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STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2013

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A N A C T

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

Introduced By: Representatives Hull, Chippendale, McLaughlin, Johnston, and Winfield

Date Introduced: February 14, 2013

Referred To: House 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 law enforcement personnel in the case of a
26 gunshot wound reportable under section 11-47-48; or to appropriate law enforcement personnel if
27 the health care provider providing treatment to a patient in a hospital if such disclosure appears
28 necessary to alert law enforcement to the commission and nature of a crime, the location of such
29 crime or the victim(s) of such crime; or the identity, description, location of the perpetrator of
30 such crime. Provided, however, if the health care provider reasonably believes that the patient
31 receiving treatment has been a victim of domestic violence or sexual assault, the health care
32 provider must receive the patient's consent to the release of information to law enforcement
33 personnel. This exception shall not apply if the patient is unable to agree because of incapacity
34 and immediate enforcement activity would be materially and adversely affected by waiting until

1 the patient is able to consent to the release of information or the health care provider reasonably
2 believes that the patient's personal representative is responsible for the patient's injury and
3 informing the personal representative would not be in the best interests of the patient. The
4 disclosures authorized by this subsection being limited to the minimum amount of information
5 necessary to accomplish the intended purpose of the release of information.

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

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

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

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

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

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

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

34 (11) In relation to information that is directly related to current claim for workers'

1 compensation benefits or to any proceeding before the workers' compensation commission or
2 before any court proceeding relating to workers' compensation;

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

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

8 (14) To a law enforcement authority to protect the legal interest of an insurance
9 institution, agent, or insurance-support organization in preventing and prosecuting the
10 perpetration of fraud upon them;

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

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

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

23 (18) To the central cancer registry;

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

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

32 (21) To the foster parent or parents pertaining to the disclosure of health care records of
33 children in the custody of the foster parent or parents; provided, that the foster parent or parents
34 receive appropriate training and have ongoing availability of supervisory assistance in the use of

1 sensitive information that may be the source of distress to these children;

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

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

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

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

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

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

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

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

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

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

34 (2) A statement that all information is to be released or clearly indicating the extent of

1 the information to be released; and

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

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

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

16 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 ACT

1 This act would require mandatory disclosure to appropriate law enforcement personnel if
2 a health care provider providing treatment to a patient in a hospital, if such disclosure appears
3 necessary to alert law enforcement to the commission and nature of a crime, the location of such
4 crime or the victim(s) of such crime, or the identity, description, location of the perpetrator of
5 such crime. If a health care provider reasonably believes that the patient receiving treatment has
6 been a victim of domestic violence or sexual assault, the health care provider must receive the
7 patient's consent to the release of information to law enforcement personnel.

8 This act would take effect upon passage.

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