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STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2020

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A N A C T

RELATING TO BUSINESSES AND PROFESSIONS -- HEALTH INFORMATION
EXCHANGE

Introduced By: Representative Robert B. Jacquard

Date Introduced: February 26, 2020

Referred To: House Health, Education & Welfare

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) ~~"Authorization form" means the form described in § 5-37.7-7 and by which a patient~~
14 ~~participant provides authorization for the RHIO to allow access to, review of, and/or disclosure of~~
15 ~~the patient participant's confidential healthcare information by electronic, written, or other means.~~

16 (c) "Authorized representative" means:

17 (1) A person empowered by the patient ~~participant~~ to assert or to waive confidentiality, or
18 to disclose or authorize the disclosure of confidential information, as established by this chapter.

1 That person is not, except by explicit authorization, empowered to waive confidentiality or to
2 disclose or consent to the disclosure of confidential information; or

3 (2) A person appointed by the patient ~~participant~~ to make healthcare decisions on his or her
4 behalf through a valid durable power of attorney for healthcare as set forth in § 23-4.10-2; or

5 (3) A guardian or conservator, with authority to make healthcare decisions, if the patient
6 ~~participant~~ is decisionally impaired; or

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

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

12 (6) A parent with the authority to make healthcare decisions for the parent's child; or

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

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

18 (e) "Confidential healthcare information" means all information relating to a ~~patient~~
19 ~~participant's~~ patient's healthcare history, diagnosis, condition, treatment, or evaluation.

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

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

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

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

29 (j) "Electronic mobilization" means the capability to move ~~clinical confidential health~~
30 information electronically between disparate healthcare information systems while maintaining the
31 accuracy of the information being exchanged.

32 (k) "Emergency" means the sudden onset of a medical, mental, or substance ~~abuse use~~, or
33 other condition manifesting itself by acute symptoms of severity (e.g. severe pain) where the
34 absence of medical attention could reasonably be expected, by a prudent layperson, to result in

1 placing the patient's health in serious jeopardy, serious impairment to bodily or mental functions,
2 or serious dysfunction of any bodily organ or part.

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

9 (m) "Healthcare services" means acts of diagnosis, treatment, medical evaluation, referral,
10 or counseling, or any other acts that may be permissible under the healthcare licensing statutes of
11 this state.

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

15 (o) "Health plan" means an individual plan or a group plan that provides, or pays the cost
16 of, healthcare services for ~~patient participants~~ [a patient](#).

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

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

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

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

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

33 (u) "Provider participant" means a pharmacy, laboratory, healthcare provider, or health
34 plan who or that is providing healthcare services or pays for the cost of healthcare services for a

1 patient ~~participant~~ and/or is submitting ~~or~~ and/or accessing healthcare information through the HIE
2 and has executed an electronic and/or written agreement regarding disclosure, access, receipt,
3 retention, or release of confidential healthcare information to or from the HIE.

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

6 ~~5-37.7-4. Participation in the health information exchange~~ **Use of the health**
7 **information exchange.**

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

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

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

21 (d) Provider ~~that provider~~ participants must continue to maintain their own medical record
22 meeting the documentation and other standards imposed by otherwise applicable law.

23 (e) State agencies may submit to the HIE and/or receive from the HIE applicable
24 confidential health care information for public health purposes.

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

30 ~~(e)(g)~~ The state of Rhode Island hereby imposes on the HIE and the RHIO as a matter of
31 state law, the obligation to maintain, and abide by the terms of, HIPAA-compliant business
32 associate agreements, including, without limitation, the obligations to use appropriate safeguards
33 to prevent use or disclosure of confidential healthcare information in accordance with HIPAA,
34 other state and federal laws and this chapter; not to use or disclose confidential healthcare

1 information other than as permitted by HIPAA and this chapter; or to make any amendment to a
2 confidential healthcare record that a provider participant so directs; and to respond to a request by
3 a patient ~~participant~~ to make an amendment to the ~~patient-participant's~~ patient's confidential
4 healthcare record.

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

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

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

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

22 **5-37.7-6. Regional health information organization.**

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

32 **5-37.7-7. Disclosure.**

33 (a)(1) Except as provided in subsection (b), a patient ~~participant's~~ or the patient's authorized
34 representative may opt out of having their confidential healthcare information ~~may only be~~

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

5 (b) ~~No authorization for release or transfer of confidential healthcare information from the~~
6 ~~HIE shall be required~~ The opt out does not apply to disclosures in the following situations:

7 (1) To a healthcare provider who believes, in good faith, that the information is necessary
8 for diagnosis or treatment of that individual in an emergency; or

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

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

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

20 (c) ~~The content of the authorization form for access to, or the disclosure, release, or transfer~~
21 ~~of confidential healthcare information from the HIE, shall be prescribed by the RHIO in accordance~~
22 ~~with applicable department of health regulations, but, at a minimum, shall contain the following~~
23 ~~information in a clear and conspicuous manner~~ Notification and opt-out procedures shall be
24 developed in consultation with the HIE advisory commission and provided in regulation
25 promulgated in accordance with § 5-37.7-5. Provider participants that share data with the HIE shall
26 notify their patients that data is being shared with the HIE to support the provision of care, and
27 inform their patients about the ability to opt out. At a minimum, the notification shall contain the
28 following information in a clear and concise manner:

29 (1) A statement ~~of the need for and proposed uses of that information; and~~ that the patient's
30 provider is a provider participant in the HIE, and as such may share the patient's confidential health
31 care information through the HIE as permitted by this chapter and all applicable state and federal
32 law.

33 (2) A statement that the ~~authorization for access to, disclosure of, and/or release of~~
34 ~~information may be withdrawn at any future time and is subject to revocation;~~ patient may opt out

1 of having their confidential health care information disclosed from the HIE except as provided
2 pursuant to § 5-37.7-7(b).

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

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

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

15 (e) ~~Nothing contained in this chapter shall be construed to limit the permitted access to, or~~
16 ~~the release, transfer, access, or disclosure of, confidential healthcare information described in~~
17 ~~subsection (b) or under other applicable law.~~

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

29 (g) Nothing contained herein shall interfere with, or impact upon, any rights or obligations
30 imposed by the Workers' Compensation Act as contained in chapters 29 – through 38 of title 28.

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

1 **5-37.7-8. Security.**

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

3 (1) Authenticate the recipient of any confidential healthcare information disclosed by the
4 HIE pursuant to this chapter pursuant to rules and regulations promulgated by the ~~agency~~
5 department;

6 (2) Limit authorized access to personally identifiable confidential healthcare information
7 to persons having a need to know that information; additional employees or agents may have access
8 to de-identified information;

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

11 (4) Provide an electronic or written statement to each employee or agent as to the necessity
12 of maintaining the security and confidentiality of confidential healthcare information, and of the
13 penalties provided for in this chapter for the unauthorized access, release, transfer, use, or
14 disclosure of this information; and

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

17 **5-37.7-10. Patient's rights.**

18 Pursuant to this chapter, a patient ~~participant~~ who has his or her confidential healthcare
19 information ~~transferred through~~ included in the HIE shall have the following rights:

20 (1) To obtain a copy of his or her confidential healthcare information from the HIE;

21 (2) To obtain a copy of the disclosure report pertaining to his or her confidential healthcare
22 information;

23 (3) To be notified as required by chapter 49.3 of title 11, the Rhode Island identity theft
24 protection act, of a breach of the security system of the HIE;

25 (4) To ~~terminate~~ change his or her ~~participation~~ opt-out status in the HIE in accordance
26 with rules and regulations promulgated by the ~~agency~~ department;

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

28 (6) To request his or her confidential healthcare information from the HIE be disclosed to
29 an authorized representative; and

30 (7) To request his or her confidential healthcare information from the HIE be disclosed to
31 healthcare providers who are not provider participants as defined by this chapter.

32 **5-37.7-12. Reconciliation with other authorities.**

33 (a) This chapter shall only apply to the HIE system, and does not apply to any other private
34 and/or public-health information systems utilized in Rhode Island, including other health

1 information systems utilized within or by a healthcare facility or organization.

2 (b) As this chapter provides extensive protection with regard to access to and disclosure of
3 confidential healthcare information by the HIE, it supplements, with respect to the HIE only, any
4 less stringent disclosure requirements, including, but not limited to, those contained in chapter 37.3
5 of this title, the Health Insurance Portability and Accountability Act (HIPAA) and regulations
6 promulgated thereunder, and any other less stringent federal or state law.

7 (c) This chapter shall not be construed to interfere with any other federal or state laws or
8 regulations that provide more extensive protection than provided in this chapter for the
9 confidentiality of healthcare information. ~~Notwithstanding such provision, because of the extensive
10 protections with regard to access to and disclosure of confidential healthcare information by the
11 HIE provided for in this chapter, patient authorization obtained for access to or disclosure of
12 information to or from the HIE or a provider participant shall be deemed the same authorization
13 required by other state or federal laws including information regarding mental health (the Rhode
14 Island mental health law, § 40.1-5-1 et seq.); HIV (§ 23-6.3-7); sexually transmitted disease (§§
15 23-6.3-7 and 23-11-9); alcohol and drug abuse (§ 23-1-10-1 et seq., 42 U.S.C. § 290dd-2), or genetic
16 information (§ 27-41-53, § 27-20-39, and § 27-19-44).~~

17 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 -- HEALTH INFORMATION
EXCHANGE

1 This act would amend 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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