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## **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" has the same meaning as defined in Title 22, section 328, subsection 8.

**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 health information exchange that provides and maintains an individual protection mechanism by which an individual may choose to allow the 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 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 health information exchange may disclose an individual's health care information covered under this section even if the individual has not chosen to allow the 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 health information exchange that provides and maintains an individual protection mechanism by which an individual may choose to allow the 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 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 health information exchange may disclose an individual's health care information covered under this section even if the individual has not chosen to allow the 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 of health care information to a 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 allow the 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 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 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 health information exchange. Except when otherwise required by federal law, a payor of health care benefits may not require participation in a health information exchange as a condition of participating in the payor's provider network.

B. Recovery 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 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 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 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 an electronic health information exchange when there was participation by both the patient and the patient's health care practitioner.

C. A health information exchange to which health care information is disclosed under this section 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. 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 health information exchange that provides and maintains an individual protection mechanism by which a client may choose to allow the 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 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 health information exchange may disclose a client's health care information covered under this section even if the client has not chosen to allow the 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.

## **SUMMARY**

This bill amends the law regarding health information exchanges to specify when and under what circumstances information may be shared between a health care practitioner or health care facility and a health information exchange. The health information exchange must provide the ability for the client or individual to opt out. The bill specifies when information may be disclosed even if a client or individual has opted out. The bill prohibits a provider or health insurer from refusing to provide medical assistance or insurance coverage based on the individual's decision to participate or not participate in a health information exchange. The bill prohibits reference to the participation or nonparticipation of a health care practitioner or health care facility in a health information exchange from being used as evidence in negligence or other civil action.