LAWS

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AS PASSED BY THE

ONE HUNDRED AND FOURTEENTH LEGISLATURE

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PUBLIC LAWS

OF THE

STATE OF MAINE

AS PASSED AT THE

SECOND REGULAR SESSION

of the

ONE HUNDRED AND FOURTEENTH LEGISLATURE

January 3, 1990 to April 14, 1990

CHAPTER 844

S.P. 807 - L.D. 2070

An Act to Assist the Department of Human Services in Conducting Chronic Disease Investigations and Evaluating the Completeness or Data Quality of its Disease Surveillance Programs

Emergency preamble. Whereas, Acts of the Legislature do not become effective until 90 days after adjournment unless enacted as emergencies; and

Whereas, the Department of Human Services lacks adequate authority to investigate patterns of disease in the State; and

Whereas, any delay in obtaining such authority could result in unnecessary harm to citizens; and

Whereas, in the judgment of the Legislature, these facts create an emergency within the meaning of the Constitution of Maine and require the following legislation as immediately necessary for the preservation of the public peace, health and safety; now, therefore,

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

Sec. 1. 22 MRSA §387, as enacted by PL 1983, c. 579, §10, is repealed and the following enacted in its place:

§387. Public information

1. Public access. Any information, except confidential commercial information obtained from a payor or privileged medical information, and any studies or analyses that are filed with, or otherwise provided to, the commission under this chapter must be made available to any person upon request, provided that individual patients or health care practitioners are not directly identified. The commission shall adopt rules governing public access in the least restrictive means possible to information that may indirectly identify a particular patient or health care practitioner.

2. Notice and comment period. The commission shall adopt rules establishing criteria for determining whether information is confidential commercial information or privileged medical information and establishing procedures to afford affected payors or hospitals, as applicable, notice and opportunity to comment in response to requests for information that may be considered confidential or privileged.

3. Public health studies. The commission, by rule or order, may allow exceptions to the rules adopted pursuant to subsection 1 solely to the extent authorized in this subsection.

A. For purposes of this subsection, "identifying information" means information derived from data on file with the commission that may directly or indirectly identify patients or health care practitioners.

B. The commission may approve the use by the department of identifying information in a manner not otherwise permitted by the public access rules adopted under subsection 1, provided that the investigation in which the information will be used is consistent with the rules adopted by the commission under paragraph C.

C. The commission shall adopt rules governing the conditions under which and purposes for which the department may use identifying information in a manner that is inconsistent with subsection 1. These rules must ensure that:

(1) Identifying information is used only to gain access to medical records and other medical information pertaining to an investigation designed to accomplish public health research of substantial public importance;

(2) Medical information about any patient identified by name is not sought from any person without the consent of that patient except when the information sought pertains solely to verification or comparison of health data that the department is otherwise authorized by law to collect and the commission finds that confidentiality can be adequately protected without patient consent;

(3) Those persons conducting the investigation do not disclose medical information about any patient identified by name to any other person without that patient's consent;

(4) Those persons gaining access to medical information about an identified patient use that information to the minimum extent necessary to accomplish the purposes of the investigation for which approval was granted. Information regarding patients identified by name may not be transferred by the investigators;

(5) The protocol for any investigation is designed to preserve the confidentiality of all medical information that can be associated with identified patients, to specify the manner in which contact is made with patients, and to maintain public confidence in the protection of confidential information; and

(6) An advisory body, independent of the department, is established and charged with responsibility for approving the protocol of the investigation, overseeing the conduct of

the investigation to assure consistency with the protocol and the commission's rules, and assessing both the scientific validity of the investigation and its effects upon patients. The advisory body must include a consumer representative, a practicing physician and a member of the Maine Medical Records Association.

D. The commission may not grant approval under this subsection if the proposed identification of or contact with patients or health care practitioners would violate any state or federal law or diminish the confidentiality of medical information or the public's confidence in the protection of that information in a manner that outweighs the expected benefit to the public of the proposed investigation.

Sec. 2. 22 MRSA §1692-B is enacted to read:

§1692-B. Investigations

1. Access to reports and records. The Department of Human Services must be given access to all confidential reports and records filed by physicians, hospitals or other private or public sector organizations, with all departments, agencies, commissions or boards of the State for the purpose of conducting investigations or evaluating the completeness or quality of data submitted to the department's disease surveillance programs. The department shall follow the data confidentiality requirements of the departments, agencies, commissions or boards of the State providing this information.

Upon notification by the Department of Human Services, physicians or hospitals shall provide to the department any further information requested for the purpose of conducting investigations or evaluating the completeness or quality of data submitted to the department's disease surveillance programs.

2. Limited immunity. A physician, hospital, or employee of a physician or hospital is not liable for any civil damages as a result of the department's use of information gathered under this section. This immunity is limited to legitimate activities pursued in good faith under this section.

3. Adoption of rules. The department shall adopt rules governing the conditions under which and purposes for which the department may use identifying information under this section. The rules must ensure that:

A. Identifying information is used only to gain access to medical records and other medical information pertaining to an investigation designed to accomplish public health research of substantial public importance;

B. Medical information about an identified patient is not sought from any person without the consent of that patient except when the information sought pertains solely to verification or comparison of health data that the department is otherwise authorized by law to collect and the department finds that confidentiality can be adequately protected without patient consent;

C. Those persons conducting the investigation do not disclose medical information about an identified patient to any other person except a health care practitioner responsible for treating the patient;

D. Those persons gaining access to medical information about an identified patient use that information to the minimum extent necessary to accomplish the purposes of the investigation;

E. The protocol for any investigation is designed to preserve the confidentiality of all medical information that can be associated with identified patients, to specify the manner in which contact is made with patients, and to maintain public confidence in the protection of confidential information;

F. An advisory body, independent from the department, is established and charged with responsibility for approving the protocol of the investigation, overseeing the conduct of the investigation to assure consistency with the protocol and the department's rules, and assessing both the scientific validity of the investigation and its effects upon patients;

G. The department does not seek information under this section if the proposed identification of or contact with patients or health care practitioners would diminish the confidentiality of medical information or the public's confidence in the protection of that information in a manner that outweighs the expected benefit to the public of the proposed investigation; and

H. Whenever a physician or hospital furnishes patient information requested by the department in accordance with this section, the department reimburses the physician or hospital for the reasonable costs incurred in providing the information.

Emergency clause. In view of the emergency cited in the preamble, this Act takes effect when approved.

Effective April 17, 1990.

CHAPTER 845

H.P. 1729 - L.D. 2388

An Act to Amend the State's Hazardous Materials and Underground Tank Installer Laws

Emergency preamble. Whereas, Acts of the Legislature do not become effective until 90 days after adjournment unless enacted as emergencies; and