for--a--health--care
11 practitioner;

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

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

40 H. To a person engaged in the assessment, evaluation or
41 investigation of the provision of or payment for health care
42 or the practices of a health care practitioner or facility
43 or to an agent, employee or contractor of such a person,
44 pursuant to statutory or professional standards or
45 requirements. Disclosure for a purpose listed in this
46 paragraph is not a disclosure for the purpose of marketing
47 or sales;

48 I. To a person engaged in the regulation, accreditation,
49 licensure or certification of a health care practitioner or
50

2 facility or to an agent, employee or contractor of such a
3 person, pursuant to standards or requirements for
4 regulation, accreditation, licensure or certification;

5
6 J. To a person engaged in the review of the provision of
7 health care by a health care practitioner or facility or
8 payment for such health care under Title 24, 24-A or 39-A
9 or under a public program for the payment of health care or
10 professional liability insurance for a health care
11 practitioner or facility or to an agent, employee or
12 contractor of such a person; or

13
14 K. To attorneys for a the health care practitioner or
15 facility that is disclosing the health care information or
16 to a person as required in the context of legal proceedings
17 or in disclosure to a court or governmental entity, as
18 determined by the practitioner or facility to be required
19 for adequate, the practitioner's or facility's own legal
20 representation;

21
22 L. To a person outside the office of the health care
23 practitioner or facility engaged in payment activities,
24 including but not limited to submission to payors for the
25 purposes of billing, payment, claims management, medical
26 data processing, determination of coverage or adjudication
27 of health benefit or subrogation claims, review of health
28 care services with respect to coverage or justification of
29 charges or other administrative services. Payment
30 activities also include but are not limited to:

31 (1) Activities necessary to determine responsibility
32 for coverage;

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

35 (3) Quality assessment and utilization review
36 activities, including precertification and
37 preauthorization of services and operations or services
38 audits relating to diagnosis, treatment or care
39 rendered to individuals by the health care practitioner
40 or facility and covered by a health plan or other payor;
41

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43 M. To schools, educational institutions, camps,
44 correctional facilities, health care practitioners and
45 facilities, providers of emergency services or a branch of
46 federal or state military forces, information regarding
47 immunization of an individual;
48

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

6 O. To a person when disclosure is needed to obtain or
7 convey information about prescription medication or supplies
8 or to provide medication or supplies under a prescription;

10 P. To a person representing emergency services, health care
11 and relief agencies, corrections facilities or a branch of
12 federal or state military forces, of brief confirmation of
13 general health status;

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

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

24 S. To a member of the public who asks a health care
25 facility about an individual by name, of the room number of
26 the individual and brief confirmation of general health
27 status unless expressly prohibited by the individual or a
28 person acting pursuant to subsection 3-B.

30 **7. Confidentiality policies.** A health care practitioner or
31 facility shall develop and implement policies, standards and
32 procedures to protect the confidentiality, security and integrity
33 of health care information to ensure that information is not
34 negligently, inappropriately or unlawfully disclosed. The
35 ~~policies, standards and procedures must state that information~~
36 ~~disclosed remains confidential and that the person to whom the~~
37 ~~information is disclosed must protect the confidentiality of the~~
38 ~~information.~~ The policies must provide that routine admission
39 forms include clear written notice of the individual's ability to
40 direct that that individual's name be removed from the directory
41 listing of persons cared for at the facility and notice that
42 removal may result in the inability of the facility to direct
43 visitors and telephone calls to the individual.

46 **8. Prohibited disclosure.** A health care practitioner or
47 facility may not disclose health care information for the purpose
48 of marketing or sales without written or oral authorization for
49 the disclosure.

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

6 A. The health care practitioner or facility provided a copy
7 of the original health care record to the 3rd party on or
8 after ~~October 1, 1999~~ February 1, 2000;

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

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

18 D. If requested by the health care practitioner or
19 facility, the individual pays to the health care
20 practitioner or facility all reasonable costs requested by
21 that practitioner or facility.

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

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

32 B. A health care practitioner or facility that discloses
33 health care information pursuant to subsections 3 and, 3-A,
34 3-B or 6 may not disclose information in excess of the
35 information reasonably required for the purpose for which it
36 is disclosed.

38 C. If a health care practitioner or facility believes that
39 release of health care information to the individual would
40 be detrimental to the health of the individual, the health
41 care practitioner or facility shall advise the individual
42 and make copies of the records available to the individual's
43 authorized representative upon receipt of a written
44 authorization.

46 D. If a health care practitioner or facility discloses
47 partial or incomplete health care information, as compared
48 to the request or directive to disclose under subsection 3,
49 3-A, 3-B or 6, the disclosure must expressly indicate that
50 the information disclosed is partial or incomplete.

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2 **11. Health care information subject to other laws, rules**
3 **and regulations.** ~~An authorization to disclose or a disclosure of~~
4 health Health care information that is subject to the provisions
5 of 42 United States Code, Section ~~290ee-3~~ 290dd-2 (Supplement
6 1997 1998); chapters 710 and 711; Title 5, section 200-E; Title
7 5, chapter 501; Title 24 or 24-A; Title 34-B, section 1207; Title
8 39-A; or other provisions of state or federal law, rule or
9 regulation is governed solely by those provisions.

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

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

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

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

31 C. ~~A person who violates this section commits a civil~~
32 ~~violation for which a forfeiture not to exceed \$1,000,~~
33 ~~payable to the State, may be adjudged for a negligent~~
34 ~~violation, plus costs.~~ A person who intentionally violates
35 this section is subject to a civil penalty not to exceed
36 \$5,000, payable to the State, ~~for an intentional violation,~~
37 plus costs. If a court finds that intentional violations of
38 this section have occurred after due notice of the violating
39 conduct with sufficient frequency to constitute a general
40 business practice, the person is subject to a civil penalty
41 not to exceed \$10,000 for health care practitioners and
42 \$50,000 for health care facilities, payable to the State. A
43 civil penalty under this subsection is recoverable in a
44 civil action.

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2 D. Nothing in this section may be construed to prohibit a
4 person aggrieved by conduct in violation of this section
from pursuing all available common law remedies, including
but not limited to an action based on negligence.

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

10 **15. Immunity.** A cause of action in the nature of
12 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
for disclosing false information with malice or willful intent to
injure any person.

16 **16. Application.** This section applies to all requests and
18 ~~directives to disclose health care information issued or received~~
~~on or after October 1, 1999 and to all authorizations to disclose~~
20 health care information executed on or after October 1, 1999
February 1, 2000. An authorization to disclose health care
22 information executed prior to February 1, 2000 that does not meet
the standards of this section is deemed to comply with the
24 requirements of this section until the next health care encounter
between the individual and the health care practitioner or
26 facility.

28 **17. Repeal.** This section is repealed March 1, 2002.

30 **Sec. A-6. PL 1997, c. 793, Pt. A, §10,** as amended by PL 1999, c.
3, §3 and affected by §5, is further amended to read:

32 **Sec. A-10. Effective date.** This Part takes effect ~~October 1,~~
34 1999 February 1, 2000 with the exception of section 9 of this
Part, which takes effect August 1, 1998.

PART B

38 **Sec. B-1. 5 MRSA §19203, sub-§2,** as amended by PL 1997, c.
40 793, Pt. B, §1 and affected by §6 and as affected by PL 1999, c.
42 3, §§4 and 5, is further amended to read:

44 **2. Designated health care provider.** To a health care
provider designated by the subject of the test in writing
~~pursuant to Title 22, section 1711-G.~~ When a patient has

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2 authorized disclosure of HIV test results to a person or
4 organization providing health care, the patient's health care
6 provider may make these results available only to other health
8 care providers working directly with the patient and only for the
10 purpose of providing direct medical or dental patient care. Any
12 health care provider who discloses HIV test results in good faith
14 pursuant to this subsection is immune from any criminal or civil
16 liability for the act of disclosing HIV test results to other
18 health care providers;

20 **Sec. B-2. 5 MRSA §19203, sub-§9,** as amended by PL 1997, c.
22 793, Pt. B, §2 and affected by §6 and as affected by PL 1999, c.
24 3, §§4 and 5, is further amended to read:

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

34 **Sec. B-3. 5 MRSA §19203, last ¶,** as amended by PL 1997, c. 793,
36 Pt. B, §3 and affected by §6 and as affected by PL 1999, c. 3,
38 §§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
44 accordance with this chapter.

46 **Sec. B-4. 5 MRSA §19203-D,** as repealed by PL 1997, c. 793,
48 Pt. B, §4 and affected by §6 and as affected by PL 1999, c. 3,
50 §§4 and 5, is reenacted to read:

§19203-D. Records

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

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

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2 A. When release has been authorized, the custodian of the
3 medical record may release, upon request, the person's
4 medical record, including any HIV infection status
5 information contained in the medical record. Release of HIV
6 infection status information pursuant to this paragraph is
7 not a violation of any of the confidentiality provisions of
8 this chapter.

9
10 B. When release has not been authorized, the custodian of
11 the medical record may, upon request, release that portion
12 of the medical record that does not contain the HIV
13 infection status information. Except as otherwise provided
14 in this section, HIV infection status information may be
15 released only if the person has specifically authorized a
16 separate release of that information. A general release
17 form is insufficient.

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

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

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

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

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

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

35
36 3. Utilization review; research. Nothing in this section
37 may be interpreted to prohibit reviews of medical records for
38 utilization review purposes by duly authorized utilization review
39 committees or peer review organizations. Qualified personnel
40 conducting scientific research, management audits, financial
41 audits or program evaluation with the use of medical records may
42 not identify, directly or indirectly, any individual patient in
43 any report of such research, audit, evaluation or otherwise
44 disclose the identities of persons tested in any manner.

COMMITTEE AMENDMENT

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

6 5. Confidentiality policy. Health care providers and
7 others with access to medical records containing HIV infection
8 status information shall have a written policy providing for
9 confidentiality of all patient information consistent with this
10 chapter. That policy must require, at a minimum, action
11 consistent with disciplinary procedures for violations of the
12 confidentiality policy.

14 **Sec. B-5. PL 1997, c. 793, Pt. B, §6, as amended by PL 1999, c. 3,**
15 **§4 and affected by §5, is further amended to read:**

16 **Sec. B-6. Effective date. This Part takes effect ~~October 1, 1999~~**
17 **February 1, 2000.**

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

24 **FISCAL NOTE**

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

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

38 **SUMMARY**

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

- 44
- 46 1. It clarifies that, if the patient is a minor who has not
47 consented to health care treatment in accordance with the laws of
48 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.

R 28

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

- 2 2. Within the provisions of the Maine Revised Statutes,
Title 22, section 1711-C, it:
- 4
- 6 A. Defines authorization to disclose and clarifies that
disclosures that are subject to the law are disclosures of
8 health care information obtained as a result of a
professional health care relationship between the individual
10 and the health care practitioner or facility to a person or
entity other than the individual. It clarifies that "health
12 care information" does not include information that is
created or received by a member of the clergy or other
14 person using spiritual means alone for healing and that
"health care" includes treatment;
- 16 B. Repeals unnecessary provisions relating to
confidentiality after health care information is disclosed;
- 18
- 20 C. Provides for oral authorization to disclose and for
authorization to disclose provided by a 3rd party;
- 22 D. Clarifies the provisions for revocation of authorization
to disclose;
- 24
- 26 E. Provides that disclosures to another health care
practitioner or facility may take place within the office,
practice or organizational entity without authorization and
28 outside of it without authorization, except that HIV and
mental health information require authorization in
30 nonemergency circumstances;
- 32 F. Allows disclosure without authorization to family or
household members unless expressly prohibited;
- 34
- 36 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
38 military forces, for the purposes of making and confirming
appointments or tests and for the purposes of obtaining
40 prescription medications and supplies;
- 42 H. Allows disclosure without authorization to confirm
admission to a health care facility and brief confirmation
44 of general health status to the media when inquiring by
name, unless expressly prohibited;
- 46
- 48 I. Allows disclosure without authorization to the clergy
unless expressly prohibited;
- 50 J. Allows disclosure without authorization to members of

COMMITTEE AMENDMENT

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

- 2 the public inquiring by name unless expressly prohibited;
- 4 K. Clarifies that disclosure under the law is subject to the professional judgment of the health care practitioner;
- 6 L. Adds cross-references regarding authorizations to disclose;
- 8 M. Imposes penalties for intentional violations and repeals penalties for negligent violations;
- 10 N. Clarifies that other laws, rules and regulations pertaining to health care information govern that information and those entities subject to those laws, rules and regulations;
- 12 O. Clarifies application of the provisions, making them applicable to requests, directives and authorizations executed on or after February 1, 2000, and provides a transition period for authorizations executed prior to that date until the date of the next health care encounter between the individual and the health care practitioner or facility;
- 14 P. It requires that routine admission forms to health care facilities provide notice of the ability to remove one's name from the directory listing; and
- 16 Q. It requires notice that removal from the directory listing could result in inability to direct telephone calls and visitors;
- 18 3. It provides that Title 22, section 1711-C is repealed on
- 20 March 1, 2002.
- 22 4. It provides that HIV testing and HIV status information will be governed by current law, not the more general law regarding the confidentiality of health care information of Title 22, section 1711-C.
- 24 5. It delays implementation of the laws on health care confidentiality until February 1, 2000.
- 26 6. It adds a fiscal note to the bill.

COMMITTEE AMENDMENT