

MAINE STATE LEGISLATURE

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LAWS
OF THE
STATE OF MAINE

AS PASSED BY THE

ONE HUNDRED AND TWENTY-FIFTH LEGISLATURE

FIRST REGULAR SESSION
December 1, 2010 to June 29, 2011

THE GENERAL EFFECTIVE DATE FOR
FIRST REGULAR SESSION
NON-EMERGENCY LAWS IS
SEPTEMBER 28, 2011

PUBLISHED BY THE REVISOR OF STATUTES
IN ACCORDANCE WITH THE MAINE REVISED STATUTES ANNOTATED,
TITLE 3, SECTION 163-A, SUBSECTION 4.

Augusta, Maine
2011

A. Review research that has been conducted on science, technology, engineering and mathematics education in the State and recommend strategic directions for consideration by policymakers as they identify future investments in science, technology, engineering and mathematics;

B. Plan for coordinated state leadership with respect to science, technology, engineering and mathematics education and initiatives;

C. Develop initiatives to promote science, technology, engineering and mathematics education;

D. Devise strategies for promoting career and technical education alignment and supporting early career planning and transition supports from high school to college and to the workforce; and

E. Propose methods for integrating out-of-school programs focused on science, technology, engineering and mathematics with school-based programs, with the goal of inspiring more students to concentrate in the fields of science, technology, engineering and mathematics.

4. Chair; vice-chair. The council shall elect from its membership a chair and a vice-chair. The chair and vice-chair serve for one-year terms. The chair and vice-chair serve until their successors are elected. The chair calls meetings of the council and presides over meetings. The vice-chair serves as the chair in the absence of the chair.

5. Meetings; quorum; subcommittees. The council shall meet at least 2 times each year. The chair shall establish the agenda. A quorum of the council is 9 members. The council may establish subcommittees of no fewer than 3 members.

6. Compensation. Members of the council appointed pursuant to subsection 1, paragraph B are entitled to receive compensation for travel expenses as allowed under Title 5, section 12004-C, subsection 8 while engaged in council activities.

7. Assistance. The Department of Education, the University of Maine System and the Maine Community College System shall jointly provide staff support to the council.

8. Annual report. By January 15th annually, the council shall submit a report of its findings and recommendations to the joint standing committee of the Legislature having jurisdiction over education matters.

Sec. 3. Staggered terms. Notwithstanding the Maine Revised Statutes, Title 20-A, section 11, subsection 2, the terms of the 11 initial appointments made in accordance with Title 20-A, section 11, subsection 1, paragraph B are staggered as follows: 6 of the appointees must be appointed for 2-year terms and 5 of the appointees must be appointed for 3-year terms.

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

Effective June 14, 2011.

CHAPTER 347

H.P. 977 - L.D. 1331

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

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

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

2-B. Health care facility. "Health care facility" or "facility" means a facility, institution or entity licensed pursuant to Title 22 that offers health care to persons in this State, including a home health care provider and hospice program. "Health care facility" or "facility" includes a pharmacy licensed pursuant to Title 32.

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

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

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

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

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

11. Access by health information exchange or other entity. To a statewide health information exchange designated by the State that provides and maintains an individual protection mechanism by which an individual may choose to opt in to allow that statewide health information exchange to disclose that individual's health care information covered under this section to a health care provider or health care facility for purposes of treatment, payment and health care operations, as those terms are defined in 45 Code of Federal Regulations, Section 164.501. A state-designated

statewide health information exchange also must satisfy the requirement in Title 22, section 1711-C, subsection 18, paragraph C of providing a general opt-out provision to an individual at all times.

A state-designated statewide health information exchange may disclose an individual's health care information covered under this section even if the individual has not chosen to opt in to allow the state-designated statewide health information exchange to disclose the individual's health care information when in a health care provider's judgment disclosure is necessary to:

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

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

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

6. Access by health information exchange or other entity. Nothing in this section precludes the disclosure of a medical record containing HIV information to a state-designated statewide health information exchange that provides and maintains an individual protection mechanism by which an individual may choose to opt in to allow the state-designated statewide health information exchange to disclose that individual's health care information covered under this section to a health care provider or health care facility consistent with the rules and regulations contained in the federal Health Insurance Portability and Accountability Act of 1996, Public Law 104-191, for purposes of treatment, payment and health care operations, as those terms are defined in 45 Code of Federal Regulations, Section 164.501. A state-designated statewide health information exchange also must satisfy the requirement in Title 22, section 1711-C, subsection 18, paragraph C of providing a general opt-out provision to an individual at all times.

A state-designated statewide health information exchange may disclose an individual's health care information covered under this section even if the individual has not chosen to opt in to allow the state-designated statewide health information exchange to disclose the individual's health care information when in a health care provider's judgment disclosure is necessary to:

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

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

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

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

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

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

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

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

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

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

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

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

This subparagraph does not prohibit the disclosure without authorization of health care information covered under this section to a state-designated statewide health information exchange that satisfies the requirement in subsection 18, paragraph C of providing a general opt-out provision to an individual at all times and that provides and maintains an individual protection mechanism by which an individual may choose to opt in to allow the state-designated statewide health information exchange to disclose that individual's health

care information covered under Title 34-B, section 1207;

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

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

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

18. Participation in a health information exchange. The following provisions apply to participation in a state-designated statewide health information exchange.

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

B. Recovery for professional negligence is not allowed against any health care practitioner or health care facility on the grounds of a health care practitioner's or a health care facility's nonparticipation in a state-designated statewide health information exchange arising out of or in connection with the provision of or failure to provide health care services. In any civil action for professional negligence or in any proceeding related to such a civil action or in any arbitration, proof of a health care practitioner's, a health care facility's

or a patient's participation or nonparticipation in a state-designated statewide health information exchange is inadmissible as evidence of liability or nonliability arising out of or in connection with the provision of or failure to provide health care services. This paragraph does not prohibit recovery or the admission of evidence of reliance on information in a state-designated statewide electronic health information exchange when there was participation by both the patient and the patient's health care practitioner.

C. A state-designated statewide health information exchange to which health care information is disclosed under this section shall provide an individual protection mechanism by which an individual may opt out from participation to prohibit the state-designated statewide health information exchange from disclosing the individual's health care information to a health care practitioner or health care facility.

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

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

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

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

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

I. Nothing in this subsection precludes the disclosure of any information, except psychotherapy notes as defined in 45 Code of Federal Regulations, Section 164.501(2010), concerning a client to a state-designated statewide health information exchange that provides and maintains an individual protection mechanism by which a client may

choose to opt in to allow the state-designated statewide health information exchange to disclose that client's health care information covered under this section to a health care practitioner or health care facility for purposes of treatment, payment and health care operations, as those terms are defined in 45 Code of Federal Regulations, Section 164.501. A state-designated statewide health information exchange also must satisfy the requirement in Title 22, section 1711-C, subsection 18, paragraph C of providing a general opt-out provision to a client at all times.

A state-designated statewide health information exchange may disclose a client's health care information covered under this section even if the client has not chosen to opt in to allow the state-designated statewide health information exchange to disclose the individual's health care information when, in a health care provider's judgment, disclosure is necessary to:

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

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

See title page for effective date.

CHAPTER 348

H.P. 986 - L.D. 1345

An Act To Align Maine Special Education Statutes with Federal Requirements

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

Sec. 1. 5 MRSA §12004-I, sub-§10-A, as enacted by PL 1989, c. 899, §1, is repealed.

Sec. 2. 20-A MRSA §254, sub-§13 is enacted to read:

13. Transitional services for students with disabilities. To provide for an efficient and effective coordinated system of services across state agencies and local and private entities, the commissioner shall plan, coordinate and implement services for students with disabilities who are in transition from school to community in accordance with rules adopted by the department. Rules adopted pursuant to this subsection are major substantive rules as defined in Title 5, chapter 375, subchapter 2-A.

Sec. 3. 20-A MRSA §7001, sub-§2-C is enacted to read:

2-C. Individualized education program team. "Individualized education program team" means the group of individuals composed in accordance with Part C of the federal Individuals with Disabilities Education Act, 20 United States Code, Section 1414(d)(1)(B) to determine the individualized education program for a child with a disability.

Sec. 4. 20-A MRSA §7202, sub-§9, as amended by PL 2005, c. 662, Pt. A, §23, is further amended to read:

9. Securing parental permission. For the agency conducting studies pursuant to Title 5, chapter 511:

A. Assist the agency in its studies; and

B. Facilitate access to relevant case records by:

(1) Notifying parents or guardians of the study; and

(2) Requesting parental consent for the agency to have access to case records; ~~and~~

Sec. 5. 20-A MRSA §7202, sub-§10, as amended by PL 2005, c. 662, Pt. A, §23, is further amended to read:

10. Department of Health and Human Services; authority to request convening of individualized education program team meeting. Notify in writing the individual designated by the Department of Health and Human Services that the Department of Health and Human Services has the authority to request the school administrative unit to convene ~~a pupil evaluation~~ an individualized education program team meeting and to attend and participate in any ~~pupil evaluation~~ individualized education program team meetings concerning a child with a disability who is a state ward. The written notice must indicate the time and place of the ~~pupil evaluation~~ individualized education program team meeting and a copy of the notice must be placed in the child's permanent record; ~~and~~

Sec. 6. 20-A MRSA §7202, sub-§11 is enacted to read:

11. Transitional services for students with disabilities. Plan, coordinate and implement services for students with disabilities who are in transition from school to community in accordance with rules adopted by the department. Rules adopted pursuant to this subsection are major substantive rules as defined in Title 5, chapter 375, subchapter 2-A.

Sec. 7. 20-A MRSA c. 308, as amended, is repealed.

Sec. 8. 26 MRSA §1411-D, sub-§9, as enacted by PL 1995, c. 560, Pt. F, §13, is amended to read:

9. Transitional services coordination. ~~Shall participate in the coordination of rehabilitation ser-~~