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STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2013

A N A C T

RELATING TO BUSINESSES AND PROFESSIONS - CONFIDENTIALITY OF
HEALTHCARE COMMUNICATIONS AND INFORMATION ACT

Introduced By: Senators Cool Rumsey, and Satchell

Date Introduced: February 28, 2013

Referred To: Senate Judiciary

(Attorney General)

It is enacted by the General Assembly as follows:

- 1 SECTION 1. Section 5-37.3-4 of the General Laws in Chapter 5-37.3 entitled
2 "Confidentiality of Health Care Communications and Information Act" is hereby amended to read
3 as follows:
- 4 **5-37.3-4. Limitations on and permitted disclosures.** -- (a) (1) Except as provided in
5 subsection (b) of this section or as specifically provided by the law, a patient's confidential health
6 care information shall not be released or transferred without the written consent of the patient or
7 his or her authorized representative, on a consent form meeting the requirements of subsection (d)
8 of this section. A copy of any notice used pursuant to subsection (d) of this section, and of any
9 signed consent shall, upon request, be provided to the patient prior to his or her signing a consent
10 form. Any and all managed care entities and managed care contractors writing policies in the state
11 shall be prohibited from providing any information related to enrollees which is personal in
12 nature and could reasonably lead to identification of an individual and is not essential for the
13 compilation of statistical data related to enrollees, to any international, national, regional, or local
14 medical information data base. This provision shall not restrict or prohibit the transfer of
15 information to the department of health to carry out its statutory duties and responsibilities.
- 16 (2) Any person who violates the provisions of this section may be liable for actual and
17 punitive damages.
- 18 (3) The court may award a reasonable attorney's fee at its discretion to the prevailing

1 party in any civil action under this section.

2 (4) Any person who knowingly and intentionally violates the provisions of this section
3 shall, upon conviction, be fined not more than five thousand (\$5,000) dollars for each violation,
4 or imprisoned not more than six (6) months for each violation, or both.

5 (5) Any contract or agreement which purports to waive the provisions of this section
6 shall be declared null and void as against public policy.

7 (b) No consent for release or transfer of confidential health care information shall be
8 required in the following situations:

9 (1) To a physician, dentist, or other medical personnel who believes, in good faith, that
10 the information is necessary for diagnosis or treatment of that individual in a medical or dental
11 emergency;

12 (2) To medical and dental peer review boards, or the board of medical licensure and
13 discipline, or board of examiners in dentistry;

14 (3) To qualified personnel for the purpose of conducting scientific research, management
15 audits, financial audits, program evaluations, actuarial, insurance underwriting, or similar studies;
16 provided, that personnel shall not identify, directly or indirectly, any individual patient in any
17 report of that research, audit, or evaluation, or otherwise disclose patient identities in any manner;

18 (4) By a health care provider to appropriate law enforcement personnel, or to a person if
19 the health care provider believes that person or his or her family is in danger from a patient; or to
20 appropriate law enforcement personnel if the patient has or is attempting to obtain narcotic drugs
21 from the health care provider illegally; or to appropriate law enforcement personnel or
22 appropriate child protective agencies if the patient is a minor child or the parent or guardian of
23 said child and/or the health care provider believes, after providing health care services to the
24 patient, that the child is or has been physically, psychologically or sexually abused and neglected
25 as reportable pursuant to section 40-11-3; [or to appropriate law enforcement personnel or the](#)
26 [division of elderly affairs if the patient is an elder person and the healthcare provider believes,](#)
27 [after providing healthcare services to the patient, that the elder person is or has been abused,](#)
28 [neglected or exploited as reportable pursuant to section 42-9.2-4 and section 42-66-8;](#) or to law
29 enforcement personnel in the case of a gunshot wound reportable under section 11-47-48; The
30 disclosures authorized by this subsection being limited to the minimum amount of information
31 necessary to accomplish the intended purpose of the release of information.

32 (5) Between or among qualified personnel and health care providers within the health
33 care system for purposes of coordination of health care services given to the patient and for
34 purposes of education and training within the same health care facility; or

1 (6) To third party health insurers including to utilization review agents as provided by
2 section 23-17.12-9(c)(4), third party administrators licensed pursuant to chapter 20.7 of title 27
3 and other entities that provide operational support to adjudicate health insurance claims or
4 administer health benefits;

5 (7) To a malpractice insurance carrier or lawyer if the health care provider has reason to
6 anticipate a medical liability action; or

7 (8) (i) To the health care provider's own lawyer or medical liability insurance carrier if
8 the patient whose information is at issue brings a medical liability action against a health care
9 provider.

10 (ii) Disclosure by a health care provider of a patient's health care information which is
11 relevant to a civil action brought by the patient against any person or persons other than that
12 health care provider may occur only under the discovery methods provided by the applicable
13 rules of civil procedure (federal or state). This disclosure shall not be through ex parte contacts
14 and not through informal ex parte contacts with the provider by persons other than the patient or
15 his or her legal representative. Nothing in this section shall limit the right of a patient or his or her
16 attorney to consult with that patient's own physician and to obtain that patient's own health care
17 information;

18 (9) To public health authorities in order to carry out their functions as described in this
19 title and titles 21 and 23, and rules promulgated under those titles. These functions include, but
20 are not restricted to, investigations into the causes of disease, the control of public health hazards,
21 enforcement of sanitary laws, investigation of reportable diseases, certification and licensure of
22 health professionals and facilities, review of health care such as that required by the federal
23 government and other governmental agencies;

24 (10) To the state medical examiner in the event of a fatality that comes under his or her
25 jurisdiction;

26 (11) In relation to information that is directly related to current claim for workers'
27 compensation benefits or to any proceeding before the workers' compensation commission or
28 before any court proceeding relating to workers' compensation;

29 (12) To the attorneys for a health care provider whenever that provider considers that
30 release of information to be necessary in order to receive adequate legal representation;

31 (13) By a health care provider to appropriate school authorities of disease, health
32 screening and/or immunization information required by the school; or when a school age child
33 transfers from one school or school district to another school or school district;

34 (14) To a law enforcement authority to protect the legal interest of an insurance

1 institution, agent, or insurance-support organization in preventing and prosecuting the
2 perpetration of fraud upon them;

3 (15) To a grand jury or to a court of competent jurisdiction pursuant to a subpoena or
4 subpoena duces tecum when that information is required for the investigation or prosecution of
5 criminal wrongdoing by a health care provider relating to his or her or its provisions of health
6 care services and that information is unavailable from any other source; provided, that any
7 information so obtained is not admissible in any criminal proceeding against the patient to whom
8 that information pertains;

9 (16) To the state board of elections pursuant to a subpoena or subpoena duces tecum
10 when that information is required to determine the eligibility of a person to vote by mail ballot
11 and/or the legitimacy of a certification by a physician attesting to a voter's illness or disability;

12 (17) To certify, pursuant to chapter 20 of title 17, the nature and permanency of a
13 person's illness or disability, the date when that person was last examined and that it would be an
14 undue hardship for the person to vote at the polls so that the person may obtain a mail ballot;

15 (18) To the central cancer registry;

16 (19) To the Medicaid fraud control unit of the attorney general's office for the
17 investigation or prosecution of criminal or civil wrongdoing by a health care provider relating to
18 his or her or its provision of health care services to then Medicaid eligible recipients or patients,
19 residents, or former patients or residents of long term residential care facilities; provided, that any
20 information obtained shall not be admissible in any criminal proceeding against the patient to
21 whom that information pertains;

22 (20) To the state department of children, youth, and families pertaining to the disclosure
23 of health care records of children in the custody of the department;

24 (21) To the foster parent or parents pertaining to the disclosure of health care records of
25 children in the custody of the foster parent or parents; provided, that the foster parent or parents
26 receive appropriate training and have ongoing availability of supervisory assistance in the use of
27 sensitive information that may be the source of distress to these children;

28 (22) A hospital may release the fact of a patient's admission and a general description of
29 a patient's condition to persons representing themselves as relatives or friends of the patient or as
30 a representative of the news media. The access to confidential health care information to persons
31 in accredited educational programs under appropriate provider supervision shall not be deemed
32 subject to release or transfer of that information under subsection (a) of this section; or

33 (23) To the workers' compensation fraud prevention unit for purposes of investigation
34 under sections 42-16.1-12 -- 42-16.1-16. The release or transfer of confidential health care

1 information under any of the above exceptions is not the basis for any legal liability, civil or
2 criminal, nor considered a violation of this chapter; or

3 (24) To a probate court of competent jurisdiction, petitioner, respondent, and/or their
4 attorneys, when the information is contained within a decision-making assessment tool which
5 conforms to the provisions of section 33-15-47.

6 (c) Third parties receiving and retaining a patient's confidential health care information
7 must establish at least the following security procedures:

8 (1) Limit authorized access to personally identifiable confidential health care
9 information to persons having a "need to know" that information; additional employees or agents
10 may have access to that information which does not contain information from which an individual
11 can be identified;

12 (2) Identify an individual or individuals who have responsibility for maintaining security
13 procedures for confidential health care information;

14 (3) Provide a written statement to each employee or agent as to the necessity of
15 maintaining the security and confidentiality of confidential health care information, and of the
16 penalties provided for in this chapter for the unauthorized release, use, or disclosure of this
17 information. The receipt of that statement shall be acknowledged by the employee or agent, who
18 signs and returns the statement to his or her employer or principal, who retains the signed
19 original. The employee or agent shall be furnished with a copy of the signed statement;

20 (4) Take no disciplinary or punitive action against any employee or agent solely for
21 bringing evidence of violation of this chapter to the attention of any person.

22 (d) Consent forms for the release or transfer of confidential health care information shall
23 contain, or in the course of an application or claim for insurance be accompanied by a notice
24 containing, the following information in a clear and conspicuous manner:

25 (1) A statement of the need for and proposed uses of that information;

26 (2) A statement that all information is to be released or clearly indicating the extent of
27 the information to be released; and

28 (3) A statement that the consent for release or transfer of information may be withdrawn
29 at any future time and is subject to revocation, except where an authorization is executed in
30 connection with an application for a life or health insurance policy in which case the
31 authorization expires two (2) years from the issue date of the insurance policy, and when signed
32 in connection with a claim for benefits under any insurance policy the authorization shall be valid
33 during the pendency of that claim. Any revocation shall be transmitted in writing.

34 (e) Except as specifically provided by law, an individual's confidential health care

1 information shall not be given, sold, transferred, or in any way relayed to any other person not
2 specified in the consent form or notice meeting the requirements of subsection (d) of this section
3 without first obtaining the individual's additional written consent on a form stating the need for
4 the proposed new use of this information or the need for its transfer to another person.

5 (f) Nothing contained in this chapter shall be construed to limit the permitted disclosure
6 of confidential health care information and communications described in subsection (b) of this
7 section.

8 SECTION 2. Chapter 42-9.2 of the General Laws entitled "Office of Elder Justice
9 Prosecution Unit" is hereby amended by adding thereto the following section:

10 **42-9.2-4. Abuse, neglect, and exploitation of elder persons - Duty to report. – Any**
11 **person who has reasonable cause to believe that any elder has been abused, neglected, or**
12 **exploited shall make an immediate report to a local law enforcement agency or the division of**
13 **state police. In cases of abuse, neglect or exploitation, any person who fails to make the report**
14 **shall be punished by a fine or not more than one thousand dollars (\$1,000). Nothing in this**
15 **section shall require an elder who is a victim of abuse, neglect, or exploitation to make a report**
16 **regarding such abuse, neglect, or exploitation to a local law enforcement agency or the division of**
17 **the state police.**

18 SECTION 3. This act shall take effect upon passage.

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EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF

A N A C T
RELATING TO BUSINESSES AND PROFESSIONS - CONFIDENTIALITY OF
HEALTHCARE COMMUNICATIONS AND INFORMATION ACT

- 1 This act would allow the release of patient records for investigation and prosecution if a
2 healthcare provider believes, after providing healthcare services to an elder patient, that the
3 patient is or has been physically, psychologically or sexually abused, neglected or exploited and
4 would require the reporting of any such abuse to the local or state law enforcement agencies.
5 This act would take effect upon passage.

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