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STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2020

A N A C T

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

Introduced By: Senators Miller, Goldin, Valverde, Crowley, and Sheehan

Date Introduced: February 04, 2020

Referred To: Senate Health & Human Services

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)~~(a) "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  
4 her 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  
11 absence 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  
14 to access their confidential healthcare information from the HIE, including family members or  
15 other proxies as designated by the patient, to assist the patient ~~participant~~ with the coordination of  
16 their care.

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

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

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

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

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

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

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

32 ~~(k)~~(i) "Emergency" means the sudden onset of a medical, mental, or substance abuse, 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 ~~(j)~~(j) "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 ~~(k)~~(k) "Healthcare services" means acts of diagnosis, treatment, medical evaluation,  
10 referral, or counseling, or any other acts that may be permissible under the healthcare licensing  
11 statutes of this state.

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

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

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

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

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

28 (p) "Opt out" means the ability of a patient to choose to not have their confidential health  
29 care information disclosed from HIE in accordance with § 5-37.7-7.

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

33 ~~(r)~~(r) "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 and/or ~~or~~ accessing healthcare information through the  
2 HIE and has executed an electronic and/or written agreement regarding disclosure, access,  
3 receipt, retention, or release of confidential healthcare information ~~to~~ from the HIE.

4 ~~(+)~~(s) "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 health care information in Rhode Island. Confidential  
10 health care information may only be accessed, released, or transferred from the HIE in  
11 accordance with this chapter.

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

17 (c) ~~Patients and health care 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, that provider~~ § 5-37.7-5.

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

23 (e) The department of health may submit to the HIE and/or receive from the HIE  
24 applicable 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 health care 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 health care information  
29 in 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 complaint business  
32 associate agreements, including, without limitation, the obligations to use appropriate safeguards  
33 to prevent use or disclosure of confidential health care information in accordance with HIPAA  
34 and this chapter; not to use or disclose confidential health care information other than as

1 permitted by HIPAA, [other state and federal laws](#) and this chapter; or to make any amendment to  
2 a confidential health care record that a provider participant so directs; and to respond to a request  
3 by a patient ~~participant~~ to make an amendment to the ~~patient-participant's~~ [patient's](#) confidential  
4 health care 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  
10 in chapter 17 of title 23 and chapter 35 of title 42 of the general laws.

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 health care  
14 provider or other organization that provides health care 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](#)  
17 [RHIO](#), will be responsible for recommendations relating to [the department regarding](#) the use of,  
18 and appropriate confidentiality protections for, the confidential health care information of the  
19 HIE, ~~subject to regulatory oversight by the department of health~~. Said commission members shall  
20 be 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. Rhode Island 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  
27 receiving, retaining, safeguarding and disclosing confidential health care information as required  
28 by this chapter. The RHIO is deemed to be the steward of the confidential health care information  
29 for which it has administrative responsibility. ~~The HIE advisory commission shall be responsible~~  
30 ~~for recommendations to the department of health, and in consultation with the RHIO regarding~~  
31 ~~the use of the confidential health care information.~~

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

33 (a)(1) Except as provided in subsection (b), a patient ~~participant's~~ [or the patient's](#)  
34 [authorized representative may opt out of having their](#) confidential health care information ~~may~~

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

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

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

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

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

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

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

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

34 (2) A statement that the ~~authorization for access to, disclosure of, and/or release of~~

1 ~~information may be withdrawn at any future time and is subject to revocation;~~ patient may opt out  
2 of having their confidential health care information disclosed from the HIE except as provided  
3 pursuant to § 5-37.7-7(b).

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

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

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

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

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

30 (g) Nothing contained herein shall interfere with, or impact upon, any rights or  
31 obligations imposed by the Workers Compensation Act as contained in chapters ~~29-38~~ 29 through  
32 38 of title 28.

33 (h) Nothing contained herein shall prohibit a health plan from becoming a data-  
34 submitting partner. A data-submitting partner is not considered a managed care entity or a

1 managed care contractor and the HIE is not considered a regional or local medical information  
2 database pursuant to § 5-37.3-4.

3 **5-37.7-8. Security.**

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

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

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

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

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

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

19 **5-37.7-10. Patient's rights.**

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

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

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

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

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

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

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

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

34 **5-37.7-12. Reconciliation with other authorities.**



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

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

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

21 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 - 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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