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**HEALTH AND HUMAN SERVICES**

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**STATE OF MAINE  
SENATE  
125TH LEGISLATURE  
FIRST REGULAR SESSION**

COMMITTEE AMENDMENT “ ” to S.P. 414, L.D. 1337, Bill, “An Act To Ensure Patient Privacy and Control with Regard to Health Information Exchanges”

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

**Sec. 1. 22 MRSA §1711-C, sub-§7**, as amended by PL 1999, c. 512, Pt. A, §5 and affected by §7, is further amended to read:

**7. Confidentiality policies.** A health care practitioner or facility or state-designated statewide health information exchange shall develop and implement policies, standards and procedures to protect the confidentiality, security and integrity of health care information to ensure that information is not negligently, inappropriately or unlawfully disclosed. The policies of health care facilities must provide that an individual being admitted for inpatient care be given notice of the right of the individual to control the disclosure of health care information. The policies must provide that routine admission forms include clear written notice of the individual's ability to direct that that individual's name be removed from the directory listing of persons cared for at the facility and notice that removal may result in the inability of the facility to direct visitors and telephone calls to the individual.

**Sec. 2. 22 MRSA §1711-C, sub-§8**, as enacted by PL 1997, c. 793, Pt. A, §8 and affected by §10, is amended to read:

**8. Prohibited disclosure.** A health care practitioner or 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.

**Sec. 3. 22 MRSA §1711-C, sub-§18** is enacted to read:

**18. Participation in a state-designated statewide health information exchange.** The following provisions apply to participation in a state-designated statewide health information exchange.

1 A. A health care practitioner may not deny a patient health care treatment and a  
2 health insurer may not deny a patient a health insurance benefit based solely on the  
3 provider's or patient's decision not to participate in a state-designated statewide health  
4 information exchange. Except when otherwise required by federal law, a payor of  
5 health care benefits may not require participation in a state-designated statewide  
6 health information exchange as a condition of participating in the payor's provider  
7 network.

8 B. Recovery for professional negligence is not allowed against any health care  
9 practitioner or health care facility on the grounds of a health care practitioner's or a  
10 health care facility's nonparticipation in a state-designated statewide health  
11 information exchange arising out of or in connection with the provision of or failure  
12 to provide health care services. In any civil action for professional negligence or in  
13 any proceeding related to such a civil action or in any arbitration, proof of a health  
14 care practitioner's, a health care facility's or a patient's participation or  
15 nonparticipation in a state-designated statewide health information exchange is  
16 inadmissible as evidence of liability or nonliability arising out of or in connection  
17 with the provision of or failure to provide health care services. This paragraph does  
18 not prohibit recovery or the admission of evidence of reliance on information in a  
19 state-designated statewide electronic health information exchange when there was  
20 participation by both the patient and the patient's health care practitioner.

21 C. A state-designated statewide health information exchange to which health care  
22 information is disclosed under this section shall provide an individual protection  
23 mechanism by which an individual may opt out from participation to prohibit the  
24 state-designated statewide health information exchange from disclosing the  
25 individual's health care information to a health care practitioner or health care facility.

26 D. At point of initial contact, a health care practitioner, health care facility or other  
27 entity participating in a state-designated statewide health information exchange shall  
28 provide to each patient, on a separate form, at minimum:

29 (1) Information about the state-designated statewide health information  
30 exchange, including a description of benefits and risks of participation in the  
31 state-designated statewide health information exchange;

32 (2) A description of how and where to obtain more information about or contact  
33 the state-designated statewide health information exchange;

34 (3) An opportunity for the patient to decline participation in the state-designated  
35 statewide health information exchange; and

36 (4) A declaration that a health care practitioner, health care facility or other  
37 entity may not deny a patient health care treatment based solely on the provider's  
38 or patient's decision not to participate in a state-designated statewide health  
39 information exchange.

40 The state-designated statewide health information exchange shall develop the form  
41 for use under this paragraph, with input from consumers and providers. The form  
42 must be approved by the office of the state coordinator for health information  
43 technology within the Governor's office of health policy and finance.

1           E. A health care practitioner, health care facility or other entity participating in a  
2           state-designated statewide health information exchange shall communicate to the  
3           exchange the decision of each patient who has declined participation and shall do so  
4           within a reasonable time frame, but not more than 2 business days following the  
5           receipt of a signed form, as described in paragraph D, from the patient, or shall  
6           establish a mechanism by which the patient may decline participation in the state-  
7           designated statewide health information exchange at no cost to the patient.

8           F. A state-designated statewide health information exchange shall process the  
9           request of a patient who has decided not to participate in the state-designated  
10           statewide health information exchange within 2 business days of receiving the  
11           patient's decision to decline, unless additional time is needed to verify the identity of  
12           the patient. A signed authorization from the patient is required before a patient is  
13           newly entered or reentered into the system if the patient chooses to begin  
14           participation at a later date.

15           Except as otherwise required by applicable law, regulation or rule or state or federal  
16           contract, or when the state-designated statewide health information exchange is  
17           acting as the agent of a health care practitioner, health care facility or other entity, the  
18           state-designated statewide health information exchange shall remove health  
19           information of individuals who have declined participation in the exchange. In no  
20           event may health information retained in the state-designated statewide health  
21           information exchange as set forth in this paragraph be made available to health care  
22           practitioners, health care facilities or other entities except as otherwise required by  
23           applicable law, regulation or rule or state or federal contract, or when the health care  
24           practitioner, health care facility or other entity is the originator of the information.

25           G. A state-designated statewide health information exchange shall establish a secure  
26           website accessible to patients. This website must:

27                   (1) Permit a patient to request a report of who has accessed that patient's records  
28                   and when the access occurred. This report must be delivered to the patient within  
29                   2 business days upon verification of the patient's identity by the state-designated  
30                   statewide health information exchange;

31                   (2) Provide a mechanism for a patient to decline participation in the state-  
32                   designated statewide health information exchange; and

33                   (3) Provide a mechanism for the patient to consent to participation in the state-  
34                   designated statewide health information exchange if the patient had previously  
35                   declined participation.

36           H. A state-designated statewide health information exchange shall establish for  
37           patients an alternate procedure to that provided for in paragraph F that does not  
38           require Internet access. A health care practitioner, health care facility or other entity  
39           participating in the state-designated statewide health information exchange shall  
40           provide information about this alternate procedure to all patients. The information  
41           must be included on the form identified in paragraph D.

42           I. A state-designated statewide health information exchange shall maintain records  
43           regarding all disclosures of health care information by and through the state-

1 designated statewide health information exchange, including the requesting party and  
2 the dates and times of the requests and disclosures.

3 J. A state-designated statewide health information exchange may not charge a patient  
4 or an authorized representative of a patient any fee for access or communication as  
5 provided in this subsection.

6 K. Notwithstanding any provision of this subsection to the contrary, a health care  
7 practitioner, health care facility or other entity shall provide the form and  
8 communication required by paragraphs D and F to all existing patients following the  
9 effective date of this subsection.

10 L. A state-designated statewide health information exchange shall meet or exceed all  
11 applicable federal laws and regulations pertaining to privacy, security and breach  
12 notification regarding personally identifiable protected health information, as defined  
13 in 45 Code of Federal Regulations, Part 160. If a breach occurs, the state-designated  
14 statewide health information exchange shall arrange with its participants for  
15 notification of each individual whose protected health information has been, or is  
16 reasonably believed by the exchange to have been, breached. For purposes of this  
17 paragraph, "breach" has the same meaning as in 45 Code of Federal Regulations, Part  
18 164, as amended.

19 M. The state-designated statewide health information exchange shall develop a  
20 quality management plan, including auditing mechanisms, in consultation with the  
21 office of the state coordinator for health information technology within the  
22 department, who shall review the plan and results.

23 **Sec. 4. 22 MRSA §1711-C, sub-§20** is enacted to read:

24 **20. Exemption from freedom of access laws.** Except as provided in this section,  
25 the names and other identifying information of individuals in a state-designated statewide  
26 health information exchange are confidential and are exempt from the provisions of Title  
27 1, chapter 13.

28 **Sec. 5. Report.** A state-designated statewide health information exchange under  
29 the Maine Revised Statutes, Title 22, section 1711-C shall by January 1, 2012 present a  
30 progress report to the office of the state coordinator for health information technology  
31 within the Department of Health and Human Services. The report must include the  
32 projected implementation date for the secure website required under Title 22, section  
33 1711-C.'

34 **SUMMARY**

35 This amendment replaces the bill and removes the language in the bill that requires a  
36 patient to opt in to the state-designated statewide health information exchange and instead  
37 makes it easier for patients to opt out of the exchange. The amendment retains provisions  
38 of the bill that prohibit a health care practitioner or health insurer from refusing to  
39 provide medical assistance or insurance coverage based on a patient's decision to  
40 participate or not to participate in a health information exchange. As in the bill, the  
41 amendment also prohibits reference to the participation or nonparticipation of a health  
42 care practitioner or health care facility in a health information exchange from being used

1 as evidence in actions for negligence or other civil actions. The health information  
2 exchange is required to establish a secure website accessible to a patient that must allow  
3 the patient to determine who accessed the patient's records and must include a method to  
4 decline participation in the exchange. The amendment also requires the health  
5 information exchange to meet or exceed all federal laws related to privacy, security and  
6 breach notification regarding personally identifiable protected health information.

7 **FISCAL NOTE REQUIRED**

8 **(See attached)**