

STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2014

A N A C T

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

Introduced By: Senators Cool Rumsey, Sosnowski, Pearson, Conley, and Satchell

Date Introduced: January 21, 2014

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) (i) By a health care provider to appropriate law enforcement personnel, or to a person
19 if the health care provider believes that person or his or her family is in danger from a patient; or
20 to appropriate law enforcement personnel if the patient has or is attempting to obtain narcotic
21 drugs 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 § 42-9.2-4 and § 42-66-8; or to law enforcement
29 personnel in the case of a gunshot wound reportable under section 11-47-48;

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

34 (A) Name and address;

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

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

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

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

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

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

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

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

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

33 (v) A health care provider may disclose to a law enforcement official protected health
34 information that the health care provider believes in good faith constitutes evidence of criminal

1 conduct that occurred on the premises of the health care provider.

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

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

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

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

19 (1) To the extent the disclosure is required by law and the disclosure complies with and
20 is limited to the relevant requirements of such law;

21 (2) If the patient agrees to the disclosure; or

22 (3) To the extent the disclosure is expressly authorized by statute or regulation and:

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

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

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

33 (1) The health care facility, in the exercise of professional judgment, believes informing
34 the patient would place the individual at risk of serious harm; or

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

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

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

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

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

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

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

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

34 (10) To the state medical examiner in the event of a fatality that comes under his or her

1 jurisdiction;

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

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

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

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

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

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

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

25 (18) To the central cancer registry;

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

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

34 (21) To the foster parent or parents pertaining to the disclosure of health care records of

1 children in the custody of the foster parent or parents; provided, that the foster parent or parents
2 receive appropriate training and have ongoing availability of supervisory assistance in the use of
3 sensitive information that may be the source of distress to these children;

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

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

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

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

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

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

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

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

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

1 (1) A statement of the need for and proposed uses of that information;
2 (2) A statement that all information is to be released or clearly indicating the extent of
3 the information to be released; and

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

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

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

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

20 **42-9.2-4. Abuse, neglect, and exploitation of elder persons - Duty to report. – Any**
21 **person who has reasonable cause to believe that any elder has been abused, neglected, or**
22 **exploited shall make an immediate report to a local law enforcement agency or the division of**
23 **state police. In such cases of abuse, neglect or exploitation, any person who fails to make the**
24 **report shall be punishable by a fine of not more than one thousand dollars (\$1,000). Nothing in**
25 **this section shall require an elder who is a victim of abuse, neglect, or exploitation to make a**
26 **report regarding such abuse, neglect or exploitation to a local law enforcement agency or the**
27 **division of the state police.**

28 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 sexual 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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