



Maine Medical Association

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• **SUPPORT Maine Physicians** • **ADVANCE the quality of medicine in Maine** • **PROMOTE the health all Maine people**

TO: Joint Committee on Health and Human Services

FROM: Mikenzie Dwyer, Public Health & Government Affairs Associate

DATE: Wednesday, March 13, 2023

NFNA – LD 474; An Act to Improve Collaboration Between Mandatory Reporters and Law Enforcement in the Investigation of Alleged Child Abuse and Neglect

Good afternoon, Senator Baldacci, Representative Meyer and the members of the Health and Human Services Committee, my name is Mikenzie Dwyer, I live in Windham, and I am the Public Health and Government Affairs Associate for the Maine Medical Association. The Maine Medical Association appreciates the opportunity to submit the following comments neither for nor against LD 474. The bill would require a member of staff of a public or private medical institution to disclose the child abuse and neglect report submitted to the DHHS to law enforcement upon request and would provide immunity for the reporter who is participating in good faith in a law enforcement or criminal proceeding related to the suspected abuse or neglect of a child.

Maine's physicians have the same vested interest and concern with the appropriate protection of the state's most vulnerable populations. Medical professionals play an important role in assessing and documenting the nature and extent of injuries due to possible abuse or neglect. Physicians are very diligent about reporting suspected cases of abuse or neglect; these cases are often complicated and multifaceted; it is essential to ensure appropriate oversight and action is taken to provide the required support to the child and their families.

According to the American Academy of Pediatrics, the Health Insurance Portability and Accountability Act (HIPPA) allows for the disclosure of protected health information (PHI) without legal guardian authorization under circumstances of suspected abuse or neglect¹.

¹ Committee on Child Abuse and Neglect; Child Abuse, Confidentiality, and the Health Insurance Portability and Accountability Act. *Pediatrics* January 2010; 125 (1): 197–201. 10.1542/peds.2009-2864

The Maine Medical Association is a statewide volunteer organization formed in 1853, serving more than 4,300 current and future Maine physicians in all clinical specialties, organizations, and practice settings.

Section 164.512(f) places limitations on the information released to law enforcement but not to CPS agencies.² However, if a law enforcement agency is a designated authority by the state to receive and investigate child abuse reports, the pediatrician may disclose all protected health information important to the investigation without legal guardian authorization. In other circumstances, the physician may disclose protected health information to law enforcement without authorization if there is a probability of imminent physical injury to the patient, physician, or another person or if the child is missing and a law enforcement agency confirms it is investigating a missing person.

Additionally, in a letter to the nation's health care providers the Department of Health & Human Services stated "The HIPAA Privacy Rule protects the privacy of patients' health information but is balanced to ensure that appropriate uses and disclosures of the information still may be made when necessary to treat a patient, to protect the nation's public health, and for other critical purposes ... a health care provider may disclose patient information, including information from mental health records, if necessary, to law enforcement, family members of the patient, or any other persons who may reasonably be able to prevent or lessen the risk of harm."³

With consideration to the request of law enforcement for the report, the MMA is interested in what constitutes this request (i.e. time limit). Reports of child abuse and neglect can be an essential tool and it is important to recognize the potential hurdles in reporting to promote medical professionals to do so.

Child abuse and neglect are serious public health problems that can have long-term impacts on the health, opportunities, and well-being of children. We appreciate the intent of this bill and thank the committee for considering our comments.

Sincerely,
Mikenzie Dwyer

² US Department of Health and Human Services, Office of the Secretary. 45 CFR, parts 160 and 164. Fed Regist. 2003;68(34):8334. Available at: www.cms.hhs.gov/SecurityStandard/Downloads/securityfinalrule.pdf. Accessed April 8, 2009

³ Rodriguez, Leon Director of Dept of Health and Human Services Office for Civil Rights (HIPPA enforcement). "Message to Our Nation's Health Care Providers" 2013. DHHS

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DEPARTMENT OF HEALTH & HUMAN SERVICES

Office of the Secretary

Director
Office for Civil Rights
Washington, D.C. 20201

January 15, 2013

Message to Our Nation's Health Care Providers:

In light of recent tragic and horrific events in our nation, including the mass shootings in Newtown, CT, and Aurora, CO, I wanted to take this opportunity to ensure that you are aware that the Health Insurance Portability and Accountability Act (HIPAA) Privacy Rule does not prevent your ability to disclose necessary information about a patient to law enforcement, family members of the patient, or other persons, when you believe the patient presents a serious danger to himself or other people.

The HIPAA Privacy Rule protects the privacy of patients' health information but is balanced to ensure that appropriate uses and disclosures of the information still may be made when necessary to treat a patient, to protect the nation's public health, and for other critical purposes, such as when a provider seeks to warn or report that persons may be at risk of harm because of a patient. When a health care provider believes in good faith that such a warning is necessary to prevent or lessen a serious and imminent threat to the health or safety of the patient or others, the Privacy Rule allows the provider, consistent with applicable law and standards of ethical conduct, to alert those persons whom the provider believes are reasonably able to prevent or lessen the threat. Further, the provider is presumed to have had a good faith belief when his or her belief is based upon the provider's actual knowledge (i.e., based on the provider's own interaction with the patient) or in reliance on a credible representation by a person with apparent knowledge or authority (i.e., based on a credible report from a family member of the patient or other person). These provisions may be found in the Privacy Rule at 45 CFR § 164.512(j).

Under these provisions, a health care provider may disclose patient information, including information from mental health records, if necessary, to law enforcement, family members of the patient, or any other persons who may reasonably be able to prevent or lessen the risk of harm. For example, if a mental health professional has a patient who has made a credible threat to inflict serious and imminent bodily harm on one or more persons, HIPAA permits the mental health professional to alert the police, a parent or other family member, school administrators or campus police, and others who may be able to intervene to avert harm from the threat.

In addition to professional ethical standards, most states have laws and/or court decisions which address, and in many instances require, disclosure of patient information to prevent or lessen the risk of harm. Providers should consult the laws applicable to their profession in the states where they practice, as well as 42 CFR Part 2 under federal law (governing the disclosure of substance abuse treatment records) to understand their duties and authority in situations where they have information indicating a threat to public safety.

We at the Office for Civil Rights understand that health care providers may at times have information about a patient that indicates a serious and imminent threat to health or safety. At those times, providers play an important role in protecting the safety of their patients and the broader community. I hope this letter is helpful in making clear that the HIPAA Privacy Rule does not prevent providers from sharing this information to fulfill their legal and ethical duties to warn or as otherwise necessary to prevent or lessen the risk of harm, consistent with applicable law and ethical standards.

A handwritten signature in black ink, appearing to read 'L. Rodriguez', written in a cursive style.

Leon Rodriguez