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STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2019

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A N A C T

RELATED TO BUSINESSES AND PROFESSIONS - RHODE ISLAND HEALTH  
INFORMATION EXCHANGE ACT OF 2008

Introduced By: Representative Patricia A. Serpa

Date Introduced: April 25, 2019

Referred To: House Finance

It is enacted by the General Assembly as follows:

1 SECTION 1. Sections 5-37.7-2, 5-37.7-3, 5-37.7-4, 5-37.7-5, 5-37.7-6, 5-37.7-7, 5-37.7-  
2 8, 5-37.7-10 and 5-37.7-12 of the General Laws in Chapter 5-37.7 entitled "Rhode Island Health  
3 Information Exchange Act of 2008" are hereby amended to read as follows:

4 **5-37.7-2. Statement of purpose.**

5 The purpose of this chapter is to establish safeguards and confidentiality protections for  
6 the HIE in order to improve the quality, safety and value of health care, ~~keep confidential health~~  
7 ~~information secure and confidential and use the HIE to progress toward meeting public health~~  
8 ~~goals~~ by promoting interoperability, enhancing electronic communication between providers, and  
9 supporting public health goals, while keeping confidential health care information secure.

10 **5-37.7-3. Definitions.**

11 As used in this chapter:

12 (a) ~~"Agency" means the Rhode Island department of health.~~

13 (b) "Authorized representative" means:

14 (1) A person empowered by the patient ~~participant~~ to assert or to waive the  
15 confidentiality, or to disclose or authorize the disclosure of confidential information, as  
16 established by this chapter. That person is not, except by explicit authorization, empowered to  
17 waive confidentiality or to disclose or consent to the disclosure of confidential information; or

18 (2) A person appointed by the patient ~~participant~~ to make health care decisions on his or

1 her behalf through a valid durable power of attorney for health care as set forth in Rhode Island  
2 general laws § 23-4.10-2; or

3 (3) A guardian or conservator, with authority to make health care decisions, if the patient  
4 ~~participant~~ is decisionally impaired; or

5 (4) Another legally appropriate medical decision maker temporarily if the patient  
6 ~~participant~~ is decisionally impaired and no health care agent, guardian or conservator is available;  
7 or

8 (5) If the patient ~~participant~~ is deceased, his or her personal representative or, in the  
9 absence of that representative, his or her heirs-at-law; or

10 (6) A parent with the authority to make health care decisions for the parent's child; or

11 (7) A person authorized by the patient ~~participant~~ or their authorized representative to  
12 access their confidential health care information from the HIE, including family members or other  
13 proxies as designated by the patient, to assist patient ~~participant~~ with the coordination of their  
14 care.

15 (c) ~~"Authorization form" means the form described in § 5-37.7-7 of this chapter and by~~  
16 ~~which a patient participant provides authorization for the RHIO to allow access to, review of,~~  
17 ~~and/or disclosure of the patient participant's confidential health care information by electronic,~~  
18 ~~written, or other means.~~

19 (d) "Business associate" means a business associate as defined by HIPAA.

20 (e) "Confidential health care information" means all information relating to a ~~patient~~  
21 ~~participant's~~ patient's health care history, diagnosis, condition, treatment, or evaluation.

22 (f) "Coordination of care" means the process of coordinating, planning, monitoring,  
23 and/or sharing information relating to, and assessing a care plan for, treatment of a patient.

24 (g) "Data-submitting partner" means an individual, organization, or entity that has entered  
25 into a business associate agreement with the RHIO and submits ~~patient participants'~~ patients'  
26 confidential health care information through the HIE.

27 (h) "Department of health" means the Rhode Island department of health.

28 (i) "Disclosure report" means a report generated by the HIE relating to the record of  
29 access to, review of, and/or disclosure of a patient's confidential health care information received,  
30 accessed, or held by the HIE.

31 (j) "Electronic mobilization" means the capability to move clinical information  
32 electronically between disparate health care information systems while maintaining the accuracy  
33 of the information being exchanged.

34 (k) "Emergency" means the sudden onset of a medical, mental or substance abuse, or

1 other condition manifesting itself by acute symptoms of severity (e.g. severe pain) where the  
2 absence of medical attention could reasonably be expected, by a prudent lay person, to result in  
3 placing the patient's health in serious jeopardy, serious impairment to bodily or mental functions,  
4 or serious dysfunction of any bodily organ or part.

5 (l) "Health care provider" means any person or entity licensed by this state to provide or  
6 lawfully providing health care services, including, but not limited to, a physician, hospital,  
7 intermediate care facility or other health care facility, dentist, nurse, optometrist, podiatrist,  
8 physical therapist, psychiatric social worker, pharmacist or psychologist, and any officer,  
9 employee, or agent of that provider acting in the course and scope of his or her employment or  
10 agency related to or supportive of health care services.

11 (m) "Health care services" means acts of diagnosis, treatment, medical evaluation,  
12 referral or counseling or any other acts that may be permissible under the health care licensing  
13 statutes of this state.

14 (n) "Health Information Exchange" or "HIE" means the technical system operated, or to  
15 be operated, by the RHIO under state authority allowing for the statewide electronic mobilization  
16 of confidential health care information, pursuant to this chapter.

17 (o) "Health plan" means an individual plan or a group plan that provides, or pays the cost  
18 of, health care services for ~~patient participants~~ [a patients](#).

19 (p) "HIE Advisory Commission" means the advisory body established by the department  
20 of health in order to provide community input and policy recommendations regarding the use of  
21 the confidential health care information of the HIE.

22 (q) "HIPAA" means the Health Insurance Portability and Accountability Act of 1996, as  
23 amended.

24 (r) ~~"Participant" means a patient participant, a patient participant's authorized~~  
25 ~~representative, a provider participant, a data submitting partner, the regional health information~~  
26 ~~organization, and the department of health, that has agreed to authorize, submit, access, and/or~~  
27 ~~disclose confidential health care information via the HIE in accordance with this chapter. ["Opt](#)  
28 [out" means the ability for a patient to choose to not have their confidential health care](#)  
29 [information disclosed from the HIE in accordance with § 5-37.7-7.](#)~~

30 (s) ~~"Participation" means a patient participant's authorization, submission, access, and/or~~  
31 ~~disclosure of confidential health care information via the HIE in accordance with this chapter.~~

32 (t) "Patient ~~participant~~" means a person who receives health care services from a provider  
33 participant ~~and has agreed to participate in the HIE through the mechanisms established in this~~  
34 ~~chapter.~~

1 (u) "Provider participant" means a pharmacy, laboratory, health care provider, or health  
2 plan who is providing health care services or pays for the cost of health care services for a patient  
3 ~~participant~~ and/or is submitting ~~or~~ and/or accessing health care information through the HIE and  
4 has executed an electronic and/or written agreement regarding disclosure, access, receipt,  
5 retention, or release of confidential health care information to /from the HIE.

6 (v) "Regional health information organization" or "RHIO" means the organization  
7 designated as the RHIO by the state to provide administrative and operational support to the HIE.

8 **5-37.7-4. ~~Participation in the health information exchange. Use of the health~~**  
9 **information exchange.**

10 (a) There shall be established a statewide HIE under state authority to allow for the  
11 electronic mobilization of confidential health care information in Rhode Island. Confidential  
12 health care information may only be accessed, released, or transferred from the HIE in  
13 accordance with this chapter.

14 (b) The state of Rhode Island has an interest in encouraging ~~participation in use of~~ the  
15 HIE by all interested parties, including, but not limited to, health care providers, patients, health  
16 plans, entities submitting information to the HIE, entities obtaining information from the HIE,  
17 and the RHIO. ~~The Rhode Island department of health is also considered a participant for public~~  
18 ~~health purposes.~~

19 (c) ~~Patients and health care providers~~ Except as provided in § 5-37.7-7(b), patients shall  
20 have the choice to ~~participate in~~ opt out of having their confidential health care information  
21 disclosed from the HIE, ~~as through the process~~ defined by in regulations in accordance with ~~§ 5-~~  
22 ~~37.7-3; provided, however, that provider~~ § 5-37.7-5.

23 (d) Provider participants must continue to maintain their own medical record meeting the  
24 documentation and other standards imposed by otherwise applicable law.

25 (e) The department of health may submit to the HIE and/or receive from the HIE  
26 applicable confidential health care information for public health purposes.

27 ~~(d)(f) Participation in the HIE~~ Nothing contained herein shall have ~~no~~ an impact on the  
28 content of, or use or disclosure of, confidential health care information of ~~patient participants~~  
29 patients that is held in locations other than the HIE. Nothing in this chapter shall be construed to  
30 limit, change, or otherwise affect entities' rights to exchange confidential health care information  
31 in accordance with other applicable laws.

32 (e)(g) The state of Rhode Island hereby imposes on the HIE and the RHIO as a matter of  
33 state law, the obligation to maintain, and abide by the terms of, HIPAA complaint business  
34 associate agreements, including, without limitation, the obligations to use appropriate safeguards

1 to prevent use or disclosure of confidential health care information in accordance with HIPAA  
2 and this chapter; not to use or disclose confidential health care information other than as  
3 permitted by HIPAA, [other state and federal laws](#) and this chapter; or to make any amendment to  
4 a confidential health care record that a provider participant so directs; and to respond to a request  
5 by a patient ~~participant~~ to make an amendment to the ~~patient participant's~~ [patient's](#) confidential  
6 health care record.

7 **5-37.7-5. Regulatory oversight.**

8 (a) The ~~director of the~~ department ~~of health~~ shall develop regulations regarding the  
9 confidentiality of patient ~~participant~~ information received, accessed or held by the HIE and is  
10 authorized to promulgate such other regulations as the ~~director~~ [department](#) deems necessary or  
11 desirable to implement the provisions of this chapter, in accordance with the provisions set forth  
12 in chapter 17 of title 23 and chapter 35 of title 42 of the general laws.

13 (b) The department ~~of health~~ has exclusive jurisdiction over the HIE, except with respect  
14 to the jurisdiction conferred upon the attorney general in § 5-37.7-13. This chapter shall not apply  
15 to any other private and/or public health information systems utilized within a health care  
16 provider or other organization that provides health care services.

17 (c) The department ~~of health~~ shall promulgate rules and regulations for the establishment  
18 of an HIE advisory commission, ~~that~~ [The HIE advisory commission, in consultation with the](#)  
19 [RHIO](#), will be responsible for recommendations relating to [the department regarding](#) the use of,  
20 and appropriate confidentiality protections for, the confidential health care information of the  
21 HIE, ~~subject to regulatory oversight by the department of health~~. Said commission members shall  
22 be subject to the advice and consent of the senate. The commission shall report annually to the  
23 department ~~of health and the RHIO~~, and such report shall be made public.

24 **5-37.7-6. Rhode Island health information organization.**

25 The RHIO shall, subject to and consistent with department regulations and contractual  
26 obligations it has with the state of Rhode Island, be responsible for implementing recognized  
27 national standards for interoperability and all administrative, operational, and financial functions  
28 to support the HIE, including, but not limited to, implementing and enforcing policies for  
29 receiving, retaining, safeguarding and disclosing confidential health care information as required  
30 by this chapter. The RHIO is deemed to be the steward of the confidential health care information  
31 for which it has administrative responsibility. ~~The HIE advisory commission shall be responsible~~  
32 ~~for recommendations to the department of health, and in consultation with the RHIO regarding~~  
33 ~~the use of the confidential health care information.~~

34 **5-37.7-7. Disclosure.**

1 (a)(1) Except as provided in subsection (b), a patient ~~participant's or the patient's~~  
2 authorized representative may opt out of having their confidential health care information ~~may~~  
3 ~~only be accessed, released, or transferred~~ disclosed from the HIE ~~in accordance with an~~  
4 ~~authorization form signed by the patient participant or the patient's authorized representative.~~  
5 Patients shall be notified of their right to opt out of having their confidential health care  
6 information disclosed from the HIE through the process provided by regulation in accordance  
7 with § 5-37.7-5.

8 (b) ~~No authorization for release or transfer of confidential health care information from~~  
9 ~~the HIE shall be required.~~ The opt out does not apply to disclosures in the following situations:

10 (1) To a health care provider who believes, in good faith, that the information is  
11 necessary for diagnosis or treatment of that individual in an emergency; or

12 (2) To public health authorities in order to carry out their functions as described in this  
13 title and titles 21 and 23, and rules promulgated under those titles. These functions include, but  
14 are not restricted to, investigations into the causes of disease, the control of public health hazards,  
15 enforcement of sanitary laws, investigation of reportable diseases, certification and licensure of  
16 health professionals and facilities, review of health care such as that required by the federal  
17 government and other governmental agencies, and mandatory reporting laws set forth in Rhode  
18 Island general laws; or

19 (3) To the RHIO in order for it to effectuate the operation and administrative oversight of  
20 the HIE; and

21 (4) ~~To a health plan, if the information is necessary for care management of its plan~~  
22 ~~members, or for quality and performance measure reporting.~~

23 (c) ~~The content of the authorization form for access to, or the disclosure, release, or~~  
24 ~~transfer of confidential health care information from the HIE, shall be prescribed by the RHIO in~~  
25 ~~accordance with applicable department of health regulations, but, at a minimum, shall contain the~~  
26 ~~following information in a clear and conspicuous manner:~~

27 Notification and opt out procedures shall be developed in consultation with the HIE  
28 advisory commission and provided in regulation promulgated in accordance with § 5-37.7-5.  
29 Provider participants that share data with the HIE shall notify their patients that data is being  
30 shared with the HIE to support the provision of care, and inform their patients about the ability to  
31 opt out. At a minimum, the notification shall contain the following information in a clear and  
32 concise manner:

33 (1) A statement ~~of the need for and proposed uses of that information; and~~ that the  
34 patient's provider is a provider participant in the HIE, and as such may share the patient's

1 confidential health care information through the HIE as permitted by this chapter and all  
2 applicable state and federal law.

3 (2) A statement that the ~~authorization for access to, disclosure of, and/or release of~~  
4 ~~information may be withdrawn at any future time and is subject to revocation;~~ patient may opt out  
5 of having their confidential health care information disclosed from the HIE except as provided  
6 pursuant to § 5-37.7-7(b).

7 (3) ~~That the patient has the right not to participate in the HIE; and~~ A statement that a  
8 patient's choice to opt out of disclosing their confidential health care information from the HIE  
9 may be changed at any time.

10 (4) ~~The patient's right to choose to: (i) Enroll in and participate fully in the HIE; or (ii)~~  
11 ~~Designate only specific health care providers that may access the patient participant's confidential~~  
12 ~~health care information.~~ The method for opting out shall be provided by regulation in accordance  
13 with § 5-37.7-5.

14 (d) Except as specifically provided by state or federal law or this chapter, ~~or use for~~  
15 ~~clinical care,~~ a ~~patient participant's~~ patient's confidential health care information shall not be  
16 accessed by, given, sold, transferred, or in any way relayed from the HIE to any other person or  
17 entity ~~not specified in the patient participant authorization form meeting the requirements of~~  
18 ~~subsection (e) without first obtaining additional authorization.~~

19 (e) ~~Nothing contained in this chapter shall be construed to limit the permitted access to,~~  
20 ~~or the release, transfer, access or disclosure of, confidential health care information described in~~  
21 ~~subsection (b) or under other applicable law.~~

22 (f) Confidential health care information received, disclosed, or held by the HIE shall not  
23 be subject to subpoena directed to the HIE or RHIO unless the following procedures have been  
24 completed: (i) The person seeking the confidential health care information has already requested  
25 and received the confidential health care information from the health care provider that was the  
26 original source of the information; and (ii) A determination has been made by the superior court,  
27 upon motion and notice to the HIE or RHIO and the parties to the litigation in which the  
28 subpoena is served, that the confidential health care information sought from the HIE is not  
29 available from another source and is either relevant to the subject matter involved in the pending  
30 action or is reasonably calculated to lead to the discovery of admissible evidence in such pending  
31 action. Any person issuing a subpoena to the HIE or RHIO pursuant to this section shall certify  
32 that such measures have been completed prior to the issuance of the subpoena.

33 (g) Nothing contained herein shall interfere with, or impact upon, any rights or  
34 obligations imposed by the Workers Compensation Act as contained in chapters ~~29-38~~ 29 through

1 [38](#) of title 28.

2 (h) Nothing contained herein shall prohibit a health plan from becoming a data-  
3 submitting partner. A data-submitting partner is not considered a managed care entity or a  
4 managed care contractor and the HIE is not considered a regional or local medical information  
5 database pursuant to § 5-37.3-4.

6 **5-37.7-8. Security.**

7 The HIE must be subject to at least the following security procedures:

8 (1) Authenticate the recipient of any confidential health care information disclosed by the  
9 HIE pursuant to this chapter pursuant to rules and regulations promulgated by the ~~agency~~  
10 [department](#).

11 (2) Limit authorized access to personally identifiable confidential health care information  
12 to persons having a need to know that information; additional employees or agents may have  
13 access to de-identified information;

14 (3) Identify an individual or individuals who have responsibility for maintaining security  
15 procedures for the HIE;

16 (4) Provide an electronic or written statement to each employee or agent as to the  
17 necessity of maintaining the security and confidentiality of confidential health care information,  
18 and of the penalties provided for in this chapter for the unauthorized access, release, transfer, use,  
19 or disclosure of this information;

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

22 **5-37.7-10. Patient's rights.**

23 Pursuant to this chapter, a patient ~~participant~~ who has his or her confidential health care  
24 information ~~transferred through~~ [included in](#) the HIE shall have the following rights:

25 (1) To obtain a copy of his or her confidential health care information from the HIE;

26 (2) To obtain a copy of the disclosure report pertaining to his or her confidential health  
27 care information;

28 (3) To be notified as required by chapter 49.2 of title 11, the Rhode Island identity theft  
29 protection act, of a breach of the security system of the HIE;

30 (4) To ~~terminate~~ [change](#) his or her ~~participation~~ [opt out status](#) in the HIE in accordance  
31 with rules and regulations promulgated by the ~~agency~~ [department](#);

32 (5) To request to amend his or her own information through the provider participant;

33 (6) To request their confidential health care information from the HIE be disclosed to an  
34 authorized representative; and



1 (7) To request their confidential health care information from the HIE be disclosed to  
2 health care providers who are not provider participants as defined by this chapter.

3 **5-37.7-12. Reconciliation with other authorities.**

4 (a) This chapter shall only apply to the HIE system, and does not apply to any other  
5 private and/or public health information systems utilized in Rhode Island, including other health  
6 information systems utilized within or by a health care facility or organization.

7 (b) As this chapter provides extensive protection with regard to access to and disclosure  
8 of confidential health care information by the HIE, it supplements, with respect to the HIE only,  
9 any less stringent disclosure requirements, including, but not limited to, those contained in  
10 chapter 37.3 of this title, the health insurance portability and accountability act (HIPAA) and  
11 regulations promulgated thereunder, and any other less stringent federal or state law.

12 (c) This chapter shall not be construed to interfere with any other federal or state laws or  
13 regulations which provide more extensive protection than provided in this chapter for the  
14 confidentiality of health care information. ~~Notwithstanding such provision, because of the  
15 extensive protections with regard to access to and disclosure of confidential health care  
16 information by the HIE provided for in this chapter, patient authorization obtained for access to or  
17 disclosure of information to or from the HIE or a provider participant shall be deemed the same  
18 authorization required by other state or federal laws including information regarding mental  
19 health (the Rhode Island mental health law, Rhode Island general laws § 40.1-5-1 et seq.); HIV  
20 (Rhode Island general laws § 23-6.3-7); sexually transmitted disease (Rhode Island general laws  
21 §§ 23-6.3-7 and 23-11-9); alcohol and drug abuse (Rhode Island general laws § 23-1.10-1 et seq.,  
22 42 U.S.C. § 290dd-2) or genetic information (Rhode Island general laws § 27-41-53, Rhode  
23 Island general laws § 27-20-39 and Rhode Island general laws § 27-19-44).~~

24 SECTION 2. This act shall take effect upon passage.

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EXPLANATION  
BY THE LEGISLATIVE COUNCIL  
OF

A N A C T

RELATED TO BUSINESSES AND PROFESSIONS - RHODE ISLAND HEALTH  
INFORMATION EXCHANGE ACT OF 2008

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1           This act amends the Rhode Island Health Information Exchange Act of 2008. Patient  
2 health care providers which participate in the "Health Information Exchange" (HIE) shall provide  
3 their patients with information that the patient may elect to opt out of disclosure of information  
4 from the HIE in accordance with regulations which shall be promulgated by the department of  
5 health.

6           This act would take effect upon passage.

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