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HEALTH AND HUMAN SERVICES

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STATE OF MAINE
HOUSE OF REPRESENTATIVES
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FIRST REGULAR SESSION

COMMITTEE AMENDMENT " " to H.P. 977, L.D. 1331, Bill, "An Act To Increase Health Care Quality through the Promotion of Health Information Exchange and the Protection of Patient Privacy"

Amend the bill by striking out all of section 1 and inserting the following:

'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.'

Amend the bill in section 4 in subsection 11 by striking out the first 2 paragraphs (page 1, lines 16 to 28 in L.D.) and inserting the following:

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:'

Amend the bill in section 5 in subsection 6 by striking out the first 2 paragraphs (page 1, lines 35 to 38 and page 2, lines 1 to 10 in L.D.) and inserting the following:

COMMITTEE AMENDMENT

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

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

18 Amend the bill in section 6 in paragraph A by striking out all of subparagraph (2) and
19 inserting the following:

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

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

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

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

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

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

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

35 This subparagraph does not prohibit the disclosure without authorization of
36 health care information covered under this section to a state-designated statewide
37 health information exchange that satisfies the requirement in subsection 18,
38 paragraph C of providing a general opt-out provision to an individual at all times
39 and that provides and maintains an individual protection mechanism by which an
40 individual may choose to opt in to allow the state-designated statewide health
41 information exchange to disclose that individual's health care information
42 covered under Title 34-B, section 1207;'

1 Amend the bill in section 7 in paragraph B in the 2nd line (page 3, line 8 in L.D.) by
2 inserting after the following: "including a" the following: 'state-designated statewide'

3 Amend the bill in section 8 by striking out all of subsection 18 and inserting the
4 following:

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

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

14 B. Recovery for professional negligence is not allowed against any health care
15 practitioner or health care facility on the grounds of a health care practitioner's or a
16 health care facility's nonparticipation in a state-designated statewide health
17 information exchange arising out of or in connection with the provision of or failure
18 to provide health care services. In any civil action for professional negligence or in
19 any proceeding related to such a civil action or in any arbitration, proof of a health
20 care practitioner's, a health care facility's or a patient's participation or
21 nonparticipation in a state-designated statewide health information exchange is
22 inadmissible as evidence of liability or nonliability arising out of or in connection
23 with the provision of or failure to provide health care services. This paragraph does
24 not prohibit recovery or the admission of evidence of reliance on information in a
25 state-designated statewide electronic health information exchange when there was
26 participation by both the patient and the patient's health care practitioner.

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

33 Amend the bill in section 11 in paragraph I by striking out the first 2 paragraphs
34 (page 4, lines 20 to 33 in L.D.) and inserting the following:

35 'I. Nothing in this subsection precludes the disclosure of any information, except
36 psychotherapy notes as defined in 45 Code of Federal Regulations, Section
37 164.501(2010), concerning a client to a state-designated statewide health information
38 exchange that provides and maintains an individual protection mechanism by which a
39 client may choose to opt in to allow the state-designated statewide health information
40 exchange to disclose that client's health care information covered under this section to
41 a health care practitioner or health care facility for purposes of treatment, payment
42 and health care operations, as those terms are defined in 45 Code of Federal
43 Regulations, Section 164.501. A state-designated statewide health information

1 exchange also must satisfy the requirement in Title 22, section 1711-C, subsection
2 18, paragraph C of providing a general opt-out provision to a client at all times.

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

8 **SUMMARY**

9 This amendment specifies that a health information exchange is a state-designated
10 statewide health information exchange. It also changes the definition of "health care
11 facility" from the definition used in the laws regarding certificates of need to a general
12 definition that includes all facilities licensed under the Maine Revised Statutes, Title 22,
13 including a home health care provider and hospice program and also pharmacies licensed
14 pursuant to Title 32.

15 **FISCAL NOTE REQUIRED**

16 **(See attached)**