

# MAINE STATE LEGISLATURE

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# 119th MAINE LEGISLATURE

## FIRST REGULAR SESSION-1999

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Legislative Document

No. 1653

H.P. 1156

House of Representatives, March 3, 1999

**An Act to Amend the Law Governing the Confidentiality of Health Care Information.**

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

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

JOSEPH W. MAYO, Clerk

Presented by Representative FULLER of Manchester.  
Cosponsored by Senator MITCHELL of Penobscot and  
Representatives: BRAGDON of Bangor, CHIZMAR of Lisbon, KANE of Saco, MAYO of  
Bath.

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

2  
3  
4 **Sec. 1. 22 MRSA §1711, 4th ¶**, as amended by PL 1997, c. 793,  
Pt. A, §1 and affected by §10 and as affected by PL 1999, c. 3,  
§§3 and 5, is further amended to read:

6  
7  
8 A patient, or if the patient is a minor who has not  
9 consented to health care treatment in accordance with the  
10 provisions of state law, the minor's parent, legal guardian or  
11 guardian ad litem, may submit to a hospital an addition to the  
12 patient's medical records, which must be retained with the  
13 medical record by the hospital. If the hospital adds to the  
14 medical record a statement in response to the submitted addition,  
15 the hospital shall provide a copy to the patient, or if the  
16 patient is a minor who has not consented to health care treatment  
17 in accordance with the provisions of state law, to the minor's  
18 parent, legal guardian or guardian ad litem.

19  
20 **Sec. 2. 22 MRSA §1711-B, sub-§3-A**, as enacted by PL 1997, c.  
793, Pt. A, §7 and affected by §10 and as affected by PL 1999, c.  
3, §§3 and 5, is amended to read:

21  
22  
23 **3-A. Additions to treatment records.** A patient, or if the  
24 patient is a minor who has not consented to health care treatment  
25 in accordance with the provisions of state law, the minor's  
26 parent, legal guardian or guardian ad litem, may submit to a  
27 health care practitioner an addition to the patient's treatment  
28 records, which must be retained with the treatment record by the  
29 health care practitioner. If the health care practitioner adds  
30 to the treatment record a statement in response to the submitted  
31 addition, the health care practitioner shall provide a copy to  
32 the patient, or if the patient is a minor who has not consented  
33 to health care treatment in accordance with the provisions of  
34 state law, to the minor's parent, legal guardian or guardian ad  
35 litem.

36  
37 **Sec. 3. 22 MRSA §1711-C, sub-§1, ¶E**, as enacted by PL 1997, c.  
38 793, Pt. A, §8 and affected by §10 and as affected by PL 1999, c.  
39 3, §§3 and 5, is amended to read:

40  
41 E. "Health care information" means information that  
42 directly identifies the individual and that relates to an  
43 individual's physical, mental or behavioral condition,  
44 personal or family medical history or medical treatment or  
45 the health care provided to that individual. "Health care  
46 information" does not include information that protects the  
47 anonymity of the individual by means of encryption or  
48 encoding of individual identifiers or information pertaining  
49 to or derived from federally sponsored, authorized or  
50 regulated research governed by 21 Code of Federal

2 Regulations, Parts 50 and 56 and 45 Code of Federal  
4 Regulations, Part 46, to the extent that such information is  
6 used in a manner that protects the identification of  
8 individuals. The Board of Directors of the Maine Health  
Data Organization shall adopt rules to define health care  
information that directly identifies an individual. Rules  
adopted pursuant to this paragraph are major substantive  
rules as defined in Title 5, chapter 375, subchapter II-A.

10 "Health care information" does not include the presence and  
12 room location of an individual to a person who has  
14 identified the individual by name, unless the individual has  
directed the health care practitioner or facility otherwise,  
orally or in writing;

16 **Sec. 4. 22 MRSA §1711-C, sub-§2,** as enacted by PL 1997, c.  
18 793, Pt. A, §8 and affected by §10 and as affected by PL 1999, c.  
3, §§3 and 5, is amended to read:

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

36 **Sec. 5. 22 MRSA §1711-C, sub-§3-A** is enacted to read:

38 3-A. Oral authorization to disclose. An individual may  
40 choose to provide oral authorization to disclose health care  
42 information. For those individuals who are unable to provide  
44 authorization and who do not have a reasonably available  
previously defined "authorized representative," a health care  
facility or practitioner may obtain oral authorization to  
disclose health care information from a reasonably available  
member of the following classes:

46 A. The spouse, unless legally separated;

48 B. An adult child;

50 C. A parent;

- 2            D. An adult brother or sister;
- 4            E. An adult grandchild;
- 6            F. An adult niece or nephew, related by blood or adoption;
- 8            G. An adult aunt or uncle, related by blood or adoption;
- 10           H. Another adult relative of the patient, related by blood  
12           or adoption and who is familiar with the patient's personal  
             values; or
- 14           I. An adult who has exhibited special concern for the  
16           patient and who is familiar with the patient's personal  
             values.

18           Such an oral authorization has the same effect as a written  
20           authorization under subsection 3. A record of an oral  
             authorization to disclose health care information must be  
22           retained with the individual's health care information.

**Sec. 6. 22 MRSA §1711-C, sub-§§4 and 5**, as enacted by PL 1997,  
24           c. 793, Pt. A, §8 and affected by §10 and as affected by PL 1999,  
             c. 3, §§3 and 5, are amended to read:

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

34           **5. Revocation of authorization to disclose.** An individual  
36           or the person who lawfully authorized the disclosure may revoke a  
             written or oral authorization to disclose at any time, subject to  
38           the rights of any person who acted in reliance on the  
             authorization prior to receiving notice of revocation. A  
40           revocation of authorization must be in writing and must be signed  
             and dated by the individual or the person who lawfully authorized  
42           the disclosure. If the revocation is in electronic form, a  
             unique identifier of the individual or the person who lawfully  
44           authorized the disclosure and the date the individual or the  
             person who lawfully authorized the disclosure authenticated the  
46           electronic authorization must be stated in place of the  
             individual's or the person who lawfully authorized the disclosure  
48           signature and date of signature. A revocation of authorization  
             must be retained with the individual's record of the  
             authorization and the individual's health care information.

50

2           **Sec. 7. 22 MRSA §1711-C, sub-§6**, as corrected by RR 1997, c.  
3, §44 and as affected by PL 1999, c. 3, §§3 and 5, is amended by  
amending the first paragraph to read:

4  
6           **6. Disclosure without authorization to disclose.** A health  
care practitioner or facility may disclose, or when required by  
law must disclose, health care information without written or  
8 oral authorization to disclose under the circumstances stated in  
this subsection or as provided in subsection 11. The  
10 circumstances in which disclosure may be made without written or  
oral authorization to disclose include the following:

12           **Sec. 8. 22 MRSA §1711-C, sub-§6, ¶A**, as corrected by RR 1997,  
14 c. 2, §44 and as affected by PL 1999, c. 3, §§3 and 5, is amended  
to read:

16           A. To another health care practitioner or facility for a  
18 purpose related to the diagnosis, treatment or care of the  
individual as follows:

20                   ~~(1) -- In-emergency-circumstances; or~~

22                   ~~(2) -- In-nonemergency-circumstances;~~

24                           ~~(a) -- For a disclosure within the office, practice~~  
26 ~~or organization of the health care practitioner or~~  
28 ~~facility, when the disclosure is made for a~~  
purpose related to the provision of health care to  
the individual; or

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

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

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

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

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

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

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

22                   **Sec. 9. 22 MRSA §1711-C, sub-§6, ¶¶A-1 and A-2** are enacted to  
read:

24                   A-1. Except in emergency circumstances, a health care  
26                   practitioner or facility must obtain an individual's oral or  
written authorization to disclose health care information  
28                   related to an HIV test, HIV infection or HIV infection  
status, as defined in Title 5, section 19201, subsections 3,  
30                   4-A and 5.

32                   A-2. Except in emergency circumstances, health care  
information derived from mental health services provided by  
34                   any of the following providers may not be disclosed by these  
providers without oral or written authorization from the  
36                   individual:

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

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

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

46                   (4) A counseling professional licensed under the  
48                   provisions of Title 32, chapter 119; and

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

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

6  
7 **Sec. 10. 22 MRSA §1711-C, sub-§6, ¶C**, as enacted by PL 1997,  
8 c. 793, Pt. A, §8 and affected by §10 and as affected by PL 1999,  
9 c. 3, §§3 and 5, is amended to read:

10  
11 C. ~~To a family or household member when an individual is~~  
12 ~~receiving diagnosis, treatment or care in an emergency care~~  
13 ~~facility or health care facility. A disclosure made pursuant~~  
14 ~~to this paragraph may include only the presence and general~~  
15 ~~health condition of the individual, unless the individual~~  
16 has directed the health care practitioner or facility  
17 otherwise, orally or in writing;

18  
19 **Sec. 11. 22 MRSA §1711-C, sub-§6, ¶¶J and K**, as enacted by PL  
20 1997, c. 793, Pt. A, §8 and affected by §10 and as affected by PL  
21 1999, c. 3, §§3 and 5, are amended to read:

22  
23 J. To a person engaged in the review of the provision of  
24 health care by a health care practitioner or facility or  
25 payment for such health care under Title 24, 24-A or 39-A  
26 or under a public program for the payment of health care or  
27 professional liability insurance for a health care  
28 practitioner or facility or to an agent, employee or  
29 contractor of such a person; e¶

30  
31 K. To attorneys for a health care practitioner or facility  
32 as determined by the practitioner or facility to be required  
33 for adequate legal representation; i

34  
35 **Sec. 12. 22 MRSA §1711-C, sub-§6, ¶¶L and M** are enacted to  
36 read:

37  
38 L. With an individual's oral authorization, a health care  
39 practitioner or facility may disclose health care  
40 information to those responsible for payment for the health  
41 care services provided to the individual to the extent  
42 necessary to obtain payment; or

43  
44 M. To a person picking up a prescription for an individual  
45 at that individual's request to the extent necessary.

46  
47 **Sec. 13. 22 MRSA §1711-C, sub-§9**, as amended by PL 1999, c. 3,  
48 §1 and affected by §5, is further amended to read:



2           **9. Disclosures of additions to health care information.** A  
3 health care practitioner or facility shall provide to a 3rd party  
4 a copy of an addition submitted by ~~an individual a patient, or if~~  
5 the patient is a minor who has not consented to health care  
6 treatment in accordance with the provisions of state law, to the  
7 minor's parent, legal guardian or guardian ad litem, to the  
8 individual's health care information if:

9  
10           A. The health care practitioner or facility provided a copy  
11 of the original health care record to the 3rd party on or  
12 after October 1, 1999;

13  
14           B. The addition was submitted by the individual pursuant to  
15 section 1711 or 1711-B and relates to diagnosis, treatment  
16 or care;

17  
18           C. The individual requests that a copy be sent to the 3rd  
19 party and provides an authorization that meets the  
20 requirements of subsection 3; and

21  
22           D. If requested by the health care practitioner or  
23 facility, the individual pays to the health care  
24 practitioner or facility all reasonable costs requested by  
25 that practitioner or facility.

26           **Sec. 14. 22 MRSA §1711-C, sub-§10, ¶¶A, B and D,** as enacted by  
27 PL 1997, c. 793, Pt. A, §8 and affected by §10 and as affected by  
28 PL 1999, c. 3, §§3 and 5, are amended to read:

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

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

40  
41           D. If a health care practitioner or facility discloses  
42 partial or incomplete health care information, as compared  
43 to the request or directive to disclose under subsection 3, 3-A  
44 or 6, the disclosure must expressly indicate that the  
45 information disclosed is partial or incomplete.

46  
47           **Sec. 15. 22 MRSA §1711-C, sub-§13 ¶¶B and C,** as enacted by PL  
48 1997, c. 793, Pt. A, §8 and affected by §10 and as affected by PL  
49 1999, c. 3, §§3 and 5, are amended to read:  
50

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

12 C. ~~A person who violates this section commits a civil~~  
~~violation for which a forfeiture not to exceed \$1,000,~~  
14 ~~payable to the State, may be adjudged for a negligent~~  
~~violation, plus costs.~~ A person who intentionally violates  
16 this section is subject to a civil penalty not to exceed  
\$5,000, payable to the State, ~~for an intentional violation,~~  
18 plus costs. If a court finds that intentional violations of  
this section have occurred after due notice of the violating  
20 conduct with sufficient frequency to constitute a general  
business practice, the person is subject to a civil penalty  
22 not to exceed \$10,000 for health care practitioners and  
\$50,000 for health care facilities, payable to the State. A  
24 civil penalty under this subsection is recoverable in a  
civil action.

26 **Sec. 16. Effective date.** This Act takes effect October 1, 1999.

28

30

## SUMMARY

32

This bill clarifies and expands the ability of a health care  
34 practitioner or facility to disclose health care information  
about an individual. The bill allows a health care provider or  
36 health care practitioner treating an incapacitated individual to  
obtain authorization to disclose health care information from the  
appropriate surrogate decision-maker for that individual. The  
38 bill allows an individual to orally authorize disclosure of his  
or her health care information. This bill also allows an  
40 individual to orally authorize the release of the health care  
information to the extent necessary to bill those responsible for  
42 payment for the health care services provided to the individual.  
The bill allows the parent, legal guardian or guardian ad litem  
44 of a minor who has not consented to health care treatment in  
accordance with the provisions of state law to submit an addition  
46 to the minor's health care record. The bill also makes related  
technical or clarifying changes in current law.