

PLEASE NOTE: Legislative Information **cannot** perform research, provide legal advice, or interpret Maine law. For legal assistance, please contact a qualified attorney.

## **An Act Regarding the Transfer of Patient Health Care Information through an Electronic Health Information Exchange**

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

**Whereas,** it is necessary for the public health and welfare that the electronic health information exchange known as HealthInfoNet begin operations as early during the summer of 2009 as possible in order to implement the exchange of electronic health care records, improve the quality of health care and contribute to slowing the rate of growth of health care costs; 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 §1711-C, sub-§6, ¶B,** as amended by PL 1999, c. 512, Pt. A, §5 and affected by §7, 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 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. 2. 22 MRSA §1711-C, sub-§11,** as amended by PL 1999, c. 512, Pt. A, §5 and affected by §7, is further amended to read:

**11. Health care information subject to other laws, rules and regulations.** Health care information that is subject to the provisions of 42 United States Code, Section 290dd-2 (Supplement 1998); chapters ~~740~~710-B and 711; Title 5, section 200-E; Title 5, chapter 501; Title 24 or 24-A; Title 34-B, section 1207; Title 39-A; or other provisions of state or federal law, rule or regulation is governed solely by those provisions.

**Sec. 3. 22 MRSA §1711-F** is enacted to read:

## **§ 1711-F. Transfer of member health care information by MaineCare program for purpose of diagnosis, treatment or care**

The MaineCare program established under chapter 855 may transfer member health care information to a health care practitioner or health care facility for the purpose of diagnosis, treatment or care of the member through an electronic health information exchange in accordance with this section.

**1. Definitions.** For the purposes of this section, “health care facility” has the same meaning as in section 1711-C, subsection 1, paragraph D and “health care practitioner” has the same meaning as in section 1711-C, subsection 1, paragraph F.

**2. Individual protection mechanism.** The department shall provide an individual protection mechanism for MaineCare members by which an individual may prohibit a health information exchange from disclosing the individual's health care information to a health care practitioner or health care facility.

**3. Health care information subject to other laws, rules and regulations.** Health care information that is subject to the provisions of 42 United States Code, Section 290dd-2 (Supplement 1998); chapters 710-B and 711; Title 5, section 200-E; Title 5, chapter 501; Title 24 or 24-A; Title 34-B, section 1207; Title 39-A; or other confidentiality provisions of state or federal law, rule or regulation is governed solely by those provisions.

**Sec. 4. Report.** The Governor’s Office of Health Policy and Finance, after consultation with the Department of Health and Human Services and HealthInfoNet, shall report by January 15, 2011 to the joint standing committee of the Legislature having jurisdiction over health and human services matters on the implementation of the statewide HealthInfoNet demonstration project, authorized by Public Law 2007, chapter 213, Part A, section 32, that transfers patient information from one health care practitioner or facility to another health care practitioner or facility for the purposes of patient diagnosis, treatment and care through an electronic health information exchange.

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

## **SUMMARY**

This bill is emergency legislation.

This bill amends the law on the confidentiality of patient health care information by adding a health information exchange to the provision that allows health care practitioners and health care facilities to disclose information to agents, employees and contractors of practitioners and facilities to carry out the usual and customary activities relating to the delivery of health care and for the purposes of billing, risk management, quality assurance, utilization review and peer review. The bill provides an opt-out mechanism for individuals.

It authorizes the MaineCare program to transfer that same information for the purposes of diagnosis, treatment or care of MaineCare members while retaining protection for sensitive health information that is controlled by other provisions of state or federal law and providing an opt-out mechanism for members.

This bill requires a report to the joint standing committee of the Legislature having jurisdiction over health and human services matters by January 15, 2011.

**FISCAL NOTE REQUIRED**  
**(See attached)**