

MAINE STATE LEGISLATURE

The following document is provided by the
LAW AND LEGISLATIVE DIGITAL LIBRARY
at the Maine State Law and Legislative Reference Library
<http://legislature.maine.gov/lawlib>



Reproduced from scanned originals with text recognition applied
(searchable text may contain some errors and/or omissions)



123rd MAINE LEGISLATURE

FIRST REGULAR SESSION-2007

Legislative Document

No. 838

H.P. 637

House of Representatives, February 23, 2007

An Act Protecting the Confidentiality of Prescription Information

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

Millicent M. MacFarland
MILLICENT M. MacFARLAND
Clerk

Presented by Representative TREAT of Farmingdale.
Cosponsored by Representative CAMPBELL of Newfield, Senator SCHNEIDER of Penobscot and Representatives: BRAUTIGAM of Falmouth, FAIRCLOTH of Bangor, HINCK of Portland, JOY of Crystal, PENDLETON of Scarborough, PERRY of Calais, PRIEST of Brunswick, RAND of Portland.

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

2 **Sec. 1. 22 MRSA §1711-E**, as enacted by PL 2005, c. 589, §1, is amended to
3 read:

4 **§1711-E. Confidentiality of prescription drug information**

5 **1. Definitions.** As used in this section, unless the context otherwise indicates, the
6 following terms have the following meanings.

7 A. "Carrier" has the same meaning as in Title 24-A, section 4301-A, subsection 3.

8 A-1. "Administrator" has the same meaning as in Title 24-A, section 1901,
9 subsection 1.

10 A-2. "Commercial purpose" means advertising, marketing, promoting or engaging in
11 any similar activity for the purpose of influencing sales or the market share of a
12 prescription drug, influencing or increasing the prescribing behavior of a prescriber,
13 marketing prescription drugs to individuals or improving the effectiveness of a
14 professional prescription drug detailing sales force.

15 A-3. "Detailing" means, with respect to prescription drugs, one-to-one contact
16 undertaken to increase prescribing of a prescription drug identified with the person
17 making the contact.

18 B. "Electronic transmission intermediary" means an entity that provides the
19 infrastructure that connects the computer systems or other electronic devices used by
20 and between health care practitioners, prescribers, pharmacies, health care facilities
21 and, pharmacy benefit managers ~~to,~~ carriers and administrators and agents and
22 contractors of those ~~carriers and agents~~ persons and entities in order to facilitate the
23 secure transmission of an individual's prescription drug order, refill, authorization
24 request, claim, payment or other prescription drug information.

25 C. "Health care facility" has the same meanings as in section 1711-C, subsection 1,
26 paragraph D.

27 D. "Health care practitioner" has the same meanings as in section 1711-C,
28 subsection 1, paragraph F.

29 E. "Health plan" means a health plan providing prescription drug coverage as
30 authorized under the federal Medicare Prescription Drug, Improvement and
31 Modernization Act of 2003, Public Law 108-173.

32 F. "Individual" means a natural person who is the subject of prescription drug
33 information.

34 F-1. "Pharmacy" means a licensed mail order prescription pharmacy as defined in
35 Title 32, section 13702, subsection 13 or a licensed drug outlet as defined in Title 32,
36 section 13702, subsection 10.

37 G. "Pharmacy benefits manager" has the same meaning as in section 2699,
38 subsection 1, paragraph F.

1 G-1. "Prescriber" means a person who is licensed, registered or otherwise authorized
2 in the appropriate jurisdiction to prescribe and administer drugs in the course of
3 professional practice.

4 H. "Prescription drug information" means information concerning prescription drugs
5 as defined in Title 32, section 13702, subsection 24 and includes prescription drug
6 orders as defined in Title 32, section 13702, subsection 25.

7 I. "Prescription drug information intermediary" means a person or entity that
8 communicates, facilitates or participates in the exchange of prescription drug
9 information regarding an individual or a prescriber. "Prescription drug information
10 intermediary" includes, but is not limited to, a pharmacy benefits manager, a health
11 plan, an administrator and an electronic transmission intermediary.

12 J. "Regulated transaction" means a transaction for a prescription for a drug that is
13 written by a prescriber within the State or that is dispensed within the State.

14 **2. Confidentiality of health care information.** A With regard to a regulated
15 transaction, a prescriber, carrier, pharmacy or prescription drug information intermediary
16 may not license, use, sell, transfer or exchange for value, for any commercial purpose,
17 prescription drug information that identifies directly or indirectly the individual ~~except if~~
18 or the prescriber unless the regulated transaction is expressly ~~permitted under section~~
19 1711-C, Title 24, Title 24-A or the federal Health Insurance Portability and
20 Accountability Act of 1996, Public Law 104-191, as amended ~~allowed under subsection~~
21 4.

22 **3. Enforcement.** A violation of this section is a violation of the Maine Unfair Trade
23 Practices Act.

24 **4. Regulated transactions that are allowed.** The following regulated transactions
25 are allowed and are not subject to the prohibitions of this section:

26 A. Transfers of prescription drug information, including identification of the
27 individual and prescriber, as required under the Controlled Substances Prescription
28 Monitoring Program under section 7248;

29 B. The dispensing of prescription drugs to an individual or the individual's
30 authorized representative, the transmission of prescription drug information between
31 a prescriber and a pharmacy or other health care practitioner caring for the individual
32 and the transfer of prescription information between pharmacies;

33 C. The transfer of prescription records that may occur when a pharmacy's ownership
34 is changed or transferred;

35 D. Care management educational communications provided to an individual about
36 the individual's health condition or adherence to a prescribed course of therapy or
37 other information relating to the drug being dispensed, treatment options or clinical
38 trials;

39 E. Transfers for the limited purpose of pharmacy reimbursement, prescription drug
40 formulary or prior authorization compliance, patient care management, utilization
41 review or health care research or transfers that are required by law; and

