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STATE OF MAINE  
ONE HUNDRED AND TWENTY-NINTH LEGISLATURE  
COMMITTEE ON HEALTH COVERAGE, INSURANCE AND FINANCIAL SERVICES

TO: Sen. Michael E. Carpenter, Senate Chair  
Rep. Donna Bailey, House Chair  
Joint Standing Committee on Judiciary

FROM: Sen. Heather B. Sanborn, Senate Chair  
Rep. Denise A. Tepler, House Chair *aid by chairs*  
Joint Standing Committee on Health Coverage, Insurance and Financial Services

DATE: July 7, 2020

RE: Public Records Exception Review of LD 1996

*+ current law*

We are writing to request review of LD 1996, An Act Concerning the Reporting of Health Care Information to the Emergency Medical Services' Board, pursuant to Title 1, section 434, subsection 2. The committee held a public hearing on the bill in compliance with the public hearing requirement of Title 1, section 434, subsection 1. The committee voted unanimously OTP-A. A copy of the draft amendment as voted by the committee is attached.

There is a provision included in LD 1996 that protects as confidential health care information or records provided to the Emergency Medical Services' Board or health care information or records requested by the Emergency Medical Services' Board for the purposes of monitoring and improving the provision of emergency medical services and outcomes within the State if that information or records identifies or permits the identification of a patient or a member of that patient's family. See proposed section §91-B, sub-§ 1, ¶¶ E and F in Section 2 of LD 1996's Committee Amendment.

We have reviewed the statutory criteria in Title 1, section 434, subsection 2 and we offer the following comments on LD 1996:

*P. 4 of packet*

A. *Whether the record protected by the proposed exception needs to be collected and maintained.*

B. *The value to the agency or official or to the public in maintaining a record protected by the proposed exception.*

A & B. It is important for the Emergency Medical Services' Board to have access to this information and records for the purposes of monitoring and improving the provision of

emergency medical services and outcomes within the State. The bill was introduced by the Board so the Board could request health care information and records from hospitals and physicians regarding patients that are treated by emergency medical services personnel. The Board believes this information is needed to evaluate the impact of emergency medical treatment and the quality of care that is being provided. Specifically, this statutory authority will also allow the Board to participate in a national program to evaluate the role of treatment provided by emergency medical services personnel in the continuum of care for certain time-sensitive conditions like heart attack and stroke.

*C. Whether federal law requires a record covered by the proposed exception to be confidential.*

C. The provision in LD 1996 is consistent with the federal Health Insurance Portability and Accountability Act of 1996 (HIPAA), which generally protects as confidential personally-identifiable health care information.

*D. Whether the proposed exception protects an individual's privacy interest and, if so, whether that interest substantially outweighs the public interest in the disclosure of records.*

D. We believe that the confidentiality of this information is necessary to protect a patient's privacy. While there is a strong interest in personal privacy, we note that it is mitigated by the authorization for information that does not identify or permit the identification of a patient or a member of that patient's family to be shared publicly.

*E. Whether public disclosure puts a business at a competitive disadvantage and, if so, whether that business's interest substantially outweighs the public interest in the disclosure of records.*

E. We do not believe paragraph E is applicable.

*F. Whether public disclosure compromises the position of a public body in negotiations and, if so, whether that public body's interest substantially outweighs the public interest in the disclosure of records.*

F. We do not believe paragraph F is applicable.

*G. Whether public disclosure jeopardizes the safety of a member of the public or the public in general and, if so, whether that safety interest substantially outweighs the public interest in the disclosure of records.*

G. The ability to share health care information and records without identifying or permit the identification of a patient or a member of that patient's family provides the appropriate balancing of any safety interest and any public interest in disclosure.

*H. Whether the proposed exception is as narrowly tailored as possible.*

H. Yes, we believe the language is crafted in this manner. While the language generally protects the confidentiality of any personally-identifiable information from the public, the language also authorizes disclosure of information in the aggregate or any other manner

LD 1996 Memo

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that does not identify or permit the identification of a patient or a member of that patient's family.

*I. Any other criteria that assist the review committee in determining the value of the proposed exception as compared to the public's interest in the record protected by the proposed exception.*

I. We do not offer any further comments.

Thank you for your consideration of our comments. Please contact us or our legislative analyst, Colleen McCarthy Reid, if you have any questions or need additional information. We look forward to discussing this with your committee in work session.

Enclosure: LD 1996 Draft Committee Amendment

cc: Members, Joint Standing Committee on Health Coverage, Insurance and Financial Services

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OTP-A as voted by HUF5

ROFS

L.D. 1996

Date:

(Filing No. S- )

**HEALTH COVERAGE, INSURANCE AND FINANCIAL SERVICES**

Reproduced and distributed under the direction of the Secretary of the Senate.

**STATE OF MAINE**

**SENATE**

**129TH LEGISLATURE**

**SECOND REGULAR SESSION**

COMMITTEE AMENDMENT " " to S.P. 698, L.D. 1996, Bill, "An Act Concerning the Reporting of Health Care Information to the Emergency Medical Services' Board"

Amend the bill by striking out everything after section 1 and inserting the following:

Sec. 2. 32 MRSA §91-B, sub-§1, ¶E is enacted to read:

E. Information or records provided to the board under section 88, subsection 2, paragraph K are confidential if the information or records identify or permit the identification of a patient or a member of that patient's family.

Sec. 3. 32 MRSA §91-B, sub-§1, ¶F is enacted to read:

F. Information or records provided to the board under section 96 are confidential if the information or records identify or permit the identification of a patient who received emergency medical treatment or a member of that patient's family.

Sec. 4. 32 MRSA §96 is enacted to read:

**§96. Monitoring and improving the provision of emergency medical services and health outcomes**

For the purpose of monitoring and improving the provision of emergency medical services and health outcomes within the State, the board may request and collect health care information or records, including information or records that identify or permit identification of any patient, concerning individuals who have received emergency medical treatment within the State, except for any information or records identifying a patient, in any format, that include HIV/AIDS status or test results or that relate to referral, treatment or services for behavioral or mental health or substance use disorder.

1. Reporting by physicians and hospitals. Hospitals and physicians shall report health care information concerning individuals who have received emergency medical treatment as follows and in accordance with this section and rules adopted by the board.

**COMMITTEE AMENDMENT**

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A. A hospital shall report to the board information or records requested by the board, including information or records that identify or permit identification of any patient, concerning an individual under or formerly under that hospital's care who received emergency medical treatment.

B. A physician shall report to the board information or records requested by the board, including information or records that identify or permit identification of any patient, concerning an individual under or formerly under that physician's care who received emergency medical treatment.

2. Access to information through the state-designated statewide health information exchange or direct reporting. A hospital or physician may satisfy the board's request for information under subsection 1 as follows.

A. A hospital or physician that participates in the state-designated statewide health information exchange as described in Title 22, section 1711-C may satisfy the board's request for information by authorizing the board to retrieve that provider's data from the health information exchange.

B. A hospital or physician that participates in the state-designated statewide health information exchange as described in Title 22, section 1711-C that does not authorize the board to retrieve that provider's data from the health information exchange shall provide the information to the board directly in the manner specified by rule.

3. Information requested. When requesting information pursuant to this section and any rules adopted by the board, the board shall request only the minimum amount of information necessary to fulfill the purposes of this section.

4. No liability for physician or hospital reporting in good faith. A physician or hospital that reports in good faith in accordance with this section is not liable for any civil damages for making the report.

5. Rulemaking. The board shall adopt rules regarding the collection and reporting of information pursuant to this section, including, but not limited to, the frequency of reporting by hospitals and physicians. Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

**Sec. 5. Rulemaking by the Emergency Medical Services' Board.** In adopting rules pursuant to the Maine Revised Statutes, Title 32, section 96, subsection 5, the Department of Public Safety, Maine Emergency Medical Services, Emergency Medical Services' Board shall address the following issues:

1. How different quality initiatives are adopted by the board;

2. How providers are notified about these different quality initiatives;

3. How providers communicate their decisions to the board to authorize the state-designated statewide health information exchange to provide information or records to the board;

4. For providers who authorize the state-designated statewide health information exchange to provide information or records to the board, the manner in which a provider may revoke that authorization; and

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5. How information or records remitted from the state-designated statewide health information exchange to the board and data remitted from the board to any 3rd parties are tracked and reported to providers when data requests are made to the state-designated statewide health information exchange.

The rules must include a requirement that any executed agreements must be made available to providers if any 3rd parties are provided information or records under those agreements.'

Amend the bill by relettering or renumbering any nonconsecutive Part letter or section number to read consecutively.

**SUMMARY**

Like the bill, this amendment makes changes to the laws governing the reporting of health care information to the Department of Public Safety, Maine Emergency Medical Services, Emergency Medical Services' Board. The amendment allows the board to request and collect health care information or records, including information or records that identify a patient. The amendment requires hospitals and physicians, upon request by the board for the purpose of monitoring and improving the provision of emergency medical services and health outcomes, to provide health care information concerning individuals who have received emergency medical treatment, except for information that includes HIV/AIDS status or test results or that relates to treatment or services for behavioral or mental health or substance use disorder.

← The amendment makes the reportable health care information confidential. Personally identifiable trauma information is already confidential.

The amendment also requires the board to adopt routine technical rules to determine how frequently information is reported and guidelines for how the data will be used.

**FISCAL NOTE REQUIRED**

(See attached)

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Title 32: PROFESSIONS AND OCCUPATIONS  
Chapter 2-B: MAINE EMERGENCY MEDICAL SERVICES ACT OF 1982

## §91-B. Confidentiality exceptions

1. Confidentiality. Except as otherwise provided in this chapter, all proceedings and records of proceedings concerning the quality assurance activities of an emergency medical services quality assurance committee approved by the board and all reports, information and records provided to the committee are confidential and may not be disclosed or obtained by discovery from the committee, the board or its staff. Quality assurance information may be disclosed to a licensee as part of any board-approved educational or corrective process. All complaints and investigative records of the board or any committee or subcommittee of the board are confidential during the pendency of an investigation and may not be disclosed by the committee, the board or its staff. Information or records that identify or permit identification of any patient that appears in any reports, information or records provided to the board or department for the purposes of investigation are confidential and may not be disclosed by the committee, the board or its staff.

A. A personal residence address, personal telephone number or personal e-mail address submitted to the board as part of any application under this chapter is confidential and may not be disclosed except as permitted under this section or as otherwise required by law unless the applicant who submitted the information indicated pursuant to section 90-B that the applicant is willing to have the applicant's personal residence address, personal telephone number or personal e-mail address treated as a public record. Personal health information submitted to the board as part of any application under this chapter is confidential and may not be disclosed except as otherwise permitted under this section or otherwise required by law.

The board and its committees and staff may disclose personal health information about and the personal residence address and personal telephone number of a licensee or an applicant for a license under this chapter to a government licensing or disciplinary authority or to a health care provider located within or outside this State that requests the information for the purposes of granting, limiting or denying a license or employment to the applicant or licensee. [PL 2011, c. 271, §19 (NEW) .]

B. Any materials or information submitted to the board in support of an application that are designated as confidential by any other provision of law remain confidential in the possession of the board. Information in any report or record provided to the board pursuant to this chapter that permits identification of a person receiving emergency medical treatment is confidential. [PL 2011, c. 271, §19 (NEW) .]

C. Information provided to the board under section 87-B is confidential if the information identifies or permits the identification of a trauma patient or a member of that patient's family. [PL 2011, c. 271, §19 (NEW) .]

D. Examination questions used by the board to fulfill the cognitive testing requirements of this chapter are confidential. [PL 2011, c. 271, §19 (NEW) .]

[PL 2011, c. 271, §19 (NEW) .]

2. Exceptions. Information designated confidential under subsection 1 becomes a public record or may be released as provided in this subsection.

A. Confidential information may be released in an adjudicatory hearing or informal conference before the board or in any subsequent formal proceeding to which the confidential information is relevant. [PL 2011, c. 271, §19 (NEW) .]

B. Confidential information may be released in a consent agreement or other written settlement when the confidential information constitutes or pertains to the basis of board action. [PL 2011, c. 271, §19 (NEW) .]

C. Investigative records and complaints become public records upon the conclusion of an investigation unless confidentiality is required by some other provision of law. For purposes of this paragraph, an investigation is concluded when:

- (1) Notice of an adjudicatory proceeding, as defined under Title 5, chapter 375, subchapter 1, has been issued;
- (2) A consent agreement has been executed; or
- (3) A letter of dismissal has been issued or the investigation has otherwise been closed. [PL 2011, c. 271, §19 (NEW) .]

D. During the pendency of an investigation, a complaint or investigative record may be disclosed:

- (1) To Maine Emergency Medical Services employees designated by the director;
- (2) To designated complaint officers of the board;
- (3) By a Maine Emergency Medical Services employee or complaint officer designated by the board to the extent considered necessary to facilitate the investigation;
- (4) To other state or federal agencies when the files contain evidence of possible violations of laws enforced by those agencies;
- (5) By the director, to the extent the director determines such disclosure necessary to avoid imminent and serious harm. The authority of the director to make such a disclosure may not be delegated;
- (6) When it is determined, in accordance with rules adopted by the department, that confidentiality is no longer warranted due to general public knowledge of the circumstances surrounding the complaint or investigation and when the investigation would not be prejudiced by the disclosure; or
- (7) To the person investigated on request of that person. The director may refuse to disclose part or all of any investigative information, including the fact of an investigation, when the director determines that disclosure would prejudice the investigation. The authority of the director to make such a determination may not be delegated. [PL 2011, c. 271, §19 (NEW) .]

E. Data collected by Maine Emergency Medical Services that allows identification of persons receiving emergency medical treatment may be released for purposes of research, regional medical control quality improvement plans, public health surveillance and linkage with patient electronic medical records if the release is approved by the board, the Medical Direction and Practices Board and the director. Information that specifically identifies individuals must be removed from the information disclosed pursuant to this paragraph, unless the board, the Medical Direction and Practices Board and the director determine that the release of such information is necessary for the purposes of the research, regional medical control quality improvement plans, public health surveillance or linkage with patient electronic medical records. [PL 2017, c. 373, §2 (AMD) .]

F. Confidential information may be released in accordance with an order issued on a finding of good cause by a court of competent jurisdiction. [PL 2011, c. 271, §19 (NEW) .]

G. Confidential information may be released to the Office of Chief Medical Examiner within the Office of the Attorney General. [PL 2017, c. 475, Pt. A, §51 (AMD) .]

H. Confidential information submitted to Maine Emergency Medical Services by any entity must be easily accessible by that entity in accordance with rules adopted by the board that enable compliance by the entity with federal and state laws regarding patient information privacy and access. [PL 2017, c. 373, §3 (NEW) .]

[PL 2017, c. 475, Pt. A, §51 (AMD) .]

3. Violation. A person who intentionally violates this section commits a civil violation for which a fine of not more than \$1,000 may be adjudged.

[PL 2011, c. 271, §19 (NEW) .]

#### SECTION HISTORY