

2024 -- H 7448

LC004427

STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2024

A N A C T

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

Introduced By: Representatives Kislak, Giraldo, Voas, Alzate, Stewart, Potter, Edwards, Donovan, Cotter, and Carson

Date Introduced: February 02, 2024

Referred To: House Judiciary

(Dept. of BHDDH)

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), or as specifically provided by the law, a
6 patient's confidential healthcare information shall not be released or transferred without the written
7 consent of the patient, or his or her authorized representative, on a consent form meeting the
8 requirements of subsection (d). A copy of any notice used pursuant to subsection (d) 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 that is personal in nature
12 and could reasonably lead to identification of an individual and is not essential for the compilation
13 of statistical data related to enrollees, to any international, national, regional, or local medical-
14 information database. This provision shall not restrict or prohibit the transfer of information to the
15 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 party

1 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, or
4 imprisoned not more than six (6) months for each violation, or both.

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

7 (b) No consent for release or transfer of confidential healthcare 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 the
10 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 report
17 of that research, audit, or evaluation, or otherwise disclose patient identities in any manner;

18 (4)(i) By a healthcare provider to appropriate law enforcement personnel, or to a person if
19 the healthcare 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 healthcare provider illegally; or to appropriate law enforcement personnel, or appropriate
22 child-protective agencies, if the patient is a minor child or the parent or guardian of said child and/or
23 the healthcare provider believes, after providing healthcare services to the patient, that the child is,
24 or has been, physically, psychologically, or sexually abused and neglected as reportable pursuant
25 to § 40-11-3; or to appropriate law enforcement personnel or the office of healthy aging if the
26 patient is an elder person and the healthcare provider believes, after providing healthcare services
27 to the patient, that the elder person is, or has been, abused, neglected, or exploited as reportable
28 pursuant to § 42-66-8; [to report allegations of abuse, neglect, mistreatment, exploitation, death or](#)
29 [violation of rights to the department of behavioral healthcare, developmental disabilities and](#)
30 [hospitals \(BHDDH\), or to produce records to BHDDH when BHDDH makes a written demand for](#)
31 [records to a BHDDH-licensed organization, and/or to a facility or program subject to chapter 5 of](#)
32 [title 40.1 \("mental health law"\), pursuant to either chapter 5, 24, 24.5, 26 or 27 of title 40.1 for any](#)
33 [of the organization's or client's or patient's records;](#) or to law enforcement personnel in the case of
34 a gunshot wound reportable under § 11-47-48, or to patient emergency contacts and certified peer

1 recovery specialists notified in the case of an opioid overdose reportable under § 23-17.26-3;

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

6 (A) Name and address;

7 (B) Date and place of birth;

8 (C) Social security number;

9 (D) ABO blood type and RH factor;

10 (E) Type of injury;

11 (F) Date and time of treatment;

12 (G) Date and time of death, if applicable; and

13 (H) A description of distinguishing physical characteristics, including height, weight,
14 gender, race, hair and eye color, presence or absence of facial hair (beard or moustache), scars, and
15 tattoos.

16 (I) Except as permitted by this subsection, the healthcare provider may not disclose for the
17 purposes of identification or location under this subsection any protected health information related
18 to the patient's DNA or DNA analysis, dental records, or typing, samples, or analysis of body fluids
19 or tissue;

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

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

24 (B) The healthcare provider is unable to obtain the patient's agreement because of
25 incapacity or other emergency circumstances provided that:

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

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

32 (3) The disclosure is in the best interests of the patient as determined by the healthcare
33 provider in the exercise of professional judgment;

34 (iv) A healthcare provider may disclose protected health information about a patient who

1 has died to a law enforcement official for the purpose of alerting law enforcement of the death of
2 the patient if the healthcare provider has a suspicion that such death may have resulted from
3 criminal conduct;

4 (v) A healthcare provider may disclose to a law enforcement official protected health
5 information that the healthcare provider believes in good faith constitutes evidence of criminal
6 conduct that occurred on the premises of the healthcare provider;

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

11 (1) The commission and nature of a crime;

12 (2) The location of such crime or of the victim(s) of such crime; and

13 (3) The identity, description, and location of the perpetrator of such crime.

14 (B) If a healthcare provider believes that the medical emergency described in subsection
15 (b)(4)(vi)(A) is the result of abuse, neglect, or domestic violence of the individual in need of
16 emergency health care, subsection (b)(4)(vi)(A) does not apply and any disclosure to a law
17 enforcement official for law enforcement purposes is subject to subsection (b)(4)(vii);

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

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

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

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

27 (i) The healthcare provider, in the exercise of professional judgment, believes the
28 disclosure is necessary to prevent serious harm to the patient or other potential victims; or

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

34 (B) A healthcare provider that makes a disclosure permitted by subsection (b)(4)(vii)(A)

1 must promptly inform the patient that such a report has been, or will be, made, except if:

2 (1) The healthcare facility, in the exercise of professional judgment, believes informing the
3 patient would place the individual at risk of serious harm; or

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

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

10 (ix) If any staff member of the department of behavioral healthcare, developmental
11 disabilities and hospitals (BHDDH) who is authorized by its director makes a written demand for
12 records pursuant to either chapter 5, 24, 24.5, 26 or 27 of title 40.1 for any of the organization's or
13 client's or patient's records while BHDDH is investigating an alleged incident of abuse, neglect,
14 mistreatment, exploitation, death, or other violation of rights of an individual who has received or
15 is receiving services from either a facility or program subject to chapter 5 of title 40.1 ("mental
16 health law") or an organization licensed by BHDDH, the records identified in such written demand
17 for records shall be immediately produced to BHDDH; provided, however, that:

18 (A) The BHDDH written demand for records shall include notice that BHDDH has opened
19 an investigation with regard to abuse, neglect, mistreatment, exploitation, death, or violation of
20 rights of a patient or client of the facility, program or organization, and the notice shall include the
21 patient's or client's name if BHDDH is aware of the name.

22 (B) If the recipient of the written demand for records fails to comply, BHDDH may file in
23 the superior court a petition for writ of mandamus or similar petition for the records requested in
24 the written demand for records.

25 (C) For purposes of this section, BHDDH is designated as a health oversight agency as the
26 term is used in 42 CFR S 164.512, and is designated as both a social-service agency and protective
27 services agency as those terms are used in this section.

28 (5) Between, or among, qualified personnel and healthcare providers within the healthcare
29 system for purposes of coordination of healthcare services given to the patient and for purposes of
30 education and training within the same healthcare facility;

31 (6) To third-party health insurers, including to utilization review agents as provided by §
32 23-17.12-9(c)(4), third-party administrators licensed pursuant to chapter 20.7 of title 27, and other
33 entities that provide operational support to adjudicate health insurance claims or administer health
34 benefits;

1 (7) To a malpractice insurance carrier or lawyer if the healthcare provider has reason to
2 anticipate a medical-liability action;

3 (8)(i) To the healthcare provider's own lawyer or medical-liability insurance carrier if the
4 patient whose information is at issue brings a medical-liability action against a healthcare provider.

5 (ii) Disclosure by a healthcare provider of a patient's healthcare information that is relevant
6 to a civil action brought by the patient against any person or persons other than that healthcare
7 provider may occur only under the discovery methods provided by the applicable rules of civil
8 procedure (federal or state). This disclosure shall not be through ex parte contacts and not through
9 informal ex parte contacts with the provider by persons other than the patient or his or her legal
10 representative.

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

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

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

21 (11) In relation to information that is directly related to a current claim for workers'
22 compensation benefits or to any proceeding before the workers' compensation commission or
23 before any court proceeding relating to workers' compensation;

24 (12) To the attorneys for a healthcare provider whenever that provider considers that
25 release of information to be necessary in order to receive adequate legal representation;

26 (13) By a healthcare provider to appropriate school authorities of disease, health screening,
27 and/or immunization information required by the school; or when a school-age child transfers from
28 one school or school district to another school or school district;

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

32 (15) To a grand jury, or to a court of competent jurisdiction, pursuant to a subpoena or
33 subpoena duces tecum when that information is required for the investigation or prosecution of
34 criminal wrongdoing by a healthcare provider relating to his, her or its provisions of healthcare

1 services and that information is unavailable from any other source; provided, that any information
2 so obtained, is not admissible in any criminal proceeding against the patient to whom that
3 information pertains;

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

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

10 (18) To the central cancer registry;

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

17 (20) To the state department of children, youth and families pertaining to the disclosure of
18 healthcare records of children in the custody of the department;

19 (21) To the foster parent, or parents, pertaining to the disclosure of healthcare records of
20 children in the custody of the foster parent, or parents; provided, that the foster parent or parents
21 receive appropriate training and have ongoing availability of supervisory assistance in the use of
22 sensitive information that may be the source of distress to these children;

23 (22) A hospital may release the fact of a patient's admission and a general description of a
24 patient's condition to persons representing themselves as relatives or friends of the patient or as a
25 representative of the news media. The access to confidential healthcare information to persons in
26 accredited educational programs under appropriate provider supervision shall not be deemed
27 subject to release or transfer of that information under subsection (a);

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

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

1 (c) Third parties receiving, and retaining, a patient's confidential healthcare information
2 must establish at least the following security procedures:

3 (1) Limit authorized access to personally identifiable confidential healthcare information
4 to persons having a "need to know" that information; additional employees or agents may have
5 access to that information that does not contain information from which an individual can be
6 identified;

7 (2) Identify an individual, or individuals, who have responsibility for maintaining security
8 procedures for confidential healthcare information;

9 (3) Provide a written statement to each employee or agent as to the necessity of maintaining
10 the security and confidentiality of confidential healthcare information, and of the penalties provided
11 for in this chapter for the unauthorized release, use, or disclosure of this information. The receipt
12 of that statement shall be acknowledged by the employee or agent, who signs and returns the
13 statement to his or her employer or principal, who retains the signed original. The employee or
14 agent shall be furnished with a copy of the signed statement; and

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

17 (d) Consent forms for the release or transfer of confidential healthcare information shall
18 contain, or in the course of an application or claim for insurance be accompanied by a notice
19 containing, the following information in a clear and conspicuous manner:

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

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

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

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

34 (f) Nothing contained in this chapter shall be construed to limit the permitted disclosure of

1 confidential healthcare information and communications described in subsection (b).

2 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 amend provisions relative to confidentiality of health care communications
- 2 and the process for requesting records and/or confidential health care information.
- 3 This act would take effect upon passage.

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