

# 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.**

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**Augusta, Maine**  
**2011**

OTHER SPECIAL	\$5,000	\$0
REVENUE FUNDS TOTAL		

See title page for effective date.

**CHAPTER 373**

**S.P. 414 - L.D. 1337**

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

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

**Sec. 1. 22 MRSA §1711-C, sub-§7**, as amended by PL 1999, c. 512, Pt. A, §5 and affected by §7, is further amended to read:

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

**Sec. 2. 22 MRSA §1711-C, sub-§8**, as enacted by PL 1997, c. 793, Pt. A, §8 and affected by §10, is amended to read:

**8. Prohibited disclosure.** A health care practitioner or facility or state-designated statewide health information exchange may not disclose health care information for the purpose of marketing or sales without written or oral authorization for the disclosure.

**Sec. 3. 22 MRSA §1711-C, sub-§18** is enacted to read:

**18. Participation in a state-designated statewide 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.

D. At point of initial contact, a health care practitioner, health care facility or other entity participating in a state-designated statewide health information exchange shall provide to each patient, on a separate form, at minimum:

- (1) Information about the state-designated statewide health information exchange, including a description of benefits and risks of participation in the state-designated statewide health information exchange;
- (2) A description of how and where to obtain more information about or contact the state-designated statewide health information exchange;
- (3) An opportunity for the patient to decline participation in the state-designated statewide health information exchange; and

(4) A declaration that a health care practitioner, health care facility or other entity may not deny a patient health care treatment based solely on the provider's or patient's decision not to participate in a state-designated statewide health information exchange.

The state-designated statewide health information exchange shall develop the form for use under this paragraph, with input from consumers and providers. The form must be approved by the office of the state coordinator for health information technology within the Governor's office of health policy and finance.

E. A health care practitioner, health care facility or other entity participating in a state-designated statewide health information exchange shall communicate to the exchange the decision of each patient who has declined participation and shall do so within a reasonable time frame, but not more than 2 business days following the receipt of a signed form, as described in paragraph D, from the patient, or shall establish a mechanism by which the patient may decline participation in the state-designated statewide health information exchange at no cost to the patient.

F. A state-designated statewide health information exchange shall process the request of a patient who has decided not to participate in the state-designated statewide health information exchange within 2 business days of receiving the patient's decision to decline, unless additional time is needed to verify the identity of the patient. A signed authorization from the patient is required before a patient is newly entered or reentered into the system if the patient chooses to begin participation at a later date.

Except as otherwise required by applicable law, regulation or rule or state or federal contract, or when the state-designated statewide health information exchange is acting as the agent of a health care practitioner, health care facility or other entity, the state-designated statewide health information exchange shall remove health information of individuals who have declined participation in the exchange. In no event may health information retained in the state-designated statewide health information exchange as set forth in this paragraph be made available to health care practitioners, health care facilities or other entities except as otherwise required by applicable law, regulation or rule or state or federal contract, or when the health care practitioner, health care facility or other entity is the originator of the information.

G. A state-designated statewide health information exchange shall establish a secure website accessible to patients. This website must:

(1) Permit a patient to request a report of who has accessed that patient's records and when the access occurred. This report must be delivered to the patient within 2 business days upon verification of the patient's identity by the state-designated statewide health information exchange;

(2) Provide a mechanism for a patient to decline participation in the state-designated statewide health information exchange; and

(3) Provide a mechanism for the patient to consent to participation in the state-designated statewide health information exchange if the patient had previously declined participation.

H. A state-designated statewide health information exchange shall establish for patients an alternate procedure to that provided for in paragraph F that does not require Internet access. A health care practitioner, health care facility or other entity participating in the state-designated statewide health information exchange shall provide information about this alternate procedure to all patients. The information must be included on the form identified in paragraph D.

I. A state-designated statewide health information exchange shall maintain records regarding all disclosures of health care information by and through the state-designated statewide health information exchange, including the requesting party and the dates and times of the requests and disclosures.

J. A state-designated statewide health information exchange may not charge a patient or an authorized representative of a patient any fee for access or communication as provided in this subsection.

K. Notwithstanding any provision of this subsection to the contrary, a health care practitioner, health care facility or other entity shall provide the form and communication required by paragraphs D and F to all existing patients following the effective date of this subsection.

L. A state-designated statewide health information exchange shall meet or exceed all applicable federal laws and regulations pertaining to privacy, security and breach notification regarding personally identifiable protected health information, as defined in 45 Code of Federal Regulations, Part 160. If a breach occurs, the state-designated statewide health information exchange shall arrange with its participants for notification of each individual whose protected health information has been, or is reasonably believed by the exchange to have been, breached. For purposes of this paragraph, "breach" has the same meaning as in 45 Code of Federal Regulations, Part 164, as amended.

M. The state-designated statewide health information exchange shall develop a quality management plan, including auditing mechanisms, in consultation with the office of the state coordinator for health information technology within the department, who shall review the plan and results.

**Sec. 4. 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 state-designated statewide health information exchange are confidential and are exempt from the provisions of Title 1, chapter 13.

**Sec. 5. Report.** A state-designated statewide health information exchange under the Maine Revised Statutes, Title 22, section 1711-C shall by January 1, 2012 present a progress report to the office of the state coordinator for health information technology within the Department of Health and Human Services. The report must include the projected implementation date for the secure website required under Title 22, section 1711-C.

See title page for effective date.

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## CHAPTER 374

### H.P. 1045 - L.D. 1419

#### An Act To Improve the Coordination of County Correctional Services

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

**Sec. 1. 30-A MRSA §406, sub-§1**, as enacted by PL 2007, c. 653, Pt. A, §6, is amended to read:

**1. Managing jail and prison capacity and offender placement.** Consistent with the board's determination of facility use and purpose under Title 34-A, section 1803, subsection 2, paragraph A, the sheriffs shall assist the Commissioner of Corrections with respect to the daily management of offender bed space throughout the ~~unified~~ coordinated correctional system pursuant to Title 34-A, section 1801, subsection 1. The sheriffs shall daily provide the following information to the Commissioner of Corrections:

A. Facility population by gender; classification; legal status, including pretrial or sentenced; special needs; and any other parameters determined by the Commissioner of Corrections; and

B. Facility capacity and available bed space or bed space needs by the reportable parameters under paragraph A.

**Sec. 2. 30-A MRSA §406, sub-§1-A** is enacted to read:

**1-A. Accepting transferred inmates.** A correctional facility shall accept any inmate transferred to it by the Commissioner of Corrections pursuant to Title 34-A, sections 1404 or 1405 if:

A. Such transfer is consistent with policies established by the board pursuant to Title 34-A, section 1803; and

B. There are sufficient vacant and budgeted beds in that facility appropriate for the security classification and any special needs or circumstances of the transferred inmate.

**Sec. 3. 30-A MRSA §406, sub-§2**, as enacted by PL 2007, c. 653, Pt. A, §6, is amended to read:

**2. Coordinated correctional system plan.** The sheriffs may recommend a downsizing plan, a plan for capital construction and a reinvestment ~~strategies~~ strategy to the board.

**Sec. 4. 30-A MRSA §709**, as enacted by PL 2007, c. 653, Pt. A, §11, is amended to read:

#### **§709. County correctional services budgets presented to State Board of Corrections**

Notwithstanding any other provision of law, beginning July 1, ~~2008~~ 2012 and for all subsequent fiscal years, ~~4-12~~ 12 months prior to the beginning of the ~~fiscal year~~ year the county clerk from ~~next biennium~~ each county shall submit ~~that county's annual~~ its proposed biennial correctional services budget for the ~~state fiscal year~~ state fiscal year to the State Board of Corrections established in Title 5, section 12004-G, subsection 6-C. The proposed budget submitted must be signed by the chair of the county commissioners and attested to by the county commissioners' clerk. The budget must include specific amounts for each correctional services related expenditure.

**Sec. 5. 30-A MRSA §710, sub-§§1 to 3**, as enacted by PL 2007, c. 653, Pt. A, §12, are amended to read:

**1. Budget growth guidance and proposed budget.** At least 6-14 ~~6~~ 14 months before the beginning of ~~each state fiscal year~~ the first year of the next biennium, the ~~State Board of Corrections, established in Title 5, section 12004-G, subsection 6-C and referred to in this section as "the board,"~~ corrections working group established in Title 34-A, section 1804 shall set a growth limitation provide biennial budget growth guidance for the correctional services expenditures in the new fiscal year for each county biennial budget. The county commissioners shall submit proposed itemized correctional services budgets to the board in a format and by a date to be determined ~~annually~~ annually by the board, but no later than 12 months before the beginning of the next biennium.