

LD 227
Sponsor's Amendment to Replace Concept Draft
Proposed by Rep. Perry
FOR HCIFS REVIEW AT MARCH 5 PUBLIC HEARING

PROPOSED DRAFT COMMITTEE AMENDMENT REPLACING CONCEPT DRAFT:
LD 227, An Act Regarding Health Care in the State

Amend the bill by striking out everything after the enacting clause and before the summary and inserting in its place the following:

PART A

Sec. A-1. 14 MRSA c. 763 is enacted to read:

CHAPTER 763

LEGALLY PROTECTED HEALTHCARE ACTIVITY

§ 9001. Legislative findings and declaration of policy.

The Legislature finds and declares that:

1. Legal right to gender-affirming health care services and reproductive health care services. Access to gender-affirming health care services and reproductive health care services in this State, as authorized under the laws of this State, is a legal right.

2. Interference with legally protected health care activity against public policy. Whether or not under the color of law, interference with legally protected health care activity and interference with aiding and assisting legally protected health care activity is against the public policy of this State.

3. Public acts in other states. Any public act of another state that prohibits, criminalizes, sanctions, authorizes a person to bring a civil action against or otherwise interferes with a person in this State who engages in legally protected health care activity or who aids or assists in legally protected health care activity:

A. Interferes with the exercise and enjoyment of the rights secured by this State; and

B. Is against the public policy of this State.

§9002. Definitions.

As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings.

1. Aid and assist legally protected health care activity. “Aid and assist legally protected health care activity” and “aiding and assisting legally protected health care activity” means:

A. Any act or omission of a person aiding or effectuating or attempting to aid or effectuate any other person in legally protected health care activity; or

B. The provision or administration of, or attempted provision or administration of, insurance coverage for gender-affirming health care services or reproductive health care services to a beneficiary or a dependent of a beneficiary by any insurer, payor or employer.

“Aiding and assisting legally protected health care activity” does not include any conduct that deviates from the applicable standard of care or that could form the basis of a civil, criminal or administrative

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action under the laws of this State had the course of conduct that forms the basis for liability occurred entirely within this State.

2. Aggrieved person. “Aggrieved person” means:

A. A person against whom hostile litigation is filed or prosecuted or the legal representative of a person against whom hostile litigation is filed or prosecuted;

B. The employer of a person against whom hostile litigation is filed or prosecuted if the legally protected health care activity or aiding and assisting legally protected health care activity of the person that forms the basis of the hostile litigation was performed within the scope of the person's employment.

B. A person in this State upon whom a subpoena seeking information concerning legally protected health care activity or aiding and assisting legally protected health care activity is served by any federal or state court in connection with hostile litigation;

3. Gender-affirming health care services. “Gender-affirming health care services” means all supplies, care, and services of a medical, behavioral health, mental health, surgical, psychiatric, therapeutic, diagnostic, preventative, rehabilitative or supportive nature, including medication, relating to the treatment of gender dysphoria and gender incongruence in accordance with the accepted standard of care as defined by major medical professional organizations and agencies with expertise in the field of gender-affirming care including in the Standards of Care for the Health of Transgender and Gender Diverse People, Version 8 or subsequent version, published by the World Professional Association for Transgender Health. “Gender-affirming health care services” does not include “conversion therapy” as defined in Title 32, section 59-C.

4. Hostile litigation. “Hostile litigation” means any litigation or other legal action, including civil, criminal or administrative action, to deter, prevent, sanction or punish any person engaging in legally protected health care activity or aiding and assisting legally protected health care by:

A. Filing or prosecuting any litigation or other legal action in any other state where liability, in whole or part, directly or indirectly, is based on legally protected health care activity or aiding and assisting legally protected health care activity that occurred in this State, including any action in which liability is based on any theory of vicarious, joint or several liability; or

B. Attempting to enforce any order or judgment issued in connection with any litigation or other legal action under paragraph A by any party to the action or by any person acting on behalf of any party to the action.

For purposes of this chapter, litigation or other legal action is based on legally protected health care activity or aiding and assisting legally protected health care activity that occurred in this State if any part of any act or omission involved in the course of conduct that forms the basis for liability in the action occurs or is initiated in this State, whether or not such act or omission is alleged or included in any pleading or other filing in the lawsuit.

5. Law enforcement agency. “Law enforcement agency” means any court, department or agency of this State, a political subdivision of this State or a college or a university in this State charged with the

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enforcement of laws or the custody of detained persons. "Law enforcement agency" includes the Department of the Attorney General and district attorneys' offices.

6. Legally protected health care activity. "Legally protected health care activity" means:

A. The exercise and enjoyment or attempted exercise and enjoyment by any person of the right to gender-affirming health care services or reproductive health care services secured by this State; and

B. The provision or attempted provision of gender-affirming health care services or reproductive health care services that are authorized under the laws of this State and that are provided in accordance with the applicable standard of care by a health care practitioner licensed under the laws of this State and physically present in this State, regardless of whether the patient is located in this State or whether the health care practitioner is licensed in the state where the patient is located at the time the services are rendered.

"Legally protected health care activity" does not include any conduct that could form the basis of a civil, criminal or administrative action under the laws of this State had the course of conduct that forms the basis for liability occurred entirely within this State.

7. Reproductive health care services. "Reproductive health care services" means all supplies, care, and services of a medical, behavioral health, mental health, surgical, psychiatric, therapeutic, diagnostic, preventative, rehabilitative or supportive nature, including medication, relating to pregnancy, contraception, assisted reproduction, pregnancy loss management or the termination of a pregnancy in accordance with the applicable standard of care as defined by major medical professional organizations and agencies with expertise in the relevant field.

8. State. "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands or any territory or insular possession subject to the jurisdiction of the United States.

§9003. Tortious interference with legally protected health care activity

1. Civil action. An aggrieved person may bring a civil action for damages, punitive damages, equitable relief, injunctive relief or any other appropriate relief against another person who, whether or not acting under color of law, files or prosecutes hostile litigation. For purposes of this subsection "damages" may include the amount of any judgment issued in connection with the hostile litigation as well as any and all other expenses, costs and reasonable attorney's fees incurred in connection with the hostile litigation.

2. Attorney's fees and costs. An aggrieved person who prevails in an action brought under this section is entitled to an award of attorney's fees and costs.

3. Exception. An aggrieved person may not bring an action under this section if the hostile litigation is based on conduct for which a civil, criminal or administrative action would exist under the laws State if the conduct or course of conduct that forms the basis for liability in the hostile litigation had occurred entirely within this State.

§9004. Foreign judgments issued in connection with hostile litigation

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1. Definition. As used in this section, "foreign judgment" means any judgment, decree or order of a court of another state.

2. Jurisdiction and due process required. A court of this State may not give any force or effect to any foreign judgment in connection with hostile litigation if the court that issued the foreign judgment did not have personal jurisdiction over the defendant, did not have jurisdiction over the subject matter; or did not provide due process of law.

3. Limitations period. Notwithstanding any provision of law to the contrary, an action on a foreign judgment in connection with hostile litigation must be commenced by filing a new and independent action on the judgment within five years.

§9005. Testimony and documents in connection with hostile litigation

1. Court order. Notwithstanding any other provision of law or court rule to the contrary, and except as required by federal law, a court of this State may not order a person who is domiciled or found within this State to give testimony or a statement or produce documents or other things in any proceeding involving hostile litigation.

2. Subpoena. An aggrieved person may move to modify or quash any subpoena issued in connection with hostile litigation on any grounds provided by law or court rule or on the ground that the subpoena is inconsistent with the public policy of this State.

3. Summons. Except as required by federal law, a court in this State may not issue a summons or warrant in a case involving criminal prosecution or a pending grand jury investigation under the criminal laws of another state for engaging in legally protected health care activity or aiding and assisting legally protected health care activity unless the conduct forming the basis of the prosecution or grand jury investigation would also constitute a criminal offense if the conduct occurred entirely within this State.

§9006. Prohibition on expenditure of public resources; noncooperation

1. Prohibition on expenditure of public resources. A public agency, including a law enforcement agency, and an employee, appointee, officer or official or any other person acting on behalf of a public agency may not knowingly provide any information or expend or use time, money, facilities, property, equipment, personnel, or other resources in furtherance of any interstate investigation or proceeding seeking to impose civil, administrative or criminal liability upon a person or entity for:

A. Legally protected health care activity; or

B. Aiding and assisting legally protected health care activity.

2. Noncooperation. Notwithstanding any provision of state law to the contrary and except as required by federal law, no officer or employee of a law enforcement agency, while acting under color of law, may provide information or assistance to a federal law enforcement agency, to any law enforcement agency in another state or political subdivision of another state or to any private citizen in relation to an investigation or inquiry into services constituting legally protected health care activity or aiding and assisting legally protected health care activity.

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3. No arrest. Notwithstanding any other law or provision of law the contrary, arrest of a person in this State is prohibited if the arrest is related to criminal liability that is based on legally protected health care activity or aiding and assisting legally protected health care activity.

4. Exceptions. This section does not apply to a public agency, including a law enforcement agency, and an employee, appointee, officer or official or any other person acting on behalf of a public agency responding to a warrant or extradition demand on the good faith belief that the warrant or demand is valid in this State.

§9007. Choice of Law

Notwithstanding any general or special law or common law conflict of law rule to the contrary, the laws of this State shall govern in any case or controversy heard in this State involving legally protected health care activity or aiding and assisting legally protected health care activity.

Part B

Sec. B-1. 14 MRSA § 402, sub-§§6 and 7 are enacted to read:

§402. Definitions

As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings.

- 1. Foreign jurisdiction.** "Foreign jurisdiction" means a state other than this State.
- 2. Foreign subpoena.** "Foreign subpoena" means a subpoena issued under authority of a court of record of a foreign jurisdiction.
- 3. Person.** "Person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, public corporation, government or governmental subdivision, agency or instrumentality or any other legal or commercial entity.
- 4. State.** "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, a federally recognized Indian tribe or any territory or insular possession subject to the jurisdiction of the United States.
- 5. Subpoena.** "Subpoena" means a document, however denominated, issued under authority of a court of record requiring a person to:
 - A. Attend and give testimony at a deposition;
 - B. Produce and permit inspection and copying of designated books, documents, records, electronically stored information or tangible things in the possession, custody or control of the person; or
 - C. Permit inspection of premises under the control of the person.
- 6. Aiding and assisting legally protected health care activity.** "Aiding and assisting legally protected health care activity" has the same meaning as in Title 14, section 9002, subsection 1.

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7. Legally protected health care activity. “Legally protected health care activity” has the same meaning as in Title 14, section 9002, subsection 6.

Sec. B-2. 14 MRSA §403 is amended to read:

§403. Issuance of subpoena

The issuance of a subpoena is governed by this section.

1. Request issuance. To request issuance of a subpoena under this section, a party must submit a foreign subpoena to the clerk of a District Court in the district or to the clerk of the Superior Court of the county in which the discovery is to be conducted. A request for the issuance of a subpoena under this Act does not constitute an appearance in the courts of the State.

1-A. Attestation. A request for issuance of a subpoena under this section must be accompanied by an affidavit stating whether the foreign subpoena seeks documents, information, inspection or testimony related to the provision or receipt of or attempted provision or receipt of legally protected health care activity or aiding or assisting legally protected health care activity. The court shall provide a form for the completion of the affidavit. The form must contain a statement informing the affiant that making a false statement on the affidavit may be punishable as the crime of false swearing under Maine law.

2. Submission of foreign subpoena. ~~When~~ Except as provided in subsection 4, a party submits a foreign subpoena to a clerk of court in the State, the clerk, in accordance with that court's procedure, shall promptly issue a subpoena for service upon the person to which the foreign subpoena is directed.

3. Requirements. A subpoena issued under subsection 2 must:

- A. Incorporate the terms used in the foreign subpoena; and
- B. Contain or be accompanied by the names, addresses and telephone numbers of all counsel of record in the proceeding to which the subpoena relates and of any party not represented by counsel.

4. Prohibition. A clerk of court in this State may not issue a subpoena under subsection 2 and must present the request to the court if the attestation submitted under subsection 1-A indicates that the foreign subpoena seeks documents, information, inspection or testimony related to the provision or receipt of or attempted provision or receipt of legally protected health care activity or aiding or assisting legally protected health care activity. After reviewing the request and attestation, if the court finds that the foreign subpoena seeks documents, information, inspection or testimony related to the provision or receipt of or attempted provision or receipt of legally protected health care activity or aiding or assisting legally protected health care activity, the court shall deny the request for issuance of a subpoena and quash any subpoena previously issued by the court in connection with the request unless the court finds that the foreign subpoena seeks documents, information, inspection or testimony related to:

- A. An action in a foreign jurisdiction founded in tort, contract or statute brought by the patient who sought or received the legally protected health care activity, or the patient's legal representative, for damages suffered by the patient or damages derived from an individual's loss of consortium of the patient if a similar claim would exist under the laws of this State; or

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B. An action in a foreign jurisdiction founded in contract that is brought by a person with a contractual relationship to the individual whose documents or information are the subject of the subpoena if a similar action would exist under the laws of this State.

In the event the court finds that the foreign subpoena seeks documents, information, inspection or testimony as provided in paragraphs A or B of this subsection, the court shall direct the clerk to issue the subpoena.

PART C

Sec. C-1. 15 MRSA §203, sub-§5 is enacted to read:

§203. Form of demand

1. Persons accused of a crime. No demand for the extradition of a person accused, but not yet convicted, of a crime in another state shall be recognized by the Governor of this State unless made in writing and containing the following:

A. An allegation that the accused is a fugitive from justice, as defined in section 201, subsection 4, paragraph A. The allegation shall be sufficient if it alleges that the accused was present in the demanding state at the time of the commission of the alleged crime and that he thereafter left the demanding state; or that he committed an act in this State or in a 3rd state, or elsewhere, resulting in or constituting a crime in the demanding state; and

B. A copy of an indictment returned; or an information issued upon a waiver of indictment; or an information or other formal charging instrument issued upon a determination of probable cause by a judicial officer in the demanding state or accompanied by an arrest warrant issued upon a determination of probable cause by a judicial officer in the demanding state; or any other formal charging instrument, together with any affidavits in support thereof, or in support of an arrest warrant, which support a finding of probable cause; or an affidavit which supports a finding of probable cause. The indictment, information, other formal charging instrument or affidavit shall substantially charge the person demanded with having committed a crime under the law of that state, and the copy shall be authenticated by the executive authority making the demand.

2. Person convicted of a crime. No demand for the extradition of a person convicted of a crime in another state shall be recognized by the Governor of this State unless made in writing and containing the following:

A. A statement by the executive authority of the demanding state that the person demanded is a fugitive from justice, as defined in section 201, subsection 4, paragraph B; and

B. A copy of the judgment of conviction or of the sentence imposed in execution thereof, which has been authenticated by the executive authority making the demand.

3. Defects in written demand. Defects in the written demand of the executive authority of another state or in any accompanying document or in the application for requisition may be remedied at any time, including at the hearing allowed by section 210, by new or amended documents or by other evidence.

4. Showing of substantial prejudice. Notwithstanding any other provision of law, defects in the written demand of the executive authority of another state or in any accompanying document or in the

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application for requisition may not be raised as a defense to extradition, in a petition contesting extradition pursuant to sections 210 and 210-A, unless it is shown by the petitioner that any such defect is substantially prejudicial to him.

5. Exception; legally protected health care activity. Notwithstanding any other provision of law to the contrary and except as required by federal law, the Governor may not surrender a person charged in another state as a result of engaging in legally protected health care activity or of aiding and assisting legally protected health care activity unless the executive authority of the demanding state alleges in writing that the accused was physically present in the demanding state at the time of the commission of the alleged offense and that thereafter the accused fled from the demanding state. For purposes of this subsection, “aiding and assisting legally protected health care activity” and “legally protected health care activity” have the same meaning as in Title 14, section 9002, subsection 1 and 6, respectively.

Sec. C-2. 16 MRSA §642, sub-§3 is enacted to read:

§642. Authority to obtain and disclose content information held by a provider of electronic communication service

1. Authority to obtain. A government entity may obtain portable electronic device content information directly from a provider of electronic communication service or a provider of remote computing service only in accordance with a valid search warrant issued by a duly authorized justice, judge or justice of the peace using procedures established pursuant to Title 15, section 55 or 56 or as otherwise provided in this subchapter.

2. Authority to disclose. A provider of electronic communication service may disclose portable electronic device content information to a government entity only pursuant to a warrant issued by a duly authorized justice, judge or justice of the peace or as otherwise provided in this subchapter.

3. Exception; legally protected health care activity. Notwithstanding any other provision of law to the contrary, a justice, judge or justice of the peace may not issue a search warrant permitting a government entity to obtain portable electronic device content information directly from a provider of electronic communication service or a provider of remote computing service that relates to an investigation into legally protected health care activity or aiding and assisting legally protected health care activity. For purposes of this subsection, “aiding and assisting legally protected health care activity” and “legally protected health care activity” have the same meaning as in Title 14, section 9002, subsection 1 and 6, respectively.

PART D

Sec. D-1. 5 MRSA §90-B is amended to read:

§90-B. Address Confidentiality Program

1. Definitions. As used in this section, unless the context otherwise indicates, the following terms have the following meanings.

A. "Address" means a residential street, school or work address of an individual, including any geographically specific description or coordinate that identifies a residential address, as specified on the individual's application to be a program participant under this section.

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B. "Application assistant" means an employee of a state or local agency or of a nonprofit program that provides counseling, referral, shelter or other specialized service to victims of domestic violence, sexual assault, stalking or human trafficking or to minor victims of kidnapping or that provides services related to legally protected health care activity who has been designated by the respective agency and trained, accepted and registered by the secretary to assist individuals in the completion of program participation applications.

B-1. "Covered health care practitioner" has the same meaning as in Title 10, section 8012.

C. "Designated address" means the address assigned to a program participant by the secretary pursuant to this section.

C-1. "Legally protected health care activity" has the same meaning as in Title 14, section 9002, subsection 6.

D. "Mailing address" means an address that is recognized for delivery by the United States Postal Service.

E. "Program" means the Address Confidentiality Program established in this section.

F. "Program participant" means a person certified by the Secretary of State to participate in the program.

F-1. "Reproductive or gender-affirming health care services practitioner" means a person who in the person's capacity as a covered health care practitioner engaged in legally protected health care activity.

G. "Secretary" means the Secretary of State.

2. Program established. The Address Confidentiality Program is established to protect victims of domestic violence, sexual assault, stalking or human trafficking, ~~and~~ minor victims of kidnapping and reproductive or gender-affirming health care services practitioners by authorizing the use of designated addresses for such victims and practitioners. The program is administered by the secretary under the following application and certification procedures.

A. Upon recommendation of an application assistant, ~~an~~ the adult person, a parent or guardian acting on behalf of a minor or a guardian acting on behalf of an incapacitated person may apply to the secretary to have a designated address assigned by the secretary to serve as the person's address or the address of the minor or incapacitated person.

B. The secretary may approve an application only if it is filed with the office of the secretary in the manner established by rule and on a form prescribed by the secretary. A completed application must contain:

(1) The application preparation date, the applicant's signature and the signature and registration number of the application assistant who assisted the applicant in applying to be a program participant;

(2) A designation of the secretary as agent for purposes of service of process and for receipt of first-class mail;

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(3) The mailing address where the applicant may be contacted by the secretary or a designee and the telephone number or numbers where the applicant may be called by the secretary or the secretary's designee; and

(4) One or more addresses that the applicant requests not be disclosed for the reason that disclosure will jeopardize the applicant's safety or increase the risk of violence to the applicant or members of the applicant's household.

C. Upon receipt of a properly completed application, the secretary may certify the applicant as a program participant. A program participant is certified for 4 years following the date of initial certification unless the certification is withdrawn or invalidated before that date. The secretary shall send notification of lapsing certification and a reapplication form to a program participant at least 4 weeks prior to the expiration of the program participant's certification.

D. The secretary shall forward first-class mail to the appropriate program participants.

E. A person who violates this paragraph commits a Class E crime.

(1) An applicant may not file an application knowing that it:

(a) Contains false or incorrect information; or

(b) Falsely claims that disclosure of the applicant's address or mailing address threatens the safety of the applicant or the applicant's children or the minor or incapacitated person on whose behalf the application is made.

(2) An application assistant may not assist or participate in the filing of an application that the application assistant knows:

(a) Contains false or incorrect information; or

(b) Falsely claims that disclosure of the applicant's address or mailing address threatens the safety of the applicant or the applicant's children or the minor or incapacitated person on whose behalf the application is made.

3. Cancellation. Certification for the program may be canceled if one or more of the following conditions apply:

A. If the program participant obtains a name change, unless the program participant provides the secretary with documentation of a legal name change within 10 business days of the name change;

B. If there is a change in the residential street address from the one listed on the application, unless the program participant provides the secretary with notice of the change in such manner as the secretary provides by rule; or

C. The applicant or program participant violates subsection 2, paragraph E, subparagraph (1).

4. Use of designated address. Upon demonstration of a program participant's certification in the program, state and local government agencies and the courts shall accept and use only the designated

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address as a program participant's address unless the secretary has approved an exemption pursuant to subsection 5-A.

5-A. Disclosure to law enforcement and to other state and local agencies. If the secretary determines it appropriate, the secretary may make a program participant's address or mailing address available for use by granting an exemption under the following circumstances:

A. Upon request to the secretary by:

- (1) A law enforcement agency in the manner provided for by rule; or
- (2) A commissioner or other chief administrator of a state or local government agency or the commissioner's or administrator's designee in the manner provided for by rule; and

B. Upon a finding by the secretary that:

- (1) An agency under paragraph A has a bona fide statutory, administrative or law enforcement requirement for use of the program participant's address or mailing address such that the agency is unable to fulfill its statutory duties and obligations without the address or mailing address; and
- (2) The program participant's address or mailing address will be used only for those statutory, administrative or law enforcement purposes and otherwise will be kept under seal and excluded from public inspection.

6. Disclosure pursuant to court order or canceled certification. If the secretary determines appropriate, the secretary shall allow a program participant's address and mailing address to be made available for use under the following circumstances:

A. To a person identified in a court order, upon the secretary's receipt of that court order that specifically orders the disclosure of a particular program participant's address and mailing address and the reasons stated for the disclosure; or

B. If the certification has been canceled because the applicant or program participant violated subsection 2, paragraph E, subparagraph (1).

7. Confidentiality. The program participant's application, supporting materials and the program's state e-mail account are not a public record and must be kept confidential by the secretary.

8. Rules. The secretary shall adopt rules to carry out this section. These rules are routine technical rules as defined in Title 5, chapter 375, subchapter II-A.

PART E

Sec. E-1. 10 MRSA §8012 is enacted to read:

§8012. Legally protected health care activity

1. Definitions. As used in this section, unless the context otherwise indicates, the following terms have the following meanings.

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A. “Aiding and assisting legally protected health care activity” has the same meaning as in Title 14, section 9002, subsection 1.

B. “Covered health care practitioner” has the same meaning as “health care practitioner” in Title 24, section 2502, subsection 1-A, except that it does not include a veterinarian. [Note to committee: This definition includes: “physicians and all others certified, registered or licensed in the healing arts, including, but not limited to, nurses, podiatrists, optometrists, chiropractors, physical therapists, dentists, psychologists, physicians' assistants and veterinarians.”]

“Covered health care practitioner” also includes persons licensed under:

(1) Title 32, chapter 18; [Note: licensed electrologists]

(2) Title 32, chapter 32; [Note: licensed occupational therapists and occupational therapy assistants]

(3) Title 32, chapter 83; [Note: licensed clinical social worker, master social worker or social worker]

(4) Title 32, chapter 117; and [Note: licensed pharmacists and pharmacy interns]

(5) Title 32, chapter 119. [Note: licensed professional counselors, clinical professional counselors, marriage and family therapists and pastoral counselors]

C. “Legally protected health care activity” has the same meaning as in Title 14, section 9002, subsection 6.

D. “Professional discipline” means the issuance of a letter of guidance or concern; a warning, censure or reprimand; a license or registration denial, nonrenewal, suspension or revocation; a civil penalty for violation of applicable laws, rules and conditions of licensure or registration or for instances of actionable conduct or activity; the imposition of conditions of probation upon an applicant, licensee or registrant; or the execution of a consent agreement with the consent of an applicant, licensee or registrant.

2. Professional discipline prohibited. Notwithstanding any other provision of law, the commissioner, Director of the Office of Professional and Occupational Regulation, any agency, bureau, board or commission within or affiliated with the department and the Department of Health and Human Services may not subject a covered health care practitioner to professional discipline based solely on:

A. The covered health care practitioner engaging in legally protected health care activity or aiding and assisting legally protected health care activity;

B. A criminal action, civil action or professional discipline action in another state against the covered health care practitioner that is based on the covered health care practitioner engaging in legally protected health care activity or aiding and assisting legally protected health care activity; or

C. Conviction of a crime or any civil judgment or professional discipline in this State or another state against the covered health care practitioner based solely on a violation of another state's law prohibiting legally protected health care activity or aiding or assisting legally protected health care activity.

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3. Confidentiality. Notwithstanding any other provision of law, the portions of a record of a conviction of a crime in this State or another state, any civil judgment, arbitration award or settlement agreement from this State or another state or professional discipline imposed in this State or another state that is in the possession of the commissioner; Director of the Office of Professional Regulation; any agency, bureau, board or commission within or affiliated with the department; or, for a licensed electrologist, in the possession of the Department of Health and Human Services is confidential to the extent that the criminal conviction, civil judgment, arbitration award or settlement agreement or professional discipline is based on the covered health care practitioner engaging in legally protected health care activity or aiding and assisting legally protected health care activity.

Sec. E-2. 24 MRSA §2513 is enacted to read:

§2513. Legally protected health care activity

1. Definitions. As used in this section, unless the context otherwise indicates, the following terms have the following meanings:

A. “Adverse action” means the reduction of, restriction of, suspension of, denial of, revocation of or failure to grant or renew a covered health care practitioner’s membership, clinical privileges, clinical practice authority, professional certification or participation on a provider panel by a health care provider or health care entity.

B. “Aiding and assisting legally protected health care activity” has the same meaning as in Title 14, section 9002, subsection 1.

C. “Covered health care practitioner” has the same meaning as in Title 10, section 8012.

D. “Formal disciplinary action” means the reduction of, restriction of, suspension of, denial of, revocation of or failure to grant or renew a covered health care practitioner’s membership in a professional society.

E. “Legally protected health care activity” has the same meaning as in Title 14, section 9002, subsection 6.

F. “Professional discipline” has the same meaning as in Title 10, section 8012.

2. Prohibited actions of health care entity or health care provider. A health care entity or health care provider within this State may not take any adverse action against a covered health care practitioner solely as a result of:

A. The covered health care practitioner engaging in legally protected health care activity or aiding and assisting legally protected health care activity;

B. An adverse action or formal disciplinary action in another state against the covered health care practitioner based on engaging in legally protected health care activity or aiding and assisting legally protected health care activity;

C. Professional discipline imposed on a health care practitioner by another state’s professional licensing board, agency or organization based on the health care practitioner engaging in legally protected health care activity or aiding and assisting legally protected health care activity.

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Sec. E-3. 24-A MRS §2159-F is amended to read:

§2159-F. Discrimination ~~based solely on provision of reproductive health care services~~ in medical malpractice insurance based solely on legally protected health care activity

1. Definitions. As used in this section, unless the context otherwise indicates, the following terms have the following meanings.

A. "Adverse action" means revocation, suspension or other disciplinary action against a health care professional's license.

~~B. "Health care professional who provides reproductive health care services" means a health care professional who provides, authorizes, recommends, aids, assists, refers for or otherwise participates in an abortion or any other reproductive health care services provided for the purpose of an abortion performed on an individual.~~

B. "Aids and assists legally protected health care activity" has the same meaning as in Title 14, section 9002, subsection 1.

C. "Legally protected health care activity" has the same meaning as in Title 14, section 9002, subsection 6.

2. Discrimination prohibited. An insurer that provides medical malpractice insurance in this State may not refuse to issue or renew coverage, cancel or restrict coverage, impose any sanctions, fines, penalties or rate increases or require the payment of additional charges by a health care professional who ~~provides reproductive health care services~~ engages in legally protected health care activity or aids and assists legally protected health care activity on the sole basis that the health care professional is acting in violation of another state's law related to legally protected health care or aiding and assisting legally protected health care activity or is subject to an adverse action against the health care professional's license in another state for a violation of that state's law related to legally protected health care or aiding and assisting legally protected health care activity.

3. Action based on adverse action in another state prohibited. An insurer that provides medical malpractice insurance in this State may not refuse to issue or renew coverage, cancel or restrict coverage or require the payment of additional charges by a health care professional who provides reproductive health care services engages in legally protected health care activity or aids and assists legally protected health care activity as a result of an adverse action against the health care professional's license in another state if the adverse action is solely based on a violation of the other state's law ~~that prohibits abortion and any related reproductive health care services in that state or for a resident of that state~~ related to legally protected health care or aiding and assisting legally protected health care activity.

Sec. E-4. 24-A MRS §4301-A, subsections 5-A and 16-B are enacted to read:

5-A. Gender affirming care. "Gender-affirming health care services" has the same meaning as in Title 14, section 9002, subsection 3.

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16-B. Reproductive health care services. “Reproductive health care services” has the same meaning as in Title 14, section 9002, subsection 7.

Sec. E-5. 24-A MRSA §4303, sub-§ 2 is amended to read:

2. Credentialing. The credentialing of providers by a carrier is governed by this subsection.

A. The granting of credentials must be based on objective standards that are available to providers upon application for credentialing. A carrier shall consult with appropriately qualified health care professionals in developing its credentialing standards.

B. All credentialing decisions, including those granting, denying or withdrawing credentials, must be in writing. The provider must be provided with all reasons for the denial of an application for credentialing or the withdrawal of credentials. A withdrawal of credentials must be treated as a provider termination and is subject to the requirements of subsection 3-A and 3-B.

C. A carrier shall establish and maintain an appeal procedure, including the provider's right to a hearing, for dealing with provider concerns relating to the denial of credentialing for not meeting the objective credentialing standards of the plan and the contractual relationship between the carrier and the provider. The superintendent shall determine whether the process provided by a carrier is fair and reasonable. This procedure must be specified in every contract between a carrier and a provider or between a carrier and a provider network if a carrier does not contract with providers individually.

D. A carrier shall make credentialing decisions, including those granting or denying credentials, within 60 days of receipt of a completed credentialing application from a provider. For the purposes of this paragraph, an application is completed if the application includes all of the information required by the uniform credentialing application used by carriers and providers in this State, such attachments to that application as required by the carrier at the time of application and all corrections required by the carrier. Within 30 days of initial receipt of a credentialing application, a carrier shall review the entire application and, if it is incomplete, shall return it to the provider for corrections with a comprehensive list of all corrections needed at the time the application is first returned to the provider. A carrier may not require that a provider have a home address within the State before accepting an application. A carrier that is unable to make a credentialing decision on a completed credentialing application within the 60-day period as required in this paragraph shall notify the bureau in writing prior to the expiration of the 60-day period on that application and request authorization for an extension on that application. A carrier that requests an extension shall also submit to the bureau an explanation of the reasons why the credentialing decision on an application is taking longer than is permitted or, if the problem is not specific to a particular application, a written remediation plan to bring the carrier's credentialing practices in line with the 60-day limit in this paragraph.

Sec. E-6. 24-A MRSA §4303, sub-§ 3 is amended to read:

3. Provider's right to advocate for medically appropriate care. A carrier offering or renewing a managed care plan may not terminate or otherwise discipline a participating provider because the provider advocates for medically appropriate health care. A carrier may not restrict a provider from disclosing to any enrollee any information the provider determines appropriate regarding the nature of treatment and any risks or alternatives to treatment, the availability of other therapy, consultations or tests or the decision of any plan to authorize or deny health care services or benefits.

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A. For the purposes of this section, "to advocate for medically appropriate health care" means to discuss or recommend a course of treatment, including gender-affirming health care services and reproductive health care services, to an enrollee; to appeal a managed care plan's decision to deny payment for a service, including gender-affirming health care services and reproductive health care services, pursuant to an established grievance or appeal procedure; or to protest a decision, policy or practice that the provider, consistent with the degree of learning and skill ordinarily possessed by reputable providers, reasonably believes impairs the provider's ability to provide medically appropriate health care, including gender-affirming health care services and reproductive health care services, to the provider's patients.

B. Nothing in this subsection may be construed to prohibit a plan from making a determination not to pay for a particular medical treatment or service or to enforce reasonable peer review or utilization review protocols.

Sec. E-7. 24-A MRSA §4303, sub-§ 3-B is enacted to read:

3-B. Provider's right to engage in legally protected health care activity. A carrier offering or renewing a health plan in this State may not terminate or nonrenew a contract with a participating provider or impose any monetary penalties or financial disincentives on a participating provider on the sole basis that the participating provider engages in legally protected health care activity or aids and assists legally protected health care activity.

PART F

Sec. F-1. 22 MRSA §1711-C, sub-§1 is amended to read:

1. Definitions. As used in this section, unless the context otherwise indicates, the following terms have the following meanings.

A. "Authorized representative of an individual" or "authorized representative" means an individual's legal guardian; agent pursuant to Title 18-C, section 5-803; agent pursuant to Title 18-C, Article 5, Part 9; or other authorized representative or, after death, that person's personal representative or a person identified in subsection 3-B. For a minor who has not consented to health care treatment in accordance with the provisions of state law, "authorized representative" means the minor's parent, legal guardian or guardian ad litem.

A-1. "Authorization to disclose" means authorization to disclose health care information in accordance with subsection 3, 3-A or 3-B.

B. "Disclosure" means the release, transfer of or provision of access to health care information in any manner obtained as a result of a professional health care relationship between the individual and the health care practitioner or facility to a person or entity other than the individual.

B-1. "Gender-affirming health care services" has the same meaning as in Title 14, section 9002, subsection 3.

C. "Health care" means preventative, diagnostic, therapeutic, rehabilitative, maintenance or palliative care, services, treatment, procedures or counseling, including appropriate assistance

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with disease or symptom management and maintenance, that affects an individual's physical, mental or behavioral condition, including individual cells or their components or genetic information, or the structure or function of the human body or any part of the human body. Health care includes prescribing, dispensing or furnishing to an individual drugs, biologicals, medical devices or health care equipment and supplies; providing hospice services to an individual; and the banking of blood, sperm, organs or any other tissue.

D. "Health care facility" or "facility" means a facility, institution or entity licensed pursuant to this Title that offers health care to persons in this State, including a home health care provider, hospice program and a pharmacy licensed pursuant to Title 32. For the purposes of this section, "health care facility" does not include a state mental health institute, the Elizabeth Levinson Center, the Aroostook Residential Center or Freeport Towne Square.

E. "Health care information" means information that directly identifies the individual and that relates to an individual's physical, mental or behavioral condition, personal or family medical history or medical treatment or the health care provided to that individual. "Health care information" does not include information that protects the anonymity of the individual by means of encryption or encoding of individual identifiers or information pertaining to or derived from federally sponsored, authorized or regulated research governed by 21 Code of Federal Regulations, Parts 50 and 56 and 45 Code of Federal Regulations, Part 46, to the extent that such information is used in a manner that protects the identification of individuals. The Board of Directors of the Maine Health Data Organization shall adopt rules to define health care information that directly identifies an individual. Rules adopted pursuant to this paragraph are routine technical rules as defined in Title 5, chapter 375, subchapter II-A.

"Health care information" does not include information that is created or received by a member of the clergy or other person using spiritual means alone for healing as provided in Title 32, sections 2103 and 3270.

F. "Health care practitioner" means a person licensed by this State to provide or otherwise lawfully providing health care or a partnership or corporation made up of those persons or an officer, employee, agent or contractor of that person acting in the course and scope of employment, agency or contract related to or supportive of the provision of health care to individuals.

G. "Individual" means a natural person who is the subject of the health care information under consideration and, in the context of disclosure of health care information, includes the individual's authorized representative.

G-1. "Reproductive health care services" has the same meaning as in Title 14, section 9002, subsection 7.

H. "Third party" or "3rd party" means a person other than the individual to whom the health care information relates.

Sec. F-2. 22 MRSA §1711-C, sub-§8 is repealed and the following enacted in its place:

8. Prohibited Disclosure. The following disclosures of health care information are prohibited.

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A. A health care practitioner, facility or state-designated statewide health information exchange may not disclose health care information for the purpose of marketing or sales without written or oral authorization for the disclosure. [Note to committee: paragraph A is in current §1711-C(8) while paragraph B below is new]

B. Notwithstanding any other provision of this section and except as provided in paragraph C, a health care practitioner, facility or state-designated statewide health information exchange may not disclose any of the following in a civil or administrative action or proceeding or in response to a subpoena issued in a civil or administrative action proceeding unless authorized in writing by the individual or the individual's authorized representative.

(1) Any communication about reproductive health care services or gender-affirming health care services made to the health care practitioner, facility or state-designated statewide health information exchange from the individual or anyone acting on behalf of the patient, including an authorized representative of the individual.

(2) Any information obtained through a personal examination of an individual relating to reproductive health care services or gender-affirming health care services.

C. Paragraph B does not apply in the following circumstances.

(1) If the communication or information to be disclosed relates to an individual who is a plaintiff in a medical malpractice action and the health care practitioner, facility or state-designated statewide health information exchange from whom the communication or information is requested is a defendant in the medical malpractice action.

(2) If the communication or information to be disclosed is requested by a professional licensing board that licenses health care practitioners in this State and the request relates to and is made in connection with a complaint investigation. This subparagraph does not apply if the complaint is based solely on an allegation that a licensee of the board provided reproductive health care services or gender-affirming health care services that are lawful within this State and that are within the licensee's scope of practice.

(3) A request made in connection with an investigation of abuse, neglect or exploitation of a child or an incapacitated or dependent adult if the communication or information to be disclosed is requested by the United States Department of Justice, a law enforcement agency of this State or a political subdivision of this State or any other federal agency or agency of this State that pursuant to statute is responsible for investigating such abuse, neglect or exploitation.

D. Nothing in this subsection may be construed to impede the lawful disclosure of information 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.

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SUMMARY

This amendment replaces the bill, which is a concept draft. The amendment provides protections to patients who seek, health care practitioners who provide and those who assist health care practitioners in providing gender-affirming health care services and reproductive health care services in accordance with the applicable standard of care.

Part A of the amendment:

1. Establishes that access to gender-affirming health care services and reproductive health care services, when those services are authorized under the laws of this State, is a legal right and that interference with access to such services or the provision of these services is against the public policy of this state;

2. It defines "legally protected health care activity" as the exercise or attempted exercise of the right to gender-affirming health care services or reproductive health care services secured in this State as well as the provision or attempted provision of gender-affirming health care services or reproductive health care services authorized under the laws of this State by a health care practitioner licensed and physically present in this State, regardless of whether the patient is located in this State or the health care practitioner is licensed in the state where the patient is located. "Legally protected health care activity" does not include conduct that could form the basis of civil, criminal or administrative liability under the laws of this State had the course of conduct occurred entirely within this State;

3. It authorizes a person against whom a civil, criminal or administrative action in another state is brought to deter, prevent, sanction or punish that person for engaging in or for aiding and assisting legally protected health care activity, referred to in the amendment as "hostile litigation," to bring a civil action in this State for damages, punitive damages and equitable relief. A court in this State may include in a damage award the amount of any judgment issued in connection with the hostile litigation as well as the person's reasonable attorney's fees and expenses incurred in connection with that action;

4. It requires a person seeking to enforce in this State a foreign judgment in connection with hostile litigation to bring an action on the judgment within five years. A court in this State may not enforce a foreign judgment in connection with hostile litigation if the court that issued the judgment lacked jurisdiction or failed to provide due process of law;

5. It provides that, unless required by federal law, a court of this State may not order a person in this State to give testimony or produce documents or other things in any proceeding involving hostile litigation. In addition, unless required by federal law, a court in this State may not issue a summons or warrant in a case involving a grand jury investigation of or prosecution under the criminal laws of another state for engaging in or for aiding and assisting legally protected health care activity unless the conduct at issue would constitute a criminal offense if it had occurred entirely within this State;

6. It prohibits public agencies, including law enforcement agencies, from cooperating with or expending public resources in furtherance of an investigation or proceeding against a person for engaging in or aiding and assisting legally protected health care activity. It also prohibits the arrest of a person in this State if the arrest is related to criminal liability for engaging in or aiding and assisting legally protected health care activity. The amendment does not prohibit a public agency, including a law

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enforcement agency, from responding to a warrant or extradition demand on the good faith belief that the warrant or demand is valid in this State; and

7. It provides that the laws of this State apply to any case or controversy heard in this State involving legally protected health care activity or aiding and assisting legally protected health care activity.

Part B of the amendment amends the Uniform Interstate Depositions and Discovery Act, through which a person may request that a court in this State issue a subpoena to effectuate a subpoena issued under the authority of a court in another state, referred to as a "foreign subpoena." Under the amendment, a person submitting a foreign subpoena to a clerk of court must also submit an affidavit attesting whether the foreign subpoena seeks documents, information, inspection or testimony related to the provision or receipt of legally protected health care activity or aiding and assisting legally protected health care activity. If the affidavit reveals that the foreign subpoena is related to legally protected health care activity or aiding and assisting legally protected health care activity, the clerk may not issue the subpoena and must present the request to the court. The court must deny the request unless it finds that the foreign subpoena seeks documents, information, inspection or testimony related to specified types of civil actions either brought by a patient or brought under a contract for which a similar cause of action exists under the laws of this State.

Part C of the amendment amends the Uniform Criminal Extradition Act to prohibit the Governor from surrendering a person charged in another state for engaging in or aiding and assisting legally protected health care activity unless the executive authority in the other state alleges that the accused was physically present in the other state when the alleged offense was committed and thereafter fled the other state.

In addition, Part C of the amendment prohibits a court in this State from issuing a search warrant authorizing a government entity to obtain portable electronic device content information that relates to an investigation into legally protected health care activity or aiding and assisting legally protected health care activity.

Part D of the amendment provides that a health care practitioner that engages in legally protected health care activity may participate in the Address Confidentiality Program administered by the Secretary of State.

Current law prohibits an insurer that provides medical malpractice insurance in this State from discriminating or taking any adverse action against a health care professional who provides reproductive health care services on the sole basis that the health care professional is acting in violation of another state's law or is subject to an adverse action against the health care professional's license in another state. Part E of the amendment extends analogous protections to health care practitioners who engage in or aid and assist legally protected health care activity as defined in Part A of the amendment.

In addition, Part E of the amendment:

1. Prohibits a professional licensing authority in this State from subjecting a health care practitioner to professional discipline based solely on the health care practitioner engaging in or aiding and assisting legally protected health care activity or a pending or final criminal, civil or professional discipline action in another state based on engaging in or aiding and assisting legally protected health care activity;

2. Prohibits a health care provider or health care entity from restricting or denying the clinical privileges of or taking formal disciplinary action against a health care practitioner solely as a result of the

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health care practitioner engaging in or aiding and assisting legally protected health care activity or the initiation or final disposition of a professional discipline action by a professional licensing authority in another State based on the health care practitioner engaging in or aiding and assisting legally protected health care activity; and

3. Prohibits a carrier offering or renewing a health care plan in this State from terminating or not renewing a contract with or imposing any monetary penalties against a participating provider on the sole basis that the participating provider engages in or aids and assists legally protected health care activity.

Part F of the amendment prohibits a health care practitioner or facility from disclosing in a civil or administrative action or proceeding or in response to a subpoena issued in such a proceeding information obtained through an examination of an individual relating to reproductive health care services or gender-affirming health care services and from disclosing a communication from an individual or a person acting on the individual's behalf about reproductive health care services or gender-affirming health care services unless:

1. The disclosure is authorized in writing by the individual;
2. The disclosure is requested in connection with a medical malpractice claim brought by the individual against the health care practitioner or facility;
3. The disclosure is requested by a professional licensing board in this State in connection with a complaint that is not based solely on an allegation that a licensee provided reproductive health care services or gender-affirming health care services that are lawful in this State and within the licensee's scope of practice; or
4. The disclosure is requested in connection with an investigation of abuse, neglect or exploitation of a child or an incapacitated or dependent adult by a federal or Maine agency responsible for investigating such abuse, neglect or exploitation.