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STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2012

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A N A C T

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

Introduced By: Senators Jabour, Pichardo, Crowley, and Hodgson

Date Introduced: March 06, 2012

Referred To: Senate Judiciary

It is enacted by the General Assembly as follows:

1 SECTION 1. Sections 5-37.3-3 and 5-37.3-4 of the General Laws in Chapter 5-37.3
2 entitled "Confidentiality of Health Care Communications and Information Act" are hereby
3 amended to read as follows:

4 **5-37.3-3. Definitions.** -- As used in this chapter:

5 (1) "Authorized representative" means:

6 (i) A person empowered by the patient/client to assert or to waive the confidentiality, or
7 to disclose or consent to the disclosure of confidential information, as established by this chapter.
8 That person is not, except by explicit authorization, empowered to waive confidentiality or to
9 disclose or consent to the disclosure of confidential information;

10 (ii) A guardian or conservator, if the person whose right to confidentiality is protected
11 under this chapter is incompetent to assert or waive that right; or

12 (iii) If the patient/client is deceased, his or her personal representative or, in the absence
13 of that representative, his or her heirs-at-law.

14 (2) "Board of medical licensure and discipline" means the board created under chapter
15 37 of this title.

16 (3) (i) "Confidential health care communication" means a communication of health care
17 information by an individual to a health care provider, including a transcription of any
18 information, not intended to be disclosed to third persons except if those persons are:

1 (A) Present to further the interest of the patient in the consultation, examination or
2 interview;

3 (B) Reasonably necessary for the transmission of the communication; or

4 (C) Participating in the diagnosis and treatment under the direction of the health care
5 provider, including members of the patient's family.

6 (ii) "Confidential health care information" means all information relating to a patient's
7 health care history, diagnosis, condition, treatment, or evaluation obtained from a health care
8 provider who has treated the patient.

9 (4) "Crime of violence" includes murder, manslaughter, first degree sexual assault,
10 second degree sexual assault, first degree child molestation, second degree child molestation,
11 kidnapping, first degree arson, second degree arson, mayhem, robbery, felony assault with intent
12 to commit murder, robbery, sexual assault, burglary, or the abominable and detestable crime
13 against nature; or any offense punishable as a felony offense under section 12-29-5.

14 ~~(4)~~ (5) "Health care provider" means any person licensed by this state to provide or
15 lawfully providing health care services, including, but not limited to, a physician, hospital,
16 intermediate care facility or other health care facility, dentist, nurse, optometrist, podiatrist,
17 physical therapist, psychiatric social worker, pharmacist or psychologist, and any officer,
18 employee, or agent of that provider acting in the course and scope of his or her employment or
19 agency related to or supportive of health services.

20 ~~(5)~~ (6) "Health care services" means acts of diagnosis, treatment, medical evaluation, or
21 counseling or any other acts that may be permissible under the health care licensing statutes of
22 this state.

23 ~~(6)~~ (7) "Managed care contractor" means a person that:

24 (i) Establishes, operates, or maintains a network of participating providers;

25 (ii) Conducts or arranges for utilization review activities; and

26 (iii) Contracts with an insurance company, a hospital or medical service plan, an
27 employer, an employee organization, or any other entity providing coverage for health care
28 services to operate a managed care plan.

29 ~~(7)~~ (8) "Managed care entity" includes a licensed insurance company, hospital or
30 medical service plan, health maintenance organization, an employer or employee organization, or
31 a managed care contractor as described in subdivision (6) of this section, that operates a managed
32 care plan.

33 ~~(8)~~ (9) "Managed care plan" means a plan operated by a managed care entity as described
34 in subdivision ~~(7)~~ (8) of this section, that provides for the financing and delivery of health care

1 services to persons enrolled in the plan through:

2 (i) Arrangements with selected providers to furnish health care services;

3 (ii) Explicit standards for the selection of participating providers;

4 (iii) Organizational arrangements for ongoing quality assurance, utilization review
5 programs, and dispute resolution; and

6 (iv) Financial incentives for persons enrolled in the plan to use the participating
7 providers and procedures provided for by the plan.

8 ~~(9)~~ (10) "Medical peer review board" means a peer review board under chapter 37 of this
9 title.

10 ~~(10)~~ (11) "Nurse" means a registered nurse or licensed practical nurse licensed to
11 practice nursing in the state.

12 ~~(11)~~ (12) "Participating provider" means a physician, hospital, pharmacy, laboratory,
13 dentist, or other state licensed or other state recognized provider of health care services or
14 supplies, that has entered into an agreement with a managed care entity to provide any services or
15 supplies to a patient enrolled in a managed care plan.

16 ~~(12)~~ (13) "Patient" means a person who receives health care services from a health care
17 provider.

18 ~~(13)~~ (14) "Personally identifiable confidential health care information" means
19 confidential health care information, which explicitly or by implication identifies a particular
20 patient.

21 ~~(14)~~ (15) "Physician" means a person registered or licensed to practice allopathic or
22 osteopathic medicine in this state under Rhode Island general laws.

23 ~~(15)~~ (16) "Psychiatric social worker" means a person holding a Master's or further
24 advanced degree from a school of social work accredited by the council of social work education.

25 ~~(16)~~ (17) "Psychologist" means a certified psychologist under chapter 44 of this title.

26 ~~(17)~~ (18) "Qualified personnel" means persons whose training and experience are
27 appropriate to the nature and level of the work in which they are engaged and who, when working
28 as part of an organization, are performing that work with published and adequate administrative
29 safeguards against disclosure unauthorized under this chapter.

30 ~~(18)~~ (19) "Third party" means a person other than the patient to whom the confidential
31 health care information relates and other than a health care provider.

32 **5-37.3-4. Limitations on and permitted disclosures.** -- (a) (1) Except as provided in
33 subsection (b) of this section or as specifically provided by the law, a patient's confidential health
34 care information shall not be released or transferred without the written consent of the patient or

1 his or her authorized representative, on a consent form meeting the requirements of subsection (d)
2 of this section. A copy of any notice used pursuant to subsection (d) of this section, and of any
3 signed consent shall, upon request, be provided to the patient prior to his or her signing a consent
4 form. Any and all managed care entities and managed care contractors writing policies in the state
5 shall be prohibited from providing any information related to enrollees which is personal in
6 nature and could reasonably lead to identification of an individual and is not essential for the
7 compilation of statistical data related to enrollees, to any international, national, regional, or local
8 medical information data base. This provision shall not restrict or prohibit the transfer of
9 information to the department of health to carry out its statutory duties and responsibilities.

10 (2) Any person who violates the provisions of this section may be liable for actual and
11 punitive damages.

12 (3) The court may award a reasonable attorney's fee at its discretion to the prevailing
13 party in any civil action under this section.

14 (4) Any person who knowingly and intentionally violates the provisions of this section
15 shall, upon conviction, be fined not more than five thousand (\$5,000) dollars for each violation,
16 or imprisoned not more than six (6) months for each violation, or both.

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

19 (b) No consent for release or transfer of confidential health care information shall be
20 required in the following situations:

21 (1) To a physician, dentist, or other medical personnel who believes, in good faith, that
22 the information is necessary for diagnosis or treatment of that individual in a medical or dental
23 emergency;

24 (2) To medical and dental peer review boards, or the board of medical licensure and
25 discipline, or board of examiners in dentistry;

26 (3) To qualified personnel for the purpose of conducting scientific research, management
27 audits, financial audits, program evaluations, actuarial, insurance underwriting, or similar studies;
28 provided, that personnel shall not identify, directly or indirectly, any individual patient in any
29 report of that research, audit, or evaluation, or otherwise disclose patient identities in any manner;

30 (4) By a health care provider to appropriate law enforcement personnel, or to a person if
31 the health care provider believes that person or his or her family is in danger from a patient; or to
32 appropriate law enforcement personnel if the patient has or is attempting to obtain narcotic drugs
33 from the health care provider illegally; or to appropriate law enforcement personnel or
34 appropriate child protective agencies if the patient is a minor child or the parent or guardian of

1 said child and/or the health care provider believes, after providing health care services to the
2 patient, that the child is or has been physically, psychologically or sexually abused and neglected
3 as reportable pursuant to section 40-11-3; or to law enforcement personnel in the case of a
4 gunshot wound reportable under section 11-47-48; or to appropriate law enforcement personnel if
5 the health care provider comes into contact with or provides medical services to a patient whom
6 the provider reasonably suspects is suffering from injuries that are the result of a crime of
7 violence. The disclosures authorized by this subsection being limited to the minimum amount of
8 information necessary to accomplish the intended purpose of the release of information.

9 (5) Between or among qualified personnel and health care providers within the health
10 care system for purposes of coordination of health care services given to the patient and for
11 purposes of education and training within the same health care facility; or

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

16 (7) To a malpractice insurance carrier or lawyer if the health care provider has reason to
17 anticipate a medical liability action; or

18 (8) (i) To the health care provider's own lawyer or medical liability insurance carrier if
19 the patient whose information is at issue brings a medical liability action against a health care
20 provider.

21 (ii) Disclosure by a health care provider of a patient's health care information which is
22 relevant to a civil action brought by the patient against any person or persons other than that
23 health care provider may occur only under the discovery methods provided by the applicable
24 rules of civil procedure (federal or state). This disclosure shall not be through ex parte contacts
25 and not through informal ex parte contacts with the provider by persons other than the patient or
26 his or her legal representative. Nothing in this section shall limit the right of a patient or his or her
27 attorney to consult with that patient's own physician and to obtain that patient's own health care
28 information;

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

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

3 (11) In relation to information that is directly related to current claim for workers'
4 compensation benefits or to any proceeding before the workers' compensation commission or
5 before any court proceeding relating to workers' compensation;

6 (12) To the attorneys for a health care provider whenever that provider considers that
7 release of information to be necessary in order to receive adequate legal representation;

8 (13) By a health care provider to appropriate school authorities of disease, health
9 screening and/or immunization information required by the school; or when a school age child
10 transfers from one school or school district to another school or school district;

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

14 (15) To a grand jury or to a court of competent jurisdiction pursuant to a subpoena or
15 subpoena duces tecum when that information is required for the investigation or prosecution of
16 criminal wrongdoing by a health care provider relating to his or her or its provisions of health
17 care services and that information is unavailable from any other source; provided, that any
18 information so obtained is not admissible in any criminal proceeding against the patient to whom
19 that information pertains;

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

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

26 (18) To the central cancer registry;

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

33 (20) To the state department of children, youth, and families pertaining to the disclosure
34 of health care records of children in the custody of the department;

1 (21) To the foster parent or parents pertaining to the disclosure of health care records of
2 children in the custody of the foster parent or parents; provided, that the foster parent or parents
3 receive appropriate training and have ongoing availability of supervisory assistance in the use of
4 sensitive information that may be the source of distress to these children;

5 (22) A hospital may release the fact of a patient's admission and a general description of
6 a patient's condition to persons representing themselves as relatives or friends of the patient or as
7 a representative of the news media. The access to confidential health care information to persons
8 in accredited educational programs under appropriate provider supervision shall not be deemed
9 subject to release or transfer of that information under subsection (a) of this section; or

10 (23) To the workers' compensation fraud prevention unit for purposes of investigation
11 under sections 42-16.1-12 -- 42-16.1-16. The release or transfer of confidential health care
12 information under any of the above exceptions is not the basis for any legal liability, civil or
13 criminal, nor considered a violation of this chapter; or

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

17 (c) Third parties receiving and retaining a patient's confidential health care information
18 must establish at least the following security procedures:

19 (1) Limit authorized access to personally identifiable confidential health care
20 information to persons having a "need to know" that information; additional employees or agents
21 may have access to that information which does not contain information from which an individual
22 can be identified;

23 (2) Identify an individual or individuals who have responsibility for maintaining security
24 procedures for confidential health care information;

25 (3) Provide a written statement to each employee or agent as to the necessity of
26 maintaining the security and confidentiality of confidential health care information, and of the
27 penalties provided for in this chapter for the unauthorized release, use, or disclosure of this
28 information. The receipt of that statement shall be acknowledged by the employee or agent, who
29 signs and returns the statement to his or her employer or principal, who retains the signed
30 original. The employee or agent shall be furnished with a copy of the signed statement;

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

33 (d) Consent forms for the release or transfer of confidential health care information shall
34 contain, or in the course of an application or claim for insurance be accompanied by a notice

1 containing, the following information in a clear and conspicuous manner:

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

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

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

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

16 (f) Nothing contained in this chapter shall be construed to limit the permitted disclosure
17 of confidential health care information and communications described in subsection (b) of this
18 section.

19 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 require mandatory disclosure to appropriate law enforcement personnel if
2 a health care provider comes into contact with or provides medical services to a patient whom the
3 provider reasonably suspects is suffering from injuries that are the result of a crime of violence.

4 This act would take effect upon passage.

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