

# MAINE STATE LEGISLATURE

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# 125th MAINE LEGISLATURE

## FIRST REGULAR SESSION-2011

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**Legislative Document**

**No. 1337**

S.P. 414

In Senate, March 29, 2011

### **An Act To Ensure Patient Privacy and Control with Regard to Health Information Exchanges**

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

*Joseph G. Carleton Jr.*

JOSEPH G. CARLETON, JR.  
Secretary of the Senate

Presented by Senator KATZ of Kennebec.

Cosponsored by Representative FITTS of Pittsfield and

Senators: BARTLETT of Cumberland, HILL of York, SCHNEIDER of Penobscot, TRAHAN of Lincoln, Representatives: CAREY of Lewiston, CEBRA of Naples, GRAHAM of North Yarmouth, HARVELL of Farmington.

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

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

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

18       **Sec. 2. 22 MRSA §1711-C, sub-§7**, as amended by PL 1999, c. 512, Pt. A, §5  
19 and affected by §7, is further amended to read:

20       **7. Confidentiality policies.** A health care practitioner ~~or~~ facility or health  
21 information exchange shall develop and implement policies, standards and procedures to  
22 protect the confidentiality, security and integrity of health care information to ensure that  
23 information is not negligently, inappropriately or unlawfully disclosed. The policies of  
24 health care facilities must provide that an individual being admitted for inpatient care be  
25 given notice of the right of the individual to control the disclosure of health care  
26 information. The policies must provide that routine admission forms include clear  
27 written notice of the individual's ability to direct that that individual's name be removed  
28 from the directory listing of persons cared for at the facility and notice that removal may  
29 result in the inability of the facility to direct visitors and telephone calls to the individual.

30       **Sec. 3. 22 MRSA §1711-C, sub-§8**, as enacted by PL 1997, c. 793, Pt. A, §8 and  
31 affected by §10, is amended to read:

32       **8. Prohibited disclosure.** A health care practitioner ~~or~~ facility or health  
33 information exchange may not disclose health care information for the purpose of  
34 marketing or sales without written or oral authorization for the disclosure.

35       **Sec. 4. 22 MRSA §1711-C, sub-§18** is enacted to read:

36       **18. Participation in health information exchange.** Before collecting, receiving or  
37 making available for disclosure or distribution any health care information of a patient, a  
38 health information exchange shall obtain the written informed authorization of that  
39 patient or a person authorized under paragraph B to provide that information.

1 A. Written consent of the patient is required prior to collection, storage, access or  
2 dissemination of health care information as described in this paragraph.

3 (1) A health information exchange may not collect, store or disseminate health  
4 care information about a patient without that patient's written consent.

5 (2) A health care practitioner may not have access to a patient's health care  
6 information through a health information exchange without that patient's written  
7 consent.

8 B. A patient may authorize, by written consent to be kept on file with a health  
9 information exchange, a health care practitioner to access that patient's relevant  
10 health care information in the event of an emergency when such access is  
11 immediately necessary to protect the life and health of that patient.

12 C. A health care practitioner participating in a health information exchange system  
13 shall provide to each patient:

14 (1) Information about the health information exchange;

15 (2) Opportunity for the patient to consent to the inclusion of that patient's health  
16 care information and other records from that health care practitioner in the health  
17 information exchange system;

18 (3) Opportunity for the patient to consent to that health care practitioner's  
19 accessing the patient's health care information through the health information  
20 exchange system; and

21 (4) Opportunity for the patient to specifically exclude certain categories of the  
22 patient's health care information from the scope of the authorized access or  
23 disclosure under this subsection.

24 D. A health information exchange shall establish a secure website accessible to  
25 patients and shall provide patients with information on how to use the website. This  
26 website must:

27 (1) Permit a patient to view that patient's health care information and identify  
28 who has accessed that patient's records and when such access occurred;

29 (2) Permit a patient to select which of the patient's treatment records the patient  
30 wishes to be included in the health information exchange system and to name the  
31 health care practitioners that may have access to selected records through the  
32 health information exchange system; and

33 (3) Provide a mechanism for a patient to amend or revoke consent for any access  
34 or disclosure provided under this section or to trigger complete removal of  
35 records from the health information exchange system.

36 E. A health information exchange shall establish for patients an alternate procedure  
37 to that provided for in paragraph D that does not require Internet access. Health care  
38 practitioners participating in the health information exchange system shall provide  
39 information about this nonelectronic procedure to all patients.

1 F. A health information exchange shall maintain records regarding all disclosures of  
2 health care information by and through the health information exchange system,  
3 including the requesting party and the dates and times of the requests and disclosures.

4 G. A health information exchange may not charge a patient or an authorized  
5 representative of a patient any fee for access provided as required by paragraph D or  
6 E.

7 H. The website and the procedure provided as required by paragraphs D and E must  
8 permit a patient and an authorized representative of a patient to control the collection,  
9 access and disclosure of that patient's health care information records through the  
10 granting or withdrawal of written consent. Patient changes must be implemented by  
11 a health information exchange no later than 2 business days after the request.

12 I. Notwithstanding any provision of this section to the contrary, until January 1,  
13 2014, health care information that is being collected and disseminated by a health  
14 information exchange may continue to be collected and disseminated for that period.  
15 Beginning January 1, 2014, if a patient has not provided written informed consent  
16 indicating that patient's decision to continue participating in the health information  
17 exchange system, that patient's health care information must be permanently deleted  
18 from the health information exchange system. If, prior to January 1, 2014, a patient  
19 requests changes in collection of or access to that patient's health care information,  
20 the health information exchange shall implement those changes no later than 2  
21 business days following the request.

22 J. A health information exchange, following the discovery of a breach of the health  
23 information exchange system, shall notify the health care facilities and health care  
24 practitioners participating in the system of the breach and notify every individual  
25 whose health care information has been or is reasonably believed by the health  
26 information exchange to have been accessed, acquired or disclosed during the breach.  
27 The health information exchange shall provide the notification required by this  
28 paragraph without unreasonable delay but in no case later than 60 days after the  
29 discovery of the breach. For purposes of this paragraph, "discovery of a breach"  
30 occurs when a health information exchange knows of the breach. The notice to a  
31 patient must be provided as follows.

32 (1) The health information exchange shall provide written notification by  
33 first-class mail to the individual or to the next of kin of the individual if the  
34 individual is deceased, at the last known address of the individual or the next of  
35 kin, respectively, or, if specified as a preference by the individual, by electronic  
36 mail. The notification may be provided in one or more mailings as information is  
37 available.

38 (2) In a case in which there is insufficient or out-of-date contact information that  
39 precludes direct written or, if specified as a preference by the individual,  
40 electronic notification to the individual, a substitute form of notice must be  
41 provided. If there are 10 or more individuals for whom there is insufficient or  
42 out-of-date contact information, there must be a conspicuous posting for a period  
43 determined by the commissioner on the home page of the website of the health  
44 care facility or health care practitioner involved or notice in major print or  
45 broadcast media, including major media in geographic areas where the

individuals affected by the breach likely reside. The notice in media or web posting must include a toll-free telephone number where an individual can learn whether or not the individual's health care information may have been accessed, acquired or disclosed during the breach.

**Sec. 5. 22 MRSA §1711-C, sub-§19** is enacted to read:

**19. Nonexclusion.** A patient may not be denied health care treatment, insurance coverage or insurance payment or reimbursement based on the nonparticipation by that patient or the patient's health care practitioner in a health information exchange system.

**Sec. 6. 22 MRSA §1711-C, sub-§20 is enacted to read:**

**20. Exemption from freedom of access laws.** Except as provided in this section, the names and other identifying information of individuals in a health information exchange system are confidential and are exempt from the provisions of Title 1, chapter 13.

**Sec. 7. 24 MRSA §2908** is enacted to read:

## **§2908. Protection from liability related to health information exchange**

The participation or nonparticipation of a health care practitioner in a health information exchange system under Title 22, section 1711-C is not admissible evidence in any civil action for professional negligence or in any arbitration proceeding related to that civil action.

## SUMMARY

This bill provides for the control and use of patient information available through a health information exchange. The bill requires a health information exchange to obtain the consent of a patient prior to collecting, storing or disclosing that patient's health care information and prohibits a health care practitioner from accessing that information without prior authorization, which may be waived by the patient in an emergency. The bill requires certain information about a health information exchange to be provided to a patient, including how to access the patient's records and other information regarding those records either electronically or through other means; a health information exchange is prohibited from charging the patient a fee for accessing those records. The bill establishes a protocol for notification if a breach of the health information exchange system occurs and patient information is illegally accessed. A patient may not be denied health care treatment, insurance coverage or insurance payment or reimbursement based on the failure of the patient or the health care practitioner to participate in a health information exchange system. Evidence of participation or nonparticipation in a health information exchange system may not be used as evidence in a professional negligence action against a health care practitioner. The bill exempts from the freedom of access laws information regarding a patient retained by a health information exchange.