

# MAINE STATE LEGISLATURE

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# 125th MAINE LEGISLATURE

## FIRST REGULAR SESSION-2011

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Legislative Document

No. 1331

H.P. 977

House of Representatives, March 29, 2011

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**An Act To Increase Health Care Quality through the Promotion of  
Health Information Exchange and the Protection of Patient Privacy**

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

A handwritten signature in cursive script that reads "Heather J.R. Priest".

HEATHER J.R. PRIEST  
Clerk

Presented by Representative FOSSEL of Alna.  
Cosponsored by Representatives: MALABY of Hancock, O'CONNOR of Berwick,  
SANDERSON of Chelsea, SIROCKI of Scarborough.

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

2 **Sec. 1. 5 MRSA §19201, sub-§2-B** is enacted to read:

3 **2-B. Health care facility.** "Health care facility" has the same meaning as defined in  
4 Title 22, section 328, subsection 8.

5 **Sec. 2. 5 MRSA §19203, sub-§9,** as amended by PL 1999, c. 512, Pt. B, §2 and  
6 affected by §§5 and 6, is further amended to read:

7 **9. Medical records.** As part of a medical record when release or disclosure of that  
8 record is authorized pursuant to section 19203-D; ~~or~~

9 **Sec. 3. 5 MRSA §19203, sub-§10, ¶B,** as amended by PL 1995, c. 319, §1, is  
10 further amended to read:

11 B. A victim-witness advocate authorized by section 19203-F to receive the test  
12 results of a person convicted of a sexual crime as defined in section 19203-F,  
13 subsection 1, paragraph C, who shall disclose to a victim under section 19203-F,  
14 subsection 4-; or

15 **Sec. 4. 5 MRSA §19203, sub-§11** is enacted to read:

16 **11. Access by health information exchange or other entity.** To a health  
17 information exchange that provides and maintains an individual protection mechanism by  
18 which an individual may choose to allow the health information exchange to disclose that  
19 individual's health care information covered under this section to a health care provider or  
20 health care facility for purposes of treatment, payment and health care operations, as  
21 those terms are defined in 45 Code of Federal Regulations, Section 164.501. A health  
22 information exchange also must satisfy the requirement in Title 22, section 1711-C,  
23 subsection 18, paragraph C of providing a general opt-out provision to an individual at all  
24 times.

25 A health information exchange may disclose an individual's health care information  
26 covered under this section even if the individual has not chosen to allow the health  
27 information exchange to disclose the individual's health care information when in a health  
28 care provider's judgment disclosure is necessary to:

29 A. Avert a serious threat to the health or safety of others, if the conditions, as  
30 applicable, described in 45 Code of Federal Regulations, Section 164.512(j)(2010)  
31 are met; or

32 B. Prevent or respond to imminent and serious harm to the individual and disclosure  
33 is to a provider for diagnosis or treatment.

34 **Sec. 5. 5 MRSA §19203-D, sub-§6** is enacted to read:

35 **6. Access by health information exchange or other entity.** Nothing in this section  
36 precludes the disclosure of a medical record containing HIV information to a health  
37 information exchange that provides and maintains an individual protection mechanism by  
38 which an individual may choose to allow the health information exchange to disclose that

1 individual's health care information covered under this section to a health care provider or  
2 health care facility for purposes of treatment, payment and health care operations, as  
3 those terms are defined in 45 Code of Federal Regulations, Section 164.501. A health  
4 information exchange also must satisfy the requirement in Title 22, section 1711-C,  
5 subsection 18, paragraph C of providing a general opt-out provision to an individual at all  
6 times.

7 A health information exchange may disclose an individual's health care information  
8 covered under this section even if the individual has not chosen to allow the health  
9 information exchange to disclose the individual's health care information when in a health  
10 care provider's judgment disclosure is necessary to:

11 A. Avert a serious threat to the health or safety of others, if the conditions, as  
12 applicable, described in 45 Code of Federal Regulations, Section 164.512(j)(2010)  
13 are met; or

14 B. Prevent or respond to imminent and serious harm to the individual and disclosure  
15 is to a provider for diagnosis or treatment.

16 **Sec. 6. 22 MRSA §1711-C, sub-§6, ¶A**, as corrected by RR 2001, c. 1, §26, is  
17 amended to read:

18 A. To another health care practitioner or facility for diagnosis, treatment or care of  
19 individuals or to complete the responsibilities of a health care practitioner or facility  
20 that provided diagnosis, treatment or care of individuals, as provided in this  
21 paragraph.

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

24 (2) For a disclosure outside of the office, practice or organizational affiliate of  
25 the health care practitioner or facility, authorization is not required, except that in  
26 nonemergency circumstances authorization is required for health care  
27 information derived from mental health services provided by:

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

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

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

32 (d) A counseling professional licensed under the provisions of Title 32,  
33 chapter 119; or

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

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

39 This subparagraph does not prohibit the disclosure of health care information to a  
40 health information exchange that satisfies the requirement in subsection 18,

1 paragraph C of providing a general opt-out provision to an individual at all times  
2 and that provides and maintains an individual protection mechanism by which an  
3 individual may choose to allow the health information exchange to disclose that  
4 individual's health care information covered under Title 34-B, section 1207;

5 **Sec. 7. 22 MRSA §1711-C, sub-§6, ¶B**, as amended by PL 2009, c. 387, §1, is  
6 further amended to read:

7 B. To an agent, employee, independent contractor or successor in interest of the  
8 health care practitioner or facility including a health information exchange that makes  
9 health care information available electronically to health care practitioners and  
10 facilities or to a member of a quality assurance, utilization review or peer review  
11 team to the extent necessary to carry out the usual and customary activities relating to  
12 the delivery of health care and for the practitioner's or facility's lawful purposes in  
13 diagnosing, treating or caring for individuals, including billing and collection, risk  
14 management, quality assurance, utilization review and peer review. Disclosure for a  
15 purpose listed in this paragraph is not a disclosure for the purpose of marketing or  
16 sales. ~~A health information exchange to which health care information is disclosed~~  
17 ~~under this paragraph shall provide an individual protection mechanism by which an~~  
18 ~~individual may prohibit the health information exchange from disclosing the~~  
19 ~~individual's health care information to a health care practitioner or health care~~  
20 ~~facility;~~

21 **Sec. 8. 22 MRSA §1711-C, sub-§18** is enacted to read:

22 **18. Participation in a health information exchange.** The following provisions  
23 apply to participation in a health information exchange.

24 A. A health care practitioner may not deny a patient health care treatment and a  
25 health insurer may not deny a patient a health insurance benefit based solely on the  
26 provider's or patient's decision not to participate in a health information exchange.  
27 Except when otherwise required by federal law, a payor of health care benefits may  
28 not require participation in a health information exchange as a condition of  
29 participating in the payor's provider network.

30 B. Recovery is not allowed against any health care practitioner or health care facility  
31 on the grounds of a health care practitioner's or a health care facility's  
32 nonparticipation in a health information exchange arising out of or in connection with  
33 the provision of or failure to provide health care services. In any civil action for  
34 professional negligence or in any proceeding related to such civil action or in any  
35 arbitration, proof of a health care practitioner's, a health care facility's or a patient's  
36 participation or nonparticipation in a health information exchange is inadmissible as  
37 evidence of liability or nonliability arising out of or in connection with the provision  
38 of or failure to provide health care services. This paragraph does not prohibit  
39 recovery or the admission of evidence of reliance on information in an electronic  
40 health information exchange when there was participation by both the patient and the  
41 patient's health care practitioner.

42 C. A health information exchange to which health care information is disclosed  
43 under this section shall provide an individual protection mechanism by which an

1 individual may prohibit the health information exchange from disclosing the  
2 individual's health care information to a health care practitioner or health care facility.

3 **Sec. 9. 34-B MRSA §1207, sub-§1, ¶G**, as amended by PL 2003, c. 563, §2, is  
4 further amended to read:

5 G. Information must be disclosed to the executive director and the members of the  
6 subcommittees on institutes and quality assurance of the Maine Commission on  
7 Mental Health for the purpose of carrying out the commission's statutory duties; ~~and~~

8 **Sec. 10. 34-B MRSA §1207, sub-§1, ¶H**, as amended by PL 2005, c. 683, Pt. A,  
9 §57, is further amended to read:

10 H. The names and dates of death of individuals who died while patients at the  
11 Augusta Mental Health Institute, the Bangor Mental Health Institute, the Dorothea  
12 Dix Psychiatric Center or the Riverview Psychiatric Center may be made available to  
13 the public in accordance with rules adopted by the department. The rules must  
14 require the department to notify the public regarding the release of the information  
15 and to maintain the confidentiality of information concerning any deceased individual  
16 whose surviving relatives notify the department that they object to public disclosure.  
17 Rules adopted pursuant to this paragraph are routine technical rules as defined in  
18 Title 5, chapter 375, subchapter 2-A; and

19 **Sec. 11. 34-B MRSA §1207, sub-§1, ¶I** is enacted to read:

20 I. Nothing in this subsection precludes the disclosure of any information, except  
21 psychotherapy notes as defined in 45 Code of Federal Regulations, Section  
22 164.501(2010), concerning a client to a health information exchange that provides  
23 and maintains an individual protection mechanism by which a client may choose to  
24 allow the health information exchange to disclose that client's health care information  
25 covered under this section to a health care practitioner or health care facility for  
26 purposes of treatment, payment and health care operations, as those terms are defined  
27 in 45 Code of Federal Regulations, Section 164.501. A health information exchange  
28 also must satisfy the requirement in Title 22, section 1711-C, subsection 18,  
29 paragraph C of providing a general opt-out provision to a client at all times.

30 A health information exchange may disclose a client's health care information  
31 covered under this section even if the client has not chosen to allow the health  
32 information exchange to disclose the individual's health care information when, in a  
33 health care provider's judgment, disclosure is necessary to:

34 (1) Avert a serious threat to the health or safety of others, if the conditions, as  
35 applicable, described in 45 Code of Federal Regulations, Section  
36 164.512(j)(2010) are met; or

37 (2) Prevent or respond to imminent and serious harm to the client and disclosure  
38 is to a provider for diagnosis or treatment.

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**SUMMARY**

2           This bill amends the law regarding health information exchanges to specify when and  
3 under what circumstances information may be shared between a health care practitioner  
4 or health care facility and a health information exchange. The health information  
5 exchange must provide the ability for the client or individual to opt out. The bill specifies  
6 when information may be disclosed even if a client or individual has opted out. The bill  
7 prohibits a provider or health insurer from refusing to provide medical assistance or  
8 insurance coverage based on the individual's decision to participate or not participate in a  
9 health information exchange. The bill prohibits reference to the participation or  
10 nonparticipation of a health care practitioner or health care facility in a health information  
11 exchange from being used as evidence in negligence or other civil action.