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STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2018

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A N A C T

RELATING TO BUSINESSES AND PROFESSIONS - CONFIDENTIALITY OF HEALTH
CARE COMMUNICATIONS AND INFORMATION

Introduced By: Representatives Keable, Blazejewski, Craven, Messier, and Regunberg

Date Introduced: February 14, 2018

Referred To: House Judiciary

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.**

5 (a) (1) Except as provided in subsection (b) of this section, or as specifically provided by
6 the law, a patient's confidential health care information shall not be released or transferred
7 without the written consent of the patient, or his or her authorized representative, on a consent
8 form meeting the requirements of subsection (d) of this section. A copy of any notice used
9 pursuant to subsection (d) of this section, and of any signed consent shall, upon request, be
10 provided to the patient prior to his or her signing a consent form. Any and all managed care
11 entities and managed care contractors writing policies in the state shall be prohibited from
12 providing any information related to enrollees that is personal in nature and could reasonably lead
13 to identification of an individual and is not essential for the compilation of statistical data related
14 to enrollees, to any international, national, regional, or local medical information database. This
15 provision shall not restrict or prohibit the transfer of information to the department of health to
16 carry out its statutory duties and responsibilities.

17 (2) Any person who violates the provisions of this section may be liable for actual and
18 punitive damages.

1 (3) The court may award a reasonable attorney's fee at its discretion to the prevailing
2 party in any civil action under this section.

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

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

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

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

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

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

19 (4) (i) By a health care provider to appropriate law enforcement personnel, or to a person
20 if the health care provider believes that person, or his or her family, is in danger from a patient; or
21 to appropriate law enforcement personnel if the patient has, or is attempting to obtain, narcotic
22 drugs from the health care provider illegally; or to appropriate law enforcement personnel, or
23 appropriate child protective agencies, if the patient is a minor child or the parent or guardian of
24 said child and/or the health care provider believes, after providing health care services to the
25 patient, that the child is, or has been, physically, psychologically, or sexually abused and
26 neglected as reportable pursuant to § 40-11-3; or to appropriate law enforcement personnel or the
27 division of elderly affairs if the patient is an elder person and the healthcare provider believes,
28 after providing healthcare services to the patient, that the elder person is, or has been, abused,
29 neglected, or exploited as reportable pursuant to § 42-66-8; or to law enforcement personnel in
30 the case of a gunshot wound reportable under § 11-47-48;

31 (ii) A health care provider may disclose protected health information in response to a law
32 enforcement official's request for such information for the purpose of identifying or locating a
33 suspect, fugitive, material witness, or missing person, provided that the health care provider may
34 disclose only the following information:

- 1 (A) Name and address;
- 2 (B) Date and place of birth;
- 3 (C) Social security number;
- 4 (D) ABO blood type and rh factor;
- 5 (E) Type of injury;
- 6 (F) Date and time of treatment;
- 7 (G) Date and time of death, if applicable; and
- 8 (H) A description of distinguishing physical characteristics, including height, weight,
- 9 gender, race, hair and eye color, presence or absence of facial hair (beard or moustache), scars,
- 10 and tattoos.

11 (I) Except as permitted by this subsection, the health care provider may not disclose for
12 the purposes of identification or location under this subsection any protected health information
13 related to the patient's DNA or DNA analysis, dental records, or typing, samples, or analysis of
14 body fluids or tissue.

15 (iii) A health care provider may disclose protected health information in response to a law
16 enforcement official's request for such information about a patient who is, or is suspected to be, a
17 victim of a crime, other than disclosures that are subject to subsection (b)(4)(vii) of this section,
18 if:

19 (A) The patient agrees to the disclosure; or

20 (B) The health care provider is unable to obtain the patient's agreement because of
21 incapacity or other emergency circumstances provided that:

22 (1) The law enforcement official represents that such information is needed to determine
23 whether a violation of law by a person other than the victim has occurred, and such information is
24 not intended to be used against the victim;

25 (2) The law enforcement official represents that immediate law enforcement activity that
26 depends upon the disclosure would be materially and adversely affected by waiting until the
27 patient is able to agree to the disclosure; and

28 (3) The disclosure is in the best interests of the patient as determined by the health care
29 provider in the exercise of professional judgment.

30 (iv) A health care provider may disclose protected health information about a patient who
31 has died to a law enforcement official for the purpose of alerting law enforcement of the death of
32 the patient if the health care provider has a suspicion that such death may have resulted from
33 criminal conduct.

34 (v) A health care provider may disclose to a law enforcement official protected health

1 information that the health care provider believes in good faith constitutes evidence of criminal
2 conduct that occurred on the premises of the health care provider.

3 (vi) (A) A health care provider providing emergency health care in response to a medical
4 emergency, other than such emergency on the premises of the covered health care provider, may
5 disclose protected health information to a law enforcement official if such disclosure appears
6 necessary to alert law enforcement to:

- 7 (1) The commission and nature of a crime;
- 8 (2) The location of such crime or of the victim(s) of such crime; and
- 9 (3) The identity, description, and location of the perpetrator of such crime.

10 (B) If a health care provider believes that the medical emergency described in subsection
11 (b)(4)(vi)(A) of this section is the result of abuse, neglect, or domestic violence of the individual
12 in need of emergency health care, subsection (b)(4)(vi)(A) of this section does not apply and any
13 disclosure to a law enforcement official for law enforcement purposes is subject to subsection
14 (b)(4)(vii) of this section.

15 (vii) (A) Except for reports permitted by subsection (b)(4)(i) of this section, a health care
16 provider may disclose protected health information about a patient the health care provider
17 reasonably believes to be a victim of abuse, neglect, or domestic violence to law enforcement or a
18 government authority, including a social service or protective services agency, authorized by law
19 to receive reports of such abuse, neglect, or domestic violence:

- 20 (1) To the extent the disclosure is required by law and the disclosure complies with, and
21 is limited to, the relevant requirements of such law;
- 22 (2) If the patient agrees to the disclosure; or
- 23 (3) To the extent the disclosure is expressly authorized by statute or regulation and:

24 (i) The health care provider, in the exercise of professional judgment, believes the
25 disclosure is necessary to prevent serious harm to the patient or other potential victims; or

26 (ii) If the patient is unable to agree because of incapacity, a law enforcement or other
27 public official authorized to receive the report represents that the protected health information for
28 which disclosure is sought is not intended to be used against the patient and that an immediate
29 enforcement activity that depends upon the disclosure would be materially and adversely affected
30 by waiting until the patient is able to agree to the disclosure.

31 (B) A health care provider that makes a disclosure permitted by subsection (b)(4)(vii)(A)
32 of this section must promptly inform the patient that such a report has been, or will be, made,
33 except if:

- 34 (1) The health care facility, in the exercise of professional judgment, believes informing

1 the patient would place the individual at risk of serious harm; or

2 (2) The health care provider would be informing a personal representative, and the health
3 care provider reasonably believes the personal representative is responsible for the abuse, neglect,
4 or other injury, and that informing such person would not be in the best interests of the individual
5 as determined by the covered entity in the exercise of professional judgment.

6 (viii) The disclosures authorized by this subsection shall be limited to the minimum
7 amount of information necessary to accomplish the intended purpose of the release of
8 information.

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

12 (6) To third party health insurers, including to utilization review agents as provided by §
13 23-17.12-9(c)(4), third party administrators licensed pursuant to chapter 20.7 of title 27, and other
14 entities that provide operational support to adjudicate health insurance claims or administer health
15 benefits;

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

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

21 (ii) Disclosure by a health care provider of a patient's health care information that is
22 relevant to a civil action brought by the patient against any person or persons other than that
23 health care provider may occur only under the discovery methods provided by the applicable
24 rules of civil procedure (federal or state). This disclosure shall not be through ex parte contacts
25 and not through informal ex parte contacts with the provider [or the provider's legal representative](#)
26 by persons other than the patient or his or her legal representative.

27 Nothing in this section shall limit the right of a patient, or his or her attorney, to consult
28 with that patient's own physician and to obtain that patient's own health care information;

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

- 1 (10) To the state medical examiner in the event of a fatality that comes under his or her
2 jurisdiction;
- 3 (11) In relation to information that is directly related to a current claim for workers'
4 compensation benefits or to any proceeding before the workers' compensation commission or
5 before any court proceeding relating to workers' compensation;
- 6 (12) To the attorneys for a health care provider whenever that provider considers that
7 release of information to be necessary in order to receive adequate legal representation;
- 8 (13) By a health care provider to appropriate school authorities of disease, health
9 screening, and/or immunization information required by the school; or when a school-age child
10 transfers from one school or school district to another school or school district;
- 11 (14) To a law enforcement authority to protect the legal interest of an insurance
12 institution, agent, or insurance-support organization in preventing and prosecuting the
13 perpetration of fraud upon them;
- 14 (15) To a grand jury, or to a court of competent jurisdiction, pursuant to a subpoena or
15 subpoena duces tecum when that information is required for the investigation or prosecution of
16 criminal wrongdoing by a health care provider relating to his, her or its provisions of health care
17 services and that information is unavailable from any other source; provided, that any information
18 so obtained, is not admissible in any criminal proceeding against the patient to whom that
19 information pertains;
- 20 (16) To the state board of elections pursuant to a subpoena or subpoena duces tecum
21 when that information is required to determine the eligibility of a person to vote by mail ballot
22 and/or the legitimacy of a certification by a physician attesting to a voter's illness or disability;
- 23 (17) To certify, pursuant to chapter 20 of title 17, the nature and permanency of a
24 person's illness or disability, the date when that person was last examined and that it would be an
25 undue hardship for the person to vote at the polls so that the person may obtain a mail ballot;
- 26 (18) To the central cancer registry;
- 27 (19) To the Medicaid fraud control unit of the attorney general's office for the
28 investigation or prosecution of criminal or civil wrongdoing by a health care provider relating to
29 his, her or its provision of health care services to then-Medicaid-eligible recipients or patients,
30 residents, or former patients or residents of long-term residential care facilities; provided, that any
31 information obtained shall not be admissible in any criminal proceeding against the patient to
32 whom that information pertains;
- 33 (20) To the state department of children, youth and families pertaining to the disclosure
34 of health care records of children in the custody of the department;

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

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

10 (23) To the workers' compensation fraud prevention unit for purposes of investigation
11 under §§ 42-16.1-12 -- 42-16.1-16. The release or transfer of confidential health care information
12 under any of the above exceptions is not the basis for any legal liability, civil or criminal, nor
13 considered a violation of this chapter; or

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

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

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

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

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

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

33 (d) Consent forms for the release or transfer of confidential health care information shall
34 contain, or in the course of an application or claim for insurance be accompanied by a notice

1 containing, the following information in a clear and conspicuous manner:

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

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

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

11 (e) Except as specifically provided by law, an individual's confidential health care
12 information shall not be given, sold, transferred, or in any way relayed to any other person not
13 specified in the consent form or notice meeting the requirements of subsection (d) of this section
14 without first obtaining the individual's additional written consent on a form stating the need for
15 the proposed new use of this information or the need for its transfer to another person.

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

19 SECTION 2. 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 HEALTH
CARE COMMUNICATIONS AND INFORMATION

- 1 This act would prohibit disclosure in a civil action of a person's confidential health care
- 2 information through ex parte contact with the provider or the provider's legal representative.
- 3 This act would take effect upon passage.

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